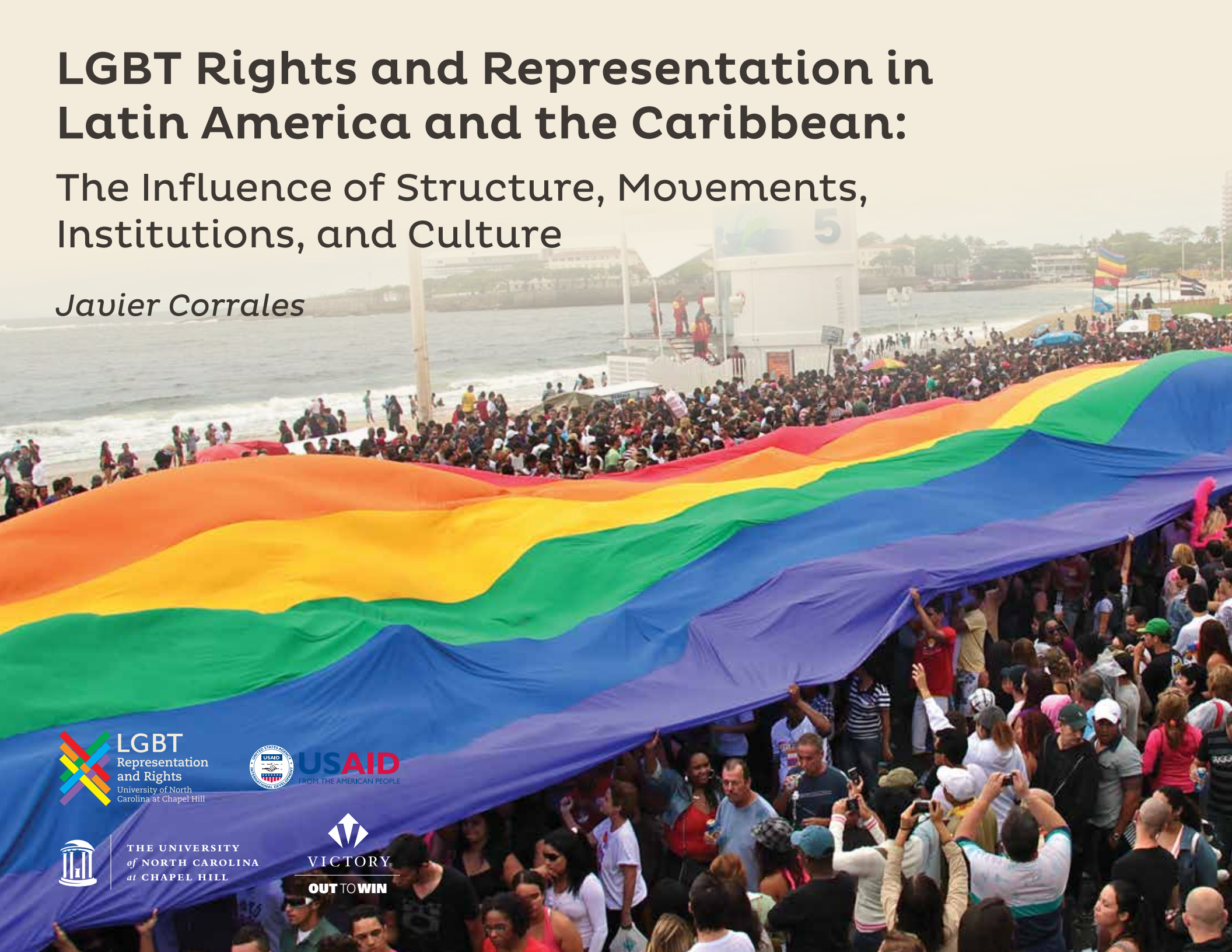


# LGBT Rights and Representation in Latin America and the Caribbean:

## The Influence of Structure, Movements, Institutions, and Culture

*Javier Corrales*



FROM THE AMERICAN PEOPLE



THE UNIVERSITY  
of NORTH CAROLINA  
at CHAPEL HILL



VICTORY

OUT TO WIN



### Javier Corrales

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LGBT Conference in Bahia, Brazil  
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# Introduction

Outside of the North Atlantic, no region in the world has undergone more progress in expanding LGBT legal rights than Latin America. Some of the most advanced legislation and policies on LGBT rights in the world, such as non-discrimination statutes, legalized same-sex marriage, expansion of health services for LGBT people, and pro-LGBT court rulings, have been established in Latin American countries during the last ten years. This begs the question: What does Latin America's experience teach us about the conditions under which rights in general, and LGBT rights in particular, expand?

One advantage of focusing on Latin America to study questions of LGBT rights expansion is that the region displays variation in outcomes. While rights have expanded in many countries and in many domains of the law across the region, they have also stagnated or even reversed in others. This variation in outcomes allows for more careful evaluation of some of the most important theoretical claims about the causes of LGBT rights expansion.

The conventional wisdom about the causes of social rights expansion, and for LGBT rights in particular, goes something like this: rights are more likely to advance in high-income democracies (the modernization hypothesis), where social movements are abundant, strong, organized, and sufficiently-networked (the social movement hypothesis), and where religion is less influential in the daily life of majorities (the secularist or culturalist hypothesis). This paper will argue that these propositions, for the most part, hold true, but they must become more nuanced to account for the experience of Latin America in the past ten years. In particular, institutional factors, such as the role of alliances between movements and political groups, degree of party competition, degree of federalism, and degree of court assertiveness and progressiveness, should supplement structural variables, such as income. In addition, the notion of secularism needs to incorporate a discussion of the different ways in which two branches of religion—mainstream Catholicism and Evangelicalism—influence politics.

# The Status of LGBT Rights and Representation

One way to appreciate the magnitude of Latin America's LGBT rights transformation is to look at some of the standard legal benchmarks associated with LGBT rights. As a measure of the quality of LGBT life in the region, focusing on legal rights alone is admittedly incomplete and imperfect, as it tells us little about enforcement policies, such as treatment by the police, education campaigns, public health policies, and general attitudes toward employment and housing. Yet, some of these legal rights, however circumscribed, are hard to obtain worldwide, and in some countries, nonexistent. They are not trivial landmarks, and most scholars agree that it is better to have them than not. Thus, it is useful to focus on legal rights as one way to capture the evolution of LGBT rights in any given country.

Table 1 compares LGBT legal rights in 1999 and 2013, across a number of domains. These trends stand out:

























- Decriminalization of homosexuality, already a strong current in the region by 1999, has become even stronger.

- Next to decriminalization of homosexuality, the area of most improvement is anti-discrimination statutes and the right to serve in the military.
- Progress has been more modest on the question of protection for gender identity.
- Progress has been even more modest in the area of hate crime laws, rights and protections for civil unions, and same-sex marriage. However, considering that no country had these protections in 1999, the record so far, especially with hate crime, is worthy of note.
- Spanish- and Portuguese-speaking Latin American countries (SPLA) are unquestionably in the lead in the region. If one excludes non-SPLA countries, which are mostly small countries in the Caribbean, the record of progress is even more impressive. The LGBT rights revolution is clearly an Ibero-America phenomenon.
- Finally, progress coexists with lack of progress. No domain achieves a perfect score. Only three countries, Argentina, Brazil and Uruguay, have achieved progress in all categories.

**Table 1 Notes:** (1) Same-Sex Sexual Activity Fully Decriminalized; (2) Same-Sex Relationships Legally Recognized; (3) Equal Rights of Marriage Extended to Same-Sex Couple as for Heterosexual Couples; (4) Homosexuals Enjoy Same Rights to Adopt Children as Heterosexuals; (5) Homosexuals Allowed to Serve in the Military; (6) Strong Legal Protections Against Discrimination Based on Sexual Orientation; (7) Strong Legal Protections Against Discrimination for Gender Identity, and (8) Hate crimes based on sexual orientation considered an aggravating circumstance.

**Table 1 Source:** Calculated by author based on data from [en.wikipedia.org/wiki/LGBT\\_rights\\_by\\_country\\_or\\_territory](http://en.wikipedia.org/wiki/LGBT_rights_by_country_or_territory); and [old.ilga.org/Statehomophobia/ILGA\\_State\\_Sponsored\\_Homophobia\\_2013.pdf](http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2013.pdf)

**Table 1: LGBT Rights in Latin America and the Caribbean, 1999 v. 2013**

	1999 # countries % of total	2013 # countries % of total	2013 # countries % of total
	All of Latin America and the Caribbean (n = 42)		Spanish and Portuguese-Speaking only (n = 20)
Decriminalization (1)	 24 57.1%	 32 76.2%	 20 100%
Civil Unions (2)	 1 2.4%	 6 14.3%	 6 30%
Marriage (3)	 0 0%	 3 7.1%	 3 15%
Adoption (4)	 0 0%	 3 7.1%	 3 15%
Military Service (5)	 13 30.9%	 24 57.1%	 14 70%
Anti-Discrimination (6)	 4 9.5%	 16 38.1%	 14 70%
Gender Identity (7)	 3 7.1%	 12 28.6%	 11 55%
Hate Crime (8)	 0 0%	 7.5 17.9%	 7.5 37.5%

## OUT IN OFFICE

Despite the progress of LGBT rights in Latin America, examples of high-profile out LGBT politicians remain rare. However, the picture is slowly starting to improve. See the Out in Office sidebars for examples of out politicians in the region, and the battles that they are fighting.



Photo by Congreso de la República del Perú

### Peru: Carlos Bruce

Carlos Bruce (b. 1957) is the first national-level politician to come out in Peru.<sup>2</sup> A former businessman and Minister of Housing, Construction, and Sanitation, Congressman Bruce was elected to Congress from a district in Lima. Before coming out, Bruce had proven to be a queer ally. In September 2013, he introduced Peru's first bill to legalize civil unions, arguing that civil unions do not challenge the traditional family and that they promote stability for same-sex partners.<sup>3</sup> Bruce and his supporters recognize that the bill is unlikely to pass in the current Peruvian congress.

A 2013 poll found that 65 percent of Peruvians oppose civil unions.<sup>4</sup> That same year, lawmakers voted overwhelmingly to remove sexual orientation and gender identity and expression from a hate crimes law that Bruce had attempted to include.<sup>5</sup> There is also significant pushback from the Catholic Church amid a history of "social cleansing" policies from guerilla groups.<sup>6</sup> He also faces criticisms from some Peruvian activists who claim that too much focus on marriage rights and not enough on anti-LGBT violence is misguided.<sup>7</sup> However, Bruce remains undeterred. He wants to encourage his country to at least engage in debates about marriage equality.<sup>8</sup> Incidentally, Bruce is not advocating adoption rights for same-sex partners.<sup>9</sup>

Perhaps the region's standard-bearer is Argentina because it was such a pioneer (see Appendix 1). In 2010, Argentina became the first country in Latin America, the second in the Americas (after Canada), and the second in the Global South (after South Africa) to legalize same-sex marriage and adoption rights for LGBT people. Then, in 2012, also through Congressional action (Senate vote of 55-0), the Argentine government enacted one of the most progressive transgender laws in the world. The law established public funding for sex reassignment surgery, while virtually eliminating the red tape for transgender persons to correct legal documents, such as driver licenses and birth certificates, to accurately reflect their gender identity.

Today, Argentina is not alone in the region. Uruguay and Brazil, together with several states and districts in Mexico, including Mexico City, also have marriage equality and generally progressive attitudes toward transgender rights. Because Uruguay, unlike Argentina, also has hate crime legislation in the books, thus scoring a perfect score in our index, it could very well be considered the most LGBT friendly country in Latin America, at least in terms of legal rights.

Overall, these are impressive legal achievements in countries that, only fifteen years ago, had very limited legal protections for LGBT people and where the topic of civil unions was not even on the agenda of most major political parties.

The story of LGBT issues in the region is thus remarkable. This progress also contrasts with the situation in many African and Eastern European countries, where LGBT rights have receded recently, and in the Middle East and Asia, where there has been very little progress.

In terms of LGBT representation, the story is less impressive. Table 2 lists the number of publicly out politicians holding public office in Latin America as of 2013. There are only twelve out national-level legislators in all of Latin America, in Argentina, Aruba, Brazil, Chile, Colombia, Costa Rica, Mexico, and Peru.

Nevertheless, some positive signs of change in the area of political representation are visible. The number of openly out politicians occupying subnational offices and, to some extent, cabinet positions, is increasing. In addition, there are more signs of out LGBT politicians running for national office. In 2013, two trans women in Ecuador and Chile, Diane Rodríguez and Valentina Verbal, respectively, made history as the first openly transgender individuals to run for office in their national legislatures.

And yet, the record so far is one of significant political underrepresentation and continued barriers for trans people. In Chile, Valentina Verbal had to withdraw from the election after TRICEL, the country's electoral body, refused to let her run using her social name, rather than her legal name.<sup>1</sup>



**Table 2: LGBT Political Representation**  
(National)

### LATIN AMERICA

Country	Name	Year	Position
Argentina	● Osvaldo Lopez	★ 2011	Senator
Brazil	● Clodovil Hernandez	★ 2007	Federal Deputy
	● Jean Wyllys	★ 2011	Federal Deputy
Chile	● Claudio Arriagada	★ 2013	Federal Deputy
Colombia	● Angelica Lozano Correa	★ 2014	Congressperson
	● Claudia Lopez	★ 2014	Senator
	● Gina Parody	★ 2014	Minister for Education ( <i>appointed</i> )
	● Cecilia Alvarez	★ 2014	Minister for Commerce ( <i>appointed</i> )
Costa Rica	● Carmen Muñoz	★ 2010	Federal Deputy
Ecuador	● Carina Isabel Vance Mafla	2012	Minister for Public Health ( <i>appointed</i> )
Mexico	● Patricia Jimenez	★ 1997	Federal Deputy, then Senator starting in 2000
	● David Sanchez Camacho	★ 2006	Federal Deputy (lower federal chamber)
	● Enoé Uranga	★ 2009	Federal Deputy
Peru	● Carlos Bruce	☆ 2006	Congressperson

### CARIBBEAN

Country	Name	Year	Position
Aruba	● Desiree Croes	★ 2011	Parliament member

- Gay
- Lesbian
- ★ Out when first elected/appointed
- ☆ Not Out when first elected/appointed

Number of LGBT Politicians





Photo by Comissão de Direitos Humanos e Minorias

## OUT IN OFFICE Brazil: Jean Wyllys

Jean Wyllys de Matos Santos (b. 1974) is Brazil's only openly gay member of congress. Trained as a journalist with extensive college-level teaching experience, he became famous as a contestant in *Big Brother Brazil* (a reality TV show), during which he came out publicly. He went on to win the show.<sup>10</sup> Wyllys was born in Alagoinhas, Bahia to a poor family of seven children.<sup>11</sup> His career as an academic is well established: Wyllys has published three books, and has taught at the School of Advertising and Marketing in the University of Veiga de Almedia. He is also a columnist of *Carta Capital e do iGay*.<sup>12</sup> He used his fame from *Big Brother Brazil* to win the election as Federal Deputy in 2010, running as a candidate from the Socialism and Liberty Party.

While Clodovil Hernandez was the first openly homosexual politician in Brazil, Wyllys is the first to advocate for marriage equality (Hernandez was against civil unions).<sup>13</sup> In 2012, Wyllys was elected as the most popular legislator in an online survey. He became famous by declaring war on Evangelical pastors who demonize homosexuality on television.<sup>14</sup> In January 2012, *Istoé*, a Brazilian news magazine, named him one of Brazil's top 100 people to watch in 2012, alongside President Dilma Rousseff.<sup>15</sup> Wyllys has won many awards for his LGBT activism. In 2014, he was named LGBT Personality of the year by *DiverCidade Marvelous*.<sup>16</sup> In 2013, Wyllys received the Pedro Ernesto Medal of Honor by the Municipality of Rio de Janeiro and the Nelson Mandela Trophy for his defense of equality.<sup>17</sup> He has also received the Commendation of Merit for Labour Judiciary by the Superior Labor Court (TST) for those people who have contributed to the advancement of the country.<sup>18</sup>

Latin America, therefore, is distinctive in the global politics of LGBT rights for exhibiting a major paradox: LGBT rights have become quite developed for world standards (mostly in SPLA), but representation remains low.

This leads to at least two observations—one positive, one negative—about how democracy is working (or not) on behalf of LGBT rights in Latin America. The positive observation is that LGBT rights openings, where they are occurring, are not being driven by elite-politics, but by pressures from below, including professional social movements. The LGBT rights transformation is, to a remarkable degree, a bottom-up phenomenon. The negative conclusion is that, despite the legal progress achieved, coming out remains (or is seen as) highly unsafe for high-level politicians seeking votes. This is reason for concern. If a true civil rights revolution requires that civil-rights claimants from below forge strong ties with both allies and representatives at the state level, then the region cannot be said to be yet on a secure path toward full progress on LGBT rights.

There is one more salient paradox about the region. Despite impressive legal advances, Latin America continues to be the scene of startling incidents of public homophobia. Some of these incidents (e.g., hate crimes, public hate speech) occur routinely in countries with low LGBT representation and legal rights scores (which is not surprising), but also in countries with

higher scores, such as Brazil and Mexico. Appendix 2 provides a list of some of the most prominent examples of public homophobia in Latin America of the last several years.

In short, the region faces substantial challenges, even though, legally, it is far more advanced than it was a decade ago, and some countries enjoy legal protections for LGBT people that are rare in the world. It makes sense, then, to study why some Latin American countries have been able to move so decidedly on the question of legal rights.

The rest of this paper seeks to explain the causes for the expansion (or lack thereof) of LGBT rights in the Americas. I organize the discussion following the standard practice in the field of Comparative Politics of grouping arguments according to three explanatory categories: structure (especially issues of income), institutions (with an emphasis on social movements, parties, the court system, and federalism), and culture (with an emphasis on public opinion and the role of institutions, such as churches, in advocating conservative attitudes).

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## The Income Argument

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Since the heyday of modernization theory, political scientists have been familiar with the argument that rising incomes (including rising levels of urbanization and rising middle classes) are associated with increases in political and social rights. This argument is somewhat confirmed by the experience of LGBT rights expansion in Latin America. The region's super achievers in terms of LGBT legal rights (Argentina, Brazil, Uruguay, and perhaps Mexico) are without a doubt the richest, most urbanized, most middle-class countries in the region.

Furthermore, LGBT rights are strong in cities that are also among the wealthiest in the developing world: Mexico City, Buenos Aires, Bogotá, São Paulo, and Rio. The middle-class component is a key factor. A recent paper by the Andean Development Corporation shows that in Latin America there is a strong connection between middle-class status and “post-materialist” values, meaning less interest in securing economic sustenance and shelter, and more emphasis on issues of “self-expression,” “subjective-wellbeing,” defense of ideas and quality of life (CAF 2014; Inglehart 2008; Inglehart and Carvalho 2008). Post-materialist

environments are generally considered more amenable for the rise of LGBT rights.

However, the problem with the income argument is that there are too many exceptions within the region. Oil-rich Venezuela, along with most non-SPLA countries, are high-income, and yet their LGBT progress is modest or nonexistent. One could even say that even Chile and Mexico, given their generally high-income status and fast-rising middle class since the 2000s, should have higher scores on our LGBT rights index. Income therefore seems to be a contributing, but not a sufficient, condition.



Photo by Bloque de Senadores Nuevo Encuentro

Top: Carina Mafla, Ecuador  
Bottom: Osvaldo Lopez, Argentina

**Chart 1:** GDP per capita and LGBT Rights in Latin America and the Caribbean, 2013



**Chart 1 Source:** GDP per capita derived from World Development Indicators.

**Chart 1 Key:** ● Latin American countries ● Caribbean countries

## Social Movements, Queer Allies, and Network-Building

Rather than focusing on income, many scholars have tried to explain the rise of rights by looking at social movements. The central idea is that a country needs to not just be a wealthy democracy, but also home to the right kind of social movements. Thus, the bulk of scholarship on LGBT rights expansion in the region has borrowed heavily from social movement theory. Here too, the experience of Latin America confirms and defies expectations.

On the one hand, there is clear evidence that rights have expanded thanks to pro-active efforts by LGBT social movements (see Encarnación 2010; Díez forthcoming). But the remarkable puzzle is that many of Latin America's pro-LGBT social movements, even long-established ones, do not seem, *prima facie*, to be equipped for success. In most countries, at least until the late 2000s, these movements were typically very small, not well organized, and generally devoid of resources and cross-class allies. They operated in countries that did not necessarily offer the right "political opportunity," given that national attention tended to focus on issues such as economic crisis, unemployment, crime, poverty, corruption, and

instability. Therefore, in the early 2000s, both pro-LGBT movements and their causes were marginal. Most political scientists would thus have predicted little influence by these social movements. How then to account for the success of many pro-LGBT social movements in Latin America?

Political scientists point to *strategy* and *framing* as reasons for success. While the experience of Latin America suggests there is not one single winning strategy, the most important theme that dominates is the value of network-building strategies: pro-LGBT movements that succeed in establishing strong partnerships with *larger* movements or political actors, or which develop innovative network-building strategies, are more likely to succeed.

On the question of alliance-building, the literature on social science suggests that, to be successful in changing policy, *small* social movements must develop alliances with *larger* social movements or political actors. This was the case in Argentina and Mexico City, where pro-LGBT movements formed key alliances with the largest and most developed social movements in each country: human rights groups in Argentina (especially those seeking that more be done to uncover human rights abuses during the dictatorship) and democratizing movements in Mexico that had been working in the country since the 1990s. (Díez 2013; Encarnación n.d.). In Ecuador, LGBT



### OUT IN OFFICE Colombia: Angélica Lozano Correa (Claudia López, Cecilia Álvarez, and Gina Parody):

Angélica Lozano Correa (b. 1975) became the first openly lesbian national legislator when she was elected to the Colombian House of Representatives in 2014. Lozano ran under the Green Alliance Party and describes herself as "center-left." Previously, Lozano served on the Bogotá City Council (2011) and as mayor of Bogotá's Chapinero district (2005–2008). She is an advocate for LGBT rights, civil rights, women's rights, and the rights of urban bikers. In Congress, she confronts resistance from the Senate, where the bulk of congressional opposition to LGBT rights exists. Lozano argues that any peace agreement in Colombia must involve reparations to LGBT individuals, given that both sides of the conflict engaged in LGBT-related hate crimes. She has also taken part in a USAID-backed training program to encourage LGBT people to become more involved in politics.

In 2014, she revealed being in a relationship with Senator Claudia López. Former senator and current Evangelical pastor Víctor Velásquez filed a lawsuit against Lozano and López based on Article 179 of the Colombian Constitution, which bans two people in a marriage or permanent union from serving in Congress. Lozano and López contend that because same-sex marriage and civil unions are not legal, this stipulation does not apply. The lawsuit followed revelations by two cabinet members (Commerce Minister Cecilia Álvarez and Education Minister Gina Parody) that they were involved in a "sentimental relationship." No other Latin American country has seen this degree of lesbian openness on the part of national-level politicians.



## OUT IN OFFICE

### Chile: Claudio Arriagada

Claudio Arriagada Macaya (b. 1955) became Chile's first openly gay national deputy on November 17, 2013. Prior to being elected to the National Congress as a member of the Christian Democrats, Arriagada served as mayor of La Granja, a district in Chile's capital of Santiago, from 1992 to 2012. He served as President of the Chilean Association of Municipalities twice during his time as mayor (2005–2007 and 2009–2011).

Arriagada was not openly gay throughout his mayoral terms, but came out to the public during his campaign in 2013. In an interview following his election, Arriagada stated that Chile is “one of the most hypocritical” countries in Latin America given its treatment of the LGBT community. Arriagada expressed his commitment to fight for the rights of homosexuals, indigenous peoples, and other marginalized communities in Chile. After taking office in March of 2014, Arriagada joined legislative commissions on human rights, government affairs, culture and the arts, and poverty. Among his first motions filed, Arriagada sponsored legislation prohibiting discrimination in health care on the basis of sexual orientation and gender identity.

movements achieved success, including protection for sexual and gender minorities in the 2008 constitution, by aligning themselves with strong feminist and indigenous movements, each of which had become particularly salient in Ecuadorean politics since the late 1990s (Xu and Corrales 2010). In Brazil, social movements formed alliances with large groups advocating for fairer economic development, particularly the improvement of health provisions as both democratic and development rights. This strategy was deployed in full force when the AIDS epidemic broke out in the 1980s and continued into the 1990s (see Gomez 2010). Brazilian LGBT groups worked together with NGOs, many of which had connections with elements of the bureaucracy, to help design effective strategies to educate the public and provide health services to serve HIV+ or high-risk communities.

Yet, some alliances have been a bit more surprising, and this is where the experience of the region defies theory. Many network-building strategies by LGBT movements do not conform with strategies that one typically expects from left-leaning social movements. In many cities, for instance, LGBT movements have formed alliances with business communities. This is one of the most controversial strategies employed by Latin American LGBT movements. The strategy consists of demonstrating to the private sector, and even the public sector, that there is such a thing as a “gay market.” LGBT groups have learned that

demonstrating (even exaggerating) the spending power of LGBT voters and consumers allows them to earn allies in government and business (see [thegayguide.com.ar](http://thegayguide.com.ar)). This strategy is predicated on whetting the appetite of both business groups as well as city officials, as a way to make them more amenable to LGBT rights and policies. For instance, Mexico's Secretary of Tourism launched a campaign called #MéxicoFriendly aimed at encouraging LGBT tourism. In Argentina, the government-run Institute for Tourism Promotion has its webpage dedicated to LGBT travel, [argentina.travel/es/type/lgbt](http://argentina.travel/es/type/lgbt).

This strategy is controversial because it is seen by some as selling the soul of the movement, a commodification of gay culture, and an exaggeration of the purchasing power of LGBT people (and thus, a non-appreciation of the socioeconomic plight of many LGBT individuals). At the same time, many LGBT groups welcome tourism as an economic force that can turn both the state and the business sector more LGBT-friendly. This strategy played a major role in getting same-sex rights in unexpected places, such as the state of Quintana Roo (Cancún), where the tourism industry tries to combat the image of a country besieged by gangs, as well as the city of Buenos Aires, which during the 2001–02 economic crisis saw itself desperate to generate new forms of revenue. LGBT people have also specialized in buycotts (more so than boycotts) and this makes them debit-card pressure groups par excellence.

Another area of innovation, related to the previous one, has to do with the relationship between pro-LGBT movements and globalization. Whereas the traditional left in Latin America has never quite come to terms with globalization, always responding to it with various forms of negativity ranging from suspicion to extreme repulsion, some LGBT movements have adopted an approach that leverages globalization (Corrales 2012). Many LGBT groups systematically use resources provided by globalization and markets to enhance their bargaining leverage. For instance, they use traditional and new media, such as the Internet, to actively monitor and adapt to local circumstances the strategies adopted by LGBT movements elsewhere in the world (especially Spain and the United States). They are, in the words of Friedman (2012), “norm receptors,” not just activists.

In short, while some pro-LGBT movements have fruitfully allied with groups from the left and adopted framing strategies with themes that resonate with the left, they have also used framing strategies focused on a more pro-market, pro-globalization orientation. LGBT groups are globalization users rather than globalization bashers, and this allows them to win allies across different sectors and to learn about best practices from multiple sources.

The overall message is that there is no one winning ally or one winning strategy. Many allies and strategies can do the trick. The idea is to pick

an ally that has some leverage in the country, either because of their size or because the issues that they defend have broad appeal beyond the natural constituency of pro-LGBT movements.



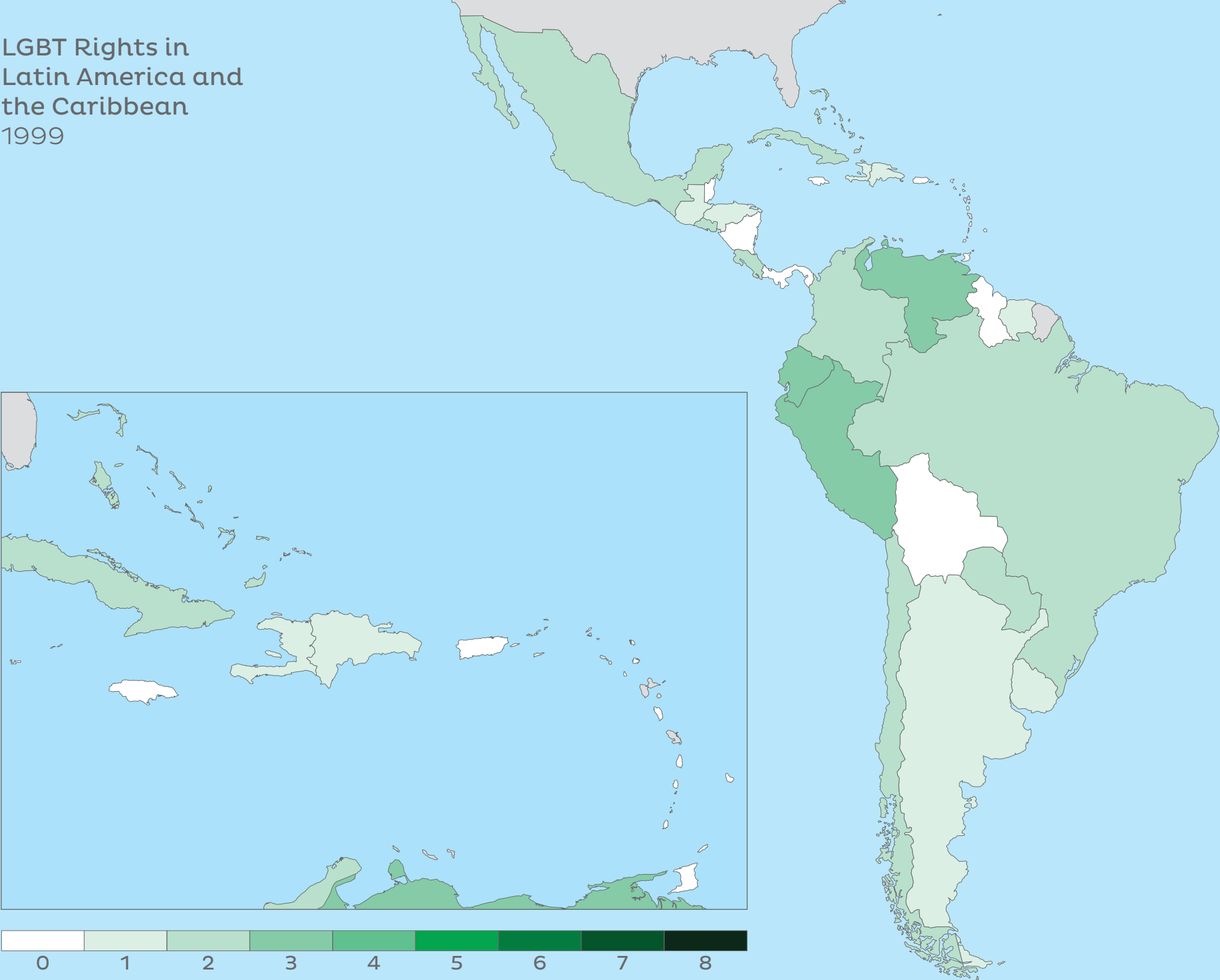
Photo by E!Universal.com.co



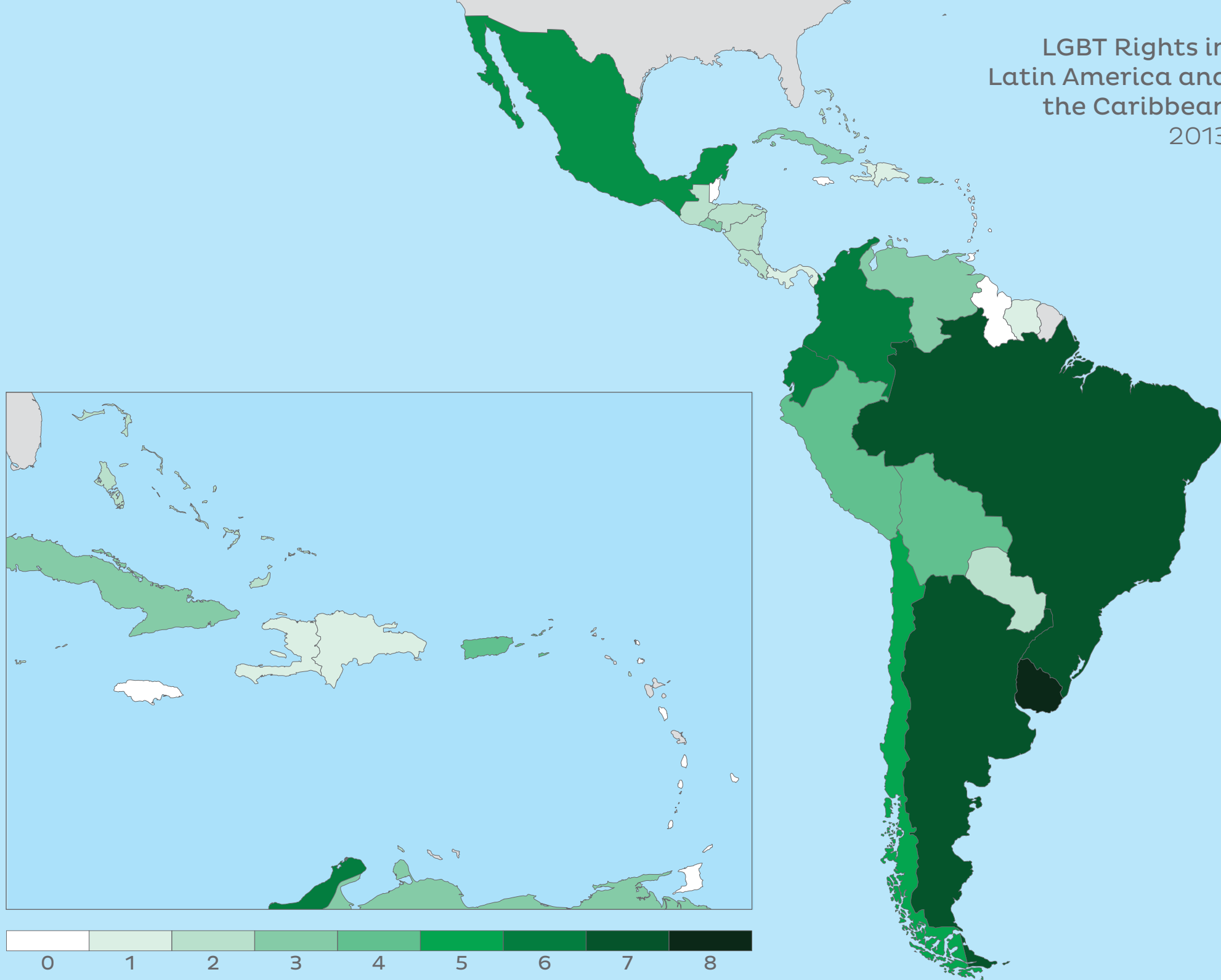
Photo by LaRepublica.co

Top: Gina Parody, Colombia  
Bottom: Cecilia Álvarez, Colombia

LGBT Rights in  
Latin America and  
the Caribbean  
1999



LGBT Rights in  
Latin America and  
the Caribbean  
2013





### Ecuador: Diane Rodríguez

Diane Marie Rodríguez Zambrano (b. 1982) was the first transgender Ecuadorian to stand for elected office when she ran for a seat in the National Assembly in 2013. After contributing to a number of advocacy organizations, Rodríguez helped establish the Silueta X association, which focuses on transgender populations, sex workers, poverty alleviation and HIV-AIDS prevention. In 2009, she sued the office of the Civil Registry to be allowed to change her given birth name to that of Diane Marie. Her victory set a legal precedence for all transgender Ecuadorians.

In 2012, Rodríguez was attacked and kidnapped upon leaving the offices of Silueta X but returned to continue her work after release and treatment. Her run for national office under the Raptura 25 party banner was unsuccessful but represented an important milestone in the involvement of transgender Ecuadorians in the political sphere.

## Institutions

While the literature on LGBT rights has been rich in accounts that focus on social movements, it has been less expansive on the institutional factors that facilitate the expansion of LGBT rights. The experience of the most successful cases in Latin America reveals that three institutions in democracies are central: 1) inter-party competition; 2) federalism; and 3) the courts.

### Parties and Party Competition

One set of overlooked institutional factors are political parties and party competition. The Latin American experience seems to suggest that: 1) parties are crucial allies without which social movements would be less effective; and 2) party support for LGBT causes is likely to rise when the party system becomes highly competitive.

In the 1980s and 1990s, leftist social movements expressed disdain for political parties. Many social movements and civic groups, especially younger ones emerging during that decade of political opening, saw parties negatively, as unrepresentative, ineffective, corrupt copouts. As a consequence, many eschewed ties with political parties. LGBT social movements in Latin America that instead forged strong ties with parties, seem to have yielded more success at

changing the status quo (Corrales and Pecheny 2010). No doubt, this movement-party cooperation, where it has occurred, has had limits. For instance, social movements have made scant inroads in getting parties to encourage candidates to come out or to select out candidates. Nonetheless, pro-LGBT laws and policies have emerged in countries where LGBT movements found ways to cooperate with parties. The question is, under what conditions are pro-LGBT movements likely to find receptive allies among parties.

### *Party Ideology*

A common argument to explain conditions under which LGBT movements and parties cooperate focuses on party ideology. Most pro-LGBT social movements naturally gravitate toward leftist parties, even though many parties on the left, especially prior to the 2000s, were neither committed nor sympathetic to LGBT rights. In the 2000s, pro-LGBT movements did find far more receptive allies among the “moderate” rather than the “contestatory” left parties (Schulenberg 2013, 37). Moderate left parties are those that are more respectful of liberal institutions, such as checks and balances and market forces. In the 2000s, the moderate left dominated politics in Brazil, Uruguay, Chile, and Costa Rica. The contestatory left is instead more interested in radically transforming the status quo in a more socialist direction (away from “middle-class values”) with less regard for checks and balances.

The contestatory left has dominated politics in Venezuela, Cuba, Nicaragua, Ecuador, and Bolivia since the 2000s.

The best examples of fruitful links between pro-LGBT movements and the moderate left are in Brazil and Uruguay. The Worker's Party (PT) in Brazil and the Frente Amplio (FA) in Uruguay have been the LGBT movement's strongest allies within their respective national legislatures. The PT and FA have supported efforts ranging from civil union and anti-discrimination legislation to national coverage for gender confirmation surgeries. Under the leadership of party founder Luiz Inácio "Lula" da Silva, the PT unveiled a 51-policy plan for promoting LGBT rights (Encarnación n.d.). And Uruguay, under the leadership of the FA, went on to score the highest points on our LGBT ranking, becoming the first Latin American country to legalize civil unions in 2007, which was followed by progressive pro-LGBT transgender, adoption, marriage, and military rights. The one difference is that the PT has had less success in the legislature than the FA.

### ***Up-and-coming Parties***

An alternative way to look at the movement-party connection is to focus less on party ideology and more on inter-party competitiveness. Many times, the key distinction between a receptive versus a non-receptive party is whether the party is an up-and-coming, non-dominant party hoping to defeat

a more dominant party. In these environments, parties may decide to compete for the LGBT vote, even the title of LGBT rights champion. Even non-leftist parties can end up supporting LGBT causes. LGBT rights have advanced not only where movement-party alliances form, but also where there is the possibility of strong inter-party competition on the question of LGBT rights.

Argentina is a good example. Party competition helps explain the transformation of the Republican Proposal (PRO) party from one of the most anti-LGBT to one of the most pro-LGBT in the Americas. The PRO is a young, conservative party that is strong only in Buenos Aires. In 2005, it won the election for the city's Chief of Government office under the leadership of Mauricio Macri, a wealthy businessman and owner of one of the country's most important soccer teams. Macri was a known homophobe, famous for saying that he would never recruit a homosexual athlete because homosexuality is a "sickness." But in 2009, Macri shocked the conservative establishment, including his own party and the Catholic Church, by refusing to appeal a ruling by a judge declaring the ban on gay marriage unconstitutional (Byrnes 2009). Though he subsequently vacillated in his support, he eventually came around, and today Macri has succeeded in converting Buenos Aires, and his government, into one of the most pro-LGBT arenas in Latin America. One could even argue that it was Macri's fast conversion, circa 2009,



Trans Rights in Buenos Aires, Argentina  
Photo by alitow, flickr.com



LGBT Pride March in Mexico City  
Photo by ismael uillafranco, flickr.com

that prompted President Cristina Fernández de Kirchner, to finally come out in favor of marriage equality in 2010 and thus get the law approved in Congress. The reason for the PRO's conversion could very well have to do with this up-and-coming party-competition argument. The PRO was trying to become a real alternative to the nationally-dominant, left-leaning Peronist party. The PRO decided that one way to compete with the Peronists was to capture the progressive sentiment of the urban vote in Argentina.

A similar process occurred in Chile. The less dominant, center-right party, National Renewal, was the first party to publicly embrace LGBT rights. This was done during the electoral campaign of 2009, when the party's candidate, Sebastián Piñera, was waging an uphill battle to win the presidency against the center-left Concertación, which had dominated Chilean politics for twenty years. Piñera's campaign made history when it released a nationally televised ad featuring gay couples, affirming his commitment to legally recognizing same-sex unions (Bonnefoy 2009). Once in office, Piñera became the leading proponent of Chile's first (and one of Latin America's leading) hate-crime laws in 2012, the so-called Zamudio Law, which was adopted following the brutal hate-based murder of Daniel Zamudio.

A final example of the importance of inter-party competition occurred in Mexico City. Mexico's

relatively young Democratic Revolution Party (PRD) also switched from being against civil unions to supporting a civil unions bill in 2006 and the 2010 same-sex marriage bill in Mexico City. One possible explanation for the change of heart in the PRD could be a change of leadership (from Andrés Manuel López Obrador to Marcelo Ebrard). But an equally plausible explanation is that this was the result of inter-party competition. While seeking to oppose the long-established National Action Party in the national elections, and seeking to differentiate itself on the left from the PRI, the PRD might have seen an advantage of taking on a more pro-LGBT rights position (Díez 2013; Lozano 2013).

## Federalism

It could be argued that, as in the United States with same-sex marriage, one major institutional feature contributing to the expansion of LGBT rights is federalism. Federalism can be a double-edged sword. On the one hand, delegating powers to subnational units might empower conservative constituencies, which tend to be strong in subnational governments. However, federalism can be beneficial for the expansion of pro-LGBT rights by providing arenas for incremental change, even experimentation, especially when national institutions are off-limits. And the chance to change the status quo incrementally, rather than sweepingly, might in the end provoke less

fear, and thus, appear more politically feasible as a strategy. Federalism offers options to make inroads in subnational units, where some of the most important veto players might not be that influential or impossible to defeat. Also, courts at the subnational level can prove to be more amenable. And as LGBT rights expand subnationally, the ground can be paved for more substantive changes nationally.

Brazil is a good example of the importance of federalism. The Brazilian constitution does not specifically protect citizens against discrimination based on sexual orientation and gender identity. For many years, getting pro-LGBT legislation through the national congress was proving impossible. Pro-LGBT social movements began to focus on generating anti-discrimination provisions at the state level (ATHOSGLS 2007). Box 1 provides a list of some of these victories. A similar process happened through municipalities: by the early 2010s, over 80 Brazilian municipalities adopted their own anti-discrimination ordinances (Encarnación n.d., 193).

The federalist variable might explain why LGBT rights have been harder to expand in Peru and Venezuela. These countries are significantly more centralized than Brazil, Argentina, and Mexico. In Venezuela, first under president Hugo Chávez, and then Nicolás Maduro, governors lost significant autonomy from the central government. Pro-LGBT groups face hard obstacles at the national

level in all these countries, but in Venezuela and Peru they do not have opportunities to achieve some progress at the subnational level and expand from there.

## The Court System

The third important institutional factor contributing to LGBT rights is the court system (Pierceson 2013; Encarnación 2014). In SPLA, some of the most important pro-LGBT laws and protections have come as a result of court rulings (see Appendix 3). When all else fails—when social movements are unable to sway public opinion, the Congress, the bureaucracy, the executive branch, subnational governments, or private institutions—it is often courts that force a change in the status quo in the direction of LGBT rights.

As with all other institutional factors, there is variation in outcomes in Latin America. Not all courts in the region have been equally forceful advocates of LGBT rights. It seems that for courts to be receptive and active on behalf of LGBT rights, they need to exhibit at least two characteristics: assertiveness and progressivism.

### *Sufficient Assertiveness, and Independence*

The former conveys a certain degree of professionalism; the latter, the ability to go against the preferences of the other branches of government. Chart 2 shows one measure of

## Box 1: Brazil: Federalism and the Rise of Pro-LGBT Legislation

### Anti-Discrimination Provisions

- 1997: Bahia enacts nation's first anti-discrimination ordinance
- 2000: Rio de Janeiro, Federal District
- 2001: Sao Paulo
- 2002: Minas Gerais, Rio Grande do Sul
- 2003: Santa Catarina, Parálba
- 2004: Piauí
- Alagoas and Para adopt provisions in constitutions banning discrimination
- Amapa, Goiás, Mato Grosso do Sul, Maranhao, Parana, Pernambuco, Sergipe, Tocantins also have enacted anti-discrimination laws

### Civil Unions

- 2004: Rio Grande do Sul allows same-sex couples to register civil unions

### Marriage Rights:

- 2011: Alagoas
- 2012: Sergipe, the city of Santa Rita do Sapuacai in Minas Gerais, Espirito Santo, Bahia, Federal District, Piauí, Sao Paulo
- 2013: Parana, Mato Grosso do Sul, Rio de Janeiro, Rondonia, Santa Catarina, Paraiba



Conference on LGBT rights  
for indigenous Bolivians

Photo by Oliver Contreras, Eddie Arrossi Photography

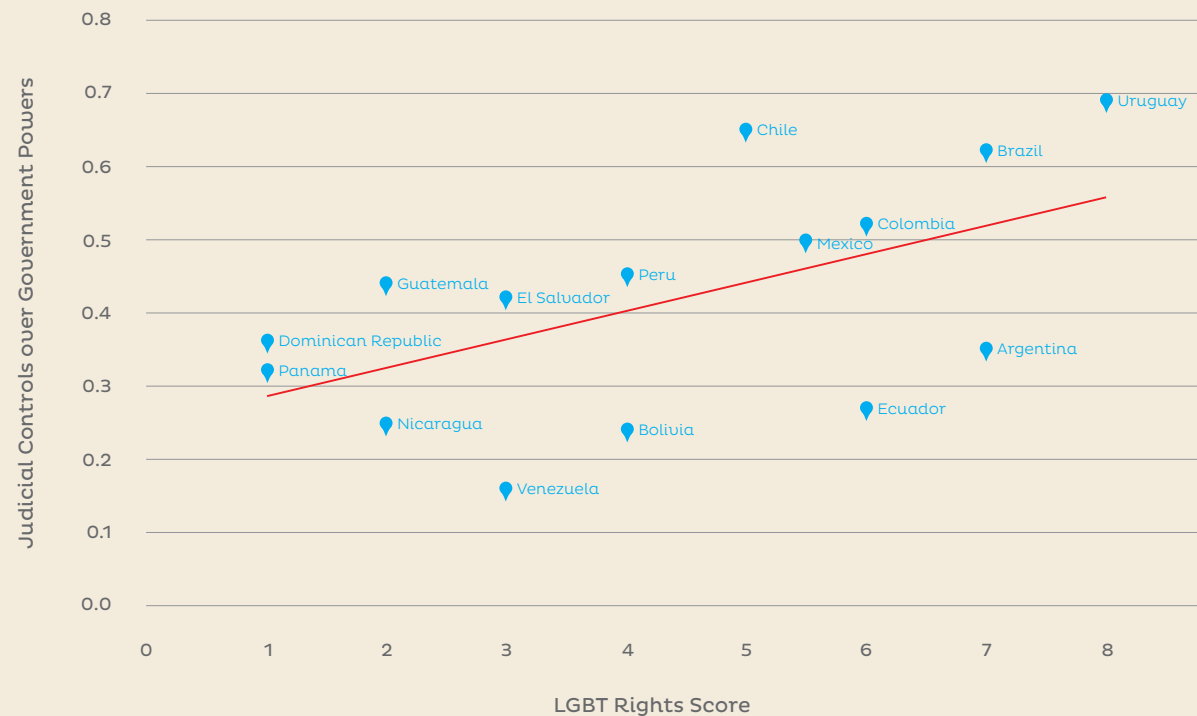
**Chart 2 Notes:** This index measures whether the judiciary as a whole, and the members of the high courts, enjoy in practice the capacity to exercise effective checks and oversight of the government, based on surveys of the general population and local experts.

**Chart 2 Source:** World Justice Project, Rule of Law Index, 2014 (see section on Methodology).

court assertiveness for SPLA countries, for which data is available, based on an index developed by the World Justice Project of the degree to which the court system is able to impose limits on government powers. Only courts that are both assertive and independent can score high

on this index, and thus, it is useful as a way to test the argument about the importance of courts. The chart shows that there is indeed a positive correlation.

**Chart 2:** *Judicial Assertiveness and LGBT Rights, 2013*



## Progressivism

The courts must subscribe to a theory of jurisprudence that is generally sympathetic to issues of human rights, equality before the law, anti-discrimination, reproductive and women's rights, commitment to separation of church and state, trans-national legal doctrines, etc.

We do not have an index of progressivism, but qualitative evidence tells us that one of the most non-progressive courts in the region is probably that of Chile, which might explain why Chile is such a judicial anomaly when it comes to LGBT rights—it is less receptive to LGBT rights than one would expect given the country's income level and the size of its middle class. Despite having one of the highest scores in judiciary assertiveness and independence in the Americas, Chilean courts are known for their historic conservativeness (Hilbink 2007). Even prior to the Pinochet period, Chilean courts insisted on adhering to “positivism” and remaining “apolitical,” meaning that they would focus on applying rather than reviewing or adapting the law. This has given the Chilean court a strong bias in favor of upholding rather than challenging the legal status quo. In fact, the Chilean courts are famous for one of the most homophobic rulings in the Americas—the Atala case. In 2004, the Chilean Supreme Court removed Karen Atala from her three daughters on the grounds that she was living with another woman. Atala brought her case to the Inter-American Court of Human Rights (the Atala Roffo and Girls

v. Chile). The Inter-American Court ruled in favor of Atala, condemned the Chilean state for violating Atala's right to equal treatment, and forced the Chilean state to pay damages in the amount of \$50,000. The Inter-American Court's ruling is considered today one of the most important cases in the history of international jurisprudence in favor of LGBT rights.

In Puerto Rico, federal district judge Juan Pérez-Giménez upheld a gay marriage ban in October 2014. He based his ruling on the technical argument that the court does not have the power to overrule a Supreme Court decision—he was referring to *Baker v. Nelson*, a ruling that states that gay marriage bans at the state level do not violate the 14<sup>th</sup> amendment. Pérez-Giménez's ruling is only the second out of sixteen other rulings to uphold gay marriage bans at the state level in the United States, revealing that on his technical argument, he is now in the minority. But Pérez-Giménez also expressed his personal opinion on the matter: “Traditional marriage is the fundamental unit of the political order.... And ultimately the very survival of the political order depends upon the procreative potential embodied in traditional marriage. Those are the well-tested, well-proven principles we have relied on for centuries” (Wolf 2004). This statement suggests that a deeply conservative argument actually informed the technical argument.

Another example of an unreceptive court system is Venezuela. There, the problem is that the courts are not progressive enough and are unwilling to



Marriage in Monterrey, Mexico  
Photo by ismael jayceeloop, flickr.com

Table 3: Court Features and LGBT Rights

Court's Capacity to Act Independently		
	ASSERTIVENESS	SUBMISSION
PROGRESSIVE	<p><b><i>Strong pro-LGBT rulings:</i></b></p> <p>Courts likely to promote more comprehensive LGBT rights or block serious homophobic initiatives.</p> <p>Brazil Mexico Colombia Argentina*</p>	<p><b><i>Soft rulings:</i></b></p> <p>Courts likely to advance limited rights such as non-discrimination norms, if at all.</p> <p>Argentina* Ecuador Bolivia Nicaragua</p>
NON-PROGRESSIVE	<p><b><i>Unsympathetic courts:</i></b></p> <p>Swayable mostly by international pressure</p> <p>Chile Puerto Rico</p>	<p><b><i>Dismissive courts</i></b></p> <p>Venezuela Dominican Republic Guatemala Paraguay</p>

**Table 3 Notes:** \*Argentina is probably an in-between case in terms of assertiveness and progressivism. That explains why the courts did not play a pro-active or consistently supportive role in LGBT rights, but they have also not been major obstacles either.

defy the ruling party, the United Socialist Party of Venezuela (PSUV). Thus, they are unlikely to hear demands of groups that are not vocally loyal to the ruling party. In 2003, for instance, the pro-LGBT movement, Affirmative Union, submitted an Appeal of Interpretation of the Constitution to Venezuela’s Supreme Court aiming to obtain state recognition of economic rights for homosexual couples (Merentes 2010). The Supreme Court’s 2008 ruling stated that “homosexual individuals have all their rights protected by the constitution, but homosexual couples may not claim those rights before the state.” The ruling indicated that same-sex couples’ rights could be recognized through laws drafted by the legislature (Merentes in Corrales and Pecheny 2010).

If we combine these two variables—assertiveness and progressiveness—we can generate the following 2x2 matrix to explain the role of courts in the advancements of LGBT rights in SPLA (see Table 3). The most assertive and progressive courts produce the strongest LGBT rulings. All the other courts produce either softer rulings, no rulings, or unsympathetic rulings.

## Cultural Variables: Public Attitudes and Secularism

So far, I have discussed the structural factors (income level), social movement factors, and institutional factors that help promote LGBT rights and/or representation. Even when all these factors are aligned in a favorable direction, it is important to bear in mind that the cultural setting matters. Two cultural factors are worth discussing: public opinion and degrees of secularism. Neither a public hostile to LGBT rights nor high religiosity is favorable for the expansion of LGBT rights, although there are exceptions.

### Public Opinion

I argued before that one reason that courts have taken a prominent role in promoting LGBT rights is that often political parties or subnational governments themselves are unable or unwilling to deliver on LGBT rights or LGBT representation. The question still remains: why so much party failure? The answer could very well be the prevalence of homophobic public opinion.

Americas Barometer has data on one measure of homophobia: popular support for same-sex

marriage (2012). The record is discouraging. Except in Argentina, Uruguay, and perhaps Brazil, a minority supports same-sex marriage. In some cases, the rate of support does not surpass 25 percent of respondents. Once again, SPLA countries tend to do far better than non-SPLA countries (for which data exists). Yet, even among SPLA cases, some countries display very strong anti-same-sex-marriage attitudes: Ecuador, Bolivia, Costa Rica, Venezuela, Dominican Republic, Panama, Nicaragua, Paraguay, Guatemala, Honduras, and El Salvador. This low level of support is noteworthy because it signals to political parties that there are scarce electoral gains to be had from advocating for LGBT rights, or from politicians coming out.

Having said that, the record on public attitudes is not uniformly dismal. Homophobic attitudes are declining, in some cases, quite drastically (see Table 4). This decline is clear in most countries when we compare Americas Barometer 2012 data with that from 2010. This suggests that unfavorable public opinion regarding LGBT rights and representation might not endure, although it may still be awhile before we see majorities adopt more LGBT-friendly public attitudes.

### Secularism

One of the most important variables in explaining the expansion of LGBT rights worldwide is the propagation of secularism: the extent to which both the state and citizens are able to adopt

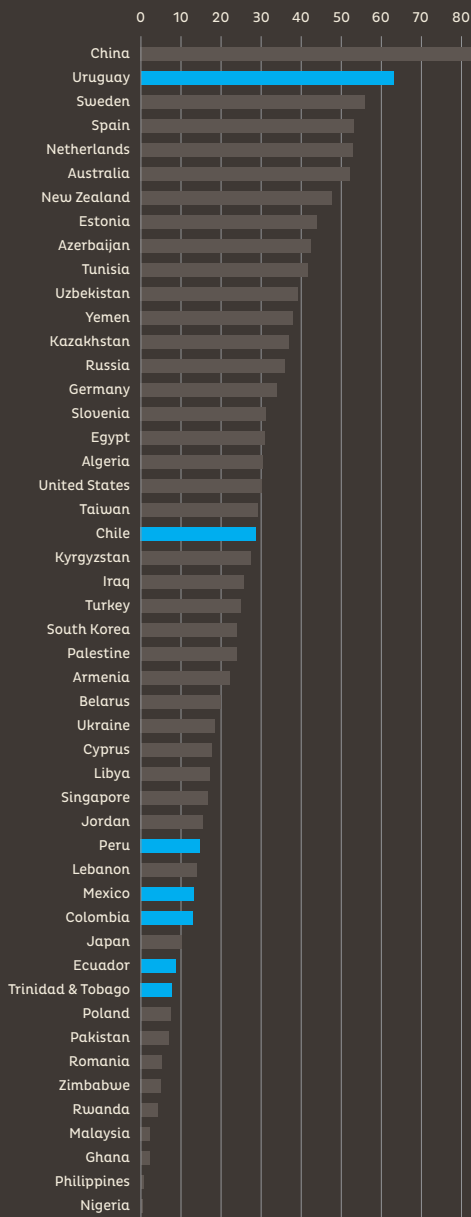
**Table 4: Support for Same-Sex Marriage in the Americas**

Country	2010	2012	% Change
Canada	63.9	67.2	3.3
Uruguay	50.5	67.1	16.6
Argentina	57.7	55.4	-2.3
United States	47.4	52	4.6
Brazil	39.8	49.8	10
Mexico	37.8	45.4	7.6
Chile	39.7	45.1	5.4
Colombia	34.4	36.7	2.3
Ecuador	18.4	26.1	7.7
Bolivia	24.7	24.7	0
Peru	26.3	23	-3.3
Suriname	20.3	22.5	2.2
Costa Rica	20.7	22.3	1.6
Venezuela	22.5	22.2	-0.3
Dominican Republic	18.6	21.4	2.8
Panama	22.8	19.5	-3.3
Nicaragua	15.6	19.3	3.7
Trinidad & Tobago	15.4	17.6	2.2
Paraguay	16.1	16.1	0
Guatemala	16.5	16.1	-0.4
Honduras	22.6	15	-7.6
El Salvador	10.3	10	-0.3
Guyana	7.2	8.8	1.6
Belize	17.5	8.4	-9.1
Haiti		6.4	
Jamaica	3.5	5.1	1.6

**Table 4 Sources:** Boidi, María F. "Same-Sex Marriage in Uruguay: A New Law in Line with Citizens' Preferences." *AmericasBarometer* ITB006 (2013). [vanderbilt.edu/lapop/insights/ITB006en.pdf](http://vanderbilt.edu/lapop/insights/ITB006en.pdf).

Lodola, Germán and Margarita Corral. "Support for Same-Sex Marriage in Latin America." *AmericasBarometer Insights* No. 44 (2010). [vanderbilt.edu/lapop/insights/I0844.enrevised.pdf](http://vanderbilt.edu/lapop/insights/I0844.enrevised.pdf)

**Chart 3: Percentage of the Population who Never Attends Church**



**Chart 3 Notes:** Percent of respondents answering “Never, practically never” to the question: “Apart from weddings and funerals, about how often do you attend religious services these days?”

**Chart 3 Source:** World Values Survey, 2010–2014.

positions that are independent of those held by organized religion. Because we know that religious groups are the most vocal and active opponents of LGBT rights, secularism can be an important predictor of whether countries will struggle to adopt strong LGBT rights. Secularism is prevalent in many European countries, but not so much in Latin America and the Caribbean.

Studies suggest that, rather than becoming more secular, Latin America seems to be experiencing “religious migration.” The number of self-declared Catholics is dropping dramatically, while the number of Evangelicals is rising, almost in tandem. The region is thus divided now into a few countries that are predominantly Catholic (with more than 75 percent of the population reporting Catholic affiliation) and those, with a few exceptions, that are experiencing a rapid increase in the Evangelical population.

By far, the clearest exception is Uruguay. Based on two possible measures of secularism—number of non-believers and levels of church attendance—Uruguay stands apart as highly secular. The number of Uruguayans who self-identify as “agnostics,” “atheists,” or not affiliated to any religion is extraordinarily high: 38 percent (Latinobarómetro 2014). Chile comes in second place, with 25 percent. In terms of church attendance, Uruguay’s secularism is even more striking. Uruguay has the second largest number of respondents in the world who claim to “never attend church,” second only to China, according to the World Values Survey

(see Chart 3). While this latter survey excludes many Latin American countries, it seems reasonable to conclude that Uruguay is unmatched in terms of the size of the population that does not attend church. That alone is a key factor in explaining the three most important features of Uruguay’s expansion of LGBT rights—expansion has been broad across domains (like Argentina and Brazil), has come through the legislative process (like Argentina), and has generated very little controversy (unlike any other case).

But if no other Latin American country, with the possible exception of Cuba, is strongly secular, what then might explain the relative progress of LGBT rights in some of these cases (and of course, the lack of major progress in Cuba)? Furthermore, the expansion of LGBT rights worldwide has occurred in countries with large Catholic populations (see Reynolds 2013). At this point, we need to refine our understanding of the role of religion beyond conventional measures of secularism. Specifically, we need to understand the ways in which specific home religions affect politics differently from country to country.

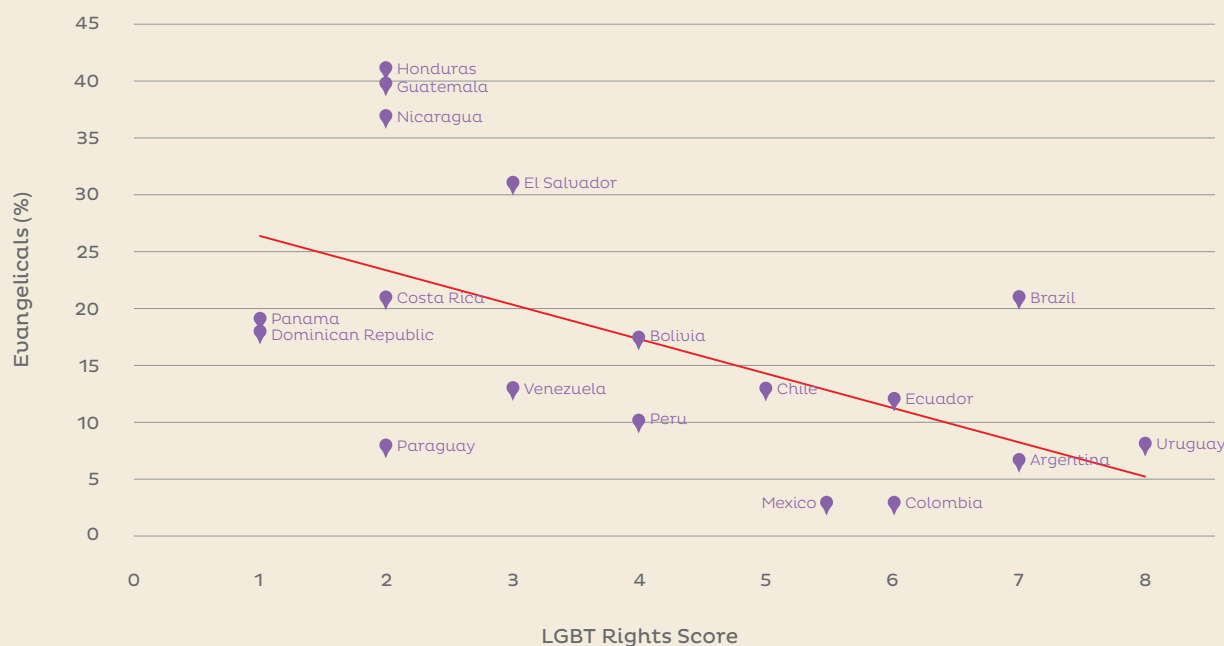
A useful starting point is to understand some of the differences between Catholics and Evangelicals. Their positions on LGBT rights are not exactly identical. While the clergy of both religious groups is overtly opposed to same-sex marriage and, in the 2000s, has adopted an increasingly combative anti-LGBT rights stance, the Catholic clergy tends to be less opposed to

questions of anti-discrimination statutes than the Evangelical clergy. Sometimes, the Catholic clergy has come out in favor of civil unions, while still opposing gay marriage. In Argentina, for instance, Jorge Bergoglio, today's Pope Francis, led the fight against same-sex marriage, but offered civil unions as a possible compromise. The Catholic clergy's more flexible stance toward issues of discrimination may be one reason that the rise of anti-discrimination laws has been less

polemical in SPLA countries, especially those that are majority Catholic.

Furthermore, the laity (not just the clergy) seems to differ between the two religions. Studies in the United States show that the Catholic laity is far more divided on LGBT issues (with 59 percent favoring same-sex marriage) than Evangelicals, 77 percent of which are against same-sex marriage (Pew Research, March 14, 2014; March 19, 2009).

**Chart 4:** *Evangelicalism and LGBT Rights: Spanish- and Portuguese-Speaking Latin America, 2013*



March for Sexual Diversity in Santiago, Chile  
Photo by Macarena Viza, flickr.com

**Chart 4 Notes:** Percentage of respondents who declare themselves to be Evangelicals (as opposed to "Catholic," "Other," or "Agnostic, Atheist, None.")

**Chart 4 Source:** Latinobarómetro 2014.



Top: Carmen Muñoz, Costa Rica  
Bottom: Claudia Lopez, Colombia

Homophobic positions among the Catholic laity also seem to be less extreme and the number of homophobes is smaller than among Evangelical churchgoers.

These differences, if they are true for Latin America, have implications for the politics of LGBT rights in the region. They suggest that in Protestant, and especially Evangelical-dominant countries, the chances of expanding LGBT rights are considerably lower—these countries exhibit the powerful combination of both clergy and laity forming a strong lobby and electoral pressure group to block LGBT rights. This argument helps to explain why English-speaking countries have some of the lowest scores in LGBT rights and representation in the world, comparable to scores observed in Africa and the Middle East, despite having more than five or six decades of stable liberal democratic government and in some cases relatively high incomes per capita.

Among SPLA cases, Brazil is a remarkable example of the rising electoral power of Evangelicals. Although the Evangelical population is not as large as in most Central American and Caribbean countries, the electoral power of Evangelicals has expanded phenomenally, so much that Evangelicals have their own block in Congress and enough electoral sway to keep even the PT relatively nervous about defying them (Queiroz 2013). Since 2006, Evangelical churches in Brazil

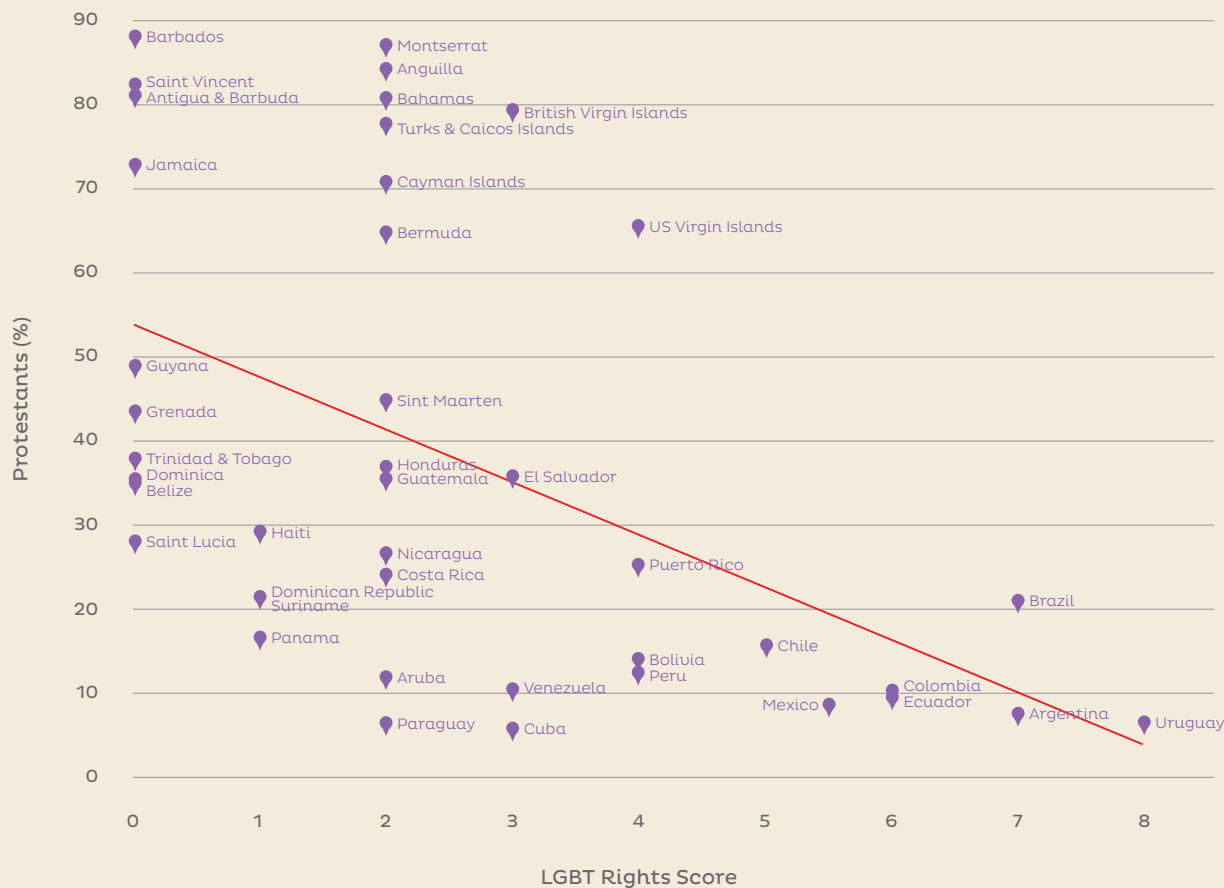
have adopted a “Brother votes for Brother” stance, and this has created a powerful effect in terms of voting and electing members to Congress dedicated to embracing an Evangelical agenda (Boas and Smith n.d.). The strong presence of Evangelical groups both in the PT and separately in Congress is one reason that Brazil, unlike Uruguay and Argentina, has had to rely more on the courts to expand LGBT rights.

We tend to think that the key issue is to ensure separation of church and state, but in Catholic-dominated countries, perhaps what is most important is to have separation of church and party. More concretely, the issue in Catholic-dominated countries is how powerful the clergy is, and more importantly, how much influence it exerts over large political parties in office or in the opposition. In those countries where the dominant parties have historical connections to the Catholic clergy, one should expect party-based opposition or lack of enthusiasm for LGBT rights: the PAN in Mexico, the Christian Democrats in Chile, the Conservatives in Colombia, COPEI/Primero Justicia/Voluntad Popular in Venezuela. Even in Cuba, the ruling Communist party has become closer to the Catholic Church since the early 1990s (and so has the opposition). A similar turn-toward-the Church has occurred with Nicaragua’s ruling Sandinista party. In contrast, one reason that Argentina and Uruguay were able to produce

party-sponsored LGBT rights is that most parties in Argentina and the ruling party in Uruguay are significantly secular—they do not have a history

of actively cultivating ties with the clergy and religious constituencies. They were thus freer to act against the wishes of the Catholic Church.

**Chart 5:** *Protestantism and LGBT Rights: Latin America and the Caribbean 2013*



Gay pride march in Mexico City  
Photo by Javier Hidalgo, flickr.com

**Chart 5 Source:** [pewforum.org/2011/12/19/table-christian-population-as-percentages-of-total-population-by-country/](http://pewforum.org/2011/12/19/table-christian-population-as-percentages-of-total-population-by-country/)



March for Daniel Zamudio in Santiago, Chile  
Photo by chilerotojp, flickr.com

## Conclusion

This paper has attempted to explain the variation in LGBT rights and representation in Latin America and the Caribbean by refining conventional explanations about the origins of political and social rights. Here are some of the main points:

- 1 High income is important, but it is not a sufficient condition to explain the expansion of LGBT rights.
- 2 Social movements are essential for expanding LGBT rights, and they can prevail even if they are weak, but mostly contingent on institutions and strategy. Institutionally, social movements stand a better chance of prevailing if they operate in a context of competitive political parties, federalism, and independent and progressive courts. Strategically, they are more likely to prevail if they forge alliances with larger, less traditional allies, including business interests.
- 3 Finally, religion continues to be the most important attitudinal and institutional obstacle. No country in the region truly qualifies as secular, except perhaps Uruguay. But religion

exercises different degrees of influence, depending on domestic characteristics. The veto power of religion is most strongly felt where Protestants and Evangelicals are dominant, growing, or have a strong presence in Congress. In predominantly Catholic countries, by contrast, religion tends to be decisive where church attendance is high or where strong historical ties exist between the clergy and at least one dominant political party.

The overall conclusion is that the dramatic transformation of LGBT rights in Latin America, unimaginable 15 years ago, is an example of how social movements and institutions can trump culture. Movements and institutions have been able to make impressive inroads in the legal environment of many countries, despite the prevalence of adverse cultural attitudes and norms.

## Appendix 1: LGBT Rights in LAC, 1999

Country	Sexual Activity	Relationships	Marriage	Adoption	Military	Anti-discrimination	Gender Identity	Hate Crimes	Total
ANGUILLA	0	0	0	0	0	0	0	0	0
ANTIGUA & BARBUDA	0	0	0	0	0	0	0	0	0
ARGENTINA	1	0	0	0	0	0	0	0	1
ARUBA	1	0	0	0	1	0	0	0	2
BAHAMAS	1	0	0	0	1	0	0	0	2
BARBADOS	0	0	0	0	0	0	0	0	0
BELIZE	0	0	0	0	0	0	0	0	0
BERMUDA	1	0	0	0	1	0	0	0	2
BOLIVIA	0	0	0	0	0	0	0	0	0
BRAZIL	1	0	0	0	0	1	0	0	2
BRITISH VIRGIN ISLANDS	0	0	0	0	0	0	0	0	0
CAYMAN ISLANDS	0	0	0	0	0	0	0	0	0
CHILE	1	0	0	0	1	0	0	0	2
COLOMBIA	1	0	0	0	1	0	0	0	2
COSTA RICA	1	0	0	0	0	1	0	0	2
CUBA	1	0	0	0	1	0	0	0	2
DOMINICA	0	0	0	0	0	0	0	0	0
DOMINICAN REPUBLIC	1	0	0	0	0	0	0	0	1
ECUADOR	1	0	0	0	0	1	0	1	3
EL SALVADOR	1	0	0	0	1	0	0	0	2
GRENADA	0	0	0	0	0	0	0	0	0
GUATEMALA	1	0	0	0	0	0	0	0	1
GUYANA	0	0	0	0	0	0	0	0	0

## Appendix 1: *LGBT Rights in LAC, 1999*

Country	Sexual Activity	Relationships	Marriage	Adoption	Military	Anti-discrimination	Gender Identity	Hate Crimes	Total
HAITI	1	0	0	0	0	0	0	0	1
HONDURAS	1	0	0	0	0	0	0	0	1
JAMAICA	0	0	0	0	0	0	0	0	0
MEXICO	1	0	0	0	1	0	0	0	2
MONTSERRAT	0	0	0	0	0	0	0	0	0
NICARAGUA	0	0	0	0	0	0	0	0	0
PANAMA	0	0	0	0	0	0	0	0	0
PARAGUAY	1	0	0	0	1	0	0	0	2
PERU	1	0	0	0	0	1	1	0	3
PUERTO RICO	0	0	0	0	0	0	0	0	0
SAINT LUCIA	0	0	0	0	0	0	0	0	0
SAINT VINCENT & THE GRENADINES	0	0	0	0	0	0	0	0	0
SINT MAARTEN	1	0	0	0	1	0	0	0	2
SURINAME	1	0	0	0	0	0	0	0	1
TRINIDAD & TOBAGO	0	0	0	0	0	0	0	0	0
TURKS & CAICOS ISLANDS	0	0	0	0	0	0	0	0	0
U.S. VIRGIN ISLANDS	1	0	0	0	0	0	0	0	1
URUGUAY	1	0	0	0	0	0	0	0	1
VENEZUELA	1	0	0	0	1	1	0	0	3

**Notes:** Excludes non-autonomous jurisdictions such as Guadeloupe, Martinique, French Guyana, and St Martin.

## Appendix 1: LGBT Rights in LAC, 2013

Country	Sexual Activity	Relationships	Marriage	Adoption	Military	Anti-discrimination	Gender Identity	Hate Crimes	Total
ANGUILLA	1	0	0	0	1	0	0	0	2
ANTIGUA & BARBUDA	0	0	0	0	0	0	0	0	0
ARGENTINA	1	1	1	1	1	1	1	0	7
ARUBA	1	0	0	0	1	0	0	0	2
BAHAMAS	1	0	0	0	1	0	0	0	2
BARBADOS	0	0	0	0	0	0	0	0	0
BELIZE	0	0	0	0	0	0	0	0	0
BERMUDA	1	0	0	0	1	0	0	0	2
BOLIVIA	1	0	0	0	0	1	1	1	4
BRAZIL	1	1	1	1	1	1	1	0	7
BRITISH VIRGIN ISLANDS	1	0	0	0	1	1	0	0	3
CAYMAN ISLANDS	1	0	0	0	1	0	0	0	2
CHILE	1	0	0	0	1	1	1	1	5
COLOMBIA	1	1	0	0	1	1	1	1	6
COSTA RICA	1	0	0	0	0	1	0	0	2
CUBA	1	0	0	0	1	0	1	0	3
DOMINICA	0	0	0	0	0	0	0	0	0
DOMINICAN REPUBLIC	1	0	0	0	0	0	0	0	1
ECUADOR	1	1	0	0	1	1	1	1	6
EL SALVADOR	1	0	0	0	1	1	0	0	3
GRENADA	0	0	0	0	0	0	0	0	0
GUATEMALA	1	0	0	0	0	1	0	0	2
GUYANA	0	0	0	0	0	0	0	0	0

## Appendix 1: *LGBT Rights in LAC, 2013*

Country	Sexual Activity	Relationships	Marriage	Adoption	Military	Anti-discrimination	Gender Identity	Hate Crimes	Total
HAITI	1	0	0	0	0	0	0	0	1
HONDURAS	1	0	0	0	0	0	0	1	2
JAMAICA	0	0	0	0	0	0	0	0	0
MEXICO	1	1	0	0	1	1	1	0.5	5.5
MONTSERRAT	1	0	0	0	1	0	0	0	2
NICARAGUA	1	0	0	0	0	0	0	1	2
PANAMA	1	0	0	0	0	0	0	0	1
PARAGUAY	1	0	0	0	1	0	0	0	2
PERU	1	0	0	0	1	1	1	0	4
PUERTO RICO	1	0	0	0	1	1	1	0	4
SAINT LUCIA	0	0	0	0	0	0	0	0	0
SAINT VINCENT & THE GRENADINES	0	0	0	0	0	0	0	0	0
SINT MAARTEN	1	0	0	0	1	0	0	0	2
SURINAME	1	0	0	0	0	0	0	0	1
TRINIDAD & TOBAGO	0	0	0	0	0	0	0	0	0
TURKS & CAICOS ISLANDS	1	0	0	0	1	0	0	0	2
U.S. VIRGIN ISLANDS	1	0	0	0	1	1	1	0	4
URUGUAY	1	1	1	1	1	1	1	1	8
VENEZUELA	1	0	0	0	1	1	0	0	3

**Notes:** Excludes non-autonomous jurisdictions such as Guadeloupe, Martinique, French Guyana, and St Martin.

**Source:** Author's elaboration based on [http://en.wikipedia.org/wiki/LGBT\\_rights\\_by\\_country\\_or\\_territory](http://en.wikipedia.org/wiki/LGBT_rights_by_country_or_territory); and [old.ilga.org/Statehomophobia/ILGA\\_State\\_Sponsored\\_Homophobia\\_2013.pdf](http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2013.pdf)

## Appendix 2: Examples of Homophobia in Latin America and the Caribbean, 2012–2013

**BRAZIL:** In 2012, an annual report by Brazil's oldest gay rights organization showed that Brazil leads the world in murders against LGBT persons, accounting for a whopping 44% of the global total. Furthermore, a homosexual is 800% more likely to be killed by hate-fueled violence in Brazil than in the United States. In 2014, around 300 LGBT people in Brazil were killed.

In 2013, the ruling party's legislative coalition approved pastor and congressman Marco Feliciano to head a congressional human rights commission. Feliciano proceeded to nearly legalize reparative therapy and is now seeking to reverse protections granted to same-sex couples.

Controversy emerged in the high-profile mayoral race in São Paulo in 2012 over “o kit gay” (the gay kit), an anti-homophobia initiative in the Ministry of Education, which was created while candidate Fernando Haddad was in charge. Haddad's opponent, veteran politician José Serra, slammed the proposed materials about sexual diversity, intended for distribution among teachers to instruct children, as a waste of money and a step toward indoctrination.

**CHILE:** Following the uproar over the horrific murder of a gay teen, Daniel Zamudio, in March of 2012, Chile barely passed an anti-discrimination bill that had been introduced seven years before. The episode gained international attention—singer Ricky Martin even dedicated his GLAAD

award to the slain teen—and was a landmark in a country with a right-of-center president.

**COLOMBIA:** The Inspector General—an office intended to monitor public officials and one that is currently headed by a religious conservative—successfully lobbied Congress to torpedo a marriage equality bill, and has since pressured judges to deny petitions for gay marriage licenses. Colombia's top court decided in 2011 that same-sex unions should be recognized by the state, which at the time was heralded as a possible pro-LGBT turning point in Colombia. But the prospects for enacting the court order appear uncertain, at least under the current Juan Manuel Santos administration.

**COSTA RICA:** In September 2013, a judge closed an “accidental” loophole in a law passed earlier in the year that could have allowed same-sex unions.

**DOMINICAN REPUBLIC:** In July 2013, Cardinal Nicolás López condemned the US ambassador-designate to Santo Domingo for being a “faggot.”

**ECUADOR:** In late 2011, revelations surfaced that unlicensed clinics were physically torturing patients to “cure” same-sex attraction.

**HAITI:** In July 2013, nearly 50 gay men were beaten in a single week by mobs armed with machetes, sticks, and cement blocks.

## Appendix 2: Examples of Homophobia in Latin America and the Caribbean, 2012–2013

**HONDURAS:** Activists in Honduras marched on the Attorney General's office in October 2013 to bring attention to the 22 murders of LGBT people since January, five of which occurred in a single month. In 2012, the U.S. Congress condemned the brutal killing of gay journalist and former candidate for Honduras's Congress, Erick Martínez Ávila. Since 2009, the rise in violence toward LGBT Hondurans had led the U.S. State Department to treat Honduras as a test for the U.S. government's new approach to promoting LGBT rights abroad.

**JAMAICA:** In 2013, a “cross-dressing teen” and a forty-year-old man were stabbed to death in separate incidents, while many more were beaten during an “unprecedented” level of violence over the summer. After getting caught having sex in a bathroom at the University of Technology, two young men were chased by an angry mob in 2012. Security guards detained and physically assaulted one of the men, while being egged on by the surrounding crowds. The assault was caught on video, shocking a nation that is often too comfortable with homophobia.

**MEXICO:** In April 2012, the ruling party's (PAN) candidate for president, Josefina Vázquez Mota, stated in front of 120 bishops and archbishops forming the Mexican Episcopate that she opposes abortion and same-sex marriage. She went on to lose the presidential election. The winner, Enrique Peña Nieto, asserted that the topic of marriage equality should be decided by the states.

**PARAGUAY:** On the eve of being elected president of Paraguay, Horacio Cartes likened gay people to “monkeys” and said that he would “shoot [himself] in the testicles” if he were to discover that his son was gay.

**PERU:** Carlos Bruce, Peru's most visible pro-LGBT legislator, has failed to secure national LGBT protections, including anti-discrimination and civil union laws. In addition to resistance from most legislators, he has had to confront personal attacks from the head of the country's Catholic Church.

**PUERTO RICO:** Days before Puerto Rico's Supreme Court upheld a ban on adoption by same-sex parents, the island witnessed the largest anti-LGBT rally in its history, with over 200,000 people attending.

**VENEZUELA:** Hugo Chávez's successor, Nicolás Maduro, openly questioned opposition candidate Henrique Capriles's sexuality as a campaign tactic during the presidential election. Yet accusations continued even after Maduro assumed office. Officials raided the offices of Capriles' chief of staff in August 2013, discovering harmless photos of men in drag at a private party. Legislators from Maduro's party displayed the pictures on the floor of Congress as “proof” that the opposition was operating a “prostitution ring”—an accusation that Maduro went on to defend.

**Sources:** Corrales and Combs 2013; Corrales and Combs 2012

## Appendix 3: Judicial successes for the LGBT movement

### ARGENTINA

- **October 2002:** A court orders two companies to offer compensation for employees forced out of their jobs due to HIV/AIDS status. This is the first court case in Argentina to deal with HIV/AIDS-related workplace discrimination.
- **November 12, 2009:** Nine months before the national legislature passes a same-sex marriage bill, Buenos Aires Judge Gabriela Seijas rules in favor of Alex Freyre and Jose Maria Di Bello's right to marry. Though the decision was later overturned by another court, Fabiana Ríos, governor of Tierra del Fuego, orders the marriage to be performed in her province. On December 28, Freyre and Di Bello become the first same-sex couple to marry in Latin America.
- **July 2010:** The Supreme Court writes a ruling declaring the articles of the Civil Code impeding same-sex marriage unconstitutional, but does not issue the ruling prior to the national congress legislating same-sex marriage itself.

### BRAZIL

- **2004:** Following a court ruling in the state of Rio Grande do Sul, legislators pass a bill establishing same-sex civil unions, including joint custody of children and property and pension benefits.
- **2007:** Law 54 of 1990, which defines all aspects of de facto marital unions, is applied to same-sex couples.
- **May 2011:** Justices at the Federal Supreme Tribunal, the country's top court, vote 10 to zero in favor of same-sex partnerships. One justice, Jose Antonio Dias Toffoli, refrains from voting. The decision grants same-sex couples most of the rights enjoyed by heterosexual partners, including pension benefits, inheritance, and possibly the right to adopt children. The request for the Supreme Court to recognize civil unions came in 2009 from the Brazilian attorney general's office, largely because legislation to grant same-sex couples the rights enjoyed by married heterosexual couples had stalled in Congress for more than a decade.
- **June 27, 2011:** Sao Paulo judge converts a civil union into the nation's first same-sex marriage.
- **October 2011:** The Supreme Appeals Court rules that a lesbian couple can legally be married, overturning two lower courts' rulings against the women. This is the highest court in Brazil to uphold same-sex marriage.
- **December 7, 2011:** Court in Alagoas makes marriage licenses available to same-sex couples at all registries throughout the state.
- **November 26, 2012:** Bahia adopts same-sex marriage after a court ruling in the state.

## Appendix 3: Judicial successes for the LGBT movement

- **April 2013:** The General Magistrate of Justice of Rio de Janeiro state, Judge Valmir de Oliveira Silva, issues a ruling authorizing marriage equality in the state, joining the other states: São Paulo, Paraná, Mato Grosso do Sul, Espírito Santo, Bahia, Alagoas, Sergipe, Piauí, Ceará and the Federal District of Brasília. Through the courts, two other states, Santa Catarina, and Paraíba, eventually recognize same-sex marriage prior to a final Supreme Court ruling.
- **May 2013:** The National Justice Council votes 14-1 in favor of a resolution introduced by Chief Justice Joaquim Barbosa requiring all notaries in the nation to perform same-sex marriages, extending marriage rights to all same-sex couples in Brazil.
- **January 2009:** The Constitutional Court upholds a lower court opinion that same-sex couples must be accorded the same benefits as heterosexual couples in common-law marriages. This ruling grants same-sex couples equal pension, survivor, immigration, and property rights.
- **April 2011:** The Constitutional Court recognizes heredity rights for same-sex unions.
- **June 2011:** By unanimous vote, the 9 justices of the Constitutional Court state that homosexual couples have the right to “form a family,” and Congress has two years to create a law that recognizes same-sex unions. If Congress does not follow through, same-sex couples will be allowed to present their cases before a notary and have their unions recognized with the same rights as heterosexual couples.

**Source:** LGBT Rights in the Americas Timeline; and Bonilla, Daniel. “Same-sex Couples in Colombia: Three Models for their Legal and Political Recognition.” *Same-Sex Marriage in Latin America: Promise and Resistance*. pp. 113-4.

### COLOMBIA

- **1993:** The Supreme Court issues its first pro-LGBT ruling ever, allowing a trans woman, Pamela Montaña, to officially change her legal name.
- **2007:** Same-sex couples are allowed to enter the health care system as legally recognized couples with the same benefits and rights provided to heterosexual couples in the health care system. Same-sex couples may “be affiliated in the contributory social security system,” and have the right to receive a survivor’s pension. Members of same-sex couples are entitled to alimony if their relationship ends.

### COSTA RICA

- **August 2010:** A constitutional court derails a Catholic Church-supported national referendum on whether the country should grant same-sex couples the right to civil unions, arguing that minority rights cannot be determined by a process where majorities are needed. One

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## Appendix 3: *Judicial successes for the LGBT movement*

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hundred and fifty thousand voters had signed a petition in favor of the referendum.

### MEXICO

- **January 2009:** In a unanimous vote, the Supreme Court rules in favor of a trans woman requesting the reissuing of a new birth certificate that would not reveal the gender assigned to her at birth.
- **August 2010:** The Supreme Court upholds the constitutionality of Mexico City's same-sex marriage bill, and in a subsequent ruling on August 10, requires all states to recognize marriages that take place in the city.
- **December 2012:** The court unanimously strikes down a measure in Oaxaca's civil code asserting marriage to be solely between a man and a woman.
- **2013:** The Supreme Court rules that two words, "puñal" and "maricón" are hate-speech terms that inflict moral harm. Citizens who are victims of these terms can sue their victimizers for compensation.

**Source:** The LGBT Rights in the Americas Timeline (Amherst College).

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# LGBT Representation and Rights

The UNC LGBT Representation and Rights initiative at the University of North Carolina at Chapel Hill is the first academic program in the United States focused exclusively on the link between the representation of lesbians, gays, bisexuals and transgender people and the legal and political rights afforded to those groups.

## The mission is threefold:

- 1 Conduct and encourage research on the relationship between the presence and representation of LGBT individuals and equality.
- 2 Nurture, connect and inspire a cohort of scholars focused on questions of sexual orientation, representation and rights in North Carolina and beyond.
- 3 Pay testimony to, and build on the Carolina tradition of pursuing engaged research, bringing the highest level of scholarship to bear on the question of how to protect and enhance equality, democracy and the civil rights of all Americans.

## The initiative will:

Gather data to generate knowledge and evidence to support advocacy and generate understanding. Specifically, data on the representation of LGBT officials in national parliaments, multi-national assemblies, governments, and as mayors of cities. We are compiling a comprehensive compendium of national laws as they relate to the rights of LGB and Trans communities.

[globalstudies.unc.edu/lgbt-representation-and-rights-initiative](http://globalstudies.unc.edu/lgbt-representation-and-rights-initiative)

## Previous publications:



Out in Office: LGBT Legislators and LGBT Rights Around the World (Andrew Reynolds)

## Forthcoming publications:

Lesbian, Gay and Bisexual Legislators and the Introduction of Same-Sex Marriage Laws in the United States (Andrew Reynolds and Alissandra T. Stoyan)

Transgender Politics: Candidates and Elected Officials around the World (Logan S. Casey)



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