LGBT Rights in Latin America: Progress and Resistance

Cassandra Ginnis
Lukas Mcgregor
Samantha Aguilar

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I. Executive Summary

In an effort to take the temperature of LGBTI rights in Latin America, we have undertaken a sociopolitical analysis of those areas in the region, which have been late in arriving to questions of equity for sexual minorities. While countries such as Argentina and Brazil have been leaders in this respect, others, such as Puerto Rico, Chile, and Nicaragua have been notable for their resistance. The reasons seem to lie at the intersections of commerce and democratization, Catholicism, and entrenched gender roles.

In the early 1970s, gay rights movements were prevalent throughout the Americas – both in the U.S. and in Latin America – but were faced with setbacks, including military dictatorships with strong ties to the Catholic Church in places such as Argentina, Guatemala and Chile. While in many instances these governments - owing to the demands of cold-war alliances - were open to neo-liberal economic practices, their strong central governments were sufficiently repressive to limit the liberal social gains we have seen more recently since the widespread democratization of the region. Since the uptick in democratic governance that began in the 1990s, the demands of the tourist trade, most notably in Chile and Argentina, have begun to ensure the safety and profitability of businesses that serve the LGBTI community.

The democratic era has also seen the rise of NGOs that are specifically focused on the rights of sexual minorities, whose visibility and dedication in the past two decades have helped to yield tremendous gains in the courts. Activist Rolando Jimenez of the Homosexual Movement for Integration and Liberation (MOVILH) was able to mobilize public support for anti-discrimination laws in the wake of a brutal murder and a tragic fire; Cesar Cigliutti of Comunidad Homosexual Argentina (CHA) has been at the forefront of the battle for marriage
equality in Latin America, and in the case of Tania Luna, a transsexual, was instrumental in obtaining her right to assert her name and gender legally without an accompanying gender reassignment surgery. A free democratic society has no doubt been essential in allowing advocacy of this magnitude to take place.

The machismo/marianisma gender paradigm has also had its role to play not only in gender inequality in Latin America, but also in national attitudes toward sexual minorities. A binary gender concept, which elevates ostensibly masculine characteristics – the capacity for casual brutality, say, or an appetitive and dominant sexual disposition – to a position of natural and unquestioned authority over its feminine opposite, is by its definition unable to accommodate the subtle varieties of sexual orientation and gender identity which comprise the LGBTI community. It is perhaps fitting that this monolithic notion of masculinity, so embodied by the military dictators of Latin America’s recent past, is being gradually eroded in their absence.

As central authority has been weakened through democratization, and NGOs and rights groups have found the room to operate on behalf of sexual and other minority groups, the power of the Catholic Church has become more diffuse. This has occurred along different timelines for different nations, with both Guatemala and Brazil legally separating Church from state before the turn of the 20th century, and Nicaragua and Chile doing the same thirty to forty years later. Despite official separation in Argentina, the Catholic Church was what Patricia Marchak, in her book “God’s Assassins”, termed a “state church” during the military regimes, essentially supporting whomever happened to be in power. While all of these counties are still nominally
catholic, issues of complicity within the church have weakened its institutional as well as its moral authority.

As with human rights progress throughout the world, the process is fought both through legislation and through norm shifting. Catholicism has been entrenched in Latin American culture since the arrival of the Spanish in the early 1500s, and much of the gender narrative and sexual intolerance can be laid at the feet of the church, as correlations have been shown between the rate of religious belief and intolerance toward sexual minorities. Because of the long history of Catholic primacy in the region, there is quite a distance to cover normatively, with only 5% of Chileans, for instance – according to a 2010 report in the Journal of Homosexuality – holding “favorable attitudes toward homosexuals.” As it stands now, in addition to the work of NGOs and advocacy groups, there is something of a “top down” process at work, with gains made in the U.S. and in Europe, both at the state level and in the Human Rights courts, having an impact on Latin American Judiciaries and the Inter American Court of Human Rights (IACtHR), and ultimately on policies affecting the LGBTI community in places like Chile, Nicaragua, and Puerto Rico.

II. Historical Context

Homosexuality is not new or limited to Latin America, nor does it have any specific country of origin. This aspect of the placement and emergence of homosexuality varies throughout the world and more specifically throughout Latin America. To provide a general and brief basis for sodomy laws and the negativity as well as discrimination surrounding same-sex relations, it has been argued that until the twelfth century the church did not necessarily regulate
these activities. After this century, regulations and discriminatory actions were initiated, with the Holy Inquisition period providing guidelines backed by religious conviction. The Holy Inquisition prompted the discrimination and negative views against same-sex relations to spread through new territories and to newly discovered indigenous cultures by Spanish and Portuguese conquerors (Green 5). Along with the end of the Spanish Inquisition and the beginnings of independence, also came the end of sodomy laws in many, but not all, countries across Latin America who wished to purge themselves of Spanish rule. This act may have ended the actual criminalization of sodomy but the initial proposition of the laws instilled a wide variety of stigmas for all homosexual actions throughout Latin America.

As we move to analyze the concept of gay rights in these specific countries within Latin America, we must begin with the historical context of these countries to fully piece together their transitions through the smaller aspects regarding rights and equality, ultimately leading to the right to marry. In Puerto Rico, specifically, the history of LGB rights or even a history of homosexuality in general went undocumented for quite some time. Even during the pre-Colombian and Spanish domination period ending 1898, practices of homosexual acts were of course existent but according to the lack of documentation within the community, were mostly neglected within legal and historical documents (La Fountain-Stokes 91). In 1898, after the Spanish-American War, Puerto Rico became one of the territories won by the United States (Montesinos). Some of the first historical documents regarding homosexuality and the LGB community arose after these periods, which was also called the diaspora period for many who belonged to the LGB community of Puerto Rico. Many lesbians and gay Puerto Ricans were displaced from their homeland and migrated into the United States where there was a greater
history and larger standing of the LGB community. Many scholars perceive the interconnectedness and relativity of Puerto Rican sexual minorities to those of the United States as a result of this diaspora (Montes-Ireland 91). It is important to recall that this is not only a sexual minority issue, but also a racial minority issue, and in many cases, a gender equality issue, when compared to the sexual minority issue of the United States, which will be referred to later on in this document. Largely discriminated against and unable to live their lives freely and comfortably, the LGB community of Puerto Rico has had a history ridden with oppression and violence. The fairly recent ban of sodomy laws and even more recently, the right to marriage laws, has encompassed a whole new trajectory for the rights and progression of rights and expression in the LGB community.

To provide further context on the recent events in Puerto Rico, in 1999, same-sex marriage was proclaimed illegal in Puerto Rico in a law signed by Governor Pedro Rossello stating that marriage was to be solely a civil contract between a woman and a man, both in consent to become husband and wife (Johnson). Since this law was passed the legal and political side of sexual minority inequality became apparent. Though a number of court cases revolving around sexual inequality have mounted since this passage, the primary First Circuit appeal to directly oppose the same-sex marriage ban and seek legal respect for a marriage license was the Conde-Vidal represented by Lambda Legal Defense versus Ruis-Armendariz case (“Conde Vidal v. Ruis Armendariz”). It was not until about fifteen years ago that NGO Lambda Legal Defense provided a basis of legal advocacy and organization to promote and secure rights for the LGBT community. The main argument behind this long awaited advance was centered on Article 68 of the Civil Code of Puerto Rico, the same article signed by Rossello in 1999, which technically
denies any same-sex couple the right to marry as well as the respect for legal marriage license. In March of 2015, Puerto Rico’s Department of Justice officially denounced the ban of same-sex marriage (“Department of Justice Takes Stance in Recognizing Equal Rights to All Citizens”). A plaintiff argued that this article does not guarantee same-sex couples the same rights that heterosexual couples are granted. With a large support basis from Lambda Legal Defense and the growing LGBT community, Secretary of Justice, Cesar Miranda, announced that Puerto Rico would not oppose this appeal against the unconstitutionality of Article 68. Though the First Circuit Court must still analyze and finalize any changes to the Civil Code of the constitutionality of Article 68, Miranda’s statement marked a first in the history of Puerto Rico as well as another step towards equality for sexual minorities.

It seems that the state of LGB rights in various regions in Latin America is shaped by two primary factors, the influence of the Catholic Church in its legislative and governing bodies, and its level of incorporation within the neoliberal global economy. In the first instance, state sponsored Catholic repression has served to oppress sexual minorities through articles and penal codes, which prohibit such things as “offenses to social morality”, which can be freely interpreted by authorities who seek to detain when no other criminal act is provable, and can engender normative discrimination - such as in Chile, where “It has become common for authorities to turn a blind eye to gay and lesbian distress calls” (Lyons 33). In the second instance, since the early 1990s, and the return of democratic rule to Chile, homosexuality has been more visible, as businesses that cater to the gay community have ceased to be raided owing to the demands of the tourism industry. This nascent tourist industry was “created as a result of a
neoliberal economy” (Lyons 34) that was begun under Pinochet, but has grown since the arrival of democratic rule.

Pinochet was himself in part responsible for the political repression of LGBTI people in Chile during his time in power. Even with the existence of prohibitive labor and penal codes resulting from catholic doctrine, in a nation that had been officially Catholic since the early 1500s, 1973 saw the emergence of multiple civil rights movements, including the movement for gay liberation. Unfortunately, “what existed of gay and lesbian visibility in Chile in 1973 was thwarted by the (Pinochet) dictatorship and shoved underground” (Lyons 25). After his departure, however, the less repressive political environment left room for organizations such as the Homosexual Movement for Integration and Liberation (MOVILH), which emerged in 1993, and the United Movement of Sexual Minorities (MUMS), an NGO which arose in 1998, to begin moving forward in the fight to push an anti-discrimination law, organize pride parades, and generally push for LGBTI equality in Chile. The Pinochet dictatorship, in short, was able to exert a crippling influence on the liberalizing effect of cultural exchange within the new economic system, and artificially extend the marginalization of LGBTI persons long enforced by Catholic influence within the government.

Similarly to Latin America in general, the idea of “machismo” plays a role in Nicaraguan culture as well. In the novel Life is Hard: Machismo, Danger, and the Intimacy of Power in Nicaragua, machismo is defined as “an organization of social relations that generate ideas.” In addition to that, Lancaster’s definition goes even further to say that it is “not exclusively or even primarily a means of structuring power relations between men and women. It is a means of structuring power between and among men” (Lancaster 236). Those using the ideology of
machismo in order to win over women have two audiences in mind. First, they must prove their masculinity and virility to other men. Second, and more important, is the separation of “real” men, and the homosexual man. The term homosexual specifies only certain practices in certain contexts, and Nicaraguan culture often identify a homosexual individual (mainly men) as a *cochón*. A cochón is tacitly understood as someone who engages in anal intercourse with other men and appears to indicate the nature of that status and role. Where homosexuality activity of any sort defines the Anglo-American homosexual, in Nicaragua by contrast, it is “the passive role in anal intercourse that defines a cochón. Oral or manual practices receive scant social attention; everyday speech does not treat them in great detail, and non-anal practices appear far less significant in the repertoire of actually practiced homosexual activities” (Lancaster 238).

In the case of Nicaragua, LGBT issues were completely unaddressed during the Somoza dynasty, and continued to be disregarded throughout the Sandinista Revolution. It was not until 1989, ten years after the revolution, that LGBT discussions were present. During this time, the door was open for support of the LGBT community by NGOs, setting up centers for counseling and activists to focus on the sexual diversity established in Nicaragua. Soon after however, this support drew to a close with pressure from the Catholic Church and the Social Christians coalition to stop such activity (“Nicaragua Rejects Gay Marriage, Adoption”).

In response, President Violeta Chamorro and the Nicaraguan National Assembly approved of many amendments to the Penal Code regarding sexual offenses. Article 204 in particular imposed a sentence of up to three years in prison for “anyone who induces, promotes, propagandizes or practices sex among persons of the same sex in a scandalous manner” (“The
Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in NICARAGUA: A Shadow Report”). In addition, the terms to this article criminalizes not only gay men, lesbians and bisexual people in same-sex relationships, but is extremely broad that it even permits the prosecution of individuals for activities such as campaigning for LGBT rights or anyone providing sexual health information or services. Those accused of such activities are thus detained and considered prisoners of conscience (“The Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in NICARAGUA: A Shadow Report”). Nicaragua repealed Article 204 at the end of 2007, when the new criminal code was approved, and the repeal took effect July 2008. Though decriminalizing sodomy is an advancement for human rights in Nicaragua, individuals and communities still face widespread discrimination and human rights violations based on their sexual orientation and gender identity.

In a shadow report conducted by five main activist groups such as the Global Rights Committee, El Grupo Safo, International Gay and Lesbian Human Rights Commission (IGLHRC), International Human Rights Clinic, Human Rights Program, Harvard Law School, and the Red de LatinoAmerica y el Caribe de Personas Trans (Red LacTrans), they have worked to bring awareness to the status of LGBT people in Nicaragua. The purpose is to first see if Nicaragua is compliant with the International Covenant on Civil and Political Rights (ICCPR), and to continue advocacy for greater protection and awareness of the LGBT community.

These committees are bringing the Nicaraguan Constitution to validate their advocacy. For example, Article 27 of the Nicaraguan Constitution states that “all people are equal before the law and are subject to equal protection under the law. It denounces discrimination based on
birth, nationality, political belief, race, sex, language, religion, opinion, origin, economic position, or social condition” (“The Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in NICARAGUA: A Shadow Report”) Though this non-discrimination clause includes discrimination based on sex, LGBT individuals in Nicaragua still experience violations of their human rights due to their sexual orientation and gender identity because this article does not include discrimination based on sexual orientation and gender identity.

There have been numerous human rights violations against LGBT individuals and they continue to suffer in recent years even though the Nicaraguan government has the duty to protect them from these violations under the ICCPR. Individuals face discrimination at the workplace due to their sexual orientation, gender identity and expression. They are denied employment opportunities and are subjected to harassment on the job. The Nicaraguan Labor Code does not include a provision against discrimination based on sexual orientation and gender identity, thus LGBT individuals have no protection from this treatment. LGBT individuals do not have adequate access to health care for the prevention and treatment of HIV/AIDS. Same-sex couples are not protected by Nicaragua’s domestic violence laws, nor are they given access to inheritance or pension rights because they are not married. Children are also subjected to harassment because of their parent’s non conventional sexual orientation (“Growing Up Gay in Nicaragua”).

It seemed as though Nicaragua was beginning to take a turn in a positive way regarding LGBT issues by appointing an ombudswoman for sexual diversity to defend the rights of the gay community (estimated to number half a million people) in 2009. The new ombudswoman’s office began work in order to “recognise the constitutional rights and duties of all citizens, whatever their sexual orientation, as universal rights which must be respected” (Silva). However,
organizations advocating for LGBTI human rights are not given the same legal operating status as other organizations in Nicaragua because of the object of their activities. This negatively affects their capacity to serve their communities and LGBT individuals subject to discrimination because of their sexual orientation or gender identity and/or expression. In addition, Nicaragua has enacted a “Family Code,” which was first agreed in June 2014, and establishes marriage as only being "between a man and a woman." Aside from barring gay marriage, the definition precludes gays from adopting and diminishes other rights (“Nicaragua Rejects Gay Marriage, Adoption”).

Spain has been extremely influential in the case of LGBT rights among countries across Latin America. In 2005, Spain became the first Catholic-majority country to legalize gay marriage, and with that became the blueprint model for Argentina while legislators sat down to draft a gay-marriage bill. More importantly however is the discussion of gay rights as human rights. One of the first gay groups to emerge in Latin America in the post transition era was Comunidad Homosexual Argentina (CHA). Their objective was to no longer press gay rights as a legal issue, but focus more on receiving human rights recognition by advocating on the LGBT community’s behalf. In 1984, their inaugural motto became, “The free exercise of sexuality is a human right” (Encarnación 106).

One of the main results of Argentina being so far progressed in the acceptance of recognition of the LGBT community in comparison to the rest of Latin America had to do with the economic collapse of 2001. In response to the economic crisis, the government devalued the national currency, giving a major boost to Buenos Aires’s biggest draw for gays in South America, replacing Rio de Janeiro. Many of Argentina’s resources have endeavored to make
Buenos Aires one of the “hot-spots” on the international gay-friendly tourist circuit. According to a study done by the New York Times, “it was estimated in 2007 that around 20 percent of the city’s “tourists . . . are gay—300,000 a year—and they spend US$600 million [there] annually” (Encarnación 111). Furthermore, in 2010, Argentina became the first country in Latin America to legalize same sex marriage, and with that legislation, Argentine gay couples are entitled to all the same rights and benefits as straight couples, including adoption; an issue most Latin American countries continue to struggle with (Glickhouse, Keller).

The religious distribution of Puerto Rico holds a primary and super majority group as being Roman Catholic. As of 2004, 85% of the commonwealth identified themselves as Roman Catholics (Montesinos). According to the Pew Research Center, a study conducted in 2013, the majority (55%) of Puerto Ricans opposed same-sex marriage, while only 33% were in favor of it (“Chapter 5: Social Attitudes”). The arrival of the Spaniards had a large role in establishing a basis of religion within the Puerto Rican community. Spanish imperialism and ultimately, religious conviction, became of great status in the Puerto Rican communities because they motivated much of the initial discriminatory acts against sexual minorities. According to a correlation chart between the status of religion in a country and the LGBT Rights Score, compiled by Amherst College Professor, Javier Corrales, in most of the Latin American and Caribbean countries recorded, a high correlation existed between countries with high percentages of religion and low LGBT Rights Scores (Corrales 29). Therefore as a country’s percentage of religion within the population falls, it is more likely that the chance of LGBT Rights will rise. In many instances, religious groups are the liveliest opponents to rights in the LGBT communities.
With less religious fervor in the community, it is less likely that a large-scale opposition would occur.

In Puerto Rico, like Nicaragua, the concept of machismo is extremely prevalent throughout societal constructs. Machismo, brought by Spanish imperialism, can often be compared to manliness and the dependence or systematic workings of a patriarchy. In more definable terms, machismo is basically a notion that exemplifies male pride and sees males as a superior gender because if their ability and manliness throughout the commonwealth. Patriarchy is not a product or a precursor to the lack of rights as seen in many other countries around the world. In the United States for example, a weaker form of Patriarchy exists yet the majority of the country has progressed into a more open society with the acceptance of many LGBT rights including the right to same sex marriages. Under a strong patriarchy progresses a resilience of strict gender roles. Like some other conventional Latin societies, Puerto Rican culture, for the most part, values set traditions that were established long ago (Montesinos). Gender roles are reinforced at an early age by the large importance placed on the ideals of machismo, even in young boys. Like many other traditional societies, within mainly the family unit in Puerto Rico, the baby is rejoiced more so if it is a male rather than a female (Montesinos). The larger role women play in Puerto Rican society, the weaker this aged societal construct becomes as it is undermined by the role of matriarchal power.

Similar to machismo is the female counterpart’s version of the notion of a societal role called marianismo. Marianismo as a parallel to machismo is the notion that women are to be pure and feminine for the males of society to increase their sexual appeal (Montesinos). The concept of marianismo reinforces the gender role of the woman to be perfect for her male
counterpart. The ideal woman refrains from any sexual activity and requires femininity as her main feat.

Both marianismo and machismo reinforce gender and sexuality as a set frame without interchangeable roles. The prominence of these two notions creates a large barrier for sexual minorities to gain any ground or respect in the Puerto Rican community. Machismo states that there should only be one type of man in society, he should be dominant and powerful as well as command the attention of women. Whereas marianismo states that a woman is solely for a man, pure and feminine. Of course not all people in the Puerto Rican society can comply or are willing to comply with this traditional status of gender roles, specifically the LGBT community. Customary gender roles hold no place in society for this growing community and changes must be made for coexistence and the 2015 denouncement of the ban on same-sex marriage was a large step towards that coexistence. Currently, the movement towards coexistence is much more prominent than before many rights have been given to the LGBT community to level the status of equality. Although certain rights are considered constitutionalized, this does not necessarily make it easier for the LGBT community to be seen as anything other than a minority. According to the Williams Institute of Law at the University of California Los Angeles, census studies conclude that same-sex couples in the LGBT community of Puerto Rico have significantly fewer economic resources to provide for their families than their heterosexual, married counterparts (Romero 3). Although certain rights are granted does not mean that they are also abided by or recognized by the larger, normative community. Discrimination will continue to persist as long as these notions of machismo and marianismo continue to exist in Latin American societies. Many things are being done to combat this discrimination through outlets of film, media, and
education (Carrion). Much of the push for rights in the LGBT community in Latin America comes from the younger generations with education and a will for change (Chang).

Strong ties with the United States allow for media outlets to reinforce these notions of marianismo and machismo. Though the patriarchy is seemingly less prevalent in the United States than it is in Puerto Rico, it continues to be projected by the importance of gender roles throughout Hollywood movies and entertainment media as well as even some news outlets. Media outlets continue to display the role of a man and the role of a woman separately and with similar characteristics between a man’s masculinity and a woman’s marianismo. Strong ties with the United States provide many reasons for a change such as the adoption of same-sex marriage rights; yet also provide reasons for reinforcing the societal constructs, such as through media. Though the intrusion of imperialist ideals and social status ultimately led to the implementation of sodomy laws, as well as gender roles, and a high importance of religion, Puerto Rico has been largely influenced by the same-sex marriage laws in United States because of the relationship between the two that dates back to 1898.

III. Conclusion

The gay-rights revolution represents a significant step in the deepening of democracy in Latin America. The extent to which minorities are protected by the law has traditionally been a reliable marker of the quality of democracy, and although gay rights have heavily depended on the intersections of commerce and democratization, Catholicism, and entrenched gender roles, the broad acceptance of homosexuality has yet to be proven throughout Latin American society. Promoting gay rights in Latin America predated the acceptance by the international community of the popular argument that gay rights are human rights. This view holds that gays are “entitled
to freedom from discrimination by virtue of being human; accordingly, what is being advanced with gay rights is humanity rather than a “gay agenda” (Encarnacion). It is essential that in order for countries such as Puerto Rico, Chile, and Nicaragua to reach the same level of acceptance for homosexuality as say, Argentina, their governments should focus on enacting anti-discrimination legislation to “prevent discrimination based on sexual orientation and gender identity in the workplace, public schools, and housing and provide redress for such discrimination” (“The Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in NICARAGUA: A Shadow Report”). In addition, there also should be some sort of hate crime legislation to prevent the harassment and violence against individuals based on their sexual orientation and gender identity.

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