Variation in Latin American LGBT Rights

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VARIATION IN LATIN AMERICAN LGBT RIGHTS

By

Jordan A. Strickler

A THESIS

Submitted to the Faculty
of the University of Miami
in partial fulfillment of the requirements for
the degree of Master of Arts

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VARIATION IN LATIN AMERICAN LGBT RIGHTS

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This thesis explores the current cross-national variation in Latin American LGBT rights since the beginning of the pink tide. I create the Latin American LGBT Rights Index that empirically measures each nation’s LGBT rights policies and use the index to quantitatively examine several economic, cultural, and political variables’ effects on LGBT policy outcomes. This work includes a multivariate panel analysis and qualitative case studies of Argentina, Brazil, and Nicaragua to examine how the left shift has had divergent outcomes on LGBT right in Latin America. I conclude this work with recommendations for further research.
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Chapter 1: Introduction

Latin American governments have passed unprecedented LGBT rights legislation since the turn of the new millennium. As of 2016, five Latin American nations have marriage equality, and five governments allow transgender citizens to legally modify their gender without medical or judicial constraints. These policies accentuate a shift from 20th century politics when sexual minority rights and protections were nearly non-existent, and neither the right nor the left adopted LGBT equality into their political agendas. However, the passing of these reforms has not been linear or guaranteed as a handful of countries have maintained the status quo of having few to no equal rights for gays and transsexuals. Moreover, some Latin American governments have diverged from the progressive trend by ratifying legislation that restricts equal rights. For example, the Dominican Republic constitutionally prohibited same-sex marriage and adoption in 2010, the same year Argentina became the first Latin American country to enact marriage equality. What has caused the recent burgeoning and high variation in LGBT rights in Latin America in the new millennium?

In this thesis, I examine the cross-national variation in LGBT legal rights in the region as of 2016. Latin America has undergone political, economic, and social shifts since the turn of the century that occurred simultaneously with the regional increase in LGBT rights, including the pink tide, economic growth caused by an increase in commodity prices, and an increasingly secular population. The “pink tide,” referring to the wave of democratically elected leftist governments in the region, began in Venezuela when voters elected Hugo Chávez into power in 1999. Since then, twelve out of the eighteen Latin American democracies have elected left-wing governments. These leftist
administrations came into power during a region commodity boom that resulted in economic grown and in turn provided the governments financial resources to implement their agendas. However, this left shift has not been uniform; Two different leftist governing styles have emerged: the populist and the institutionalized left (Blofield and Ewig 2017). In short, the latter style governs through the pre-existing institutions and respects checks and balances while in contrast, the populist government do not adhere to the previously established institutions, centralize on a charismatic party leader, and are less democratic in nature.

I examine the how these economic, social, and political changes have influenced the advancement, or lack thereof, of LGBT policies. in the 21st century. I argue that modernization theory, shown by economic development and levels of education, coupled with a nation’s level of religious participation and public opinion on homosexuality each condition cross-national variation in LGBT rights in Latin America. Furthermore, I contend democratic quality and executive ideology vis-à-vis governing style influence how many sexual minority rights a government passes. This study only assesses legislation; Due to limitations of time and resources, I do not examine the disparity between written law and its enforcement.

Below, I begin with the theoretical puzzle presented by the extant literature. To contribute to the Latin American LGBT rights scholarship, I create the Latin American LGBT Rights Index to empirically illustrate the current cross-national variation in LGBT rights, followed with a summary of each nation’s LGBT rights and major regional trends. I then present the independent variables that I hypothesize influence the number of LGBT
rights a national government has passed. I test these hypotheses by comparing national statistics, and conduct a multivariate panel analysis to statistically examine the independent variables’ effects on the LGBT Rights Index overtime. I conclude this research with qualitative case studies of Argentina, Brazil, and Nicaragua, and for the case of Argentina, I conducted an interview with Argentine legislator and activist, María Rachid.

This research finds, in accordance with the literate, the secular, educated, and tolerable to homosexuality a nation’s population is, the more LGBT rights legislation its government passes. In addition, nations that have higher economic developed and a quality democracy tend to pass more LGBT rights than less developed and less democratic countries. I also find that a left-wing government is more likely to pass LGBT rights than non-leftist executive. However, the institutionalized left enacts more LGBT rights on average than the populist left, unless if the president of a populist left government prioritizes LGBT equality.

**Theoretical Puzzle**

The extant literature has explored the cross-national variation of LGBT rights in the region. Wilets (2010) explains the divergence between LGBT rights in the English-speaking Caribbean and Latin America and the Spanish-speaking Caribbean. He argues the differences in religion, colonization, and geopolitical factors that resulted in fewer rights in the English-speaking Caribbean than in Latin America. This work underscores the importance of religion in in passing LGBT rights, but it does not asses the divergence within Latin America.
Some scholars contend the increase of gay rights, especially same-sex marriage, in Latin America has been a process of transnational norm diffusion. They argue that countries like Argentina, Uruguay, Brazil and others have emulated European countries’ gay rights legislation models since the western world had been innovators in passing civil unions and same sex marriage. Piatti-Crocker (2013) states, “international trends and, more particularly, European civil unions and same-sex marriage laws were the take-off point for the sort of bandwagon effect in Latin America” (pp. 18). Friedman (2012) supports the international norm diffusion theory by arguing, “Spain’s support was essential to the Argentine [same-sex marriage] law’s shape and passage” (pp. 29). She claims the similarity between Spanish and Argentine culture, coupled with financial assistance, led to the watershed moment of Argentina’s passage of marriage equality. Friedman notes how Spanish NGOs helped LGBT rights projects in Argentina, citing how one organization gave Argentina $150,000 between 2000-2012.

These arguments have flaws. Civil union and marriage laws originated in Europe, but that does not imply that Latin America only emulates European law. In 2012, Argentina became the first nation in the world to allow transgender people to legally change their name and gender without judicial approval or medical requirement, thus making it a trend setter. In addition, the argument of a bandwagon effect does not explain the variation within Latin America. It does not explain how a country like Argentina has many LGBT rights while its neighbor Paraguay, has passed no major LGBT rights. International norms and aid can support the fight for sexual minority rights, but it could hinder it as well. Many international churches have taken an active role in opposing
LGBT rights in Latin America, including the hierarchical Vatican and protestant missionaries.

Rather, international norm diffusion plays a subtler role, interacting with domestic factors. Some Latin American countries passed same-sex marriage and trans rights after Argentina. However, domestic variables influence whether a country is susceptible to passing pro-LGBT legislation. Ayoub (2016) analyzes the variation of LGBT rights in Europe and how international pressure from the European Union and transnational movements influence the passing of LGBT rights in European countries. International variables have more explanatory power in Europe because of the power of the European Union, while Latin America lacks a strong regional or intergovernmental organization. In example, The Organization of American States has not had any influence over implementing LGBT rights in Latin America. In one Chilean case the Inter-American Human Rights Commission ruled that a lesbian mother has the right of custody to her children and suggested that Chile should establish discrimination and hate crime protections. However, Chile passed no adoption rights for homosexuals, and the suggested discrimination and hate crime protections did not gain momentum until after the torture and murder of a gay teenager by Neo-Nazis that galvanized public demands, thus reinforcing the importance of domestic factors (Diez 2015).

Encarnación (2011) assesses the increase of gay rights in Latin America in what he calls the “Gay Rights Revolution.” He mentions international influence from Spain by stating that Argentina used the Spanish law as a “blueprint” when drafting the marriage equality bill (pp. 105). However, Encarnación’s main argument states the gay right movement’s framing of LGBT rights as human rights is the main factor that allowed
same-sex marriage to pass in Argentina, and that the movement also benefitted from domestic factors. He highlights that the international discourse of human rights, coupled with democratization and the left shift made the gay rights groups’ framing successful. Encarnación also argues against a deterministic economic development, citing that Buenos Aires had its first civil union in 2002 during the economic crisis. Encarnación (2013) details how the Argentine gay rights movement has evolved and passed same-sex marriage with the support of President Cristina Kirchner. I agree with Encarnación’s domestic variables of democratization and the left turn. However, I disagree with his argument on economic development, which I will go into further detail when discussing independent variables.

Diez (2015) compares Argentina, Mexico, and Chile and explains why the former two countries have been successful in obtaining marriage equality while Chile has not. Diez claims domestic, not international, variables determine if a government passes gay marriage. He argues that passing same-sex marriage is contingent on the connections, strength, and framing of the domestic gay rights groups and how they interact with institutions. This argument extends on Encarnación’s framing theory by showing how the institutional differences between the three countries interact with gay rights groups. Diez’s work provides insight into the variation of institutions in these countries; however, he only assesses same-sex marriage. Chile lacks marriage equality but has more rights than most Latin American countries. I address the variation of more LGBT rights in the entire region to assess why some countries have few to no rights and others have more legal equality.
Few works address transsexual legislation in Latin America. Fernandez (2004) assesses the transgender movement’s later development and ostracization from the exclusively gay rights movements. Transsexuals have struggled to be incorporated into any gay, lesbian, and feminist group, thus hindering the fight for their rights. However, Fernandez’s work does not detail how LGBT rights group have worked to pass rights for transgendered people. Transsexuals currently have a presence in LGBT rights movements, but the literature still focuses heavily on legislation for exclusively gay rights.

To contribute to the existing scholarship on LGBT rights in Latin America, I begin this research with the *Latin American LGBT Rights Index* that quantitatively represents the current cross-national variation in LGBT rights. This index not only updates the literature by comprehensively included each nations’ LGBT legislation but also serves to quantitatively examine multiple variables’ effects on the advancement of LGBT rights.
Chapter 2: Latin American LGBT Rights Index

For the dependent variable, I create the Latin American LGBT Rights Index that measures the LGBT legislation each Latin American government has passed. In addition to quantifying the LGBT rights and protections, I include the years the law passed and the political channel utilized to pass same-sex marriage, either through congressional legislation or the judicial branch.

Multiple indices exist that measure different LGBT rights throughout the world, but none of them adequately represent LGBT rights legislation in the region. The International Lesbian, Gay, Bisexual, Trans, and Intersex Association (IGLA) tracks sexual orientation rights globally by mapping various laws on criminalization, marriage, adoption, and protections. The map shades countries to illustrate the severity of the punishments its laws have for homosexual acts, ranging from jailtime to the death penalty. The map also depicts which countries have same-sex marriage and civil unions, protections for sexual orientation, and joint adoption.

This map is a useful tool, but not comprehensive enough for my research assessing solely Latin America. The same-sex marriage labels are accurate, but marriage laws are not as complicated and nuanced to map as other LGBT rights like gender recognition and anti-discrimination. The map also does not show which governments have prohibitions of same sex marriage. The IGLA map only represent laws for sexual orientation; index includes the discrimination protections for gender identity and gender recognition laws. The sexual orientation protections mapping also does not show details. It clumps together, Constitutional laws, employment protections, hate crime protections without specifying which protections it has passed and in which level of government.
Governmental level of protections shows the strength of it. Constitutional protection has more power than an anti-discrimination law at the state or city level. The adoption feature has some discrepancies as well; for example, Colombia had obtained same-sex adoption in 2015 before the map was created, but it does not show up on this map. The *IGLA Sexual Orientation Laws in the World Index* is a useful tool to see global trends in LGBT rights and penalizations. However, it only represents sexual orientation rights while lacking some specificities and accuracies in Latin America.

Another source that tracks global LGBT rights is *Equaldex*, a blog that lists different LGBT rights in every nation. The blog offers information on different rights, including marriage, civil unions, some protections, legality of homosexuality, if a person can change his/her gender, donate blood, and serve in the military. However, *Equaldex* has flaws in its accuracy and sourcing. Users edit the website similarly to Wikipedia but with no fact checking. Many of the posts do not have sources, or the sources are unreliable, and there are many factually wrong posts with Latin American countries. One example is it claims Colombia requires surgery for a person to change his/her gender; this is false due to the passage of the most recent gender recognition law in 2015 that no longer requires surgery. *Equaldex* does not have the legitimacy and accuracy to measure the variance of LGBT rights in Latin America.

Corrales (2009) creates the *Gay Friendliness Index* that ranks cities throughout the world on their “gay-friendliness.” This index takes information from Spartacus’s *Gay Travel Index* that rates the safetiness of each country for gay travelers and adds the number of gay-friendly businesses (clubs, health services, religious groups, etc.) within the density of the city. The *Gay Friendliness Index* includes same-sex marriage and
legality of homosexuality, but it focuses mostly on the number of gay friendly
establishments. This index could potentially be helpful in Sociology to measure social
acceptance of the LGBT community in Latin American cities, especially for travelers.
However, my index focuses solely on LGBT rights legislation passed.

For my index, I measure each Spanish and Portuguese speaking Latin American
country on a scale of -1-9, ranging from least to most LGBT rights at the national level
up to 2016. I form four main categories for LGBT rights: non-discrimination, family
rights, gender recognition, and hate Non-discrimination includes decriminalization of
homosexuality, non-discrimination for sexual orientation and gender identity, and
whether homosexuals can serve openly in the military. Family rights include same-sex
marriage, Constitutional bans on same-sex marriage, civil unions (or any form of equal
protections for same-sex couples) and joint adoption rights for homosexuals. The
categories for gender recognition and hate crime protections have no other subcategories.
I give each country a one per category if it has the right and a zero if it does not. I give a
country a negative one if it has a Constitutional ban on same-sex marriage. I collect the
data from Penal Codes, Constitutions, Family Codes, specifically numbered laws, and
reputable news articles.

Non-Discrimination

Decriminalization

I assess whether a sodomy law exists that criminalizes homosexuality. De la
Dehesa (2010) explains that many Latin American nations like Brazil and Mexico never
had sodomy laws since independence because they emulated the liberalism of the French
constitutions. I put “N/A” under the category if the country never had sodomy laws and count it as a (1). I take this assessment a step further to address whether homosexual acts have the same age of consent as heterosexual acts. If the law makes the age of consent different for homosexuals, then it cannot be viewed as full “equality.” The unequal age of consent partially criminalizes homosexuality under laws of statutory rape (*estupro* in Spanish law). If an individual engages in homosexual activity with another person who is at or above the heterosexual age of consent yet under the homosexual age of consent, then he/she can face persecution. If a country does not have a sodomy law, I give it a (1) and a (.75) if it has a different age of consent for homosexual acts.

*Anti-Discrimination Law: Sexual Orientation*

Each Latin American government has a national anti-discriminatory law to protect citizens from discrimination in employment, health care, housing, schools, banking and other societal institutions. I assess whether the law includes sexual orientation in the groups that it protects. These protections give homosexuals legal resources to battle prejudices that may stop them from fully participating in the public sphere. Not having these protections makes the already marginalized group of sexual minorities more vulnerable as they face threats of losing their jobs, housing, and healthcare with no legal safety net. I give a country a (1) on the index if it has a national discrimination protection that includes sexual orientation. Venezuela and Nicaragua only have anti-discriminatory policies in employment, which I measure as (0.5). El Salvador receives a (.25) in this category because it only has an anti-discrimination law for public employment sector.

*Anti-Discrimination Law: Gender Identity*
I assess whether a national anti-discrimination law exists that includes protections for gender identity. I separate gender identity from sexual orientation because most anti-discrimination legislation does not include gender identity. Excluding transsexuals in anti-discrimination laws exemplifies the more difficult conditions that they have to overcome. The trans population faces more discrimination, not only because some people view being transgender as morally abhorrent, but many people holdfast to the idea of biological determinism that claims one’s biological sex at birth determines one’s gender. Fernández (2004) mentions how the transgender population is often relegated to prostitution because of the lack of formal employment options. This problem further stigmatizes transsexuals by linking them to criminality in the margins. Not having the protections to take part in the public sphere perpetuates the marginalization of transsexuals. Each country that has an anti-discrimination law that specifies gender receives a (1) on the index.

Military Service

I assess whether homosexuals can serve openly in the military. Not allowing homosexuals to serve in the armed forces is an example of state discrimination against gays and limits their right to fully participate in the public sphere. Kraay (2007) details how Latin American militaries have historically discriminated harshly against gays because the institution claims homosexuality contradicted its “masculine” image, and Gill (1997) highlights the institutional homophobia in the Latin American military, citing examples such as the Bolivian military’s usage of the term maricones (“faggots”) in reference to weaker recruits. These authors underscore how Latin American militaries emphasize masculinity and heteronormativity. Allowing homosexuals to openly serve
shows how a nation stops legal discrimination in an institution that has historically held prejudices against the LGBT community. I do not consider a country having an approach like “Don’t Ask Don’t Tell” as being pro-gay legislation because being allowed to serve if and only if you hide your sexual identity is not an LGBT right. I give a (1) to each country that has military equality. Both Costa Rica and Panama do not have militaries; They receive “N/A” on the index that measures as a (1) to not count against them for not having a military institution.

Family Rights

Same-sex marriage

I assess whether a country’s government offers same-sex marriage. Same-sex marriage gives equal status and full conjugal rights to same-sex couples, inheritance, medical insurance and decisions, shared property, and more. I additionally note the institutional channel used to pass same-sex marriage, either through congressional legislation or a judicial ruling. A country receives a point of (1) if its government has passed marriage equality. Mexico is the only nation in which same-sex marriage is performed, albeit not universally. The Mexican federal system places marital law at the state level and has resulted in a patchwork with only the Federal District and nine out of the 31 states legally issuing same-sex marriage. However, the Supreme Court ruled that same-sex marriage and its benefits are recognized nationally, even if a state’s civil registry does not issue marriage licenses to same-sex couples. Although each state does not offer same-sex marriages in Mexico, I measure it as a (1) because same-sex marriages are universally recognized.
Constitutional Ban

Certain national constitutions prohibit same-sex marriage by declaring marriage as a union exclusively between a man and a woman. These bans form an additional obstacle to advancing marriage equality that can only be overcome through constitutional revision. I use a negative measurement for countries that have a constitutional ban on same-sex marriage. The negative point more accurately represents the country’s political atmosphere in regards to LGBT equality, and shows how the diverging trends with some countries increasing equality while others pass legislation restrict it. If a nation constitutionally prohibits gay marriage, I measure it as a (-1) in this category and a (0) if it has no ban.

Civil Unions/Same-Sex Couples Rights

I assess whether a Latin American government guarantees rights to same-sex couples through a union that is inferior to marriage. Most countries that offer couples’ rights to homosexuals through a civil union that requires them to prove they have been cohabiting for at least three to five years. These unions lack the full benefits received through marriage, and marriage does not require proof of cohabitation. Unlike passing marriage equality, civil unions are a continuous process to pass that overtime adds rights in some cases. For example, in the case of Colombia, it is not pinpointed in one year when the government passed civil unions. LGBT activists first won inheritance rights for same-sex couple’s through a court case in 2007 then continued winning cases that added social security, health benefits, and more. I note the year the first civil union was issued in a country along with the year that it became universally offered. If a country has a civil union with rights similar to those of marriage, then I measure the country as (1) in this
category. In the case of Costa Rica, I give it a (.5) because it has a domestic partnership that has minimal rights and is noticeably inferior to the civil unions in other Latin American countries.

*Adoption*

I assess whether same-sex couples can adopt children. To have full family rights, a country must allow gay couples to jointly adopt a child. I give a country a point of (1) if its government offers joint adoption to same-sex couples.

*Gender Recognition*

Some transgender individuals wish to alter their bodies through surgery and/or hormonal supplements to make their bodies physically adhere to the gender as which they self-identify. In some countries, the transgender community may face discrimination through the struggle of changing their self-expressed gender identity on legal documents and license. This affects their everyday life when they have to present documents that label them as a different gender than they appear. This problem not only causes embarrassment, but it can make them visible targets for discrimination by revealing that they are transgender.

The most equal option of gender recognition allows an individual to amend his/her gender on documents without a sex change operation or judicial approval from a judge. Sex change surgery is mostly for transsexuals who feel they need to physically change their bodies to match their gender. Requiring surgery to revise a person’s gender on legal documents discriminates against transgender people who do not feel the necessity to take the physical approach to have surgery. This requirement also further
harms transsexuals who cannot afford a costly surgery and the hormonal supplements necessary for it to take place. Although some countries allow them to receive the surgery and hormones through the state funded healthcare system, it could be difficult to be granted this surgery by the state.

Some governments allow legal gender recognition but require the person to obtain a judge’s approval. This requirement places the person’s legal recognition at the whim of a judicial official who could be transphobic. Certain countries have allowed transgender citizens to change their name on documents but not their gender. This can be problematic in a region where the main two languages spoken, Spanish and Portuguese, have gendered nouns and names.

I give a country a (1) on the index if it allows a person to alter their gender and name on documents without medical and judicial requirements. If the law requires the person to have surgery and undergo a psychological and medical examinations, then I rate it as (.5) under the category and (.75) if it does not require surgery but still requires a judge’s approval. I give a country a (.5) if it only allows them to legally modify their name to match their gender while not allowing them to modify their legal gender.

Hate Crime

I assess whether a government’s hate crime laws include the sexual orientation and gender identity. In some places, gays and transsexuals remain in a marginalized position in Latin America that makes them vulnerable to violent threats and attacks because of their sexual identity. Lawrence (1999) explains that hate crimes, also known as bias crimes, differ from other types of crimes because some people are attacked for
their race, religion, sexual orientation gender identity and other parts of their identification. Other crimes are usually a means to an end (ex. Being mugged because somebody wants your money).” Hate crime laws issue more severe to those found guilty of threatening or attacking a person or group because of their race, religion, or sexual identity. The debate over the necessity of hate crimes continues as one side argues the law should protect everybody equally. This should be the case, albeit the law is not always congruent with equality, as my research shows. Sexual minorities have historically been vilified (and still currently are) in Latin America, and the extra protection serves to deter these bias crimes with harsher. As Wade Henderson, president of the Leadership Conference on Civil and Human Rights, explains, “We cannot outlaw hate. However, laws shape attitudes. And attitudes influence behavior. Strong enforcement of these laws can have a deterrent impact and limit the potential for a hate crime incident to explode into a cycle of violence.”1 If racism, misogyny, or homo/transphobia are the motive of the attack, it is necessary for the state to further protect the vulnerable citizens to send a message that it will not tolerate hate.

Hate crimes against the LGBT community in Latin America have been prevalent and continue today. Seventy eight percent of global transgender murders have been in Latin America between 2008-20142 while 326 LGBT people were murdered in 2014 in Brazil alone3. Recently in February 2017, five men tortured and killed a transsexual

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woman while filming it in the streets of Brazil. Encarnación (2011) claims Latin America is experiencing a “paradoxical” trend with rising anti-gay violence as more countries pass gay rights. However, he does not provide evidence that whether the attacks against the LGBT community are rising in number, or whether attacks against sexual minorities are becoming more visible through increasing reporting. Regardless, these numbers underscore the states obligation to enact hate crime legislation to be sure their basic human right of security outweighs institutionalized homo/transphobia. If a government has hate crime legislation for both sexual orientation and gender identity, I measure it as a (1) and a (.5) if the state only protects sexual orientation.

**Latin American LGBT Rights Index**

**Most to Least Rights**

1. Uruguay
2. Colombia
3. Argentina
4. Chile
5. Mexico
6. Brazil
7. Ecuador; Costa Rica
8. Bolivia; Honduras
9. Panama
10. Nicaragua
11. Peru
12. Venezuela; Guatemala; El Salvador
13. Cuba
14. Paraguay
15. Dominican Republic

---

Figure 1

Latin American LGBT Rights Index

- 8.9
- 6.7
- 4.5
- 2.3
- 0.1
Table 1  
Latin American LGBT Rights Index  
(Independence-2016)

<table>
<thead>
<tr>
<th>Nation</th>
<th>Non-Discrimination</th>
<th>Family Law</th>
<th>Gender Recognition</th>
<th>Hate Crime</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>N/A 0 0 9 200</td>
<td>0 0</td>
<td>0 0 201 0 201</td>
<td>7</td>
</tr>
<tr>
<td>Bolivia</td>
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<td>0 0 -1 (2009)</td>
<td>0 0 201 0 201</td>
<td>3</td>
</tr>
<tr>
<td>Brazil</td>
<td>N/A 0 0 201 2</td>
<td>2013; court</td>
<td>0 201 5 (.5) 0</td>
<td>5</td>
</tr>
<tr>
<td>Chile</td>
<td>1999 2012 201 2</td>
<td>0 0 0 2015 0 2007 (.5) 201 2</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Colombia</td>
<td>1981 2011 0 9</td>
<td>2016: court 0 2007-2008 201 5 2015 1 (.5)</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Costa Rica</td>
<td>1971 1998 0 N/A 0</td>
<td>0 0 (.5) 2015 0 (.5) 2008 0</td>
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<td></td>
</tr>
<tr>
<td>Cuba</td>
<td>1979 (.5) 0 0 0</td>
<td>-1 (1992) 0 0 (.5) 0</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>D.R.</td>
<td>N/A 0 0 0 -1 (2010)</td>
<td>0 0 0 0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>El Salvador</td>
<td>N/A 2010 (.25) 2010</td>
<td>(.25) 0 0 0 0 0</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Guatemala</td>
<td>N/A 0 0 0 0 0 0 2016 (.5) 0</td>
<td>5</td>
<td></td>
<td></td>
</tr>
<tr>
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<td>-1 (2005) 0 0 0</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Mexico</td>
<td>N/A 2003 (.5) 0 0</td>
<td>2010; both 0 2007 0 2014 (.5) 200 6</td>
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<td></td>
</tr>
<tr>
<td>Nicaragua</td>
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<td>0 0 0 0</td>
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<td></td>
</tr>
<tr>
<td>Panama</td>
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<td>0 0 0 (.5)</td>
<td>5</td>
<td></td>
</tr>
<tr>
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<td>0 0 -1 (1992) 0 0 0</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Peru</td>
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<td>5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Uruguay</td>
<td>1934 2003 2003 9</td>
<td>2013; legislation 0 2007 9 (.75) 200 3</td>
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<tr>
<td>Venezuela</td>
<td>N/A 2012 (.5) 0 0 0</td>
<td>0 0 0</td>
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</tr>
</tbody>
</table>

*Peru recently passed anti-discrimination and hate crime laws to protect both sexual orientation and gender identity in January 2017.
As shown by Figure 1 and Table 1, *The Latin American LGBT Right Index* displays high cross-national variation in LGBT rights. Table 1 adds to the variation by including the years legislation was passed and the political channels used to pass same-sex marriage. I detail the brief history of passing LGBT rights in each Latin American country from most to least rights then highlight regional trends that this index, the dependent variable, shows.

**National Summaries**

**Uruguay**

Uruguay has the most LGBT rights in Latin America. Uruguay is one of seven Latin American countries that had criminalized homosexuality, and the government repealed the somebody law in 1934\(^5\). In 2003, Uruguayan legislators approved Law 17.817, *The Fight Against Racism, Discrimination, and Xenophobia* bill, that imposed discrimination protections for sexual orientation and gender identity\(^6\). The government subsequently reformed Article 149 of the penal code, which penalizes hate crimes, to incorporate homosexuals and transsexuals. The anti-discrimination law made Uruguay the first Latin American country pass discrimination protection for both sexual orientation and gender identity, and the first to have a hate crime law that encompasses LGBT people.

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\(^6\) Ley 17.817 retrieved from http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/URY/INT_CCPR_ADR_URY_15482_S.pdf
In 2007, Uruguay’s Congress again made history by becoming the first Latin American country to establish nationwide civil unions. The right for same-sex couples to jointly adopt was added to civil unions in 2009, thus making it the first nation in the region to have gay adoption. The Uruguayan military allowed homosexuals to serve openly the same year. Transgender people won the right to legally change their gender after Congress passed a gender recognition law in 2009. The gender recognition law does not require surgery or any medical examinations; however, the law continues to oblige transgender people to obtain judicial approval through the Family Court and be at least 18 years old. Uruguay’s Congress ratified marriage equality in 2013. LGBT activists pushed the law through the legislative branch, and all sexual minority rights in Uruguay have been passed through the legislation branch. The only right Uruguay lacks on the index is allowing people to legally change their gender without judicial approval.

Colombia

Colombia decriminalized homosexuality in the early 1980s. Colombia became the first Latin American country to allow homosexuals to serve openly in the military in 1999. No other countries allowed homosexuals to serve in the military until a decade later when Uruguay and Argentina followed. Same-sex couples won inheritance rights.

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10 Jiminez, Juan. 2015. Los 73 Triunfos de los LGBTI El Espectador retrieved from http://www.elespectador.com/noticias/judicial/los-73-triunfos-de-los-lgbti-articulo-558170
through a court ruling that established civil unions in 2007. Two additional court rulings added to this right to encompass social security and health insurance\textsuperscript{11}.

Under the Santos administration in 2011, the Colombian Congress ratified Law 1482 that reformed the penal code to extend discrimination protections to homosexuals. The bill also included sexual orientation in the hate crime law that declares it an aggravated offense to attack and/or threatening a person because of his/her sexual orientation\textsuperscript{12}. However, these laws do not penalize hate crimes and discrimination based on gender identity.

Same-sex couples in civil unions successfully acquired the right to jointly adopt in 2015\textsuperscript{13}, thus making Colombia and Uruguay the only two Latin American nations in which same-sex adoption rights preceded marriage equality. Following years of advocacy, the transgender community won the right to legally modify their birthname and gender without the constraints of judicial or surgical requirements. The Colombian Ministry of Justice announced the reformulation of the gender identity guidelines with the trending hashtag “#YoDecido” (“I decide”) to represent how an individual has the freedom to self-identify without governmental interference\textsuperscript{14}.

Colombia is the fifth and most recent Latin American country to pass same-sex marriage. The Colombian Supreme Court warned the Colombian Congress that if it failed

\textsuperscript{11} El Tiempo 2007 Corte Da Primer Derecho a Parejas Gays retrieved from http://www.eltiempo.com/archivo/documento/MAM-2382272
\textsuperscript{12} Ley 1482 http://wpresidentia.gov.co/Normativa/Leyes/Documents/ley148230112011.pdf
\textsuperscript{13} BBC 2015 Lifts Same-Sex Adoption Limits retrieved from http://www.bbc.com/news/world-latin-america-34729490
to draft and ratify a marriage equality bill by 2015 then the Court would rule on the issue. President Santos publicly supported marriage equality in 2014, but Congress stalled. The Colombian Supreme Court ruled in favor of gay marriage in 2016\textsuperscript{15}. Colombian LGBT activists utilized the judicial system to achieve most of their legal rights, excluding discrimination protections and gender recognition. Colombia is the only Latin American country in which LGBT rights activists have been successful in procuring gay marriage and other major LGBT rights without having a leftist administration in power.

**Argentina**

The Argentine penal code never criminalized homosexuality. LGBT activists won their first legal rights in 2002 when Buenos Aires legislators passed the civil union law that guaranteed rights to same-sex couples in capital. Argentina is the first country to extend couples’ rights to homosexuals. At first, civil unions were at exclusively issued in Buenos Aires, but the they were recognized nationwide and extended to all provinces through federal law in 2015. Argentina offers civil unions to all couples regardless of sexual orientation, but are not equal to marriage. The civil registry requires proof of cohabitation for a minimum of two years. No other LGBT rights were legislated until 2009 when Congress reformed different military policies. These reforms included the abrogation of capital punishment and repealed the ban that restricted homosexuals from joining the Argentine Armed Forces\textsuperscript{16}.


Argentina became the first Latin American country to achieve marriage equality in the winter of 2010 after years of persistent advocating and lobbying from gay rights groups. The same-sex marriage bill was passed by Congress and extended full conjugal rights, including adoption, to same-sex couples. Argentina set global precedence in transsexual rights as well. In 2012, Congress sanctioned the gender recognition bill that allows individuals to amend their legal name and gender with no medical or judicial restraints. This law also incorporated state funding for sex change surgery and hormone therapy through the public health system, and allows people under the age of 18, contrasting other Latin American nation’s gender recognition policies that require the individual to be at least 18.

The same year, Argentina revised the penal code with law 26.791 that added both sexual orientation and gender identity in the groups specified in hate crime laws. Argentina is the only Latin American country that has federal hate crime protections for the both sexual orientation and gender identity, yet does not include sexual minorities in its federal anti-discrimination law. The capital and Buenos Aires province ratified an anti-discrimination law in 2015, and LGBT lobbyists have endeavored to pass an anti-discrimination bill on the federal level without success. The federal anti-discrimination protections are the only categories Argentina lacks in the index. However, Argentina has been a pioneer of LGBT rights within Latin America and the world.

Chile

After independence, the Chilean penal code did not include sodomy laws. This was reversed during the military dictatorship when Pinochet’s regime criminalized homosexuality along with other draconian reforms that punished abortion and restricted civil rights. Chile later re-legalized homosexuality in 1999; However, homosexual acts have an age of consent 18, contrasting the age of consent for heterosexual acts is 14. Article 365 of the penal code states whoever engages in homosexual acts with somebody younger than 18 commits statutory rape, thus making the legality of homosexuality not fully equal to heterosexuality\(^\text{19}\).

LGBT activists won their first right through a court case in 2007 that ruled transgender people can legally change their name pending judicial approval\(^\text{20}\). This ruling does not include the modification of legal gender, and does not guarantee that a judge will approve the name change. There is currently a pending bill in Chilean congress that if approved, will grant transgendered Chileans the same rights as those in Argentina \(^\text{21}\).

In 2012, Neo-Nazis abducted, tortured, and murdered Daniel Zamudio, a gay Chilean teen. Targeted for his sexual orientation, Zamudio’s death subsequently intensified activists’ and the public’s demands for state protection for sexual minorities. The Chilean government passed law 20.609 in 2012 that included sexual orientation and gender identity in the national anti-discrimination law in Article 2, and drafted further

\(^{19}\) Artículo 365 de la Codiga Penal de Chile 1999. https://www.leychile.cl/Navegar?idNorma=138814&idParte#3650


punishments for hate crimes against gays and transsexuals in Article 17. Bachelet’s administration added to this by ratifying an anti-torture law. In compliance with the anti-discrimination law, the Chilean Armed Forces issued an Order of Command that stated the army will no longer restrict homosexuals and transsexuals from joining the military.

Chile is the highest scoring country on the *Latin American LGBT Rights Index* that lacks marriage equality. Chile is one of three Latin American countries that has rights for same-sex couples but not marriage. Same-sex couples obtained inheritance rights, medical insurance and decisions, social security, and child custody if one of the partners had a child preceding the union through Congressional legislation in 2015. Joint adoption for same-sex couples is still not permitted. President Michelle Bachelet started an open debate between LGBT rights advocates and public representatives in February 2017, and she claims there will be a marriage equality bill submitted to Congress by June 30, 2017. Chile lacks the right for trans people to legally change their gender, an equal age of consent for homosexuals, same-sex marriage, and adoption for gay couples; all of the rights it lacks are currently being pursued in Congress except for gay marriage that may be submitted later this year.

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22 Ley 20.609 Chile. 2012. [https://www.leychile.cl/Navegar?idNorma=1042092#sexo0](https://www.leychile.cl/Navegar?idNorma=1042092#sexo0)
Mexico

Mexico does not have a sodomy law that criminalizes homosexuality. Mexican Congress passed the Federal Law to Prevent and Eliminate Discrimination in 2003 that extended discrimination and hate crime protections to homosexuals in Article 4 and 9\textsuperscript{27}. In 2011, discrimination protection for homosexuals was added to the constitution through Constitutional Reform 194, albeit there are no anti-discrimination laws for gender identity\textsuperscript{28}. Despite the anti-discrimination laws, there is no guaranteed protections for homosexuals in the armed forces, and the military excuses them if officials discover their sexual orientation\textsuperscript{29}.

Mexico is the only Latin American country with a federalist system that places marriage law in the hands of the states and the Federal District, Mexico City. The Federal District passed marriage equality, civil union, and gender recognition laws and then some states adopt them. However, the Mexican Supreme Court ruled that same-sex marriage and civil unions are universally valid, albeit only nine states and Mexico City issue same-sex marriage. Mexico City passed civil unions in 2007\textsuperscript{30}. The leftist Mayor, Marcelo Ebrard, of the Party of the Democratic Revolution (PRD) pushed the civil union legislation, and after its success, prioritized marriage equality. In 2010, Mexico City legislators approved the marriage equality shortly after Argentina. The legislation stalled temporarily after conservative opponents, including former president Calderón, challenged the constitutionality of the Capital’s legislation. The Mexican Supreme Court

\textsuperscript{27} Ley Federal Para Prevenir y Eliminar Discriminacion 2003 \url{http://www.inali.gob.mx/pdf/ley-FPyED.pdf}
\textsuperscript{28} Reforma 194 2011 \url{http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_194_10jun11.pdf}
\textsuperscript{29} Schuessler and Capistran 2010 \textit{Mexico Se Escribe Con J: Una Historia de la Cultura Gay} Mexico City.
\textsuperscript{30} BBC News 2007 \textit{Mexico City Embraces Gay Unions} Retrieved from \url{http://news.bbc.co.uk/2/hi/6461159.stm}
could rule in favor of marriage equality, thus confirming its constitutionality and making
is nationally recognized\textsuperscript{31}. Transsexual activists also utilized the method of passing
legislation in the Federal District and extending it nationally through the judiciary. In
2014, LGBT activists and lobbyist succeeded in pressuring legislators to pass a gender
recognition bill that repealed the medical and judicial restrictions that limited people from
amending their legal name and gender\textsuperscript{32}. However, Mexico still lacks discrimination and
hate crime protections for gender identity.

**Brazil**

Brazil repealed its sodomy laws after it became independent from Portugal. Homosexuals had early inroads into the party system including the Workers’ Party and the Brazilian Communist Party. Brazil’s gay rights movement made early successes in the late 1980s and 1990s by omitting homosexuality from the healthcare system’s list of psychological diseases before the World Health Organization did so, and banning conversion therapy. In 2007, a Regional Federal Court ruled that Brazil’s public health system will provide free sex-reassignment surgery after transsexual activists argued it was a medical right\textsuperscript{33}. The process can take a few years and requires psychological examinations with a minimum age limit of 21. Following this ruling, the Superior

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\textsuperscript{33} NBC News 2007 *Brazil to Provide Free Sex-Change Operations* Retrieved from http://www.nbcnews.com/id/20323334/ns/health-health_care/t/brazil-provide-free-sex-change-operations/#.WPQo5Yjvyv1
Tribunal of Justice Court ruled that a transsexual that has had surgery can legally change his or her name and gender\textsuperscript{34}.

Gay rights activists and lawmakers drafted civil union and same-sex marriage bills to pass through Congress multiple times, but the conservative opposition blocked each attempt. Activists turned to the judicial channel to obtain equal rights after the failures through the legislative branch. A handful of judges at the state and federal levels ruled that same-sex couples will be issued rights through a civil union, albeit civil unions were not nationally recognized. In 2010, same-sex couples won the right to jointly adopt following a ruling from the Superior Court of Justice\textsuperscript{35}. However, civil union rights were not guaranteed and couples rarely received benefits. Activists appealed the issue to the Brazilian Supreme Court. In 2011, the court ruled in favor of equality and declared Brazil federally issue same-sex civil unions\textsuperscript{36}.

LGBT activists took the same approach to win marriage equality. Different states and judges began issuing marriage licenses. The benefits and rights were never received because in Brazil marriage law is decided on the federal level. The case went to Brazil’s National Council of Justice in 2013. The court ruled cited the Supreme Court’s previous decision in 2011, and declared that the government cannot deny same-sex couples from obtaining marriage licenses. Brazil is the third Latin American country to pass same-sex marriage, and the first to pass it through the judicial system.

\textsuperscript{34} Abreu 2009 \textit{STJ Autoriza Transexual a Mudar Nome e Sexo} Retrieved from \url{http://g1.globo.com/Noticias/Brasil/0,MUL1342579-5598,00.html}
\textsuperscript{35} Iraheta, Diego 2015 \textit{STF Reconhece Adocao por Casal Gay} HuffPost Brasil retrieved from \url{http://www.huffpostbrasil.com/2015/03/19/stf-reconhece-adocao-por-casal-gay-e-brasil-avanca-mais-um-pass_a_21669865/}
\textsuperscript{36} Brocchetto and Gomes 2011 \textit{Same-Sex Unions Recognized by Brazil’s High Court} CNN
In 2012, the military issued and Order of Command that stated it will not discriminate against homosexuals\textsuperscript{37}. However, Brazil’s federal anti-discrimination laws do not include sexual orientation or gender identity, and no bias crime laws exist to deter attacks and threats aimed at gays and transsexuals despite the publicity and high number of recorded hate crimes.

**Ecuador**

Ecuador is one of the few Latin American countries that had a sodomy law that criminalized homosexuality. Article 516 of the Ecuadorian penal code castigated homosexual acts with a four to eight-year prison sentence\textsuperscript{38}. In 1997 during a constitutional re-writing, the Constitutional Assembly repealed the sodomy law. The assembly also added sexual orientation in the national discrimination protections in Article 11 of the constitution, thus making Ecuador the first Latin American country to extend anti-discrimination protections to homosexuals.

No other LGBT rights were enacted until the subsequent rewriting of the national constitution in 2008. The 2008 Constitutional Assembly included gender identity to the discrimination protections and added Article 67 of that created civil unions that extends couple’s rights to same-sex couples. However, Article 68 paradoxically bans same-sex marriage and same-sex joint adoption. Ecuador is the only Latin American country that offers civil unions while simultaneously restricting marriage equality in the constitution.

\textsuperscript{37} O Dia 2012 Exercito Brasilerio Ja Tolera Militares Gays nos Quarteis retrieved from http://odia.ig.com.br/portal/brasil/ex%C3%9crito-brasileiro-%C3%91-tolera-militares-gays-nos-quart%C3%A9is-1.454505  
\textsuperscript{38} Codigo Penal Ecuadoreño https://www.oas.org/juridico/mla/sp/ecu/sp_ecu-int-text-cp.pdf
In 2016, Ecuador’s congress ratified Law 68 that allows transgendered people to change their legal name and gender through the civil registry without judicial approval or medical requirements. Ecuador has a mixed outcome on LGBT rights. On one hand, transexuals have achieved equal protection and the most progress gender recognition law. On the other hand, the constitution prohibits gays from obtaining full equal rights.

Costa Rica

Costa Rica legalized homosexuality and established a universal age of consent for both through reforms in 1971. Costa Rica and Ecuador are the only two Latin American countries to enact a national anti-discrimination law that protects homosexuals. Congress passed General Law #7771 passed 1998 that includes sexual orientation in legal discrimination protections. However, transsexuals have no legal protections, and the no legislation has been passed or drafted to implement sexual minorities in the hate crime laws. Costa Rica does not have a military, so it receives a point on the index for methodological reasons.

The Costa Rican civil registry will allow name change, not gender, for a person who obtains judicial approval. This process only allows name change, not gender change. The first person to do it was Kerlyn Obando, a trans woman, in 2013. Judicial

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40 Ley General 7771 [https://www.hsph.harvard.edu/population/aids/costarica.aids.98.pdf](https://www.hsph.harvard.edu/population/aids/costarica.aids.98.pdf)
approval is difficult to obtain for transgender Costa Ricans and only three people have successfully modified their names for gender identity purposes as of 2015\textsuperscript{42}.

In 2013, Congress ratified the General Young Persons Law that outlined specific rights to Costa Rican Youth. Article 4 of the law states that the recognition of domestic partnership (\textit{unión de hecho}) cannot discriminate against “human dignity”. In 2015, a judge of the Family Court cited Article 4 and ruled same-sex couples have the legal right to a domestic partnership, albeit conservative lawmakers have opposed issuing the rights and benefits. Couples have, and continue to, fight through court and congress to guarantee and extend their rights in a domestic partnership. Thus far, gay couples have won the legal rights to visit their partner in the hospital and jail and some social security benefits\textsuperscript{43} \textsuperscript{44}. Although Costa Rican domestic partnerships are at a nascent stage and continue to develop, it is the first Central American country to extend any form of couples rights to homosexuals. Costa Rica lacks discrimination protection for gender identity, legal gender recognition, hate crime protections, marriage equality, and adoption rights.

\textbf{Bolivia}

Bolivia never had a sodomy law that criminalized homosexuality. The government passed no sexual minority rights until the re-writing of the national

\begin{footnotesize}
\begin{enumerate}
\item La Nacion 2015 \textit{Pareja gay logra garantías con primera unión de hecho de Costa Rica} Retrieved from http://www.nacion.com/nacional/Pareja-garantias-primera-unicion-hecho_0_1491450876.html
\end{enumerate}
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constitution in 2009 under the Morales administration. The most recent Bolivian Constitution includes sexual minority and gender identity in the constitutional discrimination protections. However, the 2009 constitution limits marriage between a man and a woman in Article 63, a ban did not previously exist. Bolivian same-sex couples have no rights. A recent change to the Family Code omitted gender specifications for the definition of marriage, which in turn gives activists hope that they can use the new code to argue the legality of marriage in court.

Transgender Bolivians won the right to legal gender recognition in 2016. Congress approved Law 807 that allowed name and gender through the civil registry without medical or judicial requirements. Bolivia does not have hate crime protections for sexual minorities, but a bill was proposed to make bias crimes against LGBT people an aggravating offense in 2017.

Honduras

Honduras has experienced political turmoil in the new millennium, most notably the 2009 coup that ousted leftist president, Zelaya. No sodomy law exists in the Honduran penal code, but LGBT rights activists have been assassinated for the political stances. The Constitutional Assembly amended the Honduran Constitution in 2005 to ban same-sex marriage and same-sex adoption in Article 112 and 113. Following the high number of LGBT hate crimes, Congress revised the penal code to make attacks against gay and transgendered people an aggravating offense and included sexual orientation and

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45 Consitucion de Honduras [https://www.oas.org/dil/esp/Constitucion_de_Honduras.pdf](https://www.oas.org/dil/esp/Constitucion_de_Honduras.pdf)
gender identity in the anti-discrimination clause\textsuperscript{46}. However, lawmakers are currently revising the penal code, and LGBT activist fear the existing protections for sexual minorities will be reversed.

**Panama**

After independence, the Panamanian government never criminalized homosexuality until 1949 when lawmakers approved a sodomy law. In 2008, Panama became the last Latin American nation to decriminalize homosexuality when the president issued Executive Decree no. 332 that reversed the 1949 sodomy law\textsuperscript{47}. Panama no longer has a military, thus receives a point in the category for methodological measurements on the index. Homosexuals and transgendered people have no legal defenses against discrimination, and no hate crime laws exist to further protect them. Same-sex couples have no legal rights in Panama.

In 2012, a Panamanian transsexual successfully changed her name on legal after having had gender confirmation surgery. Subsequently, more transsexual people obtained judicial approval to change their names. In 2016, the first transgender Panamanian who had not undergone surgery modified her legal name\textsuperscript{48}.

**Nicaragua**

Nicaragua did not criminalize homosexuality until 1992 after the end of the Sandinista revolution. This sodomy law not only criminalized homosexuality, but it also


\textsuperscript{47} Decreto Ejecutivo 332 de la Republica de Panama https://www.gacetaoficial.gob.pa/pdfTemp/26095/12345.pdf

\textsuperscript{48} El Mundo 2016 Por primera vez, una transexual logra en Panamá cambiar su nombre en la cédula
prohibited “propagandizing” homosexuality, thus criminalizing any gay rights activism. The Ortega administration repealed the draconian law shortly before Panama in 2008. The same year, Nicaragua revised its penal code to include sexual orientation in employment discrimination protections in Article 315. In addition, Article 36 extended hate crime protections to homosexuals\textsuperscript{49}. Nicaragua has no rights for transsexuals or same-sex couples.

**Peru**

Peru never had a sodomy law that criminalizes homosexuality. In 2014, the Peruvian Supreme Courts ruled that transsexuals do not have the constitutional right to legally alter their gender. LGBT activists pushed the issue through the legislative channel, and lawmakers submitted a gender recognition bill into Congress. Before Congressmen voted on the bill, the Peruvian Supreme Court reversed its previous decision. In 2016, the court ruled a person has a right to their identity; this judicial victory established a legal channel for transgender people to change their legal name and gender without medical requirements\textsuperscript{50}. Peruvian Congress recently approved discrimination protections for sexual orientation and gender identity in January 2017, but the *Latin American LGBT Rights Index* only assesses laws passed by December 2016.

**Venezuela**

The left shift began in Venezuela in 1998 with the election of Chavez, but Venezuela has not passed near as many LGBT rights as other countries that have had


leftist administration in power. Venezuela never criminalized homosexuality. In 2012, the Bolivarian government passed the Organic Workers’ Law that outlawed discrimination against sexual orientation in Article 21\(^{51}\). Venezuela has no trans rights or protections. Transsexuals have attempted to change their names through the Civil Registry and Family Court but have always denied\(^{52}\).

**Guatemala**

Guatemala never had a sodomy law that criminalized homosexuality. The government has not passed any legislation protecting homosexuals and transsexuals from discrimination or bias crimes. In 2016, a transgender Guatemalan successfully modified his legal name and other people have changed theirs afterwards\(^{53}\). The process requires judicial approval but not surgery. Guatemala has no other LGBT rights other than the legality of homosexuality and name, not gender, recognition.

**El Salvador**

El Salvador’s legal codes do not criminalize homosexual acts. El Salvador has one of the highest numbers of recorded hate crimes against the LGBT people. In 2010, the leftist president, Mauricio Funes, signed Decree 56 that punishes discrimination against both sexual orientation and transsexuals in the El Salvadorian public sector\(^{54}\). In 2015, a hate crime bill that issues harsher punishments for attacks and threats against

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homosexuals and transsexual was approved by the national assembly but did not obtain final approval\textsuperscript{55}. Conservative lawmakers and church officials have submitted multiple bills to constitutionally ban marriage equality, but have always been narrowly defeated in the National Assembly.

\textbf{Cuba}

Cuba is a the only official non-democratic regime in Latin America. The Cuban government has violently repressed homosexuals and gender deviant people, especially after the revolution. The Castro regime forced known homosexuals into work camps, Military Units to Aid Production (UMAPs), in the sixties. The revolutionary image of the “New Man” excluded homosexuals as Fidel Castro states in the newspaper, Revolución, “No homosexual represents the Revolution, which is a matter for men, of fists, not feathers, of courage and not trembling”\textsuperscript{56}.

However, the Cuban dictatorship has lessened its repression since the beginning of the revolution. The government decriminalized homosexuality in the private sphere in 1979, but gay marriage is banned in the Cuban constitution. The niece of Fidel Castro, Mariela Castro, has been the revolution’s face and advocate for LGBT rights. She has influenced the regime to pass some rights for sexual minorities and started a sexual diversity education campaign through the formation of the National Center for Sex Education (CENESEX).


\textsuperscript{56} Hamilton, Carrie 2012 \textit{Sexual Revolutions in Cuba: Passion, Politics, and Memory} pp. 39
In 2013, the government passed an anti-discrimination law in employment for only homosexuals. In 2008, Mariela Castro pushed a bill that allows qualifying transsexuals to receive state-funded sex-reassignment surgery and hormone replacement therapy. The quality of these rights is an issue of debate considering the regime’s repressiveness. I am unable to find the exact number of people who have had the state-sponsored sex-realignment surgery; However, a Spanish photographer created a portfolio called “Reassign” that shows 26 photos transsexual Cubans before and after their surgeries in 2014.

Paraguay

Paraguay has the fewest LGBT rights in continental Latin America. No law exists that that criminalizes homosexuality. However, Article 138 of the Paraguayan Penal Code establishes a homosexual age of consent at 16, which differs from the age of consent of 14 for heterosexual acts. In 1992, a constitutional ban on gay marriage passed, and in 2010, a bill was proposed in Congress to explicitly ban gays from joining the military. The bill failed in Congress. The failure has been interpreted as a win for gay rights because it allowed gays to serve openly in the military despite the bill’s purpose to ban them.

r=1
60 Paraguay.com 2010 Diputados rechazan ley que prohíbe ingreso de homosexuales a FFAA retrieved from http://www.paraguay.com/nacionales/diputados-rechazan-ley-que-prohíbe-ingreso-de-homosexuales-a-ffaa-30985
Dominican Republic

The Dominican Republic has no LGBT rights other than the legality of homosexuality in the private sphere. The Dominican Republic has not passed any discrimination or hate crime protections for gay and transgendered people, and they cannot serve in the military or police forces. Transsexuals have no legal channel to change their name. In 2010, the Constitutional Assembly implemented a ban against same-sex marriage while revising the constitution.
Regional Trends

In addition to depicting high cross-national variation in LGBT rights, The *Latin American LGBT Rights Index* also highlights regional trends regarding sexual minority rights. Five countries have passed same-sex marriage, and seven have gone in a conservative direction by implementing constitutional bans. A handful of the analyzed have few to no rights other than the legality of homosexuality while some nations have more sexual minority rights than parts of the western world. Table 1 shows more trends at the regional level that include the recentness of these rights, sub-regionalism, and the political channels utilized to pass marriage equality.

Timing

Figure 2

Table 2
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Figure 2 and Table 2 illustrate the continual increase of LGBT rights legislation in Latin America since the new millennium. Few rights were passed from independence through the end of the twentieth century. Most Latin American countries did not criminalize homosexuality in the private sphere, and those that did, repealed their sodomy laws in twentieth century save Panama and Nicaragua. A few discrimination protections for homosexuals were passed before 2000 in Ecuador, Costa Rica, and the Colombian military, but they did not pass any other gay rights until a decade later.

The achievements of LGBT in procuring legal rights in the new millennium first occurred in Argentina and Uruguay. Buenos Aires legislator established the first civil union in Latin America, and Uruguay criminalized discrimination and established harsher minimal punishments attacks against both transsexuals and homosexuals. The index average score stagnated after 2003 then decreased slightly as Honduras passed a constitutional ban against same-sex marriage. The LGBT movement had milestones successes in 2007 and 2008: gay couples won the right to civil unions in four countries, and in 2008, homosexuality was officially decriminalized in all of Latin America after the repeal of sodomy laws in Nicaragua and Panama.
LGBT rights increased in quantity and variety in 2010. During that watershed year, both the Argentine and Mexican governments passed same-sex marriage followed with the right to jointly adopt. Same-sex marriage diffused in Latin America after 2010 as Uruguay, Brazil, and Colombia extended full conjugal rights to homosexual couples, and Chile sanctioned civil unions. Gay couples won the right to adopt simultaneously or before marriage equality to insure full family rights. Civil unions increased after 2010 as well. Table 1 shows that civil unions precede gay marriage in Latin America apart from Ecuador that banned marriage equality as it created civil unions.

However, some nations diverge from the regional trend. Table 2 shows how the burgeoning of rights have faced conservative resistance. Five out of the six constitutional bans against same-sex were ratified between 2005-2010. Constitutional prohibitions increased simultaneously with the increase in LGBT rights, underscoring the successes of the opposition. Each of these bans also prohibit adoption in the constitutional as well while there are additional bans that limit gay marriage through the Family Code that are not measured in this index.

Transsexual rights have not won rights until more recently. The most inclusive gender recognition bills had been passed during and after 2012, following the groundbreaking Argentine legislation. Mexico passed the same legislation in 2014, Colombia in 2015, and Ecuador and Bolivia followed in 2016. There is a major disparity between homosexual equality and transsexual equality. In example, only half the number of governments that extend discrimination protections to homosexuals also include transsexuals. This trend underscored how transsexuals face stronger opposition to their rights. However, certain governments that do not have discrimination protections have
passed some form of recognition for transsexuals; both Guatemala and Costa Rica have recently allowed some transgendered people to change their legal names.

There are no signs of stagnation as Figure 2 and Table 2 show. LGBT rights have continued increasing exponentially. More LGBT rights have been passed in the past five years than have been passed between 2005-2011, and as of early 2017, Peru has outlawed discrimination against both gays and transsexuals while Chile is expecting to draft a same-sex marriage bill within the year.

Sub-regionalism

As illustrated by Figure 1, the LGBT rights index reveals clear-cut regionalism. The Southern Cone has significantly more LGBT rights than the rest of Latin America, followed by the Andean region. Central American and the Spanish-speaking Caribbean score lower on the index. The Southern Cone, save Paraguay, has been a propitious region for legislating LGBT rights. Three out of five Southern Cone countries offer gay marriage, and four of them have civil unions. Argentina and Uruguay have been trend-setters in gay rights in Latin America and although Chile and Brazil have fewer rights in comparison to the former two, they score above average on the index. Paraguay contrasts the rest of the Southern Cone as it not only has not passed LGBT rights, but has imposed gay marriage bans. I explain the causes of Paraguay’s absence of sexual minority rights when I address the independent variables.

The Andean region has the highest inter-regional variation. Colombia has the second most LGBT rights in Latin America while the LGBT movements in Venezuela and Peru have made no major success; Ecuador and Bolivia fall in between. Colombia’s
progress has been the most recent after the judiciary ruled in favor of in 2016 and the gender recognition law passed in 2015. Ecuador and Bolivia have a mixed outcome on LGBT rights: both countries have discrimination protections for LGBT people, and their Congresses have voted in favor of trans rights by passing the most inclusive gender recognition law. On the other hand, they legally limit gay marriage and adoption in the constitution. LGBT rights have not been successfully passed in Venezuela and Peru compared to the rest of the Andean sub-group. When analyzing transsexual rights, the Andean region is the most progressive. Three out of five of the countries have the most progressive gender recognition law while Argentina is the only country in the Southern Cone that has the same rights for its transgender people.

Central America has less LGBT rights than South America with no same-sex marriage and inclusive gender recognition laws passed. Both Nicaragua and Panama did not decriminalize homosexuality until 2008, two years before the first legal gay marriage in Latin America. Costa Rica is the most progressive in Central America, and the only government to extend some couple rights to same-sex partners. Most of Central American countries have partial or full discrimination protections passed through the Penal Code, mostly in response to the high number of hate crimes that target LGBT people. Honduras is the only Central American country to pass protections for both gays and transgendered people.

The Spanish speaking Caribbean has the fewest LGBT rights in Latin America. Both Cuba and the Dominican Republic have constitutional bans on gay marriage and adoption, and the Dominican Republic is the most recent country to impose this prohibition. Cuba has an employment discrimination protection law for homosexuals, and
began offering sex-reassignment surgery funded through the health system in 2008. Although Cuba and the Dominican Republic have less rights compared to continental Latin America, they stand out from the English-speaking Caribbean where homosexuality is still legally punishable.

Political Channels

Activists utilized various institutional channels, including the legislative branch, judiciary, constitutional reforms, or a combination, to pass same-sex marriage and other rights. Argentina, Mexico, and Uruguay, the first three governments to pass gay marriage, voted on the issue in Congress. Each of these countries have passed all their LGBT rights through Congress, albeit the Mexican Supreme Court made Mexico City’s LGBT rights universally recognized. Although Chilean activists have yet to achieve marriage equality, they have won all their existing LGBT rights through Congress as well. Chile’s case differs because the courts have been more conservative than the legislation. In 2011, the Chilean Constitutional Court declared Article 102 of the Civil Code that bans same-sex marriage is not unconstitutional and that marriage is only for heterosexual couples; the Supreme Court upheld this ruling the subsequent year. The failure in the court lead Bachelet to claim she will have a marriage equality bill in Congress by summer of 2017.

Ecuador and Bolivia have also passed all their LGBT rights legislatively, albeit the majority through Constitutional Assemblies. The rewriting of national constitutions became a trend within the populist left after the Chávez administration drafted a new

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61 Cater, Hunter T. June 7, 2012 *Same-Sex Marriage in Chile* Americas Quarterly
constitution shortly after coming into power. As Kingstone (2011) explains, “under Chavez’s auspices, and with his financial support as well, both Rafael Correa of Ecuador and Evo Morales of Bolivia followed similar strategies of dramatic constitutional revision…the constitutional reforms were more than mere tinkering at the edges” (pp 104). Despite Chávez influence on Bolivia and Ecuador to revise their constitutions, Venezuela failed to add protections for the LGBT community during the National Constituent Assembly in 1998 when LGBT protections were taken out last minute after church protests. Chavez later admitted his regrets for not having added these protections during a segment of Alo Presidente in 2002. However, LGBT advocates in Ecuador and Bolivia had more success. Both Constitutional Assemblies added constitutional discrimination protections for gays and transsexuals and Ecuador included hate crime punishments and civil unions. Different from other legislation ratified by Congress, the newly written constitution draft required the public’s approval through a referendum. Honduras also attempted to draft a new constitution that consequently instigated the coup that ousted President Zeyala’s administration. However, both Ecuador and Bolivia passed gender recognition laws through the legislative branch, so not all gay rights were passed exclusively through the recreation of the constitutions.

LGBT activists in Colombia and Brazil had little success in pushing reforms through the legislation branch so in turn, employed judicial channels. In Colombia, courts established civil unions in series of three different court ruling between 2007 and 2008, and same-sex marriage was approved by the Supreme Court in 2016 after Congress failed

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to do so. Gender recognition for transgender Colombians was also passed through the courts, but not through a ruling; the Ministers of Justice signed a decree that stated they would no longer require medical and psychological examinations\textsuperscript{63}. Discrimination protections are the only LGBT rights that have passed through Colombian Congress. Brazilian Congress has never passed any LGBT rights other than the conversion therapy ban. Marriage, civil unions, adoption, gender change, and public funded sex-realignment surgeries have all been passed through court rulings.

The regional trends displayed by the \textit{Latin American LGBT Rights Index} show how nations not only vary in their outcome on LGBT rights, but the timing, regionalism, and political channels used by activist to pass rights, vary as well. These trends and differences not only provide insight into contemporary Latin American but also add depth to the dependent variable to adequately apply theory as to what condition the differing outcomes. Below, I hypothesize and analyze the independent variables, including economic development, education, religion, public opinion, democratic quality, and longevity and type of leftist governments, influence on the cross-national variation in LGBT rights in Latin America.

Chapter 3: Independent Variables

Economic Development

The influence of economic development on the acceptance of homosexuality has been analyzed by sociological scholarship. DiMaggio (1997) presents two separate schools of thought in socioeconomic development regarding culture change: convergence and persistence. The first contends economic modernization weakens traditional values while the latter theorizes that a society’s traditional values are not altered by economic and political modernization. Inglehart and Wezel (2005) present a modified version of the modernization theory, arguing economic development produces an individualistic, post-materialist society prioritizes minority and women’s rights. The authors write, “Acceptance of divorce, homosexuality, and abortion is spreading massively throughout rich postindustrial societies, but not in low-income societies where existential insecurity remains widespread,” (pp. 20). The post-materialist theory contends that as a country develops and provides basic needs, society shifts its priority away to social issues, including minority rights. As an Argentine journalist stated, “when people are eating out of garbage cans, it really doesn’t matter if you are gay or not.”

Encarnación (2011) argues against the post-materialist theory: “it is tempting to explain the surge of gay rights in what historically has been one of the most hostile environments for homosexuals in the Western Hemisphere as a by-product of social and economic modernization…the struggle of marriage equality in Argentina began in earnest

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in the midst of a wrenching economic crisis” (pp. 104-105). The Buenos Aires
civil union passed in 2002 during the wane of Argentina’s worst economic crisis.
However, economic crisis is not synonymous with underdevelopment and in most cases,
does not cause a reversal in development. Argentina recovered quickly followed by years
of steady growth.

Stemming from modernization theory, I argue countries that have higher
economic development will have more legal rights for sexual minorities To test this
hypothesis, I measure economic development with GDP per capita PPP and use data from

Hypothesis 1: the higher GDP per capita a country has, the more LGBT rights its
government has passed.

Education

Modernization theory also contends that as a nation develops, the level of education
rises in the population. Education is a powerful tool that in many cases stimulates critical
thinking and tolerance. Quinley and Glock (1979) explain how formal education reduces
prejudices: “1) By providing people with more knowledge about minorities and about
the historical, social, and economic factors responsible for minority and majority group
differences. 2) by teaching people to recognize prejudice and to understand its dangers. 3)
by providing cognitive skills, which increase people’s capacity to detect prejudice and
reject it” (pp. 188). Applying this theory to sexual minorities, I expect the more education
a person has obtained, the more accepting of gays and transsexuals he/she will be by
repudiating the prejudices that have historically marginalized them. The Pew Research
Center found that in the United States, the more levels of education a person has completed, the more accepting he/she is of homosexuality. I expect this to be the same in Latin America with the higher educated population supporting LGBT equality. To test this correlation, I use tertiary education enrollment rates for each Latin American country provided by the World Bank. Tertiary education includes university educated (associates, bachelor, masters, doctorate degrees), technical training and nursing schools (World Bank).

Hypothesis 2: The higher the aggregate level of education, measured by enrollment rate of tertiary education, the more legal LGBT rights a government has passed.

Public Opinion

Citizens’ beliefs and demands have influential power over government actions and policy making. Page and Shapiro (1983) find public opinion is significantly congruent with policy implementation with evidence that the increase in public opinion often precedes policy change, not vice-versa. Concerning Latin American gay rights, Schulenberg (2013) shows public opinion influences the implementation of gay rights more than partisanship. I contend public opinion conditions whether a government passes LGBT rights as government actors respond to the growing demand for equality. Politicians in democracies need public support for election and do not want push unpopular policies that could jeopardize their position, especially an issue as contentious as LGBT rights. Moreover, if a sizeable portion of the population supports a policy,

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65 Pew Research Center, April, 2016 *A Wider Ideological Gap Between More and Less Educated Adults*
democratic channels allow for them to communicate their demands to legislators and potentially end their political careers if they fail to act on the public’s preferences. I use two sets of data provided by the World Value Survey that measures public opinion on the homosexuality from the years 2000-2004 and 2005-2009. The survey asks the participants to gauge on a scale of 1 to 10 if they believe homosexuality if justifiable with 1 as “never justifiable” and 10 as “always justifiable.”

Hypothesis 4: the higher the public opinion that supports homosexuality, the more LGBT rights a government passes.

Religion

Both the Catholic and Evangelical Churches, the two most prominent religious institution in Latin America, have historically condemned homosexuality and gender deviance. Clyde and Wolpert (2000) and Reinhardt (1997) all have found that people who attend church regularly have lower approval rates of homosexuality. In addition, the Church has dominance in both the public and private education system in many Latin American countries. Diez (2015) and Blofield (2006) explain the Catholic church not only has an influence over individuals who attend church, but it also has immense institutional power rooted in the education system and land ownership. Both the Catholic and Protestant Church also have political representation mostly through Christian Democrat parties that have played a strong role in Latin American politics.

Wilcox and Jelen (1990) find that Evangelicals are less tolerant of homosexuals than Catholics. Catholicism has been declining in number of followers while the percentage of Evangelical Latin Americans has been rising. The Vatican has slightly
more tolerant towards homosexuality. The “Francis Effect” has been the main cause of the Church’s slight shift in tolerance. Argentine Pope Francis has comparatively made the papacy more open and inclusive to the homosexuals. When asked about homosexuality, “If someone is gay and searches for the Lord and has good will, who am I to judge?” However, he has not been as accepting with transgendered people as he claimed gender deviation violates the “order of creation.” These quotes exemplify the Catholic Church’s warming up to homosexuality compared to before, yet it has not changed its stance on transsexuality.

I argue the more secular the population, the more LGBT rights the government has passed. I use church attendance to measure levels of secularism. Church attendance represents the people who actively participate in the religious institutions. This not only gives the Catholic and Protestant churches more influential power over individuals who adhere to their doctrine, but individuals collectively support the institutions by voting its representatives into power, giving money by paying for education, and more. I use the church attendance data provided by the Pew Research Center’s report Religion in Latin America that was conducted between October 2013 until February 2014 with over 30,000 interviews.

Hypothesis 3: The higher the percentage of the population that attends church, the fewer LGBT

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67 Human Rights Campaign Seven Quotes that Make Pope Francis Complicated for LGBTQ People. retrieved from http://www.hrc.org/resources/seven-quotes-that-make-pope-francis-complicated-for-lgbt-people  
Democratic Quality

In theory, democratic governments provide their citizens with the freedom and political institutions to participate in and influence the policy making process. In addition, representative democracies should protect minority rights and protect them from the power of the majority. Encarnación (2014) argues that democracy, and lack of, explains the global division of gay rights: “Although gay rights are not found in all democracies, gay rights are virtually nonexistent in nondemocracies. Among the many factors that make democracy an apparent prerequisite for gay rights are the opportunities that it provides for advocacy including access to country, the party system and the legislature” (pp. 91).

I hypothesize the higher the quality of a government’s democracy, the more LGBT rights the government has passed. I examine if the level of political and civil freedoms explains the variation of LGBT rights in Latin America by charting the Freedom House Index score for each country. Freedom House measures each country by its political and civil freedoms to assess quality of democracy. The scale ranges from one to seven with one having the most freedoms while seven has no freedom.

Hypothesis 5: The lower the Freedom House Index score, the more LGBT rights a government has passed.

Leftist Government

The wave of leftist government being elected into power, also known as the “Pink Tide”, began in the late 1990s with the election of Hugo Chávez in Venezuela. Subsequently, twelve out of eighteen democratic Latin American countries elected and
often re-elected leftist presidents. Filgueira, Reygadas, Luna, and Alegre (2014) argue the left turn was caused by an incorporation crisis as Neoliberalism’s failures politically, economically, and socially marginalized many Latin Americans. These citizens showed their discontent through the election process by voting in leftist leaders that promised a positive change for the people through state actions. Overall, this new left has embraced reform instead of radical revolution. Kingstone (2011) writes, “All leftist government are united by a commitment to equitable development, social justice, and a belief in the state as an effective agent of these aims” (pp. 103).

With a devotion to social justice and equality, I hypothesize that if the executive ideology is leftist then the government will pass more LGBT rights than a government ruled by a non-leftist administration. In addition, Latin American presidents have more influential power compared to other presidential systems. O’Donnell (1994) claims leaders have few restrictions on how they wish to rule in delegative democracies, many of which are in Latin America. However, Cheibub, Elkins, Ginsburg (2011) found that Latin American presidents have wielding power, but not to the extent that O’Donnell suggests. They write, “We can thus speak of a Latin American model of presidential power that includes a powerful role in legislation as well as extensive emergency rule. This distinguishes the Latin American presidency from those in other regions of the world” (pp. 24). If president’s have more power over the legislation in Latin America, then leftist presidents would have more power to help pass LGBT rights.

I measure the influence of the left by the number of years a government has been ruled by a leftist administration. The more years in power then the more time they have had to consolidate their agenda through policy implementation. I chart the number of
years each Latin American government has had a leftist administration in power. For case of Mexico, I use the years Mexico City (D.F.) has had a leftist mayor because of the federalist system that gives the states the power to enact civil code. I use the data provided by Blofield and Ewig (2017).

Hypothesis 6: The more years a country has had a left government in power, the more LGBT rights it has.

However, the Latin American left is not monolithic, and the scholarship on the Pink Tide disaggregates the left according to governing style. Blofield and Ewig (2017) distinguish the left into two categories: the populist left and the institutionalized left. A populist left government is more clientelistic, less democratic, and governed by a hierarchical party. In addition, the party in power is led by a charismatic leader that disregards pre-existing institutions which in turn degenerates the democratic checks that limit executive power. Venezuela, Argentina, Bolivia, Ecuador, and Nicaragua constitute the populist left. Institutionalized leftist parties govern within the firmly established political institutions that limits presidential influence over the courts and legislature. In the words of Blofield and Ewig, “when governing, moreover, the executive is more deferential to the breadth of opinion within the party or coalitions and more constrained by institutional checks on executive power than populist leaders” (pp. 13). Chile, Uruguay, and Brazil fall into the institutionalized left category.

Schulenberg (2013) examines the effects the different types of leftist governments have had on advancing LGBT rights. The authors uses the nomenclature originated by Weyland, Madrid, and Hunter (2010) that disaggregates the left into the contestatory left or the moderate left. These categories are similar, but Schulenberg labels
Argentina as a moderate left government. He finds the moderate left passes more LGBT rights than the contestatory left. However, this work has a few inaccuracies; The author falsely claims Venezuela included discrimination and hate crimes protections for gays in the 1999 constitution.

I update this analysis of examining how the different types of leftist governments have affected sexual minority rights. I argue that a nation ruled by the institutionalized left passes more LGBT rights than the populist left, unless if the ruling party of the populist government adopts LGBT rights in its agenda. The institutionalized left is more democratic and LGBT activists lobby for reform through different political channels. However, if a populist government’s leader prioritizes LGBT rights, the executive’s high influential power, combined with the lack of checks and balances, places little constraint on the president’s demands.

Hypothesis 7: Institutional leftist governments pass more LGBT rights than populist leftist governments, unless if the leader of a populist government makes LGBT rights a part of his or her political agenda.

Descriptive Statistics

Below, I explain how the independent variables influence the cross-national variable in LGBT rights. Table 3 outlines each country in order of the highest to the lowest index score along with the statistics of each independent variable. The GDP per capita and the Freedom House Index score are the averages between the labeled dates. The chart does not differentiate between the populist and institutionalized left, but I describe how the different governing styles have performed on LGBT rights. Table 4 and
5 display public opinion towards homosexuality; The World Value Survey does not provide data for all countries. Following the descriptive statistics, I include a panel analysis to test the statistical significance of each independent variable influence on the LGBT rights index score.

Table 3

<table>
<thead>
<tr>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
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<td>Uruguay</td>
<td>14,547</td>
<td>63%</td>
<td>13%</td>
<td>1</td>
<td>11</td>
<td>8.75</td>
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<tr>
<td>Colombia</td>
<td>9,796</td>
<td>39%</td>
<td>50%</td>
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<td>0</td>
<td>7.5</td>
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<td>Argentina</td>
<td>15,999</td>
<td>70%</td>
<td>20%</td>
<td>2.1</td>
<td>12</td>
<td>7</td>
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<td>Chile</td>
<td>16,286</td>
<td>74%</td>
<td>16%</td>
<td>1.2</td>
<td>12</td>
<td>6.25</td>
</tr>
<tr>
<td>Mexico</td>
<td>13,579</td>
<td>26%</td>
<td>45%</td>
<td>2.6</td>
<td>16 (D.F.)</td>
<td>6</td>
</tr>
<tr>
<td>Brazil</td>
<td>12,495</td>
<td>44%</td>
<td>45%</td>
<td>2.2</td>
<td>13</td>
<td>5.5</td>
</tr>
<tr>
<td>Ecuador</td>
<td>8,602</td>
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<td>38%</td>
<td>3</td>
<td>9</td>
<td>4</td>
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<tr>
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<td>11,533</td>
<td>47%</td>
<td>51%</td>
<td>1.1</td>
<td>0</td>
<td>4</td>
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<tr>
<td>Bolivia</td>
<td>4,908</td>
<td>38%</td>
<td>41%</td>
<td>2.9</td>
<td>10</td>
<td>3</td>
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<tr>
<td>Honduras</td>
<td>3,923</td>
<td>21%</td>
<td>64%</td>
<td>3.4</td>
<td>3</td>
<td>3</td>
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<tr>
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<td>1.5</td>
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<td>.75</td>
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<td>48%</td>
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<td>0</td>
</tr>
<tr>
<td>Average</td>
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<td>42.3%</td>
<td>2.86</td>
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<td>3.6</td>
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*Sources
World Bank
World Bank
Pew Research Center
Freedom House Index
Blofield and Ewig (2017)
Table 4

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<th>Argentina</th>
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<th>Mexico</th>
<th>Peru</th>
<th>Venezuela</th>
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<td>36%</td>
<td>35.1%</td>
<td>48.3%</td>
<td>55.8%</td>
<td>61.1%</td>
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<tr>
<td>Always Justifiable</td>
<td>13.2%</td>
<td>8.4%</td>
<td>10.2%</td>
<td>2.9%</td>
<td>1.7%</td>
</tr>
<tr>
<td>Average</td>
<td>4.33</td>
<td>3.98</td>
<td>3.58</td>
<td>2.62</td>
<td>2.44</td>
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*Data provided by the World Value Survey

Table 5

<table>
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<th></th>
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<th>Colombia</th>
<th>Guatemala</th>
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<td>Never Justifiable</td>
<td>28.6%</td>
<td>30.7%</td>
<td>25.9%</td>
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<td>45.5%</td>
<td>31.9%</td>
<td>17.6%</td>
</tr>
<tr>
<td>Always Justifiable</td>
<td>21.7%</td>
<td>9.3%</td>
<td>11.5%</td>
<td>8.3%</td>
<td>3.2%</td>
<td>12.4%</td>
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</tr>
<tr>
<td>Average</td>
<td>5.3</td>
<td>4.24</td>
<td>4.86</td>
<td>3.71</td>
<td>3.12</td>
<td>4.53</td>
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</table>

*Data provided by the World Value Survey

Modernization Theory

Latin American economies have performed well since the new millennium compared to previous decades. After the global recession of the late seventies, Latin American countries defaulted on foreign loans and fell into massive debt that caused the “Lost Decade” of the 1980s. Latin America shifted to implement neoliberalist policies in the 1980s and 1990s beginning with Chile under Pinochet’s dictatorship. Neoliberalism opened the markets, prioritized privatization, and less state spending on social necessities
under mostly rightest administrations. The successfulness of neoliberalism is debated among scholars. Huber and Solt (2004) find that poverty increased or stayed the same while inequality increased; However, the debt decreased. During these the times of economic austerity, Latin American states did not make social issues a priority as they aimed resources and attention to repairing their economies.

Excluding Argentina’s economic crisis in the 2001, the new millennium marked a positive economic shift in Latin America as commodity prices rose. Each countries’ GDP per capita increased continuously since 2000 save for Venezuela in 2015. Although economies slowed during the 2008 recession, no country declined in GDP. The Bachelet administration’s counter-cyclical policies in Chile issued the government to save revenue from the increase in copper prices that in turn provided the government with capital to continue unabated social spending during the recession.69

Table 3 shows most of the top scoring countries on the Latin American LGBT Rights Index have the highest GDP per capita in the region. Uruguay, Argentina, Chile, Mexico, and Brazil each score over a five on the and have a GDP per capita above the regional average. Tertiary enrollment increased since the turn of the century, and the statistics show a correlated trend with GDP per capita. The nations that have the most LGBT rights, have a more educated population.

The regionalism in LGBT rights illustrated by Figure 1 mirrors the regional differences in development and education. The Southern Cone has the highest GDP per capita and the highest tertiary enrollment. Paraguay’s growth and enrollment percentage

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is significantly lower than the rest of the Southern Cone. Paraguay’s low development and absence of legal LGBT rights support modernization theory in explaining what determines if a country adopts LGBT rights. In addition, Central America and the Caribbean are the least developed sub-regions in Latin America, and have the fewest rights for gays and transgenders. Nicaragua, Honduras, and Guatemala each have a low GDP per capita and low tertiary enrollment. Costa Rica stands out Central America with higher development and more LGBT rights.

Despite the parallels between development and LGBT rights, there are deviant cases. Colombia has progressed with LGBT rights despite a significantly lower GDP per capita and tertiary enrollment compared the other top scoring nations. In addition, the poorest countries, Nicaragua, Honduras, and Bolivia, have passed more LGBT rights than Venezuela, the Dominican Republic, and Peru that have a higher GDP and tertiary enrollment. The increase in petroleum prices stimulated the Venezuelan economy and made it one of the performing in the region with a high GDP per capita coupled with high tertiary enrollment. However, the Bolivarian Republic’s government has passed few gay rights and no transsexual rights. These outlying examples signify that other variables influence LGBT rights.

Public Opinion

Table 4 and Table 5 show select countries’ public opinion towards homosexuality. The public has become more accepting of homosexuality overtime, but in most cases, most of society does not have a favorable view on homosexuality. The increase in acceptance is parallel with the increase in LGBT rights within the region, and the data indicates that on average, the countries that have more public support for homosexuality,
pass more pro-LGBT policies. In the case of Colombia, the legal LGBT rights are far more progressive than public opinion while Chile has more a more liberal public opinion than some countries that have passed same-sex marriage. These public opinion statistics also reveal that Latin American countries have more people who oppose homosexuality to the extreme than they do that believe it is always justifiable. Uruguay is the only country that has more in favor than they do adamantly against homosexuality. This trend highlights the polarity of the public’s opinion on the contentious issue of LGBT rights policy.

**Religion**

Table 3 shows the trend that countries with low church attendance have more LGBT rights. The two pioneers of LGBT rights in Latin America, Uruguay and Argentina, have the most secular populations. On the other hand, Central American countries have high church attendance rates and few LGBT rights.

Latin American has been undergoing a shift in religious affiliation. The Pew Research Center’s report *Religion in Latin America* shows there is a regional decline in Catholicism. The departure away from Catholicism does not fully translate to an increase in secularism because their Evangelicalism has been rising in Latin America. Central America has the highest number of Protestants and Evangelicals with Nicaragua, Guatemala, El Salvador, and Costa Rica having around 40% of their populations being Protestant. In South America, Brazil has the highest percentage of Protestants. Protestants have less tolerance for homosexuality than Catholics. This lower tolerance, coupled with the church attendance data further explains how Central America has passed few LGBT rights. In example, Costa Rica has an above average GDP per capita, high tertiary
enrollment, and one the best functioning democracy in the region; However, the country’s religious populations in part influences why the government has not passed as many LGBT rights as a country in the Southern Cone.

Both Colombia and Venezuela deviate from the religious correlation. Colombia has high church attendance with many LGBT rights. A partial explanation for this deviance is that most of Colombia’s gay rights have been passed by the Constitutional Court. Colombia under Santos has been focused on social justice throughout the peace process to sign accords with the FARC; Santos also publicly supported gay marriage in 2014. Although the peace accords and gay rights are not intertwined, gay rights activists have benefited from Santos’ promises to bring peace and rights to Colombians after decades of war. However, former rightest president Uribe and predominant Colombian religious leaders that oppose the peace negotiations spread false information that the peace process was a ploy to promote LGBT despite lack of evidence. This shows how the Colombian judicial institution has been dedicated to gay rights despite the population’s polarity. As Colombian LGBT rights activists, Marcela Sánchez, stated about the use of anti-gay rights protests to gain opposition for the peace process, “It’s sad in this country that there are people who have more fear of homosexuality than war.”

Venezuela is an outlier with low church attendance and few LGBT rights. Venezuela’s lack of LGBT rights despite being higher economic development and secularism underscores that other variables have explanatory power. Venezuela’s case is

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better explained in the next section that examines the relationship between democratic quality and sexual minority rights.

**Democratic Quality**

Democratic quality in Latin America has diverged. Uruguay, Chile and Costa Rica have full civil and political freedoms. On the other hand, Latin America has one self-declared non-democracy, but authoritarianism and semi-authoritarian regimes are present with no signs of relent. Political and civil freedoms have decreased in Venezuela, Honduras, Bolivia, Panama, and slightly in Mexico.

Table 3 displays the absence of political and civil freedoms in Venezuela and Cuba, which in turn conditions their lack of LGBT rights. Venezuela’s increasingly authoritative regime hinders LGBT activists from fighting for legal rights, especially as the Venezuelan people protest to restore basic political freedoms. The Cuban dictatorship eliminated all freedoms and diminished any possibility of LGBT advocacy or any other civil society organization.

Functioning democracies have allowed LGBT activists to work the government through the political system and with government actors to implement policy change. Openly gay politicians have been elected into office in Argentina, Brazil, and Chile have represented sexual minorities and prioritized LGBT rights. Michelle Suárez Bértora, a Uruguayan legislator, made history by becoming the first transgender person to be elected into office in Latin America.

However, democracy has a double effect that can both expand and limit LGBT rights. All the democratic channels LGBT groups have to influence policy are available
to opponents as well. This can be increasingly difficult in countries that do not have high public opinion favoring homosexuality. The conservative opposition in six governments have successfully ratified constitutional bans against gay marriage and adoption. Other than the legality of homosexuality, the Dominican Republic has a complete absence of LGBT rights, but it also has the same Freedom House score as Brazil and Argentina. Conservative legislators in Chile continuously propose reforms to limit LGBT equality. The right-wing Independent Democratic Union party submitted a bill in 2016 that aims to constitutionally ban same-sex marriage and adoption. It is unlikely the bill will pass, yet it exemplifies how democracy does not guarantee the advancement of LGBT rights.

Leftist Government

The Latin American left has not been a historical proponent of LGBT rights, especially not the revolutionary left that used Marxist theory to condemn homosexuality. De La Dehesa explains, “homosexual stigma itself was often discussed in Marxist terms as a product of capitalist decadence and a bourgeois form of sexuality (pp. 64). The founder of the first gay rights group in Latin America was a former member of the Argentina Communist Party until the party expelled him after discovering he was gay. Gay rights movements in Latin America throughout the 1970’s, but these advocacy groups did not integrate into the party system or ally with political actors.

Gay rights groups advanced to an extent in integrating into leftist parties towards the end of the twentieth century. The Brazilian Workers’ Party and Communist Party integrated homosexuals into parties after the return to democracy in the late 1980’s,

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71 Legislatura 364. 2016. Camara de Diputados de Chile
followed by smaller far-left parties in Argentina and Uruguay. However, LGBT rights did not become a priority for certain leftist parties in power until the new millennium.

Table 3 shows the top scoring nations on the LGBT rights index, save for Colombia and Mexico at the federal level, have had a leftist administration in power for over a decade. On average, the countries that score low on the index have not had a leftist government after 2000 or have had a leftist administration for only one term. However, there are incongruences between a leftist government in power and the advancement of LGBT rights. The chart shows how nations like Venezuela and Cuba have had long-lasting leftist governments yet score low on the index. The varying types of governing style explain the left’s divergent trajectories vis-à-vis LGBT rights. Below, I highlight the different types of leftist and non-leftist governments’ outcomes on LGBT rights.

**Institutionalized Left**

Fewer leftist governments have been a part of the institutionalized left. On average, the institutionalized left has had more success in advancing gay rights than the populist left and non-leftist governments, save for Argentina and Colombia. Both Uruguay and Brazil have passed same-sex marriage and joint adoption rights, while Chile has civil unions and law protecting against discrimination and hate crimes. However, no institutionalized leftist government has passed the most inclusive gender recognition law.

Lula of Brazil, Bachelet of Chile, and Mujica of Uruguay have each publicly supported same-sex marriage. However, conservative opposition has utilized institutional checks to limit the left-wring executive from easily passing LGBT rights. In Chile, President Bachelet is a part of an electoral coalition, the New Majority, that includes the
Christian Democratic Party. The representation of religious organizations through her own coalition and right-wing parties contest LGBT policies and discourage the executive from prioritizing them. Dilma Rousseff faced the same problem in Brazil where the Evangelical voting bloc in the lower house that hindered LGBT rights from passing through the legislature. Uruguay is more secular and has high public opinion in favor of homosexuality. These variables subsequently limited religious mobilization from successfully opposing LGBT rights legislation.

_Populist Left_

Populist leftist government have various outcomes on LGBT rights legislation. Argentina is the only one to have marriage equality and lacks only discrimination protections. Venezuela and Nicaragua have made no major advancements in LGBT equality while Ecuador and Bolivia lie in between. As indicated by the _Freedom House Index_, the populist left has been significantly less democratic than the institutionalized left.

Left-wing populist administrations, excluding Argentina, drastically altered their national constitutions. As explained previously, LGBT rights groups in Ecuador and Bolivia lobbied the Congressional Assemblies to include LGBT rights that resulted in the inclusion of a few rights and constitutional bans. The executive ideology in populist governments has more influence over policy outcome than in the institutionalized left. No left-wing populist leader, other than Cristina Kirchner in Argentina, supported LGBT rights. Xie and Corrales (2010) highlight Rafael Correa’s homophobic remarks during in his presidential campaign. When the Ecuadorian Catholic Church complained the new constitution is too “gay-friendly”, Correa rebutted by pointing out how the constitution
also limits marriage equality and adoption. Evo Morales has also never made any statement supporting gay rights. Other than his remark at a Climate Summit in Cochabamba claiming that eating genetically modified chicken can cause homosexuality, he has never openly discussed any LGBT topic\textsuperscript{72}.

Argentina is the only populist leftist government that progressed in LGBT equality. The Argentine gay rights movements have been historically resilient and demanding. In 2010, the populist Peronist president, Cristina Kirchner, supported same-sex marriage and other LGBT rights. This influenced the increase in LGBT rights in Argentina, which I detail further in the Argentine case study.

Although the populist left has passed less aggregated LGBT rights than the institutionalized left, the former has enacted more trans rights. Argentina, Ecuador, and Bolivia have each enacted the most inclusive gender recognition law while Ecuador, Bolivia, and Honduras have anti-discrimination protections that include gender identity. Confirming the analysis of Schulenberg (2013), the institutionalized left has passed more gay rights than the populist left\textsuperscript{73}. However, when addressing only trans rights. The populist left outperforms the institutionalized left in enacting gender recognition and anti-discrimination laws.

\textit{Revolutionary Left}


\textsuperscript{73} Schulenberg (2013) categorizes the left into the “moderate” and “contestatory” left. His nomenclature for the differing governing styles is similar save for labeling Argentina as a “moderate” leftist government.
Cuba is the only leftist regime in power that predates the “Pink Tide” and remains revolutionary in the Cold War context. The beginning of the Cuban Revolution included sexual liberation, but it was quickly reversed as the regime became repressive. The military state forced non-conforming citizens, including homosexuals, into Military Units to Aid Production (UMAP) work camps. Cuba began to change discourse in the 1990s and 2000s. The island decriminalized homosexuality in 1992 and in 2010 Fidel Castro apologized for his former treatment of the LGBT community. Cuba has been successful in passing employment protections for sexual orientation and has state-sponsored sex change surgeries thanks to the advocacy of Mariela Castro, Fidel Castro’s niece, who works through CENESEX to spread sexual education. Cuba has passed a few LGBT laws, but gay and trans rights still have not made major progress because of the lack of political and civil freedoms.

Non-Leftist Governments

Although less frequent, there have been legislative reforms on sexual minority rights in non-left governments. Colombia, Dominican Republic, Costa Rica, and Peru never had a leftist government in power since the new millennium, and their administrations vary on the political spectrum, ranging from rightest to centrist. LGBT activists rarely achieve legal rights under rightest governments, but they had some success in Costa Rica and Chile. In 2013, during President Chinchilla’s conservative administration, the Costa Rican Congress reformed he Young Persons bill that made the definition of a domestic partnership gender neutral. President Chinchilla shocked the

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country when she signed the bill into law and paved the way for the judicial ruling on domestic partnership. The president took a noninterventionist stance on gay rights. She never openly supported or pushed LGBT legislation, albeit never actively opposed it; In example, Chinchilla stated she would never contest gay marriage if the court ruled in favor of it.\textsuperscript{75}

In Chile, activists and lobbyists fought for anti-discrimination and hate crime law, but faced strong opposition from the rightest President Piñera’s administration. However, the public’s demands to pass legal protections for gays increased after the torture and assassination of a young gay teen. To the chagrin of his own party, Piñera subsequently pushed the anti-discrimination and hate crime laws. All other LGBT rights in Chile had been passed under left-wing administrations.

Colombian President Santos’s has been centrist despite being the chosen successor of former rightest president Uribe. Santos’s administration has emphasized social justice, most notably with the government’s peace negations with the FARC, Colombia’s largest leftist guerilla group. Colombia has low public opinion in support of homosexuality, but President Santos publicly supported gay marriage in 2014. LGBT activists failed to pass LGBT rights through Congress on multiple occasions save for the anti-discrimination law that includes homosexuals. However, the Colombian gay rights movements sidelined Congress and pushed reform through the judicial system. Although Santos’s government is not a part of the left turn, Colombia’s contemporary political

climate has been propitious for enacting LGBT rights as the current administration prioritizes social justice.

The combination of the various variables brings to light how economic, social, and political factors condition the number of LGBT rights each government has passed in Latin America. The cross-national comparison of each nation’s statistics allows us to detect major trends; however, the descriptive statistics alone do not suffice in proving the effects of each independent variable has on how many LGBT rights a government passes. Below, I conduct a panel analysis to provide further empirical research on the influence of these variables on the enactment of LGBT rights across time and the region.

**Panel Analysis**

This multivariate analysis includes the same statistics displayed on Table 3 to test my hypotheses. The variables are measured for each year to calculate their effects on the *Latin American LGBT Rights Index* score overtime since the turn of the century. The model does not include public opinion because there is not sufficient data for each country. I create an interaction variable that combines democratic quality with leftist government to statistically examine the impact of the different leftist governing styles.
Table 6

Panel Analysis Results

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<td>0.000126**</td>
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<td>0.529***</td>
<td>0.489***</td>
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<tr>
<td></td>
<td>(0.129)</td>
<td>(0.0601)</td>
<td>(0.123)</td>
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<td>-0.671***</td>
<td>-0.652**</td>
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<td></td>
<td>(0.304)</td>
<td>(0.205)</td>
<td>(0.319)</td>
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<td>-0.118***</td>
<td>-0.121***</td>
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<td>(0.0476)</td>
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<td>(0.0454)</td>
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<tr>
<td></td>
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<td></td>
<td>(0.0142)</td>
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<td>ChurchAttendance</td>
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<td>-0.152***</td>
<td>-0.132**</td>
</tr>
<tr>
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<td>(0.0396)</td>
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</table>

Robust standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1

I find that GDP per capita and tertiary education enrollment are closely correlated in this analyses since both variables represent modernization theory—education levels rise as a nation’s GDP per capita increases. Therefore, I run three analyses to examine their significance separately. These results reveal that GDP per capita and tertiary enrollment have significant effects on the number of LGBT rights a government has passed, and they exert a positive impact on the dependent variable when controlling for all other variables. Both GDP per capita and tertiary enrollment increased throughout the
region since 2000 save for Venezuela since 2015. This panel analysis supports modernization theory by revealing that economic growth and education have influenced the cross-national variation and recent increase of LGBT rights in Latin America.

When addressing religious influence on LGBT equality, the panel analysis further confirms previous literature and my hypothesis. There is a strong negative relationship between church attendance and LGBT legal equality. These results statistically attest how the regional decrease of church attendance since 2000 has conditioned the increase of LGBT rights.

Latin American countries have had divergent outcomes in democratic quality. As shown by the Freedom House Index, many Latin American countries like Costa Rica, Chile, and Colombia have improved their democracies while others have governed more repressively by restricting political and civil freedoms. When assessing the link between political and civil freedoms and LGBT equality, this research finds a statistically significant negative covariance between the Freedom House Index scores and the LGBT rights index score. The lower the score on the Freedom House Index, the more freedoms a country has, thus resulting in the negative correlation. The results support my hypothesis and further convey the importance of political freedoms to successfully implement legal equality for sexual minorities.

The number of years of left government has been in power has a strong positive covariance with the LGBT rights index. The ideology of the governing administration and the administration’s duration affect how many LGBT rights the government legislates, thus statistically signifying the importance of the “Pink Tide” in passing sexual minority rights. LGBT rights are a strongly partisan issue in Latin America, and on
average, longstanding leftist governments have ratified more LGBT rights than
governments that have only had a progressive administration in power for one term.

To more stringently examine the effects of the left turn on LGBT rights in Latin
America, I add an interactive variable that is the multiplicative product of the years of left
government and the *Freedom House Index* score. The interaction variable statistically
disaggregates the left according to governing style since the populist left has higher
scores on the *Freedom House Index* than the institutionalized left. The results show a
statistically significant negative relationship with the LGBT rights index. When the
“Freedom” variable interacts with the years of left-wing government, it diminishes the
impact of leftist administrations on LGBT policies. The lower the freedom, the less
important the executive’s progressive ideology becomes, thus underscoring the
importance of political and civil freedoms and further explaining the institutionalized
left’s advancement of LGBT rights.

Both the descriptive statistics and the panel analysis quantitatively show how the
multiple variables affect Latin American governments’ varied outcomes on LGBT
policies. Below, I add to the quantitative analyses by conducting three qualitative case
studies that describe how the independent variables have determined the number of
LGBT rights these government have legislated.
Chapter 4: Case Studies

Argentina, Brazil, and Nicaragua have each had leftist governments in power for multiple terms yet vary on the dependent variable. These cases examine how the differences in social base and leftist governing style have resulted in varied outcomes on LGBT rights.

Argentina: Populist Left and High LGBT Rights Index Score

Argentina has a highly secular population, high economic development, and comparatively high public support for homosexuals. Argentina has been a leading country in LGBT rights with the oldest gay rights movement in the region, and activists won most of their legal rights under the populist administration of Cristina Kircher (2007-2015). The Argentine LGBT community faced heavy state persecution through police raids and disappearances under multiple authoritarian regimes. *Nuestro Mundo*, Latin America’s first gay rights group, assembled under the Ongania dictatorship in 1967 to combat police brutality that targeted homosexuals. During the Dirty War, Argentina’s last military dictatorship, the military junta *Nuestro Mundo* deteriorated and the state violently targeted homosexuals on multiple occasions.

The return to democracy in 1983 ended the paramilitary kidnappings and murders, but state repression against the LGBT community did not relent. More LGBT rights groups emerged, including the Argentine Homosexual Community (CHA). The group started out with approximately 150 members, and in 1987 began using the slogan “freedom to express sexuality is a human right.” As both Diez (2015) and Encarnación

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(2013) highlight, CHA’s framing of LGBT rights as human rights proved successful in a period when Argentina began debating on how it should bring justice to the previous human rights abuses. Activists used human rights framing to promote the civil unions bill in Buenos Aires, arguing that same-sex couples needed the protections due to the AIDS epidemic. Encarnación (2013) explains the framing allowed gay activists to succeed in passing the civil unions city law during the Argentina economic crisis (2001-2002) by underscoring the importance of social protections in the time of crisis.

The human rights framing became increasingly successful under the Kirchners’ administrations as the government began persecuting former dictatorship leaders. Nestor Kirchner (2003-2007), belonging to the populist Justicialist Party, pleased human rights activists by reversing the military pardon in the early years of his administration. LGBT rights groups worked to incorporate themselves into the Peronist party, and in 2004, the Minister of Interior reached out to CHA to discuss gay rights, thus forming the first relationship between the movement and the ruling party (Encarnación 2013 pp. 705). LGBT rights activists worked with the party to legislate reforms, and sexual minority rights gradually increased under Cristina Kirchner’s administration. In 2008, gay couples were given social security rights and in 2009, the government passed a bill that ended discrimination in the military.

However, the Justicialist Party did not show its commitment to LGBT rights until same-sex marriage began to attract societal attention. Gay couples continuously applied for marriage licenses, but were rejected by the Civil Registry; Subsequently, couples appealed to the courts. In 2009, a judge ruled that the civil registry had to issue a same-sex couple a marriage license, but this ruling later reversed. After the failed attempts to
obtain marriage equality through the judicial branch, same-sex couples turned to the legislature.

Activists worked with the ruling party to draft the same-sex marriage bill, and it was proposed in Congress by a Peronist representative. President Cristina Kircher had publicly supported civil unions in 2007 and gay marriage in 2010, and she wielded her influence to push the same-sex marriage bill. Her populist leadership that favored LGBT rights conditioned the passage of same-sex marriage. Both the Evangelical and Catholic Churches naturally opposed the bill, but the lack of the public’s religious adherence hindered the Church’s influence. Blofield (2006) underlines how the Argentine Catholic Church works with the executive to push its agenda. However, Peronism’s populist ideology has historically been anti-clerical, a stance that Kirchner continued. She publicly assailed and dismissed the Church’s arguments each time it contested the bill.

The president also had a strong influence over Congress. The opposition attempted to bring the issue to a referendum, knowing that the majority of Argentine’s did not support gay marriage. However, Kirchner directed Peronist politicians not to allow a referendum and blocked the opposition’s attempts by stating putting the rights of a minority in the hands of the majority is not democratic (Encarnación 2013 pp. 708). When the time to vote on the bill came, the president scheduled an official trip to China that required several Senators who were planning to vote against the bill to accompany her. The bill passed on July 15, 2010 with thirty votes in favor and twenty-seven opposed. Diez (2015) writes, “every legislator interviewed declared that the pressure exerted from the president, Kirchner, and her officials was critical in getting the bill voted favorably” (pp. 150). Cristina Kircher’s actions determined the success of the same-sex
marriage bill because she used populist style influence to insure its passage. Scheduling an official trip and taking members of the opposition with her, was an undemocratic move because it did not allow them to vote against the bill, which would have defeated it. The president’s actions represent how a populist style government can advance LGBT rights when the party works with the ruling party and garners the support of the executive leader that faces less institutional constrains on his/her policy setting power.

The gender recognition was also partially contingent on Cristina Kirchner’s executive support. Activists believed it would be an auspicious time to draft a gender recognition bill after the gay marriage success that attracted attention to LGBT rights. In my interview with María Rachid, an Argentine LGBT rights activists and former Justicialist legislator, she outlined the main objectives of the gender identity bill. Law no. 26.743 allows gender recognition for both transsexuals and transgendered people without restrictions, includes people under the age of 18 since transgenderism is realized early in life, and it publicly funds sexual-realignment surgeries through the public health system. The president funded gay rights activists and legislators to create educational campaigns to inform the public on sexual diversity and acceptance in hopes to diminish prejudices. During the debate of the bill, President Kirchner demanded the law be passed and argued the right to identity is a human right. Congress approved the legislation in 2012, thus setting global precedent in transsexual rights.

However, Argentina’s federal anti-discrimination law, no. 23,592, does not include sexual orientation and gender identity, and the revision of this law or the passage

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of a bill that would establish these protections are becoming increasing less likely under President Macri’s conservative administration. LGBT activists succeeded in passing discrimination protections for homosexuals and transsexuals in Buenos Aires and Rosario, but violence and persecution continue in other provinces. Police assault against trans people in Salta has gained media attention and the recent attack on a young gay man by Neo-Nazis in Mar de la Plata made activists push harder for reform. LGBT activists did not previously prioritize discrimination protections, apocryphally believing the that the federal discrimination protection law would suffice even if it did not specifically include sexual minorities. The current presidency of Mauricio Macri makes some activists doubtful the attempts to revise the federal law will succeed. Macri, like a handful of other conservative leaders, is noninterventionist with LGBT rights by not opposing nor fully supporting their passage. As Rachid explains, “when there’s an absence of the state, human rights are never accomplished.”

Argentina has pioneered LGBT rights in Latin America and the world. The nation is developed with a highly secular and educated population, and has the oldest gay rights movement in the region. These variables, coupled with the populistic support of Cristina Kirchner, resulted in legal equality for Argentine LGBT citizens.

Brazil: Institutionalized Left and Median LGBT Rights Index Score

Brazil has the lowest LGBT rights index score when compared to other nations that have been governed by the institutionalized left. As Table 3 illustrates, Brazil is

economically developed but has lagging levels of education, and nearly half of Brazilians attend church at least once a week. Moreover, a large percentage of Brazil’s religious population self-identify as Evangelical, a denomination that is politically organized in the National Assembly and less tolerant of sexual diversity. Brazilians voted in the leftist administration of Lula da Silva in 2002, and succeeded by Dilma Rousseff in 2011; In contrast to the populist left, these presidents governed through the institutions by adhering to the system of checks and balances.

Unlike other LGBT groups in Latin America, the Brazilian movement established early connections with different political parties, including President Lula’s Workers’ Party (PT). Lula led the formation of the Worker’s Party during the gradual transition to democracy in the 1980s and incorporated gay activists into the leftist party. At the first Worker’s Party Convention in 1981, Lula declared, “We do not accept that homosexuality be treated as an illness in our party, much less as a police matter. We defend the respect that these people deserve and invite them to join the greater effort of building a new society” (De la Dehesa 2010 pp. 62). This is the first time gays converged with a political party in Latin America, and Lula’s statement was unprecedented, especially at a time when homosexuality was still illegal in several Latin American countries.

The Brazilian gay rights movement had a few early successes. In 1985, the Grupo Gay Bahia (GGB) campaigned and influenced the Brazilian Federal Council of Medicine to eradicate homosexuality from its list of diseases, thus making Brazil the first country in the world to do; The World Health Organization did not follow suit with the erasure of the pathology of homosexuality until 1993 (Porto 2012 pp. 156). LGBT rights groups
lobbied Brazil’s Health Ministry to receive grants and medication during the AIDS epidemic. Consequently, the Ministry developed policies that combined free access to antiretroviral medicine and prevention education that became successful in preventing HIV contraction (De la Dehesa 2010 pp. 179). During the revision of the Brazilian Constitution, activists attempted to include a constitutional discrimination protection covering sexual orientation, but it did not receive Congressional approval. A bill hoping to form civil unions entered the Brazilian Congress in 1995, and was quickly dismissed. However, LGBT activists successfully convinced legislators to abolish “gay conversion” facilities and practices, making Brazil the first country in the world to conversion therapy.

Lula da Silva and the PT party were elected into power in 2002 with the support of the LGBT community. Despite the LGBT movement’s adoption into the PT party and Lula now in the executive, gay and transsexuals did not see their rights advancing quickly under his administration. Lula, after multiple electoral loses, incorporated left-wing Catholics and Evangelicals into his party to obtain more support. The PT’s LGBT activists had their demands overridden by the religious faction of the party. Lula, in 2008, publicly supported civil unions and stated he would, “do all that is possible so that the criminalization of homophobia and civil unions would be approved.”80 The PT presented a national civil union law and anti-discrimination law in Congress, both stalled in the legislature. Lula, like Cristina Kirchner, supported the LGBT community and set the agenda to draft bills for their legal rights; However, he was constrained by Congressional

conservatives and religious factions from both ends of the political spectrum. Lula acquiesced to the checks and balances and did not embrace a populist style to publicly attack religious groups or legislators that opposed the LGBT bills.

The political power of Brazilian religious groups has been strengthening, especially with Evangelicals. The Evangelical population rose from 5% of Brazilian to 22% between the 1970 to 20014, and their Congressional representation doubled between 2010 and 2014 with over 60 Evangelical legislators in Brazil’s lower house\textsuperscript{81}. These legislators assemble a voting bloc in the Lower Chamber that has given them power to influence the executive and oppose pro-LGBT legislation. Marco Feliciano, an Evangelical lawmaker, became the head of the Congressional Human Rights Commission and spearheaded the opposition against LGBT rights. When the court ruled in favor of gay marriage he attempted to challenge the ruling by pushing for a plebiscite to vote on the issue\textsuperscript{82}. In 2013, the Commission approved a proposal that would repeal the prohibition on gay conversion therapy and pathologize homosexuality\textsuperscript{83}. To the relief of Brazilian sexual minorities, the bill did not gain approval in the Senate. The current mayor of Rio de Janeiro and former Evangelical pastor, Marcelo Crivella, has contested LGBT equality and stated, “unsuccessful abortion attempts lead to homosexuality.”\textsuperscript{84}

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\textsuperscript{82} Passarinho, N. 2013. Globo. Retrieved from Comissão aprova projeto que susta decisão do CNJ sobre casamento gay


Evangelicals are in high positions of power and have hindered LGBT rights success in Brazilian legislature.

Both Lula and Rousseff have had to modify their agendas and become more centrist to garner support from the religious population, a necessary move in the institutionalized left. Rousseff, a former leftist guerilla, has attended multiple public religious events; At the grand opening of Brazil’s largest Evangelical church, she quoted the Bible saying, “Happy is the nation whose God is the Lord”\textsuperscript{85}. When asked about gay marriage during the 2010 election season she stated, “I am in favor of civil unions. I think marriage is a religious issue. I, as an individual, would never tell a religion what it should. We have to respect”\textsuperscript{86}. The Evangelical voting block halted each attempt Rousseff made to advance LGBT policies. In 2011, the president stopped the disbursement of sexual education videos geared to educate student about homosexuality after Evangelical legislators threatened to block all legislation that the president supported. The Brazilian Churches have higher political power and benefit from a more religious population when compared to other economically developed Latin American nations. To have electoral and legislative success, Brazil’s leftist presidents had to appease religious factions, contrasting from the populist and anti-clerical stances taken by Kirchner in Argentina.

After failures in the legislature, LGBT activist turned to the judiciary to implement their legal rights. In 2010, the Superior Court of Justice of Brazil ruled that


\textsuperscript{86} A CAPA. 2010 “Sou a favor da união civil gay”, diz Dilma Roussef retrieved from https://disponivel.uol.com.br/acapa/mobile/noticia.asp?codigo=11198
same-sex couples can adopt children, followed by the 2011 ruling of the Supreme Federal Court that created national civil unions. Preceding the civil unions ruling, some states had already established civil unions. However, the couples did not have guaranteed rights, and it created a bureaucratic mess as same-sex couples contended the federal government was impeding on their legal rights. The Supreme Court of Justice acted after Congress failed to adequately address the issue. The same dilemma occurred with same-sex marriage as some states began issuing marriage license, thus causing a patchwork as 10 out of the 27 states issued same-sex marriage. The same-sex marriage bill was proposed in Congress, but was never voted on. After the legislature’s inactivity, the Brazilian Justice’s National Council, said that the issue had already been previously decided with the civil union decision and ruled that all civil registers must issue marriage licenses for same-sex couples in 2013.

Despite multiple attempts, no discrimination or hate crime protections have been passed in Brazil despite the high number of recorded hate crimes against the LGBT community. Some of the violence has been instigated by the media and religious leaders. One newspaper, *A Tarde*, published, “Keep the city clean by killing one fag per day,” and the dark irony is that LGBT murders occur on average once a day in Brazil (Porto 2012 pp. 156)\(^7\). Anti-LGBT crimes reached the point of terrorism in 2009 when a bomb detonated during the gay pride parade in São Paulo. Establishing protections for gays and transsexuals failed during the creation of the 1988 constitution, and was proposed again

in 2006 in bill no. 12288. Each recent attempt to pass the discrimination and hate crime protections has been stopped by the Evangelical voting bloc, and the court system has not taken any cases involving the issue.

The LGBT community has had the support of leftist president during the pink tide, however, their institutional governing style has limited them from pushing LGBT policies through the legislature as the politically powerful religious groups block all LGBT bills. LGBT groups are still attempting to pass anti-discrimination and hate crime laws to protect them legally and deter the violence against gays and transsexuals. However, it is dubious they will succeed in passing this legislation unless if a considerable number of religious lawmakers are voted out of power.

Nicaragua: Populist Left and Low LGBT Rights Index Score

Nicaragua has a highly religious population, low economic development, and joined the “Pink Tide” after the country voted former revolutionary leader, Daniel Ortega, back into power in 2007. Ortega’s contrasts from his former revolutionary rule as he now leads the FLSN party with populistic and clientelistic governing styles. Former Nicaragua administrations took a mostly noninterventionist approach towards homosexuality. The first penal code did not include criminalize same-sex acts, and the pre-revolution Somoza dictatorship did not persecute homosexuals if they kept their sexuality in the private sphere (McGee and Kampwrth 2015).

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88 Atividade Legislativa Projeto de Lei da Camara no. 122
http://www25.senado.leg.br/web/atividade/materias/-/materia/79604
This attitude towards the LGBT community continued into the revolution the Sandinista National Liberation Front (FSLN) overthrew the Somoza family in 1979. Homosexuals did not face persecution during the FSLN’s first rule if they acted in accordance to the revolution. “As long as they worked for the revolution, the appearance of some of them as gay or lesbian could be overlooked—not always, but often. But participating for other did not mean they were to participate for themselves, for their rights,” explain (McGee and Kampwrith 2015 pp. 65). During the revolutionary years, a group of approximately fifty Nicaraguan gays and some foreign activists created the first Nicaraguan gay rights group, Grupo Inicio, that joined to promote sexual diversity and AIDS prevention. The FSLN quickly arrested the activists and dismantled the group due to paranoia of subversion as the Contra War intensified. The revolution party never enacted anti-LGBT legislation; however, the FLSN thwarted the mobilization of LGBT rights during the revolution.

After the revolution in 1990, voters ushered in the conservative administration of president Violeta Chamorro with full support from the Catholic Church. The Nicaraguan National Assembly reformed the nation’s penal code in 1992 and added Article 204 that criminalized homosexuality. Article 204 read, “The crime of sodomy is committed by anyone who induces, promotes, propagandizes or practices sexual intercourse, in a scandalous way, between people of the same sex. It will be penalized with one to three years in prison” (Howe 2002 pp. 240). This draconian law not only took the rights of male homosexuals, but also criminalized lesbian sexual relations under the term “scandalous sex.” Moreover, the word choice of “propagandize” criminalized the formation of any LGBT rights organizations, encompassing any actions from AIDS
education workers, journalists, researching, and other parties that could promote the education and empowerment of sexual diversity (Howe 2002).

Nicaragua lacked significant LGBT mobilization throughout the 1990s and 2000s because of the sodomy law. However, activists saw Ortega’s reelection in 2006 as an opportunity to demand rights. Activists lobbied as the FSLN dominated government reformed the penal code and repealed Article 204, thus decriminalizing homosexuality in 2008. The government also revised Articles 36(5) and 315 to ban discrimination in employment for sexual orientation and declare hate crimes against homosexuals an aggravated circumstance. As Nicaragua returned to the left, gay rights activist won rights that would have been less likely to pass if Ortega’s FLSN party had not returned to power.

The post-revolutionary FLSN party is more and populist as it centralizes on Ortega’s charismatic leadership. himself and increasingly practiced clientelism for support (Blofield and Ewig 2017 pp. 27). The populist governing style is further underscored by the ruling party’s clientelistic practices to garner support, especially visible with FLSN’s relationship with the LGBT community. In 2009, the government appointed Samira Montiel Sandino as a special attorney for sexual diversity under the Ministry of the Defense of Human Rights to process complaints of discrimination. However, many contend that she is a symbol of the government’s faux support for gay rights because she has done nothing to meet their demands. Kampwirth (2011) mentions how when checking the Human Rights Attonery General’s website, it made no mention of Samira Montiel’s existence nor had any mention of sexual diversity. Nicaraguan LGBT rights activists argues Samira Montiel and her position to represent sexual
diversity in the state is just a political gift to make activists happy despite the lack of progress (Kampwirth 2014 pp. 327). Another activist claims Ortega’s does not even practice clientelistism with the LGBT community because they receive nothing, highlighting how no government programs like Casas para el Pueblo have ever given housing resources to a LGBT family (McGee and Kampwirth 2015 pp. 68).

The party leader’s personal beliefs direct policy in a populist government, and Ortega’s leftist image has transformed during his second presidency. He has allied with the Catholic Church and took some conservative stances to appease the Church and religious society. Ortega pushed the restriction of abortion and in 2012, called for the National Assembly begin drafting a family code that limited the legal definition of family. With the full support of the Catholic Church and Evangelicals, family code emphasizes the traditional nuclear family and excludes LGBT families, single parents, non-blood relations, and discriminated against disabled people. This family code also explicitly prohibits same-sex unions and adoption for LGBT Nicaraguans. LGBT rights lobbyists were left out of meetings with legislators during the formative stages of the code. As gay rights activists protested the Family Code outside of the National Assembly, the FLSN invited Evangelical counter protestors into the assembly to meet with representatives to discuss the family code (Kampwirth 2014 pp. 330). The LGBT groups eventually had a meeting with representatives of the National Assembly’s Commission on Women and Children that informed the the pro-LGBT protestors that, “Nicaraguans

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were not yet ready to legally recognize their families, and that they would have to wait another 30-50 years” (pp. 330).

The FLSN gave precedence to Evangelicals due to Ortega’s newfound alliance with the Catholic Church, and embracing LGBT rights would not help him win popular electoral support. The majority of Nicaraguans attend church more than once a week, and The Pew Research Center found that only 16% of Nicaraguans support same-sex marriage while 77% opposed90. Nicaragua lacks the strong social base that favors LGBT equality, thus limiting the government desire to meet the demands of LGBT rights activists. Activists have also failed to challenge the FLSN actions through court. The judicial system upheld the family code because it did not want to contest Ortega’s stances, thus underscoring his populistic influence over other institutions.

The lack of LGBT rights in Nicaragua have had direct consequences on the lives of sexual minorities, especially transsexuals. The few legal gay rights that Nicaraguans gained have been exclusively for homosexuals, thus continuing the marginalization of transsexuals. This not only disallows them to be legally recognized, but they have no legal safety net to protect them from discrimination or hate crimes. The lack of state action to mitigate and deter these crimes becomes violent; Around eighty percent of all transsexual and transgender persons in Nicaragua experience a hate crime targeted at them for their sexual identity, many of which end in death91. NGO researchers Gaedtke

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90 Pew Research Center 2014, Religion in Latin America: Widespread Change in a Historically Catholic Region pp. 69
and Parameswaran (2015) interview many transgender Nicaraguans, and one young woman recounts being thrown out on the streets by her family at age six where she resorted to prostitution. Despite the high statistic on bias crimes against the Nicaraguan trans community, the FLSN made the hate crime law, Article 36 of the Penal Code, only for sexual orientation.

Nicaragua has a highly religious population and low levels of education and economic development that in turn decreases the social base’s support for sexual minority policies. In contrast to Argentina, the left-wing populist government lacks the executive support as Ortega has worked with the Catholic and Evangelical Churches to limit LGBT rights in recent years.
Conclusion

This study has aimed to illustrate the current status and high variation in Latin American LGBT policies. As of 2016, countries like Uruguay and Argentina have progressed further than much of the western world. On the other hand, countries like the Dominican Republic and Paraguay offer no legal protections or rights for sexual minorities, while others fall in between the spectrum. This proliferation of rights has also mostly occurred within the decade, and nations not only vary on the number of rights their governments have passed but also the channels used by activists to lobby reforms.

To explain the unprecedented increase of LGBT legislation, I have argued that a nation’s level of development and social attitudes towards homosexuality influence the quantity of legal rights LGBT people have. I find that nations with a higher GDP per capita and favorable public opinion, pass more LGBT rights on average. In addition, secular countries tend to have more LGBT rights compared to countries that have high levels of church attendance. This work has also addressed the effects of democracy, government ideology, and leftist governing style on advancing sexual minority rights. I have found that LGBT equality is mostly a partisan issue in Latin America with leftist governments more likely to reform heteronormative law. However, it is imperative to disaggregate the modern Latin American left when examining its influence. Democratic quality is one of the main dividing factors that separates the modern left and has helps explain the divergent outcomes of the left on LGBT rights. I find the institutionalized left has passed more aggregate LGBT rights than the populist left, save for the case of Argentina where populist President Cristina Kirchner supported the LGBT rights movement in passing same-sex marriage and the world’s most progressive gender
recognition bill. However, when exclusively assessing transsexual rights, the populist left has outperformed the institutionalized left.

I hope this research serves to better understand contemporary Latin American politics and society. The *Latin American Rights Index* is a useful tool that can be updated overtime, and this research, to the best of my knowledge, is the only study that statistically examines the effects of government ideology, leftist government style, and democratic quality on LGBT rights in Latin America. In addition, I believe this work brings needed attention to transsexual legal rights, a subject that has been less researched than gay rights.

To conclude, this work raises more potential research questions that scholars may want to explore. For example, it would be beneficial to take this research a step further by assessing the efficacy of these rights on improving the lives of gays and transsexuals. Furthermore, violence against gays and transsexuals is still prominent throughout Latin America, even in countries that have progressed in LGBT equality; It would be practical to research what drives these crimes and whether bias crime laws and other state action could mitigate these attacks. This research topic will have to be updated continuously as governments have already legislated more rights in 2017. For example, Peruvian LGBT activists recently succeeded in passing discrimination protections along with a gender recognition bill. The Latin American LGBT movement successfully reforming centuries of heteronormative laws despite the powerful religious opposition is nothing short of astounding. However, the struggle for equality does not end after the approval of a law, and progress is never guaranteed.
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