
Marriage, Same-Sex, in Latin America

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The history of the struggle to legalize same-sex marriage in the countries of Argentina, Brazil, Colombia, Mexico, and Uruguay.

Despite its reputation as a highly conservative region with strict gender roles and prominent *machismo*, Latin America has defied stereotypes in its implementation of same-sex marriage rights. Outside North America and western Europe, it is the region of the world where this right has been expanded the furthest. In effect, by early 2018, 80 percent of Latin Americans lived in a country in which same-sex marriage was accessible to all citizens.

Historical and Cultural Context

A genealogy of same-sex marriage in Latin America must take into account broader cultural and historical aspects of the regulation and understandings of sexuality in the region. While generally perceived as having rigid regulatory social and legal systems, sexuality in Latin America has historically been rather fluid. The colonial enterprise attempted to impose strict ideas about sexuality that were prevalent in Europe on societies that had very fluid understandings of sexuality and what amounted to appropriate sexual behavior (Williams 1986). However, because processes of postindependence state formation in nineteenth-century Latin America were characterized by top-down dynamics that were not completely successful in transforming preexisting social relations, a gap between expected social norms and their compliance has historically survived. Most countries instituted a separation between the dominant Catholic Church and the state in the mid-nineteenth century, and while the church has continued to play an important role in dictating and upholding social mores, adherence to these norms has for the most part been limited to the public sphere. A significant degree of sexual freedom in intimate personal relations has therefore survived. Freedom in personal sexual relations has been reinforced by criminal codes that, at least in most Latin American countries, have not criminalized homosexuality since independence. With few exceptions, such as Chile, Latin American countries modeled their criminal justice systems at independence after the 1804 Napoleonic Code, which did not criminalize homosexuality.

Sexual Rights

Given that consensual same-sex relations in Latin America have not been criminalized, even under military rule, the politics of sexual rights, unlike elsewhere around the world, have not revolved around struggles to expand the basic negative right to practice one's sexuality freely. Early efforts made by activists to wrest rights from the state focused on basic positive rights: the right of sexual expression. While homosexuality has not been a crime, during the late nineteenth and early twentieth centuries most countries enacted legal provisions that prohibited undertaking activities in public that would violate "morality and good customs" (Green 1999).

These provisions were generally adopted by municipalities and were systematically used by police forces to harass, detain, and extort homosexuals who violated the cultural norm of ensuring discretion in public. Within a generalized context of social mobilization in the region and abroad, Latin American homosexuals began to organize—as early as 1967 in Argentina—to demand an end to state violence and for the right to express one's sexual and gender identity in public. Inspired by mobilization in western Europe and North America, gay and lesbian movements not only began to force national debates on the legal regulation of sexuality, but they gained, in many countries, the right to demonstrate collectively. Starting with Mexico in 1979, gay pride parades began to be held in several countries across the region (de la Dehesa 2010). Even in countries (in Central America and the Andean region) with stricter regulatory systems and higher levels of intolerance, states began to allow gays and lesbians to socialize in public and commercial places, such as restaurants and bars, as a result of pressure exerted by activists.

Same-Sex Partnership Recognition

The evolution of sexual rights in Latin America has most obviously varied cross-nationally. However, in several countries, the enactment of same-sex marriage rights was preceded by the extension of socioeconomic benefits to same-sex couples, a process that was counterintuitively linked to the advent of the HIV/AIDS epidemic. As the epidemic reached its climax and started to take its toll, before antiretroviral drugs became available in the mid-1990s, partners of those affected in many cases were unable to access medical services, visit their loved ones on their deathbeds, or keep the material possessions they had built together. Because most welfare systems at the time, with few exceptions, did not offer universal coverage and were based on a patriarchal logic, family members could only have access to them through heads of households. Most gays and lesbians therefore lacked coverage. As a result, as early as the mid-1990s in countries such as Argentina, Brazil, and Mexico, gay activism managed to

wrest some medical, pension, and inheritance rights from the state (Díez 2015).

The logical next step, in the eyes of many activists, was to demand formal relationship recognition for same-sex couples through civil unions. After sustained mobilization in the face of stern opposition from socially conservative forces, subnational governments in three of the four federal systems—again Argentina, Brazil, and Mexico, with the fourth being Venezuela—extended same-sex civil union rights. Federal systems provided the opportunity to press for these rights in jurisdictions in which state and nonstate conservative opposition was weaker and policy processes more accessible, such as the cities of Buenos Aires and Mexico City and the Brazilian states of Rio de Janeiro and Rio Grande do Sul. In Brazil, the extension of these rights took place through the judiciary. In Argentina and Mexico, on the other hand, the enactment of civil union laws was accomplished by local legislative assemblies, though the laws were later challenged in the courts. Several other states followed suit, and by 2018 ten countries had enacted similar legislation.

Same-Sex Marriage

Following the approval of civil union rights, gay and lesbian activists in Latin America began to push for same-sex marriage with some of the strongest and most visible activism occurring in Argentina and Mexico. By early 2018, same-sex marriage had been approved in five Latin American countries: Argentina, Brazil, Colombia, Mexico, and Uruguay, comprising more than 80 percent of the region's population.

The processes by which these reforms occurred have varied and can be placed in three categories. In the first category are countries in which reform undertook a regular legislative process: Argentina (2010) and Uruguay (2012). In both countries, well-organized activists pushed for reform in national parliaments, and, after gaining support from sitting leftist presidents, reform was enacted, albeit with significant national debate. A characteristic shared by both countries is a lack of confessional parties and high levels of popular support for same-sex marriage.

Brazil and Colombia belong to the second category in which same-sex marriage rights were achieved through



Brazilian Gay Couple Celebrate Their Union at a Civil Registry Office in Jacarei, Brazil, in 2011. Same-sex couples in Brazil had been allowed to enter civil unions since 2004, but it was not until 2013 that they could legally marry. That year the Brazilian judiciary ruled that it was discriminatory to prevent same-sex couples from getting married and granted all civil unions marriage status.

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judicial processes. In both countries, significant opposition in national parliaments, mostly from socially conservative, religious politicians, repeatedly blocked any attempts at pursuing marriage rights through the regular legislative route. In Colombia, after the senate failed to comply with a ruling from the Constitutional Court ordering the congress to legalize same-sex marriage, the court ruled in 2016 that all Colombian couples, regardless of gender, could access marriage. Brazil's legalization effort followed a two-step process through the judiciary. In 2011 Brazil's supreme court ruled—based on lower-level court decisions that had granted civil union rights to same-sex couples—that marriage rights should be expanded to the entire population. Brazil's National Justice Council (a court of cassation) followed suit and, in 2013, ruled that civil unions were discriminatory because they established an alternative system for gays and lesbians. The court thus ordered all civil unions in Brazil to be granted marriage status.

Mexico, given its unique type of federalism, represents a third, hybrid, category. Mexico is the only country in the region in which family law is administered by subnational levels of government. As a result, same-sex marriage reform has been both fragmented and judicialized. The approval of same-sex marriage in Mexico City in 2010 was followed by a strong backlash both from several states and from the federal government, which pushed the issue to the judiciary. After a complex process involving the granting of civil judicial injunctions called writs of *amparo*, Mexico's supreme court issued a series of rulings on same-sex marriage. These involved the upholding of Mexico City's reforms; the legal obligation of all states to recognize marriages performed in Mexico City; the unconstitutionality of explicit prohibitions of same-sex marriage by states; the granting of individual *amparos* to numerous same-sex couples, setting precedents in certain states; and, finally, in 2016, ordering all judges in the country to concede any *amparo* submitted by any same-sex couple.

Explanations and Prospects

The speed and scope with which same-sex marriage politics has unfolded have attracted a great deal of scholarly attention, most of which has focused on explanations for why same-sex marriage has been approved in some countries and not others. Political science research points to several factors. First, there appears to be an important association between levels of economic development and support for same-sex marriage. While public opinion does not always translate into policy, same-sex marriage has generally been approved in the countries that are most economically developed and that show the highest levels of support for such reforms (Corrales 2015). Research also shows that activism and well-organized, visible gay and lesbian social movements

have been the main drivers behind reform (Encarnación 2016), and it should come as no surprise that same-sex marriage is legal in countries in which these movements are oldest. Argentina, the first country to have adopted same-sex marriage, saw the formation of the region's first homosexual organization, *Nuestro Mundo* (Our World), in 1967. However, mobilization is not sufficient: the building of alliances with both state and nonstate actors has also been important (Díez 2015).

Scholarship also shows that three political institutions are important to understanding cross-national variation in same-sex marriage recognition. Federalism has allowed activists to access policy arenas in which favorable conditions exist, even when national forums are closed to them. This was the case in Brazil and Mexico (Marsiaj 2006). In addition, the existence of moderate, socially progressive political parties seems to be key in same-sex marriage recognition. In contrast to the more confrontational leftist parties found in countries such as Nicaragua and Venezuela, moderate parties like those in Brazil and Uruguay have provided important allies that have helped push for marriage reform (Corrales 2015). The third institutional factor has been the existence of strong and autonomous courts that have allowed for policy reform when legislative routes were blocked (Schulenberg 2012). In several countries in the region, socially conservative actors have gained strong political representation in national parliaments, making them what political scientists call "veto players." These actors, associated for the most part with evangelical and Catholic groups, have been very successful in blocking legislative reform. However, these veto players have been circumvented in countries with strong judiciaries, such as Colombia and Brazil, where activists have been successful in persuading courts to declare traditional definitions of marriage unconstitutional. Same-sex marriage, then, is more likely to be approved in countries in which a combination of these factors exists.

The future of same-sex marriage in Latin America took an unprecedented turn in early 2018 when the Inter-American Court of Human Rights opined, upon a reference submitted by the Costa Rican government, that same-sex marriage is covered by the regional Convention of Human Rights and, as such, should be extended to all citizens. The ruling was binding for all twenty-four signatory countries and paved the way for making same-sex marriage a reality throughout the region. However, given the strong opposition in countries in which same-sex marriage has not yet been approved, governments are likely to ignore the ruling. As a result, a process of international judicialization is likely to unfold over the issue of same-sex marriage in Latin America.

SEE ALSO *Argentina's Gender Identity Law; HIV/AIDS in Latin America and the Caribbean; Human Rights and*

Marriage, Same-Sex, in Taiwan

Activism in Latin America; Marriage, Same-Sex, in Taiwan; Marriage, Universal, in Europe; Marriage, Woman-Woman, in Africa; Marriage Migration in Asia; QT v. Hong Kong Immigration Department (2017)

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Marriage, Same-Sex, in Taiwan

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The path to LGBT marriage equality in Taiwan, which became the first Asian country to recognize this right in 2017.

On 24 May 2017 the Justice of the Constitutional Court in the Judicial Yuan in Taiwan ruled that it is against the constitution to bar same-sex couples from getting married. This ruling in favor of same-sex marriage is regarded as a landmark decision for LGBT movements both regionally and globally. In the domestic sphere, the ruling not only extends the freedom to marry to nonheterosexual citizens of Taiwan but also emphasizes the equal rights of citizens regardless of sexual orientation. In the global context,

media outlets often highlight the fact that Taiwan is the first country in Asia to legalize same-sex marriage because the ruling presents a historic moment for marriage equality movements across continents and encourages LGBT movements in other Asian countries.

Background of Activism on Legalizing Same-Sex Marriage

Although some social recognition of same-sex partnerships or nonheterosexual family units can be identified at various time periods and among different ethnicities in Taiwan, the Civil Code recognizes marriages only between a man and a woman. This legal recognition privileging heterosexual couples rendered sexual minorities largely unseen in the governmental domain. Although the law never explicitly targeted and punished sexual minorities, the legal invisibility of sexual minorities still functioned as a kind of punishment by denying the existence and needs of sexual minorities.

In 1958 a lesbian couple first challenged the law by applying for a marriage license at the Taipei District Court, but the court rigidly decided that marriage was a union between a man and a woman. In 1986 Chia-wei Chi and his male partner also applied for a marriage license, and their case was also denied for the same reason. In response to Chi's petition, the government maintained that "homosexuals are rare cases of abnormal deviants who mainly seek to satisfy their sexual desires against social morality" (quoted in Chien 2012, 188; translation by Hoching Jiang).

Although same-sex marriage did not become a major topic of social debate in Taiwan until the second decade of the twenty-first century, local LGBT movements and organizations have been growing in response to various incidents related to LGBT experiences since the 1990s. Over the years, the topic of same-sex partnerships and marriage recognitions arose sporadically in public discussions. For example, the anthropologist Chi-nan Chen wrote an opinion piece in 1985 discussing the diversity of traditional marriage practices such as "ghost marriage" and arguing for the legalization of same-sex marriage (Chen 1986, 39–42). The Taiwanese filmmaker Ang Lee won several major awards for his works *The Wedding Banquet* (1993) and *Brokeback Mountain* (2005), both of which have explicit queer content. While his films did not directly address same-sex marriage, they encouraged public conversation and raised awareness of LGBT rights. In addition, an abundant number of literary works addressing same-sex sexualities have been published since the 1990s (Chi 2017), such as *Eyu shouji* (1994; *Notes of a Crocodile* [2017]) by Qiu Miaojin and *Mo* (1996; *Membrane*) by Ta-wei Chi.

The writer Yu-sheng Hsu and his same-sex partner openly held their wedding in 1996, and many celebrities