

The Evolution of Marriage Equality as a Policy Issue and as a New Social Norm in Latin
America

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The central question my research will address is the following: how has the issue of marriage equality evolved differently among Latin American countries and to what extent does it still remain contentious? The case studies I will explore are Argentina and Mexico. For each country, I will explore four areas: (1) early gay organization; (2) the emergence of marriage equality as a policy issue; (3) social context; and (4) the enactment of marriage equality. While the majority of my research focuses on the years from about the beginning of the 21st century to the present, I will often revert to decades that precede this time period to discuss early activism and other historical factors.

Argentina

Early Gay Organization

Argentina is home to Latin America's oldest gay and lesbian movement. In response to heterosexist prejudice and repression, Argentine homosexuals began organizing in the late 1960s. In 1967, a group led by Héctor Anabitarte founded *Nuestro Mundo*, Latin America's first gay and lesbian organization. They emerged during a period of strong leftist mobilization in Argentina. Anabitarte was a communist himself, but he was kicked out the youth wing of the party for being gay (Díez 2015, 75-77).

Nuestro Mundo's early activity was short-lived. The group was forced to go underground after the Perón government began utilizing paramilitary groups to subdue social unrest. After Isabel Perón was overthrown, the military dictatorship that followed set out to eliminate the opposition in a brutal, unprecedented way (Díez 2015, 78-79). The opposition had provided the environment that allowed homosexuals to speak out for the first time in Argentina. The coup turned out to be extremely devastating for the gay movement. The regime considered them left-

wing subversives that needed to be eliminated. An estimated 400 gay people vanished and were subject to terrible physical abuse by their captors. They harassed, imprisoned, tortured, and murdered homosexuals in what is now considered the darkest time in Argentina's history (Tremblay 2011, 15).

In 1983, just after President Raúl Alfonsín had been sworn in as the newly democratically elected president of Argentina, a large number of homosexuals were arrested in a club called Balvanera. The raid sparked the creation of the Comunidad Homosexual Argentina (CHA). This time activists were inspired to mobilize amidst increasing democratization in the region. They were featured in a widely-publicized magazine cover story that garnered lots of media attention and galvanized the gay community. Membership within the CHA grew quickly. More people felt compelled to share their story in hopes that outsiders would somehow sympathize with the community (Tremblay 2011, 15-16).

The movement grew steadily through the 1990s and won a few noteworthy victories in Buenos Aires. In 1998, they successfully pressured the city to adopt anti-discrimination policies on the basis of sexual orientation. The city had newfound autonomy as a result of the 1994 constitutional reforms. The reforms were the byproduct of negotiations between President Carlos Menem and leaders of the Radical Party, commonly known as the Olivos Pact. The Radical Party leadership agreed to permit presidential reelection in exchange for allowing Buenos Aires to be more independent. The move required the city to draft a new constitution which gave gay rights activists their opening (Díez 2015, 113-114). They also oversaw the removal of detainment policies previously used by the city's police. No one could be apprehended for merely being gay in Buenos Aires anymore. Lastly, taking advantage of a divided elite political class during the economic crisis of 2001, gay rights leaders were successful in passing civil unions in the city in

2002. The move was groundbreaking at the time. Buenos Aires was the first in all of Latin America (Tremblay 2011, 16).

The Emergence of Marriage Equality as a Policy Issue

A key split among gay right leaders appeared during the Buenos Aires victory in 2002. Viewing themselves as realists, the establishment CHA had decided to only pursue civil unions on the national level. Some activists who thought the movement should be seeking marriage instead broke from the CHA in 2007 and joined a new organization, the Federación Argentina de Lesbianas, Gays, Bisexuales, y Trans (FALGBT). Funding for the new group was largely drawn from Spanish NGOs who saw marriage equality as a worthwhile policy objective in Argentina (Tremblay 2011, 16-17). FALGBT argued that civil unions at both the local and provincial level do not provide equal rights when compared to the civil code of law. Gays and lesbians were effectively being denied rights such as adoption and inheritance (Pierceson 2010, 62). Nonetheless, civil unions in Buenos Aires sent shockwaves through the rest of Argentina. Several provinces and cities tried to pass their own laws, but most of them failed. Only one city, Villa Carlos Paz, was successful. The reason why advocates had trouble replicating the victory in Buenos Aires was because the gay and lesbian movement outside of the city was far weaker. Their inability to mobilize effectively hindered their visibility on the political scene (Díez 2015, 123-124).

Social Context

In Argentina, gays and lesbians were still denied rudimentary political and civil rights well into the 1990s. For instance, homosexuals were strictly limited in their freedom to organize under the law. It took nearly a decade after the establishment of the new democracy for the

Argentine government to recognize the CHA, giving them the right to lobby and raise money. In Buenos Aires Province, an archaic law banning homosexuals from voting remained on the books until 1990 (Encarnación 2011, 107).

Today, attitudes toward homosexuals and marriage equality in Argentina is among the most positive in Latin America. In 2013, when asked if society should accept homosexuality, 74% of those surveyed in Argentina responded yes while only 21% responded no (“The Global Divide on Homosexuality” 2013, 1). In 2014, on the issue of marriage equality, support hit an all-time high at 52%. Argentina was second only to Uruguay and was one of only three countries in Latin America to have approximately 50% support. Support among Catholic in the country was one point higher at 53% (“Religion in Latin America: Widespread Change in a Historically Catholic Region” 2014, 21).

The Enactment of Marriage Equality

In the late 2000s, there was a push to try to get marriage equality on the public agenda. The first fruits of this effort came through the courts. In early 2007, proponents launched a legal strategy to try and force the court’s hand. It was collaborative effort by prominent attorneys, scholars, and activists. They tried to target judges they thought would be more supportive of the cause. In February, one of leaders of the team applied for a marriage license with her partner in Buenos Aires. Once they were denied, they filed for an amparo, a way for citizens to have their case reviewed for constitutional rights violations. The case eventually made its way to the Supreme Court. By late 2009, about sixty other cases had made the same journey which caught the media’s attention. The strategy had worked in the judiciary. After two years, marriage equality had reached the public agenda (Díez 2015, 131-133).

In November of 2009, a judge in Buenos Aires ruled unequivocally in favor of a gay couple seeking a marriage license. The judge said that by denying the plaintiffs, Alejandro Freyre and José María di Bello, a marriage license violated equal protection by the state and the Buenos Aires constitution which prohibits discrimination on the basis of sexual orientation. The conservative mayor of the city, Mauricio Macri, chose not to appeal the ruling. On the eve of Freyre and di Bello's wedding day, another judge issued an injunction and ordered the city not issue the certificate. He justified the injunction by claiming that the first judge didn't hold the experience to rule on matters of the civil registry. Ultimately, the governor of Tierra del Fuego, a progressive woman, intervened and ordered that her province honor the ruling made by the first judge. Later that month, Freyre and di Bello travelled to Tierra del Fuego and became the first married gay couple in Latin America (Díez 2015, 135-136).

In 2010, Argentine President Cristina Fernández de Kirchner announced her support for marriage equality as activists became adamant in forcing public figures to take a stand on the issue. Catholic and Evangelical groups began asserting themselves as part of the opposition quickly after they saw the dominoes begin to fall. Proponents tried to shape the debate as a human rights issue, consciously making an allusion to Argentina's dark past (Díez 2015, 136-139). When the legislation arrived for consideration in the lower house of Congress, the debate lasted twelve hours. In May 2010, by a vote of 126 to 110, marriage equality passed the Chamber of Deputies and, in July, it was approved by the Senate, 30 to 27 (Díez 2015, 145-150).

Mexico

Early Gay Organization

Inspired by successful social mobilization in the United States and Europe, activist groups began organizing to challenge attitudes towards social norms in the late 1960s and early 1970s. These groups were primarily led by students involved in countercultural movements that sought sociopolitical change on issues such as women's rights and access to contraceptives. This consolidation of anti-establishment sentiment followed increased urbanization and literacy in Mexico's post-World War II era, commonly referred to as the Mexican Miracle. This environment motivated early gay rights activists to take advantage of a changing social landscape (Díez 2015, 85).

The earliest visible movement on the issue of gay rights in Mexico can be traced back to the Movimiento de Liberación Homosexual, the country's first gay and lesbian group. The organization was formed in 1971 when founders Nancy Cárdenas and Luis González de Alba wanted to correct some of the oppression and stigmatization of homosexuals in Mexico. It was largely in response to a focusing event where an employee at Sears Roebuck was fired for having a "homosexual demeanor" (Díez, 2015, 85).

In the subsequent decade, like in the United States, negative stigmatization of gays and lesbians in Mexico was intensified by the HIV/AIDS epidemic. In the early the 1980s, the gay rights movement had achieved some success in that it had finally become visible on a national scale. However, unlike the movement in Argentina, Mexican activists had lost their momentum by the mid-1980s. Economic crisis during this time forced many young leaders to move back in with their families where expressing radical ideas on sexuality may not have been acceptable. Infighting among leaders about the method and pace at which they should pursue change led to organizational fracturing (Díez 2015, 91). While these are helpful in explaining the abrupt halt in the movement's energy, it doesn't account for the social dilemma that was the ultimate crux

behind this setback. HIV/AIDS forced the movement to change its focus from maintaining their newly acquired public space to taking care of their own who were infected with the disease. It took the lives of many gay activists including key leaders. (Díez 2015, 91-92). It also unleashed a large conservative backlash against the community. The Catholic church was an important player in capitalizing on the suppression of the gay movement during this time. On August 31, 1985, the Apostolic Nunciature to Mexico said “AIDS is the punishment that God sends to those who ignore the laws” (Díez, 2015, 92). Widespread ignorance about HIV/AIDS gave Mexican Catholics no reason to rebuke such comments.

The movement eventually recovered as the pandemic eased. By the early 1990s, the Mexican movement was not as strong as their counterpart in Argentina, but it began to pick up steam as medical treatments became available for patients (Díez 2015, 97-98). They entered a second wind of activism that remains relevant today.

The Emergence of Marriage Equality as a Policy Issue

Marriage equality entered the country’s national consciousness through Mexico City. In February of 2001, Enoé Uranga, one of the first openly lesbian members of the federal district’s Legislative Assembly, introduced a piece of legislation that would have legalized same-sex unions. Inspired by the French, the objective of the law was to grant the rights of alimony, inheritance, and tenancy to gays and lesbians (Potts 2013, 83). Uranga is a member of the PRD, Mexico’s largest center-left/left-wing political party. It is important to note that the party was not completely aligned with Uranga at the time. While the PRD’s majority in the Legislative Assembly ultimately allowed for Mexico’s first same-sex marriage victory in 2009, its history with the issue is not congruent with left-leaning parties in other liberal democracies. The party was not yet cozy with the gay rights movement. For example, it was Andrés Manuel López

Obrador, a former PRD presidential candidate, who blocked the approval of Uranga's proposal when he served as Head of Government of the Federal District (Potts 2013, 83). The PRD later became an ally of sorts, working for change only during opportune times politically (Pierceson 2010, 130).

After the 2006 elections, the political landscape shifted enough to finally realize some of the changes that the activists had sought. In northern Mexico, Coahuila became the first state to legalize civil unions. The very first couple to register for a "civil solidarity union" did so in Coahuila ("Out of the Closet" 2007, 60). Mexico City was next in line. Marcelo Ebrard Casaubón, a progressive politician, was elected mayor and he publicly endorsed civil unions. This coincided with a strong election performance by Mexico's Social Democratic Party. The new legislative body consequently had enough support to pass a civil union bill and did so two months after the start of the legislative session (Díez 2015, 162).

Social Context

In Mexico, traditional gender roles are deeply rooted and homophobic attitudes ran high when the discussion of civil unions broke out on the political scene. Between the years 1995 and 2000, Mexico ranked second in the Western Hemisphere in the number of hate crimes committed against lesbian, gay, bisexual, and/or transgender (LGBT) people. During this time period, there were over 275 gays and 15 lesbians murdered and the culprits were never brought to justice (Pierceson 2010, 130). Though public sentiment about gays and lesbians improved in the next decade, it still remained largely negative. A nationwide poll from March 2007 revealed that 53.5% of Mexicans would not live in the same house as a gay man. 51.7% said they would not live with a lesbian. 46% said that if their child was gay, they would prefer not to meet their same-sex partner (Pierceson 2010, 130).

Sociologists argue that one underlining cause for this homophobia is a strict adherence to masculinity, also known as machismo. Marina Castañeda Gutman, a respected psychotherapist and lecturer based in Mexico City, studied the effect of machismo in Mexico. She concluded that it is deeply entrenched within national institutions and its values significantly influence social and political debate (Pierceson 2010, 130). That appears to be the case historically with gay rights and presently with the issue of marriage equality – both of which have been viewed by some as an affront to the social norms of machismo.

Today, public opinion on marriage equality tells a slightly different story. Mexico is one of only three states in Latin America where roughly half or more of the population supports same-sex marriage. It only trails behind Uruguay (62%) and Argentina (52%). Support among Mexicans has even outpaced support among Hispanics in the United States (49% to 46%) which is noteworthy because Latin Americans are generally more conservative than Hispanic-Americans when it comes to social and sexual customs (“Religion in Latin America: Widespread Change in a Historically Catholic Region” 2014, 21).

The Enactment of Marriage Equality

Strong opposition by the Catholic Church and the PAN, Mexico’s largest center-right/right-wing party, made the prospects of marriage equality seem bleak at best in the early 21st century. Their obstruction was the reason why pro-gay activists and policymakers opted to fight for civil unions in the beginning instead of marriage (“Out of the Closet” 2007, 60). In that fight, conservative Catholics were not in the mood to compromise. Throughout the 19th and 20th centuries, the ruling party established a secular government in accordance with the Mexican Constitution. They tried to contain the power of the Catholic Church through a series of restrictive measures that included barring the church from owning property and banning priests

from political activities. These measures eventually eroded under the leadership of the PRI in the late 20th century. The church made even more progress with the rise of the PAN in the 2000 election. By the end of the next decade, conservative Catholics had permeated all levels of the administration including critical decision-making positions (Lemaitre 2012, 499). This created serious roadblocks for marriage equality.

After negotiating and striking a series of deals, members of the PRD successfully gathered enough votes in Mexico City's Legislative Assembly to put marriage equality on the agenda in 2009 (Díez 2015, 175). The bill was introduced by Assemblyman David Razu and on December 21st, it passed by a vote of 31 to 20. Before it even passed, PAN leaders vowed to fight the new law through referendum and the courts. The Legislative Assembly rejected the PAN's referendum proposal. Six conservative states subsequently challenged the law in the courts in fear that they would be forced to follow suit. However, the Supreme Court had attempted to quell such fears by setting precedence in a separate case involving abortion laws in Mexico City, saying that the Court's ruling had no bearing on laws outside of the federal district (Unzelman 2011, 135). In 2010, Mexico's Attorney General, a conservative Catholic named Arturo Chavez, also began legal proceedings against the law, but the Supreme Court ultimately upheld it (Lemaitre 2012, 500). In the Chavez case, the Court concluded that matters of marriage are governed by civil law; therefore, Mexico City was entitled to define marriage as it deemed appropriate (Unzelman 2011, 135).

Today, marriage law remains fragmented among states in Mexico. Only a few states have fully legalized same-sex marriage, but since 2010, all states are required to recognize marriages performed lawfully in states that do permit it (Agren 2010). Santiago Ballina, a freelance writer and former analyst at the Mexican Ministry of Foreign Affairs, described the events that led to

the adoption of gay marriage as “less close to the romantic vision of forces of enlightenment prevailing over backwardness” and more like “a nervous stuttering with occasional victories” (Potts 2013, 83). While this may be an accurate characterization, the narrative may change as more cases reach the Supreme Court. Because of the precedent already set in favor of marriage equality, a national mandate is foreseeable in the near future (Díez 2015, 195).

Conclusion

The central question I have attempted to answer through this research is the following: how has the issue of marriage equality evolved differently among Latin American countries and to what extent does it still remain contentious?

The way marriage equality evolved in Argentina and Mexico appears to be quite different. Argentina’s path to marriage equality was more effective and has reaped better results in that its policy is not fragmented among provinces like it is among Mexican states today. Argentina legalized same-sex marriage nationwide within a year of the first marriage license being issued. Mexico, on the other hand, has only been able to force states to recognize marriages issued in states where it is legal. Generally speaking, Argentina’s momentum has been much greater than that of Mexico’s. It is evident in the fact that Argentina was the first country in all of Latin America to fully embrace marriage equality.

As for measuring the extent to which the issue remains contentious, two factors come to mind. The first is opinion polling. The two case studies in my research constitute two of the top three countries in favor of marriage equality in Latin America. Therefore, it would be inaccurate to make any larger generalizations based on those two alone. The second factor is the degree to which the opposition is still fighting marriage equality in Argentina and Mexico. Because

Argentina has already legalized same-sex marriage nationwide, the opposition will be more of a consideration for Mexico making it more contentious.

One fascinating commonality that was shared by movements in both Argentina and Mexico was that they both had at least one focusing event that helped bring gay rights into the mix of their respective civil rights debates. For Argentina, it was the raid on the Balvanera. For Mexico, it was the firing of the Sears Roebuck employee. An analogous event in the United States would be the Stonewall Riots of 1969. All of these events appear to be important when trying to recruit other LGBT people and allies to the cause in the moment, but in terms of history, they are important as well because they provide perspective on the social movement itself.

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