

The Reconstruction of Citizenship and the Politics of Exclusion: The Case of the LGBT Rights in Latin America.

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ABSTRACT

Constructivist and Queer theories allow us to understand and resist the creation of social structures and constructs, which are often misunderstood or disguised as natural occurrences, and thus perpetuated by their interaction with systems of knowledge production. Such are the case of citizenship and heteronormative sexuality.

Both historical traditions of citizenship have a built-in heteronormative component, which at the same time is utilized to promote homophobia and political exclusion. This exclusionary process is even more accentuated in Latin America where colonial structures of power served to the creation of highly hierarchical and elitist societies.

Pervasive homophobia in Latin America is the result of the society interaction with heteronormative constructs of citizenship, masculinity and sexuality. These constructs first condemned non-conforming sexualities, but later made them invisible by omission. Such invisibility was institutionalized via legalities, and has been challenged repeatedly.

Human Rights discourse is the latest taxonomy under which LGBT rights are framed. While productive, such a perspective is criticized because of its perpetuation of heteronormative precepts and exclusionary nature. Queering citizenship (as in to promote non-prejudice and non-identity-based politics) serves as an alternative interpretation and resistance strategy.

Brazil, Mexico and Argentina provide precise examples scenarios and approaches to the advancement of LGBT-inclusive policies; always remembering the contextual nature of both citizenship and its politics of exclusion.

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INTRODUCTION

The inclusion and protection of minority groups is considered to be one of the hallmarks of liberal democracy. In Latin America and the Caribbean however, a region renowned as the most unequal in the world¹; the struggle facing sexually-diverse populations for the vindication of their rights and responsibilities, while urgent and just; continues to be blatantly dismissed. The advancement of rights for sexually-diverse populations is largely considered post-material and is overshadowed by struggling alongside racial and class-based claims in what seems to be a sea of institutionalized prejudice. Moreover, a rough transition to nationhood and eventually to democracy, as well as the role of prevailing effects of colonial dynamics of power; has helped entrench a concept of citizenship that is heavily informed by political clientelism and elitism.

However; in recent years Lesbian, Gay, Bisexual and Transgender (LGBT) populations have gained considerable legal and political ground in Latin America. The LGBT Rights movement has developed strategies in order to challenge the subordinate positions they have been forced to occupy, and have accordingly begun to build their own spaces within the public sphere. A central theme of this struggle is the assertion of advocacy for the rights to sexual diversity and gender identity as part of the larger and universal discourse of human rights. There is therefore an increasing need to understand the underpinnings of this process of

¹ UNDP, 2010. p.16.

how citizenship is constructed as the region moves towards diversity and inclusion via the protection of minority groups under state polities and institutions.

At its core, the LGBT Rights movement currently battles normalized notions of citizenship that are heteronormative. Thus, the idealization of heterosexual relationships as the norm via procreation becomes a common theme for systematic and institutional disenfranchisement of LGBT people. Although most Latin American nations have subscribed to international human rights declarations and resolutions which protect individuals from discrimination based on sexual orientation and gender identity; and moreover, many countries have enshrined these rights under their constitutions; on the ground these dispositions appear ineffective and anecdotal as cultural attitudes and institutional discrimination operate as the law of the land. Nevertheless, as universalizing discourses continue to include the struggles of LGBT populations as part of a larger-scope umbrella of human rights, this heteronormativity will most likely continue be challenged.

As attitudes and perceptions of sexual diversity continue to change, state polities are bound to follow suit. This is especially important in impoverished countries where social/political inclusion has become central to exiting developmental efforts, which I argue; must go beyond gender equality and disease prevention and move into more politically offensive strategies to become truly effective. I hope to offer some insight into how these transformative

processes occur as I consider them inexorable, thus; there is an understandable urgency for the creation of state policies to address them.

Through the lens of Constructivist theory I expect to shed light upon how systems of oppression are normalized through a normalized notion of citizenship. I attempt to highlight the idea that citizenship is not a “natural” idea, but an invented concept that shifts with economic, political and social changes. The idea of citizenship as a discourse is central to the utilization of this structure as a tool for systematic exclusion. Queer Theory will serve as my theoretical leverage in elaborating a critique of these narratives and possible resistance approaches to overcome them. My ultimate goal is the creation of a multifaceted approach for the advancement of sexual (queer) citizenship, which will highlight the strategies that have been proven fruitful in the region, but also promotes the idea of self-criticism and the inclusion of new alternatives to strengthen the successes already achieved.

Furthermore, I intend to contribute towards an understanding of the construction of citizenship as a tool to implement policies towards a reconstruction of this institution as a tool for political and social inclusion to non-conforming population. Policy recommendations reflect these objectives and are expressed in an open, non-conclusive manner as these issues continue to evolve.

THEORETICAL FRAME:

I. Constructivist Theory:

We should begin by stating that when referring to Social Constructivism we are alluding to a group of theoretical works, interpretations and practices that although cohesive, possess at the same time a wide array of different perspectives, interpretations and practices; which makes it difficult to compile it into just one theoretical approach. In fact, more than a theoretical frame Constructivism is a "way of studying social relations – any kind of social relations. While it draws from a variety of other ways of studying such a broad and complex subject, it stands on its own as a system of concepts and propositions. Constructivism is not a theory as such. It does not offer general explanations for what people do, why societies differ, how the world changes."² One could say then that Constructivism is a sort of approach, an epistemology that gives us a way to understand social phenomena: a theory of theories.

A common agreement amongst the different Constructivist approaches is the conception of knowledge not as a mere reflection of a preexisting reality, but rather as a dynamic process through which external information is interpreted and re-interpreted by the subject, who then builds patterns of meanings that progressively become more complex and powerful. "Reality is socially constructed"³ seems to be the central axiom of this epistemology.

² Onuf, N., Kubáľková, V., & Kowert, P. 1998. p. 58.

³ Berger, P. L. & Luckmann, T. 1966. p. 13

Constructivism has been deemed as theory as "ideation" as it breaks away from the prevailing materialist approach present both in positivism and behavioralism. As Jackson and Sorensen explain: "according to constructivist philosophy the world is not a given: it is not something 'out there' that exists independent of the thoughts and ideas of the people involved in it. It is not an external reality whose laws can be discovered by scientific research and explained by scientific theory as positivists and behavioralists argue. The social and political world is not part of nature."⁴

Monica Salomon explains that the focus on the fact that all ideas, including those that shape international relations; are socially constructed is a common characteristic of what she calls *reflectivist approaches*. She goes further explaining that Constructivism "is not an international relations theory. This illustrates the approach used by Constructivists towards theorizing: they tend to prefer a kind of theorizing that is more inductive and interpretative, rather than deductive and explanative."⁵

Knowledge is then understood as the result of the resources used by people in everyday life to construct a social reality, as well as the theories, concepts, meanings, and symbols which scientists use to interpret such social reality. This social reality emerges from the interaction between knowledge and the material world, and none of them is invariable through time.⁶

⁴ Jackson, R. & Sorensen, G. 2007.p. 164

⁵ Salomón, M. 2002. p. 31

⁶ Adler, E. 2003. p. 95.

This construction of reality does not happen in a vacuum. It happens within a context that allows for the interpretation of actions, behaviors, or phenomena which is being perceived and observed according to preexisting social and cultural patterns. The fundamental premise of Constructivism then is that we humans are social beings, and therefore would not be human without social interaction. There is a reciprocal process of construction between people and society.

In this regard, Berger and Luckmann argue that the most efficient method to clear the fundamental of knowledge is phenomenological, a purely descriptive method, and as such empirical and not scientific.⁷ Therefore, consciousness is always intentional. We are able to understand reality through the models that we built to explain it, which in turn are always susceptible to change and/or replacement.

Context creates the actors, which in turn create the context; there is however, a third factor that functions between them: the norms through which they interact. These patterns inform the subject about what to do and how to act, what is acceptable and what is to be expected, as well as how to value certain behaviors and beliefs. Onuf et. al. explain that these norms or rules indicate to us who the active participants in society are, who are called "agents" and who will play their role according to each specific situation: "among much else, rules tell us who the active participants in a society are. Constructivists call

⁷ Berger, P. L. & Luckmann, T. 1966 p. 37

these participants agents. People are agents, but only to the extent that society, through its rules, makes it possible for us to participate in the many situations for which there are rules. No one is an agent for all such situations.”⁸

While the origins of the Constructivist theory can be traced back to Kant; its inception in international relations theory is fairly recent. Salomon observes that the term Constructivism referring to an alternative theory to those already existing in the field of international relations was coined by Nicholas Onuf in 1989 in his book *World of Our Making*. Nevertheless, Salomon argues that the most representative author of Constructivism is Alexander Wendt.⁹

According to Wendt, “social structures have three elements: shared knowledge, material resources, and practices. First, social structures are defined, in part, by shared understandings, expectations, and knowledge. These constitute the actors in a situation and the nature of their relationship, whether cooperative or conflictive.”¹⁰

Particular meanings become stable over time, creating social orders that constructivists call structures or institutions. Social rules and norms set expectations about how the world works, what types of behavior are legitimate, and which interests or identities are possible. Klotz and Lynch called this interaction *mutual constitution* between structures and agents¹¹. Both exclusive binary gender sexuality and the heteronormative aspect of citizenship are

⁸Onuf, N., Kubáľková, V., & Kowert, P. 1998. p. 60.

⁹Salomón, M. 2002. p. 32

¹⁰Wendt, A. 1995. p. 72.

¹¹Klotz, A. & Lynch, C. 2007.p. 7.

therefore constructs that have eventually become normalized social structures, as they are defined and reinforced by social discourses that in turn create agents that take a life of their own as mutually depending claims. "These components of our political, social, and moral struggles become, quite literally, embodied, incorporated into our very physiological being and in turn shaping our cultural environment."¹²

Citizenship according to Carver and Mottier is a structure and "a moving metaphor for 'belonging', and 'inclusion' that is deployed at different times for various purposes".¹³ It is another exercise in the power/knowledge game in that it is disciplinary and productive at the same time in terms of social relationships. Any structure distributes advantages and disadvantages. Similarly, Constructivist theorists contend that "physically identical sexual acts may have different social and personal meanings depending on how they are defined and understood in their different cultures and historical periods".¹⁴ Knowledge is manufactured in a contextual fashion. Besides influencing the way individuals define and act on their behaviors, socio-historical constructions also "organize and give meaning to collective sexual experience through, for instance, constructions of sexual identities, definitions, ideologies, and regulations".¹⁵

Michelle Foucault argued that sexualities are "constantly produced, changed, modified, and the nature of sexual discourse and experience changes

¹² Fausto-Sterling, A. 2000. p. 5.

¹³ Carvier, T. & Mottier, 1998. p. 16.

¹⁴ Vance, C. S. 1991.p. 875.

¹⁵ Idem. p. 876.

accordingly.”¹⁶ which may explain the ever-expanding notion of citizenship and the ability of agents to in fact overturn systems of knowledge production, norms and identity. Moreover, Klotz and Lynch explain that within the simultaneity of the interaction between agents and structures; there are conscious and unintended replication and challenging of prevailing assumptions and institutionalized routines, which is in essence the epicenter of social movements.

Within the Constructivist school, and particularly concerned with the construction of sexuality and gender relations; Queer theory offers the adequate framework to understand and challenge the prevailing construction of sexuality and its normalization within the concept of citizenship. This theory offers a set of tools that may be extremely useful as we attempt to reconstruct institutions as a conduit to advance social justice and human rights movements.

¹⁶ Foucault, M. 1978.

II. Queer Theory:

Queer theory is a non-conforming theoretical frame that sprung from Feminist theory and flourished during the 1990s. Queer theory seeks to re-assess sexuality beyond binary-gender notions and advocates for the rejection of the adoption/internalizing of heterosexual narratives as means for inclusion. Unlike Feminist theory, Queer theory does not focus primarily on gender when assessing sexual citizenship; but rather on the "marginalization of particular sexual practices and those who engage in them."¹⁷

Both the lesbian and gay movements were committed fundamentally to the notion of identity politics in assuming identity as the necessary prerequisite for effective political intervention. Queer, on the other hand, exemplifies a more mediated relation to categories of identification. The works of authors such as Louis Althusser, Sigmund Freud, Ferdinand de Saussure, Jacques Lacan and Michel Foucault, had problematized the suggested logic behind the notion of identity leading the way for Queer theory to emerge. Queer theory sees sexuality not natural but "discursively constructed"¹⁸.

Queer theory offers a three-fold critique to the dominant construction of gender and sexuality that includes the concepts of heteronormativity, performativity, and liminality. Heteronormativity refers to the use of

¹⁷ Eichen, M. 2009. p.4.

¹⁸ Sullivan, N. 2003 p.1.

heterosexuality as the norm for understanding gender and sexuality¹⁹. Performativity describes how individuals create genders and sexual identities through everyday behaviors or performatives. "As such, an individual's gender and sexuality do not exist before she or he performs them; they are not predetermined by physiological sex or attraction to a specific gender."²⁰ . Finally liminality refers to a "resistance strategy in which elements of heterosexuality and nonheterosexuality are incorporated into one identity that rejects normalized definitions of either heterosexuality or nonheterosexuality".²¹

The word *queer* itself has gone from being a pejorative term targeting gender and sexual non-conformist, to "resist or elide categorization, to disavow binaries (that is gay versus straight, white versus black) and to proffer potentially productive modes of resistance against hegemonic structures of power."²² What was intended to be a revival of Feminism, created instead a new framework to understand the malleability of all identity claims including heterosexuality.

Michael Warner's 1991 *Fear of a Queer Planet* is one of the early foundations of Queer theory. In this Warner aimed to create a revision of social theory by taking gay politics as a starting point, as well as urging gay and lesbian intellectuals to find a new engagement with various traditions of social theory in order to articulate their aims.²³ Upon the works of post-structuralist theorists such as Michel Foucault, Jacques Lacan, and Louise Althusser; new articulations

¹⁹Warner, M. 1993.p.IV.

²⁰ Abes, E.S. & Kasch, D. 2007.

²¹ Grosz, E.A. 2004. p. 32.

²² Johnson, E.P. 2008. p.166.

²³ Warner. M. 1991. p.3.

were created which theorized "identity as provisional and contingent"²⁴. This new paradigm coupled with a growing awareness of the limitations of identity categories in terms of political representation, enabled queer to emerge as a new form of personal identification and political organization.

In her essay *Imitation and Gender Insubordination*, Judith Butler lays the foundation for what it would eventually become Queer theory. In this piece, Butler criticizes the use of labels such as *lesbian* or *gay* since they were instruments regulatory regimes as normalizing categories of oppressive structures. In fact, in her next essay called *Gender Trouble: Feminism and the Subversion of Identity*; Butler claimed that the terms *gay* and *lesbian* "restricted and legislated the boundaries of gender and sexual difference too narrowly."²⁵ Furthermore, Butler argued that Feminism had made a mistake by trying to assert that *women* were a group with common characteristics and interests. That approach, Butler writes, performed "an unwitting regulation and reification of gender relations"²⁶ reinforcing a binary view of gender relations in which human beings are divided into two clear-cut groups, women and men, rather than opening up possibilities for a person to form and choose their own individual identity, therefore, feminism had closed the options down.

According to Seidman, queers aim less to normalize gay identities than to free all sexualities from normalizing regulation: "The norm of heterosexuality is challenged but in the context of contesting a range of social controls over

²⁴ Jagose, A. 1996. p. 5.

²⁵ Johnson, E.P. 2008. p.168.

²⁶ Butler, J. 1990. p.22.

sexualities.²⁷ Queers are not against identity politics but deflate its emancipatory narrative by exposing its exclusionary and disciplinary effects; since identity politics is believed to leave in place norms that sustain sexual hierarchies unrelated to gender preference.

As a new post-identity era emerged, the idea of queer became more than just an appropriation of an offensive term, but rather a radical questioning of cultural and social norms, notions of gender, reproductive sexuality and the family. The goal of Queer theorist was not to exist outside of identity categories, but rather to understand identity through its reconstruction. Identity for Queer theorists is “a constraint rather than a source of freedom and redemption”.²⁸

Queer citizenship then refers to mapping the real world political experiences of citizens who apply the term *queer* to themselves, as this interactions reveals a great deal about engagements of power between marginalized political actors and the state. Lisa Duggan points out the three main critiques that Queer theory places on *identity politics*:

1. The homosexual/heterosexual polarity is historical recent and culturally specific. The notion that these sexual categories are fixed, mutually exclusive, and mark individual bodies and personalities is a modern Western development. In other times and places, sexual acts between or among persons of the same sex have been organized and understood in dramatically different ways.
2. The production of a politics from a fixed identity position privileges those for whom that position is the primary or only marked identity. The result for lesbian and gay politics is a tendency to center prosperous white men as the representative homosexuals.

²⁷ Seidman, S. 2001. p.322

²⁸ Ball, C.A. 2001. p.p 281-282.

Every production of "identity" creates exclusions that reappear at the margins like ghosts to haunt identity-based politics. In lesbian/gay politics, such exclusions have included bisexual and transgendered people, among others.

3. Identity politics only replaces closets with ghettos. The closet as a cultural space has been defined and enforced by the existence of the ghetto. In coming out of the closet, identity politics offers us another bound, fixed space of humiliation and another kind of social isolation. Homosexual desire is localized- projected out and isolated in the community of bodies found in the gay ghetto. In this sense, identity politics lets the larger society off the hook of anxiety about sexual difference.²⁹

The ultimate goal in the construction of a Queer notion of citizenship in which sexual autonomy is possible, meaning that individuals would be able to exercise a wide range of choices regarding bodily based pleasures and intimacies. The normative evaluation of such acts would switch from a critical judgment of "normality" to a "communicative sexual ethic", where only the morality of a communicative practice of the agents involved would assess its legitimacy.³⁰ This is important as Queer perspectives hold that normalizing social controls assign a moral status of normal and abnormal to virtually every sexual desire and act; which creates a global division between good and bad sexualities. This in turn justifies institutional interventions into intimate life for the purpose of "preventing or minimizing the undesirable public consequences of sexual pathology."³¹

²⁹ Duggan, L.1994. pp.4-5.

³⁰ Seidman, S. p.327

³¹ Ibid. p.326

III. Theory of Citizenship:

Since its inception as an idea by Greek philosophers, citizenship has been transformed as it has adopted different nuances and characteristics. Bellamy provides with a comprehensive definition of the term: "Citizenship is a condition of civic equality. It consists of membership of a political community where all citizens can determine the terms of social cooperation of an equal basis. This status not only secures equal rights to the enjoyment of the collective goods provided by the political association but also involves equal duties to promote and sustain them."³²

Much of the contemporary citizenship literature is marked by the challenge it poses to citizenship's exclusionary tendencies and by its attempt to make real citizenship's inclusionary promise. This work can be analytical or normative or sometimes a mixture of the two. Theoretical analysis has interrogated citizenship's universalistic claims from the particular perspectives of a range of marginalized groups and of nation state "outsiders" and has developed new differentiated forms of citizenship.

Citizenship has been a topic of increasing interest in the social sciences during the last decades. There is an extensive literature covering its origins and modern interpretations as the concept has become hotly contested. As the definition above states, there is an inferred duality/contradiction in the

³² Bellamy, R. 2008. p. 17.

conceptualization of citizenship. On one hand it is encased within the real of connection to a community with similar goals and values, and on the other hands it refers to the individualistic quality of such membership and its inferred hierarchies.

This ambiguity is summarized by Fabio Reis:

The idea of the citizen includes, on the one hand, an egalitarian and consensual element that correspond to the status derived from the involvement in a community, an element related to solidarity, to civic virtues and to the duties and responsibilities of the citizen. However, it also includes an element of autonomous self-assertion of each individual member of the community –and this element is potentially conflictive, instead of expressing solidarity or social convergence.³³

The origins of such ambiguity may be found in the historical evolution of the concept of citizenship. The earliest snippets of what was to become a general idea or notion of citizenship originated in ancient Greece. However, the modern interpretation of citizenship; defined by the dynamic between an individual's rights and responsibilities and the state (the purveyor and protector of these rights and responsibilities), emerged during the Enlightenment era and flourished after the French and American revolutions. One may say therefore that the very idea of citizenship is a Western construct.

According to the literature, there are two main historical subdivisions to the conceptualization of citizenship. They are the Republican Civic and the Liberal tradition of citizenship. Many authors argued that the latter has come to replace the former. The Republican Civic notion of citizenship "requires identification with

³³ Reis, F.W. 1993. p.43.

and commitment to the political community's goals, gained through the processes of education and active engagement in the democratic process"³⁴. This tradition stems from classic philosophies such as Aristotle's writings on democracy, and highlights the centrality of two supports for the formation of the Greek city-state: "a citizenry of politically virtuous; and a just mode of government [...] both elements were essential. Citizenship therefore entailed primarily duty and civic virtue."³⁵ The Athenian citizen is therefore constructed as the ideal to be mimicked.

It is within the Republican Civic notion of citizenship, which was underlined by the writings of Aristotle, that a key component of our modern idea of citizenship is constructed: the distinction between a private and a public sphere. Aristotle "made a distinction between the *oikos* and the *polis*. The former indicated the world of the Household and comprised three distinctive relationships –namely, that of husband and wife, parent and child, and master and slave. [...] In contrast to this the *polis* symbolized the public political domain."³⁶ The public, in much political theorizing in the West, is "idealized as a universal space for all, where the mind rules with rationality and logical thought; the private is a sphere of body, emotion and the particularity of relationships."³⁷

For LGBT individuals this division between the public and private spheres has resulted on a two-fold conundrum: on one hand the very construction of the

³⁴ Abowitz, K. K & Harnish, J. 2006. p. 658.

³⁵ Heater, D.2004, pp.4-5.

³⁶ Mahajan, R. & Reifeld, H. 2003. pp.9-10.

³⁷ Abowitz, K. K & Harnish, J. 2006. p. 667.

idea of citizenship rests on a binary system of the public/strong/masculine vs. private/weak/feminine which not only is non-inclusive to non-conforming sexualities, but it renders it invisible by omission. Secondly, as Bell and Binnie explain: "sexual citizenship is circumscribed and simultaneously privatized, its limits set by the coupling of tolerance with assimilation [since] lesbian and gay men are granted the right to be tolerated as long as they stay within the boundaries of that tolerance, whose borders are maintained through a heterosexist public-private divide."³⁸ Therefore, gay men and lesbians can only be citizens if they are "good" citizens.

The later Liberal tradition places emphasis on individuals' rights and the existence of the state "for the benefit of its citizens, [it] has an obligation, indeed, to ensure that they have and enjoy certain rights."³⁹ The liberal view of citizenship stresses individual rights within a framework of the *rule of law*. The best form of government in liberal eyes has therefore been one in which individual rights are safeguarded by constitutional limits on government power. The Liberal tradition defines citizenship as a private individual status with a minimal participation in the public affairs. The liberals believe that the individual self-interest has a priority over public interest. According to Abowitz and Harnish "freedom from the tyranny of authority is one of two primary values in this

³⁸ Bell, D. & Binnie, J. 2000. pp.25-26.

³⁹ Heater, D.2004, p.5.

discourse. The other involves the deliberative values of discussion, disagreement, and consensus building—all viewed as essential to democratic societies.”⁴⁰

Moreover, in the modern democratic context, where the principle of equal liberty for all individuals is seriously considered, the family and the various relationships that the private sphere encompasses are radically redefined. In place of the rule of the husband over the wife or of parents over their children, the law has to step in to guarantee the rights of women and children.

Ultimately, both traditions have influenced Western constructions of citizenship as to include an active/public and a passive/private component. The most notable modern theorist of citizenship is T.H Marshall. In *Class, Citizenship and Social Development*, Marshall divides citizenship into three elements, civil rights, political rights, and social rights. Heater classified T. H Marshall’s triad as the “modern liberal definition of citizenship.”⁴¹

Civil rights, said Marshall, are those rights necessary for individual freedom: “liberty of the person, freedom of speech, thought and faith, the right to own property and to conclude valid contracts, and the right to justice.”⁴² Political rights are the rights to participate in the exercise of political power as a member invested with political authority⁴³. Social rights are a “whole range from the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilized being according to

⁴⁰ Abowitz, K. K & Harnish, J. 2006 p. 663.

⁴¹ Heater, D. 2004, p.5.

⁴² Marshall, T.H. 1963. p.78.

⁴³ Ibid.

the standards prevailing in the society."⁴⁴ According to Marshall, modern citizenship is a combination of these three elements, beginning with civil rights and evolving with time to incorporate social rights.⁴⁵

Based on Marshall's analysis, Richardson charts the many inequalities faced by gay man and lesbians such as lack of full and equal rights, lack of full participation and political representation, as well as lack of access to welfare entitlements leads these two groups to possess only partial citizenship, and other non-conforming sexual groups such as transgender people to be virtually excluded.⁴⁶

Postmodern critiques to the established discourses of citizenship are abundant. Such critiques "raise issues of membership, identity, and engagement in creative, productive ways; however, these discourses are far more widespread in scholarly and theoretical texts than in practical, applied curricular texts."⁴⁷ These contesting discourses include feminist citizenship discourses, cultural citizenship discourses, reconstructionist discourses and, most importantly for the issues addressed in this paper, queer discourses of citizenship which "inquire into citizenship not simply as a status, membership or stable identity, but as a performance of civic courage and risk."⁴⁸

Although the concept of citizenship has been harshly challenged during the last decades, we should consider the dialectic for its continued redefinition a

⁴⁴ Ibid.

⁴⁵ Ibid., 78-134

⁴⁶ Richardson, D. 1998, p.86.

⁴⁷ Abowitz, K. K & Harnish, J. 2006. p. 666.

⁴⁸ Ibid, 667.

productive and important one, mainly due of two questions. Firstly, the discourse of rights and responsibilities that emerged from the idea of citizenship constitutes an operational language with which oppressed groups can articulate intelligible demands to the state and other actors. Secondly, and most importantly for the purpose of this paper; the idea of citizenship serves as a mean to construct political spaces and identities. Conclusively, today, as Hagopian rightly states by quoting Elizabeth Jelin: "citizens themselves define rights; citizenship is 'self-referential'".⁴⁹

⁴⁹ Hagopian, F. 2007. p.47.

DISCUSSION:

I. The Latin American State and Citizenship:

Both the conceptualization and implementation of citizenship do not occur in a vacuum as we have learned thus far. In fact, such formulations take place within social/cultural contexts that in turn shape their dispositions and outcomes. "Citizenship is contextual. It is related to the varied ways of connecting individuals and groups to states and nations. The ways in which national collective identities and loyalty to states are constructed affects the ways in which citizenship is constructed and how rights are installed."⁵⁰ Indeed, the Latin American context relied on the existing colonial structures of power for the assertion and installing of citizenship, as Tilly notes accordingly: "States often use other previously existing ties than gender as bases for forming ties of citizenship or as grounds for exclusion from citizenship."⁵¹

Specific histories and context may help understand the conditionalities under which exclusion from citizenship has been fashioned. Latin America has experienced the effects of Spanish, British, French, Dutch, American and Portuguese colonialism. Each left its distinctive imprint on citizenship and citizens alike: in systems of law, religion, language, economy, demographic particularities, as well as racialized forms of exclusion. Many countries are now

⁵⁰ Roniger, L. 2006. p. 496

⁵¹ Tilly, C. 1996. p.9.

undergoing a process of re-conceptualizing their national history as a result of the growth of movements that seek to represent previously excluded populations.

On the macro level, the process of construction of the rights and duties of citizens traditionally has as its frame of reference the state, embodied in institutional apparatuses such as the judicial system and welfare institutions. In Latin America however, state control has perennially belonged to political, economic and social elites; this in turn has allowed for the state to become and remain alien to its citizens. In this context, "recognition of state institutions and of their legitimacy by the 'subjects of rights' is a long historical process of social struggles, with no guarantee of a necessarily 'happy' and harmonious ending."⁵² Therefore, Latin America as a whole can be classified as an elitist-hierarchical society. These societies are in essence problematic "due to their tendency towards the promulgation of selective entitlements"⁵³

In Latin America as a result, even when a group is granted access to citizenship rights in practice; such group may still be unable to reap the benefits associated with citizenship. Armori argues that "the capacity of the state to guarantee a bundle of rights for all cannot be detached from existing inequalities and dominant patterns of social interaction; especially those characterized by diverse forms of socioeconomic and cultural exclusion, which are often more resistant to change than political institutions [...] The law and institutions do not

⁵² Jelin, E. 2003. p.107.

⁵³ Roniger, L. 2006. p.492.

guarantee, by themselves, that all those who claim membership in the nation-state will be able to exercise effectively their various rights and responsibilities.”⁵⁴ In other words, the laws that prescribe rights and the institutions that protect them cannot be considered independent from social practices and the relational position of social groups.

The transition from colonial rule into nationhood, as well as the many oscillations between authoritarianism to liberal democracy (to be referred as regime change from now on), allowed for the construction and contesting of the meaning and practice of citizenship to take place in Latin America. During colonial rule, membership responded directly to racialized notions of privilege in which *pure* Spaniards were the rulers and masters in an elaborate hierarchy constructed based on origin/race/class/wealth, which systematically positioned everybody else in a subordinated position as subjects to the Spanish crown. The revolutions of the early 19th century brought about an opportunity for the region to experiment with new notions of freedom and political participation as (at least theoretically) subjects became citizens.

About the early-nationhood period, Sabato writes:

*In the revolutionary years and in the first decade of independence, most of the constitutions drafted in Latin America sought to break with the colonial political order, not only by instituting new political regimes based on modern representation but also by introducing the liberal principle of political equality, defining civil and political liberties, and establishing the juridical notion of the individual.*⁵⁵

⁵⁴ Armori, A. 2007. p.97.

⁵⁵ Sabato, H. 2011.

Although insecurely implanted and politically contested, the values of liberalism and democracy have been the dominant cultural referents promoted by elites ever since independence. This cultural discourse enshrined universality as a principle in an "attempt to transcend gender, class, age, (dis) capacities, ethnicity and sexuality positioning all individuals as equal beyond their personal affiliations."⁵⁶ In Latin America the nation was constructed as one block with a unison voice. The legitimization of such a view was established via suffrage. In fact, suffrage is often used as the measure active citizenship. But who had the right to access citizenship then? Sabato answers:

"The boundaries of political citizenship were prima facie defined by the breadth of political rights, particularly the right to vote, which proved extremely variable. Immediately after independence, in most of Spanish America, the right to vote was widely extended to the male population. All free, non-dependent, adult males were enfranchised".⁵⁷

Citizenship in Latin America was therefore genderized, racialized and culturally appropriated very early on with the help of the implementation of an *Aristotelian Ideal*. This ideal, which was used to defined who is or who should be a citizen and which built on beliefs about who is capable or fit; "has been used historically, and even quite recently, to deny citizenship to the poor, women, indigenous peoples, and blacks."⁵⁸

The very narrow scope that was afforded to only a few, the right to citizenship and to exercise political power gave way to a phenomenon that Taylor

⁵⁶ Moreno, A. 2006.p.122

⁵⁷ Sabato, H. 2011.

⁵⁸ Yashar, D. 2007. p.62.

calls *client-ship*. *Client-ship* as a system relies on the acquisition of votes in return for material goods and jobs. This adaptation of patronage politics to the electoral regime allows clients (non-citizens/semi-citizens) to engage in politics in order to pursue narrow goals. The inception of *client-ship* as a system of patronage is then endemic to the state's appropriation of the role of main/only provider of services in a given society. This system was energized in Latin America by the emergence and prevalence of charismatic strong men or *caudillos*.⁵⁹ A top-down system had been institutionalized through the limiting of the citizenship criteria and the emergence of highly paternalistic states. Citizenship had acquired a vertical instead of a horizontal type of fluidity.

The ability of the state to monitor public life remained quite limited, while civil society was constituted behind the back of the state. Worth noting is the role of the Catholic Church as the only entity capable and willing to create grassroots networks throughout nations across the whole continent under what Roniger calls *Civic Catholicism*⁶⁰. This ability created ideological implications to the politics of citizenship and human rights, since the Church's early political progressiveness gave way to a new *conservative restoration* after the democratization wave of the 1980's in Latin America which officially implied a commitment to stay "above politics" but which conversely positioned the Church as moral compass of the state.⁶¹

⁵⁹ Tony, L. 2004. p.p. 214-215.

⁶⁰ Roniger, L. 2006. p. 494.

⁶¹ Vasquez, M.A. & Williams, P.J. 2005. pp. 7-8.

Latin America in general has alternated between liberal democracies and military authoritarian regimes for most of the twentieth century. Such regime changes also allowed for a reconfiguration of the idea of citizenship and its implications for the emergence of civil society. In the Latin American context such reconfiguration were often followed by drastic economic policy changes, since the policies of development and growth have been singlehandedly designed and implemented by the state/elites. Carens writes: "democratization in Latin America has mainly been about the institutionalization of elections, parties, legislatures, and so on. [...] this kind of democratization does not necessarily provide citizens with secure or effective civil, social, or cultural rights, even if it does advance certain kind of political rights."⁶²

More recent shifts and challenges to the concept of citizenship followed democratization and the embrace of industrialization and later on of the Neoliberal economic model. The point of departure of such redefinition has been the conception of *the right to have rights*, which supported the emergence of new political subjects, actively defining what they consider to be their rights and struggling for the recognition. Identity started to inform the formation of citizenship. Central to these shifts were the Indigenous Rights movement and the second wave of the Feminist movement that emerged in the region during the 1980s and 1990s.

⁶² Carens, J.H. In Tulchin, & Ruthenburg. 2007. p.112.

The emergence of the new caste of political subjects happened during the massive urban migrations of millions of peasants to the cities searching for a better future. Industrialization and urbanization responded to the region's new reason d'être: to "catch up" with the industrialized nations of the world implementing new market strategies in order to achieve "development". During these processes, communitarian and neighborhood-type of associations that served as safety nets to survival to the newly-urban peasantry; seamlessly began to morph into urban senses of citizenship rights and responsibilities.

As urban populations grew the state could not keep up with the demand for services. "As the decline in social mobility and the increasingly complexity of the city began to shift the priorities of the population to civic and political issues, so too events moved the state in a similar direction."⁶³ The embrace of Neoliberal policies enacted hardcore austerity policies which prompted the state to disengage in the developing and sustaining of welfare networks. "By placing more responsibility for social and economic welfare onto the populace, the state, both directly and indirectly, promoted the independent organization of citizens".⁶⁴

Hereafter in Latin America, contesting ideologies regarding traditional notions of citizenship have appeared; which have powered the rise of social rights movements in the region which have used an expanding notion of citizenship and the rights and duties it entails, to create their own place within

⁶³ Roberts, B. 1996, p56.

⁶⁴ Ibid, p.57.

the public sphere where to demand policies changes that reflect and address their particular struggle:

“Historically, throughout Latin America there have been two citizenship regimes: a corporatist regime, projected within the boundaries of the nation-state mainly but not only by populist leaders, to be followed in the 1980s and 1990s by a neo-liberal regime. [...] The new citizenship regime advocated individual autonomy and rights instead of earlier corporatist forms of access to resources and the centers of power. As it advocated the retreat of the state from social responsibilities and undertook decentralization.”⁶⁵

As the citizenship regime in Latin America was highly stratified, and it carried within it a construction of sexuality and gender relations molded by the context of colonial and post-colonial experience; the region progressively gained its now infamous reputation as highly intolerant towards any manifestation of non-normative sexuality. Such intolerance has been systematically legitimized and it constitutes the most potent obstacle to be overcome by the LGBT community.

⁶⁵ Roniger, L. 2006. pp.499-500.

II. Legalization of Homophobia in Latin America:

As the conquest of the Americas took hold, a systematic transplant of institutions from the Iberian Peninsula onto the territories belonging to the Spanish crown occurred. Many traditions heavily influenced the manner in which sexuality (and in particular non-conforming sexual practices) was constructed and regulated in the colonies: The Judeo-Christian tradition as interpreted by Catholic scholars, an Aristotelian idea of sexuality which helped shape sex into a binary power struggle; as well as contesting Iberian, African and Indigenous notions of sexuality were to be all absorbed to create a common discourse.

The earliest policy that aimed to dictate/regulate sexual conduct came in the form of the *sodomy laws* imported via the Spanish Holy Inquisition. These laws were inspired on a combination of biblical interpretation (particularly Leviticus 18:22 and 20:13) and the Iberian law code which criminalized homoerotic acts since the sixteenth century by "prescriptions inserted by Christianized Visigoth King Alarico II [that] called for those engaged in such acts to be burned at the stake."⁶⁶ In an attempt to monitor and mold the sexual behavior of all groups including European settlers, African slaves and native indigenous people; sodomy laws were encrypted, embedded and legitimized into the social structure via religious discourse and criminalization.

⁶⁶ De la Dehesa, R. 2010. p. 30.

As Nesvig amply explains, early Latin American discussion of sodomy had deep roots in medieval scholasticism; particularly in the works of St. Thomas Aquinas which “defined sodomy as a violation of natural, canon, civil, and scriptural law.”⁶⁷ Transgressions of these laws were punished by death through public burnings, as sodomy was seen not just as an individual’s grave offense, but conceived as a threat to the natural order of society with potentially devastating consequences to the community at large, as illustrated by the biblical story of Sodom and Gomorrah from which sodomy acquired its name.

Moreover, the Latin theological phrase *recto vaso, recta positione* (in the proper vessel and in the proper position) became the phrase that embodied the rationale behind the sodomy laws: only intercourse that involved the man on top of a woman penetrating the vagina was deemed legitimate. Any other form of sexual activity then was construed as crime against nature and therefore prosecuted and shunned.

Aristotelian notions of sexuality were significant to this politicization and normalization of homophobia in Latin America. Aristotelian metaphysics “lay at the heart of the natural law condemnation of sodomy, concluding that semen has one purpose – the fulfillment of natural coitus, with the end being conception. Therefore, acts that could never produce conception automatically violated nature.”⁶⁸ Moreover, this naturalization of sex created a gender stratification in which penetration by the active male was seen as the conquest

⁶⁷ Nesvig, M.A. 2001. p. 694.

⁶⁸ Idem., p.695.

of the passive woman, which consequently and unexpectedly created a tier system in which active homosexual men were considered to be less stigmatized; as this model of stratification creates a system of honor imbedded in the sexual ideology of Latin America.

This sexual ideology was believed to be present as well in indigenous cultures such as the Mayas and Aztecs saw the "passive role in homosexual intercourse was reserved for special opprobrium for the abnegation of masculinity"⁶⁹; which as a result allowed the sodomy laws to be the vector for the dual traditions of Iberia and Mesoamerica to fused and create a homosexual order that places the active partner in a position of power and the passive person in one of degradation. At the same time, it allowed for the creation of a "closet", or hetero-conforming space for homosexuality within the culture; at least for the active partner.

As the nation states began to emerge in Latin America, decriminalization of sodomy soon followed as nations rewrote their criminal codes eliminating sodomy from their list of prohibitions. This initiative was influenced by "the ideas of Jeremy Bentham, the French Penal Code of 1791, and the Napoleonic Code of 1810, which had decriminalized sexual relations between consenting adults."⁷⁰ This new approach to sexuality sprung from liberal ideas of agency which enshrined a view of "morality as part of civil life that should be independent from

⁶⁹ Idem. P. 701.

⁷⁰ Babb, F.E. & Green, J. N. 2002. p. 5.

any state interference".⁷¹ Although in most countries of Latin America sodomy was no longer a crime, deeply ingrained social stigmas remained in place. Furthermore, the enactment of vagrancy and public decency laws allowed for the police and the justice system to regulate and condemn non-normative public behavior.

In Mexico for example, the Violation of Public Morals and Good condemned "individual public manifestations deemed obscene effectively criminalizing social scripts that departed from prescribed gender norms."⁷² In Argentina, police edicts aiming to control urban unrests which included vague language that condemned "disorder" and "scandal"; were in turn allowed for the police to freely interpret it and use it to instigate people involved in non-conforming sexual behavior. According to De la Dehesa:

*Such laws inscribed homosexualities in the symbolic realm of social deviance rather than political marginalization. Secondly, while the issue was removed from the public agenda [via the eradication of sodomy laws as criminalization of non-conforming sexualities], public decency justified exceptions in the basic liberal rights of expression and association. [...] Rooted in Roman and Iberian legal tradition, the notion of decency (pudor) was justified by some theorists based on Christian precepts and by others as a necessary element for harmonious social life.*⁷³

The logic of the distinction between private and public behavior was that the legal penalties for public displays strengthened as private behavior was supposed to be decriminalized. However, given the constricting definition of "private", elaborate policing of civil society became a duty. By concentrating on

⁷¹ Ben. P.. In Corrales, J. & Pachany, M. (edit.). 2010. p. 35.

⁷² De la Dehesa, R. 2010. p 31.

⁷³ Idem. pp.31-32.

public manifestations of sexual deviance in the buffer zone between moral and immoral communities, this policing has effectively penetrated all “private” territories⁷⁴, no pun intended.

⁷⁴ Evans, D. 1993. p.61.

III. Current Attitudes Towards LGBT Rights in Latin America:

On May 6th 2011, Brazil's Supreme Court ruled that same-sex couples could enter into civil unions and obtain the same legal rights and responsibilities as heterosexual couples. This decision makes Brazil part of an apparent shift in the Latin American region "out of the closet and into politics" as described by *The Economist* in 2007.⁷⁵ Lesbian, Gay, Bisexual and Transgender people have witnessed a great expansion of their rights, including the enactment of same-sex marriage (with full legal provisions) in Argentina, as well as same-sex civil unions in Uruguay, Colombia, Mexico City and the northern Mexican state of Coahuila. Furthermore, decriminalization of homosexuality was enacted throughout Spanish-speaking Latin America and Brazil; as well as constitutional bans against discrimination on the basis of gender, sexual identity and HIV status in Ecuador, Peru, Bolivia, Venezuela and Mexico.⁷⁶

Often the reasons behind such significant cultural shift corresponds to social and economic modernization; since, as Encarnacion explains: "post-materialist theory [attributes] extending legal protection to sexual minorities [...] to attitudes induced by society having satisfied basic needs such as food, shelter, and education."⁷⁷ Nevertheless, in Latin America these policy changes seem to correspond more accurately to a "spillover effect of the maturity of the gay

⁷⁵ *The Economist* .2007.

⁷⁶ Corrales, J. 2010.

⁷⁷ Encarnacion, O.G. 2011. pp. 105-106.

movement in the developed world.”⁷⁸ Advancement of LGBT inclusive policies in both North America and Spain would have been highly influential in the eventual execution of political strategies and activism initiatives. These results can also be attributed directly to long decades of advocacy work and political lobbying by LGBT networks and grassroots movements, which recently have gained increasing support from international organizations such as the United Nations and Amnesty International.

However, this seemingly encouraging progress collides with the ever greater institutionalized homophobia and impunity that appear to be rampant in the region. According to UN-AIDS: “Every two or three days a person is killed in Brazil in violence connected with his or her sexuality. [...] In Mexico, the reported figure is nearly two a week”.⁷⁹ Moreover, unlike in most industrialized Western nations; homophobia in Latin America appears to be imbedded across all social, economic, gender and age groups.

As shown by the AmericasBarometer, a series of biennial hemisphere-wide surveys organized by the Latin America Public Opinion Project (LAPOP) consortium at Vanderbilt University; intolerance towards sexual minorities in Latin America appears to be staggering. Their poll shows that between half and three-quarters of the population in most Latin American countries exhibit disturbing levels of intolerance toward homosexuals. This attitudinal intolerance is by no means the only barrier that LGBT groups face in politics, but it alone is

⁷⁸ Ibid. p. 106.

⁷⁹ UNAIDS. 2009.

reason enough to be awed by the political victories that LGBT groups have achieved. The survey was completed in 2008 and covered 23 countries and drew from samples that are representative of the national voting-age population. In Latin America and the Caribbean, the samples range from 1,500 to 3,000 respondents in face-to-face interviews. The total number of interviews conducted was 40,567⁸⁰. The question asked was: *How strongly do you approve or disapprove of homosexuals being permitted to run for public office?* The survey's results were as followed:

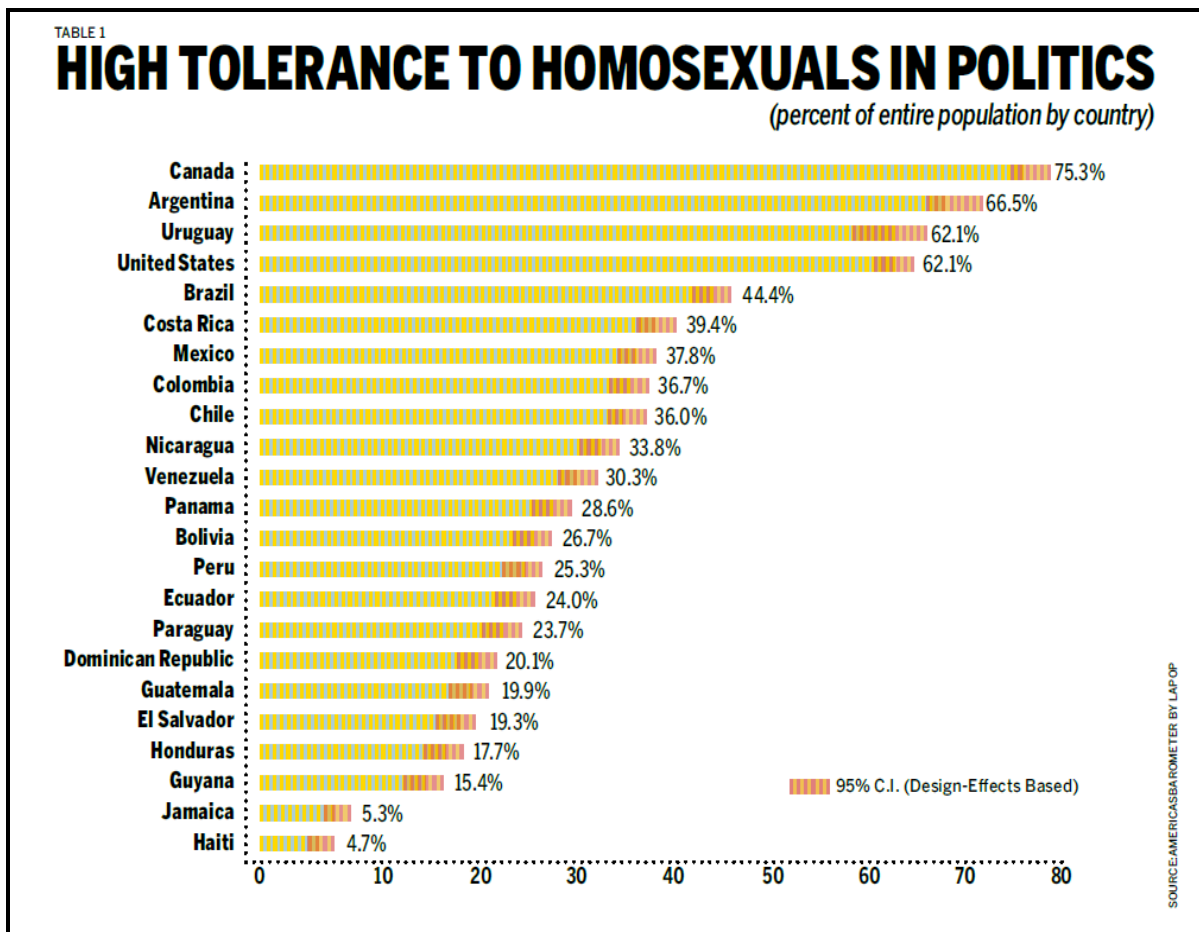


Table No. 1

⁸⁰ Moreno-Morales, D.E. & Seligson, M. A. 2010. p.38.

The question of political participation of homosexuals particularly highlights the levels of tolerance within a given society, as it entails accepting an individual's right to run for public office is a crucial aspect of tolerance: by accepting this right, a person is implicitly accepting that even someone whose sexual preference is disliked has the right to govern, indeed to rule.⁸¹

A more recent survey, also conducted by Vanderbilt University's AmericasBarometer evaluates a more common question regarding the levels of tolerance regarding same-sex marriage throughout the region. The question posed to surveyed individuals was: *How strongly do you approve or disapprove of same-sex couples having the right to marry?* Responses were given based on a 1-10 scale, where 1 meant strongly disapprove and 10 meant strongly approve. These responses were then recalibrated on a 0-100 basis to conform to the LAPOP standard, which facilitates comparability across questions and survey waves. "Around 1,500 respondents were interviewed face-to-face in each country, except in Bolivia and Ecuador, where the samples were approximately 3,000. The Canada and the U.S. are web-based surveys. Non-response to this question was 3.23% for the sample as a whole".⁸² Results of the survey mimicked closely the ones presented by the previous survey:

⁸¹ Idem.

⁸² Corral, M. & Lodola, G. 2010. p.2.

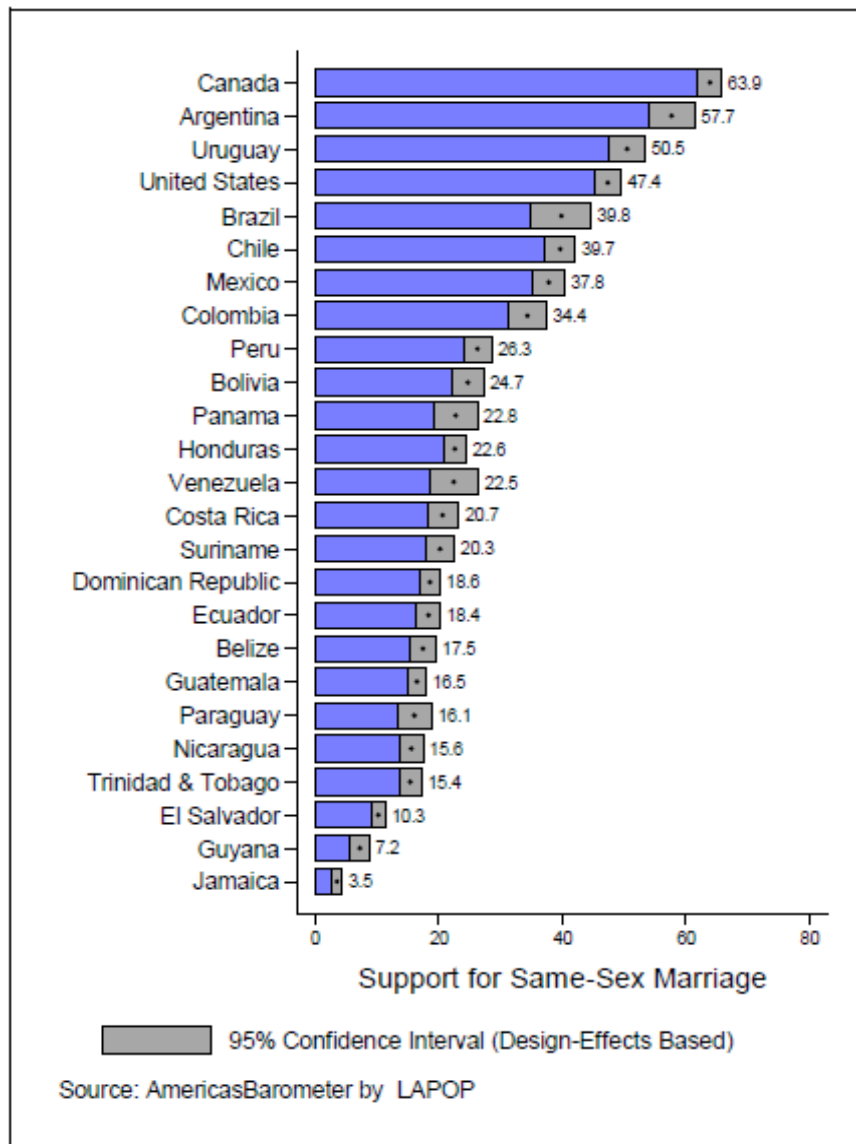


Table No. 2

While factors such as religion affiliation and age did not greatly affect the outcome of the survey, development levels and particularly education were the most influential indicators when measuring levels of tolerance towards sexual minorities. In fact, "more educated people tend to be more tolerant, more willing to accept difference: independent of their levels of wealth, gender, age, religious

preference, and place of reference, people with high levels of education are more likely to recognize and accept political rights of a minority such as homosexuals.⁸³ Table 3 illustrates this correlation:

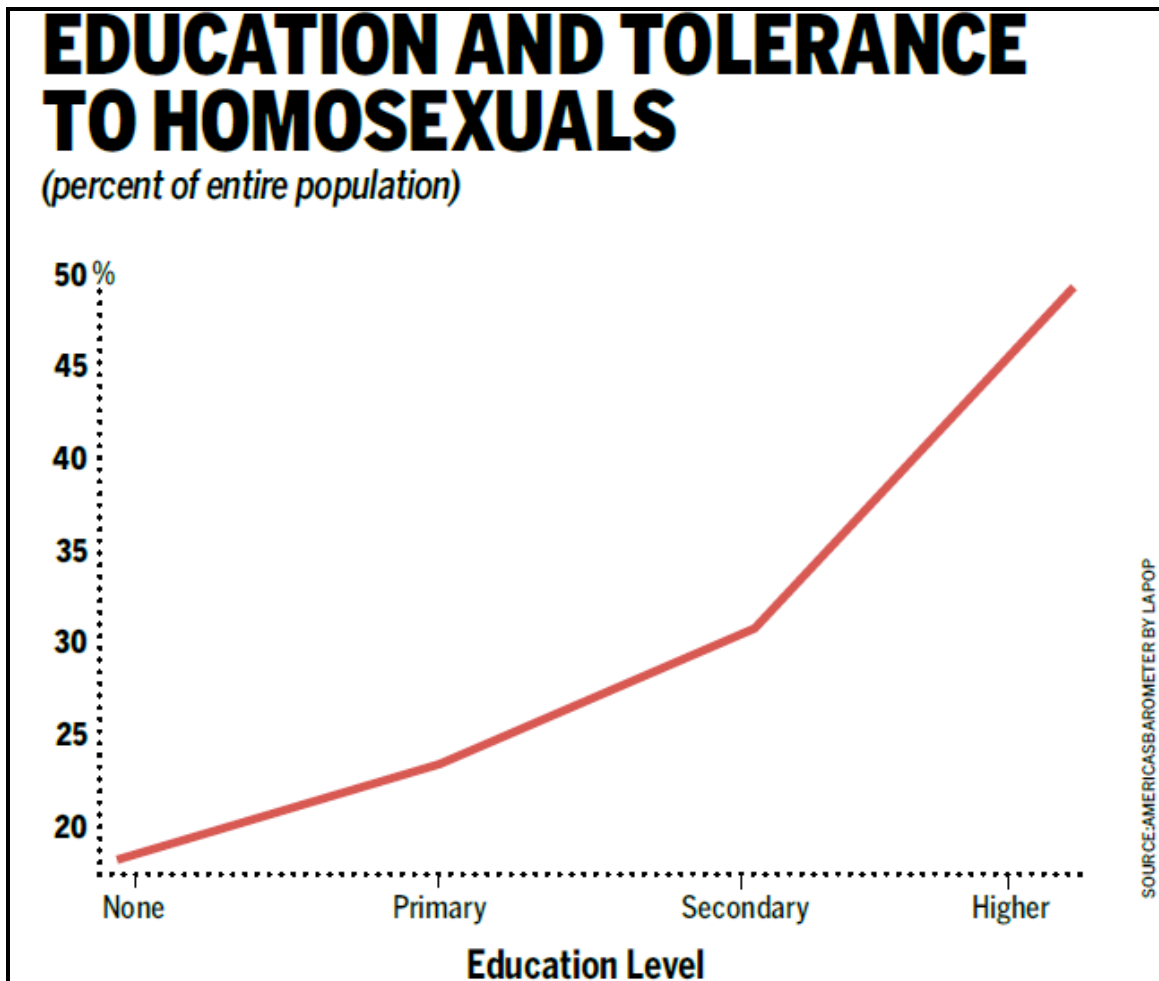


Table No. 3

One of the most surprising findings related to these surveys is the seemingly little difference between age groups and their tolerance levels toward gay rights; which in developed states seem to always increase amongst the

⁸³ Moreno-Morales, D.E. & Seligson, M. A. 2010. p.39.

younger age groups. This phenomenon may be directly related to the perpetuation and normalization of homophobia due to lack of education as stated before, as well as lack of youth's independence as in Latin America they tend to live with their parents for a much longer period of time than in developed countries. This in turn hinders the formation of gay identities, discourses, institutions and a community at large. The availability of the closet (in its many manifestations) as a safe haven against oppression also contributes to the perpetuation of the status-quo.

In Latin America as most states are unable to provide citizens with reliable social safety nets, the family becomes the insurance policy that safeguards younger generations' future. Murray explains: "in countries far from being welfare states, even urban families that are not production units provide social security."⁸⁴ Young people, who are typically considered the engines of social movements, lack the financial opportunities to become independent since the region does not offer them financial opportunities as incomes are low and jobs are scarce. Affording an independent lifestyle is as a result quite difficult⁸⁵. In turn, LGBT youth become overexposed to "a type of discrimination that is not that common among members of other non-dominant groups in any society: household discrimination."⁸⁶

⁸⁴ Murray, O.S. Family, "Social Insecurity, and the 'Underdevelopment' of Gay Institutions in Latin America". In Heath, D.B. (2002) p.285.

⁸⁵ Corrales, J. & Pachany, M. 2010.. p.14.

⁸⁶ Ibid. p12.

Moreover, prolonged stay is often sponsored by cultural preference, economic necessity and the generalized housing shortages; making multi-generational and extended family households the norm in the region. Since homophobia is stronger among older adults, young people in Latin America consequently face greater heteronormative pressures.⁸⁷

Another consequence of this phenomenon, which at the same time contributes towards the perpetuation and legitimization of homophobia; is the weakening or non-existence of a "gay consciousness" as neighborhoods and recreational facilities catering to LGBT people struggle to flourish since younger people live with their parents for an extended period of time. As a result, LGBT youth in Latin America lacks the socializing space to learn about the LGBT experience and relies not on the exchange of common experiences, but on distorted media images and homophobia-filled institutions.⁸⁸ Moreover, the lack of visibility; both territorial and figurative; contributes to the reinforcement of the closet as viable and often only alternative.

The idea of the closet entails a negation of one's own non-conforming sexuality in order to adhere to the precepts of heteronormativity. Corrales and Pecheny explain that besides this traditional notion of the closet, within the Latin American context, there are more options available. These options are according to the authors:

⁸⁷ Ibid. p.15.

⁸⁸ Murray, O.S. Family, "Social Insecurity, and the 'Underdevelopment' of Gay Institutions in Latin America". In Heath, D.B. (2002) pp.289-290

1. *The marital-life closet, linked to a gendered double standard (what is expected for a man versus for a woman): the degree to which a spouse tolerate extramarital affairs, heterosexual or otherwise.*
2. *The good-parent closet: the idea that as long as a parent is a reliable provider in the household, any behavior outside the family is tolerated.*
3. *The top-versus-bottom closet: the idea that as long as one performs certain sexual roles and not others, one need not be considered LGBT. For instance, in some circles, a sexual penetrator, a nonkisser, or simply a man who sets the rules of sexual activity can still be considered compliant with heteronormativity.⁸⁹*

Ultimately these camouflages hamper LGBT visibility, which is a necessary condition for effective collective action and the progress of LGBT movements, since not only amalgamation of members is impossible due to the lack of institutions, community, and visibility, but potential allies remain isolated as they become unavailable because of their comfortable lives in the closet.

The built-in heteronormativity in the institution of citizenship, as well as the culturally pervasive homophobia are both connected to gendered and de-gendered narratives; which systematically exclude non-conforming sexualities following Foucaultian precepts of power exercise. These are namely: denial, censorship, and prohibition.⁹⁰ However, the framing of LGBT rights as human rights has been successful in overcoming these obstacles. This, regardless of pervasive notions of LGBT rights belonging to a post-materialist context (and taking a back seat to more “salient” causes), as well as its inherent conundrum:

⁸⁹ Corrales, J. & Pachany, M. (edit.) 2010. p.17.

⁹⁰ Foucault, M. 1978. p.10.

to difficulty of advancing significant political change favoring minorities despite having the systemic disadvantage of numbers.

IV. Human Rights as a Discourse for the Advancement of LGBT Rights: Achievements and Critiques.

Following the liberal tradition of citizenship, LGBT rights have been successfully integrated into the scope of universal human rights. On the one hand, a globalization of human rights has occurred, whereby human rights have become a key criterion by which the “progress” of nations is evaluated. On the other hand, there has been a globalization of same sex sexualities as identities. These movements have the potential to conflict with, rather than complement, each other in terms of progressing toward a greater recognition of gay rights worldwide: resistance to cosmopolitan claims to gay rights is often grounded in communitarian claims based in the language of the right of self-determination of a people.

The human rights regimes began by extending universal rights already available to privileged groups under an argumentation constructed around advancing equality. Later on however, such argumentation changed and began to be focused on the rights of difference. According to Kollman and Waites: “Since the emergence of gay liberation movements in Western countries in the late 1960s and early 1970s, LGBT organizations have often framed their demands in terms of equality and/or liberation, but human rights discourses did not become central to national and international debates over gender and

sexuality until the early 1990s.”⁹¹ A pivotal point in the incorporation of LGBT rights into the human rights regime came in 1994 with the *Toonen vs. Australia* decision which “found that Tasmanian laws criminalizing all sexual relations between men were in breach of the International Covenant on Civil and Political Rights (ICCPR).”⁹²

Citizenship, like human rights, is a compelling signifier in the nexus of grammars of social relations. According to contractual liberal conception, citizens are regarded as autonomous individuals who make choices, as individuals who are bound together by a “social contract”. The growing presence and influence of international NGOs, as well as the growing power of the universalizing discourse of human rights and the explosion of transnational activism, have allowed the LGBT movement to take a new discursive life. In Latin America, as the democratization process took place; new opportunities to frame non-discriminatory policies within the discourse of human rights emerged as well.

Until the mid 1990s, most LGBT advocates seeking to do international work in gay rights found themselves working with LGBT specific organizations, which have faced considerable barriers to official representation in the U.N. The HIV/AIDS pandemic as well as genderized discrimination served as a unifying force with the women rights advocates who became the first LGBT allies, as “sexuality as the subject of rights arises powerfully within the reproductive health

⁹¹ Kollman, K. & Waites, M. (2009) p.2.

⁹² Saiz, I. (2004) p.49

and rights work⁹³, as well as their recognition of lesbian issues as integral parcel of women's concerns.

In 1995 UN World Conference on Women in Beijing also was significant for advancing the concept of sexual rights. In more direct language than that found in nearly all earlier documents, the Platform specifically affirmed that "[t]he human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence."⁹⁴ Moreover, references to sexual orientation were prominently discussed and included in brackets (indicating failure to obtain agreement) in the draft Platform for Action. Significantly, representatives of more than forty countries endorsed these provisions.

Even more significant was the promulgation of the Yogyakarta Principles on the Application of International Human Right Law in Relation to Sexual Orientation and Gender Identity, agreed upon and published in November 2006. These principles have been enshrined as jurisprudence and have already been introduced in national courts as argument for the vindication of LGBT rights such as in the case of Nepal's same sex marriage. According to Sanders: "the basic premise is that lesbians, gay men, bisexuals, transgendered people and intersexuals are all human beings and are equally entitled to human rights. The development of international human rights law has largely ignored them – as

⁹³ Miller, A. M. (2000) p.82.

⁹⁴ U.N. (1995)

racial minorities were once ignored – as women were once ignored – as the disabled were once ignored. So it is logical to state established international human rights principles and suggest how those principles apply to the situation of LGBTI people.”⁹⁵

A primary function of the international human rights system is to monitor government compliance with human rights law. As observations, recommendations, and rulings are made by the monitoring and adjudication bodies, a body of jurisprudence has developed that has deepened the interpretation and the application of law. Implementation of the law and compliance with the obligations is slow, and painstakingly so. Nevertheless the international human rights framework has become an important resource for advocacy groups. The language of human rights informs advocacy and action at all levels. Not only have activists helped to shape law at international level, but they have also worked to translate the provisions of the law so as to be meaningful to oppressed and minority groups at home.

Accordingly, “The engagement with a human rights frame has proven successful in opening the doors of powerful international organizations such as the European Union (EU), and more recently shows signs of becoming a vehicle for access to the UN. These international developments have reverberated in domestic political settings, as is illustrated by the adoption of same-sex union policies by a majority of Western democracies over the past two decades.”⁹⁶

⁹⁵ Sanders, D. (2008) p.6.

⁹⁶ Kollman, K. & Waites, M. (2009) p.2

Promoting gay rights as human rights in Latin America predated the acceptance by the international community of the popular argument that *gay rights are human rights*. This view holds that LGBT people are entitled to freedom from discrimination by virtue of being human; therefore, what is being advanced with LGBT rights is humanity rather than a *gay agenda*. De la Dehesa adds that the universalizing language of human rights, full citizenship, anti-discrimination, and equal access to the public sphere, created “shifts in legislative debates from ‘sexual preference’ to ‘sexual orientation’, and from ‘homosexual liberation’ to ‘homosexual rights’ [which] in effect constituted a fixed and clearly bounded, rights-bearing community meriting representation through a legitimizing scientific frame.”⁹⁷

As stated by Encarnacion: “adoption of human-rights arguments also signaled a strategic shift for gay activists (both in Latin America and elsewhere), who began favoring a new kind of activism that, while hardly conformist, advocated the integration of gays into the community by presenting gays and lesbians as similar to everyone else. This new strategy pointedly rejected the radicalism of the first wave of gay activism in Latin America in the late 1960s and early 1970s—afforded by the relative political openness of the era—which questioned the nature of sexual identity and the value of assimilating gays into mainstream society.”⁹⁸

⁹⁷ De la Dehesa, R. (2010) p.180-182.

⁹⁸ Encarnacion, O.G. (2011) p.106.

Queer theory criticizes the framing of LGBT rights within the frame of human rights as a continuation of the heterosexual matrix. Waites claims that the Universal Declaration of Human Rights has "been shaped by heterosexuality and heteronormativity, since 'sexual orientation', is a concept historically aligned with a presumed heterosexual/homosexual binary, which has marginalized forms of sexual identification such as bisexuality and queerness."⁹⁹ But the important question in evaluating the concept's entry into human rights discourses is whether it is open to reinterpretation, via the assignation of new meanings, and contestation of the discourses in which it is contextualized.

While the discourse of human rights utilizing a universalizing language, helps gays appropriate a sexual identity that fits the globalizing movement of sexuality that seems to be taking place (and particularly in urban centers around the world). Furthermore, it constructs non-normative sexuality as a foreign, and external "other". Stychin further analyzes the inadequacy of the paradigm of human rights as gay rights:

In these narratives, we find the homophobic state fuelling an anti-gay rights discourse by constructing its 'self' and its (homogenized and essentialized) people as oppressed by the claims of a privileged elite undeserving of 'special rights'. Rights are grounded in the particular and unique contribution of heterosexuals (and their reproduction) to the common good. In this way, rights and duties connect, and the promotion of the common good is located in the heteronormative private sphere of the nuclear family. These narratives rely upon the defense of a right to a traditional way of life for a people (composed of heterosexual families) under threat from a variety of privileged sources, which are selectively invoked depending upon the political context: urban elites; liberal,

⁹⁹ Waites, M (2009). p.150.

*white political correctness; individualism; the West; neo-colonial powers; wealthy gay men; etcetera.*¹⁰⁰

Moreover, human rights as a universalizing discourse rely on a linear construction of history where traditional societies are backward and Western, industrialized nations are advanced and modern. These assumptions under post-colonial contexts has been inversed creating the idea that homosexuality and other non-conforming sexualities are a Western export, aiming to corrupt the purity of the “underdeveloped” societies. “In this trope, the defense¹⁰¹ of heterosexuality becomes essential to securing the group right of self-determination of a people protecting its cultural heritage, pre-colonial way of life, and very survival. This is a communitarian claim in defense of a people against threats from globalization and (neo) colonial powers, and it also lends itself to the language of international human rights (i.e., the right of a community to preserve its way of life).

Conclusively, it is best to approach human rights discourses as relational, evolving and specific to a given historical and spatial context, breaking away from the idea of a linear project. Furthermore, the idea of human rights enshrines a false sense of individuality that oversees and simplifies the societal aspect of identity constructions. Nevertheless, the political power of the paradigm of human rights as a way to make LGBT issues visible is highly valuable, while keeping a self-critical eye on how it is made operational.

¹⁰⁰ Stychin, C.F (2004) p. 964.

¹⁰¹ Idem.p.956.

V. Lessons from Argentina, Mexico City and Brazil.

Just like citizenship, every episode of LGBT rights advancement is contextual, and subject to a given political climate. The recent advancements in Latin America respond to a series of strategies tailored to each specific case.

A- Argentina:

In accordance with modernization theory, Argentina possessed one of the corner-stone conditions for the advancement of social change: it has high levels of urbanization and schooling. It also, in accordance with the social movement hypothesis; has a vibrant league of civic organizations as a result of its past under a grueling military dictatorship. Furthermore, Argentina's current government sees itself left of center politically speaking, and in accordance with the partisan hypothesis, is a more socially progressive administration.

Another factor to take into account is religiosity. Although Argentina is a Catholic country by definition, church attendance is low (approximately 22% of the population attends mass weekly) and the Evangelical population remains miniscule (around 2 %). This aspect is in clear contrast with the more church-going neighbor Brazil (36%) and a strong Evangelism in Central America (40% in Guatemala). Separation between Church and party is another factor to take into account according to Corrales and Pecheny: "It is vital to have separation

between party and state [...] so many legislators from all parties, risked voting against the pulpit."¹⁰²

A third aspect relevant to Argentina's groundbreaking legislation is that it was conceived through transnational legalism. This proves that there is a helpful aspect of globalization, or the so-called "spillover effect". Transnational legalism refers to the ease with which a country's legal system borrows from international cases to set legal precedents domestically. Argentina is an avid importer of international norms (as shown by its impressive adaption of international treaties as constitutional statutes), as well as an exporter of legal norm. Therefore, Argentina's pro-LGBT forces had no problem emulating Spain's marriage equality legal blueprint.

Domestically legal resources were a factor to take into account as well., Civil society was very much involved in laying down a LGBT agenda as part of a broader agenda focused on feminism, gender, reproduction, health, and sexuality. These issues have been part of the collective memory of the nation for decades. As the main LGBT Federation encouraged gay and lesbian couples to request marriage licenses in order to obtain official refusal, which then in turn were used help to challenge this decision under constitutional grounds. The effectiveness, reliability, and independence of the judicial system proved critical.

Avoiding the systemic disadvantage of the referenda proved critical in Argentina. Submitting to a majority vote questions of minority rights is

¹⁰² Corrales, J. & Pecheny, M. (2010)

inherently a biased process.¹⁰³ This replicated what happened in Massachusetts where a court ruling was followed by legislative action, thus avoiding public referendum.

Finally, the bigger the political allies the better. Argentinean President, Cristina Kirchner, in a politically opportunist move; came out to support the marriage equality bill. Worth noting was her criticism of the Church's language and scare tactics. The media also weighed in heavily and contributed to disseminate the message of the role of the state as guarantor of minorities' rights.

B- Mexico City:

Mexico City also fit the criteria set by modernization theory, social change theory, and partisan hypothesis by the time it approved same-sex civil unions in 2006. Mexico City is the second largest city in the world; it possesses a grand gay district names *Zona Rosa*, as well as a long tradition of social mobilization. Mexico City had the special characteristic of having a Federalist system which granted "officials of the capital city the power to pass local laws."¹⁰⁴

Partisan alliances also played an important part in the enactment of cohabitation law that later when into becoming same-sex marriage. There was a coalition of left-leaning parties that came together to advance the LGBT movement's political demands. Alliances with other actors in civil society also play a significant role, particularly feminist through coalitional networks. Such

¹⁰³ Ibid.

¹⁰⁴ Encarnacion, O.G. (2011) p.111.

networks took the duty of build the principal themes used to frame LGBT rights in public debate. The theme of diversity was particularly effective given Mexico's *mestizo* past.

Redefinition of the idea of family was achieved through the displacement of the traditional notion of nuclear family. This was done through the dissemination of information related to the changing nature of the Mexican family. Surveys showed that in Mexico 20 % of the families were not nuclear, and 30% were headed by a single female.¹⁰⁵

C- Brazil:

The case of Brazil is unique as it was the courts that ruled to derogate the heteronormative language in legal documents. Moreover, it was done through the alternative channel of the courts due to the lack of political will and blatant homophobia exercised by Congress, where a same-sex civil union bill sat since 1995.¹⁰⁶

Brazil's case is closer to Massachusetts', since a judge took action to force a reluctant legislature to act; then say Argentina where gay marriage emerged as a result of legislative acts. The Brazilian case shows that even when homophobia is rampant, legislators and reluctant, and the Church launches major homophobic campaigns there is still hope: the court system.

¹⁰⁵ De la Dehesa, R. (2011) p.2.

¹⁰⁶ Corrales, J. (2011).

Noteworthy however is the fact that, along with a strong and independent judiciary, an assertive state is also important. In Brazil, it was the state that emerged as the most vocal claimant of LGBT rights. Both the Attorney General and the Governor of the state of Rio de Janeiro presented the case before court, since they were both already offering important rights to same-sex couples and wanted to guarantee their continuation.¹⁰⁷

¹⁰⁷ Ibid.

POLICY RECOMMENDATIONS:

I. STATE INITIATIVES:

- Promote the building and strengthening of civic society through the instauration of institutions and the promotion of political debate. This in turn will help enhance the self-referential character of the citizenship.
- Help diffuse the pervasiveness of homophobia through educational/communicational campaigns and inclusionary policies. Refrain from contributing to the binary-exclusive construction of gender to create “queer” spaces within the public sphere.
- Further criminalize systematic homophobia by enacting a hate crimes and/or anti-police abuse and freedom of speech/sexuality legislation.
- In accordance with the “spillover” effect, LGBT-inclusive policies are inevitable as society moves forward. Promote marriage equality, civil unions, or pacts of solidarity according to the political preparedness of a given society. Avoid referendum democracy, as minority rights should never be up for the majority to vote on.
- Promote separation of State/Church and Party/Church. Also the independence and strength of the three governing power: legislative,

executive and judicial as a means of installing a systems of checks and balances.

- Embrace the idea of diversity and means for development. Including LGBT people in all avenues of life can bring countless benefits.
- Integrate LGBT people as public servants, and more importantly public role-models.
- Promote the free movement of LGBT people as well as other rights such as immigration and asylum regimes, family reunification, and gender reassignment.

II. LGBT GROUPS INITIATIVES:

- Promote strategic alliances with both LGBT and non-LGBT institutions and persons. Education is paramount for inclusion and equality.
- Help dismantle the idea of heteronormativity within the concept of citizenship by promoting the idea of both sexual and queer citizenship.
- Plan strategies according to prevailing political landscapes to advance LGTB rights.
- Create a multifaceted approach to fight homophobia and the promotion of equality. "Coming out" and visibility should be just one part of a multifaceted strategy, and not the be-all- end-all.

- Utilize both the Human Right approach and Queer Theory in conjunction to create space for debate and inclusion. Promote self-criticism and awareness regarding universalizing and exclusionary approaches to sexuality and gender.
- Embrace Globalization as it provide LGBT groups with importance bargaining leverage, such as earning allies in government and business
- Reach out across the political party spectrum. No longer are LGBT issues radical leftist concerns. Pragmatism towards party life open political opportunities for LGBT groups.
- Increase visibility and claim your place in the public sphere by marching. Gay prides have carved a place for the LGBT community in the public's consciousness, and such space must be preserved.
- Engage Pop culture as the new populism as it transforms cultural norms. Isn't that right, Lady Gaga?
- Embrace the new media available and let your truth be heard. You are know your own story-teller.

CONCLUSION:

In order to break away from systems of oppression, it is paramount to fully understand how they form and operate. Social constructs are particularly interesting analytical subjects, since they have the ability to sustain and conceal themselves seamlessly. Furthermore, often the most critical aspect of social constructs is how they shape systems of oppression simply by omission or via invisibility.

The normalizing process is a potent tool when shaping identities and power dynamics. Constructs of sexuality and identity have been examined in this piece and inserted within the underpinning of systems of exclusion. While LGBT and Queer scholars disagree on the role of identity politics, and the ability of non-conformists to break away from the norm; I believe that what really is important is to remain engaged.

As Latin America seems to have entered a new post-material era, my hope is that this institutional changes influence the dynamics on the ground, and institutionalized homophobia begins to be systematically execrated. As we become more educated, and as a consequence, less prejudiced; we gained not only a world of possibilities for ourselves, but for those around us and those who will come after we are gone.

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