

Introduction: Christianity, Gender, Sexuality and the Law in Latin America

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The issues of gender, sexuality and reproduction have gained a strong public presence in Latin America in recent years. Political agendas have begun gradually to include topics related to LGBTI¹ rights and access of people – especially women – to reproductive justice. In some cases, these processes have generated policies, laws and judgments favorable to women and LGBTI movements' demands. For example, in recent years, countries as diverse as Argentina, Uruguay, Mexico, Colombia and Brazil allowed same-sex marriage, whether through the adoption of laws or by favorable rulings, after broad political and social debates. Other countries, including Ecuador, Costa Rica and Chile, still do not recognize same-sex marriage, but have allowed civil unions. Argentina and Bolivia also adopted laws of gender identity which, among other things, guarantee the right to recognition of self-perceived identity over the one assigned at birth. Moreover, in recent years, Uruguay and the Federal District of Mexico have legalized abortion under a trimester-based system, while other countries have expanded the decriminalized grounds for terminating a pregnancy voluntarily, despite maintaining the illegality of abortion.

However, the successful expansion of rights with respect to gender, sexuality and reproduction, is not a linear process or free from controversy and backlashes. In 1997, for example, El Salvador banned abortion without exception, a decision emulated by Nicaragua in 2007. In 2015, the Peruvian Congress rejected the adoption of a civil union law. In addition, since at least 1998 Latin America has seen a wave of litigation and legislative processes against emergency contraception (Peñas Defago and Morán Faúndes 2014). Some of these have been reversed. In Chile, a law was passed in 2010 during Michelle Bachelet's first administration (2006–2010) allowing the public health system to provide emergency contraception, which reversed an unfavorable ruling of the Constitutional

¹ Throughout this introduction we have elected to use the comprehensive term, 'Lesbian, Gay, Bisexual, Trans and/or Intersex' (abbreviated as LGBTI) to refer to the internally diverse community of people who identify in ways other than with heterosexual norms.

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Court in 2008. In Honduras and elsewhere, however, bans on emergency contraception remain.

Considering the ongoing and often public controversy around these issues, it is necessary to develop and deepen the frames through which we understand how these dynamics unfold in the region. To this end, the contributors to this special issue understand gender and sexuality as public and political fields characterized by tensions, disputes and struggles over power, including state power (Corrêa et al. 2008; Pecheny and La Dehesa 2011). Accepted meanings about gender roles, the body, sexual practices, and the permissible public expression of desire, among others, are shot through with contending assumptions and discourses, which participate in the construction of prevailing institutional frameworks governing gender and sexuality. Contributors to this special issue part ways with any assumption of gender and sexuality as either natural, biological or immutable. On the contrary, they depart from an understanding of the boundaries of gender and sexuality as demarcated by discourses of knowledge and power that establish what is publicly legitimate, true and permissible, for example about sexual conduct and gender roles (Foucault 1976).

One of these discourses is religion (Figari 2007). Some religious actors have been active protagonists in this regional context of progress and backlashes over sexuality and gender issues, making it crucial to better understand the relationship between gender and sexuality, on the one hand, and religion, on the other. The articles presented here address several dimensions of this relationship. In various forms and to different extents, Latin America is a region characterized by a strong Christian – and especially Catholic – heritage, where religious institutions continue to exercise authority over definitions of what is publically permissible around questions of gender, the body, and sexual conduct. Thus, gender, sexual and religious politics are intertwined in complex ways, which, in recent years have led to a series of public contests in different countries, in particular, over women's reproductive rights and LGBTI rights. Up to this point, religious responses to changing gender roles, new (non)reproductive practices and technologies, violence against women, and the greater visibility of LGBTI groups have ranged from ambivalent to hostile. And in some countries, these developments have triggered negative responses from religious leaders and groups, leading to religious participation in efforts to limit the legal rights of women and members of the LGBTI community.

The fact of a Latin American Pope, however, has added new dynamism to the role of religion in the region. Although his words and attitudes are still a matter of analysis and controversy (see Mallimaci 2013; Vaggione 2013), Argentine-born Pope Francis's public criticism of the Church's prioritization of dogma and moral doctrines at the expense of a stance of inclusiveness and service is a remarkable turnabout. The words and actions of Pope Francis remind us that religious attitudes and actions around controversial topics like sexuality are often more dynamic than we tend to assume.

Despite late twentieth century assumptions about the increasing secularization of society and the weakening and withering of religious beliefs with the advance of modernity, today religion maintains a strong public presence throughout the world (Casanova 1994). And Latin America is no exception. If, in the broadest sense, religion has ceased to provide the primary organizing principles for most societies and cultures, religious beliefs remain a vital source of meaning in the lives of many. At the same time, the ways in which people

identify with religions, expressions of faith, interpretations of the world, and their relationship to the sacred, have tended toward a pronounced process of individuation, syncretism and autonomization (Blancarte 2012; Mallimaci and Giménez Beliveau 2007; Martínez 2011; Parker Gumucio 2005).

Abundant evidence about the continued global relevance of religion has marginalized naive theories of secularization and revitalized different areas of religious studies (Casanova 1994). One of these areas, which is generating an increasingly robust academic literature, is the relationship between religion and politics. This 'return' of religion to academic agendas, however, has acquired different nuances in different places. In Latin America academic analysis and scholarship have focused on diverse aspects of the relationship between politics and religion, such as identifying the threshold of secularism (*laicidad*) of the state,² and the increase in religious pluralism. It is in this context that we have seen an increase in attention to the links between religion, gender and sexuality. Although still a relatively fragmented and emerging field, this special issue represents an effort to bring together some of its main analytical dimensions developed from the vantage point of Latin America.

In recent years religious positions have notably influenced political contests over the legal definition of, and rights associated with, gender and sexuality across the region. The legal arena is where gender rights and the boundaries of sexuality have most often been institutionalized in contemporary Latin American democracies. Thus, the law has become a central battleground in efforts to define the boundaries of gender and sexuality. In different countries, processes for the promulgation of laws regarding the regulation of abortion, marriage between same-sex couples, access to modern contraceptive methods, recognition of self-perceived gender identity and the access to technologies and procedures for body modification, among other issues, have been marked by regular public contestation in which religion has been a prominent actor and voice. Despite the secular status of the law, religious advocates and concepts have had notable influence upon the frontiers of what is permitted and forbidden or legal and illegal. Within this context, not only do parliamentary institutions become a core arena of these disputes, but courts have also become prominent. Legal mobilization has become an important strategy among movements struggling to push the boundaries between the authorization and prohibition of certain expressions of sexuality and gender rights (Cabal and Todd-Gher 2009; Cabal et al. 2001; Manzo 2011; Peñas Defago and Morán Faúndes 2014; Sáez 2014; Yamin 2005).

The articles in this collection, therefore, examine the strategies of church and religious groups, often as they work with governments and are engaged in influencing the legislative process, and so, the rule of law, to achieve particular goals regarding gender, the regulation of women's bodies, and policing of alternative sexual persuasions. They also examine the range of strategies and responses, including religious responses, to efforts to curtail the rights of women or members of the LGBTI community. If there are important and highly visible social movements now demanding attention to violence against women and LGBTI persons, and significant efforts by governments to address the issue,

² The concept of 'thresholds of secularism' was developed by the French sociologist Jean Baubérot (1990).

we still know comparatively little about how religious institutions and actors have sought to engage with the rights of women and of LGBTI people through legal frameworks, on all sides of these struggles. This is a gap that the present set of articles begins to address.

Legal systems, however, are not only arenas of dispute. They also articulate discourses of power (Sousa Santos 2009). Legal, as well as religious, discourse, represents a map of statements, terms, categories, and beliefs that give meaning to reality, instituting authoritative 'truths' about it (Scott 1988). The law continues to govern in Latin American societies as a regulatory frame that articulates truths about the body which reproduce forms of sexual stratification (Rubin 1989). By establishing norms that regulate the how, what and who relating to sexual practices (Vaggione 2012), the law has historically acted on bodies and sought to regulate the boundaries between what is permitted and what is not. While these regulations are not static, and vary across time and societies, they produced different sexual hierarchies (Rubin 1989; Weeks 1998). Even today, in many countries, heterosexual identities have normative privileges over gay and lesbian expressions, adult sexuality over adolescent, male over female, and cisgender over transgender, among others.

Historically, religiously-inspired family law structures have preceded the separation of church and state in Latin America. Regional legal frameworks have been influenced by religious values such as protection of the patriarchal family, the celebration of motherhood, and procreation as the primary goal of marriage. In these and other ways throughout the region religious influence in the construction of the law has helped to make women and alternative sexual identities and practices invisible to legal institutions intended to protect individuals. Women, in particular, have been treated as incomplete individuals, with little capacity to make responsible decisions. This is one important context that today informs how religion may undermine the inclusion of women and reconceptualization of family through criminal and legal systems. It is precisely these tensions that are gathered together and considered by Juan Marco Vaggione in his contribution to this special issue. Vaggione invites us to understand the link between the law and religion as an 'imbrication'. He uses this concept to interrogate the stability of the separation between politics and religion as part of Latin American modernity. In the process he highlights how a Christian heritage of concepts and assumptions underlies the secular legal system, directly affecting the rights of social categories historically excluded on the basis of gender and/or sexuality.

The last twenty years have also seen an increasing number of movements in Latin America advocating for greater equality for women and LGBTI groups, along with pioneering municipal and national anti-discrimination laws in such areas as employment, housing, and family law (Pecheny and La Dehesa 2011). If these developments have yet to lead to notable changes in the formal positions of the main churches around sexuality, informally and strategically they have affected how some religious actors interact with civil society and governments. In Mexico and in Argentina, for example, groups of Catholic clergy, influenced by liberation theology and in dialogue with feminist and queer positions, now voice support for same-sex marriage and endorse women's rights, though not necessarily all reproductive rights.

Although they are a minority, today it is now possible to find some progressive churches that are openly in favor of sexual and reproductive rights (Fuentes

Belgrave 2013; Jones and Carbonelli 2012; Vaggione 2005). Feminist theology represents another example of this religious dissidence (Althaus-Reid 2000; Aquino and Rosado-Nunes 2008; Peñas Defago and Sgró Ruata 2009; Riba 2005; Tamez 1989; Vuola 1996). Respect for the secular democratic state, along with recognition of feminism, has meant that some religious actors have begun to advance more pluralistic ideas, beyond traditional moral objections. It is not yet clear to what extent these developments are precursors of more radical changes in previously entrenched churches positions on gender and sexuality.

The appearance of progressive religious actors around these issues puts into question traditional theoretical and political approaches that associate the secular with advances in the field of sexual and reproductive rights, and where religion is inevitably linked to conservative positions (Jakobsen and Pellegrini 2008). Several authors in this special issue review these complex and rarely highlighted progressive modes of articulation between religion, gender and sexuality. For the case of Argentina, Mario Pecheny, Daniel Jones and Lucía Ariza demonstrate how religious actors are positioned on both sides of that country's gender and sexuality disputes, while pointing to the existence of a number of religious organizations, churches and leaders who have supported some of the major causes defended by feminists and LGBTI movements during the last decade. In connection with the latter, the article written by Juan Marco Vaggione emphasizes how the politicization of religious pluralism, along with the defense of secularism, has become a central strategy of feminist and LGBTI activism in Latin America, as a way to disconnect the law from its traditionally conservative Christian heritage.

At the same time in several Latin American countries we are witnessing a powerful backlash against women's and LGBTI rights, promoted largely by some religious actors, and characterized in particular by systematic legal and constitutional efforts to limit or to eliminate women's reproductive rights and to avoid the recognition of sexual equality. The Catholic Church (Carbonelli et al. 2011; Dides 2006; Esquivel 2013; Morán Faúndes 2013; Mujica 2007; Peñas Defago 2010), as well as the more conservative evangelical churches (especially those with Pentecostal roots) (Campos Machado 2012; Jones and Carbonelli 2012; Vital and Leite Lopes 2013), have become the main actors in opposition to feminist and LGBTI demands in the region. The most conservative religious actors have reacted to these new sexual and gender paradigms promoted by feminist and LGBTI movements by opposing the agenda of sexual and reproductive rights. In various ways, this reaction has amounted to a renewed entry of religion into the public space (Vaggione 2005), including efforts to bring religious positions into political institutions.

For instance, in all Latin American countries these churches have maintained categorical stances against abortion, even when the life of the pregnant woman is in danger. Across the region, the Catholic Church has lobbied to amend laws and constitutions to expand the right to life from conception, and thus render abortion virtually unattainable under any circumstances (Htun 2003). The Church hierarchy has also lobbied to enforce existing statutes and to prosecute women who may have had an illegal abortion, as occurs in El Salvador and parts of Mexico.

The conservative influence of the Catholic hierarchy has been reinforced in recent years by the growth of the evangelical field in the region. During much of the twentieth century, several studies affirmed that 90% of the Latin American

population self-identified as Catholic (Pew Research Center 2014). But in recent years this percentage began to decline and, at present, has fallen significantly. According to the data released by the Pew Research Center, today 69% of the population of Latin America identifies as Catholic, while 19% identify with the evangelical faith. As Parker Gumucio (2012) indicates, given the loss of trust with Catholicism, Latin American parishioners tend to seek evangelical alternatives, and not to abandon the faith. This process, and its multiple social and political effects, interrupted the construction of Latin America as Catholic. This growth of the evangelical field, while destabilizing the Catholic hegemony, has contributed to a reinforcement of conservative sexual politics led by both the Catholic and evangelical churches that have placed sexuality and reproduction at the center of their concerns and political objectives. Several detailed case studies explore the development, and legal implications, of the transnational footprint of conservative religious activism, and its strong impact on gender and sexual policies. The article by Mauricio Albarracín and Julieta Lemaitre focuses on marriage equality in Colombia, in which all branch of governments have intervened in one way or another. The authors show in great detail Colombia's path toward recognition of same-sex marriage, the protagonism of public officials and judicial institutions, and their complex relationship to religion. In particular, the role of Alejandro Ordoñez, the Inspector General of Colombia and a well-known Catholic activist on the far right of the Church, exemplifies religiously-inspired resistance and its intersections with the public sphere against the advance of sexual and reproductive rights.

The article by José Manuel Morán Faúndes focuses on the case of Argentina's 'Pro-Life' NGOs. Morán Faúndes shows how civil society has recently become an arena prioritized by conservative religious activists mounting challenges to sexual and reproductive rights. It highlights how 'Pro-Life' organizations have activated a number of strategies over time in order to maximize legislative and judicial impact, in opposition to feminist and LGBTI advances. The importation of conservative religious activism to the civil society arena has allowed such activism to expand its field of intervention and to diversify the institutional mechanisms through which religion might impact gender and sexuality policies.

On the other hand, Macarena Sáez addresses the religious heritage of secular regulations affecting women. Focusing on Chile, Sáez argues that historically legal statutes impacting women have been secular in form and religious in substance. This would explain why, despite the increasing influence of 'dignity' as a secular concept linked to equality and autonomy, when it comes to harms suffered by women in areas such as sexual violence and abortion, dignity has been used against women. Through an analysis of official Vatican documents and public interventions of the Chilean clergy in the debate over abortion, Sáez shows how a Catholic essentialism of women as mothers and martyrs has hindered their treatment as citizens with the same dignity as men.

However, the ability of the Catholic Church to hinder the advances of sexual and reproductive rights varies from context to context. The contribution of Mario Pecheny, Daniel Jones and Lucía Ariza to this special issue explores the variables that allowed the creation of laws and policies related to gender and sexuality in the last decade in Argentina, despite the strong opposition of the Catholic Church, led at the time by Jorge Bergoglio (now, Pope Francis), in alliance with conservative evangelical churches. Focusing on the administrations of Néstor Kirchner (2003–2007) and Cristina Fernández (2007–2015), the authors

reveal the connection between developments around sexual and reproductive rights and Argentina's post-neoliberal scenario. Over the past decade, kirchnerism promoted a development model based on a language of individual freedoms, seeking to consolidate a set of rights focused on improving the conditions of the excluded sectors of the population, including women and LGBTI people. This 'liberal populism', as the authors designate it, favored the creation of a series of laws and public policies based on respect and promotion of sexual and reproductive rights. On the other hand, the article also explores the limits of Kirchner's post-neoliberalism, and its accompanying rights based model, represented by his administration's inability to pass a comprehensive abortion law.

Just as the degree of Church opposition to sexual and reproductive rights varies, so does the opposition to these issues across different religious denominations. For example, in English-speaking Caribbean countries, consensual sex between same-sex adults is still for the most part criminalized. And LGBTI people suffer from violent discrimination in more systematic and state-tolerated ways than in the Spanish Caribbean and in Latin American countries, where the Catholic Church is still predominant. There seems to be a difference, therefore, in religious reactions to LGBTI rights between countries where the Catholic Church is still the predominant religious institution and countries where Evangelical groups have taken the lead. In the English-speaking Caribbean (as in some Sub-Saharan African countries), Evangelical groups have called for a stronger, at times more violent reaction to any attempt to decriminalize sodomy. In turn, the Catholic Church, prominent in the Spanish Caribbean and Latin America, shows an equally discriminatory stand on LGBTI rights, but does not embrace explicit violence against LGBTI people in the same manner as Evangelical groups. In contrast to Evangelicals, Catholic groups have responded to the LGBTI question with a doctrinal narrative of pity toward gays and lesbians, identifying them as social outcasts but not as legitimate targets for physical violence. If we are to understand the range of religious responses in Latin America to advocacy for women's and LGBTI rights, we need research that better accounts for increasing religious pluralism.

In her article Maria Das Dores Campos Machado addresses the complexities associated with the Brazilian scenario, where there is still a Catholic majority while conservative evangelical sectors have grown considerably, becoming an important social and political force. In such a context, evangelical actors have adopted strategies of opposition to sexual and reproductive rights. A notable form of this adaptation is the use of human rights language. If, as the author shows, human rights have become an available normative framework for widening the margins of sexuality in Brazil, conservative sectors, particularly Pentecostals, also mobilize human rights discourse to defend their participation in debates on sexual politics, appealing to rights-based notions that exclude sexual and reproductive rights.

In sum, this collection addresses multiple aspects of the contemporary intersection of religion with gender and sexuality in Latin America, as this is being worked out through different struggles around the law. Offering analyses of illustrative cases throughout the region, in such countries as Colombia, Brazil, Argentina, and Chile, this set of articles undertakes an active dialogue with critical legal debates currently defining the frontiers between religion, sex, and gender across Latin America. Case studies address such key questions as same-sex marriage, abortion rights, the relationship of Pentecostalism and Catholicism

to debates about reproductive and sexual rights, religious pro-life strategies, Church-State relations with regard to gender and sexuality, and religious uses of secular discourses in these legal struggles. Each case is concerned with the engagement of religious discourses and actors in conflicts over legal definitions regarding sexuality or women's bodies. The articles gathered in this issue show two trends: 1) how at present conservative religious actors have responded to new paradigms of gender and sexuality promoted by the feminist, women's and LGBTI movements, in the process intensifying their presence in the public sphere while developing new forms of political, including secular, action, at times in collaboration with governments; and 2) the incorporation of pluralistic religious sources as an important dimension of grassroots progressive efforts to promote the agenda of sexual and reproductive rights, and to challenge the monopoly of morality traditionally held by conservative churches.

As a whole this collection offers a snap shot of the theoretical and empirical diversity across Latin America as part of ongoing public debate about the relationship between religion and the secular understandings of gender, sexuality and reproduction. This set of articles attends to religiously-inspired legal interventions, and the dynamism of these articulations, including changing pastoral attitudes and advocacy strategies, as these sometimes unexpectedly transcend familiar religious/secular and progressive/conservative divides. Contributors also seek to identify the sources for church attitudes and actions regarding women and sexuality in Latin America in prevailing religious concepts and doctrine, oftentimes in conjunction with secular and legal sources, and the ways such concepts are combined and used to promote or discount these categories of person as rights-bearing subjects.

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