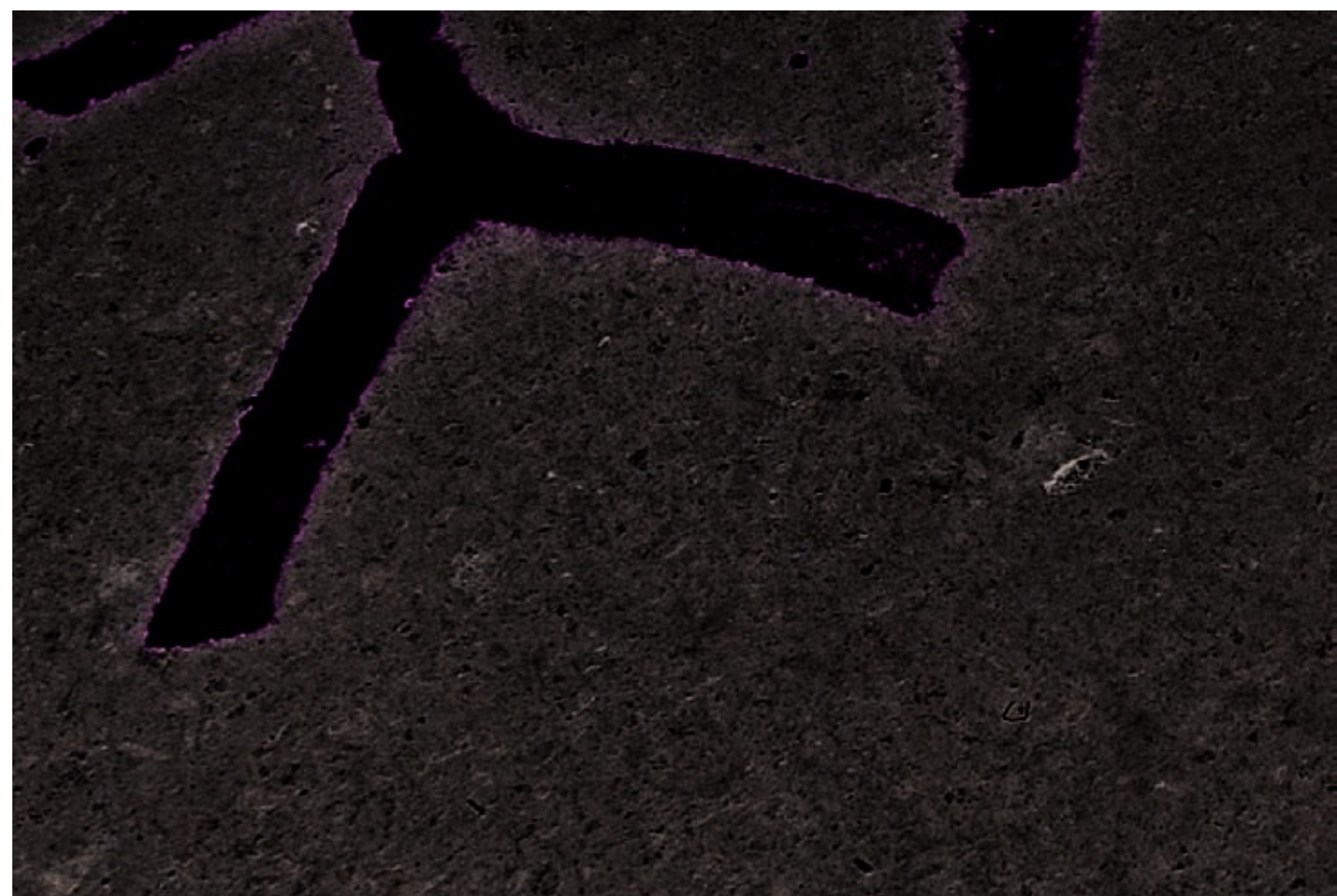


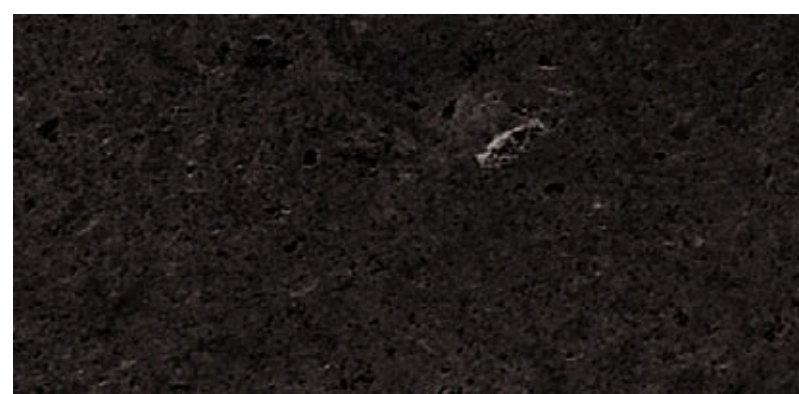
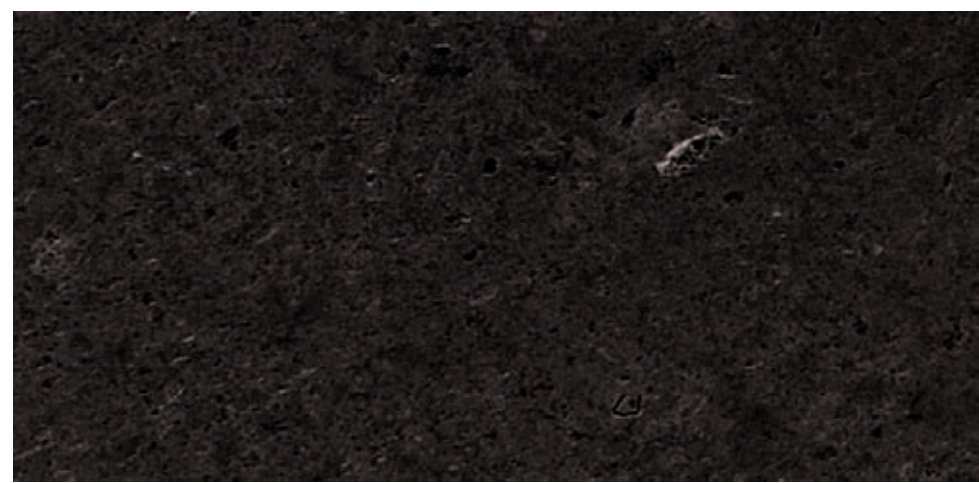
**LGBT RIGHTS IN THE  
AMERICAS**

**JAVIER CORRALES**









Taking (and painting) the  
street: a demonstration  
outside the Federal  
Congress in Buenos Aires.

***MERICAS***

***L RIGHTS***

***HE A***

***IN T***

**The region has made great strides in a new frontier  
of social inclusion: protecting and advancing the  
rights of the LGBT community. How did it happen?**

***by Javier Corrales***

88

Americas Quarterly S P R I N G 2 0 1 2

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4/10/12 6:33 AM





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A transformation, some would even say a revolution, is taking place in our understanding of democracy. Citizens and nations are increasingly recognizing that freedom and equality under the law requires



protecting the rights, status and expression of lesbian, gay, bisexual, and transgender (LGBT) people.

What was a taboo subject 20 years ago is today open to public discussion and debate. LGBT rights are central topics of concern, not just in academic circles, but even in televised presidential debates.

Remarkably, Latin America has emerged as a world leader in this democratic transformation.

Some of the most advanced pro-LGBT legislation can be found in the region. But at the same time, in many areas Latin America is a world laggard; some of the worst forms of homophobia are routinely found in Latin America—placing the Americas in the awkward position of occupying both the lead and the back seat in the historic global movement to expand our conception of democracy. What explains this dichotomy?

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S P R I N G 2 0 1 2 Americas Quarterly

89

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4/16/12 5:28 AM

LGBT Rights in the Americas JAVIER CORRALES

## **LATIN AMERICA LEADS**

and urged the Human Rights Council to address these important human rights issues.

Also that month, President Dilma Rousseff of Brazil

discussed with President Barack Obama of the United

It is important to look first at the positive. Some spectacular achievements in LGBT rights have occurred

just in the past two years.

Everybody who follows Latin American affairs is

States the appointment of a special rapporteur on LGBT

probably familiar with the pathbreaking 2010 law in Ar-

rights within the Inter-American Commission for Hu-

gentina legalizing gay marriage and adoption. But many

man Rights (IACHR) at the Organization of American

people may not realize that, while only Argentina, Can-

States (OAS). Last November, partially in response, the ada, Mexico City, and a few states in the United States IACHR created a Unit on the Rights of Lesbian, Gay, Bi-have approved gay marriage laws, LGBT rights are ex-

sexual, Trans, and Intersex (LGBTI) Persons.

panding almost everywhere.

And yet, despite these advances, Latin America is still For instance, in 2008, Brazil's then-President Luiz In-home to some of the worst forms of discrimination and

ácio Lula da Silva inaugurated an international LGBT

mistreatment of LGBT folks.

congress. The same year, Ecuador approved the second

The notion of hate crime does not exist in many coun-

constitution in the world that bans discrimination on

tries. Surveys show that the majorities tend to have little the basis of "gender identity," "sexual orientation" and political tolerance for LGBT rights everywhere except in

"HIV status" (although it still defi nes marriage as the Argentina and Uruguay. Churches, schools, neighbors,

"union between man and woman," Art. 68).

and households routinely demonize LGBT people, forc-

In 2009, Uruguay approved civil unions. In 2010, El

ing them to leave their places of residence or to stay in Salvador's president, Mauricio Funes, issued a decree

the closet. Politicians still express apprehension. The banning discrimination in the public service based

governor of Jalisco state in Mexico was typical in his

on sexual orientation and gender identity. Costa Rica's remark that gay marriage "still disgusts me."

Constitutional Court ordered the Supreme Elections

The Catholic and Protestant Churches play a compli-

Tribunal to discontinue preparations for a referendum

cated role. On the one hand, Catholic charities tend to be petitioned by *Observatorio de la Familia*, a conservative group that offers assistance to AIDS patients and victims of domestic violence seeking to block gay rights. The same year, Bra-

zil's Federal Supreme Tribunal voted 10-0 in favor of LGBT community. On the other hand, factions within gay partnerships.

the clergy are today the most unabashed exponents

In 2011, Lima Mayor Susana Villarán led the city's small-scale anti-LGBT speech. Chile's Cardinal Jorge Medina is

gay pride parade. In Colombia, the Supreme Court unan-

a good example, openly proclaiming that "if a person

imously ruled that homosexual couples have the right

has a homosexual tendency it is a defect, like missing

to "form a family" and gave the legislature two years to amend the constitution, but when it enters the practice of legislating in favor of recognizing same-sex unions. Even of sexual life between people it's still not acceptable."

Fidel Castro, a person not known for admitting errors,

Few pro-democracy movements in the past 30 years

apologized publicly for his mistreatment of homosex-

have had to face such a complicated dilemma: fighting

equality in the 1960s.

a moral authority in order to make a democratic point.

The transformation of Latin America is not just an

With certain religious leaders deciding to become un-

internal affair.

abashedly outspoken against homosexuality, the LGBT

As this process has unfolded, the region has emerged  
movement finds itself battling a widely esteemed insti-as a global champion of LGBT rights. In 2007,  
for instance, tution in its campaign to win rights.

Argentina, Brazil and Uruguay promoted the United Na-  
Even when homophobia is quiet, it is still potent.  
tions launch of the Yogyakarta Principles, which spec-  
Few Latin American employers have proactive prodi-  
ify how states must treat issues of sexual orientation  
versity policies, and LGBT employees are often encour-  
and gender identity.

aged not to fl aunt their sexuality. Marriage continues In March 2011, on behalf of 85 signatory  
countries,  
to be defi ned, constitutionally in some cases, as unions Colombia delivered a joint statement during the  
UN  
reserved for straight couples (or fake straight couples).

General Debate that called on states to end violence  
Neither the police nor school teachers receive train-  
and establish criminal sanctions for human rights vio-  
ing on how best to respond to LGBT issues. Transsexu-  
lations linked to sexual orientation and gender identity, als, many of whom rely on sex work to make a  
living,

90

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JAVIER CO RR ALES LGBT Rights in the Americas

**Violence remains a problem. In Honduras, Mexico, Colombia, and Brazil, prominent gay leaders have been murdered.**

face the worst forms of physical and mental abuse, and

were summed up, with a country's overall scores rang-

sometimes lethal violence, by the very same people

ing from -1 to 14. If a country provided no information, who purchase their services. In several English-speak-it received a 0 score for that category, based on the using Caribbean nations, homosexuality remains illegal.

sumption that if no information was listed, it was highly Consequently, there is an air of inhospitality even

unlikely that legislation existed.

when the legal environment is hospitable.

Mexico City is a good example. A year after the city ap-The Organizational Environment

proved in late 2006 a cohabitation law granting same-sex Since we know that laws are not always enforced, it is

couples marital rights identical to those established for important to fi nd ways to measure the quality of life

common-law relationships between men and women,

for LGBT people. This is diffi cult, almost impossible, only 302 couples applied for this right. In contrast, in to achieve for all countries and regions. Some surveys

Massachusetts, with a smaller population (of 6.5 million of degrees of discrimination have been conducted, but

versus 8.9 million in Mexico City), eight months after gay they are sporadic and unavailable everywhere.

marriage was approved, 6,000 couples fi led for this right.

As a less-than-perfect solution, Pecheny, Mari Crook

Violence remains a problem. In Honduras, Mexico,

and I came up with what we call an index of gay-friend-

Colombia, and Brazil, prominent gay leaders have been

liness of cities. This index measures the number of gay-murdered. Latin American LGBT groups are finding that, owned or gay-friendly organizations and businesses in

as Omar Encarnación has argued, gay rights in the books the top three most populated cities in 117 countries. The

“will mean nothing” as long as discrimination and vio-

information was gathered from the 2007 issue of Sparta-

lence remain rampant.

cus, a directory of gay services worldwide.

Three preliminary organization scores were given:

## **MEASURING PROGRESS**

average number of businesses across the three most

The dichotomy of status of LGBT rights can also be gauged quantitatively. Mario Pecheny and I

populated city and the number of businesses per cap-

have been working on two possible measures

ita in the most populated city. While this index has a

of LGBT rights and status. One looks at the le-

number of methodological problems, it offers the only

gal environment, the other at LGBT-friendly organiza-

measure of urban life from the point of view of the

tions in a given country.

LGBT community. The index provides an estimate of

the number of gay-owned and gay-friendly businesses

## **The Legal Environment**

per 100,000 inhabitants, in each country’s three larg-

Drawing from various sources, we have identified seven urban centers.

legislative categories that affect LGBT rights: legality of Both indices confirm the same story. Latin

America

same-sex sexual activity, legality of same-sex relations has become a leader in LGBT rights and urban living

ships, legality of same-sex marriage, legality of same-sex conditions. In terms of the legal environment, the average score for Latin America is 5.53. In terms of organizational density, the average for Latin America is 2.01

protection of gender identity.

(meaning that there are 2.01 gay-friendly organizations per 100,000 inhabitants).

Each country was given a score from -1 to 2 for each

category, depending on whether there is full,

partial, or no pro-LGBT legislation in the country for

that particular category. The scores from each category

are shown in Figure 1

the data. First, the score for Latin America in

Figure 1

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91

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4/10/12 6:33 AM

LGBT Rights in the Americas JAVIER CORRALES

FIGURE 1. Pro-LGBT Laws and Businesses by Region (on a -1 to 14 scale) **Canada**

**Europe\***

**USA**

**Latin America**

**Eastern Europe & Central Asia\***

**East Asia & Pacific**

**Caribbean**

**South Asia**

**Sub-Saharan Africa**

**Middle East & North Africa**

-1 0 1 2 3 4 5 6 7 8 9 10 11 12 13 14

Legal environment average score

Organizational density average score

\*Countries author

Europe: Andorra, Austria, Belgium, Croatia, Cyprus, Czech Republic, Eastern Europe and Central Asia: Albania, Armenia,

includes in Europe

Denmark, Estonia, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Greenland, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania,

and Eastern Europe/

Malta, Netherlands, Norway, Poland, Portugal, San Marino, Slovakia, Macedonia, Moldova, Montenegro, Romania, Russia, Serbia, Central Asia are:

Slovenia, South Georgia, Spain, Sweden, Switzerland, United Kingdom.

Tajikistan, Turkey, Turkmenistan, Ukraine, Uzbekistan.

excludes the islands of the Caribbean. When examined

And there is no question that, in terms of legal is-

separately, the score for the Caribbean is dismal, one of the lowest, Argentina is perhaps the most important achiever.

the lowest in the world: 2.85 for the legal index; 1.11 for the organizational index.

**Why Argentina, of All Places?**

Second, there is significant variation even across the continent. When one examines the literature on the factors that affect the rest of Latin America. Argentina, Brazil, Peru, and Co-



ten relate to LGBT rights, one finds that many of these countries score very favorably in our indices, but Bolivia, factors can be found in Argentina. Democratic rights are Mexico, Venezuela, and most Central American countries widespread and leading parties are mostly leftist. Further-tries score poorly (below 4 points of 14 in our legal index).

more, there is plenty of evidence that cultural attitudes are secular, at least in the cities. One of the strongest cor-**HOW DID ARGENTINA DO IT?**

relations is between secularism (measured in terms of the **How might we explain this divergence? Most percentage of people in a given country who believe that people are familiar with the obstacles to LGBT**

“marriage is an outdated institution”) and a very pro-LGBT

rights, ranging from well-entrenched cultural

legal and organizational environment. This finding fits norms of machismo, sexism and secrecy, to the

the Argentine case well, and helps explain why the Ca-

prominent role of religion in preaching anti-LGBT po-

ribbean and Central America don't do so well.

sitions. So perhaps the best approach to the question is But Argentina also contradicts some of the impor-  
to focus on the reasons for high scores rather than on

tant predictions of the literature. For instance, eco-

the reasons for low scores.

nomic globalization is associated with LGBT rights. Yet 92

Americas Quarterly S P R I N G 2 0 1 2

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AQ0212\_CORRALES\_LAY16.indd 92

4/10/12 6:33 AM

JAVIER CO R R A L E S LGBT Rights in the Americas

Argentina has, at best, medium rather than high levels

how globalization helps to promote LGBT rights. We

of globalization.

saw that the Argentina case defi es what the theory says Furthermore, on a number of measures, Argentina is

about globalization, when measured in economic terms.

not more secular than its peers in Latin America. While Argentina also illustrates a type of globalization that the differences between Argentina and Brazil are signifi -

is especially helpful, and that, incidentally, is scarce in cant, they are not as large between Argentina and Chile, the U.S.: transnational legalism.

Mexico, Colombia, and Peru.

This term refers to the ease with which a country's

To explain why Argentina is so far ahead of the curve,

legal system borrows from international cases to set le-we need to go beyond conventional explanations.

gal precedents domestically. While most countries in

Latin America have a strong tradition of transnational

**Here are six factors that explain Argentina's success.**

legalism, Argentina is a regional champion. It is both an avid importer of international norms (since 1994, most

**First**, it's not just secular values but also the role of international human rights treaties have had constitu-the church in Argentina. Argentine Catholics don't go

tional status) and also a voluminous exporter of legal

to church as much as people elsewhere in Latin Amer-

norms, playing active roles in helping international orica, and there are a small number of evangelicals. Much ganizations and foreign countries bolster their human

has been said about the fact that a Catholic country such rights norms and helping countries establish truth com-as Argentina has approved gay marriage. This is a point missions. Argentina's pro-LGBT forces were quite com-worth making, because the Catholic Church, since 2007,

fortable emulating norms from abroad, even borrowing

especially under the present pope, has become more ob-

verbatim wording and arguments from actors fi ghting

sessed with blocking same-sex marriage.

elsewhere to approve LGBT rights.

In Argentina, even though the church actually

launched a crusade against the marriage bill, church at-Fourth, the domestic legal landscape is as important a tendency is low—approximately 22 percent of the population as global influence. Argentina's pro-LGBT groups seldom attend church services weekly. The Evangelical

did not just draw from abroad. They also drew from do-

population is tiny (only 9 percent, including Protestants, mestizo sources.

Lutherans and Methodists).

The agenda of the LGBT movement was cast as part

Low church attendance and the low numbers of Evan-

of the country's broader agenda on women's reproduc-

tion. Evangelicals help predict pro-LGBT legislation because it reflects rights, gender equality, health, and sexuality. These factors reveal the extent of societal secularism, as well as the issues that have been part of Argentina's legislative agenda. The mobilizational weakness of the churches. Argentina is

for several decades. Furthermore, a strategy was devel-

oped that is distinctive on both counts.

It was developed by different LGBT organizations, particularly the

*Federación Argentina de Lesbianas, Gays, Bisexuales y Trans* (Argentine Federation of Lesbians, Gays, Bisexuals and Trans), to encourage gay couples to request marriage licenses, get an official refusal and then challenge the decision on constitutional grounds. There is no strong Christian Democratic party, as the decision on constitutional grounds. This strategy proved effective. Several judges re-connections with Opus Dei that characterizes the ruling parties in Colombia and Mexico. There is no party

in Chile and Venezuela. No party has the kind of strong connections with evangelical groups, similar to the ties of the contemporary Republicans in the U.S. (and arguably, the Labor Party in Brazil and most

of the world). In less than a year, a dozen gay couples with strong connections with evangelical groups, similar to the ties of the contemporary Republicans in the U.S. (and arguably, the Labor Party in Brazil and most

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of the world). In less than a year, a dozen gay couples with strong connections with evangelical groups, similar to the ties of the contemporary Republicans in the U.S. (and arguably, the Labor Party in Brazil and most

parties in Central America and the Anglo-Caribbean).

In contrast, the Catholic Church almost took pride in

This is one reason why so many legislators in Argen-

presenting itself as outside the law. Its discourse against tina, from all parties, risked voting against the pulpit.

LGBT folks became so aggressive and discriminatory that even those who were unsure about the morality of the

**Third**, transnational legalism is the most important bill were appalled by the church's position.

form of globalization. Much has been written about

Whereas the traditional left in Latin America has

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93

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4/10/12 6:33 AM



Argentina thus replicated the path

taken by Massachusetts, where gay marriage was approved first through a court ruling, and then by legislative vote against the wishes of Governor Mitt Romney, who wanted a referendum, and avoided the California and Florida models, which relied on popular vote to disastrous results.

**Sixth**, the president presides. Ultimately, what made the law possible in Argentina was the president's decision

A banner day: President Cristina Fernández de Kirchner (center) with LGBT activists after the approval of the same-sex marriage law. This

brave act is the one factor that is

more ad hoc and specific to the case,

never quite come to terms with globalization, always

and yet perhaps it was the most indispensable. Analysts responding to it with various forms of negativity ranging from suspicion to extreme repulsion—LGBT move-

ment. Perhaps she did this because of the Peronist tradition of confronting the church openly (while secretly

leveraging bargaining leverage. For instance, they use traditional negotiating other agreements). Perhaps it was another

within the ruling party.

globalization. LGBT groups systematically use resources provided by globalization and markets to enhance their

of confronting the church openly (while secretly bargaining leverage. For instance, they use traditional negotiating other agreements). Perhaps it was another

within the ruling party.

globalization. LGBT groups systematically use resources provided by globalization and markets to enhance their

and new media such as the Internet to actively monitor

example of the administration's penchant for open

and adapt to local circumstances the strategies adopted confrontation. Perhaps she did it because the opposi-by LGBT movements elsewhere on the planet.

tion was fragmented and likely to split even more se-

The key lesson, therefore, is that in addition to transna-verely than the ruling party. Perhaps she did it because tional legalism, a country needs to have a well-grounded the government needed to recover lost ground among

legal tradition of equality, liberty and human rights, as the young and the urbanites, who had abandoned her.

well as a set of social movements with expertise in how Perhaps she did it out of principle.

to use that tradition to its advantage.

Who knows? What matters is that the president

took the risk.

**Fifth**, democracy, yes; referendum democracy, no. Per-A few days after the law was approved, Fernández wel-

haps the most important victory by pro-LGBT groups in

comed, for the fi rst time ever, a host of LGBT organiza-Arentina was to avoid the referenda trap. Enemies of

tions to the Pink House. That, too, was historic and gutsy.

Argentina's gay marriage legislation, including the Cath-Overcoming homophobia is not easy and, perhaps,

olic Church, offered a populist compromise: submit the

never fully attainable. But Argentina offers some impor-issue to a popular vote.

tant lessons on what it takes to move forward.

In Latin America at the moment, the concept of par-

It is important to live in a democracy, of course. But

ticipatory democracy is in vogue. But LGBT groups in

it is more important to avoid referenda democracy. It is Argentina and their allies were smart to

recognize the

important to have separation of church and state, but it problems with this form of populism. Submitting ques-is also vital to have secular citizens and secular parties.

tions of minority rights to a majority vote is inherently a Ultimately, legislatively approved gay marriage is

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biased process—against the minority group, naturally—

transforming the way we have thought of democracy

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and this makes it undemocratic despite its reliance on

for the past three centuries, and it would be disingenu-FA/

the popular vote. Deciding the rights of minorities by

ous to believe that this effort can occur without courage.

IACR

consulting majorities is not democracy; rather, it is tyr-A

L G

anny of the majority, or perhaps more aptly, “the vio-

**Javier Corrales** *is professor of political science at IEN*

lence of faction” (Federalist No. 10, 1787).

*Amherst College.*

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94

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