

Activists, Parties, and the Expansion of Trans Rights in Bolivia¹

Calla Hummel, University of Miami

V. Ximena Velasco-Guachalla, University of Essex

Abstract

Bolivia prohibits discrimination based on gender identity and passed a ground-breaking gender identity law. These laws had little support among voters and passed along with heteronormative measures. Why did activists succeed in proposing and passing legislation that most voters did not support? Why were Bolivia's advances in LGBTQ+ rights accompanied by heteronormative laws? We argue that parties with deep ties to social movements are more likely to advance legislation that expands LGBTQ+ rights than other parties. We argue that contradictory laws emerge where both organized religion and LGBTQ+ activists are party constituents. We describe how Bolivian trans activists leveraged their access to ruling party legislators, using interviews with activists and officials, and briefly discuss the cases of Argentina, Chile, Ecuador, Uruguay, Paraguay, and Colombia.

Keywords: gender identity, activism, LGBTQ+, social movements, Bolivia

The State prohibits and punishes all forms of discrimination based on sex, color, age, *sexual orientation, gender identity*, origin, culture, nationality, citizenship, language, religious belief, ideology, political affiliation or philosophy, civil status, economic or social condition, type of occupation, level of education, disability, pregnancy, and any other discrimination that attempts to or results in the annulment of or harm to the equal recognition, enjoyment or exercise of the rights of all people.

-Article 14, Clause II of the 2009 Bolivian Constitution

Introduction

In 2009, Bolivia became the second country in the world to constitutionally bar discrimination based on gender identity, after Ecuador in 2008, and only the fifth constitution in the world to protect sexual orientation.² In May 2016, Bolivia passed Law 807, the gender identity law, which enables Bolivians to quickly change their government identification documents to reflect their name and gender. The law asserts that the constitution protects gender expression, that gender is socially constructed, and that “every person has the right to be recognized according to their gender identity.”³ Activists wrote and modeled Bolivia’s gender identity law after legislation that trans⁴ activists wrote and passed in Uruguay in 2009 and Argentina in 2012. The inclusion of the anti-discrimination clause in the constitution and the passing of Law 807 is surprising in a country that separated the church from the state in 2009, has a highly religious population, and where organized religion has significant political power.

Why did activists succeed in adopting an anti-discrimination clause and passing a national gender identity law that most voters did not support? Scholars find that advancements in LGBTQ+ rights typically come from court decisions or bureaucratic rule changes, and that LGBTQ+ rights *legislation* is less common.⁵ Lack of broad public support from voters and push back by conservative groups have been key obstacles for LGBTQ+ rights legislation in many countries.⁶ In the Bolivian case, while LGBTQ+ activists were pushing for sexual orientation and gender identity to become protected categories in the constitution, Catholic and Evangelical representatives to the constitutional assembly included a clause defining marriage as between a man and a woman. Evangelical representatives then filed a court challenge to the 2016 gender identity law that successfully reduced many of the law’s protections. This raises a related puzzle: Why were Bolivia’s advances in LGBTQ+ rights accompanied by blatantly heteronormative laws?

We address both puzzles with an argument about the parties and constituencies that back LGBTQ+ rights legislation. We suggest that centrist and leftist parties with strong ties to social movements are particularly likely to enact anti-discrimination proposals into law. We join

scholars who link LGBTQ+ rights expansion to the broader political context. We bring insights from research on parties to LGBTQ+ politics: we emphasize that the structure of the party in power shapes activists' likelihood of policy success. We show that in the context of strong party-social movement ties, trans activists in Bolivia leveraged their increased access to legislators in the Movement Towards Socialism (MAS) party and benefited from the expansion of LGBTQ+ legislation across the region. We argue that parties with strong social movement ties are more likely to advance LGBTQ+ rights because these parties' governing and electoral coalitions often include LGBTQ+ civil society groups and are less likely to include organized homophobic and transphobic religious groups. Where these coalitions do include organized religion, we suggest that the coexistence of LGBTQ+ rights expansion and heteronormative laws become more likely.

We outline a brief history of LGBTQ+ rights in Latin America, focusing on the wave of gender identity rights since Uruguay's groundbreaking 2009 gender identity law and the transnational activist networks behind the expansion. In this paper, we focus on gender identity laws because of their impact on how trans people interact with the state and participate in politics, the laws' rapid spread, and the dearth of research on gender identity laws in political science. We draw on research about parties, social movements, and the LGBTQ+ politics literature to build the argument. We illustrate the argument with a case study of the passage of the Bolivian gender identity law and the legal backlash that gutted parts of the law. We develop the case study using interviews with Bolivian officials and activists, NGO reports, newspaper articles and research by Bolivian activist-scholars. We conclude with a brief discussion on the similar dynamics behind gender identity legislation or lack thereof in Argentina, Chile, Ecuador, Uruguay, Paraguay, and Colombia and the many open research questions about the expansion of trans rights.

Gender Identity Rights in Latin America

Latin America experienced a "gay rights revolution"⁷ in the 2010s as activists won victory after victory in courts and legislatures around the region. The rights revolution now extends to trans rights: half a dozen countries have passed activist-written gender identity laws, anti-discrimination clauses are quickly spreading, and Argentina, Uruguay, and Chile provide free gender-affirming healthcare that includes medical transition.⁸ This paper focuses on gender identity laws because of their deep impact on how trans people experience citizenship and the dearth of research on gender identity laws in political science.

Gender identity laws reduce discrimination and increase access to employment, healthcare, housing, and government by allowing people to align their official identification documents (IDs) with their gender identity and expression.⁹ Gender affirming IDs are associated with improved education, employment, safety, healthcare, and political participation,¹⁰ while incongruent IDs are associated with violence and discrimination.¹¹ Gender affirming IDs are

particularly important for political participation like voting and for accessing public goods and services.¹²

In 2009, the Uruguayan legislature passed a law that established a right to gender identity and the free expression of gender identity by establishing a routine administrative process for people to change their name and gender data on official documents.¹³ Prior to Uruguay's law and a 2017 Inter-American Court of Human Rights advisory ruling, trans people in most Latin American countries could not change their gender on identity documents and either could never change their names or only change them with a court order.¹⁴ Many countries in the region now allow gender and name changes (with varying levels of difficulty) without judges' or doctors' orders, either through gender identity laws, administrative law, or court decisions. A significant minority — Venezuela, Paraguay, Nicaragua, the Dominican Republic, and Honduras — still prohibit gender and/or name changes on government documents.¹⁵

Activists in Argentina wrote and passed a ground-breaking gender identity law in 2012 that added a right to medically transition in the public health system.¹⁶ While court and administrative decisions had tacitly established this right to medical transition in a handful of other countries, including Chile and Brazil, the Argentine law was the first piece of legislation that explicitly granted a right to medically transition and directed state resources to trans healthcare. The law passed the Argentine Senate almost unanimously and established a right to gender identity and defined gender identity as individually experienced and determined. This step was particularly important because globally, most laws that enabled people to change their identity documents or medically transition at the time also required documentation from psychiatrists, therapists, general practitioners, or judges. These steps cost large sums of money and dozens of hours that many trans individuals do not have. The Argentine law de-pathologized the name and gender data change process by establishing that any citizen could apply for changes to their identity documents without any medical documentation. Scholars have found that legal recognition is associated with empowerment in the transgender population in Argentina.¹⁷

Activists worldwide took note of Argentina's success and proposed legislative projects of their own. In Bolivia, Ecuador, and Chile, activists started to develop similar legislation within their own governments.¹⁸ In each of these three countries, activists wrote the initial proposal, and then lobbied representatives in the leftist, social movement-oriented parties in power — Movement towards Socialism (MAS) in Bolivia, Proud and Sovereign Homeland (Alianza PAIS) in Ecuador, and the Socialist Party in Chile — to take up and pass the legislation. Bolivia and Ecuador passed laws in February and May of 2016, establishing a right to gender identity based on constitutional rights to identity, gender, and freedom from discrimination, and setting out a simple administrative process for changing names and gender data on official documents. While these take language from the Argentine law, they do not mention medical transition.

Chile's 2018 law enables Chileans to change their names and gender data and facilitates medical transitions through the public healthcare system.¹⁹ The law builds on previous administrative law and court decisions that had enabled trans people to access care at public hospitals. Lawsuits and court rulings expanded the 2018 law to include nonbinary identities and the state issued the first nonbinary identification card in 2022. Uruguay updated its law in 2018 to recognize nonbinary identities, allow individuals to medically transition within the public healthcare system, and to change documents without medical documentation. Argentina subsequently updated its law to also recognize nonbinary identities.

The Argentine, Chilean, Spanish, and Uruguayan laws are the most progressive gender identity laws in the world at the time of writing. They recognize self-determination and free expression of gender identity and guarantee state resources to help individuals affirm those identities through public healthcare systems. They rely on the individual's informed consent, rather than letters from third party authorities like doctors and judges. These laws remove huge financial burdens from trans and nonbinary individuals and could help to reduce inequality and poverty among gender diverse communities. Laws and constitutions in Argentina, Bolivia, Chile, Ecuador, Uruguay, Colombia, and Brazil protect gender identity and sexual orientation and allow individuals to have their identities recognized and protected by the state.²⁰ A handful of other countries protect sexual orientation but not gender identity.²¹

However, even those countries that provide strong de-jure protections can lag significantly behind in terms of de-facto enforcement. For example, Bolivian trans activists report that in 2022, they frequently have to educate state bureaucrats about how the gender identity law works when they apply for updated identification documents and that no coordination exists across government institutions to update a person's name and gender data once their official identification documents change.²² Similarly, Chilean activist Shane Cienfuegos spent 8 years suing the state before receiving the country's first nonbinary identity document and their lawyer states that there are hundreds of other similar unresolved cases.²³

Paradoxically, Latin America is also the region with the most documented violence against LGBTQ+ people and has wide variation in legal protections for trans and nonbinary people.²⁴ Hundreds of gay, lesbian, nonbinary, and especially trans people are murdered every year across the region in blatant hate crimes.²⁵ While some countries provide free medical care and gender-affirming documents, others like Paraguay prohibit any name and gender data changes and endorse state-sponsored censorship of gender diversity.²⁶

Political Parties, Social Movement Ties, and LGBTQ+ Rights Legislation

National legislatures rarely pass LGBTQ+ rights legislation because in most countries, majorities of voters are opposed to LGBTQ+ rights and LGBTQ+ people have little if any political representation.²⁷ Even in places where activists expected national leaders and their parties to be receptive of LGBTQ+ demands, the record is mixed.²⁸ For example, activists and observers expected the Latin American leftist parties that took power in the early 2000s to expand LGBTQ+ rights because their electoral platforms included broad human rights expansions.²⁹ Yet, leftist parties have proven unreliable allies for LGBTQ+ activists due to entrenched homophobia and transphobia as well as alliances with powerful religious groups.³⁰ Perhaps contrary to expectations, a few center-right ruling parties — namely Chile’s National Renewal Party under Piñera and Argentina’s Republican Proposal Party under Macri — have adopted some LGBTQ+ rights into their agendas or their members have voted for LGBTQ+ rights legislation as public opinion in those countries has shifted in favor of LGBTQ+ rights.³¹

We argue that the structure of the party in power shapes activists’ likelihood of policy success. Specifically, open party structures with greater participatory channels and more direct policy input from their bases are more likely to pass activists’ legislation initiatives. This approach is helpful in understanding why we observe pro-LGBTQ+ rights rhetoric and action across much of the ideological spectrum, and can explain the parallel presence of pro-LGBTQ+ rights and blatant heteronormative law.

Social Movement Ties

We suggest that the greater the interaction between social movements and political parties — with social movement parties being at one end of that interaction — the more likely we are to observe legislation that expands LGBTQ+ rights. Researchers have thoroughly documented the influence of social movements in electoral politics and the centrality of social movements in the expansion of LGBTQ+ rights.³² Social movements may have little to no influence on a political party; on the other hand, a social movement can form a party as its electoral vehicle in national politics.³³

Social movements’ interaction with political parties opens bottom-up participation channels into the policymaking process, and the incorporation of demands unanswered by more traditional political parties with no ties to social movements.³⁴ When electoral success for a political party depends on support from a social movement, the party is responsive to movement demands.³⁵ This enables a more open political structure — contexts where there are viable means of political access and where politicians are willing to listen.³⁶ Parties with strong social movement ties distinguish themselves from other prospective political allies for LGBTQ+ activists by giving them greater opportunities to write, propose, and expand policy. LGBTQ+ activists are more likely to be part of parties with strong ties to social movements and be recognized by the party leadership as an important constituency. The coalitions behind these parties enable LGBTQ+ activists to be part of powerful alliances with direct influence in the policymaking process within

the party.³⁷ Party leadership, candidates, and appointees often draw directly from the ranks of social movements. For example, in Bolivia, the MAS treats social movements and civil society organizations as training grounds for candidates and political appointees. Nominating or appointing an activist strengthens the party's connections to that activist's movement, which the party treats as expanding or maintaining its voter base. Appointed activists in turn then have access to party resources and the levers of government, which can be used in service of their movement.³⁸

Organized Religion and Heteronormative Law

We suggest that party structures can also help explain the parallel presence of pro-LGBTQ+ rights and blatant heteronormative law. Religious organizations form the largest organized opposition to LGBTQ+ rights around the world.³⁹ In *When States Come Out*, Ayoub links the degree of religious nationalism to variation in LGBTQ+ rights in Europe. Similarly, Corrales partially explains varying levels of resistance to LGBTQ+ rights with religiosity and especially the reach and political power of Evangelical churches across Latin America in *The Politics of LGBTQ Rights Expansion in Latin America and the Caribbean*. A party can count both social movements and organized religious groups within its electoral base, offering both access to the policy making process.

Parties with ties to social movements have increased their political presence in many countries by configuring themselves as multiethnic, multiclass, and multisectorial coalitions that bring together many interests.⁴⁰ Parties in diverse societies like Bolivia, Ecuador, and Brazil must therefore address the identities and preferences of their many constituencies and the electorate at large. These constituencies often disagree vehemently over gender roles, racism, religion, inequality, and minority rights. Parties with ties to LGBTQ+ groups and organized religion with anti-LGBTQ+ stances need to simultaneously respond to these constituencies. When this happens, parties may introduce both LGBTQ+ rights bills and heteronormative legislation. Additionally, pro-LGBTQ+ legislation can be challenged and altered by parties with stronger religious constituencies. There is significant regional and temporal variation in the presence, organization, and political access of religious groups that appears to influence the outcome of LGBTQ+ legislation in many countries.

Hypotheses

We envision a party's social movement ties as a continuum ranging from no interaction with social movements on one end to a social movement-based party on the other end. This activity intersects with the strength and agendas of organized religious groups in a country. We hypothesize that where parties with strong ties to social movements operate in societies with mobilized and anti-LGBTQ+ religious groups—the third quadrant in Table 1—we are more likely to observe both pro-LGBTQ+ rights and overtly heteronormative law rather than the absence of LGBTQ+ rights. This is the hypothesis that departs from the expectations of the

existing literature. For example, competing social movements and religious activists enshrined both sexual orientation anti-discrimination clauses and definitions of marriage as between one man and one woman in the Bolivian and Ecuadorian constitutions.⁴¹ Both constitutional assemblies were projects by leftist parties with deep social movement ties that brought together civil society representatives to create new constitutions that expanded social rights. The parallel presence of conflicting legislation is the result of the parties' response to multiple constituencies. Our expectations are summarized as hypotheses in the 2x2 in Table 1.

Table 1. 2x2 of theoretical expectations

	Social movement ties strong	Social movement ties weak
Power of organized religion low	LGBTQ+ rights legislation likely	LGBTQ+ legislation unlikely
Power of organized religion high	Contradictory legislation likely	Anti-LGBTQ+ legislation likely

Parties with few social movement ties have no regular or institutionalized relationships with them. When these parties are in power in a country where organized religion is not politically powerful or not homophobic (second quadrant), we hypothesize that they are unlikely to pass any LGBTQ+ legislation. This is the example of the Brazilian Democratic Movement Party (PMDB), a center-right party in Brazil with few social movement ties and the party of Presidents Sarney and Temer. However, when these parties are in power in a country where organized religion is politically powerful and homophobic (fourth quadrant), like the Colorado Party in Paraguay under Presidents Cartes and Peña, we theorize that they are more likely to pass anti-LGBTQ+ legislation. These hypotheses follow the existing literature on LGBTQ+ rights expansion, political context, and organized religion. At the other end of the continuum are parties with strong ties to social movements who maintain regular, institutionalized relationships through working groups, policy input, and candidate nominations. Where these parties govern with few ties to organized religion (first quadrant), like the Broad Front party in Uruguay or the Socialist Party in Chile, we hypothesize that they are likely to pass LGBTQ+ rights legislation. These hypotheses add to and extend the existing literature on LGBTQ+ rights expansion.

Scope Conditions

The first scope condition is that we expect our argument to apply to centrist and leftist parties, but not to conservative parties. Centrist parties are more likely to attract politicians and constituencies with heterogeneous interests (Hawkins & Morgenstern 2000; Morgenstern 2004), and therefore, are more willing to work with a diverse set of social movements and integrate a wider set of demands. Second, leftist parties' platforms often include broad human rights expansions. However, we expect conservative parties to pass no LGBTQ+ legislation or anti-LGBTQ+ under current political conditions, but not mixed or pro-LGBTQ+ legislation. Theoretically, LGBTQ+ activists could work with conservative parties in the ways that we have theorized. In practice, we have no examples of this happening. We expect that this may change with time. Currently, conservative parties with ties to social movements tend to develop ties to conservative religious movements that are almost universally against LGBTQ+ rights.⁴² In the handful of examples that we have of LGBTQ+ activists within conservative parties, larger and more powerful religious constituents overrule any attempt to advance LGBTQ+ rights within the party.

The second scope condition is that we expect our argument to apply in places with an active LGBTQ+ movement. The process that we theorize here cannot happen without organized and mobilized activists to pressure politicians for rights and write model legislation. Without an LGBTQ+ movement, we do not expect legislatures to pass LGBTQ+ rights laws. Relatedly, social movement-party ties are insufficient in the absence of coherent policy and transnational LGBTQ+ activist networks supply activists in different countries with policy projects that activists can adapt to local needs. In *When States Come Out*, among other publications, Ayoub demonstrates that LGBTQ+ activists across Europe share information and resources and learn from each others' successful and frustrated campaigns. Ayoub also shows that activists have built regional networks between civil society groups and regional governments.⁴³ Transnational activism and policy diffusion appear to be present and important in every case with a gender identity law and many without. As a result, we treat transnational activism and policy diffusion as a necessary background factor, but our focus is on the variation in social movement-party ties that institutionalize activists' efforts.

Finally, because our argument revolves around political parties and their constituents, the third scope condition is that the political system meets at least minimal definitions of democracy in which political parties exist, face at least some competition, and are at least minimally responsive and accountable to constituents.

In the following sections, we trace Bolivian LGBTQ+ activists' experiences through eras of low political influence in an officially Catholic state to the competing interests of the early MAS era and then to moderate political influence in the MAS under an officially secular state. We show how activists have adapted policy from other countries and increasingly written LGBTQ+

legislation as social movement actors have gained influence in party politics and as organized religious groups have lost influence.

Methods

We are interested in why activists succeeded in advancing trans rights legislation when most voters oppose it, and why LGBTQ+ rights legislation is sometimes accompanied by heteronormative legislation. To answer these research questions, we need cases where 1) legislation passed but 2) where public opinion did not support the legislation and 3) with heteronormative legislation. In Latin America, two countries meet all three conditions: Bolivia and Ecuador. Of those options, we selected Bolivia because others have written about Ecuador's experience⁴⁴ and we the authors have more connections to Bolivian officials, activists, and academics. Other Latin American countries meet one or two conditions. For example, in Uruguay, Argentina, and Chile, LGBTQ+ rights legislation has passed *with* most voters in favor. In Brazil, Colombia, and Costa Rica, LGBTQ+ rights have primarily advanced through court decisions and administrative law, rather than legislation.

We address the research questions and illustrate the theory through a detailed case study of Bolivia's gender identity law, Law 807 of 2016. We selected Bolivia because it is a case where adverse conditions suggest that a gender identity law would not pass: trans Bolivians face extreme discrimination, most Bolivian voters do not support LGBTQ+ rights, and only one openly LGBTQ+ person has ever been elected to any national office. Yet the Bolivian case becomes a pathway case if we consider other factors.⁴⁵ For example, Bolivian activists are highly networked and Bolivia has a robust social movement party that has dominated domestic politics since 2006.

We interviewed 28 activists, officials, and academics involved in multiple LGBTQ+ rights proposals in Bolivia as well as Chile, Ecuador, and the United States between May 2022 and August 2023. To develop the Bolivian case, we interviewed 19 officials and activists in three departmental capitals of Bolivia: La Paz, Santa Cruz, and Trinidad. The interviewees are primarily trans, with some cisgender gay, bisexual, and straight allies. The interviewees include government officials and activists involved in the drafting of the gender identity law and its implementation, founders of the country's first trans organizations, and younger activists who use and implement the law. We primarily interviewed activists because activists had more information on trans politics and policy than most other experts. Additionally, many activists had participated in drafting, proposing, lobbying for, and then implementing legislation over a decade whereas officials, with a few notable exceptions, had participated in only one or two stages. We use a chronologically-assigned letter of the alphabet for lesser-known officials and activists to protect confidentiality and we quote with attribution and enthusiastic consent the well-known public figures who frequently appear in the national press. We supplement the

interviews with legal texts, academic and NGO reports, and news coverage from Bolivia's main newspapers. More details on the interviews, authors' positionality, and research ethics can be found in the Methodological Appendix.

Bolivia's gender identity law

Contemporary Bolivian activists use the term *diversidad sexual y de género*, or sexual and gender diversity, to describe all gender and sexual identities, roles, and practices; we approximate *diversidad sexual y de género* with the term *gender diverse*. Gender diverse Bolivians began organizing for rights and political representation in the 1990s and 2000s.⁴⁶ Bolivian trans activists formed trans sex workers' unions in Santa Cruz and La Paz in the 1990s and early 2000s and these organizations quickly launched projects around identity documents and police harassment.⁴⁷ Activists from the sex worker unions founded larger civil society organizations that coordinated with activists around Latin America, such as the Organization of Transfeminine People of Bolivia (OTRAF). Trans organizations founded the national Miss Trans Bolivia competition and began to hold national congresses of trans activists at the competitions. These organizations and activists participated in national protest movements in the early 2000s and made alliances with the *Movimiento al Socialismo* (MAS) government starting in 2005. Activists proposed and drafted the gender identity law using these networks.⁴⁸

The 2009 Constitution and Article 14

Bolivia was rocked by repeated waves of protest in the early 2000s, with protests frequently blocking highways and airports for months on end and effectively shutting down the country.⁴⁹ The MAS party, led by Evo Morales, gained national prominence during the protests and built a powerful electoral coalition that included gay and trans activists and organizations. MAS started as the local political party of an indigenous social movement but gained national appeal by fusing multiethnic, multiclass and multisectorial movements that brought together many interests.⁵⁰ The MAS won the 2005 national elections and owed their electoral success to a wide range of social movements, including the indigenous women's movement, a faction of the feminist movement, and some groups in the LGBTQ+ community.

One of the MAS's campaign promises was to rewrite the constitution to better reflect and represent a diverse nation. No representatives of the LGBTQ+ movement were elected to the 2006-2007 constitutional assembly but their connections to feminist representatives enabled LGBTQ+ activists to propose clauses. The LGBTQ+ movement mobilized to protect gender identity and sexual orientation, for the separation of church and state, and to define marriage as between any two consenting adults; the first two of these three efforts were successful. The highly active and networked LGBTQ+ groups and activists reached out to many parts of the assembly.⁵¹ LGBTQ+ activists were in touch with activists in other countries and drew valuable lessons from the experiences of the constitutional processes in Ecuador and South Africa.⁵² Gay activist Ronald Cespedes, with an alliance of Bolivian grassroots organizations that was a core

constituency of the MAS, became the spokesperson for the LGBTQ+ movement in the Rights, Duties and Guarantees Commission of the Constituent Assembly.⁵³

Aruquipa et al argue in *Memorias Colectivas* that LGBTQ+ activists were key players in refounding the state. The 2006-2007 constitutional assembly and the 2009 constitution were envisioned as a project to decolonize, rethink, and transform the Bolivian state. Several scholars have highlighted crucial improvements in descriptive representation and overall participatory and inclusionary features.⁵⁴ Much of the 2009 constitution promotes the rights of the indigenous population and also contains articles that address the rights of women and the LGBTQ+ community, as well as officially separating church and state. Alvarez, Aruquipa, & Absi argue that for some LGBTQ+ groups, the refounding of the country as a plurinational and secular state that explicitly acknowledged in its constitution its various nations and peoples opened the door to discussions about the social construction of sexuality and gender.⁵⁵

However, the LGBTQ+ movement's proposal for gender-neutral language about marriage was discarded last-minute. Article 63 was rewritten to define marriage as between one man and one woman, after pressure from organized religious groups like the National Association of Evangelicals of Bolivia.⁵⁶ Still, by establishing non-discrimination based on gender identity or sexual orientation, article 14 of the constitution set a strong precedent and a legal tool for the drafting and eventual approval of the gender identity law. Several existing laws have also been modified to reflect the gender identity anti-discrimination clause in the constitution. Articles 14 and 63 are examples of high involvement from both social movements and religious groups leading to simultaneous and contradictory heteronormative and pro-LGBTQ+ laws.

Drafting the gender identity law

Trans activists from around Bolivia started drafting a national gender identity law at the 2010 Miss Trans Bolivia competition and national congress, months after Uruguay passed a landmark gender identity law in 2009. Laura Libertad, the president of OTRAF at the time, described a scene where over 70 trans activists from around the country gathered to enumerate the rights and clauses that they wanted in the law.⁵⁷ C remembers getting in touch with Argentine activists who had drafted a similar but broader law in Argentina that was passed in 2012:

“We simply copied the Argentine law. We used it as a base to start working on what we needed... We were in contact with the Trans Coordinating Committee in Argentina and the Latin American and Caribbean Network of Transgender People [RedLacTrans], which really helped us. We had meetings with them principally about the proposal and the design of the law.”⁵⁸

Also inspired by the Argentine experience, MAS senator Hilda Saavedra presented a bill to legalize same-sex marriage twice in 2012 and again in 2013. Although Saavedra's initiatives

were unsuccessful, her affiliation with the MAS gave the LGBTQ+ movement optimism about future legislation.⁵⁹

In 2010, it was possible for Bolivians to change their name and gender data on their national identity documents, but it was difficult and expensive. Bolivians had to go through the courts with doctors' affidavits and the process took at least two years and thousands of bolivianos, often thousands of dollars, in doctors', lawyers' and court fees.⁶⁰ Laura Libertad points out that "the whole thing pathologized us.... To access this right, people pathologized themselves."⁶¹ Several high profile activists successfully changed their names and gender data but the option priced out the vast majority of trans Bolivians who mostly make low wages in informal jobs as sex workers, beauticians, and street vendors.⁶²

OTRAF and another trans organization, the Trans Network of Bolivia (TREBOL), presented legislative proposals to the Ministry of Justice in 2011. Trans activists had developed connections with the Ministry of Justice and the Ministry facilitated these legislative proposals through workshops between activists and lawyers and repeated input from the MAS government. After combining the proposals, trans activists presented a simple legislative project that recognized gender identity and enabled Bolivians to change their names and gender data quickly. In Laura Libertad's words, the proposal meant that "there wouldn't be psychologists, psychiatrists, or judges deciding if one is trans or not, that it would be administrative."⁶³

The original proposal included language that trans people could have used to request hormone therapy and gender confirmation surgeries from public health institutions, modeled after the Argentine law. The Bolivian Ministry of Health rejected the inclusion of any reference to healthcare in the proposal.⁶⁴ Activists decided to remove healthcare and push for a right to change names, gender data, and photos on identification documents. Of the cuts, one activist involved in drafting the proposal stated, "They told us to cut it and 11 articles were left. It was proposed and they approved it quickly. Why? Because it didn't cost the state a thing."⁶⁵ The executive branch approved the proposal and President Evo Morales personally filed it before Congress in 2015.

The gender identity law

The Bolivian National Congress debated the law in 2015. The political context facilitated the law's passage: MAS had won a legislative supermajority in the 2014 national elections. This was a moment with high social movement involvement in the party and low religious influence as well as declining religious identification nationwide. The MAS supermajority included representatives from social movements who had expressed vocal support for the gender identity law, and these legislators would not face voters again until 2019.⁶⁶

There has never been an openly trans member of the Bolivian National Congress and only one openly LGBTQ+ representative, Manuel Canelas, a gay man elected in 2014. Canelas was a national representative from the MAS party who also held other high-ranking positions during the MAS administration. Trans activists gained extensive access to legislators and the bureaucracy through some trans activists' long-standing membership in the MAS party, LGBTQ+ activists like Canelas in the bureaucracy, and the MAS party's mechanisms to receive input from social movements.⁶⁷ For example, Diana Málaga and Laura Libertad, both indigenous trans women with extensive résumés in civil society leadership, have maintained membership in the MAS party since the early 2000s as *militantes*, or vocal and visible party organizers. As well-known *militantes*, they have the cellphone numbers of various politicians and bureaucrats who they can call for favors, requests, and meetings.⁶⁸ OTRAF had many contacts within the Ministry of Justice, the Ministry of Women, and the Office of the Public Ombudsman. These contacts and influence helped the activists draft a law that the administration would accept and then maneuver it to a floor vote. The LGBTQ+ movement was also able to capitalize on increased contact with the government designed to appease outrage over President Morales's off-script homophobic remarks to his Minister of Health during a speech in 2015.⁶⁹

One key activist-turned-bureaucrat, David Aruquipa, had extensive connections with trans activists as well as MAS politicians and bureaucrats. Aruquipa and the drag art collective La Familia Galán allied with MAS in the 2005 elections. After Aruquipa assisted with the administration's transition, the new ruling party appointed him to a post in the Ministry of Culture. He used this position to direct resources to the LGBTQ+ community and incorporate the community into Ministry programming. As he advanced in his career, he gained access to legislators, many of whom he knew from their activist days, and learned internal rules and regulations as well as how to write, pass, and implement legislation. He used these connections and information to help trans activists write and advance the gender identity law.⁷⁰

Trans activists remember huge debates between MAS representatives from urban areas, who supported the bill, and some representatives from rural, indigenous, and Evangelical constituencies, who opposed it. OTRAF president Luna Humerez explains, "We all participated in lobbying efforts in the upper and lower chambers with senators and representatives, speaking about the law and the importance of identity."⁷¹ Indigenous trans activists like Diana Málaga and Laura Libertad spoke with indigenous and rural representatives one-on-one to try to convince them that the proposed law protected human rights for trans people without infringing on anyone else's rights.⁷²

Former President Evo Morales and Vice President Álvaro García Linera, commanding figures within the MAS, publicly supported the law as an expansion of human rights. Diana Málaga, Laura Libertad, and the MAS leadership convinced many of the rural and indigenous MAS representatives to ultimately vote for it. The majority of MAS representatives supported the law

on human rights grounds and a few centrist opposition lawmakers did as well. The law passed the lower chamber largely along party lines but passed the Senate nearly unanimously, with a single dissenting vote from an Evangelical opposition lawmaker. Luna Humerez remembers, “When the law passed in the Senate I remember very well that everyone voted in favor except for one person... Everyone else voted ‘Yes,’ including the opposition.”⁷³

Aftermath and the Constitutional Court

The Evangelical lawmakers who opposed the law were unable to block its passage given the MAS supermajority and presidential support. However, they had public opinion on their side. Figures 1-3 offer a picture of this support. The Latin American Public Opinion Project (LAPOP) asked a nationally representative sample of Bolivians their opinions on same-sex marriage every two years from 2010-2019 and about their opinions on gay and lesbian people running for office every two years from 2004-2019. We take these questions as a proxy for support of LGBTQ+ rights more generally, including trans rights, because to our knowledge, no survey has asked Bolivians about their opinions on trans issues and rights. While research in other countries shows that opinions on trans rights can diverge from opinions on gay and lesbian rights, the documented divergence is always less support for trans rights and issues.⁷⁴ Thus, if Bolivian public opinion on trans rights differs from the data on gay rights, it likely means that the gender identity law had even less popular support than what we show here.

Figure 1. Public opinion on gay rights in Bolivia, 2004-2019

<INSERT FIGURE 1 HERE>

Source: LAPOP

Over the 15 years that LAPOP asked these questions, the proportion of Bolivians who strongly disapprove has dropped (see Figure 1). In 2010, 44% of Bolivians strongly disapproved of gay candidates while 64% strongly disapproved of equal marriage; only 11% and 7% of Bolivians strongly approved, respectively. By 2017, the year after the gender identity law, 38% and 51% of Bolivians strongly disapproved of gay candidates and equal marriage, respectively, while strong approval had more than doubled to 24% and 19%. Disapproval increased in 2014 as the legislative assembly debated modifications to the Family Code that brought discussions over the meaning and obligations of family, parenthood, and equal marriage front and center.⁷⁵ Support for LGBTQ+ rights has increased in Bolivia, but remains below 25% of surveyed respondents.

In 2019, over 88% of Bolivians identified with an organized religion and over 50% opposed LGBTQ+ rights.⁷⁶ Figure 2 shows religious affiliation and religiosity, respectively. The number of Catholics had declined from 80.9% of the population in 2010 to 66.1% in 2019 while the number of Evangelicals has risen from 8.4% to 12.5% over the same period. In public opinion surveys, the percentage of those who believe that religion is very important exceeds 50% in each survey wave and in 2019 it reached 70%.⁷⁷ The Democratic Christian Party led by Chi Hyun

Chung, an Evangelical pastor, gathered 9% and 8.8% of the vote in national elections in 2014 and 2019, respectively. Conservative parties also garner significant numbers of religious voters and often place second in national elections.

Figure 2: Religious identification in Bolivia, 2010-2019

<INSERT FIGURE 2 HERE>

Source: LAPOP

In the weeks following the approval of the gender identity law, several religious civil society groups led by the Platform for Life and Family mobilized in protest across regions in the country, with the largest mobilization in Santa Cruz, a bastion of the Catholic church and organized religion. Evangelical lawmakers deployed an institutional strategy that is common among civil society organizations: they appealed to the courts arguing that the gender identity law infringed on the rights of cisgender Bolivians. They argued that changing one’s gender data infringed on the constitutional clause that defines marriage as between a man and a woman and gender-based quotas that ensure equal representation for women in elections. The constitutional court agreed and interpreted the constitution's use of “men” and “women” to mean “cisgender men and women” in various clauses.⁷⁸ The court issued a decision that invalidated article 11 of the gender identity law, ruling that any Bolivian who changed their gender data under the law would not be able to marry, adopt, or run for public office as a woman.⁷⁹

Trans activists have challenged the court’s interpretation. Trans activists and organizations proposed another law that would address the contradictions in the constitution between articles 14 and 63 and restore trans Bolivians’ marriage, adoption, and political rights. However, they have not found sufficient support to move the proposal forward. Several obstacles that did not exist in 2015 complicate the path of the second proposal: MAS lost its supermajority, the political crisis of 2019 resulted in multiple elections, and the pandemic and political crisis increased the power of Evangelical lawmakers.⁸⁰

Discussion

At the time of writing in Latin America, Uruguay, Argentina, Chile, and Ecuador have also passed gender identity laws, while Brazil, Colombia, Panama, and Costa Rica have bureaucratic rules or court decisions that grant similar rights to trans citizens.⁸¹ Around the world, New Zealand, South Africa, Botswana, Pakistan, India, and many European countries have expanded gender identity rights through court decisions and bureaucratic rule changes while Spain passed an expansive trans rights law in 2022 and a law is moving through the German parliament in 2023. On the other hand, laws in Russia, Hungary, South Sudan, Malawi, Indonesia, Saudi Arabia, Oman, Jordan, Lebanon, Kuwait, the United Arab Emirates, and many U.S. states restrict or criminalize gender identity rights (these are not exhaustive lists).⁸²

In Argentina, Chile, and Uruguay, trans activists worked closely with a party in power to pass broad gender identity laws that voters supported and with little organized opposition from religious groups. In Uruguay, the Broad Front (FA) underwent a complex transition from a predominantly urban, center-left mass party to a party with an increasingly diverse electoral base that included a wider set of citizen organizations and movements.⁸³ The Broad Front worked closely with LGTBQ+ organizations to write and pass comprehensive LGTBQ+ rights legislation, including Latin America's first gender identity law.⁸⁴

In Chile, the Bachelet administration spent years developing a gender identity law with heavy activist involvement. Chile's Socialist Party has deep social movement ties and, according to Chilean trans activists, worked more closely with them than any previous administration.⁸⁵ While the final vote on Chile's gender identity law took place one month into the center-right Piñera administration, the law had been written, proposed, filed, and voted on under the Bachelet administration. In Argentina, several landmark LGTBQ+ laws were passed under Front for Victory (FPV) administrations, an electoral coalition that brought together several political parties with ties to civil society organizations and social movements. Representatives worked closely with the Argentine Federation of Lesbians, Gays, Bisexuals, and Trans (FALGBT) and other organizations to write and pass the gender identity law and the equal marriage law, and several of FALGBT members were officials in Front for Victory administrations.⁸⁶

Ecuador's experience echoes the dynamics that we describe in Bolivia: a party with deep social movement ties passed activist-written legislation that expanded trans rights, but also endorsed a constitutional definition of marriage as between one man and one woman. In Ecuador, Alianza PAIS's ties with civil society organizations, movements, and collectives provided opportunities for LGTBQ+ organizations to include their demands in the drafting of the 2008 constitution.⁸⁷ Alianza PAIS successfully ran multiple LGTBQ+ candidates, including Ecuador's first elected trans politician, Diane Rodriguez. Trans activists and organizations approached the Correa administration and met with ministries to draft and then pass Ecuador's gender identity law in 2016.⁸⁸ Trans organizations report that Correa's Alianza PAIS administration has been the only administration that worked closely with trans organizations.⁸⁹

Parties in power *without* deep ties to social movements may still expand trans rights, but these expansions appear to advance incrementally through bureaucratic rule changes or courts. Administrations in Colombia, Costa Rica, and at times the United States and Brazil fall into this category. In Colombia, trans rights have advanced through court decisions brought by civil society organizations during conservative administrations. LGTBQ+ organizations in the country had around nine judicial successes, the first in 1993 and the remaining between 2007 and 2016.⁹⁰ Administrations in these countries have fewer ties to the countries' active trans social movements and face opposition from conservative parties, organized religion, and their

constituencies that complicate any attempt at legislation. These cases highlight the judicial path towards LGBTQ+ rights expansion, a path that Javier Corrales argues that activists use when others paths close.⁹¹ Per our argument, social movement-party ties in these contexts are weak, and we are unlikely to observe national legislatures expanding sexual or gender minority rights. One weakness of bureaucratic rule changes and some court decisions is that the opposition can roll back rights when the administration changes, a version of which played out in the United States under the Trump administration and many subnational governments.

Some administrations have explicitly opposed trans rights, such as the Colorado Party in Paraguay, Bolsonaro in Brazil, Trump in the United States, and Ortega in Nicaragua. In Paraguay, anti-LGBTQ+ political power is strong and the ruling party has few ties to social movements and no ties to LGBTQ+ activists.⁹² The Paraguayan constitution defines marriage as between one man and one woman. In 2017, the Colorado administration declared that it would ban all “gender ideology” from educational materials and the Minister of Education publicly offered to burn books.⁹³ The LGBTQ+ policy group EqualDex lists Paraguay as a state sponsor of censorship of LGBTQ+ issues.⁹⁴

Political parties in power that had deep ties with social movements and counted LGBTQ+ groups as important constituents have been more likely to pass trans rights legislation than other administrations. Trans organizations leveraged their access to these political parties and openly LGBTQ+ officials to introduce their demands for rights into the policy agenda. The administrations that did not have strong ties to social movements either did not expand trans rights or did so incrementally through court cases or bureaucratic rule changes. In successful cases, the combination of open political party structures and trans activists’ mobilization enabled advancements in sexual and gender minority rights.

Conclusion

Through a coordinated wave of trans activism, several Latin American countries have passed laws that facilitate gender-affirming identification documents, broad anti-discrimination protections, and in a few countries, publicly-funded gender-affirming healthcare. We argue that these changes are possible because of activists’ and their social movements’ connections with parties across the region. Theoretically, our argument contributes to the growing literature on the interaction between social movements and political parties; the benefits and limitations of these ties for minority group representation. Specifically, we delve into the policy consequences of this interaction. Empirically, we explore the case of Bolivia’s 2016 gender identity law to illustrate our argument that parties with deep ties to social movements are particularly likely to pass LGBTQ+ and trans-specific legislation because LGBTQ+ activists are core members of their governing coalitions. We also address why LGBTQ+ rights legislation sometimes passes along with blatantly heteronormative legislation or clauses, as happened in Ecuador and Bolivia. We

argue that this outcome is likely when parties have deep ties to both LGBTQ+ and religious activists. In the case of Bolivia, many individual trans activists have allied with the powerful MAS party for over a decade and these alliances have created access to national government that did not exist before. Still, the influence of homophobic organized religious groups and activists means that the MAS administrations have passed both groundbreaking LGBTQ+ rights expansions and blatantly heteronormative law.

This research agenda opens many questions beyond the scope of this paper that we encourage other researchers to engage with. Chiefly, what are the effects of LGBTQ+ rights legislation and especially trans rights legislation? Do policies increase support for minority rights once passed, as they often have in European countries and U.S. states?⁹⁵ Do LGBTQ+ rights policies have other, more diffuse effects on sexual and gender minorities through increasing access to the state or public goods or decreasing discrimination in the private sector? Are there differences in the effect of these rights if they come through the legislature, the courts, or the bureaucracy? What are the limits of these policies?

The study addresses the much broader question of how underrepresented minority groups can protect their rights without support from the majority. In the case of Bolivia, trans activists were able to pass groundbreaking trans rights legislation without any trans representation in the National Congress and without the support of public opinion. They were able to do this by painstakingly building coalitions within the party in power and the bureaucracy, which the party's structure made possible. In this case and others, we posit that the expansion and contraction of trans rights contain important lessons for theories of democracy, citizenship, representation, and minority rights that are central to political science.

List of Interviews

Public Figures

Laura Libertad, Vice President, founding member, and former National President of OTRAF, July 26th, 2022, La Paz, Bolivia

Luna Humerez, National President of OTRAF, July 28th, 2022, La Paz, Bolivia

David Aruquipa, founding member of La Familia Galán, former Director of Cultural Heritage in the Ministry of Culture, former National President of the Colectivo TLGB, academic, July 29th, 2022, La Paz, Bolivia

Diana Málaga, La Paz Department President of OTRAF, journalist, July 30th, 2022, La Paz, Bolivia

Diane Rodriguez, President and founder, Silueta X, former national assembly representative, July 14th, 2023, Quito, Ecuador

Activists and academics

Note: we assigned letters chronologically to interviewees

A, May 2022, Miami, FL
B, July 2022, Santa Cruz, Bolivia
C, July 2022, Santa Cruz, Bolivia
D, July 2022, Trinidad, Bolivia
E, July 2022, Trinidad, Bolivia
F, July 2022, Trinidad, Bolivia
G, July 2022, Trinidad, Bolivia
H, July 2022, Trinidad, Bolivia
I, July 2022, Trinidad, Bolivia
J, July 2022, Trinidad, Bolivia
K, July 2022, La Paz, Bolivia
L, July 2022, La Paz, Bolivia
M, July 2022, La Paz, Bolivia
N, July 2022, La Paz, Bolivia
O, July 2022, La Paz, Bolivia
P, July 2022, La Paz, Bolivia
Q, August 2022, Miami, FL
R, October 2022, Santiago, Chile
S, October 2022, Santiago, Chile
T, October 2022, Santiago, Chile
U, October 2022, Santiago, Chile
V, October 2022, Santiago, Chile
W, October 2022, Santiago, Chile

Notes

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