

Despite Appearances Brazil Has Long Way to Go on Gay Partnership Road

Contributed by Taylor Holt
Monday, 21 July 2008

Gay couples are rejoicing in California, where they have recently obtained the right to marry, but in other parts of the Western Hemisphere, same-sex partnership-recognition is more of a dream than a reality. In Latin America, the historical influence of traditional rigid Catholic values toward gender and sexuality as well as the societal norm of machismo have created a cultural prejudice profoundly adverse to homosexuality.

Many Caribbean nations, long known for their homophobia, lie on the opposite end of the spectrum from their North American neighbors such as Canada, which legalized same-sex marriage in 2005 with the Civil Marriage Act. Though there has been pro-gay legislation proposed by governments throughout Latin America, little headway has been made in actually passing laws that would expand marriage rights to homosexuals.

Only two countries in the Western Hemisphere have passed national legislation legalizing gay partnership rights; one allows gay marriages and the other recognizes civil unions. Canada is by far the most progressive country in granting equality to its homosexual population, as evidenced by its nationwide legalization of same-sex marriage in 2005.

According to the 2006 Canadian Census - the only time the government has collected data specifically counting same-sex married couples - there were nearly 15,000 married homosexuals in the country. It is not surprising that the most socially liberal nation in North America would be the first to pass such a controversial law.

Uruguay also has enacted a nationwide gay partnership law, but the version approved by its General Assembly in 2007 only legalized same-sex civil unions. This surprisingly secular move should be seen as an important step for promoting gay, lesbian, bisexual, and transgender (GLBT) rights in Latin America. Those in recognized same-sex civil unions are guaranteed the same health insurance benefits and most of the inheritance, parenting, and pension rights enjoyed by married heterosexual couples.

It may seem quite unexpected that a country not well known for having an visible gay population would be the model for national-level legislation such as this, but Montevideo is a very gay-friendly city according to Javier Corrales' article "The Gay-Friendliness Index of World Cities." This index measures the number of identified gay-owned and "gay-friendly" businesses and organizations per capita for the largest three cities in the countries. The Uruguayan capital ranks fourteenth overall, the highest amongst Latin American cities.

Local Successes: Small but Significant

The politics and domestic mores neighboring Buenos Aires may have spurred Montevideo politicians to allow civil unions because the Argentine capital city has granted its citizens such same-sex civil unions since 2002, thus becoming the first city in Latin America to do so. However, Argentina's federal government has failed to pass a similar law, with it remaining unclear as to which governmental level has the authority to pass partnership recognition legislation.

As such, both the Río Negro province and the city of Villa Carlos Paz in the province of Córdoba made civil unions available to same-sex couples. While this effectively may discourage enactment of national legislation, this type of grassroots-style tactic could help spread acceptance and awareness throughout the country.

Mexico has also adopted this localized approach when Mexico City followed Buenos Aires' example in late 2006. Within a few months, the northern border state of Coahuila responded by approving a slightly more comprehensive civil union law. The federal government has not proposed national legislation allowing for same-sex marriage, but the new federal penal code, approved on June 17, 2008, does not criminalize homosexuality or define partnership.

Politicians on both sides of this issue could have used this document as grounds for sparking debate, but instead, it seems that the current national government has left the issue to state and local governments. With action by these smaller states, the GLBT rights movement appears to be gaining momentum, and soon, with a capital city that allows civil unions, politicians from across the nation may gradually grow accustomed to same-sex couples and may eventually expand partnership status through national legislation.

There does not seem to be an apparent trend in discerning which authority will extend same-sex partnership rights. Interestingly, both rural provinces and large cities have become centers of favorable legislation for the GLBT community. Coahuila is located across the Río Grande from Texas, yet the latter is hostile toward gay rights.

In Argentina, the Río Negro province is in the northern part of Patagonia and lacks large metropolitan areas, which are traditionally considered havens for homosexual populations. Using Corrales' index, one would expect to see highly-ranked cities (and/or the provinces that they occupy) to have already passed similar legislation. This is not the case, as six Latin American cities are ranked more gay-friendly than Buenos Aires, and another fourteen rated above Mexico City have yet to pass such laws.

Despite the apparent acceptance of homosexuality within Brazilian culture and its large tourism industry, the only area of the country to have passed a civil union bill is the southern state of Rio Grande do Sul. Advocates are hoping that recent public events will highlight the plight of same-sex couples and legislators will move to enact progressive initiatives for homosexual partnership.

In 2008, São Paulo held the world's largest gay pride parade with nearly three million visitors in attendance. Additionally, Rio de Janeiro is regarded as one of the world's best hot spots for gay travel.

Brazilian President, Luiz Inácio Lula da Silva, has been a strong advocate for homosexuality awareness, holding a national conference for Brazil's GLBT community and even calling homophobia "perhaps the most perverse disease impregnated in the human head." If President Lula can successfully urge Congress to pass a national partnership law, his work will represent the zenith of equality rights in Latin America.

Close, But Not Enough

Other countries in the region have had the opportunity to grant partnership recognition to their gay and lesbian communities, but such movements thus far have been unsuccessful in enacting any change. The Bolivian, Colombian, Chilean, and Costa Rican legislatures have all considered bills that would at least extend civil unions to homosexuals, but none of these measures have passed.

Colombia almost provided legal status for same-sex couples in June 2007, but pressure from the Catholic Church forced some conservative senators to switch their initial votes on the final vote and block the measures. Despite this setback, Colombia's highest court ruled in late 2007 that same-sex couples that have cohabitated for two years qualify for the same rights enjoyed by common-law marriages, including joint health care.

As of June 23, the Constituent Assembly of Ecuador approved a non-discrimination clause to be included in the new constitution - slated for promulgation by the end of July 2008 - but it does not include any official recognition of partnership rights for homosexuals. Even if there is still little support for homosexuals in Ecuador, experts believe that this short clause will be largely ignored by critics who want to pass the broader set of reforms.

If the new constitution is approved by a popular referendum, this will mark an important victory for gay rights legislation in South America. The anti-discrimination language of this clause may be used by GLBT activists to advance the case for equal rights before the Ecuadorian courts. If the constitution fails, however, it could significantly slow the momentum of the gay rights movement. Any bills pertaining to partnership rights would have to survive a vote in congress where debate and public opinion could turn away some of the swing votes.

Speak Now or Forever Hold Your Peace

Gay rights activists tend to feel that now is the time to act to extend equal partnership rights in Latin America. Media outlets worldwide have focused on this issue, and leftist regimes, normally supportive of progressive reforms, have gained influence and popularity throughout the region.

The Organization of American States also has called for an end to human rights violations based on a person's sexuality. If said reforms are brought before the legislatures, politicians may be more likely to submit to international pressure and vote in favor of same-sex partnership rights.

Corrales, however, believes that governments are not the only ones to blame for the current lack of gay rights, but that society itself needs to play a more important role in the discussion. He seems rather pessimistic about the possibility of same-sex marriage recognition throughout the Western Hemisphere in the near future.

Marriage advocates note the complexity of the legislative process involving elected politicians, the electorate, and pressure groups that have a vested interest in the proposed bills. Corrales notes that: "People have to come out, debate has to take place in the press, GLBT groups must form alliances with non-GLBT groups including parties, business groups must discover the benefits of diversity, both as consumers and employers, and citizens must work within local governments."

Despite the uphill battle of expanding liberties in this area, it is imperative that Latin American countries work to end discrimination towards same-sex couples and grant them legal protections equal to those enjoyed by heterosexual partners, as part of a more inclusive commitment to democratic rights.

This analysis was prepared by COHA Research Associate Taylor Holt. The Council on Hemispheric Affairs (COHA) - www.coha.org - is a think tank established in 1975 to discuss and promote inter-American relationship. Email: coha@coha.org.