Introduction

Broadly speaking, recent decades have seen advances in the formal recognition of sexual rights in Latin America (Dides et al., 2008; Dador et al., 2010; Cáceres et al., 2004; Vianna & Lacerda, 2004; Szasz & Salas, 2008; Smallman, 2008; Petracci & Pecheny, 2007). Changes in family law across the region have established more egalitarian relations between men and women within marriage; eliminated legal distinctions between children born in and out of wedlock; and legalized divorce (Htun, 2003), with Chile, the last country in the region to do so, in 2004. In some countries such as Colombia, Brazil, and Uruguay steps have been taken toward expanded understandings of family through the legal recognition of same-sex couples. In 2009, same-sex marriage was legalized in Mexico City and the following year in Argentina: the first city and country in the region to do so, respectively (Clerico & Aldao, 2010). Antidiscrimination legislation has also become a mainstay of statecraft. In 1998, Ecuador became the second country in the world (after South Africa) to institute constitutional protections against discrimination based on sexual orientation and in 2008, the first in the region to contemplate gender identity as well. In 2012, following the Yogyakarta
Principles, a gender identity law in Argentina guarantees to all individuals the right to modify ID documentation, including the sex registered on the birth certificate, to recognize the gender identity, with no professional (medical, legal) advice required, and guarantees universal access to hormone therapy and surgical treatments for gender reassignment. Beyond political developments in any one country, the adoption by the Organization of American States of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (or the Convention of Belem do Pará) in 1994, the same organization’s unanimous approval in 2008 of a resolution condemning human rights violations motivated by sexual orientation and gender identity, and the ongoing campaign by activists throughout the region to achieve an Inter-American Convention on Sexual and Reproductive Rights speak to a broader shift in the terms of sexual and gender politics in the region as well as to their increasingly transnational dimension.

The scope and reach of such achievements, however, have been markedly uneven, both in terms of differences in the formal recognition of sexual rights across countries and areas of policy and in terms of these rights’ broader societal impact, even where they are formally recognized. This paper offers a critical interpretation of contemporary sexual politics in Latin America, tracing the genealogies of some significant contemporary trends. Needless to say, such an exercise implies homogenizing a diversity of irreducible experiences across regions (countries; urban, semi-urban, and rural contexts), histories, actors, perspectives, and methodological and theoretical approaches. Our intention is not to provide an exhaustive account of sexual politics in the region or a unifying interpretation of phenomena that are complex and in flux. Rather, in the spirit of a regional dialogue, we seek to suggest certain bases for ongoing discussion.

Two central paradoxes might frame the discussion. The first concerns the contradictory historic moment in which sexual rights movements consolidated in the region. While transitions from authoritarianism to formally democratic governments throughout most of Latin America have, albeit to varying degrees, opened spaces for dialogue, promising a more inclusive politics, they coincided
with the Latin American debt crisis of the 1980s and the subsequent adoption of neoliberal structural adjustment policies, which magnified economic polarization and reinforced various forms of social exclusion. The second involves the difficulty of translating the domain of eroticism, which is marked by a fluidity of desires and identities, into the language of legislation and public policy. This process necessarily entails a rigidification of social categories and a reification of social subjects (or identities), which in turn can contribute to competition among social movements and to various forms of exclusion that often go unrecognized.

Examining the intersections of sexualities and public policies is no easy task. In what follows, we present some reflections on these intersections in Latin America. A first observation, which would have surprised many activists and analysts three decades ago, is the adoption of the discourse of rights as a *lingua franca*. Rooted in liberalism, the language has become hegemonic in the region, unexpectedly voiced by individuals, groups and movements that transcend the white, male bourgeois property-owners among whom it originated. Given this history, we can speak with some justification today of sexual subjects (of rights). Yet this transformation has not unfolded naturally, as a (falsely) neutral ideological understanding of political and social conflict might presume. Rather, the language of rights (and other languages) speak to an extended historical process, ongoing and incomplete, through which social actors have come together to redefine gender and sexual relations as an extension of citizenship. The colonial legacies of inequality that instituted and naturalized gendered hierarchies between men and women have thus become objects of struggle for equal rights, status, and power. In the course of these struggles, new questions and social subjects have entered the public stage, challenging the very binaries and identity categories that long structured these conflicts: men, women, heterosexual, homosexual, and a long list of *et ceteras*. The discussion in this piece proceeds in two sections. We begin by offering a brief overview of the historic articulation of gender and sexuality within statecraft in Latin America and the contemporary panorama of sexual rights activism. We then offer a critical assessment of the imbrication of these developments with larger ideologies and political projects of modernization.
A brief outline of sexuality and representation: yesterday and today

The Latin American republics that emerged from the wars of independence of the 19th century inherited social orders that were deeply stratified along lines of race, gender, and social class. Men’s economic, political, and sexual privilege was legally sanctioned and protected. Political elites regarded the patriarchal family as the foundation for a stable society and a well-ordered nation. Laws rooted in Iberian legal traditions and canonic law instituted this ideal, upholding husbands’ authority over their wives’ person and property (potestad marital) and fathers’ authority over their children (patria potestad). Distinctions were thus drawn between married and unmarried women and among unmarried women, between minors and adults. Tight restrictions limited married women’s legal authority over their children and legal capacity to enter contracts, initiate lawsuits, and control property. Widows regained control of their property so long as they did not remarry, and both they and single women above the age of majority could enter contracts and exercise certain other civil – though not political – rights held by men. Men and women were also judged differently under criminal law, particularly in the area of honor crimes, which reinforced male prerogatives and restrictive social norms surrounding women’s virtue.

In part due to weak state capacity and elites’ reliance of “patriarchal stability”, the first reforms in family law occurred well after independence (Dore, 2000, p. 19). The modernizing projects of liberal and later positivist elites began a piecemeal process of secularization that assumed varying forms in different countries. Recent critical histories have challenged teleological accounts positing liberal reforms as merely another step in the progressive path toward women’s emancipation, instead noting their contradictory effects on gender relations, their variable impact on different groups of women, and their concurrent articulations with expanding technologies of social control in medicine, public health, policing, and so on (Deere & León, 2005; Caulfield, 2001). For example, while some women were helped by the institution of civil marriage and steps toward the legalization of divorce,
going further in Mexico and the Central American republics than in the countries of South America, reforms ending mandatory partible inheritance, guided by the belief that preserving the unity of private estates would facilitate the march of progress, undercut an institution that guaranteed some women a share of their family property and a measure of autonomy (Deere & León, 2005). Similarly, while sodomy was decriminalized in most of the region, reflecting the influence of the French Napoleonic Code, laws regulating morals and good customs, corruption of minors, assaults on public decency, and vagrancy allowed continued police repression to uphold the dominant gender, sex, race, and class orders. More generally, informed by theories of scientific racism and fears of national degeneration, liberal elites prioritized modernizing projects over individual liberties and egalitarian ideals, establishing highly exclusionary oligarchic republics. This is the backdrop against which one must understand elite efforts to whiten national populations by attracting European immigrants, the forced removal of indigenous communities through measures ranging from campaigns of genocide in the Southern Cone to the privatization of communal lands in Mexico, as well as early efforts to regulate prostitution and control venereal disease.

Exclusionary oligarchic republics gave way to populist regimes, which played a key transformative role throughout the region well into the 20th century. Populist leaders, some with revolutionary aspirations, others with more conservative ambitions – across the political spectrum, often relying on nondemocratic means – enacted the first major pieces of labor legislation and social welfare policy as they reoriented economies away from export enclaves of raw materials toward models of import substitution, industrialization and domestic markets. In the first experiments in mass mobilization, populist governments thus sought to incorporate the growing urban middle classes and popular sectors, establishing corporatist vehicles of representation that tied (and subordinated) class organizations to political parties or directly to the state (Collier & Collier, 1991).

Women had long participated in charitable activities in the region, a role regarded as a natural extension of femininity. With the expansion of state regulation into new and more intimate spheres
of social relations, women, particularly from the upper classes, became involved in social welfare policy and eugenics movements, seeking to “bring the family under reformers’ gaze” (Molyneux, 2000, p. 48; Stepan, 1991). In this context, first-wave feminist activists in Latin America, many with ties to anarchist and socialist movements, also achieved their earliest political successes. Mobilizing in ways that paralleled prevailing corporatist modes of organization, women in Mexico organized Feminist Leagues with a membership of over 55,000 in the 1920s, establishing close ties to the new post-revolutionary leadership. In Argentina, the Peronist Feminine Party, founded in 1949, attained a membership of half a million women within three years (Deutsch, 1991; Cano, 1987). Reflecting early feminism’s transnational dimension, women gathering at the First Feminist Conference of the Pan-American Women’s League held in Mexico City in 1923, discussed access to work, voting rights, and birth control and demanded a ‘single moral standard in sexual matters for men and women’ (Cano, 1987, p. 26; Lau Jaivén, 2009). By the late 1950s, women’s suffrage was recognized across Latin America as growing numbers of women entered universities and the workforce.

The 1960s and 1970s saw a backlash against populism throughout much of the region, as military dictatorships and authoritarian governments sought to reinstate the hierarchical social order being challenged by various social actors. These regimes ushered in decades of bloody repression that decimated much of civil society and the Left. The return to formal democracy in the last quarter of the 20th century set the stage for contemporary social movements mobilizing around sexual rights that emerged in the context of broader movements for democratic and revolutionary change. Indeed, many early feminist, lesbian, and gay activists in particular had a history of militancy in socialist parties, radical student groups, and revolutionary organizations (Stoltz Chinchilla, 1992; de la Dehesa, 2007, 2010). Encountering a male-dominated and heterosexist political culture, they turned to social movements in response to the left’s common dismissal of their concerns about power relations structured around gender and sexuality as divisive or bourgeois, at best secondary to the “general struggle”. These roots help to explain the salience in early sexual politics in the
region of overlapping debates of the intersections of feminism and sexual liberation with the class struggle and the relationship that these emerging social movements should establish with the left, political parties, and the state.

In matters of gender and sexuality, women were the first to (re)enter the public stage. In the context of transitions to democracy, feminists participated within larger and more heterogeneous women’s movements. At the forefront of opposition movements against authoritarian regimes, women also mobilized through human rights groups, organizations of family members of the disappeared, community kitchens, Christian based communities, and neighborhood organizations seeking basic services in healthcare, childcare, housing, etc. Presaging the development of a notion of “sexual rights”, feminists called for stronger criminal legislation against sexual and domestic violence; changes in civil codes to allow divorce and establish more egalitarian gender relations within marriage; and the right to a “free and voluntary motherhood”, implying access to contraception and the decriminalization of abortion.

Reflecting their articulations with the left, early Latin American feminists were particularly attentive to the relationship between the fight against patriarchy and the anti-imperialist struggle. At both the national and international levels, Latin American feminists questioned neo-Malthusian population policies supported by international development strategies that reduced women to their reproductive capacity and informed policies of mass, involuntary sterilization, calling instead for integral attention to women’s health (Corrêa & Reichmann, 1994; Sternbach et al., 1992). Though often encountering resistance by heterosexual feminists, lesbian feminists in particular advanced initial discussions on the importance of opposing sexual stigma and valorizing sexual pleasure. For example, the organization of a lesbian caucus and several workshops on lesbianism at the parallel conference of the First United Nations Conference on Women in Mexico City in 1975 (an event that itself gave impetus to incipient feminist movements in several countries) provided the only venue at the forum where sexuality was discussed (Bunche & Hinojosa, 2000). Over time, as feminist
movements established ties with newly democratic states, they have fought for greater attention to women’s issues through the establishment of governmental women’s institutes and programs (if often underfunded and ineffective) and electoral quotas on party candidate lists, which exist in at least eleven countries in the region (Htun, 2004). In the course of this history, a transnational paradigm of sexual and reproductive health has gained increasing importance, often translated into narrow sector-specific policy demands for access to family planning and abortion, with the potential to medicalize and thus depoliticize the issues.

Alongside and within feminist movements, gay and lesbian liberation movements emerged in the region, beginning with the establishment of the Grupo Nuestro Mundo in Argentina in 1969 (Brown, 1999). Often dismissed, like feminism, as an alien cultural import by both the left and the right, early activists drew on a broader countercultural ethos to call for a revolution of sexual norms. As participants in the first Gay and Lesbian Pride March in the region held in Mexico City in 1979 put it: “There is no political liberation without sexual liberation”. With the consolidation of formal democracies, these movements too have largely abandoned early revolutionary aspirations, reincarnated as LGBT movements embracing discourses of civil and human rights. Along the way, travesti, transsexual and transgender activists, present in some movements from the outset, established the first autonomous trans organizations in the region in the 1990s. Going further than other social movements in questioning the dominant gender binary, these organizations have prioritized the need to end transphobic violence and police abuse, HIV/AIDS treatment and prevention, gender identity laws that would permit people to change their name and gender on official documents, and greater access to jobs, education, and healthcare. Needless to say, the HIV/AIDS epidemic, which has particularly impacted both men who have sex with men and travestis in the region, has also had profound effects on LGBT activism. While reinforcing longstanding social stigmas, the epidemic increased the imperative for activists to engage with the state while opening doorways to health ministries and government AIDS programs to advance rights-based claims, particularly the right to healthcare. It speaks to the broader medicalization of sexual politics in the
region that lesbians, unable to establish themselves as a population vulnerable to the epidemic, remain largely invisible to policymakers in most countries and have yet to attain similar levels of visibility and funding, to a certain extent reinforcing the historic gendering of the public/private divide.

Organizations have also been established in Latin America to defend the rights of sex workers and prostitutes across gender identities (framings of activism that reflect different political strategies with regard to reclaiming stigmatizing labels) (Reynaga, 2008; Grupo Davida, 2005). The first such group in the region, the ‘22nd of June’ Association of Autonomous Women Workers, established by sex workers in Ecuador in 1982, gained national attention two years later when it staged a strike to protest police abuse and exploitation by brothels and club owners. (Abad et al, 1998). While a few such precedents exist, the movement has really grown significantly in size and geographic scope since the 1990s, again in part reflecting the impact of funding for HIV/AIDS prevention work. In 1997, activists meeting in Costa Rica organized a regional network of NGOs representing sex workers, Red TraSex, which currently has affiliates in 15 countries. Embracing a human rights discourse, activists have prioritized the destigmatization of sex work, the recognition of labor rights for the profession, combating police abuse, and HIV/AIDS prevention.

Finally, since the first cases of AIDS were reported in the region in the early 1980s, the epidemic’s impact on activism and sexual politics has been profound. In addition to reorienting the activities of many LGBT, sex worker, and some feminist organizations toward prevention work, a sizable AIDS movement has developed that encompasses AIDS hospices, NGOs focused on prevention work and advocacy, research and educational institutions, as well as organizations and networks of people living with HIV/AIDS. These have played a particularly important role in pressing for access to treatment. Drawing on models of governance promoted by international agencies, many states in the region incorporated civil society organizations into policymaking bureaucracies for the first time through their national AIDS programs. As a model of public-private partnerships they have become
ubiquitous (ONUSIDA, 2009). For particularly stigmatized groups such as sex workers and trans people, whom political parties and legislators generally deem unrepresentable, the health sector has in some instances provided their only doorway to the state. More broadly, new funding has increased the strength and visibility of social movements combating the epidemic, though it has not come without costs. It has reinforced modes of activism structured around what social anthropologist Jane Galvão (2000) has termed a “dictatorship of the projects”, limiting time horizons, contributing to competition among activists, and reinforcing a broader medicalization of sexual politics in ways that somewhat parallel feminists’ turn to “sexual and reproductive health”.

On the shifting ground of activism and representation

Without denying the specificity of each of these movements and multiple differences across countries and localities, it is possible to identify certain trends that have characterized the course of sexual politics in the region more broadly over time. Organizationally, all have experienced to varying degrees parallel processes of professionalization, NGOization and increasing transnationalization. NGOs can play an important role in advocacy, research, and service provision. As brokers of information, they translate various kinds of expert knowledge (medical, legal, etc.) into everyday language accessible to the populations they serve while providing other actors with information about the issues and populations they claim to represent. While playing an increasingly important role in governance in Latin American democracies, in part compensating for the gaps and limitations of state action in the contemporary context of globalization, NGOs are not themselves democratic in their organization and indeed operate within networks that valorize (presumably apolitical) technical capacities (de la Dehesa & Mukherjea, 2012). Their growing importance in civil society thus raises new questions about representation and accountability, questions that, coupled with competition for access and funding, have at times fostered divisions within social movements themselves (Clark 2003; Ramos 2004; Câmara da Silva 1998; Alvarez et al., 1997b).
This process of NGOization is related to changes in the international arena, including the growing importance of transnational networks in activism and governance. Certainly, social movements have long maintained transnational connections that have taken various forms, although the extent and frequency of such contacts has increased in recent decades. A particularly important expression of this phenomenon has been the organization of Latin American and Caribbean feminist conferences, held regularly since 1981. These conferences have provided an important arena for the creation of what Nancy Fraser (1994) has called “subaltern counter-publics”, deliberative spaces where subaltern actors can accumulate symbolic resources and develop alternative understandings of identity and social justice. Broader transformations in the feminist movement have played out at these events, which are arenas of conflict as much as consensus. This is reflected, for instance, in the insistence of organizers of the first three conferences that they be entirely self-financed while external sources of funding were later sought; subsequent debates between so-called institutionalists and autonomists have revolved around the implications of NGOization (Alvarez et al., 2002; Sternbach et al., 1992).

Reflecting more direct linkages with frameworks of governance, another venue that has encouraged such transnational articulations is the Horizontal Technical Cooperation Group (GCTH). Established in 1995, it initially brought together state officials from 21 National AIDS Programs who sought to create a regional counterweight to international agencies responsible for AIDS governance. The GCTH has since incorporated ten regional community networks of civil society organizations, including, for example, Red TraSex, mentioned above; the Latin American and Caribbean Citizenship and Integral Health Association (ASICAL) founded in 1997 and bringing together organizations working with gay men and other men who have sex with men; and RedLacTrans, created in 2004 and bringing together travesti, transsexual, and transgender organizations. In addition to such regional venues, the United Nations Conferences on Women, Population and Development, and AIDS have, of course, also been important foci for activist mobilization in the region.
Both the growing importance of transnational networks and the NGOization of activism speak to a deeper reconfiguration of both governmentality and political representation taking place in the region. In the current context of globalization, the nation-state is being decentered (though not displaced) as the principal site of policy formulation and implementation. This process has gone hand-in-hand with the development of networks that articulate ties not just among NGOs but with state actors at national and local levels, semi-autonomous state institutions, international agencies, foundations, academic institutes, private companies, etc., incorporating them into both the formulation and implementation of policy (Torres-Ruiz, 2011). Related to the dispersal of decision-making power reflected in these changes, these networks also break with modes of political representation that have long prevailed in the region. While leftist and populist leaders privileged mass organizations structured primarily around social class, emerging networks are more likely to mobilize around identity groups or specific areas of policy and are characterized by fluidity in their composition and ability to unite around conjunctural campaigns (Chalmers, Martin & Piester, 1997).

Certainly, the internationalization of policy-making and decentering of decision-making implied by this reconfiguration have created opportunities for activists to exert political pressure through alternative channels when state doorways are closed to them. Yet in the context of emerging democracies transversed by neoliberal formulas of governmentality, they are also prone to technocratic policymaking and can undermine mechanisms of democratic accountability (Montecinos, 2001). Moreover, while such networks, in a sense, seek to embody ideals of horizontality and deliberation, they are by no means free of power asymmetries (Chalmers, Martin, & Piester, 1997). Such power differentials shape relations among actors participating in networks, not only among NGOs of varying capacities but also between NGOs and other actors, particularly funders. They are also both reinforced by and reinforce the mechanisms of selection, conditioning access to networks in the first place, which range from formal membership requirements to informal requirements such as the ability to finance travel. All of this said, many if not most civil society organizations mobilizing in national public spheres are not directly linked with transnational networks and whatever articulations
of governance may be occurring, the nation-state maintains its hold on the political imaginary.

These changes in the organization of civil society and the broader political arenas navigated by activists have also contributed to transformations in their political and discursive strategies. Marxist critiques of patriarchy and the family, liberationist celebrations of transgression and sexual pleasure, and political reclaims of the body that were once so central to sexual politics in the region are now relatively marginalized, as a lingua franca of human rights and sexual and reproductive rights and health has gained ascendance in both national and international public spheres. These changes have allowed activists to build bridges to state actors, funders, international agencies, and political parties, particularly on the political left, itself transformed; but they have also contributed to the medicalization of activism and to a certain containment of the political imagination, rendering alternatives ineffective, if not unthinkable. In the following section, we relate these histories to broader theories of modernization and development to offer some critical perspectives on the challenges confronted by activists in this changing political terrain.

**Modernity and its critics**

A vast social science literature has noted the coexistence of multiple systems organizing expressions of gender and sexuality within Latin American societies, specifically highlighting differences across regional, racial, ethnic, and class lines. This research has been particularly concerned with the relationship between certain constructions of gender and sexuality associated with various transnational projects of modernization (encompassing questions of secularization, democratization, and economic development), and these broader, much more heterogeneous sexual landscapes (Carrier, 1995; Prieur, 1998; Ponce Jiménez et al, 1999, 2004; Miano & Giglia, 2001; Miano Borruso, 2003; Nuñez Noriega, 1999; Córdova Plaza, 1993; Carrillo, 1999, 2002; List Reyes, 2004, 2005; Parker, 1986, 1995, 1999; Heilborn, 1996; Matory, 1997; Marcos, 2003; Loyola, 2000 Decena, 2008; Lacombe, 2006; Cáceres et al, 2004; Careaga Pérez, 2004).
Some sectors of the middle classes in the region, for example, have constructed themselves as “modern” by embracing consumer cultures associated with more flexible sexual and gender norms. The “demonstration effects” cited in the literature on modernization and dependent development, whereby consumption patterns of middle classes from core nations are embraced by their counterparts on the periphery (Cardoso & Faletto, 1971; García Canclini, 1995a), are thus reflected in this tendency by sectors of the middle classes to appropriate, adapt and translate transnational political and symbolic practices associated with gender and sexuality, including transnational constructions of identity (gay, heterosexual, transgender, and so on). The uneven reach of such demonstration effects and the potential entanglement of transnational practices with a violence long associated with modernizing projects once again brings questions of access and social inequality to the fore. Given such theoretical and empirical connections, the implications of debates on modernization for sexual politics in the region are worth examining.

*Modernity, dependency, sexualities*

Elite sectors in Latin America have long embraced teleological narratives of progress and modernization as justifications for political and economic projects, both liberatory and repressive. What has united these projects is a binary distinction inscribing all that is “modern” on one side, and everything else – variably labeled “traditional”, pre-, or even anti-modern – into a category of practices that presumably must be superseded on the (linear and evolutionary) path of modernization. Thus post-war modernization theorists attributed the enormous social inequalities and the instability of formal democracies in Latin America to holdovers of pre-capitalist economic relations – such as *latifundismo* – or vestigial traces of pre-modern cultures and saw sustained development within the global capitalist system as the road to more equitable and democratic societies. Not surprisingly, these theories were soon challenged on both empirical and political grounds. Empirically, the collapse of democracies and the emergence of bureaucratic authoritarian regimes in the region’s most industrialized countries in the 1960s and 1970s seemed to fly in the face of modernization
theorists’ predictions linking political (i.e. democratic) and economic development. More importantly, the profoundly ideological and Eurocentric biases underlying the assumption that all countries were merely at different stages of the same path – and that Latin America was simply not modern (or capitalist) enough – came under attack. Contending that the model of “dependent development” prevailing in the region was not an anomaly or a holdover from the past but an integral part of modern capitalism, economists associated with the Economic Commission for Latin America and the Caribbean (ECLAC) and later dependency theorists advocated policies to promote autonomous national development, albeit within the context of global capitalism. Recasting the binary division between the modern and traditional along the axis of inclusion and exclusion, the paradigm stressed the stark limitations in access to the public sphere, citizenship rights, and the formal labor and consumer markets for many in the region and the primary importance of integrating socially excluded sectors (Avritzer, 2002).

Many of these questions have been put to the test by the transitions to democracy that have swept the region since the 1980s. As the optimism that initially accompanied these processes gave way to disillusionment amidst persistent social inequalities, human rights violations, and corruption in much of the region, a new critical scholarship shifted the focus from a narrow institutional understanding of democratic governance to the broader societies in which political institutions were embedded (O’Donnell 1996, 1999; Alvarez et al., 1997a; Avritzer, 2002; Avritzer & Costa, 2006; Dagnino, 1997, 2005; Dagnino et al., 1998). Particular attention was paid to the historical configuration of the public/private divide. As political sociologist Leonardo Avritzer (2002) has observed: “The differentiation between private and public took on a completely different form [in Latin America] than it did in the West. One could even say that it failed altogether”. The result, he concludes, is “a disproportionately large private sphere and the always open possibility of extending personal relations to the political realm” (p. 73). Without necessarily embracing Avritzer’s distinction between so-called Western and non-Western democracies – all of which are variably marked by the intersections of public and private power – the incapacity of formal political institutions to
subordinate the particular interests of Latin American elites has undoubtedly contributed to the persistence of clientelistic practices and personal favor in formal statecraft, widespread impunity, and starkly different experiences of citizenship and the rule of law within the same society.

The salience of these debates for sexual rights advocates is twofold. First, the particular historic configurations of the public/private divide in the region have molded the political terrain that activists have to navigate. They have shaped both the negotiated terms of activists’ entry into formal democratic politics and the broader societal impact of their formal achievements. Second, particular constructions of gender and sexuality – often articulated with constructions of nation, class, ethnicity, or race – have long formed part of broader teleologies associated with modernizing projects. Thus eugenicists in the early 20th century who advocated prenuptial certificates to ensure national development and “racial health”; Marxist militants in the 1960s and 1970s who dismissed homosexuality as form of bourgeois deviance to be overcome on the revolutionary path to socialism; and contemporary activists framing the legal recognition of sexual rights as symbolic markers of a modern state, all in one way or another inscribe sexualities across binaries of past and present, premised on a universal telos.

Our point here is not to draw an ethical equivalence among these projects but rather to point out how the governance of desire continues to be mapped onto broader ideologies of political and economic development in ways that at least raise questions about who has access to the products and practices said to be ‘modern’ and about what is being constructed as a past to be overcome.

*By way of critique …*

When activists and their allies enter an institutional terrain – whether legislatures, the courts, the mass media, etc. – the terms of their entry are largely predetermined. Theorists exploring the intersectionality of oppressions have taken aim at how the negotiated terms of entry into these
arenas institutionalize identities in ways that tend to privilege the experiences of a few (Collins, 2002; Butler, 1993, 2000; Moraga & Anzaldua, 1983; Crenshaw, 1991; Guzmán, 2006; Gómez, 2008). In everyday interactions, sexual, racial, class-based, and gendered axes of power intersect in the production of subjectivities and social constraints. If a poor black *travesti* confronts police abuse, her race, class, gender, and sexuality all make this subjectification by the state possible. In law and political discourse, however, the disaggregation of porous vectors of power into discrete and rigid identity categories obscures their complex articulations with and through one another. Because the identity categories that form the basis for many social movement demands are constructed in ways that obfuscate differences within groups, the minimal agendas that come to define their collective interests — those demands on which all presumably agree — tend to reflect positions of relative privilege within them. Thus access to hormone therapy is inscribed politically as a ‘trans issue’ but may be taken up only with difficulty as a demand by sex worker movements; likewise, questions such as land reform, central to the struggles of rural and particularly indigenous women (and men), get inscribed outside hegemonic feminist agendas (Deere & León, 2001; Sierra, 2008; Prieto et al., 2005).

Not surprisingly, as the critical legal theorist Kimberlé Crenshaw (1991) has argued, this tendency of identity politics to obscure differences *within* groups can also increase tensions *among* them, as an institutional logic dependent on laying claim to identities that are constructed as mutually exclusive inevitably fosters competition over political access and resources. To a certain extent, this dynamic reflects a broader tendency of contemporary liberal democratic politics to fragment representation into competing interest groups, grounded in an underlying logic presuming a scarcity of rights. While in principle an intersectional analysis could provide the basis for a coalitional politics around broader collective agendas, its translation into public policy — in large part responding to the institutional imperatives of funding agencies, legislatures, state bureaucracies, and other institutional arenas — often moves in the other direction. Without dismissing demands for specific attention for groups within groups, perhaps the principal critical contribution of this line of analysis...
has more to do with the process through which political agendas are reached. Given the propensity of political identities to both homogenize and exclude, the approach underscores the importance of deliberative processes that pay attention to the intersectional dynamics underlying political identities, the boundaries of which must remain open and subject to critique.

Such discussions have, in fact, long been raised within sexual rights movements in Latin America, dating to early debates on the relationship between sexual and gender oppression and class inequalities. At the Latin American and Caribbean Feminist Conferences, black, indigenous, and lesbian activists have questioned racism and heterosexism within the feminist movement, underscoring the need to articulate struggles against multiple forms of oppression. These discussions led to the organization of regional lesbian conferences, meeting regularly since 1987. In 1992, more than 300 representatives from 32 countries met in the Dominican Republic for the First Meeting of Black Women from Latin America and the Caribbean, organized as an alternative to the quincentennial celebration of the European conquest. Among other points, participants underscored how racism and sexism are articulated in the region in ways that deny Afro-descendent women access to education and the labor market, and they challenged the feminist movement to incorporate an analysis of racism as a central concern. Likewise, in response to the lack of representation of indigenous women at a preparatory meeting for the Beijing Conference on Women and to the fact that an advisor had been assigned to represent their concerns without consultation or an election, indigenous women activists created an alternative mechanism for deliberations in preparation for Beijing and subsequently convened the First Continental Meeting of Indigenous Women of the First Nations of Abya Yala in 1996 in Quito, Ecuador, where they established a regional network of indigenous women (Alvarez et al., 2002). More recently, at the II Meeting of Indigenous Leaders and

Feminist Leaders, organized in Lima in 2008 by the Coordinating Board of Indigenous Women and the Campaign for an Inter-American Convention of Sexual and Reproductive Rights, participants discussed tensions between the indigenous and feminist movements in the region, such as the relative weight given to collective and individual rights in their respective agendas.  

Researchers drawing on post-colonial theory have begun raising parallel discussions within the academy (Sierra, 2008; Prieto et al., 2008; Hernández Castillo, 2007; Viveros Vigoya, 2002). According to the anthropologist Sylvia Marcos (2003), for example, the political priorities and epistemological assumptions of the contemporary feminist movement are strongly influenced by international agendas in ways that leave out indigenous women’s movements: “We are inserted into a dominant global discourse and there is a certain type of feminist movement in Mexico which derives from the movement in the ‘North’” (p. 2). Along similar lines, other critics have defended a “right to silence” against the imposition of a transnational coming out narrative as the (only) path to homosexual liberation, suggesting that the imposition of a one-size-fits-all solution to homophobia again ignores local realities and may amount to yet another civilizing project (Lopes, 2007; Guzmán, 2006; Santiago, 2002; Decena, 2008). Without having to reduce sexual rights movements tout court to alienated or even colonizing expressions, these critiques by both academics and activists have called attention to the plurality of voices that exists within these movements, to the ethnic, race and regional dynamics through which some of these voices become hegemonic, and to how such asymmetries can impose agendas and strategies in ways that disregard local political processes and systems of meaning.

All of these critiques raise questions about identity politics, which have come to be privileged in national and international public spheres. However, some discourses, including the discourse of

38 Memoria: II Diálogo entre líderes indígenas y líderes feministas, Lima, 4–6 de agosto, 2008.
Sexual rights, open the possibility of creating coalitions that transcend the limits of identity politics (Corrêa & Jolly, 2007). In this respect, the discourse of “sexual diversity” has acquired increasing political weight in the region. Its growing significance in part reflects a new global valorization of ‘diversity,’ enshrined in documents such as the Program of Action of the Durban Conference against Racism (2001) and the Universal Declaration of Cultural Diversity (2001). While this discourse could in principle be used to articulate alliances and decenter a hegemonic heteronormativity, it is often used in Latin America as a code word to refer to (while obscuring) LGBT identities (los diversos) and runs the risk of depoliticizing demands by recasting social inequality as cultural difference.

Beyond the possibilities and limits of particular discursive strategies, questions might also be raised about whether, when, and how it is even desirable to engage with the state in the first place, given the rigidification that occurs when informal norms are translated into public policy and the fact that claiming sexual rights in the formal political arena implies entering new fields of visibility and social control. The gender identity laws advanced today by trans movements in several countries, for example, generally make permission to change one’s name and gender on official documents contingent on a medical diagnosis of “gender identity disorder” and often on sex reassignment surgery. Individuals are thus required to make themselves visible to the state through a pathologizing transnational medical category, which becomes a “gateway diagnosis” in order to claim one’s sexual rights (Park, 2007). One notable exception is the 2012 Argentine Law, which, through bottom up consensus building and consistent rights argument, moved beyond biomedical requirements and the logic of the gender binary, which still permeates juridical rationality. This broader dynamic, however, is also at play in the regulation of sex work through sanitary licenses requiring periodic HIV/STI tests that has been adopted in some countries in the region. While such measures permit a certain legal recognition, they generally presuppose a narrow view of the population they regulate, primarily as carriers of illness to be controlled. In both cases, activists’ principal challenge is to depathologize the identities that serve as a doorway to the state and advance a more democratic and integral understanding of healthcare services.
Finally, as Corrêa (2008) has argued, activists’ specific appeals to criminal law also raise important questions, particularly at a moment when prison populations are growing exponentially in the region and security has become the principal political banner of the Right (Nuñez Vega, 2005). Without discounting the importance of efforts to confront sexual violence, violence against women, and discrimination, Corrêa justifiably cautions that an understanding of sexual rights as the right to punish runs the risk of reestablishing a static moral vision of sexualities, pleasure, and desire. At the very least this merits more reflection than it has received by activists and their allies. In a similar vein, seeking to problematize activists’ “relentless search for legal remedy” in the case of hate speech – included in several antidiscrimination proposals being debated today in Latin America – Judith Butler (1997) has warned of the potential dangers of extending state powers to new discursive terrains and thus ‘potentially empowering the state to invoke such precedents against the very social movements that pushed for their acceptance in legal doctrine’ (24).

On the gaps between law and practice

These critiques, however, presuppose a strong state and laws whose normalizing force is particularly effective. One of the central dilemmas in the advancement of sexual rights in Latin America, however, has been the marked disparity between formal law and social practice, reflected in the area of sexual rights and of human rights more generally (Jelín & Hershberg, 1996). This gap between public discourse and private practice is manifest in two distinct though related ways: on the one hand, in laws and public policies in principle designed to promote sexual rights but which ultimately remain on paper, and on the other, in public officials’ selective enforcement of the law, including repressive legislation.

Few areas reflect this gap more clearly than the case of abortion (Kane, 2008). The region has among the most repressive restrictions on abortion in the world, largely a reflection of the continued political influence of the Catholic Church and conservative religious sectors (see Vaggione, in this
Legal only in Puerto Rico, Cuba, Mexico City, and most recently in Uruguay, with a court ruling weakening restrictions in Colombia, political debates on the issue remain at a standstill in most countries. Indeed, steps have been taken in recent years toward stronger criminalization through the elimination of legal exceptions to criminal penalties in Nicaragua, El Salvador, the Dominican Republic, and several Mexican states. That said, a report by the Allan Guttmacher Institute estimates that more than 4 million women in Latin America undergo an induced abortion annually, most in conditions falling outside the law and often under circumstances that put their lives and health at risk. Driven underground but tolerated in practice (Boltanski, 2004), the hypocrisy is not so much a way of instantiating a moral vision but rather a social mechanism that determines the way abortion is inscribed in discourse and translated into political decisions and public policies.

As Bonnie Shepard (2000) has argued, a “double discourse” surrounds the practice of abortion in the region (and sexual and reproductive rights more generally), which entails extraordinary social costs and presents peculiar challenges for activists. On the one hand, it reinforces existing race, ethnic, class, and regional inequalities, as the most socially and economically marginalized women must contend with the most precarious conditions for clandestine abortions and thus bear the worst consequences of repressive policies. At the same time, middle and upper class women’s access to relatively safe clandestine abortions creates “private escape valves” that effectively undercut social and political pressure that could challenge criminalization. Policies that are not enforced, moreover, can act like a sword of Damocles over activists’ heads, so that open challenges may result in shutting down these escape valves to the detriment of women seeking to terminate their pregnancy. In Chile, Shepard notes, the release of estimates in 1994 by the Alan Guttmacher Institute that 159,650 clandestine abortions were performed annually in the country resulted in broad-based crackdowns on clandestine clinics over the next few years. After authorities raided a clandestine

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clinic in the Brazilian state of Mato Grosso do Sul in 2008, ultimately leading to the arrest of nearly 10,000 women, conservative evangelical lawmakers in the country threatened repeatedly to extend the crackdown nationally by creating a Parliamentary Inquiry Commission on clandestine abortion.

This kind of discretional enforcement of the law has also characterized the policing of sex work and “public morals” in Latin America. While a double discourse, again, has historically created private escape valves for dissident sexualities, these are subject to sudden crackdowns by law enforcement agencies as well as informal arrangements of graft and police abuse.

In addition to discretional enforcement of repressive policies, this gap between public and private practice is also manifest in the relative disuse of laws and public policies presumably designed to support sexual rights. A clear example of this would be antidiscrimination laws contemplating ‘sexual orientation’ or ‘preference’ and in a few instances ‘gender identity’, which may take the form of constitutional stipulations or regulations of commercial establishments and in a few instances, of criminal law. For a variety of reasons, such measures generally amount to a statement of ideals more than a legal instrument that can be exercised. In some instances, this is due at least in part to procedural hurdles, such as the common lack of implementing legislation to establish procedures allowing such measures to be used. In Rio de Janeiro, for example, it took activists almost two years to press Governor Anthony Garotinho, an evangelical populist, to institute procedures for an antidiscrimination law approved in 2000. Even when procedures are in place, however, discrimination is often difficult to prove and subject to the discretion of authorities, and access to the justice system more generally is profoundly shaped by people’s available time and resources and differential knowledge of their rights.

Given the difficulties in proving the intent to discriminate and the time and resources involved in pursuing such cases, the relative disuse of antidiscrimination laws is perhaps not surprising. Yet some indications raise similar questions about citizens’ appropriation of other recent changes in law.
For example, in the 16 months after the Civil Unions Law took effect in Uruguay in 2008, requiring couples to prove they have been in a stable relationship for five years, only 180 couples had petitioned for recognition; family courts had considered 40 of these petitions and recognized only 20 (half involving same-sex and half, opposite-sex couples). 40 Several proposals for gender identity laws require petitioners to present a medical diagnosis of gender identity disorder, a stipulation that, in addition to requiring a pathologizing diagnosis to access rights, also presumes that petitioners can access healthcare and legal services (as noted above, the Gender Identity Law approved in Argentina in 2012 is a noteworthy exception). This slippage can be further exacerbated in federal systems as a result of conflicts across levels of government. When former President Michelle Bachelet of Chile issued a decree in 2006 requiring access to free emergency contraception for anyone over 14, several conservative mayors publicly announced they would ignore the federal mandate (Franceschet, 2011).

More generally, this gap between law and practice is indicative of a broader relationship between the state and society. At its extreme, both weak state capacity and a lack of political will have created vast areas of marginalization in both urban and rural contexts where the state’s presence may be limited to its security apparatus or absent entirely, creating spaces where the rights of citizenship are effectively suspended (O’Donnell, 1996, 1999). In these spaces, governance may be contested among weak state institutions, private corporations, NGOs, churches, narco-traffickers, guerrillas, and paramilitary forces. For sexual rights activists, this reality poses a dual challenge. On the one hand, it points to the limits of state-centered approaches to sexual politics and of the formal achievements they generally cite in proclaiming their accomplishments to funders, state agencies, and the public at large, suggesting that a different course may be necessary to change

attitudes at the level of everyday life. At the same time, many activists have sought to build on formal frameworks through the creation of legal advisory offices, watchdog groups, etc., embracing a role that, while maintaining an eye on the state, seeks to pull formal frameworks off paper and promote the ‘subjective appropriation of rights’ (Amuchástegui & Rivas, 2008).

Conclusions

In translating sexuality into public policy, various problems arise from the latter’s instrumental nature. As Rosalind Petchesky (2007) has argued, reducing sexuality to a single dimension or to another type of social practice or relation; isolating sexuality from the structures that constitute it (from gender and other forms of power); and ignoring how sexuality operates as a means and ends of (conservative) power, are all recurring problems. In the area of HIV/AIDS policy, for example, the reduction, classification, and operationalization of sexual practices often render them ineffective (if not violent) (Ayres, 2002; Paiva, 2003, 2006). Any social policy, whatever its content or intent, requires the delimitation and operationalization of practices and social subjects. When policies target the realm of sexuality, therefore, it is not just religious conservatives but also policymakers informed by the paradigms of public health or human rights who exercise some level of symbolic violence, inscribing new boundaries of inclusion and exclusion, on an erotic field (that ultimately cannot be operationalized). In the area of sexuality, therefore, the limitations of policy cannot be explained by the intentions of decision-makers alone but are also marked by the instrumental nature of all public policy.

The institutionalization and consolidation of the rule of law and the language of human rights in Latin America, whatever their limits and however precarious, undeniably favored some advances in the sexual rights agenda in the region. Perhaps the principal challenge for Latin American democracy today is not so new: to make it work for the majority of citizens. Noting that in 2003, 225 million people in the region lived in conditions of poverty, a report by the United Nations
Development Program underscored the growing disaffection of the citizens in many countries with their government and even with electoral democracy, attributing it to deep social inequalities, to the slow pace and uneven distribution of economic growth, and to the lack of effectiveness of social services and legal systems (Hagopian, 2005).

For some national and international actors – including funders – the response to this dilemma can be found in the role of “societal control” that could be played by civil society; in other words, in the hope that civil society will exercise oversight of the state, demanding transparency and accountability, in some cases also participating in the formulation and implementation of policy. The hope is that this type of societal control can, in effect, restructure and strengthen the public sphere to improve the quality of democratic governance (Avritzer, 2002). In some instances, the mobilization of social groups and organizations – in articulation with state and international agencies, political parties, funders, and other actors – has undoubtedly led to important achievements in legislation and public policy. But this role also implies certain risks, including the technocratization of social movements through the “dictatorship of the projects”, the reorientation of their agendas to externally determined priorities, and the erosion of the critical role of the public sphere, given the political and economic dependence that such articulations may imply.

This article, again, did not intend to present an exhaustive account of the questions that emerge from the intersection of politics and sexuality but merely to outline certain problems (reflecting our own personal, political and professional interests), with the hope of advancing the theoretical and political discussions at the regional dialogue; discussions that are increasingly complex and challenging in the diverse contexts of Latin American polities.
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