

Unpacking the Drivers of LGBT+ Legislation

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ABSTRACT

This paper stems from the hypothesis that there are various key factors rooted in economic, political, and social grounds which actively influence and determine the adoption and evolution of LGBT+ rights in the legal framework of any country. The goal of this research is to analyse these factors and understand how they channel the LGBT+ legislation in our present world. Assuming there is an asymmetry in this application and by extension in LGBT+ individuals' human rights, which are often ignored if not deprived in many parts of the world, this study seeks to understand the reasons behind that asymmetry. Based on a sample of 127 countries, a correlation analysis and a Panel data model were developed to analyse the real impact of these factors.

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1. INTRODUCTION

While most lesbian, gay, bisexual, transgender, and other people around the world have faced - and many are still facing- discrimination, persecution, and violence simply for expressing who they are and who they choose to love, this situation started changing after the Second World War with the signing of the Universal Declaration of Human Rights (UDHR) and the subsequent approval of more specific legislation geared towards protecting the basic human rights of the LGBT+ community³. Nevertheless, far from being a widespread and homogenous process, there is still a diverse range of discriminatory practices at the institutional level and even public and governmentally sponsored criminalization of these groups in many countries today, thereby creating a clear asymmetry in the principle of universality of human rights.

The universality of human rights is constituted as one of the guiding principles of the application and interpretation of the so-called International Law of Human Rights. This concept, together with the term sex rights in the context of international relations, gains explicit recognition in the doctrine and among the institutions featuring in the 2004 Special Rapporteur⁴ report on the right of everyone to enjoy the highest attainable standard of physical and mental health. It expresses that a correct understanding of the fundamental principles and rules of human rights entails “the inescapable recognition of sexual rights as human rights”.

This paper aims to shed light on the analysis of the differences among countries’ current LGBT+ legal frameworks by constructing a *LGBT+ index of legislative support* and studying the main drivers of LGBT+ rights and legislation achievements around the world. To this end, a sample of 127 countries worldwide has been analysed to identify common explanatory factors. The selection of countries is based simply on data availability. The rationale behind this sampling strategy is to ensure the maximum heterogeneity of the sample in terms of economic development, religion affiliation, political system and level of openness.

The *LGBT+ index of legislative support* is based on both the norms regulating certain behaviour and acts (which can be the object of punishment) and the recognition of a set of rights and legal protections for the LGBT+ community. It continues previous efforts to summarize and synthesize different indicators of LGBT+ protection and inclusion. Notable among the most relevant ones are the *LGBTI inclusion index* (UNDP, 2016; Badgett & Sell, 2018), which synthesizes five different dimensions of LGBT+ inclusions (political and civil participation, education, health, personal security and violence and economic well-being), and the *Global Index*

³ LGBT+ stands for Lesbian, Gay, Bisexual, Transgender/Transsexual plus others (this last group referring to people who do not identify their gender identity and/or sexuality with the previous categories).

⁴ Hunt, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable level of physical and mental health. Report E/CN.4/2004/49/Add.1 March 1 from 2004.

on *Legal Recognition of Homosexual Orientation*, an index ranging from 0 to 8 that measures legal rights for LGB people (decriminalization, anti-discrimination and couple recognition) across 200 countries (Waaldijk, 2009, 2014).

Most previous empirical works on the topic (Whitley and Lee, 2000; Davies, 2004; Steffens and Wagner, 2004; Van de Meerendonck and Scheepers, 2004; Adamczyk Pitt, 2009; Reese, Steffens, and Jonas, 2013; Kuntz et al, 2014) have focused on understanding social approval of homosexuality and have narrowed their analysis down to just one or a few variables (gender differences, religion, political ideology, etc.). While there are other works which also study the determinants of LGBT+ rights (Ayoub, 2016; Dicklitch et al, 2019; Hildebrandt, Trüdingen and Wyss, 2018), the scope of the analysis (only European countries) or the omission of relevant variables (economic development, globalization, political regime) justify the need for and contribution of the present research. Among the empirical literature on the topic, the most influential work is Asal et al. (2012), which is also a quantitative examination of the effect of political, economic, and legal variables on the legality of homosexual acts between 1972 and 2002⁵.

However, LGBT+ rights go beyond the criminalization of homosexual acts and must include other dimensions and legal aspects relating to protection and recognition. Moreover, the LGBT+ legislation and its potential determinants have changed hugely since 2002, bringing about the need to update the analysis and review the conclusions. A second contribution of the paper can be identified as the analysis of the endogenous nature of the social acceptance variable and the adaptation of the empirical strategy to the results of this analysis.

Despite these contributions, the present study has some limitations that must be acknowledged right from the beginning and do limit its conclusions. Among the most relevant, we can highlight the following: the perfect identification (assumed in the paper) between the legal framework protecting, recognizing and decriminalizing the LGBT+ community and the level of real protection, security, inclusion and fulfilment of Human Rights existing in the selected countries; the availability of reliable statistical information (above all in developing countries) and the subsequent influence of this on the choice of the sample and the potential drivers; the lack of disaggregated data, impeding the identification of relevant differences within the same country; the decision to construct, in a monolithic way, a *LGBT+ index of legislative support*, which can contribute to blurring and making invisible some differences and discriminations specifically affecting some of the groups described by the acronym; and the low number of Buddhist- and

⁵ The results of this study confirm that States having a common law legal system or where Islam is the majority religion are more likely to outlaw same-sex sexual relations. However, while globalization and economic development would help decriminalize homosexual acts, the effect of democracy is not statistically significant.

Hindu-majority countries, which may limit the conclusions of the empirical analysis in these countries.

The article is structured as follows: section two describes the international LGBT+ legal framework; section three offers a brief overview of the theoretical framework and summarizes the main correlates and drivers identified by the specialized literature; section four describes the variables and indicators that approximate the potential drivers of LGBT+ legislation, presents the correlation analysis between the factors considered, and estimates a Panel data model in which LGBT+ legislation is explained through a set of economic, political, and social variables. Last, section five synthesises the main findings of the research.

2. ASSESSMENT OF LGBT+ BEHAVIOURS AND THE INTERNATIONAL LEGAL FRAMEWORK

According to Boswell (1989), almost all societies have somehow regulated the sexual behaviour of their members for social, political, and cultural ends. Thus, far from being understood as a linear process, the social assessment of homosexual behaviour and its translation into norms and laws must be explained by the specific historical context in which it takes place.

If we focus on the analysis of the institutional framework developed over the twentieth century, a first turning point can be found in the UDHR. While it imposed no legal obligations on the member states, it did state that ‘all human beings are born free and equal in dignity and rights’ (article 1) ‘without distinction of any kind’ (article 2) and with ‘the right to freedom of opinion and expression’ (article 19), setting the legal foundations for subsequent legal claims and pressure campaigns promoted by LGBT+ activists. In 1976, two binding documents came into force after being ratified by enough countries: the Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both encompassed within the International Bill of Human Rights (IBHR).

Since the Convention on the Elimination of all forms of discrimination against women (CEDAW) was approved in 1979, social organizations and some states have tried to establish similar international standards for LGBTIQ+ people by approving a Convention on the Elimination of All Forms of Discrimination Due to Sexual Orientation or Gender Identity (CEDOSIG). However, there was opposition from a majority in the General Assembly, preventing the approval of the text, despite the visibility work carried out by some Special Rapporteurs. The pressure exerted by various member states to not debate these issues in the General Assembly meant that they were not discussed, and no binding treaty or convention was created within the UN framework. The turning point in this UN neutrality came with *Toonen vs. Australia*, presented

in 1992, which generated the first international precedent and led to the Human Rights Committee, in its resolution 488/1992, providing that the laws of the state of Tasmania in Australia, which criminalized consensual sexual relations between homosexuals, were in breach of Australia's obligations as a state party to the ICCPR.

A more specific and international legal framework was created to specifically tackle LGBT+ issues. In the same vein, two important landmarks for the LGBT+ community in the global sphere took place in 2006: an International Conference on LGBT Human Rights that resulted in the Declaration of Montreal (an advocacy tool in the context of the first World Outgames); and, as a response to well-documented patterns of abuse against sexual and gender minorities across the world, international human rights experts promoted the Yogyakarta Principles⁶, a binding international legal standard with which all States must comply. These Principles were created with three clear purposes: first, to create and provide an analysis of the current state of international human rights law applied to sexual minorities; second, to emphasise that no human being or group of human beings is considered outside the language of the international treaties that are the foundations of international human rights law; and third, to detail binding obligations for government-sponsored actions within each state territory to enhance LGBT+ activism. In total, 29 principles were created to challenge the persistent and continuous human rights violations faced by the LGBT+ community around the globe.

It was not until 2011 that human rights and the LGBT+ community marked the first milestone inside the United Nations. That year, the Human Rights Council approved a resolution, considered historic, which mentioned discrimination on the grounds of sexual orientation and gender identity. The famous resolution 17/19⁷ was approved with twenty-three countries in favour, nineteen against and three abstentions. In 2015, the General Assembly passed the so-called Sustainable Development Goals (SDGs) as its global strategy. Unfortunately, there is no express mention of discrimination on the grounds of sexual orientation, gender identity or expression, much less the protection of the rights of LGBT+ people.

Some additional efforts have also been made at a more regional level, including the European Convention on Human Rights (ECHR) (articles 8 and 14) and the European Union's antidiscrimination law, which forbids discrimination on the ground of sexual orientation (Ellis, 2005 in Kuntz et al 2014). We can also find specific rulings of some international bodies such as the Court of Justice of the European Union (CJEU)⁸, the European Court of Human Rights

⁶ Available at: http://data.unaids.org/pub/manual/2007/070517_yogyakarta_principles_en.pdf

⁷ Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/148/76/PDF/G1114876.pdf?OpenElement>

⁸ C 13-94 *P v S and Cornwall County Council* [1996] ECRI – 2143.

(ECtHR)⁹, the Inter-American Court of Human Rights¹⁰, and the UN Human Rights Committee¹¹, adopting and drawing attention to the LGBT+ legal status. In 2007, the International Commission of Jurists adopted the Yogyakarta Principles on the application of human rights law in relation to sexual orientation and gender identity¹².

While there are some voices that would argue that LGBT+ rights should not be a matter of political consideration (Beredjick, 2017), all the above-mentioned institutional developments prove that the global legal trend is moving forwards in the direction of accepting and integrating legislation geared to recognizing and protecting the LGBT+ community (Lombardo and Verloo, 2009). This global trend is considered by many scholars as the increasing victory of universalism over cultural relativism (Lau, 2004; Lafuente, 2019).

However, as confirmed by different institutional reports and other reports drawn up by LGBT+- related NGOs, the acceptance and application of the previous rights are notably unequal and heterogenous (Karlsson, 2015)¹³, justifying further analysis of these national differences.

3. WHAT MAKES LGBT+ RIGHTS POSSIBLE? A REVIEW OF THE LITERATURE

In this section, we summarize the main economic, political, and social factors which, according to the specialized literature, could explain LGBT+ legislation.

With regard to the political dimension, Encarnación (2014, 1) points to the political system of a country as one of the main drivers of LGBT+ rights, arguing that ‘although gay rights are not found in all democracies, they are virtually non-existent in non-democracies.’ Having a political system where individual and collective freedoms, such as the right to freedom of association and of protest, are guaranteed and legislative processes are open to societal demands are key factors in explaining the advancement of LGBT+ rights.

Indeed, some of these democracies were even able to transform this power into international pressure capable of influencing other countries with less developed and more fragile democracies in what amounts to political plurality or power balances. This pressure has been applied through both formal political institutions and more informal channels, like social movements and international campaigns launched by civil society.

⁹ *X and Others v Australia*, Application. No 19010/07, Merits and Just Satisfaction, 19 February 2013.

¹⁰ *Case of Atala Riffo and Daughters v Chile*, IACtHR Series C 239 (2012).

¹¹ *Toonen vs Australia*, (488/92) Admissibility CCPR/C/50/D/488/1992.

¹² International Commission of Jurists, Yogyakarta Principles – Principles on the application of international human rights law in relation to sexual orientation and gender identity, March 2007, available at: www.refworld.org/docid/48244e602.html.

¹³ One good example of this heterogeneity can be found in Ettelbrick, & Zerán (2010).

One good example of the first is the countries seeking to join the European Union (EU) over the last two decades. During the process they were asked to adapt their political and legal framework to the one already created and implemented in other EU countries, considered better fitting to the basic tenets of the spirit of the EU. Therefore, we find countries on European territory where political reasons have been of the utmost importance in the adoption of these norms¹⁴. The relevance of this factor comes from the balance between the costs and benefits of this adoption, mainly considering the political domestic cost and the need to gain external legitimacy and improve reputation internationally (Ayoub, 2015). Many authors criticize this process, considering it as ‘Leveraged Pedagogy’, or the need of Western Europe to impose its discourses on sexual liberation and advancement, creating what they consider a ‘hegemonic didactical relation’ where Eastern Europe and other countries are seen as objects for that pedagogy (Kulpa, 2014).

On the opposite side of the political spectrum, there are the authoritarian and repressive political regimes. In most of these political regimes, LGBT+ rights are virtually non-existent and LGBT+ behaviours are criminalised by the legal system. Furthermore, the existence of a repressive political system does not allow the creation of political activism in the classical way (Tarrow, 2011).

However, in the last decades, new political opportunities have emerged thanks to globalization and technological devices, adding to the ways of carrying out activism. These platforms allow for the interaction between individuals with similar political goals, without having to engage in a more public and riskier context. This new so-called ‘online activism’ (Joyce, 2010) has been instrumental in giving power to LGBT+ activists in recent years in countries like Morocco (Figueredo, 2015). Globalization and global connectivity can therefore play a relevant role in the internationalization of LGBT+ rights, linking societies, blurring economic, political, and social frontiers, and internationalizing social struggles and governance frameworks that need to be adapted to a more global world¹⁵.

Apart from global connectivity, globalization can also favour LGBT+ rights through the role played by big corporations in the spread of LGBT+-friendly practices and the pressure exerted by these companies on society and local politicians (Roumpi, Giannakis, & Delery, 2020; Stavrou & Ierodiakonou, 2018). This is a consequence of what some authors consider to be the 21st-century workforce demands for inclusiveness and diversity for their organizations (Nishii & Rich, 2014). Nevertheless, there is another side to this situation. First, companies unlike governments respond basically to a cost and benefits model of thinking. Therefore, when they come across situations

¹⁴ In the same political line, although less demanding and binding, is the OAS (Organisation of American States), which pushes for LGBT+ inclusive legislation among its members.

¹⁵ In the 1990s, works like Giddens (1991;1992) and Beck (1992) advocated for the connection between globalization and issues of intimacy, gender relations, and relationships.

where D&I policies can be applied to increase their CSR image and report economic benefits, or at least not reduce them, they can apply those policies, but they can also axe them in territories where they do not feel it is a good choice in terms of their economic interests; and second, companies can change their agreements on or approach to a topic like the defence of the LGBT+ community in each territory without any explanation and without being held accountable for their decisions, unlike governments, who must respond to international treaties and supranational organizations.

Likewise, the politically repressive environment of a country can produce a domestic political movement against policies within its own borders which, thanks to these new tools, is able to connect and mobilise to impact, albeit slowly, on the policies of the state, provided it is able to gain societal respect. To this effect, while it is true that the existence of pro-LGBT+ movements is crucial, they are also insufficient if they are unable to succeed in framing the issue of LGBT+ rights in a way that resonates with local majoritarian sentiments (Corrales, 2015).

There is another political domestic factor that can impact when adopting these policies and creating such laws, and that is the ideology of the ruling party of a given country. There is currently a general positive correlation between left-wing political parties and higher acceptance of these rights (e.g., Belgium, Spain, and France passed same-sex marriage laws when left-wing parties were in power in 2003, 2005, and 2012, respectively). However, moderate conservative political parties (centre-right) can sometimes be notably willing to adopt such political reforms for the same previously mentioned reasons. This different pattern has been analysed particularly in Latin American countries (Corrales, 2015), where it has had a real impact on LGBT+ policies and was the impetus for the legal improvements in countries like Colombia and Chile. In these cases, it is even argued that centre-right political parties have had a major role in the acceptance of LGBT+ rights, since hard-left movements in the region privilege collective rights over individual rights, thereby prioritising economic equality over issues of sexual diversity (Strickler, 2017).

A second dimension that must be considered to understand the implementation of LGBT+ policies is the economic dimension and, more precisely, the existence of more materialistic or post-materialistic values, in line with a varying socioeconomic situation. According to Inglehart (1977), who first developed the concept of post-materialist values, when a territory provides a stable, developed socioeconomic situation, as has mainly been the case in the West, individuals shift from an emphasis on well-being and physical security towards an emphasis on quality of life. To illustrate the point, we can take as a reference the countries in the Organisation for Economic Cooperation and Development (OECD), where the social and political acceptance of LGBT+ rights is much higher than in the rest of countries (Valfort, 2017). More recently, Badgett et al.

(2019) has found that economic development and the social inclusion of the LGBT community are positively correlated.

Besides the general economic advancement of a given territory, the same rule applies when examining the distribution of resources within the territory. Clearly, if the benefits stemming from economic prosperity are not equally distributed, not all populations are free from the materialistic concerns previously mentioned. Following this, the high levels of income inequality present in some Western industrialised countries can have an important impact on the tolerance individuals belonging to the less favoured social classes have towards issues like LGBT+, gender equality, or environmental protection (Andersen and Fetner, 2008). Another argument supporting this view is developed by Uslaner (2002), who links the idea of ‘general trust’ with lower levels of inequality and an inclusive view of their society among individuals, making them more tolerant and welcoming of people different from themselves.

Likewise, both authors point to the mode of production as a potential factor to consider when understanding LGBT+ rights, arguing that countries that experienced Communist rule and economic collapse after the dissolution of the USSR tend to retain traditional survival values, which contribute to intolerance. In their opinion, although it cannot be said that the economic system within the Communist states is the only cause of the stagnation of these rights, since other factors such as religion, nationalism, and political oppression must also be considered, empirical evidence shows that any LGBT+ movements or laws were created in the former USSR countries when they started to attract political attention from Western countries¹⁶. Even nowadays, Eastern European countries are markedly less open in terms of attitudes not only toward homosexuality but also to sexual permissiveness in general, in what could be understood as part of the cultural legacy of the USSR (Stulhofer and Sandfort, 2005). In 2018, the Czech Republic became the first post-Communist country to pass a same-sex marriage law and the only one with a positive evolution in tolerance and legislation in support of LGBT+.

From an anti-colonial perspective, this empirical correspondence between economic development and LGBT+ rights is explained by the capacity of Western countries to impose a discourse of modernity and its own categories (Altman, 2001). This same concern is shared by Lugones (2008) when describing the ‘modern/colonial gender system’ in which conceptions of sex and gender and patriarchal and heterosexual organizations of relations are structurally embedded (2008); and by Puar (2007), when proposing, through the concept of homonationalism, a deep critique of lesbian and gay liberal rights discourses in producing narratives of progress and

¹⁶ According to Andersen and Fetner (2008), the respondents from former communist countries have an average tolerance score of around 14% lower than that of countries without a communist history. A similar conclusion is drawn in Valfort (2017), which stresses the lower acceptance of homosexuality and support for gender equality in Eastern European countries during the period 2001-14.

modernity that ease some populations' access to cultural and legal citizenship at the expense of the delimitation and expulsion of others. (Puar, 2013)¹⁷.

Last, the literature also identifies a group of cultural and moral values that could explain LGBT+ legislation. A first group of works (Reynolds, 2013; van den Akker, van der Ploeg, and Scheepers, 2013; Florida, 2014) link social acceptance and positive attitudes toward homosexuality with the establishment of LGBT rights. In fact, some of these works also assert that the causal link can work in both directions; concluding, for example, that laws permitting homosexuals to marry have contributed to reducing disapproval of homosexuality wherever these laws have been passed.

Another aspect to be considered is whether religion is embedded in the essence of the popular nation. While almost global some centuries ago, many countries have nowadays decided to leave aside the role of religion inside their governmental structure. This is the case of most European countries. Some interesting cases are Spain, Ireland, Italy, and Malta, which were traditionally considered deeply religious societies and have now embraced same-sex marriage laws among other measures of recognition and protection of the LGBT+ minority. However, some other European countries have retained their strong governmental links with religion, thereby derailing LGBT+ rights legislation, considering it morally controversial, as is the case of Poland and Romania. A similar analysis can be made of Latin American countries, where mainly the Catholic church has historically had an important veto power in politics. Even nowadays, there is what is considered a conservative backlash to the adoption of progressive legislation in Latin American countries led by religious movements allied with traditional conservative political actors (Corrales, 2020).

The same applies to territories where Islam is present, such as the Middle East, the North Africa region (MENA) and some African countries, because in Islam government and religion working as one entity is considered a necessary feature and, as a consequence, most governments in the region are faith-based. It is precisely within this context that we can find the only countries in the world that punish homosexual relations with the death-penalty (Iran, Sudan, Saudi Arabia, and Yemen; parts of Somalia and northern Nigeria, ruled under sharia law).

A third cultural aspect pointed to in the literature has to do with countries' colonial past and, more precisely, with the legal and structural legacy around sexuality left by the metropolis. In this regard, Asal et al. (2012) argues that nations with legal systems based on English common law inherited a prohibition on homosexual acts, influencing the future provisions of the legal framework around the LGBT+ community in these nations. Last, and although few authors have

¹⁷ This phenomenon is especially seen in Europe (Freude and Vergés 2020), but also present and relatively important in North and South America (Nebeling and Myong 2015).

focused on the discursivities of human rights in Confucian Asia or the conflicting position of sexual liberation and homonormativity in Asian culture and its one-party dominant system (Lee, 2016), Laurent (2005) concludes that it is not religion or its interference in politics but the cultural traditional values and standards of conduct (the so-called Asian values) that create a stigma around LGBT+ rights in Asian countries.

4. EMPIRICAL ANALYSIS OF LGBT+ LEGISLATIONS

In this section, we aim to understand what factors can explain the different level of legislative support to the LGBT+ community in the countries in the sample.

A. The data

(i) Dependent variable

To measure government support towards LGBT+ rights in each country, we constructed a *LGBT+ index of legislative support* that integrates four different dimensions: legality, punitiveness, protection, and recognition. This composite index is based on ILGA (2010, 2015 and 2020) and is structured to cover every legal aspect concerning the LGBT+ community, such that the higher the score, the higher the tolerance and protection of the legislation for the LGBT+ community.

The first dimension, legality, captures the nature of the legal status given by the country to LGBT+ conducts and acts. Consequently, the following scores were assigned in each case: two points to countries that have fully legalised the conducts and acts of the members of the LGBT+ community; one point when the legalization is just *de facto*; and zero points when a country has not legalised LGBT+ conducts or has declared them as illegal.

The second dimension, punitiveness, measures how the offence of being part of the LGBT+ community or promoting it is framed in the penal code and how it is punished. When a country scores zero points in this category it means that they punish LGBT+ acts with death penalties or life imprisonment. When the penalty is ten or more years of imprisonment (but not life) 0.5 points are awarded, and when it is five years or more but less than 10 one point is awarded. When the punishment is between one and five years the country scores 1.5 points, and when there is no imprisonment it scores two points.

The third dimension, protection, summarizes all the regulations geared to protecting the LGBT+ community against attacks of any kind, state-promoted or otherwise, due to their sexual orientation. ILGA (2020) identifies six different ways this protection can take form: constitutional

protection against discrimination based on sexual orientation; broad protection against discrimination based on sexual orientation¹⁸; protection against discrimination based on sexual orientation in employment; criminal liability for offences committed on the basis of sexual orientation; prohibition of incitement to hatred, violence or discrimination based on sexual orientation; and bans on conversion therapy. Countries were awarded 0.5 points for each of the aforementioned protections (0.25 when it was assessed as limited protection).

Last, the fourth dimension, recognition, goes further than protection in quantifying the adoption of legislation aimed at meeting the special needs of LGBT+ members and raising them to the same level as the rest of the population. ILGA (2020) identifies four different types of recognition regulations: same-sex marriage, partnership recognition for same-sex couples, joint adoption by same-sex couples, and second parent adoption by same-sex couples. Countries were awarded 0.5 points for each of the aforementioned recognition regulations (0.25 when it was assessed as limited protection).

As ILGA (2010 and 2015) do not include information on broad protection', prohibition of conversion therapies and second parent adoption, a narrower version of the dependent variable (which excludes these three categories) is also adopted for 2020 to make the series homogenous.

Table A1 in the Appendix shows the value of the *LGBT+ index of legislative support* for each selected country over the analysed period. Overall, the results allow us to conclude that legislative support for the LGBT+ community has increased since 2010¹⁹. However, there are still 35 countries in the sample where being part of the LGBT+ community entails serious personal risks including imprisonment, and even death. In another 28 of them, although there is no direct threat to personal integrity or individual freedom, a minimum legal base of protection and recognition is not given to make the LGBT+ community equal to the rest of citizens (countries scoring 4 points). Hence, in these territories the LGBT+ community remains marginalised and does not live in a safe environment where its members' sexual orientation or gender identity do not restrict their opportunities to seek a happy life, enjoying the same rights and protections conferred by the state as any other citizen. In 2020, only Malta achieved the maximum score in the index (9), meaning that most countries in the sample did not provide comprehensive recognition and protection of the entire LGBT+ community in all the required social spheres that year²⁰. Regarding regional differences, Europe and America are the regions with the highest average scores (5.71 and 5.58, respectively), and Africa and Asia are the ones with the lowest ones (2.21 and 3.17, respectively)²¹.

¹⁸ Includes 'explicit legal protections against discrimination based on sexual orientation in health, education, housing and the provision of goods and services' (ILGA, 2020; 18).

¹⁹ It has increased in 66 countries in the sample, stayed constant in 48 and decreased in 13.

²⁰ Australia, Austria, Belgium, Brazil, Canada, Colombia, Ecuador, France, Mexico, Portugal, South Africa, Spain, Sweden, the UK, and Uruguay also obtained scores of 8 or more for that year.

²¹ Since the sample only includes one Oceanic country (Australia), the average is not calculated for this region.

(ii) Explanatory variables

As we have seen in the literature review, there are different factors that could explain the introduction and acceptance of LGBT+ laws. In this part of the analysis, we describe both the explanatory variables included in the model and the data used to measure them. The choice of the variables is based on the theoretical literature on the topic and the empirical models aiming to identify the main drivers of LGBT+ rights. The rationale behind this decision is both to update these studies and to evaluate the robustness of their results and findings. To this effect, the analysis proposed by Asal et al. (2012), which explains criminalization of homosexual acts through variables that approximate the type of political regime, economic development, globalization, and religiosity, is extended with the inclusion of income inequality as a potential determining factor.

- Economic development: as we have seen in the literature, post-materialist values can emerge when societies reach certain levels of economic development. This variable is measured by the GDP per capita in US international dollars (Purchasing Power Parity) (World Bank, nd).
- Globalization: approximated by the KOF Globalization Index and ranging from 0 to 100, it aims to measure the level of globalization of each country across the economic, social, and political dimensions (Gygli et al, 2019)²². The version used in this paper distinguishes between de facto and de jure measures for each dimension. The first subindex, economic globalization²³, combines trade and financial globalization; the second subindex, social globalization, aims to capture the spread of ideas, information, images, and people and is the result of combining three subindexes (interpersonal globalization,²⁴, informational

²² Since the last available year for this indicator is 2019, this series is based on the values of the KOF globalization index for 2010, 2015 and 2019.

²³ It is based on indicators such as imports and exports of goods and imports and exports of services (as a share of GDP), capital flows and stocks of foreign assets and liabilities, liberalization of international trade, trade regulations, taxes, tariffs and free trade agreements, openness of the capital account, and international investment agreements.

²⁴ It measures direct interactions among citizens living in different countries and is calculated using indicators such as personal calls across borders, number of mobile phones per capita, migration, tourism, number of airports hosting international flights, foreign students, and international transfers.

globalization²⁵, and cultural globalization²⁶); and the third subindex, political globalization²⁷, approximates the level of diffusion of government policies and international political cooperation.

- Social acceptance: measures the acceptance of the LGBT+ community in each country. It is approximated by the LGBT Global Acceptance Index, estimated by UCLA University's Williams Institute and based on surveys conducted in 141 different countries (Flores, 2021). It ranges from 0 to 10, where 10 means total acceptance²⁸.
- Level of democratization: proxied by the Democracy Index, estimated by the Economist Intelligence Unit. It includes five different factors (electoral process and pluralism, government functioning, political participation, political culture, and civil liberties) and gives each country a score out to ten, assessing the state of democracy in each country as 'full democracies', 'flawed democracies', 'hybrid regimes', or 'authoritarian regimes' (Economist Intelligence Unit, 2010, 2015, and 2020).
- Religious affiliation: as we have seen in the previous section, the relevance of religion in each country in terms of it shaping social values and influencing political and legal institutions can help explain differences in LGBT+ legal frameworks. This variable is approximated by the percentage share of followers of the four majoritarian religions (Christianism, Islamism, Hinduism, and Buddhism), and aims to capture possible differences among religions (Pew Research Center, 2015)²⁹.
- Economic inequality: this variable is measured by the the Gini Coefficient (World Bank, nd)³⁰.

²⁵ It aims to summarize the actual flow of ideas, knowledge, and images and is based on indicators like internet bandwidth, people with access to the internet, number of television sets per capita, the press freedom index, international patents, and high technology exports.

²⁶ It approximates cultural assimilation across the world using the number of McDonalds' restaurants, IKEA stores, stock of trademark applications by non-residents, trade in cultural goods and personal, cultural and recreation services, the gender parity index on gross primary school enrolment, the human capital index, and the civil freedom index.

²⁷ It is calculated using indicators like participation in UN peacekeeping missions, number of embassies and international NGOs, number of multilateral treaties signed since 1945, and number of memberships in international organizations.

²⁸ Since the available information for this indicator is displayed in intervals, this series is based on the values for the following periods: 2009-2013, 2014-2017 and 2017-2020.

²⁹ Given the low variability of this variable, the missing value for 2015 is calculated as the average of the values for 2010 and 2020.

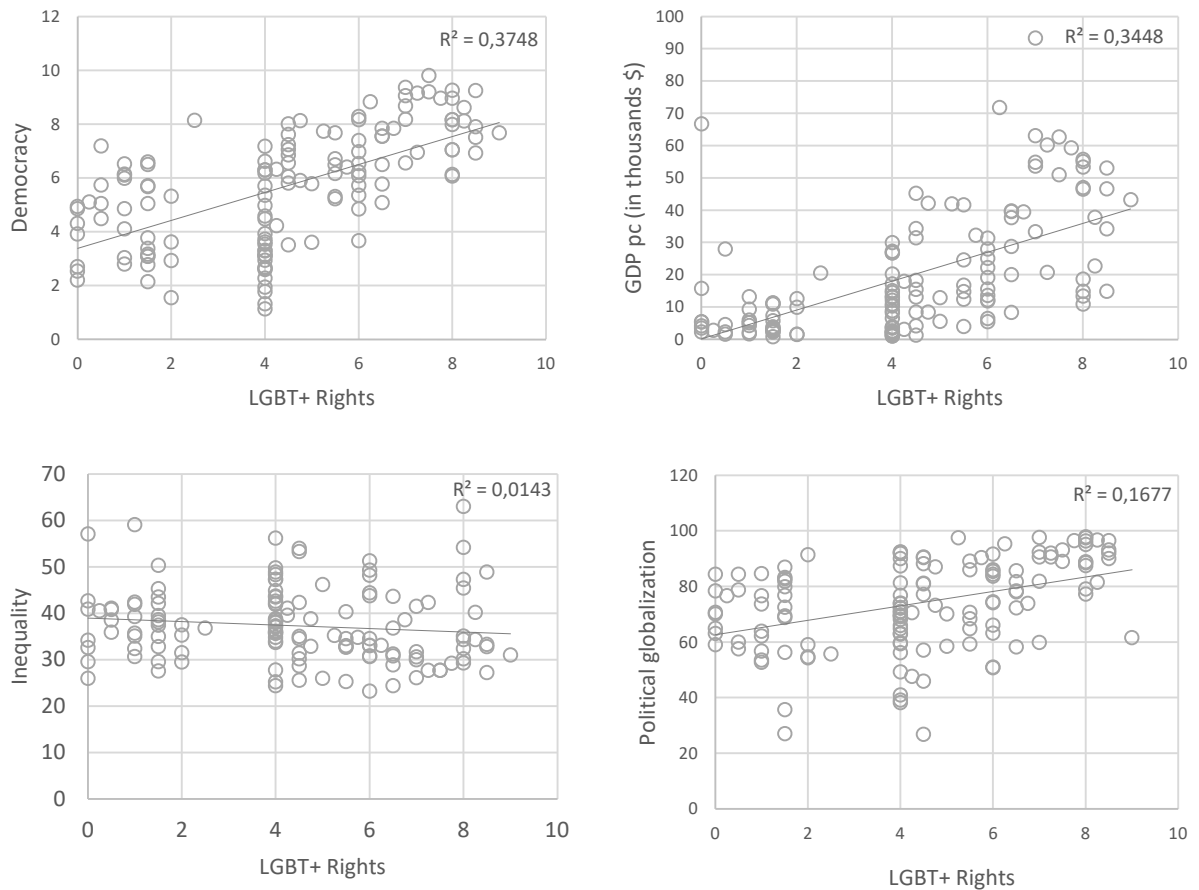
³⁰ When data are not available for 2010, 2015 or 2020, the closest value is taken.

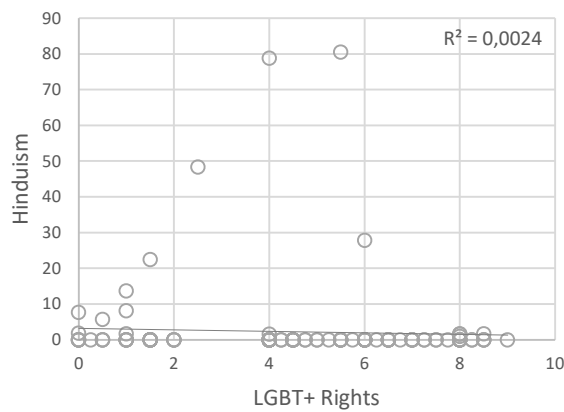
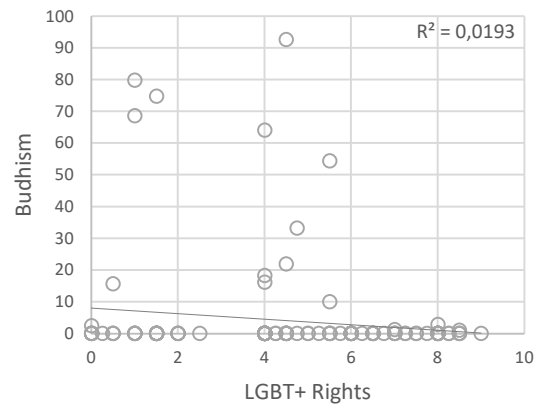
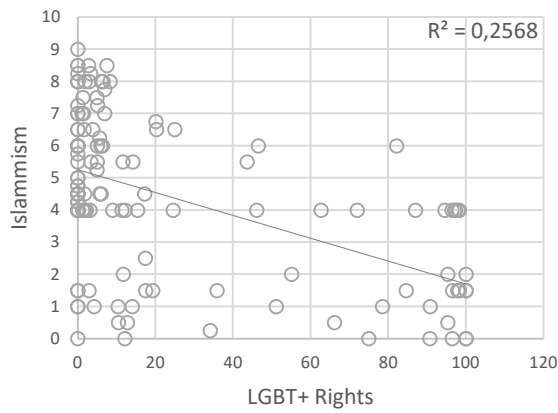
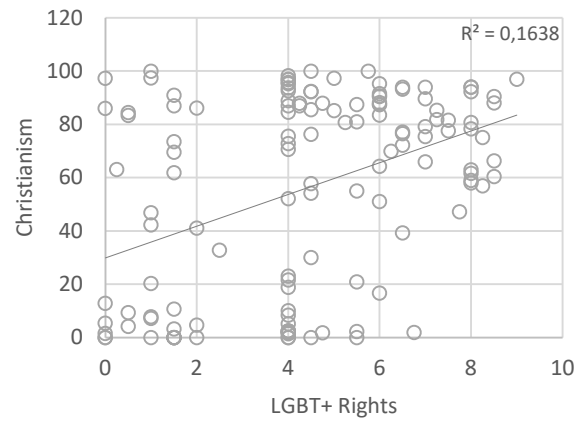
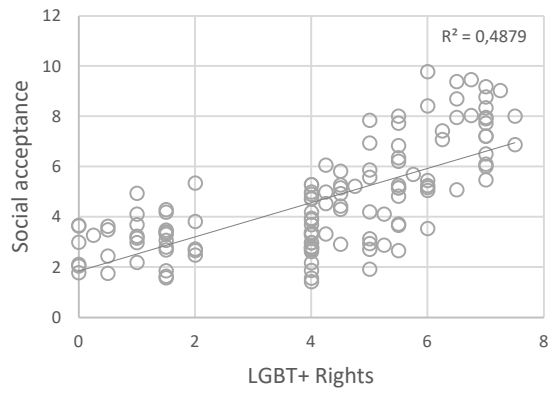
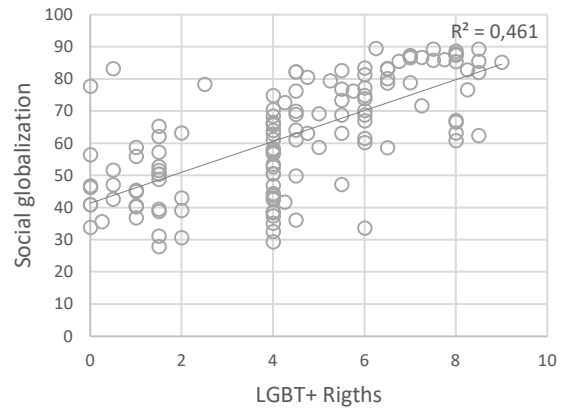
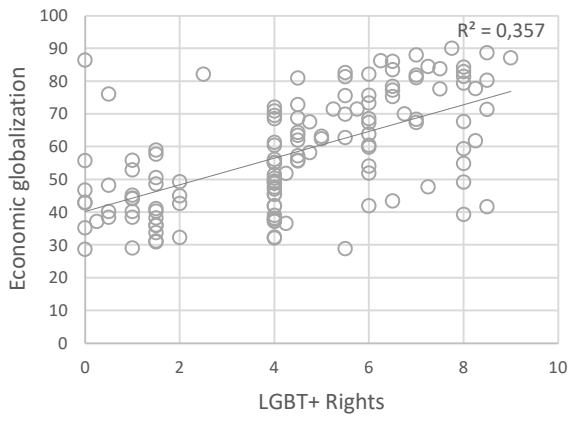
B. Statistical analysis

The main goal of this section is to empirically contrast whether the adoption of supportive LGBT+ laws can be explained by the concurrence of diverse factors. For this, we adopt two statistical approaches: first, we analyse whether the variables considered in the analysis are correlated or not in 2020; and then a panel data is estimated to identify the main drivers of LGBT+ legislation, based on a sample of 127 countries for the years 2010, 2015 and 2020.

Figure 1 illustrates the scatter plots between LGBT+ legislation and each explanatory variable.

Figure 1 LGBT+ Rights, Economic Development, Globalization, Democracy, Social Acceptance Religion and Inequality^a





Source: Authors' own elaboration.

^aThe correlation coefficients are included on the top right corner and are denoted by R^2 .

As we can see in Figure 1, the approval of LGBT+ rights is positively correlated with level of democratization, economic development, and globalization³¹, in such a way that the countries in the sample with the most developed LGBT+ legal frameworks are also the ones that are more globalized and present the highest levels of economic development and democratization (and vice versa). The analysis does not seem to support the conclusion drawn in Uslander (2002) and Andersen and Fetner (2008), according to which more cohesive societies are more likely to support and pass LGBT+ laws. As far as religious affiliation is concerned, it is negatively correlated with LGBT+ legislation in countries with an Islamic majority but positively correlated in countries with a Christian majority (although very weakly). Due to the small number of countries in the sample with a majority of Buddhist or Hinduist populations, correlations are not significant in these cases.

Having analysed the correlation between the considered variables, the next step is to estimate a panel data to evaluate the causal relationship between LGBT+ legislation and the independent variables. The main advantages of panel data estimation are the generation of more efficient results due to combining cross-sectional and time series data, and the possibility of measuring individual and unobserved heterogeneity.

Equation 1 explains LGBT+ legislation in the selected countries through the aforementioned potential drivers.

$$LGBT_{it} = \beta_1 ed_{it} + \beta_2 dem_{it} + \beta_3 ineq_{it} + \beta_4 sa_{it} + \beta_5 eglo_{it} + \beta_6 pglo_{it} + \beta_7 sglo_{it} + \beta_8 chr_{it} + \beta_9 isl_{it} + \beta_{10} bud_{it} + \beta_{11} hin_{it} + e_{it} \quad (1)$$

Economic development is denoted by *ed*; level of democratization by *dem*; economic inequality by *ineq*; economic globalization by *eglo*; political globalization by *pglo*; social globalization by *sglo*; the percentage share of Christian followers by *chr*; the percentage share of Islamic followers by *isl*; the percentage share of Buddhist followers by *bud*; and the percentage share of Hinduist followers by *hin*. Variables are indexed by country (*i*).

One of the basic assumptions of panel data estimation is the independent nature of regressor variables (no correlation between regressor and error terms). Otherwise, when this assumption is violated, the estimated parameters are biased. In the case at hand, one of the explanatory variables of the model, *social acceptance*, could be deemed as endogenous because the approval of LGBT+

³¹ Although correlation is positive in all the dimensions in the case of political globalization, the correlation is very weak.

laws and the preceding and subsequent public debate could influence, for better or for worse, the level of social acceptance³². Because of this, before estimating equation 1, the endogeneity nature of this variable must be tested. To this end, we first estimate equation 2 to then include the estimated errors of equation 2 in equation 3.

$$sa_{it} = \beta_1 ed_{it} + \beta_2 dem_{it} + \beta_3 ineq_{it} + \beta_4 eglo_{it} + \beta_5 pglo_{it} + \beta_6 sglo_{it} + \beta_7 chr_{it} + \beta_8 isl_{it} + \beta_9 bud_{it} + \beta_{10} hin_{it} + e_{it} \quad (2)$$

$$LGBT_{it} = \beta_1 ed_{it} + \beta_2 dem_{it} + \beta_3 ineq_{it} + \beta_4 er_sa_{it} + \beta_5 eglo_{it} + \beta_6 pglo_{it} + \beta_7 sglo_{it} + \beta_8 chr_{it} + \beta_9 isl_{it} + \beta_{10} bud_{it} + \beta_{11} hin_{it} + e_{it} \quad (3)$$

Table 1 shows the results of estimating equations 2 and 3.

dep.var - LGBT	Coefficient	p-value
ed	0.028	0.000
dem	-0.191	0.005
ineq	-0.006	0.705
er_eq2	0.359	0.000
eglo	0.017	0.054
pglo	-0.009	0.212
sglo	0.035	0.003
chr	-0.091	0.000
isl	-0.096	0.000
bud	0.024	0.031
Hin	-0,541	0.000
Intercept	0.897	0.419
R ²	0.707	0.615
Prob.Chi ²	0.000	0.000
Hausman test	62.92	20.59

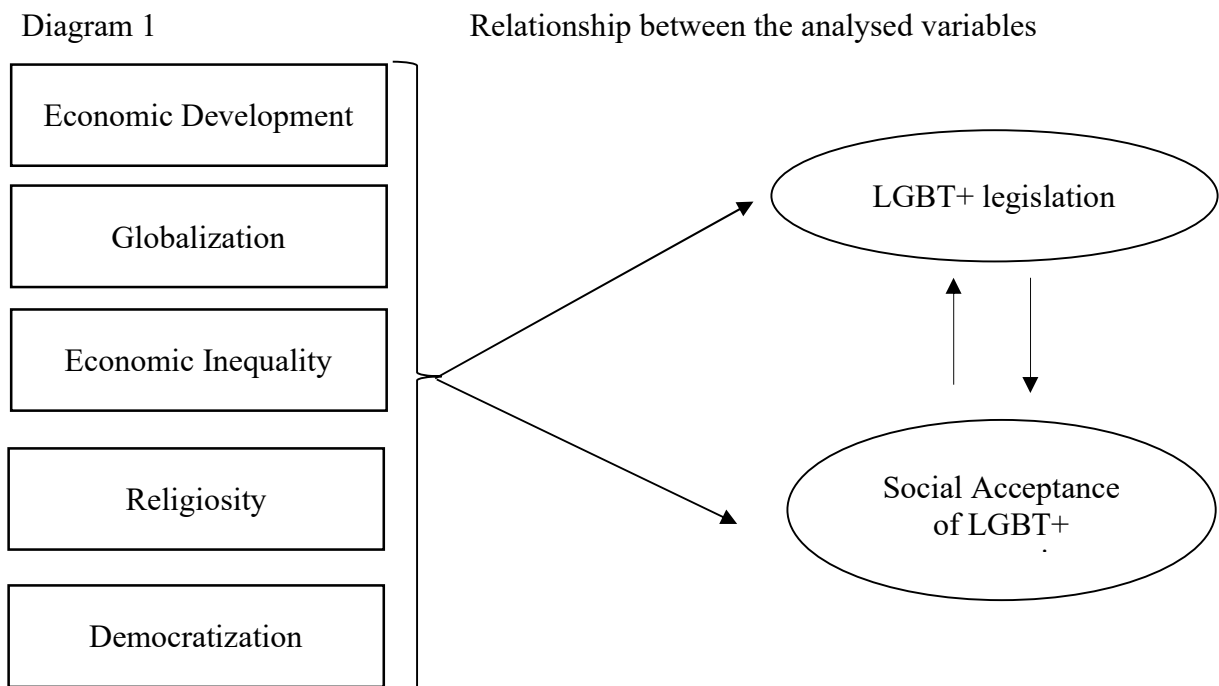
Source: own elaboration

^a Standard errors are clustered and robust.

^b The p-value is shown in parentheses

³² The bilateral relation between LGBT+ social acceptance and LGBT+ rights is confirmed by the works that have analysed the topic (Allport, 1954; Zajonc, 1968; Stangor, 2000; Altemeyer, 2002; Van den Akker et al., 2013).

The results in Table 2 show that the estimated errors of Equation 2 are significant in Equation 3, confirming the endogenous nature of social acceptance in our model. One frequent solution to problems of endogeneity is to substitute the potential endogenous variable with one or several instruments. Since the specialized literature also identifies level of globalization, economic development, democratization, inequality, and religion as potential drivers of social acceptance of the LGBT+ community, these variables can also be considered instruments of social acceptance. Therefore, as shown in Diagram 1, the effect of these explanatory variables on the development of LGBT+ legislations could be two-fold: one, the direct effect on legislators, and two, the indirect effect through their capacity to condition public opinion.



Source: Authors' own elaboration.

Consequently, while recognizing the explanatory nature of social acceptance, it is not directly included in the model to avoid problems of endogeneity.

$$LGBT_{it} = \beta_1 ed_{it} + \beta_2 dem_{it} + \beta_3 ineq_{it} + \beta_4 eglo_{it} + \beta_5 pglo_{it} + \beta_6 sglo_{it} + \beta_7 chr_{it} + \beta_8 isl_{it} + \beta_9 bud_{it} + \beta_{10} hin_{it} + e_{it} \quad (4)$$

The results obtained from the panel data estimation of equation (4) are shown in Table 2³³.

³³ Since the Republic of the Congo, Fiji, Guinea-Bissau, Papua New Guinea, Timor-Leste, and the United Arab Emirates were not initially included in the sample due to lack of information for the variable social acceptance, the

Table 2 Panel data estimates for equation 4^a

LGBT – dep var	Coefficient	p-value
ed	0.017	0.064
dem	-0.098	0.122
ineq	-0.020	0.141
eglo	0.016	0.102
pglo	0.001	0.942
sglo	0.038	0.000
chr	-0.004	0.603
isl	-0.020	0.011
bud	-0.015	0.092
hin	-0.032	0.003
Intercept	2.366	0.035
R2	0.485	
Prob.Chi2	0.000	
Hausman test	17.29	

Source: own elaboration

^a Standard errors are clustered and robust.

^b The p-value is shown in parentheses

The parameter estimated for economic development has a statistically significant effect on LGBT+ rights, thereby confirming the arguments that link LGBT+ rights with the emergence of post-materialist values once a certain threshold of economic development has been met. The results also reflect the positive and significant effect of social globalization on LGBT+ legislation, thus recognizing that societies that are more open and connected with the rest of the world should also be more willing to accept LGBT+ acts and promote their legal recognition and equal treatment. Nevertheless, globalization does not seem to have a significant impact on LGBT+ legislation when it comes to its economic and political dimension. Regarding the main setbacks for the promotion of LGBT+ rights, the empirical results suggest that religious affiliation can act as a cultural constraint in countries where Islamism, Hinduism or Buddhism are the most followed religions. Contrarily, religious affiliation does not seem to be constraining LGBT+ legislation in Christian-majority countries. Unlike the correlation analysis, the parameter associated with the variable democracy is not significant when this factor is considered together with the rest of the

removal of this variable from the model allows the size of the sample to be increased with the incorporation of these six countries, thus consolidating a final sample of 133 countries.

potential drivers. However, the parameter associated with economic inequality is again not significant, thereby suggesting that the higher recognition of minorities (such as the one in question) could be compatible with higher levels of within-country income inequality. This result seems to support positions like the one held in Fraser (1995), according to which other types of social demands (more linked to the recognition of certain historically excluded minorities) could have displaced material struggles to reduce income inequality.

5. CONCLUSIONS

In this paper we have attempted to understand, gather, and analyse what sustains the varied LGBT+ community legislation around the world. Several factors were tested with the aim of creating a better understanding of a phenomenon that requires a wider international consensus to protect human dignity, irrespective of place of birth.

The estimation of an *LGBT+ index of legislative support* allowed us to identify clear differences among countries. This asymmetric attitude towards the LGBT+ community is sometimes justified in the light of cultural relativism. However, while the international community should respect cultural differences and nations' inherent values and traditions, it does not seem acceptable that governments can discriminate and punish LGBT+ individuals simply because of their sexual orientation or gender identity. In this respect, the current analysis allows for cautious optimism since the results detect a general trend towards increased legislative support for the LGBT+ community since 2010.

Although it is not possible to create a single formula or mark one path to move LGBT+ legislation forward around the world, the analysis suggests that under no circumstances can its evolution be considered a random phenomenon. In this regard, while globalization seems to have contributed to the greater international recognition of the LGBT+ collective and to the equalization of their rights with those of the rest of society -at least, in its social dimension- cultural and religious barriers may be constraining the internationalization of the LGBT+ struggle and its main achievements. Therefore, the greater connectivity among societies that has led to important advances in terms of LGBT+ legislation may be neutralized in societies where Islamism, Hinduism or Buddhism are the most followed religions. On the other hand, the analysis fails to find support for the hypothesis that links level of democracy and legal support for the LGBT+ community, such that nations with high levels of democratization are not more likely to legally support the LGBT+ community.

As far as the economic sphere is concerned, the analysis also provides noteworthy results. As economic conditions improve, the promotion of LGBT+ rights is more likely, thereby confirming

the thesis of authors that link the post-materialist shift in values and attitudes with the promotion of LGBT+ rights (Inglehart, 1981, 2008; Asal et al, 2012; Stulhofer & Rimac, 2009). According to this position, societies are more willing to accept values of self-expression and minority rights after meeting a certain level of economic development. Although with the expected sign, the non-significant effect of economic inequality on LGBT+ rights could provide a basis for the claim that the goals of diversity, recognition, and inclusion have ousted (at least partially) the objective of more equal distribution from the discourse and narratives of both social movements and left-wing political parties.

Despite focusing the analysis on a different dependent variable and period of study and using different samples, quantitative methodology and indicators, the results obtained in this paper are almost identical to those obtained in Asal et al (2012). The positive effect of globalization and economic development, the constraining role of religion (and more specifically of Islam), and the non-significant impact of the level of democratization are confirmed after eighteen years of relevant progress in matters of LGBT+ rights. Despite all the limitations acknowledged in the introduction, the stability of the results and findings must be interpreted as a sign of robustness.

Nevertheless, the study and understanding of the drivers of LGBT+ legislation is not exempt from new challenges. Future contributions on the topic should consider how to take other aspects into account, either in a quantitative or a qualitative way, such as the interaction with other forms of inclusion of minorities, the spread and acceptance of feminist values, different cultural constructions of masculinity and femininity, and the role played by social movements struggling for LGBT+ rights.

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7. APPENDIX

Table A.1 LGBT+ index of legislative support

Country /year	2010	2015	2020 ^a	2020 ^b	Difference 2020 ^a /2010
Albania	4,5	5,5	5,5	6	1
Algeria	1,5	1,5	1,5	1,5	0
Angola	1,5	1,5	5,5	6	4
Argentina	4,25	5,5	6,25	7,25	2
Armenia	4	4	4	4	0
Australia	5,25	5	6,75	8	1,5
Austria	5	5,5	7	8	2
Azerbaijan	4	4	4	4	0
Bangladesh	2	1	1	1	-1
Belarus	4	4	4	4	0
Belgium	6,5	6,5	7	8,5	0,5
Benin	4	4	4	4	0
Bhutan	1,5	1,5	1,5	1,5	0
Bolivia	4	6	6	6,5	2
Bosnia-Herzegovina	4,5	5	5,25	6	0,75
Botswana	1,5	2	4,5	4,5	3
Brazil	4,5	5,5	7	8,5	2,5
Bulgaria	4,5	4,5	5	5,5	0,5
Burkina Faso	4	4	4	4	0
Burundi	1,5	1,5	1,5	1,5	0
Cameroon	1,5	1,5	1,5	1,5	0
Canada	6,75	6,5	7,25	8,5	0,5
Central African Republic	4	4	4	4	0
Chad	4	4	2	2	-2
Chile	4	5,5	5,5	6	1,5
China	4	4	4	4	0
Colombia	5,5	6	7	8	1,5
Comoros	1,5	1,5	1,5	1,5	0
Democratic Republic of the Congo	4	4	4	4	0
Costa Rica	4,5	4,5	5,5	6	1
Croatia	5,5	6	6	6,5	0,5
Cyprus	4,5	4,5	6	6,5	1,5
Czech Republic	4,5	4,5	5	5,5	0,5
Denmark	6,5	6,5	6,5	7,25	0
Dominican Republic	4	4	4,25	4,25	0,25
Ecuador	4	6,5	7	8	3
Egypt	2	1,5	2	2	0
El Salvador	4	4,5	4,75	4,75	0,75
Estonia	5	5,5	5,5	6,5	0,5
Ethiopia	1	1	1,5	1,5	0,5

Finland	5	6	6,5	7,5	1,5
France	5,5	6,5	7	8	1,5
Gabon	4	4	4	4	0
Gambia	0,5	0,5	0,5	0,5	0
Georgia	4,5	5	5	5,5	0,5
Germany	5,25	5,25	5,5	7	0,25
Ghana	0,5	0,5	1,5	1,5	1
Greece	4,5	5	6	6	1,5
Guatemala	4	4	4	4	0
Guinea	1,5	1,5	1,5	1,5	0
Haiti	4	4	4,25	4,25	0,25
Honduras	4	4,5	5,5	6	1,5
Hungary	5	5,75	6,5	7	1,5
Iceland	5,5	6,5	6	7	0,5
India	0	0	4	4	4
Indonesia	3,5	1,5	4	4	0,5
Iran	0	0	0	0	0
Iraq	2	1	2	2	0
Ireland	5	6	6	7	1
Israel	5,5	5	5,75	6,75	0,25
Italy	4,5	4,5	5	5,25	0,5
Japan	4,25	4	4,5	4,75	0,25
Jordan	4	4	4	4	0
Kazakhstan	4	4	4	4	0
Kenya	0,5	0,5	0,5	0,5	0
Laos	4	4	4	4	0
Latvia	4,5	4,5	4,5	4,5	0
Lesotho	2,5	2	4	4	1,5
Liberia	1	1,5	2	2	1
Republic of Macedonia	4	4	5	5,5	1
Madagascar	4	4	4	4	0
Malawi	1,5	0,5	0,5	0,5	-1
Malaysia	0,5	0,5	0,5	0,5	0
Mali	4	4	4	4	0
Malta	4,5	6,5	7,5	9	3
Mauritania	0	0	0	0	0
Mauritius	3	2,5	2	2,5	-1
Mexico	5	6,25	7	8	2
Moldova	4	4,5	5	5	1
Mongolia	4	4	5	5,5	1
Montenegro	4	5,5	6	6,5	2
Morocco	1,5	1,5	1,5	1,5	0
Mozambique	2,5	4,5	4,5	4,5	2
Burma (Myanmar)	2	1	1	1	-1
Namibia	3	2,5	1	1	-2
Nepal	4	4	5	5,5	1
Netherlands	6,5	6,5	6,75	7,75	0,25
Nicaragua	5	5	5	5	0

Niger	4	4	4	4	0
Nigeria	1,5	0,5	1	1	-0,5
Norway	6	6,5	6,5	7,5	0,5
Pakistan	1	0	0	0	-1
Panama	4	4	4	4	0
Paraguay	4	4	4	4	0
Peru	4	4	5,5	6	1,5
Philippines	4	4,5	4,25	4,5	0,25
Poland	4,5	4,5	4,5	4,5	0
Portugal	5,5	6,5	7,5	8,5	2
Romania	5,5	5,5	5,25	5,75	-0,25
Russia	4	4	4	4	0
Rwanda	4	4	4	4	0
Senegal	1,5	1,5	1,5	1,5	0
Serbia	5	5,5	5,5	6	0,5
Sierra Leone	1	0	1	1	0
Slovakia	4,5	5	5,5	6	1
Slovenia	4,5	5,5	5,5	6,5	1
South Africa	6,5	6,5	7	8	0,5
South Korea	4	4	4,25	4,5	0,25
Spain	6,5	6,5	7	8,25	0,5
Sri Lanka	1	1	1	1	0
Sudan	0	0	0	0	0
Sweden	7	7	7	8	0
Switzerland	5	6	5,5	6,25	0,5
Tajikistan	4	4	4	4	0
Tanzania	0,5	0,5	0,25	0,25	-0,25
Thailand	4	4	4,5	4,5	0,5
Togo	1,5	1,5	1	1	-0,5
Tunisia	1,5	1,5	1,5	1,5	0
Turkey	4	4	4	4	0
Uganda	0	0	0	0	0
Ukraine	4	4	4,5	4,5	0,5
United Kingdom	6,5	6,25	7	8	0,5
United States	5,75	5,5	6,25	7	0,5
Uruguay	5	6,5	7	8,25	2
Vietnam	4	4	4	4	0
Zambia	1,5	0	0	0	-1,5
Zimbabwe	2,5	1,5	1,5	1,5	-1

Source: own elaboration based on ILGA (2010, 2015, and 2020)

^a Based on the narrower definition of the index.

^b Based on the broader definition of the index