

SYMPOSIUM ON THE AMERICAN CONVENTION ON HUMAN RIGHTS AND ITS NEW INTERLOCUTORS

EVANGELICALS AT THE INTER-AMERICAN COURT OF HUMAN RIGHTS

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Christian Evangelicals are a growing political force in Latin America. Most recently, they have engaged the Inter-American Court of Human Rights to challenge basic LGBTI achievements, such as same-sex marriage and other demands for equal rights. Several commentators thus speak of an imminent showdown between human rights protections and Christian Evangelism in the region, which would mirror similar conflicts elsewhere in the world. This essay challenges this narrative and warns against a top-down “secular fundamentalism,” which may alienate a significant part of the region’s population and create deep resentment against the Court. As it turns forty, the Court faces a “spiritual” crisis: conservative religious movements have become one of its key interlocutors, with demands and expectations that compete with (but could also complement) those of other regional social movements. Difficult as it may be, the Court needs to be bold in creating argumentative spaces that allow for the Evangelical experience to exist in the public sphere in Latin America, in a context of respect for human rights in general, and for LGBTI rights in particular.

Evangélicos in Latin America

Despite being the world’s most Catholic region, Latin America is distinctly less so today.¹ The expansion of Protestantism in Latin America, mostly driven by *Evangélicos*, has been stunning.² In 1970, 4 percent of the population in the region was Protestant and 92 percent Catholic. By 2014, the numbers had shifted to 19 percent Protestant and 69 percent Catholic.³ Perhaps as importantly, most Latin Americans who have embraced Protestantism have done so for deeply personal reasons, either because they sought a more personal connection with God (81 percent) or enjoyed the Protestant style of worship (69 percent).⁴ Faith is thus comparatively more

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¹ Pew Research Center, *Religión en América Latina. Cambio Generalizado en una Región Históricamente Católica* (2014).

² A note on definitions: It is possible to distinguish between three different strands of Protestantism in Latin America. The first is “historical” Protestantism, which is based on missions from traditional denominations in the United States and Europe, such as Baptism. The second is “established” Protestantism: Evangelical and Pentecostal churches established by missionary groups mostly from the United States, such as the Church of the Nazarene. Finally, the third strand is “independent” Protestantism, featuring homegrown organizations that emerged from the splintering of an “established” church or the entrepreneurial drive of local spiritual leaders. This last group has hundreds of thousands of churches. The label *Evangélicos* therefore includes groups that are indeed Evangelical in their theology, along with most other “established” and “independent” churches in the region, while excluding all of “historical” Protestantism.

³ [Pew Research Center](#), *supra* note 1, at 24.

⁴ *Id.*

important in the life of Protestants: the gap in religious commitment between Catholics and Protestants in the region is on average 25 percentage, showing Protestants are more committed than Catholics, with countries such as Venezuela and Brazil featuring a gap of 39 percentage and 37 percentage, respectively.⁵

The growing Protestant presence has occurred not only due to the transplantation of U.S. megachurches.⁶ *Evangélicos* expanded also due to “the redeployment of ‘popular religion,’ of rural forms of Catholicism without priests.”⁷ This is a veritable social movement from below, mostly independent from the state and public institutions, and financially and organizationally decentralized—an organic expansion facilitated by a deeply felt personal experience of faith. Despite differences among theological denominations, it seems clear that the process of Evangelical expansion builds on a transformation of individual beliefs, with potential follow-on changes in social and cultural practices. Becoming an *Evangélico(a)* is not a choice with marginal impacts on the believer’s life. On the contrary, as the polls on religious commitment suggest, the choice is correlated with the stated intention of developing a deep commitment to faith, encompassing various aspects of the believer’s life.

This core dimension is not experienced in isolation. Evangelical institutions provide believers with a community—a space for like-minded individuals to share the implications of their faith, socialize, and strategize.⁸ These communities also created spaces for small-scale leadership of some traditionally disadvantaged segments of the population. For example, ethnographic work in southern Mexico has shown that *Evangélicos* opened spaces for indigenous women to gain a new level of independence, proselytize outside the home, and develop a “sisterhood” that provides shelter against domestic violence.⁹

Between Backlash and Embrace: Evangélicos and Their Paradoxical Approach to the Court

The characteristics of *Evangélicos* have shaped their approach to public power in Latin America. For most of the twentieth century, Protestants wanted their faith to be a private matter: even when they ventured into the public realm of politics, they did so to preserve their space of worship. In a way, they seemed to accept that it was crucial to distinguish between politics and religion, that it was up to public authorities to draw such a line and to protect beliefs on the “religious” side of the fence.

Yet this mindset of political liberalism saw a fundamental shift in the 2000s.¹⁰ Logically, as *Evangélicos* grew in numbers, so did their wider political ambitions. One impetus for such an expansion has been LGBTI rights—a controversial matter among *Evangélicos* if there ever was one.¹¹ *Evangélicos* have hastened to position themselves against several achievements for the equality of the LGBTI community¹² and used the debate over LGBTI rights to push for a transformation of the private-public distinction that has traditionally characterized their thinking.

⁵ *Id.* at 17. For Pew, “religious commitment” refers to those who pray daily, attend a weekly religious meeting, and consider religion to be very important in their life.

⁶ See Rene Urueña, *Reclaiming the Keys to the Kingdom (of the World): Evangelicals and Human Rights in Latin America*, 49 NETH. Y.B. INT’L L. 174, 178–84 (2018).

⁷ Jean Pierre Bastian, *The Metamorphosis of Latin America Protestant Groups: A Sociohistorical Perspective*, 28 LATIN AM. RES. REV. 33 (1993).

⁸ See JOSÉ LUIS PÉREZ GUADALUPE, *ENTRE DIOS Y EL CÉSAR: EL IMPACTO POLÍTICO DE LOS EVANGÉLICOS EN EL PERÚ Y AMÉRICA LATINA* (2017).

⁹ See Gabriela Patricia Robledo Hernández & Jorge Luis Cruz Burguete, *Religión y Dinámica Familiar en Los Altos de Chiapas. La Construcción de Nuevas Identidades de Género*, 23 SOC. STUD. 515 (2005).

¹⁰ See Urueña, *supra* note 6, at 184–92.

¹¹ The more *Evangélicos* a country in Latin America has, the lower its score in LGBTI rights. See JAVIER CORRALES, *LGBT RIGHTS AND REPRESENTATION IN LATIN AMERICA AND THE CARIBBEAN: THE INFLUENCE OF STRUCTURE, MOVEMENTS, INSTITUTIONS, AND CULTURE* (2015).

¹² While abortion was also important, it will not be explored here.

Evangélicos and the Backlash Against the Court

The Inter-American Court of Human Rights has become a crucial site for this debate, as evidenced by the case of Costa Rica. On May 2016, the center-left government of Costa Rica submitted a request for an advisory opinion before the Court on the issue of same-sex marriage.¹³ The Court then issued a groundbreaking ruling in 2017, holding that same-sex couples should enjoy all rights without discrimination and establishing standards for the self-determination of gender identity.¹⁴

The 2017 ruling came just a year after a stand-off between the Costa Rican Supreme Court and the Inter-American Court on the topic of in vitro fertilization (IVF). In 2012, the Inter-American Court had held that a Costa Rican Supreme Court decision declaring IVF unconstitutional had to be revoked, because it violated the American Convention on Human Rights.¹⁵ Compliance with this decision became highly contested in Costa Rica, with the Supreme Court standing in open defiance of the international decision.¹⁶ In response, the Inter-American Court issued a stern order, insisting that IVF was permissible—regardless of what the Supreme Court had ruled.¹⁷ Ultimately, the Costa Rican court blinked and allowed the national government to implement the order.¹⁸

Evangélicos were key players in this drama. They filed the petition to resist implementation and kept up the fight in Costa Rica's Congress.¹⁹ In that context, the Inter-American Court handed down its 2017 decision on same sex marriage, provoking a fierce backlash. The shift was sharp: in a matter of weeks, Fabricio Alvarado—an ex-gospel pop singer, one-term senator, and presidential candidate—seized on the decision and made LGBTI rights the central theme of the election. Taking his cue from the IVF confrontation, Alvarado insisted that it was necessary to resist international institutions promoting an “LGBTI agenda.” *Evangélicos* took the issue from the altars to the voting stations as a way to challenge the Inter-American Court. In an outcome that had been unpredictable two months earlier, Alvarado won the first round of balloting,²⁰ but was defeated in the second by a candidate who pledged to comply with the Court's opinion.²¹

The pushback in the Costa Rican case marks a new moment in the relationship between *Evangélicos* and human rights. It suggests the adoption of a “public” mindset, in which *Evangélicos* seek to intervene in a policy debate that goes beyond the definition of minority religious rights and promote a policy option whose main addressees are not *Evangélicos* themselves. *Evangélicos* have carried out this shift by framing the conversation in terms of human rights. In particular, they have structured their opposition to LGBTI rights as a question of freedom of religion. Such a framing entails the use of a standard argument under the “private” mindset (protection of a subjective right) to impose a religiously inspired idea on everyone, not only *Evangélicos*.

¹³ [State Obligations Concerning Change of Name, Gender Identity, and Rights Derived from a Relationship Between Same-Sex Couples \(Interpretation and Scope of Articles 1\(1\), 3, 7, 11\(2\), 13, 17, 18 and 24, In Relation to Article 1, of the American Convention on Human Rights\)](#), Advisory Opinion OC-24/17, Inter-Am. Ct. H.R. (ser. A) No. 24 (Nov. 24, 2017).

¹⁴ *Id.* at 87.

¹⁵ [Artavia Murillo and Others v. Costa Rica \(“In Vitro Fertilization”\)](#), Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 257 (Nov. 28, 2012).

¹⁶ Sala Constitucional de la Corte Suprema de Costa Rica, Sentencia No. 2016-01692 de las 11:21 hrs. de 3 de febrero de 2016.

¹⁷ [Artavia Murillo and Others v. Costa Rica \(“In Vitro Fertilization”\)](#), *supra* note 15, at pars. 26, 36.

¹⁸ Manuel Avendaño Arce, [Magistrado Luis Fernando Salazar: Es Momento de que la Sala IV se Haga a un Lado](#), LA NACIÓN (Jan. 3, 2016).

¹⁹ See Patricia Recio, [Mario Redondo: la Resolución de la CIDH es una Atrociadad](#), LA NACIÓN (Jan. 3, 2016); Aaron Sequeira, [PUSC se Mete de Lleno en Lucha Contra Decreto de Luis Guillermo Solís Sobre la FIV](#), LA NACIÓN (Sept. 22, 2015).

²⁰ Elisabeth Malkin, [In Costa Rica Election, Gay-Marriage Foe Takes First Round](#), N.Y. TIMES (Feb. 5, 2018).

²¹ Kirk Semple, [Costa Rica Election Hands Presidency to Governing Party Stalwart](#), N.Y. TIMES (Apr. 1, 2018).

Conservative Legal Activism: Evangélicos and the Strategic Use of the Court

Creating backlash against the Inter-American Court's pronouncements has not been the only strategy. Indeed, *Evangélicos'* relationship with international law has been paradoxical. While rejecting the morality of international elites, they have also skillfully used international law to advance a transnational conservative agenda.²²

For example, religious civil-society organizations in the United States are using strategies such as international litigation to promote their ideological positions around the globe,²³ including by funding local NGOs to assist in litigation processes. Perhaps the best illustration of this dynamic is the Arizona-based Alliance Defending Freedom (ADF—formerly the Alliance Defense Fund). The ADF is a “pro-family” organization that seeks to “keep the doors open for the gospel by advocating for religious liberty, sanctity of life, and marriage and the family,”²⁴ and it has tried to influence international human rights institutions. It established offices in Mexico City, from which it has launched litigation before the Inter-American Court.²⁵ It filed an amicus brief in *Atala Rifo v. Chile*,²⁶ in which a Chilean judge lost custody of her children after coming out as a lesbian, and in *Artavia Murillo vs. Costa Rica*, the IVF decision discussed earlier.²⁷ And it intervened in *Duque v. Colombia*, which addressed the pension rights of same-sex couples,²⁸ and, most recently, in a case concerning same-sex marriage legislation in Costa Rica.²⁹

By both rejecting *and* embracing the Inter-American Court in their transnational strategy, *Evangélicos* (backed by their U.S.-based partners) are not pushing for the collapse of the distinction between secular and religious discourse. Instead, they are pushing for a different understanding of the secular and the religious. *Evangélicos* reject the current Court's definition of the religious/secular line but, at the same time, embrace the Court as a forum in which to promote their ideas. For them, the Court should not decide which ideas are religious (thus belonging to the private sphere) and which are secular (thus belonging to the public sphere)—that decision belongs to the believer herself, who reclaims the agency to assert that part of her beliefs are not only religious and private, but also public.

On this view, there is an equivalency between competing public views (for example, *Evangélicos'* views opposing same-sex marriage and others' views supporting it), each of which should be considered on its own merits and not through a differentiated prism in which one is “religious” and the other “secular.” In this division of labor, the Court should not intervene to protect one particular view. Rather, it should be a mere referee and let the debate among the different views play out—ideally in the ballot box.

Responding to Evangélicos as the Inter-American Court's Interlocutors

How should the Court respond to this challenge? One option is to fight against the Evangelical move by reinforcing the secular/religious divide and denouncing their rhetoric as inimical to human rights.³⁰ This move, which

²² See *Urueña*, *supra* note 6, at 192-200.

²³ Christopher McCrudden, *Transnational Culture Wars*, 13 INT'L J. CONST. L. 434 (2015).

²⁴ Alliance Defending Freedom, *2014 IRS Form 990*, Nov. 7, 2014.

²⁵ *Id.*

²⁶ Alliance Defending Freedom, *Atala v. Chile* (Feb. 19, 2011).

²⁷ Alliance Defense Fund, *Murillo et al. v. Costa Rica: Protecting Life “From Conception” in the Inter-American System* (May 8, 2012).

²⁸ Alliance Defending Freedom, *Alberto Duque v. Colombia* (Feb. 26, 2016).

²⁹ Alliance Defending Freedom, *Inter-American Court Must Respect National Sovereignty* (May 3, 2017).

³⁰ See *Urueña*, *supra* note 6, at 200-03.

in Europe has been called “secular fundamentalism,”³¹ would try to create a space for a diversity of religious views in the private sphere while simultaneously promoting public secularism. It would denounce those who question this secularism, as defined by secular actors,³² and thus raise the classical paradox of liberal tolerance.³³

Such an approach, however, would fail to protect the very act of questioning where the secular line is drawn. As long as a person is content with her beliefs being characterized as “religious” and therefore “private” and not fit for the public sphere, the approach would work. But it would collapse if that person tried to question where the secular line is drawn, as *Evangélicos* do.³⁴ It would punish attitudes that fail to respect the definition of secularism, and try to “sanitize” the public sphere of arguments deriving from religious convictions.³⁵ Such an approach might not work with *Evangélicos*, whose views are characterized by a personal religious experience and a sense of community. Punishing the failure to respect the state’s secular/religious line would also seem to impose on the believer an artificial division between her public and private personas, which may be unfair.

There are other options that account for the continuity of the personal experience of faith, while respecting pluralism and human rights.³⁶ The Court’s own jurisprudence on indigenous rights, for example, has opened new spaces for a pluralist democracy to consider spiritual beliefs in the public sphere. Thus, in *Bámaca Velásquez v. Guatemala*, the Court expanded the notion of victim to include the relatives of a torture victim whose remains had not been returned, in recognition of the Maya’s belief in the afterlife and the deep spiritual bond between the living and the dead.³⁷ More generally, the Court’s approach to the right of property and prior consultation has considered the important spiritual connection of indigenous peoples with their territory.³⁸

These alternatives show that space already exists for democratic accommodation with deep religious belief in the context of pluralism, without going to the extreme of secular fundamentalism. Politically costly as it might be, the Court needs to be bold in creating argumentative spaces that allow for the Evangelical experience to exist in the public sphere in Latin America, in the context of respect for human rights in general and LGBTI rights in particular.

³¹ See Malcolm D. Evans, *Freedom of Religion and the European Convention on Human Rights: Approaches, Trends, and Tensions*, in *LAW AND RELIGION IN THEORETICAL AND HISTORICAL CONTEXT* 291, 305, 312 (Peter Cane et al. eds., 2008).

³² See Pamela Slotte, *The Religious and the Secular in European Human Rights Discourse*, 10 *FIN. Y.B. INT’L L.* 54 (2010).

³³ See generally JOHN RAWLS, *A THEORY OF JUSTICE* 190–94 (1999).

³⁴ See CAROLYN EVANS, *FREEDOM OF RELIGION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 80 (2001).

³⁵ Slotte, *supra* note 32.

³⁶ Joseph Weiler has suggested that religious expression is spiritual expression, but it is also political expression, and both dimensions intertwine constantly. See Joseph H.H. Weiler, *Editorial Lautsi: Crucifix in the Classroom Redux*, 21 *EUR. J. INT’L L.* 1 (2010). For the intervention, see mkobplease, *Crucifix in the Classroom – Joseph Weiler Before the European Court of Human Rights*, YOUTUBE (Oct. 9, 2011).

³⁷ *Bámaca Velásquez v. Guatemala*, Inter-Am. Ct. H.R. (ser. C) No. 70 (Nov. 25, 2000).

³⁸ *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Inter-Am. Ct. H.R. (ser. C) No. 79 ¶141 (Aug. 31, 2001).