

## **Beyond the Courtroom: An Analysis of the Limitations of Strategic Litigation for LGBT Issues in Colombia**

**Abstract:** This article presents a pioneering analysis of the limitations of strategic litigation as a tool for advancing LGBT rights in Colombia. While existing literature largely focuses on the benefits of this approach, our study delves into its constraints, considering both the macro institutional context and a detailed analysis of judgments. We argue that the judicial recognition format, while instrumental in codifying responses to public problems faced by LGBTI social groups, is not inherently designed to structure social intervention mechanisms. This leads to a casuistic, micro-situated logic that often fails to address the root causes of discrimination and inequality. Furthermore, we highlight the inconsistent distribution of benefits by the Court, the fragmentation of decisions, and the excessive dependence on the "law" by public cultural institutions. The article underscores the need for a more comprehensive, proactive, and inclusive approach to LGBT rights that goes beyond the courtroom.

### **1. Introduction:**

Explaining strategic litigation in Colombia for LGBT issues involves considering the situations and problems that may restrict the effective enjoyment of rights by LGBTI populations. These issues mobilize social actors to activate institutional mechanisms offered by the State, which have the potential to remove obstacles or add conditions that create an enabling environment in which individuals can unfold with a certain level of autonomy and self-determination to pursue their life trajectories. To understand these issues, it is useful to employ theoretical frameworks that problematize the production of oppressive cultural differentiations and markings in any social context (Restrepo, 2012). These frameworks aim to capture how individuals are encapsulated in subordinate identities that impose conditions of "not being" and "not having," ultimately constraining their "sovereign subjectivity" (Vij, 2019).

While this process is discontinuous and characterized as "unstable," "negotiated," "fragmented," "situational," and "contingent" (Briones 2007), its strength lies in power regimes that create, justify, and preserve social hierarchies from which subordinate relations emerge. These relations result in asymmetries in access to resources and differences in the status of political subjects and rights holders. In this logic, certain individuals, communities, and collectives face situations where formal and informal institutions function complementarily, albeit partially and non-totalizing, as instances for the precarity of their existence.

Precariousness, beyond a class perspective, represents a general and omnipresent

condition of vulnerability, displacement, and insecurity. It extends beyond the contemporary form of neoliberal capitalism, being determined by transhistorical and existential forces (Butler & Athanasiu, 2013; Liston, 2018). Precariousness signifies a social rejection of individuals marked by power relations, blocking the necessary conditions for the dignification of life from multiple angles. Its effectiveness and sustainability are achieved through a symbolic annulment action that delegitimizes the voices and experiences of those who are affected by it.

The modes and intensities of precarity are highly contextual and dependent on the intersection of different power dynamics. In all cases, they place the "other" in a vulnerable position, making them more susceptible to violence, poverty, underrepresentation, confinement, anxiety, hopelessness, and death. Precarity involves erasing an existence as disposable and worthless, constructing the precariat as lacking value or deserving of social esteem. Butler and Athanasiu (2013) use the concept of "dispossession" to describe the power dynamics in which certain subjects become unintelligible due to the erasure of the conditions necessary for life and humanity. Additionally, the notions of "those left to luck by negligence" (Mbembe, 2019) and the "vulnerability of premature murder" (Gilmore, 2007) hold relevance in the context of recognizing LGBTI populations in Colombia. Both concepts highlight the inherent complexity of the issues that LGBTI activism aims to address in the public arena, where precarious life courses are driven by normative and normalizing powers. The first notion directs attention to the marginalization and exclusion of certain individuals and groups from social and political systems.

This deliberate process, driven by dominant powers, devalues these groups in the social imaginary, resulting in a systematic loss of their esteem and value that directly impacts their material well-being and hinders their ability to pursue a life in freedom. Consequently, their recognition as political subjects and their right to state protection are severely undermined, condemning them to a state of lack that inhibits their full human potential. The second notion refers to the deliberate process by which certain individuals and groups are pushed into living conditions that accelerate their demise. By imposing a truncated existence, society becomes an agent of degradation, and the state reinforces the loss of their dignity and value. This process condemns them to a shortened existence. Both categories help us understand that the public sphere can offer opportunities for some while becoming a permanent battleground for others. This environment of limits and setbacks characterizes LGBTI activism in Colombia as it seeks to bring discrimination based on sexual orientation and identity into the public interest domain (Jones and Baumgartner, 2015), justifying state interventions.

## **2. LGBTI institutional Context and policy inertia:**

LGBTI social groups in Colombia have encountered two significant obstacles in their efforts to advance social and political agendas for obtaining state support in the form of social welfare distribution. Both obstacles stem from the prevailing social hostility towards sexual and gender diversity, which manifests as precarious conditions faced by LGBTI populations. The first obstacle arises from issue frames (Turnbull & MacMillan, 2022) that tend to shift the focus of public discourse towards moral disputes. This is particularly challenging in a highly conservative context with limited secularization of the public sphere.

These issue frames divert attention from the violations of LGBTI rights, the precariousness of their lives, and the societal resistance to sexual and gender diversity. Instead, they center the discussion around the perceived crisis of natural order, the subversion of traditional values, and potential risks to childhood well-being. The second obstacle relates to the lack of a well-defined and strong LGBTI electoral cleavage at the national level. This absence hampers the development of a political agenda for LGBTI electoral representation, limiting the influence of LGBTI populations in shaping policies and securing social welfare benefits. These two obstacles reinforce one another within an institutional environment where secularization of the public sphere is limited. Consequently, political decision-makers are more susceptible to the sway of hegemonic social opinions and the moralization of institutions based on certain religious beliefs, such as Christianity. As a result, a policy responsiveness mechanism (Laenen, 2020, 2008) has been established between political decision-makers and prevailing social opinions, constructing LGBTI populations as undeserving of social welfare distribution (Oorschot, 2000, 2006).

The concept of deservingness in welfare policy refers to the perception of who should be considered eligible for welfare benefits or services, influenced by factors such as socioeconomic condition, personal behavior, and contribution to society. However, in the case of social groups facing cultural differentiations and marginalization driven by power and inequality, this perception is also influenced by social representations that perpetuate their exclusion. This notion of deservingness significantly influences public acceptance of policies. Policies perceived as benefiting individuals deemed "deserving" tend to garner greater public support compared to those perceived as benefiting those considered "undeserving."

Consequently, political decision-makers may be influenced by these perceptions, leading to design and implementation of public policies that reinforce existing inequalities. Within this context, decision-makers adopt a transaction cost logic that discourages them from

prioritizing and addressing LGBTI social agendas. They seek to avoid negative incentives associated with championing these issues and instead pursue positive incentives for not including them in the institutional agenda.

The policy mechanism perpetuates the rigidity of the state system, impeding its adaptation or response to changing conditions or stimuli. This rigidity exacerbates the representation of LGBTIQ populations as subjects of violence and arbitrary acts, limiting the scope of their rights and reducing the policy salience (Cravens, 2015) of their situation of vulnerability. When a system is rigid, there is continuity in its current state and in its internal structure, despite variations in its environment.

This condition also affects its resilience capabilities (the ability of a system to adapt and recover from disturbances) and adaptability (the ability of a system to change its structure and functions in response to changes in the environment). Furthermore, the rigidity of the state system restricts the political space for marginalized LGBTI collectives to voice their experiences, memories, and testimonies, which are vital contributions to sustaining and expanding democracy.

The rigidity creates insurmountable barriers for these collectives to redefine the notion and scope of citizenship, which should reflect collective expectations and serve as a guiding principle for institutions. Consequently, a liminal reality emerges where certain individuals find themselves in a perpetual state of disadvantage, with intermittent and frequent periods of vulnerability. This reality aligns with Thomas Hobbes' depiction of the state of nature before the social contract, characterized by fear, danger, and a solitary, impoverished, brutal, and short life.

### 3. Scoping opportunities under a blocked system. LGBTQ strategic litigation:

Legislative and executive actors have traditionally obstructed LGBTIQ agendas propelled by social movements. That policy inaction aligns with their electoral interests, as exacerbating negative images of individuals with diverse sexual orientations and gender identities may yield electoral gains. Faced with mounting internal and external pressure demanding the democratization of sexuality, political actors, particularly those in the executive branch, often choose to maintain institutional inertia or selectively comply with judicial orders. In this panorama LGBTI activists have sought access to justice to obtain solutions that allow for the effective enjoyment of rights but also to transform the notions of social deservingness used to value them and keep them out of welfare policy reception.

The mere possibility of being able to exercise such mechanisms and the successes achieved in this process serve to demonstrate that the operations of oppressive differentiation and marking that enable precarious lives are not totalizing, do not eliminate agency, and have cracks through which recalibrations of power relations can be produced. From this perspective, we cannot consider formal institutions as perfectly coherent devices of a "repressive apparatus" (Althusser, 20141970) of non-normative sexual orientations and gender identities.

Rather, the experiences of Colombian activism show the difficult but possible task of finding possibilities of influence in temporalities in which windows of opportunity are open for certain institutional and non-institutional actors. Analyzing such a process involves situating ourselves at the macro level of the political system and explaining the judicialization of LGBTI social public policies in the Colombian institutional context. As in any system, the level of rigidity towards LGBTI issues is not absolute, but there is some flexibility or resilience capacity to generate openings through which inputs can be introduced that problematize the deficit situation of human rights that envelops the people of the social group that has built its collective identity under such an acronym.

Two factors have played a role in producing changes in system dynamics and reducing its rigidity. The first is the multi-level and multi-actor action of transnational LGBTI organizations, which take advantage of the preponderance that international human rights regimes have taken since the nineties, have worked to build networks of influence and pressure with national organizations. At the same time, they have constructed, lobbied, and legitimized with key actors an LGBTI human rights discourse (Velasco 2018) that has gradually been incorporated into international human rights law, both in soft law instruments and customary law.

This factor has driven the processes of transfer and diffusion of successful advocacy practices among activists and has reinforced the argument that situates discrimination based on sexual orientation and gender identity as an infringement of international human rights law. The second factor is the configuration of the Colombian constitutional polity. The inclusion of pluralism and multiculturalism as constitutional principles has been interpreted by social movements as a message for the promotion of identity politics.

Policymakers have reinforced this message through the adoption of population policies that, in an institutional context influenced by ideas of minimal state intervention and a preference for the use of residual targeting instruments, have resulted in a policy portfolio of single issue policies (Cruells and Coll-Planas, 2013), that is, ultra-focused designs (Leyva and Olaya, 2020) that singularize an identity attribute to distribute benefits (symbolic

and/or material) on the target group that is formed from by the subscription to the identity characteristic that functions as a membership criterion of the selected population group. In addition, the Constitution created the Constitutional Court and assigned it competencies that configured it as an actor of institutional stabilization (Uprimny and García, 2005), that is, an organ that injects certain doses of flexibility into the system to manage the tension between the legally binding discourse that includes a broad catalog of human rights with their correspondent justiciability mechanisms, and restrictive institutional context conditions that decrease the spectrum of materialization of such rights.

These barrier conditions include, but are not limited to, the low institutional capacities of governments (Medellín, 2004), economic weakness that restricts the maneuver and fiscal space of the state (Salamanca 2009; Echavarría et al. 2006, Echavarría 2001), the segmented structure of the social protection system (Barba 2019, Barba and Valencia 2021), the preeminence of market mechanisms for access to rights, and the strength and autonomy of Colombian technocracy to decouple social policy from economic policy.

As a general trend, the Constitutional Court has not only been expanding the social protection system designed by legislative and executive actors but has also partially conditioned economic policy under the abstract control of constitutionality. In evidence of this, the Court has vetoed certain treasury instruments such as the value-added tax on basic products (Constitutional Court C 776/2003), it has also ordered the partial updating of public servants' salaries (Constitutional Court C 1433/2000; C 1064/2001; C 1017/2003), and it has entitled certain population groups with pension benefits, considering that their exclusion disregarded the principle of equality (Constitutional Court C 409/1994). Finally, it intervened in pension policies to modify institutional arrangements that affected workers' acquired rights (Constitutional Court C 754/2004) (Uprimny 2007, 59).

In another vein, the Constitutional Court has also advanced in the justiciability of economic, social, and cultural rights through the “tutela action.” For a social right to be protected, it is required that the lack of protection invoked before the judge implies the violation of another right that is considered fundamental and of immediate application, such as the right to life, especially in matters of policy related to education, pension, housing, and wages. Initially, the right to health was considered in the constitution under the heading of social rights. In 2015, Congress approved a law declaring it a fundamental right. This came after a high flow of guardianship actions for violations of fundamental rights, in connection with the right to health.

This judicial recourse has been widely appropriated by citizens to react to violations of

fundamental rights committed by public and private actors and to expand the range of social benefits set by administrative and legal authorities. In the broadest terms of body politics, the Constitutional Court has distributed benefits to target groups associated with social constructions linked to low social deservingness. For instance, it decriminalized the use and consumption of drugs (Constitutional Court C-221/1994) and euthanasia, allowed for voluntary termination of pregnancy in three specific cases (Constitutional Court C-355/2006), protected the right to work for individuals with HIV (Constitutional Court T-295/2008), and recognized prostitution as sex work (Constitutional Court C-636/2009). Although, in a opposite standard, the Court has also authorized the practice of surgical contraception for minors with severe mental disabilities (Constitutional Court C-131/2014).

Both, multi-level and multi-actor action of transnational LGBTI organizations and the constitutional policy have favored the conditions for LGBTI activists with high legal expertise to import foreign advocacy strategies (especially from the United States) and taking advantage of the institutional resources of the judicial system to codify a part of the LGBTQ+ social agendas as legal claims that are processed through constitutional litigation, either through the exercise of the public action of unconstitutionality (which allows to exclude or condition the interpretation of certain legal norms), the use of the “tutela action” (a defense mechanism to react to violations of fundamental rights) or the review resource through the use of alliances with gatekeepers who can request the activation of such a request before the Constitutional Court to review a judicial decision of “tutela” and create a jurisprudential precedent.

In its early stages, strategic litigation related to sexual orientation and gender identity was initiated in a fragmented and dispersed manner, primarily aimed at addressing specific violations of human rights. However, as the practice evolved, it became more comprehensive, sophisticated, and systematic, encompassing a broader goal of achieving structural legal change.

This shift in approach occurred as activists recognized the potential of leveraging the decisions of the Constitutional Court as a remedial instrument to address the absence of laws and welfare policies, specifically aimed at preventing or prohibiting human rights violations based on sexual orientation or gender identity and creating enabling environments for exercising human rights. Various actors started considering strategic litigation as a tool for obtaining benefits through institutional changes.

They adapted their practices, discourses, objectives, and participation approaches to align with the evolving recognition conditions set by the Constitutional Court. These

reconfigurations occurred within the social space, and social and academic actors, primarily those with high academic and legal capital, urban, white, gay, lesbian, middle, and upper-class individuals, collectively outlined the objectives of legal change, positioning themselves as a judicial policy elite.

#### 4. Achievements of strategic litigation:

The Constitutional Court in Colombia has emerged as a crucial avenue for implementing institutional changes, yielding fruitful effects, particularly for gay men and lesbian women initially, and subsequently for trans and intersex individuals. These positive feedback loops have, to some extent, eroded the social and institutional constructs where discrimination based on sexual orientation and gender identity previously thrived with alarming arbitrariness.

The Constitutional Court's jurisprudential line has distributed greater benefits to individuals with diverse sexual orientations compared to those with non-normative gender identities, following a cycle of advancements with few setbacks. In its early years, the court employed the category of homosexuality to encompass non-normative sexual practices, primarily focusing on male subjects.

The court's construction of this social group was based on an essentialist and heteronormative logic. Initially, it acknowledged that individuals could not suffer rights violations solely based on sexual orientation. Furthermore, it imposed the confinement of homoerotic practices to the private sphere through standards of etiquette and bodily discipline for homosexuals (López 2016; Lemaitre 2005).

Towards the late 1990s and the early 2000s, the Constitutional Court began interpreting the principle of equality in a manner that prohibited discrimination based on "sex." It ruled that this category encompassed both sexual orientation and gender identity, meaning that any discrimination based on these two categories constituted a violation of the constitutional order.

Building upon this decision, the court prohibited the exclusion of gay, lesbian, and bisexual teachers from schools due to their sexual orientation. However, during the same period, the court's decisions maintained the asymmetrical treatment between heterosexual and homosexual social groups. It determined that the law was not obliged to recognize legal effects for same-sex unions (Constitutional Court C 098/1998) and justified the exclusion of homosexual couples from adoption (Constitutional Court C 814/2001). Likewise, the



Court accepted the exclusion of homosexual permanent partners from the social benefits assigned to the target group comprising heterosexual permanent partners (Court SU-623/2001).

The court also defended the definition of family, normalizing and naturalizing a traditional vision that excluded not only families composed of individuals with diverse sexual orientations but also any family arrangement deviating from the man and woman dyad for reproductive purposes. In 2007 and 2008, the Constitutional Court established a series of constitutional precedents to ensure equality for same-sex couples in matters of property, social security, and financial obligations (Quijano and Albarracín 2009). It also introduced the concept of a "protection deficit" to denote legislative omissions regarding policy matters.

These developments encouraged activists and judicial policy entrepreneurs to collectively challenge 26 legal norms that upheld arbitrary distinctions regarding the entitlement of benefits to same-sex couples. In 2009, the court conditioned the interpretation of these norms on the inclusion of same-sex couples in the distribution of social benefits (Albarracín and Rivera 2010). This rule dismantled barriers to marital life for same-sex individuals, granting equal rights in areas such as housing, migration, family subsidies, inheritance, and access to justice.

In 2011, following the presentation of two claims of unconstitutionality against the civil code's heteronormative definition of marriage, the Constitutional Court declared that "every same-sex couple has the constitutional right to form a family through a marital, solemn, and formal contractual act." It gave the Congress a deadline to rectify the protection deficit in this matter (Constitutional Court C 577/2011). This judicial decision expanded the notion of family by acknowledging the right of same-sex couples to establish a kinship bond through marriage.

Furthermore, a dissenting vote emphasized the need to replace and enhance the category of homosexuality with the broader categories of "sexual orientation" and "gender identity," as the former obscured other bodily experiences beyond homoerotic practices between cisgender men or women. Finally, in 2016, due to ongoing congressional inaction and disputes among social and bureaucratic actors regarding the operationalization of the ruling, the Constitutional Court granted same-sex couples the power to enter into civil marriage contracts without requiring parliamentary legislation.

The trajectory of recognition for individuals with diverse sexual orientations reached a new milestone with the removal of barriers to adoption by same-sex couples. Initially, the Constitutional Court recognized that sexual orientation should not be a criterion for

determining parental fitness (Constitutional Court T 276/2012). Subsequently, it affirmed the right of same-sex couples to adopt the biological child of their permanent partner in all cases (Constitutional Court C 071/2015). Finally, in another ruling, the court recognized the full rights of joint adoption by same-sex couples (Constitutional Court C 683/2015). Regarding gender identity, the Constitutional Court's jurisprudence created two target groups. The first group encompassed individuals with trans life experiences, using the generic term "transgender" to include various types of gender expressions, gender experiences, and gender identities, including transsexuals, transgenders, cross-dressers, transformists, drag queens, and drag kings (Constitutional Court T 771/2013).

Actors who have brought forward claims related to gender identity issues to the court tend to be more fragmented, less focused on institutional reforms, and primarily concerned with resolving specific obstacles hindering the exercise of human rights. It should be noted that the strategic litigants for sexual orientation differ from those for gender identity. The court's rulings primarily stemmed from requests for the review of guardianship cases (addressing specific human rights violations) and, to a lesser extent, constitutional control cases (debating the unconstitutionality of specific legal norms). In fact, most of the constitutional control processes have resulted in inhibitory rulings (Constitutional Court C 356/2019; C 220/2019; C 006/2016).

Since 2007, the court has established a standard to protect individuals with trans life experiences, leading to regulations prohibiting discrimination based on gender identity in educational (Constitutional Court T 152/2007), labor (Constitutional Court T 053/2015), and prison (Constitutional Court T 062/2011) settings. The Court also recognized the right to change one's name for the second time on official identification documents (Constitutional Court T 918/2012), access surgical procedures related to identity transitions (Constitutional Court T 771/2013, T 876/2012), and be exempted from military service during transitions from male to female (Constitutional Court T 099/2015). In 2016, the court reiterated its transition from a limited and indivisible view of gender identity and sexual orientation as objective concepts tied to an individual's physical nature, to recognizing them as separate constitutional categories deserving protection (Constitutional Court T 363/2016).

This shift in categorization aimed to respond to the historical invisibility of trans agendas within the representation of the social movement by gay men and lesbian women, who dominated the discourse of legal change. The second target group clustered intersex individuals. The language used by the court to refer to this group and the logic applied to interpret their issues are drawn from medical knowledge. In general, actors engaging in constitutional litigation have focused on discussing the situation of intersex individuals

within the context of medical treatment.

The rights agenda that has been judicially institutionalized revolves around the compulsion of heteronormative binary classifications through the regulation of the body. Therefore, the court's decisions primarily focus on the clinical care of individuals with "bodily ambiguity" or in "intersex states," establishing rules for sexual reassignment procedures in minors and determining ways to obtain valid consent in such cases, involving infants and guardians (Constitutional Court T 1390/2000, T 1021/2003; T 912/2008; T 551/1999). In 2013, the Constitutional Court urged Congress to "urgently" and "as a priority" legislate on the registration of intersex minors (Constitutional Court T 450A/2013). However, thus far, Congress has not developed any regulations on this matter.

### **5. Limitations of strategic litigation:**

Negative feedback loops have emerged, providing opportunities for mediatization, and leveraging certain policy communities and citizens, both organized and unorganized, to dispute the monopoly of LGBTI agendas by framing the discussion in moral terms. These actors have played a role in solidifying the perception of the Constitutional Court as a judicial activism entity, thereby fueling debates regarding the need for its reform or abolition to reduce its capacity to function as a veto player.

Furthermore, they have sought to undermine the achievements of LGBTI activism by characterizing them as "illegitimate" or "deceptive" means of attaining desired outcomes, commonly referred to as "going backdoors." , consequently, a narrative has been established, advocating that the appropriate forum for deciding on the issues raised by activists through the judicial system should be the Republic's Congress. According to this perspective, LGBTQ social groups should focus on obtaining the necessary political-electoral support to give viability to their agendas rather than relying on the legal support of the nine justices.

This movement to challenge the influence and value of decisions is not unique to LGBTI issues but has also been observed with other public concerns that share three common elements: a subordinated interlocutor, an agenda promoting institutional change, and a historical political blockade impeding the perspective of the marginalized. These efforts aimed at challenging the validity and value of decisions have contributed to the erosion of institutional trust within civil society.

Limited awareness of judicial events, typically restricted to high-profile cases or when sentences reach media notoriety, often generates surprise and alarm, undermining the institutional narrative that reflects the prevailing visions of morality and abjection from

the state sphere. This communication gap hinders the effective dissemination of information, weakening the connection between the judiciary and the public.

From another perspective, the deployment of a social agenda focused on identity recognition through judicial channels, amidst an environment of institutional blockade by other public power actors, raises important questions regarding its implications. The format of judicial recognition, while providing responses to the public problems faced by LGBTI social groups, is not inherently designed to structure comprehensive welfare policies.

Consequently, the rights that have been granted often respond to specific legal problems through a casuistic and micro-situated approach, rather than adopting a broader political and global perspective that addresses the root causes of public problems associated with barriers to the exercise of rights due to sexual orientation and gender identity. Accordingly, the distribution of benefits by the Court can be inconsistent. For instance, the effects of a decision may only cover individuals whose situations triggered constitutional jurisdiction, leaving others without similar protections.

Moreover, the compartmentalization of provisions among various judicial decisions (such as rulings on same-sex marriage, adoption, and non-discriminatory access to healthcare) poses challenges within a legal framework characterized by extreme formalism. In the absence of clear legal norms, decision-makers often face uncertainty in determining their competence in these matters, leading to difficulties in deriving administrative obligations from constitutional jurisprudence. Another limitation arises from the fragmented nature of the Constitutional Court's decisions, limiting individuals' ability to form a comprehensive and interconnected understanding of LGBT human rights.

While strategic litigation may yield positive outcomes addressing specific issues and rights violations, it may fall short in promoting broader policy changes and comprehensive legal reforms. This narrow focus can result in incremental progress that fails to adequately address the full range of challenges faced by LGBTQ individuals. Furthermore, strategic litigation, primarily occurring within the legal system, may not effectively engage the wider public in discussions surrounding LGBTQ rights and issues, potentially limiting its potential to shift societal attitudes and foster a more inclusive environment.

Although reliance on the law is crucial, achieving comprehensive social change requires transforming social relations and culture, which are equally, if not more, important than changing legal frameworks. Moreover, strategic litigation is often a reactive approach that responds to specific instances of rights violations rather than proactively addressing the underlying causes of discrimination and inequality. Consequently, its overall impact on

societal attitudes and the structural barriers faced by LGBTQ individuals may be limited.

This highlights the need for a broader public discourse on how societal norms shape identities and justify asymmetries in citizenship status. In short, strategic litigation alone does not offer a comprehensive political platform to queer politics, as court decisions are primarily structured by legal reasoning.

Another issue worth noting is the centralization and academicization of the movement. Strategic litigation requires legal resources and expertise, which may not be equally accessible to all members of LGBTQ social groups. This disparity in access can lead to unequal distribution of the benefits derived from litigation victories, leaving marginalized individuals unable to participate in the process.

Consequently, a disconnect has emerged between legal activists and grassroots organizations. The focus on legal strategies often fails to resonate with the intended beneficiaries due to disparities in academic capital and the methods employed to raise awareness of these issues on the public agenda. Furthermore, the prioritization of certain issues, such as marriage equality, has at times overshadowed other pressing concerns within the LGBTQ community. For instance, the victimization of LGBT individuals during Colombia's severe armed conflict was overlooked despite its significant impact. This selective focus can hinder the development of a comprehensive understanding of the wide-ranging challenges faced by LGBTQ social groups.

In conclusion, this article presents a pioneering analysis of the limitations of strategic litigation as a tool for advancing LGBT rights in Colombia. While existing literature largely focuses on the benefits of this approach, the study delves into its constraints, considering both the macro institutional context and a detailed analysis of judgments. The authors argue that the judicial recognition format, while instrumental in codifying responses to public problems faced by LGBTI social groups, is not inherently designed to structure social intervention mechanisms. This leads to a casuistic, micro-situated logic that often fails to address the root causes of discrimination and inequality. Furthermore, the authors highlight the inconsistent distribution of benefits by the Court, the fragmentation of decisions, and the excessive dependence on the "law" by public cultural institutions. The article underscores the need for a more comprehensive, proactive, and inclusive approach to LGBT rights that goes beyond the courtroom.

Overall, the article provides a well-researched and insightful analysis of the limitations of strategic litigation for LGBT issues in Colombia. The authors effectively highlight the challenges and shortcomings of this approach, emphasizing the need for broader policy changes and societal

transformation to achieve comprehensive social change for LGBTQ individuals. The article is well-structured, with a clear introduction, detailed analysis, and a strong conclusion. The use of theoretical frameworks and empirical evidence strengthens the authors' arguments and contributes to the overall quality of the article. As a peer, I would recommend this article for publication, as it offers valuable insights and contributes to the existing literature on LGBT rights and strategic litigation.