

Heterogeneous rights – Brazil and international SOGI norm promotion (Discourse and Power)

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ABSTRACT

This paper explores the complex landscape of sexual orientation and gender identity (SOGI) politics in Brazil, and the country's promotion of these human rights norms internationally. Despite Brazil's image as a trailblazer in LGBTQ+ rights and inclusion, activists are challenged domestically by legislative hurdles and conservative movements. Brazil's challenging domestic situation stands in stark contrast with the country's role as a prominent advocate for SOGI norms internationally. This paper unpacks these contradictions and compares Brazil's trajectory with those of Argentina and South Africa. A closer look at SOGI human rights norms in the Brazilian context reveals diverse pathways to human rights norm promotion. Despite setbacks, Brazil's experience offers insights into the resilience of human rights advocacy and the potential for transformative change, advocating for a nuanced understanding of SOGI politics amidst diverse actors and contexts.

The Global North is widely understood as the primary site from which human rights norms emerge and are exported. While many states in the Global North have been very active human rights norm entrepreneurs, they do not have a monopoly on “norm-protagonism,” the active promotion of norms, in the field of human rights (Klein 2021, 16). Latin American countries have promoted human rights norms internationally and some adopted landmark progressive policies such as marriage equality and gender recognition policies earlier than their counterparts in the Global North. This is not to say that any one region of the world has a monopoly on sexual orientation and gender identity (SOGI) human rights norms promotion. Rather, it demonstrates the complexity and uneven legislation of these norms around the world. There is a wealth of contradictions between and within countries on the issue of SOGI norms, with some countries defending these norms internationally despite a questionable human rights situation domestically, and others denying the very existence of LGBTQ+ identities. These contradictions are caused by a complex combination of political factors, socio-cultural norms, activist strategies and national histories.

Brazil is one such country, as it has been described as “an extremely contradictory country” in terms of 2SLGBTQ+ rights (Global Spotlight 2016). The country is known to celebrate queer identities and was one of the first countries to push for SOGI human rights protections at the international level in 2003 (Nogueira 2017, 550). Brazil is home to the world famous São Paulo pride parade and is a world leader in

progressive gender identity laws.

The queer community does however face many challenges domestically as comprehensive legal protections for LGBTQ+ people have faced legislative obstacles. This paper will argue that the counterintuitive state of queer rights in Brazil at the domestic and international level is the product of the conflicting influences of various norm entrepreneurs domestically and internationally. The country’s queer community has been politically engaged and well connected with a political leadership that has been fairly receptive to its calls to action. The government has participated in counter-hegemonic efforts to advance SOGI norms internationally. Activists have however been confronted domestically to a challenging political environment with influential evangelical and conservative movements (Encarnación 2016). Despite a degree of political support for human rights protections for LGBTQ+ communities, these hegemonic groups have been able to block most attempts at legislating many of the human rights norms Brazil promotes internationally.

The paper will start with a discussion of SOGI politics in Brazil. This includes queer rights activists and their historical strategies, political alliances and conflicts with other norm entrepreneurs. I will compare the queer rights movements in Brazil and Argentina by analysing strategies, successes and failures. This will be followed by a discussion of Brazil’s SOGI norm protagonism on the international stage. Brazil’s protagonism will be analysed alongside South Africa’s and I will discuss the impact and implications of their norm entrepreneurship. The paper’s final section will unpack

the contradictions between Brazil's domestic situation and international position, and how this paradox challenges and complexifies the notion of homonationalism as discussed by Jasbir K. Puar and other scholars.

I - Queer Politics in Brazil

Although some people report experiencing a degree of tolerance under military rule, Brazil's National Truth Commission, established in 2011 to investigate violations committed during the military dictatorship, recognised LGBTQ+ people as a group targeted by the military (Encarnación 2016, 165). After Brazil transitioned to democracy in 1985, a host of political groups emerged, including the Partido dos Trabalhadores [Workers Party] (PT). The PT was the only party that was willing to welcome LGBTQ+ groups as part of its mission to become Brazil's "most inclusive and diverse" political party (Encarnación 2016, 168). The PT's early and explicit support for the LGBTQ+ rights made the queer community one of the party's oldest and most loyal constituencies (Encarnación 2016, 178).

While this early alliance gave LGBTQ+ advocates an access to legislative and executive environments that activists around the world would envy, it focused almost exclusively on legislative initiatives. This was arguably done at the expense of other strategies which could have involved more engagement with society and culture at large to change people's attitudes (Encarnación 2016, 170). The legislative approach had little success, with none of the bills relating to SOGI rights being made into law in Congress. Conservative groups within

the legislature, backed by widespread religious and conservative attitudes in society, were unwilling to accept compromises to pass reforms (Encarnación 2016, 170-1). The challenges to SOGI norms legislation are partly due to Brazil's electoral system which has been described as a "deadlock democracy" (Ames 2009). It "generates and rewards a multiplicity of weak parties and individualistic, pork-oriented politicians with little accountability to citizens" (Encarnación 2016, 160), giving small parties significant veto power and making it extremely challenging to have a legislative majority or pass bills without extensive compromise.

Although the structure of Brazil's electoral system undoubtedly contributes to the lack of progress on SOGI norms domestically, the larger patriarchal and religious social context that underpins conservative influence in the legislature should not be forgotten. While queer identities are expressed rather freely and openly during major events in large cities such as São Paulo's Pride Parade, a large segment of the population harbors hostile attitudes towards these identities. Public acceptance is strongly influenced by Brazilian sexual attitudes and expressions of masculinity, which are crucial in shaping public perceptions and acceptance of queer communities. Observers note a link between personal struggles with masculinity and expressions of homophobia among Brazilian men, where hostility towards queer identities is perceived as constituting "proof of their machismo" (Encarnación 2016, 157).

While anti-LGBTQ+ hate is recognised as an expression of traditional masculinity in many parts of the world, a study on homopho-

bia in Brazil's northeast, one of the most disadvantaged parts of the country, documented the particularities of women's attitudes towards queer identities. Conducted in the late 1990s, it found that women were slightly more homophobic than men, and male homophobia was directed towards men and women equally. This contrasts with similar studies conducted in the United States (Encarnación 2016, 155). While no single group is in control of society's acceptance of SOGI identities, this study showcases the complexity of anti-queer sentiments.

Furthermore, various religious groups exercise significant influence on both legislative agendas and social attitudes. The Evangelical community, which is closely associated with conservative political movements and places a strong emphasis on missionary work, makes up a larger proportion of the population in Brazil than in most Latin American countries (Encarnación, 158). Both Evangelical and Catholic leaders are openly hostile towards queer communities, although Evangelical leaders have a much greater capacity to mobilize their followers against queer rights (Encarnación 2016, 159). Religious rhetoric is often dehumanizing and it feeds a culture of hostility towards LGBTQ+ people, normalizing and validating violence. Encarnación explains that "religious rhetoric contributes to a kind of structural homophobia" (Encarnación 2016, 158) by voicing generalized hostility, supporting particular political groups and organising protests against the acceptance of queer identities.

Beyond constituting obstacles for legal recognition of queer rights, these social attitudes

also inflict violence on visibly queer people. This violence has been described as "an epidemic of gay killings" (Encarnación 2016, 156). Grupo Gay Bahia (GGB) is Brazil's oldest queer rights organization still in existence and its data on anti-queer violence has been used by both the Brazilian government and the US State Department's human rights office. GGB reported a record 326 killings motivated by anti-queer sentiments in 2014 and has dubbed Brazil "the world's champion of homophobic crimes" (Encarnación 2016, 157), a claim which has been disputed. While there is undeniably extensive homophobic violence in Brazil, some critics including columnist J. R. Guzzo argue that GGB's data fails to account for the wider context of violence in Brazil. They further argue that the extent of homophobic violence in Brazil cannot accurately be compared with other jurisdictions because of the paucity of reliable data worldwide (Encarnación 2016, 156-7). Despite these nuances, it is clear that Brazil's hegemonic patriarchal and conservative religious norms all have tangible and deadly impacts on queer communities in the country's urban hubs and beyond.

The range of actors opposing progressive SOGI human rights norms points to a central criticism of the Brazilian queer movement: its emphasis on a legislative approach. The movement's alliance with the PT has failed to bring about legislative changes because of a hostile political environment and the PT's political strategies. This has been a source of frustration for many activists, who have been increasingly turning to the courts to advance their agenda. Unlike the legislative approach, working

through the courts has produced successes such as marriage equality and adoption rights for same-sex couples. However, these legal advances have had a limited impact on social acceptance. While in many western countries social acceptance preceded legal recognition of rights, in Brazil legal recognition came first. This again points to the central shortcoming of the Brazilian queer movement: its inability to produce widespread social acceptance.

Activists are now drawing inspiration from the Argentinian queer rights movement which managed to achieve legislative changes through a different approach. While not all elements of Argentinian activists' approach are directly transposable, namely their mobilization of historically salient human rights arguments, there are some practices that can be translated into the Brazilian context. Legislative change and a greater degree of social acceptance was achieved in Argentina by engaging with society and culture at large to challenge "the hegemonic collective conscience that made the homophobes feel comfortable in their thinking" (Encarnación 2016, 186). The Brazilian movement's legislative approach has been quite focused on punitive legislative measures that involves guaranteeing SOGI human rights norms are officially recognised, but paying less attention to broader public engagement with social and cultural attitudes. Even if the Brazilian legislative environment had been conducive to the codification of SOGI norms, it is possible that these legal protections would have had a limited effect on LGBTQ+ people's daily lives. Indeed, an overly legislative approach to guaranteeing respect for human rights norms can

generate resentment and heightened opposition to these rights if they are seen as punitive and are not accompanied with efforts to reform society and culture. The Argentinian movement followed a different approach by engaging extensively with society while also pursuing a legislative strategy. They also benefitted from significant political support, with President Kirchner demonstrating serious personal commitment to legalise same-sex marriage (Encarnación 2016, 181).

This does not mean that the PT neglected their LGBTQ+ constituency, rather that the party's commitment wavered according to electoral circumstances. The PT set aside its support for LGBTQ+ rights in the 1990s and in the lead up to the 2010 elections to court conservative voters which alienated the party's queer supporters, especially younger generations (Encarnación 2016, 173; 181). Conversely, support for LGBTQ+ rights gained momentum in the lead up to the 2014 presidential elections. Incumbent Dilma Rousseff was vocal in her support for LGBTQ+ rights during the campaign, both domestically and internationally, to gain progressive support. During her campaign, Rousseff explicitly stated her support for LGBTQ+ rights in her speech to the UN General Assembly (UNGA) and mobilized Brazilian diplomats around the world to ensure the UN Human Rights Council would approve a Brazilian resolution on SOGI human rights. Embassies located in member countries of the Council successfully negotiated the resolution's adoption thanks to this unusual level of mobilization for a human rights resolution (Nogueira 2017, 558). While this was not the first time

Brazil demonstrated leadership in SOGI human rights internationally, it is an example of one of the few times the country's international and domestic SOGI rights promotion aligned in one initiative.

II - Brazil's international SOGI norm protagonism

While Brazil's domestic LGBTQ+ rights promotion has been quite heterogeneous, its track record on the international scene has long been one of consistent support for human rights norms since the early 21st century. In 2003, Brazil tabled a resolution at the UN Human Rights Council entitled "Human Rights and Sexual Orientation," commonly known as the "Brazil resolution." The resolution faced strong opposition and its vote was postponed until 2004 before eventually being withdrawn (Klein 2021, 12). While the Council never even voted on the resolution, it still had a significant impact. The Brazil resolution amplified LGBTQ+ human rights advocacy within the UN and created enthusiasm among activists which culminated in the elaboration of the Yogyakarta Principles in 2006 (Nogueira 2017, 550). These principles were elaborated according to the same model as the Brazil resolution: rather than pushing for the creation of new human rights norms specific to LGBTQ+ people, it argued that existing non-discrimination principles in human rights texts should be applied to LGBTQ+ people (Klein 2021, 13; Thoreson 2009). Despite the Yogyakarta Principles being a non-binding declaration, Brazil lent them legitimacy by co-hosting an official launch event with Argentina and Uruguay at the UN head-

quarters in 2007 (Nogueira 2017, 550).

Following the defeat of its 2003 resolution, Brazil decided to focus its efforts on regional norm promotion at the Organization for American States (OAS), while continuing to support lower profile declarations of support at the UN. At the OAS in 2008, Brazil sponsored the "Resolution on Human Rights, Sexual Orientation, and Gender Identity" (Human Rights Watch 2008), the first LGBTQ+ rights resolution adopted by an intergovernmental body. This resolution would go on to form the basis of a similar 2011 resolution presented by Brazil and South Africa at the UN (Nogueira 2017, 551). South Africa's co-sponsorship of the 2011 resolution followed a period of South African withdrawal from SOGI human rights norm advocacy, which it had been involved in prior to 2003 (Klein 2021, 3).

South Africa and Brazil are especially well situated to advance counter-hegemonic queer rights norms internationally. Indeed, both are emerging powers in the Global South, they are two of the three democracies in the BRICS alliance and the only BRICS countries where LGBTQ+ people's rights are recognized (Klein 2021, 3). Global South advocacy for SOGI rights can strengthen counter arguments claiming that queer identities are invented and imposed by the West. For this reason, both Brazil and South Africa's initiatives have been welcomed by western countries, although both countries have faced difficulties in their human rights foreign policy. Brazil has been more consistent in its support of international SOGI norms, likely because it enjoys a regional context that is more welcoming to this advocacy

than South Africa. Calls for the recognition of SOGI rights face particular backlash from many of South Africa's neighbours, making it difficult for the country to advocate for these norms without jeopardizing its regional hegemonic ambitions (Klein 2021, 10).

Thus, Brazil's international position on SOGI norms responds to calls to action that could not be accomplished domestically. It is also the product of a diplomatic strategy to bolster the country's prestige on the world stage (Nogueira 2017, 555). There are however other factors at play. Nogueira describes the 2003 Brazil resolution as resulting from a "bold initiative of mid ranking diplomats influenced by the platforms of the LGBT movement" (Nogueira 2017, 552). Klein and Nogueira suggest this initial resolution was made possible by the relative isolation of Brazilian human rights foreign policy from domestic political actors other than the Ministry of Foreign Affairs and LGBTQ+ lobby groups. The country's international position, which reached its height of political prominence during Rousseff's 2014 UNGA speech, was shaped by various norm entrepreneurs over time including diplomats, lobbyists and Ministry of Foreign Affairs officials favorable to the promotion of SOGI norms. This raises important questions about the agency of individual diplomats and public officials to advance norms that may be personally important to them but of lesser concern to their governments. Written in 2021, two years after the election of Bolsonaro's conservative government, Klein's article argues that Brazilian diplomats may be able to continue SOGI norm promotion internationally if they re-

main relatively shielded from the leadership in Brasilia (Klein 2021, 18).

III - Understanding Heterogeneity

The paradoxes of Brazil's stance on SOGI human rights norms domestically and internationally is a product of norm entrepreneurs working in different contexts. Brazil's case is especially interesting because while many other countries' domestic political context is not conducive to SOGI rights protections, Brazil is one of the few countries that promotes these norms internationally in spite of the domestic context.

Brazil's paradox challenges some of the underlying assumptions of Western homonationalism. Jasbir Puar's original formulation of the concept of homonationalism was grounded in the American context and described the transition of queer subjects' relation to the nation-state from being figures of death, largely in relation to the HIV/AIDS epidemic, to figures of life as LGBTQ+ identities are increasingly accepted by the nation-state and are absorbed into its identity. This social acceptance is expressed through the granting of legal rights to marry and have legally recognized families (Puar 2007). Puar's original concept has since been expanded on from being a term specific to US politics to being "a more generalized diagnostic of the international scene" (Schotten 2016, 1), whereby "people's fitness for statehood is measured by the yardstick of their treatment of LGBTQ people" (Schotten 2016, 10). Similarly to white feminism, this form of homonationalism is grounded in a sense of Western exceptionalism and a lack of recogni-

tion of non-Western LGBTQ+ people's agency (Murray 2014), their specific needs, and of queer identities that do not fit within a Western understanding of queer existence. Brazil granted marriage equality rights in 2013, earlier than twelve western countries (Pew Research Center 2023) and is one of the few countries to allow its citizens to change their gender marker on identification documents solely on the basis of self-identification (Human Rights Watch 2018). It is worth noting that these rights were granted by the judiciary, in contrast to some other countries where such advancements were achieved through legislative processes. The methods used to deliver rights can serve as a measure of social acceptance because while the legislature is a reflection of public opinion as expressed through elections, the judiciary maintains more independence from public opinion. The adoption of SOGI norms by the Brazilian government does not align with homonationalism's underlying assumption that social acceptance triggers the incorporation of queer identities by the nation-state and the recognition of their rights because LGBTQ+ rights were recognised in Brazil despite a relatively high level of hostility to these rights.

Brazil also complexifies the homonationalist assumption that after LGBTQ+ identities are recognised by the nation-state, the nation-state will deploy SOGI norms internationally as a "yardstick of civilisation." While Brazil's position as a leader of SOGI norms on the international stage originated as a result of pressures from various domestic and international norm entrepreneurs, arguably one of the reasons it was further pursued is the prestige this position

grants Brazil. The concept of homonationalism as originally defined by Puar and later developed by Schotten does not quite fit the Brazilian context, being a non-Western nation that secured legal protections and defended SOGI norms internationally before reaching a critical level of social acceptance. This phenomena is exemplary of the range of possibilities that exist in SOGI human rights norms promotion beyond Western countries' trajectories. Brazil's position as a country from the Global South that has been promoting SOGI human rights norms internationally despite a complicated domestic context raises the possibility that codified international protections for queer identities are in fact possible despite strong opposition worldwide. Both Brazil and South Africa are uniquely situated to promote these norms in a way that avoids LGBTQ+ people's rights being perceived as a form of western paternalism.

Conclusion

Brazil's stance on SOGI human rights norms may be heterogeneous, but perhaps an expectation of homogeneity represents an overly simplistic understanding of SOGI politics domestically and internationally. Just like any other human rights norm, SOGI human rights norms are produced through a push-and-pull process involving a wide range of norm entrepreneurs with opposing goals. The specific outcomes of norm entrepreneurship will therefore vary between localities, producing different variations and applications of the same ideas. Brazil is just one example of the many ways SOGI human rights norms emerge and are adopted in different national contexts. While

Brazil's legacy of supporting SOGI norms was jeopardized by the election of Bolsonaro in 2018 and a broader context of populist election victories around the world, the country's track record provides hope that human rights norms can still be advanced internationally in spite of domestic politics.

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