

The Battle Over Abortion Rights in Brazil's State Arenas, 1995-2006

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Abstract

This article proposes a relational approach to the study of abortion law reform in Brazil. It focuses on the interaction of pro-choice and anti-abortion movements in different state arenas and political contexts. It details the emergence of a strategic action field on abortion during the Brazilian re-democratization process and the National Constituent Assembly. We offer analysis on pro-choice and anti-abortion mobilization in state arenas—mainly in the executive and legislative powers—during the two terms of President Fernando Henrique Cardoso (FHC), 1995–1998 and 1999–2002, and the first term of President Luís Inácio Lula da Silva (Lula), 2003–2006. We then map political resources for mobilization, such as legislative bills, public policy norms, and judicial decisions, and track legal continuities and changes. Finally, we analyze anti-abortion reaction, which was consolidated through an increased conservative presence in congress after 2006, and discuss how the abortion debate has migrated from congress to the Supreme Court and the public sphere.

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Introduction

Brazil's penal code, drafted in 1940, states that abortion is a crime and provides exceptions only when there is a risk to the woman's health and in cases of rape. The political struggle for and against abortion rights dates back to the re-democratization process (1974-1985). During the transition process, the National Constitutional Assembly (1986-1987) was the first important institutional stage where pro-choice and anti-abortion social movements disputed over abortion law reform. Since then, both movements have adopted new strategies to press their message, creating organizations and public campaigns, occupying government posts, proposing bills, participating in public hearings, and filing court cases.

The literature on political conflict and abortion rights in Brazil has grown primarily over the last decade. There are many publications written by authors linked to pro-choice networks and public policies. They are descriptive, containing reports about the author's perceptions of the political context.¹ Another series of studies analyzes mobilization and/or countermobilization in specific arenas, such as elections and courts.² Finally, other scholars consider abortion as a case study of the relationship between religion and public debate or between political parties and churches.³

The article intends to bring two contributions to the research on the Brazilian case. One is analytical: we analyze abortion law reform as a political process in a more integrated, relational, and dynamic way, according to the "contentious politics" perspective.⁴ We focus on social movements and counter-movements, their direct antagonists, as key collective actors to propel, or to block, political, and legal reforms.⁵ As political actors, both are informal networks of relationships between organizations, groups, and individuals that are linked by political identities built around a political or cultural conflict.⁶

The pro-choice movement aims to decrease or remove institutional, constitutional, or legal restrictions imposed on abortion. The anti-abortion movement aims to defend or increase such restrictions.⁷ Both are part of "strategic action fields"; that is, a socially constructed set of relations and arenas

that sustain interactions of cooperation and conflict between heterogeneous actors around public agendas and problems.⁸ The contentious arenas are social spaces with different political resources and level of formalization of rules and codes of action and language, such as streets, media, courts, government, and technical agencies.⁹ The actors must adapt their tactics, frames, and alliances to different arenas through which they circulate. Changes of arenas occur when they perceive opportunities for progress in achieving their goals or to provoke the public reverberation of their claims.

Our analytical argument, therefore, is that the dispute over the regulation of abortion is not linear or fixed, but occurs in more or less institutionalized social spaces and involves non-state actors (feminist movements and other social movements; trade unions; religious, medical and legal organizations, and health professionals); and state actors (state bureaucracies of public policy staff, members of congress, judges, and judicial officers). Mobilization strategies and frames change according to the balance of political opportunities and restrictions, which in turn are constantly altered by the action of movements and counter-movements.¹⁰ The emergence of opponent movements tends to create conflict that requires adaptation of strategies to neutralize the effects of the opponent's actions and push their respective agendas forward.¹¹

The state is a crucial part in the conflict and can be simultaneously a target of demands and an object of dispute. Depending on the institutional structure, the political regime and context, the state with its different arenas (such as congress, administrative agencies, courts) can take place in a contentious space. This occurs when public campaigns, the typical repertoire of action of social movements, enter the state and the world of institutionalized and routine politics, which acquires the form of, for example, lobbying for proposition of bills, occupying government posts, or proposing candidates in elections. In this sense, the contentious politics occurs not only outside the state, such as in the form of outsiders' protests, but can also occur within state arenas through the connection between state and non-state actors. This

does not simply mean the institutionalization of social movements, but the activists' ability to move through various arenas.¹²

The second contribution of the article is empirical. We focus on the pro-choice and anti-abortion mobilization in the state arenas, mainly in the executive and legislative powers, during two government periods: the two terms of President Fernando Henrique Cardoso (FHC), 1995–1998 and 1999–2002, and the first term of President Luís Inácio Lula da Silva (Lula), 2003–2006. We analyze pro-choice and anti-abortion mobilization to frame their respective agendas through bills and administrative norms of public policy. We know that this is only a part of the political process that encompasses, for instance, street movements and mobilizations in court. But we argue that it is crucial to reconstruct the mobilization in the executive and legislative powers in the two above-mentioned government periods, to understand the relationship between the movements and the state in Brazil, after the conclusion of the re-democratization process, and to explain the current state of affairs regarding sexual and reproductive rights today.

The article shows how the FHC and Lula governments were permeable to the national and international pro-choice agenda. However, the balance of political opportunities and restrictions for the movement and the counter-movement had faced variations according to two key factors: the permeability of the government to the pro-choice movement and the political context as a whole. The close alliance between pro-choice groups and the executive branch during Lula's administration, along with the political crisis, generated as backlash a new conservative reaction formed upon a close relationship between congress and the anti-abortion movement's network.

In the first section, we show briefly the emergence of a contentious field on abortion related to the end of the Brazilian re-democratization process that resulted in the installation of a National Constituent Assembly. In the second section, we compare the battle over abortion in FHC's and Lula's governments. In the third section, we analyze the conservative reaction.

Creating the abortion battleground in Brazil

At the end of the 1970s, the Brazilian feminist movement developed close ties with the domestic political opposition groups fighting against the military regime (led by left-wing activists and progressive sectors within the Catholic Church), and with international groups that had female autonomy as a main piece of their political agenda.¹³ Pro-choice mobilizations, although they did occur during Brazil's political transition to democracy, were infrequent. Abortion was rejected not only by the church, but by left-wing activists who opposed liberal and individual evocation of autonomy and freedom of choice for women. Government agencies resisted including abortion in their political agendas, and Catholics mobilized in protest whenever abortion became part of the national debate.¹⁴

The process of creating the new democratic constitution caused open disagreement between pro-choice activists and the church. The Brazilian National Constitutional Assembly (1986–1987) opened the national political arena to groups and movements mobilized during re-democratization under the broad umbrella of the anti-military regime movement. In 1985, the first civilian president was elected, and the Constitutional Assembly, a year after, represented a unique political opportunity for groups and movements to focus their specific agendas and to claim normative and public legitimacy for them. Drafting the new constitution became a battleground for divergent interests among various groups and movements.¹⁵

The polarizing topic of abortion was heavily discussed.¹⁶ Feminist leadership sent the "*Carta das Mulheres*" (Women's Letter) to congress, outlining demands for items to be declared in the new constitution, including the right to interrupt pregnancy. The counter-movement, led by the National Conference of Bishops of Brazil (CNBB) with the support of evangelical members of congress, pressed for the new constitution to include protection and right to life since conception.¹⁷ Amidst a clash with the Catholic Church, the feminists' strategy was to at least prevent the inclusion of the protection of life since conception in the final wording of the Federal

Constitution of 1988, and they succeeded in that.¹⁸ Without winners in the constitutional battle, the dispute was directed to the infra-constitutional regulation, signaling congress as a strategic space to promote political and legal changes.

The constitutional definition of fundamental and social rights, especially the right to health, created a new legal, moral, and political vocabulary that expanded the penal rhetoric that had governed the policies and laws on abortion in Brazil. The new constitution also expanded the formal access of different interests to state arenas. In addition to free elections, councils were created in the executive sphere, and in the judiciary branch, new procedural instruments were put in place for the defense of rights.

On the international front, the UN world conferences and its parallel forums became spaces for the formation of coalitions in transnational networks of feminist and human rights organizations.¹⁹ In the early 90s, feminist activists were intensely mobilized in the preparatory activities to the conferences. In September 1993, Brazilian activists held the National Meeting of Women and the Population, Our Rights for Cairo '94. The "*Carta de Brasília*" (Letter from Brasília), resulted in discussion, included feminist demands related to non-coercion, women's comprehensive health, and sexual and reproductive rights. Official delegations were also integrated by professionalized and globally connected organizations, such as CFEMEA (Centro Feminista de Estudos, e Assessoria) and CEPIA (Cidadania, Estudo, Pesquisa, Informação, e Ação).²⁰ The UN Conference on People and Development, which took place in Cairo in 1994, and the Fourth World Conference on Women, in Beijing in 1995, fueled the national pro-choice discourse framed in terms of human rights and the right to health.²¹

The national pro-choice movement maintained two agendas: one more radical (claiming the decriminalization of abortion) and another more moderate (claiming the increase in instances of legal abortion). The second gained more force in the institutional battles, as it was more open to negotiations with governments and political elites. The national mobilization was supported by the

formation, in 1991, of the *Rede Nacional Feminista de Saúde e Direitos Reprodutivos* (National Feminist Network on Health and Reproductive Rights) for the "defense of comprehensive health for women and their sexual and reproductive rights" and for a public unified health system, "universal and of good quality, accessible to all women."²²

The movement internalized the international framing of abortion as a public health issue, connecting movement, state, and global institutions.²³ Feminist leaders joined or aligned themselves with parties, thereby connecting the movement to institutional spaces. From the mid-1990s on, the pro-choice movement found its channels and access to the national executive branch during the FHC and Lula administrations. Both administrations were linked to political parties that had opposed the military regime and allowed female leaders to build alliances since the beginning of re-democratization. Both governments signed and ratified international treaties, established National Human Rights Plans (PNDH), created state bureaucracy specifically for women's politics, and furthermore, placed feminist leaders in government positions. In this way, the executive branch in the 1990s and 2000s was transformed into a political working arena for the pro-choice movement.

The anti-abortion movement also renewed the social bases of activism. During the 1970s and 1980s, CNBB led the formation of groups and movements, recruiting from its network of Catholic dioceses. Pro-life groups were created as far back as the late 1980s, but from the 1990s onward, the movement acquired its own structure connecting local groups to national and international networks. The first National Meeting of Pro-Life Movements took place in Brazil in 1992 with the support of Human Life International, an American organization of transnational anti-abortion activism, with particular focus on Latin America. In 1993, the National Pro-Life and Pro-Family Association was created, with the mission to defend "human life from conception to natural death, without exceptions" and "the moral and ethical values of the family."

Movements and counter-movements in the national state arenas (1995-2006)

In the national state arenas, the battle over abortion from 1995 to 2006 took place mainly in the legislative branch (through bills) and in the executive branch (through administrative norms for public policy). Although there are reports of litigation in individual cases beginning to be used in the 1990s in Brazil, the mobilization toward the judiciary in the dispute during the analyzed period was residual. A legal strategy was built only in 2004 in the initial action that brought to the Supreme Court a case involving the interruption of pregnancy of an anencephalic fetus.²⁴ Later, two contentious public hearings took place in the Federal Supreme Court (STF), one in 2007 on a biosafety law and another in 2008 on the case involving the interruption of pregnancy of an anencephalic fetus.²⁵

When social organizations, groups, and movements adopt a strategy to move a dispute from the public sphere to institutional arenas, they must often rely on alliances with different state actors (such as members of congress, public defenders, or prosecutors). Mobilization in state arenas depends, therefore, on how receptive such actors are to social claims. Also, the political resources available for mobilization in institutional arenas—bills, administrative norms, and judicial decisions—are not identical, because of varying degrees of coercive compliance and stability to consolidate political and legal changes.

Different regulatory compositions can be activated depending on the institution, issue, and context of political opportunities. In the composition of norms governing a certain subject, there is a structural definition of what can be regulated by what kind of norm, and the limits of these rules are also regulated. For example, altering the penal code to create the possibility for legal abortion should occur through a legislative amendment or a Supreme Court decision that can invalidate or interpret a piece of federal legislation. Technical norms, issued by the federal, state, or municipal executives, standardize and streamline operational aspects of health care equipment. These norms have

weaker binding effect, and courts do not require compliance, but they may have significant impact on accessing health services. For example, one of the major issues regarding access to legal abortion in cases of rape refers to the hospitals requiring a police report; a technical norm issued by the Ministry of Health regulated the dismissal of this requirement.

Technical norms, decisions, and bills represent a political and legal resource, as well as a tactic for framing public issues. Although constrained by rules of enunciation within the state bureaucracy, these official documents are taken here as formal translations of the political dispute, supported by state alliances and negotiations and framed by moral, scientific, and legal arguments.

To map the legal battle between movement and counter-movement in the state arenas, we created two databases: one populated with administrative actions of the federal executive branch (including decrees, ordinances, resolutions, technical norms, plans, and internalization of international documents), and another populated with actions taken by political parties and members of Congress inside the federal legislative branch (bills of law and constitutional amendments with their respective justifications). Although the collected data covers the period between 1989 and 2015, we refer in this text only to 50 bills, which were presented between 1995–2006.

FHC government (1995–2002)

During FHC's government (1995–2002), the Ministry of Health began to produce technical norms for regulation of legal abortion services in the public health system. While the 1940 penal law formally provided for legal abortion, there were many difficulties for people accessing it, especially for those relying on the public health system. In the absence of a federal norm, the provision of abortion services depended on the regulation of each hospital or state and municipal ordinances.²⁶

The mobilization to implement legal abortion services in the public health system occurred in a fa-

avorable alliance between feminists and progressive doctors, allocated especially in the Brazilian Federation of Gynecology and Obstetrics (FEBRASGO).²⁷ In 1998, the Technical Norm for the Prevention and Treatment of Injuries Resulting from Sexual Violence against Women and Adolescents was published. This was the first time the Ministry of Health regulated legal abortion in the nationwide public system. The regulation of the provision of legal abortion services in public hospitals was part of a broader package of measures for female victims of violence. This strategy of regulating access to legal abortion due to rape indication finally made it possible to implement legal abortion services.

At the end of the 1990s, only eight hospitals were performing legal abortion; in the 2000s, there were 44.²⁸ This was far below demand, not even considering unequal regional distribution (hospitals were highly concentrated in southeast Brazil), but the creation of technical norms represented a victory for the movement. In reaction, anti-abortion groups began to pressure professionals in the Technical Area for Women's Health to repeal the norm, on the grounds that the norm would facilitate access to abortion for women who were not victims of violence.²⁹ After the publication of the technical norm, Congressman Severino Cavalcanti, author of two proposals for anti-abortion constitutional amendments, presented a bill aiming to block its application.

Indeed, in this period we observed an increase in congressional opposition to abortion. Between 1989–1994, eight anti-abortion bills were proposed, as opposed to 14 pro-choice bills. Between 1995 and 2003, anti-abortion bills outweighed the pro-choice projects, with a total of 13 anti-abortion projects and 6 pro-choice projects.

The pro-choice movement sought to expand its support base focusing on the implementation of legal abortion.³⁰ The battle for broad decriminalization of abortion was central to the pro-choice agenda during the Constitutional Assembly and the years following it, but this strategy became less important in the 1990s. Between 1989 and 1994, there were six pro-choice bills opposing criminalization. From 1995 to 2002, five pro-choice bills advocated broadening the specific cases of legal abortion or

its regulations, while only one was directed at decriminalization. This relationship worsened in the following years.

Among the anti-abortion bills in this period, other regulatory strategies besides criminalization and increasing punishment start to appear. Of the 13 anti-abortion bills presented between 1995 and 2002, four were related to the increase of criminalization or punishment, four aimed at broadening the rights of the fetus, and three proposed the prohibition of research on embryos. One bill sought to broaden doctors' right to refuse to perform legal abortion, and another created a symbolic date, a day of homage to the "unborn child".

The end of the FHC government was highlighted by two actions by the pro-choice movement within the institutional field, aiming to extend the right to abortion. The first involved a draft of a penal code revision. Thanks to parliamentary allies, the Penal Code Review Commission forwarded to the Ministry of Justice a document outlining broadened permissions for abortion if the fetus had "serious and irreversible abnormalities." The then Justice Minister Jose Carlos Dias was in favor of revising the penal code, the reform did not advance. Secondly, pro-choice activists succeeded with the Second National Plan for Human Rights (PNDH II), approved in 2002, with the mention of the need for "extensions for permission to the practice of legal abortion in accordance with the commitments undertaken by the Brazilian government, in the framework of the Beijing platform of action." This demand, however, would depend on legislative changes. Although there was intense mobilization in the legislative arena, the pro-choice and anti-abortion advocates were deadlocked, and most bills never became the legal standard.

The alliance movement and government: Lula's first presidential term (2003–2006)

Lula's government reshaped the way social movements interact with the state. A closer and more organic relation was created through the implementation of national conferences and policy councils, boards of mixed composition (state actors

and civil society), with a fundamental role in the formulation of strategies and proposals for the implementation of public policies.³¹ In the field of sexual and reproductive policies, it expanded the reach of the pro-choice movement within the state bureaucracy itself: in 2003, the Special Secretary for Women appointed Maria José de Oliveira Araújo to oversee women's health within the Ministry of Health. At that time, she was already a key pro-choice activist, having helped found the *Coletivo Feminista Sexualidade e Saúde* (Feminist Collective of Health and Sexuality), the National Feminist Network for Health and Sexual and Reproductive Rights, and the drafting of the Program for Integrated Women's Health Care (Paism).³²

In this environment, the pro-choice movement increased activity between its own networks and state structures, benefiting from its ability to employ people in government positions rather than just alliances.

Comparing the institutional mobilization in the legislative and executive branches during FHC's two terms and Lula's first term, there is a general increase in state mobilization addressing abortion, particularly in the executive branch: there were 27 bills proposed and five acts of the executive branch under FHC, and 35 bills and 16 acts of the executive branch in Lula's first term.

The Ministry of Health, from 2004 on, made a concentrated effort to implement a national policy of assistance for women's health, which would involve care for domestic and sexual violence, consequences resulting from illegal abortion, and implementation of legal abortion services.³³ In 2004, the technical area for women's health of the Ministry of Health published two documents: the National Policy for Comprehensive Women's Health Care: Principles and Guidelines and the National Policy for Comprehensive Women's Health Care: Action Plan 2004–2007. These include an assessment of the (low) implementation of care services to women in situations of violence and the provision of strategies to intervene, such as increasing the number of clinics offering legal abortion; revising technical norms for legal abortion; training; and policies for humanized care for women

suffering the consequences of unsafe abortions. As part of this national policy, increased distribution of the “morning after pill” generated intense public debate, which was accompanied by the initiative of counter groups to stop the distribution of this pill via legislative bills.

In 2005, the Ministry of Health issued other technical norms that advanced implementation of the right to legal abortion. Among the pro-choice victories, these norms revoked the requirement that a hospital be given a police report before providing abortion in case of rape, and created an obligation for the National Health System to perform legal abortions in such instances.³⁴ Removing the police report requirement was one of the most controversial issues; it raised so much opposition that even a Supreme Court justice publicly advised doctors not to follow the administrative regulations.

Meanwhile, the *Rede Feminista de Saúde* (Feminist Health Network) in 2004 launched the campaign *Jornadas Brasileiras pelo Aborto Legal e Seguro* (Brazilian Efforts for Legal and Safe Abortion), which culminated in the organized participation of the movement in the First National Conference on Women's Policies, convened by the federal government. The National Policy Plan for Women was prepared at this conference, and expressed the need to “review the legislation dealing with abortion.”

Based on the conference resolution and on the National Policy Plan for Women, the federal government drove the abortion agenda in the legislature. In 2005, the special secretary for women's policies established a tripartite commission, with representatives from the executive branch, civil society, and the legislative branch itself in order to revise abortion legislation. The commission sent congress a bill decriminalizing abortion up to the twelfth week of pregnancy.³⁵ This was arguably the moment that decriminalization came closest to approval. But in Lula's second term, after a religious offensive, the executive branch removed their support and the project was halted in the House of Representatives.

Between 2004 and 2005, pro-choice members of congress proposed four bills aiming to broaden specific permissions for abortion. The bills rein-

forced the legislative strategy of the movement to invest more in projects that expand or regulate the cases of legal abortion, to the detriment of those cases decriminalizing abortion more broadly. This was already the goal of pro-choice legislative disputes: pro-choice legal frames in the FHC era involved only one bill aiming at decriminalization/reduction of punishment, while five bills focused on increasing indications and regulating legal abortion access.

On the other hand, the high number of anti-abortion bills in the first Lula government shows that the countermobilization intensified in response to the pro-choice movement's increased influence in the executive branch. For example, as a direct response to the Ministry of Health technical norm regulating distribution of the "morning-after pill," a bill was proposed that prohibited its distribution.

Number of pro-choice and anti-abortion bills, 1995-2006

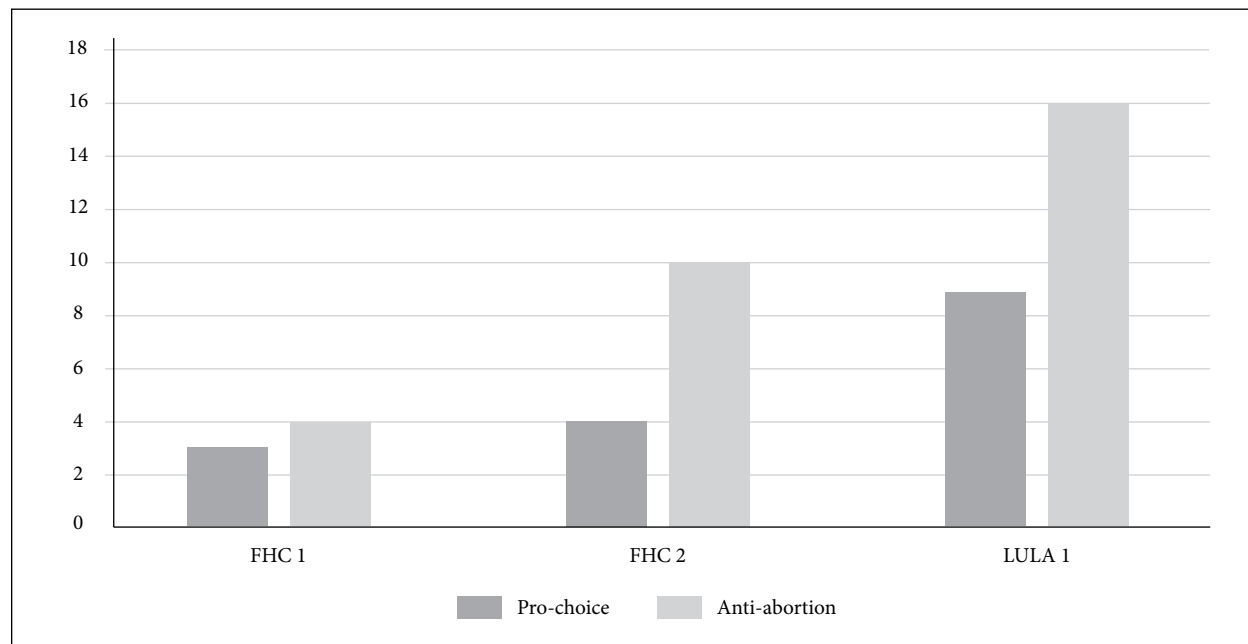
The anti-abortion bills during Lula's first administration did not just surpass the number introduced during the FHC years; they also had diversified legal

frameworks (See Table 1 and Figure 1). They sought to keep and even expand criminalization (for example, with the proposal to ban any kind of right to abortion, including in exceptional cases) but state control of the woman's body took other forms. For example, some bills proposed the creation of a hotline to report abortion cases to the police, and a mandatory pregnancy registration. More proposals sought to expand the rights of the fetus. The rhetoric of protection, which the anti-abortion movement was already using to frame the protection of the fetus, was then used also to protect women through bills ranging from abortion prevention programs to social assistance programs for women wishing to proceed with a pregnancy resulting from rape. Although these proposals focused on women wishing to keep their pregnancies, the anti-abortion movement began to dispute with the pro-choice movement the defense of the interests of women.

Anti-abortion legal frames in the legislative bills

The pro-choice and anti-abortion battle inside the state arenas led to some moderation in the framing

Figure 1. Number of pro-choice and anti-abortion bills, 1995-2006



processes on both sides. On the pro-choice side, the most radical agenda for decriminalization of abortion gave way to a more moderate agenda for abortion regulations, as outlined by the Brazilian legislation via public policies on women health and sexual violence, or through the expansion of specific legal cases. On the anti-abortion side, the language of social and human rights was incorporated selectively into its agenda: going beyond repression, this tactic aimed at proactive solutions of state policies for women deciding not to undergo abortion. This shift in the conservative activism tending to frame their discourse in the language of rights, public policy and protection of women is recognized as a tendency in Latin America and is also an example of the dynamics between movement and counter-movement as a game of reaction, neutralization, and adaptation of strategies.³⁶

Conservative reaction, political crisis, and broken alliances

The last two years of Lula's first term changed the opportunities and restrictions for movement and counter-movement. Among the legislative proposals between 2003 and 2006, a sharp reversal occurred in 2005. While legislative proposals favorable to the pro-choice agenda prevailed until 2004, anti-abortion proposals dominated from 2005. This reversal began with the report of an alleged

political corruption scheme involving vote-buying of congressional members. The political scandal, known as *Mensalão*, led to a government crisis in 2005 and 2006, undermining the government's congressional support and lowering the president's popularity. It also contributed to a retreat in pro-choice policies, which gained wide public attention and generated opposition in the public opinion.

The weakening of the government, combined with the approach of the 2006 presidential and congressional elections, generated oppositional impact in regard to the abortion agenda. Facing political and electoral damage due to this agenda, Lula's government stepped back from pro-choice initiatives and sought support from the CNBB, a traditional basis of the Workers' Party (PT) political support, and evangelical representatives in Congress.

The bill created in the 2005 tripartite commission, which proposed the decriminalization of abortion and its legalization through regulatory compliance in the public health system, sparked the formation of *I Frente Parlamentar em Defesa da Vida: Contra o Aborto* (First Parliamentary Front for Defense of Life: Against Abortion). The group promoted the First National Seminar on Defense of Life in 2005, which orchestrated meetings among local pro-life groups.³⁷ The countermobilization that began in congress resulted in the formation of the *Movimento Nacional da Cidadania pela Vida: Brasil sem Aborto* (National Movement of Citizenship

Table 1. Anti-abortion legal frames in the legislative bills

Legal frame	FHC (1995-2002)	Lula (2003-2006)
Increase criminalization/punishment	4	7
Increase choice for doctors	1	0
Institution of symbolic day	1	0
Protection of life since conception/increased rights of fetus	4	3
Prohibit embryo research	3	0
Broaden women's rights	0	3
Increase control over women's bodies	0	2
Prohibit emergency contraception	0	2

for Life: Brazil without Abortion) in 2006, which convened state committees that brought together previously disparate organizations and movements.³⁸

The simultaneous launch of the movement through the *Manifesto à Nação* (Manifesto to the Nation) and the *Campanha Nacional em Defesa da Vida* (National Campaign in Defense of Life), connected, for the first time in Brazil, congress and the anti-abortion movement's network. In the 2006 elections, marches occurred throughout the country, with slogans such as "For a congress in defense of life," "Decide for life: vote for candidates who are against abortion," and "Yes life. Abortion never!"³⁹

The conservative reaction to the abortion agenda was consolidated with the increased evangelical presence in congress after 2006. The "evangelical caucus" led pressure for the revision of technical standards and proposed projects seeking to impede or prohibit access to legal abortion. One key proposal was for the "statute of the unborn child," which sought to revoke the cases of legal abortion already in the penal code.

In a context of anti-abortion political pressure towards law enforcement agents, police departments and prosecutors' offices launched an offensive against clinics performing clandestine abortions. Most strikingly, a medical clinic in Campo Grande, Mato Grosso do Sul, was forced to close in 2007, and police investigated all clinic patients and medical staff. More than 10,000 women had their medical records confiscated and privacy invaded. At least 25 women were charged and served time in prison for the crime of abortion.⁴⁰ In 2009, a case involving the legal abortion to be performed on a 9-year-old victim of sexual abuse also received great attention from the media. After pressure from anti-abortion groups, especially the Catholic Church, the hospital and doctors refused to perform a legal abortion, which was only possible after the intervention of the Federal Secretariat for Women and the Public Prosecutor Office.⁴¹

Meanwhile, a battle occurred in the Supreme Court with two public hearings, one on biosecurity and the other on the anencephalic fetus.

The wave of institutional pro-choice activities culminated in the approval of the biosafety law in

2005 that allowed and regulated embryo research. The battle continued as a constitutional challenge of the law in the federal Supreme Court, proposed by the state attorney general, on the grounds that the law would contradict the principle of inviolability of the right to life that, according to his argument, exists since the moment of fertilization. In April 2007, a public hearing was installed by the Supreme Court, gathering two sides in opposing: pro-life movement versus scientists' pro-embryo research together with pro-choice activists. The pro-life judicial claim was dismissed in May 2008, again preventing the protection of life since conception to enter the Brazilian regulatory framework, this time through a Supreme Court interpretation of the constitutional right to life.

The anencephalic fetus case was proposed by the pro-choice movement in 2004 (after a first attempt in 2003). In July 2004, the Supreme Court granted a preliminary injunction allowing the procedure to be performed until the merits of the case were judged. The full court revoked the injunction months later, and the case was shelved until 2008, when a public hearing gave greater public visibility to the movement and counter-movement battle, the greatest since the constituent assembly. In 2008, the Supreme Court held four sessions of public hearings on the anencephalic fetus case involving 27 participants to defend views for or against the request. Participants included religious organizations, feminist organizations, professional associations, government representatives, and individual actors (such as doctors and members of congress). The tense nature of the ethical-moral conflict and the mobilization around the issue itself attracted media coverage and public interest. The trial was delayed four more years, but the Supreme Court finally recognized the claim in 2012.

While these two judicial decisions showed a context of positive political opportunities for the pro-choice movement in the Supreme Court, the alliance of feminists with the Workers' Party (PT) government ended with their definitive political and public retreat from the issue. In 2009, following political pressure, the Secretary for Human Rights removed public commitment to decrim-

inalize abortion from the Third National Human Rights Plan.⁴² In the 2010 election campaign, abortion was again a central issue. Dilma Rousseff, who had throughout her political career supported legalizing abortion, pledged in her “Open Letter to the People of God” not to take measures toward legalizing abortion if she were elected, a pledge that she fulfilled during her two terms (2011–2014 and 2015–2016).

Conclusion

This article proposes a relational approach to the study of abortion law reform in Brazil. We focus on the interaction of pro-choice and anti-abortion movements between different state arenas and political contexts. To analyze the disputes in the state areas, and the strategies used by the two movements, one has to consider that battles over abortion regulation are formalized through legislative bills, norms of public policies issued by the executive branch, and judicial decisions. They are different political resources for mobilization, with different degrees of authoritative force, which also impacts strategies. Technical norms serve as guidelines for public policy and are not binding, but legitimize and strengthen the decisions of public officials. However, they are limited political resources, unstable and susceptible to revisions by the government when faced with pressure from opposition groups. From the moment those technical norms become law, however, they are no longer subject to the inclinations of the public administrator and, in addition, courts can require compliance. This helps to explain why disputes in the legislative arena were responsive to government regulation. In this sense, although the executive branch as an ally was key to implement public policies by increasing access to legal abortion, the legislative arena was crucial for the pro-choice movement to solidify it and for the counter-movement to block it. A Supreme Court decision, in turn, although limited to formal frameworks and requirements of access, has the authoritative force to remove a piece of legislation or interpret it in an innovative way due to claims based on unconstitutionality. Although allies from

the pro-choice and anti-abortion movements have proposed many bills in congress, they haven’t advanced to change the prohibition standard. The only change in the prohibitions framework since 1940 came from the Federal Supreme Court, in its decision on the case regarding the anencephalic fetus in 2012, which allowed for termination of pregnancy in these cases.

Retracing the political process on abortion in Brazil, we showed that the movement and counter-movement dynamics between the executive and the legislative branches during two governments that progressively opened space to the pro-choice movement, FHC (1995–2002) and Lula’s first term (2003–2006), is key to understanding the backlash against the pro-choice agenda after 2006.

The first generation of Brazilian pro-choice activists advanced strategies in the occupation of the state. Political opportunity seized by the two governments intensified the connections between pro-choice movement and the state, resulting in advances in the regulation of access to legal abortion services. Offensives launched by the existing pro-choice agenda were decisive in terms of creating a perception of threat to the anti-abortion movement: pro-choice regulations were issued within the Ministry of Health, the legislative branch regulated embryo research (2005), and a bill decriminalizing abortion advanced with the support of the executive branch, with strong participation from the pro-choice movement.

The counter-movement responded by increasing activity in congress and mobilizing in the public sphere. To understand how abortion came to be a key issue to the anti-abortion movement in the electoral campaigns, it is important to mention that abortion rights policies traditionally raise opposition in the public sphere, led by the Catholic Church and pro-life groups, and public opinion is often divided. Recent research shows that most Brazilians approve legalizing abortion in cases of rape, risk to the life of the mother, and non-viability of the fetus, but the majority does not support complete legalization.⁴³

Our analysis shows that the political context in the FHC and Lula eras is key to understanding

the migration of the dispute to the Supreme Court and the public arenas in the ensuing years.

Part of the pro-choice movement explored the Constitutional Court as an escape route to legislative disputes. Three positive decisions for the pro-choice movement (the biosafety law case in 2008, the anencephalic fetus case in 2012, and the concession in 2016 of a habeas corpus considering unconstitutional the pre-trial prison of two doctors accused of abortion) showed political opportunities for the pro-choice agenda in the court. Two cases are still pending there: the Zika infection case from 2016 (demanding authorization to proceed to abortion in case of microcephaly of the fetus) and the most recent one, filed in March 2017, finally addressing decriminalization until 12 weeks. After the political backlash, the Supreme Court appears to be the sole institutional arena still receptive to the pro-choice movement.

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