

<a> "Queering Public Policy in Brazil: The Interplay Between the LGBTQ+ Movement and Institutions"

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1. Introduction

Queering Public Policy is often defined as a means to amplify the voices of LGBTQ+ individuals who are underrepresented in the public and political spheres. Queering entails establishing inclusive spaces for queer people across domains, including education, politics, job markets, public services, and healthcare. According to M. Smith (2007), queering public policy involves bringing a queer perspective into policy analysis across all areas. This requires socio-political and cultural transformations prioritizing LGBTQ+ representation, advocacy, sexual regulation and sexual freedom, gender recognition, and the recognition of queer culture (M. Smith, 2007). However, the 21st century presents several challenges for queer individuals, as evidenced by the “tensions between the advancement of rights politics and experience of violence and victimization among LGBT individuals” (Serrano Amaya & Ríos González, 2019, p. 376). These tensions prompt a debate on the effectiveness, efficiency, and inclusivity of public institutions for LGBTQ+ citizens. Moreover, queering public policy sheds light on controversies surrounding the formulation and implementation of LGBTQ+ policies, often resulting in a mismatch between the needs of queer people and their reality.

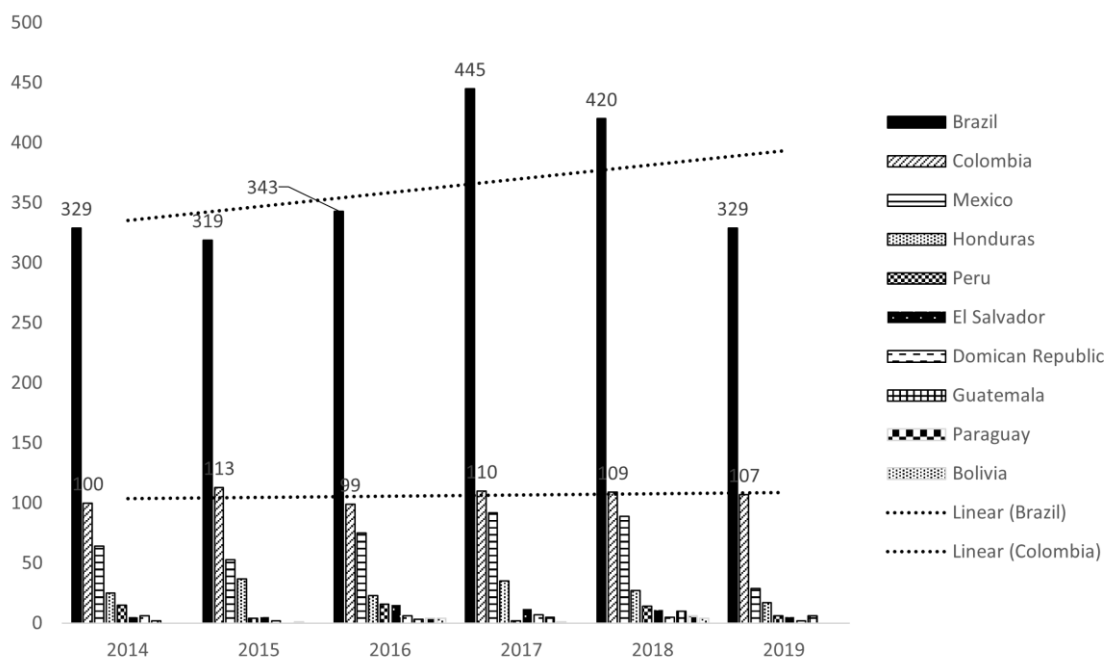
Over the years, scholars have paid attention to the challenges of queering public administration, drawing on queer theory. Many have investigated the queer perspective within specific public service contexts, such as police recruitment in the U.S. (Colvin & Meyer, 2022), primary healthcare access (Sarkin, 2019), higher education (Morley & Leyton, 2023), and the relationship between local governments and LGBTQ organizations in Italy (Bertone & Gusmano, 2013). Although some scholars have examined the institutional dynamics between public administration, queer subjects, and public spheres in the past decade (Colvin & Meyer, 2022; de la Dehesa, 2010; Galego, 2022a; Lee, Learmonth, & Harding, 2008; Meyer, 2023; M. Smith, 2007), the field of public policy and administration studies still lack an analytical framework to advance knowledge in queering public policy as a process. Furthermore, existing

studies analyzing the political development of the LGBTQ+ movement in Latin America often focus on the struggle for sexual and gender rights, emphasizing the legal challenges faced by LGBTQ+ individuals in the region (Corrales, 2017; Malta et al., 2019; Marsiaj, 2012). However, there remains a notable absence of a mechanism for influencing LGBTQ+ policy-making processes in Latin America.

Queering public policy derives from feminist theory, which challenges preconceived notions of gender roles in society and promotes a more progressive understanding of gender as a social construct (Butler, 1999). In line with this, this chapter seeks to answer the following questions: How does queering public policy occur? What challenges arise in this process? To address these questions, this chapter contributes to queer theory by examining how and when the LGBTQ+ movement influences policymaking through a causal mechanism of influence. The empirical analysis focuses on two cases from Brazil: the anti-discrimination policy “Brazil Without Homophobia”, created in 2004, and the criminalization of LGBTphobia in 2019. These cases are examined using actors-centered approaches and institutional perspectives.

Brazil is recognized as one of the most hazardous countries for the LGBTQ+ community, with high levels of violence and human rights violations reported in national and international reports (Arroyo, Arias, & Sottile, 2019; GGB - Grupo Gay da Bahia, 2019; Trans Brazil Network, 2020) (Graph 1).

Graph 1. Numbers of Registered Cases of Homophobic Homicide in 10 Latin American Countries between 2014 and 2019.



Sources: Reproduced from Galego, 2022a (p. 5)

Thus, Brazil presents an intriguing case to examine the paradigm that, despite 35 years of restored democracy, little progress has been made regarding LGBTQ+ rights, particularly in the most dangerous country for this community in Latin America. In addition, specifically for the Brazilian context, it is crucial to ask why Congress has not approved LGBTQ+ policies, what institutional issues have hindered the approval of such policies, and which actors are involved in the policy process.

This study's empirical analysis draws on official documents, semi-structured interviews with activists, politicians and academics, and secondary sources such as newspaper articles, academic literature, and judicial trial recordings (for more information, see Galego, 2022a). Additionally, an institutional analysis of various venues of activism, including the federal executive, legislative and judiciary, reveals several constraints and opportunities for queering public policy under a causal mechanism of influence throughout the three decades of democracy in Brazil.

2. Queering Public Policy: Conceptual Framework

Queer subjects have long faced resistance within academic works. Queer theory, predominantly propagated through sociological studies, has emerged as a significant mainstream approach to amplify the voices of socially, politically and culturally marginalized individuals with “sexuality-based lesbian, gay, transgender, or queer cultural identity” (Massaquoi, 2015, p. 765; Sedgwick, 1990). Queer subjects are “those whose sexual identity, orientation, or behavior is seen as oppositional to the heterosexual norm are counteracting dominant discourses [...]” (Massaquoi, 2015, p. 765). Various political movements have encountered challenges establishing “legitimacy and authority due to lack of representation or diversity” (Massaquoi, 2015). “Queering” public policy can be understood as significant changes in how queer subjects have become relevant in queer politics (Paternotte, 2018; N. J. Smith & Lee, 2015), and issues related to gender, sexuality and beyond are now on the public policy agenda (de la Dehesa, 2010; M. Smith, 2007). In this regard, the queer theory provides a tool for deconstructing normative and compulsory heterosexuality approaches to gender and sexuality imposed on many societies (Blackmore, 2011; Colvin & Meyer, 2022).

According to Lee et al. (2008), queering public administration would involve challenging the assumptions underlying each stage of the policy-making and implementation process. Similarly, Colvin & Meyer (2022) suggest that applying queer theory to public

administration can demonstrate how public services can contribute to transcending gender binaries in areas such as police recruitment processes and security service delivery. Therefore, queering public policy represents a quest for LGBTQ+ individuals or groups to become policy actors directly involved in the different stages of the policy-making process.

LGBTQ+ policy and gay and queer politics are vibrant subjects of study in political science (Mucciaroni, 2011; M. Smith, 2007). When analyzing aspects such as gender (Carli, 2001), ideological orientation and morality (Kordsmeier, Tumilson, & Song, 2019; Nalivaiké, 2020) and descriptive representation [LGBT] (Haider-Markel, 2007; Haider-Markel & Meier, 1996), authors often emphasize the institutional constraints and lack of representation of socially, politically, and culturally excluded groups in the policy-making process. Indeed, in many contexts, LGBTQ+ issues, for instance, only enter the policy agenda and formulation process when supported and promoted by politically or socially influential individuals or groups (e.g., social movements, associations, corporations, and politicians). Therefore, the implicit assumption is that the nature and structure of influence on policy-making are linked to the mobilization of members – “the larger an organization’s political capacity, the more quickly they can take advantage of opportunities to influence the polity” (Knoke, 1990, p. 195), or increased representation of minorities (Haider-Markel, 2007) or women in elected offices (Celis, 2006; Kathlene, 1994). Several examples exist where substantive representation is crucial for LGBTQ+ policy and politics to counterargue morality politics (Haider-Markel, 2007; Wald, Rienzo, & Button, 2002). For instance, religious institutions opposing LGBTQ+ rights and influencing public policy-making based on religious and moral codes, as well as lobbying by religious parliamentarians, have consistently blocked the approval of LGBTQ+ bills in Latin American countries (Corrales, 2017, 2019; Galego, 2022b; Marsiaj, 2006; Schulenberg, 2009). However, in some cases, these conflicts over LGBTQ+ rights have created opportunities for institutional coalitions to strengthen support or opposition groups (Haider-Markel and Meier 1996; Marsiaj 2006).

The political involvement of the LGBTQ+ movement has been a topic of considerable exploration by scholars, with significant attention given to the strategies developed by gay and lesbian movements through collective actions to enter the political arena. In this debate, social movement scholarship has emphasized contentious politics (McAdam, Tarrow, & Tilly, 1996; Tarrow, 2011) and identity politics (Armstrong & Bernstein, 2008; Bernstein, 1997, 2002). The LGBTQ+ movement has traditionally employed lobbying, advocacy, litigation strategies, public demonstrations, social capital, and interest groups to influence policy formulation in various contexts and countries (Holzhacker, 2012). The protests and political activities of the

LGBTQ+ movement have played a crucial role in challenging and queering the heteronormative public policy formulation process in many democratic countries. Politically engaged LGBTQ+ groups have employed various strategies to make the policy-making process more inclusive. The range of strategies and claims has shifted from identity and sexual orientation to broader discourse on human rights and citizenship (Calvo & Trujillo, 2011; Davidson, 2020).

For example, in Spain, discussions on LGBTQ+ policies have focused on human rights and sameness (Calvo & Trujillo, 2011). In Canada, LGBTQ+ public policy has been concerned with “freedom from discrimination based on sexual orientation” since the gay liberation movement in 1970 (M. Smith, 2007), leading to LGBTQ+ issues becoming part of the political agenda. The Netherlands provides examples of how advocacy beyond identity can be embraced as a strategy to advance LGBTQ+ public policies (Davidson, 2020). In the United Kingdom, anti-discrimination policies were advocated through litigation strategies to influence identity politics (Vanhala, 2009).

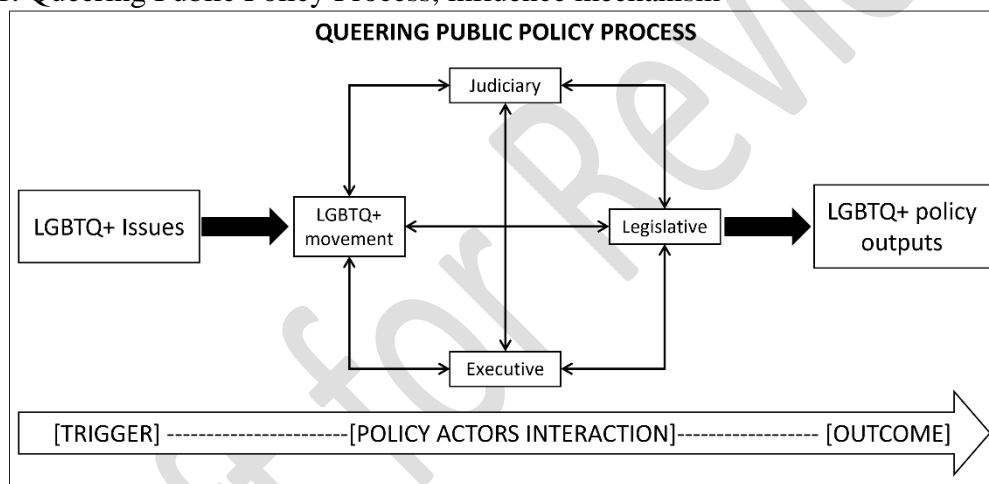
From a policy study perspective, according to Kingdon (1984), the policy process is influenced by policy windows that provide political opportunities and institutional access to policy actors to advance their interests and policy issues. These windows and opportunities are significant for the LGBTQ+ movement, allowing them to establish legitimacy in the political arena and choose which strategies and actions to employ. For instance, based on political opportunities, access to the polity, and the type of opposition faced, the LGBTQ+ movement decides whether to employ a strategy of “celebration or suppression of identity deployment” (Bernstein, 1997). Furthermore, visibility in public debates, hearings and media can create new windows for changes in power relations and partnerships and strengthen the movement’s influence in political debate (Armstrong & Bernstein, 2008; Bernstein, 1997), although this is contingent on the strength of opposition.

However, achieving a more significant representation of LGBTQ+ citizens in policymaking remains challenging. This lack of representativeness emphasizes conflicts, tensions, and a lack of information, both with and from the government, regarding the needs, issues and human rights of the LGBTQ+ community (M. Smith, 2007). For example, in Brazil, there is often a disconnection between the content of LGBTQ+ policies developed by representative policymakers and the lived reality of LGBTQ+ individuals in the face of societal challenges. This mismatch between policy goals and outcomes raises questions about whether these policies were formulated behind closed doors and without adequate input from the target group (Denhardt, Terry, Delacruz, & Andonoska, 2009). Furthermore, it raises concerns

regarding the effective engagement of communities in addition to mere representative public participation in government performance. The objective is to diminish self-interest and prioritize societal issues through a more systematic approach (Glaser, Aristigueta, & Payton, 2000). Public policymakers can significantly benefit from better contact with the policy context and target groups, which can help elucidate and identify better solutions for problems, emphasizing the coordination capacity of institutions for a more effective policy design and, subsequently, implementation (Bouckaert, Peters, & Verhoest, 2022).

To explore the policy-making process in Brazil and its interconnected nuances, a causal mechanism of influence has been developed to analyze the role of policy actors' interactions in connecting LGBTQ+ issues with expected policy outcomes (Fig. 1).

Figure 1. Queering Public Policy Process, influence mechanism



Source: Adapted from Galego, 2022a (p. 43)

The mechanism establishes a connection between LGBTQ+ issues and positions the LGBTQ+ movement as a policy actor in the public policy process. As a result, the LGBTQ+ movement can employ strategies to influence policymaking by engaging with the three federal institutions (executive, legislative and judiciary). Through such interactions, the movement aims to achieve possible or desired outcomes, namely developing effective LGBTQ+ policies to ensure non-discrimination across institutional, social, political, and economic spheres. However, the empirical evidence presented in the following sections demonstrates the complexity of power relations, actor interactions, and politico-ideological interests that underlie LGBTQ+ policymaking in one of the most violent countries for LGBTQ+ individuals worldwide.

3. Historical Overview of LGBTQ+ Activism and Policymaking in Brazil

Brazil made significant strides in its early history by abolishing sodomy from the Imperial Penal Code in 1830 (Simões & Facchini, 2009). However, homosexuality remained a target for repression by the police, political institutions, religious bodies, and culture in Brazil for an extended period (Green & Quinalha, 2014; Trevisan, 2000). The re-democratization process began in Brazil in 1985, accompanied by drafting a new Constitution in 1988. During this time, civil society organizations challenged the previous political system and gained more significant influence in policymaking under the new Constitution. As a result, the LGBTQ movement also experienced a shift towards institutionalized politics and public policy (Longaker, 2019, p. 1). Nonetheless, civil society organizations, including LGBTQ+ groups, who had faced oppression during the dictatorship, attempted but failed to persuade the Constitutional writers to include LGBTphobia as a crime, akin to gender and sexual orientation discrimination, under the anti-racism law (Lelis & Oliveira, 2021). Since then, overcoming social, institutional, political and economic discrimination has been a central focus of the LGBTQ+ movement, propelling the anti-homophobia agenda (Aguião, 2018; Galego, 2022b).

According to one interviewee, the LGBTQ+ movement in Brazil can be divided into two categories: the “popular” movement consisting of activists working directly with LGBTQ+ individuals and communities, and the “intellectual” movement composed of professors and student activists who engage in research and advocate for LGBTQ+ rights (Interviewee A4).

The Brazilian Association of Lesbians, Gays, Bisexuals, Travestis, Transsexuals and Intersex (ABGLT) was the first national LGBTQ+ organization established in 1995, emerging from the confines of marginalized spaces to advocate for LGBTQ+ human rights openly (Facchini, 2002; Klein, 1999). Currently, ABGLT represents over 200 LGBTQ+ associations, groups, and organizations nationwide. In 1985, the Grupo Gay da Bahia (GGB) began documenting cases of homophobia in Brazil, highlighting the urgent need for policies addressing this issue. Several other LGBTQ+ organizations, groups and initiatives emerged, particularly to combat the HIV/AIDS epidemic, which had both positive and negative effects. On the one hand, it increased the visibility of LGBTQ+ issues in society. On the other hand, it reinforced the stigma associating gay individuals with the illness and furthered discrimination (Carrara, 2012; Vianna, Carrara, & Lacerda, 2008).

Despite ongoing socio-political challenges faced by LGBTQ+ individuals in Brazil, the federal executive branch, under the left-wing Workers’ Party (2003-2016), created opportunities for the LGBTQ+ movement to exert influence on policymaking. For example, in 2004, LGBTQ+ activism entered the realm of institutions as LGBTQ+ individuals assumed positions within the government. Although there were challenges in formulating and

implementing policies, the anti-homophobia policy, Brazil Without Homophobia, created in 2004, marked a turning point for LGBTQ+ political participation at the federal level (Irineu, 2014). This policy aimed to raise awareness and foster a more inclusive society for LGBTQ+ individuals, addressing education, healthcare, social security, employment, diversity, culture and public security (Conselho Nacional de Combate à Discriminação, 2004). This pivotal moment signaled the beginning of a more systematic strategy to queer the public policy process in Brazil.

In 2010, the National Council Against LGBTQ Discrimination (CNCD-LGBT) was established to strengthen LGBTQ+ policymaking in Brazil. The council comprised of representatives from various segments of the LGBTQ+ movement and members of the government (Alencar et al., 2012; Colling, 2012).

Unfortunately, the LGBTQ+ community in Brazil has faced significant political and social challenges in recent years. This period has been the overturning of several LGBTQ+ public policies, limited governmental resources allocated to LGBTQ projects and initiatives, and dehumanization of gay, lesbian, bisexual, travesties and transgender individuals through discriminatory practices (Corrêa et al., 2021; Facchini & França, 2020; Galego, 2022a). Consequently, dismantling LGBTQ+ policies created by the Ministry of Human Rights in Brazil has been revealed as “Potemkin policies”, indicating a pattern of policy manipulation by the political elite, particularly within the federal executive branch (Galego, 2023). Furthermore, despite the ineffectiveness of LGBTQ+ policies in Brazil, the process of queering public policy has taken place, highlighting the challenges involved within the three branches of government.

4. Institutions and the Making of Queer Public Policy: The three power branches.

According to the Federal Constitution, the process of policy and law-making in Brazil is a shared responsibility among different levels of government – Federal, State, Federal District and Municipal (Brasil, 1988). Consequently, state and municipal laws and policies must complement each other in an integrative process before national constitutional considerations. However, power division in Brazil increases the complexity of policymaking when the degree of power is unbalanced or contested between federal institutions. The executive and legislative branches play two roles in policymaking: the creation of political decisions and the power to veto decisions from both branches.

The legislative power consists of two chambers: the House of Representatives, with 513 members and the Senate, with 81 members, representing each state of the Union. The Congress monitors, grants, and approves executive decisions, such as the pluriannual budget, and government salaries. Specific legislative processes attributed to the legislative power include the deliberation of constitutional amendments, complementary laws, ordinances, delegated laws, provisional measures, legislative decrees, and resolutions (Brasil, 1988, p. 52). The mandate of a congress member varies for the House of Representatives, four years, and for the Senate, eight years.

The executive branch possesses various decision-making powers, often generating tensions with other branches, particularly the legislative. As the head of the executive, the president has the authority to issue executive decrees more swiftly than the legislative process. Consequently, there is a risk of Brazil being governed by decree, potentially undermining democratic processes (Reich, 2002). The executive branch is also responsible for creating, approving, and vetoing laws and appointing new justices to the Supreme Court and the heads of the army, navy and air forces, and other positions (Brasil, 1988, p. 59). The executive mandate is for four years. A candidate is only eligible for two consecutive mandates in this position.

The primary function of the judiciary branch is to safeguard the Constitution by monitoring the actions and inactions of the other powers. In cases of controversial interpretations of norms between judicial or public administration units, the Supreme Court renders decisions that are binding nationwide (Brasil, 1989, p. 71). In addition, the Court is responsible for adjudicating various legal cases admitted to the federal judiciary, such as *habeas corpus*, direct action of unconstitutionality (ADI), litigation, the mandate of injunction (MI), direct action of omission, and others (Brasil, 1988, p. 69). The Court consists of eleven justices selected and appointed by the president, subject to majority approval by the Senate. Unlike the U.S. Court, where justices have lifetime tenure, justices in Brazil retire at age 75.

Regarding queering public policy in Brazil, the legislative branch has never approved a law explicitly addressing LGBTQ+ issues. To compensate for the lack of legislative action, the federal executive and judiciary have implemented some policies to combat discrimination in Brazil. Moreover, by interpreting the Constitution, the Supreme Court has made decisions that have granted numerous human rights to socially and politically marginalized communities in Brazil. For instance, the Court ruled on same-sex marriage (2011-2013), ethnic-racial quotas for public university admissions (2012), emergency repairs in prisons (2015), termination of pregnancy up to three months in case of sexual abuse and life risk for the mother (2016),

criminalization of LGBTphobia (2019), blood donation by LGBTQ individuals (2020), and other cases (Barroso & Osorio, 2019; Rios-Figueroa & Taylor, 2006; Schulenberg, 2009). Additionally, the 2019 decision on the criminalization of LGBTphobia followed precedents at the state level, such as Law 3.406/2000 (May) in the state of Rio de Janeiro and, some months later, Federal District Law 2.615/2000 (Oct). However, unlike Rio de Janeiro, which implemented the anti-homophobia law in the same year of its creation, the Federal District had to wait almost two decades for a resolution to implement the law. The contradictions within the law in the Federal District reflect the government's inability to meet the LGBTQ+ community's demands for security in the federal capital area. Five other states also preceded the 2019 Supreme Court decision: São Paulo (Law 10.948/2001), Minas Gerais (Law 14.170/2002), Paraíba (Law 7.309/2003), Mato Grosso do Sul (Law 3.157/2005), and Maranhão (Law 8.444/2006).

5. Case Studies

The LGBTQ+ movement faced challenges and controversies while influencing policymaking in Brazil. This section explores two cases of queering public policy: Brazil Without Homophobia policy, created in 2004 by the federal executive, and the Supreme Federal Court's decision to criminalize LGBTphobia in 2019.

Queering public policy in the Brazilian context occurs through institutional, societal, and political mobilizations. The LGBTQ+ movement capitalized on various windows of opportunities to advance its agenda on the political agenda. Despite institutional constraints, the movement strategically maneuvered during the Workers' Party presidency with Lula da Silva and Dilma Rousseff (2003-2016) to increase visibility and implement relatively weak policies through executive decrees (Galego, 2023). However, the process of queering public policy created internal tensions among activists, policymakers, and academics involved in the policy process (Colling, 2018; Facchini & França, 2020). Conflicts arose from the definition of policy problems since the movement's representation was predominantly dominated by white gay males from the middle-class and educated segments of society (Interviewee A.8). This representation marginalized the needs of other segments within the LGBTQ+ community. As a result, different segments within the movement demanded a role in developing policies that address their specific needs, particularly in the health system, which had previously focused primarily on HIV/AIDS treatment for men-who-have-sex-with-men since the 1980s epidemic (Facchini, 2012).

The changes in the LGBTQ+ policy-making process and its queering aspects are observed through document analysis and semi-structured interviews with ten academics (A), eight activists (Act) and seven politicians (Poli) involved in these two policy processes in Brazil (for more information see Galego, 2022a, pp. 48–49).

a. <c> Case 1: Brazil Without Homophobia – 2004

Trigger: Since the enactment of the 1988 Constitution, anti-discrimination issues have been the driving force behind political mobilizations of the LGBTQ+ movement following the end of the dictatorship period (1964-1985) (Facchini, 2003). Subsequently, the fight against discrimination became the focal point of activists advocating for the rights of gay and lesbian individuals. The emergence of the HIV/AIDS epidemic brought homosexuality, previously considered a social taboo in Brazilian society, into the open discourse of the media, politicians, and the general population (Klein, 1999; Vianna et al., 2008). In response to exclusionary and negative connotations associating homosexuality with illness, the organized social movement began developing initiatives to challenge this perspective and disrupt societal norms, such as the Pride Parades – the first of which took place in Rio de Janeiro in 1995 (Caetano, Rodrigues, Nascimento, & Goulart, 2018). Aligned with the goals of the LGBTQ+, Brazil Without Homophobia policy aims to combat discrimination against LGBTQ+ people and promote human rights through ten critical areas of action: education, public security, health, employment, culture, youth, international relations, women, racism, and homophobia (Conselho Nacional de Combate à Discriminação, 2004).

Policy Actors: As identified by the National Council Against LGBT Discrimination (CNCD-LGBT), the main actors involved in the design of this policy were national LGBTQ+ associations, namely the Brazilian Association of Lesbians, Gays, Bisexuals, Travestis, Transsexuals and Intersex (ABGLT) and the National Transgender Association (ANTRA), along with 16 other organizations from various states. Additionally, politicians supported the program more passively, while some parliamentarians allocated budgets for its implementation at the state level. The Ministry of Health, during Lula da Silva's presidency, published the program document, although its implementation involved an inter-ministerial strategy primarily encompassing the ministries of education, health, justice, human rights, and the

presidency. Various civil society and non-governmental organizations collaborated on this policy implementation, including the Grupo Gay da Bahia (GGB), Grupo Somos, Asa Branca, Brazilian Association of Lesbians (ABL), and Grupo Dignidade.

Outcomes: The primary outcome, in this case, is the formulation of Brazil Without Homophobia policy by the LGBTQ+ movement, which was endorsed by the federal executive under the Lula da Silva government in 2004. Despite the challenges encountered during policy implementation, positive outcomes included integrating LGBTQ+ issues into state and municipal agendas through the program's implementation mechanisms. For instance, Reference Center's for LGBT Human Rights were established in state capitals and mid-sized cities, violence monitoring mechanisms were created to track incidents of LGBTphobia, and educational outreach efforts were undertaken, such as the establishment of the Centre of Sexuality Studies at Federal Universities (Colling, 2018; Feitosa, 2019; Irineu, 2014). Additionally, in 2008, Brazil hosted the first national LGBTQ+ conference organized by the government to address and promote LGBTQ+ policy issues.

Queering Process: During the 2002 general election campaign, the candidate of the Workers' Party, Lula da Silva, made a promise to engage more with social movements and provide them with the opportunity to be heard at the federal executive level if elected (Diniz & Oliveira, 2020). According to Interviewee Act.2, "as part of this agreement, certain social movements, including the LGBTQ+ movement, were strategically advised to maintain a low profile during the campaign to avoid potential electoral setbacks and counterreactions from the more conservative segments of the Brazil electorate". The understanding was that once Silva assumed office, the LGBTQ+ movement would receive attention, and a specific policy addressing their needs would be developed. However, during the initial year of the government, there was reluctance to address LGBTQ+ issues, which influenced the decisions made by ministers. As shared by an interviewee,

The turning point came in 2004 with the National Convention of LGBTQ+ People held in Manaus, Amazonas, where the federal government sent a delegate. At this event, the representative was pressured to deliver on the promises made, as failure to do so would result in the LGBTQ+ movement withdrawing its support for the president and reporting the matter to the Inter-American Court of Human Rights (Interviewee, A7).

Lobby efforts by the ABGLT in Congress since 1995, when Congresswoman Marta Suplicy introduced the first same-sex marriage bill, played a role in exerting pressure on the federal executive. The political influence of LGBTQ+ activists was primarily achieved through personal relationships with supportive politicians at the state level who later became elected to the federal Congress. Other forms of influence included advocacy, shaming, blaming, and bargaining with opposition lawmakers, although these attempts to pass LGBTQ+ bills through the legislative process were unsuccessful. According to some activists interviewed, in this case, the queering of public policy was a direct action taken by the LGBTQ+ movement. The movement drafted the policy content, consolidated the needs of different segments into the text of Brazil Without Homophobia program, defined the guidelines and objectives, and submitted the policy document to the government. Even though the policy document says the contrary, it was not a collaborative policy design, several problems related to its acceptance and implementation soon became apparent, such as budgetary issues, flaws in the implementation process, and a need for more adequate human resources for its execution (Irineu, 2014). Although the government publicly accepted the policy and acknowledged it as a government initiative, many ministers and secretariats hesitated to implement it under their portfolios (Junqueira, 2012). However, some ministries established specific secretariats to coordinate Brazil Without Homophobia program and promote awareness initiatives. As a result, some LGBTQ+ individuals were appointed to coordination positions. Historically, LGBTQ+ policies implemented during the democratic period only materialized when an LGBTQ+ person was present in the right place at the right time to advocate for the LGBTQ+ agenda. Incorporating activists into Silva's government opened new avenues for activism and potential influence for the LGBTQ+ movement (Pereira, 2020). Active involvement within the government was crucial for social movements to familiarize themselves with institutional norms, create better opportunities for including LGBTQ+ issues on the policy agenda, and demand improved service delivery that meets the needs of LGBTQ+ individuals.

b. <c> Case 2: Criminalization of LGBTphobia – 2019

Trigger: Like Brazil Without Homophobia policy, the motivation behind the criminalization of LGBTphobia arises from the escalating levels of violence targeting LGBTQ+ individuals in Brazil. According to reports from the Grupo Gay da Bahia, incidents of homophobic violence have been steadily increasing, with the pick

occurring in 2017 when 445 LGBTQ+ people were murdered in Brazil as hate crimes (Oliveira & Mott, 2020). Nevertheless, this policy process began in 2001, when Congresswoman Iara Bernardi introduced Bill 5.003/2001 to Congress. The bill aimed to amend Law 7.716/1989, which criminalizes discrimination based on “race, color, ethnicity, religion or nationality,” to include discrimination based on sexual orientation and gender identity. Thus, the anti-homophobia bill sought legal protection for LGBTQ+ individuals against physical, moral, and psychological violence.

Policy Actors: The key actors involved in the process of this bill include supportive politicians in Congress, activists, academics, lawyers, policy advisors, and bureaucrats working within the federal administration. The ABGLT significantly influenced the policy-making process and represented the LGBTQ+ movement at the national level in this case. Political parties played crucial roles at different stages of the policy process, either by impeding its approval or seeking alternative legal avenues for policymaking. For example, parliamentarians from the Workers’ Party contributed substantially by drafting the bill, supporting its content, and advocating for its approval in the Lower House. Another political party, Cidadania (formerly known as Partido Popular), played a crucial role by initiating a legal case in 2012, accusing Congress of neglecting the lives of LGBTQ+ people by failing to legislate any LGBTQ+ laws for more than three decades after democratization (Iotti, 2020). Under the Workers’ Party government (2003-2016), the federal executive branch also played a role in either advancing support for or using the bill as an exchange currency on negotiations and bargains in Congress (Galego, 2023; Mello, Avelar, & Maroja, 2012; Santos & Melo, 2018). Furthermore, individual lawyers and certain judges from the Supreme Federal Court played key roles in supporting the criminalization of LGBTphobia in 2019. Conversely, opposition actors, including fundamentalist and conservative religious organizations, politicians, and lawyers, consistently obstructed the bill’s approval in Congress. Despite their attempts, the opposition failed to influence the judges’ decisions during the court trial.

Outcomes: The criminalization of LGBTphobia occurred in 2019 through a judicial decision resulting from two legal cases brought before the Supreme Federal Court. The first case was the *Mandatory Injunction (MI 4733)* initiated in 2011 by ABGLT. The second case was the *Direct Action of Unconstitutionality by Omission (ADO 26)* initiated in 2012 by the political party Cidadania. Both legal cases accused Congress of

neglecting the human rights of LGBTQ+ individuals, as no LGBTQ+ bills introduced to the legislature had ever been approved. Consequently, the Court interpreted the Constitution and decided to criminalize LGBTphobia under the anti-racism Law 7.716/1989. This means that any verbal or physical discrimination against LGBTQ+ individuals based on their gender or sexual orientation is considered a crime in Brazil until Congress legislates on this matter (Galego, 2022a; Iotti, 2020; Rios & de Mello, 2020).

Queering Process: On June 13, 2019, the LGBTQ+ movement celebrated a significant milestone in criminalizing LGBTphobia. This victory resulted from a strategic influence mechanism developed over 18 years during the policy process. In this case, queering public policy occurred at various stages and moments through lobbying, advocacy, public demonstrations, expert reports on homophobic violence, the support of “friends of the Court”, and LGBTQ+ lawyers defending the case at the Supreme Court (Iotti, 2020). Such a collective action made the criminalization possible, even under a far-right government led by Jair Bolsonaro (2019-2022). Two key factors in this process were the lawyer who proposed the legal case and could justify them as constitutional, and the precedents set by the Court in recognizing LGBTQ+ rights in Brazil. These precedents include the recognition of same-sex couples as a family and the establishment of civil union (2011), the recognition of same-sex married (2013), the granting of rights for transgender people to change their social name on official documents without the requirement of physical surgery (2018), and allowance for LGBTQ+ individuals to donate blood (2020). In particular, the justices Celso de Melo and Edson Facchin, who served as rapporteurs for the case, played crucial roles in advancing the legal cases as constitutional matters. The scientific and legal support for the case endorsed the constitutionality of the judicial decision; however, it created tensions between federal institutions, with legislators claiming that their power was overpassed by the judiciary (Boldrini, 2019; Iotti, 2020; STF, 2019). Those opposing the criminalization used institutional mechanisms to block the bill’s approval since 2008, when an opportunity was missed in Congress due to a leak in the strategy devised by activists, policy advisors, and politicians. The leaked strategy was aimed at approving the bill during the last Congressional session of that year, after several negotiations between political parties, excluding religious fundamentalist opposition parliamentarians (Galego, 2022a). In this case, queering went beyond political

representation; it brought together the national media, public figures such as singers and actors, street mobilizations by the LGBTQ+ movement, supportive politicians, and judges in a collective effort to advocate for LGBTQ+ rights (Redação Spbancarios, 2019). Given the legislative branch's failure to fulfil its constitutional duties, the progressive judiciary in Brazil has become a venue for safeguarding the human rights of socially and politically marginalized individuals, including LGBTQ+ individuals, black people, indigenous people, prisoners, women, children, the homeless, and low-income individuals (Arguelhes & Ribeiro, 2017; Barroso & Osorio, 2019; Santiago Gomes da Silva, 2020).

6. Conclusion

Queering public policy is framed as a co-production process that involves the substantive participation of target groups in policymaking. It challenges the institutional barriers that separate LGBTQ+ individuals from policies that determine their rights and lives. With the advent of democracy in Brazil, social movements and non-governmental organizations gained prominence as policy actors, particularly during the presidency of the Workers' Party (2003-2016). However, even though the LGBTQ+ movement has employed various strategies since the HIV/AIDS epidemic in the 1980s to overcome institutional and social discrimination, and advance a human rights agenda, only in 2004 the first comprehensive LGBTQ+ policy was enacted by the federal executive.

a) Case Process Conclusions

This chapter aimed to uncover how the queering of the policy process occurred and the challenges encountered through the years of policymaking by analyzing two LGBTQ+ policy cases in Brazil. These queering processes are characterized by conflicts, partnerships, and collective and individual actions that bring LGBTQ+ needs to the forefront of the national policy agenda. Activists, politicians, judges, and public support have been key actors influencing policymaking in one of the most violent countries for LGBTQ+ individuals. Their influence takes place across different federal-level institutions.

Beginning in Congress after the democratization process in 1985, the LGBTQ movement attempted to lobby and advocate for anti-discrimination policies by engaging with members of Congress. However, conservative ideologies that lingered from the dictatorship period persisted during democracy and gained strength over the years, especially with the election of more fundamentalist religious politicians to Congress. As a result, the battle for

same-sex marriage has faced nearly three decades of “policy stability without effective policy” from the legislative branch (Schulenberg, 2009). Faced with numerous failures in influencing LGBTQ+ policymaking within a conservative legislative context, the federal executive implemented some palliative policies to compensate for the absence of laws protecting LGBTQ individuals. Still, these policies were often superficial or served as bargaining exchange currency between the executive and legislative branches when the latter opposed government projects. Such a dynamic makes LGBTQ+ policies merely Potemkin (Galego, 2023).

Consequently, the judiciary has emerged as the primary institution for advancing LGBTQ+ rights in Brazil and is often considered the “first and only legislative chamber” (Arguelhes & Ribeiro, 2017; Galego, 2022a). The rights granted to LGBTQ+ people in Brazil have predominantly resulted from judicial decisions starting in 2011, recognizing same-sex couples as having family status before the Constitution. Subsequently, same-sex marriage was legalized in 2013, followed by allowing transgender individuals to change their name and gender on official documents without requiring surgery in 2018. In 2019, the criminalization of LGBTphobia was celebrated after an 18-year policy process, and in 2020, LGBTQ+ individuals were allowed to donate blood. Queering public policy in Brazil was only made possible due to the judiciary’s progressive interpretation of the Constitution, which has granted rights to socially and politically marginalized citizens.

b) System Process Conclusions

This study of queering public policy highlights a systemic issue in the realm of public policy, specifically regarding the shifting of outcomes across different government branches (see Fig 1). When the legislative branch fails to produce effective policies, ad hoc executive measures are implemented instead, and the judicial branch achieves more favorable outcomes, there is a risk that the judicial may face two potential constraints: politicization and a reduction in authority. This occurs because the legislative branch may perceive its power as being overruled by the judiciary, leading to potential backlash. Furthermore, the tension between short-term outcomes and long-term sustainable outcomes poses a challenge for LGBTQ+ policies. Short-term outcomes, which aim to address the urgent needs of the LGBTQ+ community, are often swiftly achieved through executive and judicial decisions. However, they may lack stability and sustainability. On the other hand, long-term sustainable outcomes require a legislative approach for desired lasting impact.

Overall, queering public policy in Latin America remains an ongoing endeavor to achieve a more effective public administration and politics that meet the needs of LGBTQ+ citizens.

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