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UNDERSTANDING GENDER BACKLASH: SOUTHERN PERSPECTIVES

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Backlash and Counter-Backlash: Safeguarding Access to Legal Abortion in Brazil*

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Abstract This article addresses the backlash against reproductive rights during Jair Bolsonaro's government, focusing on access to legal abortions. Although access to abortion is quite restricted in Brazil, under Bolsonaro it was further curtailed through institutionalised spaces of power. This was met by counter-backlash actions, with an intensification of feminist activism in an attempt to secure an agenda of hard-won reproductive rights. To address this struggle for reproductive rights and against restrictions, we focus our analysis on the high-profile media case of an 11-year-old girl, pregnant after being raped.

Keywords backlash, counter-backlash, gender ideology, feminist movement, reproductive rights, abortion.

1 Introduction

In *Backlash: The Undeclared War Against Women*, Susan Faludi (1991) highlights the role of religious fundamentalism and the far right, which marked the Ronald Reagan years in government, in setting the grounds for the rise in counter-feminist actions and resistance to advancements made by women's movements. Much earlier, Simone de Beauvoir (1949) had already argued that women's rights achievements are always the first to be attacked in times of crisis. The words of Faludi and de Beauvoir strongly resonate with us when considering actions undertaken by the government of Jair Messias Bolsonaro to undermine women's reproductive rights in Brazil. Bolsonaro was elected and governed with the support of religious fundamentalist and far right groups, sustaining a conservative cultural agenda based on 'moral panic' claims. He also tried to enlarge his cadre of supporters by helping elect candidates of similar political views and who tended to

be against all types of abortion, for legislative positions at the municipal to federal levels.

Access to abortion is quite restricted in Brazil, with the current legislation allowing abortion only in three situations: when the pregnancy puts the woman's life in danger, or it results from a rape, and in the case of foetal anencephaly. Still, this limited legislation was threatened during Bolsonaro's government when governmental institutions and channels were mobilised to undermine access to legal abortion – even when the victims of rape were children.

This article looks at the backlash and counter-backlash instances regarding access to legal abortions in Brazil during the Bolsonaro government, focusing on the case of an 11-year-old girl, pregnant after being raped. We chose to look more closely at this case among several other instances in which access to legal abortion was blocked, as it gained national media attention and involved the executive, the legislative, and the judiciary branches of government, as well as significant mobilisation on the part of feminist groups and organisations. To better address the issues, our discussion is organised into four sections in addition to this introduction and the final considerations. Section 2 examines the historical trajectory of the Brazilian backlash. We then look, in section 3, at the issuance of ordinance 2.282/2020, which made access to legal abortion more difficult by requiring the involvement of police authorities. Section 4 moves on to the specific case of the 11-year-old girl who was restricted access to legal abortion. In section 5, before the conclusion, we explore the actions taken by health professionals to defend women's reproductive rights, and by feminist and women's movement activists, parliamentarians, and journalists to ensure compliance with legislation.

2 The historical course of the Brazilian backlash

Susan Faludi's work on backlash against women's rights is pathbreaking in bringing to light the continuous resistance and numerous attempts to 'undo' or boycott advancements in that direction. She looks at several examples of backlash during the Reagan years; however, she does not offer us a clear-cut conceptualisation of 'backlash', nor of 'counter-backlash'. As noted by Susana Araujo (2020: 1), following Faludi's discussions, 'the popular understanding of backlash refers to episodes of acute opposition that women's rights and feminist goals face, distinct to the constant misogyny part of the patriarchal system'. However, this phenomenon seems to be much more complex, and in need of deeper theorising.

In the last decades, women's presence in positions of political representation have not increased substantially in Brazil, yet feminist ideals and projects have gained legitimacy in political and social spheres. These ideals and projects have brought

important contributions, not only in terms of a change of values regarding women's place in society, but also towards building a more gender-equitable society (Sardenberg and Costa 2010; Soares *et al.* 1995). The Workers' Party administration, pushed by feminists in government and in civil society, opened new spaces for women in executive offices and for the women's rights agenda in governmental programmes. The creation of a Secretariat for Women, with the status of a ministry, was a cornerstone in developing specific policies for women and promoting the idea of and initiatives for gender mainstreaming in different ministries and other governmental spaces (although not always successfully). In this sense, the government led by the Workers' Party offered opportunity for feminists to push forward their policy agenda.

Although gaining political space in government is a way of advancing the possibility of building policies for women, it is a provisional and unstable condition for gaining power. The underlying capitalist and patriarchal system keeps trying to reinstate the status quo, which privileges (white) men's power. Mansbridge and Shames (2008) argue that backlash is the resistance of those in power to attempts to change the status quo. Through backlash those in control use coercive power in trying to regain lost or threatened power as capacity. In this sense we may see the coup against Dilma Rousseff in 2016 as an attempt by patriarchal actors to regain their lost (or perceived as lost) privileges, and as a turning point in terms of instituting a backlash against gender and minority rights.

The coup against Rousseff might be seen as an episode of backlash in itself, not only for deposing the first woman president of the country – several studies have shown its gender-based 'lashes' (see, for example, Rubim and Argolo 2018) – but also for marking the beginning of a shift in the political opportunity structures. In this shift, agents who benefited from the capitalist and patriarchal order, and who felt perhaps that their control was endangered, tried to reinstate their power as capacity and use the state apparatus to directly promote, or help promote, actions to counter gender equality.

With the rise of Bolsonaro to government we saw the strengthening of groups that fought against women's rights in general and reproductive rights in particular – as abortion is always the agenda that most strongly mobilises these actors. His cabinet was composed of rightist military figures, such as in the Ministry of Health, as well as representatives of fundamentalist evangelical sects, with religious pastors heading the Ministry for Women, Family and Human Rights, the Ministry of Education, and as the equivalent to the Attorney General. Bolsonaro also nominated two extremely conservative men, including one pastor, to the Supreme Judiciary Court. As such, Bolsonaro's government committed itself to persecuting marginalised social groups, with women being attacked through offensive, moralising

pronouncements, as well as through government actions (or inaction). Resources earmarked for policies to combat violence against women, for example, were barely used (Resende 2022). On legal abortion, in addition to dismantling services throughout the country, the Ministry of Health released a handbook distorting information on the subject, reinterpreting norms and the Brazilian Penal Code itself by wrongly stating that every abortion in Brazil was a crime (Collucci 2022). As Ann Cudd observes, 'although a mean-spirited or punitive attitude is not necessary for a series of events to constitute backlash, it is sufficient when combined with some rolling back of past progressive gains, even if that does not make for greater overall oppression' (2002: 11). Nonetheless, as Cudd further adds, 'a punitive attitude indicates an intention on the part of a social group to deny another social group social progress' (*ibid.*: 12).

In this sense, gender backlash might be considered as those patriarchally based reactions against the advancement of gender equality and women's rights, with the intent to keep the patriarchal power structure. In turn, it provokes reactions to counter the backlash. The strength and success of these countering backlash reactions will depend not only on the intensity of the backlash in question, but also on the strength and capacity of the existing women's and feminist movements.

Bolsonaro was elected in October 2018 with 55.13 per cent of the valid votes (Brazil 2018). In his first speech at the National Congress, he stated that he would 'unite the people, value the family, respect religions and our Judeo-Christian tradition, fight gender ideology, conserving our values' (UOL 2019). As mentioned by Kováts and Pöim (2015), the fight against 'gender ideology' was the 'symbolic glue' essential for the broad recognition of the masses and the suture of all the social, moral, and political dissatisfaction of the Brazilian population, to render their support to the 'new' project that was being developed with Bolsonaro.

The policy on legal abortion became a priority target of the far right and mobilised actors both in institutions and civil society. In the former, offensive actions came mainly from parliamentarians who, through the initiatives of bills, made the fight against abortion their battlefield. In the federal government, in addition to discursive opposition from authorities and even the President, the reaction was seen through the reduction of governmental spending and discontinuity of services. Brazil even became a world actor in relation to countering the reproductive rights agenda, by signing, alongside 31 other countries, the so-called 'Geneva Consensus Declaration', in which the role of the family is emphasised, and abortion is opposed to the idea of 'protecting the right to life' (Brazil 2022).

Despite being at a substantial disadvantage in terms of resources and representation, Brazilian feminists have actively fought for

sexual and reproductive rights. Widely known as one of the best organised feminist movements in Latin America (Sardenberg and Costa 2014), Brazilian feminists have used an array of strategic actions, from protest marches to occupations of bureaucratic spaces, as well as using various media channels to defend women's reproductive rights, which will be discussed in the next sections.

3 Abortion law in Brazil

There is an average of over 600,000 'illegal' abortions performed in clandestine clinics or at home, in unsafe conditions, throughout Brazil each year. They are one of the major causes of maternal mortality in the country, particularly among poor, black, young women living in the periphery of the major cities.⁸

Despite the permission provided for abortion in the Penal Code – a very restrictive one, as mentioned above – until 1999 there were no regulations on legal abortion services in the country. This was finally enacted through a Ministry of Health document, later revised in 2005 and 2012 (Brazil 2012). A survey by Alberto Madeiro and Débora Diniz, carried out in 2016, demonstrated the positive impacts of abortion service regulation for fulfilling the law: the bureaucratic demands made for performing abortions decreased, including the previous requirement for a police report in cases where the pregnancy resulted from rape. While in 2005, 70 per cent of hospitals applied this prerequisite, in 2016 only 14 per cent of them did (Madeiro and Diniz 2016).

This scenario changed in 2020, when the government issued ordinance 2.282/2020 establishing as 'mandatory the notification to the police authority by doctors, other health professionals or those responsible for the health establishment that welcomed the patient in cases where there are indications or confirmation of the crime of rape' (Brazil 2020). The document also mandated that information on the risks of the abortion procedure should be given – but did not require warnings about the risks of carrying out an unwanted pregnancy, whether physical or psychological, especially for minors whose bodies are still developing. Worse still, it established that pregnant women should be offered an ultrasound to visualise the embryo before the procedure was performed, causing further emotional stress and potential regret.

Reaction to the ordinance was immediate among feminists, health professionals supportive of reproductive rights, and the progressive field in general. Open letters were published to sensitise public opinion. Political parties on the left and centre-left argued before the Supreme Court that the ordinance was a violation of fundamental precepts of the Constitution. In the National Congress, a 'Note of repudiation to the Ministry of Health's ordinance that imposes obstacles to carrying out the procedure provided for in the law of termination of pregnancy in cases of rape' was presented with the support of 333 civil society

organisations and social movements (Abrasco 2022). In the document, the National Congress was urged to halt the effect of the ordinance.

The Minister of Health was then called to the National Congress to explain the measure. The invitation came from opposition parliamentarians, especially those linked to leftist parties. As a result of pressure, a month after the ordinance's publication, it was partially revoked, removing the obligation to notify the police for a procedure to be carried out. However, the need to report a possible crime of rape and to preserve evidence was kept in the ordinance (Senado 2020). The outrageous suggestion to have an ultrasound to visualise the embryo was removed from the text.

4 Case study: the pregnant 11-year-old girl from Santa Catarina state

In May 2022, a girl, 22 weeks pregnant after being raped, was taken by her mother to a hospital in her state capital to have an abortion. The choice of Federal University of Santa Catarina Hospital did not happen by chance, but was the result of a referral by the local children's services council,⁹ as it is a public hospital accredited to perform legal abortions. From then on, a series of rights violations and illegal procedures followed in the conduct of the case regarding legal abortion regulations involving state authorities and agents. The case made headlines across the country's main newspapers and mobilised groups both for and against abortion.

The first breach of the law came from the medical staff. Hospital staff refused to go ahead with the procedure, providing as justification the fact that the child's 22-week gestation exceeded the legal term for performing an abortion. The Brazilian Penal Code, however, does not impose any time limitation on termination of pregnancies for victims of sexual violence.

The family was left with no alternative but to resort to the law. In court, the situation took on even more abstruse and violent contours. While the mother was fighting for the right of her child to have the abortion, the prosecutor in the case, Mirela Dutra Alberton, from the Prosecutor's Office of Santa Catarina, filed an injunction requesting that the girl be institutionally housed in a shelter for minors. She justified her action by arguing the child needed protection from the perpetrator of the rape. However, her actions suggested that the intention was to remove her from her mother's care to prevent the abortion from happening, and so allow the pregnancy to continue. With the girl in the shelter, the case began to be judged in the State Court of Justice by Judge Joana Zimmer.¹⁰

In the court hearing, the judge and prosecutor interrogated the mother and child at length, trying to convince them to continue with the pregnancy and to place the baby for adoption.

'Would you bear to keep it a little longer?', Judge Joana Zimmer asked the child, who remained silent. The judge even asked if she would like to choose a name for the baby, if she felt the baby move in her belly, if she would like to see the baby at birth, and if the 'father' (the rapist) would agree with the delivery for adoption. Trying to gain sympathy, the judge asked if the child would like to ask for something, 'a birthday present perhaps?' (Intercept Brasil 2022), as her 11th birthday was coming up. The prosecutor was even more emphatic in her persuasion tactics to induce the child to accept the continuation of the pregnancy:

Your baby is already complete, it is already a human being, can you understand that?... Instead of letting him be born and taking him out of your belly in agony, because that's what happens... Brazil does not agree with euthanasia. He will be born crying and medicine will be given for him to die; he's going to die in agony... We take him out, give him all the medical support he needs and hand him over to a couple for adoption. (*ibid.*)

The mother, who was in a state of stress and crying, seeing her child's rights being denied, said that the child did not understand what they were asking of her and begged to let her daughter be cared for by her at home. 'I'll do whatever you want, but let me take care of my daughter', she implored (*ibid.*). However, Judge Joana Zimmer was steadfast in her decision to keep the child in the shelter. This decision came despite a court ruling authorising the termination of the pregnancy. The girl ended up spending more than a month in the shelter, away from her family and without going to school.

The content and details of this hearing became widely known through a clandestine recording that was given to the press when the child was almost 29 weeks pregnant. Intercept Brasil (2022) was the first outlet to publicise the case on its YouTube channel, linked to a report that provided details, carried out in partnership with the feminist news agency Portal Catarinas. The case was widely covered by the traditional media, and on social media there were campaigns and informal group coordination that sought to denounce the abuses committed by the courts, finally enabling the child to return home and have the abortion, as originally intended by the family and the girl.

President Bolsonaro commented on the case through direct statements made to his supporters, interviews, and tweets (O Globo 2022a). As abortion tends to be a particularly hot topic during elections, he tried to take political advantage of the situation, using it to mobilise public opinion against his main opponent in the presidential race, Luiz Inácio Lula da Silva (who had on another occasion argued that abortion was a matter of public health), stating that those who defended the girl's right to abortion were the same ones who favoured the Landless Workers

Movement, who were against freedom of expression, and who intended to impose a dictatorship in Brazil (Holanda 2022).

The abortion was finally performed on 22 June 2022, when the child was almost 29 weeks pregnant (Albuquerque 2022a), with the mother's permission and a recommendation by the Federal Public Ministry (Ministerio Publico Federal, MPF) for the University Hospital to go ahead with the procedure (Albuquerque 2022b). The MPF also launched a civil inquiry to investigate the hospital's role in the case, after having previously refused to do so. As expected, the Minister of Women, Family and Human Rights at the time, Cristiane Britto, made a statement calling the allegations in the press about the case 'criminal' (O Globo 2022b). She also called for an investigation (Oliveira 2022) against the medical team that performed the abortion.

This case also exposed a conflict within the justice system. While the Court of Justice, in alliance with the State Prosecutor's Office, acted effectively to maintain the pregnancy through the actions of the judge and the prosecutor in the case, the Federal Public Prosecutor's Office sided with the law, effectively enabling the abortion to be carried out. Within the judicial system itself, there was an investigation of the judge's conduct (Albuquerque 2022c). One of the National Justice Council advisors declared to the press that the judge and prosecutor's actions represented serious state violence against the girl's rights.

5 Counter-backlash movements

In protest at the Bolsonaroista offensive on legal abortion and gender-based sexual violence in Brazil, feminists occupied the National Congress on 13 July 2022, with the support of left and centre-left feminist congresswomen. The 'Occupy Congress for the Lives of Women, Girls, and People Who Gest' resulted from a feminist alliance between social movement activists and parliamentarians. It was a moment of political confrontation (McAdam, Tarrow and Tilly 2009) against the government, through repertoires (Abers, Serafim and Tatagiba 2014) of collective action, such as occupations, protests, and institutional activism through bureaucratic channels. As such, the political confrontation took place in several different arenas of power, which goes in line with the mobilising dynamics usually employed by Brazilian feminists (Costa 2005; Bezerra 2014).

Brazilian feminists have strategically framed resistance to female rights to legal abortion as sexual violence. The Anti-Racist Feminist Parliamentary Front with Popular Participation (Frente Parlamentar Feminista Anti-Racista com Participação Popular), at the time chaired by Federal Congresswoman Talria Petrone (Socialism and Freedom Party (Partido Socialismo e Liberdade-Rio de Janeiro, PSOL-RJ)), together with the National Front Against the Criminalisation of Women and for the Legalisation of Abortion, organised the 'Occupy Congress

for the Lives of Women, Girls, and People who Gest' action. This agenda proposed a dialogue between feminist organisations and congresspeople on care actions and coping with sexual violence against girls, women, and people with a uterus. Another important nexus of struggle in this collective action revolved around guaranteeing access to abortion in those cases allowed for by law in Brazil.

The occupation of the National Congress aimed, in addition to opening a dialogue with national parliamentarians, to bar an honourable mention for the judge who denied the girl from Santa Catarina an abortion. The honourable mention was overthrown both by the presence of the movements, and because the government had other priorities at the time.

The occupation supported dialogue and coordination between feminist movements in favour of abortion, and opened the way for closer relationships and networking between them and parliamentarians. The final result was positive in the sense that it created a space for reconnecting and making it possible to work together again, face-to-face, after a long period of profound isolation due to the Covid-19 pandemic.

6 Final considerations

The case of the 11-year-old girl described above gained national coverage in both the traditional and alternative media, generating popular commotion and the mobilisation of actors in favour of and against abortion, including social movements, arts performers (O Globo 2022c), parliamentarians, and the judiciary. While those in favour defended the existing abortion legislation, those against argued for the right to 'life' of the unborn foetus, and they had as supporters high-profile authorities such as government ministers and the President of the Republic.

The dissemination of the video of the hearing by a feminist alternative news agency, Portal Catarinas, was fundamental to expanding support for the child and her mother for the abortion. The judge and prosecutor's coercive behaviours were framed as 'torture' by feminists and their allies in the media. This framing of the judiciary's performance also contributed to expanding support, thus generating pressure for the resolution of the case. A campaign entitled 'Children are not Mothers' also had repercussions on social networks (Gabriel 2022).

We believe that the 'action and reaction' movements discussed here constitute a good illustration of how the intensification of the backlash against sexual and reproductive rights during Bolsonaro's government was matched by countering backlash articulated by Brazilian feminists and their supporters. From day one, resistance was present, and in every action mentioned in this article, different sectors of civil society, especially feminist movements, but also agents from inside the state, such as the

judiciary and feminist parliamentarians, were able to pushback on Bolsonaro's propositions. The ordinance was partially revoked, the 11-year-old had her right to abortion secured, and the proposed honourable mention in National Congress for the judge who denied the girl from Santa Catarina an abortion was barred.

It is also worth mentioning that, under pressure from the feminist and women's movements, one of the first pronouncements of Luiz Inácio Lula da Silva's government, elected in October 2022, was the revocation of the previously mentioned handbook from the Ministry of Health, as well as Brazil's withdrawal from the so-called 'Geneva Consensus Declaration', resuming, in global spaces, particularly at the UN, its position in defence of women's sexual and reproductive rights. This position was confirmed by the representative of the new Ministry of Women, Carmen Foro, at the 67th session of the Commission on the Status of Women (CSW), held in March 2023, with the Brazilian mission taking a stand alongside progressive governments.

Notes

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- 8 This is one of the reasons why black women's movements prefer to use the expression 'reproductive justice' instead of 'reproductive rights' (Brandão and Cabral 2021).
- 9 When children and teenagers are victims of rape, they are directed first to these councils – the local '*conselhos tutelares*' – that provide assistance, including referrals for pregnancy terminations and police reports. As such, the police played no role in this case.
- 10 In Brazil, to become a prosecutor or a judge it is necessary to take and pass a civil service examination.

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