

“How Relevant Are Legislatures? Sexual Diversity Politics and Political Institutions in Brazil”

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ABSTRACT

The study of social movements in Latin America has often focused on movement organizations and their role in the development of an alternative, more democratic political space. More recently, a number of studies have explored the relationship between social movements and the State in the democratizing polities in the region. Partly due to the general discredit of legislatures in Latin America and to the common imbalance of power *vis-à-vis* the executive, little attention has been given to the relationship between social movements and legislatures. This paper examines the interaction of the gay, lesbian and *travesti* (GLT) movement in Brazil and legislatures, both at the federal and state level (Rio de Janeiro and Bahia states). It demonstrates that, despite significant institutional constraints on the action of legislators, GLT activists have sought alliances and have pressured state and federal deputies, at times successfully. Moreover, important victories, such as the passage of anti-discrimination legislation, have been achieved through an engagement with legislatures. This essay will argue that, despite important constraints and limitations (both endogenous and exogenous), legislatures can provide important paths for the inclusion of marginalized groups in Brazil. Factors such as the balance of power between the executive and legislative branches, the internal structure of the legislature and the ideological makeup of deputies help shape the degree to which sexual minorities are able to gain access to and influence over legislators, as well as the extent to which concrete victories result from this engagement.

The paths for the inclusion of marginalized groups are varied. A number of social movements organized to fight for this inclusion seek an autonomous line, avoiding too intimate a relationship with State actors and institutions, fearing the loss of their autonomy *vis-à-vis* the State. More mainstream political action, and a more direct engagement with State institutions and actors is only one of many possible strategies open to social movement organizations. While this diversity of social movement positions is found in the Brazilian gay, lesbian and *travesti* (GLT) movement, a large number of organizations fighting for the rights of GLTs engage with, to a greater or lesser extent, with mainstream political actors, such as political parties.

This paper will examine the engagement of the GLT movement with legislatures in Brazil, at the federal and state levels.¹ This discussion has a number of objectives: to analyze the level of access GLTs have to these institutions, as well as the degree of influence they are able to exert on legislators; to assess the more concrete impact of this access and influence and highlight the reasons why GLT activists engage with elected officials and use this as a strategy in the struggle for the inclusion of sexual minorities in the Brazilian polity.

After presenting some of the general characteristics of Executive-Legislative relations in Brazil, both at the federal and state levels, I will examine the engagement of the GLT movement with the Federal Chamber of Deputies, and the Rio and Bahia State Assemblies. A concluding section will underline some of the main elements of the role of legislatures in the struggle for the effective guarantee of rights for sexual minorities in Brazil as well as some of the limitations of that strategy. The paper will show that gays, lesbians and *travestis* have managed to gain recognition from elected officials as political actors, have been progressively making sexual diversity issues more visible in legislatures and, in some cases, successfully pushed for the approval of pro-GLT legislation.

While a relatively greater level of success has been achieved in the Executive branch, especially around HIV/AIDS related issues, legislatures have proven to be an important actor in the process of inclusion of sexual minorities in Brazil. There is, however, variation across regions and level of government. Two factors are important in explaining that variation: the institutional balance of power between the legislative and executive branches and the general ideological composition of the legislative house. The latter affects the number of supportive allies the GLT movement is likely to find among elected officials, and the former how far (in terms of legislative output) that support is likely to go. Even in cases where allied deputies exist, for example, if the legislature is virtually powerless and does not control its own legislative agenda, protective legislation is unlikely to be enacted. At the federal level, while pro-GLT legislation has not been produced up until the time of this writing, the GLT movement has built strong linkages with a number of deputies and has grown increasingly visible within that institution. Greater diffusion of information regarding sexual diversity issues, an effort to build stronger alliances with federal deputies and joint activities with executive-branch agencies all contribute to this development. At the more local level, the two main factors mentioned above are also relevant. In the case of Rio de Janeiro state, a legislature that is relatively strong *vis-à-vis* the executive and is internally decentralized allows for deputies

¹ The focus of the discussion of the engagement with state-level institutions will be on Rio de Janeiro and Bahia states.

allied to the GLT movement to have a greater impact in the struggle for rights and for inclusion of sexual minorities. Moreover, the Rio de Janeiro State Assembly has historically had a relatively large amount of centrist and leftist deputies, leading to a more propitious environment for the acceptance of sexual diversity. In the case of Bahia, both factors have a negative effect on the process of inclusion of GLTs. A very weak legislature, more hierarchically organized internally, and dominated by deputies linked to the right-wing oligarchy lead to virtually no significant gain and little visibility of the GLT movement in the Bahia State Assembly.

Executive and Legislature in the Brazilian Political System

The structure and main characteristics of the institutional context in which social movement actors are embedded have significant effects on the type of obstacles and opportunities they face, as well as on strategies they may pursue. The balance of power between executive and legislatures, for example, affects the process of inclusion of marginalized groups in important ways. That distribution of power affects the level of access marginalized groups have to elected official and public bureaucrats, as well as the degree of influence these groups have on politicians and public officials. And even in cases where groups have access to allies in the State machinery, the likelihood that something concrete emerges from that relationship is strongly influenced by the relative strength of different State institutions.

The pattern of engagement between the GLT movement and the State is obviously affected by the objectives of activists. At different points in that interaction, leaders may be more interested in the development and implementation of public policies with the executive rather than in pressuring legislators to draft protective legislation. Given the general concentration of power in the hands of the executive and the numerous difficulties of implementing human rights legislation in Brazil, it comes as no surprise that the movement seems to pay greater attention to the executive branch. This point, however, should not be overemphasized since, as will be seen below, legislation and other benefits that stem from an engagement with legislatures are also seen as important and valuable to the GLT movement. Moreover, certain issues fall under sub-national jurisdiction, helping define the focus and target of movement pressure. Issues involving police forces and public security, for example, fall under state-level responsibility.

This section will examine in greater detail the main characteristics of the institutional context in which the interaction between the GLT movement and legislatures takes place. While in general the executive holds the upper hand in the balance of power between executive and legislatures, there is some variation across different states and municipalities. In addition, the internal organization of the legislatures is an important variable, since it affects the ability of allied legislators to make a concrete contribution to the inclusion of marginalized groups.

Federal Level

Executive decree authority

A number of contributions to the literature on the democratization process in Latin America have examined the balance of power between the executive and the legislative branches of power in these democratizing polities. An emerging part of this

literature has focused its attention on the characteristics of executive decree authority in different political systems. The majority position emphasizes the growing concentration of power in the hands of the executive, particularly, in presidential systems, in the hands of the president, as made clear by the frequent use of presidential decree power in a number of Latin American countries.

Following the transition to civilian rule in 1985, the National Congress (the Chamber of Deputies and the Federal Senate) elected in 1986 simultaneously sat as a National Constituent Assembly and was responsible for drafting a new Constitution. Despite the existence of a strong anti-authoritarian bias among a large number of legislators that would have preferred to remove any type of decree power from the hands of the executive, the tumultuous and heavily politicized Constitution-writing process resulted in the maintenance of decree power in hands of the president (Power 1998). Article 62 of the new constitution granted the president the power to issue “provisional measures” with the force of law in cases of “relevance and urgency,” indicating that provisional measures not examined by Congress within 30 days would expire and lose their force. Early in the post-1988 order, important precedents were set which tilted the balance of power in favour of the executive. President Sarney and future presidents interpreted “relevance and urgency” quite broadly, issuing decrees on a wide range of policy areas. Also importantly, since article 62 of the Constitution was silent in regards to what the president could do in the case of an expired decree, presidents proceeded to continuously re-issue provisional measures that failed to be examined by Congress within the thirty-day period. Given the very high number of provisional measures being issued, an immense backlog was created, forcing Congress to spend a significant amount of its time reviewing decrees originating in the executive. As Table 1 shows, the number of provisional measures issued increased significantly during the 1990s. It is important to note the increasingly high level of re-issued decrees, which showed a steep increase throughout the period. Ultimately, the sheer volume of provisional measures arriving in Congress, be they original or re-issued ones, created a tremendous backlog in Congress, crowding out the legislature’s own agenda.

TABLE 1 HERE

A constitutional amendment passed in September 2001 instituted some important changes in regards to the use of provisional measures. According to the new rules, presidents are not allowed to re-issue a lapsed provisional measure.² Moreover, certain limits were imposed in regard to the issues provisional measures cover. A new time limit was established for Congress to analyze a decree, from 30 to 60 days. Importantly, however, if Congress has not voted on a provisional measure within 45 days, it moves to the top of the legislative agenda, locking it in place until the decree is analyzed. As can be seen in Table 1, while the new rules greatly improved the overall volume of decrees arriving in Congress, the issuing of original provisional measures has not subsided, and the Federal Congress’ agenda remains deeply affected by executive initiative.

The effect of executive decree power on the legislature’s agenda

² At least not until a new legislature is elected.

Regardless of the motivation behind the use of decree power by Brazilian presidents since 1988, this behaviour has had important consequences for executive-legislative relations. As mentioned earlier, the volume of provisional measures arriving in Congress has created an immense backlog that often constrains any autonomous action by Congress. Many bills presented by legislators in favour of marginalized groups do not survive the slow legislative process that bills originating within the legislature face and the few that do survive have the additional battle of reaching the top of the Congressional agenda.

Other powers given to the Brazilian executive by the 1988 Constitution further exacerbate this problem. Not only does the executive have the power to issue provisional measures, it also possesses veto power (both total and partial), agenda powers (requesting urgency in the examination of executive bills) and exclusive legislative powers in certain areas (such as taxation and the budget) (Mainwaring 1997; Figueiredo and Limongi 2003). This combination of powers in the hands of the executive leads to a strong bias in the production of legislation. As can be seen in Table 2, on average, since 1989, over three quarters of laws approved at the federal level were initiated by the executive.

TABLE 2 HERE

The constrained but important role of the federal legislature

This does not mean, however, that presidents can rule without constraint, independent of support from the legislature, nor that the Brazilian Congress is completely powerless. A number of executive initiatives never reach Congress, if the president feels there will be significant opposition among legislators; among those that do arrive in Congress, many are never voted on and face long delays; and “[little] gets through the Congress without substantive concessions to individuals, to narrow economic interests, or to the states” (Ames 2002: 190). In other words, the executive cannot simply govern past Congress, without some level of support. Even though presidents can wield significant power and effectively dominate the legislative agenda, the legislature can (and quite often does) amend executive bills and decrees, at times significantly. While certain limits have been imposed throughout the 1990s, deputies (especially collectively in state delegations) and legislative committees are active in presenting amendments to the budget bill introduced by the executive (Samuels 2002). Moreover, while the president possesses veto powers, Congress has the power to override them with a majority of votes from both Houses. So, while not performing as “proactive” a role as the US Congress, the Brazilian Congress (as other Latin American legislatures, such as Argentina’s) has an important role in the political process, albeit a reactive one (Morgenstern 2002).

As pointed out by a number of scholars, the Brazilian political party system is highly fragmented, with a consistently high number of parties represented in Congress, many of which have weak discipline and no clear programmatic basis.³ Consequently, since 1988 no president has enjoyed a Congressional majority from his party. The constant condition of minority presidentialism raises important challenges to the exercise of power by the executive (Mainwaring 1997). Brazilian presidents have had to resort to

³ This situation is caused by a combination of factors, including the characteristics of the electoral system (an open-list proportional representation system, with state-wide districts), as well as the pervasiveness and strength of personalism and parochial interests over partisan ones (Mainwaring 1995; 1999; Ames 2001).

a number of strategies, including the use of cabinet appointments as a tool to build support of the Congressional party coalition, and the distribution of pork among allied legislators (Amorim Neto 2002; Ames 2002). These continuous efforts highlight the importance of support from the legislature to the executive's governing agenda and, indirectly, underscore the legislature's (reactive) powers.

Another important point has to do with the type of legislation the federal Congress tends to pass. While its agenda is, as discussed above, limited by executive initiative, it is interesting to examine the main characteristics of its own (limited) agenda. In an examination of 336 laws authored by parliamentarians between 1985 and 1999, Octávio Amorim Neto and Fabiano Santos (2002) note that the legislative production of Congress is eminently national in scope, in contrast with the commonly-held view that parliamentarians' actions are mostly parochial in nature.⁴ The largely predominant type of legislation initiated by deputies in the federal Congress seems to focus on social-national questions (such as legal codes, minimum salary, education, health, security and rights of minorities), followed by economic-national issues (rents, interest rates, financial issues) and political-national ones (mainly regulation of elections) (Amorim Neto and Santos 2002: 105). Since most provisional measures are concentrated on areas such as the administration of the executive branch and implementation of anti-inflationary and economic liberalization policies (Power 1998: 214), a rough "division of labour" emerges in the relationship between the executive and legislative branches in Brazil (Figueiredo and Limongi 2001: 106-107). This division is relevant to the strategies of social movements as they engage with and attempt to gain influence over different State institutions. In the case of gays and lesbians, it points to a *potential* space for advancement in the federal Congress, given its higher legislative production related to social issues.

Internal structure of the federal Chamber of Deputies

The internal structure of the legislature also has an impact on the opportunities open to the GLT movement. The federal Chamber of Deputies is characterized by a concentration of power in the hands of the *Mesa Diretora* (a "Directing Board") presided by the Chamber President (who tends to be the president of the major party in Congress) and assisted by the *Colégio de Líderes* (a group formed by leaders of parties commanding at least 1.0 percent of seats in the Chamber), who control the agenda-setting process within the House. Political parties and the size of their delegations have thus an important role in determining who controls the internal functioning of the Chamber of Deputies. Furthermore, the allocation of seats to Congressional committees is also based on the size of party delegations. The likelihood of advancement of demands from groups in society, therefore, is affected by the extent to which larger Congressional parties and party leaders are willing to push those demands forward. Given the concentration of power within the Chamber, individual deputies have limited capability to successfully push for legislative change.

Other dynamics co-exist with the partisan one. David Samuels (2002; 2003) has demonstrated that the political ambition of a great number of deputies does not, in

⁴ It should be mentioned, however, that the authors also indicate that parochial interests do manifest themselves more strongly through other kinds of initiatives put forth by deputies and senators (such as "legislative decrees" and "Senate resolutions").

contrast to the US Congress, lead them to seek re-election to the federal legislature. A great number of federal deputies vie for (especially executive) positions at the local (especially state) level. Thus, federalism, the power of state-level interests, and deputies' political ambitions help increase the importance and strength of state delegations. Parties, therefore, do not solely dictate the internal dynamics in the Chamber of Deputies. Moreover, the budgetary process and the composition of the parliamentary budgetary committee also help strengthen state-based interests in Congress (Samuels 2002). This situation affects the relationship between social movements and parliamentarians. For groups whose constituents are spread across the country and who need to build broad support in Congress, a "federalized" strategy that seeks to pressure deputies from various states is potentially very fruitful. Since deputies give a lot of attention to demands coming from their home state, they are more likely to be more accessible there. Alternatively, a concentration of pressure on deputies from a single state can be used when the group seeks gains by including its demands in that state delegation's agenda.⁵

Given the dominance of the executive (due to its many powers discussed above), the concentration of agenda-setting and decision-making power in the *Mesa Diretora*, and the subnational-oriented political ambition of many federal deputies, other institutions such as Congressional Committees are not seen as very important by many legislators (Samuels 2003: 44-45; Pereira and Mueller 2000). Compared to the US Congress, for example, committees have little power in the Brazilian Chamber of Deputies. Still, they can approve, amend, reject or present substitutes for bills that are presented to it, before these bills are sent to the floor to be voted on by the whole Chamber (Amorim Neto, Cox, and McCubbins 2003: 557-558). Moreover, deputies are less likely than their American counterparts to seek to specialize in a policy area (*e.g.*, human rights), partly due to these differences in the institutional framework. Nevertheless, it should be noted, some deputies, especially from leftist parties, do build a career around their activism in a specific area; and despite their relative weakness, committees do play an informational role in Congress, helping reduce uncertainty regarding bills (Pereira and Mueller 2000).

Federal deputies also organize themselves in informal *bancadas* (groups of deputies representing a specific group's interest) and parliamentary fronts.⁶ Informal groups of deputies act together as a *bancada* to push for the interests of groups such as landowners, Evangelical churches and other corporatist interests. The size and level of coordination and organization among these various groups is quite varied, but they are often important actors in the parliamentary game. More formally, deputies may create parliamentary fronts to push forward demands and interests of a specific cause. Some examples include parliamentary fronts for environmentalists, against racial discrimination, for the Centre-West region, against cancer, for consumer protection, among many others. In late 2003, a Parliamentary Front for the Freedom of Sexual

⁵ It is also important to keep in mind that less-populated states in the North and Centre-West regions are greatly over-represented in Congress. Not only does Brazil have one of the greatest degrees of over-representation of those states in the upper house (Senate) if compared with countries such as Argentina and the US, but this imbalance is carried over to the lower house (Chamber of Deputies) as well (Stepan 1999: 24-26). Seeking support from deputies from smaller states, therefore, is not irrelevant, as many of these are over-represented in Congress.

⁶ While technically a *bancada* refers to a party's contingent in Congress, the term is often used to refer to a state's delegation or to an informal grouping of deputies representing a specific set of interests.

Expression was created to defend the interests of sexual minorities in Congress.⁷ Given all the constraints explored in this section, however, most *bancadas* and parliamentary fronts normally have very little chance of effecting real change. Nevertheless, they often perform an important function of increasing the visibility of certain issues as well as of diffusing information regarding these subjects.

State level⁸

Similarities with the federal level

The general characteristics of executive-legislative relations at the state level in Brazil show signs of both diversity and convergence (Santos 2001b). Most of the state constitutions were written around 1990 and were heavily influenced by the Federal Constitution established in 1988. In general, therefore, we observe some similarities between the federal executive-legislative relationship and state executive-legislative interactions, such as an imbalance towards the executive, in the figure of the governor. One author has characterized the domination of state-level politics by governors as a type of “ultra-presidentialism” (Abrucio 1998). Importantly, however, most states do not provide their governors with a constitutional decree authority (the ability to issue provisional measures).⁹ Nevertheless, governors are able to dominate the legislative agenda, as they possess a number of other tools available to them, such as varying degrees of veto power, exclusivity in the introduction of certain types of bills (taxation, budgetary, administrative and financial issues) as well as the ability to request urgency in the analysis of legislative bills (Pereira 2001). In the end, a high degree of similarity exists with the federal level in terms of the success of the executive in passing its legislative agenda through the legislature (Figueiredo 2001).

Interestingly, as at the federal level, a certain “division of labour” exists in the legislative activity of the executive and that of the legislature at the state level. While executive-initiated legislation tends to regulate the administrative and economic spheres, laws that are initiated by the legislature tend to be, in the words of one author, more “clientelistic,” “low quality” and “non-relevant” (Figueiredo 2001: 10-11). Despite this common characterization, it is important to note that there is some space open for state assemblies to legislate on areas such as social issues and minority rights, not considered a priority in the executive’s legislative agenda. In addition to this, governors cannot simply dismiss state assemblies. While, as will be discussed below, there is significant variation in regards to this issue, state legislatures, at least formally, possess some reactive powers, such as the ability to override gubernatorial vetoes.¹⁰ Interestingly, state assemblies tend

⁷ A list of parliamentary fronts created since 2003 can be found at <http://www2.camara.gov.br/internet/deputados/frentes.html>.

⁸ Much less attention has been paid to executive-legislative relations at the state level in Brazil. The growing literature on institutional dynamics has concentrated on the federal level. Consequently, the following discussion is more tentative and limited than the preceding one.

⁹ In fact, only four of twenty-seven states give that power to the governor: Acre, Piauí, Santa Catarina and Tocantins (Pereira 2001).

¹⁰ This is exactly what happened in the Federal District in 2000, when the Legislative Assembly voted to override Governor Roriz’ veto on a piece of legislation regarding the protection of GLTs against discrimination. The executive, however, has not enabled the law (outlining which State agencies are

to make use of that prerogative more often than their counterparts in the federal Chamber of Deputies (Santos 2001b).

State-level variation: Rio de Janeiro

It is important to underline, however, that not all states mimic the federal model of executive-legislative relations. A closer look at the cases of Rio de Janeiro and Bahia states will make this point clearer. Compared to the federal level, the Rio de Janeiro State Assembly has significantly more autonomy and freedom to control its legislative agenda. Two important factors contribute to this situation. First, the governor does not, as mentioned earlier, possess the power to decree provisional measures. Secondly, she does not possess a monopoly in the introduction of bills regarding budgetary or taxation issues. Moreover, individual state legislators have significantly more room to maneuver than federal deputies, since power is more decentralized within the Rio State Assembly. There is no body equivalent to the federal Chamber of Deputies' *Colégio de Líderes*, and party leaders consequently have much less say in the determination of the legislative agenda. Consequently, individual state deputies have greater opportunities to influence and have more concrete input on the deliberations of the House (Santos 2001a: 173-175). Finally, the significantly higher level of electoral competitiveness in Rio de Janeiro state pushes deputies to pay more attention to defending the interests of the electorate in the Assembly.¹¹ Deputies are thus more likely to be more responsive to societal (electoral) pressures and demands. In some cases, candidates may choose to focus their campaigning on specific groups, establishing themselves in an electoral niche. Arguably, Carlos Minc, a Workers' Party (PT) state deputy and long-time defender of GLT rights in the Rio State Assembly, has done exactly that in regard to the gay community.¹²

A certain division of labour can also be observed between the governor and the assembly.¹³ In this, executive-legislative relations are similar to the federal level: while most of the governor's legislative agenda revolve around economic, financial and administrative issues, the Rio State Assembly's agenda is preeminently social. In the 1995-1998 period, close to 30% of approved bills emerging from the assembly involved the granting of "public utility" status to civil society organizations. While this type of legislation is often characterized as clientelistic, since it involves granting tax benefits to non-profit organizations, it is also an important tool to strengthen civil society by helping ensure the survivability of associations and organizations. Not surprisingly, a large number of these bills were presented by deputies from the Workers' Party, a party with strong linkages to social movements (Santos 2001a: 178). Moreover, legislation regarding minority rights accounted for nearly 10% of assembly-initiated legislation. Public security was also an area of intense activity for legislators, which may be

responsible for the enforcement of the legislation), as the governor remains opposed to it. Interview with former district deputy, Brasília, DF, March 17, 2003.

¹¹ For the 1998 elections, for example, while Rio had an average of 18.3 candidates per seat, Bahia had 6.7 (Santos 2001a: 170).

¹² Interview with GLT leader, Rio de Janeiro, RJ, August 28, 2003.

¹³ It should be noted that most of this discussion of the Rio State Assembly is based on observations of the 1995-1998 Legislature (Santos 2001a). While the specificities of the period (such as the economic and fiscal constraints facing the state at the time) may have influenced executive-legislative relations, I believe the general pattern holds for most of the post-1990 period.

accounted for by the prominence of public security issues in Rio de Janeiro (Santos 2001a: 177-178).

The institutional framework at the state-level in Rio de Janeiro, therefore, seems more conducive to the creation of opportunities for inclusion of marginalized groups. While situations where power is more concentrated (in the executive relative to the legislature and within the legislature itself) do not necessarily entail the impossibility of inclusion of marginalized groups, the greater decentralization of power found in Rio (if compared with the federal level and Bahia state) creates greater opportunities for that inclusion. This seems to be the case because marginalized groups have a greater number of access points to political actors with capability to bring about change, both in the executive and the legislature.

State-level variation: Bahia

Bahia state, on the other hand, seems to be a more “typical” case, showing greater similarities to federal-level patterns of executive-legislative relations.¹⁴ Individual legislators are less autonomous than in Rio to influence the legislative agenda for a number of reasons. While the executive lacks decree power, the local political elite headed by Antônio Carlos Magalhães from the Liberal Front Party (PFL) has dominated Bahia politics for the past few decades. That domination is also characterized by a very high level of *governismo* (support for the ruling government) among legislators in the Bahia State Assembly. Therefore, even if Bahia presented a more balanced relationship between executive and legislature, the informal (and formal) domination of the Magalhães political elite would ensure the effective control of the legislature by the executive.¹⁵ Virtually no legislation initiated by the Bahia state legislature is approved; the legislative agenda is almost completely dominated by the executive.¹⁶ In addition, closer to the situation at the federal level, the internal organization of the Bahia State Assembly is characterized by a greater concentration of power than the Rio legislature, reducing individual legislators’ agenda-setting powers.

GLT movement and legislatures

The engagement of the GLT movement with legislatures in Brazil has been somewhat difficult and has not always led to significant concrete results. Nevertheless, success should not be solely and narrowly defined as concrete pieces of legislation or effective public policy, a point I will return to in the conclusion. With that in mind, some openings and advancements become more evident. Moreover, as will be seen in the discussion below, there is an important degree of variation at different levels of government.

Several factors help clarify this complex picture. The balance of power between the executive and the legislature has an impact on how far the movement’s engagement

¹⁴ Much less information is available on the Bahia case. As mentioned earlier, studies of state-level institutional dynamics are scarce, and there is, to my knowledge, very little specific information on Bahia within that literature. For a few indicators comparing Bahia with other states see Pereira (2001).

¹⁵ This situation is similar to that of Mexico under the rule of the PRI, at least until 1997 (Cox and Morgenstern 2002).

¹⁶ Interviews with state deputies, Salvador, BA, October 16 and 21, 2003.

with elected deputies can take them. Often, given the inability of the legislature to set its own agenda, while GLTs may gain access to and even have influence over a group of deputies, the weakness of the legislative house frustrates the attempts to generate more concrete results. As the case of Rio will show, however, where executive and legislature are more balanced, more space is open for greater advancement. Personalism, the existence of allies and the ability of the movement to plug itself into these networks also play a role in explaining the outcome of this engagement. Finally, the partisan make-up of the legislature also seems to have an effect on the general level of openness of that institution to the pressures from the GLT movement.

Federal level

Absence of protective legislation and the Human Rights Committee

During the drafting of the 1988 Federal Constitution, the GLT movement attempted to include sexual orientation as one of the grounds for equal treatment in the constitutional text. The general political and partisan dynamics of the period, however, contributed to the failure of that initiative. Moreover, since then, different deputies have presented numerous constitutional amendments with similar objectives, but none has been successful. Finally, deputies have presented a number of bills addressing various demands put forward by the GLT movement, such as the creation of a civil union for same-sex partners and the criminalization of homophobic acts.¹⁷ Few of these bills, however, survive the intermediary stages of the legislative process, and of those that do, none has been successful in reaching the top of the legislative agenda.¹⁸ Given the difficulty of the Chamber of Deputies in controlling its own agenda, as we saw above, and the political marginality of sexual diversity issues at the level of the National Congress, it becomes clear that getting to a vote on one of these bills is a large challenge. Nevertheless, even when not successful, bills and constitutional amendments help increase the visibility of the issue as well as expose deputies to the debates in legislative committees.

While no specific legislation protecting sexual minorities has emerged from the national Congress as of the end of 2005, this silence also hides a growing level of interaction between movement leaders and federal deputies. One important locus of interaction is the Human Rights Committee of the Chamber of Deputies. Important spaces have been opened through the interaction of GLT leaders and allied deputies in this Committee. The Committee receives denunciations of human rights violations, forwards cases to relevant institutions, pushes for their proper investigation and organizes public seminars and workshops, among other functions. It also organizes the annual National Human Rights Conferences. Despite the multiple difficulties in turning

¹⁷ It should be noted that these demands are not put forward by every organization in the movement. A majority of leaders, however, tends to support these initiatives.

¹⁸ The few bills presented by deputies from the religious opposition to GLT rights have met a similar fate. One example is a bill by a deputy from the right-wing Liberal Party with strong links to Pentecostal Churches that sought to create sexual “re-orientation” programs, which would be established in partnerships between the State and private (or public) organizations. Another deputy from PRONA, a small right-wing party, proposed making “lascivious” kissing between two people of the same sex a punishable contravention. Allies of the GLT movement have managed to block these bills on the basis of their unconstitutionality and inappropriateness.

Conference resolutions into effective public policy, they nevertheless provide an important space for the deliberation of human rights policies and politics in Brazil. Counting with the participation of government officials and a large number of human rights organizations, the Human Rights Conferences represent a forum for the GLT movement to raise its demands and gain visibility.

Initially, however, the participation of the GLT movement in National Human Rights Conferences was very timid. In 1996, for example, *Grupo Estruturação*, a gay and lesbian organization based in Brasília, only heard about the I Human Rights Conference at the last minute, but was nevertheless able to present a list of demands for inclusion in the National Human Rights Plan being drafted at the time.¹⁹ By the time the II Conference took place, the GLT movement was better prepared. Luiz Mott, president of the *Grupo Gay da Bahia*, gave a speech as the representative of sexual minorities, where he outlined numerous aspects of homophobic discrimination in Brazilian society, pointed out the complete lack of attention legislators and politicians paid to the issue, and highlighted some of the main demands of the homosexual movement (Brazil. Chamber of Deputies. Human Rights Committee 1998: 123-126). With time, this participation grew significantly, both quantitatively and qualitatively, as was clear during the IX National Human Rights Conference held in Brasília in mid-2004. Despite the general disorganization and ineffectiveness of the Conference as a whole, the participation and visibility of the GLT movement was significant. Increasingly, at least in the discourse of organizers and other human rights activists, sexual minorities are included in the “list” of groups whose rights need to be defended. In other words, the forum provided by the National Human Rights Conferences has contributed to an increasing recognition of gays, lesbians and *travestis* as legitimate groups deserving of protection.

The Human Rights Committee has also worked closely with other human rights government agencies such as the State Human Rights Secretariat in regard to GLT rights. For example, the Committee co-organized with the Secretariat a public meeting to discuss “Human Rights and Homosexual Citizenship” in 1999, which brought together movement leaders, public officials, members of the *Ministério Público*, and federal deputies to discuss issues related to the rights of GLTs (Brazil. Chamber of Deputies. Human Rights Committee 2000). Judicial and legal issues related to sexual orientation, as well as public policies and governmental action geared towards gays, lesbians and *travestis* were discussed during this meeting. This event was a very important moment of visibility within the Chamber of Deputies, and helped push the debate further into various State institutions. Other public meetings have also been helpful in pushing the agenda forward within the legislature. In May 2003, the Human Rights Committee organized a public meeting entitled “Mechanisms and Instruments for the Defense of Homosexuals in Society,” out of which was organized the First National Seminar on Affirmative Policies and Rights of the GLBTT Community. The First National Seminar was an important step in the creation of the Parliamentary Front for the Freedom of Sexual Expression. More recently, in June 2005, a Second National Seminar promoted by the Human Rights Committee and a number of other Congressional committees provided the opportunity for a deepening of the discussion regarding the implementation of public policies geared towards the GLT community and for the addition of new members to the Parliamentary Front (Macedo 2005a; 2005b).

¹⁹ Interview with aide to a Federal District deputy, Brasília, DF, April 03, 2003.

Therefore, as mentioned earlier, even though Congressional Committees in general, when compared to their US counterparts, may be relatively weak and ineffective, they do play an important role in the relationship between the GLT movement and the federal legislature in Brazil. The Human Rights Committee and, to a lesser extent, other Congressional Committees have helped bring the discussion of sexual diversity issues into the workings of the Chamber of Deputies and have provided a space for the interaction and the strengthening of linkages between movement leaders and federal deputies. In addition, they have helped generate and diffuse information about GLTs and have provided a space for greater visibility of the issue, however limited.

Internal structure of the Chamber of Deputies: The Parliamentary Front for the Freedom of Sexual Expression

The internal structure of the federal Congress also helps shape the interaction between the GLT movement and deputies. In October 2003, a group of members of Congress allied with and sympathetic to the GLT movement formed the Parliamentary Front for the Freedom of Sexual Expression. The Front signified an attempt to counter the atomization of support for pro-GLT initiatives by following the common practice of the creation of *bancadas*. Members of the Parliamentary Front have been actively proposing new bills, have pressured Congressional leaders to call a vote on bills related to sexual diversity issues, and have provided a common front in congressional committees where bills are examined. The Front has been active in defending the interests of sexual minorities in Congress, but the significant challenges related to the hierarchical organization of the legislature and Congress' weakness *vis-à-vis* the executive have presented a serious obstacle to the success of these initiatives. Gay and lesbian activists have also sought support from the President of the Chamber in order to increase the chances that bills relating to sexual diversity issues will be brought to the legislative agenda. Even though different presidents of the House have expressed public support for GLT bills or have promised to bring them to a vote, concrete results have failed to materialize (Mott 2003: 161-163; Ceccherini 2005; Mariz and Sales 2005). Agile political maneuvering by the religious opposition, empty promises and unfortunate timing, as in the case of the emergence of major political scandals that virtually paralyze the functioning of Congress, have contributed to keeping GLT bills from reaching the floor of the Chamber.

The ideological make-up of the Chamber of Deputies

Given the greater degree of support for the GLT movement among leftist parties, the partisan make-up of the Chamber of Deputies also affects the likelihood of advancement of sexual diversity issues in that institution. Since the number of seats a party holds defines who holds powerful positions in the internal structure of the Chamber, as well as the distribution of seats in Congressional Committees,²⁰ the overall distribution of parties has an impact on the spaces open to the GLT movement in the federal legislature. As can be seen on table 3, since the mid-1980s, the left has progressively

²⁰ The correlation, however, is not direct. The election of the president of the Chamber, for example, may depend on the party's ability to hold together a majority of the votes. This is especially the case in a place like Brazil, where no party has even come close to holding a majority of seats in Congress since the mid-1980s.

grown to fill about one third of seats in the Chamber of Deputies. Centrist parties have also moved from having a majority of seats to, since 2002, about one third. Finally, and importantly, right-wing parties have declined in power throughout the 1990s, also accounting for about one third of deputies since 2002. It should be noted that the size of centrist *bancadas* in the mid-1980s might have been inflated by the fact that a number of politicians associated with the right-wing military dictatorship switched parties prior to the transfer of power to civilian rule, especially to the centrist PMDB.

TABLE 3 HERE

It is especially since the mid 1990s, when the same-sex civil union bill was first presented, that the level of interaction between the GLT movement and federal deputies started to noticeably increase. Moreover, since 1999, when the public meeting on “Human Rights and Homosexual Citizenship” took place, more noticeable spaces for the discussion and promotion of sexual diversity started emerging in the Chamber of Deputies. This trend has intensified since 2002. These advancements have followed an increased presence of the left in Congress. In 1994, it had slightly over 20 percent of deputies in the Chamber, and by 2002, virtually one third.

Other partisan dynamics in the legislature, however, contribute to preventing these advancements from translating into protective legislation or constitutional amendments that would explicitly outlaw discrimination against sexual minorities. The complexities of the relationship between the GLT movement and political parties, coupled with the domination of Congress by centrist and right-wing parties, who together account for about two-thirds of seats in the Chamber of Deputies contribute to this reality. Moreover, the high level of party fragmentation forces government to depend on unstable governing coalitions, and sexual diversity issues tend to be further marginalized under those circumstances, especially given their divisive nature.²¹

The GLT movement and budgetary politics

Finally, especially since 2003, GLT movement activists and their allies in Congress have been paying greater attention to budgetary issues. Two main factors have contributed to this: the increasing awareness by activists of the unsustainability of the high level of dependence on resources linked to HIV/AIDS, and the need to establish a more stable and independent resource base for programs for the GLT community. Given the main characteristics of the budgetary process in Brazil, guaranteeing a specific allocation of funds to GLT programs is very difficult. Following the general concentration of power in the hands of the executive, the president has substantial power over the budgetary process. It is the president’s prerogative to prepare the Multi-Year Plan, the Law of Budgetary Directives and the Annual Budgetary Law. The 4-year Multi-Year Plan (*Plano Plurianual*, PPA) sets out the most general guidelines for public expenditure by the federal government. The annual Law of Budgetary Directives (*Lei de Diretrizes Orçamentárias*, LDO) is based on the general objectives outlined in the Multi-Year Plan and sets out the areas to be covered by the annual federal budget in the Annual

²¹ Measured by the Laakso and Taagepera index of party fragmentation, the overall number of effective parties in the Chamber of Deputies has remained high throughout the 1990s. In 1986, it was 2.9, in 1990, 9.0, in 1994, 8.2, in 1998, 7.2, and in 2002, 8.5 (Kinzo 2004: 32).

Budgetary Law (*Lei Orçamentária Annual, LOA*), which specifies the amounts of funds to be allocated to each specific area and program. Congress, in turn, is very limited in what it can propose. All proposed amendments have to be compatible with both the Multi-Year Plan and the Law of Budgetary Directives, and cannot initiate new projects and programs not included in the bill presented by the president. Moreover, expenditures approved by Congress cannot exceed governmental revenues as outlined in the budgetary bill (Mainwaring 1997: 62).

Certain dynamics underlie the budgetary amendment process. As mentioned earlier, state interests are heavily represented in this process (Samuels 2002). Gays and lesbians have thus to either tap into that logic or work around it. Individual deputies and permanent committees such as the Human Rights Committee can also present amendments to the budgetary bill, but only in very limited numbers. This has been the main avenue open for attempts to guarantee specific funds for GLT programs, especially through deputies in the Parliamentary Front for the Freedom of Sexual Expression.

Following the meeting on “Human Rights and Homosexual Citizenship” mentioned above, movement leaders negotiated with a federal deputy who was a member of the Human Rights Committee a budgetary amendment for funds for the “promotion of rights of minorities victims of prejudice and discrimination” (Brazil. Chamber of Deputies. Human Rights Committee 2000: 66), thus opening the space for the financing of programs geared towards GLTs from broader projects in the area of human rights. Out of these funds some important anti-discrimination projects were funded in Brasília and Goiânia, in Goiás state, for example. This support, however, was short-lived, and following the end of the budgetary cycle, the funding for these projects dried up, forcing some organizations to search for alternative funding for the continuation of these services, in some cases outside of the country. These attempts, however, proved unsuccessful.²² This initial success highlighted both the possibility for advancement and the limitations to these gains.

Given the remaining difficulties around budgetary legislative politics, the GLT movement has historically relied most heavily on resources available through HIV/AIDS prevention programs in the Ministry of Health, and to a much smaller extent on funds available through human rights programs, especially through the Ministry of Justice and the State Human Rights Secretariat. The creation of the Parliamentary Front for the Freedom of Sexual Expression in 2003 and the more targeted and focused pressure exerted by the GLT movement and its allies in the Chamber of Deputies may have started reversing that trend, however. In late May 2004, following an increase in the level of pressure exerted by GLT leaders on its allies in the State human rights apparatus, the Brazil Without Homophobia Program was launched, aiming at combating discrimination and violence against sexual minorities. Soon after the launch of the program, activists and bureaucrats initiated an intense debate regarding the need for resources for the implementation of the many governmental actions the program plan outlined. Out of those discussions and further engagement with members of the Parliamentary Front, a series of individual amendments to the budgetary bill were coordinated and presented. Through these negotiations, a proposal by the Human Rights Committee would allocate R\$10 million (approximately US\$3.5 million at the time) to help finance projects in the Brazil Without Homophobia Program (Azevedo 2004). While the amendment was not

²² Interviews with GLT movement leader, August 28, 2002 and February 23, 2003, Brasília, DF.

accepted without revisions, through these actions about R\$3 million were allocated in the 2005 budget to projects in that Program (Lugullo 2005). Moreover, deputies linked to the Parliamentary Front have attempted to guarantee more funds for future years. In June 2005, for example, two deputies presented amendments to the Law of Budgetary Directives requesting funds for public policies for the GLT community, thus making it more likely that amendments to the Annual Budgetary Law will be accepted (Lugullo 2005; Macedo 2005b; Emenda à LDO 2005).

State level

The variation in institutional arrangements in different states has contributed to different experiences in the movement's engagement with state assemblies. As will be seen in the discussion below, the greater decentralization of power in the Rio State Assembly and its greater strength *vis-à-vis* the state executive in comparison with the Bahia case creates important windows of opportunity for the advancement of GLT rights.

Rio de Janeiro: stronger allies in a more progressive legislature

The gay and lesbian movement in Rio de Janeiro has relied on a number of allied state deputies in the state assembly to defend their interests and push forward their demands. As in the case of the federal Chamber of Deputies, personal interaction between movement leaders and deputies is key to understanding access to the legislature. Since the early 1980s the movement has managed to build alliances with individual deputies in the state assembly. In the 1982-1986 legislature, for example, Liszt Vieira, from the Workers' Party, was sympathetic to the gay cause.²³ Later on, in the early 1990s, Rose de Souza, another deputy from the Workers' Party with links to the Methodist Church, provided an important access point for the GLT movement. In 1994, when Rose de Souza was not reelected to the assembly, other alliances started being consolidated, such as those with Heloneida Studart and, later on, Carlos Minc, both from the Workers' Party. Many of these allies, and especially Minc, maintain a close personal interaction with leaders of the GLT movement in Rio, based on political and ideological affinities and eventually extending into their social lives.²⁴ From the mid 1990s on, following a number of important initiatives by Minc, the support among deputies started gaining more ground, with deputies from other parties expressing their willingness to work with the GLT movement in guaranteeing the rights of sexual minorities.²⁵ Most of this openness came from the left, but centrist and a few right-wing deputies have occasionally voted in favour of pro-GLT bills. Support from state deputies was strengthened by the creation of the Parliamentary Front for the Freedom of Sexual Expression in the Rio State Assembly in August 2004 (Alves 2004; *Pioneira no país* n/a). As in the case of the federal-level parliamentary front, it provides greater organization and coordination of initiatives in favour of sexual minorities in the legislative house.

Rio de Janeiro: the stories of three pro-GLT laws

²³ Written communication with state deputy, Rio de Janeiro, RJ, August 23, 2003.

²⁴ Interview with leader of GLT organization, Rio de Janeiro, RJ, August 29, 2003 and written communication with state deputy, Rio de Janeiro, RJ, August 23, 2003.

²⁵ Interview with leaders of GLT organizations, Rio de Janeiro, RJ, August 29 and September 17, 2003.

The combination of a more balanced and decentralized institutional framework, on the one hand, and an active engagement between GLT leaders and elected politicians in the state assembly, on the other, have led to a number of concrete results, namely the approval of important pro-GLT legislation. The dynamics of the debate on sexual diversity issues in the Rio State Assembly will be clarified by an examination of three pieces of legislation: a law granting “public utility” status to a gay and lesbian organization (*Grupo Arco-Íris*), a law establishing sanctions against establishments that discriminate based on sexual orientation, and a law granting pensions to same-sex partners of public employees of the state of Rio de Janeiro.

As mentioned earlier, one common piece of legislation passed by state-level deputies is the granting of “public utility” status to civil society organization. Often seen as a clientelistic tool, since such status awards the organization some tax privileges and marginally improves its chances of accessing State resources, it may also be interpreted as a tool for the promotion of civic associations. In 1991, *Grupo Atobá*, a lower-class GLT organization from Rio, received its “public utility” status from the state assembly without much difficulty, as is the case with virtually all public utility bills in the legislature. In 1999, however, the bill that sought to grant a similar status to *Grupo Arco-Íris*, a more middle-class group based in the wealthier Southern region of the city, met with fierce opposition from deputies linked to Pentecostal and Catholic Churches. By that time, the GLT movement had grown much more visible, and so had opposition groups. Following heated debates on the floor of the assembly the bill passed first reading in December 1999 by a narrow margin (21 to 18). Intense mobilization by activists from *Grupo Arco-Íris* and allied deputies such as Carlos Minc, and negotiation with deputies who had not been present at the first reading and a few who were wavering in their opposition resulted in a more comfortable margin of victory in the second and final reading (24 to 10).²⁶

Also in 1999, Carlos Minc presented an anti-discrimination bill to the state assembly, establishing penalties to establishments that discriminated individuals based on their sexual orientation. Following an idea that started in the early 1990s, this bill also met significant resistance of deputies linked to various Churches. After intense negotiation with other deputies and a visible mobilization by key GLT organizations in Rio, the law passed in May 2000. Following the passage of the legislation, a new struggle emerged: the fight to get it “enabled.” As in numerous other situations across the country, this kind of legislation needs to be “enabled” by the executive, *i.e.*, a decree has to establish in greater detail the procedures necessary and the agencies and bodies responsible for the implementation of the law. Effectively, in the period between the approval of the law and its enabling, it cannot be implemented. In this case, in a battle involving the movement’s engagement with the state executive, the anti-discrimination law was only enabled in late 2001. That decree established that the Human Rights and Penitentiary System Secretariat had the power to impose penalties on commercial venues that discriminated against homosexuals. Therefore, despite the greater degree of

²⁶ Opposition to this bill, as other pro-GLT bills, is overwhelmingly based on religious grounds. A number of deputies invoked the threat to moral values and to the Brazilian family, as well as the danger of promoting unnatural behaviour by granting a gay group public utility status. Interestingly, deputies supporting the bill overwhelmingly emphasized the need to promote citizenship, and to guarantee equality and freedom of sexual “choice.”

autonomy and power of the Rio Assembly to legislate in favour of sexual minorities, the executive still retains effective weapons to nullify their impact.

The organization and mobilization of the allies of the GLT movement in the Rio Assembly was again put to the test in the struggle around a piece of legislation that recognized same-sex partners of public employees of Rio de Janeiro state for pension purposes. In early 2001, Carlos Minc co-authored a bill that aimed at amending the state pension legislation to include the recognition of same-sex partners. In a move intended to attract undecided deputies, Minc sought the support of the president of the state assembly, Sérgio Cabral, from the centrist PMDB, who was the second co-author of the bill. After the usual opposition of religious deputies, the bill was approved in November 2001.²⁷

Challenges to the new law did not stop in the legislature. Direct interference from the executive and legal action also posed a threat to its survival. After being sent for gubernatorial approval, the law was vetoed by Anthony Garotinho, who has strong links to Protestant Churches. In March 2002, in an impressive effort, the state assembly overrode the governor's veto by a wide margin (43 to 14) (Cai veto a pensão 2002). Within weeks, however, a deputy linked to the Catholic Church filed a lawsuit arguing for the unconstitutionality of the new law. An initial decision in favour of that deputy made the law ineffective for almost a year, but a later decision by the Justice Court of the State of Rio de Janeiro overturned the earlier decision in early 2003 (Servidor homossexual 2003). In late 2003, arguing for the need to make the Rio de Janeiro pension system more compatible with federal regulations, governor Rosinha Garotinho, following the example set by her husband, sought to render the same-sex pension law ineffective. She presented a new bill reforming the state pension system, and, making use of her agenda powers, requested urgency in the examination of the bill. This new pension bill omitted the article that recognized same-sex partners of state public employees, effectively nullifying the previous law. When Rosinha's bill was being discussed in the state assembly, deputies Carlos Minc and Gilberto Palmares from the Workers' Party presented amendments re-introducing the same-sex provision, which were approved by the assembly. The amended law, however, was not fully accepted by the governor, who vetoed the measures aimed at recognizing same-sex partners. Once again, the assembly overrode the gubernatorial veto in November 2004 and the law guaranteeing pensions for same-sex partners of Rio de Janeiro state public employees was maintained. During this struggle, the creation and mobilization of the Parliamentary Front for the Freedom of Sexual Expression in the Rio de Janeiro State Assembly was a key factor in strengthening the allies of the gay and lesbian movement (Rio: Protesto contra o veto 2004; Garantida pensão de parceiros 2004; Stephan 2004).

It should be noted that the same conditions that make it possible for allies of the GLT movement to push forward their agenda also create spaces for opponents to promote initiatives to counteract gains made by sexual minorities. As was the case in the federal Chamber of Deputies, a deputy linked to a Pentecostal Church has presented a bill intended to establish State-subsidized sexual "re-orientation" programs (Gois 2004; Projeto prevê ajuda 2003). Following public outcry against the proposal and intense

²⁷ The bill was approved in the state assembly in November 2001 with 28 votes in favour, 11 against and one abstention before being sent to governor Anthony Garotinho for gubernatorial sanction (da Escóssia 2001).

mobilization by *Grupo Arco-Íris*, the bill was soundly rejected by the state assembly in late 2004 (Rangel 2004; Rio: Protesto e abaixo-assinado 2004; Gripp 2004).

Rio de Janeiro: ideological makeup of the State Assembly

Even though Rio de Janeiro has one of the highest levels of party fragmentation in the country, it has advanced much further than other cases where a smaller number of parties occupy seats in the legislature.²⁸ While at the federal level party fragmentation may contribute to the difficulties faced by the GLT movement due to the constant need for coalition governments, in contexts such as the Rio Assembly, where power is internally more decentralized, party fragmentation may represent less of an obstacle.

The ideological makeup of the assembly, however, seems to play a role in creating a political environment more conducive to advancements in GLT rights. As can be seen in table 4, the Rio State Assembly has had a significantly more fluid ideological makeup than the federal-level legislature. While the number of seats held by leftist parties has oscillated significantly since the mid-1980s, it has been a much stronger force than at the national level. The table also highlights that, while partisan strength is an important factor, it is not a determining one in this process: much of the activity discussed above took place in a legislative session (1999-2002) when the strength of the left dropped to its lowest level in the period. This has also to do with the distribution of votes within the left, since throughout the 1980s and early 1990s, leftist votes were heavily concentrated on the PDT, the party led by populist leader Leonel Brizola. It is only in 1998 and, more noticeably, in 2002, that the Workers' Party received a more substantial share of leftist votes in Rio, as Brizola's influence faded.

TABLE 4 HERE

Therefore, as seen above, the institutional framework in the state of Rio de Janeiro generates greater opportunities for the advancement of gay and lesbian rights than at the federal level. In this context, the activity of strong and dedicated allies in the legislature is strengthened. Finally, a more progressive core group in the assembly, drawn mostly from leftist parties, has helped maintain the progress of the GLT cause despite the increasing presence and strength of the Churches, particularly Pentecostal ones, in Rio de Janeiro politics.

Bahia: the challenge of "traditional" politics

The institutional framework in Bahia state is much more similar to the "traditional" Brazilian model than is the case with Rio de Janeiro. The state has been historically controlled by oligarchies, in regimes characterized by patrimonial rule and strong clientelism. Active in Bahia politics since the 1950s when he was elected a state deputy, Antônio Carlos Magalhães has dominated state politics since the 1970s, when he was twice nominated governor by the military regime in power at the time. Since the

²⁸ While not exactly equal to the party fragmentation at the state level, the level of party fragmentation of Rio de Janeiro's delegation to the federal Chamber of Deputies gives us a sense of the level of fragmentation in the state. According to the Laakso and Taagepera index, the party fragmentation of federal deputies from Rio was as follows: in 1986, 5.0, in 1990, 4.9, in 1994, 9.9, in 1998, 6.7, and in 2002, 9.5 (Kinzo 2004: 32).

return to civilian rule in the mid-1980s, Magalhães has built a strong political machine in Bahia around his personal figure and party, the PFL. Being such a central reference point in local politics, in traditional *coronelista* fashion he functions as a virtual kingmaker, since his support is often seen as crucial for a politician's political advancement in Bahia. While Magalhães' and the PFL influence are very strong throughout the state, it tends to be stronger in the interior. Similarly to other states where the *coronelista* tradition persists, the capital city tends to offer some degree of resistance and opposition, but is not completely impervious to the strongman's domination.

While this oligarchy is not clearly and explicitly linked to the Catholic Church, Catholic values permeate it. Not significantly differently from most of Bahia society and political class in general, moreover, traditional *machista* notions of gender and sexuality are common among the ruling elites. This overall cultural context is a first impediment to advancement in regards to issues related to gender and sexual diversity in the state assembly.²⁹ Interestingly, these difficulties exist despite the fact that Churches (Catholic and Protestant) are significantly less visible in Bahia politics than they are, for example, in Rio de Janeiro.

Bahia: limited visibility, few allies and a weak legislature

As mentioned earlier, the executive concentrates power in Bahia, rendering the Legislative Assembly virtually powerless. The informal domination of local politics by the *coronelista* elite contributes to the weakening of the legislature, since under such conditions deputies tend to follow the executive regardless of the amount of formal power they may hold. The executive domination is often maintained through a tight control of the clientelistic machinery, whereby only deputies that follow the line of the government gain access to those resources. In addition, the state assembly's internal distribution of power is more centralized than in Rio de Janeiro, thus limiting the power of individual legislators to have an influence on the legislative agenda. Under these conditions, the representatives of marginalized groups tend to be limited to a reduced number of opposition deputies whose activity fails to produce concrete results. That, in effect, is the reality of the relationship between the GLT movement and the Bahia State Assembly.

As in other states, most of the deputies sympathetic to the GLT cause are from leftist parties, especially from the Workers' Party. These allied deputies have presented a number of bills to the assembly, including one to grant the *Grupo Gay da Bahia* "public utility" status, an anti-discrimination bill, and an amendment to the Bahia Constitution to include an explicit prohibition of discrimination based on sexual orientation. All of these attempts, however, have failed.³⁰

Nevertheless, as in the case of the federal Chamber of Deputies, lack of concrete results in the form of legislation does not mean complete inactivity under the surface. The GLT movement in Bahia, represented by the *Grupo Gay da Bahia*, especially in the figure of its founder Luiz Mott, has been active in trying to bring some visibility to the

²⁹ Interview with state deputy, Salvador, BA, October 16, 2003.

³⁰ After years of debate, a motion originally presented by a PT deputy granting Luiz Mott the title of honorary citizen of the state of Bahia was finally passed in April 2006 (*Grupo Gay da Bahia* 2006). The fact that such an innocuous bill met with such difficulty is an indicator of the obstacles faced by the GLT movement in the Bahia state Assembly.

issue in the state assembly. Some small actions have been put in place, but have been episodic at best.³¹

Another locus of engagement has been the Human Rights Committee of the State Legislative Assembly. The *Grupo Gay da Bahia* has sent a number of letters with denunciations of human rights violations of sexual minorities to the Human Rights Committee, bringing the issue to the attention of deputies in the state assembly. According to a state deputy active in the Human Rights Committee, the role of organizations is key to the functioning of the committee, since, given the weakness of a human rights culture among the population in general, most denunciations of violation came to them via groups such as the *Grupo Gay da Bahia*. Having received these denunciations, the Committee tries to publicize a few emblematic cases, thus helping diffuse information and awareness in regards to human rights issues.³² In contrast to the federal-level Human Rights Committee, which has managed to work effectively within the legislature and with other executive human rights agencies, the Bahia State Assembly Committee has had a very limited impact. It does not have strong agencies in the executive with which it can work, and it faces serious constraints to its functioning. For example, despite some efforts to push for an effective investigation of cases of abuse and despite attempts to create services to address the problem of discrimination, resource and infrastructural constraints prevent the Human Rights Committee from doing anything significant.³³ Moreover, reflective of the lower levels of institutionalization in the more heavily personalistic context of Bahia politics, the effectiveness of the Human Rights Committee is strongly influenced by the person presiding it.³⁴ Consequently, its role as a space for the inclusion and participation of GLTs is unstable.

Bahia: ideological makeup of the state assembly

Even though Bahia has one of the lowest levels of party fragmentation in the country,³⁵ the marginal situation of the few leftist opposition parties prevents them from having an impact, even if it is relatively easier for them to work together against the governing elite. The ideological makeup of the Bahia State Assembly helps explain the challenges faced by the GLT movement and its allies in that state's legislature.

TABLE 5 HERE

As can be seen in Table 5, despite the fact that the left has been progressively increasing its presence in the Bahia state assembly, the right's domination has followed a similar pattern. In this polarized situation, the leftist representatives sympathetic to sexual minorities and other marginalized groups have a very limited capacity to generate concrete gains. Therefore, while the GLT movement may have gained access to a few

³¹ One such action was a motion supporting human rights for homosexuals that passed in the Bahia state assembly in 1992 to mark the International Gay Pride Day (Grupo Gay da Bahia 1992).

³² Interview with state deputy, Salvador, BA, October 21, 2003.

³³ Interview with state deputy, Salvador, BA, October 16, 2003.

³⁴ Interviews with leader of GLT organization, Salvador, BA, October 15, 2003 and with state deputy, Salvador, BA, October 21, 2003.

³⁵ The Laakso and Taagepera index for party fragmentation of Bahia federal deputies were significantly lower than those for Rio de Janeiro or the federal Chamber of Deputies taken as a whole. In 1986, 2.2, in 1990, 6.6, in 1994, 4.6, in 1998, 3.3, and in 2002, 3.5 (Kinzo 2004: 32).

deputies and some influence over their activities, the institutional and cultural contexts of the Bahia state assembly prevent these inroads from producing legislative gains.

Conclusion: GLTs, legislatures and inclusion

The discussion above has highlighted a number of factors that seem to dampen and limit the impact of legislatures on the inclusion of sexual minorities in the Brazilian polity and on the guarantee of their citizenship rights. As mentioned earlier, the movement's engagement with the State is concentrated on the executive branch, and a number of concrete advancements have been achieved via that path. Nevertheless, the interaction with state and federal deputies remains an important part of the GLT movement's strategy, as demonstrated in this paper.

At the federal level and in states like Bahia, no significant pro-GLT legislation has been approved, even though sexual minorities have allied deputies in both legislative houses. Despite the absence of legislative output, this engagement has produced a very important result: the growing recognition of sexual minorities as a legitimate political group with articulated demands for rights. In other words, the recognition that GLTs have the right to have rights is a major advancement in political and historical terms. While opposition and resistance to this view remains among a number of deputies, especially those linked to Churches, the activity and pressure of deputies in Human Rights Committees and Parliamentary Fronts for the Freedom of Sexual Expression are evidence of the growing visibility and assertion of sexual minorities as a political actor in legislatures. The struggle for inclusion should not be reduced to the passage of protective legislation; it is also played out in the symbolic realm.

In a few cases, concrete victories have been achieved. In the case of the Rio de Janeiro state assembly, some key laws have been passed, despite opposition from the governor's office and from a number of deputies. In the federal Chamber of Deputies, a few gains have been made in securing budgetary resources for programs and policies geared towards protecting and promoting sexual diversity and the GLT community. These victories are clearly important for the GLT movement, but the challenge of implementation still remains. While protective legislation may pass, numerous obstacles for its effective implementation remain: the executive may not "enable" the law, law enforcement agents may not observe it, and GLTs themselves may not use this protective mechanism (for lack of knowledge or fear of exposure). Regardless of these challenges, however, the existence of these laws, and the possibility of activating them are important; as an activist succinctly put it to me: "They [anti-discrimination laws] may not make a lot of difference in our everyday lives, but we are better off with them than without them."

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Table 1: Use of presidential decrees (provisional measures) in Brazil (1988-2005)

	Sarney (Mar 88-Mar 90)	Collor (Mar 90-Oct 92)	Franco (Oct 92- Dec 94)	Cardoso (Jan 95- Dec 98)	Cardoso (Jan 99- Sept 01)	Cardoso (Sept 01-Dec 02)	Lula (Jan 03- Oct 05)
Original	125	89	142	160	103	102	163
Re- issued	22	70	363	2,449	2,587	-	-
Total	147	159	505	2,609	2,690	102	163
Average per month (total)	6.13	5.22	18.7	38.77	81.51	6.8	4.79
Average per month (original)	5.21	2.92	5.26	3.33	3.12	6.8	4.79

Source: Presidência da República. Casa Civil. Subchefia para Assuntos Jurídicos. Medidas Provisórias (available at <http://www.planalto.gov.br>).

Table 2: Legislation Approved According to Initiator (1989-2001)

Year	Executive (%)	Legislature (%)	Judiciary (%)
1989	70.11	18.32	11.53
1990	82.4	15.2	0
1991	80.08	8.4	11.5
1992	75	9.72	15.27
1993	79.04	16.19	4.76
1994	58.47	35.59	5.93
1995	79.9	21.34	3.74
1996	80.68	17.61	1.7
1997	84.61	14.79	0.59
1998	79.21	15.16	5.61
1999	77.96	20.90	1.12
2000	81.85	15.48	2.65
2001	74.45	23.37	2.16

Source: Pessanha (2002: 188).

Table 3: Distribution of seats in the Chamber of Deputies according to party cluster (percentage, 1986-2002)³⁶

	1986	1990	1994	1998	2002
Left	9.6	19.9	21.6	22.1	32.3
Centre	57.0	36.6	39.0	41.5	33.3
Right	33.4	43.5	39.4	36.4	34.4

Source: Nicolau (1998; n/a).

³⁶ The results shown refer to electoral results and do not account for the at times intense party-switching among Brazilian deputies. My intention here, however, is to indicate the general balance of power among the different party clusters. For 1986 results, the Left includes deputies from the PDT, PT, PCB, PC do B and PSB; Centre from the PMDB and PTB; Right from the PDS, PFL, PL, PDC, PSC. For 1990, the Left includes PDT, PT, PSB, PC do B and PCB; Centre includes PMDB, PTB and PSDB; Right includes PFL, PDS, PRN, PDC, PL, PSC, PRS, PTR, PST, PMN and PSD. For 1994, the Left includes PT, PDT, PSB, PC do B, PPS and PV; Centre includes PMDB, PSDB and PTB; Right includes PFL, PPR, PP, PL, PMN, PSD, PSC, PRN, PRP. For 1998, the Left includes PDT, PT, PPS, PC do B, PSB and PV; Centre includes PMDB, PSDB and PTB; Right includes PPB, PFL, PL, PSC, PST, PMN, PSD, PSL and PRONA. For 2002, the Left includes PT, PSB, PDT, PPS, PC do B and PV; Centre includes PMDB, PSDB and PTB; Right includes PFL, PP, PL, PRONA, PSD, PST, PMN, PSC, PSDC, PSL.

Table 4: Distribution of seats in the Rio de Janeiro State Assembly according to party cluster (percentage, 1986-2002)³⁷

	1986	1990	1994	1998	2002
Left	34.3	41.4	31.3	22.8	41.3
Centre	32.8	21.5	35.8	40.1	28.5
Right	32.9	37.1	32.9	37.1	30.2

Source: Nicolau (1998; n/a).

³⁷ The results shown refer to electoral results and do not account for party-switching among deputies. For 1986 results, the Left includes deputies from the PDT, PT, PSB and PC do B; Centre from the PMDB and PTB; Right from the PDS, PFL, PL, PDC, PASART, PTR, PMN and PTN. For 1990, the Left includes PDT, PT and PCB; Centre includes PMDB, PTB and PSDB; Right includes PFL, PDS, PRN, PDC, PL, PTR, PST, PMN and PNT. For 1994, the Left includes PT, PDT, PSB, PC do B, PPS and PV; Centre includes PMDB, PSDB and PTB; Right includes PFL, PPR, PP, PL, PMN, PSD, PSC and PRONA. For 1998, the Left includes PDT, PT, PPS, PC do B, PSB and PV; Centre includes PMDB, PSDB, PTB and PT do B; Right includes PPB, PFL, PL, PSC and PRONA. For 2002, the Left includes PT, PSB, PDT, PPS, PC do B and PV; Centre includes PMDB, PSDB, PTB and PT do B; Right includes PFL, PP, PL, PRONA, PSC and PSL.

Table 5: Distribution of seats in the Bahia State Assembly according to party cluster (percentage, 1986-2002)³⁸

	1986	1990	1994	1998	2002
Left	6.4	14.4	17.4	20.6	28.7
Centre	58.8	36.5	31.7	23.2	12.7
Right	34.8	49.1	50.9	57.2	58.6

Source: Nicolau (1998; n/a).

³⁸ The results shown refer to electoral results and do not account for party-switching among deputies. For 1986 results, the Left includes deputies from the PDT, PT and PC do B; Centre from the PMDB and PTB; Right from the PFL. For 1990, the Left includes PDT, PT, PSB and PCB; Centre includes PMDB, PTB and PSDB; Right includes PFL, PRN and PL. For 1994, the Left includes PT, PDT, PSB and PC do B; Centre includes PMDB, PSDB and PTB; Right includes PFL, PPR, PP, PL and PMN. For 1998, the Left includes PDT, PT, PC do B, PSB and PV; Centre includes PMDB, PSDB, PTB and PT do B; Right includes PPB, PFL, PL and PSC. For 2002, the Left includes PT, PSB, PDT, PPS and PC do B; Centre includes PMDB, PSDB and PTB; Right includes PFL, PPB, PL, PSD, PST and PSC.