

# Weak Institutions, Strong Movements: The Uneven Implementation of Abortion Policy in Latin America

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**A**cross Latin American countries, there is remarkable heterogeneity in abortion legislation, ranging from full prohibition to legal elective abortion.<sup>1</sup> However, abortion policy does not seem to clearly map onto implementation on the ground. On the one hand, even in countries with very restrictive abortion laws, (clandestine) abortion rates are comparatively high, and legislation that criminalizes abortion is rarely enforced (Blofield 2006; Htun 2003). On the other hand, in countries that allow abortion under all or some circumstances, access to abortion is not guaranteed. In Argentina, for instance, different reports have stressed the difficulty in accessing abortion procedures both before and after legalization was enacted in early 2021.<sup>2</sup>

What explains variation in abortion policy implementation throughout the region? I argue that feminist activists and street-level providers—that is, doctors and, more generally, health care personnel with the ability to provide access to abortion procedures—are key to explaining this variation. To do so, I rely on qualitative evidence from semi-structured, in-depth interviews conducted in Argentina during 2022–2023 (i.e., after abortion legalization).

In particular, this study concentrates on the role that the first of these actors—feminist activists—play in ensuring that access to abortion is guaranteed on the ground through the following five mechanisms: service delivery, network creation, information dissemination, monitoring, and the generation of “virtuous circles” by participating in state bureaucracies. The Argentine context represents a “typical case” (Gerring 2007) of how feminist activism can shape policy implementation in settings with weak institutions (Brinks, Levitsky, and Murillo 2020), yet with a high enough level of democracy that social movements are not (systematically) repressed by the state. When feminist activism flourishes, it can have a powerful impact on access to abortion on the ground.

In this way, I depart from previous accounts, which focused on subnational politicians as the central actors in determining

the uneven enforcement of the law (Holland 2016, 2017). The key argument in these works, which typically concentrate on redistributive non-doctrinal policy issues, is that subnational politicians deliberately choose not to enforce the law to signal a commitment with certain voters. However, I contend that this framework does not apply to certain doctrinal issues—that is, those that challenge “...the explicit doctrine, codified tradition, or sacred discourse of the dominant religion or cultural group” (Htun and Weldon 2010, 210). This includes the issue of abortion policy in predominantly Catholic Latin America because the Catholic Church strongly opposes abortion. In the case of abortion legislation, subnational politicians rarely stand to electorally capitalize (non)enforcement.

Past literature underscores the role of women’s movements—specifically feminist mobilization—in explaining the adoption of progressive reproductive rights policies (Blofield 2006; Daby and Moseley 2022; Htun and Weldon 2018). However, the dynamics of policy *implementation* on the ground in this issue area—and, therefore, the extent to which there is actual access to these rights—remain largely unexplored (Htun and Weldon 2018, 255).

## JUSTIFYING THE DEPARTURE FROM THE FOCUS ON LOCAL POLITICIANS

A framework focused on local politicians’ electoral incentives cannot explain the dynamics of implementation of abortion law for three main reasons. First, the visibility of its implementation is comparatively low, making it unlikely that local politicians will electorally capitalize on the (non)enforcement of abortion policy. Implementation that takes place in spaces such as hospitals and health centers tends to be hidden from public scrutiny.

Second, local politicians cannot easily select street-level bureaucrats who share their preferences regarding abortion policy implementation. Following the canonical work of Lipsky (1969), it should be noted that the actors (i.e., doctors and healthcare staff) who ultimately choose whether to

provide access to abortion procedures are street-level providers, with considerable discretion and independence in their jobs—even when they work in the public sector. Thus, in contrast to other public employees, they cannot be selected,

Network of First Responders emerged in 2012, prior to abortion legalization in Argentina. These activists provide support and information before and after an abortion through telephone and in-person meetings; they also accompany women

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replaced, or easily monitored and sanctioned by local politicians. Therefore, even if subnational politicians wanted to dictate the implementation of abortion law at the local level, they still would face street-level providers with a comparatively high degree of independence in their job decisions (Lipsky 1969) and potentially divergent preferences over policy and its implementation.

Third, following Tuñón (2019, 10), left-wing politicians may lack incentives to support access to abortion to avoid antagonizing voters who are “economically progressive but socially conservative.” As Tuñón (2019) noted, several left-wing parties in Latin America receive support from factions of the Catholic Church that share progressive views in the economic dimension. This collaboration presents a tradeoff for left-wing parties: they may need to moderate their stance around doctrinal policy issues (e.g., abortion) so as not to antagonize religious and socially conservative voters. Thus, a new theoretical framework is required to understand the uneven implementation of doctrinal policy issues such as abortion.

### **HOW DOES FEMINIST ACTIVISM IMPACT ABORTION POLICY IMPLEMENTATION IN ARGENTINA?**

My argument is based on more than 35 interviews with prominent feminist activists, street-level providers, political elites (i.e., politicians and bureaucrats), and academics. I contend that there are five main channels through which feminist activism has increased access to abortion on the ground both before and after its legalization in Argentina: service delivery, network creation, information dissemination, monitoring, and the generation of “virtuous circles” by participating in state bureaucracies.

First, there are two actors who have played important roles in service delivery: (1) healthcare professionals who provided access to elective abortion before legalization, and (2) feminist activists outside of the healthcare system. Among healthcare professionals, a doctor who has served as a bureaucrat in the area of sexual and reproductive health recounted her experience, along with other healthcare professionals who typically self-identify as feminists, in providing clandestine abortions years before legalization: “...we learned how to work under the rug really well.”<sup>3</sup>

Outside of the healthcare system, activists such as the Network of First Responders (*Socorristas en Red*)—which belongs to the National Campaign for the Right to Legal, Safe, and Free Abortion (henceforth, the Campaign)—have “accompanied” women seeking abortion procedures.<sup>4</sup> The

via telephone *during* a medication abortion (Keefe-Oates 2021, 191; Maffeo et al. 2015, 218; Zurbriggen, Keefe-Oates, and Gerds 2018, 110). Before abortion became legal, this support typically included helping women to access the medication, including but not limited to pointing them to drugstores where it was possible to obtain misoprostol without a prescription or at a lower price.<sup>5</sup>

It is interesting that this accompaniment continues even after abortion became legal. An activist at *La Revuelta*—“one of the founding feminist collectives of *Socorristas en Red*” (Keefe-Oates 2021, 192)—described how she initially thought of *Socorristas* as playing a temporary role: “while the law is not there, we will be there.” However, this individual recounted how her views changed over time: “...we realized that it was going to be very important too, once we had the [abortion legalization] law, to show the health system what we did with accompanying. How to accompany, what is a feminist accompaniment...”<sup>6</sup>

Second, feminist activism has contributed to creating networks of support for healthcare personnel willing to provide access to abortion procedures before and after legalization. This includes the formation and expansion of the Network of Healthcare Professionals for the Right to Choose, which also belongs to the Campaign.<sup>7</sup> As noted by a healthcare professional who is a member of this Network, “the [big] push for us was the organization as a network. That is, supporting each other, showing each other that we were the only ones who performed the abortions, who guaranteed the rights, and saying it, putting voice to it [*ponerle voz*], putting up signs, pamphlets.”<sup>8</sup>

Third, feminist activism has played an important informational role. As noted by a member of the Campaign who has worked in the area of sexual health at the national level, “...an important fact is that in most of the abortions performed in the public system, in general, the person first went to a [feminist] social organization.”<sup>9</sup> For instance, in addition to engaging in service delivery, the Network of First Responders has played an informational role by connecting women who seek an abortion within the healthcare system with “friendly” healthcare staff who can provide access to these procedures (Keefe-Oates 2021).

The second and third mechanisms—network creation and information dissemination—at times were combined in the form of trainings for healthcare professionals led or organized by non-governmental organization feminist activists. For example, the organization Catholics for the Right to Choose,

an important actor in the Campaign, has held trainings in different provinces, typically in coordination with subnational- and/or national-level bureaucracies and actors.<sup>10</sup> A doctor who also has served as a bureaucrat in the area of sexual health in the City of Buenos Aires and is an abortion rights activist described trainings as “...not only having to do with sharing information and guaranteeing, increasing skills, but also having to do with legitimizing, with generating spaces of fraternity, in which people can feel safer to perform other practices [abortion procedures].”<sup>11</sup>

Fourth, feminist activism has been crucial for monitoring abortion policy implementation, particularly after legalization. For instance, Catholics for the Right to Choose is one of the civil society organizations monitoring the implementation of abortion legislation.<sup>12</sup> The *Proyecto Mirar* initiative, which has rallied feminist activists around the goal of monitoring abortion policy since legalization, is another such organization.<sup>13</sup>

Fifth, feminist activists who have entered state bureaucracies at the national and subnational levels in Argentina have contributed to generating “virtuous circles” that reinforce these other four channels. Describing her subnational bureaucratic role a few years before abortion legalization, the doctor and abortion rights activist who served in the area of sexual health in the City of Buenos Aires introduced previously recounted her support for healthcare professionals. She described trying to make professionals who already were providing access to legal abortions under the framework before legalization to “feel more endorsed and empowered.”<sup>14</sup>

A feminist and abortion rights activist from the province of Córdoba explained the role that feminists within the *national*-level bureaucracy have played in improving access to abortion in this province. She stated that although the topic of abortion is “not in the agenda” for the provincial administration, “the National Direction of Sexual Health is the one that has this on their shoulders...”<sup>15</sup> The role of national-level bureaucrats in safeguarding the implementation of progressive policy builds on previous findings by Rich (2019) in the case of Brazil. In that context, national-level government bureaucrats were crucial to sustaining and expanding the AIDS movement—and, thus, to the continued and successful implementation of progressive AIDS policies.<sup>16</sup>

## CONCLUSION

This study provides a novel account of abortion policy implementation in Argentina by highlighting the role of two different actors: street-level providers and, especially, feminist activists. This article concentrates specifically on abortion legislation; however, the proposed framework may “travel” to other doctrinal issues, such as sex education in schools in predominantly Catholic countries. This occurs when implementation has comparatively low visibility, when street-level providers with a high degree of independence in their job decisions are in charge of implementation, and when left-wing politicians face electoral tradeoffs due to heterogeneous support coalitions.

In addition to the presence of feminist activism, a visibly important source of variation that may affect access to abortion on the ground is changes in laws surrounding abortion. For instance, the passing of more progressive abortion policy (e.g., abortion legalization) may lower the threat of prosecution for both street-level providers who provide access to abortion and women who obtain one. Moreover, if this legislative change is supported by the incumbent, national-level actors ranging from the president to appointed bureaucrats may care not only about the legislative change but also about proper implementation. Thus, legislative change, as well as the conditions under which it takes place, may be relevant for shaping actual access to abortion on the ground.

This source of variation is present in the Argentine case. In December 2020, shortly before fieldwork for this project was conducted, the Argentine Congress approved a bill that legalized abortion up to the 14th week of pregnancy. The abortion legalization bill, in fact, was initiated by the Executive Branch and had strong support from President Alberto Fernández and his administration.

Does this mean that feminist activism becomes irrelevant in shaping access to abortion after its legalization? I argue that this is not the case: legalization is not a sufficient condition to automatically guarantee access to abortion on the ground. Although a *de jure* expansion of abortion rights may have important effects, it does not necessarily reduce the importance of feminist activists for securing *de facto* access to abortion. Even after legalization, challenges in access—and even the threat of prosecution—remain. This is evidenced by the case of Doctor Miranda Ruiz, who was prosecuted for providing access to abortion in the conservative province of Salta after abortion had become legal.<sup>17</sup> As voiced by an abortion rights activist and member of the Campaign: “...we understand as a feminist movement that the fight does not end when you conquer the right. Then you have to defend it; you have to ensure that it is implemented equally throughout the country.”<sup>18</sup> Thus, even when progressive abortion legislation is enacted—especially in settings with weak political institutions—a strong feminist movement nevertheless is crucial to ensure the *de facto* implementation of the law.

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## CONFLICTS OF INTEREST

The author declares that there are no ethical issues or conflicts of interest in this research. ■

## NOTES

1. Throughout this article, I use the expressions “abortion policy,” “abortion law,” and “abortion legislation” interchangeably.
2. See, for instance, Human Rights Watch (2020). Before legalization in 2021, abortion was legal in Argentina only when the pregnancy was the result of rape or when the pregnant woman’s life or health was at risk.
3. Author interview; July 21, 2022.
4. See Gutiérrez (2021) and Keefe-Oates (2021).
5. See, for instance, Marziotta (2018) and Sousa Dias (2018).
6. Author interview; August 16, 2023.
7. See Gutiérrez (2021).
8. Author interview; August 24, 2022.
9. Author interview; July 28, 2022.
10. Author interview; June 24, 2022.
11. Author interview; July 6, 2022.
12. See, for instance, Católicas por el Derecho a Decidir/Argentina (2022).
13. See <https://proyectomirar.org.ar>. Accessed January 10, 2024.
14. Author interview; July 6, 2022.
15. Author interview; July 15, 2022.
16. In the Brazilian case, Rich (2019) showed that federal bureaucrats primarily impacted policy endurance and implementation through their support of the activism and expansion of the AIDS movement. However, there are important differences with the Brazilian context. Most saliently, unlike in Brazil (Rich 2019, 13), unelected bureaucrats in Argentina do not typically remain in their positions across different administrations. Therefore, in the Argentine case, the dynamics outside of the bureaucracy are crucial.
17. See Centro de Estudios Legales y Sociales (2022).
18. Author interview; August 12, 2022.

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