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Abortion as a right and abortion as a crime: the neoconservative setback*

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Abstract

This article analyzes the political confrontation between feminist and fundamentalist arguments about abortion in Brazil in the 2000s. The dispute for conceptions of life is at stake. Feminists argue for the distinction between “lived” life and “abstract life.” The exclusive fundamentalist notion of “abstract life” derived from religious arguments supports the absolute rights of the concept since fertilization. Abortion should be a crime (because of sin) under all circumstances (without any legal permissive exceptions). The analysis of the testimonies of fundamentalist federal representatives and clergy members reveals the confrontation with the secular nature of the state. They capture and distort legal and genetic discourses, disguise them as a human rights discourse, and disqualify women as less entitled to rights. Abortion as “a crime and a sin” is linked to the “woman’s (subordinate) place” in the “traditional family.” Neoconservative forces are working toward a religious moral imposition on women and seek the setback not only of abortion rights, but of women's rights.

Keywords: Rights to Abortion, Feminist Arguments, Abortion as crime and sin, Fundamentalist Religiosity, Moral imposition, Secularity and secularization, Neoconservative retraction.

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Introduction

Feminist mobilizations, especially since the 1960s and 1970s (the so-called second-wave feminism) were successful in legalizing abortion in several European and North-American countries.

In contrast with the 1970s, in Brazil and in many other Latin American countries, the current mobilizations toward legalizing abortion seem to be facing growing difficulties.

They face an internationally-articulated, neoconservative fundamentalist movement in favor of the family and against abortion which absorbs the rise of a new conservative wave in the United States and increasingly gains profoundly impositonal moralistic and religious undertones.

The qualification as neoconservative forces is due to the fact that this is not a long-standing facet of religious and conservative thinking. It is more than that. Since feminist movements began mobilizing for the legalization of abortion, in the 1970s, in order for any “new” or “old” social forces to manifest themselves and oppose the right to abortion, they needed to organize as an ostensible social movement, because they confront abortion rights that have been legitimated and implemented in several countries, not only in the West.

The different types of fundamentalist narratives in favor of criminalization and opposed to the legalization of abortion have grown exponentially in Brazil since 2005, in reaction to the formulation and presentation, by the Executive Branch, of a draft law proposal in favor of legalizing abortion. Though formally formulate by a Tripartite Commission (the “three parts” comprising six representatives of the Executive Branch, six representatives of the Legislative Branch, and six civil society representatives, chosen by, or members of, the National Women’s Rights Council), the Tripartite Commission for the Revision of the Punitive Legislation of Voluntary Abortion was initiated by the Executive Branch through the Secretary for Women’s Policies. The draft resulted from feminist movement demands for the revision of the punitive

legislation regarding abortion, which were presented and approved in the First National Conference for Women's Policies, in 2004.

The imminent risk of the legalization of abortion, as a result of the Executive Branch's initiative, led to a growing reaction from opposing social forces, which began to organize, articulating parliamentary and religious forces, and to seek a broader expansion and social adhesion.

I call the period that clearly begins in late 2005 and becomes acute in the 2010s, with the increase in political power of pro-life groups in the Brazilian Congress, which reacts to a process of societal secularization and of growth in human rights movements, the "Neoconservative setback". In the 1990s and in the early 2000s, there was a legitimate public and political debate over the defense of abortion rights. Though that goal was never reached, there were accomplishments, with the determination that public health services must take in cases resulting from clandestine abortions and the creation of legal abortion services for those cases permitted under the Brazilian legislation.

During the 2010 Presidential electoral campaign, both leading candidates were strongly pressured by the Evangelical and "anti-abortion" Parliamentary Caucuses, as well as by the National Conference of Bishops in Brazil (CNBB, in Portuguese). The setback instituted the silencing of the discussion on legalizing abortion in the Legislative and Executive political debate and introduced an opposing offensive that seeks to set back the decriminalizing exceptions that are already present in the Brazilian legislation.

My objective is to analyze and reconstruct the fundamentalist religious arguments. I will use statements from federal representatives and speakers who were invited as **experts** (Beck; Giddens; Lasch, 1997) to a "critical event" (Das, 1995) in November, 2005. The event was the public hearing that preceded a session of the Social Security and Family Commission (in November, 2005) that was to discuss the Substitute Law Proposal n. 1135/91, based on the draft formulated by the Tripartite Commission for the Revision of the Punitive Legislation of Voluntary Abortion

delivered to Federal Representative Jandira Feghali, who wrote the report on the proposal. As I was a member of the tripartite commission, I personally observed, witnessed and heard the testimonies I analyze, which I also consider as a research object.

In order to analyze and reconstruct fundamentalist arguments in the 2010s, I will turn to news articles and statements made by federal representatives and clergy members, available in the websites and blogs they used in order to divulge their proposals between 2011 and 2016, as well as in law proposal justifications and news articles available in the House of Representatives' website.

I will not, in this article, reconstruct feminist narratives. I will, however, include certain cases that enable me to infer feminist modes of argument that were directly produced in the clash with the fundamentalist opposition in the political arena. I will take into consideration recent formulations found in feminist blogs in social media and formulations stated at the critical event of the 2005 public hearing. What emerges is the primacy of the idea of women's "lived life", in the face of the fundamentalist conception of an "abstract life" that does nothing but absolutely delegitimize women's right to end a pregnancy under any circumstances. The formulations "lived life", "living people" and "life in its concreteness" enrich feminist arguments.

They strengthen the defense of the respect for an ethics of justice and of the use of the "weighing" principle in determining access to disputing, opposing rights that must be taken into account in relation to one another: the conceptus's rights to "(abstract) life" and the woman's rights resulting from her "lived life". This weighing, though not always articulated in this legal terminology, has long been present in feminist proposals for legalizing abortion which restrict the right to abortion to the first twelve weeks of pregnancy and to the need to present reasons and severe risks (to health, to life, and of sexual violation) in the later periods.

One important feminist argument in the current debate is the defense of a secular State as an antidote to the strength and the

modality of religious arguments. My objective is not only to confirm the importance of a secular State in order to arrive at the possibility of the right to abortion, but also to show the complex and relative independence of visions of abortion as a right and different constructions and moments of constituting secular States and of degrees and forms of societal secularization.

The reflection on a brief history of the relationship between the secular State, secularization, religiosity, and conceptions of abortion precedes and lays the groundwork for the analyses of the neoconservative fundamentalist arguments in Brazil in the 2000s.

One must therefore reflect upon the current debate between secular and religious principles.

The secular nature of a State is related, first, to the affirmation of the democratic, rather than religious, legitimation of power. (...) The determination of the institutional separation between State and Church composes the context of the constitutional protection of the principle, but is not to be confused with it (Zylbersztajn, 2016:207).

The different forms of State secularism that follow the industrial, economic and political revolutions of the 18th and 19th centuries and the different forms of secularization of those societies during those centuries tended to progressively push away the religious bases of their laws, invoking arguments of “public reason” (Rawls, 2000 and 2004), and arguments that implied the non-imposition of one religious belief over another. Even countries that did not absolutely separate Church and State established forms of secularism, given the extensive secularization of their societies, as is the case of Great Britain.

Despite the introduction of secularism in the 18th and 19th centuries, the condemnation of abortion as a crime and a sin, postulated by the views adopted by the Catholic church and by protestant churches over the centuries of the expansion of Christianity, was not immediately altered.

It was only over the course of the 20th century, with the progressive secularization and separation between Church and State, and with the mobilizations for rights that, before the 1960s, a

few States legislated in favor of decriminalizing abortion. Before 1960, the first European country to legalize abortion (with restrictions) was Sweden, in 1938, followed by Finland (1950) and by the Baltic republics (1955) – Estonia, Lithuania and Latvia.

It took the appearance, in the 1960s and 1970s, of feminist movements that denounced the imprisonment, death or morbidity that afflicted women who had abortion for the religious bases of the condemnation of abortion to be unveiled and challenged.

The criminalization of abortion stands in conflict with women's fundamental civil, political and social rights, as well as with the minimum definition of legal subject, of a born person made a social and legal person as a result of birth, in a fully secular society.

Secular principles, religious principles and secularization

The reasons why the secularization of the 18th and 19th centuries did not result in the decriminalization of abortion, nor in the acknowledgment that the condemnation of abortion was based on religious principles, is due, in my view, to the Nation-States' absorption of the long-standing Christian view of family and conjugal values that are centered on the unequal authority and power of men and women and on sexuality (mandatory, because sacred, heterosexuality and procreation).

Luiz Fernando Duarte (2004) also discusses secularization starting from Christian religious values. Sonia Corrêa (2016), on the other hand, emphasizes the secular 18th-and-19th-century origins of the laws banning abortion. Though she agrees these laws were created at a time when modern societies were becoming secularized, I disagree on their origin, which I view as religious. The bases for abortion as a crime and a sin were simultaneously made explicit as religious sanctions and moral rules.

The previous long duration of the criminalization of abortion during the continuous expansion of Christianity in the Western world, from medieval to modern times, took place within a context in which the non-separation of Church and State was

predominant. For centuries, State laws were articulated with, or complemented by, Canon Law. And Canon Law was the paradigm for the view of abortion as crime and a sin. However, it is important to note that abortion was not considered condemnable if it happened during the early stages of pregnancy.

If it was in modern, secular nations that individualism and the notion of legal subject were developed, sex/gender inequalities nonetheless persisted in these societies. The constitution of the sex/gender inequality originated in Christian religious precepts, based on the naturalization of the two sexes such as they was perceived by those precepts. These long-standing values were responsible for the dual sexual contract of modern patriarchy (Pateman, 1988 and 1996): equality of rights among citizens and sexual inequality of rights. They were largely legitimated by the political elites at the time. Without meaning to reduce the complexity of the issue, the construction of modern Nation-States additionally brought with it natalist concerns. Corrêa (2016) states that “The revolutions and reforms of 18th- and 19th-century political regimes – guided by secularism – imposed restrictions on women’s ability to make reasonable decisions about their sexual and reproductive lives”.

During the 18th and 19th centuries, Nation-States in the metropolises and in the colonies and peripheral nations criminalized abortion. Until 1960, most countries in the “Western world” legally banned abortion.

The criminalization of abortion under Canon Law that developed over centuries, based on the expansion of Christianity, was varied and suffered many oscillations (Cunha, 2007; Rosado-Nunes, 2012). According to Ranke-Heinemann (1994), the distinction between inanimate fetus and animated fetus was shared by many representatives of the Church. In the 4th century, Jerome understood that there was no official Church doctrine regarding the animation of the fetus, so theologians could take different and even divergent positions (Melo, 1994). Abortion would only be reprehensible when the fetus went from inanimate to animated. Thomas Aquinas (1225-1275 AD), in turn, understood that abortion

could not be considered murder in the early stages of pregnancy, because the embryo went through different developmental stages, through successive steps. Only at the third stage would the embryo receive the rational, human soul (*anima rationalis*) (Wijewickrema, 1996). From 1588 to 1591, abortion was considered condemnable at any stage of the pregnancy. In 1599, Pope Gregory XIV reinstated abortion as condemnable only after the “moment when a pregnant woman could feel the fetus moving for the first time (around 116 days after conception)”. It is also important to note that acts of abortion would often not reach the courts.

Canon Law was the paradigm, during Brazil’s colonial period, for the understanding of abortion in the Afonsine, Manueline and Philippine Ordinances. In the Philippine Ordinances, there are no references to the crime of abortion, but it was understood to be murder (Mendonça Correia, 2016), with the caveat that only if the fetus was considered to have a “soul”, which considerably restricted its reach.

The Catholic church’s position on abortion was only officially established in 1869 when Pope Pius IX declared simultaneous animation, according to which the fetus would be invested with a soul at the moment of conception (Wijewickrema, 1996); from that point onwards, abortion is severely prohibited and considered a grave sin.

Religious views on the condemnation of abortion and the belief in the simultaneous animation at the moment of conception had already been absorbed by part of the medical communities and the political elites over the course of societal secularization and the creation of new Nation-States born out of the political and economic revolutions of the 18th and 19th centuries.

The 1791 Penal Code, post-French Revolution, and Napoleon’s Penal Code (1810) punished abortion and infanticide with death. The rules of criminalization – adopted after the modern and secular revolutions – were engraved in the laws of European metropolises and had been transported to colonies and post-colonial contexts, as Corrêa (2016) points out. The Napoleonic Code of 1810 directly influenced the penal laws adopted by Latin

American countries after independence. The English Penal Code of 1861 traversed the British empire in Asia, Africa, Oceania and the Caribbean (Corrêa, 2016).

During the entire Brazilian colonial and imperial periods, in addition to the absorption of religious principles, there was no separation between the State and the Catholic church. Rodrigues (2008) discusses the passage from the imperial period to the Republic:

Let us once again remember that, during the imperial period, the clergy's participation in politics was official and ostensible: the clergy voted and was voted on, directly participating in the parliamentary political life. Between bishops and priests, 17 members of clergy occupied seats in the Senate and more than 200 passed by the House of Representatives. This scenario was altered with the passage to the Republic, when the clergy became unelectable. Let us also remember that the Archbishop of Bahia, D. Macedo Costa, ran for a seat in the Senate, but was not elected. Thus, due to the secularizing zeal of the First Republic, of separation between Church and State, there was a progressive emergence of a Catholic laity in the political arena. These are crucial issues, since we are working with a theme that is dear to the Catholic church, that is, the family. For this reason, mapping the church's terrain of action is crucial (Rodrigues, 2008:39).

Merely reading this text allows us to deduce how the presence of religious bases for laws was supported by the presence of religious authorities in Congress and how political deals were made between representatives of the Catholic Church and the Monarchy. This text draws our attention to the need for reflections that are directed toward the current effects of the strong presence of elected representatives who are not only members of their religions, but also religious authorities.

The Brazilian Empire's Criminal Code of 1830 partially adhered to the long-standing religious understanding of abortion

as condemnable, because it only typified the crime of performing an abortion on another person. It did not consider self-administered abortion as a crime. We can see in this Code the porosities and interfaces between religious thought and social thought around the idea of “honor”, a (partly secularized) mode of argument that could, in the common sense views of the time, lead the political elite to understand why a woman would want an abortion.

During the republican period, the 1890 Penal Code, which remained in effect until 1940, criminalized not only the person who performed, or assisted in, an abortion, but also the woman who underwent it. In 1890, sentences for abortion performed by a third party and for infanticide were increased – though they remained distant from the punishment for homicide (Corrêa, 2016). To this were added concerns regarding population regulation and the inscription of natalism. Even though it was considered a crime, when the woman was understood to have had an abortion in order to “defend her honor” or due to “postpartum madness”, she could be found not-guilty, or the sentence could be attenuated. Additionally, few cases of abortion reached the courts (Rohden, 2003; Hentz, 2013). Rohden (2003) states that the term criminal abortion began to be publicly used in 1873, while the medical establishment spoke of embryotomy, therapeutic feticide or obstetric abortion. The 1940 Penal Code criminalizes abortion, but does penalize abortions when the pregnancy results from rape (preserving the honor) or when the abortion is needed to save the woman’s life.

If we can speak of secular logics of disciplining women’s sexual and reproductive behaviors, which were present in the creation of secular States, it is because long-standing Christian religious principles had already been absorbed. The principles were responsible for the introduction of what I have called, in several previous works, the “relational code of honor”. The idea of “family honor” found in the Philippine Ordinances, which unequally distributes powers, attributions, duties and rights to men and women, fathers, mothers and children, slave-owners,

household members and slaves, is based on (or is adequate to) Christian disciplinary norms on sexuality (with all sexuality other than heterosexuality considered under the sin of sodomy), sex and gender differences (women having the duty to obey the male power and the different duty of fidelity) and social status difference and distance (referring not only to social class but also to the institution of slavery). The principles of the relational code of honor persist in the 1916 Civil Code and the 1940 Penal Code, and in the social memory (Machado, 2000, 2001, 2010; Correa, 1983).

These logics of inequality named around the idea of honor, though secularized, came from religious principles and fed secular, lay views, but also the knowledge of medical and legal communities, which, at the time, added medical arguments, such as “postpartum madness”, or legal arguments, such as the “defense of honor” (Caulfield, 2005).

The Constituent Assembly clearly introduced into the 1988 Constitution the fundamental rights to democracy, to liberty and to equality. The Constitution is marked by the principle of secularism and by the explicit affirmation of all citizens’ basic rights in an increasingly secularized society. For the first time in Brazil, the Constitution established gender equality and the promotion of all citizens’ well-being, banning discrimination based on origin, race, sex, color, age, or discrimination of any other nature (Item IV, article 3 of the Constitution). The Constitution also includes remnants that do not adhere to the principles of secularism, as Zylbersztajn (2016) analyses, but it is still a strongly secular Constitution. Though there were politicians defending religious arguments at the Constituent Assembly, secularism was unsurmountable (Pierucci, 1996; Duarte, 2011).

However, even before the new Constitution was drafted, during the transition from dictatorship to democracy (the so-called “opening” of the regime), the secularization of the Brazilian society and the demand for the secularization of the State advanced progressively, though only relatively. Important ruptures with interdictions mandated by religious values took place. The 1962 Statute of the Married Woman removed married women from the

legal status of “relative incapacity”, subordinated to their husbands, a situation resulting from traditional and religious values that legitimated and legalized the principle that women should obey their husbands on all matters that were “just and honest”, according to the 1916 Civil Code. From the indissoluble marriage that only permitted a (difficult to obtain) annulment or separation, in 1977, divorce became a possibility. If, in Brazil, family arrangements were always varied and diverse (Correa, 1982; Almeida, 1987), new possibilities were created for legalizing and intensifying new marriages and new forms of stable unions. The visibility and experience of gender identities and sexual diversity, of diverse lifestyles and behaviors in all kinds of social spaces became possible.

From the 1970s to the 1990s, it was possible for different social movements to emerge: black movements against racial inequality and discrimination, indigenous movements, *quilombola* movements, sexual diversity (LGBT) movements, women’s and feminist movements against sexual discrimination and for gender equality.

The Vatican’s religious responses against proposals and legislative reforms to decriminalize abortion

Internationally, the Vatican’s response to the expansion of secularization of Western metropolitan and peripheral societies had been present for many years, following the expansion of the development of contraceptive technologies in the 1960s.

The Vatican’s statements largely preceded and followed feminist mobilizations, unsuccessfully seeking to block the processes of legalizing abortion that took place in several European societies: United Kingdom (1967), Denmark (1973), France (1975), Italy (1978) and the Netherlands (1980), among others. In the United States, legalization resulted from actions by the Supreme Court, which ruled that abortion was constitutional in the 1973 *Roe v. Wade* case.

The Catholic religious doctrine, due to the strength and visibility of the Vatican in the Western world, became the parameter for confronting secular social movement arguments in favor of legalizing abortion. In 1968, the Encyclical Letter *Humanae Vitae*, of Pope Paul VI, was published.

The Encyclical Letter *Humanae Vitae*, on the regulation of birth, explicitly states the obligation of Catholic church members to conform their actions to religious and divine principles. It invokes the nature of marriage and laws of fertility as natural laws, which, according to the religious doctrine, must be obeyed. Thus, abortion must absolutely be excluded, both those which are “spontaneously” sought and those performed for therapeutic reasons.

11. (...) From this it follows that they are not free to act as they choose in the service of transmitting life, as if it were wholly up to them to decide what is the right course to follow. On the contrary, they are bound to ensure that what they do **corresponds to the will of God the Creator**. The very nature of marriage and its use makes His will clear, while the constant teaching of the Church spells it out.

God has wisely ordered laws of nature and the incidence of fertility in such a way that successive births are already naturally spaced through the inherent operation of these laws. The Church, nevertheless, in urging men **to the observance of the precepts of the natural law, which it interprets by its constant doctrine, teaches** that each and every marital act must of necessity retain its intrinsic relationship to the procreation of human life.

14. Therefore We base Our words on the first principles of a human and Christian doctrine of marriage when We are obliged once more to declare that **the direct interruption of the generative process already begun and, above all, all direct abortion, even for therapeutic reasons, are to be absolutely excluded as lawful means of regulating the number of children.** (Pope Paul VI, 1968).

The religious arguments laid out in the Encyclical Letter are disciplinary and mandatory to all members of the Catholic faith, but are restricted to possible sanctions related to the notion of sin. That is, abortion, within this religious doctrinal conception of the conceptus's absolute right, against which nothing may be weighed, becomes an absolute prohibition, under all circumstances, for the entire Catholic community. However, its power is exclusively restricted to religious sanctions related to the notion of "sin". If they sought to regulate an entire society, including Catholics and members of other religions, atheists and agnostics, it would no longer be exclusively understood as a sin, but rather as a crime. It would thus offend women's basic rights to health, to physical and psychic integrity, since the prohibition of abortion would be absolute, and there would be nothing left for women to do but not to have an abortion, whatever the consequences that might entail, including death.

The 1968 Encyclical Letter was followed by the Declaration on Procured Abortion, formulated by the Sacred Congregation for the Doctrine of the Faith, on November 18th, 1974, and the Encyclical Letter *Evangelium Vitae*, of Pope John Paul II, promulgated in Rome, next to Saint Peter's Basilica, on March 25th, 1995, during the celebration of the Annunciation of the Lord (Machado, 2010).

The dictates of the 1869 Canon Law, translated and renewed by the Encyclical Letters of 1968 and 1995, states that abortion is absolutely prohibited due to the conceptus's absolute right. Abortion is condemned even in the face of "therapeutic reasons", that is, if required to save a woman's life, preserve her physical or mental health, or to terminate the pregnancy of a conceptus with fatal congenital problems or with severe diseases.

Contrary to the dictates of Christian churches, the understanding of women's human rights were consolidated in the intergovernmental space in 1975 and during the 1990s with the major World Conferences on human rights (1993), population and development (1994) and women's rights (1995). These conferences consolidated the notion of reproductive rights, sexual rights and

women's rights as prevailing over traditional practices that could impede their exercise.

The relative minimum intergovernmental consensus of these agreements only offered principle which could, or not, become new national laws, depending on local and national mobilizations.

If the religious conception of abortion came to rule over the Brazilian society, abortion would become a crime, without allowing even the exceptions to punishment currently established in Brazil: rape, imminent risk of death and fetal anencephaly. It would not only mean denying the right to religious freedom and disrespecting the legal principles of weighing which rule modernity, but would also mean denying women's basic rights.

The 2000s: the return of movements for legalizing abortion in Brazil and neoconservative responses

The new mobilizations for legalizing abortion, however, took place in the first and second decades of the 21st century in many Latin American countries, as well as in many European countries where abortion had not been legalized in the previous century. The Mexico City Legislative Assembly approved the decriminalization of abortion in the capital on 04/24/2007, despite strong pressure from the Catholic church and the National Action Party (PAN, in Spanish) (*Folha de São Paulo*, 04/24/2007). In Uruguay, abortion was legalized in 2012. In 2015, the Uruguayan Health Ministry released a report with data on abortions in 2014: 6,676 abortions and no deaths. That is, there was a reduction in maternal mortality. The only death recorded resulted from a clandestine abortion.

The last two decades have also seen the worldwide rise of neoconservative movements, reaching countries where abortion was already legalized, as well as making countries where abortion had not yet been legalized more vulnerable. I call them fundamentalist neoconservative forces. Neoconservative, because their goal is to re-introduce into highly secularized societies impregnated with the human rights and gender equality debates

the view of abortion as a crime and grave sin, added to the view that its prohibition is absolute, regardless of the reasons. And for this purpose they have organized as an ostensible social and political movement. Fundamentalist, because their parameters are based on religious principles.

In Brazil, the mobilization for the decriminalization and legalization of abortion that had begun in the 1980s and 1990s, and the LGBT movement, gained strength in the 2000s, due to the greater secularization of the Brazilian society and to the then greater proximity between the feminist movement and the Executive Branch.

On April 6th, 2005, the Executive Branch created the Tripartite Commission for the Revision of the Punitive Legislation of Voluntary Abortion, charged with formulating a draft law proposal. However, neither the Substitute Proposal of 2005, nor the original text of the 1991 law proposal were approved (Machado, 2016).

The successive Encyclical Letters and Declarations against abortion promulgated by the Catholic Church were welcomed by followers of diverse Protestant denominations who in Brazil defended, or came to defend, absolute positions against abortion, making it difficult for decriminalization to be approved.

This greater secularization of the Brazilian society points to principles of plurality and diversity of the forms of “private life” and the forms of civic experiences in the public space. It moves away from the monolithic understanding of how family arrangements, gender and sexuality identities and decisions on reproduction should be.

The strongly religious neoconservative movements rail against the progressive – though relative – departure of secularized societies from so-called traditional family values (in which the male power prevails) and from traditional morality. The rise of social movements demanding sexual and reproductive rights was the “last straw” for the neoconservative reaction.

They are movements that originate directly from religious members of Congress, such as the Evangelical Caucus, and the

many caucuses that were formed in response to the mobilization for the legalization of abortion, starting in 2005.

In response to the proposed legalization of abortion, the non-governmental organization Brazil Without Abortion was created. It began to hold annual Marches for Life and participated in the formulation of the Statute of the Unborn, a project currently under discussion in the House of Representatives and which, according to “pro-life” movement members, could “shield the country from a possible legalization of abortion” (Jônatas Dias Lima, 2015).

On October, 2005, the first “Parliamentary Caucus in defense of life and against abortion” was registered. In the following legislature, a new caucus was created: the Parliamentary Caucus in favor of the Family. In the name of defending religious values, they incorporated the defense of the traditional family, the opposition to abortion and to homosexual rights.

The Brazilian Supreme Court (STF, in Portuguese) recognized, in 2011, the equivalence between homosexual and heterosexual unions. Two years later, the National Justice Council (CNJ, in Portuguese) decided that Brazilian clerks could not refuse to convert homosexual stable unions into marriages.

The religious caucuses that defend “traditional values” remained over the course of different legislatures. In 2015, two were registered: the “Mixed Parliamentary Caucus of the family and in support of life” and the “Parliamentary Caucus in defense of life and of the family”.

In 2016, in response to the decision (enthusiastically received by feminist movements) by the First Group of the Supreme Court that stated that abortion should not be considered a crime in the first twelve weeks of pregnancy, the presidents of the Evangelical Parliamentary Caucus, of the Parliamentary Caucus in defense of life and of the family and of a new caucus, the Mixed Roman Catholic Parliamentary Caucus, signed a note, on November 30th, 2016, against the decision, which would have, according to an

opinion by Judge Luís Roberto Barroso, neglected the “inviolability of the right to life”.

Contrary to secular principles, all of these caucuses are clear in taking stances in the name of religious motives and arguments, regardless of the fact that their members belong to a great variety of Evangelical, historical Protestant, Spiritist or Catholic denominations.

On the other hand, the National Conference of Bishops in Brazil (CNBB, in Portuguese) continues to participate politically as a voice in favor of maintaining abortion as a crime, based on their institutional space in its historical relationship with the State.

In current times, in Brazil, the idea of abortion as a crime and a sin has undergone a secularization process. It is not a value considered to be immemorial and untouchable, nor is it a consensus. It tends to inform the enunciation of an abstract opinion more than act as a parameter for the decision whether or not to have an abortion.

In everyday life, women are faced, on the one hand, with the idea of abortion as a right (if not in their own country, in others) and, on the other, with the need to reflect on what to do: carry a pregnancy to term or terminate it, an action that may be considered desirable, undesirable or indispensable, depending on the context and the specific situation in which they evaluate their desire and possibility to become a mother. The knowledge that abortion is legally considered a crime is imposed by the lack of access to legal forms of abortion and the need to resort to clandestine options that are more or less safe, depending on their capacity to pay for the procedure. Studies in Brazil show how widespread the knowledge of having had an abortion, or of someone who has had an abortion, is (Faúndes; Leocádio; Andalaft, 2002; Rocha, 2006).

It is, thus, in the face of a society with heterogeneous experiences and knowledge regarding types of families, sexuality and values related to abortion that movements against the legalization of abortion act. It is therefore not possible to call them

conservative forces, but rather neoconservative forces. Their goal is to impose moral and religious values on society as a whole.

Strategies and narratives of neoconservative movements in Brazil: the pulpit and the congressional seat

My objective is to show how Brazilian neoconservative movements created, beginning in 2003 and especially since 2005, the strategy of combining the pulpit and the congressional seat in order to condense in a single power the political and religious authority so as to focalize the traditional values of family relations that include the control over women's sexuality and reproduction. Such was the proposal of the Evangelical Parliamentary Caucus (FPE, in Portuguese). Its current president explicitly states it:

As a church of our Lord, **we cannot accept the distorted concept of a secular State that some are trying to apply to Brazil.** If we remain silence, the day will come when we will only be able to worship the Lord inside our home. God has called upon us **to confront the world**, not to conform to it", stated João Campos. Pastor José Wellington thanked the president of the FPE, stating that the church grew with an aversion to politics, but today, through well-prepared, honored, capable individuals, it needs to have its legitimate representatives in all national spheres (Bertulino, 2016).

Religious services performed in offices of legislative commissions or in Senate auditoriums are contrary to the principle of secularism, albeit without violating the principle of secularity (impartiality towards religions), from which it differs. By secularism, I mean the emphatic exclusion of religion from the public sphere, without any penetration in State environments (Zylberstajn, 2016:63). However, in my view, its effects are, in some way, an attack on secularity.

Wednesday morning in Brasília. A group of men and women go to a room to pray. The scene is common in thousands of churches in Brazil, but, in this case, the

participants are federal representatives – and the setting is an auditorium in the National Congress. It is the weekly service of the members of the Evangelical Parliamentary Caucus (FPE, in Portuguese), a multi-party group that claims to include 92 Evangelical representatives. Its members are the main showcase of the mixture of politics and religion in Brazil (Struck, 2016).

The extreme contradiction of the principle of secularism has effects that counter the principle of secularity and the separation of Church and State. The act of holding religious services in Congress translates into exposure and visibility of the preeminence of religious principles which, in fact, underpin this caucus's arguments and law proposals.

The Caucus's priorities are: approving the "Statute of the Family", the "Statute of the Unborn" and the Constitutional Amendment 99/2011. The first two are centered on the defense of the so-called "traditional family" and on combating abortion, respectively. Of the 36 law proposals currently under discussion in the House of Representatives, five seek to make abortion a heinous crime. These proposals are also supported by the other pro-life, pro-family caucuses.

The Constitutional Amendment 99/2011, in turn, would enable a series of churches to be included among the entities entitled to propose Direct Actions of Unconstitutionality and Declaratory Actions of Constitutionality to the Supreme Court (STF, in Portuguese). Today, this is a prerogative of political parties, the Heads of the Executive and the Legislative Branches and the Brazilian Bar Association (OAB). The Constitutional Amendment 99/2011 would sensibly weaken the separation between the State and religious institutions.

In 2016, the Caucus articulated the approval of the increase in the tax exemption for churches and enabled the amnesty of fines levied by the Internal Revenue Service against churches – the value surpassed 300 million reais. The principle that the State should not subsidize religious institutions is thus violated. Likewise,

the concession of proselytizing radio and television channels weakens the obedience to the principle that the State should not subsidize religious organizations. Religious proselytizing, in addition to the pulpit and the congressional seat, expands its place in the use of media powers obtained through public concessions (Zylbersztajn, 2008).

I do not intend to provide an in-depth scrutiny of the Evangelical Caucus's activities and multi-party constitution (as Duarte, 2011; and Gonçalves, 2011 have done), or the strategies of pro-life and pro-family parliamentary caucuses. I merely note that the increase of federal representatives who are members of the Evangelical Caucus has been constant in the past legislatures. In 2016, the caucus included 67 representatives and three senators. In order to formally register the caucus and receive resources from the House of Representatives, it was registered under the House Leadership's Act n. 69, 12/10/2005 with a larger number than its frequent members. For the 2015-2018 legislature, it has 203 signatures¹.

I am particularly interested in unveiling the articulation of different narratives produced by neoconservative movements that call themselves "pro-life" and "pro-family", doubly installed on the pulpit and on the congressional seat: a) the religious narrative that constructs the argument of the legitimacy of the Christian religious majority in the Brazilian society; b) the legal narrative (with religious bases) of the absolute (non-weighed) right to life of the conceptus in the face of the woman's rights, reiterating and rendering into metaphor the woman's subordinate position in the face of the obligation of the sacred maternal love and of the wife's adjutory role in the traditional family; and c) the (genetic) scientific narrative such as it is appropriated by the religious narrative about the singular and individual nature of DNA, articulating the discovery of the individual singularity of the DNA with the singularity of the individual soul, such as prescribed in the Western

¹ Cf. <http://www.metodista.br/midiareligiaopolitica/index.php/composicao-bancada-evangelica/> – accessed on: March 7th 2016.

conception of individual/person as “body and mind” or “body and soul”.

In my view, the identification of abortion as a crime and a sin is not an isolated proposal that defines itself in the name of defending “the right to life since conception”. It is a strategy and an integral part of the proposal of imposing a single model of family that seeks to block the plurality of varied forms of family arrangements that develop in Brazil and in the world and to block the diverse forms of exercising sexual and reproductive rights. It seeks especially the control over women’s reproduction, in the name of religious values.

The argument of the Christian majority against the atheist minority and the confrontation with secularity

In order to present the formation of the distinct forms of narratives presented by federal representatives in favor of criminalization and against the legalization of abortion, I turn to their statements found in their blogs and in news stories from 2011 to 2016, to statements from clergy members who are part of the pro-life movement in their blogs, and articulate them with statements from federal representatives and from experts in the public hearing of November 2005, in the session of the Social Security and Family Commission (in November, 2005) that was to discuss the Substitute Law Proposal n. 1135/91, based on the draft proposal formulated by the Tripartite Commission. This draft proposal established the legalization of abortion during the first 12 weeks of pregnancy and, after that point, only in cases of risk to the woman’s health, severe fetal malformations or pregnancies resulting from rape. The statements were recorded and transcribed by Anna Lucia Cunha (2007), who was then my student.

The State must guarantee what the majority thinks and I believe that **the majority of Brazilians believes in what God teaches, and that is the right to life. I cannot separate the representative from the Christian...** (Federal Representative Henrique Afonso, PT-AC, member of the Evangelical Caucus) (Favretto, 2016).

The creation (of the caucus) was a reaction “to the ideological confrontation with PT, which wanted to promote leftist atheist values”. They sought a confrontation and we responded **by defending Christian values** (Federal Representative Sóstenes Cavalcante, DEM-RJ) (Struck, 2016).

So, if the country is secular, but isn't an atheist country, and this is a question I received, because most of the population follows a faith, so this country's legislation is fated to depersonalizing it, if **it does not take its people's religiosity into account**. What do you have to say about this? (Federal Representative Osmânio Pereira, PTB-MG, at the public hearing, in November, 2005).

I agree when they say that the State is a secular State. And when they say the State is secular it's because that is in the legislation: it means it isn't Catholic, it also isn't Evangelical, but it also isn't atheist. Isn't it? Atheism is the contradiction or the denial that some divinity exists. Therefore it is an opposition to those who have a religiosity. Therefore, **the situation of atheist is also not contemplated by the State. And I don't want an atheist dictatorship here. A dictatorship of the minority**. In a country where a secular State is guaranteed, it is guaranteed that the State must not legislate for those who profess a religion, **but not only for the atheists, either**. (...) And if Brazil, through Evangelicals, through so many other denominations and through Catholicism, has 90% of people who express some religiosity, this is a fact that must be considered when formulating laws (Federal Representative Durval Orlato, PT-SP, at the public hearing, in November, 2005).

I think this vision of the defense of life, it is very strengthened. And the Constitution, in its preamble, it stated that it was under God's protection that this Constitution would be placed, would be enacted. The god I know, he is the God of life. I imagine, for anyone who has some faith, he is the God lord of life. So, this Constitution respects, from its preamble, that all its articles **have to take into consideration he who is the lord of life and who to all of us gave**

life, so that we may protect life, especially the life **of the helpless life who is in the mother's womb** (Federal Representative Nazareno Fonteles, PT-PI, at the public hearing, in November, 2005).

I understand that there are three laws. There's the law of men, which is the Federal Constitution, the one we approved once, two thirds of the House of Representatives that approves it; there's the Civil Code, which is half plus one; and there's this one, which is God's law, which is the Holy Bible. I can't, Mr. President. I wanted Jandira to understand. We have the law of two thirds, the law of half plus one and God's law. It says here: **"Heaven and earth will pass away, but my words will never pass away"**, **"I came that they may have life and have it abundantly"** (Federal Representative Odair Cunha, PT-MG, at the public hearing, in November, 2005).

In the last statement, by Federal Representative Odair Cunha (PT-MG), the hierarchy of laws he establishes puts at its apex God's laws present in the Bible, to which Constitutional and Congress laws must submit.

All of these statements accentuate the argument that their law proposals are explicitly based on Christian religious values and that their legitimacy comes from the fact that Christians make up the majority of the population. The atheist minority must not have its demands met. Atheism must be confronted.

Taking into account the contributions from Zylbersztajn (2016) and Rawls (2004), all of these statements are diametrically opposed to what is understood by secularism. The concept of pluralism is essential, lest the majority's religious values be imposed on the minority. The affirmation that atheism should not be included, but confronted, seems to forget the principle of religious freedom, so dear to the historical movement of Protestantism when facing the Catholic church, it errs by lacking respect to the same principle it defends: religious freedom. The principle of religious freedom includes the freedom not to believe, for the atheist and the agnostic. I cite Coutinho (2011) in order to highlight how the non-adherence to the principles of pluralism,

religious freedom and secularism, the decision in the name of a religious “majority”, is no more than the imposition of a single morality.

Pluralism, in and of itself, is irreconcilable with any form of union between the State and any religion, because it means tolerance and respect of the multiplicity of consciences, beliefs, philosophical, existential, political and ethical convictions, instead of a society in which the choices of the majority are imposed on all, disguised as “common good”, “will of the people”, “morality and good mores”, and others (Coutinho, 2011).

They also presuppose (in a chain of thought in which statements follow one from the other) that, since the majority of the population is comprised of members of Christian religions, all believe “in what God teaches”: the “right to life”; that all believe that God is “the lord of life”, that he “gave life” to all and, reciprocally, that it is the duty of all the faithful to “protect life”, especially the “helpless life who is in the mother’s womb”.

These statements reveal the assumption that belonging to a religion is enough for all members to participate in, and adhere with the same intensity to, all values it proposes and thus for all to behave uniformly. As if they could not be flexibilized, distorted or, following Deleuze (1983), classified not according to the same fixed general rule, but making themselves as a classification process based on their individual position within a relational context.

The value of the abstract, generic opinion regarding behavior perceived as correct for an entire collectivity may be that one should not abort. However, in concrete conditions, one may understand that one may, indeed, have an abortion. In studies on women who have had an abortion, some have said: “it isn’t right, but it was right for me!”. When individuals participate in relationships with people who claim to need an abortion, they tend to understand and approve the abortion, because they put themselves in that position. As an example: “how will you stop working to have another child at your age, at 43 years old, with

high blood pressure and depending on your work to support the three children you already have?”). The decision or the evaluation of whether or not to abort depends on the social relationship between the person who speaks and the person who has the abortion, and on the relationship between the person who has the abortion and the social, affective, economic, psychic, health conditions of an entire relational nexus. As stated by a feminist in an on-line magazine:

The prohibition only happens for some of the women: the black and the poor. Legalizing abortion will reduce the number of deaths, especially of these women, because abortion is only banned for those who do not have money, states Gabriela (Matuoka, 2016).

In the statements from federal representatives that I have presented in this article is clear a “false certainty” or “assumption” that all individuals who follow Christian religions (nearly 90% of the population) obey the values and behaviors regarding abortion that they postulate.

A study by ANIS publicized by the University of Brasília (UnB, in Portuguese) concluded that 65% of the women who have abortions are Catholics and 25% are Protestants. In general, the women who seek abortion are religious and have experienced motherhood (67% have children). Rates are higher among black women, indigenous women, women with lower educational levels and women who live in the North, Northeast and Center-West regions (Diniz, 2016).

The 2016 National Abortion Study found alarming numbers regarding the magnitude of abortion in Brazil: one in every five women over the age of 40 has had at least one abortion – that means 4.7 million women have had abortions. At the age of 40, one in every five Brazilian women has terminated a pregnancy – a practice restricted by law and condemned by public opinion. These are, above all, normal Brazilian women. In 2015 alone, 503,000 women had illegal abortions. This means at least 1.3

thousand abortions every day, 57 every hour, almost one every minute, according to a groundbreaking national study (Diniz, 2016).

The conceptus's absolute right and the metaphor of the woman's subordination. Disguising religious discourse as legal discourse.

As an anthropologist, I always question myself regarding my familiarity, or lack thereof, with the theme and the social subjects who are my objects of study. As a feminist and an anthropologist (Code, 1993; Haraway, 1988), the question I always ask myself is to try to understand how could someone, some other person, disconsider, in their political statements – in favor of the conceptus's absolute right to life – that women are the ones situated in the most intimate relationship with pregnancy and abortion? And, if, “at least” for this reason, one should consider their rights? How can they establish the complete disappearance of women's rights to health, life and dignity? Are women less “people” in the face of the conceptus's absolute value? It is what a feminist blogger asks.

In terms of a woman's right to choose, for a long time, the feminist movement has stuck to a radical idea, that is, that **women are people**. What does it mean to be a person? Largely speaking, we could say that to be a person is to be a biological, social and political subject who is capable of autonomous experiences. The fetus is not an autonomously-constituted being, neither from the biological standpoint, nor from the social/legal standpoint, therefore it is not a political body. Thus, why should its life be more important than the life of a woman? **Why do we, women, need to submit to the privilege of the life of a being that does not yet exist independently?** Why must so many women die in practices that amount to carnage? **None of this should happen in a secular State, that is, a State that prioritized rational choices and viewed both men and women as autonomous beings** (Silva, 2012).

In the question above, the social dilemma of the search for an ethics of justice is clearly present. In legal language, the dilemma is translated by the need for reaching decisions through “weighing principles” between “legal goods”. In the narrative of religious movements that oppose abortion, no public reason is given for not endowing women with any rights. Only the conceptus’s absolute and exclusive rights are defended in the name of “life”. The distinction between the initial stages of the conceptus’s formation are not even considered.

The statements that follow do not refer at any moment to women as concrete people and as full legal subjects confronting their “life”, their “dignity” and their circumstances.

Is killing an embryo the same as killing a person? As we have seen on the issue of abortion, to say that a zygote or an embryo is not yet a person is completely wrong, because **human life begins at conception; the embryo is a human being**. It cannot be anything else other than human. Its humanity is inherent. Additionally, though every man will one day die, no one, other than the God who created him, can determined the time at which this will happen (Malafaia, June 24th, 2013).

If everyone is entitled to the right to life, then fetuses, which provenly, scientifically, have life, and this we cannot question, they have to have the same right. If the woman has the right to protect her body, **that child who is there, borrowing it, because it was the work of nature, temporarily, so it can later on have autonomy, and has no way of defending itself** expect through a collective effort of social organization based on the Law, and on equal respect to all, must be taken into consideration, democratically (Federal Representative Nazareno Fonteles, PT-PI, at the public hearing, in November, 2005).

There are many ways, this has already been stated here, I won’t go into it, of not exercising that right [to motherhood]. **Once a woman is pregnant, the pregnancy has started, it stops being a right and becomes a duty and it the greatest of duties. It is**

the greatest! It is the duty to maintain life. Life is not the woman's property (Federal Representative Luiz Bassuma, PT-BA, at the public hearing, in November, 2005).

But I would ask: **The mother, when she wants to get rid of her baby, she's defending herself against what?** What is she defending herself from? Is it a malignant tumor she is carrying? She wants to get rid of this baby in defense of what? (Federal Representative Durval Orlato, PT-SP, at the public hearing, in November, 2005).

To those who defend abortion based on the claim that a woman has the right to end an unwanted pregnancy because she is the master of her own body, I would like to remind them that **the fetus isn't an extension of the mother. Though it needs her uterus and has a symbiotic relationship with her, the fetus is an independent being. Thus, she does not have the right to take its life,** says the pastor (Malafaia, in March, 2013).

And that's not all! I am against abortion, because it is the violence of the powerful against the helpless. How can a **helpless embryo or fetus defend itself from an abortion performed by a woman who does not love or desire it** and a doctor who swore to defend life, but practices death? (Malafaia, on May 5th, 2014)

We advocate for a harmonious relationship between mother and baby in the defense of the interests of both. The mother's rights cannot suppress the baby's rights, and vice-versa. Thus, we do not agree with the ultrafeminist agenda that seeks the **destruction of the conceptus because of the woman's "desire"** (Vieira, 1997).²

² Humberto L. Vieira was the president of the National Pro-Life and Pro-Family Association that succeeded the Brasília National Pro-Life Association, created in 1983. He states he received help from Human Life International and later from the Brasília Cardinal-Archbishop to set up his office in the clergy member's office. In September 2015, Hermes Rodrigues Nery honored the recently-deceased Humberto Vieira. Nery recounts that in October 2005, the two of them, along

The statements aver: if the zygote and embryo are human matter, one must, at once, view the zygote as a “person” and as a full legal subject. They define zygotes and embryos not as extensions of the mother, but as “independent”, “helpless” beings. Just as children “borrow”, zygotes and embryos “borrow” her uterus. When they speak of the conceptus’s absolute right over women, nothing is said of women’s place as full legal subjects.

They forget the embryo’s dependence on the mother’s body and view it as autonomous. And further, they believe the mother must serve the embryo/fetus, always, at any cost. They reproduce the most traditional view of the woman/mother. An imposition of reproduction controlled by others, not her (Machado, 2010).

They do not speak of women’s rights, but they speak of women’s duties. They assume or demand of women that it is their duty to desire, love and welcome zygotes as if they were children or “babies”. They seem to forget that zygotes are merely possibilities of becoming. They forget to refer to the woman’s concrete life, inserted within a relational world in which her autonomy to carry that possible maternity to term depends on an intricate set of situations that affect health, emotion and various economic resources, not only her own, but those of her children and family members as well. Women, once fertilized, must be mothers, obligatorily.

The following statements add to this understanding, connecting women’s duties to the religious values concerning women’s role in the traditional family according to the fundamentalist version:

In October 2005, Father Lodi filed the **habeas corpus to prevent a pregnant woman from moving forward with an abortion that had been authorized by the Court** of a fetus diagnosed with

with other members, created the “Legislation and Life Movement” “to broaden the efforts to affirm the culture of life also in the difficult legislative field”.

Body Stalk syndrome. This disease is characterized by a short umbilical chord and by **the impossibility of closing the abdominal wall, promoting the exposure of the internal organs.** According to the Superior Court of Justice, the woman had already taken the labor-inducing medication when the hospital was notified of the Goiás Justice Court's decision accepting the priest's request and determining that the procedure be stopped. Eight days later, the baby was born, dying shortly thereafter (Tavares, Anápolis, October 26th, 2016).

The unanimous decision of the third group of the Superior Court of Justice followed the opinion of Justice Nancy Andrichi, considering that the priest abused his right to action and **violated the pregnant woman's rights** and those of her husband, causing them unnecessary suffering. The priest stated he regretted the mistake and guaranteed that if he "knew Geovana had survived and that her parents were in Morrinhos, I would certainly **have gone** to visit them, followed them during the pregnancy, **offered them assistance during labor (as we have done for so many other pregnant women)** and, since she was a child at risk of imminent death, **baptized her soon after birth.** And if she died, I would consider it an honor to **perform the funeral services,** following the family to the cemetery" (Tavares, Anápolis, October 26th, 2016).

(...) because the ugly offends. I received photos of anencephalic babies who were three days old, four days old, I received photos of month-old babies. They are ugly to look at, very ugly to look at. But far more beautiful, **far more beautiful, was the maternal and paternal care, the family gathering around something called solidarity.** (...) (In reference to the 1993 Polish family law:) Here is how a serious State does it. **Pro-family education,** (...) that includes natural family planning, for young people aged eleven to nineteen years (...) (Claudio Fonteles, public hearing, November 2005).

Silas Malafaia explains: What is the man's role and what is the woman's role in marriage? Generally speaking, we can say that **the man is more logical and rational than the woman.** His social role, designated by God in Genesis 2:15, is to

protect, provide for and lead the family. The Lord made him capable of plowing the garden of Eden, taking care of it and keeping it. All the rules were given to him by the Creator. For this reason, after the fall, God did not demand these responsibilities directly from the woman. He demanded them from the man (Malafaia, 03/25/2014).

And what is the woman's role? Biblically speaking, **the woman's role is to be the husband's adjutant, that is, assistant,** in the mission to protect, provide for and lead the family. God delegated to the woman an extremely important function in the family. The woman was created with sharper intuition and sensibility than the man, in order to balance family relationships, acting as a wise mediator, bringing harmony to the home. For this reason, in Proverbs 14:1, it says that every wise woman edifies her home. **The wise woman does not invert roles, nor does she act in an arrogant manner, so as not to humiliate her husband and not to undermine his leadership.** If she does this, she acts like a fool who, instead of edifying, destroys her home with her own hands, and the entire family will suffer from spiritual, emotional and even material problems, and it may disintegrate as a result of the couple's separation (Malafaia, 03/25/2014).

The analysis of statements by defenders of the conceptus's absolute right demanded an analysis of what, and how, they say referring to women. This made it possible to unveil that it was based on the category of the sacredness of motherhood, be it "painful" or "radiant", but always "welcoming" and "caring", that it was possible, in these statements, for women to be deprived of their attribute as a legal subject. The narrative of women's secondary/adjutory role within the traditional family is articulated with the narrative of the synonymy between the maternal love of the child and the maternal love of the conceptus (be it a zygote, a morula, an embryo or a fetus). It makes clear the inscription of this discourse in favor of the defense of "traditional morality" and of the values of the "Brazilian family".

Such a narrative in fact advocates for the value of, and the woman's return to, the traditional place of subordination, obedience and assistance to the husband/partner. It advocates that the State regulates the maximum criminalization (heinous crime) of any form of abortion under all circumstances. It seeks to reinstate, and aggrandize, the male power in the family and, in its name, the control over women's sexuality and reproduction.

Given this conception of women's subordinate role, it is easier to understand why the defenders of the concept's absolute rights say nothing about women as full legal subjects. They do not perceive them as such.

They advocate imposing on society the assumption that the biological sex inscribed in the body is the only admissible form of gender because it is "natural". And is the belief in a "natural sex" that would lead women to become "wise"? This narrative is coupled with a critique of customs and an imposition of a single morality. Far from the modern idea of diversity, plurality and ethics,

Let us now turn to how legal scholars opposed to the legalization of abortion express themselves in the debate between the concept's absolute rights and the legal principle of weighing goods.

However, this right is divided into two facets: the right to life in the terms of the Brazilian Constitution (in which the reference of the article 5 Caput is the "guarantee of the inviolability of the right to life, to liberty, to equality, to safety and to property for all Brazilians and foreigners", therefore, all those "living" in the country) and the religious right to life. It is thus a matter, for the scholars who defend the concept's absolute right, or even those who exclusively accept the exceptions already included in the Penal Code, as is the case of Claudio Fonteles, of making those concepts (the constitutional and the religious) coincide, eliding their differences.

(...) I am, I insist for the millionth time, making a strictly legal construction. In my report I will say, it isn't, here in item 5, that it is, I say "the inviolability of the right to life"...

I mean, that is the constitutional interpretation of what the principle of inviolability means. Pay close attention (...) to this word of our language: inviolability. Pay attention to the word's meaning. (...) It was the representatives (who said it). Then I say: (...) my legal understanding of the principle of the inviolability of life. If the human being exists, if the embryo is a human being, (...) this is another point of reflection – **one cannot establish a constitutional gradation of the concept of inviolability of life**. How is it inferior? This is a theme on which you have to meditate as well. As I say: **the inviolability of life concedes full tutelage, as long as a human being exists** (Cláudio Fonteles, at the public hearing in November, 2005).

My intervention will be entirely made on the strictly legal plane – just today I saw a newspaper say I am an ardent Catholic. And, within that line of coherence, not omission, I called upon the Supreme Court to define the moment at which life begins, as the American Supreme Court did. (...) So it is a constitutional concept of inviolability, it requires the fixation of the initial term of human life. **And human life, based on scientific studies, of the zygote, which is totipotent, this is further explained here, it's not my place to develop this thesis here, but it is explained in the petition. Based on me? No! On nine scientists, isn't it, on nine Brazilian scientists. I show that there is already life there** (Cláudio Fonteles, at the public hearing in November, 2005).

Constitutional Law is also concerned with the theme of life and in a different perspective, coherent, but diverse, and fundamental. (...) This is the major point. The principle of the inviolability of life is in article 5 of the Brazilian Constitution. The life itself: pay attention. **One thing is life in an interpersonal relationship, Civil Law. Another is life itself: it is a constitutional right** (Cláudio Fonteles, at the public hearing in November, 2005)

The fetus not only corresponds to a person, endowed with subjectivity, but it also presents another fundamental characteristic: the incapacity to defend itself, unless through collective social action. Thus, to speak of abortion is to “speak of the right of

those who have no defenders (Ives Gandra Martins, at the public hearing, in November, 2005).

The religious morality may thus be expressed in legal discursiveness and invoke scientific knowledge without having to reveal its deep religious bases. All it takes is that religious terminology not be used – a recourse already institutionalized in the Ecclesial Declarations and in the Papal Encyclical Letters, in which alongside “arguments of faith” are included “arguments in light of reason”.

The religious narrative of the conceptus’s absolute right as synonymous with the right to life hides its religious starting point because it disguises itself as a legal narrative and elides the principles of the legal narrative based on the weighing of different legal goods. It seeks to produce a new basis for the concept of person that is able to forget that the person made a “legal subject” presupposes the subject’s context in social relations. It creates a hierarchy, establishing women’s supposed rights as subaltern to the proposed rights of the zygote, the morula, the embryo and the fetus (at any point during its formation and under any circumstances), in such a way that not only do women’s rights over their reproduction disappear, but so do their rights to life, to health and to a dignified life. By appropriating the human rights language, it distorts it in the name of the sacralization of a life in abstract, and not a concrete social person.

In contrast, the feminist legal scholar Miriam Ventura, who was present at the public hearing as a representative for the defense of the legalization of abortion, articulated a critical view regarding the attribution of the bases of a legislative decision either to the moral field, or to the religious or scientific:

So, initially, we have to understand that abortion is a social phenomenon, it is not a scientific phenomenon. Therefore, we absolutely must use the ethical and philosophical discourse to justify it. (...) morality, ethics and the law have shown themselves to be different fields. (...) So, we must observe that the medical field works with scientific evidence, not scientific truths. And we

work with arguments, and **we resort, in the field of Law, to ethics and not to morality**, as someone said. (...) **Biological material is life (...)** **What we have to pursue isn't the concept of life, but the concept of person.** What characterizes a person? The person is only characterized by the live birth, that is what the Civil Code says. And that is an important concept. **Because it is from there that ethics, morality and the law develop. It is based on the concept of person** (Miriam Ventura, at the public hearing in November, 2005).

The Brazilian legal reference to the right to life is the right of the person from birth. The rights of the unborn related to inheritance are only considered effective if there is a birth and only after it. To Ventura, the legal decision must turn to ethical principles in order to deal with a social phenomenon and to decide on the rights of persons, relational subjects. In such a way that a “must be” must not result from a “being” (Cunha, 2007).

Disguising the conservative religious discourse as a genetic discourse

The molecular biologist Lilian Eça was called to participate in the public hearing of November, 2005 in the name of those who oppose the legalization of abortion. Lilian Eça points to the difference between what a lay person does not see and what science can see.

Let's look at that which we do not see. (...) Since the 1980s that we have talked about this genome, that we have to concern ourselves with the molecules called proteins. (...) When you mark the zygote's proteins (visible through the laser microscope), we have exactly the form of the future embryo in proteins. The spine's proteins are situated here, over there are the brain proteins and over there the proteins of the members (Lilian Eça, at the public hearing, in November, 2005).

The purpose of this statement is not only to construct the identity between embryo and baby but, more than that, between

the zygote, the fertilized egg that has yet to fixate on the uterus, and the baby. According to her statement, in the zygote, one may already see, through the laser microscope, the proteins (made fluorescent) that will be responsible for bodily development. Thus, in her argument, “seeing the proteins of the spine, the brain and the members” is “to see the spine, the brain, the members and each of the body parts” in its individuality. It would always be the individualized DNA which, present in the first cells, would enable the deduction that, in them, the body’s development is inscribed. And, at once, this zygote is positioned as if it possessed the unique individuality of a specific baby.

I return to, and further elaborate, analyses I have already presented (Machado, 2010). It is known that 75% of zygotes are lost before fixation on the uterus and that there is no single form of development, but these data are not taken into consideration in the arguments of the defenders of the conceptus’s absolute right. The discourse uses the argument of the scientific truth diffused in an individualized DNA and states that there is an individuality in the zygote. The laser microscope, by marking the zygote’s proteins, would reveal that those first embryonic cells must be exactly identified with the individuality of an already-formed baby. The truth of the proteins would affirm that the zygote is already a person with its own individuality.

In the contemporary Western imaginary, with the development of individualism (Dumont, 1985), the idea of the person is increasingly constituted by the emphasis on its individuality, and not on its relational position. Thus, the Christian religious idea of a “soul” which was originally more abstract, as if it could congregate entities of goodness, piety, charity, or evilness and be distributed among humans, increasingly came to be perceived as individualized, that is, it came to be the mark of the individual’s character and characteristics. The unique DNA of every living being would scientifically ground the truth of every human and every zygote’s individuality.

The conservative religious discourse establishes a connection between the religious argument of the “invisibility” of the

individual-person's religious truth, that is, their "soul", and the argument of the "invisibility" of DNA, which is the scientific truth inscribed within the individuality of the body. "To see the zygote's proteins with a laser" would be to reveal the previously "invisible" truth of the zygote's unique personhood, imperceptible to the naked eye. The "soul", according to Christian religiosity, was always considered "invisible", but was always set as "the truth" of the individual-person. The conservative religious discourse appropriates and disguises the idea of an individual soul in the DNA. The DNA would represent the person's individuality.

Genetics reveals the "old religious truth" of the individual-person. The propagation, in common sense views, of the idea of DNA enables one to derive from it not only the individual's physical characteristics, but their temperamental characteristics as well. Thus, the enchanting effect is produced whereby the invisible is rendered visible and DNA comes to be considered the scientific proof of the individual soul. It is what "animates" the human person, an individualized "body/soul".

The act of disguising the religious discourse as a scientific discourse manages to argue that the person-individual-soul already exists in the zygote, that zygote and person are one and the same. And in the name of morality, they define that abortions are not possible under any circumstances. They move toward an attempt to re-ground the notion of person. The laser's little blue dots that mark the zygote's proteins are worth more than the lived lives of pregnant women. Against this discourse, one must remember that the proteins and the first fertilized cells are a human substance, but not a person; a potentiality. They are not relational subjects.

The Brazilian neoconservative forces, in general, advocate for the end of the legal admission of conditions in which it is not a crime to have an abortion: when the pregnancy is a result of rape or puts the woman's life at risk. They protested against the Supreme Court's decision, in April 2012 (published on April 30th, 2013), that permitted terminating pregnancies of anencephalic fetuses. Ultrasound imaging technology enabled the detection of fetal malformations and electroencephalograms enabled the

detection of the lack of brain and encephalic activity, as in cases of brain death. Even in those cases in which one cannot detect a symbolic human life, nor extra-uterine viability, neoconservative forces want only the embryo's rights to be valued, without taking into consideration the tragedy experienced by pregnant women, nor the torture of being forced to carry the pregnancy to term.

They protested against the feminist demand that reached the Supreme Court to allow abortions for those women whose pregnancies had been afflicted by microcephaly cases resulting from the Zika epidemic, and who chose to do so.

The conservative proposal is the introduction of an **absolute right bestowed on the zygote/embryo/fetus, regardless of its development stage and to the detriment of any demand for rights for pregnant women.** The absolute right of the "zygote's proteins" is opposed to the recognition of the rights of women who live their lives in unequal and diverse circumstances, struggling to maintain a dignified, responsible life.

The neoconservative forces, in the name of a religious discourse, turn to a single, impositional morality, using and interpreting a discourse originating in science and technology. They invoke ethics, but do not regard the admission of a plurality of visions and the acknowledgment of diversity as ethics, proposing rather a single, impositional morality.

The neoconservative forces invoke the legal discourse, but distort it by not admitting the principle of weighing legal goods. There are no absolute rights with no weighing of legal goods. They seek to attribute an absolute right to life to the zygotes/embryos/fetuses, thus seeking to cast out of the legal discourse, in all cases related to abortion, the acknowledgment of pregnant women's rights. Pregnant women should never be heard or have their demands met, seen as they are from the perspective of women's subordinate and "adjutory" place in the "traditional family".

Ethical feminist plurality, the responsibility of choice and religious freedom

Maria José Rosado-Nunes, a sociologist and member of the group Catholics for the Right to Choose, always refers, in her talks, to the right to choose a non-mandatory motherhood. She thus points to the ethical importance of motherhood being a choice, not mandatory.

The notion of choice is polysemous. It is understood by the conservative movement as if the “possession” of the body were the consumerist “possession” of any given object (I have a body, I may do with it as I please). That is not its meaning.

Feminist mobilizations present the right to choose as a right one exercises with autonomy and responsibility. The right to choose related to “it’s my body” is the bodily inscription of a relational social subject.

In my view, based on anthropology and feminism, the notion of person is not based on a notion of “abstract life”, in which dignity and responsibility is sought. The right to choose a non-mandatory motherhood may be one step in demarcating persons as persons-individuals within networks of social relationships, able to encompass the rights of any and all pregnant woman; in which individuals may be autonomous without being wrongly considered isolated monads.

The human rights language does not fulfill the moralistic role of Western myths that identified certain sexual and reproductive practices as sinful and criminal, and other as legitimate, legal or sacralized virtues. Human rights reinforce an ethical orientation which is universalist only to the extent that it sets the rights of the other as the limit, and crime as the offense or affront to the other’s right, and is, thus, pluralistic.

While neoconservative movements opposed to women’s rights and gay rights claim the need for social order and “good mores”, movements for sexual human rights and against violence are not based on the introduction of a new impositional morality, but are opposed to a State of Moral Imposition, defending, rather, the rights of persons, in favor of a secular State and in the name of an Ethical Plurality that enables the experience of diversity and the acknowledgement of equality.

The Law has this role, it cannot simply conform to the reality of the moment. (...) Any democratic State has commitments. And the commitments are not only to the majorities, but also to the minorities (Roberto Lorea, a legal scholar in favor of legalizing abortion, at the public hearing in November, 2005)

Feminist movements thus seek to modify legislations to legalize abortion as a way of inserting women's basic rights to freedom and dignity.

Against the notion, invoked by the neoconservative forces, that a legislation must correspond to what the population "opines", a "religious majority", the feminist movement opposes the plurality and the principle of secularism in favor of expanding basic rights and religious freedoms.

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