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ANALYSIS OF THE MORALITY OF ABORTION: A LOOK AT BRAZIL

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ABSTRACT

This article discusses the morality of abortion in the West, and in Brazil in particular, in light of the main ideas of the Italian bioethicist and philosopher Maurizio Mori and the Brazilian bioethicist and anthropologist Débora Diniz. It is a passage through time on the changes regarding this theme and a reflection on access to abortion in Brazil, based on the regulations and public policies instituted in the most recent period.

Keywords: Bioethics. Abortion. Morality. Public health.

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INTRODUCTION

THE MORALITY OF ABORTION IN THE WEST

Mori's (1997) invitation is for a reflection on abortion, through the analysis of the morality of the theme, in step with the historical landmarks that are pertinent to them. In his work *The Morality of Abortion*, the convictions and motivations for decisions about abortion in the West and some related positions are analyzed, in addition to the presentation of two definitions of abortion, to meet the "requirement of a rigorous language", which better allows the development of knowledge about the subject.

The theme of morality, it is important to emphasize, is not guided by a superficial analysis of concepts and practices accepted by some and inconceivable by others, but seeks, based on historical data, to think critically and identify which sensitive and unjustifiable points by reason have the maintenance, or not, of a conviction. Internal coherence emerges, then, as a useful and relevant criterion in the path of building critical and complex thinking.

For Mori (1997), morality is "a *rational* activity and a *critical* research". Thus, to be interpreted as such, it lacks rationality, and must be supported by "good reasons" and situated "within a more general and coherent ethical discourse". For a conviction to leave the private realm of isolated moralisms and be "proposable on the moral plane", it needs to be "rationally justified", to necessarily "surpass the critical evaluation made by reason" and then be on the plane of morality.

> It may happen that rational analysis shows how a certain conviction, which we thought was justified, is not, either because the empirical data presented are false, or because such a thesis contrasts with other more solid and well-argued theses, which is why it must be abandoned, to re-establish the internal coherence of the general discourse. (Mori, 1997, p. 12)

Mori's (1997) rational analysis of the morality of abortion exposes the almost always unjustified convictions around the agenda, based on metaphysical propositions and non-scientific data, which do not consider the social aspects involved. And it also exposes the morality of abortion that comes closest to rational justification, because it is based on social and historical analyses, built from data produced by scientific research and guided by a sanitary and humanistic perspective.

Thus, the author puts into debate some primordial conceptions for a better analysis of abortion, such as the definition of whether the embryo can be considered a person from

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conception, whether the right to life can imply the right to use the body of others, as well as what is the "true justification for the prohibition of abortion".

More (1997) traces a brief history of the morality of abortion in the West, which begins in ancient Greece and Rome, a time when abortion was not criminalized, nor were related ethical problems raised. It goes through the paradigms of Christianity, spread worldwide, of God's sovereignty over human life, reproduction, the sacredness of marriage, the infusion of the soul into the body immediately at conception, and also the persecution of *pharmacopeia women* for "witchcraft" since they were the ones who manipulated contraceptive and abortifacient potions. Until the seventeenth and eighteenth centuries guided by the theses of preformism – the immediate animation of the body – and epigenesis – delayed animation. The thesis of preformism gained scope with the image that there was of the *homunculus,* the individual that would have been seen, under the microscope, in the semen. And epigenesis gained ground with the birth of embryology in the nineteenth century.

Regarding this last period, Mori states that "ontogenesis recapitulates phylogenesis", that is, the development of the embryo is analogous to the development of the species and, therefore, makes clear his position that the embryo is not yet a person, insofar as the power of being something is not *the something* yet. He uses the oak tree as an example to express that its seed when germinated is not yet the oak tree. It is only the power of being oak. Just like the embryo, which is not yet a person "in act".

The author also refers, from a historical perspective to the importance of the medicalization of childbirth, a moment in which (male) obstetricians began to impose themselves on midwives, thus taking away their protagonism in women's sexual and reproductive health care and opening space for masculinized perceptions of childbirth, birth, and motherhood.

Regarding Western regulations on abortion, Mori (1997) dates back to 1803, when English law began to severely punish abortion and was followed by other European countries, such as Italy, which, in 1889, typified it as a "crime against the person". Thus, until the 1960s, all Western legislation strictly punished abortion – except Sweden and the Soviet Union.

From this period on, due to the high rates of fetal malformation, caused by the use of thalidomide by pregnant women – primarily those in the United States and European countries – to mitigate the stomach discomforts of the gestational period and also by the impacts of the advent of the suction technique in abortion procedures, which made it safer

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and less traumatic, The social movements of women for the right to abortion are taking shape, as a "guarantee of equality between men and women". At this moment, the agenda shifts greatly from the private sphere to the public sphere, because, defended as a right, it no longer ends as a confidential private event, without public projection.

As a consequence, the 1970s inaugurated the emergence of more permissive legislation on abortion, not necessarily with the prospect of establishing a new morality on the subject, but above all as a "need to overcome the plague of clandestine abortion" (Mori, 1997). In better words, the author summarizes that there is a technical-legal solution to the moral content of abortion:

> Permissive legislation does not intend to morally guarantee abortion, but only to prevent clandestine abortion that feeds illegality and often endangers the woman's life (...) The interdiction obliges everyone to abstain from the indicated behavior, while the permission does not impose the action, but simply allows it to anyone who wants to adopt it, And this asymmetry guarantees the freedom of the whole world. (Mori, 1997, p. 32)

For the author, more permissive legislation is connected with civil and human rights issues. A more restrictive one is contrary to religious freedom because it presupposes that all people subject to it share the same religious morality, especially Christian morality, and does not consider the diversity of beliefs and customs.

After the 1960s and 70s, the author confirms that there were changes in the moral evaluation of abortion. And it establishes four positions on its morality. The Catholic position condemned everything from contraception – the paradigm of the inviolability of reproduction in marriage, the *sacramentum magnum* – to the voluntary interruption of pregnancy. The position of the Movement for Life was defended by Catholics who partially admitted the exceptions. The position for the legalization of abortion, which aimed at not worsening the situation of women, "pushing them towards clandestine abortion". And the position for the liberalization of abortion, according to which the woman could claim it "by request", in a private decision, and "the law, therefore, should be limited to ensuring that the medical intervention occurred correctly" (Mori, 1997, p. 31).

To meet the requirement of the "use of a rigorous terminology", necessary for the advancement of knowledge, as mentioned above, Mori (1997) brings to the abortion debate the discussion about the beginning of pregnancy, whether at conception, when the egg is fertilized by the spermatozoa, or at nidation, when the fertilized egg sticks to the wall of the uterus to begin its fetal development. And yet, the author questions whether contraceptive

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methods that prevent nidation – contragestational – would not be, later, a form of abortion, from the perspective of those who defend the beginning of life at conception.

Conception is a stage of the reproductive process and does not determine the difference between preventing the formation of a life and killing a life already formed. (Mori, 1997, p. 37)

Another important discussion brought up by Mori (1997) concerns the debate on the conceptualization of a person. According to him, the embryo is a "potential person, not a person *in act*". In opposition to "hard materialism", which reduces the person to a set of molecules, the author, based on the non-reductionist view, according to which the person transcends the natural world, argues that the person is composed of soul and body and is endowed with rationality. Therefore, a philosophical interpretation of this concept is imperative. This metaphysical debate is commonly brought up by opponents of abortion, in the sense of affirming the existence of the person at the moment of conception and, therefore, linking abortion to the crime against the person, and ignored by defenders, who understand the primacy of women's life and autonomy. (...) person is a notion that belongs not to biology but to philosophy. (...) It is a technical term that indicates the compound of soul and body. (Mori, 1997, p. 45)

In summary, Mori (1997) says that the morality of abortion presupposes the answer to two problems: whether or not the fetus is a person, with the right to life, and whether a person's right to life implies the denial of a woman's right to reproductive health. Thus, for him, the true justification for the prohibition of abortion lies in the Principle of the Sacredness of Human Life (PSV), according to which the reproductive process cannot be violated, "because it involves divine intervention". Here the "ethics of the sacredness of life" is contrasted with the "ethics of the quality of life", according to which it is the inviolability of women's life that must be guaranteed.

Abortion for Mori (1997) thus brings into question, in addition to the PSV, also the traditional conceptions of motherhood and procreation, marriage and family, and the role of women in all these contexts. From this, it is invited to think about the Brazilian reality and the involutions and differences that prevent Brazil from following a trend in several countries, being able to rethink women's rights and their access to safe abortion.

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ABORTION IN BRAZIL: MAGNITUDE AND MORALITY

Today in Brazil there are three possibilities for access to legal abortion: rape, risk of death for the woman, and anencephaly of the fetus – the latter the causality made legal more recently, in 2012 by the Federal Supreme Court, the STF. However, given the political and social history of the country, marked greatly by the close relationship between the Catholic Church and the State, this access is restricted, or not at all. In the last decade, there has been a substantial increase in the number of evangelical Christian parliamentarians, which has a strong impact on the direction of public policies aimed at women, especially those related to reproductive rights.

The Brazilian Penal Code of 1940 criminalizes the practice of abortion in all other hypotheses, other than those mentioned above, with penalties of up to three years in prison. In addition to criminalization, access to legal and safe abortion encounters structural, geographical, and moral barriers. Even with the legal permissives, it should be noted that the first legal abortion health service in Brazil appeared only in 1989, almost fifty years after the Penal Code.

It is important to consider that, according to federal law 9.263/96, family planning is the right of every citizen and is characterized by the set of actions to regulate fertility that guarantees equal rights of constitution, limitation or increase of offspring by the woman, the man or the couple, with comprehensive health care. In addition to being a fundamental right expressed in the Federal Constitution of 1988, family planning aims to promote information on sexuality, prevention, and control of sexually transmitted infections – including HIV/AIDS – assistance to conception and access to contraceptive methods, in addition to prenatal care, childbirth, puerperium and newborn care, the control and prevention of cervical cancer, breast cancer, and prostate cancer.

Family Planning also encompasses the exercise of the experience of sexuality without constraint, voluntary motherhood, and self-decided contraception (Lemos, 2014), as recommended in the National Policy for Comprehensive Attention to Women's Health – PNAISM (Brasil, 2004) and, mainly, in the National Policy on Sexual and Reproductive Rights (Brasil, 2005b).

PNAISM, published in 2004, redefined the public agenda related to women's health because it expanded the range of actions until then focused on maternal health care, to include other relevant aspects of women's health, such as care for prevalent gynecological diseases, prevention, detection, and treatment of cervical and breast cancer, climacteric

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care, assistance to women who are victims of domestic and sexual violence, sexual and reproductive rights, and the promotion of health care for specific segments of the female population, among others.

Thus, the concept of reproductive rights gained a political character, because it brought the pressing need for cultural transformations in society and the focus on health education and the protagonism of the actors involved in care. It is worth mentioning that the right to safe abortion is only one of the points that involve reproductive rights.

A national study (Diniz and Madeiro, 2016) showed the existence of about sixty reference services for legal abortion in the country, present in almost all states, usually in the capitals, concentrated, however, in the south and southeast regions, a fact that constitutes a barrier for women from other regions or for those who live far from the capitals. Even when these services are in a legal situation, registered in the National Registry of Health Establishments (CNES) of the Unified Health System (SUS), they are not easily accessed, because, either for fear of stigma on the part of the population or for lack of financial and management support, they are placed within other services, without identification, nor publicity. It is not uncommon for services to be deactivated, also due to the resistance of health teams, originating from deficiencies in academic training or for moral and religious reasons. Others even do not perform the procedure claiming their clinical protocols, such as limits on gestational age.

Between April and May 2020, the non-governmental organization Article 19 and the journalism platforms AzMina and Gênero e Número surveyed individual telephone contact with each of the 76 services that had been performing the legal abortion procedure in 2019, to measure the impact of the COVID-19 pandemic. Only 42 hospitals were performing legal abortions – a 45% reduction. Twenty hospitals said they were not performing the procedure and, of these, only 5 indicated an alternative service to the user.

The Anis National Report (Anis, 2020), also produced to monitor reproductive health policies during the COVID-19 pandemic, showed that, even before the pandemic, only 9 Brazilian capitals offered all contraceptive methods, with COVID-19 the scenario became even more difficult. There was a restriction on the distribution of condoms and tubal ligation and vasectomy surgeries, in addition to a 45% reduction in the services that provide legal abortion procedures in the country.

Another barrier that is added is the lack of training of the health teams that make up these services. There is a limitation in the knowledge about the regulations that support the

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performance of the procedure. As an example, many still require women to file a police report in cases of violence and/or are unaware of the clinical protocols and therapeutic guidelines (PCDT) for the procedure – use of medications and invasive techniques, such as Manual Intrauterine Aspiration (MVA) and curettage.

In this sense, the Ministry of Health (MS) has the Technical Standard for Humanized Abortion Care (Brasil, 2005a), first published in 2005, then with a new edition in 2011, which aims to guarantee women's sexual and reproductive rights, from the perspective of a guide to support health professionals and services, based on the introduction of new approaches in reception and care, thus allowing the consolidation of health care standards, based on the needs of women.

It should be noted that Brazil authorizes the use of a single drug, Misoprostol, exclusively in a hospital environment. Another drug used in other countries, Mifepristone, is not authorized by the federal regulatory agency for drugs, the National Health Surveillance Agency (ANVISA).

Furthermore, abortion is a medical act, and it is not up to another health professional to perform it. This fact restricts access to the procedure to services that have a specialist professional, who may also claim conscientious objection to the practice of abortion, supported by normative provisions of professional codes and public policies, which aim to protect the integrity of people in a professional situation of moral conflict (Diniz, 2011).

> In a conflict between public duties and individual rights, this provision is activated to protect the private morality of the individual, as in the case of the doctor who declares conscientious objection to not attending to a woman who wishes to have a legal abortion. In the name of individual convictions, this provision would protect the feeling of moral integrity of the physician, by authorizing him not to participate in a procedure that he believes to be morally wrong, although legal. (Ibid.)

These regulations advocate the individual right of the physician to conscientious objection to the practice of abortion, but the regulation established by the Ministry of Health (MS) also defines that public services accredited to care for women in situations of sexual violence must guarantee timely care by another professional of the institution or by another service. If the right to object is not recognized, then, in the absence of another doctor to attend to the woman, if there is a risk of death for her, if the omission of care may cause damage or aggravation to her health, or if it is emergency care (Freitas, 2011).

In addition to this inhibiting scenario for access to legal abortion, very recently the Brazilian government issued a regulation – Ordinance 2,282, of August 27, 2020 – that

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obliges health professionals or those responsible for the health establishment to notify the police authorities when the patient is welcomed with evidence or confirmation of the crime of rape, in addition to collecting evidence. The same regulation also extinguishes the consideration provided for in the previous technical standard – Ordinance 1,508 GM/MS, of September 1, 2015 – on the prevention and treatment of injuries resulting from sexual violence against women and adolescents, which does not oblige rape victims to present a police report for their submission to the procedure. It expresses, also as an obligation of the health team, the offer to the woman in care of the possibility of visualization of the fetus through an ultrasound exam. Here the requirement seems designed to dissuade her from proceeding with legal abortion and even to delay medical care.

On the occasion of the issuance of this regulation, the Ministry of Family, Women, and Human Rights also announced the creation of an exclusive channel for medical professionals to report women and girls who are suspected of illegal abortions. In short, Ordinance 2,282/20 makes access to legal abortion even more difficult, enhancing threats to the rights to life, health, privacy, and medical confidentiality, in addition to non-discrimination, and being free from cruel, inhuman, or degrading treatment.

This was one of the measures of the Brazilian government in the 2019-2022 term, among others, which revealed the conservative character of the incumbent rulers. The speeches were based on the moral platforms of "defense of life and family".

On March 8, 2021, then-President Jair Bolsonaro did not sign the declaration of the United Nations (UN) Human Rights Council, which had as one of its commitments the implementation of actions for women's health during the fight against COVID-19 to reduce historical inequalities. More than 60 countries have signed the declaration for the rights of women and girls, including Mexico, Argentina, Australia, Canada, France, Germany, Israel, Japan, the United Kingdom, and the United States. In time, until 2016, Brazil was guided by the UN Millennium Development Goals, such as the reduction of the maternal mortality rate and universal access to reproductive health.

The point of disagreement of President Jair Bolsonaro's government not to sign the document was precisely the issue of the inclusion of sexual and reproductive health services in the declaration.

Both the president and the Minister of Family, Women, and Human Rights, Damares Alves, a lawyer and evangelical pastor, publicly positioned themselves against sexual and reproductive rights. In January 2019, the first month in office, President Bolsonaro issued

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Law No. 13,798, which established the National Week for the Prevention of Teenage Pregnancy, as an addendum to the Statute of the Child and Adolescent. In carrying out the activities alluding to the period, recommendations such as the focus on care for the "life that comes" and the importance of the family as "a very important educational pillar for reproductive health" revealed the opposition to the public policies that had been implemented, either by not considering the autonomy of adolescents and adult women related to sexual and reproductive health, or because it does not defend the school environment as an important space that promotes health care practices.

And it is not only in the executive branch that there are political forces opposed to the guarantee of women's rights. In the Federal Legislature, new bills translate the conservative agenda into policies that are foreign to democracy and public reason, such as the compulsory registration of pregnancy, the so-called rape grant, and the Statute of the Unborn Child (Freitas, 2011).

In the 1990s, of the 23 propositions on abortion presented to the National Congress – expanding or restricting legal permissions, facilitating or barring access to health services – just over 50% were in favor of liberalizing access to abortion (Freitas, 2011). A single proposal on abortion was approved in this period, in the labor area, which guaranteed the allowance of absences due to abortion. In 2001 there was a proposition in favor of the approval of all liberalizing proposals (Ibidem).

Bill 1,135 has been pending in the legislative house since 1991, which proposes the decriminalization of abortion, through the repeal of Article 124 of the Brazilian Penal Code, which provides for imprisonment of one to three years for pregnant women who cause abortion in themselves or consent to another doing so. In 2011, after exactly twenty years of processing, the Bill was shelved.

Since the 2002 parliamentary elections, the National Congress has been increasingly made up of parliamentarians who identify with the religious platform and/or other blatantly conservative agendas, which greatly hinders the advancement of laws that protect women from unsafe abortions.

In the wake of the legal aspects of abortion in Brazil, it is worth mentioning the Allegation of Non-Compliance with a Fundamental Precept (ADPF) No. 442/DF presented to the STF in 2018 aiming at the partial non-reception of Articles 124 and 126 of the Penal Code, that is, the request for the decriminalization of abortion up to the 12th week of pregnancy. The publicity given to this ADPF, in itself, has once again opened space for the

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discussion of abortion in the country as a public health problem and not a criminal law problem.

During the argument, 36 interested entities presented *amicus curiae*, which are offers by other institutions to support the decisions of the courts, to support relevant and high-impact issues. Anis compiled the main arguments (Anis, 2019). This is considered the action with the highest number of requests for admission as *amicus curiae* in the history of the STF.

It is therefore worth emphasizing here the historical role of social control exercised by social movements. Both feminist groups and others with progressive agendas, such as human rights, among others, monitor and advocate daily for the guarantee of women's rights. Civil society has a primordial role, because, even in the tendentially progressive governments that have already existed, abortion is hardly on the agenda and when it is, it brings with it the Christian morality so present in the Brazilian social fabric, which disregards women's autonomy and abortion as a public health issue, not a moral or religious one. Thus, the constant advocacy of civil society, in all its movements, contributes significantly to the advancement of the abortion agenda in the country.

The National Abortion Surveys (PNA) carried out in 2010 and 2016 by Anis – Institute of Bioethics, Human Rights and Gender, which sought to trace the magnitude of abortion in Brazil, demonstrated that *abortion is a frequent and persistent phenomenon among women of all social classes, racial groups, educational levels and religions* (Diniz, Medeiros and Madeiro, 2017), with greater frequency among those with less schooling, black, brown and indigenous women living in the North, Northeast and Midwest regions. And it specifies that, at the age of 40, 1 in 5 literate women in the urban areas of the country has already had at least one abortion. In 2015, about 416 thousand women had abortions.

This situation ratifies and reinforces that access to safe abortion in Brazil must be ensured as a measure to protect women's mental and physical health. Evidenced as a frequent event, it continues and will continue to occur regardless of its legal situation. If the barriers to their access are not properly confronted, women's lives will continue to be at risk in medications in clandestine markets, in illegal and unsafe clinics, and/or in the penitentiary system.

FINAL CONSIDERATIONS

The Italian bioethicist Maurizio Mori in the 90s presented reasons that led people to consider or not abortion as a right to be guaranteed. More than 30 years later, we realize

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that Brazil is still taking short steps on this important topic. Issues related to Christian morality endanger thousands of women every year who are criminalized by the State, when they decide, for various reasons, to submit to an abortion process.

More than the concern with women's health and the possible offspring, the moral point of the denial of this, which should be a right, is linked to the paradigm of the sacredness of the life of becoming, and not to respect for the autonomy of the person. Thus, it is of paramount importance that all the concepts that emerge in the discussion about the morality of abortion are very well debated, under pertinent and geographically located historical contexts, guided by rationality and critical research, so that they are not reduced to the moralisms of particular convictions. And last but not least, reflecting on the relaxation of abortion laws does not push women to practice, however, its criminalization puts the lives of thousands of them at risk every year.

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