



Political discourse in legislative proposals on abortion in the Brazilian Parliament between 2015 and 2018

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Abstract

This paper presents the results of the content analysis of 25 bills that went through the Brazilian National Congress between 2015 and 2018 on the theme of criminalization and decriminalization of abortion. The objective is to describe and discuss the arguments used by the parliamentarians to support or reprove those bills. The analysis reveals that women's reproductive rights are not protagonist of the discourse presented in the bills, which focus on the natural status of the fetus and on increasing penalties to the women who perform self-induced abortion. Even if the religious discourse is not so explicit, we can find many traces of it, though disguised behind a definition of the beginning of human life, to demarcate in time the recognition of the fetus as a subject of rights.

Key words

Abortion; decriminalization; political discourse; feminist theories

Resumen

El artículo presenta los resultados del análisis de contenido de 25 leyes sobre la penalización y la despenalización del aborto que pasaron por el Congreso Nacional de Brasil entre 2015 y 2018. El objetivo es describir y debatir los argumentos utilizados por los miembros del Parlamento para apoyar o reprobar dichas leyes. El análisis revela que los derechos reproductivos de las mujeres no protagonizan el discurso presentado en las

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leyes, que se centran en el estatus natural del feto y en crecientes penalizaciones a las mujeres que realizan abortos autoinducidos. Incluso si el discurso religioso no es tan explícito, encontramos muchos rastros de él, si bien enmascarado tras una definición del comienzo de la vida, para demarcar en el tiempo el reconocimiento del feto como sujeto de derechos.

Palabras clave

Aborto; despenalización; discurso político; teorías feministas

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1. Introduction

Brazil has one of the most restrictive abortion laws in the world: abortion is allowed only in cases of rape, risk of death of the pregnant woman and anencephaly of the fetus. Despite of this, even under conditions with legal authorization, in practice, the right to abortion is seldom achieved, due to the difficulty of access to public policies, as well as the cultural resistance to this decision (Madeiro and Diniz 2016). With the focus in Brazilian context, this paper aims to understand how the abortion debate is handled in the discourses of parliamentarians. Our central issue is this: what kind of criminalization or decriminalization proposals were active in the Brazilian National Congress between the years of 2015 and 2018 and what were the central arguments that justified them. For achieving this, we conducted the content analysis of 25 bills proposed in the Parliament, that in some way address the criminalization or decriminalization of abortion in Brazil.

This research was carried out and presented for the first time in 2018, in a specific political context in Brazil. After the controversial impeachment of President Dilma Rousseff, Michel Temer, who took over the presidency in 2016, was in the last year of government. A new election was about to begin, and everything indicated that “abortion” would be a central theme in the debates of the candidates for presidency. 2018 was the year of the “Green Wave” in Argentina,¹ and a year of important mobilizations in Brazil that accompanied the organization of the Supreme Court to gather information and to analyze a Constitutional Action to define rules for a legal abortion in the country (Supremo Tribunal Federal 2018). As women, feminists, researchers, and Brazilians, we were not optimistic, but we felt it was a unique moment, in which the topic was being discussed in the public arena.

Following the essence of feminist epistemology, the subjective processes that involved the design, writing and publishing of this research are part of the data that we need to present. We wrote the first version of this paper between 2018 and 2019, shortly after the election of President Bolsonaro. We were already vigilant to what would be a time of intense defense of women’s rights, due to conservative positions already promised by his administration. In the first version of the paper, we mentioned cases² that seemed, at that time, to illustrate which speeches structured the debate on abortion in Brazil and we alerted to changes that might come with the new administration.

¹ A bill that intended to authorize the abortion until the 14th week was the focus of public demonstrations that took about 50,000 Argentine women wearing green scarves to the streets of Buenos Aires. The bill passed in the Chamber of Deputies but was rejected in the Senate.

² We described the “Jandira’s Case”: “On August 2014, Jandira Magdalena, 27 years old, disappeared in Rio de Janeiro. The case reports describe her as a white, young, lower-class woman, from a Catholic family, and who was the mother of two girls (a 12-year-old and a 9-year-old). She was desperate because of an unwanted pregnancy resulting from a sexual relationship outside marriage. The woman searched for an underground abortion clinic and never came back home. Her body was found quartered and carbonized, and the identification was only possible through a DNA test. Jandira’s case could help to bring to the public agenda the contradictions and deaths produced by the criminalization of abortion in Brazil. However, this possibility was supplanted by the criminal prosecution against clandestine clinics nicknamed “Operation Herodes” and culminated with about 60 preventive detentions. This easy transition of focus, from the terrible losses of women’s lives due to clandestine abortion, to the criminalization of the same women and the staff of the clinics, shows how difficult it is seriously dealing with the real question: abortion is a problem of public health”. This is the initial excerpt that opened the first version of the article.

Between the review processes, almost two years have passed. The examples presented in 2018 seem naive in the face of the obscenity for which the relationship between religion, state and misogyny intermingle in Bolsonaro's administration. In 2020, the three branches of the Brazilian State took part in events that revealed actions in favor of restricting access to abortion. In the executive branch, we can mention the change of the guidelines for legal abortion in case of rape (Ministério da Saúde 2020), which will be presented in topic 2 of the text. In the legislative branch, we noticed an increase in the number of bills related to the theme of abortion since 2019,³ most of which seeking to restrict access to legal abortion or the increase in the sanctions. In the Judiciary, there was no significant advance in the main constitutional action that addresses the issue and aims to declare the criminalization unconstitutional. In addition, the Federal Public Prosecutor's office has recently positioned itself against the action, arguing that the matter should be decided by the legislative branch (Aras 2020).

As researchers, we finished this last version for publication with a conflicting feeling. On one hand, the wish that the information in this article can help to record these changes and to compose an understanding of how the issue of abortion is an important promoter of national political debates. On the other hand, a feeling that a text about Brazil is very easily outdated and in just a few months, the content recorded here will become as naive as the text we wrote in 2018. The fact that this is a text written in English and published in a non-Brazilian journal also challenges us to observe that the commitment for decriminalizing abortion should not be just for women who still live under restrictive legislation.

The paper is organized into three sections. In the first section, we present a review of the legal and political frameworks of abortion in Brazilian context, discussing its relationship with public health and politics under a feminist framework. In the second section, we present the methodological procedures used in the paper. The data collection was carried out on the website of the National Congress, which maintains a database of all proposed projects. On the website, we used the keyword "abortion". From the 800 occurrences, we selected only those bills that were still active in December 2008 and presented propositions addressing criminalization or decriminalization provisions, resulting in 25 projects for content analysis. In the third and last topic of the paper, we present and discuss the results of the qualitative research.

2. The context and the debate about Abortion in Brazil

According to the NGO Center for Reproductive Rights, 36% of the world's population of women in reproductive age live in countries that allow abortion with restrictions only on the length of pregnancy, while other 39% live in countries with stricter standards (5% of them do not allow abortion at any time, 22% just to save the woman's life and 14% to preserve her health) (Center for Reproductive Rights 2020). The vast majority of countries with more restrictive standards are located in the Global South, covering the whole Latin America with the exception of Uruguay, Guyana and French Guyana.

³ According to a research carried out by the news portal Uol, there were 16 projects in 2019 and 16 in 2020 seeking for more restrictions on abortion. Among them, for example, the bill 2,893 of 2019 that seeks to revoke all hypotheses of legal abortion in Brazil, including the one that authorizes abortion when there is risk of death for the pregnant woman (Tonietto and Barros 2019, Sobrinho 2020).

The World Health Organization (WHO) points out that 3 out of 4 abortions that occurred in Africa and Latin America are unsafe. Researchers estimate that abortion rates decreased between 1990 and 2014 in developing countries, however, they also point out that between 2010 and 2014, 25% of pregnancies ended in induced abortion (WHO 2016). According to Zordo (2016), in Latin America, the vast majority of unsafe procedures are performed by poor women who do not have access to private clinics that perform the illegal procedure with a certain privacy (Grimes *et al.* 2006).

In Brazil, the Penal Code criminalizes “abortion carried out by the pregnant woman or with her consent” (Código Penal, 1940).⁴ The penalty applied may vary from 1 to 3 years in prison, that can be served in lighter detention regimes – open and semi-open regimes. In Brazilian legal language, it is a crime against life, of medium offensive potential, which allows, for example, the conditional suspension of the process if the defendant is a first offender or if she is not being prosecuted for another crime.⁵ There are two exceptions to criminalization: legal abortion is possible when the life of the pregnant woman is at risk; and when the pregnancy is the result of rape and the pregnant woman or her representative consent with the procedure.

Although there were movements supporting the decriminalization of abortion since the 1970’s in Brazil (Aldana 2008, Machado and Maciel 2017, Machado and Cook 2018), only during the National Constituent Assembly (1986–1987) the first significant moment of institutional conflict between the pro-choice and anti-abortion agendas took place (Machado and Maciel 2017). Pro-choice movements addressed the Women’s Letter to the Congress, outlining feminist demands to be incorporated into the Constitution, including the voluntary termination of pregnancy. The response of the anti-abortion movements came, in particular, from the National Conference of Bishops of Brazil (CNBB), with the support of evangelical members of the National Constituent Assembly. At that time, they already wanted to achieve the constitutionalization of the protection of life from the conception (Aldana 2008, Machado and Maciel 2017). The new Brazilian Constitution, from 1988, was considered the “Citizen Constitution”, due to the participation of popular movements, but it did not incorporate the demands of either side, leaving the dispute to the infra-constitutional level (Machado and Maciel 2017).

Machado and Maciel (2017) analyze the dispute between the pro-choice and anti-abortion movements in the two terms of President Fernando Henrique Cardoso (FHC, from Brazilian Social Democracy Party – PSDB), 1995–1998 and 1999–2002, and the first term of President Luís Inácio Lula da Silva (Lula, from Workers’ Party – PT), between 2003–2006. They understand the dispute over the regulation of abortion as a non-linear, dynamic, and plural process, more or less institutionalized, according to the permeability of the administrations and the conditions of circulation of the movements’ actors. In their analysis, they consider that both the FHC government and Lula’s first term, showed a certain permeability to the demands of the pro-choice movements.

⁴ The Brazilian Penal Code is a law from 1940 that lists part of the crimes and sanctions in the country.

⁵ The Penal Code also criminalizes the person who performs the procedure of abortion in the pregnant woman with higher penalties, from 1 to 4 years when the pregnant woman consents; and from 3 to 10 years if the pregnant woman does not consent for the procedure. In both cases the sentences of detention can be served in the most serious regimen - the closed one, in a maximum-security facility (Código penal, 1940).

During the administration of Fernando Henrique Cardoso, for example, there was a proposal for a new penal code bringing the decriminalization of abortion, although it was never voted. The first Lula administration was significant for the creation of a feminist bureaucracy through the implementation of public policy councils and other initiatives that brought members of social movements to influence government decisions (Machado and Maciel 2017). During that time, a set of documents of good practices and standards have been published to guide care for women.⁶ The *Technical standard for humanized abortion care*, published in 2005, recognized abortion as a public health problem and guided health professionals to receive women in situations of induced abortion without criticism and to provide orientation about reproductive planning after abortion (Ministério da Saúde 2005). In 2005, the government also instituted a tripartite commission to review abortion legislation. According to Machado and Maciel (2017), it was believed that decriminalization was close.

However, the increase in pro-choice mobilization throughout 1995 and 2006, was also accompanied by the increase in the number of anti-abortion proposals, showing the growing importance of the topic on the public agenda. According to Machado and Maciel, the pro-choice tide changed in 2005 with the drop in popularity of the Workers' Party (PT), as some of its main leaders were involved in a political scandal.⁷ Added to that, the increase in resistance from other political institutions led PT administration to renounce progressive agendas, starting to rely more on alliances with conservative sectors (Machado and Maciel 2017).

In opposition to the tripartite commission, anti-abortion movements formed the First Parliamentary Front for the Defense of Life: Against Abortion. In the 2010 electoral campaign the Workers' Party candidate, Dilma Rousseff, made the commitment of not changing the legislation on abortion through the publication of the *Open Letter to the People of God* (Machado and Maciel 2017). According to Machado (2012), in that context, Dilma Rousseff's opponents viralized a video in which she positioned herself against the criminalization of abortion. After many negotiations with catholic and evangelical sectors, Dilma won the elections, being voted by 58% of the catholic and 52% of the evangelicals, according to a research made by the Public Opinion and Statistics Brazilian Institute (IBOPE) (Machado 2012). It was the consolidation of the Party's backing down position on its commitment to support the decriminalization of abortion.

Without the declared support of the presidency of the republic, the dispute left by the 1988 Constitution was occupied by different strategies of movements on the subject, especially over technical rules, non-legal legislation, and precedents of the Brazilian supreme court. In 2012, a third possibility of legal abortion was authorized by the Brazilian Supreme Federal Court, through a Claim of Breach of Fundamental Precept,

⁶ Some of these norms are the Program for Integrated Women's Health Care (Paism); the National Policy for Comprehensive Women's Health Care: Principles and Guidelines; and the National Policy for Comprehensive Women's Health Care: Action Plan 2004–2007.

⁷ The press named this political scandal as "Mensalão", a pejorative word used to mean a quantity of money monthly paid to politicians as bribes for voting according to the government's interests. The scheme was discovered in 2005 and involved several Brazilian political parties in the payment of monthly amounts to congressmen in order to guarantee support for government projects.

ADPF no. 54 (Supremo Tribunal Federal 2012, Machado and Cook 2018)⁸ in cases in which the fetus has anencephaly. The Court understood that, according to the criterion of end of life adopted in Brazil – the brain death – these fetuses would not have life. The Court precedent not even mentioned the word “abortion”. Instead, the procedure was called “anticipation of the birth”. Similar legal strategies were used in 2016 and 2017 addressing the issue of abortion.

In 2015, a congenital syndrome caused by the Zika Virus started to be identified through the association between pregnant women who had Zika and malformations in their fetuses, such as microcephaly (Teixeira *et al.* 2020). In February 2016, WHO declared a Public Health Emergency due to the Zika epidemic in Brazil and the right to abortion for affected women came to be defended by several authors (Pitanguy 2016, Ventura and Camargo 2016, Diniz 2016, 2017). The most affected women were residents of peripheral regions of the northeast region of the country, where basic sanitation is precarious. Human rights organizations, especially the Institute of Bioethics Anis were organized for the legalization of abortion for these women (Diniz 2017). Thus, the National Association of Public Defenders (ANDEP) proposed two constitutional actions on the Supreme Court, one asking for social assistance policies for mothers with children affected by Zika and the other requesting authorization to terminate pregnancy. Both actions ended in 2020, the first one because the state instituted a lifetime pension for children with microcephaly due to Zika; and the second because it was understood that ANDEP was not an institution authorized to propose a constitutional action (Supremo Tribunal Federal 2020b).

In 2017, the aforementioned ADPF 442, another Constitutional Action was proposed by the Socialism and Freedom Party (Psol) before the Supreme Federal Court. If approved, it will regulate the performance of voluntary abortion until the 12th week of pregnancy. In order to gather information for the matter, in August of 2018 the Federal Supreme Court organized a public hearing that lasted 4 days and listened to more than 40 people, including doctors, researchers, members of civil and religious associations, including some with pro-choice positions. A very good example was the declaration of Maria José Rosado, from a group called Pro-choice Catholics (Católicas pelo direito de decidir)⁹ (Rosado 2018), and Pastor Lusmarina Campos Garcia, a Lutheran woman who spoke in name of the Institute of Studies of Religion supporting the legalization of all kinds of abortion (Campos Garcia 2018).

In a deeply religious and sexist country like Brazil (Gonzales 1984, United Nations Development Programme – UNDP – 2020, p. 20), promoting public policies in themes related to church’s interests is a hard task. In the theme of abortion, the religious groups are mostly against legalization, although they are quite heterogeneous groups. We can see, for example, that in the 2018 presidential campaigns, the catholic and neopentecostal

⁸ The Action Against a Violation of a Constitutional Fundamental Right (ADPF) “is suited to avoid or repair grievance to a fundamental precept, as a result of an act of the public power” (Supremo Tribunal Federal 2020a).

⁹ In October 2020, a Brazilian court prohibited the pro-choice group Catholics for the Right to Decide from using the word “Catholics” in their name. The action was proposed by the Catholic group Association Center Dom Bosco of Faith and Culture and the reason used by the judge in his decision was that the group defends values that do not identify with Catholics (Pinhoni *et al.* 2020).

churches were divided between the two main candidates:¹⁰ Jair Bolsonaro, who won the election and is against decriminalization and in favor of more restrictions, and Fernando Haddad, who has not made a commitment about the theme.

This debate is happening while the Parliament is becoming more and more conservative, even though a progressist and liberal political program won the presidential elections in 2002, 2006, 2010 and 2014. In 2018, 199 politicians from different parties and different zones of the political spectrum in the parliament composed the Evangelic bench. Among them, there are four declared Christian political parties: Christian Labor Party (PTC); Christian Social Party (PSC); Humanism and Solidarity Party (PHS); and Social Democrat Cristian Party (PSDC).

President Bolsonaro, elected in 2018 with term until 2022, was a member of this bench during all his terms as a congressman, between 1991 and 2018. His government has been guided by conservative policies and statements regarding to sex, gender and race, so he positioned himself clearly against the legalization of abortion. His former party (PSL)¹¹ elected more than 50 federal representatives and it is attached to the Evangelic bench and to the Bullet bench (the sector of the National Congress that votes for increasing penalties and liberating the civil use of guns). When elected president, he created a Ministry of Women, Family and Human Rights, and chose the evangelic pastor Damares Alves as Minister. She is known as a conservative activist, opposing the decriminalization of abortion and the same-sex union.

In this scenario, in the last public statistics of the prison population that describes people who were incarcerated for abortion,¹² there were 770 people arrested for committing the crimes just quoted, 43 women, included those who had a self-abortion and the ones who helped others to get an abortion, and 727 men (Filho *et al.* 2014).¹³ Usually, the penal consequences for self-inducing abortion are claimed to be “soft” since it does not end in a fulfilment of sentence of imprisonment. This notion of “softness” is controversial because it does not consider how criminalization impacts the death rate due to complications of clandestine abortions and the extent of state control in the lives of these women. Besides that, the conclusion that there is little impact of criminalization on Brazilian population is unsustainable since the practice of abortion is highly underreported, and so it is the lethality rate.

¹⁰ Catholic groups aligned with the left were closer to the candidate of the Workers' Party (PT), Fernando Haddad. The catholic feminist group called Catholics for the Right to Decide, which advocates for the legalization of abortion, also supported the PT's candidate. More conservative groups, especially from Protestant churches, supported the Social Liberal Party (PSL) candidate, Jair Bolsonaro, who ended up elected (Alves 2018).

¹¹ In November 2019, Bolsonaro left the Social Liberal Party (PSL) after conflicts between him, his sons (who are also politicians and actively advise the father) and other party leaders. He aims to create his own party, called Alliance for Brazil. When we finished reviewing this article, in November 2020, he had not collected enough signatures for the creation of the party and remained without party legend (D'Agostino 2019).

¹² The last report by the National Penitentiary Department that listed the number of people arrested for abortion in Brazil was in 2014. Currently, the number of prisoners for criminal types appears categorized according to the broader crime category (crimes against life) so that it is not possible to distinguish them, for example, from the homicide figures.

¹³ In this regard, it is important to inform that the data obtained from the consolidated Brazilian prison information does not inform how many women among the 43 had induced abortion or helped others to get an abortion.

Monteiro, Adesse and Drezett (2015) have monitored the magnitude of abortion in Brazil since 1995. By 2013, they identified a reduction in admissions in the hospitals for abortion complications by 27%. One of the reasons attributed to this fact is the popularization of the abortive medicine Misoprosol (Zordo 2016), which facilitates and makes safer for women to do the procedure at home (Monteiro *et al.* 2015). Despite being forbidden, the drug is easily found in the informal market. In 1991, for example, it was found that 57% of the women who arrived at a hospital in Rio de Janeiro with complications after an abortion procedure, claimed to have used the drug Misoprosol.

The most successful endeavor for quantifying the incidence of abortion in Brazil is the National Abortion Survey, held for the first time in 2010 and repeated in 2016. Since an index of omission was identified in abortion responses due to the taboo in interviews, the researchers chose to apply an anonymous questionnaire that was deposited in a ballot (Diniz and Medeiros 2010, Diniz *et al.* 2017). In 2010, the survey found that 15% of the interviewed women, aged 18 to 39, had already interrupted a pregnancy (Diniz and Medeiros 2010). In 2016, repeating the strategy, they identified a percentage of 13% of women who performed self-induced abortion. The research also drew a profile of this public as women linked to some Christian religion with a low level of schooling, who have children and are or have been through marriages or stable relationships. This same survey estimates that half a million women experience abortion each year in Brazil (Diniz *et al.* 2017).

The Public Defenders of Rio de Janeiro also carried out a survey of the women prosecuted for abortion in the state. They identified the profile of accused women as black, young, mothers, poors and with no criminal background, whose abortion was reported to the police by the hospital (Haber 2017). Only in 2018, in the state of São Paulo, this kind of hospital report was found illegal due to the violation of patient's privacy and medical confidentiality (Vital 2018). However, this practice still happens in the hospitals and the women who go to these facilities to receive health care, are frequently victims of institutional violence by doctors and nurses.

Treating abortion as a crime, even if the penalty seems to be light, produces severe consequences. Complications from abortion are the second cause of deaths related to pregnancy in Brazil (Lima 2000, Laurenti *et al.* 2004). Another important part of this scenario is the racial stratification of the abortion consequences. First, it is relevant to outline that Brazil has a mixed health system – a private and paid health care network, and a universal, free, public network called Unified Health System – the SUS. Most of the people who use SUS in basic attention cannot afford health insurance and private health care – which means, in a racially stratified country like Brazil, most of the black population.

Mostly, those who can afford private, safe, and confidential services for doing an abortion are white and middle or high classes women. The risk of death is twice higher for black women. In terms of maternal health, in the total mortality of pregnant women, 53% are black, and 41% are white and most women who did not have access to anaesthesia during birth labor are also black. That is, instead of reducing the incidence of abortion, criminalization causes stigma, trauma and death, hitting black women more severely than white women (Venturini *et al.* 2010).

The problem is not only how the criminalization of abortion causes deaths due to the illegal underground network of the procedure, but also the way in which criminalization selectively denies the right to legal abortion in the public health system. Although the hypothesis of abortion in the case of rape exists since 1940, only in 2012 Brazil published technical standards to guide the care of these cases in the public service and regarding women victims of sexual violence (Ministério da Saúde 2012). To carry out the procedure it was not required to formally report the rape to the police or any interference from the criminal justice system throughout the process. The document only instructed health professionals to explain to women the possibility and how to make the complaint, if she felt the urge to do so (Ministério da Saúde 2012).

However, a research (Madeiro and Diniz 2016) about the legal services of abortion showed that in 2015 there were 37 active legal abortion services in Brazil, of which five (14%) still required a police report, a requirement that is neither in federal laws nor in the Ministry of Health norms. In a survey conducted in one of these hospitals, only 5% of the clinical staff accepted to terminate the pregnancy due to rape, while 95% alleged exceptions of conscience. It is estimated that 67% of women victims of rape did not even have access to the legal abortion (Madeiro and Diniz 2016).

In 2020, federal government changed the current technical standard, adding the following new requirements to legal abortion:¹⁴ the report of the occurrence of rape to the police; the prior notification of the police authorities by health care professionals before the procedure; and the delivery of “remnants of the abortion” to the police authorities after the procedure. This change has been widely criticized, arguing that it can lead to intimidation of women who choose legal abortion and also the persecution and criminalization of those who do not conform to the stereotype of the ideal victim and raise suspicious by police authorities (Leal 2020).

With the negative reception of the new standard, in the following month the federal government published a new version of the ordinance replacing the word “mandatory” with “must observe” the new requirements. The change occurred one day before the audience in the Supreme Court that would analyze the norm. The Minister responsible for the action, Ricardo Lewandowski, ended up removing the text from the agenda (Falcão and Vivas 2020a). We understand that the alleged correction in the new text of the ordinance is not sufficient to mitigate its effects on restricting access to women’s rights. In effect, our hypothesis is that the access to legal abortion in Brazil will be even more difficult than it already is. In addition, the “correction” in the ordinance mitigated the essential debate about why these interferences from the criminal justice system in health care endanger individual freedom – both for women and for any health service

¹⁴ This change in the norm happened days after a 10-year-old girl, who became pregnant after being a rape victim for 6 years, made the request for legal abortion. At the time, the case was widely publicized and a group of religious people went to the hospital where the girl was. They prayed, harassed the doctor who would perform the procedure and used slogans that named the girl as the murderer, all with the intent to prevent the abortion from occurring (G1 PE and G1 ES 2020). The Minister of Women, Family and Human Rights, Damares Alves, spoke up for the maintenance of the pregnancy. The Attorney General’s Office opened a preliminary investigation against her to verify her involvement in the illegal leak of the child’s personal data, which led the group of religious to identify the place she was hospitalized, the names and addresses of her relatives (Falcão and Vivas 2020b).

user, especially those in vulnerable conditions as illicit drug users and people in situations of mental suffering.

The context described and analyzed above demonstrates how abortion is a sensitive issue in Brazilian political dynamics, that promotes the adhesion or rejection from sectors of public opinion and guides decisions and alliances between agents of power. But the issue of abortion is more than a political marker and a focal point for debate, it is a question of human rights. Then, abortion should be taken as a right that integrates a broader claim for sexual and reproductive rights, with direct consequences for the achievement of other women's rights (Biroli 2014).

Although they are commonly addressed together, reproductive rights are more linked to reproductive health, voluntary motherhood and family planning. Reproductive and sexual rights have a dependency relationship, since the right to sexual freedom and the right to voluntary maternity, for example, are inseparable (Mattar and Diniz 2012). Through different approaches, authors formulated abortion as a right (Dworkin 2009, Miguel 2012, MacKinnon 2014, Biroli 2014), addressing a conceptual core that deals with self-determination, integrity of the body and recognition of women as free and political subjects.

According to Flávia Biroli (2014), there are limitations in the liberal tradition based on an abstract individual representation and the maintenance of the barrier between the public and private spheres. Placing women in concrete contexts adds a political dimension to the individual and intimate choice perceived by the liberals. Beyond the liberal background of the human rights theory, feminist theory has been warned that reproductive and sexual experiences are always situated in power relations, through which the access to information, rights and public policies differ according to the concrete context of women's lives. This approach allows us to address racial and postcolonial issues. Haraway (1992, p. 95) shows how black women in the United States and women from colonized territories faced a broader social field of reproductive unfreedom: "... [T]he problem of the black mother in this context is not simply her own status as subject, but also the status of her children and her sexual partners, male and female". Recognizing difference inside womanhood is necessary to face universalism inside the speech of "reproductive rights".

The impacts of pregnancy are physical, psychological, and political for women. It includes the horizon of opportunities, choices, and representations that are involved in their entire lives during and after the pregnancy. In addition to physical integrity, compulsory maternity works as an idealized role of motherhood, a natural tendency for female development, or even as an "essence of the female subject", brought from the bourgeois individualistic ideology during the eighteenth and nineteenth century (Poovey 1992, p. 243). Actually, these roles require the exercise of domestic obligations and care, as well as diminish the access to the labor market and political life (Biroli 2014, 2015).

In this article, we chose to drive the readers through political disputes over the regulation of abortion in Brazil. However, these same analyzed proposals held in the Parliament do not consider many fundamental dimensions of this theme. Women from the periphery and those with black and indigenous racial markers have precarious access to family planning, contraceptive, prenatal and obstetric health policies (Alves

2006). They are the most vulnerable group to reproductive control practices that involve the performance of sterilization surgery or situations of obstetric violence (Ciello *et al.* 2012, Leal 2014, Nielsson 2020). In addition, the children of these women are part of most vulnerable group to criminal prosecution and homicide (Instituto de Pesquisa Econômica Aplicada – IPEA – 2019). In the next topic we will discuss the research findings, with focus on understanding the political debate on abortion until 2018.

3. Methodology

The main question of this research is to understand what kind of criminalization or decriminalization proposals were active in the Brazilian National Congress in the 55th Legislature (2015–2018), and which were the central arguments that justified them. To answer this question, the research initially collected all the bills around the subject with the word “abortion” on the website of the National Congress.¹⁵ It guided to a result of more than 800 occurrences, from which we extracted only the proposals and discourses that dealt with criminalization or decriminalization.¹⁶ The final corpus of analysis gathered 25 proposals¹⁷ that were still active in December 2018, the year this research took place. The documents selected for analysis were the bills, with their justification, debates and reports from the committees.

When these bills were collected for the research, we used as a criterion that they should be active in the 2015–2018 legislature. This means that they could not have been rejected or archived, but they could have been joined to other older projects in order to be conducted by the same process of debate and voting. As there has been an expansion of the debate on abortion since the Constitution, it is common for parliamentarians who are seeking to establish their names as defenders of the cause, to make projects similar to those that are already being voted on.

Throughout the analysis, we carried out macroanalytical categorization, through content analysis (Bardin 2011), seeking to identify the type of legislative claim of the bill. We used four categories: 1) punitive demand, in which we categorized the texts that demanded an increase in punishment, criminalized legal conduct or created new crimes; 2) definition of the beginning of life in the moment of conception (“unborn child” statute), leveling the value of life of an unborn child to the woman’s and born children’s; 3) creation of public assistance for encouraging raped women to continue with the pregnancy; 4) legalization of abortion in some cases.

All the bills proposed in the Parliament present a text to justify the proposal. There is no specific rule for their writing, so it is common to find texts with only one page and others way larger. Despite the frequent use of rhetoric, the justifications tend to have an

¹⁵ On the website of the Brazilian National Congress it is possible to access the database of bills and their status of processing. Available from: <https://www.congressonacional.leg.br/materias/pesquisa>

¹⁶ Some documents found in the search are requests for reading or publication of texts, or are projects that merely mention the word “abortion” and do not address this issue in terms of proposed legislative changes.

¹⁷ The list of the analyzed proposals is: PL 4703/1998; PL 4917/2001; PL 7443/2006; PL 3207/2008; PL 4646/2016; PL 9104/2017; PL 9105/2017; PL 9106/2017; PL 9107/2017; PL 478/2007; PL 489/2007; PL 3748/2008; PL 1763/2007; PL 1085/2011; PL 8116/2014; PL 1459/2003; PL 5166/2005; PL 4396/2016; PLS 460/2016; PLS 461/2016; PEC 29/2015; PEC 181/2015; PL 882/2015; PL 891/2015.

extremely simple language, even colloquial sometimes. The sources of the statements made by the authors are seldom cited.

Even though there is no previously arranged form, in general, these texts are composed of a repeated structure, which is characteristic of political discourse, as Charaudeau (2011) points out. Firstly, it presents a contextualization of the moment, and from it, the author extracts a serious problem. Then, he or she presents the causes of the identified problem and the solution for it, which is embodied in the proposal. This structure, as Charaudeau (2011, p. 91) observes, is typical of popular tales and adventure narratives: “an initial situation that shows evil, a determination of its cause, recovery of this evil through the intervention of the natural or supernatural hero”.

The documents were submitted to a thematic analysis, proceeded through a second step of grouping indicators in categories (Bardin 2011). In the next topic, we present the results of the research, through the analysis of the categorization of the bills. Then, we present the main arguments that support the projects, being these arguments about: a) the nature of the fetus; b) the nature of life; c) the understanding about abortion; d) the counter-arguments to projects to restrict abortion.

4. Results: The “abortion agenda” in the Brazilian Parliament

Brazilian law has been historically constructed mainly by men (Biroli 2018). During the analyzed legislature, the Chamber of Deputies was composed of 51 women and 462 men (Senado Federal 2018) and the Senate of 13 women and 68 men. In the elections of October 2018, the proportion of women in the Parliament grew from 10% to 15%, still an extremely low rate (Haje 2018).

From the 25 analyzed bills, only 1 was proposed by a woman, and she did not approach the subject under a feminist perspective. Gender inequalities provoke many difficulties to seriously discuss historical feminist demands, as abortion (Telles 1993, Pinto 2003, Saffioti 2004). Class and race inequalities add an important complexity to the topic, once the access to public debate is still more difficult for non-white and lower-class women (Gonzales 1984, Carneiro 2003, Pereira 2013). The authorship of the bills helps to explain the conservative character of their content and discourses.

During the analysis, we categorized the bills in four main categories of proposals that we explained in topic 2. As the result of this analysis:

TABLE 1

Categories	Number of proposals
Punitive Proposal	16
Assistance for pregnant women victims of rape	6
Conception as the beginning of life	5
Legalization of abortion in any case	1

Table 1. Number of proposals in each category.

Some of the bills were categorized in more than one category. 16 proposals are considered “Punitive”. Among the “Punitive Proposals” we found different propositions that were organized in four subcategories: a) increasing penalties of already existent crimes; b) making abortion to become a special category of crime, called

“heinous crime”;¹⁸ c) creating new criminal types (culpable abortion; propaganda of abortive substances; inducing a pregnant woman to abort; abortion of fetuses with anencephaly or microcephaly); d) defining abortion as the interruption of pregnancy in anytime

The same projects were also categorized among the six bills that define “Conception as the beginning of life”. It happens because some projects combine the increase of penalty with the redefinition of laws about life. Six bills bring proposals for “Assistance for pregnant women victims of rape”; two of them propose the legalization of abortion in some cases, and one proposes legal abortion in any case. As described above, the bills classified under the “punitive” category direct the punitive power towards specific hypotheses, described in the Table 2 below:

TABLE 2

Categories	Number of proposals
Turning abortion into “Heinous Crime”	7
Creating the figure of culpable abortion	2
Criminalizing the abortion of the fetus with anencephaly or microcephaly	3
Criminalizing the individual stimulation of pregnant women to abort	4
Criminalizing the propaganda of abortive products	3
Defining abortion as the interruption of pregnancy in anytime	1

Table 2. Number of proposals in each subcategory among the “Punitive Proposals”.

The most prevalent of these proposals is the transformation of abortion into a heinous crime, what appears in seven proposals. “Heinous crime” is a category created in Brazilian law to name the most serious crimes and to restrict the chances of progression of the prison regime for the condemned and accused. Although the creation of this category came from the Federal Constitution of 1988, the heinous crime law was created in 1990 after strong popular pressure due to express kidnappings that occurred in large Brazilian cities (Budó and Oliveira 2012).

These dynamics among actions, mobilization of the public sphere and reactions in legislative projects are fundamental to understand the abortion agenda in Brazil from a broader mobilization of conservative and progressive sectors, as stated by Machado and Maciel (2017). The authors described how that the mobilization on the agenda is fluid and not linear, depending on how the moment shows opportunities and restrictions, and how the subjects transit, integrate or provoke the state bureaucracy. As we demonstrated in topic 1, from 2005, the Workers’ Party needed to ally itself with conservative sectors of the National Congress to maintain governance. One hypothesis is that the gain in legitimacy with the support from the executive favored the proposition of more restrictive projects on abortion by conservative parliamentarians.

¹⁸ “Heinous crime” is a category of crime listed in a special law called “Lei dos Crimes Hediondos”. This law forbids convicted people to receive amnesty, grace, pardon, and limits the conditions to have parole. In summary, it keeps people longer in jail (Lei nº 8.072, 1990).

As contextualized in the first topic, the bills analyzed in this paper were proposed during important moments of public discussion on abortion. In 2012, Supreme Federal Court decided to legalize abortion in cases where the fetus is anencephalic and in 2013, the government published the guidelines to health care for safe abortion, which includes offering emergency contraception (also known as the “morning after pill”) for women that have been raped.

Also, in 2013, the Unborn Child Statute bill, proposed in 2007, was discussed and approved by the Finance and Taxation Commission. The project, which currently has 17 other joined projects, legally equates the fetus to the person, which has the effect of both criminalizing abortion in any case and prohibiting research on embryonic stem cells, for example. The project is still awaiting to be voted in two other committees of the Chamber of Deputies: the Constitution and Justice Commission and the Commission for the Defense of Women’s Rights in the Chamber of Deputies, in which the rapporteurs have already issued opinions in favor of the approval of the project.

In 2015, the bill that proposed the legalization of abortion (Wyllys 2015) was filled, and, in 2016, the Zika crisis increased the debate around the theme due to the aforementioned demand of legal abortion for pregnant women of fetuses with Zika congenital syndrome (Valadares 2016). With this context in mind, it is remarkably interesting to understand the strategies that have been used during the last ten years for conservative groups to set the pro-life agenda inside the most different debates. Descriptive Table 3 below brings some of these strategies.

TABLE 3

Achievement	Counter-proposal
2012 – Supreme Court Decision to legalize abortion in cases of anencephalic fetus.	PL 4396/2016, for criminalizing abortion in case of anencephaly and microcephaly (Ferreira 2016).
2013 – Ministry of health promotes health care for victims of sexual violence, including contraception.	Reports in the committees for the bills all appended: PL 478/2007 (Bassuma and Martini 2007), PL 489/2007 (Cunha 2007), PL 8116/14 (Filho <i>et al.</i> 2014), PL 1085/2011 (Verde 2011), PL 1763/2007 (Oliveira 2007), PL 3748/2008 (Vidigal 2008), for giving psychologic and economic care for raped pregnant women.
2015 – Proposal of a regulation for reproductive rights and legalization of abortion by many feminist groups, by Deputado Jean Wyllys – PL 882/2015 (Wyllys 2015).	PL 891/2015 – The same day another bill was proposed with the same title but prohibiting all kinds of abortion by Deputado Flavinho (2015).
2016 – Supreme Court Decision to declare unconstitutional the criminalization of abortion until the third month of pregnancy. 2017 – Proposal of an ADPF in the Supreme Court, By Socialism and Liberty Party for creating rules for legal abortion until 3 rd month of pregnancy.	PL 461/2016, for defining the crime of abortion as the interruption of pregnancy in anytime (Valadares 2016). Report on the PEC 181/2015, in November 2017 defining conception as the beginning of life (criminalization of all kinds of abortion, even in cases of rape, and the use of next day pill) – approved by 18 men.

Table 3. Achievements of the feminist movements *versus* conservative counter-proposals.

Even though the compared events of this table are sometimes distant in time, they are deeply linked by the subject. The events that occurred in 2016 and in 2017 were important in the pro-choice agenda. The Second Panel of the Supreme Court¹⁹ granted habeas corpus (HC 124.306/RJ) for two people prosecuted for abortion (Barroso 2016). In this decision, Justice Luís Roberto Barroso weighed the rights of the women and the rights of the unborn child and stated that criminalization is unconstitutional. The decision, by itself, does not have a declaratory character of unconstitutionality of criminalization because it was not a process of “constitutional jurisdiction” dedicated to discussing the validity of a federal law against the Brazilian Constitution. Nevertheless, it showed the favorable positioning of the Justice Luis Roberto Barroso, with arguments that are used by pro-choice groups. In March 2017, the Socialism and Liberty Party proposed a Constitutional Action to define rules for a legal abortion in the country, the ADPF 442 (Supremo Tribunal Federal 2018), following the arguments developed by that Justice, and the opened trend of constitutional interpretation on the subject.

Conservative Parliamentarians have intensified criticisms to the Judicial Branch ever since, arguing that the Supreme Federal Court would be usurping Legislative competence. The report on the Proposal of Constitutional Amendment nº 181/2015 given in November 2017 by representative Jorge Tadeu Mudalen is a symptomatic example of this.²⁰ He says:

In the specific case of abortion, a complex and sensitive issue, the proper place for its discussion is, undoubtedly, the Legislative Power and not the Supreme Federal Court (...). The Court lacks competence and constitutional legitimacy to define a topic of such importance. Therefore, it is worth emphasizing that, in the case of abortion, a Minister who has not been elected cannot (...) disregard not only the representative principle embodied in the National Congress (...) as well as directly and vehemently disregard the will of the people, who, almost unanimously, reject the practice of abortion, as research on the subject demonstrates. (Mudalen 2017, p. 13)

He includes the right to life since conception in a proposal that was not associated to the criminalization of abortion and because of that, nine parliamentarians presented separated votes against this substitutive, whose synthesis of the arguments will be further presented. However, the substitutive was approved in the committee by 18 men.

Besides this general argument of lack of democratic legitimacy of the Judiciary branch, parliamentarians also mobilized legal discourse in the proposals regarding the unborn rights, mostly for giving constitutional and conventional substance to the claim of the need of protecting life since its conception. Examples of internal and international legal

¹⁹ The Brazilian Supreme Court has two chambers of appeal, namely the “First Panel” and “Second Panel”, each formed by five ministers.

²⁰ Just to provide some context, this bill originally intended to extend the time of maternity leave for mothers of premature babies, proportionally to the period that the baby stays in the hospital. The reporter Mudalen brought a substitutive proposal in which he includes in the fundamental rights in the Constitution the following wording: “Article 5. All persons are equal before the law, without any distinction whatsoever, Brazilians and foreigners residing in the country being ensured of inviolability of the right to life *since conception*, to liberty, to equality, to security and to property, on the following terms (...)”. Through the insertion of the words “since conception”, the representative aims to prevent the Judicial power of allowing abortion in any case.

documents repeatedly cited are: Statute of the Children and Adolescent; American Convention of Human Rights; UN Convention on the Rights of the Children.

Another important data from this content analysis is the prevalence of instruments that criminalize the supposed “incentive” and “propaganda” of abortion and its methods. These instruments describe behaviors that are easily adaptable to the actions carried out by the feminist movement, such as the dissemination of reports of women who chose to have an abortion or the description of safe means of abortion. In addition to the criminalization effect of social movements that discuss abortion, the projects postulate an interdiction to the debate. In Brazil, we have identified processes to depoliticize social conflicts that occur through the criminalization of agents and their practices²¹ (Budó 2014).

In the qualitative research, we could see that in the justifications of the bills, and in the reports of the committees, it is rare to find scientific arguments. Formal legal arguments are used in the most part of the discourses, as well as moral arguments. Religious discourses appear sometimes in a very dissimulated way, mainly in the exhortations at the end of the justifications of the bills, or in the reports of committees. The following quotation, extracted from the Justification of the bill number 489/2007, called the Unborn Child Statute, exemplifies the exhortation: “May God wish that this House of Laws be committed as soon as possible to approve this Statute, for the joy of the children to be born and for the pride of this country”.

After this overview of the corpus, we will present next the thematic categories that emerged from content analysis:

a) The nature of the fetus

The bills proposing an increase of punishment for abortion or creating obstacles to access the actual legal hypothesis congregate a specific view of the fetus: that it is already a person and has all the rights guaranteed from the conception. For example, in the bill 7.443/2006, abortion is defined as the “death of a child in the mother’s womb”. Here, the congressman qualifies the fetus as a child, a category that appears in other projects as “baby”, “being” (Cunha 2006), “defenseless being” (Vidigal 2008) and “innocent” (Silva 1998).

The bill number 478/2007 clearly seeks to equate the unborn child to a person, when it uses expressions as “coming child”, “unborn human being”, “status of a person”, “human being that already exists”, “future person in development” (Bassuma and Martini 2007). The use of this terms is not a coincidence: it corresponds to a proposal that wants to give to the unborn child a role of subject of rights.

The argumentation in this category is guided to show that national and international legislation have a lack of protection regarding to the unborn child. This idea only makes sense if the constitution of a subject of rights is determined by the beginning of life since conception. Therefore, these bills seek to change exactly the Constitutional text on that

²¹ As an example, in 2011, after several cities banned the March of the Marijuana claiming that the event carried out an apology for the crime of drug trafficking, the Attorney General’s Office filed an Action for Noncompliance with a Fundamental Precept to the Supreme Federal Court, which decided to authorize these manifestations based on the Right to Assembly and freedom of expression (Supremo Tribunal Federal 2011).

point. This topic has been one of the main objects of the legal and feminist debate on abortion, since the individualistic and liberal approach is based on the acknowledgment of women's rights to privacy and choice (Poovey 1992). The author argues that the liberal concept of rights can be appropriated by reactionary abortion opponents who strategically address the discussion of the beginning of life to equate the unborn child rights to the pregnant woman rights. Appealing to a metaphysics of substance, it leads to a proliferation of those who have rights, and simultaneously this appeals "... obscure the fact that both the metaphysics and legal persons are always imbricated in a system of social relations, which, given the existence of social differences, are also inevitably politicized" (Poovey 1992, p. 250). As we will present in the next topics, the grammatic of human rights have been actually appropriated exactly by conservative political groups inside the Brazilian political system.

b) The nature of life

According to the Constitution, Brazil is a secular state, so there is no official religion. Therefore, spiritual, or metaphysical understandings of the world should not be the references for public policies. It is clear that religious thought is at the base of the bills regarding to the nature of life. Although some of them do not try to hide this connection, as we showed in the exhortation to god, in other cases the discourse is constructed to give a scientific appearance to the proposal. One example is the quote below, written by representative Diego Garcia in his report on the bill 478 in the Committee for the Defense of Women's Rights:

It is questioned, however, from when human beings can be considered to exist. For medicine, it is undisputed that the life developed in the maternal womb has full control over its own evolution, with the mother being the protective environment that, in this case, submits herself to the commands of the new being's organism, which releases substances that find an echo in the woman's body. It is still peaceful that the zygote, even if it has not yet doubled even once, keeps within itself the genetic load that will define it throughout its life. (Garcia 2018, p. 14)

In this report, women are represented only as a territory with an environment in which the fetus will biologically develop, being also disposable after birth. Without using religious arguments, the representative claims that science itself already proved that life starts with conception, even before the formation of a fetus. Legal consequences are claimed to be necessary to protect life. Another citation, in the aforementioned report on the bill 181 (PEC 181/2015) by representative Jorge Tadeu Mudalen, deepens this idea:

... science has provided technology so that increasingly premature babies can survive outside the uterine environment. Therefore, we can affirm that in a not-so-distant future it will be possible to protect and develop human life outside the maternal womb from the very conception or from a moment very close to it, to demonstrate, with this, that there is a human life to be considered in itself in the maternal breast already from that moment. (Mudalen 2017, p. 11)

The text shows that the acknowledgment, by law, of the autonomy of the fetus is biologically anchored in the lack of woman's autonomy to decide about her body. The author not only uses science to defend this idea, but also calls for science to move forward to the point when reproduction will not need the maternal womb. This alliance with science appears also in another report given inside the legislative procedure of a

bill from 2007: “To be against abortion (...) is also a scientific question, since for decades Science has affirmed that human life begins at the moment of conception, with the first cell, the zygote” (Oliveira 2007, p. 3). The author does not cite a scientific reference to support this sentence, using the strategy of mentioning science as an abstract place of legitimation. It does seem like science would be an extension of religion and not a completely opposite system of knowledge, with other methods for validating hypotheses.

These statements also reveal a limitation of some of the main criteria of time used by legislation or judicial precedents in many countries for authorizing abortion. Analyzing precedents from North American courts, Poovey (1992) argues that the same criteria – a point in time – to affirm the viability of the fetus or the potentiality of life inaugurated the idea that the fetus has rights and merits state protection before the birth. These assumptions let unexplored “the relationship between viability and meaningful life”, (Poovey 1992, p. 248) guiding to a paradox for abortion advocates: if in the future science would concretize representative Mudalen’s prophecy of making feasible a complete pregnancy outside the woman’s body, the legalization of abortion would be automatically at stake. This fragility is being well explored by Brazilian legislators, even without any sophistication.

If on one side the “scientific” approach implies a complete emptying of the subjectivity of women, seen only as territory to be occupied and used for procreation, on the other side, there are also statements that try to focus on maternal love to legitimize the obligation for women to accept pregnancy as their biological destiny. In the justification of the bill 5166/2005, representative Takayama states that “(...) biological determinism makes the woman the bearer of a new life, evolving the maternal feeling” (Takayama 2005). By adopting biological determinism, social construction of motherhood and the subjectivity of women are completely erased from the political debate. The very existence of a “female nature” is an assumption for this argument, persisting the idea that a maternal instinct and the desire to be a mother are intrinsic to the essence of being a woman (Poovey 1992, p. 243).

These discourses also reflect the dispute that has been established since the Federal Constitution for the inclusion of a Christian worldview. For Miriam Aldana, when analyzing Catholic voices in the 1990s, discourses about the beginning of life are supported by sacred texts, sources that “(...) are absolute, universally valid, without the need of being spatially and temporally contextualized” (Aldana 2008, p. 642). In addition, the conception as the beginning of life is still essentialist in social terms, since it reduces existence to merely biological factors, which “ignores the subjective, cultural, social and political aspects of the mother, that is, recognizes in human life only the aspect of biological survival, ignoring that it has a subjective dimension specific to each human being, a peculiar way of giving it cultural and social meaning” (Aldana 2008, p. 641).

Moralistic and sensationalistic descriptions are also strategies to dispel the argument that a woman’s life is also at stake in the case of an unwanted pregnancy. Even when it is shortly considered, it seems to be completely irrelevant. In the aforementioned report on PL 478/2007, representative Diego Garcia states: “I do not deny that in different situations there will be suffering for women. But eventual suffering, always of temporary duration, cannot be weighed with the extinction of a life” (Garcia 2018, p. 23).

These understandings of the fetus and about life are arguments that make the “crime of abortion” equivalent to the “crime of homicide”. The current penal code qualifies abortion as a medium offensive crime, not as a major offense like homicide. Proportionately, these two crimes have a quite different approach by the Criminal justice system, as explained in the first topic of this paper. Those discourses not only neglect women autonomy and the negative effects in her social, professional, political and physical life (Biroli 2014), they also neglect the consolidated life, with past and expectations for the future. Not even in 1940, when the penal code was first published, it could have been accepted by the legislators.

c) The comprehension about abortion

The bills that directly address the criminalization of abortion use a very wide concept to define it. The bill number 7443/2006, for example, brings this concept: “abortion is the death of a child in the mother’s womb, produced in any time from the fertilization (union between ovule and spermatozoon) until the moment before the birth”. The bill also brings the distinction between induced and natural abortion: “the abortion is induced when the baby’s death is aimed” and “the abortion is spontaneous when the death is a product of some unpredicted or undesired anomaly or dysfunction of the fetus” (Cunha 2006).

Beyond this generalist and descriptive concepts, many of the conceptions on abortion in the bills are also evaluative and moralistic. The following sentences help to understand the way these politicians think about abortion: “the conviction of babies to death because of physical deficiencies or because the parents committed a crime” (Martini 2008), “monstrous crimes” (referring to abortion), “it is necessary to publish a law to ‘stop’ such monstrosities” (Bassuma and Martini 2007, p. 7), “I reject abortion as a heinous crime”, “the methods usually employed in an abortion cannot be described during a meal” (Bassuma and Martini 2007, p. 7), “some [fetuses] take a long time to die, being necessary to act directly to end the killing, if you do not want to put them in the garbage still alive” (Bassuma and Martini 2007).

Still in the bill number 478/2007, some descriptions of different procedures of abortion are given by the parliamentary with a very sensationalistic approach: “[T]he baby is quartered (abortion by curettage), sucked in small pieces (abortion by suction), poisoned by a solution that corrodes the skin (abortion by saline poisoning), or simply extracted alive and let die of starvation (abortion by Caesarian section)” (Bassuma and Martini 2007, p. 7). Beyond the obvious misunderstanding of the procedures, we notice the total abandonment of the concepts established by law and by science. It is easily perceptible the strong intention of demonizing abortion through moralistic discourses, seeking to increase the disapproval of this conduct. It is an important strategy to justify the increase of the penalties.

As mentioned above, juridical arguments are used to support the idea that the Supreme Court does not have democratic legitimacy to decide about such a controversial issue as abortion. One of the main subjects of proposals and argumentations inside them oppose the aforementioned ADPF 54, in which SFC legalized the anticipation of birth of the fetus with anencephaly. The arguments in these cases also create another label to abortion, and a new legal definition. The bill 1459/2003, for example, creates a new type of crime called “eugenic abortion” (Cavalcanti 2003).

The disagreement with the criterion for the beginning of life by the Supreme Court ADPF 54 (Supremo Tribunal Federal 2012) as brain activity does not come along with any actual justification besides the religious background and a moralistic approach as consequence. There are also arguments that try to create doubt and skepticism about how the scientific debate on the beginning and the end of life is always changing according to scientific research. Being an open topic, it cannot guide a political decision. This point of attention is important, considering that the modification of the life existence criterion would impact other legal definitions, such as the one that authorizes organ transplantation.²² In this sense the category “eugenics” is mobilized by the representative Diego Garcia, in his report: “The Statute of Persons with Disabilities, recently approved in Brazil, is a milestone in the protection of the person. And it must reach the person of the unborn child. Eugenics is a crime against humanity” (Garcia 2018, p. 27). The consequence is a comparison between abortion of the fetus with anencephaly to racism, sexism and speciesism: hideous types of discrimination.

Even if there is not a deep rationale to support conception as the beginning of life, the consequences of it seem to be supported by legal arguments, and also to broad references to science. The main claiming behind the new legal definition of a type of crime, called “eugenic abortion”, is that science is always progressing. Thus, to stop a pregnancy based on the diagnosis of anencephaly would prevent the baby from a possible recovery through technology. The following statement summarizes this idea:

Medicine around the world has been showing such advanced stages of development that thousands of children, who were previously condemned to a vegetative life, today – thanks to the advances of medical science – have a normal life. These children are bringing happiness to many homes that have known how to respect their Right to Life. (Cavalcanti 2003, p. 3)

However, also here the sensationalistic and moralistic rhetoric come to the debate inside the report on the PL 478/2007 by representative Marcos Rogerio in the Committee of Constitution, Justice and Citizenship, based on analogy: “(...) [N]o one would admit the killing of anencephalic newborns (who, after all, have similarly little life expectancy) in order to spare the mother the burden of frustration, suffering, psychological torture, or any other pseudo-legal title attributed to the unpleasant state of mind about it” (Rogério 2017, p. 6).

d) Opposing the bills: counterpoints from the parliamentary debates in the committees

The thematic committees play an important role in the Brazilian legislative process. These permanent collegiate bodies are composed by Parliamentarians chosen by their parties observing their proportional representation in the Chamber of the Deputies. The committees have the competence to discuss bills that afterwards must be approved by the plenary, presenting a report against or in favor of the proposal. In cases in which there are not human rights involved, some of these committees can also approve or reject bills without the need of the vote in plenary. Decriminalizing or reinforcing the criminalization of abortion evidently is a subject that needs to be voted inside the

²² According to Article 3 of Law 9,434, “the post-mortem removal of tissues, organs or parts of the human body intended for transplantation or treatment must be preceded by a diagnosis of brain death, verified and registered by two physicians not participating in the removal and transplantation teams, using clinical and technological criteria defined by resolution of the Federal Council of Medicine” (Lei nº 9.434, 1997).

committees and, if approved, they are ready to be voted in plenary. In the case of the analyzed bills, all of them had to pass for at least two committees: Committee of Constitution, Justice and Citizenship and Committee of Family and Social Security.

The main document resulting from the debates held in the committees is a report, presented by an elected rapporteur, approving (with or without amendments), or rejecting the bill. This report is submitted for approval inside the committee. The unconformity with the result of this vote is often registered through a separate vote, arguing why the committee should not have decided like it did. In the legislative process of the bills analyzed in this article, the separate votes are a powerful source of controversial arguments.

In the research corpus, few bills have been voted in the committees, and generated separated votes or reports against them. It was the case for PL's 4703/98, 478/07, 1763/07, 1459/03, 4403/04 and PEC 181/15. The discursive strategies for opposing the pro-life arguments were, in summary: claiming the legal principle that states that criminal law is the last resource to protect rights, and using the criminological argument that increasing penalties does not prevent the crime; using the juridical argument of laicism of the state and freedom of choice, stating that criminalization violates the freedom of thinking and religion and the dignity of women because they become only a mean to procreation; equating the maintenance of an unwanted pregnancy with institutionalized psychological torture; using the scientific certainty of the woman's life as a more concrete, viable and real than the life of the fetus; affirming the change of perspective of the analysis on the issue of abortion from a criminal to a public health approach, bearing in mind that criminalization causes the precarious conditions of this service; addressing abortion as a right ensured by international regulations. These points were made predominantly by left-wing parliamentarians. Eight of the parliamentarians who presented separate votes were men, two were women and all of them were white.

5. Conclusions

The issue of abortion is strategic to the organization of conservative and progressive agendas in the Brazilian parliament. Parliamentary proposals and debates on these subjects have historically dealt with key issues for a secular state: the beginning of life, the women's autonomy and freedom, the patriarchal social structure. This article aimed to comprehend how the debates regarding criminalization and decriminalization of abortion took place in the Brazilian parliament.

While studies on periods prior to this article corpus of analysis showed the centrality of discussions on religion and morality (Aldana 2008, Machado and Maciel 2017), this research pointed to the appropriation of scientific and secular arguments to support the most conservative proposals studied. The liberal and individualistic discourse of rights was regularly used to support the idea that the fetus is a human being and must be protected by the State. In this sense, the proposals placed the criminalization of abortion as part of the human rights protection system, using the San José of Costa Rica's Pact, the Brazilian Federal Constitution and Brazil's Statute of the Child and Adolescent²³ as

²³ The Brazil's Statute of the Child and Adolescent (nº 8,069 of July 13, 1990) is a federal law that establishes the integral protection for children and adolescents.

the legal basis to support it or even to increase the punishment for abortion. By doing that, the discourses also interdicted the liberal feminist argument on the right of abortion inscribed in the idea of choice, freedom, and autonomy, weighing them with life of an equal subject of rights: the unborn child.

These logics also guided to proposals in which abortion could never be accepted, even in cases currently allowed in Brazil. The example are proposals that have the aim of explicitly criminalize abortion of fetuses with anencephaly, as if decriminalization would lead to a eugenic cleansing of the population. So, in this approach, to criminalize abortion is a way to protect children and babies, as a way of legislating through social, economic and humanitarian concerns.

The key to the discussion of anti-abortion movements begins to appropriate scientific and secular arguments, in particular, the fact that science is always questionable and in constant debate. This poses new challenges for the agenda, which discuss the connection between biological sciences, politics and law: Will the political discourse appropriate the scientific evidence? How? Who will validate and which criteria of validity will be applied to the studies presented to support a legal and political decision on the subject? In addition, we can notice the fear that freedom of choice could lead to a lack of control about other topics: the fear of eugenics; the fear of using abortion as a contraceptive method, and the fear of women who do not follow their reproductive destiny and may take spaces dominated by men.

Proposals against the regulation and legalization of abortion strongly predominated. This data may represent that the Parliament is mostly opposed to the agenda – which, knowing the current composition of the legislative branch, is a thesis with strong evidence. However, there is another possible hypothesis to explain why there were more proposals in favor of increasing restrictions to abortion. The first one is that there is a need to take a position against abortion by “pro-life” parliamentarians. As the abortion agenda is a “focal theme”, capable of generating adherence and rejection by sectors of society, proposing a bill on the subject is a way for these parliamentarians to communicate their values and to give accountability of their work to their electoral base.

It also shows that the feminist demands on reproductive rights are not being received and addressed in the parliament, even though one proposal in this sense appeared in the corpus. Regarding to the conservative composition of the parliament, and the way in which the federal government is also legislating inside administrative rules to avoid abortion in the legal cases, the horizon is not optimistic. Struggles to defend the most basic rights will be more and more necessary in this context. Influencing in this debate will be a condition of survival for the most part of Brazilian women.

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