FEMINISMS, DWORFIN AND ABORTION

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ABSTRACT

Objective: The objective of this study is to investigate Brazilian legislation, Dworkin's studies and feminist critical theory regarding abortion with the aim of understanding how feminisms can generate criticism of Brazilian legal regulation and Dworkin's conclusions on the topic.

Theoretical Framework: In this topic, the main concepts and theories that underpin the research are presented. Feminist critical theories and Dworkinian theory stand out, providing a solid basis for understanding the context of the investigation.

Method: The methodology adopted for this research comprises the hypothetical-deductive method and data collection was carried out through bibliographical documentary research, notably from research sources consisting of scientific articles, books, periodicals and collections.

Results and Discussion: The results obtained revealed that (i) different feminisms contribute to confronting sexist oppression; (ii) by guaranteeing the material equality of people, the Federal Constitution is feminist and the acts of the three Powers should be revised accordingly; (iii) the decriminalization of abortion in the first trimester of pregnancy will be decided by the Federal Supreme Court in ADPF 442, but there is a favorable understanding in HC 124/306; (iv) Dworkin's interpretive theory proposes Law as integrity and analyzes abortion from the American context, when the Supreme Court presented a permissive precedent; (v) Dworkin understood abortion as a collective issue because it involves collective values and the intrinsic good of life, which is of state interest, which would justify the State demanding certain responsibilities via regulation; (vi) Dworkin criticizes the author of radical feminism and cites the author of femininity feminism, which is widely criticized for the idealization of motherhood and for enabling sexist aspects; (vii) for the Law, abortion is not a religious, moral or ethical discussion, it does not require consideration between the community's religious rights and other rights, but it is a choice of the pregnant woman and its regulation depends on scientific medical criteria. In the discussion section, these results are contextualized in light of the theoretical framework, highlighting the implications and relationships identified. Possible discrepancies and limitations of the study are also considered in this section.

Research Implications: The practical and theoretical implications of this research are discussed, providing insights into how the results can be applied or influence practices in the field of criminal law. These implications could include the (de)criminalization of abortion.

Originality/Value: This study contributes to the literature by approaching a critical view of abortion for Dworkinian theory from feminisms. The relevance and value of this research are evidenced by its questioning of some Dworkinian moral assumptions about abortion.

Keywords: Feminisms, Abortion, Dworkin, Gender, Women.

FEMINISMOS, DWORFIN E O ABORTO

Objetivo: O objetivo deste estudo é analisar a legislação brasileira e os estudos de Dworkin a respeito do aborto, a partir da teoria crítica feminista, com o objetivo de identificar morais nesses discursos e compreender as críticas feministas sobre o tema.

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Referencial Teórico: Neste tópico, são apresentados os principais conceitos e teorias que fundamentam a pesquisa. Destacam-se as teorias críticas feministas e a teoria dworkiniana, fornecendo uma base para a compreensão do contexto da investigação.

Método: A metodologia adotada para esta pesquisa compreende o método hipotético-dedutivo e a coleta de dados foi realizada por meio de pesquisa documental bibliográfica, notadamente de fontes de pesquisa consistentes em artigos científicos, livros, periódicos e coletâneas.

Resultados e Discussão: Os resultados obtidos revelaram que (i) diferentes feminismos contribuem para o enfrentamento da opressão sexista; (ii) por garantir a igualdade material das pessoas, a Constituição Federal (CF) é feminista e os atos dos três Poderes deveriam ser revisados de acordo; (iii) a descriminalização do aborto no primeiro trimestre gestacional será decidida pelo Supremo Tribunal Federal (STF) na ADPF 442, mas há entendimento favorável no Habeas Corpus (HC) 124/306; (iv) a teoria interpretativista dworkiniana propõe o Direito como integridade e analisa o aborto a partir do contexto estadunidense, quando a Suprema Corte apresentava precedente permissivo; (v) Dworkin entendia o aborto como questão coletiva por envolver valores coletivos e o bem intrínseco da vida, que é de interesse estatal, o que justificaria que o Estado exigisse certas responsabilidades via regulamentação; (vi) Dworkin critica autora do feminismo radical e cita autora do feminismo de feminidade, que é muito criticado pela idealização da maternidade e por possibilitar vertentes machistas; (vii) para o Direito, o aborto não é uma discussão religiosa, moral ou ética, não demanda ponderação entre direitos religiosos da comunidade e outros direitos, mas é uma escolha da gestante e sua regulamentação depende de critérios científicos da medicina. Na seção de discussão, esses resultados são contextualizados à luz do referencial teórico, destacando-se as implicações e relações identificadas. Possíveis discrepâncias e limitações do estudo também são consideradas nesta seção.

Implicações da Pesquisa: As implicações práticas e teóricas desta pesquisa são discutidas, fornecendo insights sobre como os resultados podem ser aplicados ou influenciar práticas no campo do direito penal. Essas implicações podem abranger a (des)criminalização do aborto.

Originalidade/Valor: Este estudo contribui para a literatura ao abordar uma visão crítica do aborto para a teoria dworkiniana a partir dos feminismos. A relevância e o valor desta pesquisa são evidenciados por questionarem algumas premissas morais dworkinianas sobre o aborto.

Palavras-chave: Feminismos, Aborto, Dworkin, Gênero, Mulheres.

FEMINISMOS, DWORKIN Y ABORTO

Objetivo: El objetivo de este estudio es investigar la legislación brasileña, los estudios de Dworkin y la teoría crítica feminista sobre el aborto con el objetivo de comprender cómo los feminismos pueden generar críticas a la regulación jurídica brasileña y las conclusiones de Dworkin sobre el tema.

Marco Teórico: En este tema se presentan los principales conceptos y teorías que sustentan la investigación. Se destacan las teorías críticas feministas y la teoría dworkiniana, que brindan una base sólida para comprender el contexto de la investigación.

Método: La metodología adoptada para esta investigación comprende el método hipotético-deductivo y la recolección de datos se realizó a través de investigación documental bibliográfica, principalmente de fuentes de investigación compuestas por artículos científicos, libros, publicaciones periódicas y colecciones.

Resultados y Discusión: Los resultados obtenidos revelaron que (i) diferentes feminismos contribuyen a enfrentar la opresión sexista; (ii) al garantizar la igualdad material de las personas, la Constitución Federal es feminista y las leyes de los tres Poderes deben revisarse en consecuencia; (iii) la despenalización del aborto en el primer trimestre del embarazo será decidida por el Supremo Tribunal Federal en la ADPF 442, pero hay entendimiento favorable en el HC 124/306; (iv) la teoría interpretativista de Dworkin propone el Derecho como integridad y analiza el aborto desde el contexto americano, cuando la Corte Suprema presentó un precedente permissivo; (v) Dworkin entendió el aborto como una cuestión colectiva porque involucra valores colectivos y el bien intrínseco de la vida, que es de interés estatal, lo que justificaría que el Estado exija ciertas responsabilidades vía regulación; (vi) Dworkin critica a la autora del feminismo radical y cita a la autora del feminismo de la feminidad, que es ampliamente criticada por la idealización de la maternidad y por permitir aspectos sexistas; (vii) para la Ley, el aborto no es una discusión religiosa, moral o ética, no requiere consideración entre los derechos religiosos de la
comunidad y otros derechos, sino que es una elección de la mujer embarazada y su regulación depende de criterios médicos científicos. En la sección de discusión, estos resultados se contextualizan a la luz del marco teórico, destacando las implicaciones y relaciones identificadas. En este apartado también se consideran posibles discrepancias y limitaciones del estudio.

**Implicaciones de la investigación:** Se discuten las implicaciones prácticas y teóricas de esta investigación, proporcionando información sobre cómo los resultados pueden aplicarse o influir en las prácticas en el campo del derecho penal. Estas implicaciones podrían incluir la (des)penalización del aborto.

**Originalidad/Valor:** Este estudio contribuye a la literatura abordando una visión crítica del aborto para la teoría dworkiniana desde el feminismo. La relevancia y el valor de esta investigación se evidencian en el cuestionamiento de algunos supuestos morales dworkinianos sobre el aborto.

**Palabras clave:** Feminismos, Aborto, Dworkin, Género, Mujeres.

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### 1 INTRODUCTION

Abortion is a topic discussed in various branches of science and the discussions permeate it in different ways and with different methodologies and goals. In this study, the theme is analyzed from the Law: the Brazilian legal regulation is studied and, later, the conclusions of the American philosopher Ronald Dworkin to oppose them to the feminisms.

The research problem consists in questioning the ideological premises of Brazilian legislation and of Dworkin's conceptions about abortion, starting with the feminisms. The methodology consists of the analysis of bibliographic material, such as articles, books and other scientific documents.

In the development of the research, the starting point was the understanding of various feminist theories and of the importance of law as an instrument of emancipation and social transformation for the feminisms - and, within these spheres of change, the regulation of abortion in Brazil was studied. Dworkin's views on abortion were then analyzed, notably when she faced feminist criticism of the topic. So, one could counter Dworkin's position to the feminisms in order to obtain some conclusions as to the morals contained in Brazilian legislation and in Dworkinian theory.

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2 There is talk of "feminisms" rather than "feminism" because there is a multiplicity of diverse studies within the feminist movements. In the scientific literature of feminisms, there are numerous terms used to refer to them: movements, theories, thoughts, studies, feminist criticisms, etc. The term "feminisms" refers to all these elements, whose common goal is to criticize and confront sexist oppression.
2 MILESTONE

2.1 FEMINISM AND LAW

Dworkin (1994, p. 70) states that most people understand that life has intrinsic value and this explains the considerable disagreement about abortion, precisely because we interpret the preciousness of life in different and vigorous ways. There is no way of disagreeing with this statement, but there is also no way of studying the theme of abortion, ignoring the feminisms. When we speak of "feminism" we really mean the feminist movement that encompasses all these feminisms, and is formed by theory and praxis, by science and politics (Pollock, 1996, p. XV). Disregarding multidisciplinarity, pluralism and complexity of feminisms generates theoretical improprieties and misconceptions that harm them. The most common mistake is to suppose a feminism, when, in fact, there is not a single feminism.

What exists are feminisms that see and study the feminine conditions, gender and sexist oppression from different points of view. They pass through different disciplines, historical moments and places; they arise with different objectives and theoretical benchmarks and develop with equal complexity: they form ramifications and unfolding that cannot be assumed. They are theories and developments under way, alongside struggles fought in the field of life and that generate implications about such theorizations, that is, theory and practice complement each other, counter each other and interact.

The feminisms are multiple because "Feminist Studies have enunciated themselves, since their emergence, in multiple ways, multiple places of production and evolve in several directions" (Descarries, 2000, p. 11). If oppression occurs in various fields - such as Law, Politics, Religion, Science and Society, for example - then feminisms need to combat it in these multiple arenas.

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3 Gender theories emerged in feminisms, but went further. It is not uncommon to speak of gender to refer to the female sex, but the notion of gender goes far beyond gender differences: as an analytical category, gender is not confused with sex and sexuality. Jaramillo (2000, pp. 105-106) explains that the word sex is commonly used to refer to the biological differences of the human being, distinguishing it between male and female; in turn, the word gender refers to the cultural significance of these differences. It so happens that gender is a social construction that does not share the same simplistic subdivision; gender is not given, it is built. For Scott (1995, p. 72), gender is a "constitutive element of social relations based on perceived differences between the sexes" and "is a primary way of signifying power relations". Souza (2016, p. 105) points out that "the dimension of power must not be ignored in the process of understanding the gender category and becomes fundamental for the support and argumentation, in general, of feminist theory". Butler (2019, pp. 228 and 231) deals with the transformation of bodies into gender through performance acts over time by cultural conventions aligned with systems of oppression.
When one speaks of the development of feminisms, a progressive linearity is not advocated, since they are complex, non-linear and run through different disciplines and branches of knowledge — which explains the difficulty in categorizing them or organizing them. They start from different problems and with different objectives and complement each other, they are part of the feminist movement with their different contributions and biases; they imply the evolution of the movement without a necessary linearity or hierarchy. What feminisms have in common is the initial premise (sexist oppression) and the general goal (to combat it).

As to the differences in the way of understanding sexist oppression, Jaramillo (2000, pp. 113-116) presents two main currents: the feminisms of equality and difference. The feminisms of equality or egalitarianism are subdivided into: (i) Classical liberals: basic liberal claims of female freedom (e.g. voting rights, property, labor, etc.), breaking down legal barriers. Although very important, they are considered insufficient; (ii) Social liberals: with the aim of granting equal material resources and conditions to women, propose affirmative measures; (iii) Socialists: see patriarchy and capitalism as mutually dependent systems. They are criticized by the political leftist bias; (iv) Radicals: the fundamental structure of society is gender, which determines the distribution of power, so one must transform social structures by means of the method of "raising consciousness" (MacKinnon).

The feminisms of difference (also known as cultural feminisms or feminitude), based on specific currents of psychology, propose the existence of psychological differences between man and woman in the way of seeing the world, and differences in moral rationality and identity formation. Thus, they deal with the value of the feminine and the importance of the ephemeral, of individuality, of differences, of motherhood, among other aspects in the life of the woman. They arose in the late 70s and are defended by Gilligan, Ruddick, Kohlberg, Eisenstein and Chodorow, but much criticized by Fraser, Butler, Young, Littleton, Rhode, Smith and West, for example, for the social construction of the notion of feminine in a patriarchal and sexist society, as a product of a reality of oppression and dependent on critical vision (Jaramillo, 2000, p. 118).

As for the priority of the gender factor in understanding the phenomenon of oppression, feminisms are divided into essentialist gender feminisms - which understand gender as the main and essential factor of oppression of females - and anti-essentialist gender feminisms - which

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4 Examples include Latin American feminist decolonial theory; ideas focused on the East-West disagreements of Said, Gayatri, and Babba; the ideas of Australian Connell; American Butler, Scott, and Haraway; Rowland's theorizations of feminism and Jungian analytic theory; the epistemological reflections of feminist science of Harding and Sardenberg; feminist theory as Matos' theoretical movement; the Queer theory of Laurel and Butler; the different ecofeminisms and queer ecology (Muthukricology) shnan & Venugopal, 2024, p. 4-5).
claim that oppression is different in each case because of factors other than gender, such as race, sexual orientation, social class, and ethnicity. Essentialist feminisms would comprise the above-mentioned feminisms (classical liberals, social liberals, socialists, radicals and difference liberals) and anti-essentialists would understand the feminisms of black, third-world, lesbian, and postmodern feminism. The latter would be anti-essentialist in general by the idea of the subject as social construction without essence in itself, without characteristic defining it, having its individuality built by social interactions through language (Jaramillo, 2000, pp. 119-121).

Feminisms are global — they exist all over the world in a diversified manner — and are not limited to Western or Northern theories. The aim of the above illustrative synthesizing was merely to demonstrate that feminisms contemplate different, multiple, non-linear, non-hierarchical views in various branches of knowledge and with diversified objects and methods. This does not mean that their differences do not matter and that there are no counterpoints to be made to the assertions of each study, but also does not dissociate/separate them in an inescapable way so that there is nothing to be understood and considered in their contributions. With specific objectives and diverse methods, each feminism presents its own contribution.

Feminisms have in common the fight against oppression and this will be carried out on several fronts, without diminishing the specificities and violence suffered by different women, moving away from generalizations without dispelling the feminisms into a fragmentation capable of weakening them and destroying them as a collective movement. Efforts must be added in a dialog that understands the differences with the common objective of facing up to the oppressions on the various necessary fronts (Descarries, 2000, p. 35).

In short, as a plural and multifaceted movement, feminisms meet in various fields of knowledge and, starting from the premise (recognition of sexist oppression) and general objective (confronting this oppression) common to the theories, each one covers problems of study, methodology and specific objectives different, presenting a diverse proposal as a way of

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5 There are also those who speak of post-structuralist, Marxist, indigenous, anarchist or ecological feminisms - which explains the critique of Disch and Hawkesworth (2016, p. 4) to attempts to schematize multiple feminisms.

6 Hooks was one of the exponents of feminism. A black woman born in 1952 in rural Kentucky, Gloria Jean Watkins adopted the pseudonym bell hooks to honor her great-grandmother Bell Blair Hooks, known in the family for speaking her mind (Almeida, 2021, p. 22). The pseudonym is written in lowercase letters, to emphasize the importance of the content of his writings. With more than thirty works written, she died in 2021, leaving a legacy of theory and praxis by affordably advocating feminism as a movement to end sexist oppression. Hooks (2019) explains that the feminist movement is multifaceted and evolving; suggests using the term “feminist movements” instead of the term “feminism” in order to avoid misconceptions; criticizes empty studies; explains that oppression occurs in various fields, such as work, sex, family, education, law and politics; states that the struggles of the feminist movement need to encompass gender, social class and race; criticizes victimization and the view of man as an enemy and proposes unity through encouragement and brotherhood; affirms the need to develop a radical political consciousness that starts with social status, values and political convictions, among others.
confronting oppression. It is clear from this that all feminisms have already participated - directly or indirectly, either by the visibility and acceptance of criticism or by the practical applicability of one or more of its proposals - in the effective transformation of social reality and positively impacted the reality of women.

If society is patriarchal and sexist oppression occurs in all fields of life - in the family, in religion, at work, in health, in the economy, in academia, in education, in taxation, in politics, in public safety, in sexuality, in the State/Law, etc. - then there is the possibility of facing up and change through the Law in each of these horizons.

Jaramillo (2000, p. 121) summarizes the multiple and varied forms of interaction between feminisms and Law from two distinctions: feminisms as critics of Law and Law as a tool of feminisms. Feminist criticisms of law stem from three currents: (i) Legal reformism: it asserts that law should be rational, objective, and universal, but denounces its flaws in being so (criticism of mere formal equality and the absence of material equality, the existence of male models, the exclusion of the right from the domestic sphere, etc.); (ii) Law as a patriarchal order: it affirms that law is rational, objective, and universal, it is masculine and patriarchal, and criticizes the hierarchy among dualisms; (iii) Legal critical feminist theory: rejects the idea that law is rational, objective, universal and universal, and rejects the hierarchy among the categories of dualism (Olsen, 1990, pp. 460-468).

In the theory of law, feminist criticisms aim to question the premises by which we observe law, how and from which ideologies it is constructed, viewed and developed. Such studies are important because they generate questioning and criticism of existing institutions in a patriarchal and sexist reality, which has been causing the revision of norms and institutions and change in the oppressive reality - even in different ways, places and moments. The common goal implies the sum of multiple visions and bases for feminisms, which still present a long journey ahead.

Law plays an essential role for feminist movements in the face of their power to change reality. If we understand machismo as sexist oppression and feminisms as movements that seek material equality between people, just as Article 5 of the CF does, then the State is and needs to be feminist. Recognizing oneself as a feminist is a duty stemming from the Brazilian Federal Constitution.

Feminist criticisms of law can be made both of the institutions and the norms and within the typical and atypical functions of the three Powers. Confronting sexist oppression needs to be implemented through strategic actions on the three state fronts: Legislative, Executive and Judicial.
2.2 REGULATION OF ABORTION IN BRAZIL

The term "abortion" refers to the intentional act caused by interruption of pregnancy, according to the following classification: (i) miscarriage: "occurs without any intervention and can be caused by illness of the pregnant woman, by genetic problems of the embryo or by traumas of the embryo" (Ribeiro & Spink, 2011, p. 64); (ii) abortion caused: due to intentional external intervention.

The Legislative considers provoked abortion to be criminal (Articles 124 to 126 of the Penal Code - CP) and provides for an increase in the penalty in case of serious bodily injury or death to the pregnant woman (Article 127), but excludes the punishment (Article 128) when there is no other way to save the pregnant woman's life (necessary abortion) or if "pregnancy results from rape and abortion is preceded by the consent of the pregnant woman or, when incapable, of her legal representative".

At the moment, 617 bills are going through the channels of the Chamber of Deputies with respect to abortion, with the objective of restricting it, discriminating against it, or regulating it in other aspects. In the Federal Senate, there are 44 propositions, among them the bills 460/2016 (criminalization of inducement / instigation), 461/2016 (decriminalization), 46/2017 (criminalization in any gestational phase), 556/2019 (increase of penalty), 2.574/2019 (criminalization of abortion of fetus with poor training) and 434/201 (Statute of the Birth (o). Most bills in the Chamber of Deputies and the Federal Senate propose restrictions on abortion.

In the Judiciary, there are individual decisions regarding abortion and a binding precedent handed down in 2012 by the STF: ADPF 54 decriminalized the interruption of pregnancy of anencephalic fetus. Currently, ADPF 442 is being processed, which calls for the decriminalization of abortion in the first 12 gestational weeks. Considering that the decision will be a binding precedent, this is perhaps the most important decision to be taken in the country on the matter. Following public hearings and the hearing of amici curiae, the rapporteur, Minister Rosa Weber, voted to decriminalize abortion in the first twelve gestational weeks.

For the World Health Organization (WHO) and for the Ministry of Health, this is a close definition of "abortion", abortion being, in fact, the product of conception eliminated in abortion: "According to the WHO (World Health Organization, 1992), abortion should be considered as interrupting voluntary pregnancy or representing pregnancy attains a significant gestational week, with the fetus weighing less than 500 grams (for cases where gestational age is unknown). The Brazilian Ministry of (2005) adopts the following definition: abortion".
Among the individual decisions rendered by the Judiciary, HC's decision 124.306 by the STF in August 2016, in which the Court conferred conforming interpretation to the arts. 124 to 126 of the CP ‘in order to exclude from its scope the voluntary interruption of pregnancy in the first trimester’, on the ground of infringement of the fundamental rights of women to sexuality and reproduction, equality, autonomy, physical and mental integrity and proportionality.

In the Executive, the concern with abortion surrounds issues such as: (i) the holding of public hearings for social participation in state decisions regarding the theme; (ii) monitoring and supervision of abortions in the hypotheses allowed by legislation; (iii) police power over clandestine or illicit abortions; (iv) conducting research and collecting data and indicators regarding abortion; (v) regulation by normative acts of legislation regarding abortion; (vi) public policies (awareness about family planning, psychological support to women, etc.).

It should be mentioned that the indicators regarding abortion in Brazil are alarming, either because of the number of deaths, the social markers of difference of women, or the lack of adequate monitoring of the data by the public sector. Quantitative studies indicate: (i) 45% of the 55 million abortions performed worldwide between 2010 and 2014 were unsafe, according to WHO; (ii) increase in deaths from abortion from 47.4% (2008) to 72.2% (2015) according to the Mortality Information System (Cardoso et. al, 2020, p. 12); (iii) at age 40, one in five literate women from urban areas already or at least once, according to the 2016 National Abortion Survey; (iv) in 2015, there were about 500,000 abortions in Brazil; (v) the abortion rate varies by region, schooling, race, and social class (Diniz et al, 2017, pp. 658-659).

In spite of the difficulty in collecting data - since the immense majority of abortions are clandestine and, therefore, the data does not even appear for consideration - it is possible to say that there are high rates of unwanted pregnancies and of mortality in clandestine abortions. In addition, the statistics on parental abandonment and inequality and lack of opportunities caused by the raising of children exclusively by mothers (Dharani & Balamurugan, 2024) should be considered, which may lead many women to desire an abortion in this scenario. It is clear from this that the Executive branch fails in public education and preventive policies and the Legislative branch fails in repressive norms against abandonment, and therefore fails in the protection of women's rights.
2.3 DWORKIN AND ABORTION

Analyzing abortion from Dworkin's interpretative theory is justified by the importance of this philosopher for the theory of law and by his well-known studies on the subject. In his theory, Dworkin (2014, p. 258) attaches strong importance to the community - with an argumentative effort in explaining what a "true community" should be - that contains the values that will guide the Law.

Dworkin views law as a social phenomenon, an argumentative, interpretive social practice, and a political concept. For him, "legal practices occur within a context and impact that context", interpretations occur in arguments in social practices marked by intentionality and values at certain historical moments (Macedo Junior, 2013, p. 226). There are strong influences from Heidegger, Gadamer, and Wittgenstein on Dworkin's thought. His interpretative theory does not deny critical hermeneutics, on the contrary, part of it.

The author (2006, pp. 2-5) advocates the value-based judicial interpretation. He states that judges do a moral reading of the Constitution and this is part of the control of constitutionality and even is very important. Neutrality is a myth and this moral reading is neither undemocratic nor unlimited (it does not give absolute power to judges) because there are general principles in the Constitution that demand interpretation, which must be done by people - taking into account their own places of speech - in the face of the historical context at the time of the text and also from principles of integrity.

There are two conceptions about the limitation of the power of judges - moral reading or originalism - and normally one looks for a middle ground between them, but this is not necessary, since moral reading is not undemocratic. Those who defend this presume an injustice when the majority cannot do what they want - due to the judicial decision -, but this premise is wrong because it ignores the counter-majority conception of democracy (Dworkin, 2006, p. 50).

8 Dworkin was born in Massachusetts in 1931. He was a student of Rawls at Harvard Philosophy. He later studied Jurisprudence at Oxford, where he was a student of Austin. He was an intern for Judge Learned Hand and was a lawyer for two years in a law firm. "Obtained the Masters at Yale in 1956 and the LLB at Harvard Law School in 1957" (Macedo Junior, 2017). He taught law at Yale, Jurisprudence at Oxford and University College London, and law and philosophy at New York University. He died in London in 2013, and is known worldwide as one of the greatest names in the philosophy of law.

9 "Law as integrity, on the other hand, revolutionizes the definition of law, by attributing it to an interpretative character, binding society, in the broad sense, to the political process. The members of the community are actively participating in the determination that public tariffs should be raised to the level of principles. The juridical paradigm, in the meantime, is constructive, because the principles are placed at a higher hierarchical level, in attention to what was produced in the past, however, valuing the protagonism of the present" (Barreto Júnior & Pedron, 2021, pp. 13-14).
He explains that opponents of moral reading are based on three ideals - equality, freedom and community - and deconstructs the arguments in this regard. For example, with regard to freedom, the constitutional conception of democracy requires structural and relationship conditions: (i) everyone has to have the opportunity to modify collective decisions; (ii) all interests have to be considered equally; and (iii) moral independence (not to prevent people from reaching their own conclusions on moral issues). It then demonstrates how different views on such values imply the opposite conclusion, that the counter-majority conception is not undemocratic, because it depends on the conception of democracy (Dworkin, 2006, pp. 32-49).

Although Dworkin’s interpretative theory is important to understanding his views on abortion, Dworkin has analyzed the topic specifically at least in two places: in the article "Unenumerated rights: whether and how Roe should be overruled" (1992) and in the work "Dominion of Life" (1993). On both occasions, Dworkin (1992, p. 407) stated that the issue of abortion is not singular (mother-father decision), but collective (community), as it affects collective values and involves the intrinsic good of life, which is of state interest.

The author shares the precedent Roe v. Wade - currently revoked by the conservative current composition of the Supreme Court - in the context of the U.S. legal system, stating that the U.S. Supreme Court: (i) reaffirmed the constitutional right to procreative autonomy; (ii) recognized that states cannot prohibit abortion as they see fit, but have a legitimate interest in regulating it; (iii) weighting between a woman’s procreative right and state interest must be based on three parameters: (a) the state's impossibility to prohibit abortion in any hypothesis in the first trimester of pregnancy; (b) abortion can only be When it involves issues of mother's health; (c) abortion may be prohibited from the beginning of the third trimester of pregnancy, as the fetus may feel pain and wait until that time allows ample reflection to the woman.

Dworkin (1992, p. 431) concludes that the case decision was correct and suggests that the Courts assess on a case-by-case basis whether there was reasonable time for the woman to decide.

In "Dominion of Life", he states that the government can regulate some issues of responsibility over abortion. While agreeing with Roe vs. Wade’s decision, it states that the

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10 "Can a state require that a woman thinking about abortion must wait twenty-four hours to achieve her goal? Can you ask her to be informed about the seriousness of her decision to abort? Can you require a pregnant teenager to consult her parents or some other adult? Or that a married woman informs her husband of her decision if she is able to do so? Should the government help very poor people to pay for abortion services, if it helps pay for birth?” (Dworkin, 2016, p. 211).
state can take steps to raise pregnant women's awareness and make people accountable for abortion.

Dworkin (2016, pp. 70-84) knows the feminist arguments in favor of abortion and at one point faces MacKinnon's feminist criticisms, but is opposed to the foundation of privacy, makes use of an argument of feminism of feminitude\(^{11}\) to justify its positioning and speaks in the special condition of motherhood and the responsibilities that it entails. The use of feminism's arguments for feminism also occurs when, later, she uses Gilligan's research - one of the representatives of this feminism - to reinforce her opposition to MacKinnon - exponent of radical feminism, which analyzes gender as a power structure.

Although Dworkin is pro-abortion under the precedent *Roe vs. Wade* and is concerned with protective policies towards women, in several excerpts of his work it is clear that he cannot distance himself from his place of speech - as a man who has not known the psychological, physical and symbolic violence suffered by women and as a citizen in a legal order with state authorization to date. Furthermore, when in contact with feminism, she came close to feminism of feminitude, which is the object of current criticism because of the idealized and romantic vision of a supposedly egalitarian and detached motherhood with social markers of difference.

### 3 METHODOLOGY

The methodology adopted for this research comprised the hypothetical-deductive method and the data collection was carried out through bibliographic documentary research, notably from research sources consistent in scientific articles, books, periodicals and collections to analyze abortion in Brazilian legislation, in Dworkinian theory and in feminisms.

\[^{11}\text{By ignoring the unique nature of the relationship between the pregnant woman and the fetus, neglecting the perspective of the mother and comparing her situation to that of the owner of a property or that of a woman linked to a violinist, the privacy statement obscures, in particular, the \textit{special} creative role of the woman during pregnancy. Your fetus is not merely \textit{within} as could be an inanimate object, or something living but strange that had been transplanted into your body. It is \textit{hers}, and is hers more than anyone else” because it is, above all, her creation and her responsibility; it is alive because it has made her alive. She has already made an intense physical and emotional investment in him, different from what anyone else could have done, including her father; because of these physical and emotional connections, it is so wrong to say that the fetus is separated from her when she says that she is not. All these aspects of a pregnant woman's experience - everything that exists in a special, complex, ironic and tragic way about pregnancy and abortion - are neglected by the liberal explanation that women have the right to abortion because they have the right to sovereignty over personal decisions, an explanation that would apply with equal force to the right that women have to choose their own clothes” (Dworkin, 2016, p. 77).}
4 RESULTS AND DISCUSSION

Dworkin's understanding of abortion manifested itself in the context of American ordinance, in which at the time, despite existing religious and moral discussions, there was a Supreme Court precedent for abortion in the first gestational trimester. The precedent was set in 1973 and surpassed in 2022, i.e. it regulated abortion for almost 50 years.

The Brazilian context is quite different: abortion is a crime and its punishment can only be ruled out in the case of an anencephalic fetus - a conquest of human rights that was only possible by a relatively recent judicial precedent -, risk to the pregnant woman's life or pregnancy resulting from rape - a right that is currently being questioned by Bill No. 1904/2024, which prohibits legal abortion (even by rape) after 22 weeks and proposes its assimilation to the crime of murder. The ADPF in which the decriminalization of abortion is discussed in the first gestational trimester is judged. Such a precedent will depend on the composition of the Supreme Federal Court, which has undergone a male and conservative increase over the last four years.

Feminist criticisms of the criminalization of abortion typically present two natures of arguments: criticism of sexist oppression and the patriarchal system through the imposition of a certain morality on women or criticism of the public structure for the protection and feasibility of abortion in the legal hypotheses (public health).

The "current" Penal Code (drafted in 1940) criminalizes abortion. This Code - much earlier than the Federal Constitution of 1988 - was drawn up by a commission of male jurists and does not present in its construction process minimally relevant plural female participation. In its elaboration, it did not have and could not have as its motto the protection of fundamental guarantees recognized much later, and it is also a question of a norm prior to the first feminist movements that go back to 1960.

In short, it is a standard devised by men to regulate and criminalize the will, body, gestational freedom and family planning of women. It is for no other reason that Siegel (2018,

12 "The international interpretative framework strengthened the national mobilization processes and delimited the theme of abortion to the area of public health and human rights. Only a minority of pro-abortion projects advanced on gender frameworks, mentioning autonomy ("abortion as a woman's right to decide on her own body") and weaving criticism of patriarchal culture. After 2000, no pro-abortion bill was based on women's empowerment; the proposals of that period were entirely justified by the public health framework. This framework highlights the consequences of illegal abortion - high mortality and injury rates among women - and emphasizes its unequal distribution, according to race and class. One of the bills related unsafe abortion to violent practices, building women as victims of prohibition. The framework of public health has therefore allowed the elaboration of a pro-abortion position from the speech of protection, as opposed to that which emphasized autonomy" (Machado et. al, 2018, p. 72).
p. 1) states that the State must protect life consistently and not selectively in ways that promote reproductive freedom. When one understands that the various feminisms have as their objective the confronting of sexist oppression, it is precisely cases like this that come to light.

Since pregnancy is deprived of a biological sex, its regulation by the opposite sex is questioned. For a long time, it has been understood that female bodies have been dominated, oppressed, raped and led by men, and their release necessarily involves breaking with the patriarchal basis of society and law.

The distortion of the abortion debate in a religious debate also consists in yet another conservative strategy for domination, which blatantly offends state secularism and women's fundamental rights. It is a form of violence which presupposes that certain religious concepts are given priority over the dignity and freedom of women of any religion.

Masked by morals, the right to religion and the right to life, conservative conceptions against real abortion aim to maintain the status quo, sexist oppression in a patriarchal and sexist society. The agenda of abortion only progresses through the discourse of health, since the arguments related to female freedom end up generating the revolt of the counter-movement (Machado et. al, 2018, p. 86).

It agrees with Dworkin on the correlation of abortion with the right to life and on the state interest in regulating it; and also on the practical conclusion of regulation of abortion brought about from scientific medical data. However, one cannot accept the idea that a woman should provide any kind of clarification as to her reasons for abortion in the first pregnancy quarter or even prove that there has been time for reflection on the subject. The "responsibilities" that Dworkin points out constitute psychological and symbolic violence against women.

At this point, Dworkin approaches feminism of feminitude, which is advocated by authors such as Gilligan (quoted by him) and heavily criticized by postmodern feminists precisely for the idealization of motherhood and for generalizing feelings, understandings, and speech places. This feminism sees in motherhood a specific space for the development of female subjectivity, something that reinforces the dualisms between man and woman criticized by so many feminists and by gender theories. By romanticizing motherhood, she ends up generalizing this experience and ignoring that it affects various women in different ways, that is, "exalts, or even sacralizes, an immutable feminine-maternal, essentially inscribed in the body, as locus and metaphor of otherness and counterpower, without specifying the social contexts of the symbolic representations invoked (Descarries, 2000, p. 28).
Departing from feminism of feminitude, in several excerpts, Dworkin generalizes and ends up simplifying feelings and sensations related to pregnancy from her personal assumptions about what should be or cause pregnancy to the psychological and female body. The excerpts demonstrate that the view about pregnancy is stereotyped and romanticized, which social reality and psychology - in different approaches - regularly criticize. The speech relegates all women to a position of determined power.

In the same sense, Gonçalves and Dias (2017) explain that women are historically reduced to their reproductive capacity and "that this conception, forged by heterosexual and cisnormative patriarchalism, limits their subjectivities and their moral agency and, by extension, the citizenship and democratic existence of women".

Both Dworkin and the drafters of the Penal Code ignore the different forms of violence - psychological, physical, sexual and symbolic - against women throughout the decision-making process involving the various forms of motherhood and abortion. They ignore it not because they do not know them, but because they do not understand them as a hierarchical and imposed social position. In one of the most important feminine issues — in which physical intervention is carried out exclusively on women's bodies —, one can see that the word is given in the majority to men.

They are men who draw up the rules that apply to women, maintain them, teach them, criticize them - with their visions and places of speech - and propose in what measures and how they should be reviewed or reconsidered. They are also the ones who defend "moments" and "forms" for interventions on women's bodies. It is the masculine doctrine that guides the judicial

13 Let's look at some excerpts: "ignoring the unique nature of the relationship between the pregnant woman and the fetus, neglecting the mother's perspective"; "the woman's special creative role during pregnancy"; "her fetus is not merely 'inside her'"; "it is her, and it is hers more than any other person" because it is, above all, her creation and her responsibility"; "she is alive because she has made her live"; "she has already made an intense physical and emotional investment in him"; "it is so wrong to say that the fetus is separated from her when she says she is not"; "everything that is special, complex, ironic and tragic about pregnancy and tragic about her" abortion - are neglected by the liberal explanation that women have the right to abortion because they have the right to sovereignty over personal decisions". (Dworkin, 2016, p. 77).

14 "Furthermore, the thinkers of the current Fémelléité carry out an imbrication between the feminine and maternity, which certainly leads to a new conception of femininity of the feminine subject starting from the only maternal identity. Such an argument lies in another non sens that consists in defining all women as mothers and confuses, or assimilates, in the name of their abilities to procreate, the reality, needs and interests of the first to the others. For Jane Flax, the theses developed within the feminism of Difference rest not only on a reductive view of the diversity and heterogeneity of the experiences lived by women, but also on an idealization of motherhood, motherhood and intimacy, which do not take into account the multiple tensions, contradictions and limitations marking the maternal life of women and their relations with the family, or the spouse. Extremely essentialist, the feminism of Femelléité does not transmit any project that is likely to incite women to political engagement to improve their living conditions. On the contrary, by its constant use of metaphor to express the subject-woman and her ethics, it makes it difficult to understand the historical, social and daily realities of sex relations, suppressed, deformed or denied by the dominant androcentric discourses and knowledge" (Descarries, 2000, p. 29).
precedents, the Executive in the choice of policies (whose arena is also majority masculine) and the Legislative in the elaboration (and maintenance) of the norms. In the meantime (and for a long time), the patriarchal system of oppression persists and continues with its social markers of differences established exactly where it wants them.

5 CONCLUSIONS

From the benchmarks studied, it was possible to conclude that Brazilian legislation concerning abortion is of old wording, conservative and independent of medical-scientific criteria, since, in spite of the advances in medicine, it is based on moral aspects of a society ideologically structured starting from machismo and gender inequality.

Abortion is often said to be a highly complex issue because it involves medical, religious, moral, and ethical issues - and Dworkin ended up moving in the same direction by treating abortion as a right-to-life issue that concerns the community and the state. This phrase usually inaugurates studies or exhibitions about abortion, including in the Law, but it is precisely her that one disagrees with this study, because, when dealing with feminisms, Dworkin positions herself starting from feminism of feminitude, a current much criticized for the idealization and romanticization of motherhood.

Considering the premises outlined by the Federal Constitution and most feminisms regarding abortion, for the Law, abortion is not a religious, moral or ethical discussion, does not involve or could involve weighing up the religious rights of the community and other rights.

In spite of the repeal of the American precedent because of the conservative waves in the current majority composition of the Supreme Court, the regulation of abortion — notably in Brazil, where there is an urgency for a legislative or judicial revision of the norms — depends on medical criteria and its possibility alters in accordance with the gestational phase.

Abortion in the first gestational trimester, for the Law, should be a choice of the pregnant woman - and this only involves the freedom, privacy and dignity of the pregnant woman herself and of the medical professional who conducts the act (who has the right to an excuse of conscience). This conclusion stems from medical and scientific criteria that do not violate women with ideologies opposed to fundamental rights guaranteed by the Federal Constitution.

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