

## The social accountability of induced abortion in police investigations

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The article reflects on police investigations that led to 14 criminal prosecutions for induced abortion in Rio de Janeiro city between 2005 and 2019. Adopting an approach informed by the Sociology of Morality, I propose to analyze the moralities involved in the construction of police inquiries from the social accounts contained in the documents produced at police stations recording the depositions of the accused women and the witnesses involved in the criminal offense of induced abortion.

**Keywords:** sociology of morality, accountability, police inquiry, induced abortion, social stigma

**A accountability social do aborto induzido em investigações policiais** O artigo tem como proposta trazer reflexões a partir dos inquéritos policiais contidos nos autos de 14 processos judiciais sobre o crime de aborto na capital do Rio de Janeiro entre os anos de 2005 e 2019. A partir da Sociologia da Moral, proponho caminhos para analisar as moralidades envolvidas na produção do inquérito policial por meio dos *accounts* registrados nos documentos de termo de declaração, produzidos na delegacia com os relatos de acusadas e de testemunhas quando envolvidas na infração penal do crime de aborto.

**Palavras-chaves:** sociologia da moral, accountability social, inquérito policial, aborto provocado, estigma social

### The social accountability of induced abortion in police investigations

**T**his article sets out to examine the documentation relating to criminal prosecutions for the practice of abortion. Exploring the motives declared by the accused women and witnesses contained in the procedural records, where they explain the recourse to abortion in order to terminate an undesired pregnancy, I analyse the moral grammar of the accounts provided by the women and the employees at the clinics as these are configured as justifications and/or excuses. Recognizing that abortion is socially stigmatized even in legal contexts, I highlight how the criminalization of abortion produces a criminal subjection that negatively impacts the healthcare provided to women who have undergone an induced or spontaneous abortion, as well as being a possible factor in the contamination of health services, which effectively operate here as an extension of the criminal justice system. By mapping the motives presented by these women, elaborated through a systematic analysis of their narratives, I propose a path towards a legitimized understanding of abortion, citing studies that have closely investigated the discourses and feelings that pregnant women express in the aftermath of having an abortion.



The research consulted fourteen court cases of people accused under Article 124 of the Criminal Code (CC) between January 2005 and April 2019. Six cases were prosecuted following raids on clandestine clinics and eight cases following an abortion induced by the pregnant woman herself, totalling 19 women charged under Article 124 of the CC. For this article, I analyse the set of documents included in the police inquiries, especially the Incident Reports (IRs), Arrests in Flagrante, Charge Sheets and Depositions, since these are the documents that record the statements made by witnesses and the accused women at the police stations (PS). These documents provide access to 34 statements by women present during the raids on the clinics and 7 statements by women accused by third parties of self-induced abortion.

Save for one clandestine clinic where an investigation was initiated after a woman went missing, the other inquiries were launched following denunciations forwarded to the police stations either through the Undersecretariat of Intelligence (Ssinte) of the Public Security Secretariat (Seseg) or even through an e-mail sent by an appeals court judge. Specialized police units such as the Consumer Unit (Decon-Sul), the Women's Assistance Unit (Deam) and the Child and Adolescent Victim Unit (Decav) were thus among those most frequently involved in the raids on clinics. The district police stations, for their part, dealt with most of the cases of denunciations of self-induced abortion, generally made by military police officers who helped transport the women having an abortion to hospital or even by health care professionals within the hospital system. No significant differences were observed in the modes of operation at police stations that had not launched the inquiries with the exception of the high amount of bail set by the police chief of the 14th PS Leblon — 2,000 reais when the average at the other police stations was around 522 reais — and the police chief's refusal to offer bail at the 13th PS Copacabana. In both cases, this led to the imprisonment of the woman accused of self-induced abortion, even though their socioeconomic profile was similar to the other defendants. It is worth emphasizing that the two women were black, favela residents, aged 22, and mothers of children under the age of four, who were only released after going before a judge. On this point, the court cases relating to self-induced abortions tend to involve women living in more vulnerable situations who resorted to use of the abortion drug Cytotec in advanced stages of pregnancy or without adequate information or qualified assistance. As a result, they ended up being sent to a hospital emergency unit where they were subsequently charged for a criminal offence. It is also notable that these types of abortions involved less expense on the procedure: the average cost in the cases of self-abortion was 785 reais, spent purchasing the medications, while the procedures in the clinics averaged around 2,027 reais. In addition to the high cost, the gestational age of the women who had abortions in the clandestine clinics was

usually earlier than the twelfth week of pregnancy. These were older women with an average age of 27 who had travelled longer distances to reach a clinic. In contrast, abortion medications are purchased through circles of family and close friends, the internet or from people living in the nearby area. According to the information contained in the case files, the 29 women present in the clandestine clinics included 12 white women and 14 black women, while the 8 women charged with self-induced abortion comprised 7 black women and 1 white woman.

The consultation involved photographing the case files at the criminal courts desk, as well as accessing the electronic files with the use of a temporary password. For ethical reasons, despite the public nature of the court proceedings, because those involved in the cases were not consulted to obtain their authorization and were unaware of the research, I decided to omit the case numbers and further protect the anonymity of the actors by changing their names and omitting any references in the documents that might reveal their identity. I retain the references to the tabulated case numbers, the Criminal Courts and the gender and posts of the public officials, since these are included in the provisions of the TJRJ (Rio de Janeiro Court of Law).

The material analysed here can be summarized in the following table:

Table 1 – Number of charged women and witnesses who testified in police investigations of induced abortions or consensual abortions by court case in Rio de Janeiro city – Articles 124 and 126 of the Criminal Code. Author's elaboration.

<b>File</b>	<b>Year of the incident reports</b>	<b>Police Station</b>	<b>Type of the case</b>	<b>Quantity of persecuted women</b>	<b>Quantity of witnesses in clinics' cases</b>
1	2011	Consumer Unit	Clinic	2 women	None
2	2011	Women's Assistance Unit	Clinic	1 woman	None
3	2014	Homicide Unit	Self-induced abortion	1 woman	–
4	2011	4th PS Leblon	Self-induced abortion	1 woman with her mother	–
5	2008	Women's Assistance Unit	Self-induced abortion	1 woman	–
6	2013	Homicide Unit	Clinic	3 women	2 women and 2 companions
7	2011	19th PS Tijuca	Clinic	2 women	7 women and 1 companion
8	2008	30th PS Marechal Hermes	Self-induced abortion	1 woman with her partner	–
9	2007	14th PS Leblon	Self-induced abortion	1 woman	–

Table 1 – Continuation

File	Year of the incident reports	Police Station	Type of the case	Quantity of persecuted women	Quantity of witnesses in clinics' cases
10	2012	13th PS Copacabana	Self-induced abortion	1 woman	–
11	2015	33th PS Sulacap	Self-induced abortion	1 woman	–
12	2016	22th PS Penha	Self-induced abortion	1 woman with her partner	–
13	2014	35th PS Campo Grande	Clinic	2 women	3 women
14	2013	Child and Adolescent Victim Unit	Clinic	1 woman with her partner	5 women and 4 companions

Source: TJRJ 2019.

### **MOTIVES for HAVING AN abortion (ACCOUNTABILITY)**

Boltanski (2013) defines two types of imperatives/constraints in the gestational process, apprehended by both the pregnant woman and by other social actors involved: engendering through flesh and engendering through speech. These constraints differentiate the human status of the conceptions: engendering through flesh is a biological process that begins with pregnancy, while engendering through speech is achieved via the inscription of this process in a *life project* of parenting. This latter imperative can only be officially realised through an understanding of the parental project, where the differentiation between the two constraints is accepted by a state that incorporates medical care to administrate legal abortion. The author constructs three ideal types of understanding through which abortion is limited to the realm of the unofficial — not officially recognized but tolerated in practice: the understanding of the Creator, Kinship and the Nation State, in which engendering through flesh and through speech occur a priori, insofar as the power of gestating bodies is subordinate to an outside authority. These four understandings have been constructed over different historical periods of western society, reflecting the changing relationship between sexual intercourse and engendering, as well as the agency legitimised to consummate the imperatives and constraints of engendering in an official dimension.

By mapping women's motivations for choosing whether or not to have an abortion, the author seeks to comprehend the legitimisation of abortion in terms of its ethical issues, the moral conflicts involved and their contradiction in the economies of grandeur (EG) model proposed by him and Laurent Thévenot (BOLTANSKI; THÉVENOT, 2020[1991]) due to the rupture with the principle

of common humanity. Boltanski points out that the act of abortion does not take place through the *common good* but as a kind of *lesser evil*. Consequently, the legitimisation of abortion would be impossible within the moral principles included in the EG model, since an ‘authentic foetus,’ the one inscribed in speech, presents no bodily difference in relation to the ‘tumoral foetus,’ the latter only engendered through flesh — which raises the problem of common humanity. As a consequence, abortion’s legitimisation is perpetually under dispute given that, situated on a spectrum of evil in relation to good, it will always be susceptible to being identified as a *greater evil*. Boltanski concludes, therefore, that abortion is limited to the logic of excuse rather than the logic of justification. While justification demands a moral principle that accounts for the situation, asserting its legitimacy, in the excuse circumstances are emphasized in order to point out that a legitimate action was not possible.

This is precisely what I mean when I say that abortion *is not legitimizable*, because it cannot be treated as a good, nor can it be justified in full generality with reference to a legitimate requirement, *even though it cannot be penalized* (BOLTANSKI, 2013[2004], p. 237, original emphasis).

Although in the cases under analysis here, the dominant understanding is limited to the nation state, specifically with regard to the actions legitimised by the authority of institutions, the other understandings — Creator, Kinship and the Parental Project — coexist as devices and frameworks of moralities recognised in justifications of abortion. Despite the forensic and legal attempts to interpret the nuances of what abortion constitutes — when it is induced, consensual or spontaneous — the period that it covers and the limits that define the beginning of a life understood as constituted, insufficient or in formation, Débora Diniz (2012) emphasizes that:

The dispute over when life originates is not confined to an argumentative confrontation between different scientific discoveries and hypotheses. It is above all a moral clash over the symbolic meaning of human genesis, a topic on which consensus will never exist. [...] The recognition of moral diversity that underpins the different discourses on abortion on one hand removes any pretence of a natural absolute in this field, while, on the other, also opening up space for the legitimate expression of pluralism (DINIZ, 2012, p. 409).

As the author points out, even in medical examination reports, proof of the practice of abortion, as measured by the difference between the induced and natural acts, in the investigation of whether there was extra-uterine life and the cause of death, is frequently inconclusive. This leaves legal proof of the crime of abortion under a moral dispute between legal actors. Even when these lacunas are filled, they are not employed in the judgment. Assuming that the practice of abortion exists at diverse levels of understanding and, therefore, is based on justifications and excuses in

a plurality of expressions that seek legitimacy, I propose an analysis of the motivations for abortion through the accounts of women appearing in their testimonies, given at police stations during the police investigations into the crime of abortion.

Although they are *translated* (LOWENKRON; FERREIRA, 2014) into depositions or charge sheets — that is, they are conducted and *reduced to terms* by police officers with the aim of incriminating the women concerned — their reasons for the abortion, their doubts concerning the pregnancy and the events leading to the abortion are recorded in the police inquiries.

In police raids on clinics, as well as the testimony of those accused of perpetrating the crime, the other people present are taken to the police station to testify as witnesses. In these witness statements, some of the women who testify admit that the woman sought an abortion after an undesired pregnancy, while others knew about the pregnancy but were reportedly seeking more information about their health situation. Some women also reported that their menstrual periods had been late and they had sought a diagnosis or other routine gynaecological exams. In the confessions provided by the witnesses and accused women, the prices charged by the clinics varied from R\$ 900 to R\$ 4,500, while the gestational period at the moment of the procedure ranged from 4 to 16 weeks. When describing how they came to have an abortion, the women report seeking information as soon as they suspected that they were pregnant, obtaining the contacts for abortion clinics via close friends, relatives or the internet. They went alone or accompanied by a friend, family member or their partner. People in their immediate circle did not always support the woman's decision to have an abortion. Even so, we can observe cases in which the reports show the efforts made by the woman's support networks to obtain and supply information, provide financial assistance or accompany the pregnant woman in her decision-making processes:

The declarant tried to convince her not to perform the procedure, telling her about the risks to her health; [...] she knew that the procedure that TATIANA was intending to undergo was a crime and advised TATIANA of such, but she went with TATIANA since she was afraid to let her go alone (Case 6).

In this context, the clandestine nature appears in the speech of the actors, expressing their fears concerning an unsafe procedure. In some testimonies, the precariousness of the locality for performing surgical abortions is made evident by the actions of the police. This in turn reveals how the oral testimony in the IR is composed of an interweaving of the normative principles of the police team and the accounts of the accused women:

The declarant states that she is still very confused about everything that happened but she is relieved because there was not time to perform the abortion procedure before the police arrived and, *now, she has found out that the police seized various medications with exceeded expiry dates and was very shocked to learn*

*what happens to the fetus during the procedure. The declarant had never imagined that the abortion procedure in relation to the fetus was so shocking, she just didn't want this pregnancy because she was experiencing financial problems and was unemployed (Case 1, my italics).*

When, in case 13, the person responsible for the procedure at the clinic was found to have been practicing with a fake CRM (medical license), since he had not completed his medical degree, the accused woman declared that "...she sincerely believed he was a doctor." Similarly exploring the moral intervention of police officers in the actions reported by the women involved, Letícia Ferreira, researching acts of documenting cases in the Missing Persons Discovery Sector of the Homicide Police Station of the Rio de Janeiro capital (FERREIRA; LOWENKRON, 2014), highlights the effects of police interaction with the relatives of missing persons through counselling, suggestions and guidance, also registered in the documentary records. Analysing the cases of three adolescent girls, Ferreira emphasizes the feelings of guilt and regret and the agreements reached between family members and the disappeared, oriented by the police officers at the end of their inquiries.

In response to the police interventions and investigations, those involved provide an account of their conduct. This is the moment when they expose the values that guided their action and also negotiate their identities and the roles played in the action under investigation. According to Marvin Scott and Stanford Lyman (2008[1968]), these accounts — an accountability in social life — are classifiable as either justifications or excuses. The authors define the difference between them in terms of responsibility and the negativity of the action: justification involves an admission of responsibility but a denial of the pejorative sense attributed to it, while the excuse accepts the negativity of the action but denies full responsibility for the action. Examining the moral economy of accounts in further depth, Alexandre Werneck (2012, 2013) proposes a definition of the excuse in which the moral order is not questioned — a situation in which the actors explain their conduct as the result of some interference in their power of agency, whether due to momentary limitations to their cognitive capacity to make decisions, or due to external impediments that arose in the given situation. In justifications, the actors present values that diverge from the established moral rules, a theory further developed by Boltanski and Thévenot in the EW model. At the critical moment, when moral disputes occur that interrupt the sociability of the routine through critique, evidence is evaluated by means of proofs (*épreuves*) in which the dispositives mobilised organise an actantial system that allows moral frameworks to be chosen.

Returning to the police investigation, 16 of the 18 accused women whose depositions were consulted declared an interest in having an abortion or even admitted to undergoing one, while one black woman denied practicing an abortion and one abstained from making any declaration.

It is observable, therefore, that the police inquiry into the women incriminated for abortion in my sample is characterised by the *confession* of the action by the accused. Furthermore, if we take into account the testimonies of witnesses present at the clinic during the police raid, 15 of a total of 24 women indicated that they had sought an abortion or information related to abortion, while seven denied any interest and even declared being ethically opposed to terminating the pregnancy. Another four declared making an appointment due to health concerns and a wish to take a pregnancy test. Among the clinic employees arrested in flagrante, 11 denied practicing any abortion procedure in the clinic, 14 expressed their right to remain silent under questioning and just one employee admitted that abortions were performed at the locality. In principle, therefore, the accountability recorded in the statements made by the women is largely constituted by the vocabulary of the *excuse*, while among the employees the vocabulary of *denial* predominates. For Chateauraynaud, after a situation that reconfigures the status of evidence — as in the case of the police raids on gynaecological clinics accused of practicing illegal activities under the façade of a doctor’s surgery, where the oral statements are superseded by the seizure of objects and instruments on the premises as criminal proof — the situation switches to one of

conclusive proof, capable of smashing any argument in a single blow: it is the equivalent in the world of things to being caught in flagrante for humans. Even if the protagonists refuse to see this as ‘proof’, the salient event constitutes the argumentative framework that will be produced later and the cognitive and social cost is extremely high for anyone claiming that nothing happened (CHATEAURAYNAUD, 2012, p. 10).

According to this reasoning, the narrative line of the police officers plays a decisive role in the final investigation report involving the participation of an officer in the operation that led to the denunciation. In this sense, the moment of proof of the police inquiry is divided between the confessions of the women and the denial or silence of the employees of the clinics concerning the activities in progress at the time of the police raid. Roughly speaking, in the women’s accounts, abortion is an act that takes place outside the sphere of their power of agency, when a number of factors present themselves in such a way that, as Werneck (2013, p. 707) describes, “something stronger acted on me,” or, as the same author elaborates, a situation in which the dispositives configuring agency/actancy became *effective* in making a decision to have an abortion that, under other conditions, it is clear, the women would not have made, given that the legitimacy of abortion, in this space of incrimination, is not questioned. Again it is important to emphasize that these documents form part of the police investigation with the questioning conducted by police officers and written up by a clerk. Hence, my own analysis



does not set out to comprehend the reasons why the pregnant women opted for an abortion, but concentrates instead on what is recorded by the police investigation as relevant in exercising social control and criminal prosecution and, consequently, on the moral dispositives that have consequences in social life and in the criminal justice system. As Das and Poole (2004, p. 105) propose, underlined by Ferreira and Lowenkron:

What is particularly interesting is that this mode of management becomes effective because it finds its way *on paper*, starkly revealing that official documents “bear the double sign of the state’s distance and its penetration into the life of the everyday (FERREIRA; LOWENKRON, 2014, p. 105).

Hence, the ambivalence of the agency — as Werneck (2013) argues, located either in the subject or in the structure, a question directly connected to the moral economy of accounts — apparent in the women’s testimonies is marked by the “competence filter” of the police agents during the registration of the documents, including their transcriptions in the form of critique, as appears in one record denouncing a contradiction in which “the person investigated in this case for practicing abortion *stated that she did not remember but began to describe it*” (Case 13, my emphasis). Likewise, the documents are marked by linguistic errors and legal jargon, sometimes including testimonies that, though given by different people, are extremely similar to each other — which reveals the processes of *translation* and *reduction to terms* cited previously. These vary from case to case, yet, based on the responses, it is possible to work out a basic script that includes the following questions: 1) Why/how did the woman become pregnant (did she use contraception, was the relationship consensual or was it a high-risk pregnancy)? 2) How did the abortion take place (in the case of clinics, explaining the functions of each person in the procedure; if alone, how was the medication obtained — since the women researched had reported using the drug Cytotec)? 3) Why did the woman have an abortion? 4) What was she feeling at the time of making the statement (was she regretful or did she suffer during the procedure)? 5) Was she aware that the act is a crime? 6) Who paid for the procedure? 7) General questions about the woman’s living conditions.

In this script, abortion is evinced through the vocabulary of domestic and financial lives, sometimes including an investigation of female reproductive control: the accounts focus on the moment when the woman sought an abortion through her social circles or the internet, as well as her family and amorous relationships, sometimes asking about the contraceptive methods she used, calling into question not just the abortion but the very act of becoming pregnant, as in the deposition below:

She took the medication because she wanted to, since she could not financially afford to have a child at present. She became pregnant because she was not using contraceptives and did not use a condom when she had sexual relations with IGOR. She also forgot to take the morning-after pill. IGOR is not her boyfriend, they just had sex frequently (Case 4).

The reasons cited by the women vary from plans to study or pursue a professional career, the pregnant woman's relationship with her family, financial problems and unemployment, a crisis or violence in the marital relationship, to conception as the result of a furtive relationship or the impossibility of raising a child or 'yet another' one, as well as the wish not to carry a child to term and then hand it over for adoption. These reasons mark the fact that not just external factors were involved in the termination of the pregnancy: there was also an active choice to not go ahead with the pregnancy. In other words, there was an autonomous decision to end the pregnancy, motives that go beyond a mere lack of responsibility of motherhood and/or maternity. These motives rarely appear in isolation, indicating that different moral frameworks are mobilized in the decision to have an abortion, sometimes expressed only by feelings of 'despair,' 'trauma' or 'unhappiness' about the pregnancy, but very often a combination of various such frameworks.

The declarant already has two children, a daughter aged four and a son aged one year and nine months, from different fathers; the declarant, convinced that she lacked the financial and psychological conditions needed to raise another child alone, became desperate; she therefore began to find the money to terminate the pregnancy (Case 3).

In this sense, despite the existence of *excuses*, which situate her actions beyond her capacity for agency, the decision to have an abortion was taken in clandestine form. The accused women express an understanding of the act of abortion based on their living conditions. As Boltanski (2013[2004]) points out, the impossibility of inserting the pregnancy in a parental project are predominant in the accounts contained in the depositions of the accused women and witnesses. This fact may be distorted by the script of the police interrogation, but it is nonetheless similar to the findings presented by Boltanski. As well as financial problems and the employment issues that an undesired pregnancy would generate in the life project of these women, questions related to the partner were cited in most of the cases. Below I include two charts with the motives cited in the police investigations, first by the 27 women in the raids on the abortion clinics and second by the 7 women charged with self-induced abortion, representing the accounts from 34 women in total.

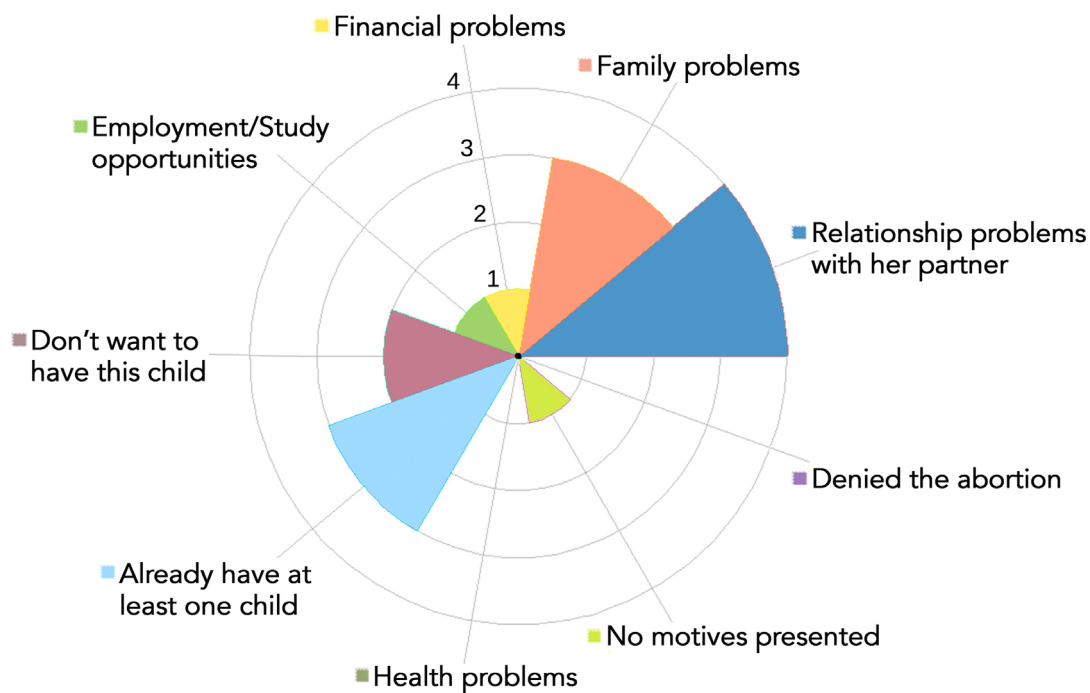


Figure 2 – Motives of the women who induced their own abortion

Source: Police Inquiries, TJRJ, 2008-2019.

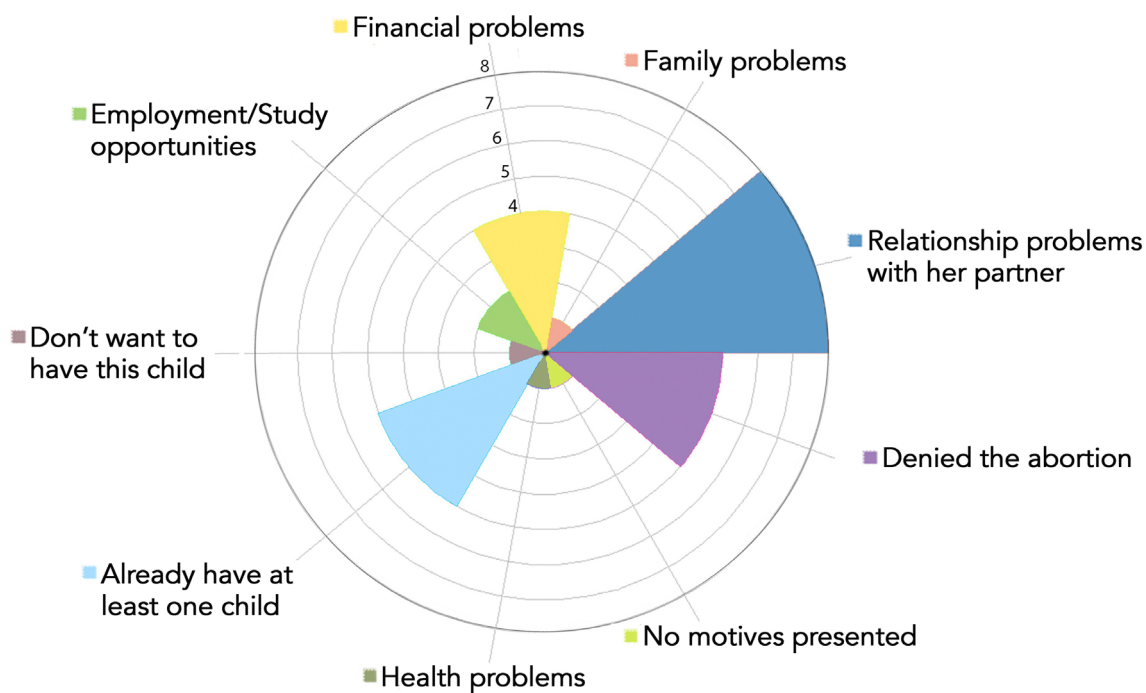


Figure 3 – Motives of the women who sought an abortion in clandestine clinics

Source: Police Inquiries, TJRJ, 2008-2019.

Relationship problems varied from furtive affairs (the majority) to domestic violence, a relationship crisis, the partner's poor health, or the fact that one of the couple was married to someone else. In these cases, either both partners agreed to the abortion or the woman found herself making a decision about her life project on her own, either because of the absence of the partner/father or because she could no longer tolerate the relationship. Just four of the nineteen women were charged together with their partner who also admitted participation in the decision to have an abortion. Although there were more cases of partners involved in the practice of abortion, there was also a denial of their consent to the act, meaning that responsibility for the abortion and its criminal consequences were attributed to the woman alone. In the majority of cases, however, the women did not involve their partners in the situation, either because they did not tell them about the pregnancy, or because the father broke up with the woman after learning about the pregnancy. In these relationships, the understandings of kinship and the parental project merge insofar as they are based on the construction and maintenance of a legitimate family, as well as on the formation of the family as a life project.

Family problems relate to the support base of the woman's life, whether because she still depends on the nuclear family or because she lives with and cares for other relatives, conditions in which a new addition would change all the family relationships. I opted to separate employment and study opportunities from financial problems, since these were expressly mentioned in cases of future planning in the woman's life, such as passing a public service entrance exam or continuing with education, also characteristic of a project. Financial problems are linked to material resources and unemployment, whether those of the woman or the couple, while the problem of health appears in one case only where the pregnant woman sought information about the risks involved in her pregnancy and the possibility of abortion. I consider the latter two cases to be understandable in terms of a critique of the state, since unlike the nation state, the welfare state should ensure the minimum conditions of maternity rights and the right to health of those who are pregnant.

Although there are lacunas in terms of understanding the specific problems caused by the implications of a new pregnancy for each of these women, "already having children" is an enunciation that directly challenges the idea that the women who have abortions reject motherhood. "Not wanting the child" is linked to the decision to have an abortion as the only possible option, a situation where the immediate termination of the pregnancy is necessary, insofar as the pregnancy itself is problematic as it implies the development of an entity that would never be conceived through speech. In this sense, the dimension of the body is indissociable for those who become pregnant, since pregnancy is inscribed in flesh, transforming

and weaving the body, core and life of pregnant women. These latter two categories have an understanding in the sovereign decision of the women over their own body and the autonomy over their reproductive life.

As Boltanski (2013[2004]) observes, under modernity, sex and reproduction are apprehended separately as a consequence of advances in contraceptive methods. In this sense, an undesired pregnancy is a starting point for taking a decision, not only from the viewpoint of comprehending the potential life of the foetus but also the continuation of the pregnancy itself. For the author, engendering through flesh is a biological process, arising from sexual intercourse, and a premise for engendering through speech, when the responsible authority apprehends the foetus as a human life. However, as a process, “engendering through flesh” itself includes various understandings that differ between the social actors involved. As Débora Diniz explains:

Terminate the pregnancy, to restore ones’ menstruation, de-menstruate, remove, release the stuck blood, regulate menstruation, give birth early and menstruate in shock are some of the cultural expressions attributed to what biomedicine and some international legislations qualify as abortion (DINIZ, 2012, p. 405).

Boltanski highlights this distinction in terms of the division between public and private, the official and unofficial discourses that permeate the practice of abortion in western culture. When reproductive control was a private matter of women, prior to the authority and power of the modern state, pregnancy might be

marked by the woman’s ambivalence towards her own state, or, viewed from a different perspective, by the displacement of the tension between authority and power, between the official and the unofficial, that lay at the heart of the internal debate. The woman involved could ‘unofficially’ fear being pregnant while acting ‘officially,’ with regard to herself and without ever making this tension public, as if the halt in her menstruation had a pathological cause against which she needed to struggle by using appropriate remedies (BOLTANSKI, 2013[2004], p. 71).

In the author’s view, these understandings coexist over time — in other words, there is no complete substitution of values over the course of history. Today, with the reorganisation of the labour market, the emancipation of women beyond the family sphere, and the issues surrounding sexual and reproductive rights, especially when conceived from the feminist perspective that contributed to the legalization of abortion in diverse countries from the 1980s, and continue in constant transformation, there is a dimension to self-induced abortion that differs from the understandings of the Creator and the domestic, which still surround the uncertainty of pregnancy and kinship relations. What I mean is that there is a conception about the choice of motherhood and about one’s own body that is not observed by the dominant utopias, since the understanding

of gestation has also changed as a result of new technologies and scientific advances. As well as understandings of abortion that set out from the termination of pregnancy due to the impossibility of projecting the conception in social life, the process of engendering through flesh, through the tumoral foetus, and the rejection of this process by the pregnant woman can also represent understandings about the practice of abortion not yet contemplated by the four understandings cited earlier. In other words, the times of engendering through flesh and engendering through speech are also altered by technological advances, and the position of women in the decision-making process involved in abortion has also become more complex insofar as it is possible to confirm pregnancy with precision and abortion as a safe and self-managed practice is a tangible reality, so long as it is well-informed and competently assisted.

Despite accounts of fear, pain and helplessness, women may also report positive feelings of relief and joy after the procedure (MENEZES; LIMA; ROLIM, 2008; CARNEIRO; IRIART; MENEZES, 2013; BURTON; PERALTA, 2016; BERALDO; BIRCHAL; MAYORGA 2017; DUARTE; SILVA; WERNERSBACH PINTO, 2020; SOUZA, 2021) — also cited in the technical form for humanized abortion care (BRAZIL, 2014, p. 23) — a feeling that is overlooked in Boltanski's research. As Nanda Duarte aptly points out in her analysis of the multiple narratives shared on the *Women on Web* site concerning experiences of self-induced abortion:

the experience of induced abortion is a *multiplicity* of experiences. Not only in the sense that the contexts vary widely, but principally because the discovery of the pregnancy, the search for abortion methods, the realization of the procedure in a clandestine and stigmatised context, and the processing that follows confirmation that the abortion was effective shape multiple experiences *within* the experience, including for the same person. The despair of discovering pregnancy and the suspension of normality that it provokes is not the same despair potentially caused by a complication during abortion. The 'trauma of abortion' can be a profound pain associated with the decision to realize the procedure, for sure, but it can also be a revolt at the brutal conditions that need to be confronted, or may not even exist in the narrative. The exercise of 'opening up' the narrated experience concerning induced abortion into diverse experiences enables us to problematize to which context and situations particular emotions and meanings refer, avoiding taking the experience of abortion as a single, homogenous act (DUARTE, 2019, p. 89).

As Boltanski observes, the legalization of abortion did not make the discussion of abortion in public life any less difficult or natural, since women prefer to keep their decision to have an abortion private, sharing the situation with a few people in their social circle. In this sense, the practice and dialogues surrounding abortion carry a social stigma, a socio-anthropological concept developed by Erving Goffman (1981[1963]), both for the women involved and for the health professionals. This point is also made by Adesse et al. (2016) in their systematic review of Brazilian studies of abortion and social stigma, a situation that has led to "low quality care provision,

mistreatment and discrimination” (ADESSE et al., 2016, p. 3820) in current abortion care, including in terms of access to legal abortion in hospital environments. Indeed, the precariousness of the healthcare provided and the fact that the hospital is the entry point for the criminal justice system (DEFENSORIA PÚBLICA DO ESTADO DO RIO DE JANEIRO, 2017) means that we need to start here when thinking about the criminal subjection (MISSE, 1999, 2008, 2011, 2014) of women who arrive immediately after an abortion or in search of legal abortion services. As observed in my own research, four of the eight women charged with self-induced abortion were denounced by health professionals providing care to the woman after she arrived seeking assistance soon after an abortion, a moment when the expelled material is collected and sent to the police stations. In two cases, the court files show that civil and military police officers assigned to the hospitals in question made the denunciation. Consequently, the criminal subjection occurring in the hospital environment involves health professionals affected by the social stigma of abortion, meaning that they act in conjunction with police authorities as vigilantes of situations of abortion. This also has a negative impact on the women in need of medical care who experience processes of violence or even delay seeking medical assistance due to fear and insecurity (CARNEIRO; IRIART; MENEZES, 2013). Because of this criminal subjection, extrajudicial punishment is inflicted on the women who undergo unsafe abortions, without access to information, in clandestine clinics that may be run by militias, or due to medications of unknown origin that place their lives at risk with unknown methods and far from medical assistance if and when needed. This avoidance of hospitals means that women arrive as a last resort in grave states of health, leading to a higher number of maternal deaths caused by unsafe abortions (DOMINGOS; MERIGHI, 2010). Given that there is a criminalized dimension to abortion — in Brazil, all cases not covered by the provisions of the Criminal Code — and also that care guidelines and the right to legal abortion are intertwined with an inquisitorial environment focused on producing evidence and filing police reports, where the woman seeking care is placed under suspicion, as in the attempt to certify that a rape occurred for access to legal abortion (Diniz et al. 2014), then the criminal subjection of the crime of abortion can possess a specificity linked to the capacity to become pregnant. While a taboo surrounds abortion even in countries like France where the practice is legalized, as Boltanski (2013[2004], p. 149) rightly points out, the precarious care conditions develop at different levels that range from the illegality of abortion to social stigma. In Brazil, even in legal abortion services, the use of uterine curettage is the most prevalent post-abortion treatment, whether a miscarriage was involved or not — a method that is more painful and invasive and less recommended than Manual Vacuum Aspiration (MVA), which requires professional qualification (BRAZIL, 2014).

Drug-induced abortions are performed using misoprostol only since Brazilian institutions do not recognise mifepristone — a pill recommended for safe abortions by the World Health Organization (WHO 2022) — which also demonstrates the failure to modernize abortion services. As a result, the criminalization of abortion not only affects the doctor-patient relationship for women who seek out health services or the work relations in which professionals are embedded: public health policies for implementing legal abortion services are also outdated in terms of their methods and norms, which are more painful for patients. The precariousness of the care offered to women also provokes feelings of helplessness and fear in cases of legalized abortion too.

### **Towards new utopias for understanding safe and desired abortion in the lives of pregnant women**

Based on the divulgation of photographs from the United States' war on Iraq showing human rights violations perpetrated by US soldiers, combined with poetry written by prisoners in Guantanamo, Butler proposes an analysis of frames to investigate the differential distribution of the precariousness of life. This is a concept developed by the author to reflect on “the conditions that make life possible,” which differentiate lives that are grievable from those that are not, also linked to the potential for recognition and violability, where discourses, whether produced through imagery or writing — but above all through language and the production of meaning — delimit subjects (with rights), distinguishing the intelligibility of “lives we can apprehend from those we cannot” (BUTLER, 2015[2009], p. 17). Thus the author suggests three axes of analysis of the conditions of precarious life: frames, norms (which include ontologies) and suffering. Although Butler sheds light on frames as picture frames or borders — which proved useful in my own research on the documents that pass through the criminal justice system — Ana Beraldo (2021) explores the possibility of frames as something malleable, like ‘modelling clay,’ to account for conflict situations in which there are negotiations over grievable lives and precarious lives in the recognition of the actors living in a critical situation. If frames contain norms that define a social ontology, as in the *cités*, the concepts of framing and precarious lives introduced by the author can contribute to an understanding of abortion that goes beyond the *cités* presented in the original work of the EW model. For Butler, the humanization of beings, in the form of subjects, is constituted

through norms which, in their reiteration, produce and shift the terms through which subjects are recognized. These normative conditions for the production of the subject produce an historically contingent ontology, such that our very capacity to discern and name the ‘being’ of the subject is dependent on norms that facilitate that recognition (BUTLER, 2015[2009], p. 17).



Norms and understandings enunciate the humanity of beings. In this sense, Butler suggests that the apprehension of humanity is generalized through the condition of the *precariousness of life*. Based on a social ontology that comprehends life as liveable, the author develops the concepts of *precarious lives* and the *precariousness of life* to account for life and death decisions that escape the frame of an ontology of individualism, as well as the anthropocentrism that eschews the reflection on the human limitation over the domains of life and death in nature, the distinction between human life and animal life, or the conception of the subject as a person.

There is no life without the conditions of life that variably sustain life, and those conditions are pervasively social, establishing not the discrete ontology of the person, but rather the interdependency of persons, involving reproducible and sustaining social relations, and relations to the environment and to non-human forms of life, broadly considered. [...] The question is not whether a given being is living or not, nor whether the being in question has the status of a 'person'; it is, rather, whether the social conditions of persistence and flourishing are or are not possible (BUTLER, 2015[2009], p. 38).

For the author, the condition of precarious life is generalizable because life does not depend solely on an internal impulse but is based on a conception of the body that is dependent on and conditioned by what is outside of itself — social conditions, external institutions and affective relations — to make a life liveable.

In this light, then, we can understand those modes of justifying stem-cell research when it is clear that the use of living cells may increase the possibilities for livable life. Similarly, the decision to abort a fetus may well be grounded in the insight that the forms of social and economic support needed to make that life livable are lacking (BUTLER, 2015[2009], p. 41).

This shift from common humanity as a generalized condition in Boltanski's model to an apprehension of the precariousness of life as a generalized condition can extend the model to the reading of moral frameworks that complexify the understandings of life and humanity to the condition of liveable life, not just human life or the subject as a person — conditions ruptured by common humanity.

If certain lives are deemed worth living, protecting, and grieving and others not, then this way of differentiating lives cannot be understood as a problem of identity or even of the subject. It is rather a question of how power forms the field in which subjects become possible at all or, rather, how they become impossible (BUTLER, 2015[2009], p. 232).

In this way, the concept of the precariousness of life suggested by the author, combined with her analysis of frames, complements and expands a new understanding of the moral frameworks elaborated by Boltanski and Thévenot in the EW model (2020[1991]). When the motives of women

to have an abortion involve not just the impossibility of having a child due to a factor beyond their control, an occasion in which the decision is situated in a *lesser evil*, when the decision is based on the will and desire not to gestate, not to have the child or not to be a mother, women's autonomy to have an abortion can be taken seriously as part of sexual life in which not wanting to reproduce and terminating a pregnancy is a relief — an understanding that allows a destigmatized place of legal abortion, desired, self-induced and recognizing the abortion as a justification.

In a study conducted with women engaged in feminist movements that realize self-induced abortions, Ana Beraldo, Telma Birchall and Claudia Mayorga (2017) emphasize how “feminist ideas provided support towards the decision, alleviating possible feelings of guilt or remorse” (2017, p. 1154). Returning to Boltanski, Julia Burton (2021), based on studies of the assistance given to clandestine abortions by the feminist collective *Socorristas en Red* in the city of Neuquén (Argentina), proposes that the legitimization of abortion involves understanding the relief felt by women after the procedure: first, in the physiological sense of gestation, which encompasses affective and emotional changes; and second, through the speech of those who have had an abortion, in the enunciation of the practice and the sharing of experiences that can remove abortion from an occult and solitary place, enabling the emergence of new epistemologies that allow different decisions to be taken for life. In this sense, for Butler:

Whether we expand our existing frameworks or allow them to be interrupted by new vocabularies will determine, in part, how well we consult both the past and the future for our present-day critical practices (BUTLER, 2015[2009], p. 231).

In this way, despite the limits of the Incident Report as a source of women's experience, whether due to the translation involved, the inquisitorial conduct or the incriminatory form of the document, as well as the precarious state of the women who have had clandestine abortions and have been denounced by the authorities who provided them with medical assistance, the motives for seeking to terminate the pregnancy are echoed in other research on the access to legal abortion, in the statements taken ‘at the bedside’ and the abortions carried out in safe clandestine environments. Even with the precarious routes to obtaining an abortion, all sorts of risk to life and the lack of knowledge about care that makes these abortions so unsafe, the vulnerability experienced in the health system that can function as an extension of the criminal justice system, the women still decide to have an abortion as an inevitable good to continue with their lives. Burton (2021) proposes recognizing the desire to have an abortion, since “abortion can also be a decision and an experience that generates happiness, joy, which is linked to desires. Consequently, in narratives on abortion free of eternal suffering and victimization” (2021, p. 4). As a hypothesis,

therefore, I propose the development of a new approach to common humanity in the EW model, in order to encompass a *cit * that can account for abortion processes produced in welcoming spaces, so as to listen to women and other people with a uterus who opt for the power to control their body and life projects beyond the limits imposed by outside authorities and social stigmas. In a frame that recognizes life as conditional on social relations, in an interdependent chain that enables new lives to be generated and developed, tumoral foetuses and authentic foetuses do not share the same humanity but comprehend the precariousness of the life of an unwanted pregnancy and magnify the potency of grievable lives.

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## Notes

<sup>1</sup>The research was funded by CNPq during my master's degree on the Postgraduate Program in Sociology and Anthropology (PPGSA-UFRJ). This article is based on a selection of the content analysed in the dissertation.

<sup>2</sup>Abortion induced by the pregnant woman or with her consent (Article 124): Induce an abortion in oneself or consent to another person inducing one. Sentence: imprisonment of one to three years (Brazil 1940).

<sup>3</sup>The authors highlight the act of *reduzir a termos* (literally: "reduce to terms") when, in drafting the document containing the deposition of the witnesses, accused women and others involved, the narratives provided are translated into the legal language used by the police officers. In other words, the depositions are not recorded verbatim. As the authors observe, "converting oral discourse into writing, in this case, means reducing and substituting answers given by questioned persons with the interrogator's indirect discourse" (LOWENKRON; FERREORA, 2014, p. 88).

<sup>4</sup>20 women from the total number consulted participated in the act of consenting to or practicing an abortion. Among these, however, one died during the procedure while in another case the testimony of the accused woman had not yet been added to the case file because since it was too close to the time when the research material was collected.

<sup>5</sup>The set of witnesses described here is made up of other pregnant women waiting to be seen at the clinic or their companions, whether men or women, family or friends. Since the analysis here focuses on the accounts given by people seeking an abortion, this description omits the police officers involved in the operation, who also testified during the inquiries.

<sup>6</sup>Here I took into consideration the accounts of pregnant women present at the moment of the police raids on the clinics, but who were not tried for a criminal offence in the justice system, acting only as witnesses during the police inquiry. Because of the similarity of their accounts to those of the women charged, I consider them to be as relevant as those of the women under trial.

<sup>7</sup>I emphasize these two understandings since unofficially pregnant women would have more power to act in these arrangements, given that the symptoms of pregnancy are self-diagnosed prior to being announced.

<sup>8</sup>For a genealogy of the knowledge and practice of feminist support for self-managed abortions using medications in Latin America and the Caribbean after the 2000s, see Mel Bleil Gallo (2021). For an in-depth exploration of feminist collectives that work towards the social decriminalization of abortion and of Latin American feminist support for access to safe abortion even in clandestine circumstances, see Marcelle Souza (2021). After decades of work by feminist collectives, remote abortion using medication is now recognized by the WHO (World Health Organization 2022) and was definitively recommended to ensure the functioning of essential health care services during the Covid-19 pandemic (Anis: Instituto De Bio tica, Direitos Humanos e G nero; Global Doctors for Choice Brazil; N cleo de Aten o Integral a V timas de Agress o Sexual [Nuavidas] 2021). Gynaecologist and obstetrician Helena Parto from the Hospital das Cl nicas de Uberl ndia (HCU) at the Federal University of Uberl ndia (UFU) has also contributed to the implementation of telehealth abortions by legal abortion services in Brazil — a medical practice that involves the monitoring of abortions remotely — since, in addition to the safety of the method, drug-induced abortion provides effective access to legal abortion services for pregnancies of up to nine weeks (HOGEMANN; ALMEIDA; BRITO, 2022). Here it is important to stress that the knowledge produced by women, pregnant women and feminist activists — professionals, scientists or laypeople — has driven technological and scientific advances concerning techniques, empirical data and feminist epistemologies that give intelligibility to the experiences of abortion.

<sup>9</sup>Included in the topic "Welcome and Guidance," the technical norm anticipates that a "woman who arrives at the health service following a miscarriage or induced abortion is going through a difficult moment and may experience feelings of solitude,

anguish, anxiety, guilt, self-blame, fear of speaking or being punished or humiliated, a sensation of being unable to become pregnant again. All these feelings merge at the moment of deciding to terminate a pregnancy, although for the majority of women, in the post-abortion period, the feeling of relief predominates.”

<sup>10</sup> A physical or social mark incorporated by the self (GOFFMAN, 2002[1959]), which participates in the interactions between social actors, either through an introjection of the stigma that shapes the presentation of the stigmatized actor in everyday life, or in the relation of other actors with the stigmatized actor, which extends to the theory of labelling. For more on social stigma, in addition to the review by Adesse et al. (2006), which outlines the development of the concept in studies of abortion and health, also see the application of social stigma to the theory of labelling in a sociology of deviance and criminality developed by Werneck (2013).

<sup>11</sup> The collective *Socorristas en Red: Feministas que Abortamos* — emerged in 2012 as part of the Campaña Nacional por el Derecho al Aborto Legal, Seguro y Gratuito — a front of women affiliated to parties, organizations, collectives and autonomous activists who had joined forces since 2005 in political campaigns for the legalization and decriminalization of abortion in Argentina. The collective provides assistance towards clandestine abortions through the dissemination of information on safe abortion methods, as well as the realization of what they call *socorrismo* (MAFFEO et al., 2015; BURTON; PERALTA, 2016): the accompaniment of women through all stages of an abortion, working in the construction of affects, in the systemization of the knowledge produced, relating to both health and demographics, in the production of friendly linked with health professionals and in giving new meaning to abortion through a socialized practice of feminist accompaniment. In this way, the *socorrista* network aims to neutralize the social stigma of abortion, moving from the realm of the unspoken to listening with mutual support and the sharing of experiences, so that abortions acquire new meanings through a practical feminist conception.

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