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Abortion in Brazil

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Carlos Miguel Teixeira Ott 1 Ms.
Thalyta Karina Correia Chediak 2

ABSTRACT

This article analyzes the obstacles to the effective implementation of legal abortion in Brazil, based on the 1940 Penal Code and contemporary debates in the Supreme Federal Court. The aim is to compare the possibilities of excluding punishment related to abortion with Thomson's position (1971) and to evaluate the STF's position on decriminalization in light of this thesis. The methodology consisted of a bibliographic review and documentary analysis of the STF's jurisprudence, with emphasis on ADPFs 54 and 442 and the votes of Rosa Weber and Luís Roberto Barroso, in addition to official public health data. It starts from the hypotheses that the legal exceptions of risk to life and rape partially materialize Thomson's moral intuition, expressed in the analogy of the violinist, by recognizing that the right to life does not guarantee unrestricted use of another's body; that the votes for decriminalization up to the 12th week in ADPF 442 indicate the absence of an express constitutional prohibition on abortion; and that the Supreme Federal Court finds itself exposed to judicial delays due to inaction on the part of the National Congress.

It is concluded that, despite precedents favorable to the expansion of legal hypotheses, the convergence with Thomson is only partial. The impasse between the branches of government maintains legal uncertainty and intensifies inequalities in access to reproductive health, and the future scenario does not seem promising.

Keywords: Legal abortion. Penal Code. Supreme Federal Court. Judith Thomson. Public health.

ABSTRACT

This article analyzes the obstacles to the enforcement of legal abortion in Brazil, from the 1940 Penal Code to contemporary debates in the Federal Supreme Court (STF). There are two objectives: to confront the possibilities excluding punishability on abortion with the writings of Thomson (1971) and evaluate the position of the STF about decriminalization in light of said writings. The methodology consisted of a literature review and documentary analysis of STF case law, with emphasis on ADPF 54 and 442, the votes of Justices Rosa Weber and Luís Roberto Barroso, as well as official public health data. We hypothesize that the legal exceptions of risk to the pregnant person's life and rape, partially materialize Thomson's moral intuition, expressed in the violinist analogy, by recognizing that the right to life does not imply the right to unrestricted use of another's body; that the votes for decriminalization up to the 12th week on ADPF 442 indicate that there is no express constitutional prohibition on abortion; and that the Federal Supreme Court is immobilized due to inaction of the part of the National Congress. We conclude that, despite favorable precedents for expanding the scope, convergence with Thomson is only partial. The deadlock between branches of government maintains legal uncertainty and inequalities in access to reproductive health, and the future ahead of us is not promising.

Keywords: Legal abortion. Penal Code. Federal Supreme Court. Judith Thomson. Public health.

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[1] Law student. Email: carlosott@uol.com.br. Article submitted to UNISAPIENS as a requirement for obtaining a Bachelor's degree in Law. Porto Velho, 2024.

[2] Professor and Advisor. Master's degree in Education from UNIR. Master's student in Law and Social Justice at FURG. Lawyer specializing in Civil Law from UNIR. and Procedural Civil Engineer, FARO. Professor, UNISAPIENS and

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INTRODUCTION

Abortion is a highly complex legal, political, and social issue in Brazil.
Since its inclusion in the 1940 Penal Code, which criminalizes it with exceptions provided for in
Regarding article 128, I and II, the debate pits two central axes against each other. (Brazil, 2021) On one side, defenders of
Those who argue for decriminalization invoke the dignity of the human person, reproductive autonomy, and secularism.
of the State and material equality, highlighting that white women and those with higher incomes have access
Safe procedures, while poor and black women are the main victims of abortions.
insecure. (Rocha; Alves, 2023) On the other hand, critics argue for the protection of the right to life.
From conception onwards, they point to psychological risks after an abortion and express fear regarding...
trivialization of the practice (Weber, 2023).

The relevance of the topic intensifies in light of public health data.
The World Health Organization (WHO) recommended, in 2022 , complete decriminalization
of abortion as a measure to protect the life and health of women (WHO, 2026). In the scenario
Nationally, the Ministry of Health indicated in 2023 that unsafe abortion accounts for
approximately 5% of maternal deaths in the country. These numbers show that the
Criminalization did not eliminate the practice; it merely shifted it to clandestine contexts.
and risk, as pointed out by empirical studies (Medeiros; Rondon, 2021b).
In the legal field, judicialization has redefined the contours of the debate. The Argument of
Non-compliance with a Fundamental Precept – ADPF 54, judged in 2012, authorized the
interruption of pregnancy of anencephalic fetuses by excluding criminal liability in these cases. (Brazil,
2013) More recently, ADPF 442 (Brazil, 2017a), under the rapporteurship of Minister Rosa Weber,
discusses the compatibility of criminalizing abortion up to the 12th week of gestation with
Fundamental precepts of the 1988 Federal Constitution. The vote of rapporteur Rosa Weber.
(Brazil, 2023), delivered in September 2023, concluded in favor of decriminalization, a thesis already
anticipated by Minister Luís Roberto Barroso in HC 124.306, of 2016 (Brazil, 2017c).

Given this scenario, the aim of this article is to confront the exclusionary laws.
Regarding the punishability of abortion in Brazil, considering the position of Judith Jarvis Thomson, evaluate the...
The Supreme Federal Court's position in light of this thesis and an analysis of the public health data resulting from the legislation.
current.

The hypothesis is that the decision rendered in ADPF 54, combined with the votes of
Minister Rosa Weber and Minister Luís Roberto Barroso in ADPF 442 (Brazil, 2025), indicates
that there is no express constitutional prohibition against the decriminalization of abortion performed up to the 12th week.
week of gestation.

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However, statements from other members of the Supreme Federal Court indicate that the
This matter is of a public policy nature and should be prioritized for deliberation by...
National Congress, highlighting the institutional tension between constitutional protection and discretion.
parliamentary.

Therefore, this research is characterized as qualitative and was developed based on
This research was bibliographic and documentary in nature. Current legislation and decisions were analyzed.
from the STF, official health data and contributions from Thomson's position (1971) on the
abortion. The theoretical framework is anchored in the balancing of constitutional principles and references.
public health guidelines presented by WHO (2026) and the Ministry of Health (2026).

THOMSON AND THE RECONFIGURATION OF THE ABORTION DEBATE

Judith Jarvis Thomson (1929–2020), American moral philosopher and professor at Massachusetts.
The Institute of Technology (MIT) published the essay "A Defense of Abortion" in 1971. , or , as
is most cited , "A Defense of Abortion." The text became a landmark in applied ethics.
not for defending the legalization of abortion as a political issue, but for her argumentative strategy,
reconfiguring the philosophical terms of the discussion.

Thomson's originality lies in his initial methodological concession, which is to assume that
the fetus is a person from conception (1971, p. 48), without denying the fetus's status as a person.
to justify abortion. Conversely, she adopts this premise, considered the strongest.
an argument against abortion, to demonstrate that, even so, the conclusion of
Moral impermissibility does not necessarily follow.

To support his thesis, Thomson constructs the thought experiment of the "unconscious violinist":

> You wake up in the morning and find yourself , with her back against the bed , with a famous
> Unconscious violinist. He was found to have end-stage renal disease, and the 'Society'
> The Music Lovers Association consulted all available medical records and found that
> You, and only you, have the correct blood type to help. As a result, they
> They kidnapped him and , Last night, the violinist's blood system was connected to yours.
> so that the violinist's kidneys could be used to extract poisons from his body, thus
> like yours (Thomson, 1971, p. 48).

The author goes on to question whether there is a moral obligation to remain connected for
nine months, nine years, or for the rest of their lives, under the justification that "all people
They have a right to life, and violinists are people" (Thomson, 1971, p. 48). She concludes that such
The requirement would be "outrageous," indicating a flaw in the argument that gives rise to the obligation to use it.

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bodily right to life.

The central conceptual point is the distinction between the right to life and the right to everything that is necessary to stay alive. For Thomson, "the fact that, in order to continue living , the The fact that a violinist needs continuous use of his kidneys does not mean he is entitled to use it. continuous of their kidneys" (1971, p. 50). The right to life consists of the right not to be killed. unjustly, not having the right to demand another's body as a means of subsistence.

Thomson (1971) extends the analysis beyond rape cases, also addressing the pregnancy resulting from contraceptive failure. To illustrate this, he uses the analogy of "seeds of people":

Imagine that "seeds of people" float in the air like pollen. They enter through the windows of Houses, and if they take root in your carpet, they'll turn into babies. You don't want a baby right now. So You put very thin protective screens on the windows — the best contraceptive available. But sometimes a seed slips through a tiny hole in the screen and takes root in your carpet (Thomson, 1971, p. 56).

In this framework, rape is equivalent to having a window broken and the seed thrown inside. Contraceptive failure is like keeping a window open with a screen, aware of the residual risk. In both scenarios,

Thomson (1971) argues that there is no consent for the use of the body. Therefore, even if While acknowledging the fetus's right to life, it does not automatically imply a duty on the part of the pregnant woman to... to continue the pregnancy.

It is important to emphasize that the author does not argue that abortion should be permissible in all cases. circumstances. At the end of the essay, Thomson mentions "whimsical abortion in the seventh month". (Thompson, 1971, pp. 65-66), as morally indecent, indicating that his argument possesses This scope does not equate to unrestricted authorization.

Thomson's (1971) contribution to bioethics consists of shifting the focus of the debate. Traditionally, the discussion centered on the ontological question: is the fetus a being or not? person? If so, abortion would be equivalent to homicide. The author transfers the problem to the field. Regarding bodily rights and consent: even if the fetus is considered a person, this Does it morally obligate another person to give up their body?

Thus, "The Defense of Abortion" does not present itself as a political manifesto, but as an exercise in philosophical ethics. Its impact stems precisely from demonstrating that... The moral permissibility of abortion can be upheld without denying the personhood of the fetus. All that is needed is to separate the right to life from the right to use another person's body.

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Abortion in Brazil: In Theory and in Practice

Abortion in the Penal Code, Title I of the Special Part: "Crimes against the person", Chapter
I: “Crimes against life” appears as an underlying punitive and moral rule. The topography
The regulation already reveals the legislator's axiological choice: intrauterine life has been equated, for
For the purposes of criminal protection, to independent living (Brazil, 2021, no. 1).

Articles 124 to 127 govern the matter. Article 124 punishes self-induced abortion or abortion with consent.
For someone else to cause it, with imprisonment from 1 to 3 years. Article 125 criminalizes abortion.
Caused by a third party without the pregnant woman's consent, punishable by imprisonment from 3 to 10 years. Article 126
It provides for abortion with consent, with imprisonment from 1 to 4 years. Article 127 establishes the grounds.
The penalty increases if the conduct results in serious injury or death to the pregnant woman.

The legal basis of the 1940 Penal Code reveals that abortion was classified as a crime.
against life, with punishment being the rule. The exclusions of punishability foreseen in article 128
They function as a legislative balancing act between the protection of potential life and other assets.
legal rights, such as the life and dignity of women (Schor; Alvarenga, 1994, p. 3).

It is possible to observe that the structure of 1940 reflects a specific political and moral project.
As Schor and Alvarenga (1994) point out, criminalization was linked to values.
conservatives who associated a woman's legal identity with her reproductive function, relegating
Bodily autonomy is relegated to a secondary plane.

However, the punitive rule is not absolute. Article 128 provides for two exclusions of unlawfulness: I)
Necessary abortion, when there is no other way to save the life of the pregnant woman; and II) abortion
sentimental, if the pregnancy results from rape and there is consent from the pregnant woman or her representative.
legal.

In 2012, the Supreme Federal Court, when judging ADPF 54, added the third hypothesis:
Interruption of pregnancy of an anencephalic fetus. The basis for the decision was the violation of human dignity.
of the freedom, autonomy, and mental health of women, in the face of the inviability of pregnancy.
extrauterine.

Schor and Alvarenga (1994) argue that article 128 functions as a legislative balancing act.
between the protection of potential life and other legal rights, notably life and dignity.
of the woman. Thus, the 1940 Code itself recognizes that the right to life of the unborn child is not
unconditional.

The implementation of these exclusions does not require judicial authorization or a bulletin from...
Police report (BO) or report from the Institute of Forensic Medicine (IML). Technical Standard for Care
The Ministry of Health's Humanized Abortion guidelines, updated in 2014, dispense with the need for a police report.

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rape cases (Brazil, 2016). Summary 593 of the Superior Court of Justice – STJ (Brazil, 2017b) and Theme 1121/2024 reaffirm that the vulnerability of children under 14 years of age is absolute. (Brazil, 2024). In ADPF 737 MC/DF, the Supreme Federal Court suspended ordinances that imposed notification. Police intervention and compulsory provision of ultrasound, as a violation of dignity and health (Brazil, 2022).

Despite the legislation, in its article 128 , dating from 1940 and the updated normative clarity, Data from 2024 indicates that only 70 services were enabled as "Reference for "Interruption of Pregnancy in Cases Provided for by Law," concentrated in capital cities. The The discrepancy between normativity and effectiveness was mainly marked by: objection of awareness, lack of technical knowledge, stigma, and institutional violence. , resulting in refusal of Illegal patient care and complaints.

Emblematic cases expose the structural flaw. In 2020, a 10-year-old child in Espírito Santo... Santo and, in 2022, an 11-year-old child in Santa Catarina were denied access to In this procedure, even in cases of rape of a vulnerable person, judicial intervention was required. In the 1990s and 2000s, the need for court orders... case by case , for malformations fetal complications made the procedure impossible to perform in a timely manner, as evidenced by Severina's case. Maria Leôncio Ferreira, who led to the termination of an anencephalic pregnancy after the dismissal of preliminary injunction in ADPF 54.

The HC 124.306/RJ case, judged by the First Panel of the STF in 2016, approached the Thomsonian thesis. By stating that criminalizing abortion up to the third month violates fundamental women's rights, such as autonomy and physical integrity (Brazil, 2017c). However, because it has no effect The binding ruling did not alter the rule in articles 124-126. ADI 5581, which discussed abortion in certain cases... The Zika virus infection protocol was discontinued in 2020 without a ruling on the merits (Brazil, 2020).

Article 128 and its expansion via ADPF 54 materialize, on a reduced scale, the central intuition. According to Thomson: the right to life of the fetus is not absolute and cannot impose sacrifice on the woman. excessive or non-consensual physical contact.

In these specific cases, the Brazilian legal system accepts and operates under the logic that there is no duty. forced pregnancy.

However, the continued punitive rule in articles 124-126 keeps Brazil far from... Thomson's conclusion. For the philosopher, bodily autonomy is the basis for decriminalization. wide-ranging testing in early pregnancy, not just in exceptional cases. In the Brazilian model, the The woman remains in the position of having to justify herself to the State in order to avoid punishment, while , in Thomson , The state is the one that must justify any restriction on interruption. Thus , to the Exclusions of unlawfulness can be read as "Thomsonian islands" within a sea. punitivist.

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The tension between norms and reality, evidenced by the scarcity of services and the judicialization of the country, This demonstrates that even this minimum legislation does not yet translate into an effective guarantee of rights.

ADPF 442 AND THE SUPREME FEDERAL COURT

The Claim of Non-Compliance with Fundamental Precept 442, filed in 2017 by the Party The Socialism and Liberty Party (PSOL) and the ANIS Institute question the reception of articles 124 and Article 126 of the Penal Code — by the Federal Constitution of 1988, when the interruption of pregnancy It occurs up to the 12th week at the pregnant woman's request (Brazil, 2017a). Alleging violation of precepts of human dignity, freedom, equality, the right to health and Prohibition of torture.

The argument presented in ADPF 442 operates through the principle of proportionality and the model of... Gradual protection of intrauterine life, already adopted in ADPF 54 (Brazil, 2013). This is not denied. Legal value is given to the unborn child, but it is argued that criminal protection up to 12 weeks is disproportionate. with regard to the fundamental rights of pregnant women.

Two axes structure the request: (a) Autonomy and dignity: reproductive self-determination It forms the core of dignity, so imposing pregnancy is equivalent to instrumentalizing it. (a) Female body; and (b) Equality and public health: criminalization shifts abortion to the female body; clandestine nature, with a disproportionate impact on low-income Black women, violating material equality (Brazil, 2023).

Thomson adopts a different strategy. He concedes, for the sake of argument, that the fetus is a person. from conception. Even so, he argues that abortion can be morally permissible because "Having the right to life does not guarantee having the right to use another person's body" (Thomson) , 1971 , p. 56).

Three analogies summarize Thomson's thesis: (a) there is no duty to remain connected to a violinist to save him; (b) reasonable precautions do not create an obligation to surrender the body; (c) the law prohibits killing, but cannot demand bodily sacrifice.

According to the author, abortion is an exercise of the negative right against the instrumentalization of the body. regardless of the gestational stage or the consequences for public health (Thomson, 1971).

The convergences in Thomson's thesis and the ADPF are that both constructions place the Bodily autonomy at the center. The notion of existential choices (Brazil, 2025) echoes the refusal Thomsonian view of a good Samaritan duty (Thomson, 1971).

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The differences are methodological in nature, since ADPF 442 is a legal argument-
Positive law linked to the Constitution and proportionality, requiring a time frame. Thomson
formulates a pre-institutional moral argument that dispenses with gradualism: if the premise is
Correct, it applies to the entire pregnancy.

It is important to highlight that the Supreme Federal Court (STF) maintains the criminal offense for 12 weeks, except for legal exceptions.
Thomson would not recognize the legitimacy of this differentiation. On the other hand, ADPF 442
It mobilizes public health data, absent in Thomson's work, to demonstrate the irrationality of
criminalization.

ADPF 442 and Thomson start from the illegitimacy of transforming the female body into a resource.
Compulsory, but they follow different paths. The constitutional route is prudential, gradualist.
and empirical; therefore , It establishes 12 weeks. The Thomsonian approach is ethical and dispenses with...
temporal cuts.

The Brazilian Supreme Court (STF), since ADPF 54 regarding anencephaly, has adopted gradual and proportional protection: the more...
The more developed the skin, the more protection it provides. Hence the cut-off at 12 weeks. Thomson rejects this premise.
If the violinist's argument holds true after 1 day, it holds true after 9 months. That's why. , it is most commonly used
by those who advocate for full decriminalization, not just up to 12 weeks.

The outcome of ADPF 442 will depend on adherence to the proportionality model already outlined.
The eventual incorporation of Thomson would require abandoning the gradualist paradigm, which represents
a movement of greater resistance in the jurisprudence of the Supreme Federal Court. Thus, the
ADPF 442 offers the institutionally viable path; Thomson offers the horizon.
normative that gives it moral weight.

In his vote for HC 124.306, in 2016 (Brazil, 2017c), Supreme Court Justice Barroso uses
an empirical argument that the law "pushes women into clandestinity" with regard to
Regarding abortion, since it is a matter of public health. Thomson does not use health data.
public, as it adopts a principled argument: even in a world where abortion was 100%
Safe and legal, the moral question would be the same.

In a vote delivered in 2023, Justice Rosa Weber, rapporteur for ADPF 442, ruled...
The request was partially granted, stating that "sexual and reproductive rights are integral parts of the body."
the content of the dignity of the human person and autonomy" (Brazil, 2023). October 17
In 2025, Minister Luís Roberto Barroso agreed with the rapporteur, arguing that
"Criminalizing the voluntary termination of pregnancy in the first 12 weeks violates choices."
existential needs of women" and produces a "discriminatory effect on poor women" (Brazil, 2025).
With a score of 2-0, the trial has been suspended at the request of a party since April.
2026, pending four votes to form a majority.

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In the votes of Supreme Court Justices Weber and Barroso, it is clear that there is an argument of Comparative law on proportionality. But the core "bodily autonomy" of Weber and Barroso's "existential choices" is the constitutional version of Thomson's point. The difference The votes in the Supreme Federal Court (STF) regarding abortions only up to 12 weeks implies a judgment of proportionality that does not exist in Thomson.

In short , ADPF 442 states that "criminalizing up to 12 weeks is unconstitutional because "It violates women's rights and is bad public policy," while Thomson argues that, same Even though the fetus is a person, the woman is not obligated to give up her body.

Succeeding Rosa Weber, Flávio Dino assumed the role of rapporteur, but will not vote on the merits of the case because he succeeded her.

there, as decided by the STF in ADI 5.399, that the vote of the retired minister remains Valid even with emphasis. As of the time of completion of this article, May 2026, the The process remains suspended following a request for review, with no date set for resumption. , 4 votes remaining between 8 ministers to form a majority.

If the trial resumes, the remaining 8 justices will have to decide whether to accept the argument. whether the constitutional-strict interpretation of ADPF 442 applies, or if one of them pulls the broader moral argument, Thomson type.

Inequalities and Moral Barriers to Access to Abortion

The legal framework governing abortion in Brazil has direct repercussions on public health. to the extent that criminalization, as a rule, provided for in current legislation, coexists with only three grounds for excluding unlawfulness: pregnancy resulting from rape, risk to the life of the pregnant woman and fetal anencephaly (Brazil, 2021). Outside of these hypotheses, both the woman and whoever Those who perform the procedure are subject to criminal penalties ranging from 1 to 10 years of imprisonment. or imprisonment.

This legal framework does not prevent abortions from occurring, but it pushes some of them into the process. clandestine nature, transforming a reproductive event into a public health problem, because It meets the three criteria defined by Brazilian Social Medicine, namely: high prevalence, severe impact on the individual and society, and the possibility of prevention. through appropriate public policy (Carvalho; Oliveira, 2021, p. 42).

Epidemiological data clearly demonstrate this impact. Although underreporting is inherent. Regarding this issue, the Ministry of Health estimates that, in 2018, approximately 1 million induced abortions occurred in the country, resulting in roughly 250,000 hospitalizations within the Unified Health System (SUS). (SUS) due to complications such as hemorrhages, infections, organ perforation and

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Infertility. Unsafe abortion remains the third leading cause of maternal death.
in Brazil, representing preventable deaths if there were access to safe procedures (WHO,
2026, p. 11).

From an economic standpoint, the direct cost of hospitalizations for abortion in the SUS (Brazilian Public Health System) was...
estimated at R$142 million per year, a figure that does not include ICU beds or reproductive sequelae.
and loss of productivity (Bahia; Scheffer, 2023, p. 18). Concrete cases documented in
Technical literature highlights the risk: case studies in leading hospitals report...
Uterine perforations and bowel injuries during uterine evacuation procedures.
performed without adequate training, including in legally authorized abortions, resulting
in severe morbidity and the need for colostomy (Corrêa; Menezes, 2024, p. 215). From
Similarly, analyses of maternal mortality indicate deaths of young women after
attempted abortions using sharp objects and abortifacients in contexts of
clandestinity (Martins; Silva, 2022, p. 88).

The distribution of this burden is profoundly unequal. (National Abortion Survey 2021)
It indicates that 1 in 7 Brazilian women up to the age of 40 has had an abortion, however, black women...
They are 46% more likely to resort to unsafe methods than white women, reflecting
the overlap between structural racism, poverty and lower education (Diniz; Medeiros;
Madeiro, 2022, p. 7).

Regionally, the North and Northeast have the worst indicators, with a lower number of...
accredited legal abortion services and a higher mortality rate, consequently,
maternal care is a problem, with only 42% of municipalities in the Northeast having a hospital with the capacity to provide it.
to comply with the legal provision for pregnancy termination (Fonseca et al., 2023, p. 305). As for
Despite having a larger number of hospitals in the Southeast region, there is a phenomenon of secondary criminalization:
Research based on data from state security departments shows that public hospitals
They are the main source of police reports regarding abortion, and women seeking the service.
complications are the most frequently reported (Ventura; Villela, 2024, p. 112). Thus, the
Criminalization operates selectively, primarily affecting young, Black, poor, and marginalized people.
who do not have the resources to access private clinics and depend exclusively on the SUS (Brazilian public healthcare system).
or risky practices (Diniz; Medeiros; Madeiro, 2022, p. 9).

Beyond the law, prejudice and moral issues act as additional barriers that
They keep women away from accredited health services and the justice system. Abortion is
It is socially framed as a moral issue rather than a health concern, which generates stigma.
about the patients and about the professionals who attend to the cases foreseen by law (Villela;
(Lago, 2020, p. 56). This stigma translates into concrete fear: women who are victims of rape.

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or those with high-risk pregnancies delay seeking care at referral hospitals for fear of trial, exposure and criminalization.

The Ministry of Health acknowledges that pregnant women without adequate information avoid institutions. medical and hospital settings, precisely because of criminalization, even when they need to urgent clinical follow-up (Brazil, 2026, no. 1). In practice, medical confidentiality is... frequently strained: qualitative studies in maternity wards show that professionals of Health professionals report a conflict between the duty of care and the perceived "duty to report," even that there is no mandatory protocol for notifying the police, transforming the space of Care in the context of whistleblowing (Zordan; Portella, 2023, p. 77). The result is the production of a “double violence”: the woman suffers sexual assault or a serious medical condition and, then, the institutional violence of discrediting, humiliation and fear of imprisonment (Carvalho; Oliveira, 2021, p. 45).

The same moral mechanism applies to access to justice. Even in cases where the Abortion is legal, but many women don't file a police report for rape or other reasons. They contact the Public Defender's Office because the process is revictimizing (Machado; Gomes, 2023, p. 203). There are reports in the literature of delays in service and requirements for documents. unnecessary, intrusive questions and collective conscientious objection in entire services, the which discourages the continuation of the therapeutic journey. For poor and black women, this Moral filters are exacerbated by institutional racism and territorial inequality: displacement Traveling to the capital to access one of the few reference services involves transportation costs. food and absence from work, making the legal right, in practice, inaccessible (Fonseca) et al., 2023, p. 312).

Therefore, the consequences of abortion for Brazilian public health cannot be explained solely by... Not by the letter of the law, but by the way law, prejudice, and morality interact. A Criminalization leads to underreporting, hospitalizations, and deaths; stigma leads to silence. A pilgrimage seeking assistance and a refusal to seek justice. The result is a cycle in which... The most vulnerable population bears the greatest physical, psychological, economic, and penal costs. Treating abortion exclusively as a criminal matter ignores the fact that, as long as there is no... To guarantee safe, humane, and judgment-free access, the SUS (Brazilian Public Health System) will continue to bear the costs. complications will arise, and the justice system will continue to criminalize the victims of its own negligence. state-owned.

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FINAL CONSIDERATIONS

Institutional resistance to the application of legal exclusions and the rulings of the Superior Court of Justice (STJ) and the Supreme Federal Court (STF).

This shows that the problem does not originate from a regulatory gap, but from non-compliance with the...

Existing norms. Guaranteeing legal, safe, and accessible abortion is a measure of justice.

Reproductive health, public health, and equity. Congress remains a legitimate forum for this.

Public policy, but legislative omission does not eliminate the Judiciary's duty to protect rights.

fundamental when violated.

The legal regulation of abortion in exceptional circumstances dates back to 1940, but since then...

There has been considerable evolution in social and legal views regarding the dignity of life.

of women. At that time, women's rights and autonomy were subordinated.

to those of men. However, feminist movements challenged and transformed these

norms, promoting women as holders of rights and equality. However, the

Theory and reality in Brazil are distinct objects.

Although Brazilian law allows for legal grounds for terminating a pregnancy,

its normative structure remains anchored in a punitive and patriarchal logic that

It subordinates female bodily autonomy to the penal protection of intrauterine life. The Penal Code

In 1940, by classifying abortion as the norm and establishing only three exceptions to illegality...

— risk to life, pregnancy resulting from rape, and fetal anencephaly —, reverses the burden

argumentative and evidentiary, requiring the woman to prove her vulnerability beforehand.

to grant the same guardianship over one's own body.

This model directly contradicts the thesis put forward by Judith Jarvis Thomson, according to

The debate should not begin with weighing lives against each other, but with recognizing autonomy.

The female body as an insurmountable limit. Regardless of admitting personality to

The fetus can be possessed from conception, but this does not imply a compulsory right to the use of another's body.

The right to life means the right not to be unjustly killed, but it should not imply the use of force.

of another person's body without their desire and/or consent.

Given the Brazilian perspective, even with the decriminalization of abortion, with a

With a 12-week timeframe, this should be the rule, not the exception, and it is up to...

The State has a duty to justify, under strict criteria of proportionality, any restriction on

Reproductive freedom.

However, the gap between the norm and its implementation reveals the exclusionary nature of

current legislation. The application of legal exclusions is mediated by institutional barriers.

Geographic and economic factors make legal abortion inaccessible to most women.

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concentration of services in capital cities, the requirement for bureaucratic pilgrimage in cases of rape and the systemic distrust of victims' accounts transform the procedure.
in privilege. Thus, clandestinity is not eliminated by criminalization, but
commercialized: those with financial resources can safely terminate a pregnancy;
Those who lack access to healthcare resort to unsafe methods that result in morbidity, mutilation, and...
death.

This normative design produces disproportionately burdensome effects on Black women.
and the poor, upon whom falls the burden of criminal prosecution and institutional revictimization. The data from
The justice and public health systems show that criminalization operates as a device.
of racialized and class control, since it is these women who, when seeking the SUS (Brazilian public healthcare system) in
Cases of unsafe abortion end up being reported and prosecuted. Similarly,
girls under 14 years old, mostly black and from marginalized communities, although supported
According to STJ Case 1121, they face repeated denials of access to legal abortion, being
forced into motherhood as a result of sexual violence, in violation of their dignity, health and
development.

Therefore, it can be concluded that the 1988 Federal Constitution provides sufficient basis.
for the decriminalization of abortion, based on the principles of human dignity,
The right to health, equality, privacy, private life, and individual autonomy, all within the same model.
philosophy defended by Judith Thomson.

The widespread criminalization currently in place, by denying access to safe reproductive services, violates these rights.
rights and deepens structural inequalities of gender, race, and class. The defense of abortion.
It is legal and safe, therefore, not simply an individual demand, but constitutes an imperative.
of social justice and the realization of women's human rights.

As long as Brazil maintains a model that treats bodily autonomy as an exception.
Conditional, and not as a constitutive right, the State will continue to reproduce an architecture.
legal framework in which the abstract protection of intrauterine life is based on the concrete violation of
life, health and freedom of women, especially those who have historically occupied the
Margins of citizenship. Overcoming this situation requires recognizing that reproductive justice
This presupposes not only formal decriminalization, but also the material guarantee of access.
universal, free, and unbureaucratic, otherwise fundamental rights will be transformed into
prerogatives of color, class, and territory.

On April 29, 2026 Jorge Messias , the nominee to fill the vacancy left by Minister Barroso,
He underwent an 8-hour grilling and was approved by the Constitution and Justice Committee.
The Senate has been heavily criticized for its stance on the issue of abortion.

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On the same day, the Senate Plenary rejected the nomination with 42 votes against and 34 against.
favorable.

With Messias's disapproval and the next president expected to appoint 3
or 4 members of the Supreme Federal Court, far from making progress on the issue of abortion from an ethical-philosophical perspective.
According to Thomson, maintaining the current order is perhaps the best possible world.

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