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Elementary Axiological Basis for Democratic Culture: an Analysis of Constitutional Amendment Bill (PEC) N° 164/2012 and Bill (PL) N° 1.920/2024 Through the Myth of Antigone¹

Base Axiológica Elementar à Cultura Democrática: a Análise da Pec N° 164/2012 e do PL N° 1.920/2024 Pelo Mito de Antígona

Base Axiológica Elemental para una Cultura Democrática: Análisis de La PEC N° 164/2012 y del PL N° 1.920/2024 a través del Mito de Antígona

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Abstract

There are two bills pending in the Federal Legislature that have an impact on women's rights: Proposed Constitutional Amendment (PEC) No. 164, of May 2, 2012, which proposes amending Article 5 of the Federal Constitution to guarantee the inviolability of the right to life from conception, and Bill No. 1,920, of May 20, 2024, which amends Article 128 of the Penal Code by providing for severe punishment for abortions performed after the 22nd week of gestation. In order to delimit the appropriate argumentative basis for the debate on the limits to the interruption of pregnancy, which is entangled by religious and private moral motivations, the tradition of Western thought that contrasts the body with reason, through the domination of the former by the latter, is addressed. To this end, through deductive, bibliographical and documentary research, with a qualitative approach, in indexed databases from articles, the myth of Antigone is analyzed in contrast to Platonic philosophy. Moving forward in the historical socioeconomic consequences of the dichotomous discourse between body and soul, we conclude that this narrative is incompatible with contemporary theories of democracy, which bring as a structural foundation to democratic societies the equal relevance of all before the State, plurality, mutual respect, and reciprocity.

Keywords: theory of democracy; interruption of pregnancy; platonic philosophy; myth of Antigone.

Resumo

Tramitam no Legislativo Federal dois projetos com impacto sobre os direitos das mulheres: a Proposta de Emenda à Constituição (PEC) n° 164, de 02 de maio de 2012, que propõe a alteração do art. 5° da Constituição Federal para garantir a inviolabilidade do direito à vida desde a concepção; e o Projeto de Lei (PL) n° 1.920, de 20 de maio de 2024, que altera o art. 128 do Código Penal mediante previsão de pena severa ao aborto praticado após a 22ª semana de gestação. No propósito de se delimitar a base argumentativa adequada ao debate sobre os limites à interrupção da gravidez, que se vê enredado por motivação religiosa e de moral privada, aborda-se a tradição do pensamento ocidental que contrapõe o corpo à razão, mediante o domínio daquele por essa. Para tanto, mediante pesquisa dedutiva, bibliográfica e documental, com abordagem qualitativa, em bases indexadas a partir de artigos, analisa-se o mito de Antígona contraposto à filosofia platônica. Avançando nas consequências históricas socioeconômicas do discurso dicotômico entre corpo e alma, conclui-se pela incompatibilidade dessa narrativa com as teorias da democracia contemporâneas, que trazem como alicerce estrutural às sociedades democráticas a igual relevância de todos perante o Estado, a pluralidade, o respeito mútuo e a reciprocidade.

Palavras-chave: teoria da democracia; interrupção da gestação; filosofia platônica; mito de Antígona.

Resumen

Se encuentran en trámite en el Legislativo Federal dos proyectos con impacto sobre los derechos de las mujeres: la Propuesta de Enmienda Constitucional (PEC) n° 164, del 2 de mayo de 2012, que propone modificar el art. 5° de la Constitución Federal para garantizar la inviolabilidad del derecho a la vida desde la concepción; y el Proyecto de Ley (PL) n° 1.920, del 20 de mayo de 2024, que modifica el art. 128 del Código Penal mediante la previsión de penas severas para el aborto realizado después de la semana 22 de gestación. Con el objetivo de delimitar una base argumentativa adecuada para el debate sobre los límites a la interrupción del embarazo —enredado en motivaciones religiosas y de moral privada—, se aborda la tradición del pensamiento occidental que contrapone el cuerpo a la razón, mediante el dominio de aquel por esta. A través de una investigación deductiva, bibliográfica y documental, con enfoque cualitativo y basada en fuentes indexadas y artículos académicos, se analiza el mito de Antígona en contraposición con la filosofía platónica. Avanzando en las consecuencias históricas y socioeconómicas del discurso dicotómico entre cuerpo y alma, se concluye que esta narrativa es incompatible con las teorías contemporáneas de la democracia, que tienen como fundamento estructural de las sociedades democráticas la igual relevancia de todos ante el Estado, la pluralidad, el respeto mutuo y la reciprocidad.

Palabras clave: teoría de la democracia; interrupción del embarazo; filosofía platónica; mito de Antígona.

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1 Introduction

In the twenty-first century, female participation grows in several spheres. Women begin to recognize control over their own bodies as a right, especially in matters related to conception and pregnancy, without the intervention of the State. In this sense, in Brazil, the decision of women who opt for abortion is observed, in the cases provided for by law, that is, the two hypotheses of article 128 of the Penal Code: 1) when there is no other way to save the life of the pregnant woman and 2) when the pregnancy is the result of rape; and, finally, by virtue of a decision of the Federal Supreme Court in Allegation of Non-Compliance with a Fundamental Precept (ADPF 54), in the case of pregnancy of an anencephalic fetus.

On the other hand, two bills are pending in the Federal Legislature that provide for the prohibition of abortion, including for cases already regulated by the Penal Code. One of them is the Proposed Amendment to the Constitution (PEC) No. 164, of May 2, 2012, authored by former federal deputies Eduardo Cunha and João Campos, which proposes the amendment of article 5 of the Federal Constitution to guarantee the inviolability of the right to life from conception; the other is Bill (PL) No. 1,920, of May 20, 2024, authored by federal deputy Marcos Pollon, which amends article 128 of the Penal Code, with the provision of severe punishment for cases consented or not by the pregnant woman, after the 22nd week of pregnancy.

From the analysis of the aforementioned bills, with an impact on the right to family planning, involving contraception and abortion, the debate about the limits of the State's interference in women's decision-making in private matters gains space, based on the inviolability of life from conception. The hypothesis raised is that the debate on this subject takes place under historical conditions that are not compatible with the axiology immanent to contemporary democracy.

In order to verify this hypothesis and with a view to delimiting the appropriate argumentative basis for the debate on restrictions on the interruption of pregnancy, the present manuscript, after referring to the socioeconomic structure, still present in contemporary democratic countries, to the dichotomous discourse between reason and body with its cradle in ancient Greece, moves on to reflect on the Greek myth of Antigone. In particular, Sophocles' tragedy addresses the civic subordination of women, resulting from the necessary subjugation of the beings of providing to the men of the foreseeing.

It is a bibliographic and documentary research, carried out through literature review, in indexed databases from consultations with articles from periodicals, legislation and doctrine, through access to the databases of google scholar, redalyc.org and Revista Pensar, with a qualitative approach. PEC No. 164/2012 and PL No. 1920/2024 are exposed. After delimiting some traditionally structuring features of Western discourse and the contemporary conception of democracy, embodied in the equal relevance of all before the State and the Government, a dialogue is proposed between the aforementioned reform proposals and the myth of Antigone, analyzing the points of tension.

The research is relevant because it offers a legal and philosophical analysis of the proposed discussion, which is often highlighted, especially through bills that seek to criminalize abortion, even in cases of exclusion of illegality. The objective of this manuscript, consisting of delimiting the argumentative basis from which the debate on the prohibitions on the interruption of pregnancy should be held, gives publicity and effectiveness to the contemporary democratic axiology, circumscribing it to a rational basis, purified of ideological and religious extremism.

2 Analysis of PEC No. 164/2012 and PL No. 1920/2024

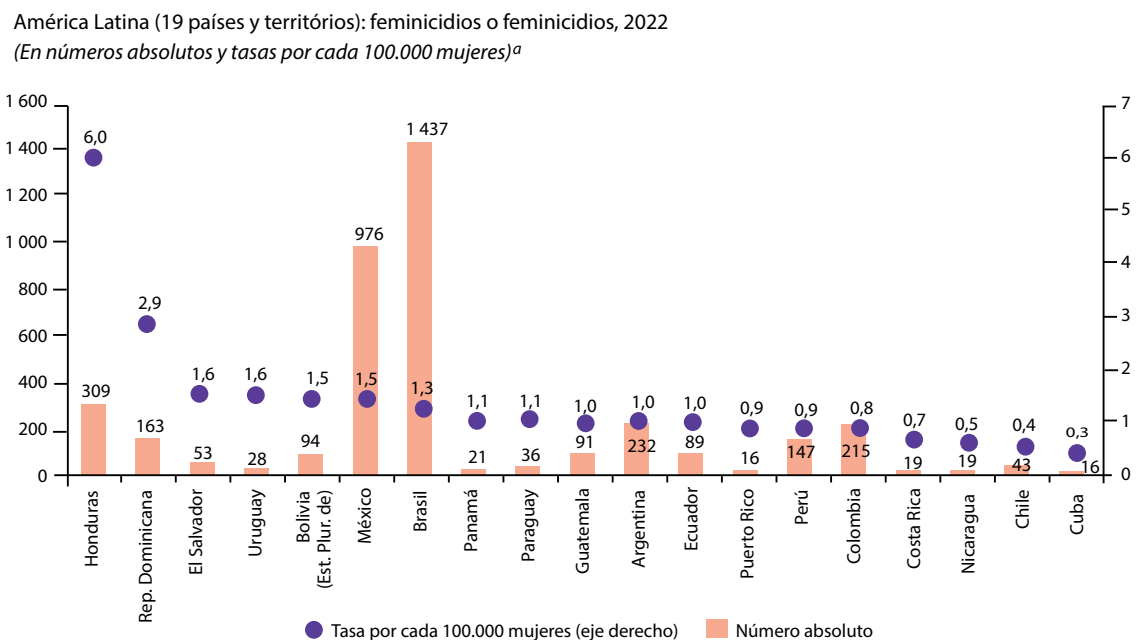
On November 27, 2024, the Commission on the Constitution of Justice and Citizenship of the Chamber of Deputies approved the admissibility of PEC No. 164/2012, authored by former federal deputies Eduardo Cunha and João Campos, through which it is intended to amend article 5 of the Federal Constitution of 1988, to state that the inviolability of the right to life begins from conception, which would reach, as a consequence, the fetuses. The justification presented, in four short paragraphs, it is said that "life does not begin with birth, but with conception. To the extent of this concept, the guarantees of the inviolability of the right to life have to be extended to fetuses." In other words, this proposal will imply the prohibition of the practice of abortion, even in the cases admitted by law, since the fetuses will become subjects of rights. If approved, the aforementioned PEC will be forwarded to the special committee of the Chamber of Deputies and the Senate, requiring a quorum of 3/5 in two rounds, so that it can then become a Constitutional Amendment (Brasil, 2012).

In turn, Bill No. 1,920, of 2024, proposed by federal deputy Marcos Pollon, seeks to amend article 128 of the Brazilian Penal Code, in order to prohibit the practice of abortion performed by doctors after the 22nd week of gestation, including fetal asystole, even in cases of exclusion of illegality, that is, in cases of rape, when there is a risk to the woman, or even in cases of pregnancy of an anencephalic fetus. According to the aforementioned Bill, if the abortion is consented by the pregnant woman, the penalty will be from 5 to 12 years of imprisonment. If not consented, the penalty will be from 8 to 18 years (Brasil, 2024).

The justification presented for the aforementioned bill argues that “the embryo is a human being from the moment of conception and that it has the inviolable right to life” (Brasil, 2024), which is why the practice of abortion constitutes a crime of homicide and a violation of human rights, giving rise to legal protection. The Bill is based on the Resolution of the Federal Council of Medicine, No. 2,378/2024, which prohibits the physician from practicing fetal asystole, even in cases of abortion provided for by law, “[...] putting an end once and for all to the abortive rage of those who live thinking that killing is a right” (Brasil, 2024). Thus, those who act against the CFM resolution “[...] are considered deniers of science and scientific knowledge” (Brasil, 2024).

On the other hand, the phenomenon of violence against women takes on worrying contours, as warned by the Economic Commission for Latin America and the Caribbean or the Economic Commission for Latin America and the Caribbean (ECLAC), in Graph 1 below.

Graph 1. Data on femicide in Latin America in 2022, with emphasis on Brazil



Source: CEPAL (2024, p. 4)

As can be seen from the graph above, Brazil stands out, negatively, as the country that had the highest number of femicides in 2022, with a total of 1437, higher than any of the other countries in Latin America. In this sense, ECLAC (2024) emphasizes the importance of moving towards a society of care, pointing out that it is necessary to transform patriarchal, discriminatory and violent cultural patterns. In 2024, through Bill No. 2,762, of 2024, the National Care Policy was created, whose text provides, among its objectives, “to promote cultural change related to the sexual, racial, and social division of care work” (Brasil, 2024, art. 4, item VIII).

The idea of care stresses the treatment offered to pregnant women by PEC No. 164/2012 and PL No. 1920/2024, since these proposals are based on the understanding that the right to life begins from conception, in a context of strong moral and religious component, as a reflection of justice itself. In view of this, it is justified to revisit the debate between public and private, to analyze the possibilities of State action on women’s bodies, especially when private morality and religious doctrines are introjected into the State, legal and scientific discourse (Delajustine, 2020).

Care, a primacy of moral content that has been expanding to various branches of technology, including law, promises to embody the forgotten flag of fraternity; the only one, from the French Revolution, that did not deserve

legality. Revisited under the notion of reciprocal recognition of an equal dignity that demands equitable possibilities of development as a person, fraternity breaks with individual atomism in favor of an institutional network of care. And the question that arises is to what extent the discursive virulence that has impregnated politics in contemporary times is capable of blurring the reciprocal bonds of recognition of equal dignity.

This issue is so serious when faced with disagreements that involve aspects relevant to private morality and that are publicized, such as the one referring to gestational interruption. In such cases, the hierarchy of “points of view” tends to grow in relation to the egalitarian perspective that informs care.

Hence the need to be fully aware of the context in which such disagreements are inserted, so that the understanding of rights occurs in an adequate way. To this end, the historical-cultural approach of Western thought, from ancient Greece, proves to be a useful instrument: this is what the present manuscript is dedicated to in the following topics.

3 Tension between life and liberty

The tension between life and liberty in the context of postmodernism, i.e., the demand for recognition, often leads to the idea of a conflict irreducible to a reasonable agreement. In such a scenario, the question arises: Should it leave the decision about female autonomy or the protection of life to the majority? Would this be around a political decision? Or, on the contrary, would it be before a fundamental right, to manifest oneself in life or in liberty?

The search for the answer demands the understanding of the scenario in which this question unfolds, nuanced by the Western history of discrediting the body, subjugated to the soul, resulting from the order of nature, in a perspective that was born in Greece, is universalized with Stoicism and its echoes in Christian doctrine. Under this history must be positioned the problem that is the object of this manuscript.

To this end, the starting point will be the cultural tradition that has been outlined since ancient Greece, in which theater constitutes a powerful artistic manifestation. Greek tragedy, similarly to philosophy, is rich in the treatment of ethical dilemmas, manifesting themselves in the clashes between civism and freedom, affection and reason, dignity and animality. In this way, it makes it possible to specify some cultural traits or rancidities that sometimes present themselves as reality.

Martha Nussbaum (2009), an enthusiast of Greek theater, develops her literature by comparing the philosophical and artistic approach in facing issues relevant to Greek thought. In “Fragility of Goodness”, the priority of civism over other commitments, such as family and customs, was one of the themes she faced, so she used Plato’s philosophy, in parallel with the play *Antigone*.

This approach, between Plato and *Antigone*, promises to bring light to another relevant aspect about the theme of civism, through which a certain order of unbreakable nature would materialize. But, before starting *Antigone*, for an exact understanding of how the civism dealt with in it echoes on the present theme, it is necessary to focus on the elementary trait of the history of Western thought, manifested in the dichotomy between reason and meaning, in which the narrative of the prevalence of the former over the latter is verified.

3.1 The Body and human animality

One of the most relevant pillars of Greek philosophy is rationality and its prevalence over the body, which presupposes, in turn, the dichotomy between reason and body. Such speculations lead to an idea of man’s remission to the order of nature and, as a consequence, his aptitude for perfection: “Perfect is that which is disposed with his nature” (Salgado, 1995, p. 34).

Both Plato’s and Aristotle’s philosophy do not escape these molds, nor do Stoicism and later Christianity. In his most rigid stage, Plato, in dealing with justice, did so both in the city and in man. For him, the city would incorporate the dynamics most apt for survival, since no person would possess all the talents necessary to produce goods capable of satisfying the various human demands. This would only be possible through the joint coexistence of different people with different talents.

Directing each one to the activity for which he demonstrated a natural aptitude would bring greater efficiency to the city in satisfying the needs of its inhabitants. This dynamic should remain as the city grew and became more complex, requiring both material and spiritual activities. Even in its most advanced stages, each one should be directed to the social function for which he reveals talent: it would be up to the wise, with their aptitude for knowledge,

to govern the city; to the brave, the order and defense of the city; the others, called artisans, would be responsible for the work devoted to the material subsistence of the members of the community.

In the same way as in the city, the human soul would be composed of three elements, reason, courage and senses, each one of which should be directed to the exercise of the function for which it denotes a natural vocation: reason, apt to knowledge, would be responsible for the government of man. Courage, on the other hand, would be concerned with the subjugation of the senses to the mind, while the senses should act in the exact measure of the body's subsistence: eating enough for nourishment, sleeping in the right measure of rest. Justice for Plato is manifested, therefore, in the directing of each element, whether constituting man or of the city, to the function for which it has a natural aptitude.

On the other hand, this aptitude of the object to perfection, through the observance of the order of nature, led to segregation, opposition and hierarchization between the body and the mind and, consequently, between the social actors. Since the craftsmen would be dedicated to the subsistence of the city and of man, they would act within the scope of necessity. On the other hand, the wise men, who are able to know through the purification of the senses, would be responsible for the government of the city, which would take place in the sphere of freedom.

Hannah Arendt (2010), in her second book, "The Human Condition", highlights the tradition of Western thought, with its cradle in Greece, of the demerit of work and the excellence of intellectuality. In the field of work, man would not be free, since he would occupy himself with it for the material need for subsistence of his corporeality. Freedom would take place, properly, in the sphere of politics, in which man would not act motivated by an end predetermined by his animal nature, which would escape his control and volition. In politics, human action would not be pre-established by conditionings of the body, but would be based on reason, purified of the needs and susceptibilities of matter: the exercise of active life.

Reason would free man from the senses, but not all would have the same aptitude; that is why, in the Platonic Republic, the wise men should rule. For Aristotle, too, politics would be the responsibility of free men, while work would be the domain of women and slaves. The social position should be defined in observance of the dynamics of nature that would be realized by original unions "between people, arising from a natural need" (Aristotle, 1997, p. 14), such as that of man and woman in the purpose of reproduction, as well as that of "a natural commander and commandee for their reciprocal preservation" (Aristotle, 1997, p. 15). The Greek philosopher also explains in "Politics" (p. 15): "he who can use his spirit to predict is naturally a commander and naturally a master, and he who can use his body to provide is commanded and naturally a slave".

The perception of the body and work as a human element and social activity inferior to reason and politics, the superiority of intellectual practices over bodily ones, as well as the subjugation of the body to reason and of the people of providing to those of foreseeing, engrave even more deeply the polarity between the body and the soul, coining the place of people in society. Free men, with the aptitude for reason, were destined to command, to domination, to choice; women and slaves, on the other hand, referenced in the corps, would make themselves available to the command of their commanders: "women and slaves belonged to the same category, they were hidden not only because they were the property of others, but because their lives were laborious" (Arendt, 2010, p. 89).

Work, since it is an activity of the body dedicated to the body, would reveal the animality that the human being shares with other animals, making them indistinguishable. What would make man distinguishable and worthy of being seen would be rationality, what would be proper to him and allow him to be free. Animality, inferiority and the corruptibility of matter mark the way of organizing itself in the West, even after the spread of Christianity, which contextualizes the order of nature to the dichotomy between the divine and the earthly, the soul is the eternal: through the soul one arrives at the truth, one knows the order of nature and the divine, reaching God. The body, on the other hand, is what perishes, the transitory, the corruptible, what needs to be tamed, worked on and subjugated.

The duality between body and soul continues to have as a consequence the supremacy of intellectuality and "intellectuals" over the body and the "workers". A model of social organization is sedimented through the perspective of the superiority of people from the foreseeable to the providing, whose dynamics take place in a relationship of command and domination of the former over the latter, characterizing what, in contemporary times, Jessé Souza (2021) calls structural racism.

The element of racism "is always, in all cases, a process of animalization, of reducing the other to an animalized body and, therefore, inferior" (Souza, 2021, p. 77). If the polarity between reason and senses was important in

Greece as a foundation for slavery, civic segregation and hierarchization, it continues to impregnate Christian culture, serving as a justification for domination and subjugation, both in private, political and economic relations, between men and women, between masters, servants and slaves, between royalty, the nobility, the clergy and the people: the intelligentsia revealing the superiority, which even in predestination does not yield.

If Protestantism, at first, sought in work the symbol of revelation, this did not imply the glamorization of bodily labor. The work with visibility was that of the artist, merchant, financier, capitalist, scientist, the one who, with his economic, political or cultural power distinguished himself in society, made himself visible. On the other hand, the labor of women in the domestic sphere, of workers in factories, of apprentices in workshops, of sailors in ships and ports, of slaves in mines and plantations, remained invisible, interchangeable, commensurable, indistinct, perishable, replaceable.

For several centuries, “the subordination of affections and the body by the spirit has been the grammar of all kinds of real learning, on the one hand, and of its use for the purposes of social domination, on the other” (Souza, 2021, p.120). For generations on end, the superiority of the soul distinguishes and inferiorizes, commands and subjugates, separates the worthy from the unworthy. “The classes of privilege are the classes of the spirit, while the working classes are the classes of manual labor and the body,” explains Jessé Souza (2021, p. 121). This implies that, “in the gender dimension, men are perceived as calculating spirits and distanced morality, and women as bodies, affectivity, and affection” (Souza, 2021, p. 121), while, in the racial sphere, whites are associated with the faculties of the spirit and blacks with those of the body (Souza, p. 121).

These associations, by grounding a hierarchical relationship in the various spheres of society, be it family, political, economic or cultural, attack precisely the inferior, undermining their self-esteem and self-respect, which in the terms of Rawls (2005) means recognizing oneself equally worthy in the eyes of the other. The moral dimension by which human dignity is recognized in Western culture has long focused on intellectuality, on the “ability to make fundamental life choices in a reflected and conscious way” (Souza, 2021, p. 60). John Rawls’ (2005) moral faculty of rationality, Dworkin’s (2011) moral duty of authenticity, as well as the primacy of thought in Arendt’s ethics, even though Arendt (2004) dismisses intelligence and culture as necessary conditions for thought, embrace this perspective. But the body, the sensitive, the sensual, is not recognized as having the moral dignity of reflective choice, the possibility of building a valuable, visible yet distinguishable life. To those who are socially limited to the body, ditto.

3.2 Civism

The duality between body and soul, the predominance of the latter, the tradition of superiority and the command of reason over meaning, all of this experienced as a result of the order of nature and the materialization of perfection, coined a sense of justice that characterized civism in Greece.

Justice (Vianna, 2017, p. 5-6) is an essential requirement for the existence of Plato’s ideal city. During the dialogues that make up the work “The Republic”, held by Cephalus, Polemarchus, Adimantus, Glauco, Thrasymachus and Socrates, Plato explains the concept of justice and the other virtues, for which the dichotomy is elementary, as has been emphasized throughout this manuscript: there would be the physical world and the metaphysical, the first apprehensible by the human senses and, therefore, imperfect, since it does not reflect reality in its entirety. The metaphysical world, on the other hand, conformed by ideas, would be eternal and perfect, encompassing the reality of goods in their completeness and universality. From this duality, from the imperfection and incompleteness of the phenomenological world and from the perfection and completeness of ideas, a tradition marked by reason and truth is built.

In Book V, Chapter IV of Plato’s work, there is another interesting dialogue about the individual’s duty to exercise a function consistent with his nature: that is, to realize himself, perfectly, by placing himself in conformity with the order of nature. The Platonic Socrates asks Glauco if it would be possible to deny that women and men are different and, therefore, that each should be imposed a different social function according to their nature. Socrates of “The Republic” then concludes that the differences between men and women would not be reflected, properly, in the social functions attributed to one and the other: “there is no occupation in the administration of the city, my friend, proper to woman, as woman, nor to man, as man” (Plato, 1980, p. 220), despite the fact that the aptitude for government in the city was weaker in women (Plato, 1980, p. 221).

But Plato, unlike Aristotle, allows women to be part of the class of philosophers or guardians, who would take care of the government of the city. Still dealing with the class of rulers, Plato (1980, p. 224) states that “all women will

be common to all men, and none will cohabit in particular with any of them; and in turn the children will be common, and even the parents will not know who their own children are” and vice versa. Moreover, philosophers, in addition to being forbidden to take a woman in marriage for themselves and forbidding her to know about her offspring, it would also be a defense of the ownership of property.

It is dwelling with greater specificity on book V of “The Republic” because it is strongly symbolic of the perception of civism as the duty of greater commitment, since it is a condition for the realization of perfection: to conform to the order of nature. That is why Plato denied the guardians, the rulers of the city, marriage, parenthood, patrimony, because they are commitments distinct from civism and that, at times, compete with the public good for the attention and priority of the ruler.

The ethical question regarding the priority of civism finds a definitive answer in Plato, for whom, regardless of personal happiness, each one should direct himself to the social function for which he demonstrated natural talent: the philosophers, therefore, the government of the city. As a ruler, philosophers should not be allowed marriage, parenthood and patrimonial ownership, since they could distance them from the greater commitment to the public good. This question, in turn, is also the basal matter of the play Antigone, in which different commitments and the inability of the antagonists to abdicate their values, a priori hierarchical, in the experimentation of conflict, trace the fate of tragedy.

3.3 The hierarchy of commitments: the myth of Antigone

Antigone is the daughter of Oedipus and Jocasta. His siblings are Ismene, Eteocles, and Polynices. When Oedipus blinds himself when he discovers that he has killed his own father (Laius) and married his mother, with whom he had four children, Antigone accompanies her father in his exile in Colonus, becoming the light of his eyes. Faced with this tragedy, Creon, Jocasta’s brother, began to reign in Thebes (Sophocles, 1990).

Polynices gathers seven armies and launches himself against Thebes, in order to regain the throne that rightfully belongs to him. Eteocles, in turn, defends the city ruled by his uncle Creon. The two brothers die by each other’s swords. Because of this, Creon publishes an edict in which he forbids the funeral ritual for Polynices, who will remain unburied, serving his body as pasture for birds and dogs. To Eteocles, for having defended the city and died in battle, all honors will be given so that he can then descend into Hades. The edict also determines that whoever transgresses its determinations will have the death penalty as a consequence (Sophocles, 1990).

However, Antigone does not accept her uncle’s edict, as she considers his decision unfair. According to her, this escapes the most expensive law dictated by the gods, which is the right to burial and the rite of passage to Hades. Remaining true to her conscience, Antigone defies Creon’s orders and buries her brother in secret, granting him due honors. She still tries to convince her sister Ismene to help her, who refuses: “Let us not forget that we are women and therefore we will not be able to face only men. In short, we are sent by the most powerful and we can only obey these orders [...]” (Sophocles, 1990, p. 203).

Antigone is brought before Creon and claims to have refused to comply with a law not proclaimed by Zeus:

But Zeus was not the herald of them for me, nor are these laws dictated among men by Justice [...] and it did not seem to me that your determinations had the strength to impose on mortals even the obligation to transgress divine, unwritten, inevitable norms; It is not from today, it is not from yesterday, it is from the most remote times that they have been alive, without anyone being able to say when they appeared. And it would not be because I feared any man, not even the most arrogant, that I would risk being punished by the gods for violating them (Sophocles, 1990, p. 219).

“Two narrowly limited practical worlds”, observes Martha Nussbaum (2009, p. 57): in one, “a singular human value has become the ultimate end; in the other, one ultimate set of duties overshadowed all others.” Notwithstanding the one-sidedness and inflexibility of both, “Antigone demonstrates a deeper understanding of the community than Creon does when she argues that the obligation to bury the dead is a law of custom, which cannot be set aside by a law of a particular ruler” (Nussbaum, 2009, p. 57).

As punishment, the Theban king orders Antigone to be imprisoned on a rock, burying her alive. It turns out that Antigone was engaged to Hemon, Creon’s son, who, upon learning of his arrest, goes to his father to try to dissuade him from his decision, to which he has the following response: “[...] Submission, however, is the salvation of the well-ordered majority. We must therefore support good order, not allowing a woman to beat us” (Sophocles, 1990, p. 230).

Hemon insists that his father's decision offends justice and outrages the gods. Creon, in turn, points out that Antigone's punishment should be maintained out of respect for her power. After that, Hemon goes to visit his fiancée and finds her dead, as a result of suicide by hanging. Continuously, he takes his own life, with a sword blow.

3.4 Antigone: A Present-Day Warning

The tragedy can be perceived as a denunciation of the understanding that the greatest ethical commitment must be to civism, experienced under the paternalism of the men of foreseeing. But Antigone, anchored in custom, confronts Creon, with tragic consequences for all involved. Although it refers to ancient Greece, Antigone brings relevant questions to the present day, which have been lavish in the reverberation of political and discursive extremism, due to which the common axiological basis to safeguard a democracy, that is, mutual respect anchored in the conception that everyone is equally worthy, has been lost.

At the present point, the ancestral understanding that government should be exercised by free men, the men of the foresee, and not by women and slaves, the people of the provide, is brought back into perspective. Civism gains strength in the belief that the great mass of the population would not be able to exercise thought and, therefore, would be incapable of making choices. Not least, Creon warns his son that the well-ordered majority will be saved through submission, and good order cannot be allowed to be overcome by a woman.

The woman, like the slave, would not have the adequate and sufficient rational ability to make choices and political agency, and therefore had to subordinate herself to the free man, endowed with the capacity to exercise reason, which would allow him to reach the reality of things and choose well. The proper functioning of the city, which presupposed its rational government, since it would require knowledge and conformity to reality, would be of interest to all, whether free men, women, children and slaves.

In other words, civism manifested itself as the greatest commitment, as it demanded the subjugation of men of talent, able to command in the face of their knowledge of reality. The subjugation to men of foresight was the guarantee of one's own perfection and that things would conform to the order of nature. The good deed was therefore dependent on perfection, rationality and subjugation. Antigone, to this state of affairs, she contested, when she intended, even if on the basis of customs, to disobey the edict of the ruler, a free man, a being of foresight and, therefore, able to achieve good order for the benefit of all, including the "well-ordered majority".

Such a perspective, explored by Greek philosophy and theater, is still striking to contemporary social organization, in which self-respect and the feeling of dignity are strictly associated with the activities of thought that would enable the person to conform to reality, that is: the good decision, the right action, the ability to perform at one's best. In the order of gender, such a prerogative would fall to man, who is credited with the greatest and best rationality and, therefore, the right decisions, since they are free of affections that would weaken the domain of reason.

On the other hand, the woman, associated with affection, feelings, the sensible and, sometimes, the sensual, would not have sufficient mastery of the senses to decide under good reason and to act, therefore, in an appropriate and correct way. Such perception, in the racial order, as well considered by Jessé Souza (2021), would also reach black: those who would have a natural aptitude for bodily work. The good choices would be proper to the free man, the white man, accustomed to intellectual activities, to thought, to the most relevant subjects, those of the spirit.

Motherhood, when examined in this context, loses the paradox in which it appears, to a lightened perception, shrouded: the fascination that it refers to a biological condition would bring the woman recognition for the body. It so happens that the rapture that surrounds motherhood is more associated with the life that develops in it than with the woman herself. It is true that because of her gestational condition, culture has reserved for her some affective prominence as a mother. Nevertheless, such prominence is of the order of feelings, often referring to an archetype of affections that, although to some extent venerable when associated with motherhood, do little to help the image of women as reasonable and rational beings capable of good decisions: jealousy, partiality, passion, protectionism, immeasurability.

Through this imagery, motherhood further imprisons the woman's reference to corporality: a being who understands herself as affectionately devoted to what she gestates. Under this role, women are reserved the role of supporting actors, sometimes passionately irrational, due to their only biological condition of gestating life: their animality eroding the moral dignity of a being capable of good decisions under the proper use of reason. Furthermore, the social imaginary of the feminine as a quality related to the gestation of life, imprisons women to the biological duty of perpetuating the species, a bodily imperative that makes them available to the greater good of the collectivity.

Passionality, coadjuvation, animality, perpetuation of the species are identities associated with the feminine archetype that has coined the role of women in Western societies: a role of subjugation in the face of moral inaptitude for the activities of the spirit. Contextualizing this consideration, to Antigone and to the ancestral culture, which refers to ancient Greece, of the dichotomy and superiority of reason over the body, an interesting panorama is reached to understand and think about the reduction of female freedom regarding the conception contained in PEC 164/2012 and PL 1920/2024.

4 Legislative reform proposals in Brazil

It is useful to contextualize the debates about PEC n.º. 164/2012 and PL No. 1920/2024 to the myth of Antigone, especially if understood beyond the ethical dilemma between moral principles and legal norms: “a conflict between natural law and positive law, between the divine and the civic order” (Leal, 2022, p. 200). According to Alves (2024, p. 336), Antigone’s interpretation would have to do, above all, with the conception of law and justice, of Law and Morals, addressing issues of a political, religious, moral, and ethical order that involve “faith, feeling, and reason”: this would be the main focus, although, in the present work, civism is highlighted.

In Greek mythology, Antigone was the one who defied the law of men, then dictated by her uncle and king of Thebes, because he considered it unjust. This is because the Greeks have the divine law that the dead should be buried in obedience to a rite of passage, so that they could then be led by the god Hermes to the ferryman Charon, who would take them to Hades (Sophocles, 1990).

But Antigone’s refusal to obey the “civil law” allows for an interesting reflection on the question that is the subject of the present manuscript. As Antigone did in the face of Creon’s edict, it is worth evaluating the limits of the State in the effort to criminalize abortion, in the hypotheses of excuse until then provided for by law, as well as the possibility of attributing to the protection of life from conception, consequences such as the prohibition of the use of certain methods of birth control, like the pill of the other day, as well as the axiological justification to remove the exclusion of illegality in the case of rape or risk to the pregnant woman. More specifically, the reading of Antigone under the clarification of the cultural conditioning factors of the West, manifested in the antagonism between reason and the senses, in the primacy of the former over the latter, as well as in the superiority of the men of reason in relation to the “corporeal” beings dedicated to providing, brings light to the questioning of this problem.

In short: the elaboration, reading and understanding of the legal regime based on conditions that restrict the freedom of women in relation to pregnancy must be critically analyzed, through a warning about historical conditionings. Women cannot be reduced to their animality and corporeality, to the archetype of a person of providing, devoid of a better rationality and the ability to make good decisions: subject, therefore, to the protection of the good in their best interests and in the interests of all. Rather, women must morally recognize their equal aptitude for good rationality, assuring them self-respect, so that they see themselves equally worthy in the eyes of others.

Self-respect, demanding reciprocity (Rawls, 2005), is fundamental to the construction of a democratic society, in which everyone has the same relevance to the State, which must, therefore, treat each and every one with equal respect and consideration (Dworkin, 2000). This axiological basis immanent to democratic public culture means that the State and the government cannot pronounce or act under the assumption of the superiority of a certain model of life, even if anchored in immemorial cultural reasons, which go back to the cradle of Western thought and are entangled by religious meanings that strongly mark social conceptions, cultural, family and personal still experienced contemporaneously.

The prevailing conception, typical of democracy or public culture in contemporary democracies, as Rawls (2006) would say, is that everyone, in the public area to be materialized in the scope of the discourse and action of the State, has the same relevance. This political perspective has its origins in North American democracy and informs the concept of citizenship through the dimension of equal freedom to project, experience and review a conception of life that is one’s own and pertinent to each one. Denying equal freedom would mean hierarchizing the social structure, based on what some people defend as the most important. In the family context, according to Moraes (2013, p. 592), democracy also means “the freedom to decide the course of one’s life and the right to play an equal role in forging a common destiny.”

As everyone is equally worthy, one cannot restrict the area or scope of a person’s activity due to conceptions that others find important and relevant. Obviously, equality of freedoms is still an open concept, demanding different

interpretations and leading to different concrete applications. It is not absolute, so that the area of freedom of one cannot be conditioned or limited by issues related to the collectivity, the public good, sustainability and even the freedom and dignity of the other. But it is essential that the debate on the contraceptive and gestational availability of women be waged, consciously and intentionally, in the context of public culture, under the conception that she is a person equally worthy of any other, therefore, capable of rational and reasonable choices, that is, of good choices.

In an attempt to “equalize” the voices, the Federal Supreme Court, in the records of ADPF 54, which allowed abortion in the case of an anencephalic fetus, understood that in addition to the inviolable right to life, guaranteed by the Federal Constitution, other principles could not be disregarded, such as the right to health, dignity and freedom, in the face of the impossibility of life beyond the mother’s womb.

Through ADPF 54, in reference, the STF launched a new “legal and ethical argument” to this issue (Diniz; Vélez, 2008) by deciding that abortion could not be debated only from the political-public-religious point of view that considers it as a violation of life. When life begins, it is a matter of dissent from the earliest times, with Plato, Aristotle, St. Augustine, and many other philosophers manifesting themselves on it (De Carvalho Xavier, 2022, p. 105). However, it was from Christianity that this issue acquired religious contours and, on the other hand, abortion became the opposition to the inviolable right to life, not least because women did not have any protagonism in discussions of this nature, including in their private sphere.

But the publicization of private points of view, in addition to being indisposed to the basic axiology of a contemporaneously democratic society, which is structured on equanimity, promises social ruptures. Contemporary democracies, which Innerarity calls the “liberal democracy of hatred” (2024, p. 32), have their genesis in individualism, which, paradoxically, instead of strengthening the lines between public and private reason, sustains the invasion of public reason by private reason.

It so happens that the invasion of state discourse by private reason clouds rationality and reasonableness, frays the possibility of dialogue, critical thought and discourse, as well as social commitment to an axiological basis that sustains political and social stability. This state of the art demands, as a powerful antidote – perhaps the only one – the awareness that “contemporary democracies can only become better by fighting the individual tyrant who is unaware of the effects that his behavior has on nature and future generations” (Innerarity, 2024, P. 17), as well as on socio-political-economic stability.

As Innerarity (2024, P. 17) warns, “the current social contract requires a self-limitation of personal freedom”. In short, the great challenge of contemporary democracies is no longer individuality and self-sufficiency, but the configuration of “a subjectivity that deals with how much we have in common” (Innerarity, 2024, P. 17). In matters, therefore, that tend to involve strong subjectivities materialized in morals rooted in the private conscience, one has to practice the exercise of self-limitation in favor of a minimum common axiology, built from what is elementary to democracy: equanimity.

5 Conclusions

In the course of this manuscript, the approach of the tradition of Western thought consisting of the opposition of reason to the senses through the subjugation of the latter to the former and, consequently, of the people of providing to those of foreseeing, confirms the hypothesis of an equivocal narrative context in which, sometimes several, the question of the debate on the restriction of abortion is posed.

This narrative context has as its content the association of woman with providing, the consequence of which consists in her subjugation to man, the being of providing. Such a narrative is inscribed in what Jessé Souza calls structural racism that, having an immemorial cradle in ancient Greek thought, was sustained by different religions, which inherited the dichotomy between reason and senses and the subjugation of the body to reason. As a result, a hierarchical social dynamic was organized, in which people associated with reason, the white/free man, began to have primacy and dominion over those related to the body: women and blacks.

The rescue of Greek philosophy and theater through the opposition of Antigone to the literature of Plato and Aristotle evidences this discursive trait characteristic of the social dynamics of the West, which needs to be counterposed to the content of democracy contemporaneously accepted. For this purpose, with a theoretical framework in the egalitarian liberals, the concept of democracy was adopted based on the equal dignity of all before the State, of which it is characteristic to recognize oneself equally worthy in the eyes of the other.

But Antigone goes beyond evidencing the social hierarchy resulting from the discourse of subjugation of the body to reason, by exposing the potentiality of the tragic through the a priori commitment to the superiority of civic duty, through the assumption that the subjection to people of providing is in the best interest of all, including those who are subjected. Sophocles warns about the socio-political ruptures that the most radical tensions promise. Despite being dated millennia ago, Antigone is current in warning about the social instability resulting from the publicization of private commitments: the antidote consists precisely in investing in a common axiological basis of mutual and reciprocal respect, which is open to an effective dialogue, built through critical listening and speech, which presupposes recognizing oneself equally worthy in the eyes of the other.

The objective of this manuscript, to delimit the appropriate discursive basis for the debates about the restriction of contraceptive and abortive practices, is to warn about the discursive ruptures resulting from the publicization/nationalization of private points of life, which do not find support in the minimum material content that informs contemporary democracies: the equal relevance of all before the State and the government.

The debates on PEC No. 164/2012 and PL No. 1920/2024 cannot, therefore, be based on private and religious morality, which compromise the equal dignity of all as people, which is the essential core of the material conception of democracy. The irreducibility of the tensions tends to the emergence of other “Antigones” that insist on challenging the rule of law of men, the beings of the foresee, especially in cases of pregnancies resulting from rape, when the mother’s life is at risk or in the case of pregnancy of an anencephalic fetus.

It is necessary to equate the temperance, courage and wisdom immanent to the Platonic ideal of justice, through the nuance of the contemporary democratic axiology of equal respect, relevance and consideration, when debating the interruption of pregnancy.

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