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DOSSIÊ: INTERSECCIONALIDADES, DIREITOS E POLÍTICAS

Can the criminalization of reproductive rights be a nationalist project? An analysis of the 5069/2013 bill in the Brazilian National Congress

A criminalização dos direitos reprodutivos pode ser um projeto nacionalista? Uma análise do projeto de lei 5069/2013 no Congresso Nacional Brasileiro

¿Puede la criminalización de los derechos reproductivos ser un proyecto nacionalista? Un análisis del proyecto de ley 5069/2013 en el Congreso Nacional de Brasil

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Abstract: The purpose of this paper is to investigate a federal bill pending analysis in the Brazilian Federal Congress – the 5069/2013 bill – which seeks to criminalize further women's capacity to control issues relating to their sexual health in the country. By analyzing this bill, as well as the political discourses surrounding its proposal and the current arguments for its approval, I seek to highlight the social and political roles attributed by it to Brazilian women, focusing on the implications of the adoption of the nationalist discourse of the bill in official state discourse, should it become law, especially with regards to what the nationalism literature refers to as the "biological and cultural reproduction of the nation," as well as the impact that these new definitions have on Brazilian women's citizenship.

Keywords: Abortion rights. Nationalism. Feminism. 5069/2013 bill.

Resumo: O objetivo deste artigo é investigar um projeto de lei federal em tramitação no Congresso Federal – o PL 5069/2013 – que visa criminalizar ainda mais a capacidade das mulheres de controlar as questões relativas à sua saúde sexual no Brasil. Ao analisar este projeto de lei, bem como os discursos políticos em torno de sua proposta e os atuais argumentos para sua aprovação, procuro destacar os papéis sociais e políticos atribuídos por ele às mulheres brasileiras, enfocando as implicações da adoção do discurso nacionalista de o projeto de lei no discurso oficial do Estado, caso se transforme em lei, principalmente no que se refere ao que a literatura nacionalista denomina de "reprodução biológica e cultural da nação", bem como ao impacto que essas novas definições têm sobre a cidadania das mulheres brasileiras.

Palavras-chave: Direito ao aborto. Nacionalismo. Feminismo. Projeto de lei 5069/2013.

Resumen: El propósito de este trabajo es investigar un proyecto de ley federal pendiente de análisis en el Congreso Federal de Brasil, el proyecto de ley 5069/2013, que busca criminalizar aún más la capacidad de las mujeres para controlar los temas relacionados con su salud sexual en el país. Al analizar este proyecto de ley, así como los discursos políticos en torno a su propuesta y los argumentos actuales para su aprobación, busco resaltar los roles sociales y políticos que atribuye a las mujeres brasileñas, centrándome en las implicaciones de la adopción del discurso nacionalista de Brasil. el proyecto de ley en el discurso oficial del Estado, en caso de que se convierta en ley, especialmente en lo que la literatura nacionalista llama de la "reproducción biológica y cultural de la nación", así como el impacto que estas nuevas definiciones tienen en la ciudadanía de las mujeres brasileñas.

Palabras-clave: Derecho al aborto. Nacionalismo. Feminismo. Proyecto de ley 5069/2013.



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Introduction: A conservative wave in contemporary Brazilian politics?

In this paper, I investigate a federal bill pending analysis in the Brazilian Federal Congress – the 5069/2013 bill – which seeks to further criminalize women's capacity to control issues relating to their sexual health. Adopting a feminist approach to the study of this bill, as well as the political discourses surrounding its proposal and the current arguments for its approval, I attempt to highlight the social and political roles attributed by it to Brazilian women, focusing on the implications of the adoption of the nationalist discourse of the bill in official state discourse, should it become law, as well as the impact that these new definitions have on Brazilian women's citizenship.

A common misconception regarding contemporary Brazilian politics is that the country has been going through a "conservative wave" since President Dilma Rousseff's impeachment in 2016; the origin of such misdiagnose comes from a short-term observation of the core dynamics of Brazilian politics in the first two decades of the twenty-first century: during the eleven years comprised between 2003 and 2014, the Workers' Party ("Partido dos Trabalhadores – PT"), the most consolidated left-wing party in the country since its re-democratization, held control of the executive branch of the federal government, and in that capacity, it deepened and developed a series of progressive social policies. Most of these policies were related to market access of marginalized populations. However, more progressive transformations also accompanied such changes regarding the social and political inclusion of minorities, such as the implementation of affirmative action initiatives in the access to public institutions. As a response to these policies, and at the heels of the economic crisis of 2014, traditional and conservative sectors of Brazilian politics, at the State level, articulated a strong rejoinder which has been characterized as a "conservative wave" that hijacked the country.

The characterization of this movement as a wave could not be farther from the truth. While it is a fact that the country has become abruptly

more hostile to demands for equality coming from minority groups, and that Bolsonaro's government has thwarted several of the initiatives regarding social and political inclusion, it seems inaccurate to classify this as a conservative wave – meaning that this is not a sudden and momentary reaction. Brazil has always been a deeply conservative country. If anything, what the country experienced during the two first decades of the twenty-first century was indeed a progressive wave, one that was quickly defeated by the long-established conservative movement in Brazil.

In this context, examining the recent history of the battle over abortion rights in the country can represent a fascinating window through which to understand contemporary Brazilian politics, in the sense that this particular strife, since 2013, seems to capture the very core of the recent changes the country has been going through it extrapolates the domain of moral discussions, constituting, in itself, is scrutiny on what kind of country is, exactly, Brazil, and what is the meaning attached to Brazilian citizenship.

A brief overview of abortion rights in Brazil

Abortion in Brazil is, historically, a sensitive and controversial issue, be it in terms of public opinion, public policy, or the lived experience of women in the country. The legislation regulating this practice dates from 1940 and states that provoking or allowing someone to provoke an abortion is a crime punishable by reclusion, with punishment varying from one (1) to ten years (10) of incarceration. The only exceptions for this rule are abortions provoked by a physician in cases where the pregnancy poses a risk to the woman's life or in pregnancy resulting from rape, the so-called "abortion on compassionate grounds" (Htun 200, 16). In 2012, the Brazilian Supreme Court ruled in favor of allowing abortions in cases of anencephalic fetuses, a procedure they labeled "early delivery" with therapeutic purposes.

Despite such draconian legislation regarding abortion rights in Brazil, it is common to say that abortions are already permitted if you have the money to pay for them. Often, middle-class and

upper-class individuals will access these services in private clinics, hidden from the courts' eyes, even if publicly they espouse conservative opinions on the issue. Shepard (2000) names these practices a "double discourse," meaning "the art of espousing traditional and repressive sociocultural norms publicly, while ignoring-or even participating in-the widespread flouting of these norms in private." As Shepard (2000) herself notes, this double discourse has one peculiar caveat: it is, to a large extent, maintained by middle and upper-class individuals that, when in need of abortion services, have the means to access them. Therefore, a focus on reproductive rights is also a valuable access route for an intersectional analysis of citizenship and national belonging in the country: following Collins (1998), it exposes the Brazilian State's dynamics of exclusion, hierarchy and contention of its citizenry through the lines of gender, race and class.

One of the leading physicians dedicated to Public Health in Brazil, Drauzio Varella, has stated: "Abortion is already allowed in Brazil. You only need money to have the procedure under reasonable conditions. Everything else is prevarication. Everything else is hypocrisy".² Data from 2014 estimates that the number of abortions in Brazil in 2013 varied between 685.334 to 856.668, while official state statistics report only 1.523 legal abortions occurring in the country for the same period. Evaluations from 2004 up to 2013 estimate 7,5 and 9,3 million abortions in the country for the ten-year range.³ Moreover, the practice is ranked the fifth leading cause of maternal death in the country, with a total of 1.627 women dying from complications relating to the practice (performed either legally or illegally) from 1996 to 2014.⁴ Despite the prohibition and the number of procedures conducted in the

country, only 33 women were arrested in 2014 for undergoing an abortion.⁵ More recent data from the 2016 National Research on Abortion (Diniz, Medeiros and Madeiro 2017) estimates 503.000 clandestine abortions in the country for 2016.

Nevertheless, even in the face of these numbers, public support for changes in the Brazilian abortion law is, at best, diffident. A public opinion poll conducted in 2010 revealed a strong rejection among the population regarding more progressive changes in the legislation: 82% of Brazilians believe that the current legislation on abortion should not be changed, while only 14% said it should be decriminalized and 4% were not confident of their position on the matter.⁶ The most recent poll conducted in the country regarding these issues is from 2018. The results point to the fact that the majority of Brazilian over 18 years old is still favorable of the criminalization of abortion, but that the overall number has receded: the rate of Brazilians who support the incarceration of women who interrupts a pregnancy fell from 64% in 2016 to 57% in 2018 (the lowest level for this index since 2007, when it was 43%). The rate of Brazilians who declared themselves against the criminalization of abortion increased from 23% to 36% in the same period.

Additionally, the poll also shows the persistence of support for the idea of abortion on "compassionate grounds." Commenting on the status quo of Brazilian legislation, most Brazilian adults (61%) favored allowing the interruption of pregnancy in the cases in which it endangers the life of the mother, while a third (32%) said they were against abortion in this situation. In pregnancy cases resulting from rape, 53% declared to be favorable to abortion, with 42% against it.⁷

² Senra, Ricardo. 2016. 'Aborto já é livre no Brasil. Proibir é punir quem não tem dinheiro', diz Drauzio Varella. *BBC News Brasil*, 02 February 2016. Accessed 26 March 2021, https://www.bbc.com/portuguese/noticias/2016/02/160201_drauzio_aborto_rs.

³ Castro, Carolina, Dandara Tinoco and Vera Araújo. 2014. Tabu nas campanhas eleitorais, aborto é feito por 850 mil mulheres a cada ano. *O Globo*, 19 September 2014. Accessed 26 March 2021, <https://oglobo.globo.com/brasil/tabu-nas-campanhas-eleitorais-aborto-feito-por-850-mil-mulheres-cada-ano-13981968>.

⁴ Ministério da Saúde. Governo do Brasil. *Datasus. Tecnologia da informação a serviço do SUS*. <http://tabnet.datasus.gov.br/cgi/tabcgi.exe?sim/cnv/mat10uf.def>.

⁵ Maciel, Edgar. 2014. 33 mulheres foram presas por aborto em 2014. *Exame* 22 December 2014. Accessed 26 March 2021, <https://exame.abril.com.br/brasil/33-mulheres-foram-presas-por-aborto-em-2014>.

⁶ Pichonelli, Matheus. 2010. População rejeita mudanças na lei sobre aborto, gays e drogas. *Último Segundo*, 05 December 2010. Accessed 26 March 2021, <https://ultimosegundo.ig.com.br/politica/populacao-rejeita-mudancas-na-lei-sobre-aborto-gays-e-drogas/n1237848797384.html>.

⁷ Datafolha. 2017. Temas Polêmicos - PO 813942. *Datafolha*, 30 November 2017. Accessed 26 March 2021, <http://media.folha.uol.com.br/datafolha/2018/01/08/b29e802ac9aa4689aa7d66fbc24a52e045d6de.pdf>.

The 5069 bill in the Brazilian National Congress – meaning and significance

Considering the scenario described above, it is not surprising that the most recent attempt to change legislation regarding abortion in the country aims to further criminalize this procedure in Brazil. The 5069/2013 bill, which has been under discussion in the Brazilian National Congress since 2013, proposes to amend the current legislation, by making it even stricter and dour, primarily because of the grand strategy it uses to discuss the issue of reproductive rights in Brazil.

First, the bill advances a proposal to amend the 1940 penal code by specifying that the advertisement of “abortive means” or the “incentive to abortion” should also be prohibited and punishable by incarceration. The proposed amendment is the following:

Advertisement of abortive means or incentive to abortion

Art. 127-A. Advertising processes, substances, or objects that could provoke a miscarriage, the induction or instigation of pregnant women on the usage of abortive substances or objects, the instruction or advising of pregnant women on the practice of abortion, or the provisioning of any assistance for this practice, **even under the guise of harm reduction**:

Penalty: imprisonment of four to eight years.

§ 1. If the agent is an employee of the public health system, or exercises the medical profession, or is a pharmacist or a nurse:

Penalty: imprisonment of five to ten years.

2. The penalties increase to a third if the pregnant woman is a minor who was induced or incited in the use of abortifacient substances or objects or has received instructions, guidance, or assistance to the practice of abortion.

[...]

III - referral of the victim after the service, referred to in article 1, for the recording of the case in the nearest specialized police station and, in the absence of such station, the nearest police station in order to collect information and evidence that might be useful to identify the offender and evidence of sexual violence;

IV - non-abortive procedure or medication with early effectiveness to prevent pregnancy resulting from rape;

[...]

§ 4 No health professional or institution, in no case, may be required to advise, prescribe, or administer medication or procedure they **consider** abortive.⁸

While the proposed amendment to the original text seems, at first, superfluous and even redundant, given how strict the original legislation is, a closer analysis of its text reveals the severe implications that would follow from the adoption of this bill, avowing a dire perspective for women's rights and health in Brazil. One should note the subtle qualification that no abortive method should be advertised to a pregnant woman even under the guise of harm reduction. While not explicit, the discussion surrounding the bill reveals that once approved, the amended legislation would severely impact reproductive rights in Brazil in ways that are already accepted by the majority of the country's population (as seen on the polls mentioned in the previous section of the paper), or that regard the safety of sexual assault victims, such as the access to the morning-after pill, or pregnancy prophylaxis in cases of rape – the 5069/2013 bill would slash the possibility of abortion “on compassionate grounds” in the cases of pregnancy resulting from rape.

Here, I must highlight the first element of the heterodox strategy adopted by this proposal: the 5069/2013 bill is not questioning or seeking to completely change the current framing of abortion in the Brazilian penal code, which would necessarily provoke a nationwide discussion of reproductive rights in the country. It is, in fact, only proposing to make the current legislation more specific in its application, ensuring its effectiveness. More so, it is implicitly addressing one specific piece of legislation sanctioned by President Rousseff in August of 2013, law n° 12.845,⁹ which determined that all hospitals and health centers that partici-

⁸ Translated from Portuguese to English by the author, emphases are mine.

⁹ Brasil.2013. *Presidência da República*. Casa Civil. Subchefia para assuntos jurídicos. Lei n° 12.845, de 1° de agosto de 2013. Dispõe sobre o atendimento obrigatório e integral de pessoas em situação de violência sexual.

pate in the Brazilian Unified Health System must provide immediate access to the prophylaxis for both sexually transmitted diseases (STDs) and pregnancy for victims of sexual violence. In doing this, the bill explores a widespread commonsensical notion in Brazil that law n° 12.845 was too lenient in its provisions because it accepted the word of the victim as enough evidence for the access to prophylaxis, and that therefore it allowed for "frauds," that is, women who were not assaulted but found themselves pregnant, could claim that they were victims of sexual violence to access abortion services legally.

Second, the bill suggests that to receive proper medical assistance, victims of sexual assault needs first to undergo forensic analysis to confirm the assault and to subsequently report the crime to the police, all of this before they receive proper medical care. Here, it is essential to highlight that due to several societal issues – including the shame of admitting oneself as a victim of sexual assault – it is estimated that in Brazil, 90% of rape crimes go unreported and that most women only seek health care after they discover a pregnancy resulting from rape. In such cases, if the 5069/2013 bill were to be approved, these women would be denied access to safe and legal abortions.¹⁰

Third, the 5069/2013 bill also allows health professionals, hospitals, and health centers to withhold treatment that they consider abortive. This statement implies that if doctors believe the pill or the intrauterine device (IUD) to be an abortive method, they are under no obligation to provide it to the patient. Because of the intentionally vague language of the bill in defining what is an abortive method, leaving this definition to the doctors that prescribe contraceptives to Brazilian women, it may further hamper the already precarious access to contraceptive methods such as the pill or the IUD in the country, since both could be considered, in some interpretations, as abortive resources.

Thus, the first pillar of the grand strategy advanced by the 5069/2013 bill to further restrict

reproductive rights in Brazil is a double movement in revisiting and rewriting the original law from 1940 to make it more specific in the treatment of women who seek the already scarce legal abortion care in Brazil, while simultaneously allowing doctors, hospitals and health centers to make up their definitions of what are contraceptive methods and what are abortive methods. The result of this amendment, should it be approved, is a vertiginous retrenchment of Brazilian women's autonomy, transferring any power they might have had to the hands of police forces, doctors, and health institutions.

Before moving to the analysis of the specifics of the bill, it is crucial to explore the political actors involved in the construction and proposition of the legislative text. The 5069/2013 bill was composed by a group of twelve congressmen from different political parties led by Eduardo Cunha.¹¹ A brief examination of the composition of this group reveals the pluripartidary and post-ideological strategy which has come to characterize contemporary Brazilian politics. Aligned with Cunha, who was, by the time of the proposition of the bill, affiliated with PMDB (the "Party of the Brazilian Democratic Movement," a traditional party of center-politics in the country), the group gathered representatives situated in supposed different positions of the ideological spectrum in Brazil, encompassing a total of eleven different parties. Among the sponsors of the bill, we find representatives from right-wing parties such as congressman José Linhares from the Progressive Party ("Partido Progressista – PP"), congressman Lincoln Portela from the Party of the Republic ("Partido da República – PR"), congressman Aureo from the Brazilian Labor Renewal Party ("Partido da Renovação Trabalhista Brasileiro – PRTB"); from center parties such as congressman Andre Moura, from the Christian Social Party ("Partido Social Cristão – PSC"), congressman Roberto de Lucena, from the Green Party ("Partido Verde – PV"); congressman João Dado, from the Brazilian Labor Party ("Partido Trabalhista Brasileiro – PTB");

¹⁰ Bendinelli, Talita. 2015. O que o PL 5069 diz (e não diz) sobre a pílula do dia seguinte: tire dúvidas. *El País*, 13 November 2015. Accessed 26 March 2021. https://brasil.elepaís.com/brasil/2015/11/12/politica/1447357721_656693.html

¹¹ Cunha, Eduardo. 2013. Projeto de Lei n° 5069/2013. Brasília.

congressman Marco Rogério, from the Democratic Labor Party ("Partido Democrático Trabalhista – PDT"); congressman João Campos, from the Brazilian Social Democracy Party ("Partido da Social Democracia Brasileira – PSDB"); congressman Isaias Silvestre, from the Brazilian Socialist Party ("Partido Socialista Brasileiro – PSB"); and finally congressman Father Ton, from the Worker's Party ("Partido dos Trabalhadores – PT").

The most remarkable characteristic of the group of authors involved in the composition and proposition of the 5069/2013 bill is its stated ideological diversity – the group does not focus on a single political orientation. Instead, it could be considered plural within the contemporary context of the country. If this composition seems strange or unusual at first, it is essential to highlight that, in a conservative country such as Brazil, reproductive health issues can be understood as having a transversal appeal to the electorate, thus surpassing more traditional ideological divisions. It is also important to note that the Roman Catholic Church and Neo-Pentecostal churches have been an important influence for both left and right-leaning political parties in Brazil. Notwithstanding the ambidextrous appeal of a conservative approach to reproductive rights, in this research, I intend to stress that beyond appealing to the social conservatism of Brazilian public opinion,¹² the 5069/2013 bill reinforces it with another unanimity among the Brazilian electorate: nationalism, which, in this context, is denoted through the appeal to protect the nation from imperialistic advances from foreign powers. This peculiarity – we could call it an innovation in the debates regarding women's rights in Brazil – will be explored in detail in the next section of this text.

In the name of... not God, but nation

The second pillar of the strategy of the 5069/2013 bill refers to its justification, and it is the most interesting part of the proposed text. Curiously enough, although the bill is sponsored mainly by the so-called neo-Pentecostal group

within the Brazilian House of Representatives, led by Eduardo Cunha, and notwithstanding the influence that the Roman Catholic Church has had in the definition of this matters in Brazil (Htun 2003, 143), its rationale does not rely on the beaten path of religious arguments that are usually listed and recited against the decriminalization of reproductive rights. The justification for the 5069/2013 bill is very innovative in the discussions regarding reproductive rights in the country because it shuns the traditional arguments employed in this debate. In one of the smartest moves regarding the discussion of reproductive rights in Brazil, the 5069/2013 bill replaces this traditional argument against reproductive rights with nationalistic rhetoric. Surprisingly, at least for Brazilian standards, the proposed legislation is supported by a nationalistic and anti-imperialist discourse that specifies a very particular role for Brazilian women within the country's national project – the role of reproducers of the nation.

The 5069/2013 bill advances an understanding of the decriminalization of reproductive rights in Brazil as a threat to the sovereignty of the survival of the Brazilian nation. The arguments presented in the text of the bill are dreadfully close to Yuval-Davis'(1997, 22) analysis of the interactions between women and nation in contemporary politics:

[...] often the pressures on women to have or not to have children relate to them not as individuals, workers, and/or wives but as members of specific national collectivities. According to different national projects, under specific historical circumstances, some or all women of childbearing age groups would be called on, sometimes bribed, and sometimes even forced, to have more, or fewer, children. The three main discourses [...] which are applied in these cases are the 'people as power' discourse, [...] the Malthusian discourse, [...], and the eugenicist discourse.

The analysis of the proposed text of the bill points towards two specific reasons for the further restriction of reproductive rights in Brazil: on the one hand, we have the "people as power" rhetoric, in which women are key for the maintenance

¹² As explored in the previous section of this text.

of a nation's population and to the possibility of expansion of the nation. On the other hand, the restriction of reproductive rights in Brazil also stands as resistance against what the bill's authors identify as a neo-Malthusian enterprise led by the United States of America to control and weaken underdeveloped nations in Latin America, Africa, and Asia.

Legalizing abortion has been imposed on the world by international organizations inspired by a neo-Malthusian ideology of population control and funded by U.S. foundations linked to super capitalist interests.

[...]

The world population control plan executed by Usaid during the 1970s covered the encouragement of abortions in all countries considered underdeveloped, even in those in which domestic laws prohibited such practice.

[...]

In 1974, the Rockefeller organizations' direction, together with sociologists from the Ford Foundation, formulated a new tactic in controlling the world's population. The means to reduce population growth, among which was abortion, would be presented in the perspective of women's emancipation and required no longer by demography experts but by feminist movements organized in international networks of NGOs under the label of "sexual and reproductive rights."

In this sense, the significant foundations also deceived the feminists, who have been given this dirty game, thinking that those entities were concerned about women's status.

The tactics of sexual and reproductive rights were attached, in recent times, to the one of harm reduction to circumvent the illegality of abortion. Harm reduction is understood as a set of measures designed to mitigate the risk of a problem that supposedly cannot be overcome or decreased. However, on behalf of harm reduction, several procedures that are themselves criminal or harmful to health are already being suggested.

[...]

Of all the facts described in this reasoning, one can draw three conclusions:

a) The influential international and super capitalist organizations, interested in a neo-

-Malthusian policy of population control, do not hesitate to encourage illegal abortion to achieve their goals;

b) since the 1970s, the means for the control and reduction of the population are now presented in a feminist garb, under the paradigm called "sexual and reproductive rights";

c) harm reduction has all the conditions to become the new tactics to foster illegal abortions.

Given these findings, we can see that the Brazilian judicial system is ill-equipped to face such an international offensive, which contradicts the wishes of most of the Brazilian people, who repudiate the practice of abortion, as verified by various opinion polls. It is also a matter of ensuring maximum effectiveness of the constitutional norms, which set down the inviolability of the right to life. It is, therefore, urgent a legislative reform to prevent the outbreak of a severe public health problem.¹³

Despite the conspiratorial and outlandish tone of the text, it presents one notable characteristic that deserves attention because it may prove itself a winning strategy: by abandoning religious rhetoric and adopting a nationalistic and anti-imperialist discourse, the 5069/2013 bill manages to bridge a traditional gap between right and left-wing politicians in Brazil, mainly because the language used in the composition of the bill (although Eduardo Cunha, a former right-wing congressman, sponsored it) sounds very familiar to the Brazilian left. This realization is disconcerting because, at least in Brazil, and especially in the current political moment of the country, a nationalistic discourse is less divisive, and in a sense, appeals to a broader spectrum of political subjects. In other words, by making the transition from an overtly religious discourse to a positively nationalistic one, the bill's proposal becomes very auspicious and convincing for most Brazilian politicians, significantly increasing its chance of success. Evidence of this argument is the political heterogeneity of the group of authors that sponsor the 5069/2013, as discussed in the previous section.

In this sense, I would like to propose an understanding of the 5069/2013 bill as more than another unfortunate chapter on the discussion

¹³ Translated from Portuguese to English by the author.

of reproductive rights in Brazil, but also as one of the first recorded instances of the advancement of a specific kind of nationalistic discourse in the country, one that is characterized by the reclaiming and the reaffirmation of profoundly traditional and conservative values within Brazilian society. It is also the type of discourse that has paved the way for several of the country's downturns since 2013. By enforcing the notion that Brazilian women carry a particular role within the realm of domestic politics of the country, that is, the biological reproducers of the nation, the 5069/2013 bill not only redefines the political arena for women in Brazil: it also recasts a gendered hierarchy that impacts other minorities, such as the LGBTQIA+ population of the country. As Nussbaum (1999,15) argues "defenders of the hierarchical nuclear family rightly see women's autonomy, and the feminism that supports it, as a threat to that [traditional hierarchical] structure." Nevertheless, the perception of such a threat is not restricted only to the rights and the autonomy of women: it also targets LGBTQIA+ groups in this movement.¹⁴

Therefore, one should see the main potential effect of the 5069/2013 bill as the curtailment of women's citizenship rights, especially regarding their autonomy and privacy. As Nossif (2007, 62-63) explains:

Restrictive abortion laws [...] are also shaped by traditional attitudes about women, their roles as wives and mothers, which reveal two interrelated assumptions about them. The first is that they are incompetent to make decisions and are unaccountable for their actions. The second is that once a woman is pregnant, her citizenship can be abridged, and her rights to privacy and equality shared with her physician, the State, and the fetus she is supporting. She is a patient and a mother first and an individual with constitutional rights second.

As it stands, the 5069/2013 bill proposes a reimagining of the Brazilian nation, one that abandons previous efforts at inclusion (perfectly translated in one of the slogans for President Lula's

mandate: "Brazil, a country for all"), replacing it with a vision of hierarchy and deference to traditional values (also mirrored in the slogan for president Bolsonaro's government "Brazil: beloved homeland"). This process of reshaping and recomposing the nation, conducted mainly by the reinforcement of traditional social roles, furthers dynamics of discrimination in the country, which are cast through the lines of gender, race, and class, mostly. As Collins (2001) reminds us, these practices of subordination, containment, and exclusion create different classes of citizens. While the gendered consequences of the 5069/2013 bill are clear, we should not turn a blind eye to issues of race and class in the analysis of the nation-building process in Brazil. Once approved this bill would work to further hierarchize the Brazilian citizenry, producing consequences to the composition of our society that extrapolate the immediate matter of reproductive rights.

Finally, it is worth mentioning that the argument advanced in this bill brings one other innovation regarding the Brazilian national identity's political discussion. In a country where historically, the discussion of the nation centers on race issues (such as the myth of racial democracy), this bill is one of the few documents that highlight how conceptions of gender roles are also deeply ingrained in the Brazilian national imaginary. Unfortunately, these are still images of exclusion. An intersectional approach, here, allows us to move beyond static analysis that center in one single category toward more dynamic interpretations of nation-building processes.

Past continuous? The persistence of regressive politics in Brazil

This paper began by posing one specific question: Can the criminalization of reproductive rights be a nationalist project? This question was, primarily, a rhetorical one – by now, it is well established in the literature on the theme – mostly

¹⁴ Thus, it is not surprising to realize that the 5069 bill is also accompanied but two other different but related bills: the proposition for a new "Family Statute" (the 6583/2013 bill), which seeks to redefine what is understood legally as a family in Brazil (and the proposal here is that only a man and women who are legally married and that have borne children should be considered a family); and the "School without Party" proposition (the 867/2015 bill), which seeks to criminalize any discussion in schools regarding gender issues.

the feminist approach to the study of national identities (Collins 1998, 2001; Nossif 2007; Vogel 1991; Yuval-Davis 1997, 2012) – that there is a strong relationship between gender and nation, and, more specifically, between women and nation, in which women are, time and again, cast as the biological, the cultural and the symbolical reproducers of the nations (Yuval-Davis 1997). Therefore, the expansion and consolidation of reproductive rights – especially abortion rights – is generally understood as a threat to nationalist projects since it detracts from this power of the nation's biological reproduction.

In this sense, the 5069/2013 bill fits very well within the framework of feminist literature on nationalism, configuring a textbook example of the argument advanced by several authors (Yuval-Davis 1997; Mosse 1985; Stevens 1999). What is abnormal in this piece of legislation is its fit within Brazil's conventional discussion regarding abortion rights and the country's national identity. Traditionally, the debate surrounding abortion rights in Brazil has been wrapped in religious and metaphysical arguments, an obvious consequence of the Roman Catholic Church's heavy influence in Brazilian society. Thus, the fact that a conservative, right-wing politician with a neo-Pentecostal base would avoid such reasoning on a bill designed further to restrict the access of Brazilian women to reproductive rights is, at best, curious, and at worst, very Machiavellian. As I have tried to highlight, by swapping the religious rationale against abortion with a nationalistic one, the bill mobilizes political support across ideological lines, increasing its chance of success.

Regarding the Brazilian national identity, the content of the bill is relatively scarce. It does not postulate or delimits any criteria for belonging to this nation. Nonetheless, it does perform one significant change: it highlights sexual and gender-differentiated roles within the Brazilian nation. This change constitutes an interesting turning point on the regular discussions on national identity in Brazil, which have traditionally focused on racial issues. In doing so, it unintentionally provokes an intersectional discussion on

the status of women in Brazil: the idea, translated by Varella's statement quoted at the beginning of this paper, that the criminalization of abortion rights in Brazil serves the single purpose of further marginalizing poor and non-white women in the country: they are the ones who are left outside, with no alternative and no autonomy. In this sense, the 5069/2013 bill works as a highlighter of what I have been calling "the internal borders of the Brazilian nation," that is, the faulty but not so invisible lines that hierarchize and segregate our citizenry in different echelons, following differences on race, gender, and class, as well as their different intersections.

The 5069/2013 bill has not been approved by the Brazilian legislative yet. Regardless of its future – the last legislative action regarding the bill was its approval by the Brazilian House of Representatives Committee on the Constitution, Justice, and Citizenship in October of 2015. Whether it will become a law or not, the bill already stands as an essential indicator of the recent changes that have ambushed contemporary Brazilian politics: it is perhaps one of the first acts to signalize, back in 2013, the conservative response against the three consecutive presidential mandates held by the Workers' Party. When we analyze the last five years of Brazilian politics – from the impeachment of President Rousseff to the election of president Bolsonaro – under these lenses, it becomes gradually apparent that Bolsonaro was not a fluke, but the logical political result of social and cultural changes that have been regaining strength in Brazil since the beginning of the current decade.

Finally, it is essential to highlight that, even though the 5069/2013 bill is still under discussion in the Brazilian House of Representatives, the attack on reproductive rights in Brazil continues its course: an interesting and relatively recent example of the issues discussed throughout this paper happened on the 24th of July 2019. Fernando Holiday, a city councilor from the city of São Paulo, proposed a new bill at the City Council (the 352/2019 bill), advancing that the state should forcefully commit women with "propensions" to abortion into psy-

chiatric care.¹⁵ Despite this proposition's absolute illegality, it is yet another example of how the conservative movement in Brazil, which is present across party lines in the country, has been articulating and weaponizing the discussion on reproductive rights to rally their base to polarize further and publicize these debates in the country. This approach is proving to be a winning strategy for these conservative, right-wing groups who are currently dominating Brazilian politics, one that the opposition is still struggling to retort.

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¹⁵ Ghelfi, Renato. 2016. Holiday propõe internação psiquiátrica para grávidas com 'propensão' ao aborto ilegal. *O Estado de São Paulo*, 24 June 2016. Accessed 26 March 2021. <https://sao-paulo.estadao.com.br/noticias/geral/holiday-propoe-internacao-psiquiatrica-para-gravidas-com-propensao-ao-aborto-ilegal,70002884576>.