

## **Whose opinion counts? A case of forced sterilization in Brazil**

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**Abstract:** In 2017, the prosecutor of Mococa, Brazil, filed a request to have Ms. Janaina Quirino sterilized because she was impoverished, drug-dependent and already had five children who she could not care for. Based on those arguments, the judge granted the request and in February 2018 Ms. Quirino was compulsorily sterilized. Ms. Quirino never met with the prosecutor and was never brought before the judge. She was too impoverished, too black, too drug-dependent, too woman for her opinion to count. In this essay, I use the Epistemologies of the South framework to analyze whose opinion counts when deciding on the right to one's body and to search for alternatives.

**Keywords:** forced sterilization; abyssal line; abyssal thinking; Epistemologies of the South.

### **Introduction**

In May 2017, the prosecutor of Mococa, a small town in São Paulo, Brazil, filed an urgent motion to have Ms. Janaina Quirino sterilized, even if against her will (Tribunal de Justiça de São Paulo n.d.:Prosecutor p. 6). He argued that she was impoverished, drug-dependent and already had five children that she could not provide for. After some motions, statements by the social workers and medical staff and objections by the Municipality of Mococa, the judge ordered that Ms. Quirino be compulsorily sterilized. Throughout the case, the prosecutor never met with or interviewed Ms. Quirino and the judge never called Ms. Quirino to inquire whether she wanted to be sterilized.

In this essay, I analyze Ms. Quirino's case in light of Santos' Epistemologies of the South framework. I first review the legal case including the motions by the prosecutor, the Municipality and the judge's decisions. I then question who decided over Ms. Quirino's body and why Ms. Quirino's opinion did not count. Lastly, I apply the Epistemologies of the South framework in search of alternatives to abyssal thinking.

### **The Judiciary System Forcibly Sterilized Janaina Quirino**

On May 29, 2017, Mr. Frederico Barruffini, the prosecutor of Mococa, filed an urgent motion requesting that Ms. Quirino be sterilized. In the motion, he argued that Ms. Quirino was impoverished, drug-dependent and already had five children who she could not care for.

Mr. Barruffini indicated that because of Ms. Quirino's condition, the healthcare professionals had recommended sterilization as the contraceptive method. In his motion, he further indicated that, at times, Ms. Quirino expressed her wish to undergo sterilization and at times she expressed her disinterest by not attending the medical appointments (Tribunal de Justiça de São Paulo n.d.:Prosecutor p. 4). He argued that Ms. Quirino's lifestyle can lead to "irresponsible and unplanned growth of her offspring" and stated that because of her condition, Ms. Quirino "*does not demonstrate any discernment to evaluate the consequences of a gestation*" (Tribunal de Justiça de São Paulo n.d.:Prosecutor p. 4-5). He concluded by stating that there was no other alternative other than granting the motion to compel the Municipality to perform, and cover the costs of, the tubal ligation of Ms. Quirino, *even if such procedure is conducted against her will* (Tribunal de Justiça de São Paulo n.d.:Prosecutor p. 6).

The judge, Mr. Djalma Moreira Gomes Júnior, ordered that a psychological evaluation be performed to determine whether the defendant, Ms. Quirino, had an interest in the process of sterilization (Tribunal de Justiça de São Paulo n.d.:Judge p. 19). In the psychological report, the social worker opined in favor of Ms. Quirino's sterilization based on the following reasons: Ms. Quirino's prior attempts to use contraceptives, the number of children that she has, her "complex living situation that would not allow her to care for another baby", and her drug-dependency (Tribunal de Justiça de São Paulo n.d.:Psychological Evaluation p. 27).

On June 27, 2017, the judge granted the request and ordered the Municipality to compulsorily to sterilize Ms. Quirino. In the decision, the judge indicated Ms. Quirino poverty and drug-dependency, and the fact that she already had five children as the basis for his decision to grant the prosecutor's request (Tribunal de Justiça de São Paulo n.d.:Judge's Order p. 30). He further noted that Ms. Quirino had agreed to the procedure by signing a statement confirming her intention to be submitted to a tubal ligation (Tribunal de Justiça de São Paulo n.d.:Judge's Order p. 31). The judge ordered the Municipality to sterilize Ms. Quirino within 30 days from the date of the court order under the penalty of paying R\$100,00 (one hundred reais) a day for each day the Municipality failed to comply with the decision.

Ms. Quirino did not show up at the scheduled medical appointment to be sterilized. In response, the prosecutor filed a motion requesting that she be compulsorily sterilized (Tribunal de Justiça de São Paulo n.d.:Prosecutor p. 50). On August 15, 2017, the judge ordered the Municipality to operate on Ms. Quirino within 48 hours under the penalty of

paying a R\$1.000,00 (one thousand reais) per day for each day of non-compliance (Tribunal de Justiça de São Paulo n.d.:Court Order, 51). Ms. Quirino was taken into custody and, as the tests were performed in preparation for the surgery, it was determined that she was pregnant, and, as such the sterilization procedure could not be conducted. Thus, the court ordered the Municipality to wait until the birth of the child and immediately sterilize Ms. Quirino (Tribunal de Justiça de São Paulo n.d.:Court Order, 92-95).

The Municipality appealed the decision arguing that the prosecutor was seeking demographic control through sterilization which is illegal under Brazilian law (Tribunal de Justiça de São Paulo n.d.:Municipality Appeal p. 101). The Municipality stated that “[t]he argument that the person is not able to care for the offspring cannot serve as the basis for involuntary sterilization, because if this were so we would admit that poverty would justify demographic control, which is not the case” (Tribunal de Justiça de São Paulo n.d.:Municipality Appeal p. 104). Further, the Municipality argued that forced sterilization without clear consent of the woman violates the Constitution (Tribunal de Justiça de São Paulo n.d.:Municipality Appeal p. 102).

Despite the appeal, the process against Ms. Quirino continued and the Court granted the Prosecutor’s motion to compulsorily sterilize Ms. Quirino (Tribunal de Justiça de São Paulo n.d.:Court Order, 119). On February 14, 2018, Ms. Quirino gave birth and her tubes were ligated. She was compulsorily and permanently sterilized (Tribunal de Justiça de São Paulo n.d.:Sterilization Confirmation, 145-148).

Three months later, on May 23, 2018, the Court of Appeals decided the case and in a unanimous decision reversed the lower court’s decision (Tribunal de Justiça de São Paulo n.d.:Court of Appeals, 159-193). The Court of Appeals found that Ms. Quirino had not consented to the sterilization and that the compulsory nature of the lower court’s decision violated Ms. Quirino’s constitutional and human rights, and it was contrary to Brazilian law. Clearly, the decision arrived too late to prevent Ms. Quirino from being forcibly sterilized.

### **Whose opinion counts in deciding over Ms. Quirino’s body? And why?**

Ms. Quirino’s case highlights deeply problematic aspects of the Brazilian Justice system. The case was presented by a white male prosecutor to a white male judge who neither one ever spoke to Ms. Quirino, a black impoverished woman. Ms. Quirino was treated as a defendant, considered incapable of making decisions over her own body, and not given

counsel. Lawyers, doctors, social workers, the experts of the legal system where the ones heard in Ms. Quirino's trial and at the end it was a white male judge who decided the fate of her body. The motions by the Municipality pointing out inconsistencies in the process were rejected by the judge who ordered her forced sterilization. Ms. Quirino was too impoverished, too black, too drug-dependent and too woman for her voice to count.

Moreover, these decisions were made in disregard of the law. Brazilian Law no. 9.263 prohibits forced sterilization. But the law did not stop the prosecutor nor the judge from sterilizing Ms. Quirino. The decision over her body was made not by her, but by the state. A white male judge and a white male prosecutor took upon themselves the power to decide over the body of a black impoverished woman. This is what Foucault called *biopower* (Foucault, 1978:140), the power over other bodies, to use "numerous and diverse techniques for achieving the subjugation of bodies and the control of populations" (Foucault, 1978:140). Thus, it is through this biopower that the judiciary subjugated and controlled Ms. Quirino's body. Indeed, as Foucault explained, a

consequence of this development of bio-power was the growing importance assumed by the action of the norm, at the expense of the juridical system of the law.... the law operates more and more as a norm, and ... the judicial institution is increasingly incorporated into a continuum of apparatuses (medical, administrative, and so on) whose functions are for the most part regulatory (Foucault, 1978:144).

Ms. Quirino already had five children, she was too impoverished, too drug-dependent – she needed to be normalized. Her body and reproduction "needed" to be regulated and contained and it was the judicial institution, through its apparatuses, that would be responsible for doing so without even taking Ms. Quirino's opinion into consideration.

And, Ms. Quirino's opinion did not count because as Santos says, she had been placed on the other side of the *abyssal line*. The abyssal line that "divide[s] the human from the sub-human" (Santos, 2016:4), "that divide[s] social reality into two realms, the realm of 'this side of the line' and the realm of 'the other side of the line'" (Santos, 2016:1).

The people classified above the line of the human are recognized socially in their humanity as human beings and, thus, enjoy access to rights (human rights, civil rights, women rights and/or labor rights), material resources, and social recognition to their subjectivities, identities, epistemologies and spiritualities. The people below the line of the human are considered subhuman or non-human; that is, their humanity is questioned and, as such, negated (Fanon 1967). In the latter case, the extension of rights, material

resources and the recognition of their subjectivities, identities, spiritualities and epistemologies are denied (Grosfoguel, 2016:10).

For the judge and the prosecutor, as well as the medical and social workers in the case, Ms. Quirino was/is below the line. She was impoverished, black, drug-dependent, woman who “*does not demonstrate any discernment to evaluate the consequences of a gestation*” (Tribunal de Justiça de São Paulo n.d.:Prosecutor p. 4-5). She was not fully human, her rights and material resources, the recognition of her subjectivities, identity, spirituality and epistemology could be denied. She was produced as nonexistent, “not existing in any relevant or comprehensible way of being” (Santos, 2016:1), and was placed in the zone of non-being (Grosfoguel, 2016:14). And

Since the humanity of the people classified into the zone of non-being is not recognized, and given that they are treated as non-human or subhuman, that is, without norms of rights or civility, then acts of violence, rape and appropriation are permitted that would otherwise be unacceptable in the zone of being (Grosfoguel, 2016:14).

Since Ms. Quirino was classified into the zone of non-being, acts of appropriation relating to her were/are permitted; others could make decisions for her, over her body; she could be sterilized “*even if against her will*” (Tribunal de Justiça de São Paulo n.d.:Prosecutor p. 6). Her opinion did not count, and her body could be disposed of by the state in the manner it deemed fit. She was on the other side of the abyssal line.

And she had been placed on the other side of the abyssal line because of the an “interlock[ed] systems of oppression[s]” (Amuchie, 2016:622). She did not “endure one-dimensional oppression, but rather experience[d] discrimination in multiple ways” (Amuchie, 2016:623). She was oppressed by heteropatriarchy<sup>1</sup>, colonialism, and capitalism (Santos, 2014:371), or more specifically because of her gender, race, and class (Amuchie, 2016:622; Bidaseca, 2004:63). In sum, Ms. Quirino was compulsorily sterilized because she was too impoverished, too black, too drug-dependent, too woman.<sup>2</sup> It is as Judith Butler reminds us,

certain kinds of bodies will appear more precariously than others, depending on which versions of the body, or of morphology in general, support or underwrite the idea of the human life that is worth protecting, sheltering, living, mourning. These normative frameworks establish in advance what kind of life will be a life worth living, what life will

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<sup>1</sup> I use the term heteropatriarchy, as Cunha and Mendes do, “to bring into light the heteronormativity embedded in patriarchal rationality, which does not recognize or accept the complex and large spectrum of existing sexualities” (Cunha and Mendes, 2019:2).

<sup>2</sup> As Nnennaya Amuchie states, we “cannot separate gender-based violence from race-based violence [from class-based violence] because they intersect to create a host of unique experiences” (Amuchie, 2016:663).

be a life worth preserving, and what life will become worthy of being mourned (Butler, 2010:53).

In the case of Ms. Quirino, hers was a black impoverished woman's body, that supported an idea of a life that was not worth protecting, sheltering, living and mourning (Butler, 2010:53). Who, after all, would mourn Ms. Quirino's offspring?

To emphasize this point, one can simply ask if Ms. Quirino would have received the same treatment had she been above the abyssal line. That is, if she had been a man, would there have been questions about how many children she could have before being sterilized? If she had been white, would the prosecutor have intervened to sterilize her? If she had been an upper-class woman, would she have had counsel? For the judge and prosecutor of Mococa, Ms. Quirino was/is a non-citizen, all the stereotypes of a dangerous savage (Santos, 2016:9), a black woman who is "sexually promiscuous, hyper-sexualized, and highly fertile" (Amuchie, 2016:639), and of an impoverished person "unwilling or unable to control their reproductive capacity" (Stavig, 2017:12) were at play here "influencing perceptions, interpretations, and judgments... reinforcing ... discrimination ... influenc[ing] how institutions perpetuate [inequalities]" (Amuchie, 2016:635–36). In this system, Ms. Quirino did not/does not have rights, subjectivities, identities, spiritualities and epistemologies worthy of being recognized.

### **Epistemology of the South: Ecology of knowledges and post-abyssal thinking**

As seen, at no point, Ms. Quirino's opinion, voice, understanding, were taken into consideration by the judicial apparatus. Neither the prosecutor nor the judge met with her to ask her what she wanted to do. In his own motion, the prosecutor recognized that Ms. Quirino's decision to be sterilized was inconsistent (at times indicating she wanted to be sterilized and at times that she did not), but this inconsistency never provoked in him the need to meet and talk with her. Moreover, in order to decide over her body, the judge also never met or spoke with Ms. Quirino, he simply relied on the statement by the medical staff, the social worker and the prosecutor who were all in agreement regarding the need to sterilize Ms. Quirino. It is as Cecilia MacDowell Santos' states: "[t]he legal knowledge produced by the states and legal experts is based on scientific knowledge" (MacDowell Santos, 2018:8), and it is the only knowledge that is worthy of being considered, it is the only one that counts. Other knowledges are disregarded and ignored. The judicial apparatus believed that they knew better than Ms. Quirino. Ms. Quirino's epistemologies, spiritualities,

wishes, knowledges were disregarded. She was placed on the other side of the abyssal line and the judicial apparatus denied her opinion, her voice, denied her justice.

As such, this case exemplifies how judicial/legal thinking can be an “abyssal thinking” (Santos, 2016:1). In fact, “modern law represent[s] the most accomplished manifestations of abyssal thinking. ... separates the realm of law from the realm of non-law” (Santos, 2016:2). Ironically,

it appears that Western modernity can only spread globally to the extent that it violates all the principles upon which it has historically grounded [its] legitimacy ... Human rights are thus violated in order to be defended, democracy is destroyed to safeguard democracy, life is eliminated to preserve life (Santos, 2016:7).

In order to protect Ms. Quirino, she had to be compulsorily sterilized, in order to protect her integrity, her integrity had to be violated. Ms. Quirino’s sterilization was “necessary for both the good of society and for [her own] wellbeing” (Patel, 2017:9).

This kind of abyssal thinking “if not actively resisted, ... will go on reproducing itself, no matter how exclusionary and destructive the practices to which it gives rise” (Santos, 2014:207). In order to resist and oppose this thinking, we must turn our focus to “the construction and validation of knowledge born in struggle” (Santos, 2014:11). We must recognize that “there is no global social justice without global cognitive justice” (Santos, 2014:207, 342, 2016:10), and more than that, that there is “no social and cognitive justice without sexual justice” (Cunha and Casimiro, 2019:6).

To this end, we must work towards an ecology of knowledges that “confronts the logic of the monoculture of scientific knowledge and rigor by identifying other knowledges and criteria of rigor and validity that operate credibly in social practices pronounced nonexistent by metonymic reason” (Santos, 2014:296). In doing so, the knowledges of all Janainas Quirinos<sup>3</sup> must be considered, the experiences and individualities must be part of the knowledge construction process. Here I am not advocating that “class, race, religious, cultural and historical specificities of the lives of women in the third world can create a ... sense of the commonality of oppressions, interests and struggles between and amongst women globally” (Mohanty, 1984:348), after all, as Chandra Mohanty reminds us “[b]eyond sisterhood there

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<sup>3</sup> I use/refer to the “Janainas Quirinos” to indicate and include all those who are oppressed by heteropatriarchy, colonialism and capitalism; all those who are placed on the other side of the abyssal line. However, I do not treat these group as a monolithic group who are not inserted in particular political, cultural, religious, economic contexts who do not have their own individualities; I do not treat this as “a homogeneous ‘powerless’ group often located as implicit victims of particular socio-economic systems” (Mohanty 1984:338).

is still racism, colonialism and imperialism!” (Mohanty, 1984:348). I am not advocating that all women are in the same place, have the same understandings, and subjectivities. I am not advocating for an “universal indicator of women’s emancipation” (Mohanty, 1984:348). As Teresa Cunha reminds us, “who can say who is an emancipated woman? The idea of a feminine brotherhood that evaluates and advocates for all the same idea of emancipation, power, and identity is as valid as any other ethnocidal thought” (Cunha, 2015:33).

I am, however, stating that it is important to recognize that the meaning of emancipation varies and that all Janainas Quirinos must have their epistemologies, knowledges and individualities respected and validated. In the case of Ms. Quirino, she indicated that she did not want to be sterilized (Da Redação 2018), she wanted to decide over her own body, but the abyssal thinking present in the Brazilian judiciary did not want to hear her, refused to consider her opinion; her knowledges, practices and subjectivities did not count.

Thus, in order to change, to actively resist and not reproduce this form of abyssal thinking, we must engage in a post-abyssal thinking, we must

situate our epistemological perspective on the social experience of the other side of the line, that is, the non-imperial Global South, conceived of as the metaphor of the systemic and unjust human suffering caused by global [heteropatriarchy], capitalism and colonialism (Santos, 2016:11).

We must have present Teresa Cunha and Vanessa Duarte Sousa’s reminder that “[t]here is no social and cognitive justice until all women, and other identities that represent themselves as feminine, as well as their practices, knowledge and work, are free from any form of discrimination, violence or subordination” (Cunha and Duarte Sousa, 2019:5). Therefore, in this context, and in all contexts, the subjectivities, knowledges, practices, identities of all Janainas Quirinos, must count, and must be free from all forms of discrimination, violence and subordination.

### **Final considerations**

In this essay, I analyzed the case of Ms. Quirino, an impoverished, black, drug-depend woman who was sterilized against her will. As seen above, the structural oppressions worked interconnectedly to deny Ms. Quirino’s humanity. It was through the reproduction of a sexist, classist and racial system that Ms. Quirino was/is placed on the other side of the abyssal line and that her opinion was not considered, was not relevant. Only the opinions of the



prosecutor, social workers, medical staff, and the judge were relevant in deciding over her body. Only the scientific knowledge prevailed and Ms. Quirino's embodied experience, understanding, and knowledge were disregarded. The judicial apparatus in Brazil continued and continues to perpetuate an abyssal thinking and unless there is a post-abyssal thinking that includes learning from the South, decisions like this one will continue to be made.

As long as we continue to produce people as nonexistent, "not existing in any relevant or comprehensible way of being" (Santos, 2016:1), as long as we continue to have different answers to the questions "who counts as human? Whose lives count as lives?" (Butler, 2008:10), we will continue to reproduce abyssal societies.

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