

Pro-Life, Anti-Women: The criminalization of abortion and the infringement of women's human rights in El Salvador



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Abstract

Abortion is a common and also a very safe procedure when performed by trained medical professionals. Women decide to terminate their pregnancies for many different reasons but not every woman has safe and legal access to abortion. Abortion has been a controversial issue and a focal point in political debates globally. While abortion is mainly a political issue, it is a religious one as well. The belief that the life of a human being begins at conception and that the rights of the fetus have to be protected has been long attributed to the pro-life proponents, while the ones who are advocating for legal access to abortion are known as the pro-choice side. In some countries, the major influence of the pro-life actors has contributed to the criminalization of abortion and with that, the abuse of women's human rights. One of the countries that implement a law that bans abortion with no exceptions and where women's fundamental human rights are violated is El Salvador.

By utilizing the WPR approach by Carol Bacchi, as the main method for analysis, this thesis aims to thoroughly examine how abortion is problematized in the abortion law embedded in the Penal Code of El Salvador. The WPR's six questions will assist in analyzing what events in the past led to the current abortion law, identify what are the dominant problem representations in the law, what assumptions underlie the problem, what is silenced and what are the effects, and how the problem representation was produced, disseminated and defended. The WPR framework will be complemented with the norm translation theory by Susanne Zwingel in order to understand why women's human rights norms fail to be translated into the domestic context of the country. Moreover, this thesis' analysis of El Salvador's abortion law will also explore the role of Salvadoran women in society, the strong influence of the Church on the criminalization of abortion and political actors, and the deep-rooted cultural values.

Keywords: abortion law, reproductive rights, human rights, UN, norms, El Salvador, WPR approach

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Abbreviations

ARENA - Nationalist Republican Alliance (Alianza Republicana Nacionalista)
CEDAW - The Convention to Eliminate All Forms of Discrimination Against Women
FMLN - Farabundo Martí National Liberation Front (Frente Farabundo Martí para la Liberación Nacional)
IACHR - Inter-American Court of Human Rights
PDC - Christian Democratic Party (Partido Demócrata Cristiano)
UN - United Nations
WHO - World Health Organization

1. Introduction

Abortion has been a controversial topic and a sensitive issue in many states around the world. Nowadays, many women do not have the possibility to make autonomous decisions about their own bodies and reproductive health. The medical procedure done to end a pregnancy is still a widespread taboo among many populations. One of the countries where abortion is severely condemned is the Republic of El Salvador. Abortion in this country is illegal under all circumstances, making El Salvador one of the few countries in the world where a total ban on abortion is imposed. However, abortion was not always illegal and a part of contemporary law. For example, the turning point for abortion in Europe happened in the 19th century when the Napoleonic Penal Code of 1810 prohibited women to receive the procedure to end their pregnancies (Tafuro, 2021). Following the legal condemnation, in 1869, religious authorities also opposed abortion. Pope Pius IX, in his document, called *Apostolicae Sedis*, declared excommunication or the most severe Church censure, as a penalty for women who would undergo an abortion. Pope Pius IX as a pro-life proponent, also established that life begins at the moment of conception (Lopez, 2010). The religious condemnation of abortion by the Catholic Church had an influence on most of the world, especially in predominantly Catholic countries. While abortion in the past had strong opposition and was seen as a “moral evil” (Hume, 2016), it was not until the 1960s that the attitudes toward abortion began to change and many countries began making legal changes to make abortion legal or to allow the procedure under specific circumstances (Kelley et al., 1993, pp. 594-595). Ever since the abortion debate has been a part of the political agendas of many governments and a matter of concern for both the pro-life and pro-choice lobbying groups.

In recent years, a few Latin American countries have made substantial and empowering progress in expanding access to abortion and advancing women’s reproductive rights. The Green Wave (or *Marea Verde*) pro-choice movement, which initially started in 2018 in Argentina, is the reason why a million activists protested on the streets in this country demanding abortion to be legalized. The participants in the Green Wave wore green scarves as their resistance symbol and later on the use of green scarves spread among women’s rights activists in other countries in Latin America and even in Poland (Casas, 2021). In the past few years in Latin America, there were significant legal changes that lowered the barriers to abortion made in Uruguay, Argentina,

and Mexico. Following this series of rulings, in 2022, Colombia became the fourth country in Latin America to decriminalize abortion in the first 24 weeks of pregnancy. This historic ruling of Colombia's Constitutional Court was welcomed and celebrated by the Green Wave activists (CBC, 2022). This wave of feminist activism in the Latin American conservative and predominantly Catholic Roman region played a huge part in demanding and advocating for women's rights while also "shaking historically male-dominated power structures" (McDonnell & Linthicum, 2021).

The Latin American country, El Salvador is characterized by its widespread gang violence and is often referred to as "the deadliest place on earth" (Zaidi, 2019). Despite the country's gang violence culture, El Salvador is also known for its high rates of violence against women. Namely, 7 out of 10 women in the country experience sexual or physical violence (UN, 2020a), and many of them are murdered every year. Women and girls in this country are frequently victims of rape and sexual assault by gang members. There were 8,464 rape complaints registered in the period between 2013 and 2016 and the majority of the accusations of rape filed were regarding minors (Luz Nóchez & Aguirre, 2020). Moreover, in 2021, there were 97 femicides reported in El Salvador while in 2020, the number was higher and that year 130 women were reported to have been killed (Isabel Martinez, 2021). However, violence against women that often results in the death of Salvadoran women, is not the only concern that females in this country have. Due to the total abortion ban women in El Salvador are prohibited to terminate their pregnancies even if they were victims of rape, if their lives are at risk, or in cases of incest. Even though the aforementioned Latin American Green Wave did not initiate any changes in the abortion law of El Salvador, women in this country are determined for their voices to be heard and their rights to be respected. In March 2022, thousands of women marched in San Salvador, the capital of El Salvador, demanding for abortion to be legalized at least in cases when the woman's life is at risk, cases of rape, and when the fetus is nonviable (BBC, 2022). Prior to the protests in March this year, there were also other attempts for abortion to be decriminalized. For example, women in El Salvador held major protests and demanded reforms to the abortion law in 2013, 2016, 2018, and 2021 but all were unsuccessful (Amnesty International, n.d.; Warren, 2017; Reuters, 2021).

Nonetheless, prohibited or not, the legal status of abortion was never a barrier for women to terminate their pregnancy. According to the United Nations (UN), around 25 million unsafe abortions occur every year and 7.9 percent of maternal deaths are due to unsafe abortions that take place under severely restrictive national laws (UN, 2020b). Unsafe abortions are accompanied by many consequences and restrictive abortion laws breach fundamental human rights. The right to life, rights to nondiscrimination and equality, right to health and healthcare, right to be free from cruel, inhuman, or degrading treatment, etc. are a few of the rights which are continuously violated in countries where abortion is illegal (Amnesty International, n.d.). According to human rights bodies, the right for women to make autonomous decisions about their reproductive functions is a precondition to these fundamental human rights. Abortion is a procedure required only by women, and therefore, restrictive abortion laws are discriminatory against women as these laws do not allow them to have an access to essential health services while also infringing on women's dignity, autonomy, and right to make private decisions regarding their reproductive health and life (UN, 2020b). States that fail to protect and respect these rights, discriminate against women in law and practice and violate the principles of international human rights law. In countries where abortions are banned with no exceptions, women are forced to carry an unwanted pregnancy to term or to seek an unsafe abortion, which can have fatal consequences for the woman (Amnesty International, n.d.). Accordingly, the absolute ban on abortion can be understood as “a gender-based arbitrary killing, only suffered by women, as a result of discrimination enshrined in law” (UN, 2017, p. 17, para. 94).

In the past three years, three predominantly Catholic Latin American countries influenced by pro-choice activists have reformed their abortion laws (McKeown, 2022). Despite the fact that the abortion issue in El Salvador is of vital importance because it has deleterious effects on women, El Salvador's president Nayib Bukele has recently ruled out the possibility of abortion being decriminalized (Reuters, 2021). Therefore, the focus of this thesis is El Salvador's law under which abortion is prohibited under all circumstances. This absolute ban on abortion denies women their physical and mental integrity, their autonomy, and their ability to make decisions, and imprisons women for pregnancy complications. Furthermore, the ban on abortion is a form of institutionalized violence against women as it “has resulted in the death and morbidity of thousands of women and girls and the loss of dignity for many more” (Amnesty International, 2014, p. 9). Hence, the way abortion is problematized in this country needs to be addressed and

examined. This problem affects many women, especially the ones living in the rural areas of El Salvador, it violates their human rights and diminishes every aspect of their lives. By utilizing the “What is the Problem Represented to Be?” (WPR) analytical tool, I will conduct an in-depth critical analysis and firstly present how this problem come about. I will then identify the problem represented in this law and also look at the assumptions in the legislation which underlie the problem of abortion. Further, I will look at the silences and limits of the representation, and the effects. Finally, I will reveal how this representation of abortion has been produced, disseminated, and defended. Also, as the criminalization of abortion violates numerous fundamental human rights, I will address the human rights treaties signed and ratified by El Salvador and see how the country breaches human rights standards. Regarding human rights treaties, the focus throughout this thesis will be on the CEDAW, as one of the core human rights treaties for women and the main instrument of social transformation (Zwingel, 2016, p. 1). In addition to the method, I will also make use of the norm translation theory which will complement the method and help me analyze the discrepancies between El Salvador’s national and international norms, and address the important actors and the resistances to global norms.

1.2 El Salvador: Then and Now

El Salvador is the smallest Spanish-speaking country in Latin America, but also the most densely populated country. The country’s colonial legacy of political instability, unequal distribution of land, and an elite in possession of the wealth laid the foundation for El Salvador’s lengthy civil war (Hobden, 2000, p. 106). The brutal civil war which began in 1980 and lasted for twelve years, resulted in the death of approximately 75,000 civilians, soldiers, and insurgents. Moreover, it has been estimated that around one million Salvadorans were internally displaced or became refugees during that period. The war between the insurgency found in 1980, Farabundo Martí National Liberation Front (FMLN), and the Salvadoran government was fought against the ones who wanted to preserve the “oligarchic military regime” (Chávez, 2015, p. 1784). During the war, FMLN members and supporters were tortured and assassinated by the government. Civilians, such as students, peasant organizers, and trade activists were kidnapped, tortured, and killed. The security state forces targeted women and routinely tortured them. Women were frequently mass raped, sexually tortured, intimidated, and murdered (Musalo, 2018, p. 15). However, the FMLN, as one of the most potent insurgencies in Latin America, was successful in

dismantling the oligarchic regime and paving the way for democracy in the country. In 1989, the political changes within the Nationalist Republican Alliance (ARENA) as the governing political party, and the FMLN's major military attack were two crucial events that initiated the peace negotiations (Chávez, 2015, p. 1785).

In 1992, the peace negotiations mediated and supported by the UN put an end to the long war. The leaders of the FMLN and the President of El Salvador, Alfredo Cristiani, signed the peace accords in Mexico City. During the peace process, the FMLN was transformed from a powerful insurgency to a legal political party in the Salvadoran newly emerged neoliberal democracy (Chávez, 2015, p. 1793). The peace accords, in addition to the security, electoral, judicial, and socioeconomic reforms, also included the creation of an institution for the protection of human rights and focused on preventing the massive human rights violations that occurred during the civil war to reoccur in the future (Chávez, 2015, p. 1793; Musalo, 2018, p. 12). However, even though the peace accords ended the war after twelve devastating years and began the transition of El Salvador to democracy, they failed to address many social issues, such as the structural poverty problem, unjust distribution of wealth, and the inequalities between men and women and also (Kampwirth, 2014, p. 80). The accords focused on preventing the massive human rights violations that took place during the civil war to reoccur in the future (Musalo, 2018, p. 12). The role of women in society was also disregarded, despite the fact that women constituted more than half of the El Salvadoran population. In the wartime period, women also represented around 30 percent of the FMLN's combatants and 60 percent of the civilians that supported the FMLN forces. Women's efforts in the war were not acknowledged and the peace accords did not guarantee the equal treatment of women (Kampwirth, 2014, p. 81).

The civil war "had left a fragmented and traumatized civil society" (Miguel Cruz, 2009, p. 5), and the neoliberal economic policies adopted by the country after the war failed to improve the lives of the Salvadoran people. The inequalities and marginalization of the majority of the population that had led to the civil war are still present in the country. Three decades later, El Salvador is a country with a weak political system and distorted economy (BTI, 2022), defined by high levels of poverty, violence, and inequality. Many Salvadorans today live below the poverty line, while half of the country's income is received by the wealthiest people in the country (Musalo, 2018, p. 23). The emergence of the Salvadoran gangs after the war was

facilitated by the already existing economic marginalization, social exclusion, violence and also the lack of quality education, and widespread poverty in the country (Miguel Cruz, 2009, p. 5). Additionally, the “strong societal norms of patriarchy and machismo contributed to the idealization of a gang identity that adopted and exaggerated these norms” (Musalo, 2018, p. 25), allowing the Salvadoran gangs today that operate in the country to exercise control over parts of the territory. The gangs greatly contribute to the level of violence and commit violent crimes, such as killings, rape, and extortions (Human Rights Watch, 2021a). For example, in a recent killing spree that happened in March 2022, the gangs killed 62 people in one day, making that day the bloodiest day since the end of the civil war (Abi-Habib & Avelar, 2022).

In addition to the high levels of crime and violence, many other issues affect the progress and development of El Salvador. Today, as a constitutional republic with a democratically elected government, the country faces many challenges regarding government corruption, persistent impunity in security forces, executive branch, and justice system, and major human rights violations. Further, there are serious issues with the independence of the judiciary, restrictions on free expression, lack of consistent investigation and accountability for gender-based violence cases, violence against the LGBTQ+ people which is tolerated by the government, and torture, cruel, and inhuman treatment or punishment by security forces (U.S. Department of State, 2021). Considering the above, it is hardly surprising that it has been argued that El Salvador’s peace is worse than war (Musalo, 2018, p. 4).

1.3 Problem statement

Drawing on the arguments presented in the introduction, I aim to analyze the issue of abortion from a reproductive human rights perspective and to understand why El Salvador is firmly committed to enforcing its draconian abortion law and why the country has been resistant to the trend of abortion decriminalization in Latin America. I also aim at examining how significant are the normative discrepancies between the international and domestic women’s rights norms and why El Salvador’s government is persistent in its resistance to the translation of norms.

2. Methodology

In this chapter, I will elaborate on the method (WPR) I have decided to apply as the guiding framework of the analysis. I will explain the method and present an overview of its questions and subquestions which will be described and answered in detail in the analysis (Chapter 3). Thereafter, I will also address the empirical data, limitations, and translation of this thesis.

2.1 “What is the Problem Represented to Be?” by Carol Bacchi

In order to conduct an in-depth analysis, I have decided to apply the “What is the problem represented to be?” approach, developed by Carol Bacchi. The WPR approach, as an analytical and unique tool, aims to investigate specific government policies, laws, or other documents. The reason why the WPR method differs from the other tools for policy analysis is that this approach opposes the general perception that government policies are produced to deal with problems. Instead, it suggests that by looking at a government policy we can see that the policies do not necessarily address the problems but they “constitute (or give shape to) ‘problems’” (Bacchi, 2009, p. x, 1). This approach allows us to think outside the box and instead of approaching policies or specific pieces of legislation as documents that aim to address and “fix” the issues that exist in society, it allows us to examine carefully the problems in the policy which are not explicitly communicated. As a critical analysis tool, the WPR method, according to Bacchi (2009), “creates the opportunity to question taken-for-granted assumptions that lodge in government policies and policy proposals by interrogating (problematizing) the problem representations it uncovers within them” (p. xv). The fact that “Policies are usually located within a web of related or interconnected policies” should be considered when conducting the analysis (Bacchi, 2009, p. 4). Also, Bacchi does not assert that the governments deliberately create these policy problems, but that they are an integral part of policymaking processes (Bacchi, 2009, p. 1).

A crucial part of the WPR method is the concept of problematization. However, the author indicates that the societies in which we live and our lives are governed and affected by problematizations, rather than through policies (Bacchi, 2012, p. 22). The term problematization has been widely used by social theory scholars and is associated with critical analysis. In the

WPR method, we can apply the term problematization in two ways: to critically interrogate a policy and to refer to the governmental thinking and practices behind the implied problem in a policy that needs to be “fixed.” When utilizing the WPR method, the attention should be on the study of the problematizations and not on the ‘problems’ represented in the policies (Bacchi, 2009, p. 30, xiii). Bacchi coined the term problem representation in 2009 in her book *Analysing Policy: What’s the problem represented to be?.* The identification of the problem representation is the first step when conducting a WPR policy analysis and the term refers to the “form of a problematization or the problematized phenomenon in a specific site” (Bacchi & Goodwin, 2016, p. 20, 17). Another crucial concept that needs to be taken into consideration when applying the WPR method is the concept of ‘reflexivity.’ It is important that when answering Bacchi’s six WPR questions, we reflect on ourselves, our way of thinking, and the origins, purpose, and effects of the problem representations we intend to analyze (Bacchi, 2009, p. 19). Moreover, it should be noted that this approach “has an explicitly normative agenda.” This method favors the side of the groups of people who are harmed by the problem representations and “It presumes that some problem representations benefit the members of some groups at the expense of others” (Bacchi, 2009, p. 44).

Furthermore, the emphasis of the WPR method is on the deconstruction of the already constructed social problems. In her book *Women, Policy and Politics: The Construction of Policy Problems* Bacchi argues that social issues are not natural phenomena, but instead, they are issues that attain the status of a ‘social problem’ differently depending on the context, time, or place (Bacchi, 1999, p. 51, 148). By utilizing the WPR method, I will analyze the problematization of abortion as continuing social, moral, and political problem in El Salvador and the conceptualizations that support this problematization. The WPR’s questions will assist me to “think deeply about the assumptions and presuppositions that lie behind and shape” the piece of legislation, or the Penal Code of El Salvador, which will be the focus of this research paper (Bacchi, 2009, p. xiv). The WPR approach consists of six interrelated questions which need to be applied and answered to one’s own problem representation. The specific WPR questions are the following (Bacchi, 2009, p. 2):

- *Question 1: What's the 'problem' (e.g. of 'problem gamblers', 'drug use/abuse', domestic violence, global warming, health inequalities, etc.) represented to be in a specific policy?*
- *Question 2: What presuppositions or assumptions underlie this representation of the 'problem'?*
- *Question 3: How has this representation of the 'problem' come about?*
- *Question 4: What is left unproblematic in this problem representation? Where are the silences? Can the 'problem' be thought about differently?*
- *Question 5: What effects are produced by this representation of the 'problem'?*
- *Question 6: How/where has this representation of the 'problem' been produced, disseminated and defended? How could it be questioned, disrupted and displaced?*

2.2 Empirical data and translation

In terms of empirical data, I have used both, primary and secondary data. The analysis of this thesis relies greatly on the two government documents: the Penal Code and the Constitution of El Salvador. My theory and method-driven research is complemented by different scholarly articles, website articles from reliable sources, and books. In order to support my arguments, I also have made use of statistical data from various sources, such as the UN and Reuters.

Regarding the translation from Spanish to English, I would like to indicate that I personally have limited knowledge of the Spanish language and for that reason, I requested assistance from a person who is a native Spanish and American English speaker. Therefore, the sources that were used and were originally in Spanish were translated from Spanish to English by the native speaker. I believe that this was significant for the thesis because native speakers have the knowledge needed for an accurate translation and structuring of the translated sentences. It should be also noted that in the analysis I will present the translated version of the abortion law while the original text in Spanish will be presented in Appendix A. The citations used from the other sources that were originally in Spanish will be presented in the text and will be placed after the translated quote in English, in parentheses.

2.3 Research limitations

One of the main limitations of this paper is the lack of access to important government documents and statistics. The data which could be obtained from official government websites is highly limited. The statistical data regarding estimated illegal abortions and maternal mortality rates were obtained from different sources which may not be entirely accurate since the total ban on abortion could greatly affect the access to statistics. The limitation regarding accessing data is perhaps due to the flourishing corruption in the country and therefore, the country's extreme lack of transparency. According to Transparency International (2022), El Salvador was ranked 34 out of 100 in the corruption perception index. This limitation is of importance because precise data would allow for a clear understanding of the effects of this law on women and therefore, a more accurate analysis.

Furthermore, this thesis was written over a three-month period. Therefore, acknowledging the complexity of abortion as an issue and the many factors impacting the reproductive rights of women, the time constraint indicates that some of the research questions might not be answered as extensively as intended at the beginning of the writing process. In addition to the answering of the research questions, due to the time limit, some actors, such as political actors or Salvadoran NGOs will also not be addressed.

3. Theoretical Framework

In order to complement the chosen analysis method, I have decided to utilize the norm translation theory. This theory will help me understand why El Salvador fails to engage with international women's rights norms regarding reproductive health and why the country conceptually rejects the translation of these norms. Moreover, the norm translation theory will assist me in analyzing which actors are mainly responsible for the resistance and rejection of the translation of norms into the country's domestic context. Also, in the following section, I will provide a comprehensive explanation of the theory. In order to understand how norms are translated from global to national levels, I will mainly make use of Susanne Zwingel's book from 2016 titled "*Translating International Women's Rights. The CEDAW Convention in Context,*" her article titled "*How Do Norms Travel? Theorizing International Women's Rights in*

Transnational Perspective” from 2012 and Zwingel’s 2017 article on “*Women’s rights norms as content-in-motion and incomplete practice.*”

3.1 Norm Translation theory

Norms have been given significant attention by scholars in multiple disciplines, especially within the international relations discipline, but they have also been surrounded by a lack of clarity (Chung & N.Rimal, 2016, p. 1). Norms are understood and defined as “expectations of appropriate behaviour in a specific social situation” (Barnett, 2018, p. 209). In development, norms are established at the global level but the global norms “often fail to successfully diffuse to local contexts” (Martinsson, 2011, p. 1). These global norms are defined as “the shared expectations or standards of appropriate behavior accepted by states and intergovernmental organizations that can be applied to states, intergovernmental organizations, and/or nonstate actors of various kinds” (Khagram, Rikker & Sikkink 2002, p. 14 as cited in Martinsson, 2011, p. 2).

Susanne Zwingel’s main area of focus is gender equality, women’s rights norms, and their translation. Zwingel’s theory aims at analyzing how norms travel from one context to another and she sees the global, regional, national, and local contexts as interrelated. According to Zwingel, these contexts have distinct characteristics, “but they do not establish a hierarchy, as in the ‘general global’ vs. the ‘particular local’” (Zwingel, 2017, p. 676). According to Zwingel (2012), the term norm diffusion is perceived as “too one-dimensional” (p. 116), because it “assumes a one-way influence from global to non-global” (p. 123). Therefore, Zwingel uses the term norm translation which “implies that different contextualized norms may be translated into another realm, for example, from global to national or local to national” (Zwingel, 2012, p. 124). Further, Zwingel argues that norm translation can occur in two major directions. First, norms can be translated “towards and within global governance institutions” and second, norm translation can take place “towards and within domestic contexts” (Zwingel, 2017, p. 676). Zwingel (2016) refers to the first movement of international norms as “global discourse translation” and the second direction is the “impact translation” (p. 5). In regard to impact translation, it is important that the connecting dimensions are uncovered, and that the resistances, translating actor constellations and the context for the act of translation are acknowledged (Zwingel, 2016, p. 23).

In addition, the second type of norm translation, or the impact translation could establish a new norm or strengthen a local norm. However, when a domestic civil society actor as a norm translator thinks that a norm rejection “adds legitimacy to their claims” then the second type of norm translation could also result in a norm adaptation or rejection (Zwingel, 2017, p. 676).

Further, Zwingel (2012) offers three constellations of norm translation. First, the global discourse translation refers to the activism that has an influence on international or supranational institutions or the activists’ use of these institutions to create transnational links (p. 124). Second, the impact translation “means agency that uses international gender norms to influence domestic gender regimes” (Zwingel, 2012, p. 125). This constellation’s strategies and outcomes are determined by the actor formation and the context relevant for the action of translation. Lastly, the third constellation, or the distorted translation, “refers to activism in which international norms play only an indirect role, to international norms that have unintended domestic effects, or to a more obvious disconnect between international and domestic norms” (Zwingel, 2012, p. 125). The distorted translation of norms can be identified in abortion debates or regulations of abortion. It can be established that “centrality of domestic actor constellations” is crucial for the framing of this issue, rather than the “border-crossing connections between women’s organization and international gender norms” (Zwingel, 2012, p. 125).

Zwingel gives an example of the shift of norm translation towards the domestic level. She addresses the issue of abortion and reproductive rights in Chile and the CEDAW as Chile’s important normative framework. Chile’s abortion law was very similar to the current law in El Salvador and it was not until 2017 when Chile overturned the absolute ban and legalized abortion in certain cases. Therefore Zwingel argues that while the absolute ban on abortion was in force, the lack of normative overlap with the international framework shaped the norm translation dynamics in Chile. Moreover, by the majority, the notion of motherhood is seen as women’s “dominant marker” and this is what makes it difficult for these norms to favor an understanding of women’s reproductive freedom and to approve women’s choices that could “go against motherhood” (Zwingel, 2017, pp. 683-684). From the example of Chile’s reproductive rights approach, it can be concluded that normative discrepancies with, for example, CEDAW, may result in blockage of external norms. Conversely, in states where global norms are supported, there is a higher possibility for meaningful implementation efforts. Also, the domestic

framing of gender norms is not static but rather, it depends “on the strength and level of engagement of diverse actors” which is why it is of great significance to analyze these actors in the context of norm translation. However, even in cases where there is a domestic resistance from specific actors, progress toward norm translation in the context of the international framework can still be achieved (Zwingel, 2017, p. 684).

In terms of human rights, the transnational, national, and local dynamics are of major importance. While the implementation of the human rights treaties is to a great extent a domestic affair, transnational and domestic dynamics are significant steps on the path toward the realization of the human rights established in the treaties (Zwingel, 2012, p. 115). Women’s human rights have been considered a matter of the country’s domestic affairs and the violations of their rights were long thought of as national issues not needing pressure or interference from international actors. Among the relevant factors for human rights treaties’ compliance are the attitudes of the state toward human rights and the “cultural match” between domestic and international norms. Moreover, a domestic factor that strengthens the “compliance with women’s rights norms ... is the absence of a dominant religion and the prevalence of secularism” (Zwingel, 2016, p. 13). This domestic factor, as it will be presented later on, is of particular relevance to women’s human rights in El Salvador as religion permeates and shapes every aspect of the country’s society. Further, human rights norms are negotiated as norms that are universally acceptable, instead of enforced. Due to the promotional nature of the human rights norms, the countries “notoriously implement human rights norms only superficially or fail to implement them altogether” (Zwingel, 2012, pp. 116-117).

4. Analysis

In this chapter, El Salvador’s abortion law will be analyzed through Bacchi’s WPR method, and the norm translation theory will also be used to complement the method. The WPR framework will be used to analyze certain aspects of the El Salvadoran context and legislation in relation to the problem of abortion. Therefore, the main focus of the analysis will be the abortion law which is inserted in the country’s Penal Code, the social factors and actors which play an important role in the country’s society, and women as the people who suffer the consequences and whose human rights are violated from the specific problematization of abortion. In terms of the

structure of the analysis, I will apply Bacchi's questions in a slightly different order because I believe that would allow for a more comprehensive analysis of the problem. Therefore, I will first explore what actors and events influenced the current abortion law and also address the human rights treaties ratified by the country, with a focus on CEDAW. Then, I will proceed to analyze the content of the abortion law in order to identify the problem representations within the law. After the problem representations have been identified, in the third question, I will address the assumptions that underpin the representation of abortion. In question four, the limits, silences, and contradictions of the problem representation will be addressed and a cross-cultural comparison of El Salvador and Argentina will be conducted. The fifth question will examine the discursive, subjectification, and lived effects of the representation of abortion. Lastly, in the sixth question, I will analyze how and what processes and actors contribute to the dominance of the problem representations.

4.1 How has the representation of abortion as a reproductive issue in the Penal Code of El Salvador come about?

This question encompasses two objectives. The first objective is to "reflect on the specific developments and decisions (the non-discursive practices) that contribute to the formation of identified problem representations" and the second one is "to recognise that competing problem representations exist both over time and across space, and hence that things could have developed quite differently" (Bacchi, 2009, p. 10). This question focuses on the process of how the problem took on a particular shape or on the genealogy of the problem. Bacchi (2009) points out that the problem representation is "susceptible to change" and that when looking at the history of a current problem representation, instead of assuming, we need to identify "specific points in time when key decisions were made, taking an issue in a particular direction" (p. 10). Therefore, in this question, I will present the two main pivotal moments in the history of El Salvador and the main protagonists who participated in the shaping of the current problematization of abortion. Also, I will address the UN human rights instruments in the context of El Salvador, relevant to abortion as a reproductive human right issue.

4.1.1 Genealogy: Penal Code and Constitutional reforms

Prior to the current Penal Code, El Salvador's 1956 Penal Code did not establish any exceptions to the prohibition of abortion, however, according to the general principles of criminal law, the procedure was allowed in cases when the pregnant woman's life needed to be saved. As it was apparent that the practice of illegal abortion was widespread and the rates of maternal mortality were high, the Government decided to liberalize the abortion laws (UN, 2002, p. 137). Under the 1973 Penal Code, abortion was permissible under three circumstances. Women were allowed to get an abortion in cases of rape or statutory rape, in cases of serious fetal deformities, and when abortion was the sole solution to save the mother's life. Also, an abortion caused by the negligence of the woman was not punished under this law (UN, 2002, p. 137). Even though the attempts for a total ban on abortion to be enacted began in 1992, it was not until 1997 that a significant, regressive change occurred in El Salvador's abortion legislature. The conservative, right-wing political party, ARENA, introduced a bill to revoke the grounds under which abortion was legal. In the efforts for the country to impose a total abortion ban, ARENA was supported by the Catholic Church and its right-wing Catholic groups and their antiabortion campaign. Besides the Church, ARENA's draft bill that aimed to reform the Penal Code was also extensively supported by the major daily newspapers. The articles published in the newspapers were in favor of the absolute criminalization of abortion and therefore, provided substantial coverage of the campaign of the right-wing Catholic groups. The media was not interested in addressing or analyzing the issue from a public health or woman's perspective, and often presented abortion as a woman's selfish decision. One newspaper editorial had even stated that the problem lies in the women and girls' "promiscuity and premature sex" and that abortion is a result of a woman's promiscuousness (CRLP, 2001a, pp. 30-31). Assisted by the media, the Church had the most significant role in shaping public opinion on the issue of abortion.

Before the mid-1990s, the Catholic Church of El Salvador utilized its social influence to help the impoverished and protect human rights and social justice. The 'old' Church which once had a major social activist role took a particularly more conservative stance and distanced itself from social activism in the country with the appointment of the new Archbishop, Fernando Sáenz Lacalle. In 1995, the Church took a different and more radical stance toward abortion as a

social problem and the appointment of the new Archbishop marked a new era for El Salvadorans, especially for women and their human rights (Wade, 2016, p. 176; CRLP, 2001a, p. 17). The Church has ever since had a significantly influential role in the domestic legislative processes despite Sáenz Lacalle's initial intent for the Church to become politically impartial (Los Angeles Times, 1995). In 1997, the Church supported and reinforced ARENA's position on abortion, and in alliance with the right-wing Catholic groups, the Church promoted the Penal Code reform. The Church and the Catholic groups collected signatures throughout the country, organized demonstrations, and mobilized thousands of students from Catholic schools (CRLP, 2001a, p. 32). With the intention to condemn abortion and shape public opinion on abortion as an unacceptable act, the Archbishop publicly "compared abortion to the 'Nazi death camps'" (Garcia, 1997 as cited in Viterna et al., 2017, p. 5). This Holocaust analogy and the comparison of abortion to the extermination of people in concentration camps were used by the pro-life proponents to "overwhelm people and distract them from their ability to think clearly about it" (Dubofsky, 2012).

Through the "Say Yes to Life Foundation" the right-wing Catholic groups published numerous articles regarding abortion. The foundation claimed that abortion is not an option and that if a woman is a victim of rape, she has to carry the pregnancy to term and choose whether she will raise the child or she will give it up for adoption (CRLP, 2001a, p. 32). Due to the Church's dominant societal position and extensive antiabortion campaign, the women's groups' efforts went unnoticed. Women never had a chance to actively participate in the abortion debate nor their human rights recognized in the international human rights instruments signed and ratified by El Salvador were taken into consideration. The women's movement was unsuccessful mainly because the women advocating against the Penal Code reform did not have the support or forum and therefore was not able to make an impact on the legislators or the people of El Salvador (CRLP, 2001a, p. 33, 35).

On the day of the vote in the Legislative Assembly of El Salvador, ARENA, supported by the PDC, expressed the same opinions as to the Church, Catholic groups, and the media. However, the fact that the anti-abortion discourse was opposed by only two deputies of the FMLN political party came as no surprise. The FMLN deputies stated that the total abortion ban would be a violation of women's rights, especially the right to physical integrity (CRLP, 2001a,

p. 34). Even though FMLN's members publicly expressed their opposing opinions and were against the reform of the Penal Code, their votes were not sufficient for the exceptions allowing abortion to be maintained (Viterna, 2012, p. 251). Therefore, in April 1997 the decision for a total abortion ban to be imposed was made by the Legislative Assembly. Nevertheless, according to the antiabortion proponents, the abortion reforms in the Penal Code were not sufficient for the life of the fetus to be fully protected.

The political party ARENA took advantage of the legislative victory and proposed a constitutional amendment. The Church, right-wing Catholic groups, the conservative political parties, and the media used the same campaign strategies as before. They supported ARENA's proposal to amend Article 1 of the Constitution to recognize life "from the very moment of conception" (CRLP, 2001a, p. 36; Viterna, 2012, p. 251). The campaign to amend the Constitution was also highly publicized. The legislators which were in favor of the constitutional reform cited international human rights treaties, such as the Universal Declaration of Human Rights, to justify the constitutional protection of the rights of the fetus while disregarding the fact that the UN has "never interpreted the right to life as protection of the life of the fetus" (CRLP, 2001a, p. 36). Once again, the FMLN party opposed the antiabortion movement and the amendment in the first vote but the party alone could not prevent the amendment from passing to the second round. Even though FMLN did not support the constitutional amendment, the party's leadership allowed their members to vote according to their own conscience. In the final round, none of the FMLN deputies voted against the amendment of the Constitution because "Voting for legal abortion in any form seemed a deeply unpopular move, and with upcoming legislative elections, FMLN deputies increasingly worried that the party line would equate to political suicide" (Viterna, 2012, p. 251).

The antiabortion campaign's success was confirmed with the passing of the constitutional amendment in 1999. The Church was the first actor to express its satisfaction with the reform of the Penal Code and the primary norm of the country, the Constitution. On the other hand, El Salvador's civil society argued that the total abortion ban "was a political maneuver spearheaded by the Church and conservative groups" (CRLP, 2001a, p. 37). Moreover, the parties involved in the abortion debate did not consider the opinion of international organizations and did not consider any other perspectives on the effect of the abortion ban and the socioeconomic

consequences. According to some legislators, a secret vote would have given different results to the reforms because although the highly politicized abortion issue was not supported by many deputies, they feared expressing their opinion publicly (CRLP, 2001a, p. 40).

4.1.2 Human Rights Instruments

El Salvador has signed and ratified most of the major UN international human rights treaties and also as a member state of the Organization of American States (OAS) has signed and ratified the regional Inter-American human rights instruments (IJRC, 2018). However, the importance will be placed on the human rights instruments of the UN, especially the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW) as one of the crucial global instruments for the protection of the human rights of women.

The realization of human rights is strongly associated with the principle of non-discrimination. This principle is a part of all core international human rights instruments and it means that every person is entitled to the full range of human rights. States, therefore, are under an obligation to pass laws that are non-discriminatory and to prohibit intentionally discriminatory policies. Laws that criminalize reproduction target groups that are stigmatized and disadvantaged, such as girls and women but in particular the low-income females who depend on the public healthcare system (Amnesty International, 2018, p. 66). The criminalization of abortion as a reproductive human right is closely related to multiple recognized human rights, which are enshrined in the international treaties. Some of the rights which are frequently violated by the criminalization of abortion are the right to life, the right to freedom from torture and other ill-treatment, the right to health, the right to equality and non-discrimination, and the right to privacy (Amnesty International, 2018, pp. 63-66).

The UN CEDAW was signed by El Salvador in 1980 and ratified in 1981 (UN, n.d.). The text of the CEDAW, such as the other UN treaties, does not address abortion as a human right in an explicit manner. However, the human rights treaties of the UN do not preclude the recognition of abortion rights either (Ngwena, 2010, p. 787). The lack of recognition of abortion as a standalone human right has initiated a debate on the effectiveness of the human rights treaties on the liberalization of abortion. The supporters of the human rights law assert that human rights

treaties help to explain why the violations of human rights principles by the government are wrong and that the “Treaties are effective even when courts are too weak to enforce them because they codify a public’s views about how its government should behave” (Roth & Posner, 2014). The criticism of human rights and pessimistic reasoning is mainly attributed to human rights law’s ambiguity, the fact that the treaties are not legally binding and the difficulty to enforce compliance due to the lack of evaluation mechanisms. They also argue that states cannot abide by the human rights obligations because “human rights treaties do not recognize that rights are expensive, both financially and politically” and because “different types of rights are easier to respect in different types of countries” (Roth & Posner, 2014). In terms of CEDAW, scholars argue that even though the Convention has been ratified by 188 countries, laws and customs subordinate women in most of the countries around the world (Roth & Posner, 2014). While some scholars argue that the CEDAW is ineffective in promoting women’s right to abortion because “the most important influence on abortion liberalization is the empowerment of women politically and economically,” others believe that the CEDAW contributes to the increase of abortion rights and liberalization of abortion laws (Hunt & Gruszczynski, 2019, pp. 722-723). Regarding reproductive rights, the CEDAW contributes to the improvement of legal access to abortion by affirming women’s reproductive rights and targeting the role of the cultural and traditional aspects that shape the stereotyped gender roles and family relations (UN Women, n.d.). The CEDAW recommends states eliminate practices that are “based on the idea of the inferiority or the superiority of either of the sexes,” modify or eliminate laws that are discriminatory against women, “modify the social and cultural patterns of conduct of men and women,” and obliges states to “confirm that culture and tradition is not used to violate or limit human rights” (Amnesty International, 2018, p. 67).

With El Salvador’s ratification of the regional and international human rights instruments, the country has undertaken international obligations to protect, respect, and guarantee the rights recognized and affirmed by the treaties. Under the Constitution of El Salvador, international treaties are directly incorporated into the domestic legislation and constitute laws of the country after their ratification. Article 144 of the Constitution states that “The law shall not modify or repeal that agreed in a treaty in effect for El Salvador. In case of conflict between the treaty and the law, the treaty shall prevail” (El Salvador, 1983). Even though international treaties are considered laws in the country and have supremacy over domestic laws (Samour, 2007), in

reality, numerous human rights violations are a recurring issue in the country (Human Rights Watch, 2021a). The Constitution of El Salvador also protects every citizen's right to life, health, liberty, security of person, and social justice, and establishes that every person is equal regardless of race, gender or religion. However, these rights and constitutional guarantees are violated by the criminalization of abortion (CRLP, 2001b, p. 56). Besides the discriminatory nature of the abortion law, the notion that the woman's role is confined only within the boundaries of the family unit is also represented in the Constitution. While the Constitution protects the family unit as "the fundamental basis of society" (El Salvador, 1983), it mentions women only in three Articles (Article 33, 38, and 42) of which two Articles are related to women's role as a wife and a mother. Women are acknowledged when defining marriage and when establishing that they are entitled to paid leave before and after childbirth (Diossa-Jiménez & Menjívar, 2021, p. 8).

In 2018, the UN Human Rights Committee published a general comment on Article 6 (right to life) of the International Covenant on Civil and Political Rights (CCPR). The language used in the document clearly affirms that abortion is a human right and acknowledges that the right to life begins at birth (Center for Reproductive Rights, 2018). The Committee calls on the states to revise their abortion laws and to provide safe and legal abortion in cases "where the life and health of the pregnant woman or girl is at risk, and where carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or is not viable" (UN CCPR, 2018, p. 2). Moreover, the Committee recognizes that abortion laws must not violate women's right to life and health, discriminate against them, interfere with their privacy, or violate any other rights established in the CCPR. It is also stated that states should not impose punitive abortion measures against women and medical professionals and grant women access to effective prenatal and post-abortion health services on a confidential basis (UN CCPR, 2018, p. 2). In efforts to ensure compliance with the human rights treaties of El Salvador, the UN has condemned the total abortion ban and urged the country to reform its abortion law. The UN has also expressed utter disapproval of the imprisonment of mainly poor women who had miscarriages or were accused of having an abortion (UN, 2017). However, despite El Salvador's ratification of the human rights treaties and the UN's criticism of the country's failure to ensure women's rights are guaranteed and protected, El Salvador appears uncooperative and unwilling to reform its abortion law and commit to implementing human rights treaties.

I do not necessarily believe that the lack of recognition of abortion as a standalone human right within any of the international human rights instruments is a barrier for El Salvador not to acknowledge abortion as a women's human right. As mentioned above, the notion that abortion is a human right is supported by a constellation of rights to which every human being is entitled and that could be interpreted by the government of El Salvador to protect women's right to abortion (Zampas & Gher, 2008, p. 255). Human rights treaties were used as inspiration during the campaign for absolute prohibition of abortion but were interpreted to benefit the notion that life begins at conception. Even though the common belief is that human rights are of service to the most oppressed in the society, in the case of El Salvador, the misleading interpretation of the human rights treaties benefitted the groups in favor of the criminalization of abortion, and with that, the violation on women's rights. Therefore, I argue that El Salvador is a repressive state and as such, the country is not susceptible to new ways of behavior. The country has ratified human rights treaties only to gain political advantage from membership (Hafner-Burton & Tsutsui, 2007, p. 414). For example, even though CEDAW was ratified by El Salvador in 1981, long before the abortion law and constitutional reforms, the country was not interested in changing its behavior nor in internalizing the human rights norms. Instead, El Salvador employed strategic and purposeful repression toward women and their reproductive rights, thus failing to improve the protection of women's human rights. However, while repressive states are capable of reforms to ensure the protection and respect of human rights, they are also not probable to "give up repression simply because their neighbors have" (Hafner-Burton & Tsutsui, 2007, p. 414). Also, while many believe that human rights are the highest moral norm for every nation, "in reality, clashes between human rights values with traditional practices, beliefs and religions are very common" (A de Man, 2018, p. 90). This claim seems to be accurate in the context of El Salvador as the dominant traditional and religious norms shape and influence the political powers in the country, as well as every other aspect of the society.

4.2 What's the problem of abortion as a reproductive issue represented to be in the Penal Code of El Salvador?

Considering that all policies are problematizing and thus contain implicit problem representations, the goal of the first question is to determine the dominant problem

representations in the policy. Due to the complexity of the policies, we could identify more than one problem representation in one policy, and therefore Bacchi argues that this could be a challenging task (Bacchi, 2009, pp. 2-4). To answer this question, I will examine the abortion law in El Salvador and identify the dominant problem representation within the legal document. Also, I will explain what is covered by the law, and examine how the issue is perceived by the authorities and which issues they attempt to fix.

El Salvador's abortion law is mainly concerned with outlawing abortion with no exceptions, protecting the fetus from harm or illness, and establishing criminal sanctions for the woman and every other person who might assist her in terminating her pregnancy. This abortion law went into effect in 1998 (Amnesty International, 2014) and was not created as a special law, instead, it was inserted and aligned with the Penal Code since its approval. Articles 133 to 137 from the Penal Code severely punish abortion with prison sentences for the woman, other people who help the woman carry out the intervention, and healthcare professionals. The law fails to define the termination of a woman's pregnancy, but the country considered every scenario regarding abortion "in a parsimonious set of five articles with penalties associated with each crime" (Diossa-Jiménez & Menjívar, 2021, p. 9). The abortion-related crimes are explained in the chapter on "Crimes Against the Life of Human Beings in the First Stages of Development" ("De los Delitos Relativos a la Vida del ser Humano en Formación") and put briefly, the dominant problem with abortion represented in this law appears to be the legitimization of the termination of pregnancy procedure under every circumstance. Further, none of the law's provisions address abortion as a component of women's health care or as a reproductive human right issue. While abortion is simply constituted as an unwanted act and a criminal offense against the fetus in this law, it refers to a safe and effective abortion, which is an intervention typically performed by medical professionals, as to an "Aggravated abortion." This can be identified in Article 135 of the Penal Code which states (El Salvador, 1980, art. 135) (Hereafter, Appendix A):

If the abortion was performed by a doctor, pharmacist, or by people who perform Auxiliary activities of the aforementioned professions ..., [they] will be sentenced from six to twelve years in prison. The penalty of disqualification will also be imposed for the exercise of the profession or activity for the same period.

In addition to “Aggravated abortion,” the law recognizes as illegal the following abortion categories: “Consensual and self-induced abortion,” “Abortion without consent,” “Induction or aid to abortion,” and “Unintentional abortion” (Appendix A). Induced abortion, which is also a safe and very common procedure when “performed by a licensed physician, or an appropriately licensed mid-level practitioner acting under the supervision of a licensed physician, with the intention of terminating a pregnancy” (Rigterink et al., 2013, p. 235), is prohibited under Article 136. It is noteworthy that the father's role in this law is almost completely disregarded and the male parent is acknowledged only in this article of the abortion law. Article 136 on “Induction or aid to abortion” (“Inducción o ayuda al aborto”) states (Appendix A, art. 136):

Whoever induces a woman or provides her with economic or other means so that abortion is performed, will be punished with imprisonment from two to five years.

If the person who helps or induces the abortion is the male parent, the penalty will be increased by one-third of the maximum penalty indicated in the previous paragraph.

Moreover, the highest prison sentence for a woman regarding the termination of her pregnancy according to this law is eight years for “Consent and own abortion.” Article 133 on consent and own abortion states (Appendix A, art. 133):

Whoever provokes an abortion with the consent of the woman or the woman who provokes her own abortion or consents to another person performing it, they will be punished with imprisonment from two to eight years.

However, this law’s legal positioning also allows women to be found guilty and sentenced to aggravated homicide in cases of abortion or miscarriage when the fetus is considered viable. The punishment for aggravated homicide is established in Article 129 of the Penal Code and the sentence for this crime ranges from thirty to fifty years in prison (Appendix A, art. 129; Reproductive Health Matters, 2014, p. 52). The fetus in this law is referred to as the unborn and is protected from harm under Articles 138 and 139. Article 138 on “Injuries to the unborn” states (Appendix A, art. 138):

Whoever causes an injury or illness to the unborn that seriously impairs its normal development or causes a serious physical or mental impairment, will be punished with imprisonment from one to ten years, depending on the seriousness of the same.

In addition to the five antiabortion articles, in the Penal Code's chapter on "Offenses Related to the Life, Integrity and Personal Liberty" ("Faltas Relativas a la Vida, la Integridad y a la Libertad Personal"), Article 373 ensures that the illegal sale of substances or products that are used to terminate a pregnancy is sanctioned and according to Article 374, media announcements of procedures, medicines, and objects intended to cause abortion are also sanctioned. However, the imposed punishments for these crimes are not as severe as the ones intended for the woman and the health professionals (El Salvador, 1980, art. 373, 374).

To put it succinctly, in addition to the legitimatization of abortion identified as the predominant problem representation, three additional problem representations emerge: (1) abortion is conceived as a state issue, rather than a personal one; (2) termination of pregnancy is not considered to be a medical matter; (3) abortion is not considered to be a reproductive human rights issue.

4.3 What presuppositions or assumptions underlie this representation of abortion as a reproductive issue in the Penal Code of El Salvador?

This question is an analytical one and it aims to identify the presuppositions or assumptions, or the "background knowledge that is taken-for-granted" (Bacchi, 2009, p. 5), which underlie the specific problem representation. When answering this question, we are not interested in looking at the presuppositions or assumptions of the policymakers or legislators, but the focus is on identifying the presumed background knowledge within the problem representations (Bacchi, 2009, p. 5). In this question, the emphasis is placed on the deep-seated cultural values and premises that underpin the problem representations. Also, when applying the WPR analysis tool, we need to observe where the binaries and categories appear in a policy. According to Bacchi (2009), "A binary assumes an A/not-A relationship" (p. 7). For example, male/female, rich/poor, legal/illegal, etc. The hierarchical structure in the binaries indicates that one of the sides is privileged and more important than the other (Bacchi, 2009, p. 7). Bacchi (2009) defines

categories as “concepts that play a central role in how governing takes place” and people categories are central to the governing processes (p. 9). Some examples of categories are age, disease, gender and sexuality categories, etc. People categories are more specific, such as single mothers, students, citizens, etc. These categories affect the governing, and the ways people think about themselves and others (Bacchi, 2009, p. 9).

4.3.1 Abortion: A public matter

In El Salvador's law, the general assumption underlying the problem representations is that the act of abortion, under all circumstances, is a violent act against the fetus and as such it requires state intervention in order for the life of the fetus to be protected. The fact that the law criminalizes the woman and every other person in the Salvadoran society who might help the woman terminate her pregnancy, indicates that abortion is perceived as a public concern. Therefore, abortion is not a woman's personal decision, but rather, a public issue. This separation between the public and personal spheres, known as the public-private divide, has been the center of attention of many feminist scholars (Mohapatra & Wiley, 2019, p. 107). While some strands of feminism argue that the border between the public and private spheres and the absence of government's interference in women's private lives devalues women's lives, others believe that the public-private divide should be maintained, especially in relation to matters such as women's reproductive freedoms, custody of their children, and choosing a partner (Cohen & O'Byrne, 2013, p. 39, 47). Following the notion that the barrier between the public and private is crucial in terms of women's reproductive decisions in order for their fundamental rights to privacy, freedom, and autonomy to be respected, it can be observed that there is no separation between the public and the private realms. On the contrary, through this abortion law, the government impinges on women's private lives and deprives them of their rights and freedoms. By constituting a woman's pregnancy a subject to government control, this law shows that the private is not always apolitical, but is “culturally (and socially) constituted and permeated by power relations perpetuated by the state” (Cohen, 1992, p. 53). In addition, the state's neglect of women's human rights is evident from the fact that the problem of abortion is not acknowledged as a reproductive human rights issue in this law. Abortion is prohibited in all cases that are considered critical under human rights standards such as danger to life and health, rape, and

incest (Zúñiga-Fajuri, 2014, p. 845), and this suggests that the law was not created in accordance with human rights principles, therefore it does not recognize abortion as women's human right.

4.3.2 The Church and Morality

El Salvador is predominantly a Catholic country, like many other countries in Latin America. Salvadorans are known for their strong religious identity and faith. Religion in the country permeates every part of the society, and the Catholic Church maintains a close relationship with the government and political elites, thus immensely influencing the sociopolitical consciousness in the state (Ahn, 2015). In countries with strong Catholic identities, the Church typically condemns the act of abortion, and argues that the life of the unborn child has to be protected because "taking of innocent human life, whether born or unborn, is morally wrong" (Saunders, n.d.). Moreover, by attributing humanness to the fetus, the Church perceives abortion as an immoral act that "goes against God's moral code" (Zúñiga-Fajuri, 2014, p. 842). Religious narratives on morality are frequently used to justify the punishment of reproduction. Also, morality is oftentimes used to conceal prejudice toward women and is declared as a fixed, public good by lawmakers. Regarding human rights standards, it is allowed for the concept of morality, to some extent, to be used for some rights to be limited. However, human rights standards do not allow for morality alone to be used as a justification for criminalizing sexual and reproductive actions or decisions (Amnesty International, 2018, pp. 41-42). Therefore, as this law aims to control women's bodies by banning abortion with no exceptions and protects the life of the unborn, it could be assumed that this abortion law was influenced greatly by religion and is a morality-based law. As a morality-based law, it aims to control the supposed immoral behavior of women and protect the moral and legal personhood of the fetus.

4.3.3 The Fetus as a Human Being

The main objective of the law is to protect the right to life of the fetus and prevent the fetus to be harmed by the mother or any other person, thus, assuming that the fetus is a legal

person. The notion that the fetus is a human being before its birth can be detected in the title of the chapter under which the abortion crimes are explained, “Crimes Against the Life of Human Beings in the First Stages of Development,” and also in the articles which refer to the fetus as to the “Injuries to the unborn” and “Current injury to the newborn.” The keywords here are “human beings” and “unborn.” By using these terms, the law humanizes the fetus and assumes that embryos and fetuses are already born children or babies with legal rights (Abboud, 2020, p. 6). The linguistic terms used to attribute humanness to the fetus in the law reflect the attitudes of the legislators which are associated with cultural beliefs and values. The acknowledgment of the fetus as a human being is a significant part of the abortion debate. These humanizing, post-natal terms which are central in the abortion debate, are associated with great opposition to abortion and have the power to shape the abortion-related attitudes (Mikołajczak & Bilewicz, 2014, pp. 2-3).

4.3.4 Women, Patriarchy, and Familism

Furthermore, as all forms of abortions are punishable with prison and women’s reproductive rights are neglected, it is assumed that the primary role of the woman in society is the role of a mother and a child-bearer. Such views about women can be predominantly found in societies in which sociopolitical structure is defined by patriarchal norms. El Salvador’s patriarchal society is maintained by the men’s belief that women have a subordinate position and are second-tier citizens (Musalo, 2018, p. 32; COHA, 2013). One of the central features of the patriarchal system is the control of women’s sexuality and reproduction through restrictive legal and cultural norms. The women who fail to comply with the norms governing their reproduction are then seen as deviant or criminal. This denial of women’s reproductive rights and control over their bodies reinforces misogynistic cultural values (Chesney-Lind & Tonima Hadi, 2017, pp. 73-74). According to Lerner (1986), in patriarchal societies, women’s deemed appropriate behavior is expressed in laws, social roles, and values (p. 212). Moreover, Lerner argues that women’s sexuality and reproductive capacities were commodified by men and that the only way a woman could attain a “respectable woman” status within the family and society is by providing sexual and reproductive services to men (p. 215). In this regard, this abortion law implies that El Salvadoran women’s role in society would only be respected if they adhere to what is considered ‘normal’ behavior by society and their status as respectable women could be sustained through

their reproductive function. On that account, this law favors and aims at preserving the main role of the woman, which is her role as a wife, child-bearer, and mother. The women, on the other hand, who are not married or are childless, are accorded a lower status than the women who are mothers. In Salvadoran society, the mother-child relationship is viewed as central to family functioning, and as nurturers, they are “expected to subjugate their own goals for the well-being of their families” (O’Reilly, 2010, p. 338). Therefore, by not allowing women to have access to reproductive health services and make decisions related to the termination of their pregnancies, the law aims to preserve a woman’s traditional family role. The assumption here is that this abortion law is in alignment with the family ideology, and as such, besides the fetus, prioritizes and aims to protect primarily the family unit over the health of the woman. According to the family ideology, or familism, the primary responsibility of the woman is to provide care to the husband and children. Familism, as a set of standards that supports the role of the women as the main nurturers of the family, is deeply established in the laws and shapes their context and the portrayal of women as the primary family caregivers reinforces legislation “that precludes women from protection within the law.” The women whose behavior is perceived as deviant in terms of the traditional family structure are then “subject to devaluation and control through informal and formal legal means” (Diossa-Jiménez & Menjívar, 2021, p. 5).

4.3.5 The Criminalization of Healthcare Workers

In addition to the woman and other people who assist the woman to carry out the abortion, the law punishes all healthcare workers. Today, most countries that enforce antiabortion policies, prosecute only the doctors and believe that women do not need to be punished because they are the second victims of abortion. However, El Salvador’s abortion-related crimes are prosecuted against both, doctors and women, making this law one of the few. Oberman (2018) argues that “the only practical way to enforce abortion crimes against women is to enlist the aid of doctors” (p. 6). Therefore, for the law to be effectively implemented, the country prosecutes the healthcare workers because they are the woman’s support network who can help obtain safe pregnancy termination (Santini, 2016, p. 39), and the law’s extreme penalties also encourage and motivate doctors’ behavior to report suspected reproduction-related “crimes” (Viterna & Bautista, 2017, pp. 81-82). Abortion has been recognized as a reproductive human right by organizations such as the UN and WHO. UN experts have proclaimed that abortion is essential

health care and that the women's full access to reproductive health-based services is a fundamental human right (UN, 2021). However, the fact that women are not allowed to seek professional medical help for unsafe abortion complications or other obstetric emergencies, for fear of being prosecuted, leads me to the assumption that according to this law, abortion is not recognized as an aspect of reproductive healthcare and that the procedure is not inherently related to the health of the woman or women's human rights.

4.3.6 Categories and Binaries

From the problem representations, there can be identified four people categories. The law recognizes the woman, the healthcare professionals, and other people who help the woman terminate her pregnancy or provoke her abortion. The activities taken by these people categories in relation to abortion are illegal and therefore, they are considered criminals. The fetus or the unborn on the other side is the victim, needing legal protection. Therefore, the significant dichotomies detected here are the woman, healthcare workers, and every other person who is of service to the woman to obtain an abortion as the offenders and the fetus as the possible victim and a privileged side. As mentioned in the first question, the supposed father is explicitly addressed once in the law and is held legally responsible for helping or inducing the woman's abortion. However, according to MacKinnon (2005), "Criminal abortion laws hurt women through a biological correlate of femaleness and a socially defining characteristic of gender long used to disadvantage women and keep them in a subject status" (p. 144). Although this law in addition to the father, punishes the healthcare workers who could also be males, that is "merely a pretextually gender-neutral means of accomplishing the same goal: depriving women and only women, by law, of relief from a situation of sex inequality that begins in unequal sex and ends in unequal childrearing" (MacKinnon, 2005, p. 144).

4.4 What is left unproblematic in this problem representation of abortion as a reproductive issue in the Penal Code of El Salvador? Where are the silences? Can the problem be thought about differently?

Up to this point of the analysis, the focus was on examining the influential Salvadoran actors and the genealogy of the problem, identifying the underlying problem representations within the

abortion law, and identifying the conceptual premises. This question's main objective is to consider and reflect on the limits and silences in a specific problem representation. In this step of the analysis, it is important to ask ourselves: "What fails to be problematised?" (Bacchi, 2009, p. 12). The intent here is through critical analysis to identify the perspectives and issues of the problem which are silenced in the problem representations. Moreover, the analysis performed on this question "accompanied by inventive imagining of potential alternatives," gives us the opportunity to "imagine different futures but always with a commitment to examine proposals for their modes of problematising" (Bacchi, 2012, pp. 22-23). This question also requires a cross-cultural comparison because it will allow for the problem representation to be understood in a different way, depending on the cultural and institutional contexts (Bacchi, 2009, p. 14).

4.4.1 Limits and Silences

First and foremost, El Salvador's stringent law does not provide a clear definition of what abortion means. Moreover, the country's radical approach to abortion fails to take into consideration many significant and deep structural factors, such as the lack of sexual education, high rape and incest rates, widespread poverty, and religiously prohibited contraception, that predispose women's unwanted pregnancies (Strochlic, 2017). Perhaps one of the most detrimental silences within this law is the delegitimization of abortion in cases of rape or incest, especially considering the frequent occurrence of these forms of sexual violence and the gangs' practice of sexually assaulting females. Due to the cultural and religious beliefs, rape in El Salvador is not regarded as a serious act and the resulting psychological and emotional trauma of the victim is of little or no importance at all. Instead, the full responsibility is transferred to the woman, who from a victim can instantly become a criminal if she decides to terminate the unwanted rape-related pregnancy. Drawing on the argument made in question three about promiscuity, women's supposed immorality is interrogated even in cases of rape. Authorities' focus is not on the perpetrator, instead, they question the woman's behavior and her clothes when the crime took place (Herrera, 2017). The silencing of rape in the problem representations can be strongly linked to the beliefs of the antiabortion proponents that rape or incest exceptions could never be in a harmony with their belief that the fetus is a human being (Goodwin & Ziegler, 2021). Acts of incest are not perceived as a serious issue by certain members of the communities and are committed openly. The normalization of the acts of incest in certain places in the country

and by certain people, can be assigned to the ubiquitous patriarchal norms and the “view that the father “owns” the rest of the family and therefore has the unrestricted right to sexual relations within it” (Musalo, 2018, p. 44).

The criminalization of pregnant women’s behavior, even though those women are in reality victims of crimes, and the stance of the antiabortion activists regarding rape can be observed in the case of a young Salvadoran girl. In 2006, the girl was raped by several men on her way back home. After realizing she was pregnant, she tried to terminate her pregnancy in an illegal way by taking a pill. However, due to excessive bleeding, the girl went to the public hospital where the doctor who treated her abortion-related complications, threatened to remove her uterus if she did not confess that she had provoked her abortion. This case was commented on by one of the most powerful anti-abortion advocates in El Salvador, Archbishop Sáenz Lacalle. In an interview for the BBC News Mundo, Sáenz Lacalle claimed that if the girl terminates her pregnancy, then “she is committing a much more serious crime than the rape itself,” (“si se acude al aborto se está realizando un delito muchísimo más grave que la propia violación”) and added that “The human being that is conceived is an innocent person who is not attacking anyone, his life is as respectable as that of any other citizen” (“El ser humano que está engendrado es una persona inocente que no está agrediendo a nadie, tan respetable es su vida como la de cualquier otro ciudadano”) (Figueroa, 2007). The lack of recognition of rape as a serious crime in the Archbishop’s statement reaffirms the inferior position of the females in El Salvador’s society and the deeply-rooted patriarchal attitudes toward women. Moreover, his claim that every person’s life is respected appears to be in discordance with the law criminalizing abortion in cases when the pregnancy endangers the woman’s life.

This law does not address women’s health and reproductive life in any of the provisions. Moreover, it does not offer any guidance on what should be done in situations when the pregnancy is unviable and endangers the woman’s health or life. The complications that may arise during different stages of the woman’s pregnancy could result in involuntary termination of the pregnancy, such as miscarriage or stillbirth. The silence surrounding these obstetric complications could have harmful effects on the health of the women or could even result in the death of the woman. Therefore, as the loss of the unborn could happen involuntarily, it may transgress a woman’s imposed acceptable behavior and social role as a mother and a

child-bearer. Consequently, the woman could be found guilty according to this law and be subjected to harsh penal sentences for a crime she did not commit voluntarily (Zureick et al., 2018, p. 123). As the law's ambiguity leaves room for interpretation in terms of the woman's life and reproductive health, it is quite straightforward when it comes to the protection of the life and health of the fetus. The fetus's health is protected by criminalizing any type of harm that could impair its normal development or cause any physical or mental defects. This, therefore, implies that the fetus's right to life and health has greater protection and is valued more than the health and life of the woman carrying the fetus. By silencing pregnancy-related complications that can have serious consequences on the woman's health or life, the law fails to address the perspective of the woman and her overall well-being. Instead, the country expects women to act heroically, and the lawmakers "regard human beings with full dignity as mere vehicles for the reproduction of the species" (Zúñiga-Fajuri, 2014, p. 845).

In addition to the above-mentioned silences regarding abortion in cases of rape or incest and when the woman's health and life are endangered, this abortion law also fails to recognize the role of the male partner. The role of the man and the fact that the father is directly addressed only in one of the articles of the law was touched upon briefly in question one. Taking into consideration the men's oppressive attitudes toward women, the gang members' practice of targeting girls and women and sexually assaulting them (O' Toole, 2018), and the high incest rates in the country, the absence of the male parent indicates that the woman is put against the fetus, therefore, revealing the discriminatory tendencies of the law. This also confirms the assumption that El Salvador's patriarchal society is predominantly defined by misogynistic cultural values. The full responsibility is put on the woman, and the law neglects the fact that "women do not impregnate themselves by themselves" and that men do not "suffer the physical, psychological, and emotional trauma of abortion" (Ngo et al., 2021, p. 12).

4.4.2 Contradictions

The basic human rights of every person are protected by El Salvador's Constitution and also in the core international human rights treaties ratified by the country. The right to life, as a core right, states have an obligation to protect and not to infringe (Hathaway et al., 2020) is protected under the Constitution and also by human rights treaties. This fundamental right is seriously

violated by this anti-abortion law. Women are deprived of the right to life as they do not have a choice and are forced to either carry the pregnancy to term or terminate their unwanted pregnancies in an illegal way and under unsafe conditions which can contribute to the high maternal mortality cases in the country (CRLP, 2001b, p. 56). In addition to the protection of the right to life, the Constitution protects and guarantees all people “the enjoyment of liberty, health, culture, economic well-being and social justice” (El Salvador, 1983, art. 1). Furthermore, El Salvador’s Constitution guarantees and protects the right to physical and moral integrity and the right to personal intimacy (El Salvador, 1983, art. 2). Further, the CEDAW calls on states to “take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, ... access to health care services, including those related to family planning” (UN CEDAW, 1979, art. 12, para. 1). The right to life, health, liberty, and right to physical integrity are all human rights that are strongly associated with the right to bodily autonomy. Bodily autonomy is the right of women to decide freely what they will do with their bodies and the right to make essential decisions about their bodies (Amnesty International, 2018, p. 19). Every Salvadoran woman is entitled to bodily autonomy, but the total abortion ban interferes with their decision-making regarding their reproductive health and jeopardizes their autonomy, thus undermining their human rights. Notwithstanding the constitutional and human rights guarantees, this law invades women’s bodies as it forcibly imposes maternity on them (Zúñiga-Fajuri, 2014, p. 842) even in cases when the woman was a victim of rape or incest, or when the pregnancy is putting her life and health at risk. As carrying a pregnancy to term is enforced on women, that severely invades women’s psychological and physical well-being which violates the rights protected and guaranteed under the country’s Constitution.

Despite the fact that this law contradicts the constitutional guarantee on the right to health, contradictions can be also identified in the country’s Health and Civil Codes. The Health Code establishes the state’s obligation to protect the health of the mother and the child. However, as already determined, the wording of the Constitution and Penal Code indicates that the life of the fetus is a priority over the life and health of the woman. Therefore, the Health Code’s regulation contains a contradiction between the life of the fetus, protected under the anti-abortion law and the Constitution, and the woman whose health and life might be in danger (CRLP, 2001b, p. 59). While the Constitution protects and recognizes human beings from the moment of conception, the Civil Code “establishes that a human being’s existence begins at birth” (CRLP,

2001b, p. 59). This implies that in case of conflict between protecting the woman's life and the fetus's right to health and life, the country should give precedence to the rights defined in the Civil Code or the rights of the woman recognized and protected by the Constitution (CRLP, 2001b, p.59). In reality, the life and reproductive health of the woman are never a priority and the country does not take into consideration the Civil Code or any other regulations when enforcing its anti-abortion law. Moreover, doctor-patient confidentiality is also guaranteed under the Civil Code and Health Code. However, as this law punishes the healthcare workers as well, in fear of being prosecuted as abortion is criminalized under every circumstance, doctors report women to the prosecutor even if there is only a suspicion of abortion. Women's medical information is not considered private or kept confidential (Zureick et al., 2018, p. 122) as every time a doctor reports a woman in need of medical attention, the professional confidentiality and the woman's right to privacy are violated (CRLP, 2001b, p. 60).

The right to equality and nondiscrimination as a fundamental element of international human rights law is recognized in El Salvador's Constitution and different UN human rights treaties. The Constitution guarantees equality of all people before the law and states that "All persons are equal before the law. For the enjoyment of civil rights, no restrictions shall be established that are based on differences of nationality, race, sex or religion" (El Salvador, 1983, art. 3). The CEDAW explicitly prohibits discrimination and aims to eliminate discrimination on specific grounds (IHRC, n.d.). The CEDAW (1979) condemns discrimination against women and requires countries "To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women" (art. 2-f) and "To repeal all national penal provisions which constitute discrimination against women" (art. 2-g). However, this law violates the right to equality and nondiscrimination based on gender by enforcing a punitive law and denying a procedure that is only required by women. Moreover, it also discriminates against women based on their socioeconomic status. Women who are poor or young girls with low incomes are disproportionately affected by this law as they do not have the financial means to obtain a costly abortion in some of the private hospitals in El Salvador or to travel abroad. Therefore, this law contradicts the constitutional and human rights protection against discrimination and is deepening the already existing gender inequalities. While El Salvador's prohibition of abortion affects only women it also accentuates

“the fact that multiple forms of discrimination may occur simultaneously, constituting a clear violating of the right to equality and nondiscrimination” (CRLP, 2001b, p. 57).

All things considered, there are numerous conflicting legal provisions concerning this law and despite that, the country is more interested in enforcing the provisions on abortion in the Penal Code and prosecuting women rather than respecting the Constitution, its national legislation, including the human rights treaties to advance and protect women’s rights. Even though El Salvador’s legislation protects women’s fundamental rights, the neglect of certain laws “reinforces the symbolic domination that renders the “male order” as self-evident, taken for granted, and beyond the need for explicit justification” (Diossa-Jiménez & Menjívar, 2021, p. 4).

4.4.3 Cross-cultural Comparison

Argentina was briefly mentioned in the introduction of this thesis as a country where, owing to the feminist movement, significant progress toward the advancement of women’s reproductive rights was made. But why compare El Salvador to Argentina in particular? El Salvador and Argentina are two Latin American countries that share many similarities in terms of cultural and religious values, but also both countries have high levels of abortion stigma. I will address Argentina’s developments, the recent decriminalization of abortion, and the translation of international women’s rights norms toward the domestic context of the country.

Similar to El Salvador, Argentina is also an ex-Spanish colony. Argentina is the second-largest in South America and is also a predominantly Roman Catholic country. Historically, Roman Catholicism has had an immense influence on the country and Catholicism has an important role in public and political life. The power of the Church in Argentina can be observed in the Church’s influence on the cultural norms and practices and policy and decision-making processes (Ngo, 2021). In terms of women’s human rights, the Church opposed the government’s programs on reproductive health, sexual education in schools, and the provision of contraception. The Church also opposed the government’s ratification of the CEDAW, because according to the ecclesiastical hierarchy, the Convention was “a “shortcut” to legalization of abortion” (Esquivel, 2016, p. 138). Argentinian bishops have also condemned the

ratification of CEDAW, stating that the treaty does not promote women's rights but that it "serves as a cover "for promoting negative changes in the culture of our people"" (CNA, 2006).

Another similarity between El Salvador and Argentina is the woman's traditional role in the family and society. Men's role is described with the concept of machismo, which is common in Hispanic communities and which refers to men being "genuinely superior to women for the benefit of the family, work and society as a whole" (Quintana, 2021). While men are seen as the masculine and dominant gender, women perform the role of the main nurturers of the family, child-bearers, and wives. Even though the expectations and the gender roles have been gradually changing, there is still a general expectation that individuals should put "the interests of the family above their own" (Cultural Atlas, n.d.). In addition, the machismo culture which is prevalent in these two countries oftentimes results in gender-based violence and high rates of femicide. It has been estimated that there were more than 250 femicides in 2020 in Argentina (Naundorf, 2021). The main impetus behind these high numbers is the inequality between men and women, prejudice, and lack of women's autonomy and opportunity in society (UN, 2020c).

In 2018, at least 500,000 women and young people of the Green Wave pro-choice movement marched outside the Congress in the capital of Argentina, Buenos Aires, demanding for women to have the right to make decisions about their bodies and demanding for their reproductive rights to be protected and respected (Giménez Béliveau, 2018). However, the Senate rejected a bill that would have allowed abortion in the first 14 weeks of pregnancy. As a consequence of the criminalization of abortion in Argentina, there were up to 450,000 illegal abortions every year resulting in the death of around 50 to 94 women annually. Despite the negative outcomes of illegal abortion, the Church was satisfied with the Senate's decision not to legalize the procedure and maintained its official position that abortion is murder (Giménez Béliveau, 2018). However, only two years later, the voices of the pro-choice movement were heard. In 2020, Argentina's Congress made a historic decision and legalized all abortions up to the 14th week of the pregnancy. Prior to this moment, Argentina had one of the restrictive abortion laws as women were allowed to terminate their pregnancies only in cases of rape or when the mother's health was at risk (BBC, 2020). The law also allows women to get abortions after the 14th week of pregnancy in cases of rape or when the life and health of the woman are in danger (Human Rights Watch, 2021b). As this landmark decision allows women to get a legal

abortion for the first time in more than a century (Politi, 2021), this shift in the legislation, expectedly, was met with strong opposition from the anti-abortion proponents. In expressing its discontent with the new abortion law, the Church also stated that the government ignored the feelings of the pro-life movement. The Commission for Life, Laity, and Family of the Episcopal Conference of Argentina called the day of the decriminalization of abortion “a sad day for Argentina” and also expressed its disapproval of the new legislation because the abortion law “authorizes a mother to kill her child” (Vatican News, 2021). Apart from the Church, the law was opposed by doctors also, particularly the ones working in the rural areas where Catholic and evangelical churches are the most influential (Politi, 2021). Nonetheless, Argentina’s decriminalization of abortion demonstrates a strong political will toward the advancement of women’s reproductive rights and the rise in secularism. Following the legalization of abortion, Argentina’s President Alberto Fernández and other politicians in favor of abortion stated that abortion is a matter of public health, rather than a moral or religious issue (Politi & Londoño, 2020).

The legalization of abortion in Argentina demonstrates the influence of international human rights and their recognition of abortion as a women’s reproductive human right. International women’s rights norms, in Argentina’s case, were not rejected but on the contrary, the translation in practice and the codifying of the new norm in law reveals the government’s supportive attitude toward global norms and determination to make normative changes regarding women’s human rights. Argentina’s step toward decriminalization of abortion also indicates that there are not any significant conceptual discrepancies between the international women’s rights norms and the country’s domestic context which could impede the translation of norms. Drawing on Zwingel’s theory, this could be identified as impact translation as the feminist movement utilized the international recognition of abortion as a human right to influence the restrictive legislation on abortion. Even though the domestic resistance from the Church and the other pro-life activists in 2018 resulted in norm rejection, the 2019 elections and the election of the new President Alberto Fernández (BBC, 2019) resulted in the adoption and implementation of external women’s rights norms. Therefore, the translation of international human rights norms into the domestic context of Argentina was largely determined by the years of rallies of the feminist Green Wave movement, as a powerful actor, and the level of engagement of the political actors. In addition to the pro-choice movement demanding the legalization of abortion, perhaps,

the translation of the norms into Argentina's domestic practice could also be attributed to the decline of the power of the Church and the rise of secularism. The social demand to democratize the country and the rise in appreciation of religious diversity contributed to the decline of the Church's influence on politics and society (Ngo, 2021), making the Church a weak state pro-life advocate. Evidently, the religious values and ideas were not prioritized and the Congress' vote was not determined by the Catholic Church's notion that abortion is murder.

However, even though Argentina had a restrictive abortion law where women were allowed to get an abortion only under two circumstances, the country's positive attitude toward human rights can be recognized in the country's Constitution and the incorporation of international human rights treaties into the Constitution in 1994, including the CEDAW (Levit, 1999, p. 281). Same as El Salvador, Argentina considers the human rights treaties to "have a higher hierarchy than laws" (Argentina, 1994, para. 22). However, as it can be understood from the two countries' attitudes toward abortion, the ratification of human rights treaties and their constitutionalization is insufficient in order for women's reproductive rights to be acknowledged and protected. The prominent influence of the Church on El Salvador's government and the lack of neutrality toward religious values and ideas generate normative resistance as abortion is perceived as a religious and moral issue and therefore, not culturally acceptable. Argentina, on the other hand, demonstrates openness to new ways of behavior and willingness to translate human rights norms into their domestic context. Further, the country shows a selective implementation of religious ideas and values into policies while at the same time maintaining a friendly relationship with religion (Ngo, 2021). Argentina's substantive norm translation indicates that the domestic actors are favorable to the international human rights framework (Zwingel, 2017, p. 684) while El Salvador's failure to protect and ensure women's reproductive autonomy is perhaps due to the state's primary interest to protect its state religion and support its ideology, which may indicate that El Salvador has ratified the international human rights treaties due to political pressure, rather than an expression of the country's moral duties (Man, 2018, p. 95).

4.5 What effects are produced by this representation of abortion as a reproductive human rights issue?

The main goal of this question is to gather an understanding of the effects that the problem representations have on people because the WPR approach “starts from the presumption that some problem representations create difficulties (forms of harm) for members of some social groups more so than for members of other groups” (Bacchi, 2009, p. 15). We need to interrogate the effects of the problematizations and assess how they “limit what can be talked about as relevant, shape people’s understandings of themselves and the issues, and impact materially on people’s lives” (Bacchi, 2012, p. 22). Therefore, the focus here is to comprehend how the problem representation of abortion affects women, which groups of people benefit from them, which members are harmed, and what can be done about that. Bacchi (2009) identifies three interlinked kinds of effects that need to be answered in this question and those are discursive, subjectification, and lived effects (p. 15).

4.5.1 Discursive effects

Bacchi (2009) defines discursive effects as “effects which follow from the limits imposed on what can be thought and said” (p. 15). In this part of the analysis, we take into account questions two, three, and four because within those questions we identify the problem representations’ assumptions, presuppositions, and silences (Bacchi, 2009, p. 16).

In question three of the analysis I presented the assumptions underlying the problem representations and according to the answer given, abortion in El Salvador is a felony and is perceived as morally wrong and socially unacceptable behavior. The termination of pregnancy which is equated to the murder of the fetus or the unborn is therefore illegitimate and women who do not act in accordance with what is acceptable and perceived as morally right are severely punished. Hence, any different behavior disrupts the gender norms in the society and the patriarchy embedded in the social and political spheres. Moreover, women as human beings are undervalued and their well-being neglected as the law closes off the consideration of women’s reproductive rights and healthcare needs and demands, instead, it places the fetus above the woman’s life and health. Further, while the family is also placed above El Salvadoran women’s rights as the Constitution protects the family as the fundamental unit of Salvadoran society (El Salvador, 1983, art. 32), women’s Constitutional rights and fundamental human rights, as seen in question four, are not put into practice, rather only exist in writing. The notion that women’s

reproductive health is portrayed as unimportant can be identified in the law's provision that sanctions the healthcare professionals which implies that abortion cannot be discussed in terms of healthcare and that abortion is not a matter of public health. Further, by criminalizing every other person who may assist or help the woman terminate her pregnancy, the law portrays not only the woman but everyone else involved in the act as the problem.

The way this issue is framed in the punitive abortion law makes it difficult for the complexity of abortion to be properly addressed. The very narrow perspective on abortion overlooks the numerous consequences of imposed maternity on every aspect of a woman's life.

4.5.2 Subjectification effects

According to Bacchi (2009), subjectification effects are “the ways in which subjects and subjectivities are constituted in discourse” (p. 15). An important issue that is noteworthy when we talk about subjectification effects is the dividing practices or the “way in which the problem representation within policies often set groups of people in opposition to each other” (Bacchi, 2009, p. 16). According to Bacchi (2009), “this stigmatising of targeted minorities serves a useful governmental purpose, indicating and encouraging desired behaviours among the majority” (p. 16). Here we need to take into consideration the attributions of responsibility and their effects because the representations of problems typically incorporate implications of who is responsible. Oftentimes, due to the dividing practices, the responsibility for the problem lies within the members of targeted groups. Therefore, “it is necessary to reflect upon the impact of such problem representations on the people who are targets of the policy” (Bacchi, 2009, p. 17).

In El Salvador's case, the subjectification effects can be understood from the given binaries. The woman and the people involved in the termination of the pregnancy and the fetus or the unborn are the subject positions that place first the woman and the people who help her obtain an abortion against the fetus. Therefore, placing the woman in opposition to the fetus and categorizing the woman as a criminal encourages the broader population to perceive abortion as immoral behavior and to support the absolute ban on abortion. Consequently, this deepens the abortion stigma by separating the women who want to terminate their unwanted pregnancies from society and portraying their behavior as illegitimate. Further, this encourages the deepening

of the social stigma and discriminatory attitudes toward every woman who terminated her pregnancy in an illegal way or she suffered an obstetric emergency that led to an unintentional loss of the pregnancy. Abortion stigma, according to Millar (2020) is not fixed and it does not impact the targets evenly because it is tied to power and therefore, affects individuals based on their race, gender, and class (p. 5). This abortion's law main target group is the El Salvadoran women, especially those who are socioeconomically disadvantaged and are not able to afford an abortion in a private clinic in the country where doctors will not report them to the authorities or to travel to a country where abortion is legal in order to obtain one.

4.5.3 Lived effects

The lived effects are the policies' direct influence on our lives. These effects present “the way in which policies create representations of problems that have effects in the real by materially affecting our lives” (Bacchi, 2009, p. 18).

The lived effects allow us to understand the actual consequences of the implementation of this law. Among this law's many repercussions for the women's lives, perhaps one of the most detrimental lived effects is maternal mortality. It has been estimated that the total ban on abortion in El Salvador is the second cause of maternal mortality in women and the third cause of mortality in adolescent girls (Januwalla, 2016). Young girls who have suffered rape or incest suffer major consequences as they are not allowed to terminate the unwanted pregnancy. This affects their education, employment, and overall quality of life. Approximately three out of eight pregnant Salvadoran girls under nineteen escape the imposed maternity through suicide (Oberman, 2018). These dreadful statistics that demonstrate the harmful effects of this law and how women's lives are belittled are presumably much higher as abortion is illegal and performed unsafely, and therefore, difficult to keep track of. However, the high rates of maternal mortality and the many harmful effects on women's and girls' lives are seemingly not a matter of major concern for the country's government, but instead, the country's main interest is the protection of the fetus. This, therefore, is ironic because “in defense of the sanctity of life” the country pursues a “policy which tends toward the maximization of maternal mortality” (Morris & Hawkins, 1970, p. 14). This could be attributed to the fixed gender roles and the deeply entrenched forms of cultural inequalities. The dominant motherhood norm, which is one of the few acceptable

norms when it comes to women's identity, is a significant barrier to understanding women's reproductive rights from a different perspective. El Salvador's cultural expectations of women and social norms which condemn abortion and support women's procreation and role as a mother at any cost are in reality perpetuating the inequality in the country and the stigma surrounding abortion and women's reproductive rights.

In addition to the high rates of girls' and women's mortality, as mentioned before in question two of the analysis, the Constitution and abortion law provide the legal basis for the state to prosecute abortion as aggravated homicide. This indicates that women, even the ones who suffer miscarriages, under this abortion law can be prosecuted and sentenced to up to 30 years or more in prison if the authorities conclude that an illegal abortion had occurred (Casas, 2022). Many of the women who had been accused of killing their unborns and because of that were sentenced to prison or charged with aggravated homicide were mainly poor, uneducated, and with limited access to health care services (Viterna, 2012, p. 249). As women with lower socioeconomic status are disproportionately affected, they are also the ones who are at the highest risk of maternal mortality and morbidity. For example, the case of Manuela, which is a well-known case, demonstrates how poor and uneducated women are the primary victims of this law. In 2008, Manuela suffered an obstetric emergency which led to her losing her unborn. After she experienced pelvic bleeding and lost consciousness, Manuela was taken to the hospital where she was reported to the police by the medical staff because they suspected she had an abortion (Smyth, 2022). She was then sentenced to 30 years in prison for aggravated homicide and died two years later from cancer. Her death in prison was a consequence of the inadequate medical diagnosis and treatment she received (Center for Reproductive Rights, 2021). In 2021, years after Manuela's death, the Inter-American Court of Human Rights (IACHR) in a historic ruling found El Salvador responsible for the death of Manuela. The country was also found "to have violated Manuela's rights to life, health, judicial protections and guarantees, freedom from discrimination and gender violence, and other rights" (Center for Reproductive Rights, 2021). However, even though this was a landmark ruling in which the standards for the protection of women seeking abortion were established (Center for Reproductive Rights, 2021), the IACHR's ruling does not provide a critique of this abortion law, and therefore it fails to contribute to the advancement of women's reproductive health and rights (Smyth, 2022). Moreover, the IACHR also did not acknowledge the fact "that Manuela would never have been on trial but for the complete

criminalisation of abortion, the active prosecution of those suspected of abortion, and the legislation's disproportionate impact on poor rural women and girls" (Smyth, 2022).

Even though I presented only two lived effects of this law, these effects reveal the harsh and cruel impact this abortion law has on girls and women. The high rates of maternal mortality, suicides caused by the ban on abortion, and women's imprisonment on aggravated homicide charges also show the significant discrepancies with the women's human rights norms and deviation from the CEDAW standards (Zwingel, 2017, p. 682). Despite the fact that El Salvador's President, Nayib Bukele has ordered for a few women who were sentenced to 30 years in prison to be released (New York Times, 2021), women's human rights are still being violated and women, under this law, are at risk of being labeled as murderers and imprisoned for aggravated homicide.

4.6 How has this representation of abortion in the Penal Code of El Salvador been produced, disseminated and defended? How could it be questioned, disrupted and displaced?

This question builds on the first question answered in this analysis and focuses on the practices and processes through which certain problem representations become dominant. In this step of the analysis, "it is appropriate to think about the means through which particular problem representations reach their target audience and achieve legitimacy" (Bacchi, 2009, p. 19). Apart from looking at how the problem representation has achieved legitimacy and reached its target audience when answering this question we also need to consider the role of the media because of its disseminating and supportive role in certain problem representations. Here, we need to be aware of the fact that "discourses are plural, complex and, at times, inconsistent" and they "can be seen as 'assets' or resources for re-problematisation" (Bacchi, 2009, p. 19).

Drawing on the first question about the genealogy of the problem, it can be observed that the determining factors for the production, dissemination, and defense of the problem representation of abortion have been the religion, media, and political actors.

The Church's belief that abortion is immoral and the notion that abortion is a murder of the fetus has been maintained by religious leaders ever since the Church's campaigns against

abortion during the Constitutional and Penal Code reform processes. The Salvadoran Church, as an influential actor, had one of the main roles in the production of the problem representation of abortion and also in its dissemination. While during the Penal Code reform process, the Church referred to abortion as a “frightful plague” (CRLP, 2001a, p. 32) with the goal for the government to prohibit abortion under all circumstances and protect the rights of the fetus, the Church’s position remained unchangeable after the law was enforced. This can be identified in a recent statement by the current Archbishop of San Salvador, José Luis Escobar Alas, who expressed his satisfaction with the rejection of the proposals for constitutional reforms that would decriminalize abortion. The Archbishop stated that “It is sad that they are trying to present to the Assembly a project that follows the patterns, ... of an international agenda promoted by the UN and other international organizations, to impose abortion on us, the legalization of abortion, which they do not even call that but 'reproductive health' or 'interruption of the gestational process', and other things like that that have been invented to confuse people” (Agenzia Fides, 2021). In the Archbishop’s statement, the consistency of the pro-life position of the Church can be detected, and also an aversion toward the UN. However, the Archbishop fails to acknowledge the numerous negative effects this abortion law has on El Salvadoran women and also the fact that the country has ratified many major human rights treaties, such as the CEDAW. The Archbishop also overlooks the fact that the UN human rights treaties cannot be imposed on the countries, but that they have the authority to inspire, teach and applaud the implementation of women’s rights norms, such as reproductive rights, into the countries’ policies (Zwingel, 2017, p. 685). However, it is quite clear that the Church and the prominent religious leaders were the key actors in the production of the problem representation of abortion as something that is not acceptable in the Salvadoran culture. The Church has also been one of the dominant defenders of the absolute ban on abortion and a significant factor in the dissemination of the problem representation of abortion.

In question one, the role of the media and the media’s support of the ideology of the Church was also touched upon briefly. The media was a powerful ally of the pro-life activists, mainly the Church, and actively participated in the production and dissemination of the problem representation of abortion. The media successfully disseminated the position of the Church and Catholic groups as the articles in the leading daily newspapers were in favor of the absolute ban on abortion (CRLP, 2001a, pp. 30-31). However, today, the Salvadoran mass media seems to

have divided opinions on abortion. In a recent article published in March 2022, the author supports the notion of the Church that abortion is murder and that women's ability to give birth to a human being is God's gift. The author then addresses the UN and states that "“Empowerment” is really a little word cleverly used by the communist UN through its subsidized international feminist tentacle” (“Empoderamiento” es realmente palabrita utilizada hábilmente por la comunista ONU mediante su subsidiado tentáculo feminista internacional, en agenda para controlar la natalidad”) (de Sol, 2022). The author of the article shares the same opinion regarding the UN as the Archbishop of San Salvador. The criticism toward the UN is perhaps used as a justification for enforcing one of the harshest abortion laws and therefore, the UN is perceived as the country's enemy by the pro-life proponents. In another article from 2019, published by the same El Salvadoran website, the author argues that therapeutic abortion which cannot improve or save a woman's life differs from when a woman loses her unborn by natural means. However, the author points out that whatever the case might be “the last word is with the Lord Jesus Christ who can perform a miracle regardless of the case” (“En todo caso la última palabra la tiene el Señor Jesucristo que puede hacer un milagro independientemente de cuál sea el caso”) (Ortega, 2019). In addition, the author argues that if a woman was raped, then the only option for her would be to give the baby up for adoption or to a family that cannot have children (Ortega, 2019). This article again demonstrates the support of the Church's stance against abortion, even in cases where the woman's health and life are at a risk or when the pregnancy resulted from rape. Conversely, an article published on a different website, argues the belief that abortion is murder is a weak argument used by the antiabortion supporters. The author argues that the murder of the unborn is a populist and non-rational appeal. The author proceeds to question why it is allowed for the armies and police forces to kill people in certain cases which are established by the law and women are not allowed to have an access to therapeutic abortions (Zamora, 2018). All in all, there are many Salvadoran digital media platforms where the problem representation is defended and the condemnation of abortion supported. Although articles that provide a different perspective and that are in opposition to the current punitive law can also be found, the media that favors the total ban on abortion is still a significant supporter of the religious beliefs, and therefore, along with the Church, has an impact on the public opinion on abortion.

The political actors, mainly the political party ARENA, were another major factor in the production, dissemination, and defense of the problem representation of abortion. The political parties that were in favor of the prohibition of abortion under every circumstance, together with the Church and the mass media, contributed to the problematization of abortion. Due to their powerful influence, other political parties, such as the FMLN, were subjugated. The ARENA initiated the Constitutional and Penal Code reforms, however, the total ban on abortion would not have been accomplished without the significant support of the Church and the mass media, nor its dissemination and defense. All things considered, every three actors were a major force behind the current abortion law of El Salvador and are of great importance regarding the production, dissemination, and defense of the problem representation of abortion.

5. Conclusion

I have sought to examine the reasons why El Salvador is determined to implement a law that denies women's right to reproductive freedom and self-determination and what factors contribute to the blockage of the translation of international norms to the domestic context. By utilizing Bacchi's WPR method in the analysis, I was able to identify the events and dominant actors who contributed to the total ban on abortion and identify the dominant problem representation as the legitimization of abortion. I also revealed the assumptions underlying the problem representation, the silences, and the effects of this law. Finally, I analyzed the factors contributing to the production, dissemination, and defense of the representation of abortion.

Based on my findings throughout this thesis, I can conclude that one of the most influential actors in El Salvador is the Church because of its tremendous influence on the policymaking of the country and the shaping of the people's opinions on the reproductive rights of women. Even though religion plays an important part in many countries, in El Salvador, religion and religious leaders aim at reinforcing the gender hierarchy and controlling women's bodies while at the same time neglecting the harmful effects this law has on women, especially the low-income women. The Church is also one of the main factors that contribute to the blockage and rejection of women's rights norms and with that, to the deviance from the human rights standards. In addition to the Church as the dominant antiabortion actor, I argue that the political actors in the country are in favor of the absolute ban on abortion because deviance from

the belief that abortion is murder would be an unpopular move considering the political power of the Church. Therefore, the political actors aim to maintain their political power by implementing an abortion law that denies women essential healthcare, contributes to high rates of maternal mortality, and violates numerous women's human rights.

In terms of human rights, El Salvador demonstrates an unwillingness to internalize and implement the human rights treaties ratified by the country. This indicates that the country is not open to new ways of behavior and that is perhaps mainly because the leaders of the country are accustomed to enjoying certain privileges such as persistent corruption and impunity and consider the human rights as norms that are enforced upon the country. The lack of interest in protecting and realizing women's reproductive rights by the state is further exacerbated by the patriarchal traditions and norms and the women's position in the family and society. These deeply entrenched traditions and beliefs in the society of El Salvador also contribute to the criminalization of abortion as women are primarily perceived through the lens of motherhood. The motherhood norm, and the women's role as the main caretaker of the family clash with the international framework of women's reproductive rights. Therefore, it can also be concluded that there are significant discrepancies between El Salvador and women's human rights norms and no support or interest for those norms to be translated into the domestic context. Hence, the translation of norms toward the domestic level is what Zwingel refers to as a distorted translation because there is a clear disconnection between international norms and the norms of El Salvador.

I would like to end this thesis with a quote by the feminist theorist Drucilla Cornell that I find very relevant to the situation regarding abortion in El Salvador. She states that "The denial of the right to abortion should be understood as a serious symbolic assault on women's sense of self precisely because it ... places the woman's body in the hands and imaginings of the others who would deny her coherence by separating her womb from her self (Cornell, 1995, p. 38 as cited in Smyth, 2002, p. 342).

Appendix A

CAPITULO II

DE LOS DELITOS RELATIVOS A LA VIDA DEL SER HUMANO EN FORMACIÓN

ABORTO CONSENTIDO Y PROPIO

Art. 133.- El que provocare un aborto con el consentimiento de la mujer o la mujer que provocare su propio aborto o consintiere que otra persona se lo practicare, serán sancionados con prisión de dos a ocho años.

ABORTO SIN CONSENTIMIENTO

Art. 134.- El que provocare un aborto, sin consentimiento de la mujer, será sancionado con prisión de cuatro a diez años.

En la misma pena incurrirá el que practicare el aborto de la mujer, habiendo logrado su consentimiento mediante violencia o engaño.

ABORTO AGRAVADO

Art. 135.- Si el aborto fuere cometido por médico, farmacéutico o por personas que realizaren actividades auxiliares de las referidas profesiones, cuando se dedicaren a dicha práctica, será sancionado con prisión de seis a doce años. Se impondrá además la pena de inhabilitación especial para el ejercicio de la profesión o actividad por el mismo período.

INDUCCIÓN O AYUDA AL ABORTO

Art. 136.- Quien indujere a una mujer o le facilite los medios económicos o de otro tipo para que se practique un aborto, será sancionado con prisión de dos a cinco años.

Si la persona que ayuda o induce al aborto es el progenitor, la sanción se aumentará en una tercera parte de la pena máxima señalada en el inciso anterior.

ABORTO CULPOSO

Art. 137.- El que culposamente provocare un aborto, será sancionado con prisión de seis meses a dos años.

El aborto culposo ocasionado por la propia mujer embarazada, y la tentativa de ésta para causar su aborto no serán punibles.

LESIONES EN EL NO NACIDO

Art. 138.- El que ocasionare en el no nacido una lesión o enfermedad que perjudicare gravemente su normal desarrollo o provocare en el mismo una grave tara física o psíquica, será sancionado con prisión de uno a diez años, según la gravedad de la mismas. (11)

LESIONES CULPOSAS EN EL NO NACIDO

Art. 139.- El que culposamente ocasionare las lesiones descritas en el artículo anterior, será sancionado con multa de cincuenta a cien días multa.

La embarazada no será penada al tenor de este precepto.

MANIPULACIÓN GENETICA

Art. 140.- El que con finalidad distinta a la eliminación o disminución de taras o enfermedades graves, manipulare genes humanos de manera que se altere el tipo constitucional vital, será sancionado con prisión de tres a seis años.

En la misma pena incurrirá el que experimentare o manipulare clonación con células humanas, con fines de reproducción humana. La aplicación de la tecnología genética para determinar el sexo, sin consentimiento de los progenitores, será sancionada con prisión de seis meses a un año e inhabilitación especial de profesión u oficio de seis meses a dos años.

MANIPULACIÓN GENETICA CULPOSA

Art. 141.- El que realizare manipulaciones con genes humanos y culposamente ocasionare un daño en el tipo vital, será sancionado con multa de cincuenta a cien días multa.

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