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### Leaving behind cultural relativism to endorse historical pluralism

Feitosa et al. discuss one of the most difficult themes in the fields of both ethics and rights, since the practice of so-called “indigenous infanticide” constitutes an issue at the limits of legal reasoning. The article is not only a theoretical reflection, but also takes place in a national scenario in Brazil where the issue is on the agenda of the National Congress and in the news media, sparking intense controversy between those pushing to pass a bill specifically criminalizing the practice and those that consider the bill inappropriate and even irrelevant.

Despite the enormous difficulties in building the argument defending the difference between peoples, even when involves the practice of infanticide, but without defending the practice itself, the authors do so efficiently and appropriately. They employ an argumentative strategy that can be described as “repatriation of the critique”, i.e., showing how in various historical situations the accusation aimed at indigenous peoples can be reversed to accuse the West of also having been stage to the practice, of having promoted or disguised it, even in the founding Biblical account itself. This strategy of showing that we are all infanticidal becomes highly convincing, since it exposes our widespread tendency to view other peoples as cruel and defective, judging them with a rigor that we fail to apply to what we consider our own world. I especially appreciate the information and analysis in the final sections: *Abortion, Infanticide and Neonatal Euthanasia and Possibilities for Intervention*.

However, I now offer some observation that could lead to retouching some aspects of the essay.

One of the paper’s problems is that it gives the impression that infanticide is highly frequent, when in fact the practice is rare, increasingly less frequent in the societies in which it occurs, and practiced in fewer and fewer societies. It is practically in extinction, and where it does occur, it is surrounded by intense controversy among the community’s members.

In dealing with the reasons that determine the practice of infanticide of various indigenous societies, the authors overlook a fundamental issue, namely the normative differences concerning who makes the decision in relation to the practice. This omission leads to the deepening of an important and quite widespread mistake, namely to believe that we are dealing with the

same type of act across various societies, when that is not the case. In fact, there are societies in which the reasons for a newborn’s life not be allowed to thrive, or even to prevent it from doing so, are of a cosmological order, and the decision to apply the rule and make sure that it happens lies with the community. And there are other societies in which the reasons are of a practical order, and in these the mother has the autonomy to make the evaluation and the decision. These are the two main tendencies, and based on them there is a wide variety of modalities.

Meanwhile, to refer to the practice, the phrase “*Among Indians, the decision to kill a child...*” is incorrect. If, as the authors note quite well, “*the human body is the result of a cultural ‘construction’*” (p. 855), then no “child”, that is, no human life, can be killed before it is “constructed”. Since the definitions of human life, including the notion of “infant life”, are different, one cannot kill what has still not acquired existential status<sup>1</sup>. The missionary discourse makes this mistake in its representation of the phenomenon, but the authors cannot allow themselves to commit the same error, and thus a better grasp into the anthropological reflection on the depth of the difference in the conception of life and death would have been indispensable for the argument.

Along this same line, the authors do not sufficiently elaborate on the contradiction between the positions of the two anthropologists they cite. Thus, these citations appear to be used to legitimize the text, i.e., through an obligation that is foreign to the argumentation, since the two authors differ; this difference is not analyzed, nor is a way found to mediate or interpret this difference.

Likewise, I believe that they fail to reflect on the missionary critique of indigenous infanticide, insofar as the latter contends that “*life has more value than culture*”, immediately asserting that “*life and the right to it are above culture*” (p. 858). It is not culture that is at stake, but life itself, i.e., life as it determines all other forms of human life: physical life, material life, that of a people, a collectivity. It is life’s capacity to reproduce and last. There is no individual life outside collective life. In some cases, in transhumant societies and those that do not accumulate a surplus, a single additional individual life jeopardizes the life of the entire collectivity, or at least, that of his or her immediate family – that of the siblings already born and preserved, also small and without autonomy in relation to maternal care<sup>2</sup>.

The authors invoke Convention 169 to emphasize that it demands respect for customary rights by applying the national law to indigenous peoples, but they forget that despite giving access

to the principles of legal pluralism, it safeguards the principles laid out under international human rights legislation and affirms respect for the internal law of peoples whenever human rights (as well as each national state's legislation) are not violated. Thus, the argumentation relying on this safeguard is only relatively effective. It would be more effective to draw on Brazil's commitment, assumed by ratifying this Convention, but also more recently by signing the Declaration of the Human Rights of Indigenous Peoples, to not legislate for indigenous peoples without their own participation in the decision-making process on norms that will affect their lives.

Further considering respect for each people's own law, I have argued at length that the discussion of infanticide does not involve this issue, but another area which I find central for dealing with such extreme dilemmas as infanticide: the state's responsibility to protect each people's internal decision-making capacity, and in keeping with this,

safeguarding each people's autonomy to build its own history. Through its own history, woven from the internal debate, and not the preservation of customs from an essentialist perspective of culture, each people will build its own particular dialogue with the common sphere of human rights. This has been my stance, and I believe that it allows us to efficiently transcend the paralyzing dichotomy between relativism and universalism<sup>3</sup>.

1. Holanda MAF. Quem são os Humanos dos Direitos? Sobre a criminalização do infanticídio indígena [Dissertação de Mestrado]. Brasília: Programa de Pós-graduação em Antropologia Social, Universidade de Brasília; 2008.
2. Sánchez-Botero E. Entre el Juez Salomón y el Dios Sira. Decisiones interculturales e interés superior del niño. Bogotá: University of Amsterdam/ UNICEF; 2006.
3. Segato RL. Que cada pueblo teja los hilos de su historia: el pluralismo jurídico en diálogo didáctico con legisladores. <http://www.cimi.org.br/?system=news&action=read&id=3594&eid=259>.

The case report by Ayer-de-Oliveira & Oselka on the twin pregnancy made a major contribution to our debate. The dilemma experienced by the attending physician in the case gives us an idea of the huge daily challenges faced by health professionals serving indigenous communities. This further reveals the need for greater and better professional qualifications, adding new knowledge to their technical training. The information on the “prior history” of an unsuccessful intervention in a similar case reveals all the care required for any intended intervention. Importantly, the physician in question proved to orient his approach according to ethical references; if another professional had not proceeded likewise, he certainly would have caused unimaginable damage with his undue intervention.

To contextualize the case, various approaches were taken, even to the point of consulting Brazilian Penal Law. Here, we take the liberty of making a slight correction. It is not true that Indians are not liable for their acts. On the contrary, the indigenous prison population in Brazil is relatively high. Thus, indigenous women can also be charged with the crime of infanticide. Article 26 of Brazil's *Penal Code*, quoted in the commentary, does not apply to Indians, but to individuals with “*mental illness or incomplete or delayed mental development*”, considered “*entirely incapable*”. The confusion probably stems from the case law that was consulted, since nothing in the current or previous penal code refers to immunity from criminal liability for indigenous persons, and many judges, moved by their high levels of prejudice and racism, and unable to perceive the Other and recognize him or her in his or her difference, have equated indigenous persons with the “incapable” (sic). Thus, indigenous persons are purportedly unable to “*understand the illicit nature of their acts*”, a position that proves false given the enormous number of criminal charges brought against many indigenous peoples, even those in more recent contact with Brazilian national society, as in the case of the Cinta-Larga in the State of Rondônia and numerous other peoples victimized by the strategy of criminalization perpetrated by their executioners. For further clarifications on this point, we suggest the elucidative work by Lacerda<sup>3</sup>.

We emphasize the relevance of the case report, especially since it reveals that the conflicts raised by indigenous infanticide practices are not limited to the villages, since the Indians establish various forms of relations with the outside world and use various public services, both in health and other areas. Finally, we highlight the appropriate discussion and caution adopted by Ayer-de-Oliveira & Oselka in their analysis, pursuing

the broadest possible scope. Such procedures contribute to the search for more adequate solutions to the various moral conflicts.

Schramm, in disagreeing with the theoretical perspective we postulated, took the care to explain the differences between moral relativism and moral pluralism, making clear our option for the latter, justified by its defense of “*respect for cultural differences and their existing value systems*”. Corroborating the dialogical stance he defends, he referred to the “*authority of consent*” defined by Engelhardt<sup>2</sup> as the “*secular moral authority*”, added the bioethical focus of quality of life, and concluded on the argument's pertinence, despite the controversy it raises. As Schramm himself warned<sup>4</sup>, when we face the dual challenge of respecting the specificity of the particular conflict and at the same time consider “*the universalist tradition of moral discourse*”, we should remain constantly alert in order not to promote “*cynical discrimination against vulnerable individuals and populations*”. This is the complexity that makes the argument controversial. Although in the case of indigenous peoples the concept of vulnerability is controversial, we use it here considering the historical process of territorial invasion and massacres to which they have been systematically submitted by the dominant society.

The critique by Jardim, with the peculiar acuity of an anthropologist, highlights the article's limitations in its reflections on the ethnographic data presented, making suggestions that we will certainly incorporate in future work. While clearly agreeing from the onset on with the limits identified in the area of ethnography, and recognizing our inability in ethnographic interpretations (even because none of the article's authors has training in the field), we will make some brief remarks concerning his critique.

We begin with a *mea culpa* for not having clarified two reasons which, in our understanding, give cause to the motivation of infanticide among indigenous peoples – namely cosmological and practical – as correctly observed by Segato in her commentary. We focused more on practical reasons, while we are aware that reasons of a practical nature persist within the cosmological reasons, despite the cosmological explanation given by the respective indigenous peoples. Still, there was no justification for our reductionism in translating the ontological reasons as being of a “*religious nature*”; our intention was to simplify, but we ended up limiting the reflection. We also understand now that the paper was jeopardized by not referring to Lévi-Strauss, whose quote is familiar to us. We thank Jardim for having done so. Concerning the indication of Holanda as an

updated bibliography, we agree and consider it a relevant study, with a beautiful ethnographic approach and enviable philosophic detail that require a close reading. We know the work, the author, and her thesis supervisor, Professor Rita Segato, an outstanding reference on the subject in debates held by the Brazilian Congress as well as the author of a widely acknowledged and relevant article on the theme. We maintain a frequent dialogue with Segato and Holanda and share common understandings. Unfortunately our article was prepared before their work cited in the critique, which prevented us from taking advantage of their valuable contributions.

As to the suggestion of an intent “*establish some relationship of continuity between indigenous infanticide practices and the modern practices of abortion and neonatal euthanasia*,” we wish to clarify that it is not a matter of “continuity”, but of analogy, since we understand such practices as persistent moral dilemmas and common to a wide variety of cultures, without overlooking “*the ambiguities of our own conception of the person*” or the ambiguities of our *moral strangers*. There, we do not see the “*ethnocentric bias*” alluded to by Jardim. Since this was not an ethnographic study, we cannot agree that it could trigger a “*feeling of anachronism*” among ethnological scholars of indigenous cultures. They will certainly be able to distinguish between this article and a study from their own field.

Segato, from a complementary perspective, makes important suggestions for the text in demonstrating a concern over avoiding misunderstandings related to what was not said or what should have been explained better. We share her view that the practice of infanticide is limited to few indigenous peoples, especially those with less time in contact with Brazilian national society, as well as the low and decreasing frequency of infanticide cases. However, we did not intend to give a different impression. We also accept the criticism that prioritizing one type of infanticide – that due to practical reasons – leads to generalization. We already referred to this in relation to the comments by Jardim.

Our use of the expression “*to kill a child*” reveals the difficulty in identifying an appropriate form of language, but we acknowledge the contradiction and the incorrectness when we admit that “*the human body is a cultural construction*”. Obviously, since this construction process is not concluded, this body will not have acquired “*existential status*”, and there is no reason to speak of death or killing. On the other hand, the article also contemplates the idea of a dual birth – biological and cultural – which can lead to a certain ambiguity: a biological death is possible, since the first

birth has occurred. The observation serves as a warning for us to avoid this dualism.

As for the divergence between the two anthropologists, we really had no intention to go into depth on their positions, since our stance already indicated the path to follow. The same occurred in relation to the missionary critique. But this does not mean that our choice was correct.

The fact that we invoked Convention 169 of the International Labor Organization (ILO) reflects a conscious and politically justified choice. First, because of the Convention’s political weight and legal value (having become law in Brazil since 2004). Second, because it has been used improperly by those who defend the criminalization of infanticide to justify their positions. Concerning the criticism that we failed to cite the *United Nations Declaration on the Rights of Indigenous Peoples*, the declaration was only approved by the 107<sup>th</sup> Plenary Session on September 13, 2007, when we had already concluded the paper.

1. Siqueira JE. Comentário ao texto de Guillermo Hoyos Vásquez. In: Garrafa V, Kottow M, Saada A, organizadores. Bases conceituais da bioética: enfoque latino-americano. São Paulo: Gaia/Fundo das Nações Unidas para a Infância; 2006. p. 181-8.
2. Engelhardt Jr. HT. Fundamentos da bioética. 2ª Ed. São Paulo: Edições Loyola; 2004.
3. Lacerda RE. Diferença não é incapacidade: o mito da tutela indígena. São Paulo: Baraúna; 2009.
4. Schramm FR. Bioética sem universalidade? Justificação de uma bioética latino-americana e caribenha de proteção. In: Garrafa V, Kottow M, Saada A, organizadores. Bases conceituais da bioética: enfoque latino-americano. São Paulo: Gaia/Fundo das Nações Unidas para a Infância; 2006. p. 143-57.