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This paper focuses on one of the 'child-trafficking scandals' that occurred in Brazil in the 1990s. Ethnographic research was carried out between 2000 and 2001 within a movement of poor families formed in São Paulo to put pressure on the authorities to review the legal procedures that had led to their children being placed for national and international adoption. Fieldwork was supplemented by other data, including reports by legislative bodies, articles in the press, and case files involving the termination of parental rights. This paper explores views on international adoption among members of the Brazilian elites such as judges, agents in the field of child protection and journalists, in the context of old but persistent neo-Malthusian ideas. Although the Brazilian birth rate is now below the replacement level, it is still common to blame 'irresponsible' reproduction among the urban poor for violence in large cities. Drawing a parallel with the routine sterilization of women that prevailed for decades and was encouraged by Brazilian physicians, the paper examines how, in a 'struggle against poverty', judicial agents took it upon themselves to enforce 'birth control' through adoption, bypassing family consent and the law in the process. The paper concludes by arguing that discrimination against poor families who are viewed as disorganized, immoral and irresponsible – characteristics frequently associated with criminality by a sector of the elites – has contributed to the view that lower-class families do not have the right to bear children, or to keep them.

Keywords: traffic in children; adoption; birth control; poverty; Brazil

In an article on adoption published in the national magazine *Isto É* in, 1995, the federal police acknowledged the existence of 'legal child trafficking' in Brazil, explaining that they could not intervene once a court adoption decree was produced 'except when the decree was shown to be manifestly illegal' (*Isto É* 22 February 1995, p. 80). This official use of the term 'legal child trafficking' confirms the findings of Abreu (2002, 47–8), that illegality in the adoption process in Brazil was widespread in the courts during the 1980s and 1990s with the support, complicity, and even active participation of judges and other agents of the judicial system. These irregularities, however, although common in cases of domestic adoption, only become unacceptable to Brazilian society when they benefit foreigners. Thus, while the term 'irregular adoption' is used when Brazilians adopt children within an illegal

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but sometimes legitimized framework, that of 'trafficking' is used when children are adopted by foreigners.

The subject of international adoption is at the root of an inflammatory discourse regarding the Brazilian nation (Abreu 2002, 152–3). On one hand, certain people in the judicial milieu and the elite are ashamed of the country's poverty. They see international adoption as a solution, as it allows poor children to be raised by people living in rich countries, where they would benefit from 'every comfort' and the best available health care. On the other hand, judicial 'nationalists' and a number of journalists took a stand against international adoption, emphasizing that it was shameful that Brazil did not have the means to raise its children and had to give them up to foreign couples. Through this discourse, international adoption became associated with trafficking and child exporting (Abreu 2002, 88). The Child and Adolescent Act of 1990 gave rise to a discourse that advocated the child's right to remain within the family and in the community of origin (and, therefore, in the birth country), strengthening arguments against international adoption. The rights of poor families to keep their children are rarely mentioned in this nationalistic debate, and neither are the ways in which these children are taken and placed not only in foreign families, but also in wealthy Brazilian families.

Based on ethnographic research carried out between 2000 and 2001 in the city of Itaguaí[1] in the State of São Paulo, this paper focuses on one of the 'child-trafficking scandals' linked with international adoption that occurred in Brazil in the end of the 1990s. In 1998, on the initiative of a lawyer, about 20 poor families formed a movement and demanded a review of the judicial procedures that resulted in their children's adoptions. This paper draws on fieldwork carried out by the author among the families participating in this movement. Thirty members of 20 families were interviewed on the cases of 30 adopted children. Moreover, 15 lawyers and social workers who had contact with the families were also interviewed. Finally, two reports by federal and state legislative bodies, over 100 articles published in the press, nine files of cases of termination of parental rights, printed interviews and other written testimonies were also examined.

The first part of this paper clarifies the procedures of the Itaguaí case of legal child trafficking. The second part draws a parallel between the arguments of judges and other actors in the judicial domain who promote adoption and those of the doctors who encourage the sterilization of poor women. The third section examines how the concept of 'disorganized families' is used to disqualify poor people from raising children. Finally, the last section explores the persistence of neo-Malthusian ideas in the Brazilian public agenda. The paper concludes by arguing that the question of who has a right to have a family in Brazil is strongly influenced by the perception of poor families as disorganized, immoral, and irresponsible – characteristics that are frequently associated with criminality.

'Irregularities' in the Itaguaí case

Between 1992 and 1998, poor families from the town of Itaguaí lost approximately 480 children to adoption, with close to 200 of them being adopted internationally. A single judge and a single state prosecutor authorized all these adoptions.

At the end of the 1990s, the Human Rights Commission of the Legislative Assembly of São Paulo and a commission of parliamentary inquiry of the Federal

Senate produced two reports denouncing irregularities in the adoption procedures of the children of the families concerned. According to these reports, in more than one case, allegations of child abuse and abandonment – the basis for the court process that led to the termination of parental rights – had never been proved. Irregularities observed in other cases of child-trafficking scandals in Brazil have been corroborated, such as adoptions processed within very short time periods; suspected collusion between judges and attorneys; non-existent files or suspicious dates and signatures in files.[2]

Moreover, after the children had been removed from their families, several family members went to the court to search for them or to obtain information. Although the courts thus had personal contact information for these families, they did not send a bailiff to summon the families to defend themselves, but instead published a public notice summons (*edital*), as if the families' addresses were unknown. These summonses were issued in a legal gazette, the *Diário oficial*, to which the families did not have access. Thus, in several cases, the legal process of the termination of parental rights began and ended without the families even being aware of it.[3] When families were aware that the process of the termination of parental rights had begun, the court refused to provide the families with any information whatsoever; they were simply advised to find a lawyer. The cost of a private lawyer is prohibitive for these poor families, and no one at the court informed the parents that they were eligible for legal aid.

Some of the families had signed documents without knowing their content. Either they were illiterate – some could sign their names but not read – or they did not understand the legal terms used in the document. They were also frequently coerced to sign by the commissioners for minors and the social workers, sometimes immediately after their babies' births, when mothers and babies were still in hospital. Some said they had been tricked: they had signed declarations without reading them (saying they had 'put their faith in the legal system'), under the impression they were signing a document authorizing visiting rights or the return of their children. Only later were they informed that they had signed a renunciation of their parental rights. When the families protested against the removal of their children, the commissioners for minors often threatened to put them in prison. Because they refused to sign, some parents were actually held at the police station for several hours.[4]

The creation of the Movement of families and the acquittal of the judge

At the end of 1998, the print media reported on the presence of a group of about 100 families who gathered regularly in the square in front of Itaguaí's courthouse. These families demanded a review of the judicial procedures that had resulted in their children's adoptions. Its name had been suggested by a lawyer, inspired by the Argentinean movement *Madres de la Plaza de Mayo* (The Mothers of the Plaza de Mayo), the association became known as the 'Movement of the Mothers of the Courthouse Square' (see Cardarello 2007, 2009). Two years later, each vigil was attended in its entirety by only seven people, on average. Despite the small number of core participants remaining, extended family continued to appear at the gatherings, if only to catch up on the latest news.[5]

The judge and the State prosecutor in the Itaguaí case founded an NGO that claimed to protect children and deprived families. Journalists' and politicians'

suspicions of child trafficking were aroused when it was discovered that donations for the organization came from an Italian association that promoted international adoption by Italian couples.[6] The Senate inquiry revealed no irregularities in the judge's bank accounts, but a number of checks made out to the State prosecutor by the same Italian association were uncovered.

In December, 1998, due to the pressures and denunciations, the judge and the prosecutor in question were transferred to courts in the city of São Paulo – courts without jurisdiction over the youth and child sector. However, despite the inquiries that were carried out, the creation of the movement by the families of origin and the ensuing media attention, the judge responsible was acquitted of all accusations of irregularities by the Court of Justice of São Paulo at the end of 2001.

The heavy media coverage of the 'child-trafficking scandals', such as the Itaguaí case, and the series of regional investigations that followed led to a significant decline in the number of international adoptions in the country in recent years.[7] Brazil is no longer among the top ten sending countries as it was from 1980 to 1998 (being fourth on the list in the 1980s; Selman 2009). However, instances of child-trafficking in national and international adoption continue to be reported by the press.[8]

Abandonment and circulation of children

Some of the Itaguai children placed for adoption by the judicial system were living with grandparents or other extended family members, while others were living with *familias de criação* (foster families) who were not biologically related to them. In Brazil, it is not uncommon for children to circulate between different family milieus (the homes of grandmothers, other relatives, close friends, or neighbors), a pluriparentality practice that makes several adults responsible for the child's socialization.[9] These children may speak of having two or more mothers, even when their biological mothers have maintained a relationship with them. In fact, some of the Itaguai children had been using the word 'mother' for biological mothers, aunts and extended family members who were raising them before their removal from their families.

One aspect that stood out in the analysis of the stripping of parental rights in the Itaguaí cases was that children who were not living with their parents were labeled 'abandoned' by the judicial authorities. Thus, the child-rearing practice of 'child circulation' became the equivalent of child abandonment in the case files.

In one case file, a commissioner for minors reported that a mother had left her child in the care of a female friend since birth. According to the judge's decision, this situation was treated as abandonment, as the mother had 'abandoned the child to an unauthorized stranger'. As stated by the legal authorities, leaving a child in the care of 'an unauthorized third person' indicated 'immoral' behavior on the part of the parent(s). According to the judge, only the father or the mother had the right to the custody of the child; *criação* parents 'could not be considered family members' – because family implies blood relationships. The arguments presented in the case files by the judge and the state prosecutor made it clear that formal adoption was seen as the only way to guarantee a life of 'stability and dignity' for the child, and that the fact that the child was staying with different people at different times implied an 'inability to establish a relation of affinity and security, or to recognize parental figures'. As the families had not passed through the courts to legally formalize the

custody rights or the adoption of a child and had arranged informally to have the child brought up 'in circulation', the child was therefore seen to be in an 'irregular situation' and to be living with the *familia de criação* in an 'illegal manner'.

'Having the means' (*ter condições*)

Another salient aspect in the analysis of the files and the interviews with the families was that the families in these cases were accused of 'not having the means' (*não ter condições*). In Portuguese, this expression can be used very vaguely. Unlike English, it is not necessary to specify the means for what – such as meeting the children's material needs, or providing an adequate moral environment or a minimal living space (with a bedroom for the children, for example). Nonetheless, when the expression 'you do not have the means' is used without further qualifications, it generally refers to the lack of financial resources, and this is what the families understood it to mean.

According to many sources, such as interviews with families and social workers, the legislative reports and articles in the press, after the removal of their children family members were told in court they had to fulfill certain conditions such as getting a job or moving to a dwelling with more than one room. They were then misled into believing that if they complied, their children would be returned to them. In addition, unrealistic deadlines (a few days, in some cases) to meet these conditions were set. Moreover, some of the better-off members of these families went to the court to declare their willingness to take care of the children. However, this fact was never recorded and was absent from the case files.

It should be recalled that Article 23 of the Child and Adolescent Act of 1990 made important changes to previous legislation with respect to the relationship between adoption and poverty.[10] Under Article 23, 'the lack of material resources does not constitute a sufficient motive for the loss or suspension of parental rights', and, if this is the only motive, 'the child or adolescent will remain in the family of origin, which will be referred to official aid programs'. Since the law was adopted, several legal practitioners in favor of international adoption have protested against this article (Abreu 2002, 29). They evoke the 'nationalization of poverty', arguing that parents who are too poor to meet their children's basic needs should lose their parental rights.

The interpretation of Article 23 by the magistrate in his decisions was quite peculiar. The magistrate's view was that the lack of resources was 'always' or 'generally', associated with other motives that justified the termination of parental rights. However, several justifications for the termination of parental rights cited in the judgments were directly related to the 'lack of material resources'. If the parents were not able to rent a house or apartment, or pay for their children's medical treatment or a daycare centre, the decision was made to remove that child from his or her family. Citing Article 23, the magistrate emphasized that this measure was not at all taken due to the parents' poverty, but to guarantee the child's fundamental rights. To take on the characteristics of an accusation – and because of the existence of Article 23 – the arguments in the judgments use moral and psychological categories such as 'irresponsibility', 'immaturity', 'moral shortcoming' or 'lack of the emotional structure needed for motherhood'. Thus, in the files, the ubiquitous 'lack of material resources' takes the form of a 'violation of the children's basic rights', such as the

right to good health, the right to a 'structured life', the right to 'a responsible and effective family', or the right to a 'decent, dignified life'. Therefore, parents' rights were violated under the pretext of protecting their children. In order to gain a better understanding of the procedures of the judicial authorities in this case, it is necessary to take into consideration the importance of neo-Malthusian ideas in the Brazilian public arena.[11]

A 'culture of sterilization'

Neo-Malthusian ideas emerged on the Brazilian political scene during the 1960s, when the Kennedy administration tried to link its economic aid to Latin America with policies aimed at checking the so-called population explosion (Barroso and Bruschini 1991, 153–4). In American politics after the Cuban Revolution in 1959, there was the fear that Communist doctrine could make the prevailing poverty of Latin America a factor encouraging the rise of leftist governments. As Brazil was viewed as a major player in world overpopulation, a political menace was thus transformed into a demographic one (Pedro 2004, 32–7; see also Martine 1998, 183).

In 1965, the International Planned Parenthood Federation (IPPF), an international agency largely funded by the United States government, created a private institution, BENFAM, which provided free family-planning services through community pill distribution and clinics. BEMFAM's educational program aimed to convince poor people that the reason for their poverty was the large number of children they had, while women were pictured as irresponsible baby-producers (Barroso and Bruschini 1991, 153–4). Finding support among the conservative elite, birth control was viewed as the solution to the problem of poverty. However, in the face of opposition from the Catholic Church, leftists, and certain members of the military dictatorship, the Brazilian government, even if it tolerated the presence of private organizations such as BEMFAM, showed no willingness to implement an official program to curb population growth.[12]

Even without an aggressive birth-control strategy by the government, the Brazilian total fertility rate has declined since 1970, from 5.6 to 1.83 in 2007 (IPEA 2008). There is not a simple and ready explanation for Brazil's accentuated fertility decline; rather the phenomenon can be explained by a multiplicity of factors.[13] This process occurred at different times in the different regions of Brazil. In the south and centre-west, the drop in the fertility rate began in the early 1970s, while in the north and northeast, it began at the beginning of the 1980s, with the 'unofficial' sterilization policy discussed below (IBGE 2009a, 10).

According to Martine (1998, 175), two methods of birth control have had the most impact on fertility reduction: abortion and sterilization.[14] Regarding female sterilization, even if its rate had diminished since 1996, when it was the method adopted by 40% of women living with a partner, sterilization remains the dominant form of contraception in the country. The 2006 PNDS report found that 30% of women living with a partner had been sterilized, followed by 21% who used contraceptive pills.

The Brazilian demographer Elza Berquó (1998) has stated that the promotion of tubal ligation as the main contraceptive method has led to the establishment of a 'culture of sterilization' in the country. Before 1997, sterilization was not officially performed by the public health service, although doctors and their female patients

found ways to do it daily, most often by combining a C-section with a tubal ligation (Diniz, de Mello e Souza, and Portella 1998, 36).[15]

Although the uncontrolled practice of sterilization and its effects have been thoroughly criticized in Brazil by women's groups and feminist politicians, it is still an extremely common practice among the poor (Dalsgaard 2004, 28). According to the 2006 PNDS report, the percentage of sterilized women with four years of education or less was more than double that of women with nine years or more (PNDS 2006, 79). Moreover, the percentage of sterilized women in the North and Northeast, the poorest regions, is more than twice that of women in the South and Southeast of Brazil. The rate is also much higher among black women than white women.

The reasons why poor women in Brazil are more likely to use sterilization or abortion rather than non-permanent methods to control their fertility are many and complex. In a study among low-income Brazilian women in an outlying neighborhood of the northeastern capital of Recife, Dalsgaard (2004, 127) reported the lack of availability, the unreliability and uneven quality of pills and condoms, a lack of knowledge about alternatives, and the lack of power to negotiate in sexual relations as being among the reasons that women did not find any reversible contraceptive method satisfactory. Like other researchers, Dalsgaard cites unequal gender relations – in frustrated marital relationships, for example – as another reason for lower-income women to want to control fertility (Dalsgaard 2004, 30, 205, see also Goldani 2002).

Along with structural problems and gender inequality, the disdainful attitudes and behavior of medical providers towards low-income patients emerge in several studies as another significant factor influencing poor women in their reproductive and contraceptive decisions. In clinics, sterilization is often suggested to them as the only desirable contraceptive method (Diniz, de Mello et Souza, and Portella 1998, 59).[16] Medical providers tend to negate women's role as decision-makers, especially when they are poor and black, and to promote methods that they consider 'more efficient' for such women.

In a study undertaken in the Northeast, in the state of Pernambuco, Caetano and Potter (2004, 81–2) focus on the common practice promoted by local politicians, physicians and politicians–physicians of the exchange of free female sterilizations for promises of votes. The authors assert that, aside from women's growing demand for birth control, physicians played a direct role in the Brazilian fertility rate decline by the medicalization resulting from the expansion of hospital care.

Caetano and Potter mention monetary profit, electoral success, and compassion or charity among the motives for those who provide sterilizations. However, in the Brazilian context, the persistence of 1960s neo-Malthusian ideas and the concept of poverty as inseparable from criminality can be added to these motives. Dalsgaard (2004, 115), for example, quotes the statement of a gynecologist who was known to provide sterilizations and who was also a local politician:

> Some of the women are not so sure, some even regret it later, but the majority really needs [to do the sterilization] as they do not have the conditions [(or means) to take care of more children]. If I could decide, I would do them all. I do not think that tubal ligation is good, but I think it is bad to suffer from hunger. At times I send food because they are dying from hunger, they bring the small children and I give cans of milk, because the small children are dying from hunger and they have nothing at home, and I feel sorry for them. To ligate tubes isn't good, but they do not know how to avoid more

children. Isn't it better to ligate than abort, suffer from hunger, and bring up *marginais*?[17]

Based on a sample of 400 interviews with women in a low-income community also in Pernambuco, Recife, Fernandes (2003, 257) concluded that the high number of sterilizations among the women in the sample – almost half of whom had been sterilized – was not necessarily a consequence of the women's decisions, or their full consciousness of what the decision implied. The desire of many of these women to have more children was hidden and substituted by the discourse of their doctors: 'The doctor said I already had too many children'. As in the pro-adoption discourse, the term 'lack of means' takes centre stage again. Many women justified their decision to undergo sterilization by the doctors' urgings, stating 'the doctor said I didn't have the means'. The great majority of the women, however, did not know exactly to which means the doctors were referring.[18]

Dangerous classes

The position of the judges, lawyers, journalists, politicians, agents in the field of child protection and other members of the elite who promote international adoption parallels that of the doctors who advocate the sterilization of poor women. In their eyes, adoption not only prevents these children from becoming 'miserably poor' or 'hungry', it also prevents them from becoming 'criminals'. In one of the first interviews granted to the press following the founding of the Movement of families in Itaguaí, the judge stated: 'I'm an unconditional fan of international adoption. It's the way to get rid of prostitutes and drug dealers'. Ginzburg (1990, 91), quotes a statement by one Brazilian judge who encourages international adoption:

> Of course, in the adoption of a child, one must proceed with great caution, respecting the laws of both the country of origin and the country where the child will live. Nevertheless, put yourselves in our place: the future for these children is often the street, miserable poverty, and in the best-case scenario, prison.

The association between poverty and criminality with respect to poor children has been made since the beginning of the twentieth century, when the question of childhood and childhood criminality first emerged in Brazilian society (see Rizzini 1995). Since then, there has been a continual process of shifting back and forth between protecting the child and protecting the society that is potentially threatened by that child.

Itaguaí's inhabitants, the conservative and progressive wings of the Catholic Church, and members of the press were divided on the procedures of the judicial authorities. However, articles supporting the Court decisions (written not only by journalists but also by attorneys and other authorities) showed the approval of a sector of Brazilian society. One journalist asserts in a *Jornal da Cidade* article on 9 August, 1998:

> That judge acted according to the law. He removed children from inconsequential and irresponsible parents – children who would certainly have gone from begging at intersections (when still small enough) to petty larceny (puberty), to armed robbery (as young adults), and to today's typical vices, like marijuana, cocaine, heroin, crack, and other less common substances (for life) and end up in a bad situation: probably in a reformatory, a FEBEM [a public shelter for young people], or in an adult prison.

In the view of another columnist, the judge had saved the children from living in 'pigsties'. In the media's support of the judge's position, terms like 'dirty', 'irresponsible', and 'scatter-brained' were used to describe the families in the Movement.

'Disorganized families'

Many changes have occurred in Brazilian families over the last decades. Since the 1970s, there has been a decrease in the number of families headed by couples. With the increasing participation of women in the workplace, the number of single-parent families headed by women has increased. In Brazil, this rate rose from 15.8% in 1996 to 18.1% in 2006 (IPEA 2008). The importance of legal marriage has diminished. As in other parts of the world, new reproductive technologies have created diverse family arrangements and, after overcoming resistance from some quarters, it is now possible for homosexual couples to legally adopt children (see Fonseca and Cardarello 2010; Scott 2004).

The family was always viewed by politicians, doctors, and law makers as the locus of morality and the ideal milieu for children's socialization, in preference to institutions or the street (Londoño 1991; Rizzini 1993; Alvim and Valladares 1988). However, not all families are considered adequate to the task of child-rearing. Whenever a discussion of the problem of childhood poverty in the country arises, the family of origin is often blamed for the child's situation, being described as 'disorganized' (*desorganizada*), 'maladjusted' (*desajustada*), or 'disunited' (*desagregada*).

The 'disorganized family' is defined by Brazilian child welfare agents and policy-makers as a family model 'characterized by the absence of the father and in general headed by the mother' (Alvim and Valladares 1988, 19; Pereira Júnior, Bezerra and Heringer 1992).[19] In a study carried out in the mid-1990s in a shelter for children and adolescents in the city of Porto Alegre in southern Brazil, the psychologists interviewed said that, in their view, a 'disorganized family' was one in which there were 'undefined roles, instability, switching mothers and fathers all the time' (see Cardarello 2000). Other employees of the institution added the parents' lack of effort to organize themselves, which basically implied getting a steady job, providing an adequate dwelling, and ensuring that the children were properly nourished and attended school. The 'organization' category as linked to the notion of hygiene was also used by social workers when describing the condition of the dwelling at the time of their visits (an 'organized home' was a clean and tidy home).

These same connotations related to the term 'disorganized family' or its synonyms (as 'maladjusted' family) were seen in the files documenting the termination of parental rights in Itaguaí. In one case, three sisters aged 6, 11, and 12 years were reported to a commissioner for minors by a policeman because they had left home without permission and gone to the centre of town to beg. According to their maternal grandmother, only the youngest was detained, as the two older girls managed to flee. However, the next day, when the older sisters went to try to obtain their little sister's release, they too were held by the commissioners for minors and were placed in an institution.

In this legal procedure, the family's functioning was described as 'maladjusted'. The father of the three girls, of a family of nine children, was working in agriculture

in another state. In one of the hearings to determine whether the children should be removed from the family by the judicial authorities, the judges and the public prosecutors made accusations that the father was 'completely absent in the raising of the children' and that the mother was 'idle'. The father explained that the mother looked after the children when he was away working. According to the lawyer who defended the family, at that time, the father wanted to separate from the mother, a fact that was also used against the parents. The lawyer advised him to wait, as a parental separation would make the case more difficult to win.

In another case, according to a mother who was interviewed, the magistrate asked her at one of the hearings if she owned a house or had a husband. Her lawyer objected that owning a house or being married did not constitute a legal condition for a mother to keep her child and that he himself was not a home-owner. The magistrate reacted by treating the lawyer with disdain, telling him that he 'knew nothing about family matters'.

The analysis of the procedures in the termination of parental rights shows that the use of the organization/disorganization opposition and other pairs of contrastive terms – such as 'well-adjusted/maladjusted' – was promoting the family model that the agents find adequate for a child's development. As others authors suggested (Alvim and Valladares 1988, 19; Pereira Júnior, Bezerra, and Heringer 1992), this model is the bourgeois nuclear family, in which the parents work, occupy a dwelling, and possess the necessary 'means' or 'conditions' for them to be able to meet their children's needs.

Neo-Malthusian ideas: a national debate

The following statements were overheard in an anteroom before a meeting of the town's custodial council (*Conselho Tutelar*) of the city of Itaguaí, an organization responsible for ensuring observance of the rights of the child and adolescent.[20] The president of the council, speaking to an employee, said:

> The judge probably made some money out of it, that's the problem [*esse é o mal*]. But he did 250 good deeds.[21] These women who have no jobs and no husbands, horrible dwellings and mistreated children, and who are without means… There are lots of people who can look after children, who can offer them another kind of life. [Otherwise], what is a child going to be like 12 years from now? […] There's proof that the judge has an apartment across from the courthouse [bought with the money he made]. But in my opinion, that's better than leaving children in the street […]. If the children were sold, it's because there are people who can pay. People without any money shouldn't have children. […] You're going to look after your child, not the municipality, the State, or the shelter. I wanted to have one child. You have to think of the future—school—, you have to guide them, it's not easy. […] I'm not ready to have another child […] And the Church against using condoms – what's that?'

According to Pedro (2004, 29–30), the fall in the birth rate since the middle of the twentieth century in both 'developed' and 'poor' countries produced a very diversified discursive struggle. In Europe in the 1960s and 1970s, for example, the availability of the birth control pill was viewed as a gain for women's rights. However, in Latin America, it was qualified as a necessary measure to counter the menacing 'population explosion'. The arguments to justify family planning policies in poor countries arose within power struggles in which class prejudice, the confrontational context of the Cold War, and racism all had significant weight.

According to the IBGE (Brazilian Institute of Geography and Statistics), in spite of all the changes in reproductive behavior that have been observed in the country, major sectors of society are still stuck in an ideological framework founded on the idea that the country will continue to experience stages of a process previously referred to as a population explosion (IBGE 2009a, 5n6). It is very common to read in newspaper articles or letters to the editor that the cause of the rise in violence in Brazil in the last two decades was the absence of family planning.

In 2007, the declarations of the Governor of the State of Rio de Janeiro promoting the legalization of abortion as a way of combating crime led to the publication of polemics in the press. In the daily *Folha de São Paulo* on October 27, sociologist and demographer George Martine and anthropologist Sônia Corrêa, in a letter printed to contrast with statements by an economist, argued that the politician's remarks reflected the simplistic reasoning among many that poor people have too many children, which generates more poverty, which in turn generates more violence. They also wrote that in spite of the Governor's good intentions, his view covered up the real causes of complex social problems like violence by scapegoating the poor, mainly women. The year before, Martine, as president of ABEP (*Associação Brasileira de Estudos Populacionais* – Brazilian Association of Population Studies), wrote to the weekly news magazine *Veja* contesting the content of an article on the population question (Martine 2006). The article cited lepidopterist Paul Ehrlich, who said in an interview: 'over-population is our key problem'. Martine's letter maintained that in Brazil 'the ready acceptance of the idea that poverty, crime, environmental destruction, and other evils can be blamed on demographic pressure is scandalous'. Even though his letter was supported by the signatures of dozens of specialists, the magazine decided not to publish it.

Conclusion: The right to have a family

In the files that were examined documenting the termination of parental rights, the phrases used in connection with poor families – 'lack of dignified and honest work', 'lack of family structure', and 'precarious sanitary conditions' – convey in legal or bureaucratic language what the president of the Custodial Council, among others, expressed in a simpler way: 'these parents do not have jobs'; 'these mothers do not have husbands'; and 'these families are dirty'.

The legal cases discussed in this paper are good examples of what Bourdieu (1987) calls 'the universalising posture of the law', when the juridical sphere contributes to imposing a representation of normality in which any different practice is seen as deviant, anomalous, or even pathological. Ignoring the plurality of family forms existing in the different social classes of Brazil, the law reflects only one possibility of family arrangements: the dominant model of the nuclear family. The informal practices of the circulation of children and pluriparentality are either not taken into account or condemned, and the points of view of the families of origin are not considered.

Nevertheless, these cases can be seen as simply an example of class prejudice. To a significant portion of Brazilian society, poverty is a moral failure. In the opinion of the journalists, lawyers, and politicians who supported the judicial authorities, 'legal child trafficking' is tolerated because these families have no right to reproduce due to

their immorality, laziness, uncleanliness and irresponsibility – characteristics considered endemic to their social class.

As Reis shows (2005, 42–4), the Brazilian elites' concept of poverty is characterized by an apparent dissociation between social awareness and social responsibility. These groups do not acknowledge the interdependency that exists between them and the bottom layers of the society, nor are they convinced of the need for collective social solutions. Although Brazilian elites may acknowledge that the poor are victims of major social forces, to these privileged sectors of society, the urgent reasons to fight poverty and inequality are the danger and the threat of violence in large cities. Therefore, from that perspective, they see the urban poor as a 'dangerous class'. In the Itaguaí case, the discourse of the judge and his supporters is representative of the contemporary version of the elite's old fear of poor children, who they see as presenting a threat in the present (street children), or the future (poor children will become 'criminal' youths and adults, or 'prostitutes').

The liberal bourgeois concept that predominates in the legal procedures that were examined is that of a family able to support itself, living in a dwelling in which parents carry out the duty of helping their children, who are not obliged to work (Pereira Júnior, Bezerra, and Heringer 1992). The connotations that are still attached to the term 'disorganized family' in the child protection milieu do not take into account the huge economic and cultural gap that separates poor families from state agents. Concerning issues of entitlement to parenthood and 'stratified reproduction' (Colen 1995, 98), the Itaguaí case reveals who, in Brazil, has the right to have a family (see Abreu 2002, 49; Fernandes 2003, 254).[22]

Even with a total fertility rate of 1.8 children, a rate that is below minimum population replacement level, neo-Malthusian ideas persist in the Brazilian public arena. In a peculiar anti-poverty strategy, similar to that of physicians who advocate the sterilization of poor women in Brazil, certain legal agents take it upon themselves to enforce birth control among the lower classes. Through legal child-trafficking, they authorize adoptions without respecting the legal formalities and above all, without the consent of the families of origin. This process reflects the idea, among the elite, that poor families do not have the right to bear children, or to keep them.

Notes on contributor

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Notes

1. Itaguaí is a fictitious name.
2. See Abreu (2002) for the same irregularities in cases in the state of Ceará.
3. For a similar use of public notice summons to search for parents in some Argentinean courts nowadays, see Villalta (2008).
4. One mother told me that a commissioner for minors, who was also a policeman, pointed a gun at her head when four of her five children were removed.
5. The ethnography collected suggests that, due to the consequences of the sudden removal of their children, many other families, having received no support, were not even able to join the movement. For some parents and relatives, the removal of their children caused the manifestation or aggravation of problems of alcoholism and mental illness, and even suicide attempts.
6. Between 1994 and 1998, families from Italy adopted about 40% of the Brazilian children placed for international adoption (Commissione per le Adozioni Internazionali, http://www.commissioneadozioni.it/stat/1.htm; and Fonseca, 2002). In 2004, with an official total of 477 international adoptions, Brazil still ranked fifth among the countries of origin for international adoption in Italy – and tenth in France (Selman 2009, 37). In the case of this 'scandal', the press also reported adoptions by German, Dutch, Swiss, American, and Danish families.
7. Nevertheless, statistics for domestic adoptions are not available. For other countries in which the 'child trafficking scandals' caused a drop in the number of international adoptions, see Selman (2000, 24).
8. To give a few examples, in 2009, there were media allegations of the abuse of power, concealment of information, and the arbitrary removal of the children of at least 42 families for purposes of adoption in the State of São Paulo between 2004 and 2007, involving custodial councilors (*conselheiros tutelares*) and a state prosecutor (see Constantino 2009). In 2006, in the State of Parana, the police arrested six people for child-trafficking. Of the six, three were lawyers, and one was a Civil Police Force support agent. They had been involved in the sale of children to couples all over Brazil (Agência 2006). In 2003, international adoptions in Pernambuco were investigated for suspicion of child trafficking, due to fast-track judicial processes in which foreigners were willing to pay $7500 for a smoothly-processed adoption (Associação 2003). The media report pointed at public employees of the Civil Registry Office and the administrative department of the Juvenile Court who allegedly adulterated documents in cases that were processed in only three days.
9. A number of kinship studies carried out among the lower classes in Brazil have brought out the importance of this practice (see Fonseca 2002; Sarti 2003 [1996]; Cardoso 1984).
10. Even with the considerable progress made in the seven years of the Lula government (2003–2010), with official statistics revealing that 20 million people rose above the poverty line out of a total population of 190 million, Brazil still has one of highest rates of income disparity in the world (see Rocha 2010; Barros, Henriques, and Mendonça 2001). It should be noted that poverty affects Brazil's black population more than its white population (see Guimarães 2002).
11. For the adoption of the principle of the 'child's best interest' contributing to the family's being frequently considered the primary cause of the violation of children's rights, without any responsibility being attributed to the State or of the society in general, see Cardarello (2012). In 2009, the 'Child and Adolescent Act' of 1990 was amended, to guarantee the child's right to live in the family of origin. However, it is too early to appreciate the impacts of this change.
12. In the Catholic church, the rejection of family planning policies is a point of consensus in a church otherwise divided with regard to political and doctrinal issues. Although no longer linked to the state, Catholicism is still the dominant religion in the country, as it is the majority religion, including among the elite (Barroso and Bruschini 1991, 154).
13. For an analysis of this factors see Martine (1998).
14. Abortion is illegal in Brazil except in cases of rape or endangerment of the woman's life. Most abortions are obtained illegally in the private sector. Abortions range from the

safest type of operation in private clinics for members of the middle and upper class who are able to pay to procedures done at home using traditional methods and remedies (see Diniz, de Mello et Souza, and Portella 1998, 36).

15. It should be noted that 43% of deliveries in Brazil are by Caesarian (IBGEb 2009b, 11).
16. For a description of attitudes of neglect and the brutality of members of hospital staff and the feelings of shame and inferiority that these attitudes caused in lower-class women see Dalsgaard (2004, 149–55). For a case of a woman sterilized against her will in São Paulo, see Nelson (2002, 204).
17. The word *marginais* here, as the author explains in a footnote (Dalsgaard 2004, 222, n22), usually refers to criminals and drug users in popular language.
18. It is interesting that in Dalsgaard's study about the reasons why some women so willingly chose to be sterilized in a poor neighborhood close to Recife, in the Northeast region, a frequent explanation was: 'we don't have the conditions for bringing up children' (Dalsgaard 2004, 20). If having no children was out of question, having many was seen as irresponsible behavior (Dalsgaard 2004, 16). Viewing these women as simultaneously controlled and empowered, the author advocates that recourse to sterilization represents a search for social acknowledgement, as well as a hope for control over their lives (Dalsgaard 2004, 98, 25–7). And yet, as the author asserts, in Foucauldian terms, these women had incorporated their ascribed role as responsible citizens and, simultaneously, as docile bodies, through their identification with the role of compliant patient (Dalsgaard 2004, 135).
19. This concept corresponds to the dysfunctional family category used in the United States from the 1960 s to describe poor African-American families (Pine 1996, 227), and, in the 1970 s, to the irregular families category in France (Meyer 1977). See Meyer (1977) and Donzelot (2005 [1977]) for this categorizing of poor families as a form of discipline in the Foucauldian sense.
20. The local custodial councilors register children and families in social, educational, and financial-assistance programs, exercise control over associations dealing with children and adolescents, and place children in institutions when they deem it necessary.
21. In fact, as mentioned above, it is estimated that approximately 500 adoptions were authorized by the judge, the state prosecutor, and his assistants.
22. For the concept of 'stratified reproduction' used to describe the power relations by which some categories of people are empowered to nurture and reproduce, while others are disempowered, see Colen (1995) and Ginsburg and Rapp (1995, 3).

References

Abreu, D. 2002. *No Bico da Cegonha. Histórias de Adoção Internacional no Brasil*. Rio de Janeiro: Relume Dumará.
Agência de Notícias Estado do Paraná. 2006. Polícia prende seis pessoas acusadas de tráfico de crianças. August 4, http://www.aen.pr.gov.br/modules/noticias/article.php?storyid = 21998&tit = Policia-prende-seis-pessoas-acusadas-de-trafico-de-criancas (accessed March 3, 2007).
Alvim, R., and L. Valladares. 1988. Infância e sociedade no Brasil: Uma análise da literatura. *BIB* 26: 3–37.
Associação Brasileira de Magistrados e Promotores de Justiça da Infância e Juventude. 2003. Adoções em Timbaúba-PE estão sob suspeita de tráfico. Clipping, *Diário de Pernambuco*. September 8, http://www.abmp.org.br/noticias.php?origem = 2&idt = 2585 (accessed November 23, 2006).
Barros, R.P., R. Henriques, and R. Mendonça. 2001. A estabilidade inaceitável: Desigualdade e pobreza no Brasil, *IPEA*, Text for discussion No. 800, Rio de Janeiro, June.
Barroso, C., and C. Bruschini. 1991. Building politics from personal lives: Discussions on sexuality among poor women in Brazil. In *Third world women and the politics of feminism*, ed. C.T. Mohanty, A. Russo and L. Torres, 153–72. Bloomington: Indiana University Press.

Berquó, E. 1998. The reproductive health of Brazilian women during the 'lost decade'. In *Reproductive change in India and Brazil*, ed. G. Martine, M. Das Gupta and L.C. Chen, 380–404. Delhi: Oxford University Press.

Bourdieu, P. 1987. The force of law: Toward a sociology of the juridical field. *Hastings Law Journal* 38, no. 5: 814–53.

Caetano, A.J., and J.E. Potter. 2004. Politics and female sterilization in northeast Brazil. *Population and Development Review* 30, no. 1: 79–108.

Cardarello, A. 2000. Du mineur à l'enfant-citoyen: Droits des enfants et droits des familles au Brésil. *Lien social et politiques* 44: 155–66.

Cardarello, A. 2007. Trafic légal' d'enfants: La formation d'un mouvement de familles pauvres contre les politiques de l'adoption au Brésil. PhD diss., Université de Montréal.

Cardarello, A. 2009. The Movement of the Mothers of the Courthouse Square: 'Legal child traffiquing', adoption and poverty in Brazil. *Journal of Latin American and Caribbean Anthropology* 14, no. 1: 140–61.

Cardarello, A. 2012. O interesse da criança e o interesse das elites: 'Escândalos de tráfico de crianças', adoção e paternidade no Brasil. *Scripta nova*, Revista Electrónica de Geografía y Ciencias Sociales. Barcelona: Universidad de Barcelona, March 15, Vol. XVI, no. 395(10). http://www.ub.es/geocrit/sn-395/sn-395-10.htm

Cardoso, R.C.L. 1984. Creating kinship: The fostering of children in favela families in Brazil. In *Kinship ideology and practice in Latin America*, ed. R.T. Smith, 196–203. Chapel Hill: University of North Carolina Press.

Colen, S. 1995. 'Like a mother to them': Stratified reproduction and West Indian childcare workers and employers in New York. In *Conceiving the new world order: The global politics of reproduction*, ed. F.D. Ginsburg and R. Rapp, 78–102. Berkeley: University of California Press.

Constantino, J. 2009. Tribunal Popular ouve famílias que tiveram filhos levados por Conselho Tutelar. *Brasil de Fato*, October 10, http://www.brasildefato.com.br/node/1588 (accessed October 8, 2009).

Dalsgaard, A.L. 2004. *Matters of life and longing. Female sterilization in northeast Brazil*. Copenhagen: Museum Tusculanum Press, University of Copenhagen.

Diniz, S.G., C. de Mello e Souza, and A.P. Portella. 1998. Not like our mothers – Reproductive choice and the emergency of citizenship among Brazilian rural workers, domestic workers and housewives. In *Negotiating reproductive rights, women's perspectives across countries and cultures*, ed. R.P. Petchesky and K. Judd, 31–68. London: Zed Books.

Donzelot, Jacques. 2005 [1977]. *La Police des Familles*. Paris: Les Éditions de Minuit.

Fernandes, M.F.M. 2003. Mulher, família e reprodução: Um estudo de caso sobre o planejamento familiar em periferia do Recife, Pernambuco, Brasil. *Cadernos de Saúde Pública* 19, no. 2: 253–61.

Fonseca, C. 2002. Inequality near and far: Adoption as seen from the Brazilian favelas. *Law and Society Review* 36, no. 2: 397–431.

Fonseca, C., and A. Cardarello. 2010. Família e parentesco. In *Sociologia: ensino médio*, ed. A.C. Moraes, 209–230. Brasília: Ministério da Educação.

Ginzburg, N. 1990. *Serena Cruz o la vera giustizia*. Torino: Einaudi.

Ginsburg, F.D. and R. Rapp, eds. 1995. *Conceiving the new world order: The global politics of reproduction*, Introduction, 1–17. Berkeley: University of California Press.

Goldani, A.M. 2002. What will happen to Brazilian fertility? Completing the fertility transition. ESA/P/WP.172/Rev.1. *UN Population Division*, pp. 358–75.

Guimarães, A. 2002. *Classes, Raças, Democracia*. São Paulo: Editora 34.

IBGE (Brazilian Institute of Geography and Statistics). 2009a. http://www.ibge.gov.br/home/estatistica/populacao/indic_sociosaude/2009/comentarios.shtm. Accessed December 2010.

IBGE. 2009b. http://www.ibge.gov.br/home/estatistica/populacao/indic_sociosaude/2009/comentarios.shtm. Accessed December 2010.

IPEA. 2008. PNAD 2007: Primeiras análises (Demografia e Gênero). Comunicado da Presidência no 11, Brasília.

Londoño, F.T. 1991. A origem do conceito menor. In *História da Criança no Brasil*, ed. M. Del Priore, 129–45. São Paulo: Contexto.

Martine, G. 1998. Brazil's fertility decline, 1965–95: A fresh look at key factors. In *Reproductive change in India and Brazil*, ed. G. Martine, M. Das Gupta and L.C. Chen, 169–207. Delhi: Oxford University Press.

Martine, G. 2006. Mensagem George Martine a Redação da Veja 12/02/2006. http://www.abep.org.br/usuario/GerenciaNavegacao.php?texto_id=2954. Accessed December 2010.

Meyer, P. 1977. *L'Enfant et la Raison d'État*. Paris: Éditions du Seuil.

Nelson, S. 2002. Constructing and negotiating gender in woman's police stations in Brazil. In *Rereading women in Latin America and the Caribbean – The political economy of gender*, ed. J. Abbassi and S. Lutjens. Maryland: Rowman & Littlefield.

Pedro, J.M. 2004. Entre a bomba populacional e o direito das mulheres. In *Genealogias do Silêncio: feminismo e gênero*, ed. C.S.M. Rial and M.J.F. Toneli, 29–39. Santa Catarina: Ed. Mulheres.

Pereira Junior, A., L. Bezerra, and R. Heringer, eds. *Os Impasses da Cidadania. Infância e adolescênia no Brasil*. Rio de Janeiro: Ibase.

Pine, F. 1996. Family. In *Encyclopedia of social and cultural anthropology*, ed. A. Barnard and J. Spencer. London: Routledge.

PNDS. 2006. Pesquisa Nacional de Demografia e Saúde da Criança e da Mulher: dimensões do processo reprodutivo e da saúde da criança/Ministério da Saúde, Centro Brasileiro de Análise e Planejamento. Brasília.

Reis, E. 2005. Perceptions of poverty and inequality among Brazilian elites. In *Elite Perceptions & Inequality*, ed. E. Reis and M. Moore, 26–56. London: Zed Books.

Rizzini, I. 1993. *Assistência à Infância no Brasil. Uma análise de sua construção*. Rio de Janeiro: Editora Universitária Santa Úrsula.

Rizzini, I. 1995. Crianças e menores, do pátrio poder ao pátrio-dever. In *A Arte de Governar Crianças: História das políticas sociais, da legislação e da assistência à infância no Brasil*, ed. F. Pilotti and I. Rizzini. Rio de Janeiro: Instituto Interamericano del Niño.

Rocha, G.M. 2010. Quel bilan social pour 'Lula'? *Le Monde Diplomatique* 113, no. Oct–Nov: 94–7.

Sarti, C. 2003 [1996]. *A família como espelho: um estudo sobre a moral dos pobres*. 2a. edição revista. São Paulo: Autores Associados.

Scott, P. 2004. Família, gênero e poder no Brasil no século XX. BIB. *Revista Brasileira de Informação Bibliográfica em Ciências Sociais* 58, no. 1: 29–78.

Selman, P. 2000. The demographic history of intercountry adoption. In *Intercountry adoption; developments, trends and perspectives*, ed. P. Selman, 15–39. London: British Agencies for Adoption & Fostering.

Selman, P. 2009. The movement of children for international adoption: Developments and trends in receiving states and states of origin, 1998–2004. In *International adoption, global inequalities and the circulation of children*, ed. D. Marre and L. Briggs, 32–51. New York and London: New York University Press.

Villalta, C. 2008. Entre reformas: procedimientos y facultades en torno a la adopción legal de niños. Actas del IX Congreso Argentino de Antropología Social, Universidad Nacional de Misiones, Argentina.