

From the Ethics of Care to Dissenting Motherhood in the Actions and Practices of the Justice System: “She Did Not Behave Like a Real Mother.”

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Abstract

Motherhood is often portrayed through a sacralized, vocational, and sacrificial ideal shaped by care ethics and the myth of maternal love. Through this gendered and compulsory normativity, the figure of the “true mother” is defined within the field of intelligibility. Those who deviate from the ethics of care and unconditional love for their children are transformed into abject subjects who should not only be rejected and penalized in social reality but also the actions and practices of the Justice System, reinforcing gender asymmetries and stereotypes, reifying models of motherhood as legitimate and others as abject, thus subject to violence, penalties, and state exclusion. This study analyzes hearings concerning custody and visitation in the Family Courts of a district in Maranhão, Brazil. It examines how deviations from the sacralized, vocational, and sacrificial ideal of motherhood are penalized in the actions and practices of the Justice System. The paper also compares legal cases from different jurisdictions, such as the United States, the United Kingdom, and Australia, to comprehensively analyze how gender stereotypes and societal norms influence the justice system’s approach to custody and visitation rights. The research adopts the ethnographic method of participant observation. The theoretical foundations are based on the works of Badinter, Federici, Zanello, Angotti, Scott, and Butler.

Keywords

Motherhood, Stereotypes, Gender, Abject, Justice System

1. Introduction

Motherhood is constructed and perpetuated through a sacralized ideal, endowed with a unique calling and a sacrificial and nullifying character, molded by the ethics of care and the myth of maternal love. It is through this gender normalization, universalized and compulsory, that the image of the “true mother woman” emerges within the sphere of maternal understanding. The production of the “genuine mother” is thus articulated through gender technologies and socially legitimized discourses (Badinter, 1985; Ávila & Vieira, 2018; Zanello, 2018).

According to Ávila & Vieira (2018: p. 27), even as they are elevated to a sacred status, they are subjected to surveillance to ensure their behaviors align with the idea of a “good mother”. These individuals find their bodies subjected to public scrutiny, leading them to receive guidance, rebukes, advice, physical contact, and discussions from nearly everyone in their vicinity, particularly other women.

This paradox underscores the latent societal pressures and normative benchmarks that weigh heavily upon women, particularly those occupying the role of mothers. Continuous monitoring enforces traditional gender roles, with women receiving constant guidance, criticism, and interaction primarily from other women. This scrutiny reveals broader societal imbalances and underscores how norms limit women’s autonomy. It emphasizes the urgency for a fair reevaluation of maternal roles in society.

In this context, those who deviate from the ethics of care, love, and unconditional protection for their children transform into repudiable subjects requiring penalization. This logic permeates the entire social fabric and persists throughout the procedural course, manifesting in the practices of the Justice System, reinforcing gender stereotypes, categorizing individuals, and reifying models of motherhood as legitimate. In contrast, others are relegated to marginality, considered abject, and consequently susceptible to undergoing acts of violence, penalties, and exclusion by the state apparatus. Such situations characterize dissenting motherhood (Butler, 2019; Rodrigues & Gruman, 2021).

From this perspective, this paper aims to analyze the judicial cases concerning custody regulation and visitation rights from a juridical and gender-feminist standpoint. Specifically, the focus is on hearings in the Family Courts of a jurisdiction in Maranhão from March to October 2022.

An empirical analysis of Law and the Justice System was employed to conduct this research, utilizing an ethnographic research method involving participating in and observing Family court hearings. The theoretical underpinning of this study draws upon academic and feminist contributions from figures such as Badinter, Federici, Zanello, Angotti, Scott, and Butler.

Four hearings were attended throughout this study, all conducted virtually due to the ongoing pandemic context. This arrangement enabled a hybrid functioning of the Justice System, encompassing virtual and in-person proceedings. Out of these hearings, we had the opportunity to analyze the judicial records of three out of the fourteen cases.

Within the family law domain, custody regulation and visitation hearings hold paramount importance in delineating parental relationships subsequent to the dissolution of a marital union. This rationale informed the decision to employ participant observation specifically within these hearings, as they offer a distinctive vantage point for comprehending the intricate dynamics surrounding the societal portrayal of the mother-woman, the underlying dynamics of power, and the societal construction of differentiation, particularly about gender hierarchy.

Exploring this situation allows the researchers to discover hidden details throughout the legal cases and the Justice System. The interactions among various stakeholders, judges, lawyers, fathers, and mothers, can unveil dynamics that mirror and reinforce societal norms and power structures, shaping mother-women experiences and allocating parental rights.

It is important to emphasize that it is not within our scope to analyze the judicial decisions in the cases being sued in the State of Maranhão's justice system. Our focus is on examining the statements, dialogues, and interactions of the parties involved in the process, especially during hearings, intending to scrutinize what is said and related to the figures of the father and the mother, primarily the mother. We seek to understand the social representations of the mother that are presented in the cases under examination, as well as which behaviors of the "mother-figure" are normalized and which are stigmatized.

Through participant observation, it becomes feasible to capture the conversational dynamics evident in the hearings and discern the enduring presence of gender stereotypes. These stereotypes position mothers as naturally predisposed to caregiving and emotional sensitivity, while fathers are often relegated to a secondary role.

Furthermore, this technique is relevant in apprehending instances of abjection and punitive judgment directed towards mother-women who challenge the conventional social perception of being nurturing, affectionate, and self-sacrificing figures.

It is essential to acknowledge that hearings dealing with custody regulation and visitation rights pertain to cases conducted under judicial secrecy. Thus, obtaining access to the schedule, the access link, and permission to attend virtual hearings necessitated prior connections and approvals from judges.

While authorized by competent judges to access and employ empirical data from the hearings for scientific purposes, we are ethically and legally committed to safeguarding the identities of those involved. This commitment aligns with Article 5, Section LX, of the Brazilian Federal Constitution of 1988, which defends and protects the withholding of procedural details when privacy or social interests are at stake.

Moreover, following Article 189, Section II of the 2015 Civil Procedure Code, procedural actions are generally accessible to the public. Still, they may be conducted under judicial secrecy, especially in matters related to marriage, filiation, separation, divorce, stable unions, alimony, and child custody. This provision extends to cases within Family Courts on custody regulation and visitation rights.

Hence, in this paper, to uphold confidentiality as stipulated by scientific ethics and the established constitutional and legal norms within the Brazilian legal system, we have refrained from disclosing case numbers, Family Court designations, judge identities, and party names involved in the proceedings. The references indicated as “Field Notebook” express the statements captured in the hearings, the data of which is covered by confidentiality. Direct citations as “CASE A” are part of the framework of legal documents, and court records are referenced only by “CASE A” and the year in which the case was filed in the court.

The study is structured around three core themes: the historical and sociocultural context linked to assigned gender roles and the development of ‘maternal love myth,’ ‘ethics of care,’ and ‘mandatory motherhood’; the gender-oriented dimension of Law and the Justice System; and, lastly, the concrete analyses anchored in gender-discursive critique, culminating in concluding reflections.

2. Women and Gender Social Roles: From the Ethics of Care to the Compulsory Motherhood: A Theoretical and Comparative Approach

According to [Badinter \(1985\)](#), the present construct of motherhood is a product of a historical process that culminated in the subjugation and confinement of women to the domestic sphere.

According to [Clímaco \(2020: p. 7\)](#) the process of positioning women as creators and preservers of life, a role that has historically served both patriarchal and capitalist agendas, necessitated a fusion of diverse knowledge domains, including religion, economy, medicine, philosophy, literature, law, criminology, and psychological disciplines such as psychiatry, psychoanalysis, psychology, and pedagogy. Furthermore, the author explains that: “Feminist theorist [Badinter \(1985\)](#), in her work “A Conquered Love: The Myth of Maternal Love,” demonstrates how the notions of love and maternal instinct, the notion of exclusive or preferential maternal care—essentially, the concept of motherhood as we understand it today, to a lesser or greater extent—was gradually constructed over nearly 300 years in European countries” ([Clímaco, 2020: p. 7](#)).

Throughout history, sexual difference has served as a natural justification for upholding power hierarchies between men and women across diverse domains, encompassing familial, social, political, professional, and economic contexts. In Western cultures, the transition from feudalism to capitalism reshaped the interplay between men and women and perpetuated the prevailing mode of production. This reconfiguration gave rise to a dissociation, predicated on observed gender distinctions, resulting in the segmentation of two labor categories underpinned by the capitalist system: productive activities (aligned with men) and reproductive responsibilities (attributed to women).

According to [Federici \(2017: pp. 145-146\)](#): “These historical changes, which peaked in the 19th century with the establishment of the full-time homemaker role, redefined women’s position within society and about men. The resultant sexual division of labor subjected women to reproductive tasks and heightened

their dependency.”

In the 18th century, the establishment of the sexual division of labor led to a deepening separation between the public and private spheres. In this framework, the public sphere, where productive work took place, became associated with masculinity, while the private sphere of reproductive activities was predominantly delimited as feminine. This segregation forms the foundation upon which motherhood is constructed and perpetuated within the sociocultural context.

Between the 18th and 19th centuries, with the solidification of the capitalist system and the consolidation of marriage as the family’s foundation, the contemporary concept of motherhood began to take shape. Social, economic, and moral changes ultimately mystified the “maternal instinct” (Badinter, 1985), leading the “mother” to function as an idealized and sanctified operator characterized by sacrificial, vocational, and nullifying attributes shaped by the ethics of care and compulsion.

Furthermore, the state required a surplus of the labor force during a time characterized by declining populations and high infant mortality rates, making it imperative to encourage women who gave birth to breastfeed and care for their own children.

The capitalist system, intentionally and methodologically through “colonized empowerment”, chose to exalt rather than coerce women into engaging in reproductive labor. In other words, the preferred strategy to promote breastfeeding and childcare was the narcissistic allure of magnifying and dignifying such a function (Zanello, 2018).

Within this context, the woman came to exist concerning others primarily (children and husband), undertaking work regarded as less technical and productive, but rather centered on caregiving and affection, closely tied to the presumed “feminine nature” (Badinter, 1985; Federici, 2017; Zanello, 2018).

Consequently, motherhood began to be glorified as one of a woman’s greatest gifts, duties, and purposes. Previously deprived of any inherent value, women were elevated to the status of mothers and equated with a sacrosanct, self-sacrificing, and submissive figure.

According to Zanello (2018: p. 128) “What can be seen, between the 16th, 17th and 18th centuries, is the shift from the view of women as a “mermaid, devil, dangerous” to an essentially maternal (good) woman available to care. Eva gave way to sweet Maria. The previous image, sensual, of a woman (Eve), is replaced by another asexual, submissive, and maternal by nature (Mary). The curious, ambitious woman metamorphosed into a modest and thoughtful creature whose greatest ambition was limited to the domestic space. In this sense, images of Our Lady began to abound in churches and people’s homes as a gendered technology”.

With the political expansion of the Catholic Church, the institution of marriage, once seen as a means of transmitting wealth, transforms into a religious sacrament with monogamy as its fundamental pillar. The family, the result of this marriage, becomes the cornerstone of the Christian faith, uniting a man and

a woman before God for procreation. Thus, marriage is seen as the proper path for women to achieve motherhood (Zanello, 2018).

Motherhood is established as one of the pillars of feminine identity in many cultures and religious systems, shaping performances and producing ways of becoming a woman that emphasizes maternal skills and the role of caregiver, often associating motherhood with a sacred duty (Meira et al., 2017).

The true woman is expected to be essentially maternal. That is, to prioritize the child in her life, be modest, generous, understanding, and often suffer in silence to resemble the figure of Mary, the Mother of Jesus, as stated by Vasquez (2014): “The “use” of the mother, the virgin and pure Mary, is fundamental. This religious representation is foundational for Western culture’s ideal of motherhood, and in this way, the figure of Mary helped solidify a stereotype of motherhood and femininity (...) Thus, Mary was constructed as an example of a mother, or rather, she was discursively created as the ultimate MOTHER. She is the one who endures everything, who suffers in silence, who remains chaste even after childbirth (...) This representation is still deeply rooted in religious conception. Such discourse still resonates in society at the end of the 20th century and the beginning of the 21st century.”

In the Brazilian context, there has been a process of establishing the submission of women to Christian motherhood, characterized as a method of taming and shaping: “There has been a trajectory of producing the submission (domestication and training, in the words of Del Priore (1993)) of women to Christian motherhood. With the ideals of marriage and reproduction, the ideal (not without resistance) of the saintly mother was forged, the mother-woman who would find her biological and moral fulfillment in motherhood, dedicating herself to procreation and the care of her children. This path was influenced by medical, scientific, and religious knowledge, and drew inspiration from the prevailing logic of slavery and colonialism that was in place” (Clímaco, 2020: p. 7).

From this everyday understanding of motherhood, the immaculate image of the “Mother” who endures everything, renounces, and nullifies herself for the sake of the dependent child becomes rigid and crystallized.

It is through this connection among “motherhood,” “nature,” and “love” that an ideal model of motherhood is perpetuated via discourses, representing the societal image of affection and care towards children. These ideals extend into the actions and practices of the Justice System.

The concept of motherhood is closely linked to nature and love, forming an expectation that mothers prioritize their children through self-sacrifice and devotion. This widespread view shapes the idea of an ideal mother who places her child’s welfare first. This perspective infiltrates discussions and stories, becoming a societal norm where mothers are seen as endlessly caring and selfless. This understanding extends to the legal system, influencing decisions about custody, visitation, and family issues, as the notion of the devoted mother affects judgments.

With the rise of industrial society, the concept of motherhood was profoundly

influenced by the time's social, economic, and cultural changes. As factories and industries demanded more labor and opportunities for women in the workforce emerged, there was a departure from the traditional model of motherhood, which had previously confined women to the roles of homemaker and mother. Industrialization opened up new possibilities, but many of them were still conditioned by established gender roles (Scavone, 2001).

This transition from the traditional model to a more modern one, allowing women to be mothers alongside other activities, occurred with the consolidation of industrial society. However, this change was accompanied by contradictions stemming from profound social and gender inequalities. This resulted in the so-called “double burden,” where women balanced paid work outside the home with unpaid caregiving work at home. Even while engaged in the workforce, women continued to be the primary caregivers for household tasks, child-rearing, and family care. This link between sex, gender, and motherhood perpetuated an idealized model of motherhood, associated with the societal image of affection and care for children, which manifests itself in conversations and interactions within the justice system (Scavone, 2001: p. 49).

In summary, the cultural and social construction of the “perfect mother” as someone who selflessly sacrifices for her child establishes a powerful image that shapes both public perceptions and legal considerations. This image influences how motherhood is understood and valorized, affecting various spheres, including the intricacies of the Justice System's proceedings and rulings.

3. The Place of Dissenting Motherhood in Law and the Justice Systems: When the Right Is More Countable as Women's Dues

In employing a gender-based and feminist approach to investigate the dynamics of interaction, communication, and expressions during the hearings, we embrace gender as a category of analysis. This choice arises from gender's role as a pivotal component of social relations, constructed around perceived distinctions between sexes and as a fundamental element in imbuing power configurations with meaning, as posited by Joan Scott.

According to Scott (1995: p. 75): “The term “gender,” instead, becomes a way to indicate “cultural constructs”, the entirely social creation of ideas about suitable roles for men and women. It is a way of referring to the exclusively social origins of subjective identities of men and women. “Gender,” according to this definition, is a social category imposed upon a sexed body. With the proliferation of studies on sex and sexuality, “gender” has become a handy word, as it provides a means to distinguish sexual practice from the gender roles ascribed to women and men”.

To lend substance to the research and demonstrate how the normative ideal of the “mother-woman,” which extends from the social sphere into judicial procedures, perpetuates specific models of motherhood as legitimate while marginalizing others, we gathered empirical information through the technique of par-

ticipant observation in hearings related to custody and visitation regulation.

Severi (2011: p. 332) highlights that the actual potency of the legal system isn't just found in its ability to force compliance or in the decisions of the highest courts, but rather in the multitude of everyday interactions and smaller legal scenarios that take place within hearings and trials.

Based on the acquired empirical data, it was possible to deduce the solidification of how gender, socially and culturally, confines roles deemed suitable for men and women, resulting in the association of care and affection for children as a maternal domain.

It's worth noting that the empirical research was conducted in the state of Maranhão, located in northeastern Brazil. Maranhão like many Brazilian states, bears deep marks of its colonial and patriarchal history, significantly influencing the justice system today (Costa & Magno, 2020).

The legislation that guides the procedures and practices of the Maranhão Justice System is the same as that which governs all of Brazil. Therefore, the reflections made regarding constitutional and legal norms, as well as the protocol of the National Council of Justice, are applicable to Brazil as a whole and, consequently, to Maranhão, which is a state within the Brazilian Federal Republic, as stated in Article 1 of the Brazilian Federal Constitution.

Given this context, it is relevant to provide a brief historical overview of women's position in family law. This helps to illustrate how the subordination of women is linked to their female bodies and their reproductive function within the framework of the sexual division of labor and caregiving. It's important to recognize that the law is not abstract but is intrinsically shaped by social, cultural, and historical contexts, reflecting power dynamics, hierarchies, and cultural and social processes (Igreja, 2017: p. 11).

Although there have been significant studies and research in understanding family dynamics in Brazil, such as those conducted by Mariza Corrêa (1982) and Eni de Mesquita Samara (1987), aiming to challenge the traditional patriarchal family model established as predominant, especially in the literature of Gilberto Freyre in his seminal work "Casa-Grande & Senzala," published in 1933.

The ethical framework that has permeated all spheres of Brazilian society since the colonial era is that of the patriarchal family. It is from this foundation that the social, economic, political, and consequently, legal dimensions of Brazil are established: "The patriarchal family is our starting point (...) rooted in the type of production that dominated the life of colonial Brazil, characterized by production for export, the devastation of the land, and slave labor. Therefore, it is not only a rural family but also a slaveholding patriarchal family in which slavery degrades manual labor and diminishes human life. Moreover, it is a polygamous family whose ethics it is inscribed that for white men, all active sexual relations are possible and desirable. In contrast, white women are reserved for chastity, and later, fidelity" (Almeida, 1987: p. 55).

It is within this dominant ethics, which permeates the entire social structure, that the Law, more precisely Family Law, finds its foundation. In other words, a

Law grounds its legal norms in a patriarchal, racist, patrimonialist, colonialist, and sexist bias.

According to Article 233 of the Civil Code of 1916, it was the husband, as the head of the conjugal society, who had the following rights and responsibilities: “I. The legal representation of the family. II. The administration of both the common property and the wife’s individual property, which the husband was entitled to administer according to the adapted marital regime or prenuptial agreement. III. The right to establish and change the family’s domicile. IV. The right to authorize the wife’s profession and her residence outside the conjugal home. V. To provide for the maintenance of the family, subject to the provisions of Article 277” (Brazil, 1916).

According to Article 233 of the 1916 Civil Code, marriage resulted in the loss of full civil capacity for women. This meant that they could no longer carry out various legal acts without the consent of their husbands, transitioning from legally capable to “relatively incapable.” In summary, this Civil Code regulated and legitimized gender hierarchy and the subordinate and subjugated position of women within the context of civil marriage (Barsted & Garcez, 1999: p. 17).

The 1988 Federal Constitution establishes equality between men and women in Brazilian law. However, when viewed from a feminist perspective, using gender as an analytical category, it becomes evident how deeply entrenched the idea that the creation and protection, hence the work of care, is inherently women’s responsibility within the Brazilian legal framework.

Article 7, item XVIII, of the 1988 Constitution is a fundamental pillar in this context, stipulating a 120-day maternity leave, ensuring time off from work during this period without any harm to employment and salary. This measure aims to provide mothers with the necessary time for postpartum recovery and caring for the newborn, recognizing the importance of this period for both the mother’s health and the baby’s development.

However, it’s important to note that paternity leave, also mentioned in the Constitution, is not directly related to Article 7, item XVIII, but is a relevant element in the context of gender perspective. According to the Constitution, paternity leave is set at five days. This relatively short duration means that it does not reflect an equal division of parental responsibilities between parents.

Interpreting this scenario highlights that the burden and responsibility of care remain predominantly with mothers, reflecting deep-seated gender inequality in society. The five-day paternity leave, while an improvement over previous periods, still does not promote an equal division of parental responsibilities between men and women.

In light of this, although Article 226, paragraph 5 of the Constitution has granted men and women equal responsibilities concerning the family, stating that “the rights and duties related to conjugal society are exercised equally by the man and the woman,” the legal framework is structured in a way that reproduces the idea that the care of newborns is primarily a responsibility of women.

Thus, the conception of motherhood and maternity, not only in social reality and the legal framework but also in the practices of the justice system through courtroom interactions, is idealized and standardized, captive to gender stereotypes that “naturalize the unequal allocation of responsibility for care between men and women, reproducing and reinforcing the sexual division of labor” (Angotti & Vieira, 2020: p. 307).

The division between the spheres of reproductive and productive work is reinforced by stereotypes, asymmetries, hierarchies, and inequalities that assign distinct social roles and markers to women and men. This results in the normalization of the patriarchal paradigm, which places women as the primary, or even sole, responsible party for reproductive and caregiving work, encompassing both paid and unpaid activities. These tasks are related to the maintenance of life and the reproduction of society (CNJ, 2021).

On the other hand, men are often associated with paid productive work, which enjoys recognition and social value. Through this work, the necessary income is obtained to fulfill the role assigned to the male gender, that of the provider (CNJ, 2021: p. 25).

The entrenched concept of mother and motherhood prevails in social reality, legal frameworks, and the actions of the Justice System. It conforms to an idealized and normalized portrayal, entrapped by gender stereotypes that “naturalize the unequal allocation of caregiving responsibility between men and women, thereby reproducing and reinforcing the sexual division of labor” (Angotti & Vieira, 2020: p. 307).

In the field research, it was possible to repeatedly hear the following statements: “He never called or reached out to the son. Throughout this time of separation, since 2019, he only gave 100 reais. I kept the receipt as evidence that during this whole time, he only gave 100 reais” (Field Notebook, March 2022).

In this context, motherhood operates as a mechanism that extends beyond the biological experience of pregnancy and childbirth. It encompasses a complex system of beliefs, values, and norms that delineate the roles and responsibilities of mothers and the societal expectations placed upon them.

According to Badinter (1991), the concept of maternity operates as a mechanism that expands the definition of motherhood beyond childbirth. While pregnancy and childbirth are intrinsically linked to the idea of motherhood, it also encompasses the role of nurturing and safeguarding the well-being and education of the child. Scavone (2001) contends that this is the prevailing notion in contemporary times: a mother prioritizes their child’s needs over their own, often juggling multiple responsibilities simultaneously. Lastly, Pinheiro (2014) asserts that through feminist critical theory, motherhood becomes a lifelong undertaking. So, mother is this entity whose actions and behaviors are shaped by the imperative of social norms, under the influence of prescriptive demands (Fidalgo, 2003).

According to De Diego (1992), through the discourse of maternal love, these guidelines operate to confine women within the recesses of the private sphere,

circumscribed by the domestic environment, entrusting them with the responsibility of overseeing not only their own well-being but also that of their children, as well as tending to the entire family unit. As a result of this integration, the mother-woman is transformed into a pillar of support, a fundamental column that underpins the interrelated and functional dynamics of the family entity (de Diego, 1992).

The evolving definition of motherhood beyond childbirth, emphasizes the contemporary notion of a mother prioritizing her child's needs, shaped by discourses of maternal love. Motherhood functions as a governing mechanism, constructs women's behaviors and roles, often confine them to the private sphere and cultivate their identities as familial foundations. Resistance to this ideal may result in societal backlash, highlighting agency within constructed mechanisms. Maternal love transforms from an instinctual concept to a discursively constructed one, showcasing the power of discourses and their influence on behavior. Non-conformity with maternal expectations can induce guilt and potential labels (Gonzalez & Moita Lopes, 2020: pp. 4-5).

This construct does not solely rely on moralities or prohibitions; it is shaped by a rational, regulatory, and disciplinary discourse delineating a boundary between the normal and the deviant. This discursive framework gives rise to knowledge and power mechanisms that intricately connect the female body to the social fabric, the familial sphere, and the lives of children (Foucault, 2020).

From a Foucauldian perspective, the evolution of motherhood as a dispositive unfolds through a network of heterogeneous elements, encompassing discourses, institutions, laws, and scientific pronouncements that (re)create and reinforce performances, parenting models, and representations of motherhood within the context of social reality.

By contextualizing motherhood as a control device, Badinter (1991) unveils specific stratagems that shape it and guide it to its current profile, as previously indicated. Primarily, she highlights the discursive apparatus that ultimately (performatively) constructs what is described (maternal love) and presents it as something inherent to the feminine condition. According to Pinheiro (2014: p. 5) it illustrates how motherhood as a control device that shapes behaviors, establishing the prescribed manner in which maternal performances should be executed. In practical terms, what is observed is that the motherhood apparatus, woven from discourses that "encourage" women to be "good" mothers and impose a life of sacrifices and renunciations for the sake of offspring, assigns blame to those it fails to snare. If it does not operate as intended, if resistance persists against having one's conduct shaped by the maternal device, women may be labeled as selfish or even disqualified as women.

Judith Butler (2015: p. 162) asserts that the "discursive production of the maternal body as pre-discursive is a tactic of self-expansion and concealment of the specific power relations by which the trope of the maternal body is produced".

It is through discursive production that the internalization of the female condition occurs and the conversion of an idealized vision of the mother's role,

linked to stereotypes of submission, protection, affection, and selflessness of women so that she will only be considered worthy of respect when she meets the requirements imposed by society. The demand for compliance with these requirements is also enforced through interactions by the plaintiff's attorney via petitions and legal documents: "In the case at hand, the defendant tarnishes the sweet image we have of a 'mother' by adopting the demeanor of an unbalanced and violent person who terrorizes her entire family! (...) Not only that, but she refuses to take responsibility for the upbringing of her offspring (...)" (CASE A, 2021).

Another point gleaned through a meticulous investigation of these hearings is a tendency toward delegating caregiving responsibilities. It is observed that the presence of another woman, such as a grandmother, aunt, or even a father's partner, is often deemed an acceptable substitute for the absent mother. This practice can be understood as an extension of compulsory motherhood, as the author's statement in one of the assessed cases elucidates: "After my daughter's death, I took over the custody and support of the minors. The father showed up a few days later, but since he had no closeness with the children, he did not insist on staying with them (Field Notebook, April, 2022)".

In such instances, when the mother is absent from assuming the anticipated role of the primary caregiver, societal mandates and gender norms appear to redirect focus onto alternative female figures. This observation underscores the concept that the duty of childcare is instinctively shifted to the feminine realm, shedding light on the persistent influence of gender norms over decisions and anticipations concerning parenthood and caregiving.

Another visible aspect tied to the configuration of motherhood as compulsory is that while the father has the privilege of choosing not to "insist on spending time with the child" (Field Notebook, October, 2022), the mother is burdened with the obligation to care and bear the burden of self-annulment for the sake of the child who depends on her. This is what we can deduce from the statement of the mother and legal representative of a child who was compelled to take on all parental responsibilities for her child, as the father, in addition to not taking on the caregiving work, exempted himself from providing and materially supporting the child: "He never called or sought out his child. During this time of separation, since 2019, he has only given 100 reais. I kept the receipt as evidence that during all this time, he only gave 100 reais" (Field Notebook, March, 2022).

Hence, through observing statements and interactions within custody and visitation hearings, the recognition emerged that mothers frequently shoulder the burden of obligatory motherhood. The Justice System, guided by its representatives, presumes that women in the role of mothers must exhibit unwavering commitment and personal self-sacrifice to meet these expectations.

Compulsory motherhood directs us to the sociocultural imposition of motherhood upon women, irrespective of their individual choice or desire. According to [Mattar and Diniz \(2012: p. 108\)](#) the lack of choice essentially led to an

imposed identity, rather than a voluntary experience driven by the desires of women or couples. The persistent social expectation for women to fulfill this role can create a moral obligation regardless of circumstances, with the risk of associated social stigma. Faced with such constraints, compulsory motherhood emerges as a notion highlighting women's historical and contemporary challenges in exercising their agency and shaping their identities.

The deductions drawn from observing the statements of a prosecutor during one of the monitored hearings are as follows: "Here in the Family Court, it is not the place to address the burden of the mother in raising the child. It's meant to address custody, child support... The greater burden should fall on the mother" (Field Notebook, June 2022).

This deeply ingrained social notion that motherhood must be an unquestionable priority is echoed in the discourse of the involved parties, placing mothers in a position where non-compliance with these norms can be used as an argument against their capacity to be competent mothers.

An additional example is provided by a lawyer who uses the mother's choice to work instead of caring for the child to categorize her as someone who practices divergent and therefore condemnable motherhood: "She spends the entire day working at the Liberdade market, and the child is left alone without anyone to care for her when she is working" (Field Notebook, October 2023).

The notion of idealized motherhood often surfaces in court hearings and legal proceedings, subjecting mothers to evaluation partly based on their alignment with this ideal. Instances where a mother displays independence, professional aspirations, or maintains personal interests can lead to perceptions of neglect or self-centeredness, deviating from societal expectations. Consequently, she becomes emblematic of a motherhood model regarded as unconventional and problematic, departing from the endorsed norm.

In contrast, fathers frequently enjoy a realm of choice regarding their involvement in their children's lives. Fathers are commonly seen as "contributors" or "secondary figures" in parenting, while mothers carry the mantle of primary caregivers. This distinction is evident in statements such as that of a father-defendant: "I can't care for the child due to my dual work commitments" (Field Notebook, June 2022).

This element of choice gives fathers a greater latitude to prioritize personal, professional, and social aspects without being subjected to the same level of scrutiny mothers face.

Considering these observations, it becomes apparent that the dynamics of custody and visitation hearings underscore how motherhood assumes a compulsory role, demanding mothers make self-effacing sacrifices for their children. On the other hand, fathers are granted the prerogative to decide. This contrast reflects deeply ingrained gender norms that perpetuate disparities in parental responsibilities.

According to [Mattar and Diniz \(2012: p. 14\)](#) the acceptance of a particular form of motherhood is determined by the accumulation and interaction of vari-

ous aspects of a woman. The greater the number of perceived negative factors attributed to the woman or the couple engaging in motherhood and/or child-bearing and care, the closer they are to the base of the hierarchical pyramid. Furthermore, this proximity to the base indicates a diminished exercise of human rights, highlighting the social exclusion to which they are subjected.

In this regard, dissenting mothers, those who seek to balance motherhood with other spheres of their lives and/or do not conform to the presumed standard of “normalcy,” may be stigmatized as neglectful or selfish and, consequently, may not have their rights fully realized.

Another important point is that during one of the hearings, the daughter of the mother in question testified in favor of her half-sister and stepfather, attempting to portray her as a dissenting mother with inappropriate and harmful behaviors for cohabitating with the child. She stated, “The mother exhibits aggressive behavior and shows repulsion towards her daughter. She does not behave as a mother should, she does not act like a real mother” (Field Notebook, May 2022). This shows that those who do not fit the socially accepted stereotype of a mother, the “ideal mother,” are categorized in the legal proceedings as “non-mothers” due to their unconventional approach to motherhood. This categorization becomes evident in this statement. At process, A hearing was also possible to notice that: “Her temperament is very explosive, and she exhibits behaviors that do not align with the demeanor a mother should display. To begin with, she would lose her temper very quickly from a young age and hit me in random situations. When we were out in public, there were instances when I said something I shouldn’t have, and she even slapped my mouth and stomped on my foot (CASE A, 2021).”

Challenging the traditionally assigned roles to women in the context of motherhood, which emphasize care, love, and affection towards their children, performances that encompass non-affectionate, aggressive, and violent behaviors are incompatible with the image of a “real mother.” Dissenting mothers occupy the opposite pole in representations of the female gender precisely because they deviate from women’s natural, exclusive, and sanctified calling.

It is noteworthy that Resolution No. 492 of the National Council of Justice (CNJ, 2021), dated 2023, has made the adoption of the “Protocol for Judging with a Gender Perspective” mandatory, requiring judges to enhance their knowledge in areas such as human rights, gender, race, ethnicity, and intersectional approaches.

The Protocol for Judging with a Gender Perspective, as outlined in its text, acknowledges the androcentric bias deeply rooted in legal principles by recognizing that the universality of the law results in presumed neutral norms.

The Brazilian National Council of Justice (CNJ) emphasizes that it is crucial for the legitimacy and proper functioning of the Democratic State of Law to have jurists who are attentive to the existence of structural inequalities in Brazilian society and aware that such asymmetries impose systematic disadvantages on specific social segments: “just as it is heavily influenced by patriarchy, which as-

signs women ideas, social images, prejudices, stereotypes, positions, and social roles. The creation, interpretation, and application of the law do not escape this influence, which permeates society as a whole. In this context, historically, the law originates from an androcentric worldview. Under the argument that universality would suffice to generate neutral norms, the law was shaped from the perspective of a “universal and abstract legal subject,” with the standard being the “average man,” that is, a white, heterosexual, adult, and affluent man (CNJ, 2021: p. 35).”

These observations from the Protocol for Gender Perspective Judgement point to a significant gap between formally established rights and those enjoyed but also highlight that the empirical analysis conducted here goes beyond the mere identification of rights violations. It reveals a condition in which, even with legal frameworks and work protocols guiding the Justice System and affirming gender equality and human dignity in all scenarios, gaps and practices persist that relegate women to marginalized and disadvantaged positions.

According to Pasinato (2015: p. 408), despite the formal recognition of various rights for women, “there still exists a significant gap between formal rights and actual rights, excluding large portions of the female population from citizenship”. Thus, social and cultural aspects of realization must be considered in this process of rights recognition and realization—must be regarded as in the recognition and completion of this right.

Understanding this impact entails recognizing the need for advancements to be made (Barboza & Demetrio, 2019) so that legal professionals can operate and equip themselves with knowledge to deconstruct commonly established assumptions within the Justice System. This involves breaking free from gendered, mental health, and supposed parental alienation concepts, perpetuating social and familial roles based on a historical domestication of women’s bodies and minds. Given this landscape, it is crucial to challenge motherhood’s gendered and stereotyped normativity and question the practices that sustain it.

It becomes evident that the justice system must commit to promoting the integration of a legally and socially conscious culture with a gender perspective. Furthermore, there is a need to “ensure the modernization and reforms of judicial bodies in order to empower them to identify and combat specific obstacles faced by women in accessing justice and to eradicate discrimination, inequity, and gender inequality” (Severi, 2011: pp. 336-337).

4. Conclusion

The examination of the role of motherhood within the legal and societal framework reveals complex dynamics that contribute to the perpetuation of normative ideals and gender hierarchies. While Article 5 of the 1988 Federal Constitution establishes equality between men and women, and Brazil is a signatory of international human rights treaties, such as the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Civil

and Political Rights, and the Pact of San Jose, empirical findings illustrate how discursive statements rooted in an idealized, compulsory, and sacrificial view of motherhood permeate judicial processes. These discourses transform into vectors of institutional violence by reinforcing the marginalization of non-conforming motherhoods, deviating from the gender-oriented guidance advocated by the National Council of Justice (Conselho Nacional de Justiça, CNJ).

The exploration of custody and visitation hearings in the Family Courts sheds light on how the idealized model of motherhood influences legal proceedings. The prevalent notion of compulsory motherhood places substantial burdens and expectations on mothers, enforcing the belief that their dedication and selflessness are intrinsic qualities. This ideal shapes judgments and societal attitudes, prioritizing a mother's commitment to her children above all else, while simultaneously marginalizing alternative forms of motherhood that do not align with this norm.

Judicial hearings represent one of the most crucial moments in the legal process. In this setting, multiple legal subjects speak, engage in dialogue, interact, and discuss the concept of the "real mother" and the feasibility of these women's motherhood. Therefore, it is important to reflect on the contested meanings that permeate the judicial records as a whole.

In these interactive encounters, the involved parties, witnesses, judges, lawyers, prosecutors, and/or defenders have the opportunity to express themselves, argue, and present evidence. Much of the legal narrative unfolds on this stage, which is why the statements made during the hearings deserve a central place in the reflections of this work, as they reveal practices within the justice system that often perpetuate gender stereotypes and reinforce social inequalities.

Not only the legal techniques of judges, lawyers, prosecutors, and defenders but also the statements and interrogations of the plaintiff, defendant, and witnesses serve moral purposes, as they "use the time of the process to select and adjust the elements of the situations, the 'pieces' of the process that best fit the composition of the desired image, the truth to be demonstrated" (Côrrea, 1983: p. 14).

In the case of the topic addressed here, the components of the legal process, or rather, the interactions and dialogues during the hearings, are employed to classify women based on their behavior and adherence to the normative ideal, either as good mothers or as disqualified, thus highlighting the concept of dissenting motherhood for deviating from gender norms and the primary female roles determined by society and the law.

Furthermore, the research points out that beyond merely improving the technical skills of judges, lawyers, prosecutors, and defenders, it is essential to sensitize the professionals within the justice system. Unlike technical training, sensitization addresses the subtleties of power dynamics and allows for a critical reexamination of the roots of patriarchy, as well as its interconnectedness with categories of race, gender, and class (Costa & Magno, 2020).

Moreover, the justice system operates within an androcentric framework historically rooted in male norms and perspectives. Despite efforts to introduce gender-sensitive protocols, the legal system often perpetuates gender stereotypes and reinforces existing power imbalances. Fathers are granted greater flexibility and choice in their parental roles, whereas mothers are evaluated against an idealized standard. This imbalance becomes particularly pronounced when considering mothers who strive to balance motherhood with other aspects of their lives, leading to judgment and negative labeling that underscores the rigidity of societal expectations.

The recent implementation of the “Protocol for Judging with a Gender Perspective” is a step toward acknowledging the gender biases ingrained in legal practices. However, a significant gap persists between formal rights and their actual implementation, resulting in the exclusion of numerous women from full citizenship benefits. This accentuates the necessity for a comprehensive reevaluation of cultural and social norms within the context of rights recognition.

To address these challenges, legal professionals must actively engage in gender-sensitive education and challenge established assumptions. The justice system needs to move beyond perpetuating gendered stereotypes and actively pursue the modernization and reform of judicial bodies. This includes identifying and eliminating obstacles that impede women’s access to justice, eradicating discriminatory practices, and promoting genuine gender equality.

In conclusion, the intricate interplay between motherhood, gender norms, and the legal system underscores the urgency of reimagining and reconstructing the concept of motherhood. Challenging the compulsory nature of motherhood and recognizing women’s agency and autonomy are pivotal steps. By acknowledging and rectifying the discrepancies between formal rights and lived experiences, society, and the justice system can progress toward a more equitable and just future for all individuals.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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