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Virgin or not, and dishonest? The treatment of female victims of sexual violence within the Brazilian criminal justice system (1890-1930)

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Abstract

The present work is part of a broader research which found that female sexual honesty functioned as a formal social control norm in the sphere of sexual crimes in Brazilian First Republic (1890-1930) (Sassi, 2023). A bibliographic review of studies on criminal procedure and an analysis of jurisprudential materials cited by Brazilian legal doctrine were conducted, with a focus on the crime of rape. The objective was to understand 1) how discriminatory discourses were (re)produced during criminal proceedings, reinforcing gender, class and race stereotypes associated with female sexuality; and 2) how and to what extent female victims of rape, intersected by markers of race (non-white) and class (poor), adhered to the discriminatory gender discourses propagated by justice operators. It was found that the imputation of the category "virgin or not, but dishonest", implicit in the interpretation of the Criminal Code, suppressed the presumption of honesty for virgin women and the presumption of violence for young women under the age of 16, subjecting complainants to a judgment of their honesty.

Keywords: rape, secondary victimization, sexual honesty, criminal legal history.

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Introduction

This paper is part of a broader research[1] which, among other findings, confirmed that female sexual honour operated as a norm of formal social control within the criminal justice system. In this context, the objective was to examine how discriminatory discourses were (re)produced in criminal proceedings, reinforcing gender, class, and race stereotypes associated with female sexuality, and to what extent female victims of rape internalized the discriminatory gender discourses disseminated by judicial actors. To this end, a bibliographic review of studies on criminal cases was conducted, alongside an analysis of judicial opinions published in doctrinal sources between 1890 and 1930.

The research takes into consideration Joan Scott's (1986) approach on gender as a useful category of historical analysis, as qualified by Joana Pedro (2005) within the Brazilian historiographical field. Intersectionality (Crenshaw, 1991) encompassing race and class is employed as a key analytical element to address women's experience within the criminal justice system. The research seeks to understand how discourses legitimizing the use of the 'honest woman' concept reinforced an elitist ideology of civilization and modernity that produced discrimination against women in criminal proceedings.

Conducting a bibliographic review of a range of local studies on the subject enabled a comprehensive analysis of the stereotypes surrounding female honour and sexual honesty in the criminal prosecution of rape in Brazil at the turn of the century, without imposing a strict jurisdictional limitation[2]. Part of the analysed studies focused on understanding the crime of deflowering[3] within the framework of sexual offenses defined in the 1890 *Código Penal*. These works provided valuable comparative data that contributed to a better understanding of the procedural logic underlying the crime of rape. On that matter, Mariana Augusta Conceição de Santana Fonseca (2020) examined the terminological variations in the use of the terms 'rape' and 'deflowering' in criminal proceedings in the city of Aracaju/SE, between 1890-1900. Mariana Lima Winter (2015) analysed gender aspects in the construction of legal truth in criminal proceedings of rape and deflowering in the district of Campos dos Goytacazes/RJ between 1890-1930. As for Eliane Martins de Freitas (2005), who studied the functioning of justice in the district of Rio Paranaíba, Catalão/GO in the period of 1890-1941, special attention was given to cases from the early period (1890-1920). This work is interconnected with subsequent research, in which the author expanded

[1] Conducted during a master's degree. See Sassi (2023).

[2] It is important to note that during this period Brazilian criminal procedure was decentralised, and criminal proceedings varied across the different states. See Nodari (2023) and Sabadell (2006).

[3] Crime of deflowering a minor through seduction, deception, or fraud, categorized as a form of 'carnal violence' in the Brazilian 1890 Criminal Code.

her analysis of legal discourses targeting women accused of "misconduct" (Freitas, 2011). Additionally, Rafael de Tilio (2009) addressed gender strategies and representations of sexuality in sexual crimes reported in the city of Ribeirão Preto/SP, between 1870-1970. Later research focused on crimes reported between 1871-1941, specifically examining the figure of the sexual aggressor (De Tilio and Caldana, 2009).

Furthermore, Liana Machado Morelli's (2015) work on sexual crimes in São Paulo/SP between 1890-1920 provided an overview of the legal, medical, and social treatment of women victimized by these offenses. Similarly, Bárbara Gonçalves Textor (2019) examined the convergences and divergences in the criminal prosecution of deflowering, rape, and rapt cases committed in Santa Maria/RS between 1910-1939. Finally, the works of Sueann Caulfield (2000), on the intertwining of morality, modernity, and nation in Rio de Janeiro/RJ between 1918-1940, and Martha de Abreu Esteves (1989), on the clashes between legal discourses aimed at social control and the everyday practices of the populace regarding sexual crimes in early twentieth-century Rio de Janeiro/RJ, underpinned the theoretical foundation for this article.

Additionally, jurisprudential materials cited by the jurists Viveiros de Castro (1936) and Galdino da Siqueira (1932) in their doctrinal works contributed to elucidating the norms governing the criminal prosecution and adjudication of such offences. Regarding concrete data on rape, it should be noted that no national criminal statistics existed for the period under investigation. Furthermore, as indicated by Viveiros de Castro (1936, p. 21), crime was not addressed with the same rigor in all Brazilian states.

Finally, considering that 'rape' (*estupro*) constituted a relatively new term used to characterize only the sexual penetration achieved through violence, it was frequently conflated with 'deflowering' (*defloração*) in the prosecution of these offenses (Fonseca, 2020)[4]. This confusion not only reflected linguistic ambiguity but also underscored the importance of virginity in prosecuting these criminal acts (Morelli, 2015, p. 154). Violence, therefore, tended to remain in the background (Vieira, 2007), a tendency reflected in the data presented here. These findings should be considered alongside Freitas' (2011, pp. 192-193) observations regarding the phenomenon of underreporting. Sexual crimes were characterized by a significant amount of concealed violence, which was exacerbated by public shame, and, in most cases, rape accusations implicated someone a known to the victim (Textor, 2019, p. 264), thereby reducing the likelihood of filing a complaint. Furthermore, rape was generally pursued through private criminal action, which depended on the victim filing a complaint. Consequently, the lawsuits processed by the courts represent only a percentage of the actual cases.

[4] In the Criminal Code of 1830, 'rape' was a concept that included both offenses, 'carnal violence' and 'deflowering'.

"Virgin or not, but honest": An essential element to the crime?

At the end of the nineteenth century, efforts to modernise the new Republic were accompanied by the industrialisation of cities, which, in turn, led to the need to sanitise public behaviour[5]. Consequently, the control of female sexuality was encouraged and reinforced by a moralising discourse with religious foundations, institutionalised by the State (Sassi 2023, p. 109). In this context, the 1890 *Código Penal* assigned specific gender roles to men and women in defining the crime of rape. Article 298 punished "raping a virgin or not, but honest woman" with a penalty of one to six years of prison. The first paragraph established a lesser penalty in case the victim was a "public woman or prostitute", considering she had no "honesty" or "modesty" to protect. Article 269 conceptualised the crime: "it is called rape the act through which the man abuses a woman, being virgin or not, with violence" (free translation), and violence was characterized by using physical force or other means that reduced the victim's mental faculties and ability to resist (Brazil, 1890).

Rape was prosecuted through private criminal action. Article 275 of the Criminal Code established a statute of limitations of six months for filing a criminal complaint, counted from the date of the crime (Brazil, 1890). Its maintenance as a crime prosecuted via private action was ideologically justified by the belief that it served the interest of families or the honour of individuals who preferred peace over scandal, even at the cost of the offender's impunity (Esteves 1989, p. 87). Sexual violence was, by default, a private matter. Nonetheless, the Criminal Code established specific exceptions in which the action was public: when the victim was declared indigent or sheltered in a charitable institution; if the rape resulted in death, danger to life, or serious health consequences[6]; and if the crime was committed through the abuse of paternal power or authority (art. 274) (Brazil, 1890). The latter, intended to combat potential impunity, applied to individuals with whom the victim had a legal bond of dependency.

In the analysed works, indigence (*miserabilidade*), attested by proof attached to the case records, was the primarily justification for initiating public criminal action. The authors did not mention any other hypotheses, even in cases where the violence was perpetrated by a legal representative. Moreover, Esteves (1989, pp. 90; 99) emphasises that in Rio de Janeiro/RJ, within the broader "civilising" effort, exceptions to the law were, in some cases, the norm. It was common for the police to disregard the right to private complaint, initiating proceedings on their own account after an "immoral" flagrant or at the request of a third party. Ultimately, this practice

[5] On the modernisation project during Brazilian First Republic, see Costa & Schwarcz (2002), Carvalho (1990; 2018), Neves (2018).
[6] Including sexually transmitted infections, such as syphilis.

aligned with the sanitisation project envisioned by the bourgeois elites who controlled the police and judicial apparatus, aiming to impose social containment on the lower classes — whom they perceived as a "bestialized" mass (Carvalho, 2018).

Criminal procedure between legal tradition and social control practices

Regarding the filing of *notitia criminis*, De Tilio (2009, p. 92) observed that fathers were most frequently the complainants in cases of sexual crimes committed against their daughters. This reflected the legislative tradition of delegating to the head of the family the responsibility for representing family interests in the public sphere. Given the extensive authority of the *pater familias* over the girls and women under his guardianship, criminal complaints often depended on his decision. Indeed, in the cases investigated by Winter (2015, pp. 96, 98; 103-104), 50% of the complainants in deflowering and rape cases were male guardians, such as fathers, uncles and godfathers, who considered themselves responsible for safeguarding the honour of the minors. These guardians also served as primary witnesses, attesting to the victim's family background and moral integrity. It was common to describe the father as a "good head of the family" when discussing the modesty of the supposedly offended minor. Since male testimony carried significant weight in assessing female honour, men were also typically the defence witnesses. A double standard emerged in this context: although male testimony weighed in young women's favour, the guardianship and testimonies of women were easily discredited — particularly if those women were not considered to be of "good behaviour" (Winter, 2015, p. 96).

In other words, women who did not conform to the moral standards dictated by the elites were subject to disqualification as witnesses.

Indeed, criminal procedures involved a threefold investigation on the alleged victim's sexual honesty. In addition to scrutinizing her honesty or personal integrity, the moral standard of her female legal representative and any female witnesses was also subject to scrutiny. The focus, therefore, was not on the facts but on the reputations of those who vouched for the victim's previous life and virtue. They had to be prudish, chaste, and respectable[7]. A daughter's perceived honour was the reflection of the mother's behaviour: when the victim lacked a male guardianship, the defence would turn to her mother for arguments to disqualify her behaviour (Winter, 2015, pp. 98-99).

[7] About the of gender roles and female sexual honesty in Brazilian history, see Algranti (1992), Araújo (2004), Caulfield (2000); Cruz & Souza (2016), Dias (1995); D'Incao (2004), Esteves (1989), Rago (1987; 2008), Ribeiro (2016), Scott (2013).

In this regard, De Tilio (2009, p. 92) identified two main scenarios in which the mother was responsible for filing the complaint: cases of female-headed households and instances where mothers, historically entrusted with child-rearing, were delegated the responsibility of addressing delicate issues such as their daughters' "sexual downfall". Similarly, Caulfield (2000, pp. 238-241) found that in deflowering cases, mothers often played a central role in filing complaints. This was likely due to the high proportion of female-headed households among the working class, as well as men's tendency to resolve conflicts privately rather than seek public authorities. Mothers, even in the presence of men, commonly employed a range of strategies and functioned as protagonists (Caulfield, 2000, pp. 238-241). On the other hand, the traditional association of mothers with the education of children had direct implications for accusations concerning the honour of girls and women.

Crimes that affected the free exercise of sexuality, classified as crimes against the honour of families, aimed at the special protection of virgin and "honest" women. This system emphasised the protection of the heteronormative and patriarchal family as its socio-legal basis. Consequently, marriage emerged as an important remedy for the sexual violation represented by rape and deflowering crimes, as such offences significantly reduced the victim's marital prospects. Article 276, first paragraph, determined the extinction of the penalty for both crimes if the victim married the accused (Brazil 1890). Indeed, matrimony was one of the main objectives sought in allegations of defloration, often revolving around claims of an unfulfilled promise of marriage by the perpetrator following the victim's defloration (Winter 2015) (De Tilio 2005). In cases of rape, it was uncommon for victims to accept it or perceive it as a means of reparation, even though it was contemplated by the author in some cases (Textor 2019, p. 214). In one instance analysed by Winter (2015, p. 101), dated 1908, marriage was suggested by the magistrate not as substitute for punishment, as provided for in the Criminal Code, but as a means of reparation for the woman's dishonour.

Moreover, De Tilio (2009, p. 118) found that, in cases of sexual crimes, complaints from victims who conformed to gender standards of morality, modesty, and innocence were more likely to be accepted, as female sexual honour was an essential element for the characterization of the crime. In 1909, the Federal Supreme Court consolidated jurisprudence establishing that "the virginity of the raped woman, or her honour, when she is not a virgin, are constitutive elements of the crime defined in article 268 of the Code" (Siqueira, 1932, p. 463) (free translation). Although some rulings acknowledged that the female honesty was not an essential element of the crime of rape, entering only as a mitigating circumstance for the penalty (Siqueira, 1932, p. 464), concerns regarding female morality prevailed. As a result, the element of violence, which was fundamental to the crime, was, in many cases, relegated to secondary importance.

Female sexual honesty as a focal point of judgement

The legal interpretation of these crimes was not based solely on the presence of violence but rather on forensic medical criteria, such as proof of virginity, or subjective understandings of the ideal affective, sexual, and social behaviours that the elites sought to uphold (Martins Júnior 2011, p. 2693). Even though violence was a central and distinguishing element of the crime of rape, the complainant's past was always scrutinised, with the defence — or accusation — of honour prevailing. As a result, the seriousness of women's allegations was often minimised. Honour was placed on a similar level to the accused's culpability, and the supposed victims had to convince the magistrates of their honesty (Esteves 1986, p. 84), demonstrating to the justice system that they had not contributed to the materiality of the crime.

Throughout the investigative and judicial process, female sexual honesty became a focal point of judgment. Any non-conformity with the bourgeois sexual values embedded in the law could easily lead the judge or the jury to acquit the defendant. The defence's questioning of the alleged victim's behaviour was aligned with the emerging field of anthropological criminology (Andrade 2022, pp. 99; 295), which sought to regulate leisure spaces, viewed as breeding grounds for perverted practices (Freitas 2011, p. 195). An "honest" female should barely go out, and never alone. However, popular customs did not always adhere to the elitist moral norms that formal institutions sought to impose on society. It was common for girls and women to participate in leisure activities, as these were not viewed pejoratively by their communities (Caulfield 2000, p. 234).

Nonetheless, as we will see, in the aftermath of sexual crimes, they would need to dance to the rhythm of the moralistic ideologies that were used by jurists, defending their sexual honesty against numerous accusations.

The distinction between an 'honest woman' and a 'prostitute' in the Criminal Code opened discursive strategies to undermine the victim's credibility. By framing the complainant as a non-honourable person, through defamation, defence attorneys sought to mitigate their client's sentences (Morelli 2015, p. 136). In their analysis of the discourses of men indicted for sexual crimes, Tilio and Caldana (2009, p. 112) found that a common counter-allegation was that the women, socially and morally corrupted, had seduced them. Although not always directly compared to prostitutes, the victims were, in most cases, disqualified as dishonest.

In the next section, we will examine discursive strategies of defence lawyers to shift blame onto the complainants by introducing a category that was beyond the legal determinations: "virgin or not, but dishonest". This implicit classification served as a presumption of dishonesty, particularly targeting the social uses of non-white and poor women.

From the presumption of dishonesty to female (in)submission

Article 272 of the Criminal Code addressed presumed violence in cases of sexual intercourse with a minor (Brazil 1890). In such cases, legal doctrine, grounded in judicial precedent, held that no evidence to the contrary was admissible:

> *Elements of the crime of rape. How is the proof of authorship made, by the confession of the accused. Violence is presumed in this crime, whenever the offended party is under 16 years of age; This presumption is iuris et de iure and does not admit proof to the contrary. Even if the minor is dishonoured and has voluntarily surrendered, the violence remains [...] (Sent. from J. D. of S. Pedro, Esp. Santo, from 28-8-28. R. J. B. IV-300, apud Castro 1936, p. 320) (free translation).*

Consequently, the testimonies of witnesses were rendered irrelevant, as was any claim of error regarding the victim's age — even if she exhibited behaviours deemed dishonouring. Therefore, sexual intercourse with a female under 16 years of age constituted rape, regardless of her consent, virginity, or even "honesty", as violence in such cases was presumed *iuris et de iure,* allowing no evidence to the contrary.

Nonetheless, the specificities of presumed violence could intersect with legal doctrine and jurisprudential determinations regarding the constitution of the rape, which determined proof of honesty when the victim was not a virgin (Castro 1936, p. 305). In this regard, a ruling upheld by the 3rd Chamber of the Court of Appeal of the Federal District in 1921 established that the presumption of a virgin woman's honesty was *juris tantum*, thus allowing for contrary evidence:

> *In article 268, the legislator punishes the rape of a virgin or non-virgin woman, but honest, and in paragraph 1 that of a public woman or prostitute, the former naturally with a higher penalty than the latter. If the woman is a virgin, the presumption is of honesty, presumption iuris tantum, admitting proof to the contrary; if the woman is not a virgin, proof of her honesty must necessarily be made (Sent. conf. by the 3rd Chamber of the Court of Appellation, by Acc. of December 17, 1921, apud Siqueira 2003, p. 464) (free translation).*

In the cases analysed by Winter (2015, p. 86), the maximum age of the victims was 21 years. Although there were complaints involving girls between the ages 5 and 10, most of the crimes appeared to be concentrated between the age groups of 11 to 15 and 16 to 21 years. However, in none of these cases was the victim's age sufficient to incriminate the accused. In other words, the *iuris et de iure* presumption of violence was not applied, but the *iuris tantum* presumption on virginity was, allowing proof of contrary. The provision on presumed violence for minors under 16

did not prevent the defence from contesting the young women's honesty, even though the defendant's culpability and the victim's consent were irrelevant to the materialisation of the crime.

In fact, Textor (2019) noted that the legal categorisation of rape through presumed violence did not appear to have been widely recognized by the society, as it was often confused with deflowering when reported. This confusion was especially prevalent as many of the reported victims were also virgins. Thus, as in the cases analysed by Morelli (2015), during the proceedings, violence was frequently undermined; the focus shifted towards arguments typical of defloration cases, with the alleged victim denouncing the seduction through promises of marriage, and the defence questioning her honour without denying the sexual act itself.

The confession of sexual intercourse, a key element of presumed rape, was often insufficient to incriminate the accused. Therefore, in some cases, neither virginity nor young age were sufficient to establish female sexual honesty.

Indeed, in a criminal case analysed by Fonseca (2020, p. 24), the defendant, a married man, attempted sexual intercourse through fraud and subsequently invaded the alleged victim's house, raping her. In this case, the term 'defloration' was used, as the victim was reportedly a virgin. However, this fact did not prevent the questioning of her sexual honesty — as we have seen, it was a case of *iuris tantum* presumption. Additionally, in a complaint cited by Textor (2019, p. 290), the victim, a 12-year-old girl, did not even know how to characterize the abuse perpetrated by her uncle as sexual violence, but her morality was also questioned from the beginning.

The jurist Galdino da Siqueira (1932, p. 457) had pointed out the direct and automatic association between virginity and sexual honesty, subdividing the terminology of the *caput* of Article 268 (Brazil 1890) into "virgin woman" and "non-virgin woman, but honest". However, it is evident that in judicial practice, this presumption was violated. The victim, even if virgin and of young age, was still examined regarding her virtues. In 1936, Viveiros de Castro (1936, p. 313) quoted a jurisprudential decision according to which "the circumstance of the victim's virginity excludes the quality of the prostitute, which is the integral element of carnal violence in the less serious modality of §1 of Article 268 of the Penal Code" (Acc. of the T. R. M., of 10-2-25. R. F. XLIV-618, *apud* Castro 1936, p. 313) (free translation). However, this interpretation did not prevent the volatile and broad use of the 'prostitute' category to associate girls and women with the lack of honour (Textor 2019, p. 222).

Questioning the victim's honour

Legal doctrine was grounded in moral precepts that reflected discriminatory, religion-based norms concerning the female gender, and it frequently inspired judicial decisions. Among other jurists, Chrysolito de Gusmão (1921) was often cited by judges (Winter 2015, p. 85) when seeking to question female sexual purity, since he, alongside Viveiros de Castro (1936, pp. 24-25), emphasized that women's allegations regarding sexual honesty should be thoroughly investigated in the procedural phase. Female honour was entangled with a range of assumptions concerning the victim's behaviour at the time of the crime, as well as her previous habits.

The questioning of female honour was also linked to the verification of civil status. In the analysed studies, the victims were majorly single (Fonseca 2020, p. 24) (Textor 2019, p. 204) and non-single women were generally constrained and discouraged from filing complaints (De Tilio, 2009, p. 96). This could be justified by the need for moral and sexual vigilance over that group of women, as, according to the hygienist conception propagated at the time, women were expected to "guard" themselves sexually until marriage (De Tilio 2009, p. 96). Moreover, since virginity was highly valued in both social and legal spheres, it was common for the offended party to emphasize the occurrence of deflowerment alongside the sexual violence. According to Textor (2019, p. 264) this could have led to the concealment of rapes when perpetrated against non-virgin women, married women, or women who could easily be interpreted as prostitutes. Hence, Morelli (2015, pp. 136-138) cites a case in which the examination of the *corpus delicti* found that the vaginal canal of the alleged victim was dilated. This fact became a strong weapon for the defence, which linked the complainant's anatomy to habitual coitus and, consequently, to sexual trade. Additionally, marital rape was not considered a crime, but rather part of the married couple's obligations. In this context, Morelli (2015, pp. 127-128) cites a case in which the offended party, the only one among those analysed by the researcher who was of legal age (39 years old) and married, reported a crime of collective rape, committed by two of her husband's friends. However, the *corpus delicti* was not conducted, as the victim was no longer a virgin. In the understanding of the forensic medics, the evaluation would yield no significant findings. In the absence of this examination, which could have proven the aggression, the accused — who were on the run — were acquitted.

Another finding was that in most of the cases, the perpetrators were individuals within the victims' immediate social circles: neighbours, uncles, bosses, and even fathers. On the one hand, this proximity often led to confusion and silence among younger victims (Textor 2019, p. 264); on the other, it enabled defendants and their witnesses to discredit the complainants' honour, shifting blame away from themselves (Winter 2015, p. 94). In this context, Textor (2019, p. 264) found that

the most violent cases of rape were often concealed, only coming to light through unrelated or external facts, such as the discovery of physical injuries on the victim, the woman's refusal to return to work, or the onset of pregnancy. Due to the deep stigma surrounding sexual offences, victims were often reluctant to seek justice in court, fearing further scrutiny and possible social repercussions.

Intersectional pathways: contesting the dishonesty label

Finally, intersectionality played a significant role in shaping the perception of female victims of rape. Class and race prejudices were closely tied to sexual honesty, stereotyping poor women as exploiters and social climbers (Sassi, 2023, p. 119). Moreover, black women were viewed as possessing an "innate eroticism and sensuality" (Esteves 1989, p. 59), which led to a presumption of dishonesty from the outset.

In a deflowerment case analysed by Freitas (2005, p. 191), while the prosecutor emphasised the social oppression faced by the victim — a poor, fragile and helpless woman — the defence accused her of attempting to elevate her social status by the coercing the defendant into marriage. According to Freitas (2005, p. 191), the Justices of the Superior Court of Justice decided the case based on the prevailing model of female behaviour at the time, asserting that poor girls should be aware of their social position and were not entitled to the "virtue" of naivety. In the same context, Esteves (1989, pp. 57-59) noted that all women who initiated an investigation against someone of higher economic status were burdened with the stigma of profiteering.

In the cases analysed by De Tilio (2009, pp. 100-104), the victims were mostly white. However, they occupied domestic work positions and belonged to the middle and lower classes, thus being subjected to class prejudices. For the author, rather than a lack of criminality, this suggests that wealthier social groups tended to resolve such issues more privately, without involving public authorities. The laws, although based on the moralities of wealthy classes, were aimed at controlling the behaviour of the masses. In Textor's (2019, p. 207) and Winter's (2015, pp. 88-89) analyses, most of the complainants were domestic workers, and the rest did not have specified professions. All self-declared as being poor, corroborating the hypothesis that wealthier families avoided publicizing the female "dishonour" (Winter, 2015, p. 102). For Textor (2019, p. 207), the social marker of class made young women more vulnerable: as they were relatively independent from family surveillance and more exposed to socialisation, being "deflowered" earlier, they were also the protagonists of cases of presumed violence.

Contrary to De Tilio's (2009) findings, most of the complainants in Winter's (2015, pp. 88-89) research were non-white, as were those whose lawsuits were deemed unfounded and archived. In Textor's (2019, p. 211), the number of white and non-white victims was similar. The colour of the complainants, although linked to socioeconomic conditions, should also be considered from a demographic analysis of the different Brazilian regions and cities that were part of these studies. Caulfield (2000, pp. 284-285) emphasizes, for instance, that until 1940 there were no data on the demographic-racial composition of the city of Rio de Janeiro. However, when comparing criminal proceedings data, she found a higher proportion of brown and black people among both complainants and accused individuals in sexual crimes. This likely reflects the predominance of non-white people in poorer social groups, who were more likely to seek justice to resolve problems, as well as a higher-than-actual number of white individuals. This overrepresentation could be explained by the tendency of Brazilians, in the absence of defined racial categories, to identify themselves as lighter-skinned than they were. Additionally, De Tilio (2009) and Textor (2019) emphasize that Ribeirão Preto and Santa Maria, respectively, were predominantly white locations due to large waves of European immigration at the end of the nineteenth century.

Regarding the accused, De Tilio (2009, p. 104) concluded that white men were the majority prosecuted for sexual offences; a result of a recently post-slavery society in which interracial relationships were uncommonly accepted, and non-white individuals were widely discriminated against, making them less likely to engage with the criminal justice system. Similarly, in 60% of the sexual crimes' proceedings analysed by Caulfield (2000, p. 292), the complainant and the accused belonged to the same racial group. However, in 82% of the cases, the defendants were white men, and the defence frequently accused the female plaintiff — often non-white and poor — of attempting to socially ascend at the expense of the male defendant. In fact, however, white men, shaped by the prevailing idea that "black and brown women are good for having sex, but not for marriage", showed a preference for seducing black women and demonstrated less reluctance to marry white women, which probably explains why the former relationships ended up in the police stations more than the latter (Caulfield, 2000, p. 292). In the cases analysed by De Tilio (2009, 104), even the lower rates of criminal prosecution for non-white individuals did not exempt them from the effects of criminal selectivity. Although most of the accused were white, black defendants were more frequently convicted and received harsher sentences. The higher percentage of black men in trials and of white men in police investigations demonstrate how racial discrimination influenced procedural outcomes (Caulfield, 2000, pp. 304-305).

At the turn of the century, the Brazilian society upheld a hypersexualized perception of black individuals, according to which black women and men should be punished for destabilizing family structures and stirring up sexuality (De Tilio 2009, p. 104). As asserted by Camila Damasceno de Andrade (2022, p. 173), the "civilizing" elite's project was aligned with scientific racism. The

formal abolition of slavery was recent, and emerging eugenicist theories about human races provided justification for the stereotyping, classification, and segregation of non-white people. Black women had, for centuries, been labelled as promiscuous and excessively sensual (Nepomuceno, 2013, pp. 478-479), which also shaped the perception of their bodies as violable and made them more vulnerable to sexual violence.

The former slaves faced numerous barriers to being inserted into the new society. With the encouragement of European immigration to fill jobs and whiten Brazilian social spaces, black people were forced to find alternative means of livelihood[8]. According to Bebel Nepomuceno (2013, pp. 458-459) black women took up informal jobs associated with cooking, selling snacks and washing clothes — and as a result, they struggled to fit into the standards of passive modesty and hygiene expected of bourgeois women by lawmakers and enforcers.

The law, designed to promote the social containment of the so-called uncivilized, had been created by and for the white elites. The standard of female sexual honesty imposed by the legal code was associated with behaviours deemed most appropriate for the modernization of society and the "hygienisation" of the population. The discourse of judicial authorities, beyond simply enforcing legal paradigms, sought to reinforce socially accepted values and reject those deemed undesirable (Freitas, 2005, p. 177).

Jurists aimed to shape the "complete" (male) citizen — one who was a worker, family-oriented, and morally upstanding (Esteves, 1989, p. 41). The individual's entire conduct determined whether they could be redeemed from a crime, and the victim's traits were also considered. As a result, it was not uncommon for the victims to become the central focus of trials. The dynamics of sexual trials involved a reversal of roles: the prosecution sought to defend the victim's honesty and modesty, while the defence aimed to portray her as dishonest and depraved. In fact, plaintiffs' testimonies commonly aimed to prove their honourability, often arguing that they had been seduced through false promises of marriage or coerced into sexual acts (Winter, 2015, p. 103-104).

However, women did not always conform to the norms imposed upon them (Esteves 1989, p. 155). Although distinct from the elites, the poorest layers of society had their own means of monitoring sexual behaviour and specific norms related to honour, which conflicted with the elites' perception of them as abnormal and sexually unruly individuals (Morelli, 2015, pp. 165-166; 172-173). But even when their behaviours differed from those promoted by the legislation, the elitist concepts embedded in the laws were often instrumentalised by those involved in legal proceedings. Rather than rejecting these concepts, the individuals engaged in the procedural dialectic evoked them to their advantage. For the defendants and their witnesses, aligning with the hegemonic

[8] On the State promotion of white Europeans' immigration as part of a broader ideology of racial whitening, see Nascimento (2016).

discourse was the easier path since the law ultimately benefited them (Textor, 2019, p. 232). On the other hand, women seeking proper legal protection had to fight not to be perceived as dishonest.

Concluding remarks

Maria Odila Leite da Silva Dias (1995, p. 51) highlights the challenge of reconstructing the history of poor women using official documents, which tend to record prescribed roles and normative values designed to uphold the established social order. Esteves (1989, p. 174) further emphasizes that testimonies collected during legal proceedings may have been unintentionally manipulated during transcription, reflecting the moral values of the scribes rather than representing the actual morality of the deponents. However, De Tilio (2009, p. 60) contends that these documents should not be viewed solely as instruments of class oppression through discourse, but instead as the reflection of the strategic use of these representations by plaintiffs who turned to police and judicial institutions to achieve specific objectives. The author asserts that while the State produced those documents, they also contained divergent narratives and positions aimed at affirming or refuting power.

It is crucial to recognize the vulnerability of female deponents and acknowledge that their recorded discourses may have been conditioned by the ideologies of those who transcribed them. At the same time, it is essential to consider that socially unprivileged individuals may have, in some instances, reproduced bourgeois ideologies to achieve their own goals. Indeed, Caulfield (2000, p. 230) and Esteves (1989, p. 119) observed cases in which poor women sought to fit into the standards of morality propagated by the jurists under analysis, using this as a procedural strategy to defend their honour. This does not mean that these women were, in fact, deceitful, seductive, or bearers of moral vices. Rather, it was a matter of how they could ensure their voices were heard in court. After all, how could they defend themselves against rape when they were stigmatized as provocateurs merely because of their daily habits? Sexual honesty, embedded in criminal classification, became a norm of formal social control, manipulated by jurists in various ways throughout the legal process. Legal discourses were intertwined with gender roles that did not always meet the social uses.

There were women who fought back, resisting and standing firm in the face of accusations that sought to morally incriminate them (Textor, 2019, p. 238). For this, family and community support proved to be essential. Since most young women lacked this support, they were left in a vulnerable position from the beginning of the procedural plot. Despite holding different values regarding

sexual honesty, and often under pressure from neighbours and employers, poor women experienced leisure, dating, relationships, sexual intercourse, cohabitation and formal marriages (Esteves, 1989, pp. 119 e 293). Many of them did not fit into the "honest woman" ideal that the elites sought to impose. While their socioeconomic conditions made them freer and more independent in navigating the cities and choosing whom and when to date, they also made them more vulnerable and exposed to potential violence.

Brazil was marked by high rates of concubinage, female-headed households, single mothers, and "illegitimate" children (Esteves, 1989, p. 179). The laws did not seek to mirror social reality; instead, marriage remained protected and actively encouraged as a means of containment of female sexual honesty. Through the regulation and political administration of practices involving love and sexual affairs, the judiciary sought to implement ideal models of sexuality and family relationships based on bourgeois values assimilated by the dominant elites (Martins Júnior, 2011, pp. 2692-2693).

For this reason, social markers of class and race further increased the possibility of secondary victimisation of women in their pursuit of justice. During the proceedings, declarants sought to conform to the submissive roles that society imposed on them — even if their customs were based on their own moral codes, distinct from those that regulated sexual crimes. However, when reporting sexual violence, these women had their lives investigated and exposed, often being classified, defamed, and revictimized.

Across all the analysed research, there was a clear prevalence of cases being dismissed, time-barred, or archived. Guilt and punishment in sexual crimes were, in practice, directed at women. Also, the low conviction rate suggests that such cases were handled with negligence by the criminal system (Morelli, 2015, p. 205). Defence strategies were centred on the demoralisation of the victim's behaviour, as well as that of women associated with them, aiming to mitigate their jurisdictional protection.

Rape, in this context, reigned as a plausible condemnation of badly-behaved women. Although these women adhered to a distinct set of social norms in their community life, the morality of the elites operated, in practice, as an effective means of social control. It sought to frame, through doctrinal discourses, written criminal rules, moral codes of conduct, and many other norms, their behaviour within what was considered formally appropriate by the law (male) operators.

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