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Una donna onesta non soltanto domani, ma per sempre: un'analisi dell'iter legislativo brasiliano sui crimini sessuali dal punto di vista della teoria dell'etichettamento

Une femme honnête non seulement demain, mais à jamais : une analyse de la procédure législative brésilienne sur les crimes sexuels du point de vue de la théorie de l'étiquetage

An honest woman not just tomorrow, but forever: An analysis of Brazilian legislative process dealing with sexual crimes from the standpoint of the labelling approach

Jéssica Moraes Cesarino•, *Sergio Nojiri**

Riassunto
Partendo dalle domande proposte dalla teoria criminologica dell'etichettamento, gli autori analizzano l'iter legislativo che ha portato alla modifica delle fattispecie di reato del Titolo VI del Codice penale brasiliano sui crimini contro la dignità sessuale, nonché il comportamento degli attori sociali alla base della creazione delle leggi (deputati e senatori), dell'indagine (funzionari di polizia) e del processo (magistrati). A tal fine, l'articolo inizia con una breve panoramica della teoria dell'etichettamento. Successivamente, gli autori affrontano la procedura legislativa e i dialoghi istituzionale che hanno portato alla cancellazione dell'espressione "donna onesta" e i termini che alludono alla verginità delle donne per aumentare la protezione e mitigare la stigmatizzazione delle persone che hanno subito violenza sessuale. Infine, verranno prese in considerazioni le conseguenze delle leggi brasiliane in casi di violenza sessuale. Si osserva che, nonostante le varie modifiche legislative, la logica morale contenuta nel memorandum esplicativo del Codice penale brasiliano del 1940 resta invariata: i crimini sessuali sono offese contro l'onore, l'onestà delle famiglie e la pubblica decenza, e l'offesa contro la dignità sessuale delle donne resta relegata sullo sfondo.

Résumé
Sur la base des questions proposées par la théorie criminologique de l'étiquetage, les auteurs analysent le processus législatif qui a conduit à la modification des infractions du titre VI du code pénal brésilien sur les crimes contre la dignité sexuelle, ainsi que le comportement des acteurs sociaux à l'origine de la création des lois (députés et sénateurs), de l'enquête (officiers de police) et du procès (magistrats). À cette fin, l'article commence par un bref aperçu de la théorie de l'étiquetage. Ensuite, les auteurs abordent la procédure législative et les dialogues institutionnels qui ont conduit à la suppression du terme « femme honnête » et des termes faisant allusion à la virginité des femmes afin d'accroître la protection et d'atténuer la stigmatisation des personnes ayant subi des violences sexuelles. Enfin, les conséquences des lois brésiliennes dans les cas de violence sexuelle seront examinées. Il est à noter que malgré les différents changements législatifs, la logique morale contenue dans l'exposé des motifs du code pénal brésilien de 1940 reste inchangée : les crimes sexuels sont des atteintes à l'honneur, à l'honnêteté familiale et aux bonnes mœurs, et l'atteinte à la dignité sexuelle des femmes reste reléguée à l'arrière-plan.

Abstract
Using the questions proposed by the criminological theory of the labelling theory, we propose to investigate the legislative processes that modified the criminal types of Title VI of the Brazilian Penal Code on crimes against sexual dignity, as well as the behavior of the agents behind the creation of the laws (deputies and senators), the investigation (police officers) and the trial (magistrates). To this end, we gave a brief overview of the labelling theory. Afterwards, we dealt with the legislative movements and institutional dialogues that removed the term "honest woman" and terms alluding to female virginity to increase protection and mitigate the stigmatization of people who have suffered sexual violence. Finally, we consider the consequences of Brazilian laws in cases of sexual violence. We noticed that despite the various legislative changes, the moral logic contained in the Explanatory Memorandum of the Brazilian Penal Code of 1940 remains: sexual crimes are offenses

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against honor, the honesty of families and public decency, and the offense against women's sexual dignity is relegated to the background.

Key words: women; sexual crimes; labelling theory; Brazilian legislative process.

1.Introduction.

In this article, we propose an analysis of the law-making process and the institutional stance of certain agents in order to identify the ownership of protected rights in crimes against sexual dignity.

We start from the hypothesis that women who present legislative proposals and who have suffered sexual violence are constantly removed from their place as subjects of rights. Our assumption is that they are repeatedly victims of depersonalization, the object of accusation, discrimination and institutional violence.

Our approach to this problem is based on the questions proposed by the criminological theory of labelling theory: "who created this rule?", "what interests does this rule serve?" and "what are the consequences of this rule?" (1).

We emphasize, however, that our objective is not to examine the content of the laws that underpin crimes against sexual dignity, but especially the behavioral aspect of the agents responsible for creating them (deputies and senators), investigating them (police officers) and judging them (magistrates) (2).

Next, we will deal with the legislative movements that led to the alteration of Title VI of the Brazilian Penal Code from "Crimes against customs" to "Crimes against sexual dignity". We will then look at the institutional dialog that led to the removal of the term "honest woman" and mentions of female virginity in crimes against sexual dignity, in order to mitigate stigma, discrimination and gender-based violence against women and to transform a criminal type designed to protect women into a more comprehensive criminal type, whose protection extends to any and all people, regardless of their gender.

Finally, in the context of the consequences of legislative changes, we will make some considerations about the effects of Brazilian laws in cases of sexual violence.

2. Methodology

This research has two strands: bibliographical and documentary.

The bibliographical research was carried out by searching the main Brazilian scientific research platforms: SciELO, Portal de periódicos da Capes, Biblioteca de Teses e Dissertações da Universidade de São Paulo and Google Acadêmico. Our starting point was the questions proposed by the criminological theory of labelling theory: "who created this rule?", "what interests does this rule satisfy?" and "what are the consequences of this rule?" (3).

Although each of the questions required different research techniques in order to come up with possible answers for the treatment of women in situations of sexual violence in criminal justice, we used the second question as a link between the first and the third.

Our analysis of the process of proposing laws that deal with crimes against sexual dignity included the Explanatory Memorandum of the 1940 Penal Code, the bills that were passed in the Chamber of Deputies and the Federal Senate on the subject, the justification given for altering, including or repealing criminal types and the discussions and votes in

plenary. By reading these documents and seeing who created the rule or who took part in the creation process, we sought to understand the purpose formally put forward by the legislators for including, repealing or altering criminal types.

The third question comes into play by analyzing the consequences of Brazilian laws in cases of sexual violence, especially with regard to the actions of the agents behind the creation of the laws, the investigation and the trial.

Considering that Brazilian law is predominantly written, with laws as primary sources, we believe that analyzing the documents that gave rise to the creation, alteration and/or repeal of criminal types can broaden the understanding of the object of study through the historical and sociocultural understanding that led to the particularities that occurred in the recent past (Cellard, 2012, p. 295-296), especially given the fact that stigmas, stereotypes and prejudices can often be inserted into legal propositions that are guided by the defense of a certain morality.

3. Labelling Theory

Labelling theory, also known as social reaction theory, proposes that no behavior is inherently deviant or criminal, but only comes to be considered so when others give the act this label. For this theory, it is not the intrinsic nature of an act, but its social reaction that determines whether a "crime" has in fact occurred.

Among the critics of this theory are those who argue that they simply do not go far enough. By focusing their attention on the labelling powers of frontline agents in the criminal justice system, they ignore the ability of powerful groups to make laws to their advantage and to the disadvantage of the poorest and most vulnerable (Burke, 2009, p. 13).

From the perspective of labelling theory, "the interest of the investigation shifts from those who are controlled (the deviant) to those who control them (the institutions)" (Viana, 2018, p. 296). As in conflict theories, the social order is the result of the use of force by some members over others. In other words, the social order and the power that sustains it and derives from it are maintained by a criminal law that criminalizes certain conducts in order to maintain the power of the ruling class.

The labelling theory, in addition to investigating the factors that criminalize the behavior of those who commit crimes, also proposes investigating the process of perception and social reaction that generates law enforcement agents interpretation of what is a crime and who will be criminalized.

For the criminological theory of labelling, crime, intrinsically speaking, does not exist on its own. What does exist are criminalizing interpretations based on subjective processes (various actors and various sources, such as legal agents, society, religion etc.), often riddled with prejudice, which result in the construction of a penal type aimed at applying labels to certain individuals. According to this logic, if crime inherently does not exist, then neither should punishment. What there is, in fact, for supporters of labelling, are concrete systems of punishment aimed at specific criminal practices (Rusche; Kirchheimer, 1999, p. 18).

For the purposes of this article, it is necessary to investigate when the norms were created and applied, as well as the effects of their applicability, in order to try to understand the mechanisms of social control that lead to the reversal of roles in Brazilian criminal justice and the consequent stigmatization of women in cases of sexual violence.

Knowing who created and whose interests the rule satisfies is justified by the interpretation of certain

conduct as criminal, since it tends to be the result of a dispute of interests, especially when these interests are those of the "moral managers".

For Becker and Viana (2008; 2018, p. 301), these managers use the state and criminal law as an instrument to satisfy their own moral, religious and economic values, in other words, criminalizing some behaviours and naturalizing others. This is the case with the right to abortion in Brazil. Even though it is a public health issue, since women inevitably have abortions (Diniz; Medeiros; Madeiro, 2017), the guarantee of this right is uncertain in the Brazilian legislative sphere due to the constant movement of conservative parliamentarians in the "defense of life", who make efforts to diminish the already scarce sexual and reproductive rights (4).

Regarding the central points of criminalization processes from the perspective of labelling theory, Viana (2018, p. 302) indicates six points: (i) no behavior is inherently deviant, (ii) deviant behavior exists only because norms exist, (iii) the definition of a behavior as deviant only generates consequences when norms are applied, (iv) the application of the norm is selective, (v) the criteria of this selectivity are the result of the existence of power relations and (vi) labelling someone as deviant causes self-fulling prophecy, that is, imputing someone with the label of deviant favors that the prophecy associated with the label is fulfilled by the very individual who suffered the labelling process.

But it is not just these points. It is common sense to imagine that those who break the law will be labeled as criminals. However, this perception is not accurate, innocent people are sometimes falsely accused and, more importantly, only a few of those who break the criminal law are eventually arrested and prosecuted by the system. Several labelling studies point out that behavior is not the only factor in determining a criminal act. Extralegal variables, such as appearance, behavior, ethnic group and age, as well as clothing and general appearance occupy an important place in criminal investigations in order to infer a suspect's character. Structural factors such as gender, social class, ethnic group and time of day are also significant. A young black working-class man in a "high crime" area at night is a good example of the increased chances of being stopped and questioned, if not arrested (Burke, 2009, p. 170).

In short, labelling theory argues that some people find it easy to apply stigmatizing labels to others because they violate norms that the labellers wish to maintain. And this is only possible because some are identified as individuals with little or no political power.

Having said that, we propose the use of the labelling theory to investigate cases of women in situations of sexual violence.

4. Legislative changes between crimes against customs and crimes against sexual dignity

Gender-based violence cuts across traditional gender roles. Although violence in itself does not distinguish between one gender and another, it is notable that the incidence against women is considerably higher, as it faithfully portrays the patriarchal ideology that fosters power relations between men and women.

Among the crimes provided for in the Brazilian Penal Code, we will investigate, above all, crimes against sexual dignity. We will make a comparison between the crimes against sexual dignity that have already been typified by the Brazilian Penal Code and those that still have legal provisions. We will

analyze the reasons that led to the standardization and reformulation or extinction of the crimes of indecent assault, sexual possession by fraud, indecent assault by fraud, seduction and violent abduction or abduction by fraud - former articles 214 (5), 215 (6), 216 (7), 217 (8) and 219 (9), of the Brazilian Penal Code, respectively, as well as the legislative movement that led to the amendment of the legal text to include the crimes of rape, sexual violation by fraud and sexual harassment - currently articles 213 (10), 215 (11) e 215-A (12), of the Brazilian Penal Code, respectively.

Nevertheless, the crime of adultery, previously provided for in article 240 (13), of the Brazilian Penal Code, will still be part of the analysis of this research, given that this conduct has long been a stigma for women, even though it was allocated to crimes against the family and, more specifically, to crimes against marriage.

In the case of crimes that have been repealed or reformed, two infra-constitutional laws are worth highlighting: Law No. 11.106/2005 (Brasil, 2005) and Law No. 12.015/2009 (Brasil, 2009).

4.1 Discussions on the "honest woman" and Law 11.106/2005

The first bill, PL 117/2003, was proposed by Deputy Iara Bernardi (PT-SP). Initially, the proposal aimed to amend articles 216 and 231 of the Brazilian Penal Code to remove the term "honest woman" in order to eliminate anachronisms, stereotypes, prejudices and discrimination against women (Brasil, Congresso Nacional. Câmara dos Deputados, 2003a).

During the course of the process, changes were made to the bill, and only then was it transformed into Law No. 11.106/2005 (Brasil, 2005), which amended six articles of the Brazilian Penal Code to, among other things, change the classification of crimes of sexual possession by fraud (article 215) and indecent assault by fraud (article 216), and repealing the criminal offense of adultery (article 240).

When discussing the bill, the Constitution and Justice and Redaction Committee (Brasil, Congresso Nacional. Câmara dos Deputados, 2003c) decided that the bill was pertinent precisely because it understood that the concept of women's honesty is related to outdated loving and behavioral conduct and that it should no longer foster discussion about sexual crimes, because, according to the rapporteur, women have the same prerogatives, rights and guarantees as men, and no choices can remove women from the protection of the law and exempt those who attack their sexual freedom from guilt.

In consultation with the audios of the Ordinary Deliberative Meeting held on November 4, 2023 (Brasil, Congresso Nacional. Câmara dos Deputados, 2003b), the only comment made at the session pointed out that when the opinion for the 2002 Civil Code was presented, all the expressions relating to the object of PL 117/2003 (removal of the term "honest woman") were materialized, which is why the amendment was well received at the session.

In an assessment by the Federal Senate (Brasil, Congresso Nacional. Senado Federal, 2004), the rapporteur argued that many provisions of criminal legislation carry values and concepts from the time they were conceived and which no longer find a place in our time. Thus, it was argued that the maintenance of typifications that foster premises that place greater value on women's virginity, the patrio poder exercised over women, the honor of the male spouse, as in the case of the crime of adultery, for example, should be removed from the legal text.

From reading the discussion and the plenary vote on the bill until it was transformed into an ordinary law, it was possible to perceive the manifestation of an awareness on the part of parliamentarians regarding various retrograde aspects of the 1940 Brazilian Penal Code.

It was also possible to see that the agenda under discussion, i.e. the removal of the term "honest woman", did not face any major challenges, since both the discussion and the vote were brief and the bill was approved unanimously. The amendments proposed and accepted without embargo by the parliamentarians were all aimed at broadening the analysis to other criminal types besides those provided for in articles 216 and 213 to exclude, also, anachronisms, stereotypes, prejudices and discrimination present in articles 245, 215, 226, 227, 231 of the Penal Code, as well as adding article 231-A to criminalize human trafficking.

4.2 Recycling crimes against customs and Law No. 12.105/2009

Law No. 12.015/2009 (Brasil, 2009), on the other hand, is the result of the investigation carried out by the Joint Parliamentary Commission of Inquiry of the National Congress, which was tasked with investigating situations of violence and networks of sexual exploitation of children and adolescents. This investigation gave rise to Senate Bill 253/2004 (Brasil, Senado Federal, 2004), whose proposal was to amend Title VI (crimes against customs) of the Special Part of the Brazilian Penal Code, particularly to expressly typify crimes committed against children and adolescents.

To mitigate the authoritarian exercise of power characteristic of the period in which the Brazilian Penal Code was conceived and the existence of inefficient repression against sexual crimes, among others, the proposed changes were: (i) changing the nomenclature of the chapter of the Penal Code entitled Crimes Against Customs to Crimes Against Freedom and Sexual Development, (ii) deleting the terms "honest woman" from the crimes of sexual possession by fraud, indecent assault by fraud and violent abduction or abduction by fraud for libidinous purposes, (iii) synthesizing the crimes of sexual possession and indecent assault by fraud for libidinous purposes into the crime of sexual violation by fraud, in order to mitigate the stigmatized and overvalued conception of female virginity, (iv) repeal of the crime of seduction, the criminal type of which was seducing a virgin, under the age of 18 and over the age of 14, and having carnal conjunction with her, to include the criminal type of rape, which does not distinguish sexual violence by gender and (v) elimination of the chapter on kidnapping, repealing the crime of violent kidnapping or kidnapping by fraud, which was aimed at protecting the "honest woman".

During the parliamentary discussion (Brasil, Congresso Nacional. Senado Federal, 2005), after 5 amendments (14), we could see a convergence of ideas among the senators present. Two Senators (PFL-GO and PSDB-GO) pointed out that the term "honest woman" was a cultural manifestation that, in practice, offended female dignity and imposed a burden of prejudice on women, as well as revealing the Penal Code's obsession with female virginity and conveying the message of control and vigilance over their sexual behavior.

In the Chamber of Deputies, PLS 253/2004 was transformed into PL 4.850/2005 (Brasil, Câmara dos Deputados, 2005), which, after vetoes and amendments, was transformed into Law No. 12.015/19 with the changes listed above.

While it was on the agenda in the Chamber of Deputies (Brasil, 2008), the vote of the rapporteur

(PT-RS) was in favor of approving the bill due to the expansion of support conditions for children, women and men who are victims of violence, in order to give greater precision to the crime of rape. This is because, according to the rapporteur, an analysis of judicial decisions reveals that, in practice, many of them end up penalizing the victim.

After the bill was read out, some parliamentarians expressed concerns about the proposed changes to the Penal Code.

We believe that there is concern about the place women occupy in criminal proceedings in cases of sexual assault. We believe there is concern about the secondary victimization of women who suffer sexual violence and, in many cases, suffer from prejudice and have stigmas and stereotypes attributed to them both in the reporting process and in the judicial process. Although there is no express mention in the bills, the factors listed lead us to believe that there is an attempt to reshape the image of women, who have often been seen as more guilty than victims, being responsible for the violence because of their behavior.

However, from the analysis of the discussion on this bill, we can see a difference with the previous bill, since it was already seen as "deep" and uncomfortable at the start of the discussion.

Although the importance of discussing the issue has been acknowledged on the one hand, on the other, there is a wall that insists on being (re)built when the subject refers to women's issues. The discourse (and silence) of some parliamentarians shows that dealing with sexual violence against women bothers them more than maintaining a punitive state that keeps people incarcerated even when it is no longer necessary (15).

However, another point that stood out during the parliamentary session was the embarrassment caused to the rapporteur (Deputy Maria do Rosário) should conduct her speech. The incessant interruption of other male parliamentarians against her speech was a constant during the session.

The challenge faced by the deputy to be allowed to occupy a speaking space that was rightfully hers, as she was the rapporteur of the bill, and which is therefore intrinsically related to the discussion and clarification of any doubts during the session, is in line with Gambetta's definition of discursive sexism. For the author, discursive sexism is present in practices that make speech authoritarian, such as assertive statements, statements that ridicule or disqualify arguments and excessively firm and inflexible opinions (Gambetta, 2001, p. 28-30).

Thus, the many attempts to silence and devalue Deputy Maria do Rosário show how sexism exerts a coercive function to the extent that it makes it impossible for women's agendas to be discussed or for women to speak in plenary. However, the disrespect and silencing portrayed in this session is far from being the only or the most emblematic case of discursive sexism present in the Brazilian parliament.

The transcribed excerpt from the parliamentary session in which the bill was presented by rapporteur Maria do Rosário reveals important nuances about gender dynamics in the Chamber of Deputies. Analysis of this fragment allowed us to identify at least four of the fifteen forms of sexism described by Barros and Busanello. For example, there is an abusive use of aside remarks by parliamentarians during her speech, demonstrating an attempt to silence and delegitimize her speech. The president, Deputy Arlindo Chinaglia, interrupted her at least twice, while Deputy José Aníbal also interrupted her on two occasions.

We also noticed the impatience shown by the parliamentarians at the rapporteur's statement. The interruptions, especially those of Deputy José Aníbal, were marked by the use of discursive reiterations, such as "it is not possible" and "it is not possible. It is not possible". This discursive strategy can be interpreted as a way of imposing his voice and having the "last word", reinforcing a power dynamic that sought to invalidate the deputy's argument.

Another important point identified is the discriminatory treatment in the control of speaking time. While other parliamentarians spoke freely and without any restrictions, even interrupting the rapporteur's speech repeatedly, the president of the session warned the parliamentarian at least twice, stating that the issue could no longer be discussed if she continued with her speech.

The interruptions, the tone used by the parliamentarians and the unequal control of speaking time create a hostile and disrespectful environment, constituting microaggressions that contribute to the perpetuation of sexism and gender inequality in the political environment.

The behavior of the deputies shows the existence of a sexist logic in the conduct of work in the Brazilian parliament. At the limit, there is a certain instrumentalization of the attributions given to parliamentarians in order to maintain the invisibility and silencing of agendas that concern women's rights and also women themselves, since, for example, women are denied the right to speak or, when granted, their speech is limited and/or interrupted.

4.3 Collective rape and Law No. 13.718/2018

Law No. 13.718/2018 is the result of Senate Bill No. 618/2015 (Brasil, 2015), proposed by Senator Vanessa Grazziotin (PCdoB-AM), seeking to increase the penalty for cases of rape and rape of a vulnerable person when committed by two or more people (collective rape). The justification put forward by the senator was based on a logic of "differentiated and exemplary punishment of those responsible for the crimes" (Brasil, 2015, p. 2), that is greater penal rigor for cases of collective rape.

The key points of the senator Simone Tebet's speech (Brasil, Congresso Nacional. Senado Federal, 2016) were twofold. The first is the recognition that social exposure violates the victim's dignity, as well as causing revictimization and various moral judgments based on gender prejudice. And the second, occurred when the senator once again mentioned how serious the incidence of collective rape is in Brazil and around the world, and that this is an issue comparable to a war, but with two differences: it is a mute and deaf war, since many women do not report it out of fear or shame, and because the Brazilian parliament often refuses to listen to the appeal that comes from these crimes, instead tending to sweep them under the carpet.

To illustrate the importance of the bill under discussion, Senator Cássio Cunha Lima (PSDB-PB) used as an example the case of the "Barbárie das Queimadas", a collective rape that took place in the countryside of Paraíba (Bernardes, 2023). In this brutal crime, five women were raped and two murdered during a fake robbery simulation, planned by one of the attackers as a birthday "present" for his brother, who also took part in the crime.

Although this discussion was conducted more thoroughly than the others, with parliamentarians using examples of real cases to justify the need to approve the PLS and actively suggesting measures that, in the view of each parliamentarian, could reduce the recurrence of collective rape, it is worth mentioning that during the session the logical

constructions developed by some parliamentarians after the legislative proposal was unanimously approved. After praising the legislative proposal, the discussion turned to the importance of education in preventing sexual violence, with the need for a pedagogical intervention to educate boys and combat the sexism and patriarchal culture that fosters these crimes. This idea was complemented by criticism of the sexism and patriarchal culture, and the defense that sexual violence would decrease if aggressors remembered that they have mothers, sisters, grandmothers and other female figures in their families (16).

At the beginning, a striking moment in the debate on Bill 4.850/2005, which would become Law 12.015/19, was Senator Simone Tebet's speech about the resistance of many parliamentarians to discussing sensitive issues such as rape crimes. We were able to see how this resistance manifested itself in the refusal of Deputy Antônio Carlos Magalhães Neto (DEM-BA) to continue discussing the issue so as not to feel uncomfortable, which exemplified the existence of the difficulty of dealing with sensitive issues in the legislative sphere.

Another example that illustrates this difficulty is the suggestion to implement chemical castration as a punishment for sexual crimes through proposals such as PLS 282/2011 (Brasil, Senado Federal, 2011). Chemical castration in cases of sexual violence is a recurring theme that was addressed by at least 27 bills between 1998 and 2023. However, most of the bills were returned to the parliamentarians who proposed them and were subsequently shelved, as they contravened the constitutional ban on the imposition of cruel punishments, see Article 5, XLVII, paragraph "e", of the Federal Constitution (Brasil, 1988).

In the case of Senator Ivo Cassol's (PP-RO) proposal, the senator justifies the implementation of chemical castration on the grounds that pedophilia is not an individual choice or a cultural behavior, but a disease that should be treated pharmacologically in order to reduce the recurrence of sexual crimes (Brasil, 2011).

In addition to the obvious unconstitutionality of the proposal, there is no guarantee that the measure will be able to curb or reduce the occurrence of sexual crimes; at most, it could serve as a palliative measure with ephemeral effects, due to its reversibility, since blocking the production of testosterone depends on the continuity of the treatment (Mattos, 2009, p. 59). It is also important to remember that the ability to have sexual intercourse is not intrinsically related to sexual libido (Holmes, 1997, p. 424) and that sexual violence does not always result from vaginal or anal penetration, since many aggressors do not use erections to commit rape or libidinous acts (Vieira; Santos, 2008, p. 20). It is interesting to note that, when commenting on his proposal for chemical castration, Senator Ivo Cassol also referred to sexual violence as a "headache" and to aggressors as "monster" (17). We thus identify antagonistic constructions in his speeches: on the one hand, the crime of rape in a trivialized way, as if it were a mere nuisance, that is, a "headache", and, on the other, as social damage that deserves a penalty for depersonalizing the aggressor, who from being a human being is now seen as a monster.

Finally, we should also mention the similarities in the speeches by Senators Waldemir Moka and José Maranhão about the weight of the female family figure in the processes that lead aggressors to commit or not commit sex crimes. Ultimately, for the senators, committing sex crimes involves a dual

choice: men commit sex crimes because they devalue their family ties with women, or they don't commit sex crimes precisely because they value their family ties with their mothers, sisters and grandmothers, for example. In this context, any defense of the dignity and sexual freedom of women who have suffered sexual violence is linked to blood ties or some form of kinship, because rape reaches the sphere of punishable, reprehensible and condemnable conduct only if the woman who has suffered the violence has a role in the family (as a mother, sister, grandmother, aunt etc.).

Therefore, even when parliamentarians speak out in favor of punitive measures for sexual crimes, this is not because women who have suffered sexual violence are considered individuals, who have rights and deserve to be respected and have their sexual freedom guaranteed. In reality, there is a re-reading of the logic of protecting male honor and family morals set out in the Explanatory Memorandum of the Brazilian Penal Code of 1940, since the protection is not originally intended for women, but is extended to them insofar as they have relationships with people of the male sex (they are mothers, grandmothers, aunts, wives). In this logic, women only exist and deserve protection when they play a role in the lives of men.

Moving forward, Senate Bill 618/2015 was forwarded to the Chamber of Deputies with the proposal to add articles 218-C and 225-A to the Penal Code, to typify the crime of disseminating a rape scene and provide for an increase in the penalty for collective rape, respectively.

This is the proposal of PL 5.452/2016 (Brasil, Câmara dos Deputados, 2016), which was transformed into Law No. 13.718/2018 (Brasil, 1989), resulting in the inclusion of the criminal type of sexual harassment (article 215-A).

Several opinions were issued during the bill's passage through the Chamber of Deputies, but we will only deal with the two that relate to the discussion of article 215-A of the Penal Code, as the others, despite dealing with sexual violence, focus on other types of crime.

The first opinion was issued by Deputy Fábio Ramalho (PMDB-MG) (Brasil, Congresso Nacional. Câmara dos Deputados, 2016), who defends increasing the penalty for collective rape, but argues that legislative changes should be more comprehensive. In the second opinion, Senator Laura Carneiro (PMDB-RJ) (Brasil, 2017), although she addressed aspects unrelated to the subject of this work, such as increasing the penalty for sexual crimes against children and adolescents, expressed her support for the proposals. She pointed out that the practice of shared and collective rape is increasingly common and that the classification of rape as a heinous crime has not reduced the number of crimes.

4.4 Analysis of legislative changes

From reading the documents that describe the legislative processes that culminated in various changes to the Brazilian Penal Code, in most cases to include typifications or increase the penalty for existing types of sexual crime, it is possible to note the existence of various legislative proposals whose main concern is essentially to punish the aggressor.

Despite being mentioned in some proposals, the deconstruction of the androcentric structure that fosters the dissemination of stigmas is in the background. It is a secondary objective and one that needs to overcome several obstacles to be put on the agenda and properly discussed in plenary, which denotes at least eight forms of expressive sexism: (i) ostentatious disrespect for female parliamentarians chairing plenary and committee sessions, (ii)

aggressive interruptions of female parliamentarians speeches in plenary and committee sessions, (iii) derogatory treatment of women's speeches, (iv) abusive use of aside remarks by men in female parliamentarians speeches, (v) the use of discursive reiterations by parliamentarians as a way of having the "last word", (vi) discriminatory treatment in the control of women's speaking time, (vii) inattention by parliamentarians to statements made by women and (viii) demonstrations of impatience in the face of statements by female parliamentarians (Barros; Busanello, 2019).

One possible explanation for such invisibility in women's issues and women's rights lies in the fact that the Brazilian parliament is dominated by men.

According to data released by the Brazilian Superior Electoral Court (2019), in the 2010, 2014 and 2018 elections for the Chamber of Deputies and the Federal Senate, women occupied, respectively, 8.77% and 12.96% of the seats in 2010, 9.94% and 18.52% in 2014 and 15%.01 and 12.96% in 2018.

This minimal participation of women in parliament reflects an exclusionary representation, whether in relation to the agendas aimed at solidifying women's rights or the effective electoral representation of women, which, in numerical terms, is considerably lower than that of men.

In this way, the resistance and the logic of neglect, disinterest and sexism that prevails in dealing with issues such as the protection of women, the right to abortion and sexual violence comes as no surprise, since a parliament made up mostly of white, heterosexual men is unlikely to be able to understand in depth the gender-based violence practiced against women, especially since it does not have discriminatory and stigmatizing experiences in its history, such as a woman in a situation of sexual violence.

It seems that many of the men in the Brazilian parliament aren't even capable of making an empathetic effort, insofar as they take it for granted the many times when women's words are stifled, questioned, combated with rhetorical arguments and/or even interrupted to make way for other subjects. Politics, therefore, appears to be a system built for the domination and exclusion of women. Built, because patriarchy and discursive sexism are not inherent to human nature, but are the product of a historical and social environment that fosters and reproduces structural sexism (Barros, 2015, p. 188-189).

Cases of psychological violence, sexual violence in marriage, sexual harassment and other forms of violence against women were for a long time "swept under the carpet" by the legal system. And when brought to criminal justice, the judgment of criminal conduct usually revolved around the honesty of women (moral virtue in the sexual sense) and the working relationship of men, which, if proven, transported the aggressor to the status of "good citizen" and not liable to blame (Caulfield, 2000; Coulouris, 2004; Esteves, 1989).

Despite the creation of Women's Police Stations in 1984 to receive complaints of gender-based violence, the discussion that led to the decriminalization of adultery, seduction and abortion, the criminalization of domestic violence and sexual harassment, the aggravation of the penalty in cases of femicide and the reconstruction of the crime of rape to protect regardless of gender are all recent, all from the 21st century.

In this respect, it is important to note that advances in women's rights are not free from setbacks or additional costs. According to Larrauri (1991, p. 220-221), state protection is (i) sexist protection, which has little real or symbolic protection because

it was built on a patriarchal culture of sexist values, (ii) which has never stopped projecting penal selectivity, because even the perpetrator of sexual crimes has a specific "clientele", (iii) which (re) legitimizes a system in crisis and incapable of resolving social conflicts and (iv) is not open to alternative means of resolving conflicts.

So we return to the questions that drive this research, especially the first and second: who created the rule and whose interests does it serve?

Despite legislation on sexual and reproductive rights aimed at protecting women, the legislation and, consequently, the implementation of the laws end up satisfying androcentric interests, since there is no effective protection or prevention of women against the occurrence of sexual crimes. On the contrary, in practice, there is a questioning of the sexual morality of the person who has suffered violence, which can culminate in a reversal of roles: the accuser becoming the accused.

Despite the low representation of women in the Chamber of Deputies and the Federal Senate, the bills dealing with women's rights were proposed by women and had women as advocates. Although some male parliamentarians welcomed and expressed agreement with the agendas raised, none of them defended them with the same vehemence with which they welcomed Senator Aloysio Nunes occupation as leader of the Senate or the various interruptions of women's voices during the debates.

The process of creating Laws No. 11.106/2005, 12.105/2009 and 13.718/2018 was dialogical and permeated by many debates, in which men and women had the purpose of removing from the criminal types stigmas related to the requirement of a certain sexual morality for the recognition, protection and criminalization of sexual violence. However, this process has been far from balanced and equal. Women were interrupted and crossed by derogatory treatment, as well as suffering from the abusive use of aside remarks by male parliamentarians, time control and, above all, the inattention of parliamentarians to the agendas put forward by women.

In this way, the presence of various forms of discursive sexism denotes the symbolic inequality present in the Brazilian parliament, both in terms of the numerical disparity between male and female parliamentarians and in terms of the treatment of agendas that deal with women's rights or specifically the protection of women.

So, with regard to the third question that drives this article, "what are the consequences of this rule?", we believe that one of the consequences is the replication of the disparate treatment given to women in the legislative sphere when cases of sexual violence are actually received.

On the legal level, which involves the treatment of women by judges, there is usually a logic of mistrust, since testimony can be considered frivolous, subject to alteration and considered less important than testimony given by men, regardless of the context (Coulouris, 2010, p. 85).

Regarding institutional treatment in cases of violence against women, nine out of ten complaints made to the Ombudsman's Office of the Secretariat for Women's Policies of the Presidency of the Republic were complaints of poor service against the Military Police service (Montenegro, 2012), which, among other causes, may have occurred due to possible reprisals and the perception that police institutions and the justice system are unable to handle cases satisfactorily, especially because the military police are not prepared to assist women in situations of sexual violence, as reported by Planty and Krebs (2013, p. 7).

Research by Neves and Lima (2021, p. 25-26) shows that police narratives disqualify women, sensationalize the facts and often justify the aggressor's conduct. However, this is not only a characteristic of cases of police institutional violence, since in many cases, institutional violence ends up masking gender conflicts by justifying and naturalizing the violence practiced by the aggressor. This is a reflection of the discursive sexism that permeates the Brazilian legislative process and finds its way into the institutional treatment of women

5. Final considerations

Howard Becker argued that rules - including criminal laws - are made by people with power and imposed on people without power. On an everyday level, we observe that rules are made by the old for the young, by whites for blacks, by the middle class for the working class, by schools for their students, and especially by men for women. Often, these rules are imposed on their recipients against their will and their own interests and are legitimized by an ideology that is transmitted to the less powerful in the course of primary and secondary socialization. As a result of this process, most people internalize and obey the rules without realizing or questioning the extent to which their behavior is being decided by them (Burke, 2009, p. 168).

In this paper, we have tried to highlight legislative changes that have attempted to increase the protection of women in situations of sexual violence, while at the same time trying to remove terms such as "honest woman" and other passages that alluded to virginity and the morality that was supposedly due to the person who had experienced a sexual crime. In other words, we have tried to demonstrate the difficulties of confronting the logic portrayed above by the labelling theory, which is that of social groups in power who do not wish to give up defining the limits of what is considered acceptable, moral and legal.

Although the legislative changes show, to a certain extent, some parliamentary effort, notably by women, to expand protection of dignity and sexual freedom, in most cases, the patriarchal and androcentric structure continues, to a certain extent, to resist agendas that recognize and expand women's rights.

The way in which issues relating to gender, gender-based violence and sexual violence have been received by the Brazilian legislature shows the survival of institutional mechanisms that allow and, in some cases, encourage the permanence of inequalities materialized by discursive sexism, and which have causes related to the patriarchal structure that sustains modes of socialization.

As we have tried to show in the course of this work, criminal types for which the existence of the crime was linked to honest conduct on the part of the woman were altered or repealed, as in the case of the crime of sexual possession by fraud, in which the victim had to be an honest woman and the penalty was increased in the case of virginity, and the crime of seduction, which also depended on the woman's virginity. This is due to an attempt to reduce the stigmatization of women in situations of sexual violence, since the essence of gender violence still guides Brazilian legislative and judicial processes.

Despite the various legislative, institutional and social attempts to transform criminal justice into (as far as possible) an egalitarian environment, the data collected leads us to believe that, despite the legislative changes that have been made in the last 20 years, the expression "behavior of the victim"

outlined in article 59 of the Penal Code, and its real motive, that of blaming the victim for the crime, especially in sexual crimes where her "modesty" was a factor to be analyzed, still echoes in Brazilian legislative processes.

Another point worth considering is the near homogeneity of men in parliament and the logical consequence of the low representation of women and the few agendas aimed at addressing women's rights in the Brazilian legislative process. Although this is a difficult issue to resolve, given that it involves a structural change in the reading of the democratic process and the exercise of citizenship, the diversity of gender, ethnicity, sexual orientation and gender identity, among other markers, can enable processes that are more in line with the fight for women's rights and the removal of gender violence from institutions.

We believe that restructuring the way in which women in situations of violence are viewed in the institutional sphere is a key step towards combating gender-based violence and, consequently, ensuring that they are treated in a way that is free from stigmas and stereotypes that only serve to re-victimize those who seek protection through criminal justice.

Notes.

(1). In the words of Alessandro Baratta (2011, p, 88-89), traditional criminology examines the phenomenon of crime based on the questions "who is a criminal?", "how does one become deviant?", "under what conditions does a convict become a recidivist?", "with what means can control be exercised over the criminal? ", but interactionists and authors inspired by the labelling theory, on the other hand, ask "who is defined as deviant?", "what effect does this definition have on the individual?", "under what conditions can this individual become the object of a definition" and "who defines whom?". It was from these questions that the questions used in this research were adopted, as a way of investigating the distribution of the power of definition that social control agencies exercise over society.

(2). In order to facilitate exposition and allow for better textual fluidity, we will use the conventional language of the "universal masculine" in the text to refer to the functions of legal and political agents in general, while making explicit the presence of female judges, legislators etc.

(3). As we pointed out earlier, the questions that guided this investigation were based on the criminological reasoning developed by Alessandro Baratta about the questions that drive traditional criminological, interactionist and social reaction research. Thus, the questions "who created this rule?", "what interests does this rule satisfy?" and "what are the consequences of this rule?" were used to analyze how control agencies, in this case the agencies behind Brazilian legislative processes, exercise their power of definition in cases involving sexual violence.

(4). In the Brazilian context, there has been a notable intensification of political action against abortion in recent years through conservative and sexist discourses, particularly by parliamentary fronts linked to the church, which hinder the progress of agendas relating to women's sexual and reproductive rights (Miguel, 2015, p. 255; Vaggione, 2016, p. 36). As an example, Vieira (2024, p. 128) shows that of the 247 proposals on abortion tabled between the 53rd and 56th legislatures, from 2003 to 2022, at least 57 aim to restrict the practice of abortion. There is also judicial support from magistrates who share the same conservative thinking (Sáez, 2016).

(5). Article 214: Constrain someone, by violence or serious threat, to perform or allow to be performed with them a libidinous act other than carnal conjunction. Penalty - imprisonment from 6 (six) to 10 (ten) years. Sole paragraph. If the offender is under 14 (fourteen) years of age: Penalty - imprisonment from 3 (three) to 9 (nine) years. Repealed by Law 12.015 of 2009.

(6). Article 215: Having carnal conjunction with an honest woman, by fraud. Penalty - imprisonment from 1 (one) to 3 (three) years. Sole paragraph. If the crime is committed against a virgin woman, under 18 (eighteen) and over 14 (fourteen) years of age: Penalty - imprisonment, from 2 (two) to 6 (six) years. The wording was altered by Law No. 12.015, of 2009.

(7). Article 216: Inducing an honest woman, through fraud, to perform or allow to be performed with her a libidinous act other than carnal conjunction. Penalty - imprisonment from 1 (one) to 2 (two) years. Sole paragraph. If the victim is under 18 (eighteen) and over 14 (fourteen) years old: Penalty - imprisonment, from 2 (two) to 4 (four) years. Repealed by Law 12.015 of 2009.

(8). Article 217: Seducing a virgin woman, under 18 (eighteen) years of age and over 14 (fourteen), and having carnal intercourse with her, taking advantage of her inexperience or justifiable trust. Penalty - imprisonment from 2 (two) to 4 (four) years. Repealed by Law 11.106 of 2005.

(9). Article 219: Abducting an honest woman, by means of violence, serious threat or fraud, for libidinous purposes. Penalty - imprisonment from 2 (two) to 4 (four) years. Repealed by Law 11.106 of 2005.

(10). Article 213: Forcing someone, by violence or serious threat, to have carnal intercourse or to perform or allow another libidinous act to be performed with them. Penalty - imprisonment from 6 (six) to 10 (ten)

years. It was included in the Penal Code by Law No. 12.015 of 2009.
(11). Article 215: Having carnal conjunction or performing another libidinous act with someone, by fraud or other means that prevents or hinders the free expression of the victim's will. Penalty - imprisonment from 2 (two) to 6 (six) years.
(12). Article 215-A: Performing a libidinous act against someone without their consent with the aim of satisfying one's own lust or that of a third party. Penalty - imprisonment from 1 (one) to 5 (five) years, if the act does not constitute a more serious crime. It was included by Law No. 13.718, of 2018.
(13). Article 240: Committing adultery. Penalty - detention, from 15 (fifteen) days to 6 (six) months. Repealed by Law 11.106 of 2005.
(14). The first amendment sought to recognize the imprescriptibility of the crimes in articles 213, 217, 218-B, 228, 231 and 231-A. The second amendment aimed to modify Title VI to identify the intended changes more explicitly, spelling out certain characters. The third amendment sought to include simple rape in the list of heinous crimes. The fourth amendment aimed to add paragraphs to §2 and include §3 of article 218-B of the Penal Code, to define the criminal liability of the owner, manager or person in charge of the place where sexual exploitation takes place.
(15). We are referring here to the speech by Deputy Miro Teixeira (PDT-RJ), who was concerned about the possibility of *abolitio criminis* (abolition of the crime), which is the phenomenon in which a subsequent law makes conduct considered a crime no longer punishable, even for those who have already been found guilty and sentenced for committing the crime.
(16). We mention the speeches of Senators Waldemir Moka (PMDB - MS) and José Maranhão (PMDB-PB) respectively. The former outlined the logical sequence of blame for violence committed by men. According to the senator, in addition to punishment, pedagogical intervention is needed in order to educate boys in particular, who even though they have been raised and educated by women, still commit crimes (Brasil, Congresso Nacional. Senado Federal, 2005, p. 70). The second, in turn, dealt with the topic by criticizing the sexism and patriarchal culture that encourages the commission of sexual crimes. In the senator's view, sexual violence would decrease if aggressors remembered that they have mothers, sisters, grandmothers and other female figures in the family, because, for the senator, sexual violence only occurs because men "don't know how to respect their own origin, as children of women" (Brasil, Congresso Nacional. Senado Federal, 2005, p. 74).
(17). We refer to the following speech by parliamentarian Ivo Cassol: "Unfortunately, we in this House end up waiting for something to happen before we take action. [...] As soon as we take action with a project like this for chemical castration, we will certainly avoid many headaches with rapes, as has happened to children and teenagers, the way it is now. [...] Therefore, I have a project that is also being processed in this House, which I hope will come here, so that we can take action and give more peace of mind not only to women, but also to our children, who are raped every day by monsters in the middle of the road".

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