

**MACHISMO IN THE DOCK  
A CRITICAL FEMINIST ANALYSIS OF BRAZILIAN CRIMINAL POLICY  
CONCERNING THE COMBAT OF VIOLENCE AGAINST WOMEN**

**O MACHISMO NO BANCO DOS RÉUS  
UMA ANÁLISE FEMINISTA CRÍTICA DA POLÍTICA CRIMINAL BRASILEIRA DE  
COMBATE À VIOLENCIA CONTRA A MULHER**

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**ABSTRACT:** The aim of this article is to critically analyze the feminist discourse that led to the recent enactment of Brazilian laws that increased the penalties for violence against women, in order to demonstrate that they cannot escape the cognitive traps established by male domination naturalized in Western societies and how they have served the development of neoliberal biopolitics.

**KEYWORDS:** Feminism. Gender-based violence. Maria da Penha Act. Femicide. Criminalization.

**RESUMO:** o presente artigo tem por objetivo realizar uma análise crítica dos discursos feministas, que levaram recentemente à promulgação das leis brasileiras responsáveis por tornar mais severa a punição da violência contra a mulher, de modo a demonstrar como não conseguem escapar das armadilhas cognitivas estabelecidas pela dominação masculina naturalizada nas sociedades ocidentais e como têm servido ao desenvolvimento de uma biopolítica neoliberal.

**PALAVRAS-CHAVE:** Feminismo. Violência de gênero. Lei Maria da Penha. Feminicídio. Criminalização.

**INTRODUCTION**

The combat of violence against women is one of the contemporary concerns that is reflected on the actions of social movements, in state policies, and in academic debates and research. Many solutions have been proposed and some even implemented aiming to decrease the toll of this violence, a reflection of male domination naturalized in Western societies such as Brazil.

However, the aggressions committed by gender issue are complex phenomena and certainly will not be avoided by measures thought within the male order that organizes our social structures. To this moment, this cognitive trap has not been escaped and the problem has been faced

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with the criminalization of the male aggressor, that has been severely punished, and, on a second plane, with the victimization of the woman with paternalistic governmental assistive policies; *i.e.* male solutions have been sought for a problem created specifically by male domination.

Evidently, this essay does not aim to propose solutions to the problem of violence against women, but to establish a feminist critique, not exclusively criminological<sup>1</sup>, to this discourse and to governmental policies that propose the criminalization of violence against women. In other words, it aims to critically analyze the Maria da Penha (BRASIL, 2006) and Femicide (BRASIL, 2015) Acts from a sociological-philosophical contribution, so to denounce why their discourses symbolically reaffirm male domination in Brazilian society and protect the family-business, necessary to the development of neoliberal biopolitics.

Therefore, it is indispensable to trace back the moment in which the feminist movement assumed criminalization as a solution to the problem of violence against women in Brazil, and understand the historical context of the shift in its discourse from gender equality to the punishment of the enemies of gender equality, to demonstrate how this has been constituted in the game of power-relations in Brazilian society.

Thus, we researched documents from the first half of the previous century, which transcribed the discourse of the protagonists of the feminist movements responsible for important achievement in legally guaranteeing gender equality in Brazil, despite the deficiency in effecting these laws to this day. Also, we investigated governmental actions that allegedly contributed to a hiatus in the feminist discourse during through the 1950's and 1970's in our country's official political scene. Lastly, we analyzed the main claims of the various feminist movements, which gained voice in the legislative processes occurring after 1980 in our country and were institutionalized with their active participation in defining governmental policies intended to secure gender equality, with the purpose of detecting the moment in which these movements' discourses incorporated a clamor for the punishment of male aggressors. It should be noted that, at this point in the research, it was no longer possible to work with the individualized discourse of certain feminists, due to the plurality of the feminist movements themselves, and for this reason we opted to deal with the discourses institutionalized and expressed in the laws that targeted violence against women.

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<sup>1</sup> As to the criminological critique on the criminalization of violence against women, it is indispensable to read the works of critical criminologists: ANDRADE, 1997, and KARAM, 1996.

Moreover, to comprehend the bases of these discourses concerning the combat of violence against women, it was necessary to map academic studies that in some way permeated and based this warlike decision to combat the male aggressor through the criminalization of his conduct in the Maria da Penha (BRASIL, 2006) and Femicide (BRASIL, 2015) Acts. It was then decided that the analysis of the feminist studies would be limited to those that legitimized and legitimate the existence of said legislation, despite knowledge that feminist studies advanced greatly, especially concerning the problematization of the concept of gender.

Lastly, the critique to this discourse of criminalizing violence against women is done through sociological and philosophical landmarks provided by Pierre Bourdieu and Michel Foucault, the former chosen for his relevant and notorious analysis on male domination, and the former for his peculiar insight on neoliberalism. From these two author, whose thoughts are not fundamentally incompatible, we seek to demonstrate how the discourse of combating violence against women is unfit to subvert the culture that supports male domination in neoliberal societies.

## **1 THE FEMINIST DISCOURSE FOR GENDER EQUALITY: THE STRUGGLE FOR THE RIGHT OF PARTICIPATION IN POLITICS AND IN THE LABOR MARKET**

In 1919, biologist Bertha Lutz participated officially, as a Brazilian representative, in the Female International Counsel of the International Labor Organization – ILO), where recommendations for equal salaries for men and women were approved, as well as the creation of an inspection service to secure the enforcement of labor protection laws. At that time, it can be said that a political scene of effective female performance to influence government actions regarding the matter of gender equality began in Brazil (SAFFIOTI, 2013, p. 358).

In 1922, this pioneer of the Brazilian feminist movement was also responsible for founding the Brazilian Federation for Women's Progress – BFWP, that brought in its by-laws the purposes of raising the female educational level, protecting mothers, guaranteeing work and professional development for women, securing political rights for women, and strengthening ties to other American countries to collaborate in maintaining the peace. By that period, the feminist movement had many strands, and Bertha Lutz represented that which identified with the ideals of the middle strata of the Brazilian population and aimed the expansion of the capitalist structure in Brazil to open new paths for women's economical emancipation (SAFFIOTI, 2013, p. 378). However, it should be noted that, parallelly, feminism also had its works face, with the anarchists of the "Seamstresses', Milliners' and Associated Classes' Union", that called attention to the precarious situation of women in factories.

In spite of the incessant struggle, only in 1932 women indistinctly conquered their right to vote with the change of the Electoral Code by the Vargas Provisional Government (1930-1934), which was not a great sympathizer of the feminist causes, but needed to appease the pressures of the Revolutionary period. It appears that after the State Act of 1928 – which secured the right to vote and eligibility without sex discrimination in the state of Rio Grande do Norte –, the BFWP Feminist Manifest demanding gender equality in the exercise of individual rights and duties, and the adoption of suffrage without sex discrimination in the electoral reform agenda defended by the revolutionaries in 1930, the federal government could not see any alternative but grant women the right to vote (SAFFIOTI, 2013, p. 365).

In that same year, Bertha Lutz integrated a committee formed by the Vargas Provisional Government to prepare the Pre-Draft of the Constitution<sup>2</sup>, despite being barred from acting in the subcommittee responsible for drafting the constitutional text, which would supposedly found the Second Republic. In her speeches inaugurating the constitutional works, she made clear that her mission was to lucidly continue the struggle for individual and social rights without any gender-based distinction, which began with the movement that guaranteed women's right to vote that same year.<sup>3</sup> It should be noted that, in the words of Lutz, women did not form a mere class, but half the population that worked incessantly from home, unrecognized, professional ill-paid and whose tale was constantly frustrated regarding the possibility of development and expansion.<sup>4</sup>

The same egalitarian tone is identified in her proposals for the Pre-Draft of the Constitution, publicized under the title “13 Basic Principles”, among which stand out the abolition of the painful double work shift of the proletarian woman, “who serves a double penalty, adding to her time at the factory the unmeasured work performed at home”; the enforcement of labor protection laws without distinction based on sex or nationality; the provision of assistance to pregnant women and their right to paid leave during pregnancy without the risk of losing their jobs; as well as the entrance of women in the political scene with the purpose of maintaining life above any purpose of struggle or dissent, as opposed to the male civilizations, who had not found an

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<sup>2</sup> Bertha Lutz was not elected congresswoman that year; her participation in the Committee was as a representative of the feminist movement. However, two other congresswomen participate in the 1934 Constitutional Assembly: Carlota Pereira de Queiroz and Almerinda Faria Gama (BANDEIRA; MELO, 2010, p. 17-18).

<sup>3</sup> LUTZ, Bertha. [Speech] Diário Oficial do Poder Legislativo. 20.07.1936. Available at: <hs.unb.br/bertha/wp-content/uploads/2013/03/Bertha-28\_07\_1936-Posse.pdf>. Accessed 23 May 2015.

<sup>4</sup> Ibid.

alternative to war and its strife. However, among all of them, the most daring is the declaration of civil, economic and political rights without any distinction based on gender, class or birth (1933).

In 1937, Congresswoman Bertha Lutz presented a Bill to enact the Woman's Statute (PL no. 736/1376) before the House of Representatives, and in its Explanatory Memorandum pointed to the need for revoking the then current legislation that was in conflict with the recently enacted Constitution, which granted women the right to vote and to take office in government.

Lutz denounced that the legislation, which required marital grant for women to fully exercise their civil capacity, was contaminated by remnants of the exceeded Roman institutes of *manus marital* and *pater familias*. She also affirmed that these laws were incompatible with the standards of production and consumption established by the Industrial Revolution of the 19<sup>th</sup> and 20<sup>th</sup> Centuries, which boosted women towards the pursuit of their own subsistence and that of their families. As stated in the Draft's Explanatory Memorandum, it would no longer be permitted for laws to reflect "man's instinctive desire to sequester women for his own use and enjoyment, even when she is unable to provide for herself."<sup>5</sup>

Regarding the criticized legislation's criminal aspects, Lutz emphasized that it was unfair and anachronistic, in that it equates men and women regarding crimes and penalties, however it required a greater dosage of immorality to punish male adultery or, still, severely punished the infanticidal mother, frequently abandoned and sick, while the father enjoyed complete impunity. Aside from this, Lutz observed that these laws made by men attributed exclusively to the victims of pimping the initiative to accuse the offender when her spouse committed the crime, exempting the government from protecting these enslaved women.<sup>6</sup>

It should be noted that the feminist discourses analyzed did not treat man or male as an enemy who should be fought violently and, in this sense, did not claim criminalization of gender-based violence policies. At no point discussions regarding the increase of criminal punishment were set in the agenda, the sole concern being the need for egalitarian treatment for women subdued into position from a stranger and for those who suffer the same violence from their husbands, stipulating public rather than private accusation for both cases.

In spite of the criticism suffered by these feminists, who were accused of importing ideas that were incompatible with Brazilian society and that did not have as their basis true social relations that abashed women, it cannot be denied that their discourse was indispensable to delimit

<sup>5</sup> LUTZ, Bertha. [PL no. 736/1937]. Explanatory Memorandum. Câmara dos Deputados. Comissão Estatuto da Mulher, 1937. Available at: <<http://lhs.unb.br/bertha/?series&paged=2>>. Accessed 23 May 2015.

<sup>6</sup> Ibid.

the space for female participation in that trouble context of the 1930's, as well as in the years that followed. In summary, despite the miscomprehension of the oppressive functioning of capitalist society against women, Bertha Lutz's and her comrades' discourse was necessary to awaken the conscience regarding patriarchal dominion in Brazil, as well as permit the enactment of various laws that sought to establish some gender equality (SAFFIOTI, 2013, p. 368 et seq.).

In the years following the Vargas Provisional Government, some of Bertha Lutz's proposals were made into laws, such as the Married Woman's Statute, enacted in 1962, that chance married women's condition of civil incapacity. However, it is certain that there is a hiatus regarding the participation of the feminist movement in the legislative process from 1937 to the end of the Military Government. During this period, feminists had important political participation, seen that in 1943 labor legislation finally secured maternal protection, but, as all social movements, they were silenced in the process of design and preparation of laws in Brazil.

In the 1950's, the feminist movement stood out in the actions of the Women's Federation of Brazil, which participated in the 300 thousand strike and in the Empty Pot March, fighting to raise minimum wage and against famine, which originated Delegated Law no. 4, which conferred broad powers to the public authorities to control supply and demand of goods and required the creation of the National Supply Superintendence – SUNAB (BANDEIRA; MELO, 2010, p. 23).

In the Kubitschek Government (1956-1961), many feminist associations had their operations suspended, however these measures were not enough to prevent the clandestine operation of these groups of women that supported single mother, taught sewing and other manual activities that allowed their livelihood, and gradually increased their participation in unions.

In spite of the effective participation of middle class women in the Marches of the Family with God for Freedom (a series of manifestations against the communist threat and the Goulart Government), which created the ideal setting for the military coup d'état in 1964, it cannot be said that the feminist movement regressed in their path toward a more egalitarian society (SARTI, 1988, p. 42).

It should be noted that during the Military Government many women participated in revolutionary movement and were tortured and punished exactly because they were not at home caring for their children and husbands and they were considered too advanced, thus associated with prostitution according to testimony transcribed in the works "Direito à memória e à verdade: luta, substantivo feminino" (OJEDA; MERLINO, 2010), "Ex-presos políticos e a memória social da tortura no Paraná (1964-1978)" (CALCIOLARI; MONTEIRO, 2006), "Mulheres e militância:

encontros e confrontos durante a ditadura militar" (GIANORDOLI-NASCIMENTO; TRINDADE; SANTOS, 2012), and the Final Report of the National Truth Committee (CNV, 2014).

Also, these women fought not only against the oppression of a military government, but also for gender equality among the revolutionary movement themselves. Moreover, women's militancy against the junta was never fully recognized by their comrades-in-arms, being that most women who participated in the resistance were invisible and always regarded as "daughter of", "wife of", "girlfriend of" or "sister of" some important activist, rarely seen as decisive in the struggle for the country's democratization (GOLDENBERG, 1997, p. 349-365).

In fact, memoires and testimony from these militants shows that in gender-based relations the authoritarian culture was also present in the leftist organizations, in that "women, just because they were women, regardless of their abilities, were prevented from taking positions of leadership and direction" (GIANORDOLI-NASCIMENTO; TRINDADE; SANTOS, 2012, p. 19). In the case of threat of imprisonment by the organs of repression, flight strategies were only available to the heads of the movements, all men.

Despite the many difficulties faced in exile, women pursued by the Military Government participated in many meetings to discuss the fight for their rights, under censorship and disapproval of exiled men, usually their domestic partners, who saw in feminism a distraction in the movement against the dictatorship (PINTO, 2003). In summary, the feminist movement survived in many ways continued guiding that the struggle for women's rights should not be subordinated to or eclipsed by the general struggles of the Brazilian people (BANDEIRA; MELO, 2010, p. 25).

Some authors affirm that the military attempt to de politicize and silence citizens regarding human rights, as well as keeping women away from politics, were the factors that led to the fortification of the feminist movement in the 1970's, and moved it towards the radicalism of movements in the United States and Europe that occurred in the previous decade and allowed its organization to vindicate amnesty and the democratic reopening (SOARES, 1998, p. 35). The United Nations Conference that established 1975 as the International Women's Year served as a fuse to found feminist centers in São Paulo, Rio de Janeiro and Paraná, which struggled for a democratic turn (SARTI, 1988, p. 63).

Therefore, in a Brazilian context of absence of democracy, feminism did not falter, and in that same year, under the sponsorship of the United Nations and the Brazilian Press Association, groups of women and feminist newspapers multiplied in the fight against male supremacy, sexual violence and for the right to pleasure (BANDEIRA; MELO, 2010, p. 26).

Simultaneously, local women's associations, mothers' clubs, connected to the Catholic Church, professional associations and unionized groups were organized to demand better work conditions, daycare for children and the reduction of poverty (SARTI, 1988, p. 64).

In the second half of the 1970's and in the beginning of the 1980's, feminist vindications multiplied and violence against women gained space in the media, mainly due to the release of news stories about cases that reverberated in society at that time, such as the killings of Ângela Diniz (1976), Maria Regina dos Santos Souza Rocha (1980) and Eloísa Ballesteros (1980) by their domestic partners (BANDEIRA; MELO, 2010, p. 26). Also, from this point on, Brazilian courts started becoming less tolerant with defensive arguments of justification of marital homicide based on the legitimate defense of the husband's honor, and began discussing intramarital rape (RAMOS, 2012).

However, the feminist movement would once again effectively participate in political decisions and in the law making process in Brazil during the mid 1980's, with the country's redemocratization, which coincided with the time that women started worrying more clearly with the issue of violence, and, mainly, with the necessary mechanisms to combat it (SARTI, 1988, p. 42).

In 1983 the first State Counsels for Women's Rights were created in São Paulo and Minas Gerais, and, two years later, the National Counsel for Women's Rights – NCWR, to which were attributed the responsibility for elaborating and implementing public policies specifically regarding women's issues. In its first year of operations, the NCWR launched a campaign convening women to participate in the Constitutional Assembly discussions, which culminated with the service of 80% of women's demands in the constitutional text promulgated in 1988 (BANDEIRA; MELO, 2010, p. 27).

In 1985, under pressure from the State Counsel for Women's Rights, the São Paulo Department of Public Safety created the Police Stations for Women's Protection, whose objective was to provide specialized assistance to women victims of rape, beatings or any other form of violence, aiming to reduce embarrassment in denouncing sexual crimes or aggressions committed by their husbands and domestic partners (SARTI, 1988, p. 46).

At the same time that women's movement advanced to consolidate its institutionalization and increased their participation in governmental devices, it also suffered ruptures due to the diversity of women's demands and the increasingly apparent divergence between the feminist movement and feminist thinking. Thus, women experienced the difficulty of organizing themselves

among a common agenda, and the combat of violence against women appeared as an element of convergence among the various feminist discourses, which grounded both the actions of the movement and the reflections of feminist thinking in Brazil.

## 2 FEMINIST THOUGHT AND VIOLENCE AGAINST WOMEN

According to Izumino and Santos, in the second half of the 1980's feminist studies turned to government action in public safety and justice, aiming to combat violence against women, concentrating on the research of the types of crimes denounced by women, on the characteristics of their aggressors and on the position of women in regard to this violence. In their view, an analysis of these works allows the identification of three theoretical currents used to explain violence against women: the first, referred to as the male domination theory, has as its starting point the presupposition that violence against women elapses from the domination exercised by men against women, which is naturalized and has been reproduced in social relations; the second is called the patriarchal domination theory and it is influenced by a feminist and Marxist perspective, understanding violence against women as a fruit of male domination brought forth by capitalism and by racism; the third is named relational in the sense that it conceives violence as a form of communication between men and women in a game in which women are not victims, but accomplices (IZUMINO; SANTOS, 2005, p. 148).

The male domination current has as its main reference Chauí and her article "Participando do Debate sobre Mulher e Violência" (1985), in which she defends that violence against women is the fruit of social reproduction of an ideology that transforms the differences between men and women into hierarchical inequities of domination and oppression of women. In other words, the domination of women in this sense would occur with the dissemination of this ideology that objectifies and silences them, making them passively dependent and without the ability of self-determination. In this context, the female condition, idealized from maternity as women's fundamental social role, is defined as inferior to the male condition, which ultimately naturalizes a sense of superiority of men over women and consequently their violence. However, this does not prevent women from being violent, because, as instruments of male domination, they become accomplices of the violence they receive and exercise, *i.e.*, women who suffer violence by their partners as victims of male domination and accomplices when they reproduce this naturalization of violence to their children (IZUMINO; SANTOS, 2005, p. 149).

The theoretical current of patriarchal domination, headed by Saffioti, is founded in a feminist and Marxist perspective of the patriarchy and aims to comprehend male domination in a class-structures society. According to Saffioti, the capitalist system of production cannot absorb the potential labor of all the adult members of the class-structured society and thus established a filter of determining two categories of sex (man and woman) to ease the conflicts created by the competitive social order. Therefore, reproducing the culturally naturalized myth of the reproductive woman, socializer of the immature and consequently inferior because her work does not produce surplus value, the capitalist system marginalizes great female contingents from the class and production structures. According to the author,

[...] factors of natural order, such as sex and ethnicity, operate as exhaust valves in the sense of a simulated relief from tensions created by the capitalist mode of production; and, also, in the sense of deviating from the class structure the attention of members of society, focusing it on physical characteristics who, involuntarily, some social categories possess (SAFFIOTI; 2013, p. 58-59).

It can be said that this current maintains that the patriarchy does not summarize the domination of women, their submission to the “male power”, as the dissemination of a macho ideology, but it is also an important instrument of economic exploitation that has as its main beneficiary the white, rich and adult man. In this sense, violence against women would be the fruit of this macho socialization preserved by the capitalist system, of this unequal power relation between men and women, which established women’s natural fate to be subjugated and exploited by men, forcing them many times to reproduce violent macho behavior (IZUMINO; SANTOS, 2005, p. 150).

The relational theoretical current, which has as its framework the writings of Gregori, sought to relativize this dimension of domination-victimization. According to said author, “there is something that cuts the issue of violence against women that is not being considered when it is read only as a criminal deed that demands punishment (the reading reaffirms the duality of aggressor against victim)” (GREGORI, 1999, p. 166).

According to Gregori, to understand violence against women one cannot presuppose a Manichean duality between victim and tormentor, associated respectively to passivity and destructive action. Therefore, she states that the couple is a culturally construed unit that defined complementary conducts between the male and female genders, in which women are conferred some attributes associated to nature, such as their instincts, femininity constructed from their body, which explains in part their enclosure in the domestic unit (the universe of reproduction), making

them at the same time unique and indispensable. Thus, women live ambiguously, sometimes enjoying being indispensable and sometimes resenting the limitation to their freedom. Moreover, it is exactly this paradoxical situation that explains both the victimization of women by the limitation of their freedom and by the possibility of the fragile body suffering violence, and the manipulation of her own fears to appear indispensable to her male aggressor, making him feel guilty and ready to fulfill the role she expects. This way, it is possible to find that women, often even by fear, reproduce and reinforce the gender roles, cooperation in the production of their lack of autonomy, with the objective of obtaining protection and pleasure. In this context, violence functions perversely as a language between partners that maintains the couples' unity, from the preservation of their roles (GREGORI, 1999, p. 166).

It should be noted that, for the first two currents the issue of violence implicates in inevitable victimization of women and provides the perfect substratum for the criminalization of the male aggressor. According to the male domination current, violence against women would be the fruit of the dissemination of a macho ideology that made women fragile due to their maternity, incapable of self-determination and subjected to the supposedly superior man, while to the patriarchal domination current, the capitalist system, from the myth to female inferiority, produced the economic exploitation of women, subjugating her to the white, rich, adult man; both of these currents identify a vulnerable women who is incapable of reacting to the superior man's violence, leading to the conclusion that it is the government's duty to react.

Evidently, the governmental responses to this problem are limited to policies directed towards the combat of some of the factors that generate this violence, assistance to victims and the criminalization of the offender. There is no doubt that the first measure is the most effective, since it is educational and it deconstructs from this standpoint the symbology that sustains male domination, however its effects are produced slowly, which can be frustrating in contemporary society that seeks quick responses; the second measure, on the other hand, is always necessary since it is the government's duty to provide assistance to citizens in dangerous situations, despite being palliative due to its inability to avoid the perpetuation of violence; finally, the third measure is an immediate response to violence, since it quells society's vengeful outcry, but it is ineffective in the long term because of the proven collapse of the penal system in recuperating criminals. It should be noted, however, that none of these policies is capable of ending the practices of power that establish a normalization of the relations between men and women from a discourse of male superiority and the permissiveness of violence.

The third current, on the other hand, makes an entirely different analysis of the subject because it considers the complexity of violence against women without falling into the Manichean trap of domination-victimization. Insofar as it proposes that women are also the protagonists of violence and contribute to its committal, the theory allows the statement that the vicious cycle of aggression will not end with the criminalization of offender, but depends on the empowerment of women capable of freeing her from this enslaving cycle to which she submits because violence is often the only possible language to communicate with her cohabitant. So, from this feminist theoretical model, it is viable to consider a solution to prevent violence against women other than punishment and imprisonment of the aggressor.

In the 1990's other feminist theoretical currents appeared proposing new bases to reflect upon violence against women, mainly from the concept of gender, understood as a social construction of the male and female as categories of analysis of the relations between men and women. Years later, Brazilian feminists (PINTO, 2010), influenced mainly by Butler (2003) and Preciado (2010), would dare to problematize the concept of sex, which would be seen also as a social construction, fruit of power relations and of practices that would attach it to gender by discursive repetitions and establish the normalizing standard for the materiality of the heterosexual man/woman.

In this sense, the comprehension of the relation between men and women and of the violence committed in its scope has become more complex, because – differently from the patriarchate paradigm, which presupposes rigid social roles that are culturally conditioned by the biological differences between men and women – the gender perspective reveals the difference between the social and the biological, demonstrating how the male and the female are socially constructed in power relations between men and women (IZUMINO; SANTOS, 2005, p. 155).

Initially influenced by Scott's (1986) gender studies, Brazilian feminists began thinking violence against women as a form of gender-based violence (SAFFIOTI; ALMEIDA, 1995). In this perspective, they begin claiming that violence against women is committed by force of socially constructed differences between men and women that are reproduced in relations dating back from childhood and establish male domination and female subjection. In this sense, the Manichaeism of two gender, that does not admit a third or fourth gender, founded on heteronormalization, gave way to a power discourse and practices that establish symbols for the dominant male and the fragile female according to the analyzed social context, often verifying acquiescence towards violence directed at maintaining this order (SCOTT, 1986, p. 1067).

Based on these recent feminist theoretical currents, it is possible to conclude that an effective combat of violence against women should begin from questioning power practices, that are exercised as performative discourse of normalizing heterosexuality by the construction of female and male bodies subjected to the binary standard of female/male. An effective combat of this violence should, thus, seek to rearrange of power games that establish male domination and in its agglutination give way to violence.

### **3 MACHISMO IN THE DOCK: THE INSTITUTIONALIZATION OF FEMINIST DISCOURSES FOR CRIMINALIZATION IN THE COMBAT OF VIOLENCE AGAINST WOMEN**

Despite the proliferation of these various theoretical feminist currents in Brazil, mostly from the late 20<sup>th</sup> Century, that problematized the concepts of sex and gender and their oppressive effects, the institutionalization of the feminist discourses happened through the adoption of government policies founded on the victimization of women, that combat violence taking from women her autonomy to stop it and criminalizing the aggressor.

The mark of these policies can be identified in the enactment of the well-known Law no. 11.343/2006 (“Maria da Penha Act”) (BRASIL, 2006), which excluded the crimes committed through domestic violence from the list of minor offenses, preventing the possibility of civil agreements that exempt the offender from criminal responsibility, of probation and of plea agreements; set forth obstacles for the victim to withdraw her complaint necessary for prosecution; established a series of protective precautionary measures for women in situations of violence, ranging from the removal of the alleged aggressor from home to a restraining order; prevented alternative punishment in convictions involving domestic violence against women; imposed the aggressor's attendance at a recovery and rehabilitation program, as well as created a specialized court to judge these issues.

Many language resources were used in the drafting of the legal text to break with the cultural tradition of considering the woman an object of violence, such as replacing the term “women victims of violence” with “women in situations of violence”, or defining gender-based violence as a “violation of women's human rights” that can be perpetrated by both men and women (CAMPOS; CARVALHO, p. 146 et seq.).

However, an analysis of the motivation behind the Act and the consequences of its practical application allows the conclusion that such strategy is insufficient to prevent woman from

being treated as an object of violence, incapable of being a protagonist in actions directed towards ending aggression and promoting changes in the power practices that naturalize male domination and gender-based violence. In truth this law represents what criminal lawyers call “symbolic criminal law”, which criminalizes conducts and establishes severe penalties with the goal of reassuring the population, of demonstrating that the legislator attends to social claims, even though the penal provisions created are often destined to not being applied and its enactment produces symbolic effects of safety in the social imagery (CANCIO MELIÁ, 2008, p. 57-60).

The Maria da Penha Act was fruit of Brazil's conviction by the OAS Inter-American Commission on Human Rights – IACHR for omission and negligence regarding human rights in the case of Maria da Penha Maia Fernandes, a bio-pharmacist from Ceará, who suffered countless aggressions from her ex-husband Marco Antonio Herredia Viveros, a university professor. In 1983 she was victim of her first attempted homicide, when she received a shot through the back during her sleep, which left her quadriplegic, and of her second attempt when her husband tried to electrocute her to death. The first trial happened only eight years after the fact and was annulled on defensive appeal in 1991. Viveros was only convicted in 1996, mas his appeal postponed the suit for another few years. This lead to a complaint to the IACHR in 1998, which lead to Brazil's conviction in 2001.

In summary, the Act has its origin in an international decision on a case of violence against women, and not in a social discussion of public policies to avoid gender-based violence. Also, while conferring the government with broad powers to end violence, the Act jettisons women from this process while it criminalizes and severely punished the aggressor.

The same happened with Law no. 13.104 (“Femicide Act”) (BRASIL, 2015), that aggravated the crime of homicide when committed against women “for reasons of female condition”, understood as domestic or intra-familiar violence or discriminatory contempt of womanhood, setting the penalty at twelve to thirty years of imprisonment, and provisioned an increase in sentencing from one third to half the penalty when the crime is committed during pregnancy or three months after child-birth, against a person with disability, under fourteen years, over sixty years or in the presence of the victims ascendants or descendants, and for the progression of the penalty regime it is no longer enough to serve 1/6 (one sixth) of the sentence; it is necessary to serve at least 2/5 (two fifths), and in case of recidivism, 3/5 (three fifths).

These laws undoubtedly were responsible for giving visibility to violence suffered by women in the enclosure of her home and in private relationships, and in this aspect represent

feminist achievements in the fight for gender equality, as well as demonstrate the effective participation of women in the political arena.

After the enactment of the Maria da Penha Act there has been news of increase in the number of complaints of violence against women and the reduction of these aggressions entered the agenda of the government, culminating with the National Pact for Facing Violence Against Women (2011).

The latest research published by the Institute for Applied Economic Research (TD no. 2048<sup>7</sup>), in March 2015, with the objective of evaluating the effectiveness of the Maria da Penha Act, demonstrated that since its enactment there was a sensible reduction in the rate of homicide for gender issues in some regions, where supposedly patriarchal ideology is not as strong and the permissive subculture regarding violence against women not as rooted. It was also verified that the reduction in the violence rates happened where the care services to women victims of violence were implemented.

However these laws were unable to promote changes in the culture that sustains male domination in society. Recently, another research, published in April 2014 by the same institute, aiming to investigate Brazilian perceptions on issues linked to violence against women<sup>8</sup>, found that, of the 3,810 people interviewed agreed with the following statements: 58% agreed that “if women knew how to behave there would be less rape”; 68% that “cases of violence at home must be discussed only by family members”; 89% that “dirty laundry is washed at home”; 82% that “people should not intervene in fights between husband and wife”; 64% that “men should be the head of the household”; 79% that “all women dream of getting married”; 59% that “women are only fulfilled when they have children”; 52% that “same-sex marriage should be forbidden”; 55% that “there are women for marriage and women for bedding”; and 64% that “women who are assaulted and stay with her partner like being beaten”.

Despite 90% of people interviewed agreeing that “men who beat their wives should go to prison”, one cannot help noticing that the culture that perpetuates male domination is much naturalized in the Brazilian population and that the idea of natural roles for the male and female genders is quite settled in society’s social imagination.

In this sense, Bourdieu (2014, p. 21) explains that

[...] the division between sexes appears to be in the “order of things”, as it is commonly said to speak of what is normal, natural, to the point of being inevitable; it is present, at the

<sup>7</sup> IPEA-TD nº 2048, 2015.

<sup>8</sup> IPEA-SIPS, 2014.

same time, in the objectified state of things (at home, *e.g.*, where all parties are “sexual”), in the whole social world and, in an incorporate state, in bodies and in the *habitus* of agents, functioning as systems of perception, thought and action.

According to the French sociologist, the force of male order needs no justification and the androcentric vision imposes itself as neutral, needing no legitimating discourses. Thus, social order works as an immense symbolical machine that constantly reaffirms the male domination that grounds it, and it can be perceived in the sexual division of labor, *i.e.* the distribution of activities designated to each sex, its places, moments and instruments; in the spatial structure, opposing public places such as the assembly or the market to private ones such as the home, which is reserved to women; or yet in the home itself, dividing the male part, such as the living room, and the female part, such as the kitchen (BOURDIEU, 2014, p. 24).<sup>9</sup>

Bourdieu also points out that the social world also constructs the body as a sexual reality and depositary of sexualizing vision and division principles, therefore constructs the difference between biological sexes, conforming them to a mythical vision of the world, rooted in the arbitrary dominative relation of men over women, which serves as a natural justification for the socially constructed difference between genders and, mainly, for the sexual division of labor. In his words,

[...] the social definition of sexual organs, far from being a mere registry of natural properties, directly exposed to perception, is the product of a construction made at the cost of a series of guided choices, or better though the accentuation of certain differences or the obfuscation of certain similitudes (BOURDIEU, 2014, p. 29).

The representation of the vagina as an inverted phallus, since the Middle Ages, meets fundamental oppositions between positive and negative, allowing the perception that the male is taken as a measure of all things and in the sense men and women are seen as two variables, superior and inferior, of the same physiology. Likewise, in this perspective, the sexual act in itself is conceived as a form of domination, of possession, that allows the contemporary perception of the distance between men and women's probable expectations regarding sexuality, romantic relationship and even conjugal violence,

[...] differently from women who are socially prepared to live their sexuality as an intimate experience heavily laden with affection, which does not necessarily include penetration, but can also include a wide range of activities (speaking, touching, caressing, hugging, etc.), boys tend to “compartmentalize” sexuality as an aggressive and overall physical act of conquest oriented towards penetration and orgasm (BOURDIEU, 2014, p. 37).

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<sup>9</sup> On this issue SPAIN, 1992.

Regarding the sexual division of labor, the naturalization of male domination can be verified in the stations offered to men and women (doctor/nurse, boss/secretary, etc.), in the attitudes, the clothing and the hairstyles imposed on woman, who in partaking in a public debate have to fight for their access to the floor and to maintain attention, because they are normally interrupted so that a man can talk in her place about something more intelligent, and when they do not accept the interruption they are immediately labeled hysterical (BOURDIEU, 2014, p. 87).

In family and school environments, women constantly hear that they are more fragile and that scientific careers are easier for boys and that they should opt for a profession compatible with motherhood, and are constantly adverted that her personal autonomy and intellectual independence will make them appear manly and remove their feminine attributes and the “advantages” of being a woman and enjoying male protection. Thus, paradoxically, women who subvert their femininity, approaching masculinity and power (women who occupy directive positions, etc.) are subject to a lesser degree of domestic success (divorce, late marriage, celibacy, difficulties with children), because their absence from home for professional investment is socially unaccepted and is often not supported by her family (BOURDIEU, 2014).

In this context, physical violence against women appears as a demonstration of male domination in a pure state, because it signifies the culminating moment of virile affirmation, the foundation of male superiority in the social construction of sexes, though it is not tolerated because it denounces female submission and thus puts the maintenance of male order in jeopardy. This differs from psychological violence, which is surreptitious, tolerated and effective in imposing submission, since it parts from the notion that

[...] the dominated apply to that which dominates them schemes that are product of domination, or, in other terms, when their thoughts and their perceptions are structured in conformity with the structures of the imposed dominative relation themselves her acts of knowledge are inevitably acts of recognition, of submission (BOURDIEU, 2014, p. 27).

Given this complex picture of male domination that permeates objective social structures and cognitive structures, one can imagine why the previously analyzed laws, which criminalize gender-based violence, were ineffective in reduction the rates of aggressions committed by men against women or in changing the macho social perceptions in Brazil, according to the cited research.

By putting machismo in the dock, feminists presented male solutions to gender-based violence, since they wound up victimizing and fragilizing women even more and subjecting aggressor to violence greater than that inflicted, after all the stigmatizing rituals of criminal

procedure, the bankruptcy of the Brazilian penal system, and the subhuman conditions of prisons to which convicts are submitted are well known.

In summary, despite the political achievement represented by the Maria da Penha (BRASIL, 2006) and Femicide (BRASIL, 2015) Acts, feminists could not escape the trap revealed by Bourdieu, due to the fact that, as men and women in a patriarchal society, we incorporate thought unconscious schemes of perception the historical structures of male order, which leads us to think male domination and way to subvert it though modes of thought with are the product of the domination itself (BOURDIEU, 2014, p. 17).

No doubt, it is a herculean task to think solutions to gender-based violence that escape the male order, therefore the reflexive exercises should not give up the sociological and philosophical instruments of questioning power practices that maintain men's domination over women. For this reason, this brief analysis of how the male symbolic power is materialized is necessary to comprehend how male domination is engendered in everyday social and familiar practices and why the discourse of criminalizing violence against women reinforces the structures of this domination (BOURDIEU, 1989). However, it is equally essential to understand what are the underlying political foundations of this discourse of criminalizing violence against women in the context of a society marked by neoliberal biopolitics, and for this reason we beg leave to Bourdieu to think through Foucault.

#### 4 THE MALE ENEMY IN TIMES OF NEOLIBERAL BIOPOLITICS

As analyzed in a previous text by the first author of this article, based on the writings of Foucault (BORGES, 2014) and his microphysics of power, in the 18<sup>th</sup> and 19<sup>th</sup> Centuries, with the expansion of markets and the consequent migratory movements responsible for increasing population multiplicities and pluralities, Western societies witness the (re)appearance of biopowers, *i.e.* the power practices that appropriate life for the government of the new heterogeneous social body (AGAMBEN, 2007, p. 14).

Under the terms of Foucault's hypothesis, this new mechanics of power statized the biological, perverting altogether the idea of a power founded on sovereignty, exercised exclusively by the State/sovereign over life and death of its subjects. According to the theory of sovereignty, paradoxically, it would be for the State/sovereign to decide who has the right to be alive considering its power to kill, demonstrating the dissymmetry in the exercise of this power, which does not *make*

live or die, nor *let* live or die, but makes die and lets live. Even during the war, the sovereign could ask its subjects that in defense of the government expose their lives to danger or indirectly exercise its power of death to defend themselves from enemies. So in this panorama of sovereignty, the sovereign's power to kill contains the power of life and death of his subjects, *i.e.* "it is because the sovereign can kill that he exercises his right over life" (FOUCAULT, 1999, p. 287).

So when the biopowers and a new form of power investing over life appeared, this sovereign power of making die and letting live was not eclipsed, but permeated, penetrated in such a way that it transformed into a power of making live and letting die. This new technology of power also did not erase the practices of disciplinary power, essential to developing industrial capitalism in the 16<sup>th</sup> and 17<sup>th</sup> Centuries, however would no longer act over the individual body so to distribute it, organize it, control it and make it more useful; its target would be the multiplicity of men, the global mass, that should be governed through the regulation of its processes of life, such as birth, death, production, diseases and sexuality (FOUCAULT, 1994a, p. 605, v. III).

In the words of the French philosopher, "after the anatomic politics of the human body, established through the 18<sup>th</sup> Century, we see appear, at the end of that same Century, something that is no longer anatomic politics of the human body, but something I would call 'biopolitics' of the human species" (FOUCAULT, 1999, p. 289).

Thus, biopolitics was established by controlling the processes of birth, mortality, longevity and the way of life of the human being, examining, statistically measuring these phenomena, so to later set up knowledge capable of intervening directly over them, regulating them and consequently normalizing the large populations to govern them.

From the 18<sup>th</sup> Century observations on natality and endemics were made, creating a medical science aimed towards public hygiene, which should coordinate medical treatments, concentrate information, conduct awareness campaigns and promote medicalization. Aside from that, biopolitics focused on the phenomena that by accident or nature relegated individuals out of the field of activity, of capacity, such as anomalies, old age and mutilation, regulating through rational assistance, insurance, savings and social security mechanics (FOUCAULT, 1999, p. 291).

In other words, biopolitics accomplished a world-level populational intervention mapping the phenomena of human life, setting a standard of normality for life and the exercise of the power to make live (FOUCAULT, 1999, p. 294). For no other reason, this new technology of power is perceived by its care with life and the progressive disqualification of death. In this sense, since the 18<sup>th</sup> Century, Western societies promoted a progressive deritualization of death, with the end of brilliant and prestigious wakes, turning them into brief and simple private events, over-concerned

with a useful life, worthy of being lived or with making live<sup>10</sup> (AGAMBEN, 2007).

As referenced, biopolitics as regulatory technology does not replace disciplinary technology, necessary to the development of industrial capitalism, but began coexisting with it and overlapped so to diagram the entire social body with their practices, articulating from the norm that is applied both to the social body and the population. The norm is seen by the French philosopher as “means for the group to adopt a common standard through a rigorous principle of self-reference, without recourse to any externality, whether it's an idea or an object” (EWALD, 1993, p. 108). The norm is a measure deduced from the curve of normalities of a certain social body through statistics and population measurements, it is a criterion that will serve to generate this multiplicity of individuals, rule it, direct it while establishing it as letting live, deciding in this sense who should be made live and who should be let die.

In this context of articulation of disciplines and biopolitics, sex entered politics, on one hand as an element of disciplining bodies, training, adjustment, energy economy, distribution of forces, and, on the other, as an element of regulating populations, giving way to constant infinitesimal surveillances, medical and psychological exams, as well as solid measure, statistics and intervention on the entire social body. According to Foucault, in the last two centuries, politics advances in four great lines of attack, through the norm it established the regulation of child sexualization, done through campaigns for health and the future of the human species; the hysterization of women, allowing the thorough medicalization of their bodies and sex in the name of maternal responsibility and the future of family; and the discipline of bodies in birth control and the psychiatrization of perversions, with the objective of securing the life of the population (FOUCAULT, 1988, p. 159 et seq.).

The norm does not refer to the legal system of the Law, which is always armed and its most powerful weapon is (physical or social) death to those who break it; the norm regulates, it established a common measure, a profile, that separates individuals as “normal”, which regarding sexuality means conforming to the heterosexual man/woman binary, and “abnormal”, those who must be corrected, normalized and even left to die (FONSECA, 2002, p. 180).

This separation between normal and abnormal does not leave the latter out of the criterion of separation; on the contrary, the abnormal have the same nature as the normal, the only difference being the position occupied regarding the norm. Moreover, in the name of the truth set forth by the

<sup>10</sup> This biopolitical concern with making life does not prevent it from causing death, if this is necessary to guarantee life, thus justifying wars, racism and alike. See FOUCAULT, 1999, p. 49-73, 285-315.

norm populations are conducted, conditioning their mass behavior, from known grazing techniques that thrived in the Middle Ages, in the heart of the Church, to guide the flock of the faithful (FOUCAULT, 1998).

Finally, biopolitics took to the extreme not only lets the abnormal die, but also makes the enemies die, those who are dangerous and threaten the life of the population (FOUCAULT, 2008b). Thus explains racism, or thanatopolitics, as defined by Agamben (2007), which is no longer a simple expression of hatred between races or religion, but instead serves as a legitimate justification to apply lethal government action (DUARTE, 2009, p. 42).

From this analysis it is possible to explain Nazism, that dealt with the extermination of supposedly inferior races through annihilation, including homosexuals, under the argument that they endangered the Arian race, or even the reasons that led Brazilian society to relegate the “rabble” to death by the police in outskirts of cities, in the precarious public hospitals or in the inhumane prisons in the country (SOUZA, 2011).

Moreover, on this issue Agamben completes that

[...] the national-socialist Reich marks the moment in which the integration between medicine and politics, which is one of the essential characteristics of modern biopolitics, begins assuming its consummated form. This implies that the sovereign decision over life move from strictly political motivations and scope to a more ambiguous terrain in which the physician and the sovereign seem to switch roles (AGAMBEN, 2007, p. 150).

In the normalizing society, which is marked by biopolitics, an almost absolute control over populations is developed to rule them and make the live, leading to a few authors dubbing it the control society (DELEUZE, 1992), which in contemporaneity is a key piece for the development of neoliberalism.

Foucault has a unique vision on neoliberalism, substantially less apocalyptic than those that circle in the legal literary universe, in which the market expands to unimaginable levels, without any governmental intervention, promoting exclusion close to intolerability, ameliorated by the governmental penal apparatus that neutralizes those who do not consume and violently pursue their social insertion.

According to Foucault, neoliberalism does not have, as does classic liberalism, the purpose of establishing a free space for the market's development and self-regulation in political society, but a projection of formal principles of a market economy in a general art of government. This means that neoliberalism is far from *laissez-faire* and demands permanent vigilance and intervention by the government, which it starts to work in accordance with formal principles of market economy (FOUCAULT, 2008a, p. 201).

Thus, to neoliberalism, social relations are no longer read as mercantile relations, where goods are exchanged, as thought classic liberalism, but as competitive business relations (FOUCAULT, 2008a, p. 337). In this sense, family is no longer seen exclusively as a locus of mercantile trades and the accumulation of property, but as an area of production of human capital, since the mother invests her time, her care and her affection so that the child becomes an adult and produces income, wages. Thus, it is possible to comprehend why higher income families start having fewer children, since they possess a higher human capital and have as an economic project the transmission to their children of human capital as high as theirs, which demands heavy investment in education, feeding and health of their children, something impossible for large families. The big problem is that in this context a child become the great family investment, which is why he or she becomes the target of a heavy burden of responsibilities, which in turn makes childhood an anguished and thus medicated phase (FOUCAULT, 2008a, p. 335-336).

Concerning the political side, while Smithian liberalism was defined by the delimitation of a free space where the market could develop according to “natural” and spontaneous mechanics, which established a standard of truth that enabled discernment on the correct and incorrect governmental practices, neoliberalism proposes new issues to these practices in that the economic grid will allow the test of governmental action, verifying its validity, allowing “objection to the activity of public power, its abuses, its excesses, its futilities, its plethoric spending” (FOUCAULT, 2008a, p. 338). Thus, governability becomes the target of a cynical mercantile critique, no longer exclusively political or legal, e before it rearranges and perfects itself while maintaining the development of neoliberalism, in Foucaultian terms, founding a sort of permanent economic tribunal to judge the government and perfect it.

As regards to the individual, neoliberalism produced liberties that were imaginable, which were no longer found in the negative space of governmental intervention as in liberalism, but which were simultaneously controlled to secure the government and the life of the population. Thus, while creating innumerable liberties, neoliberalism also destroyed others, setting a limited number of possibilities to enjoy them, providing the strange sensation the never were people so free, and at the same time, that all these liberties were so conditioned, so normalized. In a gender-based analysis, women were never so free in the expression of their sexuality, to compete in the labor market and to design their lives, as long as they don't give up on the project and proper functioning of the family-business to do so (FOUCAULT, 2008a, p. 86).

Lastly, concerning problems of criminality and criminal justice, which are of particular

interest to the issue under analysis, neoliberalism proposed intervention in the crime market to the detriment of the utilitarian-legalistic solution presented by 18<sup>th</sup> Century reformers<sup>11</sup>.

The reformers' critique, founded on economic rationality, focused on the cost of delinquency, judicial practice and the inefficiency of the punitive system of torture and banishment, and had as its objective sustain the project of a less costly penal system. In this sense, the reformers understood that the law could be the most economic and effective response to punishment of actions harmful to social relations, and for this reason argued that crime be defined as a violation of the law, which would establish penalties according to its seriousness, being the duty of the courts to apply the penalty set forth in the law to the crime committed, after it is proven and according to its seriousness. This was a simplified, obvious, less costly and more effective mechanic to eliminate actions that were harmful to society (FOUCAULT, 2008a, p. 341).

However, this new economy crime was paradoxical in that, on one hand, the law sought to punish exclusively actions and not individuals for their personal qualities, but, on the other, the same law was based on the purpose of punishing and correcting individuals, setting an example to others. This contradiction explains the internal tendency of the penal system that while approaching an increasingly individualized modulation in applying criminal law problematizes psychologically, sociologically and anthropologically those to whom the law applies (FOUCAULT, 2008a, p. 341).

for this reason, in the 19<sup>th</sup> Century, *homo penalis* is unfolded into *homo criminalis*, causing a replacement of the legal economic mechanics for an inflation in knowledge, an "inflation of discourses, a multiplication of instances, of institutions, of elements of decision, and all the parasitization of sentencing in the name of the law for individualizing measures in normal terms" (FOUCAULT, 2008a, p. 342). At this time, the etiological or positivist school of criminal law is consecrated, having Lombroso as its most well-known author (LOMBROSO, 2013).

Thus, it is possible to conclude that these changes that occurred during the 18<sup>th</sup> and 19<sup>th</sup> Century in the penal system denote that its organization based on an economic rationality led inevitably to the concretion of a criminal law that punished people and not facts as intended, making it so that punishment constituted the elimination, isolation or the treatment of those individuals considered dangerous and unwanted in a given society (ZAFFARONI, 2007, p. 11).

As mentioned, neoliberals sought to overcome the paradox created by this project in which utility take legal form and law is built on utility calculation, and so problematized crime exclusively in the economic context based on the *homo oeconomicus* figure (BECKER, 1968). In this sense,

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<sup>11</sup> Cf. BECCARIA, 2005, e BENTHAM, 2000.

crime became every action that put the individual at the risk of being sentenced to a penalty, *i.e.* every action that can be economically useful to the individual or not, considering the risk of being sentenced to a penalty, which will be governmentalized in the same economic utility calculation.

This means that the neoliberal analysis of crime is not concerned with criminal acts or their correction, but with the individual who seeks to profit with crime and risks being convicted, with the cost of conviction, with the risk of economic loss that can be inflicted by a penal system. In this perspective, the government is then concentrated on policies to intervene in the crime market, to control the offer of crime, and concerned with what offenses should be permitted, which offenders should be punished, and mainly with what actions offer danger to its economic development and market development (FOUCAULT, 2008a, p. 350 et seq.).

The Brazilian penal system, in its formal or criminal legal aspect, is marked by the paradoxical economic rationality of the reformers' criminal law, destined to punish acts, but is justified by the purpose of correcting individuals, however in its practices clarifies its concern with the crime market, with crimes that should be tolerated, with offenders that should be punished, with actions that threaten market development, free from the masks of punishment's preventive functions.

Moreover, the policy of criminalizing violence against women in Brazilian legislation follows this logic, in that on one hand it establishes increasingly severe penalties to the male aggressor, under the pretext of deterring the commitment of new aggressions and morally correcting him, and on the other exercises control over him, with restrictive measures that denounce him as the real threat to the family-business or yet submitting him to jail where he is left to die.

Ultimately, in a neoliberal biopolitical perspective, women's labor became essential, not only in the family-business, but in the increase of consumption itself, which constitutes the male aggressor as a danger to the maintenance of this order and consequently an enemy that must be severely punished, to be put in the dock under social censorship. In other words, the male aggressor is also the perverse man, who escapes the standards of normality in contemporary society, which equally censors the nervous woman, the frigid wife, the indifferent mother, the young homosexual and the eroticized child, all of them incompatible with the economic maintenance of the family unit and that must thus be normalized, *i.e.* treated or punished (FOUCAULT, 1988, p. 104).

## 5 FINAL CONSIDERATIONS

As analyzed, criminal law is constituted as a virile discourse, armed for war, made by men, and impregnated with social constructions that identified it with the masculine and for years served the naturalization and maintenance of male domination in Western societies. Its use in combating violence against women may seem efficient at first, when it promotes isolation of the male aggressor from social life, immediately avoiding the continuation of violence. However, this discourse does not significantly contribute to a significant change of macho culture that permeates our objective and cognitive social structures, as demonstrated in recent research.

Furthermore, the increasing criminalization of violent practices against women has served the development of neoliberal biopolitics, which dislocated to the market – or to those who are in control of the market – the decisions on the life of the population, over who should be made live and who should be let die for the good of this multiplicity. For some time the family-business became essential to market development and consequently to neoliberalism, and who becomes an obstacle to its functioning, as the male aggressor, must be severely punished, as advocated by the Maria da Penha (BRASIL, 2006) and Femicide (BRASIL, 2015) Acts.

In summary, criminal law, as conceived by the reformers and later operated by neoliberals, is not the adequate discourse to combat violence against women, i.e. putting machismo in the dock does not decrease gender-based aggressions. The legal discourse can only offer effective responses to this phenomenon by degenerating, by establishing itself from a discourse that is neither male nor female, by leaving behind the man-aggressor/woman-victim binary, by assuming that all individuals suffer the effects of the social constructions of gender and sex, by concerning itself with the creation of educational instruments, of dialogue to overcome machismo that is naturalized in Western societies. The legal discourse will only be suited to combat violence against women when it is no longer guided by the economic grid, by market interests; when it is transformed into a resistance discourse, which does not normalize or let itself be normalized.

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## **MACHISMO IN THE DOCK A CRITICAL FEMINIST ANALYSIS OF BRAZILIAN CRIMINAL POLICY CONCERNING THE COMBAT OF VIOLENCE AGAINST WOMEN**

**ABSTRACT:** The aim of this article is to critically analyze the feminist discourse that led to the recent enactment of Brazilian laws that increased the penalties for violence against women, in order to demonstrate that they cannot escape the cognitive traps established by male domination naturalized in Western societies and how they have served the development of neoliberal biopolitics.

**KEYWORDS:** Feminism. Gender-based violence. Maria da Penha Act. Femicide. Criminalization.

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