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Women, Normativities, and Scandal

The Crime of Concubinage through Conviviality Lenses in
Southern Portuguese America in the Late 18th Century
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Vanessa Massuchetto

Abstract

This paper seeks to understand colonial women's agencies, experiences, and convivialities through the crime of concubinage, bearing conflicts against the moral order taken to the ecclesiastical jurisdiction for trial in the late 18th century. The aim is to use the concept of convivialities to discover the normativities that permeated the cases, paying special attention to the social impacts expressed (and not expressed) in the narratives, and the institutional treatment given by the judicial administration apparatus. This paper draws on archival research to analyse several cases from 18th-century Brazil in light of the royal justice system, ecclesiastical constitutions, and canon law regarding the relation between legal and social norms and violations of them. I argue that scandal turns out to be a vital social-legal category for Portuguese America in the modern period for understanding convivialities in terms of social, legal, and moral notions about honesty.

Keywords: women | normativities | concubinage

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Contents

1. Introduction	1
2. Finding Clues and Signs to Read Colonial Women's Convivialities and Normativities	6
2.1 Brief Notes on the Narratives: The Normativities and the Cases	8
3. Honesty and Scandal: Key Notions to Understand Sexuality in the Colonial Context	17
4. Conclusion: Scandal as a Social-Legal Category	21
5. Manuscript Sources	22
6. Bibliography	22

1. Introduction

From travellers' reports and occupation memoirs, among other sources, it is common to find news in the historiography of early colonization about the high number of concubinage situations, especially between Portuguese men and Indigenous women, usually described with astonishment by some missionaries as one of the "sins of the flesh", that is, the sin of lust. Marriage was one of the bases of the royal incentive to increase the colonial population and, in a first instance, the stimulus was for Portuguese men to make sacramental ties with white women (Boxer 1975). As a result of this matrix of thought when developing colonization strategies, cohabitation between unmarried men and women was classified as an offence under the jurisdiction of the ecclesiastical justice system. In 1603, the alleged scarcity of "suitable" unmarried women combined with the permanence of the practice of concubinage were the reasons why the Royal Letter of 2 September intended to determine the sending of orphan "*donzelas*"¹ "of good parents" to marry the occupants of administrative positions in America and contribute to the settlement of the colony. In these terms, women were to contribute and, to a large extent, spearhead the colonization of America by submitting to the purposes of marriage (Portugal 1854: 22; Algranti 1993: 62, 67).

Concubinage was, therefore, a practice that not only violated the moral and religious order disseminated in the Portuguese Empire but also affronted the colonization strategy. Raphael Bluteau had defined the crime as a synonym of *amancebamento*, referring to the sin of those who had concubines, representing "the state of the *amancebado*", "to have in one's hand some mistress (*amasia*), concubine, friend" and "to make love to a woman of bad life". The term *mancebia*, as well as its derivations, indicated the name of the place of prostitution of harlots, the "house of bad women", the dishonesty of "impudent women". *Manceba* – unlike *mancebo*² – meant friend and concubine, a woman who maintained a dishonest friendship with a man. This same definition held the terms *barregã* and *barregão*, being identified as the earliest form of calling concubines or those who were in "*amizade desonesta*" (dishonest friendship) (Bluteau 1712a: 315, 1712b: 442, 1716: 280, 1789: 71, 304). Domingos Vieira explained the continuity of the illicit relationship by stating that the "*amancebamento*" corresponded to the "illicit dalliance between a man and a woman he had and kept" and the "*amancebado*" was the man who lived in concubinage, or in friendship with some woman "who prefers *mancebia* to marriage" (Vieira 1871: 352).³ It is possible to perceive from reading these sources that these terms gave rise to great complexity in defining social realities.

1 According to Bluteau's Vocabulary, "*donzela*" was a virgin woman, usually young (Bluteau 1712b: 290).

2 Which meant a young man, up to 30 or 40 years old (Bluteau 1716: 280; Vieira 1873a: 71).

3 "*Trato illicito entre homem e mulher teúda e manteúda*"; "*que prefere a mancebia ao casamento*" (Vieira 1873b: 382, 1873a: 70–71).

Moreover, these sources allow us to see how the nature of women was the element used for the description of the crime, which is why honesty ended up figuring, to a large extent, at the centre of the definitions of behaviours that were defined as concubinage. This working paper explores the contours of honesty based on criminal cases of concubinage prosecuted in the villages of Curitiba and Paranaguá, in the second half of the 18th century. I focus in particular on the normativities that permeate the legal, social, Christian-religious, and moral orders surrounding the behaviour of the women involved in the cases, collecting the suggestions that the sources offer for the analysis of female agency and the meanings of honesty in colonial society.

To access the cases of concubinage and unravel women's agencies, I use the lawsuits processed by the ecclesiastical courts in Portuguese America and maintained in the Archive of the Metropolitan Archbishopric of São Paulo.⁴ Working in the archive, I consulted 324 lawsuits maintained in the PGA collection and the Divorce and Nullities of Marriage collection.⁵ The reason why legal procedures are prioritized is that studying women in colonial Portuguese America presents some difficulties, especially when attempting to recover the experiences of women who were illiterate, which included poor, Indigenous, and Black women. Very few women were able to express themselves in writing without a male mediator. These documents are a rare opportunity to uncover women's contributions to historical processes and to access their voices because this genre enables historians to centre the experiences and world views of women during this period. Identifying and analysing "clues and signs" (Ginzburg 2014: 171) throughout legal procedures allows historians to access women's lived experiences, survival tactics, conflicts, the expression of their concerns, contemporary social and gender relations, the normativities that oriented their lives, the social spaces they occupied, community's understandings about women, and women's mentalities about themselves and conditions that were given within their contexts: in other words, their convivialities.

Lawsuits expose situations that probably would never have been revealed if they did not constitute a disturbing social fact, and, in a certain way, they shed light on hidden situations, showing what was happening to the historical actors when they did not predict they would be in court. Once a situation was seen as social damage or a violation of order, the historical actors came to explain, were made to comment or report how

4 I would like to express special thanks to the Archive of the Metropolitan Archbishopric of São Paulo and particularly to Father Hernane Módena (general director of the Archive) and Mr. Jair Mongelli Jr. (technical director of the Archive). I would also like to thank Prof. Dr. Samuel Barbosa, from USP and Mecila, and Caio Tolentino, colleagues with whom I was able to develop the Collaboration Agreement with Father Módena and Mr. Mongelli.

5 From this collection, called *Processos Gerais Antigos* (Early Modern General Lawsuits), I consulted boxes n. 142-144, 145, 147, 151, 152, 188-192, 194-196, containing the following labels: *Crime*, *Esponsais*, and *Divórcio*.

and why the situation occurred in their lives, while going about their daily tasks and in front of their neighbours' eyes. Those people who, for example, were illiterate and did not have daily contact with the justice administration apparatus appear in the sources describing their habits and their flaws – things they sometimes did not want to share – and thus revealing details about the days in question for the judge who was taking their testimony (Farge 1993). It is important to stress that, in this sense, lawsuits can also be used to articulate specificities about convivialities when they recorded what a community saw as derisory and what situations were tragic in contrast to normativities followed by other members of society.

However, it is important to stress that lawsuits are polyphonic sources, that is, they carry more than the women's voices; they carry multiple narratives in conversation with the prosecutors' interests and the recording practices of the authorities. In this sense, Arlette Farge emphasizes the importance of considering that among the narratives of the lives and actors, there is a double fragmentation: the transformation of the story into legal form and the statements made by prosecutors, judges, clerks, and other officials (Farge 1993: 2–3). A legal procedure expresses the interests, loyalties, behaviour, and perspectives of more than one actor.

With this in mind, the methodological approach to the lawsuits is inspired by the “indiciary paradigm”, formulated by Carlo Ginzburg, by prioritizing micro elements of a society that are constitutive of broader phenomena (Ginzburg 2006, 2014). This strategy of analysis helps to understand the nucleus of more frequent events while allowing us to glimpse even latent acts. It considers characteristics of the local while also taking into account the global elements in circulation. In a historical analysis, addressing clues and signs that, at the first moment, could be neglected helps us to access the particular issues of the society that we are analysing. By this strategy, it is possible to understand frequently recurring facts and how they participated in historical movements, while latent nuances reveal the issues of the actors, places, ways of living, reproduction of specific cultures, local normativities and elements that circulated in the historical period in question. Thus, they are vivid sources that allow us to decipher dull realities.

In this way, legal phenomena are interpreted as part of the complex configuration of normativities produced by normative knowledge which, in turn, is developed by processes of cultural translations through an array of knowledge (Duve 2020, 2022). With regard to colonial law, some legal analyses might distinguish between European norms and local norms, considering legal norms to be only the canonical and royal laws that originated in the kingdoms of Portugal and Spain. The concepts of normative knowledge and normativities overcome this supposed dichotomy and include other social, religious and moral values as normative spheres, emphasizing the influence of both local and global elements. Thus, colonial law was one element of a diverse range

of normativities from different normative orders. These normativities were produced by normative knowledge which emerged following the mobilization of a diverse array of knowledges developed by processes of cultural translation undertaken by local actors. These processes can be described as appropriation, reinterpretation, adaptation, functional misunderstandings and the spread of beliefs based on knowledges such as practices, world views, perspectives, understandings, discourses, and norms. Consequentially, normative knowledge and normativities, as concepts, prioritize local practices and take into account the contacts and interactions of different normative orders. In addition, they address tensions, impositions and processes of suppression in the colonies, stressing that the coexistence of global and local normativities was not always peaceful, although permissiveness and layers of acceptability occurred.

The concept of normativities considers law to be a cultural product of social processes of multiple societies expanding our understanding of what constituted the legal sphere and placing written law and legal textual traditions as part of such constellations. This creates a space for including colonial women as active actors in legal processes, making it possible to centre them and their relations in this research project.

Using this framework, legal historians have begun working towards new methodologies in colonial women's legal history by intertwining law (specifically the feminist jurisprudence movement), legal history, women's history, and the history of gender relations. This dialogue enables fruitful discussions about the treatment of gender differences in the past in addition to debates concerning the universality of heteronormativity and the immutability of the notion of sex in law. In this way, feminist jurisprudence is concerned with a set of criticisms, theorizations, methodological propositions and practical activities regarding legal phenomena, and it is characterized by plurality, heterogeneity and conflict. The primary aim of feminist jurisprudence is to encourage research that examines the transformations of norms, discourses, and legal practices to foster gender equality and combat the androcentrism of law through the valorisation of diversity (Cain 1990; Facchi 2005). The intersection with legal history, women's history, and the history of gender relations aids the examination of women, law, and justice in different historical periods, and drives an analysis of law as a sexual, male, and sexist system which may be present in the contexts of creation and dissemination of the institutional thought throughout historical periods. Accordingly, it allows for new perspectives on the use of legal sources, and it increases the space for critical work on women in law, women's history and legal fora, women's history and legislative processes focusing on the entanglements between the daily female experiences and the institutions of justice administration, including their social impacts and the production of education (Coutinho Silva 2020, 2021).

Therefore, it is necessary to conceive “women” in the plural to refer to the social, racial, and ethnic multiplicities contained by this group in the colonial context. The necessity of the plural form of the word rather than the singular was employed by gender studies scholars in reaction to opposition to the concept of “man”, which universalized and homogenized all manhood.⁶ This objection led scholars to contest an essentialism that did not encompass women who held “difference within difference”.⁷ The fragmentation caused by race, class, ethnicity and sexuality issues positioned and still positions women at different levels of subordination and oppression in relation to scholars who defended the concept of “woman”. Thus, the new (at the time) feminist movements (mainly Black feminism) demanded a conceptual amplitude that would also explain women involved in these movements who held different agendas. These scholars stated that it was not possible to imprint equality onto the multiplicity of women by relying only on biological sex. In this way, women advocated the use of the category “women” (Sohiet 1997; Rago 1998; Pedro 2005; Sohiet and Pedro 2007). For the study of female actors in the American colonies, it is important to consider the multiplicity of women in the context in which they lived. Thus, my research pays special attention to the vicissitudes that defined each group of women – encompassing white, Indigenous, Africans and descendants, free and not free, elite and poor women – in an attempt to affirm the multiplicity of women in colonial societies.

In line with Mecila’s theoretical framework, I understand conviviality to involve daily social relations structured by inequality and difference, consisting of social cooperation and fragile bounds (Costa 2019; Costa and Nobre 2019; Heil 2020). An important element of the concept is the encompassment of conflicts and domination as structural features, including processes of competition and violence, concerning not the generic shared life but rather interactions among humans and non-humans in society. These interactions compose a “web of interdependences” that shapes social life not only among those that have the same cultural background (Costa 2019: 17).⁸ That is, the process of conviviality includes social interplay and communication while social groups remain culturally different, for example, with respect to ethnicity, religion, language, and hierarchy. The contact between these different groups requires the development of levels of negotiation and cultural translations to take place to allow the actors to maintain these interdependences (Heil 2020). Therefore, conviviality can aid the study of societies through a relational and interdependent analytical perspective.

6 As used by women’s history scholars throughout the 1980s and the 1990s.

7 In the 1970s, it contributed to the feminist movements through the discourse of collective identity (Sohiet 1997).

8 Developed through social communication, including those interactions that are not face-to-face.

In this working paper, the aim is to explore colonial women's experiences and agencies through their convivialities in cases of concubinage, unveiling normativities about honesty and scandal that were active in their daily lives. Using these nuances to study women in colonial society, conviviality allows us to perceive power relations as being comprised of gendered relations; conflicts and violence, and varying levels of autonomy and negotiation skills that women developed to achieve their goals. The aim is not to categorically affirm male dominance over women but rather to consider that colonial societies had a strong tendency to engage men in situations of power concerning women. Dynamics of power are understood as constitutive of gender relations with an emphasis on the social and cultural aspects of difference, generating hierarchies that sustain different values attributed to men and women (Scott 1986).

Considering the inequality extant at the epistemological level (Costa 2019), conviviality also enables me to identify the types of knowledge that women carried, particularly the normative knowledge that permitted them to engage with different normativities and express themselves in court cases to achieve certain benefits. In this perspective, conviviality also created normative layers and, placing it in conversation with normativities, it is possible to affirm that social normative orders directed social interactions in, broadly speaking, such a way that relied on normativities, that over time could or could not turn into traditional normativities.

2. Finding Clues and Signs to Read Colonial Women's Convivialities and Normativities

Among the judicial records sources consulted and classified under "crime" by the technical management of the Metropolitan Archbishopric of São Paulo, there are records referring to *alcovitaria*,⁹ adultery, incest, bigamy, concubinage, rape, abduction, illicit marriage, *sevícias*,¹⁰ illicit separation, homicide, theft, illegal arrest of a cleric, resistance to arrest, forgery of the Reverend Magistrate's initials on warrants, sacrilege, bribery, sorcery, perjury, usury, illicit collection of sacraments by the parish priest, failure of the parish priest to apply the sacraments (*omissão de sacramentos*), irregularities in clerical activities, failure to fulfil the precepts of Lent season, among some others. By far the most frequent crime, with no doubt, was concubinage. The reasons may be multiple: one may think that, in fact, concubinage was the most widely practiced crime, but at the same time one wonders if it was only the crime most often denounced. The sources suggest that it was indeed a rather common behaviour in the

9 A crime committed by a person who took advantage of, or permitted sexual activity of, unmarried women under their guardianship. It was the closest crime to prostitution.

10 Bad treatment, abuse, and torture of the wife by the husband.

convivialities of the city dwellers, but a question that now arises is the reasons for the selective denunciations of this practice.

Although this text separates the cases by the criminal “type” to which it refers, it is important to pay attention to the particular mentalities of the modern era regarding the classification of crimes. The punishable behaviours were described in the First Constitutions of the Archbishopric of Bahia¹¹ and the Philippine Ordinances, but an overarching logic of “types” of crime, developed during the 19th century, did not exist.¹² What was punishable was people’s conduct considered as a whole, without the separation of certain behaviours referring to different crimes. That is, the officials involved in the judicial proceedings hardly ever listed a crime explicitly and separated it from other behaviours the accused person had committed. When the case was related to moral crimes, this was more complex; often several behaviours that could lead to other crimes were mentioned, and sometimes other crimes were also mentioned in the accusations against the defendants. Thus, in most proceedings, there is no express categorization of all the crimes with which the defendant is being charged.

The cases discussed in this section of this working paper do not correspond to the totality of 78 concubinage lawsuits. However, they are representative of the analysis of the convivialities among the citizens and the normativities that were involved in most, if not all, of the cases.

11 The *Constituições* of the overseas dioceses were a juridical-pastoral compilation of Tridentine dogmas, canon law, church tradition and local practices that aimed to disseminate the Catholic matrixes of institutional organization and behavioural regulation throughout the colonial possessions. The *Constituições Primeiras do Arcebispo da Bahia* (hereinafter CAB), although written for the ecclesiastical jurisdiction of the Archbishopric of Bahia, were also used in the archbishoprics of Olinda and Rio de Janeiro and should have been sent to all the existing parishes.

12 Among normative documents produced in Portugal – the range of documents that throughout the 18th century were called *direito pátrio* – for the period worked in this research the main legislative compilation was the *Ordenações Filipinas* (hereinafter OF), published in 1603 in the context of the Iberian Union (1580-1640) by King Philip II. This format of a normative body of precepts was not produced at the time with the purpose of marginalizing or reducing the applicability of common law and preexisting normativities, which can be seen precisely because a large part of the *Ordenações* was influenced by these norms. The *Ordenações* corresponded to subsidiary normative orientations, which intended to develop and promulgate a standard for institutional functions throughout the Portuguese Empire, outlining the constitution of the legal and political administration apparatus, indicating which functions would be attributed to the royal officers, guiding the ways of solving social conflicts and regulating certain behaviours. Thus, the *Ordenações* cannot be called a code, but rather a normative compilation. Before the Philippine Ordinances, there were the Afonsine (*Ordenações Afonsinas*, issued in 1446) and the Manueline Ordinances (*Ordenações Manuelinas*, issued in 1521). They had the same purposes as the Philippine Ordinances, in the sense that the king had to impart his “wisdom” to his subjects through a written document.

2.1 Brief Notes on the Narratives: The Normativities and the Cases

In 1750, in the village of Paranaguá, Maria de Jesus Pereira was accused of prostitution and of living in concubinage with Manoel Pinto da Silva, who “had and kept her in *barreguice* with so much scandal and boldness that she walks in public” (ACMSP, PGA-188, Crime, Paranaguá, 1750: fl. 6).¹³ The accusation was based on statements given to the priest in the interrogatories of the population, in which all the witnesses present were supposed to denounce any public scandals.

Despite the normatization of the elements and consequences incurred by those who engage in concubinage, the Council of Trent did not describe it fully through a clear exposition of what, in the terms of the doctrine, the practice meant. In the guidelines for the sacrament of marriage in Session XXIV, Chapter VIII, the determination was that concubinage was a grave sin when committed by unmarried people and a very grave sin when committed by married people, and it was briefly characterized by situations in which men kept women other than their spouses in their houses (Catholic Church 1781b: XXIV, c; VIII, 249-251).¹⁴ The provisioned penalty was excommunication if, after three admonitions, the sinners did not end the illicit relationship within one year after the warning. By these instructions, it is only possible to acknowledge who was liable to commit the crime – men and women, single and married – and the presupposition of two main characteristics: publicity and cohabitation (Silva 1984: 38). This brings out that this sin was most likely committed more prominently and visibly at the time of the Council, so much so that the ecclesiastical legislation recognized it to be a common practice that men maintained women in their houses even together with their own wives (Catholic Church 1781a: XXIV, c; VIII, 249-251)

The crime of concubinage, in legal terms exposed by Joaquim José Pereira e Sousa, referred to illegitimate unions, is considered an illegitimate action contrary to the “purity of Christianity, and good customs” (Sousa 1803: 195).¹⁵ The concubine, thus, was the woman who found herself in this situation, emphasizing – unlike Bluteau – that this was not a designation for prostitutes (Sousa 1825: 243; Sousa 1803: 193). *Mancebia*, on the other hand, “was understood as the dishonesty of public and impudent women” (Sousa 1827: 220), and *manceba*, on the other hand, would be the designation given to prostitutes.¹⁶ Concubinage was “the state of a man and a woman who live together as if they were married, without having fulfilled the legal solemnities to give this union

13 “*teúda e manteúda em barreguice com tanto escândalo, e desenvoltura que anda em público*”. (All translations are by the author.). *Barreguice*, in this context, means the same as concubinage.

14 “*têl-las, e sustentallas*”.

15 “*pureza do Christianismo, e aos bons costumes*”.

16 “*se entendia pela desonestidade das mulheres públicas, e impudicas*”.

the quality of a legitimate marriage” (Sousa 1803: 193).¹⁷ According to the author, therefore, cohabitation was the main element for the configuration of the offence, in which it was necessary that the couple shared their lives as if they were legally married. By contrast, the “simple carnal trade”, as he called occasional sexual intercourse or that which occurred between people who did not live as if they were married, did not exactly constitute the crime of “concubinage”, even if it continued over time.

In the early 18th century, the First Constitutions of the Archbishopric of Bahia indicated concubinage¹⁸ as the “illicit conversation of a man with a woman for a considerable period of time” (Vide [1707] 1853: b. V, 338),¹⁹ thus adding continuity of relations as a characteristic of the crime, being proved mainly by confession and public notoriety. This element, moreover, had to be accompanied by scandal and strong evidence,²⁰ otherwise the proof was not considered enough to condemn the defendants. In these cases, the suspects could be admonished not to come into contact with each other, preventing them from establishing any kind of communication. If they engaged in it, the crime would be considered to have been proven. When the public notoriety and the evidence were not strong enough, the violation would also be considered proven if a woman who was not a slave lived in a man’s house for service, became pregnant and continued to be kept in the same house. The penalties possible in these cases were excommunication and prison, banishment, or fines after the prosecution by the ecclesiastical justice system (Vide [1707] 1853: b. V: 338-340).²¹

The crime of adultery was not described in detail by the Tridentine doctrine, however, the practice was briefly mentioned in the same section as the concubinage in situations in which men left their first wives and maintained relationships with other women in different locations (Catholic Church 1781b: XXIV, c; VII, 249-251). The Constitutions described the sin in Title XXIII and characterized it as a crime committed by married women in concubinage relationships. Therefore, from Maria Beatriz Nizza da Silva’s and Eliana Rea Goldschmidt’s perspectives, adultery constituted a subclass of concubinage for ecclesiastical rules, and it was recommended in the synodal rule to be prosecuted with guardedness and secrecy (Silva 1984: 40; Goldschmidt 1998: 130).

17 “o estado de hum homem, e de huma mulher, que vivem juntos, como casados, sem terem preenchido as solemnidades leaes para dar a esta união a qualidade de casamento legitimo”.

18 The term “*amancebamento*” was inserted as a synonym in this document.

19 “*illicita conversação do homem com mulher por tempo consideravel*”.

20 Accompanied considering that “cannot by notoriety only be condemned to a pecuniary punishment, or any other” (“*não poderão pela fama sómente ser condemnados em pena pecuniaria, ou outra alguma*”; Vide [1707] 1853: b. V: 340).

21 In any case, it is worth noting that according to the research undertaken by Silva (1984: 41) in the Archive of the Metropolitan Archbishopric of São Paulo, the penalties applied by the parish priests were often excommunication, and the number of concubinarians was small in the sources she analysed.

In the royal court, the contours of the crime of concubinage pointed to more delineated characteristics than the ecclesiastical norms, and it was divided into simple concubinage and qualified concubinage. The first would be committed by single people – and, according to Joaquim José Caetano Pereira e Sousa, was not punishable under the Philippine Ordinances – and qualified concubinage was committed by married women and men, married or unmarried women and clergymen, and women kept in the man’s house (Sousa 1803: 195). These occurrences were sanctioned in Titles XXVII, XXVIII, XXIX, XXX and XXXI of Book V of the Philippine Ordinances, and it is possible to affirm that the definition of the crime depended on the quality and status of the men who maintained the relationship. That is, Title XXVII dealt with courtiers and men who had concubines, XXVIII regulated married men who had such illicit relations, and, in turn, Titles XXX and XXXI dealt with clergymen who had concubines. The terms used by the norms to refer to the women involved were *barregã*, *manceba* and the expression “*teúda e manteúda*”, revealing this to be one of the characteristics of the configuration of the offence.

Title XXVII forbade those who attended the court to take or have with them their concubines, and established pecuniary fines for those who did so. For women, the penalty was to be banished over one year from the court, in addition to the payment of fines and the loss of the exercise of their offices if it was they who had given them access to the court.²² Title XXVIII then dealt with married men who had concubines, the proof being “the voice and the notoriety of the quarrelsome”,²³ given by witnesses who had witnessed their habit of frequenting each other’s homes (Castro 1699: 51). The penalty for the man was banishment to Africa for three years and payment of the quarantine of his goods – which increased with each recurrence – excluding those belonging to his wife, and for the woman, the penalty that should be imposed was flogging with a robe tied around the neck and the announcement of the execution, a year’s banishment to Castro Marim and payment of half of the cost of the quarantine, which also increased with each recurrence. If they married or entered a religious order before being arrested, these rules would not apply (Portugal [1603] 1870: XVIII: *caput*, § 1º).

Title XXX, in turn, regulated the concubines of clerics and religious who were kept outside their homes and received food and clothing from them. As in the preceding title, the proof was given by the public notoriety of the concubinage, being attested by at least one witness, seven or eight visits of the cleric to the house where the woman was kept, or vice-versa, over a period of six months. If there was evidence that the

²² The Ordinances cite trades such as fisherwomen, bakers and ransomers (Portugal [1603] 1870: tit. XXVII §1º).

²³ “*voz e fama de barregueiros*” (Portugal [1603] 1870: tit. XXVIII §6º).

concubine was notoriously kept in the house of a cleric, the penalty would be flogging, banishment from the bishopric and the payment of a fine. In the provision of Title XXXI, the directive was that clerics and friars should not be kept imprisoned for being in a concubinage relationship, unless required to do so by the Prelate, Vicar, or other higher ecclesiastical authority.

According to the Ordinances, the accusation or complaint of concubinage relations could occur by *devassa* or by *querela*, and in the case of *devassa* the accusation could be made by anyone.²⁴ Complaints made against married men were required to meet the requirements of the *querela*, that is, to be accompanied by an oath, the deposit in court, and the presentation of witnesses (Portugal [1603] 1870: tít. XXVIII §5º). The License (*alvará*) of 26 September 1769, however, established the prohibition of opening concubinage *devassas*. That is, the absence of exclusivity in the denunciation, according to the description of this normative, made it also possible for enemies to accuse married women who lived in good harmony with their husbands. Also, it permitted false testimonies that led to the accusation of guilt and the capture of these women, ruining their lives, sullyng their honour, exposing them to danger, and causing their husbands to distrust them. This same situation was experienced by some daughters whose parents, as a result of the unjust accusation, were forced to marry the people with whom they had been carried on suspected relations, unions that probably would not have happened without the existence of the aforementioned accusation in court. To prevent this situation from happening, this License prohibited the opening of inquiries to investigate concubinages, maintaining the possibility only in cases where the concubines were “had, and kept with general, and public scandal” (Portugal 1829).²⁵

That is, in the terms of what Sousa states, this rule precluded the opening of inquiries against simple concubinages; in the author’s view, it was considered a “political error” to punish sexual relations that took place in a casual way (Sousa 1803: 196). Still, with regard to the qualification of the woman as married, it restricted the application of the titles referring to concubinage and declared instead that the correct title to use was the one concerning adultery.

The dissemination of these norms in the social environment, as well as of the rules of marriage, gradually built up common knowledge about illicit relationship practices between men and women. According to Goldschmidt, this favoured not only a gradual increase in the number of accusations of concubinage in ecclesiastical institutions but also encouraged the creation of techniques to hide the transgression from the eyes of

24 No more charges could be brought if the couple was separated for six months (Portugal [1603] 1870: V, XXVII §1º; XXX, §2º; Castro 1699: 51).

25 “*teúdas, e manteúdas com geral, e público escândalo*”.

the authorities, such as, for example, the change of domicile. Thus, new situations were created by society and then the institutions developed new approaches to prosecute them (Goldschmidt 1998: 131-133).

Returning to the case, none of these classifications appeared to be the situation described by Maria. The witnesses presented by her stated that she was a “*fraustera*” (a quiet woman of “moderate voices”) (Bluteau 1713: 203) and that she had told Manoel to leave her house because “she did not want to have any treatment or mistreatment with him” (ACMSP, PGA-188, Crime, Paranaguá, 1750, fls. 10-11v; ACMSP, PGA-188, Crime, Paranaguá, 1750, fl. 19).²⁶ One of the witnesses reported that Maria had been complaining about Manoel for some time, which was why she ended up with a reputation and appearance of scandal. However, she had never had unlawful dealings with him. The vicar of the court accepted Maria’s assertions that she was, in fact, being disturbed by Manoel and acquitted her (ACMSP, PGA-188, Crime, Paranaguá, 1750, fl. 19).

The case of Mariana Vitória de Siqueira and Manoel Lourenço Pontes, in turn, was different from the above-mentioned case. In 1753, the couple was accused of concubinage because they used to frequent each other’s house for a period of two years and Manoel provided Mariana with all the assistance necessary to maintain her household. According to what was described in the accusation, these behaviours were practiced “with a notable scandal of such bad procedure” (ACMSP, PGA-190, Crime, Paranaguá, 1753, fl. 7).²⁷ Mariana and Manoel were forced to sign a certificate of separation as the couple’s first admonition, and, when they went to do so, Manoel asserted that he had been blamed by his enemies. In his contrariness, he argued that in his house he used to host “very important [people] from this village” and that Mariana had never been there (ACMSP, PGA-190, Crime, Paranaguá, 1753, fl. 9-v).²⁸ Witnesses confirmed his good behaviour and that he had never caused any scandal.

In Portuguese America, the temporality during which the concubinage was maintained was a key element determining whether the ecclesiastical court would prosecute the conduct or not. As mentioned above, this rule was added by the synodal Constitutions and it may be explained by the way the colonial society understood the crime. The absence of continuity of the illicit relationships was seen as evidence of simple fornication and had a more lenient penalty, drawing attention to the fact that occurrences might be discovered more effectively without considering the duration of the behaviour. That is, the publicity of the practice was accentuated when it lasted over some time, and this seems to suggest that the crime was committed in more covert ways or that

²⁶ “*não queria ter tratos nem destratos com ele*”.

²⁷ “*com notável escândalo de tão ruim procedimento*”.

²⁸ “*muy principais desta vila*”.

short-term illicit relationships were much more common and were not the focus of the ecclesiastical institutions' discipline.

In the case of Francisca Gomes and Lourenço, denounced in 1766 in Paranaguá, there was not only the highlight of the eight years through which they maintained their relationship as well as the existence of their two children, "with a public, and notorious scandal in the neighbourhood, and for the residents of the territory of the Raza Island of this said village" (ACMSP, PGA-191, Crime, Paranaguá, 1766, fl. 2).²⁹ In this case, however, there was an element that denoted greater complexity: Francisca was a married woman and the complainant asserted that her husband knew about the affair and allowed her "to live more unimpeded in their dalliance, thus allowing themselves to walk in this miserable state, totally oblivious of the obligation of good Catholics" (ACMSP, PGA-191, Crime, Paranaguá, 1766, fl. 2).³⁰ The witnesses corroborated the terms of the accusation by stating that Francisca's husband, João Nunes, had left for the city of Rio de Janeiro as a result of the concubinage maintained by his wife. According to the narratives, João knew about Francisca's extramarital relationship and decided to leave the village "not only because of the notoriety but also because he witnessed the scandal with the other residents" (ACMSP, PGA-191, Crime, Paranaguá, 1766, fl. 4-v).³¹

For women, in particular, the Constitutions determined that if a woman was married and the offense was discovered, the matter should be treated with great caution in the admonitions provided, since adultery was also involved, and the husband could be a threat to the woman's life. When this was not possible, the notification should be given verbally by a priest in secret, a situation which should not arouse the husband's suspicion. If the woman was unmarried and had not lost her "good reputation", the caution should be the same, due to the threat that her father and brothers possibly would treat her badly (Vide [1707] 1853: b. V: 341-342).

The case seems to go in another direction than those advised by the ecclesiastical norms. That is, in this case, Francisca was publicly engaged in her concubinage and João knew about the whole situation, so the neighbours and the ecclesiastical institutions did not feel the need to hide her behaviour from her husband. But the discretion was instructed by the Constitutions since it was not rare for women to suffer heavy punishment from their husbands, especially in case of adultery. This reveals the normativity that the husband, upon discovering the adultery practised by his wife,

²⁹ "com público, e notório escândalo da vizinhança, e moradores do território da Ilha Raza desta dia Vila".

³⁰ "com seu marido para assim viver mais desimpedida no seu amancebamento, deixando-se assim andarem neste miserável estado, esquecidos totalmente da obrigação de bons Católicos".

³¹ "não só por razão da mesma notoriedade como por restar presenciado todo o referido escândalo com os demais moradores".

would put her life at risk. The rationale of this logic was real, to the point of being part of the precepts of the Ordinances. In favour of family power, Title XXXVI of Book V stated that the royal justice should withdraw and the “penalties will have no place” when violence was used for the punishment of women. Pascoal José de Melo Freire, in an attempt to define what the “right to impose penalties” would be, argued that the rule was exclusive detention by the royal power (Freire 1789-1794, 1967: 60-61, 127). He did, however, exclude cases involving the dominion of parents over children, masters over slaves, and husbands over wives, as he recognized the existence of the power of the former over the latter. The husband’s power over his wife was understood as coming from natural law and used to give him “the faculty to direct his wife’s actions”,³² although it was not recognized by the legislation as unlimited; the domestic punishments were conditioned to the application of a certain penalty and, still, only in a light and a moderate way “when unruly”.³³

In the wake of this thought, the Ordinances suspended the punishment if the husband found his wife in adultery, allowing him to kill her without being penalized. For this, it was mandatory to prove both the marriage in Tridentine terms and the situation of the crime and the flagrancy, otherwise, he would be condemned and banned from access to the wife’s dowry (Portugal [1603] 1870: b. V: XXXVIII). For the common law of the 16th century, however, the extent of this permissibility was directed at the father, and, according to the Manueline Ordinances, the husband was entitled to prosecute the woman with the possibility of pardoning her at any time (Portugal [1603] 1870: b. V: XXV § 4º; Gonçalves 1557: 23–24) – or leaving the case to the courts (Barbosa 1618: 287). The pardon was maintained in the Philippines Ordinances and, moreover, the possibility of absolving the adulteress even if she became pregnant from the illicit relationship was expressed in black-letter law (Amaral 1729: 118; Portugal [1603] 1870: b. V: XXV § 4º, LV). Manuel Barbosa (Barbosa 1618: 303–304), in the first half of the 17th century, expressed that, although lawful under royal law, killing the wife would mean a sin to the so-called “internal forum”³⁴ of the husband, and, at this point, there would be an explicit link that in the theological field, and for the canon law, causing someone’s death would always be conditioned to a spiritual consequence, referring to the “forum of the soul” (Amaral 1733: 121).

32 “*faculdade de digirir as acções da mulher*” (Portugal [1603] 1870: tít. XXXVI § 1º; tít. XCV § 4º).

33 Portugal ([1603] 1870: tít. XXXVI § 1º; tít. XCV § 4º). Mello Freire used as basis for the law’s recognition, also, the title LXVI of Book IV, due to the use of the expression “in power of the husband” (Portugal [1603] 1870: L. IV, tít. LXVI, *caput*).

34 In the canon law doctrine, there is a differentiation between the internal and the external forum of people. The external forum, theoretically, excluded the consciousness of the behaviours and the internal took it as a major point. The law of humankind was made to rule the external forum and the spiritual law, the internal forum.

In another case, in 1777, in the parish of Santo Antônio da Lapa, in Curitiba's jurisdiction, Maria de Andrade and Manoel Francisco dos Santos were denounced for being "in love with each other causing a scandal for the residents" (ACMSP, PGA-147, Crime, Curitiba, 1777, fl. 3).³⁵ According to the witnesses, the couple flaunted their relationship in front of the eyes of the inhabitants of the village, and, in addition, had disobeyed the admonitions made by the vicar. At the end of the proceedings, however, the vicar decided to apply a separation order, which obliged the couple to live in separate houses in order to end the illicit relationship.

The case of Antonia Cordeira and Gonçalo Francisco, however, went in another direction. They were denounced in a *devassa* prosecuted in Curitiba in the year 1790 and, although the witnesses affirmed the existence of rumours that both were in a concubinage relationship, a deponent declared that it could not be used as evidence because he had never seen Gonçalo enter Antonia's house, but that instead she went to his house. The most interesting point of this testimony is the mention that the deponent "[...] thinks that none of these things can be proved" (ACMSP, PGA-147, Crime, Curitiba, 1777, fl. 3),³⁶ that is, the fact that Antonia went to Gonçalo's house did not mean that they had a concubinage relationship, because, the witness claimed, Gonçalo lived with his father and brothers, and Antonia went to the area where Gonçalo lived because she "had plants" there (ACMSP, PGA-147, Crime, Curitiba, 1777, fl. 3).³⁷ It was known that Antonia lived alone and, therefore, the testimony cast doubt on the correspondence between what was "known by word-of-mouth" (ACMSP, PGA-147, Crime, Curitiba, 1777, fl. 3)³⁸ and what was practised in the village. Other deponents claimed to have seen Gonçalo once at night in Antonia's house since his horse was tied to her door, behaviour that leads "some people [to] incriminate" her for being a woman who "has nothing to live on and does not work, from which her bad behaviour is assumed" (ACMSP, PGA-147, Crime, Curitiba, 1790, fl. 3-v).³⁹ The deponent had even asked Antonia about the situation, and she had confirmed that Gonçalo was at her house, but that, however, for eight months there had been no further news about this – supposed – couple.

The case of Quitéria Nunes went through a similar path. Described as a non-white former enslaved woman, Quitéria and Pedro Dias Pereira were denounced by the same procedures likewise the above-mentioned case in 1781 in the same village. The

³⁵ "*amancebados com escândalo dos moradores*".

³⁶ "*mas que nenhuma destas coisas julga fazer prova*".

³⁷ "*ter plantas*".

³⁸ "*se sabia de ouvir*".

³⁹ "*algumas pessoas incriminam*"; "*não tem do que viva nem trabalha de onde se colige o seu mal procedimento*".

vicar believed the couple lived together despite the court's notification, in "persistent rebelliousness, with no fear of excommunication" (ACMSP, PGA-147, Crime, Curitiba, 1781, fl. 2),⁴⁰ and was absent when they should have signed the admonition notice. The vicar ordered the clerk to notify both criminals to go to the court within nine days, and, in doing so, he stated that he went to Pedro's house and, afterward, to Quitéria's – that is, contradicting that the couple lived together as denounced. On her petition, Quitéria said she was not in a concubinage relationship with Pedro, but she used to go to his house because she sometimes worked for him and was in his company as well as other people when she went to the village to discharge a debt from her brother-in-law. She also affirmed living without any scandal, being poor, and working in honest jobs permitted to women in order to maintain herself and her son.

These cases have a number of interesting passages, not least the claim that the woman who did not clearly have a livelihood could be viewed as being some man's concubine. The witnesses did not use references to honesty to describe both women who were accused, even though they lived in a way that could be disapproved by some people. In the first case, Antonia's misconduct was linked to the fact that, to her neighbours, she did not have a clear livelihood, but this in itself does not directly link her to a concubinary relationship. If she had been described as a dishonest woman, most likely the claim by the deponents of the real existence of concubinage between her and Gonçalo would have been more forceful, even if nothing left clear evidence that the couple lived together or that Gonçalo supported her economically. For Quitéria, on the other hand, her one witness supported all her claims and said she lived from her "agencies", which meant she worked mainly by barter (Bluteau 1712c: 165–166). In any case, the reverend ordered the accused to sign the first lapse of concubinage and the admonition notice, which had the effect of breaking the illicit communication to avoid a possible continuation of the crime, but, at the same time, he did not penalize them in a pecuniary way.

From all the exposed cases, it is possible to affirm that, in Portuguese America, matrimonial practices developed in different manners, arising mainly from the complexity of local realities between traditions of different Indigenous groups and metropolitan rules brought with the Portuguese colonization movements prior to the establishment of Tridentine norms. According to Maria Beatriz Nizza da Silva, these sets of practices underwent interpenetration – especially in the unions between Portuguese and natives – and led the Jesuit priests of the early colonization period to refer to the situations generically as concubinage or *mancebia* (Silva 1984: 36-37, 88-89). This does not mean, however, that they did not differentiate. In an analysis of a letter by the priest Manuel da Nóbrega from 1549, Silva states that the Jesuit made the distinction

40 "*contumaz rebeldia, sem temor da excomunhão*".

between *mancebas* and women as a way to differentiate two forms of relationships that the Portuguese were having with indigenous women, the one that the lord had with his slave and the union between the white man and the free indigenous woman “according to the custom of the land” (Silva 1984: 36).⁴¹ Silva states that it was a very common practice throughout Portuguese America, and it consequentially resulted in a high rate of parish registrations of foundling and illegitimate children.

It is possible to affirm that the term concubinage in the 18th century, according to the provisions of the synodal norms, presented a widening meaning of the denomination and encompassed more formats of relationships than in previous centuries (Silva 1984: 40). Cohabitation and publicity were the basic part of the main characteristics of the offence in the colonial context, being the continuity of the relations the chased element, extending to the core of the offence relations between people who did not live in the same house but who were frequenting each other’s households for an extended time. This suggests a greater concealment of the practices than in the period of publication of the Tridentine directives, in addition to the demonstration of concern with the relations between free individuals, since the pregnancy of a slave would not be an element to raise suspicions.

3. Honesty and Scandal: Key Notions to Understand Sexuality in the Colonial Context

Honesty is a recurring theme in 18th-century sources and appears in almost all documents narrating women’s experiences. In the case of crimes against the moral order, it was a component of most of the arguments that attempted to defend or accuse the women involved. It was part of the attributes by which female honour was attributed and was demonstrable through the behaviour of modesty and gravity, ideals supported by the virtues that constituted the female representations circulating in the modern period intensely permeated by the Christian moral doctrine embedded in the theological tradition of St. Thomas Aquinas.

The virtuous behaviours directed to women, which transmitted the values that a certain society wished to preserve, were closely influenced by the female representations in the colony, permeated by the theological and medical logics coming from the metropolis. This reverberated ideals of devotion, obedience, discretion and, above all, modesty, virginity and chastity, orbiting around a range of conducts expected by the Christian and moral order for its protection. The exercise of these values by women made them be seen as holders of the virtue of honesty, being – as the other virtues – a means of construction, preservation or destruction of honour from the measurement of conduct,

41 “segundo o costume da terra”.

implying the observation of social practices of individuals and those who shared the same status. In these terms, female honour was directly linked to honesty, considered the greatest among the virtues attributed to women in the Portuguese Ancien Régime, giving them greater prestige and social esteem (Braga 2003: 4; Lopes 2017: 34; Twinam 1998: 81).

The honour attributed to women was correlated to sexual behaviour and, for this reason, was based on the biological differences between the sexes, since women could be identified when they engaged in active sexual behaviour – pregnancy and the existence of children were difficult to conceal – and men could not. Female honour ended up being controlled by reproduction, and male honour by the authentication of paternity. In any case, women had their sexual behaviour controlled in order to be honourable, and conceiving only legitimate children was the factor that ensured honour (Braga 2003: 12; 64-65, 2018: 171; Algranti 1993: 111–112). The social value of a female individual was, therefore, essentially tied to her reputation. In the absence of social confirmation, the individual claim was groundless and untenable. Moreover, it needed to be defended and socially affirmed – which is why it had to be made in such a way as to be clothed in public formalities– otherwise, it could jeopardize the social position of a woman and her family.⁴² In this sense, it is possible that the conceptual approximation between honour and fame, a notion linked to social recognition as a result of living according to “good manners” (Undurraga Schüler 2019: 4). Sin, honour and fame, guided by canon law, were factors that contributed to the definition of crimes against the moral order established by moralist doctrinaires (Muguruza Roca 2011: 197).

The great question of honour, therefore, seems to be the publicity of qualities and behaviours that expressed the desired virtues. In the colonial context of South America, honour had a public nature, representing much more than a normative set for the regulation of behaviours: it meant the very social organization, permeating everyday life and defining a series of social roles – it should be noted, “public” – for men and women, especially to those belonging to elite groups (Johnson and Lipsett-Rivera 1998: 6–7; Twinam 1998: 83). An honourable woman, then, demonstrated unassailable behaviour, which meant that she had a good reputation. Discretion and modesty in living, dressing, and expressing herself were part of the set of behaviours a woman should have in order to be considered honourable.⁴³ These behavioural guidelines weighed especially

42 The quest for honour was often manifested in conflicts, duels, lawsuits, family genealogies, and with the concern for marriage arrangements appropriate to the family (Johnson and Lipsett-Rivera 1998: 7).

43 At this point it is necessary to make a reservation: Maria Beatriz Nizza da Silva affirms, based on traveller’s reports, that such norms regarding modesty in the forms of sociability and in dress seem to have been more flexible in the colony than in the metropolis (Silva 1984: 71).

on unmarried women, taking into account that the loss of virginity reduced considerably their chances of getting a marriage that would be advantageous to the family. These were the elements that would allow her to be honest and, consequently, to maintain her chastity; in case she was no longer chaste, the advice was to be cautious and to appear so, since what mattered was the reputation gained publicly. Appearing to be chaste ended up being more valued than actually being chaste, and this search was oriented toward the preservation of a good public image (Almeida 2012: 98–99; Silva 1984: 70; Almeida 2005: 89).

The publicity of the sexual behaviours of both women and men was one of the main elements used by colonial institutions to identify who was committing crimes against the moral order. The information about the crimes was taken to the judges, especially, by social denunciation, and, in this sense, it is possible to affirm that it was the normativities circulating in the social fabric that, sharing the understandings and knowledge of the villagers, acted as means of selection of the types of conduct that were liable to be denounced. In this matter, it is possible to bring to these issues the theorization of Tomás Mantecón Movellán for the modern period (Movellán 1996: 226, 1997: 23, 55). The author maintains that the practices of violence were closely related to the notions of order and deviation, the latter corresponding rather to a violation of the social consensus than to a contradiction of the social order itself. The very notion of conflict, and consequently violence and criminality, are elements of social formation, so the notion of deviation did not essentially refer to a subversion, or resistance, to the social order itself. It was a phenomenon of social nuisance, which could cause correction, exclusion or marginalization to the deviant subject, but in most cases, it was not located outside the established order and is understood in the limits of the tension between social tolerance and intolerance. So, placing such conduct as contrary to the social consensus would be the most appropriate (Movellán 1997: 23, 55). However, crimes and deviations from the social consensus were not necessarily coincident; what represented order to institutions could represent a deviation from social practices. The illicit and the scandalous, the licit and the tolerated were not essentially equivalent.

The coming to light of female sexual activity outside of marriage brought out the problem of scandal, tarnishing the good name of the woman involved. This largely seems to be one of the main points when analysing the legislation and the occurrence of crimes against the moral order. Scandal, as defined by Mantecón Movellán, represented the behaviours that were for some reason not accepted in the social consensus, deviations that gave rise to intolerance due to conflict with social customs and were often the target of accusations, even if they were not, strictly speaking, illegal conduct (Movellán 1996: 226, 1997: 14). That is, scandal was an indicator of the transgression of social norms just as illicitness – crimes and misdemeanours – represented the deviation from

the royal criminal norms, and the same behaviour did not necessarily correspond to violation of both orders at the same time. In the meantime, both scandalous and illicit conduct comprised facets of the circulating norms. Sometimes, it is possible to affirm, based on what is indicated in the sources, that scandalous conduct gave rise to forms of imposing discipline that were much more effective than for the illicit ones.

For the women to maintain a good reputation it was necessary to appear to have honest behaviour – in court, to present witnesses who declared her to do so – and to be cautious with behaviours that the social consensus could classify as scandal. It was not necessary, in reality, to be a virgin or chaste, since most cases reveal some kind of love relationship between the couples described. And yet, these loving relationships were known by the witnesses but only came to light when some specific circumstance gave rise to scandal. For the crime of concubinage in Portuguese America, the temporality of the relationship, the woman receiving the man in her house or going to his house, and the pregnancy were some of the situations that gave rise to social scandal. This points to the fluidity of normativities and the mismatch between the legal and social orders, moving between the extremes of lawfulness and unlawfulness, tolerance and scandal, and, apparently, most cases went on for a long time being unlawful but tolerated. This suggests that the illicitness itself would not be sufficient motivation for denunciations and accusations by the village society. The point that made them liable to be prosecuted by the secular courts was aggression toward non-written normativities of the social order, not the written ones (the specific prescriptions of the Constitutions or the Philippine Ordinances). It was scandal, a circumstance that lifted the case beyond the permissibilities of the social order.

Therefore, scandal is essential to understanding crimes against the dominant moral order in the colonial context. Apparently, the determining form of justice for whether or not a practice was investigated and prosecuted was the social one, and not the prescriptions from the legal and moral-religious orders. It is known that it is not possible to defend a separation between the normative orders, given the fluidity of these normativities and reciprocal influences by all these fields regarding the disciplining of behaviours. However, what is being argued points to the fact that social justice had a considerable weight when it came to transforming, in fact, a deviation into a crime through the judicialization of the case. Therefore, in the case of concubinage, the touchstone was scandal: women needed to be within the elastic limits of tolerance in order not to generate scandal.

4. Conclusion: Scandal as a Social-Legal Category

I have been developing the idea that criminal justice in Portuguese America was largely made by society, according (or not) to normativities from the Portuguese Empire. The sources I have been analysing rarely contain final sentences and descriptions of the execution of penalties; most lawsuits end without the institutional resolution of the case but rather with the withdrawal of the party or with an interlocutory decision excluding culpability. This leads me to think that the responses the historical actors wanted by making claims in the courts were not those that the institutions could provide, but those that the social elements could provide and used to bring to the daily life of the defendants. Therefore, the criminal justice system was, in reality, made by social judgement, and it was undertaken in the terms of local non-written normativities as the law of shame, humiliation and tolerance (Massuchetto 2021a, 2021b, 2022).

In most of the cases that I have been analysing, I was able to discern that although honesty was traduced into highly estimated behaviour that women should have, it seems that appearance was the main point rather than the actual maintenance of virginity or chastity. It was not necessary, in women's practices, to be a virgin or chaste, since most of the cases reveal some kind of loving relationship between the couples. These relationships only became cases in the courts when some specific circumstance gave rise to public scandal. For example, pregnancy was one of the main situations that used to give rise to scandals, and many cases were taken to the judicial institutions only so that women could marry the men with whom they became pregnant as a result of the legal case, or so that they could receive payment to their dowry so their honour could be restored.

This points to the fluidity of normativities and how convivialities influenced them by the common daily practices. Also, points to the non-correspondence between the legal, moral and social orders. The legal order works between the extremes of licit and illicit, while the social order works with social consensus, tolerance and scandal, and most of the cases of sexual crimes happened for a long time not in legal proceedings but within the limits of tolerance (and therefore in the social consensus), which makes even *prima facie* illegality seem not to be sufficient motivation for there to be formal denunciations and accusations. The point that made them liable to be prosecuted by the courts was a violation of the social order, not the legal order, through the emergence of a scandalous situation.

I believe that scandal should be considered as a hybrid social-legal category for moral crimes in the Portuguese Empire. Not only because a "public scandal" was mentioned as a requirement for the prosecution of the concubinage for the secular court, and for many other crimes as described by the First Constitutions of the Archbishopric

of Bahia, but mainly because, as we can see from Bluteau, scandal, a circumstance that elevated the case beyond the permissible experiences of the social order, was seen as an offence; an offence to the social consensus, to the social-moral order, and, according to the sources I examined, we can see that it was taken to be the most serious violation of order. Finally, these cases allow me to conclude that the boundaries of social order – as well as those delineated by the legal system – were usually known by the women, considering that they expressed notions of how they should behave towards their neighbours so as not to exceed the limits of what was tolerated by colonial society.

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