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Violence and gender new proposals, old dilemmas*

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ABSTRACT
This paper discusses and analyzes the dilemmas involved in the use of notions that have been employed to qualify violence within social relationships marked by gender and their current developments in different instances of the justice system. Based on ethnographic studies conducted at the Women's Police Stations and Special Criminal Courts and the controversies surrounding the Maria da Penha Law, the meanings carried by expressions such as violence against women, marital violence, domestic violence, family violence and gender violence are mapped herein. The central argument is that the transformation of violence into crime leads to semantic and institutional developments that tend to replace the interest in politicizing Justice in the defense of women with the judicialization of family relations.
Keywords: Violence; Gender; Forms of control; Justice system.

The purpose of this paper is to situate some semantic changes in the concept of violence against women, from the early 1980s onward in Brazil. This is an intricate discussion due to the many voices involved, but it is one worth facing. On one hand, it

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provides an understanding of some of the problems involved in the distribution of justice and consolidation of citizenship rights within the contemporary Brazilian society. On the other hand, based on an examination of these changes, it becomes possible to reflect on the effects and limits of the analytical articulations of crime, abuse, and relationships marked by gender differences.

The starting point of this discussion is how social movements have been politically banking on the revision of laws and on the institutions of the criminal justice system as a privileged means of fighting abuse. That reliance assigns a specific character to what is being called the judicialization of social relations. This expression seeks to describe the growing encroachment of the legal system on the organization of social life. In contemporary Western societies, this sort of capillary infiltration of Law does not limit itself to the political sphere, but has reached the regulation of sociability and social practices within spheres traditionally had as strictly private in nature, such as gender relations, treatment of children by their parents, or treatment of parents by their adult children.

Some analysts consider this expansion of Law and its institutions as a threat to citizenship and a dissolution of civic culture, as it tends to replace an ideal democracy of active citizens with an arrangement of jurists who, assuming the position of exclusive depositories of fair judgment, end up usurping the people's sovereignty.[1] The special police stations targeted at defending minorities are, however, a result of demands from social movements, and therefore can be seen as an example against such argument. Rather, they suggest an advance in the equal rights agenda, for they express an intervention of the political sphere able to translate the interests of groups subject to personal dependence into rights.

The history of feminist movements in Brazil is marked by significant achievements in terms of reaching their legal objectives. However, it becomes clear through the debates regarding women's police stations - and, more recently, regarding the "Maria da Penha"[2]

[1] For an analysis of this debate, see Werneck Vianna *et al.* (1999); about the judicialization of marital conflicts, see Rifiotis (2002).

[2] Reference to Federal Law 11,340, sanctioned by the President of Brazil on 8/7/2006 and passed on 9/22/2006. It is known as the "Maria da Penha" Law, a reference created by sectors of the feminist

law - that abuse has been “encapsulated” by criminality and there is a concomitant risk of transforming the defense of women into the defense of family.

Foucault already said that it is not possible to understand the dynamics of relationships of power only through the instruments of Law. This does not mean to say that the juridical universe is not affected by power and interests, despite its purported neutrality. Although we should recognize that the juridical field is one of contention, in which the legal system is constantly updated, it is organized institutionally based on criteria that, while seeking justice for all, tends to eclipse the political dynamics that comprises it.

The battle for the expansion of access to justice therefore entails negotiation. Negotiation among social players with unequal powers in the dispute that formats the rules of the legal system; the emergence of new players striving to formulate demands is an inborn property of the democratic game. Citing Habermas (1994, p.134), those dynamics must be viewed in an increasingly “context-sensitive” way if the legal system is to be updated democratically.

Likewise, the meaning of abuse – which assigns an attribute of damage, aggression and injury to certain actions – is determined historically and depends on the influential power of those who participate in the democratic game. It is therefore vitally important to distinguish between the meaning of abusive processes and that of those processes that criminalize abuse.

Far from aspiring to construct truths or normativities, our purpose in this paper is to understand the dynamics of negotiation within the scope of justice, as well as its limits in catering to the complexity involved in abusive relationships, which have to do with the asymmetries of power between the genders and is implied in the idiosyncrasies that mark contemporary contexts. Without intending to cover issues exhaustively or conclusively, we must acknowledge that the asymmetric dynamics of gender relationships have points in common and similarities with other asymmetries related to the production of differences that are made into inequalities. Gender is not an encapsulated dimension, nor should it be

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movement in honor of Maria da Penha, a victim of domestic violence whose case was significantly neglected by the legal authorities. In 2001, the Inter-American Commission on Human Rights condemned the Brazilian government for such disregard. This is the first law in Brazil addressing domestic and familial violence against women.

seen as such, but it intersects with other dimensions affected by relationships of power, such as class, race and age.

We know that citizenship in Brazil suffers an intricate paradox: our Constitution is one of the most advanced in the world – integrating themes, social segments and rights following an undeniably progressive concept –, a group of government institutions, organizations of civil society and active social movements, and yet we live amid a persistent social inequity in terms of access to justice. According to the current definitions, the State is not comprised merely of the state apparatus (sector and public bureaucracies), but is also and foremost a group of social relations that presents an order to be applied to a specific territory. "That order is not equitable or socially impartial; both in capitalism and in bureaucratic socialism, it sustains and helps to replicate systematically asymmetric relationships of power" (O'Donnell, 1993, p. 125). The legal system is a dimension that implements that order and guarantees that social relations, even asymmetric ones, will follow a course of acquiescence and mutual commitment. There is no effectiveness and guarantee, in the strict and formal sense, regarding the contents of laws and their application. According to O'Donnell,

> [...] citizenship is not exhausted at the limits of the political (which are strictly defined, as per most contemporary literature). Citizenship is involved, for example, when after entering a contractual relationship, a party who believes that it has a legitimate complaint has the choice of appealing to a legally applicable public organization, from which it can expect fair treatment, to intervene and judge the matter at hand (*Ibid*, p. 127).

The Brazilian context has been considered paradoxical, for it mixes democratic and authoritarian characteristics: political rights are respected, but "peasants, slum dwellers, Native Americans, women, etc. are usually not able to obtain fair treatment at court, or obtain rightful services from the State's organizations, or escape police abuse – and a very extensive etc." (*Ibid*, p. 134).[3] That mixture tends to be seen as the result of a type of curtailment of the full exercise of citizenship, which is qualified by such expressions as "contradictory citizenship" (Santos, 1999) or "regulated citizenship" (Santos, 1979).

[3] The very citation used to describe the players excluded from the legal system is contingent. Terms such as "peasants" or "slum dwellers" have lost the political expression they carried until very recently.

Without denying the specificity of the Brazilian situation, we must however acknowledge that it is difficult to find a democratic society nowadays without controversies on how the public institutions should improve their ability to recognize the identity of the minorities of which they are comprised.

The creation of special police stations for the defense of underprivileged minorities *recalls the manner by which universality and particularity are articulated within our country. Those institutions are responses to a group of actions implemented by civil society movements and organizations, in their efforts to fight specific manners of abuse applied to discriminated groups. With practices that target specific segments of the population, the assumption that guides the actions of these organizations is that universality of rights can only be achieved if the fight for the democratization of society includes the particularities of the forms of oppression that characterize the experiences of each different underprivileged group. That movement leads to the creation of several types of police stations that will achieve different levels of impact, such as children's and adolescents' stations, senior citizens' stations and stations targeting crimes of racism. The dilemma faced by the officers of each of those stations is to combine police ethics with the defense of the interests of the minorities they serve. This challenge creates arenas of ethical conflict, assigning a specific dynamics to the day-to-day activities of those stations, demanding a monumental dose of creativity from their officers.*

Violence against women and the political and legal institutions

Without proposing to provide ordered explanations, our purpose is to discuss problems, issues and dilemmas based on our research experience and tracking of ongoing debates. What would be the best way to qualify those relationships? What are the challenges involved in the interchange of such expressions as violence against women (a notion created by the feminist movement as of the 1960s), marital violence (another notion which specifies abuse against women within the context of marital relationships), domestic violence (including manifestations of violence between other members or positions within a household – and which gained visibility in the 1990s), family violence (a notion currently

employed within the scope of legal system engagement and consolidated by the recently passed "Maria da Penha" Law as domestic and family violence against women) or gender violence (a more recent concept, employed by feminists wishing to avoid accusations of essentialism)? The challenge is knowing what is meant by the use of each of those terms, their rentability in analytical terms, and the limitations and paradoxes that they present. On one hand, there is an effort in thinking about how those concepts are being used – and by whom – when it comes to interventions on what is generically called gender violence. On the other, the reflection involves the limits of those concepts and their replacement with the term 'gender violence'. In this case, the question at hand is the validity and interest of this new concept. The concept of gender, especially in studies based on the legal system, was an incisive factor in critical views of victimization, which understands women as passive victims of domination. However, interest in alternative forms of justice cannot take us to the extreme opposite, assuming that those women who are able to take adequate action may easily get rid of discriminatory practices, finding channels by which to restore rights and libertarian practices. From that perspective, we cannot fall into the trap of transforming violence, power and conflicts into problems caused by low confidence and self-esteem of the oppressed, or by their communication shortcomings.

The definition of violence against women in Brazil was prepared in the midst of an innovative political experiment in the 1980s, in which, along with awareness-raising activities, feminist activists attended to abused women in what were called *SOS-Mulher* [SOS-Women] offices.[4] The group of ideas that supported and fleshed out that definition was prepared based on a particular understanding of the oppression suffered by women within the context of Patriarchism – a notion in line with the feminist discussions taking place on an international scope. Gender was not the category employed in that definition, and the meaning of the female condition was articulated with some universalizing assumptions, such as the idea that oppression is a situation shared by women due to the

4 The *SOS-Mulher* office in São Paulo was the first entity in Brazil created by a joint initiative of many feminist groups, in October 1980, for the purpose of attending to abused women. That entity operated for three years, attending to the women through on-call staff, referring them to legal and psychological counseling, and organizing awareness campaigns on the severity of the problem they addressed. For further details, see Pontes (1986) and Gregori (1993).

circumstances of their gender, irrespective of historical or cultural context. One decade later, that interpretation underwent some critical revisions. If we can say that the 1960s were a milestone in the political history of the West – and the changes then promoted had an intense participation in the many libertarian movements of the time (feminism among them) –, then the second half of the 1980s and the 1990s inaugurated new paradigms within the theoretical and academic debates which questioned those theories.[5]

In any case, even with its universal and somewhat essentialist connotation, the feminist movement publicly revealed an approach that placed the conflicts and violence within male-female relationships as resulting from a structure of domination. That interpretation was not present in the rhetoric or in the juridical and judiciary actions applied to crimes of abuse until the promulgation, in 2006, of Law 11,340 ("Maria da Penha").[6] The power inequity issue implied in gender differences, although suggested in the Constitution and in the aforesaid Law, finds immense resistance in the practices and knowledge that affect the application and effectiveness of the laws.

Even if we consider the importance of the creation of women's police stations (WPS, known in Brazil by the acronym DDM – *Delegacia de Defesa da Mulher*) in 1985 to the fight against abuse,[7] we must keep in mind that the legislation addressing those stations

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5 There are countless bibliographical references on this debate, from the many fields involved (architecture, literary theory, philosophy, anthropology), whether regarding the directions taken by the proposals or the critical comments made therein. Some of the most relevant notes in the discussion on the gender issue and the questioning of old epistemes include those found in Scott (1988); de Lauretis (1997); Butler (1990); Moore (1994). For a discussion on the impact of that literature on the studies conducted in Brazil, see Heilborn & Sorj (1999); Gregori (1999); Piscitelli (1997).

6 Prior to this, in 2002, Law 10,455 enabled judges to issue restraining orders against aggressors, forbidding them from approaching the pertinent households in cases of domestic abuse. In 2004, Law 10,886 increased the minimum sentence from three months to one year in cases of bodily injury where the aggressor is a relative or partner of the victim.

7 The first Women's Police Station was created in 1985, by an initiative of the State Council for the Female Condition and the State Secretary of Safety at the time, Michel Temer. Among the available studies on the activities of those stations, special note is given to Ardaillon (1989), Blay & Oliveira (1986), Brandão (1997), Brocksom (2006), Carrara *et al.* (2002), Debert & Gregori (2002), Gurgel do Amaral *et al.* (2001), Machado & Magalhães (1999), Moraes (2006), Muniz (1996), Nelson (1996),

does not mention violence against women. The juridical culture that informed and guided the operation of those stations defined the task of the judiciary police as investigating crimes based on the "principle of legality", according to which there is no crime without a prior law that defines it as such, therefore there is no penalty unless previously established by law (Santos, 1999). The stations operated in accordance with penal typifications and, as we know, violence against women (whether family, domestic or gender violence) did not comprise a legal entity defined by criminal law. What was described as the penal type, thereby implying some classification, depended foremost on the interpretation given by the police officer (and, in concrete cases, the police chief or scrivener) to the complaint presented by the victim. Most of the ethnographic studies performed in the 1980s and 1990s about the services provided in those police stations reveal that due to the absence of guidance on the complexity of the dynamics in which take place the interpersonal conflicts where women are victimized, the classification of cases was usually arbitrary or overly influenced by the personal experiences or opinions of the attending officers.[8] As emphasized by Santos (1999), the officers tended to restrict the feminist notion of violence against women to those crimes and offenses committed within the scope of marital relations in a domestic scenario, with the obvious exception of rape or sexual abuse committed by strangers.

Another important aspect highlighted by the literature specializing on the legal procedures of that period was that all the knowledge available about marital conflicts and which guided the handling of cases was subordinated to the requests made by the complainants. Santos (1999) and Brandão (1999) warned us about this aspect: marital violence with the woman as the victim seems to have been consolidated as the paradigmatic case describing violence against women in general and, later, what was understood as gender violence in general. Indeed, that paradigm did not result from the actions of the police. The assistance provided at the *SOS-Mulher* offices, as well as the data based upon

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Oliveira (2006), Rifiotis (2003), Santos (1999); Soares (1999); Suárez & Bandeira (1999); Taube (2002).

8 The research that we coordinated in 2002 showed a very large uniformity in the typification of crimes, despite the differences between the studied WPSs. The large majority of the events presented to all the women's police stations in the country are typified as "slight bodily injury" or "threat".

which the researchers prepared their analyses, ended up being oriented by the predominant demands of the complainants. Most cases were presented by women of a specific social stratum and referred to their relationships with husbands or partners within a domestic context. Paradoxical and limiting: the object was gradually defined based on information provided during the immediate appeal. Moreover, there was no institutional support for cases such as sexual violence within marital relationships, sexual harassment, sexual discrimination, or even psychological violence.

Another consequence of the absence of a finer reflection on the phenomenon refers to the monumental task which feminists expected the WPSs to perform. Their difficult-to-achieve expectation was that those police instruments would not only play an active role in cohibiting and punishing abuse and aggression, but also an educational role in teaching and enabling the exercise of civic virtues. The fact is that the fulfillment of their appeals did not alter the scope of the victims' representations, in the sense of a higher awareness of their rights. The ethnographic studies showed that the women assisted by the WPSs described their conflicts without ever mentioning violence.[9] In most cases, they referred to their husbands' "pranks" or "rude behavior" as excessive and inacceptable, but never acknowledging the effects of those attitudes in terms of expecting their relationships to assume a more equitable basis. Gregori (1993) suggested that without actions able to obliterate the "rationale of complaint", there is a risk of encouraging victimization, making it more difficult for the social players engaged in the conflicts to problematize the deeper motivations involved therein in a more compelling manner, such as the women's position as rights-bearing subjects.[10] Likewise, Debert *et al*. (2006) showed that from the police

9 This aspect was also present in the stories of the women who sought out the *SOS-Mulher* offices, analyzed in a previous study (Gregori, 1993).

10 One of the aspects that called Gregori's attention is the fact that these statements were worded in the form of a complaint: a type of narrative that tends to reduce situations of conflict and abuse seen in the daily lives of gender relationships by creating a static polarization of victim and abuser. The unexpected paradoxes and effects of this type of discursive construction are highlighted: these complaints did not so much pursue an investigation, followed by due punishment of the parties responsible for the abuse, as place the complainants in a position not very conducive to emancipation, for it tended to reiterate the position of women as victims (Gregori, 1993, pp. 185-186).

corporation's perspective, a displacement of gender violence into domestic violence can also be observed.

In 1996, a new law (Decree 40,693/96) in the state of São Paulo expanded the jurisdiction of these specialized police stations, also enabling them to investigate crimes against children and adolescents. With the support of the advisors in charge of WPS coordination and signed by governor Mario Covas, that expansion aimed to expand the scope of assistance in order to also provide coverage for crimes committed within families. The underlying argument for that decision was an attempt to delimitate the scopes of police assistance, leaving family violence to the WPSs (not just violence against women) and charging the common police districts with other crimes, associated with urban violence.

This expansion of the assigned attributions of the WPSs, where focus ceases to be on the rights of women and turns toward domestic violence in general, tends to be defended when it comes to strictly juridical arguments. In the words of a WPS police chief:

> *In the field of Law, when we investigate a fact, we investigate the fact completely. Forget about women's issues. [...] I investigate crimes of homicide and the crimes connected to them, everything that happened. Whether the case involves the killing of one person, 2 people, 3 people, attempted homicide, bodily injury, it's all inserted in a context. It's a police inquiry, a judgment that will judge everyone involved. When a women's police station is created to investigate crimes committed specifically against female victims, the following happens: I have in a same household the abused woman, the abused son, the abused grandfather, the sexually abused daughter, but I can only touch those crimes where the woman is the victim. I can even touch those crimes where the child involved is a girl. But the male child, the son, ends up being left to the common police district – the same fact is investigated by 2 different districts. Conclusion – the victim has to render her statement at my station, at the district station, at court. We split up a fact which, legally speaking, should not be investigated in such a way. With that, we compromise the evidence. And the district police used to handle such investigations very badly when it came to children; they created opportunities for the aggressor's acquittal. So we wanted the Women's Police Stations to be renamed, if possible, to something like Family Crimes Investigation Office, a more general designation. But that would be difficult because the Representative at Congress – Rose – won't relinquish the current one; [...] so it stays Women's Police Station, but its jurisdiction has been expanded to children and adolescents, regardless of sex, who are victims of domestic violence. We don't assist any child or adolescent victim of any type of crime. We only assist those victimized within the family environment, because it's a*

single fact and the type of assistance is different. So that was the goal and its results were positive, for the number of convictions increased a lot and inquiries were initiated [...].[11]

It is necessary, however, to acknowledge the political effect of domestic violence. Bodily injuries, attempted homicides and homicides committed by husbands or partners are, without a doubt, the most dramatic and compelling expressions of the oppression to which women are subjected and of the importance of institutions targeting the pursuit of punitive measures or implementation of victim protection procedures. The available data on domestic violence have led authors such as Luiz Eduardo Soares *et al.* (1996) and Saffioti (2001), to consider that the home is the environment where women and children are most at risk.[12]

The idea that violence against women is not reduced to wife-beating is a basic principle in the discourse of feminists who have spoken both for and against the creation of Women's Police Stations. But that is the manifestation that mobilizes the greatest indignation and, therefore, despite the activists' endeavor to prevent the reduction of all problems to the dimension of family, domestic violence is used as an expression that encompasses all grievances of Brazilian society and is synonymized with violence against women, child abuse, or even violence against the elderly.

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11 Interview granted to Debert & Brockson in 2002.

[12] The data on criminality reinforce this image. In the supplement on victimization issued with the National Survey by Domicile Sampling (PNAD) in 1988, se see that 55% of abused women in the Southeast region of Brazil had been attacked in their own homes, and 45% in public places. Relatives and acquaintances were responsible for 62.29% of violent attacks (33.05% by relatives and 29.24% by acquaintances). Among aggressions committed by relatives, 86.80% of the cases took place at home. The police reports filed in 1991 in the state of Rio de Janeiro showed that 67% of child homicides (ages zero to eleven) were perpetrated by a family member (Soares *et al*., 1993). The National Movement for Human Rights researched all child and adolescent homicides covered by newspapers in fourteen Brazilian states, from January to December 1997 (three states in the North, six in the Northeast, two in the Central West, two in the Southeast and one in the South) and concluded that 34.4% of all child homicides were committed by relatives (parents, grandparents, uncles or siblings) and 4.6% by neighbors or friends. The author of the crime was unknown in 55.3% of cases, and 44.3% of the investigated crimes took place at the children's own homes (Daniela Falcão, *Folha de São Paulo*, 7/23/1998, p. 3.3).

That semantic displacement causes undesirable effects when we think of the available records on the fight against gender violence. The feminist demands – incorporated by the public power in the form of WPSs – were based on the assumption that there is a particular type of violence based on the asymmetries of power ingrained in certain social relationships, those that are marked by gender and are not restricted to family violence.

On the other hand, and this can be perceived in the words of many officers and players connected to the special police stations, the expansion of attributions of those stations is an attempt to expand the protection of family, using an approach which is still far removed, however, from the feminist view on the role of gender asymmetries in family configurations. The matter at hand is not demanding that judiciary institutions share in the feminist ideals, but rather having them regard women seriously as subjects of rights. It is thus relevant that we keep in mind this displacement in the object of intervention and think about its consequences. The organization of actions aiming to eliminate gender violence entails the drafting of alternative concepts of family. Beyond correcting the excesses, the abuses committed by family heads – which seemed to be the stated intent in the decree from 1996 –, eradicating this type of violence involves tackling the inequities of power within families and making it inadmissible to undertake any action that would harm the fundamental rights of those involved.

What is concretely seen in the assistance provided by the WPSs – as shown by the ethnographic studies and confirmed by our research (Debert & Gregori, 2002; Debert *et al*., 2006) – is a tendency to treat family violence as a dysfunction originated within unstructured or poorly educated families, or even originated from traditional cultural backgrounds. Brandão (1999), Soares (1999, 2002) and Izumino (2003) suggest that the WPSs began to offer symbolic resources for women who seek to negotiate their family relationships by means of a filed complaint.

It is therefore important to expand the scope of reflection on what is desired or what is understood about the eradication of family violence, violence against women, domestic violence, or even gender violence. For if the truth is that negotiating in this manner implies that women are fighting for what they consider to be their rights, the assisted women may still be acting or operating under notions of right that are distant from ideal citizenship. The Judiciary power, on the other hand, is not being provided with clearer definitions or

diagnoses on the different dynamics that surround those scenarios of abuse, thus ending up constrained by the immediate demands of the complainants and unable to institute new parameters, new procedures or new practices that would effectively inhibit the occurrence of those crimes.

From the defense of women to the defense of family

The Special Criminal Courts (SCCs, known in Brazil by the designation of Jecrims – *Juizados Especiais Criminais*) were created by Law 9009 of 1995 and brought a radical change to the dynamics of Women's Police Stations and the way in which the cases recorded therein were handled. The core objectives of the aforesaid law are to expand the population's access to Justice and to promote quick and effective application of Law, simplifying the procedures in an attempt to quicken the progress of filed proceedings.[13] Guided by the search for conciliation, SCCs judge contraventions and crimes considered to be less offensive, whose maximum penalty does not exceed two years of imprisonment. Here, the principles of informality and procedural parsimony dismiss the need for a police inquiry; the police report has been replaced with a "circumstantiated term", reporting the facts and identifying the parties, which can be quickly submitted to the Court.

The effect of this law on women's police stations was extraordinary, especially because most of the cases presented to them are typified as crimes considered to be less offensive (bodily injuries and threats) and, as such, they fall under the jurisdiction of the new courts. In an investigation of 1,036 preliminary hearing proceedings at the Itaquera SCC in São Paulo conducted in 2002, we ascertained that 76.6% of the victims were female, among which 80% were women who had suffered bodily injury and threats from their husbands or partners. The recently published studies have called attention to this "feminization" of the complainants attended to by the special courts and, in particular, to

[13] For social science research on the SCCs, see, especially, Amorin (2003), Azevedo (2000 and 2001), Beraldo de Oliveira (2006), Burgos (2001), Campos (2002 and 2003) Cardoso, (1996), Cunha, (2001), Debert and Beraldo de Oliveira (2007), Faisting, (1999), Kant de Lima *et al*. (2001 and 2003), Sadek (2001) and Werneck Vianna *et al*. (1999); about similar courts in the United States, see Cardoso Oliveira (1989).

the high prevalence of cases pertaining to fights and aggressions within couples in a domestic scenario. The study revealed that this configuration results from an expressive number of "circumstantiated terms" submitted to the special courts by the WPSs. Therefore, what was verified was a diversion of demand from the WPSs to the SCCs.

Law 9099 and the SCCs not only modified the dynamics of women's police stations, they also showed how the demand for those institutions ended up surprising their own proposers. Created to take over a parcel of the criminal proceedings submitted to the common courts, the SCCs began to account for another type of violation, which previously was not presented to any court at all.

One of the controversial points from the perspective of feminist movements is the fact that Law 9099 establishes that in crimes of threat or light or involuntary bodily injury, representation of the offended party is required, which is not the case of other types of crime, such as illegal possession of weapons or driving without a license. That condition complicates the investigation and solution of gender violence, as expressed by Dr. Maria Berenice Dias, chief judge of the Rio Grande do Sul Court of Justice, in the following terms:

> [...] due attention was not given to the fact that upon creating the special courts, Law 9099/95 made the offended party's representation a condition for judgment of light and involuntary bodily injury. With that, the State shirked its obligation to act, transferring to the victim the responsibility of seeking her aggressor's punishment, following a criterion of mere convenience. Why, when it comes to domestic crimes, such delegation of responsibility practically inhibits the progress of a proceeding when the aggressor is the victim's husband or partner. On the other hand, when there is some type of bond between the victim and her aggressor, the rate of acquittal is high under the justification that family harmony should be pursued, seemingly assigning lesser harmfulness to crimes of a domestic nature. It can almost be said that such crimes became invisible. But all that is still not enough to show that Justice maintains a discriminatory and prejudiced view when the victim is a woman (*Zero Hora*, 21/7/2001, p.3).

One of the most compelling criticisms targeting women's police stations referred to the high number of police reports that were not transformed into accusations submitted to the Public Prosecution Office and, therefore, to the fact that ultimately the victims still had

low access to Justice. But with the creation of the SCCs, filed incidents such as light bodily injury and threat, which are the majority of cases, have been quickly submitted to court and the parties are often summoned to appear before the Judge in less than a week.

The women's station officers have differing opinions on this change. On one hand, it was considered that the law brought no significant change to the process, but only a quickening in terms of, in the words of a police chief, "alleviating the load of police reports piled up at the station". On the other hand, some police chiefs lamented the fact that the law restricted the police's power of enforcement, thereby distorting the very purpose of the WPSs. One of the procedures defined by the law was the authorization of alternative sentences involving community service; payment of a basic food basket is the most frequent sentence in cases of domestic violence and aggressions by neighbors and relatives. Beraldo de Oliveira (2006) clearly shows that the process of informalization of judicial procedures, which aimed to maximize efficiency and expand access to Justice, ended up producing an effect of rendering the pertinent crimes invisible. Based on several episodes described ethnographically, as well as statements by the police officers involved, the author affirms that a new institutionality was created, whose results indicate a persistent attempt to remove the crimes that victimize women from the scope of penal law. Observation of the assistance provided prior to preliminary hearings revealed insistent suggestions for the women to desist from representation and await the end of the statutory limitation period.[14] Beyond this, as shown by Debert & Beraldo de Oliveira, a much greater displacement than would initially be imagined is actually involved in the procedural flow from the WPSs to the courts:

> Instead of a rights-bearing subject, the victim is seen as a wife or partner; likewise, the aggressor is seen as a husband or partner. The crime is transformed into a social problem or a moral deficit of the parties involved, which, in the view of justice, can be easily corrected by mere explanation and, in the most difficult cases, can be compensated for with a minor punishment. The rationale that guides conciliatory processes in the courts produces a quick,

14 These attempts were apparently successful, as indicated by the study performed at the Itaquera SCC, revealing that 36.4% of cases pertinent to domestic crime where the victim was a woman reached extinction of punishability and 40% were waiting out the statutory limitation period. These data were collected in 2002.

> simple, informal and cost-effective solution for cases which should not be taking up space in the legal system, nor the time of its agents (2007, pp. 330-331).

Different moral and juridical economies are at stake at those institutions. Centered on the problem of "violence against women", the stations were created to account for a demand by rights-bearing subjects, and its officers are capable of indignation when a woman chooses to relinquish those rights. At the special courts, on the other hand, although the judges "have a greater symbolic power than the WPS police chiefs, they are not educated or prepared to deal with the issue of "violence against women", not is that expected of them" (*Ibid*, p. 331).

Indignation at the way in which domestic violence was treated and the view that these crimes deserved special treatment led the feminist movements to revindicate changes that would lead to the promulgation of the "Maria da Penha" Law. As described in Article 1, the Law "addresses the creation of Domestic and Family Violence Against Women Courts and establishes assistance and protection measures for women found in situations of domestic or family violence".

Reflecting on the changes that took place throughout the twenty years of existence of the WPSs is to observe a two-sided process. On one hand, violence within couples – which was previously treated simply as a domestic problem - was transformed into a public issue, for the women's police stations had an important impact in clearly showing that such aggressions were crimes. On the other hand, with the creation of the Special Criminal Courts, we saw the opposite take place, namely the privatization of these crimes. Those courts tend to see this type of criminality as a lesser matter that should be resolved at home or with the help of psychologists or social workers, so as to refrain from getting in the way of court business. Furthermore, it is left to the victims to decide whether the aggressions or threats suffered by them should be treated as crimes.

The "Maria da Penha" Law was created precisely for the purpose of reversing this situation. It is still too early to evaluate its impact, and making any generalizations would be precipitated, given the differences that mark the country and the manner of operation of the legal system's different instances according to each context. However, the tone imparted by this new legal instrument – "domestic and family violence against women" – suggests that the law targets exclusively what has been seen as the demands presented at

the special police stations. Sexual violence within marriage or sexual harassment find no institutional support, given that gender violence is subsumed into domestic and family issues.

However, the nature of the criticism made of this law, especially that made by purported progressionists and defenders of human rights, is impressive for their defense of family and for how they feed the illusions of freedom of choice.

In a paper entitled "*Violência de gênero*: *o paradoxal entusiasmo pelo rigor penal*" [Gender violence: the paradoxical enthusiasm for penal rigor], judge-at-law Maria Lúcia Karan criticizes the "Maria da Penha" Law in the following terms:

The handling of gender violence, the overcoming of remaining traces of patriarchism, the end of this or any other type of discrimination, will not always be achieved through the misleading, painful and harmful intervention of the penal system [...]. This painful and damaging misunderstanding has a long history. For a long time now, feminist movements – among other social movements – have been making themselves co-responsible for the currently disproportionate expansion of punitive power. Seeking intervention from the penal system as a purported solution for all problems has contributed decisively to the legitimation of the greater penal rigor which has marked legislations worldwide starting in the final decades of the 20th century and is accompanied by a systematic violation of principles and norms couched in the universal declarations of rights and in the democratic Constitutions [...]: The restriction and suspension of rights to visit children violates children's and adolescents' fundamental right to family life [...]. When one insists on accusing a woman's partner of committing a crime and threatens him with punishment against the woman's will, one is subtracting from that woman, formally treated as the offended party, the right and will to freely have relations with her chosen partner. This means denying her fundamental right to freedom, treating her like an inanimate object, subject to the wishes of State agents who, by inferiorizing and victimizing her, presume to know what is best for her, intending to punish the man with whom she wishes to have a relationship – and her choice must be respected, regardless of whether her chosen partner is an "aggressor" – or, at least, whom she does not wish to be punished (2007, pp. 10-11).

It is not without grounds that, based upon such opinions, Carmem Hein de Campos vehemently affirms that "critical penal thinking in Brazil is, for the most part, misogynous" (2007, p.1).

Women's defense is reduced to a naive celebration of freedom of choice and of the value of family, and, in these terms, the hierarchies to which women were subjected are reestablished when the defense of family dictates the main focus of decisions made by legal system agents.[15]

This reinstatement of family as the privileged institution to guarantee good societal conduct has been gaining strength, a very worrisome fact where the issue of gender, justice and democracy is concerned.[16] The manner in which family defense meshes with the illusions of freedom of choice is worth discussing.

From victimization to the rule of choice

In Brazil, a large part of the feminist movement has rightly criticized the victimization of women, who were presented as passive subjects of violence from men, from the beauty industry, from the justice system, from the media, and other instances of social life. That criticism was fundamental because it demanded, on one side, that attentions

15 Regarding family and penal justice, see especially Corrêa (1981 and 1983), Ardaillon & Debert (1987), Grossi (1998) and Teixeira (2004).

16 Several authors have shown that in the 1980s and early 1990s, the Western European countries saw the emergence of a new moral agenda questioning dependency on the State. Concern with the financial costs of social policies led to a new emphasis on family and the community as agents able to resolve a series of social problems. A different perspective than that which characterized the role of family in previous agendas entered the scene. According to Simon Biggs (1996), after World War II, the ideologies and practices of the Welfare State bore a paternalism which hampered possible questions on the soundness of family as a privileged environment for the care of its members. That paternalism was shaken in the 1970s by awareness movements on violence against women and children. In the current agenda, the duties and obligations of family have been redefined. In Brazil, the public policies targeting the poorer segments of the population have updated the roles of family members, as can be seen in the country's minimum income or educational aid policies. Regarding this view, they are in line with the treatment of family violence applied by the SCCs.

be turned to the forms of female agency, emphasizing their ability to resist oppressive arrangements in different contexts. On the other hand, it demanded that the authors focus on the specific forms assumed by domination in particular contexts. However, the alternative discourse that is gaining increasingly more space within gender studies, especially those studies about the justice system, tends ultimately to consider that women who are able to put forth the adequate attitudes can rid themselves from discriminatory practices, thereby finding means to restore libertarian rights and practices and finding channels of "empowerment".[17] Thus, the opposite extreme is reached: the view of women as mere objects of a system of male domination is replaced by the notion that individual trajectories are always flexible, social and economic constraints are of little matter, and inequities can be easily neutralized. One then begins to chime in with those highly celebrated self-help manuals and media programs that claim that will and disposition are all that is needed to guarantee success. Furthermore, violence, power and conflict are transfigured into problems of low confidence or self-esteem by the oppressed, or into marital communication difficulties. A good society is one where there is dialog based on democratic and Christian values; the possibility of dialog is the necessary and sufficient condition for a fair and equitable society. That is the tone that, as we have previously seen, has been marking the discourse of critics of the "Maria da Penha" Law, especially defenders of penal abolitionism. Celmer and Azevedo put forth the following considerations about the aforementioned law:

Nonpenal measures for the protection of women in situations of violence [...] have been shown to be a much more sensible way make the aggressions cease and, at the same time, are less stigmatizing to the aggressor. [...] Certainly, it would be most adequate to handle this type of conflict outside of the penal system, radicalizing the application of mediation mechanisms conducted by duly trained personnel with the supervision of lawyers, psychologists and social workers. [...] Instead of moving forward and developing alternative mechanisms for conflict management, we will once again appeal to the myth of

17 The term *empowerment* is used mainly by social movement activists, to designate the transformation of their target public into rights-bearing subjects, able to reverse the oppression and submission of which they are victims.

penal tutelage, which is in itself a manifestation of the same culture that we intend to combat. [...] [by excluding] the women's participation in the discussion of the problems, a satisfactory solution for such conflicts is not possible (2007, pp. 16-17).

Some analysts of the forms of power and control have suggested that we are living in a radically different time, which translates into the use of new expressions such as "post-disciplinary societies", "electronic panopticon", "risk society" or "actuarial justice". Others consider that there has been a complexification of the forms of control, but this does not exactly mean such a radical change.

Something that certainly deserves careful assessment, as shown by Nicholas Rose (2000), is how the contemporary discourse on crime control combines apparently incompatible forms of characterization of the problems at hand and the ways to resolve them. Proposals that stress the need for individuals and communities to take greater responsibility for their own safety coexist with arguments defending "zero tolerance". Revindications of the death penalty coexist with proposals that focus on the relationship between aggressor and victim and seek forms of mediation and reconciliation. Interest in community-based forms of control is gaining increasing importance with the proposal of fines and community service (as in the case of the SCCs), but, at the same time, we are seeing an increase in the incarcerated population.

Rose, however, attempts to stress that these apparently contradictory proposals and assessment follow a same strategic rationale. Inspired by Foucault, the author shows that crime control programs have always had stronger ties to moral issues than to fighting crime, *per se* – concerns regarding crime and illegality have long been an object of institutions and practices that are not an integral part of the criminal justice system. On one hand, his purpose is to call attention to the current conceptions of a perpetrator of crime and, on the other, to the redefinition operated at the different instances of the State, which characterize "advanced liberalism". Despite the diversity of current conceptions, the contemporary views on the perpetrator of crime is not one of the juridical subject of the rule of law, nor that of the bio-psychological subject of positivist criminology, but of the responsible subject of moral community guided--or misguided--by ethical self-steering

mechanisms and therefore lacking therapeutic rehabilitation in order to exercise control over himself.

Likewise, the tendency of national governments is to no longer aspire to be the main providers of safety and security. Rather, the State should be a partner, an encourager and a facilitator not only for private safety and security agencies, but also for a diversified range of agents and authorities in charge of such therapeutic rehabilitation. A group of new technologies is invented aiming to promote government at a distance, which Rose calls the "technologies of freedom".

All individuals must be prudently responsible for their own destinies, actively calculating the future and providing for their own safety and that of their families, with the assistance of a plurality of independent experts who specialize in what Rose calls *ethopolitics* – politics that seek to regenerate and reactivate ethical values which are currently believed to regulate individual conduct and help maintain order and observance of law, binding individuals to shared standards and values, such as honor, shame, duty, trust, faithfulness and commitment to others.

The courts are no longer responsible for guaranteeing the citizens' safety. Protection from risk involves investments in measures that are able to operate a moral reform and an ethical reconstruction of people involved in crime. This makes room for a broad spectrum of psychological techniques recycled into programs to govern the excluded, acting together with judges in order to improve the application of conflict mediation mechanisms. In these programs, the central assumption is ethical choice, the experts' target is the relationship established by the individual with him or herself, and the work to be done in association with them is to prepare the individual to become free.

In a study about the meanings of the language of "empowerment", Barbara Cruikshank (1994) analyzes the new technologies of *self* that characterize the programs implemented in the U.S. and which claim to be innovative, showing how they redesign the relationship between public and private. Self-esteem or lack thereof is considered to be the source of a diverse range of social problems. According to the author, the movements for self-esteem are not limited to the individual scope, but rather target a new policy and a new social order. They announce a revolution, not against capitalism or sexism, but against the incorrect forms of self-governance. From that point of view, the angle of political and

social intervention is modified. It is not structural factors such as unemployment, alcoholism and criminality that must be resolved – an assumption of the welfare state –, but rather subjective individual categories such as self-esteem and self-respect, in order to guarantee empowerment.

Hence, exclusion becomes fundamentally a subjective condition, related to the manner in which people conduct their own lives. Autonomy begins to be understood as the ability to accept responsibility and acknowledge the personal form of collusion which keeps a person from being what he or she truly is. “Empowerment” produces an active individual in the rule of choice, where each must do the work him or herself, not due to conformity, but as a condition to become free.

It is well-known that prison is not a place of re-socialization and future social reintegration, but rather a storeroom of bodies in which the only investments made are those seeking to reduce the possibility of escape and impart rigorous punishment by increasingly lengthening the sentences.

However, the alternative to penal law cannot be the moral rearmament that specialists are proposing, aiming to impose what the American anthropologist Laura Nader (1994) calls “coercive harmony”. In a similar movement to the one taking place in the United States, the SCCs indicate that we are shifting from a pursuit of justice to a pursuit of harmony and efficiency; from a pursuit of the ethics of right and wrong to a pursuit of treatment. A court-focused justice model, whose rationale is to have winners and losers, tends to be replaced with another, where accord and reconciliation design a new context in which there are only winners. The goal at hand is no longer avoiding the causes of discord, but rather the manifestations thereof. The virtues of alternative mechanisms governed by the ideology of harmony are celebrated, creating a context of aversion to the law and giving higher value to consensus. According to Nader, considering harmony as something benign is a powerful form of social and political control. The wrongful party who acts in defiance of the law is always the most interested in a conciliatory solution.

In the case of aggression within couples or generations of a family, the issue is much more complicated still, for it merges with the hypocritical defense of family. Family in this case is not viewed as a patriarchal family, or a family representing a realm of

protection and affection, but family as the only solution for the citizen that failed, who is poor and unable to enforce his or her acquired rights (Debert, 2001).

The importance of relational perspective in the handling of violence

The problematic aspects of the “Maria da Penha” Law’s formulation have been sufficiently explored. We must now highlight that the definition, in law, of certain committed abuses as “domestic violence” involves a difficult to handle paradox: the inequity of power that characterizes the relationships between the victims and their aggressors does not manifest itself solely within the spheres of domestic life, nor just in the positions occupied by men and women within a family group. Beyond this, the deepest problem of this law appears to be the confusion of violence with crime, or trying to subsume the phenomenon.

No matter how well-intended the social players involved in the law’s formulation and the undeniable political importance of trying to resolve the "invisibilization" and banality with which the SCCs treat conflicts of this nature, one must question the limits of the judiciary sphere in the observed context, in terms of attenuating, compensating, providing justice for those who suffer abuse on behalf of the preservation of normativities applicable to gender configurations.

Without the intent of offering concrete alternatives, but aiming to expand the debate, especially within the scope of analysis, we propose a strategic distinction between crime and violence. Crime implies the typification of violence, the definition of the circumstances involved in the conflicts and resolution thereof by juridical means. Violence, a term which is open to theoretical contention and to disputes about its meaning, implies the social (not just legal) acknowledgment that certain acts comprise violence, which requires deciphering the conflictive dynamics that involve interactive processes wherein the people involved hold positions of unequal power. Violences evoke a relational dimension that, according to Foucault, is far from being resolved by the juridical sphere, for regardless of the legal system’s objective of providing justice for all, it creates, produces and reproduces inequalities. Given that consideration, we are not assuming that Justice and its legal and institutional scope do not provide important instruments to organize and define

standards of compensation, thereby providing a solution. It is also a relevant arena of political disputes.

We are calling attention not only to the fact that equality before the law was never fully achieved by any nation, but also to the fact that the very definition of equality and access to justice is open to dispute and to the differences in power among social players. Foucault also suggests that the devices which conform the regimens of power in societies such as ours are organized in such a manner as to conceal their workings and cloak the way in which they "permeate" the social body. The idea of an equitable justice based on universal principles or values actually conceals the inequities that Justice produces, the circumstances and people it excludes, and what it never even considers. It would be fanciful to imagine the existence of a sphere within society that can act with neutrality, no matter how good the intentions or how exemplary the procedures. It would be important to highlight that more than a fantasy, the idea of justice for all is a chimera, something that should be achieved, correcting its imperfections, whose result is the difficulty in understanding or even deciphering the mechanisms that make relationships of violence complex and intricate.

Examining the articulations between violence and gender enables us to advance in the analysis of the dynamics that configure the positions, negotiations and abuses of power involved in social relationships, creating a vigorous field in which to challenge the difficulties implied. In a critical discussion about the specialized literature on the theme concerning Brazil in the 1980s, Gregori (1993) observes that in the several studies of that period, there was a prevailing tendency to feed, or even reproduce, the asymmetric mesh which made up relationships afflicted by violence. Her critique aimed to raise awareness of the "victimizing" effect of a series of explanatory and descriptive "conventions" present in the political and academic treatment of violence against women: situations where women were the direct victims were given greater emphasis, whereas other manifestations of violence (against children, between women, or against male partners) were seen as acts of resistance, reaction and reproduction of behavioral standards internalized by the women based on rules reiterated by custom and tradition. Indeed, women appeared as passive beings, victimized by a situation already established by the structure of domination.

Violent relationships were described as the typical situation, based on the majority of data available about the agents' profiles and their own relationships – thus, no analysis was made of variations in socioeconomic, ethnical, or age-related factors, nor of variations in a family's life cycle, number of children, etc. Moreover, the narrative construction of these typical relationships was made up of the following stages: all of the gestures of abuse described included disrespect and humiliation, necessarily followed by beating and finally murder. Such gestures were presented in a crescendo, in a sort of evolution of the events leading to death. Men act; women feel, reaffirming a kind of emotional passivity encased by fear, shame and guilt.

Another favored conception in the analyses in question is the idea that violence occurs as a manifestation of men against women, without interpreting that the social hierarchies engaged in these violent relationships are inserted in a game of interactions between a set of attributes relative to masculinity, femininity and the different significations associated with each of those terms. Indeed, sex is associated with gender, constructing rigid opposing pairs. Between the poles – men and women – there are contrast and conflict. The experiences shared between them were conceived and explained based on the idea of an ideological system, named male chauvinism, and, in this case, an idea of ideology as falsification.

In *Cenas e queixas* [Scenes and complaints], Gregori pinpointed the immense limitations of a view which emphasizes the problem at hand only based on explanatory conventions that reaffirm, instead of question, the dualism between the victim and her aggressor, or even reduce the woman's representations to a dichotomy of traditional *vs.* modern. Such dichotomies are no good as analytical instruments because they assume a coherence with each term of the opposition, which does not actually exist in the dynamics that comprise the representations and the social relations.

This critical perspective is in line with the debate proposed by some theorists of contemporary feminism, who question precisely the monolithic conception of violence and analyze the articulations between gender and violence. The most recent literature has been trying to overcome a certain diffused "neutrality" when it comes to the problem of gender

differences.[18] These authors are positioning themselves against any rhetoric that does not treat violence as something *en-gendered* (in other words, characterized by sex and gender asymmetry).[19] The conceptualization of gender that we use as a reference for this paper is the one proposed by Judith Butler (2004), for we believe it to be the most vigorous in its interface with violence. Butler treats the concept in Foucaultian terms: the regulations of gender are organized into an apparatus of power through which the production and normatization of male and female are achieved based on several factors, such as hormones or chromosomes.[20] This is an apparatus which institutes constraints, but does not lead to a definitive stability. It should therefore be seen as a group of devices that creates inequities

18 For an analysis of this trend in contemporary literature, see Gordon & Breins (1983). Henrietta Moore (1994) builds her approach on abuse based on a concept discussed by psychology, according to which what leads an individual to assume an identitary position has to do with the level of investment that was engaged. That level is conceived in a process wherein the individual counterposes his or her emotional commitments with his or her interests. Abuse takes place due to an inability to sustain an identitary position regarding gender, which results in a real or imaginary self-image and/or public image crisis. It may also be an effect of the contradictions created by exposure to multiple positions. According to the author, many cases of abuse result from an inability to control another's sexual behavior – a behavior which threatens self-image and hampers social assessments of another. The problem with this type of argument is the difficulty in discerning the moment when frustrations due to self-image – certainly numerous in the biographical dynamics of each individual – appear, thereby leading to acts of violence. Another weak spot is the fact that this analysis focuses excessively on the dynamics of an individual, and not – as we believe – on the relationships established by individuals. Those are relationships which, most of the time, involve an asymmetry of power.

19 There is an extensive controversy on the intricate associations between sex and gender and their conceptual implications. The concept of gender was formulated by Robert Stoler in the 1970s as the cultural framework (variable and unessentialized) that applies to differences between the sexes, but in the 1980s, the polarity of sex – and something associated with the body in its biological sense – and gender – as the culture's active, creative force – began to be questioned. Both Lauretis and Moore share in the criticism produced from the 1980s onward, such that when they refer to the concept of gender, they assume a nonpolarized association with the concept of sex. For explanations on this discussion, see Scott (1988), Butler (1990), Heiborn & Sorj (1999), Gregori (1999) and Piscitelli (1997).

20 It is important to clarify that such normatizations correspond to a group of arrangements by which the biological raw material of sex and procreation is modeled by human intervention.

of power and, at the same time, is open to transformation. As Butler well states, gender is improvisation within a scenario of constraints. Moreover, there is no risk of incurring the modern temptations that lead to substantivism and essentialism: no one is the sole determinant of gender, it implies a relationship, a sociality.[21]

This line of violence studies does not focus the issue only in the prefiguration of individual behaviors, but rather it discusses and problematizes the expansion of the concept of violence toward the aspects that comprise social practice, following the same tendency as the post-structuralist studies influenced by Foucault. However, these new theories criticize the generalist way in which the philosopher treats the asymmetries and inequities of power involved in the differences between sexes. According to Butler (2004), Foucault views gender as only one among many norms of a broader operation that is the regulation of power. According to the author, the regulatory apparatus which governs gender creates its own "disciplinary" regime. However, this consideration must not lead our rationale into the pitfall of constructing an isolating barrier between gender and other markers of difference (such as class, race, ethnicity, age, etc), which are also drivers of inequity. These intricate regulatory operations are worth analyzing using a methodological procedure which aims to establish intersectionalities among the several drivers and markers.[22]

Another author who maintains a critical view of Foucault is Teresa de Lauretis (1997).[23] She specifically discusses his conception of violence (and, in particular, its relation with disciplinary power and with the technologies of sexuality), which does not consider the asymmetry found in a relationship of power where one of the poles is in an inequitable position. In effect, what matters in this case is the inequity found in the relationship between female and male, for the representations and practices position the genders on different "empirical supports". This means that, ultimately, men can also be violated and have their bodies treated as female. In this sense, it is not sufficient to approach the theme of violence as if it were something pertaining to a couple, diverting

[21] The gender apparatus does not act upon an individual as a pre-existing subject, but acts and forms such a subject (Butler, 2004, p.42).

[22] For a consistent theorization of the associations among gender, class and race under the perspective of intersectionality, see Brah (1996).

[23] See also the work by Elisabeth Brofen (1992).

one's eyes from the relations of power between the parties involved. Lauretis is right to affirm that Foucault is guilty of conducting a circular analysis which results in a neutralizing political position. The author bases herself on the ideas presented in the book *The History of Sexuality I – The will to knowledge (Foucault, 1976)* and, in particular, on its argument on the power of the State to normatize people's love lives. By starting out with the notion that sexuality is produced discursively (institutionally) by power and that power is produced institutionally (discursively) by the technologies involved in sexuality, Foucault leaves no room for the application or concrete formulation of a counter-discourse or a counter-view. To illustrate the paradoxical effect of this overall notion, Lauretis recalls Foucault's view on rape: according to the author, in order to neutralize the State's power over sexuality, it would be better if women treated the subject as an act of aggression, and not as an act of sexual violence. The approach proposed by Lauretis goes in the opposite direction, indicating the relevance of viewing rape based on the notion of gender technology, or, more precisely, understanding the techniques and strategies by which gender is construed and based upon which violence is *en-gendered*.

Some of those propositions make the connections between the concepts of violence and gender more complex, for their suggest that the identities of those involved in a relationship of violence are created within an inexhaustible movement of mirroring and contrasts. There is no generic or essential category that imposes, *a priori*, the outlines or profiles of such identities. As considered by Lauretis, it must be emphasized that the dynamics of these relations are ridden with inequities and asymmetries which lead, among other things, to violence.

In order to think of the paradoxes involved in violent relationships, in an approach which does not abandon the concrete and experiential dynamics in which they are enveloped, we adopted that perspective which believes in the coexistence of many focuses of meaning which overlap, merge together, and are permanently in conflict. In the context of family relations, for example, there is a crossing of conceptions of sexuality, education, community living and individual dignity. There is also a crossing of positions defined by other markers or categories of differentiation which entail several different positions of power: generational or age-based, racial markers, and also those relative to class and upward social mobility. Exercising a position is acting according to several of these

conceptions, positions and markers, combining them even when they are conflictive. Accordingly, it would be important to stress that upon dealing with gender-based positions, one must consider that there are certainly some socially legitimated standards that are important to the definition of identities and conducts. However, one must keep in mind that they must be seen as constructions, images, references that are composed and adopted in a very complex, somewhat nonlinear and definitely not fixed manner.

Thinking in relational terms also implies refraining from reifying or deterministically establishing asymmetries based on gender markers. Indeed, it is becoming increasingly more relevant to problematize what has been qualified as gender violence. That does not mean to say that gender markers, as categories of differentiation that produce hierarchical maps and positions of inequity, are not fundamental to the movement against dissymmetries and relationships of power and force. But it would be convenient to question whether those markers should not also be articulated with other, equally fundamental ones, such as those pertaining to class, race and sexual orientation, regardless of their low visibility upon a close observation of the scripts which guide violent relationships. From that complexity derives a realization that brings undeniable millstones to the undertaking of political action, especially regarding those problems that are still in dramatic need of explanation and of essential, permanent enemies. In other words, women, African-descendants, Native Americans, homosexuals, transsexuals, transgenders (as well as those transgressors of the sexual norm who not wish to identify themselves) live in the midst of relations where identities are gradually created within a permanent process of mirroring and contrast. There is no generic category that imposes a fixed profile to those identities. A strategic and important resource in political terms, they are built along the way within social and private relationships. It falls upon us to question whether, from a political point of view, it would not be relevant to suspect of prior, assigned categories, aiming first and more “accurately” to an alliance among movements that seek to destroy the bases of intolerance and prejudice within the concrete, day-to-day relationships in which inequities and asymmetries of power are not just negotiable, they can be maintained but also transformed. In our view, the matter at hand is guaranteeing the public (and private) acknowledgment that we are living in a battle arena, comprised of several different objects and positions of power. If the very relationship between object and subject and the

contrastive and polar "appointment" thereof should be questioned – this is an object of discussion for future papers –, then our intent with this text was to support the theoretical and political positions within the contemporary debate which point towards consolidating the social and political acknowledgment of subjects who fight to construct new, innovative scopes and instruments of power.

This does not mean to say that believing in changes in the institutions of the criminal justice system as a means to expand its "context-sensitive" potential carries no meaning when one thinks of societies that are more in line with the democratic ideals.

In a book about leftist thinking in the United States, Richard Rorty (1999) counterposes social campaigns and social movements, bemoaning the fact that in the contemporary world, social campaigns have replaced the social movements which characterized leftism in the 1960s. In a social movement, each specific campaign was seen as part of a much bigger picture: a matrix upon which good society would be produced, which would require changes of a structural nature. From that perspective, isolated campaigns carried little meaning and were evaluated in terms of advancement or recession in the construction of bases for a society that strived to reverse the economic inequities. Rorty considers that to the contemporary Left, the central matter of the debate is no longer the structure of the economy. In the fight for human rights, today's Left allow cultural politics to supersede real politics, collaborating with the Right in the sense of having cultural issues centralize the public debate. The defenders of multiculturalism, the politics of difference, or the politics of identity, Rorty good-humoredly affirms, think more about stigma than money. Unlike social movements, social campaign politics have a purpose of their own, they enable a prompt acknowledgment and assessment of whether the initiatives undertaken were successful. The campaigns of today do not merge into movements and do not include the radical improvement of social life among their purposes; according to Rorty, they are consequences of a fragmented world and a fragmented human existence.

Rorty deplores the replacement of social movements with campaigns. However, one must recognize the attractiveness of campaign politics, especially if one goes against Rorty's opinions and thinks about how much the social movements of old tended to transform the good into an enemy of the best. Today, upon reassessing the politics of social

movements, we all know that an optimum result was never achieved, whereas much that was good was sacrificed.[24]

Moreover, campaigns play an important role in that they help to improve living conditions: improving collective transportation, increasing the availability of schools, improving the efficiency of the telephone system, inhibiting corruption and fraudulent overpricing – which are still everywhere to be seen –, offering resources to women, seniors and children who are still being victimized by threats and bodily injury. But whether this will bring forth a radical transformation of society is a different matter. That could not have been the intention, nor the promise of women's police stations or the "Maria da Penha" Law.

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24 For a critique on the counterposition made by Rorty between social movement and campaign, see Bauman (1998).

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