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Deviant Sexual Practices as a Legal-Political Force in the Brazilian Context

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I. Introduction: Unavoidable Concerns[1][2]

There is an abundant bibliography that deals with Law as a political instrument for the normalization of bodies and sexuality. Like medical literature, the regulation of pleasures through legal structures was a significant cause of the repression that emerged from the 18th century onwards around the world. On the other hand, with the rise of feminist and LGBTQ + social movements, especially since the 1960s, the law became a dispute arena for those who sought greater civil liberties in the reproductive and sexual fields.

Since the first wave of feminist liberation, many theorists have made gender and sexuality their study. They have brought political, historical, cultural, and social questions to what had been insisted on being restricted to the field of biological sciences. The male and female figures in society, the rupture with the sexual organs and the relativization of genders stood out as research problems in the humanities, largely fostered by constructionist currents. Also, these questions would come to support political transformations based on the dispute for rights and the provocation of identity recognition, aiming at the minimum guarantee of equality and diversity in the legal scope.

The legal dimension, thus, is disputed by different interpretations, coming to represent both confinement and space to obtain achievements. As an example, the Brazilian author Roger Raupp Rios (2006), understanding the existing tensions between law and normalization, defends a constitutional reading of sexual rights, structuring them based on the fundamental principles of freedom, equality, and dignity of humanity. As will be seen below, it is not only a reading of sexuality in accordance with constitutional rights, but also an effective expansion of the legal system based on sexual freedom with equal respect and consideration of whomever.

In another space unrelated to the legal sciences, theorists of gender issues, such as Paul B. Preciado, for example, carry out a more decisive criticism in the face of the normalization of bodies, without mediating the struggle for rights as an action that may eventually disrupt the cloistering meanings of normalization. In a courageous position, he says that a society radically averse to the idea of gender knows no limitations to the sexual disposition of bodies. Thus, "contrasexual contracts" could be freely signed in order to guarantee the consensual relationship in the pursuit of pleasure, even if they are subject to the social scrutiny of the so-called "deviant practices."

Considering the above, the following problem question is exposed: "is it possible for minority sexual practices to influence legal production?". Beforehand, raised as a main hypothesis from the selected bibliography, it is believed that practices and theorizations about sexuality and gender studies largely affect the political-legal construction of society. Finally, it is believed that the Law presents itself as an arena for the dispute of meanings and the production/ management of practices; sometimes using the well-known normalization of bodies; other times, using the recognition of minorities and the guarantee of dignity.

II. Deviant Sexual Practices: A Conceptualization

We start from a Foucaultian perspective to conceptualize what is meant by "deviant practices." The utterance that brings together the notion of sexual

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[1] This article is a shortened, english and one-author version of Fonseca, A., & Gazotto, G. (2020). Práticas insolentes: Práticas sexuais desviantes e potência jurídico-política. Revista Direito e Práxis, 11(1), 64-88.

[2] The study was partially financed by the Coordenação de Aperfeiçoamento de Pessoal de Nível Superior – Brasil (CAPES) – Finance Code 001.

practices with deviant quality touches on two activities: one of the naturalizations of sexual practices and the other of the recognition of those referred to as "deviants", provided by this natural place. The records of medical, biological, and also legal discourses carry out such activities by producing, signaling, and treating a marginalized sexual sphere. More than that, if sexuality and sexual practices are removed from the space of nature, there is a concern to understand how their classifications produce types of subjectivities (normal or deviant) and how sexuality constitutes a criterion for revealing the truth about the subject (FOUCAULT, 1988).

For Michel Foucault, sexuality spirals from words in late antiquity. The Stoics, masters in the denial of carnal pleasure and in austere lives, would have been the first to suppress sexual practice as something absolutely immoral. At that moment, the individual who sought the truth was to withdraw and abdicate all enjoyment. There is, thus, a previous denial of sexuality with the Hellenic. (FOUCAULT, 2004).

Such an interpretation, however, does not displace the importance of Christianity in deepening the ethical-philosophical discussions about sexuality. If in the Roman period there was a dual censorship between pleasure versus rigor, the fall of the empire will make possible a concern with the practices of pleasure. This means that the speech will be aimed not only at sex but at sexual practices and their organization. In a summary exhibition, confessional duty and monasteries are the main mechanisms for teaching and establishing a pastoral society: an obedient society, with a sexual morality directed absolutely towards reproduction, monogamous and reserved within the family. In that sense, it would not be a prohibited sexuality, but the putting into action of a mechanism of power and control, which was at the same time a mechanism for knowing individuals, but also for individuals to know about themselves. (FOUCAULT, 2006)

In modern times, sexual discourse gains new breadth with the alignment of erotic practices with medical knowledge. Here, there was a hyper development of discourse, placing sexuality at the level of theory, science, in short, as knowledge. The birth of a *scientia sexualis* and the desire to discover the truth about sex, however, operated in a very little, if at all, liberating way (FOUCAULT, 1988). With Freud's incursions, it was believed that much of the Western suffering came from the lack of thinking about sexuality and that the discourses won by history were based on irrational, affective and erroneous myths. There were a new affirmation and an intense scientific production on the theme of the erotic, but above all of normality and perversion. (FOUCAULT, 2006)

By founding normal sexual practices, medical discourse ended up fitting a series of dissonant practices within the field of abnormality, perversion, and disease. As an example, it is worth remembering that until the mid-1990s, there was talk of "homosexualism", and gay couples were considered to be sick. In the template of scientia sexualis, scientific knowledge places sex, gender identity, and sexual identity in a coherent axis, as necessary for normality and as a criterion for measuring abnormality whenever this "logical" sequence is broken. In this sense, sexuality could only be expressed through and according to the authorities of such knowledge.

In the political-legal sphere, the policies that faced the sexuality device focused on the transcendental entities of the "family" and the "nation", aiming at sexual relations based on the reproductive interests of the State. Thus, the state projects had as their primary object to control the population and its large statistical numbers: birth rates, sexually transmitted diseases, the vectors of contamination of such diseases and the statistics of abortions committed are illustrative examples of sexual policies born in the 19th century. The most well-known and exhaustively presented effect in countless essays was the constitution of the heterosexual reproductive couple as a biological, moral and legal norm, that is, the normalization of the heterosexual body. (CARRARA, 2015)

If it is true that the history of sexuality was based on the formation of knowledge and the construction of normal bodies, it is equally true that the same discourse produced anomalies. These abject bodies[3] fulfill an absolute centrality in *scientia sexualis*, because as the abnormal is scanned, the normal subsists. Thus, "sound" and rebellious sexuality have close relations with each other, the former depending on the latter for its validity. On the other hand, although there is a pattern of normality, the same unity does not occur with deviant practices. Scattered throughout the social group in the most diverse forms, quantities and qualities, libidinous behaviors are also equally anomalous in the face of legal-scientific discourse, but with a greater or lesser degree of disapproval among themselves.

Regarding this social reading about deviant practices, Gayle Rubin (1989) identifies which sexual uses are most rejected in the West. Thus, she outlines a hierarchical system of sexual valorization, in which married and reproductive heterosexuals would be at the top of an "erotic pyramid"; at the base, the most despised identities: transsexuals, *travestis*, fetishists, sadomasochists, sex workers (prostitutes and pornographic actresses), followed by those whose eroticism cross-generational barriers. At the center of this pyramid, gay and lesbian couples, promiscuous gay

[3] Judith Butler, in defending that the production of normality realizes a "constitutive exterior" of abnormality, names such lives excluded from the normal space of "abject bodies" (BUTLER, 2007 and 2011).

men and heterosexual couples with open relationships, depending on the political and social situation of each historical moment. Individuals whose sexual behavior is at the top of this hierarchy will be rewarded daily with respect, mental health, economic mobility, social support and much other material and institutional benefits. However, as erotic practices descend to the Rubin pyramid, individuals who practice them become more prone to mental illness, restrictions on freedom and mobility, loss of institutional support, and the various forms of economic sanctions present in the economic market (RUBIN, 1989).

As seen earlier, the condition of abnormality or sexual valorization is not natural. On the contrary, it was slowly built by the legitimate knowledge of history. If, in antiquity, sexuality was rejected by stoic philosophy and, in the medieval period, by religion, in modernity and in contemporary times, medical discourse reigns. Thus, although the third edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) has removed homosexuality from the list of disorders, voyeurism (DSM-V 302.82), masochism (DSM-V 302.83), sadism (DSM-V 302.84), fetishism (DSM-V 302.81), transsexuality (DSM-V 302.6), transvestism (DSM-V 302.3), and other paraphilic disorders are firmly defended as psychological dysfunctions. Here, the term paraphilia means "any intense and persistent sexual interest other than that aimed at genital stimulation or foreplay with human partners who consent and have a normal phenotype and physical maturity". (AMERICAN PSYCHIATRIC ASSOCIATION, 2014, p. 452 and 685 – 703)

In other words, academic productivity in the medical sciences regarding the etiology, treatment, and cure of these cases of "pathologies" is still wide. (RUBIN, 1989). From this knowledge of broad legitimacy and social acceptance, one may take as means of a reliable source of what the current hierarchy of sexual practices would be, and, consequently, those indicated by medicine to be considered deviant. To use the expression of BHABHA (2014), deviants would be those "bearers of policed sexualities" (p. 25), as they belong to other voices - outside the dominant system of ideas - unable to reach equal discursive proportions.

Although the above is presented as an unavoidable theoretical accumulation for the following development, it is not intended here to reiterate the denunciations against the normalizing device. On the contrary, after literary productions in the field of gender studies and - it should be stressed - the political engagement of LGBTQ+ groups, it is possible and necessary to investigate sexuality as a legal power. When dealing with this potentiality, sexuality is raised both as an indicator of gaps in the legal systems and as an amplifier of normative statements. It remains, therefore, to understand what the Theory of Law can learn from sexual practices or how, if ignored, they necessarily break out in the face of the legal dogmas of modernity.

III. Legal Practices: The Completeness Dogma in Civil Law and the Gaps in Common Law

In the legal tradition of revolutionary-French origin called civil law, the written law has a centrality. Some scholars of this tradition will define the law as being a set of norms or emphasize that "the legal experience is a normative experience" (BOBBIO, 2010, p. 15). In this typically modern legal construction, inaugurated with the codifications of the Western world, it is believed that the totality of social relations is housed by law and that, in the case of conflict, there will be a rule capable of its solution. The judge constituted in civil law, when facing the dispute, will have to find a rule - mandatory or declarative commands - able to resolve the situation fairly and unequivocally. On the other hand, the absence of a rule is immediately dismissed as a legal impossibility. In fact, the judge cannot avoid the conflict despite silence, obscurity or legislative insufficiency. It is the prohibition of the *non liquet* and the completeness dogma. (BOBBIO, 2010)

The belief still prevails in the current positive law with a doubtful settlement. It cannot be said that the completeness dogma has passed unscathed by criticism from all sides of the Theory of Law. The counterpoints will emphasize that not only would the Law be incomplete in the face of social relations, but the existence of gaps would be insurmountable by the codifications. This is because, as Bobbio (2010) will point out, social changes, which are increasingly volatile, generate a huge gap between reality and what is standardized. At every moment, new ways of hiring, working, defrauding or exercising sexuality appear in public and private lives, despite the legislator's inertia in following social changes. In opting to understand the law in its normative construction, the understanding of it as an inconstant social phenomenon was renounced. In other words, "the claim of orthodox jurists to make the law a product of the state was unfounded and led to various absurdities, such as that of believing in the completeness of codified law". (BOBBIO, 2010, p. 281)

It is not appropriate here to present a history of critics of legal positivism, nor to deconstruct, in such few paragraphs, entire centuries of theoretical construction of law. It should be noted that many criticisms were met with mastery in defense of a law capable of resolving all social conflicts. For these defenders, "completeness was not a myth, but a demand for justice; it was not a useless function, but a useful defense of one of the supreme values that the legal order, certainty, must serve." (BOBBIO, 2010, p. 282). Indeed, Law, as a whole, falters between system stability and social adaptability.

Notwithstanding this, there are several global experiences that escape the normalist system of French tradition. A legal tradition that stands up to civil law and does so with great acceptability even in the West, is common law, with English origins. That is a judge-made law, as the construction of the common law is largely based on judicial precedents, that is, on the linking of past decisions with similar current conflicts. In fact, in this system of binding precedents, the courts act in two dimensions: resolving conflicts already faced, according to past decisions, as well as producing the law when dealing with unprecedented litigation and creating rules for the future. (WAMBIER, 2009).

This double movement makes it possible to build legal predictability and stability due to obedience to previous judgments, while also acting on social adaptability. It is said that, in English law, precedents must govern law, unless there is a serious reason for them to be abandoned. In this sense, the specifications of the cases are of huge importance for the consolidation of the law. Although not all characteristics matter, it is recognized in common law that two cases are never absolutely identical. Thus, when faced with an unprecedented litigation (case of first impression), the decision that ends it will consist of a precedent with future consequences (WAMBIER, 2009). Therefore, the striking characteristics of the tradition in question are extracted: practice, casuistry and concrete facts are and make up the law. (CAVARZANI, 2014).

In exposing the belief in legal completeness introduced by the movement of codification of norms, it was also chosen to present the legal tradition of common law as an antagonist. Such an operation tried to provoke, first, an ambivalent estrangement - in the expectation of breaking the universality of the legal systems and, secondly, an issue facing the legal gaps in each of the traditions. As we have seen, the choice of representation of the standard in both cases aims to resolve the insurmountable legal conflict between security / predictability and adaptability. Notwithstanding this, they will treat non-standard facts in quite different ways. If in civil law there is an axiom of completeness, then gaps are always considered a legal defect, or rather an exception. However, faced with an unavoidable legal gap given the specifics of the case, the judge must resort to other means, generating a new law. On the other hand, such an issue does not present itself with greater consequences in the common law tradition. This is because, focused on the particularities and practices of the case, the judge will have ways to resolve the unprecedented dispute without hurting the hermeneutic foundations of the system.

It seems to us, however, that facing these legal deviations would be promising to Law. Exposing the wounds of the legal system, its contradictions and incapacities would end up improving both the capacity for dialogue between law and anomalies and the critical reading of the Norm Theory. On the other hand, these transgressions do not occur only in theoretical speculation or in the always absurd hypotheses of law teaching manuals. On the contrary, these fissures are found in the marginalized and misunderstood practices of society. In this sense, it is essential to remove from potential deviant sexual practices a potential questioner of the law itself. When exposing the tensions between marginalized erotic praxis and sedimented (and, at first, totalizing) normative abstractions, there is an impulse that removes the Law from its inertia and coerces new readings. Although the normalizing character of the dominant discourses has been recognized above, the next chapter will attempt to demonstrate how a critical dialogue can, through sexuality, put the legal system in check.

IV. Deviant Practices and the Expansion of the Law: For More Desirable Rights

It was seen that certain knowledge throughout history had been concerned with producing morality and normality in the sexual field. Parallel to this, a brief incursion was made into the two contemporary Western legal traditions, without the intention of consolidating exhaustive knowledge, but in the hope of bringing the interdisciplinary reader the lens for interpreting the dogma of completeness. As seen, even though the law starts from a certainty as to its totalizing regulatory capacity, society is too complex and volatile to be restricted to written law. Diverse practices in all areas constantly appear contrary to previous understandings and, as such, the rules must be revised.

At the intersections between the normalization of sexuality, however, it is possible to say that very little has been revised, especially in Brazil. Only more recently, with the LGBTQ+ movement consolidated, some guidelines and demands began to enter both the Judiciary and the Legislative Powers as well as doctrinal concerns. Slowly the legal ills of dealing with situations that are always present in society began to appear. This was the case, for example, with ADPF 132[4], in which the Brazilian Supreme Federal Court recognized the same-sex union (BRASIL, 2011). Notwithstanding the presence of these guidelines taken actively and necessarily to the legal scope, it is intended here to analyze situations that are not yet well worked out. These are everyday practices that, with lesser notoriety in the face of social movements, produce enormous fissures in legal institutes and desecrate their dogmas.

[4] ADPF, standing for Arguição de Descumprimento de Preceito Fundamental, is a judicial action in which the Brazilian Supreme Court rules over the constitutionality of a norm that existed before the constitution itself. That is not unusual, as the current Brazilian Constitution was promulgated in 1988.

In this sense, it is worth mentioning the case of the travesti[5] Indianara Siqueira, a defendant in a criminal case of alleged public outrage at modesty (art. 233 of the Brazilian Penal Code). The lawsuit originated after Indianara removed her shirt in front of a bar on Copacabana beach in Rio de Janeiro. In addition to possible defenses on the content of the misdemeanor, there is an inconsistency in the legal system that reveals the incapacity of the legal system. Being considered legally a man, the act of removing the shirt in public space would be allowed, as in fact it was done by countless bathers at that time; on the other hand, the female breasts that she possessed could not be exposed, as it so happens with other women, having the effect of recognizing the female social identity. This space between two identities, provoked a conflict of recognition for a coherent legal treatment. In this very interesting dilemma, the judge preferred to close the case instead of facing the decision (SANTOS, 2017).

The Indianara case reveals more than the disapproving behavior of society in similar situations. It also explains an incompleteness of the right to understand social practices that question the stable positions of gender identity. A limitation was revealed regarding the intelligibility of the State in the face of its criminal types, which need to be drastically rethought in the face of dissonant experiences. To put it mildly, Indianara's example "thus placed law itself in a dilemma, in which any solution (...) would be able to demonstrate the limitation to restricted terms of gender intelligibility". (SANTOS, 2017, p. 198)

The fissure discussed here is due to a tension between the behavior considered probable by the subjects in the legal system and a more complex reality, in which part of the individuals and their practices remain in an extralegal field. This denunciation of normative incapacity plays a crucial role in the supposed naturalization of everyday practices. After all, before becoming an object of discussion, the norm remains inert, naturalized in the state of affairs. When questioned, however, it exposes the flaw to a series of contesting possibilities that are always uncertain, both in the production of greater sexual equality and freedom, and in defense of a moral setback. The clash here, in addition to being purely legal, faces the political, demonstrating the potential of the deviant body. (SANTOS, 2017)[6]

The logic of transgression of lewd practices also emerges in orders that do not depend so much on a previously written norm. Thus, in the common law tradition, practices will not be limited to the modification of a normative understanding but will reach the constitutive power of law. In some way, these constructions act just like the Constitutional Action listed above, but without the need for constitutional offense, arising more properly from everyday experience. It means, therefore, that any judgments about praxis considered as deviants will have general effectiveness.

In this regard, Bennet (2012) investigated some leading cases ruled in the United Kingdom involving sadomasochistic practices. It is worth mentioning what happened to a British policeman with more than 17 years of patrol, having images of his performances made in sadomasochistic clubs anonymously disclosed to senior officers. Although they understood that such activities do not imply an offense to the law, the officer was formally exonerated. In justification, they reported that such material in the public domain was incompatible with the position of a police officer. Called Pay v. UK, the case reached the European Court of Human Rights because of the protections against unfair dismissal and the prohibition of discrimination. The judges, however, did not accept the appeal, arguing that the police officer had not been dismissed for his sexual practices, but because, when attending such clubs, this fact could come to the public and hinder his effectiveness at work. In other words, the concern is not in erotic preferences, but in their dissemination to an undetermined audience of people. (BENNET, 2012)

It would be to say that the whole issue of discrimination revolves around advertising and that such sexual practices that are marginal to society only deserve protection when carried out in the private space. In any case, the extent of this trial to other public agents involved in the legal administration, such as magistrates or public prosecutors, remains doubtful. Should these characters have their sexual freedom restricted, even if such acts are not in themselves contrary to the law? Following the logic of advertising as the justification, employees of private security companies could suffer the same exclusion, even if there is a clear offense against the prohibition of discrimination. (BENNET, 2012)

The interesting thing is that the legal understanding signed above goes beyond an earlier discussion, also occurred in the United Kingdom, which included sensitive points related to masochism. This is the case of first impression R vs. Brown, tried in 1994, in which five gay men ended up in prison for bodily harm

[5] Travesti is a Brazilian gender expression that differs from that assigned to the person at birth, therefore assuming a gender role different from that of the origin of her birth. Related terms used worldwide are crossdresser or drag queen, but there is no exact translation for it.

[6] In this regard, Giorgio Agamben and Judith Butler, although they are not worked on here, contribute in a unique way to this debate of power based on the externality of exclusion. Agamben, with his notion of Inoperosity, calls into question those who deactivate the so-called law and reactivate it in the condition of effectiveness and promise (performative normativity), (AGAMBEN, 2000). Butler, in a reinterpretation that questions the standard that politics only happens in the space of qualified life, points out precariousness as a political power (BUTLER, 2012).

committed during sadistic and masochistic acts. Although the typification of the English bodily injury considers as an offense only that which is practiced without the consent of the victim, the understanding of the judiciary was different for the case. This is because the English tradition provides for very unique circumstances of valid consent, such as surgery, tattoos and the alike, religious circumcision, and violent sports. Sadomasochistic practices were removed from these and any other hypothesis where, supposedly, there would be sufficient social utility to raise punishment. (BENNET, 2012)

If, in the last criminal case, the illegality rested on the sadomasochistic practices themselves and on their insufficient consent, in the study of Pay v. UK, such illegality was not questioned. Despite being situations that apparently deserved the same judicial treatment, since the practices would be the same (sadistic deviations), the specifics of the second one broke the previous understanding. It refers to the phenomenon of distinguishing, a common law flexibility technique due to the singularities of the new case. (WAMBIER, 2009) In this situation, the rule of bodily injury due to lewd conduct remains operative. However, because new questions were raised in the conflict with the security agent, an unprecedented rule must, therefore, be applied.

On the other hand, even though it is understood that the policeman's discussion spanned areas of labor law and the right to non-discrimination, the fact is that the provocative practices were the same in both cases. If the option for exoneration is considered an advance when compared to the material violence of the prison, this does not mean greater legal certainty, nor a universal change. It appears that different behaviors can have different results, especially regarding the subjects involved and the provocation made by third parties. It is seen that the masochistic sexual deviations remain too much for the legal structure and cannot be conditioned by the current state of law.

Maria Filomena Gregori (2016) appreciated the transgression of sadists and masochists against the norm and the necessary consent among practitioners. Indeed, the categories of consensus and vulnerability are fundamental to think responsibly about new escapes of power technologies and, on the contrary, to influence the law through sexual resistance. Today, the researcher points out how consent and vulnerability are today the central terms around which sexual practices and rights are understood. On the other hand, the concepts of pleasure and danger, which previously presented great analytical profitability, were thoroughly studied, taking the current problematizations to other fields. (GREGORI, 2016)

That said, to think about a right constituted from deviant praxis, it is essential to take into account that practices that involve greater risks need greater guarantee of free consensus. It just so happens that, when we take sensitive examples such as prostitution or SM (sadomasochistic) practices, especially in a society with such unequal social markers, the free expression of will might be flawed. “The concern with safety and with the consent of practitioners [of SM] works as a kind of ideal. None of these terms is easily accessible or guaranteed”. (GREGORI, 2016, p. 178)

It is important to highlight the crucial role that such practices play in presenting themselves as the exception to the norm, in an attempt to expand the boundaries of what is accepted and socially legitimized. “In this case, a bet is made on the capacity for the transgression that these unsanctioned sexual practices have in contesting norms of sexuality and gender and in the creation of new collective identities.” (GREGORI, 2016, p. 185) If, on the one hand, they enhance the experiences of the body in putting into tension the norms and conventions of sexuality; on the other hand, there are no guarantees that they will be able to avoid abuse and violence, even though their speeches are increasingly permeated by the notion of being “healthy, safe and consensual.” It is necessary to understand how the dynamics of these practices put into operation, at the same time, “the search for the legitimation of sexual behaviors and preferences - which tends toward a normative stabilization - and the attempt to create acts and relationships that put the norms in tension”. (GREGORI, 2016, p. 182) In the end, new sexual practices and their limits between pleasure and risk will always reallocate their understanding of the limits of the norm and the law to other spaces. What is certain is that sexual practices considered deviant are risky endeavors. This does not mean, however, that they should not be read from the perspective of a right resulting from the democratic State, a right that is always attentive to plurality.

Perhaps who came very close to the analysis of what a right read through the lens of sexual diversity means was Roger Raupp Rios (2006). When formulating the so-called democratic sexual rights hypothesis, it indicates not only how the law should be changed to the possibility of effective sexual freedoms and equality but also how the legal discourse has already been remodeled due to the theoretical productions of sexuality. In these terms, it highlights, for example, the transition from reproductive rights to the right to sexuality. The former, although of notorious importance, appears in an initial moment of sexual liberation, guided mainly by women, especially about contraceptive techniques and abortion. It happens that limiting the understanding exclusively to the rights of reproduction would produce an obstacle in the face of the diversity involved. Still, as the author maintains, "one could run the risk of reducing the operability of these legal

categories, including that about the female universe, in an undesirable and unnecessary weakening". (RIOS, 2006, p. 9)

Thus, for an effective change in the legal scope of sexuality, it was necessary to remove the emphasis on reproduction and make explicit the right to sexuality. With sexual rights, legal protection not only expands for women, but also it becomes no longer restricted to subordinate groups according to gender and sex. On the contrary, the right to sexuality cannot find boundaries in the protection of identities, but rather it must guide itself towards the protection of sexual conducts and practices, even if unconventional, as those already presented.

Practices, therefore, not identities. The mitigation of the subject and the change in emphasis for the conduct objectively performed is essential for the transformation of the discourse on sexuality. This is because the knowledge about the theme, since modernity, sought in the subject the construction of its identity, constituting the dichotomy of normal bodies and deviant bodies. Thus, the homosexual subject, the nymphomaniac, the hysterical, the sadistic, the masochistic, the heterosexual emerges among endless examples according to the desires of each individual. This is a first and shy step toward the construction of a sexual policy of valorization of sexual minorities (those that adopt less valued practices). The practices are emphasized, focusing on the intersubjective relations treated in each case. It should be noted that a democratic sexual morality means evaluating sexual practices by the way their partners treat each other: the level of mutual consideration, the presence or absence of coercion, and the quantity and quality of the pleasures involved. (RUBIN, 1989)

In order to structure a democratic sexual right without falling into mere naive liberalism, Rios clarifies that, in addition to being democratic, it must be a responsible right. The question that follows is pragmatic: how to structure a right to sexuality in these terms? The answer would be to root this right on the basic formulas of the declarations of human rights and classic constitutionalism, namely, the principles of freedom, equality and dignity. In this regard, the right to democratic sexuality "breaks with the subordinate treatment of women, homosexuals, HIV positive people, children or adolescents" (RIOS, 2006, p. 13 - 14), without looking away from the situations of vulnerability. In fact, it is a question of extending those principles in the sexual developments that concern them, adding to these rights sufficient legal content to face the real situations in which sexuality is at stake.

Without further deviations and in an illustrative way, sexual rights develop the fundamental principles of freedom and equality in multiple consequences not so distant from what the constitutionalist movement has already produced. However, there is a hyperbolic enlargement, the result of the tension between the rights already laid down in the legal system and the need for justice in the face of ideological gaps. Thus, we list the "(i) right to sexual freedom; (ii) the right to sexual autonomy, sexual integrity and the security of the sexual body; (iii) the right to sexual privacy; (iv) the right to sexual expression; (v) the right to sexual association."(RIOS, 2006, p. 15)In other words, based on the fundamental rights of the rule of law, an extensive interpretation is proposed, to the point that new guarantees are constituted. As seen, freedom, privacy, security and autonomy are necessary principles for democracy and the constitutional regime. Their interpretative-sexual extensions are mere consequences.

Thinking about the possibility of a right to sexual association, for example, reveals two initial consequences. The first highlights the evident gap due to the simple originality of the concept, not previously worked; the second creates something distinctly new to the legal order, much more porous and volatile than the figure of marriage. Relationships within the framework of Family Law, although they can be metaphorically compared with associations, do not imply an effective right to sexual association, capable of corresponding to plurilateral duties in as many numbers as eventually contracted. It would certainly be quite irresponsible to make such a simple relationship. The expansion proposed by Rios, in all his figures, reveals practical possibilities of intentional interference from erotic practices in the field of the study of law. It imposes necessary thoughts in the face of social complexity and practices on the margins, emerging from the tension between normativity and the untamed sexual.

V. Conclusions: Where We Want to Arrive

It was investigated how deviant sexuality remains affected by the juridical arena. Through examples involving subjects who did not even want the intrusion of law, an attempt was made to clarify the law's absolute incomprehension in the face of said subjects. Although the whole coding legal theory starts from the assumption of the totality of the norm and the absence of systemic gaps, practices such as those that occurred with the travesty Indianara expose its opposite and the need for scientific refinement that accounts for the predictability of the norm, once said system is chosen.

On the other hand, the study of law based on the tradition of common law exposes a need for investigation with the specific case much greater than written legality. In Pay v. UK, the sadomasochistic performances under discussion were themselves constitutive of a right founded at court. Notwithstanding this, a series of questions remained, as if there was no exhaustion of the theorist even when the minutiae are attached to material reality.

The gaps denounced, and the provocations made by so many other scenes demand the construction of a new law, which raises deviant practices to the category of legal powers, producing normative meanings. In this sense, aware that law is a field of discourse dispute, Roger Raupp Rios proposed an alternative. From the pillars of the Constitutional State, especially in the notions of freedom and equality, he distilled several sexual rights. To consider that these are, first, rights and, later, sexual, is not frivolous. The potential construction derived from the enormous tension between hierarchically renounced practices and the contemporary norm is highlighted here. Despite the ignorance of legislators and magistrates of law, there is something that remains uncomfortable within society, something that, at times, skips legal concerns.

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