

UNIVERSIDADE ESTADUAL DE CAMPINAS  
SISTEMA DE BIBLIOTECAS DA UNICAMP  
REPOSITÓRIO DA PRODUÇÃO CIENTÍFICA E INTELLECTUAL DA UNICAMP

**Versão do arquivo anexado / Version of attached file:**

Versão do Editor / Published Version

**Mais informações no site da editora / Further information on publisher's website:**

<https://periodicos.fclar.unesp.br/alfa/article/view/16714>

**DOI: 10.1590/1981-5794-e16714t**

**Direitos autorais / Publisher's copyright statement:**

©2023 by UNESP. All rights reserved.

DIRETORIA DE TRATAMENTO DA INFORMAÇÃO

Cidade Universitária Zeferino Vaz Barão Geraldo

CEP 13083-970 – Campinas SP

Fone: (19) 3521-6493

<http://www.repositorio.unicamp.br>

## FRAMED STATEMENTS OF “VAGRANT” BODIES: READING OF AN ARCHIVE OF POLICE REPRESSION ON *TRAVESTI* PROSTITUTION

Daniela PALMA\*

- **ABSTRACT:** This article examines a police file on repression of *travesti* prostitution in the 1970s in the city of São Paulo. The aim is to use police documents to analyze the strategy of having framing bodies to manufacture criminals, in the frame of the penal discourse on the vagrancy misdemeanor. The research corpus is 316 affidavits issued by the Civil Police of São Paulo, criminological texts, laws, and a police manual, gathered through documentary research. A multidisciplinary reference base (linguistic, historical, legal, and philosophical) is the basis for the integrated reading of the corpus materials. The analyses focus on the construction of the penal argument, the instances of enunciation, and the observation of formal elements that point to the criminalization of cross-dressing prostitutes by mobilizing a language apparatus to physically and morally describe their bodies. The discursive strategies are interpreted in this study as technologies of a pastoral power that acts on the circulation of bodies in urban spaces in the context in question, following Michel Foucault’s understanding.
- **KEYWORDS:** police archives; *travesti* prostitution; vagrancy/loitering; discursive frames.

### Introduction

On May 16, 1977, the *travesti*<sup>1</sup> prostitute Patricia was arrested downtown São Paulo by plainclothes military police and gave a statement at the 4th Police District Station to the police chief, Guido Fonseca. Regarding the circumstances of her arrest, the records state that it occurred on the Ipiranga Avenue, where the affiant “was talking to faggots” (SÃO PAULO, 1976-1977, our translation)<sup>2</sup>. The document also contains data on work, residence, use of hormones, the information that “he does not wear a wig but has long hair” (SÃO PAULO, 1976-1977, our translation)<sup>3</sup>, and the value of her

---

\* Universidade Estadual de Campinas (UNICAMP). Instituto de Estudos da Linguagem (IEL). Campinas - SP – Brazil. ORCID: 0000-0003-2068-0624. dpalma@unicamp.br.

<sup>1</sup> The term “*travesti*” (lit. “transvestite”) is distinguished by a history of uses in Brazil that involves social stigmatization (correlating transgender identity, social class, prostitution, and crime) and recent processes of resignification that stimulate new political non-pejorative connotations.

<sup>2</sup> Original: “*se encontrava conversando com bichas*” (SÃO PAULO, 1976-1977).

<sup>3</sup> Original: “*não usa peruca mas usa os cabelos compridos*” (SÃO PAULO, 1976-1977).

monthly expenses for “women’s clothes”. The affidavit is part of a set of documents recording a series of police investigations against *travesti* prostitutes held between 1976 and 1977 in downtown São Paulo.

Contact with this documentation was the catalyst for the elaboration of a project aiming to reflect on the relationship between human rights and language based on the reading of official documents from archives of repression. The point of the context presented here is to discuss, based on procedures for reading official documents, some of the ways in which police discursive technologies act in the construction of legal framings of bodies. The idea of analyzing the power discourses in these documents involves, therefore, not only focusing on linguistic aspects, but mainly, as Foucault (2005 [1974]) proposed, on interpreting their strategy games. The understanding of discourse as a set of strategies situates the discursive fact in social practices, here, particularly in judicial practices. This allows us, through historical analysis, not only to read institutional functioning, but also “to locate the emergence of new forms of subjectivity” (FOUCAULT, 2005 [1974], p. 11, our translation)<sup>4</sup>.

In this textual structure, we begin with a theoretical and methodological discussion about working with documents from archives of repression and the presentation of the research corpus. In sequence, we focus on the construction of the meanings and the historical uses of vagrancy as something illicit in Brazil and the legal and discursive incongruities of the actor-based criminal law (DUBBER, 2013)<sup>5</sup>. In the last part of the article, some integrated analyses of the documents from the corpus are given, seeking to read the strategies that form the technologies of a pastoral power that acts on the circulation of bodies in the urban space, within the limits of the context in question.

## Archives of repression, document reading and the research corpus

Among the institutional forms of memory, the “archives of repression” are usually understood as a collection of official documents from instances of surveillance and repression of political crime. These documents, which became public after their validity expired, play a central role in processes linked to Transitional Justice rights.

Arlette Farge (2013 [1989], 2019 [1997]) reflects on how judicial and police archives can be sources for understanding popular suffering, because, by recording the actions of repression, they end up opening a possibility to snatch “out of darkness (...) breathless, disjointed beings, summoned to explain themselves before the court” (FARGE, 2013 [1989], p. 26) through historiographical work. The “sayings of suffering” (FARGE, 2019 [1997], p. 14, our translation)<sup>6</sup> and the repressive voice are not only

---

<sup>4</sup> Original: “Localizar a emergência de novas formas de subjetividade” (FOUCAULT, 2005 [1974], p. 11).

<sup>5</sup> In contrast to act-based criminal law (from German, *Tatstrafrecht*), the actor or offender criminal law (*Täterstrafrecht*) is a conception of criminal law based on active personality principle: “the act was significant only as a symptom of the actor’s characteristics” (DUBBER, 2013, p.272).

<sup>6</sup> Original: “Ditos de sofrimento” (FARGE, 2019 [1997], p. 14).

found in situations characterized as “exception,” but populate the police records of ordinary events, daily transgressions and small offenses framed by the mundane actions of city order.

Considering the above, we understand “repression archives” beyond the characterization of political crime: in authoritarian conjunctures, even “minor crimes,” small infractions, such as misdemeanors, are politically framed under the regime of state violence. Popular daily life is thus marked by violence and various interdictions on personal lives and the bodies of city inhabitants. Thinking about this in a historical and social scenario, such as the Brazilian one, in which institutional formulations abruptly burst into daily life and the intimate sphere, police and judicial archives have enunciative powers from which we could extract keys to interpret repression and suffering in contemporary Brazilian formations.

Farge’s proposition signals the ability of the historian’s interpretative gesture to transform political archives into historical ones. Aleida Assmann points out the importance of this distinction: in the political dimension, the archives serve “as tools for the symbolic legitimation of power and to discipline the population,” appropriated as historical materiality, it gains a second life, recontextualized, as a force capable of forming “the basis of what can be said in the future about the present, when it will have become the past” (ASSMANN, 2008, p.102). Transforming the political archive into the historical archive operates in the very performative capacity of documents, with their instabilities of meaning, or what Judith Butler (1997) called “open temporality of speech act,” and may correspond to manufacturing lenses to interpret the actions of power that generated the archive. Within this framework, the reading of police documents could take two paths, as Farge (2019 [1997]) describes: “to take the individual statements and understand at the same time their ‘competence’ and their function; to study those who have the authority to manage violence or dispossession, who repress, inflict, or forgive”. (FARGE, 2019 [1997], p. 17, our translation).<sup>7</sup>

This study adopts an interpretative movement that takes Farge’s second path, aiming to interpret discursive forms of constructing police authority in the framing of bodies “out of order” in the urban context in a conjuncture of state violence. Framing is understood as a discursive action, in the sense of Judith Butler’s frame construct, relying on the double meaning of the word: “a picture is framed, but so too is a criminal (by the police), or an innocent person (by someone nefarious, often the police)” (BUTLER, 2009, p. 8). Thus, the framings of institutional discourses define the contours that manufacture the criminal. It is a way to interpret the acts, as the author explains: “[s]ome way of organizing and presenting a deed leads to an interpretive conclusion about the deed itself” (BUTLER, 2009, p. 8). In this sense, the police archive is understood as a powerful locus to reflect on the discursive technologies of framing. While reading

---

<sup>7</sup> Original: “tomar as falas individuais e compreender ao mesmo tempo sua ‘competência’ e sua função; estudar aqueles que têm autoridade para gerir a violência ou o despojamento, que reprimem, infligem ou perdoam” (FARGE, 2019 [1997], p. 17).

these documents, we can seek ways to expose “the ruse that produces the effect of individual guilt.” (BUTLER, 2009, p. 8-9).

Reading the strategies of framing criminal bodies in the police archive, within the context of sexuality, allows us to reflect on how the mechanics of power creates disciplinary classifications, to which are attributed “an analytical, visible and permanent reality,” which are embedded in bodies and guide conduct (FOUCAULT, 1978 [1976], p. 44).

## Research corpus

The documental corpus of this research is composed of 316 affidavits, issued in the years 1976 and 1977, in the 4th Police District, in the Downtown Office in São Paulo. They were produced in a larger context of a criminological study conducted by Guido Fonseca, head of the Civil Police of São Paulo. In the mid-1970s, Fonseca undertook a study on transvestism, prostitution, and misdemeanor to define male prostitution (in which he characterized the prostitution of *travestis*) as vagrancy. In that context, on December 14, 1976, an ordinance (N. 390/76) was published that allowed police officers to approach *travestis* in the region known as “Boca do Luxo” in downtown São Paulo and take them to the district for investigation. The legal basis for approaching them was the classification of vagrancy as a misdemeanor, but disturbance of the peace or practice of obscene acts could also be alleged. The *travestis* who were approached, and who did not have their identity card and work permit, were taken to the police station for questioning, had to sign a statement, and could be taken to jail, with the risk of becoming defendants in a criminal trial.

These procedures and Fonseca’s study are linked to a 1970s’ police offensive on the “underworlds” of downtown São Paulo, mainly directed towards prostitution activities and gay and lesbian spaces of sociability. In a sentence from 1977, Erasmo Dias, secretary of public safety, determined that the police “begin to curb, in a more rigorous manner, such individuals incurring in misdemeanor (indecent exposure).” (FONSECA, 1977, p.80, our translation).<sup>8</sup> In a broader context, they are related to the military dictatorship apparatus of surveillance and control of public circulation.

According to an article by Fonseca, published in the journal *Arquivos da Polícia Civil*, 460 inquiries were carried out and 62 charges were filed between December 1976 and July 1977, when this activity stopped. These statements were kept in a special file, separate from documents related to other investigations into vagrancy and other types of crime (GREEN, [1999] 2000, p. 405). There was probably the intention that these affidavits resulting from the investigations would form a documental set to provide data for Fonseca’s study and could be used as an instrument for surveillance and intimidation. In an interview with historian James Green in 1995, Fonseca states that the police’s intention was to create obstacles to prostitution and the circulation of *travestis*.

---

<sup>8</sup> Original: “passassem a coibir, de maneira mais rigorosa, tais figuras contravencionais” (FONSECA, 1977, p.80).

Even if he stayed four or five days in jail, he suffered losses, because he didn't earn enough to pay the rent, the installment of the car... He started to realize that what he was doing was not enough to survive. He had to either leave the 4th District and go to another area where there was no repression, or get a job and live off another profession. (FONSECA, 1995 as cited in GREEN, [1999] 2000, p.404-405, our translation).<sup>9</sup>

In addition to the affidavits, the research corpus includes the article by Guido Fonseca, "Prostituição masculina em São Paulo – Male Prostitution in São Paulo," published in the magazine "*Arquivos da Polícia Civil*," in 1977. The texts of Ordinance no. 390/76 of the Civil Police of São Paulo, the Law of Criminal Misdemeanors (Decree-Law no. 3.688/1941), and a police manual was also used.

### **Vagrancy, pastoral power and criminal law**

The text of Ordinance no. 390/76 of the Civil Police of São Paulo, published on December 14, 1976, began with a diagnosis of the increase in the circulation of "*travestis*" (spelled with quotation marks) in the region of the 4<sup>th</sup> District, downtown São Paulo, "offering a sad spectacle to passers-by because of the scandalous 'trottoir' they practice." (SÃO PAULO, 1976).<sup>10</sup>

The ordinance instructed that a team of five plainclothes police officers and a clerk, under the coordination of Guido Fonseca, should "repress the 'trottoir' of these perverts." (SÃO PAULO, 1976)<sup>11</sup> With the declared objective of investigating "all the '*travestis*' that frequented the jurisdictional area of the 4th Police District," (SÃO PAULO, 1976)<sup>12</sup> individuals whose conduct could be characterized as transgressions of articles 59 (vagrancy) and 61 (indecent exposure) of the Law of Criminal Misdemeanors should be arrested in the act.

"*Vadiagem*," vagrancy in Portuguese, is a crime with a long history of formulations and uses in Brazil. The most trivial meanings of the term are related to idleness and vagabondage; it is also associated with prostitution, through the derivation "*vadia*" (a whore). In the legal tradition, vagrancy appears associated with work and with moralizing issues of public order (prohibition of circulation). In the history of Brazil, vagrancy's characterization as an illicit act is ancient; the Kingdom Ordinances, during

---

<sup>9</sup> Original: "*Mesmo que ele ficasse quatro ou cinco dias no xadrez, ele sofria prejuízo, porque não ganhava o suficiente para pagar o aluguel, a prestação do carro... Ele começava a se conscientizar de que aquilo que ele fazia não dava o suficiente para sobreviver. Ele tinha de ou sair da área do Quarto Distrito e ir para outra área onde não havia repressão, ou arrumar emprego e viver de outra profissão*" (FONSECA as cited in GREEN, [1999] 2000, p.404-405).

<sup>10</sup> Original: "*oferecendo triste espetáculo aos transeuntes pelo escandaloso 'trottoir' que praticam*" (SÃO PAULO, 1976).

<sup>11</sup> Original: "*repressão ao 'trottoir' desses pervertidos*" (SÃO PAULO, 1976).

<sup>12</sup> Original: "*Todos os 'travestis' que frequentam a área jurisdicional do 4º Distrito Policial*" (SÃO PAULO, 1976).

the Colonial Period, prescribed that vagrants arrested in Portugal could be sent to Brazil (PIERONI, 2000). The Code of Criminal Procedure of 1832 established that vagrants, beggars, drunkards, prostitutes, and those accused of public nuisance could be forced to sign statements in which they pledged to live honestly (SOARES, 2017). After the Abolition of Slavery, several proposals and policies of social control appeared (having as main target the freedmen), such as the project of repressing idleness of 1888, which expressed the concern in “instilling the habit of work in the citizen” and was marked by a moralizing rhetoric that aimed not at “the pure and simple punishment of the individual, but at his moral reform” (CHALHOUB, 2001 [1986], p.71, our translation)<sup>13</sup>. The Penal Code of 1890 described vagrancy as an infraction and the application of this code came to be associated with policies of hygienism in the late nineteenth century and early twentieth century, even using insane and judicial asylums as places of confinement (ENGEL, 2001).

During the “Estado Novo” (“New State”, 1937-1945), the “custom” police were central to the national political project (based on the idea of creating a “new Brazilian citizen”). The Law of Misdemeanors (Decree-Law No. 3688/1941), the most recent legislation on the subject, is formulated in this context, defining vagrancy in Chapter VII (Misdemeanors related to the customs police) as:

Art. 59. To habitually indulge in idleness while being valid for work, without having an income assuring sufficient means of subsistence, or providing for one’s own subsistence through illicit occupation:

Penalty - simple imprisonment, from fifteen days to three months.

Sole Paragraph. The supervening acquisition of income, which ensures the convicted sufficient means of subsistence, extinguishes the penalty. (BRASIL, 1941, our translation)<sup>14</sup>.

The 1941 law underwent some modifications, but Article 59 is still in force<sup>15</sup>, despite recent decisions that consider detention for vagrancy to be unconstitutional (CRUZ, 2012). During the military dictatorship, vagrancy was widely used as an instrument of social control, and there were even specialized police stations. Poor workers used to carry their work permit with them, since there was a concrete risk of arrest for vagrancy if they did not present the document during police approaches. In

---

<sup>13</sup> Original: “incutir na cidadão o hábito do trabalho” (...) “a punição pura e simples do indivíduo, mas sim sua reforma moral” (CHALHOUB, 2001 [1986], p.71).

<sup>14</sup> Original: “Art. 59. Entregar-se alguém habitualmente à ociosidade, sendo válido para o trabalho, sem ter renda que lhe assegure meios bastantes de subsistência, ou prover à própria subsistência mediante ocupação ilícita: Pena – prisão simples, de quinze dias a três meses. Parágrafo único. A aquisição superveniente de renda, que assegure ao condenado meios bastantes de subsistência, extingue a pena” (BRASIL, 1941).

<sup>15</sup> Both the Brazilian Chamber of Deputies (Bill 4540/2021) and the Senate (Bill 1212/2021) are currently examining proposals to repeal the article.

a manual of police practice, considering people who do not carry documents proving income as suspect of vagrancy and referring them to the police station is described as routine police procedure.

**Lack of documents.** When the person does not have any document or proof of legal activity, they are to be taken to the police station, where they shall be questioned about their marital status, profession, place of work and residence. If there is suspicion that the person is a vagrant and does not have an income of their own that assures their sufficient means of subsistence, a police report will be issued to commence a vagrancy investigation, which will later instruct the competent Misdemeanor Case. (ROCHA, 1989 [1982], p.78-79, our translation)<sup>16</sup>.

According to a survey by the newspaper *O Globo*, vagrancy was the second most committed crime in the metropolitan region of Rio de Janeiro, based on police statistics from December 1975 (VILLELA, 2014). In 1977, a reform in the Penal Code made vagrancy and begging non bailable misdemeanors, as stated in Article 313 of Law No. 6416 (OCANHA, 2016).

There are contemporary juridical interpretations which consider that the Law of Criminal Misdemeanors is legislation marked by several retrograde and anti-democratic criminal categories that favor forms of social discrimination, thus having an unconstitutional character. The misdemeanor of vagrancy (along with begging, described in Article 60, repealed in 2009) is probably one of the legal formulations most incompatible with modern criminal law fundamentals. By the general principle of offensiveness, which guides the relations of exteriority and alterity in criminal law, the use of penal instruments for the moral education of citizens should be excluded: “the purely internal, or purely individual conduct – be it sinful, immoral, scandalous or different – lacks the offensiveness that can legitimize the penal intervention.” (BATISTA, 2007 [1990], p.91, our translation)<sup>17</sup>. Among the functions of the principle of offensiveness, jurist Nilo Batista points out that “prohibiting the incrimination of simple states or existential conditions” (BATISTA, 2007 [1990], p.91, our translation).<sup>18</sup> only admits the idea of a *criminal right of action* (or of the fact). Thus, fundament prevents “the imposition of penalty (i.e., the constitution of crime) to a simple state or condition of that man, refuting, therefore, the proposals of

---

<sup>16</sup> Original: “*Falta de documento. Quando a pessoa não tiver documento nem comprovante de exercício de atividade lícita, será conduzida à Delegacia, onde será inquirida sobre o seu estado civil, profissão, local de trabalho e residência. Havendo suspeita de ser vadia e não ter renda própria que lhe assegure meios bastantes de subsistência, será elaborado boletim de ocorrência, para início de Sindicância de Vadiagem que posteriormente instruirá o competente Processo Contravencional*” (ROCHA, 1989 [1982], p.78-79).

<sup>17</sup> Original: “*à conduta puramente interna, ou puramente individual – seja pecaminosa, imoral, escandalosa ou diferente – falta a lesividade que pode legitimar a intervenção penal*” (BATISTA, 2007 [1990], p.91).

<sup>18</sup> Original: “*Proibir a incriminação de simples estados ou condições existenciais*” (BATISTA, 2007 [1990], p.91).

a criminal law of authorship and its more or less concealed derivations.” (BATISTA, 2007 [1990], p.93, our translation).<sup>19</sup>

The misdemeanor of vagrancy, as an actor’s criminal type, is based on the ideas of guilt by conduct or condition and anticipation of punishment based on the danger that the vagrant may represent to society. According to Foucault (2005 [1974]), the dangerousness is consolidated in the penal theory of the 19th century as a proposition that frames the criminal individual not by one’s acts, but by one’s virtualities. It is possible to interpret the construction of the sense of dangerousness in penal theory as one of the instruments of what Foucault (1995 [1982]) called the technology of pastoral power. This set of power techniques originates in Christian institutions and becomes integrated under a new political form in the modern era. It consists of techniques of individualization and totalization procedures aimed at salvation: in the ancient Christian form, pastoral power was founded on the idea of an individual salvation in another world; in the modern version, it starts to have “worldly objectives,” and salvation gains equivalence to notions of public order, such as welfare, health, safety, etc.

The main institution to administer this kind of power in the modern form is the police. Foucault (1983 [1982], p.215) states: “the police force was not invented only for maintaining law and order, nor for assisting governments in their struggle against their enemies, but for assuring urban supplies, hygiene, health and standards”. Thus, not only justice operates in this framing for social control, but also a series of “lateral powers” that encompass the police and other institutions and instruments that “no longer punish infractions, but correct their virtualities.” (FOUCAULT, 2005 [1974], p.86, our translation)<sup>20</sup>.

## Analysis of the corpus

The set of documents analyzed here can be understood within a field of discursive production of a legal-technical-scientific nature. In this sense, it is possible to consider two main typologies in the forms of writing of these documents, to be integrated in the analytical work: that of Fonseca (of a technical-scientific and argumentative nature) and that of the clerk (of a technical-judicial nature, holding public faith). Injunctive texts, such as laws, ordinances, and manuals, which form a secondary documentary block within the corpus, are also used.

We classified Guido Fonseca’s article in the first typology. The text is inscribed in the areas of police sciences and criminology, and there are marks of a positivist approach, mainly regarding the use of observational methods, the emphasis on the behaviors that produce the criminal, and the idea of dangerousness. This criminology, whose origins

---

<sup>19</sup> Original: “a imposição de pena (isto é, a constituição de crime) a um simples estado ou condição deste homem, refutando-se, pois, as propostas de um direito penal de autor e suas derivações mais ou menos dissimuladas” (BATISTA, 2007 [1990], p.93).

<sup>20</sup> Original: “função não mais de punir infrações, mas de corrigir suas virtualidades” (FOUCAULT, 2005 [1974], p.86).

date back to the 19th century, is part of the body of disciplinary knowledge that “arises from the observation of individuals, their classification, the registration and analysis of their behaviors, their comparison, etc.,”<sup>21</sup> according to Foucault (2005 [1974], p.121). This positivist perspective of the field defends a formalist view (giving it a “scientific” status), whose objective is the causal-explanatory analysis of crime and criminals, considering social facts in a mechanistic way, as Batista states: “such criminology necessarily tends to treat the criminal episode as an individual one and to support the legal order as the natural order.” (BATISTA, 2007 [1990], p.30, our translation)<sup>22</sup>.

In the second typology, we find the police documents and the affidavits, which lead us to consider specific issues of this document genre, as well as the internal structures of the police and the functions and procedures active in the issuance of documents and procedural formalities. The meaning of the *framed statement* is first constructed in a situation of enunciation marked by a repressive context, and second in the materialization in reported speech in the rigid textuality of the affidavits. The police clerk’s activity is highlighted here, and may be thought of in its institutional role, in the technical rules to which it is subjected, and in the more particular contexts of the police stations. This means to consider the document as the result of a confrontation between a strongly normative structure and a daily police practice. Norms are considered not only everything guides the “writing,” in the strict sense, but all the procedures that relate to this practice, and the main one is the interrogation itself. In this conception, the clerk’s activity takes the form of a translation of the deponents’ statements into forensic writing; a “translator” with public faith, who acts within a repressive context, under a general “command” of meaning given by the ordinance instructing the inquiries.

## The construction of Fonseca’s argument

The article “Male prostitution in São Paulo” by Guido Fonseca was originally published in 1977 in the journal *Arquivos da Polícia Civil*, and a modified version was transformed into a chapter of the book *História da prostituição em São Paulo* (History of Prostitution in São Paulo) (FONSECA, 1982). Fonseca was police chief (*delegado de polícia*) and director of the Police Academy of São Paulo, having published, besides the book on prostitution, articles in police science, criminology and history of police and crime, as well as the book *Crimes, criminals and criminality in São Paulo* (FONSECA, 1988).

The main purpose of the 1977 article is to defend the legal characterization of male prostitution as vagrancy, subject to imprisonment. The text states that experts in the field pay little attention to the phenomenon of male prostitution in contrast to female.

---

<sup>21</sup> Original: “nasce da observação dos indivíduos, da sua classificação, do registro e da análise dos seus comportamentos, da sua comparação, etc.” (FOUCAULT, 2005 [1974], p.121).

<sup>22</sup> Original: “Tal criminologia necessariamente tende a tratar o episódio criminal como episódio individual e a respaldar a ordem legal como a ordem natural” (BATISTA, 2007 [1990], p.30).

He presents an overview of studies that account for the practice in various parts of the world and a short history of criminal records of pederasty in São Paulo since the end of the 19th century. He observes that this older data is vague, as it only records “passive pederasty, which is in no way to be confused with male prostitution.” (FONSECA, 1977, p.67, our translation)<sup>23</sup>

Then, based on studies and reports from the 1930s and 1940s, he draws a partial profile of contemporary prostitution and establishes a comparison with its closest context (the 1970s), already framing the practice with a moral opinion: “The most audacious dressed up as women. (...) Even so, it was still an ashamed prostitution, so to speak. The prostitutes did not have the *audacity of the present ones*. Today, they do not seem to feel ashamed of their *abnormality*” (FONSECA, 1977, p.69, our emphasis, our translation)<sup>24</sup>.

The “audacity of the present ones” and the “abnormality” seem to be related to the use of female clothing and the exhibition of their bodies in public spaces. An overview of male prostitution in São Paulo in the 1970s is presented, informing that in December 1976 (before the publication of the ordinance), a total of 243 *travestis* were registered in the 4th Police District. Fonseca selects a sample of 100 cases to compile a statistical table on color, age, place of birth, and profession. Regarding professional activities, he says that most of them did not present personal documents and that “all of them practice prostitution (...) and do not show any intention of abandoning it,” justifying that “due to their too feminine appearance, their chances in the labor market are limited,” (FONSECA, 1977, p.72, our translation)<sup>25</sup> according to some of the *travestis*’ statements registered by the author.

Fonseca also relates *travesti* prostitution to practices of violence, theft, extortion, pimping, and drug use. He points out that the *travesti* prostitutes would dispute some areas of prostitution with (cisgender) women, against whom they used physical intimidation. To trace the relations of *travesti* prostitution with violence and illicit activities, he created a system of differentiation of classes of “prostitutes,” considering that “not all homosexual prostitutes use criminal maneuvers to achieve their economic goals.” (FONSECA, 1977, p.74, our translation)<sup>26</sup>. In the “low prostitution” category, he defines the main targets of the repressive policies defended: they dress “scandalously,” walk the *trottoir* [attract clients on the street], and are more violent. “Medium prostitution” includes those who dress “with a certain refinement and walk the *trottoir*’

---

<sup>23</sup> Original: “*pederastia passiva, o que, de modo algum se confunde com a prostituição masculina*” (FONSECA, 1977, p.67).

<sup>24</sup> Original: “*Os mais audaciosos vestiam-se de mulheres. (...) Mesmo assim, era ainda uma prostituição, por assim dizer, envergonhada. Não tinham os prostitutos a audácia dos atuais. Hoje, não parecem sentir vergonha de sua anormalidade*” (FONSECA, 1977, p.69).

<sup>25</sup> Original: “*todos exercem a prostituição (...) e não demonstram a intenção de abandoná-la*”; “*devido suas aparências por demais afeminadas, as chances no mercado de trabalho são limitadas*” (FONSECA, 1977, p.72).

<sup>26</sup> Original: “*Nem todos os homossexuais prostitutos utilizam-se de manobras criminosas para alcançar seus objetivos econômicos*” (FONSECA, 1977, p.74).

with some discretion.” (FONSECA, 1977, p.75, our translation)<sup>27</sup> The category of “high prostitution” describes the ones who work mainly in nightclubs and prostitute themselves “in their spare time,” but do not usually walk the *trottoir*.

Based on this profile of prostitution and the observational diagnosis of its increase in the city, Fonseca presents the text of Ordinance No. 390/76 as an instrument to “mitigate the consequences of this expansion.” (FONSECA, 1977, p.75, our translation)<sup>28</sup> The main argument affirms that female and male prostitution should be treated differently by criminal legislation, since the former would have “an important social function, which is to preserve the morality of homes, the purity of morals within families.” (FONSECA, 1977, p.76, our translation)<sup>29</sup>. Thus, in his argument, the court’s position in not considering female prostitution illicit should not be extended to male prostitution. He presents a 1972 judgment and a 1977 sentence to corroborate his thesis.

The article’s idea is to demonstrate the author’s argument in his criminal thesis: 1) characterization of male prostitution as a little-studied object; 2) diagnosis of the increase of male prostitution in São Paulo and its great public visibility; 3) characterization of individuals who engage in prostitution, including the association with criminal activities in their orbit; 4) defense of the differentiation between female and male prostitution; 4) case law that considers the framing of male prostitution as vagrancy.

One point to be highlighted in this argument is a mark of positivist empiricism identifiable in the data presentation. The author’s experience as a police chief seems to be a background issue for many of his diagnoses, the main one being about the increase in the *trottoir* movement in the city of São Paulo; this is even the main point that justified the publication of the 1976 ordinance. This grounding in police practice is also seen in the profiling of *travesti* prostitution and the emphasis on visual description of bodies and clothing in many of the arguments presented. Thus, we observe strategies to construct the penal argument through the logic of the administration of the police’s pastoral power, with individualization techniques and totalization procedures. The very action instructed by the ordinance operates as a part of those strategies: individual identification guidelines for repression (to take individuals out of circulation) and the assembly of the file that collaborates with the totalization: that is, it configures a *political* file as an instrument of the repression system.

Regarding the characterization of the “prostitute,” the resources of individualization and totalization are operationalized, first by restricting the meaning of “male prostitution” in the recognition of *travesti* bodies. Néstor Perlongher proposes thinking of a continuum of homosexual prostitution in degrees of femininity and masculinity, which would have at its extremities the *travestis* and the *michés* (male prostitute), respectively. For the

---

<sup>27</sup> Original: “com certo apuro e fazem o ‘trottoir’ com alguma discrição” (FONSECA, 1977, p.75).

<sup>28</sup> Original: “atenuar a consequência dessa expansão” (FONSECA, 1977, p.75).

<sup>29</sup> Original: “uma importante função social, qual seja, a de preservar a moralidade dos lares, a pureza dos costumes no seio das famílias” (FONSECA, 1977, p.76).

more masculinized individuals, he created the expression “virile prostitution,” which would be the focus of his ethnography (PERLONGHER, 2008 [1987]). Guido Fonseca understands male prostitution as being synonymous with *travesti* prostitution, making no mention of virile individuals; these would only be implied with the designations “homosexuals” or “pederasty.”

The *travesti* is framed, in Fonseca’s paper, as an individual who exists only in a context of prostitution; the word is used as a synonym for “prostitute.” Another very important element in the profile’s constructive system is the characterization of the practice of *trottoir* as the most extreme form of male prostitution. Prostitution that is exhibited in public spaces is one of the main indicators of dangerousness in Fonseca’s classificatory system. The *trottoir* of bodies exhibiting the feminine and masculine in themselves gains pathologized readings (“abnormality”) and would be judicially punishable by the exercise of a pastoral power.

From this characterization of the practice of *trottoir*, it would be possible to assume the configuration aimed at the concept of “indecent exposure,” but the criminal framing as “harassment,” expressed in Article 61 of the Law of Criminal Offenses (repealed in 2018), did not provide for imprisonment (only a fine). Thus, it is understood that the state actions against *travesti* prostitution strongly induced its characterization as vagrancy, which was a misdemeanor often used by the contemporary repressive system, even with a case law contrary to its application in the case of female prostitution. Apparently, Article 61 could only have an auxiliary role in constructing the argument of accusation, potentiating the effects of meanings related to “immorality” and “obscenity.” Both misdemeanors involve problems within the legality principle in criminal law (besides the issue of harmfulness already discussed for the case of vagrancy), directly related to the formulation of their statements. Batista points out some violations of this principle, such as the concealment (which can also be a kind of camouflage) of the “core of the type,” that is, the verb that expresses the action, and also “the use of the element of the type without semantic precision,” namely vague formulations that do not allow “an acceptable level of ‘typical certainty’” (BATISTA, 2007 [1990], p.82, our translation)<sup>30</sup>: How to describe the acts of “habitually indulging in idleness”? How to establish the limits of “indecent exposure”?

Even considering the linguistic impossibility of a “pretension” of legal language in wanting to “establish original and univocal meanings for legal expressions,” (BATISTA, 2007 [1990], p.83, our translation)<sup>31</sup> applying these criminal types that violate legality because of the excessive imprecision of the statements allows the use of moral arguments and judgments based on virtues and not on acts. As stated in the 1972 judgment, reproduced in Fonseca’s (1977, p.78, our translation) article: “(...) the vagrant who claims to live precariously on the subsidy of his immorality, must be considered a vagrant for

---

<sup>30</sup> Original: “o emprego do elemento do tipo sem precisão semântica” (...) “um nível aceitável de ‘certeza típica’” (BATISTA, 2007 [1990], p.82).

<sup>31</sup> Original: “estabelecer sentidos originários e unívocos para as expressões legais” (BATISTA, 2007 [1990], p.83).

criminal purposes, because his idleness constitutes an index of social danger, since, frequently, it is allied with begging and crime.”<sup>32</sup>.

The penal difference between female and male prostitution, defended in the text, is based on the naturalized idea of a “necessary evil” in the female case, based on a “theory of the latent impulses of men” that allowed the incorporation in urban designs, as Park describes, of “regions where a divergent moral code prevails.” (PARK, 1967 [1916], p.72, our translation)<sup>33</sup>. In Fonseca’s argument, the effort is to apply this idea only to female prostitution and associate a greater potential for criminality to the same activity practiced by *travestis*, which from a legal point of view shows all its fragility.

## Affidavits and utterance

Analysis of police documents, which form this research’s corpus, should be aligned with the argumentation set out in Fonseca’s article. The production of these documents is related to a command, given by Ordinance no. 390/76, but the general architecture that subsidizes it is exposed later on in the text of Fonseca.

This set of documents has 316 affidavits produced in the context of the *travesti trottoir* offensive in the region of Avenida Ipiranga. Affidavits, hereinafter AF, is a document genre that plays a very important role within the procedures making up the practice of the Judiciary Police, from which is drawn the “possibility of indicting or exonerating an accused or a suspect.” (COSTA, 2009. p.99, our translation).<sup>34</sup> They are texts of technical writing, which register “statements of individuals who testify or are victims, accused, informants, offenders, or suspects in the occurrence of a criminal offense.” (COSTA, 2009, p.101, our translation).<sup>35</sup>

The production conditions of this type of document have great influence in understanding it as a genre, as well as its meanings. It works in the field of what Paul Ricoeur calls testimony with judicial use: that is, it would be a type of declared memory, directed to an interlocutor (in this case, the police authority) and under which relations of trust and suspicion weigh (testimony is understood here as an umbrella for several genres and memory practices). This oral declared memory becomes a written record, so it is also an archive and, in this operation, increases its reach: “like all writing, a document in an archive is open to whomever knows how to read. Therefore it has no designated addressee, unlike oral testimony addressed to a specific interlocutor” (RICOEUR, 2004, p. 169).

---

<sup>32</sup> Original: “o vadio que diz viver precariamente do subsídio de sua imoralidade, há de ser considerado em verdade vadio, para os efeitos penais, pois a sua ociosidade constitui índice de perigo social, porque, não raro, vem aliar-se à mendicância e à criminalidade” (as seen in FONSECA, 1977, p. 78).

<sup>33</sup> Original: “regiões onde prevaleça um código moral divergente” (PARK, 1967 [1916], p.72).

<sup>34</sup> Original: “possibilidade de indiciar ou inocentar um acusado ou um suspeito” (COSTA, 2009. p.99).

<sup>35</sup> Original: “declarações de indivíduos que testemunham ou que são vítimas, acusados, informantes, infratores ou suspeitos em uma ocorrência de ilícito penal” (COSTA, 2009, p.101).

As a police document, the oral statement first takes on the condition of political archive (or of judicial use, according to Ricoeur) and gains new recipients: police officers, lawyers, prosecutors, and judges (COSTA, 2009, p. 101). An AF is understood as a “transposition from speech to writing, as quickly as possible, considering that the information comes from the conversational act of the deponent,” (COSTA, 2009, p.105, our translation)<sup>36</sup> within police technology. Thus, we can understand the police clerk’s work in creating an AF as an act of translational character, which transposes speech from orality to writing, from the deponent’s testimonial statements to the forensic format, under technical-judicial norms that guide the writing. The main mark, in the resulting textual materiality, is a reported speech text, in indirect mode. The AFs that make up our corpus are completed using the same model form.

**Chart 1 – Model Declaration Statement**

**TS Model**

On the [day of the month] of [ one thousand nine hundred and seventy], in this city of [ ], at the Police Station where the respective Delegate, [name of delegate], was present, with me clerk [name] of this office, signed below, appeared [civil name and, in some cases, “alias ‘travesti name’”], son of [ ] and [ ], age [ ], skin color [ ], marital status [ ], nationality [ ], born in [city], occupation [ ], resident at [ ], knowing how to read and write and stated:

[body of the statement]

He said nothing further – nor was he asked. Read and found to be in conformity, it is duly signed. I, [name of clerk], clerk, have typed it.

[Signatures] Authority  
Affiant  
Clerk

**Source:** Author’s elaboration based on the AFs consulted.

The AF model builds a representation of the statement condition, in which the affiant, the police chief and the clerk would participate. The affiant, in discursive terms, may be understood not as a speaker but as a speaking subject, according to Ducrot (1984): an individual of the world who speaks and has his statements reported in the form of police language. In the structure of the document text, the affiant is the subject of the verb (“stated”), which has illocutionary force within the situation of his statement: the statement given in front of the police authority has the legal importance of an act. In the documents analyzed, the affiant’s role is played by *travestis* sent to the district for investigation and urged to declare themselves about

<sup>36</sup> Original: “*transposição da fala para a escrita, da forma mais rápida possível, considerando que as informações são oriundas do ato conversacional do depoente*” (COSTA, 2009, p.105).

the situation of “vagrancy in the act” in an environment, we can assume, marked by strong intimidation.

The police authority is the interlocutor of the affiant’s statements, but not of the AF utterance. His presence is only referenced, and his statements and acts in the context of taking the statement are not reported or “translated” in the documents. Guido Fonseca is the “delegate” identified in all the AFs constituting the corpus, but here the role he plays is no longer the same as we observed as the author of criminology articles; he is not an author who argues, but the authority that conducts the testimony and makes decisions. The sense of authority, in the institutional context of the police, refers to the figure of officials who embody the idea of exercise of Public Power. The legislation of the state of São Paulo understands the police authority as the one that “presides over the acts of the Judiciary Police” and has included among its attributions “to arrest perpetrators of crimes or misdemeanors in *flagrante delicto*,” and activities typical of the exercise of pastoral power such as “to take into custody drunks, beggars, madmen and troublemakers who, by word or gesture, outrage modesty, offend public tranquility and the peace of families.” (ROCHA, 1989 [1982], p.59, our translation)<sup>37</sup>.

In the AFs analyzed, all identified clerks have male identity, the model form has a blank space for the gender desinences in the clerk’s characterization,<sup>38</sup> indicating that there might be women performing this function. In the AF, the clerk is the speaker, and the pronoun, “I” (the clerk) even appears explicitly.” This clear indication of the first person is due to the institute of public faith. The clerk is an auxiliary function of the police administration and is technical in nature. It is the only police designation that has public faith, which in its practice corresponds to an attestation of the trustworthiness of its translation work. This character of trustworthy transcription would constitute, in relation to the communicational situation, the truth of the act of enunciation: it attests that the statement was made just as the written text reports.

Thus, conceptions of *truth* and *reality* emerge in this type of document, activated by the very particular configuration of enunciative heterogeneities in its composition. The heterogeneities that constitute and are shown in the discourse “represent two different realities: the real processes of constitution of a discourse and the real processes of representation of its constitution in a discourse,” (AUTHIER-REVUZ, 1990, p.32, our translation)<sup>39</sup> according to Authier-Revuz (1990). The signature of the agent with public faith creates the meaning effect of *truth* and *reality* in the discourse’s constitution in the legal field, with illocutionary force for judicial procedures.

Regarding what is stated, there is the testimonial importance of *suspicion* and *trust*. The affiants, in that situation, are framed in the field of suspicion: the approach

---

<sup>37</sup> Original: “*preside os atos da Polícia Judiciária*” (...) “*prender em flagrante delito autores de crimes ou contravenção*” (...) “*pôr em custódia os ébrios, os mendigos, os loucos e os turbulentos que, por palavra ou gesto, ultrajam o pudor, ofendem a tranquilidade pública e a paz das famílias*” (ROCHA, 1989 [1982], p.59).

<sup>38</sup> Original: “*escriv\_*”: in portuguese, clerk is “*escrivão*” (male) or “*escrivã*” (female).

<sup>39</sup> Original: “*representam duas realidades diferentes: a dos processos reais de constituição dum discurso e a dos processos não menos reais, de representação, num discurso, de sua constituição*” (AUTHIER-REVUZ, 1990, p.32).

of the police, the being taken to the police station, the instance of presenting the statement in front of the authority, and the writing of the AF are acts that draw the figure of a suspect. The confidence of testimony, according to Ricoeur (2004, p. 163), starts from “the fact that the assertion of reality is inseparable from its being paired with the self-designation of the testifying subject,” that is, the ability to declare the typical formulation of testimony “I was there” (which can also mean “I was not elsewhere”).

Since our corpus is made up of loitering AFs, the trustworthy formula of self-designation is shaken: the affiant cannot state the basic testimonial statement (“I was [not] there”) within the framing of a criminal type of “perpetrator,” the suspected affiant is required to prove that he is what he says or prove not to be what the police accuse him of being.

## Visualization in language and criminalization

The texts of the statement in the TSs have a fairly rigid format in their cohesive organization: basically, a chain of clauses, interconnected by the use of the connective “que” (that), in repetition (polysyndeton), to ostensibly mark the reported nature of the text ([affiant] stated that...).

The following text was reproduced from one of the affidavits:

[the affiant stated] THAT he has been a *travesti* for about six months now, using the *nom de guerre* “VERA”; THAT, since then, he has been dedicated to prostitution, seeking men for anal intercourse and libidinous acts in Teodoro Baima Street or Dr. Arnaldo Avenue; THAT he charges the men with whom he has libidinous contacts the amount of Cr\$ 150.00, earning around Cr\$ 6.000.00; THAT, in addition to this, he has made cushions for his residence; however, he does not have any document proving this; THAT he pays the sum of Cr\$ 600.00 per month for rent at the place where he lives, not knowing the name of the property owner; THAT, for the clothes that he now wears, suitable for women, he paid the following prices: for the blue blouse, he paid Cr\$ 59.00, for the women’s long pants, he paid Cr\$ 125.00, for the bracelet and necklace that he wears, he paid Cr\$ 40.00, and for the women’s “bikini” panties, he paid Cr\$ 45.00; THAT the hair he wears is his own; THAT the affiant made up his face by himself; THAT the women’s handbag and the women’s shoes that he wears, he got from a “customer” during a date; THAT both his fingernails and toenails are painted, in different colors; THAT he uses the hormone PROGINOL, which is injectable, and pays Cr\$20.00 for each application on the buttocks in pharmacies; this is the reason why he has developed breasts. He said nothing more, nor was he asked. Read

and found to be in conformity, it is duly signed. I, [ ], Registrar Clerk.  
(SÃO PAULO, 1976-1977).<sup>40</sup>

This general cohesive mark is also observed in an analysis of the AF of homicide inquiries registered in Porto Alegre in the 2000s, which can be read as an indication of the crystallization of this formula within police practice (COSTA, 2009). The author also points out other structural parameters in these texts, which would mark the bases of the investigative work; “all police texts should contemplate the seven elements of police investigation: what; when; where; who; why; in which way; with which intensity.” (COSTA, 2009, p.105, our translation)<sup>41</sup>. These seven parameters had to be adapted in the AF reproduced above. Throughout the document set analyzed, we found general structure of information sequencing, with small variations in the order and degrees of detail:

1. how long has the affiant been a *travesti*;
2. the *travesti*’s name (usually indicated as “nickname,” “*nom de guerre*,” “alias”);
3. how long has the affiant been prostituting (or if not, has he ever prostituted);
4. where does the affiant prostitute herself;
5. how much does the affiant charge and earn;
6. reference to employment or remunerated activities other than prostitution;
7. residence (if pay rent, amount of rent, etc.);
8. listing the items of clothing that the affiant wore and the amount paid (and in some cases, where they were purchased), and;
9. reference to the use of hormones (frequency, amounts paid) and physical characteristics of the affiant.

The parameters of investigation assume a more descriptive character for the characterization of the affiants rather than narrating an event. This operation in the format

---

<sup>40</sup> Original: “*QUE, é travesti há cerca de seis meses, usando o nome de guerra “VERA”; QUE, desses seis meses par cá, vem se dedicando à prostituição, sendo que procura homens, para coito anal e atos libidinosos, na rua Teodoro Baima ou Av. Dr. Arnaldo; QUE, cobra dos homens, com quem mantem contatos libidinosos, a quantia de Cr\$ 150,00, ganhando por mes, nesse metier, cerca de Cr\$ 6.000,00; QUE, além disso, fez almofadas em sua residência, contudo, não tem qualquer documento que isso prove; QUE, paga por mes a quantia de Cr\$ 600,00 de aluguel, no local onde reside, não sabendo o nome do proprietário do imóvel; QUE, a roupa que ora usa, própria de mulheres, pagou os seguintes preços: a blusa azul, pagou Cr\$ 59,00, a calça comprida de mulher pagou Cr\$ 125,00, a pulseira e o colar que usa pagou Cr\$ 40,00, e a calcinha “biquini” de mulher pagou Cr\$ 45,00; QUE, o cabelo que usa, é próprio; QUE, a maquiagem que usa, o declarante foi que fez; QUE, a bolsa de mulher e o sapato de mulher que usa, ganhou de um “fregues”, quando fez um programa; QUE, tanto as unhas da mão como as unhas dos pés, são pintadas, de cores diferentes; QUE, usa hormonio PROGINOL, que é injetável, sendo que paga Cr\$ 20,00 cada um com a aplicação, que é feita nas nadegas, sendo que lhe é aplicado em farmácias; motivo por que tem os seis desenvolvidos. Nada mais disse - nem lhe foi perguntado. Lido e achado conforme, vai devidamente assinado. Eu,[ ], Escrivão” (AF, 21 Dec. 1976). The transcription in Portuguese was made keeping the textual and orthographic forms of the document, only disregarding cases of printing flaws of the typed text (e.g., erased letters in the middle of words).*

<sup>41</sup> Original: “*Todos os textos policiais devem contemplar os sete elementos da investigação policial, que são os seguintes: o quê; quando; onde; quem; por quê; de que modo; com que intensidade*” (COSTA, 2009, p.105).

of the affidavit transcripts responds to the need to fit the statements into the qualification of the misdemeanor of vagrancy. The stable order of the information observed in the AFs of the corpus also allows us to identify an interrogation script and a performance that marks the authority role of the “*delegado*” in the production of the statements.

There are two main blocks highlighted in this textual frame: one focusing on information related to the “work” context and the other on characteristics related to bodies. In the first case, the targeting is aimed at characterizing vagrancy. Prostitution is highlighted as an organizing activity for the survival of most of the registered *travestis*. In addition, the information on “licit” occupations, which would be those that could be proven, in accordance with the command of Ordinance No. 390/76, which provided that “proof of work shall be made through proper documentation, accompanied by photocopies” and preserving the appearance of the assured defense. Proof of work cannot be achieved easily in the contexts of informality, even more for young transgender people (as can be seen in many of the work activities described in the AFs), and there were obstacles to obtain a work permit in the 1970s (OCANHA, 2016). Fonseca (1977) associates *travestis* with various types of crimes, including the forgery of documents, stating that when investigated, “they do not hesitate to present false documentation trying to prove illegal occupations.” (FONSECA, 1977, p.73, our translation)<sup>42</sup>.

The second block we highlight is related to information associated with the affiants’ bodies. There are descriptions of clothing, haircuts, makeup, and indications about hormone use, with the respective statements of amounts paid for the products and treatments described. The emphasis on women’s clothing is clear; in some cases, there are even mentions of underwear worn by the affiants or indications that “they don’t wear a purse or a necklace” or “they don’t wear a wig.” The descriptive emphasis in the statements, especially the physical descriptions, points to the use of textual resources to build the reference of visualization. In the text of the ordinance, there is the explicit instruction: “whenever possible, the inquiries will be illustrated with photographs of these perverts in the female attire they are wearing on the occasion, so that the Judges can evaluate their harmfulness”<sup>43</sup> (SÃO PAULO, 1976, our translation)<sup>44</sup>.

We interpret that there is the formation or reinforcement of a discourse of criminalization by appearance, through mechanisms of language and forensic procedures, which represent part of the surveillance offensive on bodies and public circulation during the Brazilian military dictatorship. Visuality, in terms of semiotic communication, is an important boundary marker of public morality, hence the emphasis on characterizing the “abnormality” of bodies and combating the practice of *trottoir*. Margareth Rago (2008

---

<sup>42</sup> Original: “*não vacilam em apresentar documentação falsa tentando provar ocupação ilícita*” (FONSECA, 1977, p.73).

<sup>43</sup> Some photographs were in deed taken during the inquiries, and we had access to some of them that were published. However, due to ethical concerns, we decided not to use them in this research, since it was impossible to guarantee the non-identification of the people in the files.

<sup>44</sup> Original: “*sempre que possível, as sindicâncias serão ilustradas com fotografias desses pervertidos em trajes femininos que estiverem usando na ocasião, para que os MM. Juízes possam avaliar sua nocividade*” (SÃO PAULO, 1976).

[1991]) notes, in contexts of female prostitution, how “clothing becomes a semiotic system and the concern to clearly define the difference between ‘honest’ and ‘ladies of the night’.” (RAGO, 2008 [1991], p.136, our translation)<sup>45</sup>. Perlongher (2008 [1987]) points out that the urban underworlds have a notion of territoriality not only marked by delimitations of a city’s physical regions (even because they move constantly, as Fonseca’s studies show), but also by code systems, which involve practices, languages, and ways of dressing and behaving, helping to form cartographies of moralities. In the AFs, it is possible to identify the articulation of geographic markers (identification of areas where the affiants prostitute themselves) and of visual codes of transvestism and prostitution.

In these systems of recognitions and moral interpretations of bodies and sexualities, as Foucault (1978 [1976], p.43) points out, “homosexuality appeared (...) when it was transposed from the practice of sodomy onto a kind of interior androgyny, a hermaphroditism of the soul”. Not only in an “inner” way or in the “soul”, the external visual markings that condense codes of femininity and masculinity on bodies represent parameters for the construction of social pathologization. This may be perceptible in the fabrication of the taxonomy of *travesti* prostitution by Fonseca, in which the categories are formulated based on the practice (or not) of *trottoir*, on financial gains, and on the more or less feminized appearance (how much they “pass” themselves off as cis women).

About the “low prostitution,” in which Fonseca (1977) fits the *travestis* that he considers more “scandalous,” he describes: “there are those who, besides female panties, cover their bodies only with a cape that is opened quickly during the passage of vehicles” and thus “show their breasts.” (FONSECA, 1977, p. 74, our translation)<sup>46</sup>. The *travestis* in the “medium” and “high” categories would have reached “one of its most cherished goals, that is, an almost perfect resemblance to a woman” (FONSECA, 1977, p.74, our translation)<sup>47</sup>. The implication is a comparison that “low prostitution” would leave the “hermaphroditism of the soul” more exposed in the body, representing a higher degree of dangerousness.

The financial argument justified the registration of the amounts spent on female clothing and hormonal treatments and placed the “surgery for ‘sex change’” as the main objective and driving force of *travesti* prostitution (FONSECA, 1977, p. 75).

The elements articulated into the AFs sought to support both the argument of vagrancy, in the case of unfolding of the police action in criminal proceedings, and the characterization of *travesti* prostitution as a social pathology, collaborating with the thesis that it should be framed as an illicit activity. The “vagrant” body, thus, is not only a body without work, but a body that represents social danger.

<sup>45</sup> Original: “A roupa se transforma num sistema semiótico e a preocupação em definir claramente a diferença entre as ‘honestas’ e as ‘mulheres de vida airada’” (RAGO, 2008 [1991], p.136).

<sup>46</sup> Original: “Há os que além da calcinha feminina cobrem o corpo apenas com uma capa que é aberta, rapidamente, durante a passagem dos veículos” e “mostram os seios” (FONSECA, 1977, p. 74).

<sup>47</sup> Original: “Um de seus objetivos mais caros, ou seja, uma semelhança quase perfeita com a mulher” (FONSECA, 1977, p.74).

## Conclusions

Vagrancy has been configured as a legal and police instrument used in stricter policies of surveillance and control of urban public order. Its use goes beyond the exclusive theme of labour, being operationalized for various forms of moral ordinances. Since it is based on legal statements that are almost semantically hollow, its meanings are formed entirely in its use, in characterizing the participants, with pragmatic force, in criminal investigations and processes and, even before that, in the police procedures of interrogation and registration of infractions, detentions for investigation, and correctional arrests.

Regarding the archive, in a first reading of these documents, we were struck by the mobilization of a technical language apparatus to describe, in specific detail, the bodies and intimacies of the deponents. It was precisely there, in the words of the police writing, that intimate life was shown to be so violated by the public powers. This was the axis that organized this article.

However, other paths opened up during the research, indicating that future works should search for what surpasses the repressive act, the reminiscence, the act of not erasing those voices, listening to their echoes and interpreting their traces left in the very record of repression.

## Acknowledgements

I thank James N. Green, professor at Brown University (USA), who provided access to the documentation on which this research is based.

PALMA, D. Declarações enquadradas de corpos “vadios”: leitura de um arquivo de repressão policial à prostituição de travestis. *Alfa*, São Paulo, v.67, 2023.

- *RESUMO: O artigo propõe a leitura de um arquivo policial de repressão à prostituição de travestis na década de 1970, na cidade de São Paulo. O objetivo é analisar nos documentos de polícia jogos de estratégias de enquadramentos de corpos para a fabricação de indivíduos criminosos, na moldura do discurso penal sobre a contravenção da vadiagem. O corpus da pesquisa é formado por 316 termos de declarações lavrados pela Polícia Civil de São Paulo, textos de criminologia, leis e um manual de polícia, reunidos por meio da pesquisa documental. Uma base de referências multidisciplinares (linguísticas, históricas, jurídicas e filosóficas) fundamenta a leitura articulada dos materiais do corpus. As análises focam na construção do argumento penal, nas instâncias de enunciação e na observação de elementos formais que apontam para a criminalização das travestis por meio da mobilização de um aparato de linguagem para descrever física e moralmente seus corpos. As estratégias discursivas são interpretadas neste estudo como tecnologias de um poder pastoral, conforme a compreensão*

*de Michel Foucault, que atua sobre a circulação de corpos no espaço urbano, no contexto em questão.*

- *PALAVRAS-CHAVE: arquivo policial; prostituição de travestis; vadiagem; enquadramentos discursivos.*

## REFERENCES

ASSMANN, A. Canon and Archive. In: ERLI, A.; NÜNNING, A. (ed.). **Cultural memory studies**. Berlin: Walter de Gruyter, 2008. p. 97-107.

AUTHIER-REVUZ, J. Heterogeneidades enunciativas. Tradução de Celene M. Cruz e João Wanderley Geraldi. **Cadernos de Estudos Linguísticos**, Campinas, n. 19, p. 25-42, 1990.

BATISTA, N. **Introdução crítica ao direito penal brasileiro**. Rio de Janeiro: Revan, 2007 [1990].

BRASIL. Decreto-Lei nº 3688, de 3 de outubro de 1941. Lei das Contravenções Penais [Law of Misdemeanors, Decree-Law No. 3688/1941]. **Diário Oficial da União**, Brasília, 3 out. 1941. Disponível em: [https://www.planalto.gov.br/ccivil\\_03/decreto-lei/del3688.htm](https://www.planalto.gov.br/ccivil_03/decreto-lei/del3688.htm). Acesso em: 2 jun. 2023.

BUTLER, J. **Frames of War: When Is Life Grievable?**. London: Verso, 2009.

BUTLER, J. **Excitable speech: a politics of the performative**. New York: London: Routledge, 1997.

CHALHOUB, S. **Trabalho, lar e botequim: o cotidiano dos trabalhadores no Rio de Janeiro da *belle époque***. Campinas: Unicamp, 2001 [1986].

COSTA, M. I. P. da. A textualidade no termo de declaração de inquéritos policiais de homicídio sem autoria conhecida. **Cadernos do IL**, Porto Alegre, n. 38, p. 98-107, 2009.

CRUZ, E. P. Liminar proíbe detenção de moradores de rua por vadiagem. **Carta Capital**, São Paulo, 5 jun. 2012. Disponível em: <https://www.cartacapital.com.br/sociedade/liminar-proibe-detencao-de-moradores-de-rua-por-vadiagem/>. Acesso em: 15 jul. 2020.

DUBBER, M. D. Criminal Jurisdiction and Conceptions of Penalty in Comparative Perspective. **University of Toronto Law Journal**, Toronto, v. 63, n. 2, p. 247-277, 2013. Disponível em: <https://utpjournals.press/doi/citedby/10.3138/utlj.11117-2?role=tab>. Acesso em: 01 fev. 2023.

DUCROT, O. **Le dire et le dit**. Paris: Minuit, 1984.

ENGEL, M. G. **Os delírios da razão: médicos, loucos e hospícios**. Rio de Janeiro: Ed. Fiocruz, 2001.

FARGE, A. **Lugares para a história**. Tradução de Fernando Scheibe. Belo Horizonte: Autêntica, 2019 [1997].

FARGE, A. **The allure of the archives**. Translated by Thomas Scott-Railton. New Haven: Yale University Press, 2013 [1989].

FONSECA, G. **Crimes, criminosos e a criminalidade em São Paulo (1870-1950)**. São Paulo: Resenha Universitária, 1988.

FONSECA, G. **História da Prostituição em São Paulo**. São Paulo: Resenha Universitária, 1982.

FONSECA, G. A prostituição masculina em São Paulo. **Arquivo da Polícia Civil**, São Paulo, v. XXX, p. 65-86, 1977.

FOUCAULT, M. **A verdade e as formas jurídicas**. Tradução de Roberto Cabral de Melo Machado e Eduardo Jardim Morais. Rio de Janeiro: Nau, 2005 [1974].

FOUCAULT, M. The subject and power. In: DREYFUS, H. L.; RABINOW, P. **Michel Foucault: beyond structuralism and hermeneutics**. 2. ed. Chicago: The University of Chicago Press, 1983 [1982]. p. 208-226.

FOUCAULT, M. **The history of sexuality**. Volume I: an introduction. Translated by Robert Hurley. New York: Pantheon Books, 1978 [1976].

GREEN, J. N. **Além do carnaval: a homossexualidade masculina no Brasil do século XX**. Tradução de Cristina Fino e Cássio Arantes Leite. São Paulo: Unesp, 2000 [1999].

OCANHA, R. F. Travestis paulistanas na mira da Polícia Civil: a prática da Contravenção Penal de Vadiagem. In: ENCONTRO REGIONAL DAANPUH-SP, 23., 2016, Assis-SP. **Anais [...]**. Assis-SP, Unesp, 2016. Disponível em: [http://www.encontro2016.sp.anpuh.org/resources/anais/48/1475255809\\_ARQUIVO\\_RafaelOcanha-TextoCompleto.pdf](http://www.encontro2016.sp.anpuh.org/resources/anais/48/1475255809_ARQUIVO_RafaelOcanha-TextoCompleto.pdf). Acesso em: 15 jul. 2020.

PARK, R. E. A cidade: sugestão para investigação do comportamento humano no meio urbano. Tradução de Sérgio Magalhães Santeiro. In: VELHO, G. (org.). **O fenômeno urbano**. Rio de Janeiro: Zahar, 1967 [1916]. p. 25-66.

PERLONGHER, N. **O negócio do michê: a prostituição viril em São Paulo**. São Paulo: Fundação Perseu Abramo, 2008 [1987].

PIERONI, G. **Os excluídos do reino: a Inquisição portuguesa e o degredo para o Brasil colônia**. Brasília: UnB, 2000.

RAGO, M. **Os prazeres da noite: prostituição e códigos da sexualidade feminina em São Paulo, 1890-1930**. São Paulo: Paz e Terra, 2008 [1991].

RICOEUR, P. **Memory, history, forgetting**. Translated by Kathleen Blamey and David Pellauer. Chicago: The University of Chicago Press, 2004.

ROCHA, L. C. **Prática Policial**. São Paulo: Saraiva, 1989 [1982].

SÃO PAULO. Polícia Civil do Estado de São Paulo. Departamento das Delegacias Regionais de Polícia da Grande São Paulo. Delegacia do Quarto Distrito Policial. **Termos de Declaração de dezembro de 1976 a janeiro de 1977 [Affidavits from December 1976 to January 1977]**. São Paulo, 1976-1977.

SÃO PAULO. Polícia Civil do Estado de São Paulo. Departamento das Delegacias Regionais de Polícia da Grande São Paulo, DEGRAN. Seccional Centro. **Portaria N° 390 de 14 de dezembro de 1976 [Ordinance no. 390 of December 14, 1976]**. São Paulo, 1976.

SOARES, J. de S. Considerações sobre uma polícia preventiva: discursos políticos e a natureza da atividade policial no Brasil oitocentista. **Almanack**, Guarulhos, n. 15, p. 71-105, abr. 2017. Disponível em: <https://doi.org/10.1590/2236-463320171504>. Acesso: 15 jul. 2020.

VILLELA, G. Lei de 1941 considera ociosidade crime e pune “vadiagem” com prisão. **Acervo O Globo**, Rio de Janeiro, 04 dez. 2014.

Received on April 27, 2022

Approved on July 29, 2022