

**5th Conference of the ESA**  
**Visions and Divisions, August 28-September 1, 2001, Helsinki, Finland**

**Carlos Silva\*** (mcsilva@ics.uminho.pt)

**Helena Machado\*** (hmachado@ics.uminho.pt)

**Susana Silva\*** (susilva@ics.uminho.pt)

\* Institute for Social Science, University of Minho, Campus de Gualtar, 4710-057 Braga, Portugal

**LAW, SCIENCE AND THE FEMALE BODY:  
PROSTITUTION AS A “BOUNDARY OBJECT”\***

**Keywords**

Prostitution; female body; social control; law; science.

**Abstract**

The conceptualisation of the female body as a sexual and reproductive object has been for a long time a focus of both law's and science regulation.

Considering the specific sexual objectification of the phenomenon of prostitution in Portugal, we aim to analyse how the cultures of law and science, which claim to be self-regulating and independent from other knowledges and practices, are in fact mutually constitutive and jointly produce dominant ideas about women's bodies, women's sexuality and women's place in society. According to this, we intend to emphasize how the social phenomenon of female prostitution can be described as a “boundary object”, since it is plastic enough to adapt itself to both law and science procedures, and yet robust enough to maintain a common and recognizable identity trough those two different institutions.

The representations of law and science as different but complementary enterprises towards female prostitution create constantly negotiable boundaries and a clear fluidity of work divisions that have in common the feature of providing the basis to define the

---

\* This research is benefiting from financing granted by the Foundation for Science and Technology (Ministry of Science and Technology), within the scope of two supported research projects untitled “Female prostitution in Portuguese semiperipheral border areas” and “Law, science and institutional control of women's sexual and procreative behaviour”, both being carried on at the Institute for Social Science, University of Minho, Braga, Portugal.

prostitute as out of the regulated and authorized boundaries of proper feminine behaviour.

The position of law and science in a hierarchy of knowledges allows a very direct control over the prostitutes' bodies and behaviours in such ways that it reinforces the reproduction of women in a sexualised, subjugated and disqualified way.

### **1. Introduction: from sexuality as an *essence* to female prostitution as a *problem***

Until the seventies, sexuality was a marginal and unimportant theme on sociological research, namely on what concerned the female prostitution. And when analysed, this social phenomenon was conceived as being a “deviant” behaviour and framed into the context of parentage, family and marriage.

Nowadays, there are several theories and approaches on female prostitution. Without intending to mention all those different theoretical frameworks, we believe that it is necessary to raise some critical questions, in order to understand if female prostitution should be appreciated as an expression of some kind of “libidinous behaviour” (as common sense sometimes believes); or if it is a historical and social conditioned phenomenon, that can be explained and understood by biological and psychological factors, but also by social ones: economical, political, cultural and ideological.

Before stating a variety of issues, it is necessary to define sexuality first. There is no intellectual consensus on what concerns a definition of sexuality. To the more conservatives circles – like the catholic church, in Portugal – prostitution, as well as homosexuality, for instance, are still considered as mainly “abnormal sexuality”; but according to some liberal and emancipator currents, some of them inspired on Freudian psychoanalytical models, sexuality can be interpreted by both psychological and biogenetically factors. To organic, functionalist and conservative trends, sexuality was a strong carnal impulse, raising from primitive biological instincts, that should be, in some way, socially controlled and even repressed, in order to prevent its potentially destructive effects on dominant moral order. In contrast, in a liberated perspective, sexuality was a libidinal irresistible force that could change or revolutionise the prevailing social order presented on traditional, as well as in modern Victorian societies.

On both models, sexuality was conceptualised as an essential bio-genetic force, unstoppable, close to animal nature and, for that reason, being sometimes asocial, or at least, transocial.

On the more traditional religions, namely the catholic one, sexuality has been perceived as having a physical and mundane nature, that could only be controlled by the spiritual forces or be tolerated in the context of marriage (that in some way, as a holy sacrament, could repair the impure nature of sexual intercourse). On the liberated perspective of Freud (1975), the truly and real essence of human personality relied on unconsciousness (*id*) libidinal instincts, seen as a vital impulse towards pleasure, that would be always in confront with the *superego*- that one being constructed by cultural restricted norms and values that would conditioned the fulfilment of pleasure. Some Freud followers like Reich (1972) and Marcuse (1963) linked Freudian theories with Marxism, conceiving the Freudian *superego* as a consequence of the alienating norms and values of the capitalistic system, which then created the unidimensional man. This perspective conferred a historical dimension to the genesis of women's possession and exploitation, that according to Engels (1964), was linked to the first form of private property and to the State.

Without depreciating the contributes of the diverse mentioned thinkers, namely those ones emerging from Freud's theories, in our perspective they reflect an essentialist naturalised vision of sexuality, that has been criticised and deconstructed by sociologists, anthropologists, historians and other social scientists, who began conceiving sexuality not only as a biological and genetic object, but as a social product. As Foucault would state (1994), sexuality should always be perceived as social-historical construction. Namely, the biological and anatomical difference between male and female sexual organs began to be perceived as an element of the woman domination by patriarchal power. As Bourdieu wrote, "*the natural justification of the gender differences is socially constructed*", and so it is "*a social construction that bases itself on the principles of the division of the androgynous reason*" (Bourdieu, 1998: 16, 21).

As we see it, sexuality can not be perceived as only a kind of bio-psychological energy based on the genes, hormones, sexual organs, instincts or unconsciousness, without a social and historical framework (Weeks, 1986: 15). Sexuality means a group of biological and mental possibilities (gender identities, body differences, reproductive

capacities, needs, wishes and fantasies), that can be or not be interrelated in each specific society. So, contrarily on what the more rigid, deterministic and reductionist perspectives reflect, sexuality comports diverse dimensions. Sexual intercourse can be perceived as a social interaction, as any other: always socially conditioned, structured and constructed in different socio-cultural, organisational and interactional paths.

We intend to understand the social phenomenon of female prostitution in a pluricausal perspective, which attends to its own dimension, mainly: the structural socio-economic constraints of prostitution activity; its networks and the political-organisational contexts; the actor's rational dimension; and the impact of the social origins of the female prostitute and her biographical path (Silva, 1998). In this paper, our aim is to analyse the phenomenon of female prostitution at a political and organisational level (Weber, 1978; Dahrendorf, 1959; Parkin, 1979), linked to an interactional dimension, namely the representation on female prostitution produced by judicial-legal and medical social actors. Thus, the discourses and practices of health and social technicians, police forces and magistrates can be perceived as having a mediated function of the sexual politics imposed by the State, which creates preventive, curative and criminal procedures.

As well on what refers to sexuality, our concern about the prostitution is not to reveal the essence or a series of attributes of women classified as "prostitutes", but mainly the relational process, which, in particular historic and socio-political and cultural context, throws them out the boundaries of proper behaviour, regulated and authorised by the political and administrative institutions and juridical/judicial and medical agents.

The sexual behaviour patterns transmitted by the socialisation process are gendered, as women are thought to associate sexual activity to emotion and intimacy and men are conducted to dissociate/fragmentize sexual impulses and emotion, causing the men different images of the woman and corresponding meanings of femininity. It is either about the "whore"-woman, seen as object of "animal" pleasure and of body's subjection, or the wife-mother woman, taken as the virtuous and protective figure, commonly and paradoxically sublimated as source of life. This dichotomy of images reflects the dominant belief, presented not only in the literature and art but also in common sense knowledge, aimed at contrasting the malignant, fallen and lecherous

woman of the street with the shy wife and excellent housewife and mother. In this view, prostitution would stand for a “social stain” at the table of the mother-women and virgin-“queens”.

On what concerns an organisational and political-administrative dimension, the level of the state interference on the legal regulation of prostitution, namely the female one; as well as the strength of patriarchal and police procedures towards female prostitutes depends on the specificity of the society concerned and its related spatial-temporal context, embodied by institutional and state mentalities, doctrines and ideologies concerning sexual behaviours. In that way, some conducts are considered “normal” and acceptable and others “abnormal”, “deviant” and even “pathological”, which reminds us of the functionalist theories of Durkheim and his vision of “social normal and pathological facts”. According to Durkheim (1974), man and woman are “by nature” sexually promiscuous, and thus society has to find means of controlling and regulating sexual instincts. So, in that perspective defended by this French sociologist, in the more traditional agricultural societies, religion was the more effective institution in order to regulate “deviant” or “pathological” behaviours as female prostitution; but in modern industrialised societies, the diverse bio-social and political field of sexuality has to be regulated and controlled by the family, the school, the mediator professional corporations, the public and state institutions, being the last ones represented by technicians like police forces, magistrates and medical doctors.

The emergence of new sexually transmitted diseases, like AIDS, increased the urgency to regulate and control sexual behaviours perceived by the dominant values as “deviant”, “artificial” and “abnormal”- homosexuality, sexual intercourse outside institutional marriage and, in particular, merchandised sexuality, namely female prostitution. Nowadays, in a more sophisticated and subtle way than in the past, the patriarchal power of the state sexual politics, can be perceived with clarity by the public health politics aimed at female prostitutes.

According to some critical visions associated with feminism and marxism, the female prostitution, as Nencel states (1994), questions male positions and sexual practices, attitudes and images, male roles and representations about women and mainly their stereotypes and sexual prejudices. On the other side, that questions also the dominant codes of feminine behaviour, namely the elaboration of binary oppositions

between “wel behaved” (“honorable”, “goodworking” and “virtuous” women) and “badly behaved” women (“degenerated”, “lazy” and “vicious”). Indeed, in the past, the female prostitution was perceived, namely in conservative Portugal of the “New State” (Estado Novo), as a threat to the family’s stability and to the integrity of the ‘good Portuguese’, potentially corruptible, both biologically and morally. In contrast, men were excused because they were seen as having sexual urges. The guilt remained on female prostitutes, as symbols of degradation and demoralisation.

Nowadays, the State, namely with the world proliferation of AIDS, claims itself to be responsible for the defence of legitimate interest in order to improve public security and public health. It is in name of these objectives that the old and new forms of State’s prosecution made prostitutes suspicious to the health services, the social services and the police forces (McKeganey and Barnard 1996). Although, similarly to what happened in the nineteenth century, in England; with the legislation on sexually transmitted diseases, between 1864 and 1869 (Millet 1974, Finnegan 1979:9 ss.), the men who are prostitutes’ clients are not supervised by the health services or punished by eventual transmission of disease. This reflects the moral and sexual politics promulgated by the State: indulgence and benevolence when it comes to men and criminalization and discrimination when referring to women.

Thus we advance the following working hypothesis: the legal, medical and socio-political handling of prostitution in Portugal reflects the patriarchal power, which is assured, in part, by the promotion of a model of femininity, which corresponds to the normative standards of the dominant social groups.

Drawing on thirteen interviews made to two magistrates, five police officers, five social workers, one medical doctor and on qualitative analysis of content of a set of one hundred and one written reports on judicial lawsuits of paternity investigation, filed in a court of law in the North of Portugal, between the years of 1968 and 1996, we will analyse the links between the institutional and the discreet disciplinary power beyond the individual speeches and actions aimed at prostitutes.

## **2. Legal control of prostitution: from the first Republic to the New State**

From the analysis of the legislative evolution related to prostitution in Portugal, since the middle of the nineteenth century till the present time, we would demonstrate the strong political and ideological implications of the legal concepts that are part of a speech, which, under the pretension of describing the social reality, only tries to manipulate and change it. Thus, we will put in doubt the arguments associated with the proposed legislations, equating the permeability of the frontiers of the private and intimate experiences of the female prostitutes till the transformation of their sexual and procreative life into a State affair.

In the Occidental Europe, in general terms, specially during the second half of the nineteenth century, the “marginal” social spaces coexisted with the protagonists and rituals of the “decent” and “legal” social spaces, all mixed in the same determined physical space – the street. Therefore, the legislative efforts concentrated themselves in this space - the “contamination” of the “well behaved women” was avoided by making serious efforts to keep them at home and, at the same time, the regulation of prostitution was attempted by making the police registration obligatory for periodic sanitarian inspections.

It appeared, in this context, the first Portuguese municipal regulations against prostitution between 1858 and 1865. Thus prostitutes would seem invisible for those who should not know about their presence, but visible, because they were localizable and identifiable, for the “authorities”, which would this way easily exercise a control over them.

The contagion of the “light” by the “obscurity”, of the “healthy” by the “illness” and related corollaries results from a ideological construction of the dominant social groups, which claim themselves to be the defendants and protectors of sanity, namely a moral, social and hygienic one.

However, parallel to the efforts of regulation and circumscription of the “deviants” and the “normalization” of the behaviours, there are the “transgressions” and the resistances, which show the fluidity of the concepts of “legality” and of “marginality”.

Although this challenge is constant, its specification in this period consisted mainly in the fact that it happened in a particular context – the streets, making its inconvenience visible to all (Guinote and Oliveira 1989).

In this context, the speech changes itself progressively, as from the end of the nineteenth century, becoming more open and disassociating itself sometimes from moral references. In fact, beyond the difficulties in the distinction between the “honest” women and the “vile” women, who were familiar in the streets, the State seemed to be alienated about the problem of prostitution, worrying itself mainly with its own stable maintenance.

In the first decades of the twentieth century in Portugal, a specific public space for the female prostitution was recognised in general in the social system. This was “*a socially tolerated reality and even legitimated by authorities, when it was developed according to the administrative regulations*” (Bastos 1997: 38), namely by the selection of the appropriate locals and places. Moreover, a symbolic dimension with a functional aspect was associated with prostitution – that was the case of the arguments that pointed out prostitution as a contribution to regulate some “instincts”, which would assure the sexual and familiar harmony of the “normal” Portuguese.

*“So, what does it remain? It assumes all the conviction that prostitution is a necessary evil and even useful; if it is useful, it can be named evil in order not to keep on walking in wrong ways, by legislating the impossible and the unprofitable ...”* (Guinote and Oliveira 1989: 341).

Thus, the regulating model coexisted with the traditional reciprocative model. That became possible through the construction of two “opposite” images – the “genuine” female prostitute and the “theatrical” female prostitute, a dichotomy, which is, otherwise, still maintained.

The “genuine” female prostitution wouldn’t be a real life option, but the result of some circumstances gets out of the prostitute’s own control. On the one hand, there are economic difficulties that derive from physical or mental insufficiencies and from accidental situations in life (widowhood, husbands’ abandon, etc.). On the other hand, prostitution would be a “natural” alternative to unemployment and to “dead” periods of work, as well as an income for low incomes of the family.

During the twenties and thirties, the State returned to the purpose of getting firmness and rigidity and the repressive measures against prostitution increased. With the consolidation of the socio-political project of the so called “New State” - Salazar’s



dictatorship, which lasted for forty eight years in Portugal - tried to “close up” the female prostitutes and to take them from the public space.

In order to accomplish this aim, some “Salazar’s” elites had to change the female prostitutes’ own image, founding themselves on the “scientific” nature of some raising medical perspectives on prostitution and sexual diseases transmission. So, the moral reprobation of the prostitution practice was grounded in the construction of a new identity of the “ill” and a new status of the “socially dangerous”, whose fundamental drafts would be “impurity” and “contamination” (Bastos 1997: 222-248).

This juxtaposition of moral-political and medical perspectives, created the notion of the female prostitute as a threat of biological and moral contamination for the “honest” and “innocent” Portuguese, who were still sound but easily corruptible. Moreover, she represented the feminine own nature, when not educated in reason and in norm.

Then, during the period of Salazar’s dictatorship (since the late twenties until the late sixties), it was found necessary to control the feminine sexuality through education, allowing her expression just in a matrimonial context and with procreative objectives. And this is the Women’s and the feminine nature representation – inconstant, capricious, weak, lazy, etc. – that we find specially since the late twenties, in diverse kind of discourses, being them “sociological”, “anthropological” or psycho-physiological ones. “Just through these discourses, the abolitionist movement, which developed with more intensity among us in the twenties (...) and whose activity aimed to repress prostitution (...) and, simultaneously, the taking of preventive directives (...) extended the devotee of prostitution causes, physiological (organics and hereditary), mesological, economic and social ones” (Bastos 1997: 231-2).

The Salazar’s dictatorship also intended to surpass and reconvert female prostitutes, through assistance and social re-education. Around 1930, the Sanitary Police was created, which should inspect the female prostitutes. Those women being suspicion of being prostitutes, would be immediately arrested and registered on the Police files and the men, who was found with them, was usually excused, since he was seen as a kind of “victim of the feminine seduction”. This dissociation between the involving female and male roles in the phenomenon of prostitution is strongly related to the own process of sexual socialization, as we will see.

The police authorities had the function of marking the distinction between the “good” and the “bad” Portuguese women, symbolizing all the last ones as suspects of “wickedness”, “impurity” and “contamination”. Concerning the female prostitution, the police’s project of “purification” assumed two distinct, but complementary, sides – it imposed hygienic norms to registered female prostitutes and the elimination of the clandestine ones.

*“Without denying the medical, hygienic and epidemiological fundamentals of the social contagion of syphilis or of tuberculosis, we can’t juggle away the ideological pressure that the threat of the moral contamination project by vagrants and by their assimilates assumed at that time” (Bastos 1997: 278-9), namely the street female prostitute.*

This threat of moral and biological contamination was dramatized in such a way that, in a second time, it could affirm the substitution of the previous ideological political system for a new image of society. At the same time, it could hide the imperfections of the own national political system, making the image of harmony and of social order possible.

In this process, it was essential the thesis that privileged the individual factors in the prostitution causes, thus reinforcing the idea of a psychiatric pathology of these women, juggling away the conceptualisations, which any way contradicted this exclusively endogen causality.

During the Salazar’s dictatorship period, the ideological separation between the idealized profile of the “good” and of the “bad” Portuguese was assimilated by the State, which claimed itself to be the detector of a superior “rationality” and capable of governing a sentimental and ignorant *social body* (Bastos 1997).

The State became gradually more active and intervenient, accentuating this tendency in the four ties given to the perturbations associated with the critical situation that Portugal went through in the Second World War period.

Combining some characteristics founded in the discourses produced in the previous decades, symbolized by the impurity and by the contamination of power, it emerged the

decree-law n° 35 042 of 1945, which compared, in legal terms, various “states of social dangers”<sup>1</sup>.

In August in 1949, the law n° 2036 (considered to be pre-abolitionist) decreed the prohibition of new inscriptions of female prostitutes and of the opening of more houses for the exercise of prostitution, closing those, whose function did not obey to the stabilisation of hygienic norms, because they constituted a danger to the public’s health. The police proceeding and the sanitary arguments were replaced by a sanitary and police justification, whose inefficiency was notary.

This scenario changes definitely with the decree-law n° 44579/62 of September 19, which forbade the practice of prostitution from January 1 in 1963, ordering the closing of legal brothels and pointing out measures against those, who facilitated, promoted or exploited prostitution.

This legal statement only defines female prostitution - “girls and women who usually practice illicit sexual intercourse with any man to get remuneration or any economic profit”. They are compared to “vagrants for the effect of security measures. For minors under sixteen years old, measures of protection, assistance or education would be applied”.

As we may notice, this law centred itself fundamentally in the exterior and public outlines of prostitution, corroborating the hypothesis that, in law terms, only women are prostitutes, namely the street female prostitutes.

This way, it would legitimate the exercise of clandestine prostitution, where one can find the major contingent of prostitutes, who, by their own clandestine nature, escape to the more visible legal mechanisms of social control. At the same time, it would favour the development of organized nets of prostitution exploitation.

Otherwise, the possibilities of execution of this diploma required not only complementary legislations by clearing up the generic aspects of the law, but also the “collaboration” of the population with the authorities. Therefore, the complementary diplomas were successively delayed and the population alerted them to the inherent risks of those measures. We believe that this situation could be benefiting, on the one

---

<sup>1</sup> This diverse “states of social dangers” were: the simulated beggar; the pimp; the homosexual; the recidivist in fraudulent crimes; the female prostitute of public scandal or disobedient to police prescriptions; the ones who maintain brothels and repeatedly subvert the police regulations; and the ones who incentive usually the depravation and the corruption of minors or the ones that dedicate themselves to the enticement of prostitution.

hand, from the propagandistic discourses of the ones interested in prostitution and, on the other hand, from the “fact that the “social function” of prostitution was still strongly implanted among the public authorities. However, in the quotidian and popular representations, the tolerance towards prostitution lasted longer (increasing equally in times of crisis), reverberating namely in the missing of solidarity” (Bastos 1997: 234) of the Portuguese, in general, towards authorities. So, this proposal created its own limitations, although some female prostitutes abandoned prostitution in the initial period of misleading.

### **3. Nowadays decriminalisation of prostitution**

Prostitution was finally decriminalized with the decree-law nº 400/82 of September 23, becoming effective on the 1<sup>st</sup> of January in 1983. While the practice of prostitution is not punished, its exploitation and/or facilitating are penalized. However, the exclusive reference to female prostitution remained and the client is again forgotten. The sanitary arguments apparently disappeared and the police justifications persisted.

The civil governors in each district can elaborate local regulations, enforcing the law. So, street prostitution is more or less “tolerated”, according to the local police regulations, which may differ from city to city. In general, female street prostitutes can be prosecuted if there are offences against decency and public order, but such prosecutions are rare. In Braga (a Portuguese city characterised by the strong local power of the catholic church), the global strategy confines prostitution to specific areas, hidden from the public, namely “good” Portuguese people and/or foreigners. Prostitution is not illegal itself, but it is illegal in various aspects related to it, allowing female prostitutes to be detained for identification and/or for investigation, as it can be noticed in the following police statements:

*Concerning prostitution itself, as I would know it, there is not a legal base to end it. However, in the street prostitution, the police forces have methods of prevention. That's the situation I told you about: we bring such a person to the police station for identification, because, in general, she has never got her I.D. with her, but she can also be here for 2 hours, in extreme, for identification. After that time, they return again to their local work ...we can say it this way*

*(...). If they see the police, they hide and run away. The police turn around the corner and they return. (a policeman, interviewed in May 9, 2001)*

It emerges through this discourses an apparent indifference of the society towards the law, but also of the law towards the society in such domains that it cannot or will not regulate. This does not mean that the law would lose its relevance but, on the contrary, through vigilance and categorization, it would classify the “normal” sexual behaviours, concealing the subtle discreet exercise of a power over the feminine sexuality with the visibility of the law.

The social control over sexuality has got so many different repercussions for both the “normalized” law subjects and the social actors who, in certain ways, “escape” from this process; or the female prostitutes do not run away still nowadays when they see the police.

So, the decriminalisation of prostitution does not signify a decrease in the police activities or in prostitution. It expresses the adjustment in the police proceedings, creating alternative measures for it, essentially political ones, like the detentions for investigation. The police still reflect worries about prostitution, namely the street prostitution.

The present legislation punishes the exploitation and/or the facilitating of prostitution. Ironically or not, it was in this arena and in the client’s relationship, which “*women were to experience the grossest victimisation, control and male violence*” (Edwards 1995: 46). The true reality is that this phenomenon of exploitation of women prostitutes is out of legal reach. The violence, to which prostitutes are subjugated, is hardly reported to the police. That situation is recognised by the own magistrates:

*We continue as we always did – the law forbids, but later there are no evidence means and all stays in family! (a male magistrate, interviewed in June 25, 2001)*

This unequal judicial-legal “protection” reflects the own distinctions between “well behaved women” and female prostitutes. In fact, the police and judicial practice conceived the sexual violence over women who are prostitutes as justifiable by their inappropriate female behaviour, especially in relation to the public solicitation of sex, as it can be noticed in this policeman’s opinion:

*Yes, there are complains, in fact, about them being attacked, assaulted and raped. Not many, but some. It also depends a little bit on their personality. In general, when they are raped, they don't complain. They complain oftener when there are assaults. I don't know why, it's strange! Sometimes, in this case the rape is a little bit difficult to understand, because if she goes with a man with a certain intention and a third man appears, it can be a rape, but she has already and freely chosen to go with him with a pre-contract for sexual activities. Because she works in the street at night, she is more vulnerable to crime ... (a policeman, interviewed in May 10, 2001)*

Through the social respectability and the sexual “purity” association, a woman may lose her own reputation. So, “sexual violence (...) is not about sex but about power. At the heart of such violence is the structurally subordinate position of women in society” (McKeganey and Barnard 1996: 79).

This way, a woman should “learn” the criteria beyond a “normal” sexuality in order to become a “good” woman – ideally, she should be a wife and a mother that should express her own sexuality in the context of an affective familiar relationship. The men has always got the public respectability as protection, while women, in particular female prostitutes, are regarded according to their own “work”, which means their “moral and sexual behaviour”. Police and courts confer no credibility to female prostitutes, as we will realise in the lawsuits concerning paternity investigation, since the uncorroborated evidence of this woman is insufficient in practice.

Recently, there have been debates about the possibility of legalizing brothels, thus allowing, one more time, the sanitary control over prostitutes. While the popular and police discourses generally approved this idea, the judicial-legal and medical authorities criticized it, as we can notice in the following extracts of some interviews:

*It seems right to me, it is better than walking on the street without the minimum hygienic conditions, provoking other people, who don't have anything to do with it. (...) So, it would be much better for both the own female prostitutes and the rest of the society. (a policewoman, interviewed in May 9, 2001)*

*If it's forbidden and if it can't be fought, then let's give it an end – let's legalize them or create conditions so that it can function in other ways, instead of seeing in every corner a female prostitute, who is ugly for us and for the people who visit us. (a policeman, interviewed in May 10, 2001)*

*Now the State (as I believe that it has few power in society) begins to legalize the “girls' houses” ... Since they pay their taxes. (...) I think that this idea is perfectly ridiculous. (...) The characteristic of social escape that the thing has*

*got is the same as the one in the case of the illegal car keepers. (...) Why do people complain deeply about the illegal car keepers? I don't know why, maybe with the same motives why they complain about female prostitutes – they give us a bad image!* (a male magistrate, interviewed in June 25, 2001)

*I'm formally against. And it's not necessary to have a lot of moral sensibility, just a human sensibility, nothing else! Look, it just defends the legalized prostitution who is naive or who hasn't got any interest on it.* (a male medical doctor, interviewed in April 10, 2001)

In short, “*law, social policy and organised crime presently combine to ensure that while women engaged in prostitution face high risks of either prosecution or exploitation, pimps, ponces and others benefiting from prostitution business remain relatively free to exploit prostitute women's increasingly vulnerable position in both law and economy*” (Edwards 1995: 56).

#### **4. Science and the “new” limits to the women's sexuality – the AIDS challenge**

In a Portuguese weekly newspaper of June 2, 2001 we can read the following title of an article: “*Immune to AIDS. In a slum of Majengo, a small village of Kenya, there are immune women to HIV. They are prostitutes and they live in misery. They have some luck, after all. They have been used as human “cavies” for the discovery of the vaccine. Maybe one day the world will owe them a lot*” (Fonseca 2001: 77).

With the appearing of AIDS, the world sees itself suddenly confronted with an infectious disease and with premature death, constituting a transversal tragedy, since “*there was no money, power or knowledge that could save the most influent people from the fatality that affected the poorest and the unluckiest ones.*” (Bastos 1994: 69).

In this context, AIDS would potentially challenge the “*traditional*” contrasts and would reformulate distances, ordering as “*new*” reference to the “*global*” community, a speech which even nowadays dominates the ideology and the language of the action against AIDS.

However, we believe that a brief approach to the strategies of the scientific investigation in the dominion of AIDS will reveal the hegemony of the capitalistic centres on what concerns the perspective of modernisation in the world repartition. In



the first world countries there still are the resources to mobilize (among others, the economic and technical means and the political power) and the scientific “authority”, while the peripheries are perceived as basis of data and basis of useful materials, which will be researched.

The developed investigation concerning the “immune to AIDS” prostitutes of Majengo illustrates this situation: “This vaccine is being developed in association with KAVI (Kenya AIDS Vaccine Institute), through the Microbiology Department of Nairobi University and by the Medical Research Council of Oxford University. The project is benefiting from the financing granted by the International AIDS Vaccine Initiative. If the research works out, this organization will attribute funds in order to distribute the vaccine in the Third World” (Fonseca 2001: 84).

Bastos (1994: 73 ss.) underlines the way AIDS revolutionized the terms of the relationship between medicine and society because, when reaching a politically organized group, such as the gay community in the U. S. A., the representation of the “ill” as mere bodies, passive receptors of medicaments, changes, configuring themselves as active social actors with full knowledge of their rights.

Nonetheless, we think that this evidence will have to be conceptualised or it will mask structures of inequality of resources. In Portugal, AIDS is still associated with a disease of the “marginal” and of the “other” and, therefore, distant from the normal population, in general. Thus, we will advance with the hypothesis that the active presence of partners will be able to happen in the phase of voluntarism, mainly to test a vaccine, but not in the previous phases of the investigation, for which the passive “ill” bodies (for example, the women who prostitute themselves) will be used.

In order to do this, powers and knowledges conjugate themselves and construct “pathologies” and related “therapeutics”, (re)creating social representations about the body, which thus show different mechanisms, subjacent to the institutional control over themselves.

“Concerning the vaccines that explore the cellular immunity as the one which is being studied in Kenya and in Oxford, I have faith enough to be a cavy. Some years ago I was a volunteer in an experiment: the other Portuguese medical doctors and I. But the project aborted. Hopefully this one will be successful.” (Jaime Nina, sub-director of the Tropical Medicine Institute, specialist in infectious-contagious diseases in the Egas Moniz Hospital in Lisbon, quoted by Fonseca 2001: 85).



While the possibility of neutralizing the HIV for the development of antivirals in the central laboratories is investigated, the projects of intervention in the community tend to elaborate strategies of prevention in the potential infected people. This way a new identity breaks out – the one of the potential seropositive person - which orients its policies of public health, fomenting the distinction between potential infected and non-infected people.

The tone put on the prevention and institutionalisation of the primary health cares fits in with the problems of essentially political and economic nature, namely the increasing financial charges concerning health and the correlative impossibility of the national health system to take charge of the totality of the society's expectations. So, options must be made, mainly political ones, oscillating the State between the worry of assuring the citizens' health rights and the emphasis on the autonomy and imputation of responsibility to the individuals themselves.

Educational policies for health, which conjugate the prevention of the “disease” with the promotion of “health” through the recognizing of the interdisciplinary character of health problems, are thus developed. In this ambit, projects of intervention for the prevention of AIDS and other STD are conceived for the people who prostitute themselves, making the health professionals in general and the “ill”/“service users” simultaneously responsible.

“One would not think there was anything positive about AIDS, but this disaster has forced governments to pay for research on - and sometimes services for - sex workers” (Alexander *in* McKeganey and Barnard 1996: x). This perspective is shared with the health professionals in general, as we noticed it through the held interviews.

*It is clear that then there is AIDS, blessed AIDS... Blessed syphilis, because it was syphilis, which allowed the development of all the medicine, as the blessed leprosy in the past, which in a certain way speeded the development of medicine at that time and after the plague... And now AIDS, and I say blessed AIDS, because AIDS is giving an extraordinary medical increment, because thanks to AIDS many things are developed. (a male medical doctor, interviewed in April 10, 2001)*

Beyond the visibility of the “scientific” arguments of these speeches, their hooded faces, which, in our opinion, point out the reinforcement of the medical influence in the social control of the feminine sexuality, must be analysed.

We underline, at once, the fatalistic vision that is subjacent to them, as if “nature” itself would be responsible for the “normalization” of the sexually deviant behaviours through the “(re)invention” of “new diseases”.

Even when assuming different outlines, this perspective appears dissimulated in the “scientific” explanation for the immunity of such a vulnerable group, like the prostitutes. This alerts us for the social construction of the scientific knowledge: “there has been some speculation that the reason why some women remain HIV negative, despite intense exposure to HIV through prostitution, might indicate the acquisition or natural development of a kind of resistance to HIV infection” (McKeganey and Barnard 1996: 60).

In fact, the epidemiological perspective identified, during the eighties, the “groups of risk”, delineating them according to the cultural and political constraints. Since the relational specificities of the socio-cultural and biological elements originate a heterogeneity of situations, the direct relation established between prostitution and the STD, in particular AIDS, is no longer a valid argument. So, subterfuges are constructed as an alternative, like the recommendation of the European Network for HIV/STD Prevention in Prostitution (EUROPAP/TAMPEP) to elaborate a financing proposal – demonstration of a bigger vulnerability and not of an increased prevalence.

*“It is not necessary to demonstrate that the male and the female prostitutes have an increased prevalence of the infection caused by the HIV, but only that they are more vulnerable to it” (AAVV 1998: 14).*

It seems obvious that the existing services base themselves essentially upon the sexual health of the women who prostitute themselves. However, a more attentive reading of the written reports of the projects of intervention makes it evident that the true object of preoccupation is the heterosexual society, symbolized by the “well behaved women” and the “innocent children”.

*“The argument that the health of those who prostitute themselves is important, not only for a minority group but also for the public health, will be reinforced,*

*if there is available information for the clients in their country” (AAVV 1998: 15).*

In this context, the hierarchy of these project’s aims will be better understood: prevention of the HIV and STD; promotion of sexual health; availability of social and health services; prevention/treatment of toxic dependence/a more secure use of drugs; prevention of violence/exploitation; human/civil/emancipation rights; promotion and reinforcement of self-esteem; counselling; and information services (for example, in judicial subjects) (AAVV 1998: 8-9).

Although the availability of services centres itself in medical vigilance, the adhesion of the women who prostitute themselves is being slow in our country. In general, the projects point out the toxic dependence as being the justification for this situation (cf. AAVV s/d; AAVV 1999; AAVV 2001). Even though, they publicize the acquisition of “a great potential intervention in the marginal population and of high risk in terms of transmitted diseases, which was till then inaccessible for the health services” (AAVV 2001: 5), benefiting from “a previous work with the target population in order that the medical consult would not be understood as an obligatory inspection, but as an individual initiative, making the woman responsible for the care of her own health” (AAVV s/d: 18).

Independently from the recognition of that projects’ activity, we think that their attention has been focused on prostitution as a result of the concerns about the spread of HIV, which does not correspond to the prostitutes’ own needs. In fact, the greatest risk to the health of such women does not come from a deadly virus but from the daily violence and life conditions (McKeganey and Barnard 1996).

Even if they start to deal with the drug problem, few services offer another type of supports, namely the judicial support, alleging the low level of solicitations at this level.

The resort to medication, prevention and the imputation of responsibility to women, named “service users”, contributes to the maintenance of their socio-economic exploitation, making revolting life conditions acceptable (Barbosa 1987).

*“The truth is that, despite having an immune system, resistant to HIV, she lives in misery. “My life didn’t change at all, because of that. I was told I was immune five years ago and everything is still the same.” The only difference forms the moments of glory on television and the usual visit to the clinic” (Fonseca 2001: 80).*

*“She knows that there are medicaments which allow people to live longer. She ignores the name or the price. Why should she know them? She could never take them. She talks about the anti-retrovirals with the same incredulity, present in the West, when talking about the elixir of youth. The hypothesis of taking them is not even demanded. Those medicaments are not for us”* (Fonseca 2001: 83).

In this picture, the superficiality of the investigation and of the health professionals’ practice is underlined, being present inclusively in the respective codes of conduct at the level of prevention and counselling in the working field, through the delimitation of spaces and frontiers of involvement. For that reason, they defend the development of “an affective controlled relationship” (AAVV 1999: 12), which is easily confused with the absence of personal involvement, critical detachment and impartiality.

*“With the advent of HIV/AIDS the wheel has turned full circle and prostitutes are back to the public health agenda, this time charged with spreading HIV infection. (...) Prostitution and AIDS make a volatile mix, combining our interest in sex with our fear of illness and death”* (Mckeganey and Barnard 1996: 58).

The option is to believe and to fight or die and this confers authority and social power to medicine. Through prevention and cure, the medical profession has got a very important role in the process of uniformity of social life. It benefits on the one hand from the disbelief of the daily knowledge to solve “health” problems and on the other hand from an autonomous language and from a specialized - and legitimated by the State - scientific knowledge through the judicial-administrative recognizing of the trajectory of the health professionals’ practices. This *“isolates and classifies the social forms of illness and it is at the same time included in the enunciation of the parameters of normal behaviour - physical as well as mental - and indirectly, of the institutions able to fit it”* (Ruivo 1987: 130-1).

After the conquest of a feminine sexuality “without impositions” by the modern contraception, AIDS (re)puts power in the men’s hands, when imposing fidelity or the use of condoms. From an eventual unloved life, men can today transmit death or take it (Mossuz-Lavau 1995). And the challenge of the sexuality without mortal threat claims more than new rights, establishing “new” limits that only the “scientific” progresses will be able to set back.

## 5. From prevention to prosecution: the “prostitution’s kit”

We have been defending the idea that the projects of intervention for the prevention of AIDS and other STD in the people who prostitute them have contributed to the reinforcement of the medical influence in the social control of the feminine sexuality. The women who prostitute themselves are made responsible for the prevention and, at the same time, the inequalities of resources and of opportunities, inherent in their sexual behaviours, are dissimulated.

The merely preventive logic in the health/disease dominion not only permits the control and the reduction of the public expenses but also perpetuates the sacredness of “science” and of the technical progress. The reduction of the limits in the efficiency of medicine is then understood through the accentuation of the inherent risks to certain eventually pathogenic sexual behaviours, as the ones practised by the prostitutes, service users/ill.

The “scientific” rationality of the prevention is based, in this case, in a “restrict” epidemiological model – it associates a “sexual”/“social” behaviour with a potential disease, evidencing mainly the explicative variables or the factors of risk, which are supposed to have a direct incidence over “health” (physical, chemical, biological factors etc.), as a replacement for the understanding of the phenomena of indirect influence over the body itself (socio-economic, cultural factors, etc.) (cf. Barbosa 1987: 175-6).

This perspective is well rooted in the own orientations of the projects of intervention, which base their intervention in a professional action and are also specialized in the individual variables. Then, there is the surprise, which these projects manifest, when they find out the relative subalternity of the worry about the health and about the prevention of the disease by the female prostitutes.

*“Curiously, the question of health and of the prevention of the disease is seen by women as one of the services, which the project offers, among so many others, giving thus more importance to the shelter, to the acceptance, to the non judgement, to the individual promotion, which they feel in the place” (AAVV s/d: 50).*

These strategies of prevention are thus based in a typical rationality of the model of hospital curative medicine, which favours, on the one hand, the dependency of these

women and, on the other hand, eventual campaigns of moralization and of culpability. *“It cannot be forgotten that the ideology of the prevention is based in the morality and in the values of the most privileged classes, from where the norms that tend to dominate other forms of knowledge come from”* (Barbosa 1987: 178).

Between the promotion of health and the fear of death, the specialized prevention might be replaced by a general prevention, which is used to avoid all the “deviant” behaviours. This way, it may be understood the field of action of medicine, which will reinforce its power of “normalization” of behaviours.

It is in this context that some health’ education materials for prostitution from Portugal appear and they say: *“Defend yourself. Impose your conditions”; “Your life is in your hands. (...) Use always a condom. If you inject drugs, don ‘t share injection needles”*.

The strategies of prevention favour the transmission of information, evoking (in order to do so) diverse arguments, whose fundamental aim is: to be capable of altering the individual behaviours, mainly through a re-socialization of the adult person.

Thus, the success of the programs of education for “health” and for the prevention of the “disease”, which claims an intervention in the factors of indirect incidence that act in the own body of the women, being this fundamental to achieve a modification in their individual behaviours.

However, we realize that the depersonalisation and the objectification of the body characterize the predominant conception in the speeches and practices of prevention, which is also present in the own women who prostitute themselves.

The distinction between the public and the private dimension of the same physical body requires, in this case, a fragile mental construction, for both the involved women and the “technicians” (nurses, medical doctors, psychologists, sociologists and social workers), who collaborate in the projects. Thus, when they regulate this fragility, the “technicians” evoke, fundamentally, two strategies:

- i) delimitation of spaces and of frontiers of involvement, fomenting an “affective controlled relationship”;
- ii) and maintenance of certain rituals of distance.

In order to do so, they use, among others, “technical” instruments and a “scientific” language, constantly illustrated by the handling of prostitutes as “service users”, requiring a mental separation only by its own.

From a multiplicity of available means to mark this distinction, we underline the “kit of prostitution” (condoms, inject needles and little towels). In fact, the distribution of condoms and of injects needles claims to be a symbolic barrier, which reinforces permanently the idea that everybody knows that one is a merely “professional” relationship.

But “preventing AIDS is much more than simply promoting the use of condoms or alternatives to the specific sexual acts that carry the risk of transmission, or even distributing sterile needles to those who inject drugs. The sex workers, in order to be able to protect themselves, have to be capable of controlling their work, which in turn demands that they must be free to control their lives” (Alexander in McKeganey and Barnard 1996: xi). Moreover, condoms reduce but do not eliminate the risk of HIV and other sexually transmitted infections.

In this context, we understand why the health services for HIV/STD Prevention in Prostitution have resulted in late interventions and have had an ambiguous success, as it can be seen in the following opinions:

*They have nothing to lose. (...) It doesn't interest them– they have already understood that the use of condoms is a lost message. They are women and men who are illegal car keepers, who steal, and who do all kind of crimes. Why will they use condoms? (...) I think that I would follow the idea of prevention in relation to men, through the sensibility of those who have need of prostitution.* (a female social service worker, interviewed in April 3, 2001)

*Then notice: to submit such a woman [a street female prostitute] to a clinical or sanitarian exam, and it is difficult to fixate her presence, we need more or less one hour of conversation and it must be done by a doctor with a certain ability and deep knowledge, but who doesn't have time or doesn't want to. (...) On the other hand, she could be examined at this moment, because it would be possible with sophisticated techniques (which don't exist) to determine at that moment if she was contaminated or not. If she was not contaminated, she would leave and a little bit later she could be already contaminated. Moreover, there is here an intentional mistake – the prostitute is blamed; and the man? (a male medical doctor, interviewed in April 10, 2001)*

Both in the medical and in the social services perspectives, “safer sex” is, in fact, of both sides’ (prostitute/client) responsibility. The reasons why the common sense usually



attached that blame to the female prostitute reflect the patriarchal power and reinforce the reproduction of women in a sexualised, subjugated and disqualified way.

The only ones who are subjugated to this “vigilance” are the prostitutes who have a recognizable public expression. Furthermore, the female prostitution stopped to be the only main source of diseases of sexual order, thus developing, among others, the correlative male prostitution (Fonseca 2000).

When given the available resources, the inefficiency of the arguments of promotion of “health” and of prevention of the “disease” is known, being these arguments used to camouflage interests, mainly political and ideological ones.

In fact, through prevention it is possible to associate the conceptualisation of prostitution as a moral and a social biologic “danger” (and not as a crime) with the application of support and (re)educative measures.

And this ideological convergence is obtained, among others, through the own distribution of condoms and of inject needles. On the one hand, it symbolizes the “scientific” and “professional” nature of the projects of intervention and it assures a “controlled” relationship between “technicians” and “service users”. On the other hand, these are the collected material evidence to be used by the police in diverse situations.

In certain areas the police are sometimes forced to intervene because of the pressure of the citizens who regard prostitution as a public annoyance in their area.

According to the police we interviewed, the most frequent complaints are related to the street prostitution and to the “strange” movements in the buildings (among others, many movements of cars and of people in the buildings, late at night), which cause incommode noises for the residents. In these situations, the police go to these places to observe what is going on and, if it is the case, they elaborate a report of the information considered to be pertinent. After this phase, the involved people are heard – complainers and witnesses – and the report are sent to the Public Prosecutor. If the Public Prosecutor decides that there are enough facts to start a criminal process, the police have got a search court order and then some materials are apprehended, mainly condoms, inject needles and dirty sheets.

The “scientific” credibility of the projects of intervention for the prevention of AIDS and other STD in the people who prostitute them is thus appropriated by the police forces. As we can see, the “kit of prostitution”, by one side, reinforces



permanently the “scientifically” and the “professionalism” of these projects, allowing the conceptualisation of prostitution as a biologic “danger” and not as a crime and it increase the possibility of use (re)educative measures. In this perspective, these “technical” instruments seem to be exclusively of the domain of science. On the other side, the “kit of prostitution” is used as an evidence in criminal lawsuits settings, which aims to prove in court the involvement of women in the prostitution. So, it seems to be exclusively of the domain of law.

According to this, the “prostitution’ kit” assumes a symbolic dimension, which allows us to understand how the female prostitution can be described as a “boundary object” - it is robust enough to maintain a common and recognizable identity across to both law’s and science’s procedures, and yet plastic enough to adapt to those two different institutions.

## **6. Some extra-judicial proceedings: the exclusion of the “scientific” evidence in affiliation lawsuits**

We have already seen how the State controls and regulates the “deviant” behaviours through the analysis of the production and of the legislative practices, thus revealing the strong political and ideological implications, which are subjacent to the legal concepts. In this context, the woman is classified in conformity to her sexual behaviour; this way prostitution assumes specific outlines in this domain, because of its state of “danger”, underlined by the emergency of the sexually transmissible diseases, namely AIDS.

The separation between the “good” and the “evil” women is thus based in the notion of appropriate feminine behaviours, defined according to the social expectations, culturally constructed in accordance with the codes of the dominant social groups. The exclusivity of the relationships is defended, particularly concerning the woman’s behaviour, which should express her sexuality only in the context of an affective familiar relationship.

Even with different grades of success in the concretisation of the strategies of distance between the clients and the private partners (lovers, boyfriends), the women who prostitute themselves tend not to perspective any contradiction at the level of exclusivity in their relationships, since they conceive the clients as excluded from their

private lives. But their own love partners seems to not share this apparently irrelevance of the clients and this reflects once again the male domination and reinforces the women's subordinate position.

And a very sensitive area in this dominion is related to pregnancy and paternity – “most women would mark down this possibility because of their use of condoms and other spermicidal agents but their partners may not share that same security” (McKeganey and Barnard 1996: 97).

On paternity lawsuits, sometimes the court orders the realisation of genetic tests on the minor whose paternity is unknown, the mother and the alleged father. The “scientific” credibility of the genetic tests is today shared both by the public, in general, and by the own magistrates, who “accept automatically” their results (Machado 1999, 2000). The worry about the “biologic truth” of paternity is today unquestionable, both on the Portuguese family law, as well as on the routine courts practices as the declarations of the interviewed magistrates confirm:

*There was a huge increase after the moment [in the nineties] in which we had the possibility, in fact, of doing haematological exams that would say: “This person has 99% of hypothesis of being the father of the child”. After that, the philosophy changed indeed and started to be this one – independently from the promiscuous behaviour of the mother what is really intended in the investigation is the paternity of the child. (...) I believe that the philosophy was liberal – the father of the child was the one considered to be the one who had had sexual intercourses with the mother constantly, in a relatively permanent form, so that it is, in a certain way, similar to a situation of marriage. This is a liberal answer; however, our present answer is, and we may say so, a state answer, which is related to the reality. (...) It was a truth inside certain limits and this had defects effectively; this is why a lot of people did not have the right of paternity. Our present one has also got defects not related to the child, but related to the father (...). For example, imagine a prostitute who has sexual intercourses with 300/400 clients and one of them is the father of the child (...). This means that somehow it is unfair for him... Our law advanced in order to establish the truth, to defend the child, but also to punish someone because of having had a sexual intercourse. It is the other side, the side, which would ask for the nationalization of the question, the side of the punishment. (a male magistrate, interviewed in June 25, 2001)*

So, how can it be understood that no genetic exam has been done in the lawsuits of paternity investigation which we consulted, being its execution requested only in one single process, although the majority of the mothers identify one or more alleged fathers

(table 1)? The answer is that in all the cases analysed, the minor's mother was a prostitute.

**Table 1 – Mother's identification of an alleged father**

<b>Mother's identification of an alleged father</b>	<b>n</b>	<b>%</b>
<b>Identification of an alleged father</b>	<b>79</b>	<b>78,3</b>
One alleged father	74	73,3
Two alleged fathers	2	2,0
Three or more alleged fathers	3	3,0
<b>No identification of an alleged father</b>	<b>20</b>	<b>19,7</b>
<b>Mother not inquired</b>	<b>2</b>	<b>2,0</b>
<b>TOTAL</b>	<b>101</b>	<b>100</b>

SOURCE: Records of *lawsuits of judicial investigation of paternity* (1968-1996).

In fact, parallel to these apparently neutral and impersonal speeches, which tend to auto-legitimize the socially constructed and recognised power of the law agents, we find out the subtlety of courts' form of action.

Through the analysis of the judicial practice, we will question the autonomy of the juridical field, as well as the related notions of "neutrality" and "impersonality" (Bourdieu 1986; Machado 1996, 1999; Santos 1996).

The social control over the feminine sexuality and the women's subalternity are kept, in this case, by the construction of a subterfuge – a dissimulated resistance to the execution of genetic tests, when the mother of the child reveals a "bad moral and sexual behaviour", excluding her, this way, from having the possibility of "scientific" evidence in affiliation lawsuits.

The evolution at the level of the magistrates' practices does not reveal great changes concerning the feminine sexuality. On the one hand, the mother stays at the bottom of the hierarchy of credibility's (Machado 1996), as it can be seen in an *ordinary lawsuit of paternity*, concluded in 1969:

*The proof of carnal existence with the accused is, on the other hand, extremely superficial and uniquely based in the declarations of the referred woman,*

*whose credit suffers irremediable loss, attending to the conduct, which is attributed to her.*

On the other hand, the cognitive, evaluative and interpretative proceedings of the “moral, sexual and social behaviour” outline a profile of the “good” woman - wife and mother, married and faithful, expressing her sexuality/affection in the family domain.

In an *ordinary lawsuit of paternity* concluded in 1973 we can read the following statement of a magistrate:

*Facing the documents, it figures to us that, in spite of the confession of the accused father of the child about the fact that he had had sexual intercourses, an element of essential importance is missing: it is the good moral and sexual behaviour of the child’s mother. (records of lawsuits of judicial investigation of paternity, 1973)*

In 1995, the legal decision is not too much different:

*Thus, it occurs to us that it would be hardly possible to obtain the proof of exclusivity about the sexual intercourses of Anne in the legal period of conception with Paul, who is a fundamental element for the derivation of the action, even if there is a blood exam with high degree of probability related to paternity. Moreover, the execution of the blood exam seems to be not very viable, since during the process the child’s mother has been showing a total lack of collaboration with the investigation carried out (...).(records of lawsuits of judicial investigation of paternity, 1995)*

So, it will not be surprising the fact that the judges considered every lawsuit (which involved “badly moral, social and sexual behaved” women) as “unviable” or “groundless”, as it can be seen in table 2. We have verified only four empirical cases of “affiliations” (voluntary acknowledgment of paternity) that occur when the alleged fathers seems to be the mother’s love partner, as the mother or the alleged father themselves or the witnesses state that they lived together for a certain period of time.

**Table 2 – Judicial results by decades**

Judicial results	Decades				TOTAL
	1968-1969	1970-1979	1980-1989	1990-1996	

<b>“Unviable”</b>	13	49	20	15	<b>97</b>
<b>“Affiliation”</b>	0	1	3	0	<b>4</b>
<b>TOTAL</b>	<b>13</b>	<b>50</b>	<b>23</b>	<b>15</b>	<b>101</b>

SOURCE: Records of *lawsuits of judicial investigation of paternity* (1968-1996).

This way, the differentiated nature of the admissibility and of the use of the evidences, namely the “scientific” ones, subtly reinforces the reproduction of women in a sexualised, subjugated and disqualified way.

Independently from the genetic evolution, the means of defence of the moral and social logic of societies prevail (Ferreira 1999). Because of her inappropriate sexual behaviour, the woman who prostitutes herself is thus accused of “contaminating” biologically, socially and morally “normal” men, husbands and fathers. In those cases, the men are not responsible for their own sexual behaviours, as it can be seen in the following rulings concerning two “unviable” *ordinary lawsuits of paternity*, concluded, respectively, in 1972 and 1996:

*Rose confirms that for many years she has had sexual intercourses with many men among them Joe and his brother. Joe is married, poor and has got many children. Joe confirms that he has had many sexual intercourses with Rose and he also affirms that she has had them with a lot of men, too.* (records of lawsuits of judicial investigation of paternity, 1972)

*Although the “P.S.P.” (Police of Public Security) allude to the marital relationship between them, it also mentions the fact that in that region Maria worked in prostitution while she lived with Arthur. Beyond the lack of proof concerning the relationship and the exclusivity of the intercourses between Maria and Arthur, the elements point out the inexistence of exclusivity because of the activity to which she dedicates herself in that region. In conformity to this, we believe that the action of investigation concerning the paternity is not viable (...).* (records of lawsuits of judicial investigation of paternity, 1996)

Through the analyse of the different ways in which the courts appropriate the “scientific” arguments (depending on what they want to prove), we can perspective the female prostitution as a “boundary object”. On the one hand, the “badly sexual and moral behaved” women are excluded from the “scientific” evidence – the genetics tests – in affiliation lawsuits, as well as from the recognition of their child’s paternity, even if they point out an alleged father. On the other hand, the courts use the “scientific”

instruments (the “prostitution’ kit”) as evidence to prove at the bar the involvement of women in the prostitution’ activities.

## **6. Conclusion**

Despite their differences in objectives, practices and traditions, the sphere of science and the sphere of law have a common element: their intention of exclusivity. Both present themselves as the sole model of rationality and knowledge in the narrow field of action they are applied to.

This paper aimed to analyse how different interactions between judicial practise and scientific practise are made, bearing in mind the specific phenomenon of female prostitution in Portugal.

We found some common features between the ways of action of the social actors involved on the projects of intervention for the prevention of AIDS and other STD among female prostitutes; the ways the courts carry on the judicial investigation of paternity when the child’s mother is a prostitute child and how the Police forces act when they have court orders to investigate and apprehend materials related to prostitution.

On the one hand, the nowadays increasing danger of the sexual transmitted diseases allows an increasing of medical power, namely through the construction of prevention as a mechanism, which conceals the differential resources and opportunities in order to dominate their own sexual behaviours. Thus, it reinforces the medical social control and the prostitutes’ submission. Moreover, the “prostitution kit” (condoms, injection needles and a small towel) distributed by the health services for HIV/STD prevention in prostitution is converted to a proof used by the police forces in processes of crime investigation (disorders, noises, etc.), producing jointly a very direct control over the bodies and behaviours of prostitutes.

On the other hand, in the lawsuits of paternity investigation, when there is a strong evidence, that the child’s minor is “badly sexual and moral behaved”, no genetic paternity tests are ordered by court – and consequently, the identity of the biological father of the minor remains unknown.

Both by the medicine practises, as well as by the ways of acting among the different judicial actors (magistrates and police forces), the prostitutes are classified according to their “deviant” sexual behaviour.

The medical and the magistrates constructions of normal and deviant sexuality, and the ways in which the female prostitute is constantly defined as outside the boundaries of the acceptable, also create certain norms of behaviour against which other behaviours are judged and calibrated. This gives rise to mechanisms formulated in order to prevent, to reform or change the individuals, being judge according to their nearness to or distance that which is defined as the norm.

## **Bibliography**

AAVV (1998), *Cuidar da saúde. Desenvolver serviços para as pessoas que se prostituem na Europa*, s/l, Rede Europeia para a Prevenção do VIH/DST na Prostituição (EUROPAP/TAMPEP) (translation to portuguese version of some chapters from the manual "Hustling for Health").

AAVV (1999), *Projecto de intervenção para a prevenção da SIDA e outras DST nas pessoas que se prostituem. Relatório UNIDADE MÓVEL 1997-1998*, Lisboa, Região de Saúde de Lisboa e Vale do Tejo e Comissão Nacional de Luta contra a SIDA.

AAVV (s/d), *Projecto de intervenção para a prevenção da SIDA e outras DST nas mulheres prostitutas. Relatório DROP-IN 1994-1998*, Lisboa, Região de Saúde de Lisboa e Vale do Tejo e Comissão Nacional de Luta contra a SIDA.

Alferes, Valentim Rodrigues (1987), “O corpo: regularidades discursivas, representações e patologias”, *Revista Crítica de Ciências Sociais*, 23: 211-219.

Barbosa, António (1987), “Educação para a saúde: determinação individual ou social?”, *Revista Crítica de Ciências Sociais*, 23: 169-184.

Bastos, Cristiana (1994), “Geomorfologia do poder na produção social da ciência: a propósito da luta global contra a SIDA”, *Revista Crítica de Ciências Sociais*, 41: 63-84.

Bastos, Cristiana (1997 (1.º)), “A pesquisa médica, a SIDA e as clivagens da ordem mundial: uma proposta de antropologia da ciência”, *Análise Social*, vol. XXXII (140): 75-111.

Bastos, Susana Pereira (1997), *O Estado Novo e os seus vadios. Contribuições para o estudo das identidades marginais e da sua repressão*, Lisboa, Publicações Dom Quixote.

Beleza, Teresa Pizarro (1990), *Mulheres, direito, crime ou a perplexidade de Cassandra*, Lisboa, Dissertação de Doutoramento apresentada à Faculdade de Direito de Lisboa.

Bourdier, Pierre (1998), *La domination masculine*, Paris, Seuil.



- Bourdieu, Pierre (1986), “La force du droit - éléments pour une sociologie du champ juridique”, *Actes de la Recherche en Sciences Sociales*, 64: 3-19.
- Brock, Deborah (1998), *Making work, making trouble: prostitution as a social problem*, Toronto, University of Toronto Press.
- Bullough, Bonnie, Bullough, Vern (1999), “Introduction. Female prostitution: current research and changing interpretations”, in James Elias *et al* (eds.), *Prostitution: on Whores, Hustlers and Johns*, s/l, Prometheus Books: 23-44.
- Cabral, João de Pina (1993), “A lei e a paternidade: as leis de filiação portuguesas vistas à luz da antropologia social”, *Análise Social*, XXVIII (123-124): 975-997.
- Carlen, Pat, Worrall, Anne (eds.) (1995), *Gender, crime and justice*, Buckingham, Open University Press.
- Costa, Susana, Nunes, João Arriscado, Machado, Helena (2000), ““Política molecular”, crime e “cidadania genética” em Portugal”, *Revista Crítica de Ciências Sociais*, 57/58: 291-301.
- Cruz, Francisco Ignacio dos Santos (1984), *Da prostituição na cidade de Lisboa (1841)*, Lisboa, Publicações Dom Quixote.
- Dahrendorf, Ralf (1959), *Class and Class Conflict in Industrial Society*,
- Davidson, Julia O'Connell (1998), *Prostitution, power and freedom*, Ann Arbor, The University of Michigan Press.
- Doezema, Jo (1998), “Forced to choose: beyond the voluntary v. forced prostitution dichotomy”, in Kamala Kempadoo, Jo Doezema (eds.), *Global Sex Workers: Rights, Resistance and Redefinition*, London, Routledge: 35-50.
- Duarte, Fátima (2000), *Prostituição e tráfico de mulheres e crianças. Colectânea de textos legais e de instrumentos internacionais*, Lisboa, Comissão para a Igualdade e para os Direitos das Mulheres, Gabinete da Ministra para a Igualdade.
- Durkheim, Émile {1974 (1895)}, *Las reglas del método sociológico*, Madrid, Morata
- Durkheim, Émile {1977 (1893)}, *A divisão social do trabalho*, Lisboa, Presença.
- Eaton, Mary (1986), *Justice for Women? Family, Court and Social Control*, Milton Keynes, Open University Press.
- Edwards, Susan (1995), “Prostitutes: Victims of Law, Social Policy and Organised Crime”, in Pat Carlen, Anne Worrall (eds.), *Gender, crime and justice*, Buckingham, Open University Press: 43-56.
- Engels, Friedrich (1964 [1884]), *A origem da família, da propriedade privada e do Estado*, Rio de Janeiro, Editorial Vitória.
- Engels, Friedrich {1964(1884)}, *A origem da família, da propriedade privada e do Estado*, Rio de Janeiro, Editorial Vitória.
- Ferreira, Virgínia (1999), “A reprodução e as novas tecnologias. Da volatilização da maternidade à materialização da paternidade”, *Ex Aequo*, Oeiras, Associação Portuguesa de Estudos sobre as Mulheres/Celta, 1: 33-43.



Finnegan, Frances (1979), *Poverty and Prostitution. A Study of Victorian Prostitutes in York*, Cambridge; Londres, Cambridge University Press.

Fonseca, Ana Sofia, Rocha, Sandra (2001), “Imunes à SIDA”, *Revista do Expresso*, No. 1492, 2 de Junho de 2001: 76-85.

Fonseca, Aureliano da (2000), “Breves notas acerca da prostituição”, *Notícias*, Comissão para a Igualdade e para os Direitos das Mulheres, N.º 55: 34-35.

Foucault, Michel (1994), *História da sexualidade I. A vontade de saber*, Lisboa, Relógio D'Água.

Freud, Sigmund {1975 (1946)}, *Abrégé de psychanalyse*, Paris, Presses Universitaires de France.

Gião, Armando (1891), *Contribuição para o estudo da prostituição em Lisboa*, Lisboa.

Giddens, Anthony (1996), *Transformações da intimidade. Sexualidade, amor e erotismo nas sociedades modernas*, Oeiras, Celta.

Guibentif, Pierre (1992), “A aplicação do direito redescoberta pela sociologia jurídica”, *Sociologia - Problemas e Práticas*, 12: 19-39.

Guinote, Paulo, Oliveira, Rosa Bela (1989), “Prostituição, boémia e galanteria no quotidiano da cidade”, in António Reis (ed.), *Portugal contemporâneo. Volume II - Consolidação e decadência da monarquia liberal. Esperanças e frustrações da nova ordem socioeconómica. As tensões culturais. A evolução das mentalidades*, Lisboa, Publicações Alfa: 339-382.

Hester, Marianne, Kelly, Liz, Radford, Jill (eds.) (1997), *Women, violence and male power*, Buckingham, Open University Press.

Lees, Sue (1997), *Ruling passions. Sexual violence, reputation and the law*, Buckingham, Open University Press.

London, Routledge & Kegan Paul.

Machado, Helena (1996), *Redes informais e institucionais de "normalização" do comportamento sexual e procriativo da Mulher*, Braga, Dissertação de Mestrado em História das Populações apresentada ao Instituto de Ciências Sociais da Universidade do Minho.

Machado, Helena (1999), ““Vaca que anda no monte não tem boi certo”: uma análise da prática judicial de normalização do comportamento sexual e procriativo da mulher”, *Revista Crítica de Ciências Sociais*, 55: 167-184.

Machado, Helena (2000), “Law, science and institutional control of women sexual and procreative behaviour”, paper presented at the 4S/EASST Conference, *Worlds in Transition: Technoscience, Citizenship and Culture in the 21st century*, Vienna, Austria, 27-30th September, 2000.

Marcuse, Herbert {1963 (1955)}, *Eros et Civilisation*, Paris, Éditions du Minuit.

McKeganey, Neil, Barnard, Marina (1996), *Sex work on the streets: prostitutes and their clients*, Buckingham, Open University Press.

Merton, Robert (1970), *Sociologia: teoria e estrutura*, São Paulo, Editora Mestre Jou.

Millet, Kate (1974), *Política sexual*, Lisboa, Publicações Dom Quixote.

- Mossuz-Lavau, Janine (1995), “As mulheres e a sexualidade. Novos direitos, novos poderes?”, in George Duby, Michelle Perrot (eds.), *As mulheres e a história*, Lisboa, Publicações Dom Quixote: 79-89.
- Nencel, Lorraine (1994), “The Secrets behind Sexual Desire: The Construction of Male
- Pais, José Machado (1983), “A prostituição na Lisboa boémia dos inícios do século XX”, *Análise Social*, XIX (77-78-79): 939-960.
- Parsons, Talcott (1976), *El sistema social*, Madrid, Revista de Occidente.
- Patriarca, Maria de Fátima (1997), “Sobre a leitura das fontes policiais”, *Análise Social*, vol. XXXII (143-144): 925-935.
- Peterson, Kerry (ed.), (1997), *Intersections: women on law, medicine and technology*, Aldershot, Ashgate.
- Reich, William {1972 (1942)}, *La psicología de masas del fascismo*, Paris, Payot.
- Roberts, Nickie (1996), *A prostituição através dos tempos na sociedade ocidental*, Lisboa, Editorial Presença.
- Rodger, John (1996), *Family life and social control. A sociological perspective*, London, MacMillan.
- Ruivo, Fernando (1987), “A construção de um projecto profissional: o caso da medicina”, *Revista Crítica de Ciências Sociais*, 23: 129-139.
- Santos, Boaventura de Sousa (1987), “O estado, a sociedade e as políticas sociais. O caso das políticas de saúde”, *Revista Crítica de Ciências Sociais*, 23: 13-74.
- Santos, Boaventura de Sousa et al (1996), *Os tribunais nas sociedades contemporâneas. O caso português*, Porto, Afrontamento.
- Sexuality” in Lima, Peru” in *Etnofoor*, VII, 2:59-75.
- Shrage, Laurie (1997), “Should feminists oppose prostitution?”, in Lori Gruen, George Panichas (eds.), *Sex, morality and the law*, Londres, Routledge: 133-144.
- Silva, Manuel Carlos (1998), “Prostituição feminina: uma primeira abordagem para uma pesquisa”, *Cadernos do Noroeste*, 11 (1): 227-244.
- Sousa, Elisabeth (1992), “O tratamento da informação na sentença judicial. O caso das crianças maltratadas”, *Sociologia - Problemas e Práticas*, 12: 41-55.
- Sousa, Elisabeth, Mateus, Filomena, Lopes, Paulino (1993), “Decisões em matéria penal: o caso da violação e o peso de variáveis extralegais”, *Sociologia - Problemas e Práticas*, 14: 141-158.
- Turner, Bryan S., Samson, Colin (1995), *Medical power and social knowledge*, London, Sage Publications.
- Varandas, Isabel, Alves, Lurdes Barata (2000), *Atravessar a vida ao contrário: Ser prostituta - Histórias de/a vida*, Porto, Comissão para a Igualdade e para os Direitos das Mulheres e Gabinete da Ministra para a Igualdade.
- Weeks, Jeffrey (1986), *Sexuality*, London and New York, Tavistock Publications.