

Crime Scene and Masculine Receptacle: The construction of the female body in the Chilean Legal Medicine, an interview to Alejandra Palafox Menegazzi*

By María Catalina Sánchez Martínez**

During the 10th edition of the *European Spring School on History of Science and Popularization (ESS)*, organized by the Institut Menorquí d'Estudis (IME) and the Societat Catalana d'Història de la Ciència i la Tècnica (SCHCT) with the support of the University of Cantabria and the University of Granada, more than 20 papers studying the technologies of the gendered body were discussed from a gender perspective. One of them was the paper presented by the professor Alejandra Palafox Menegazzi: "*Corpus delicti. Medical-legal appropriation of female sexuality in the verification of sexual aggressions in Chile (1890-1928)*".

The PhD Alejandra Palafox Menegazzi is a postdoctoral researcher in the FONDECYT-CONICYT program in the Social and Humanistic Studies Institute of the Autonomous University of Chile where she is conducting the paper presented in the ESS. In 2016, she obtained her PhD in History degree from the University of Granada "*Comply or Resist: Women and Sexual Crimes in the México City (1824-1880)*". In the interview below, she delve deeper into the work she is doing to help us to deconstruct and rethink the conceptions in the sexual violence and the influence of the forensic and legal sciences.

María Catalina Sánchez (MCS): As a first question, I would like you to tell us, how did you get into the investigation you are working on?

Alejandra Palafox Menegazzi (APM): Well, in first place I believe that history, like other social sciences, is a tool to understand the current problems and contribute in solving them. The sexual violence is a broad category that can be studied conceptually and analytically and so can be historicized. It is hard to define, but in an operative way, it can be understand as a group of violent actions directed to the sexuality of a person. Nowadays it is an important and serious problem, so, I wanted to contribute with my work as a historian to deconstruct some practices that are constructed from cultural and social processes based in inequality and abuses of power and strength.

Secondly, I had a thematic approach when I was developing my doctoral research and later, I applied to a CONICYT-FONDECYT funding and after realizing a lack of information in the medical and legal treatment of sexual violence in Chile I developed a research project in this topic. It is centered in the crimes of rape, sodomy and minors corruption. Until now, I have only worked in the rape felonies. The medical and legal authorities, since the XIX century, started to create a new discourse related to the sexual violence. Which, is present in the actual collective mentality, in and out of the academic institutions, this conceptualization preclude reformulations of the cultural and social relations that could help to fight against the sexual violence in all its manifestations.

MCS: Which are the methodological tools that are you using to do this research?

APM: I am using two methodological approaches, the first one is theoretical in which I analyze normative works such as the Penal Code, the Penal Procedures Code, but also

medical and legal texts of the epoch, like magazines, monographs of physicians and lawyers. In that way I tend to comprehend, from a gender perspective, how is it conceptualized the sexual violence, which are the main changes that are produced in the theoretical corpus and which are the main characters. Through the second approach, I try to know the implementation of this normative in the judicial practice by studying judicial records of felonies. I have worked, until now, 100 documents from 1820 to 1920, I want to study until 1950, in the cities of Santiago de Chile and Valparaíso.

MCS: You describe in your paper, that for the epoch, the felony of sexual violence was in the category of crimes against the honor and the public morality. How and why was this codification formed?

APM: Although in 1874 the codes 361 and 362 of the penal code were written, which defined the sexual violation in the category of crimes against the honor, the public morality and the families order, since the beginning the jurists didn't agree with this categorization because they considered that rape was a felony against the victim. Later, in the the comments of the Penal Code and the discourses of participants in the judicial records I could find contradictory discourses about the legal object that was protected. These means that there is not a homogenization in the concept, I think that there was a need to have a Penal Code and, to be honest, there was not an interest in the legal world of the epoch to change the situation.

Nevertheless, I consider that this codification was because it prevailed a conception of masculine honor that was created and could be violated through the sexual behavior of the women related to those men. There was a difference between the female and male honor, since violating a women was a crime against that person but it was also against the honor of men related to them, and so against the family order and public morality.

As well, this debate was in the theoretical and practical domains, but the Chilean Penal Code, nowadays, is the same from 1874, the Criminal Justice Reform for the sexual felonies was made until late XX century. Those were partial reforms that tried to change or introduced new terms, but in my opinion, they were patches because they didn't rethink the legal forms that, in their origin, were created from an androcentric perspective and currently represent antagonist values from the ones that the actual Chilean society defend.

MCS: You also said that the proofs of the sexual felony were focus on the women "honor", how does this concept influence the construction of techniques that attempt to proof the sexual crime from the legal and medical scope?

AMP: To understand the materialization of the tests that tried to proof the sexual felony is important to analyze some terms. Before 1874 there were the "Siete Partidas" law which recognized the crime of strength against a honored women, but not of violation. For the lawyers the word "violación" (rape) was understood as a synonym of "estupro" which was the defloration of a virgin that could happen with or without violence or through seduction. In that way, in the colloquial language "violación" was understood like the violation of the virginity of a women and many times, after the legal codification this misconception was present. After the Penal Code codification, there was a change,

this crime was tied to violence or intimidation by means of having a sexual relation with a women or any sexual relation with a women less than 12 years old.

So, even though, the codification of this crime was applicable to any women, it is interesting to see how the medical and legal tests are centered in the genital condition of the victim and mainly in the hymen rupture. Even though the fact that this membrane was broken or not, doesn't mean that there was a violation crime. This technique made that for the ones that had started their sexual lives to be impossible to prove a rape, even the physicians in those cases considered that there were no exams. Even though, in the theory there were other methodological forms to know if there had been violence or a recent intercourse.

MCS: What conceptualizations are behind the female body that is constructed by the Legal Medicine to search for proofs of sexual crimes?

APM: Well, in a way, from the medical and legal authorities there is a perception of the female body as materialization of sexuality. I mean, the body of the women if were the traces remain, it is conceived not only as receptor but also as the place where the sexuality falls off, meanwhile the men seems that are not vulnerable to the sexual activity, they remain intact and without traces. Also, the conceptualization of the female purity is tied to the virginity and the sexual discipline, which were part of the construction of feminine passivity in the sexual discourse of women. The medicalization of justice continued this tension of the women's sexuality; it centers the attention in the female body leaving behind the male body. In that way, the female body through these acts is continually resignified as a receptacle of male activity. Which is a violent conception since it reinforces the sexual passivity of the women that is consistent in the dichotomous model of femininity.

MCS: There is also a conceptualization of the masculine sexual activity, how is it constructed and how is it influenced by science?

APM: This is a very interesting subject, currently I am studying the Italian Criminal Anthropology, especially in relation with the sexual violence because I am interested in understanding the association between the Chilean criminology and the Italian positivism. I am researching the proposals in this field and especially the ones of Cesare Lombroso, its founder; he is criticized for his conceptualizations of the physiognomic determinism or the criminal atavism in which he theorizes the figure of the "born criminal", the one that was born with a biological predisposition for committing crimes.

Nevertheless, he isn't criticized for his interpretation, from a relecture of Darwin's natural selection, in which he concludes that the human beings develop different sexual characters in function to their sex. So, he said that the secondary sexual characteristics of men are the enjoyment of violence and a very exacerbated erotism and for women these characteristics were directed to maternity and modesty. We can see, in Lombroso and some physicians of the epoch, a naturalization of the violent sexual activity in men, this was justified in a logic of evolution, since it was seen as an strategy related to adaptation in the face of the possible female rejection. In this way, it also naturalized the female sexuality as minor and passive, and not for the enjoyment, but for maternity and modesty.

These interpretations, unfortunately, underlay nowadays, not only in pseudoscientific works like “The Natural History of Sexual Violence” of Thronhill and Palmer, but also in some endocrinologist studies that still defending that sexual violence can be understand in terms of testosterone. Then so, these scientific discourses don't have been discussed and, even though in the academic scope have been partially overcome, I consider that in the collective imaginary are present and enable the concept of sexual violence in biological terms, like an unreasonable instinct and as a part of the masculine nature.

MCS: If science has had an important influence in the naturalization of sexual violence and was in charged of creating the technical comprobation of these crimes, do you believe that this actor influenced or is influencing the high rates of impunity in these crimes?

APM: I believe that science isn't responsible for the wrongful conceptualization about sexual violence, it is a cultural matter. I mean, in the XIX century there were doctors that showed the lesions which were proof of the sexual act that had been caused by a particular person but they were not judicialized. Nowadays, there is a case that helps me to exemplify this, it is the spanish case of “La Manada” were we knew who were the people responsible, the medical legal examination showed sprains and lesions but because a cultural matter, the results of the medical examination were interpreted as normal lesions provoked by a normal sexual act. This shows what we were talking about the lombrosian idea of sexual violence as intrinsic to masculine nature. I think that science, by being an authority, justified through a method supposedly scientific these cultural stereotypes, but science isn't the only one responsible.

MCS: One of the conclusions of your work is that the judicial orders became performative acts, could you amplify that idea?

APM: Actions create meanings, there for these judicial orders in the cases of rape were directing all of the attention on the victim's body and the judicial attention was on the life and sexual activity of the victim before the crime. The concept that was reproduced is that the value of the women relays on her sexual activity. As well, it normalize the raping due to the fact that in any moment they questioned “why” the aggressor could have or could have not committed the crime. That's how they naturalized the sexual violence and the ones questioned are the women since their role, value and social status depends on their sexual activity, so in the judicial orders this is constantly resignified and so it creates reality.

MCS: In conclusion, what comments or thoughts do you have left about the ESS?

APM: For me this has been a marvellous experience, not only to learn about pretty interesting investigations from other latitudes, and acquire new contacts, but also to get close to topics that at the beginning didn't seem related to my investigation, but that gives a fresh perspective. I believe that reinforcing this spaces in other institutions is necessary.

However, I would like to draw our attention to re-orientate our strategies of divulgation, we keep reaching an almost exclusively female audience, I don't want to make a dichotomous division of gender, but it is visible that women are the ones that

feel summoned to these type of thoughts, it seems like we feel we are the only ones responsible. Like if for men the gender problems and feminism were distant or uninteresting, I believe there's so much to do, it is important.

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