

## Gender pathologization and criminalization: The prison experience of transvestites

*Patologização e criminalização de gênero: a experiência de travestis no cárcere*

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DOI: 10.1590/2358-28982023E18040I

**ABSTRACT** The experience of being a transvestite is traversed by multiple regulations in the fields of law and medicine. Both fields of knowledge articulate and reaffirm a specific normative conception of gender that leads to the criminalization and pathologization of this experience. This situation reaches alarming levels, especially in the case of imprisoned transvestites. To illustrate the articulation between pathologization and criminalization, we use bibliographic research and the field report constructed by one of the authors of this essay. We aimed to show how this articulation occurs from the concrete case of a female transvestite subjected to medicalization within the prison system and how this procedure led to her (re)criminalization. That way, pathologization, and criminalization build an epistemological framework that sets the limits within which gender and sexuality become visible and bypass an understanding of the right to health.

**KEYWORDS** Criminalization. Gender norms. Health. Prisons. Transvestism. Gender identity.

**RESUMO** A experiência de ser travesti é atravessada por múltiplas regulações no campo do direito e da medicina. Ambos os conhecimentos se articulam e reafirmam uma determinada concepção normativa de gênero que produz a criminalização e a patologização dessa experiência. Especialmente no caso de travestis presas, tal situação alcança patamares alarmantes. Para ilustrar a articulação entre patologização e criminalização, utilizam-se levantamento bibliográfico e relato de campo construído por uma das autoras deste ensaio. O objetivo foi demonstrar como essa articulação se dá, a partir do caso concreto de uma travesti submetida à medicalização dentro do cárcere, e como esse procedimento ensejou a sua (re)criminalização. Dessa forma, a patologização e a criminalização constroem um marco epistemológico que traça os limites dentro dos quais gênero e sexualidade se tornam visíveis e passam ao largo de uma compreensão do direito à saúde.

**PALAVRAS-CHAVE** Criminalização. Normas de gênero. Prisões. Travestilidade. Identidade de gênero.

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## Introduction

The field of gender and sexuality studies has moved towards making the reading of events related to criminalization and the pathologization of some experiences more complex. This movement is grounded on the feminist theoretical construction of gender, whether regarding the multiple meanings in which the term can be used or the political implications and possible articulations between sexuality, race, class, and ethnicity, systematically abandoning the logic of identity politics and expanding concepts such as ‘woman’ and ‘oppression’.

Regarding what is of interest to address, the conception of gender as a norm provides essential elements for understanding the experiences of transvestites, especially in interface with Law and Medicine. Such production has grown considerably in recent years. In this context, we underscore the efforts to study the harmful effects of the pathologization of such experiences<sup>1-12</sup> and the criminalization of these experiences, based on reflection on prison<sup>13-17</sup> – more recently, on the relationship between these experiences and criminal law<sup>18-27</sup>. However, if it is true that such academic production is opportunely growing, some themes are still rarely addressed. Specifically, a negligible production regarding the link between pathologization and the criminalization of transvestites is observed, especially within the prison context.

The experience of transvestites is traversed by multiple regulations in law and medical and psy (psychology and psychiatry) knowledge. These fields of knowledge articulate and validate a particular normative conception of gender, producing the criminalization and pathologization of these experiences that challenge gender historical fixation.

The work methodology consisted of a bibliographical survey and a report on the field research of one of the authors of this essay. The field report was constructed from logbooks prepared during the collective

research ‘The experiences of transvestites in Belo Horizonte’ by the Center for Human Rights and LGBT Citizenship at the Federal University of Minas Gerais (NUH/UFMG), approved by the Research Ethics Committee (CEP) under CAAE N° 38670114.6.0000.5149. This work aims to show from a concrete case of a female transvestite subjected to medicalization within prison how the articulation between criminalization and pathologization led to her (re)criminalization.

The gender normative conception is presented first. Next, we show how it articulates pathologization and criminalization building on the specific case of a female transvestite subjected to medicalization in prison, which led to a new criminalization. Finally, considerations are made about the impact of this situation from the viewpoint of the right to health.

## Pathologization, criminalization, and gender norms

In ‘Fresh Tropics’, Green and Polito<sup>28</sup> show that, between the mid-19<sup>th</sup> century and the early 1980s, while the world was experiencing a technological and customs upheaval, homosexuality was portrayed as an anomaly that should remain hidden. In Brazil, doctors had concepts about what was normal or abnormal to characterize homosexuality as a disease or not. They classified male homosexuals and looked for the reasons why people like this existed. The authors record as extensive:

[...] the rapprochement between doctors and the legal-police apparatus, and the police is responsible for capturing homosexual offenders and handing them over to researchers in the field of medicine for ‘studies’. Once caught by the law, homosexuals would have two distinct fates, but identical from the viewpoint of their outcome: confinement<sup>28(21)</sup>.

However, we can observe that these fields generally act together, articulating to produce and control deviation in most societies. When addressing the definitions of deviation, Becker<sup>29</sup> affirms that a common approach identifies it as something essentially pathological, revealing a disease. He relies on a medical analogy, sometimes in a strict way, when he considers deviation as a product of mental illness. Becker illustrates:

[...] the behavior of a drug addict or a homosexual is a mental illness symptom in the same way that the difficulties in healing in a person with diabetes are a symptom of his illness<sup>29(17)</sup>.

In Brazil, this conception took over law schools, allowed the emergence of theses about poverty, race, and madness, and guided efforts to control deviance and keep social order<sup>30,31</sup>. Schritzmeyer<sup>31</sup> points out, for example, that, in the 1890s, Rio de Janeiro was considered a sick body, and prostitution and sodomy<sup>32</sup> were its principal evils,

which led doctors and jurists to consider themselves capable of combating them based on the belief that they were the 'evolved' of a nation that needed to rush towards technological and scientific progress<sup>31(141)</sup>.

In other words, the offender was produced as a pathologized subject<sup>33</sup>. The medical metaphor is limiting. It starts from a deviant prejudice and, through analogy, locates the cause in the individual, preventing us from seeing that the prejudice itself is a crucial part of the event<sup>29</sup>. Deviation is (re)produced throughout processes and interactions between people, acts, and the reaction arising from this interaction. Regarding the pathologization of homosexuality, the deconstruction of this prejudice involves feminist theories and, especially, gender studies.

Despite the multiple possible uses of the term 'gender', adopting this category always depends on the context and must assume a

complementary nature in the analyses, and not an exclusive one, as it is a "ground that seems fixed, but whose meaning is contested and floating"<sup>34(28)</sup>.

In the early days of developing feminist theories, gender was understood as a descriptor of two supposed subjective identities, 'man and woman', forged by a social character whose social identity was imposed on a sexed body<sup>35</sup>.

From a bodily anatomy governed by a logic of similarities, we moved to an anatomy governed by a logic of differences<sup>5,12</sup>; a logic is developed where sexual difference starts to be understood and translated as anatomical truth. At the heart of this rationale is the reiterated conception that some component aspects of our subjectivity must be related to each other, such as sex, gender, body, and sexual orientation. This relationship is significantly marked by the concept of agreement and complementarity between them: gender must agree in a cisnormative way with sex, and desire must be hetero-oriented<sup>11</sup>.

We should point out here that the notion of bodies as a substance defines the diagnosis as if they were "human natures and not cultural and social constructions articulated by discourses and social practices"<sup>11(48)</sup>, which is why expressions refuting this linearity are considered pathological and deviant.

Later, gender was considered in an intersectional approach with race, class, and ethnicity<sup>36-38</sup>. It was also related to social, historical, economic, and political systems of fixing and legitimizing power<sup>34</sup> and social hierarchies<sup>39</sup>, which inform the complex relationships between the different human interactive ways.

Thus, contemporary gender and sexuality studies have contributed to the complexification of the relationship between genders, primarily based on understanding which mechanisms act directly on subjects so that they 'fit' into the feminine and masculine molds<sup>40</sup>.

The authors of this essay believe that the pathologization and criminalization of transvestites' experiences can be better understood

if a normative conception of gender<sup>41</sup> is adopted, in which gender is a normative principle of the social field's organization. Having a gender, or being a gender, does not constitute an ontological attribute – it does not define being – while such attribution participates in the production of meaning and intelligibility of social practices. The idea of intelligibility is associated with recognizing specific practices and their fitting as legitimate practices: “It defines the scene in which we can appear while restricting the possibility of this appearance”<sup>42(26-27)</sup>.

In other words, gender is directly related to the ability to be intelligible or integrable in social life. Gender norms are not abstractions. They must be understood as forms of action. In a sense, norms persist in and through actions: they are social practice principles and statements.

The norm, therefore, relates to acting in reality, which controls subjects' experience while guaranteeing their existence and establishes a reality among many other possible ones in which the characteristics of obligation and sanction are observed to all their extents. Gender norms establish a specific rationality in the subjects' ways of acting, being, thinking, and desiring. It is a category that constructs and constrains perception and representation forms.

From this conception, we can question how a social fact becomes a natural fact; that is, certain gender ideals are considered innate and specific characteristics of men and women<sup>41,43</sup>. Consequently, genders that do not manifest those characteristics by which natural gender is defined are addressed as pathological, aberrations, and criminalized.

To ‘understand’ gender norms, the best way is to pay attention to their effects, as norms may or may not be explicit. They often remain implicit and challenging to read when they operate as a social practice principle. They are more clearly and dramatically discernible in the effects they produce<sup>41,43</sup>.

Among the effects produced by gender norms “at the service of other regulation

forms”<sup>44(268)</sup>, we highlight the criminalization and pathologization of transvestites because, when they move away from the matrix of recognition supported by gender norms, they are subjected “to varied and contingent consequences for the disciplinary field, which will intervene to regulate deviant conduct”<sup>13(74)</sup>.

Thus, we can understand that pathologization and criminalization are an effect of gender norms. Furthermore, deviations from the norm can be considered a justification for continuing the norm. In other words, the deviation indeed constitutes a justification for the norm.

Pathologization concerns behaviors, experiences, and expressions controlled and diagnosed adequately by medical and psy sciences. Criminalization is related to the control of these experiences by the law. Both mechanisms work with the conception of ultimate truths of the subject or facts, in which how they operate in practice has pointed to the effort to reiterate normative gender conceptions<sup>12</sup>.

In this sense, crime as an empty signifier is effective because it is anchored in processes located in each place, produced in each act, triggered by multiple stakeholders, and supported by gender norms<sup>27</sup>. It refers to a reference matrix for identifying subjects, practices, and meanings produced around the experience of transvestites. Thus, criminalization is a constant daily exercise of coordinating heterogeneous practices<sup>27</sup>.

The elements in the criminalization scene are not just settings: pathologization makes up the performance of the crime. Therefore, pathologization materiality is not just an effect; it is a production in the present doing where the crime is performed differently under the techniques used to describe and fit it. However, these two mechanisms are articulated in the name of healthcare. This articulation is most easily seen in the prison's internal dynamics.

If it is true that homosexual experiences were at the heart of the initial productions on deviance and crime, the early 1950s point

to a change in focus towards the experience of transsexuality<sup>1,3,8</sup> as a pathology, which is because,

by contradicting such essential 'coherence', the experiences of trans and transvestite people were left exclusively to occupy the space opened by the psychiatrization of homosexuality: that of a pathology<sup>4(23)</sup>.

## Criminalization through pathologization: Fernanda and prison

Pathologization and criminalization very frequently affect people who are Lesbian, Gay, Bisexual, Transvestite, Transsexual and Transgender, Queer, Intersex or Intersex, Asexual and others (LGBTQIA+). We chose to talk about transvestites here. Kulick<sup>45(204)</sup> explains that the idea behind the conceptions of transvestites, sexuality, sex, and gender is:

Females and males are inexorably and essentially females and males depending on their respective genitals; however, males' sexual organs favor more flexibility and thus allow males to construct themselves as females.

This summary allows us to immediately understand how transvestite experiences are considered pathological and deviant from the cisgender and heteronormative standard. Transvestites are the most exposed to violence among LGBTQIA+ people because their social identity "is inscribed, located, and perceived in the body and its forms"<sup>46(136)</sup>. In defense of morals and public order, the police classify them as criminal misdemeanors and crimes, such as indecent harassment, disturbing the peace, obscene acts, and contempt.

Female transvestites face two myths when incarcerated: they are violent, and they need medication to calm down. These myths

reinforce transvestism's criminalization and pathologization, which, not infrequently, are used to legitimize discourses and practices adopted by the stakeholders involved in prison dynamics. It is estimated that these myths result from gender norms and produce consequences through disciplinary sanctions and excessive medicalization. Inside the prison, criminalization is linked to pathologization and produces new control strategies in the name of supposed healthcare.

This is what the story of Fernanda (fictitious name), told by one of the authors<sup>27</sup>, reveals to us: Northeastern, she was born in a house with four brothers. She had a peaceful childhood, despite her father's reprimands when he saw her, as a child, with a bath towel tied around her head and displaying her long hair. She left home at 18 to live in her state's capital, and 11 months later, she left for Rio de Janeiro with other girlfriends.

When she turned 34, she was arrested in Belo Horizonte, accused of aggravated robbery for using a 'duckbill' clip against a client in 2002 in her home state. I only met her in person in prison, imprisoned for about a year and a half, and knowing absolutely nothing about the reason that led to her arrest. I had already heard of her in other contexts as someone who 'causes much trouble in there'. Fernanda felt the anguish of the lack of information. A year and six months without news – waiting for a time that does not pass.

After she was released from prison, we kept a close relationship. On a given Wednesday, Fernanda called me and asked if I could stop by her house. That day, she received a summons to appear at a hearing at the Special Criminal Court in Vespasiano, where the prison where she served part of her sentence is also located.

Fernanda said that she was 'out of her mind' in prison for a long time. They said that she took off her clothes at inappropriate

times, fought with everyone, and had an angry face. One day, when she was worse than usual, she asked to go to the infirmary. The request was immediately denied and, after insisting, she heard from a criminal police officer: “*You should die, faggot!*”.

The unfolding events were unexpected. Fernanda’s summons was to appear in court for the crime of threat committed against this criminal police officer. In the publicly accessible Police Report, the history is limited to a few lines:

*[...] involved 1 threatened involved 2 with the following words ‘then you will turn up dead, and you do not know why’; after threatening the Involved 2, Involved 1 removed all his clothes, became completely naked, and uttered profanity towards Involved 2.*

The complaint states that, on October 31, 2017, “*in the Prison Unit, the accused threatened, in words, to cause unfair and serious harm to the victim [...], a prison officer*”. Now, in what context would it be possible for a prison officer, equipped with institutional and symbolic strength, to feel legitimized to accuse someone in his custody of the crime of threat?

I tried to explain to Fernanda what the fact for which she was being criminally prosecuted consisted of. Outraged and perplexed, she found an answer to her question: “*But why do they do this to us? They are terrible, right?*” Fernanda said that she remembered little about that day. She hardly remembered anything about most days, as she spent most of the time under the influence of medication.

She said that less than a week after being arrested, she was sent to a Social Assistance Reference Center (CRAS) close to the penitentiary. There, she was met by a doctor, just once, who, with few questions, prescribed medicine without blinking. It was Levozine®. According to the leaflet, it is a medicine indicated in cases where there is a need for a neuroleptic and sedative action “in psychotic patients and adjuvant therapy for the relief of

delirium, agitation, restlessness, and confusion associated with pain in terminal patients”<sup>47</sup>.

However, it can cause psychiatric disorders, such as “states of confusion, delirium, indifference, anxiety reactions, and mood variations”<sup>47</sup>.

According to Fernanda, ‘screaming’ and ‘taking off her clothes’ are bizarre behaviors that she cannot remember or explain the reasons for.

The episodes involving the confusion experienced during his period in prison gradually gained other interpretations. She recalled that she was not the only one in the pavilion to make prolonged and forced use of psychiatric medications during incarceration. However, throughout the time she was imprisoned, she was perhaps the only one with symptoms of mental confusion, hearing hallucinations, excessive sleep, and dizziness. What is certain is that Fernanda was not diagnosed with psychosis, which would recommend the use of this medication, which caused some behavioral and mental disorders when employed. However, stopping taking it was not an option, as refusal could lead to formal or informal disciplinary sanctions. Control over her body was compulsory, and she had a hint of chemical restraint. Pathologization had finally found effective imposition means in that space.

According to the case records, Fernanda had already appeared at the preliminary hearing. However, she did not remember that. The date corresponded to the time she was imprisoned, and her signature was affixed to the document. However, she swore she had not seen the judge.

Now, she was free and would not go to the hearing alone. The Vespasiano City Forum is located on a residential street, and its architecture resembles a house in inland Minas Gerais. We traveled by car, listening to music and pretending that life was not tragic. A large jaticoba tree occupies part of the side of the Forum. When Fernanda looked at the tree, she remembered the day she was in that place: “*It*

*was right here; I remember it because of the jaboticaba tree; the officers ate jaboticaba all the time and spat on the ground*". She added, saying that she waited a long time inside the prison transport car until one officer came to hand her a document and asked her to sign it. Pressured by handcuffs, time, and jaboticaba seeds, Fernanda signed the document without thinking twice. Later, we discovered that it was her testimony at the preliminary hearing and that the agent who was driving the car was the agent who accused her of threatening her.

Out of jail and away from medication, Fernanda leads her life like someone recovering from a long trip.

The relationship between an apparent concern for health, pathologization, and incarceration has another effect when paying attention to the routine association of transvestites with sexually transmitted infections. All in this place are seen as potential carriers of these diseases. However, they either receive discriminatory or no treatment from the administration when they show the first symptoms.

This space and these dynamics seem organized through a classificatory and pathologizing repetition that is hard to dismantle – notably in total environments. After all, "everything is organized per the classificatory reiteration. The perceptions, questions, looks"<sup>48(32)</sup>, and the actions and policies created in the pavilion.

With Fernanda, we always talk about knowledge, the truth about a body, an experience, or even a crime. The knowledge produced at all times in prison pathologizes, criminalizes, and victimizes. Victimization, however, is invisible.

## Final considerations

The conception of gender as a norm helps to understand how the experience of transvestites is traversed by multiple regulations that combine to criminalize and pathologize these experiences. Such regulations establish a specific rationality in the subjects' ways of acting, being, and thinking, producing the idea of diagnosis and reaffirming an understanding of the body as a substance. Pathologization concerns behaviors, experiences, and expressions diagnosed and controlled by medical and psy sciences. Criminalization represents the control of these experiences through the law and the justice administration institutions.

Criminalization is directly related to the pathologization of transvestites' experiences. In the case discussed, the chemical restraint's side effects by the indiscriminate use of antipsychotic medications are erased, and pathologization produces an indiscipline to criminalize the transvestite experience. This dynamic restricts the possibilities of constructing care genuinely aligned with the physical and mental health needs in the prison environment.

Pathologization thus materializes from practices and constitutes a present doing in which crime is performed differently per the techniques used to describe and fit it.

## Collaborators

Vidal JS (0000-0002-0139-262X)\* and Castilho EWV (0000-0001-7215-5755)\* equally contributed to the elaboration of the manuscript. ■

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- Received on 11/22/2023  
Approved on 12/19/2023  
Conflict of interests: non-existent  
Financial support: non-existent
- Responsible editor:** Henrique Rabello de Carvalho