



Article

“The Adultery of a Woman Is a Very Serious Attack on the Honor and Dignity of a Man.” Perceptions about Gender Violence of Judges and Inmates

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Abstract: Crossing the analysis of court rulings on domestic violence produced in Portuguese courts and semi-structured interviews of men convicted of this same crime, this article emphasizes the transversality of gender categories as social markers in the different dimensions of Portugal’s social and institutional life, as well as the processes through which an inseparability between gender and state is built. From the comparative analysis of our research, we have identified the presence and relevance of these moral models that ascribe meanings and expectations to gender-based violence in different contexts—in courts and in prisons, with judges and inmates.

Keywords: gender; court rulings; imprisonment; violence



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1. Introduction

In May 2002, after a year of assaults, threats, and insults, a woman was shot dead at point-blank range with two shotgun blasts by her husband and the father of their three children. The youngest son witnessed the crime. The Supreme Court of Justice considered that, until that moment, “the defendant was just a normal man”. Former judge–counselor PM, and the other judges who signed the decision, referred to the fact that the woman’s refusal to have sexual relations with her husband “will allow (. . .) the assertion that not only on the defendant’s side there was a violation of conjugal duties”. The victim’s refusal “may even help explain the doubts that arose in that poorly enlightened mind about her (in)fidelity”. The judges considered that the motive that led the killer to shoot his wife was “not a trivial reason”.¹

According to the Portuguese Annual Monitoring Report - Domestic Violence in 2021 (the last one that was published), an average of “2210 reports per month, 73 per day, and 3 per hour” were received for crimes of violence against women. “Physical violence was present in 65.2% of situations, psychological violence in 81.5%, sexual violence in 2.6%, economic violence in 7.1%, and social violence in 15.6%”. Going a little further, it can be seen that “of the total results of Domestic Violence inquiries analyzed [2015–2021], 78.3% were archived, 16.9% of the perpetrators were accused, and 4.9% to provisional suspension of the process”. ([Ministério da Administração Interna 2022](#), p. 7) Inquiries were archived mainly due to lack of evidence, either because the victim—who cannot withdraw the complaint—chooses not to provide evidence or cannot actually prove it in the absence of witnesses as these are crimes perpetrated in private spaces. In cases where there is an accusation and conviction, it is noted that “in 59.1% of the decisions issued from 2015 to 2021 (n = 12,094), the prison sentences applied were between 2–3 years, the wide majority suspended, usually for an equal period of time”. (idem).

Crossing the analysis of court rulings on domestic violence produced in Portuguese courts and reports of men convicted of this crime, this article emphasizes the transversality of gender categories as social markers in the different dimensions of Portugal’s social and

institutional life, as well as the processes through which an inseparability between gender and state is built.

Culturally, Portugal is a catholic country where the patriarchal family was traditionally hegemonic, and gender is an important basis of inequalities (cf. [Amâncio and Santos 2021](#)). In the research on gender-based violence and domestic violence crimes that we have developed in courts and in prisons, with judges and inmates, we have identified the presence of moral models based on that traditional patriarchal system in both the justifications of criminal offenses by inmates and in the arguments of the judicial rulings. In this article, we analyze cases in which the presence of patriarchal values justifies intimate-partner crimes in order to show the presence of moral values based on gender perceptions in legal decision-making and which, in this way, reproduce through the court's gender-based forms of power that legitimize gender-based violence. In doing so, through rulings and judgments, it is not just judges who apply their power on the basis of moral judgments. It is the state, through its institutions, that reproduces forms of power based on patriarchal gender models that impose a certain moral and social order (Cf. [Vianna and Lowenkron 2017](#)).

We should make it clear that although there are still a number of rulings, such as those we will discuss in this article, which reproduce this patriarchal model and, in some way, legitimize gender-based crimes, they do not represent the majority in the Portuguese judicial landscape. We believe, however, that it is important to draw attention to in order to identify institutional processes that continue to reproduce structural forms of gender inequality, often against the law while giving continuity to conservative moral models that undermine the equality of citizens. In order to do so, this article we will be situated at the confluence of Gender Studies and Legal Anthropology ([Hastrup 2003](#); [Debert and Gregory 2008](#); [Coelho 2010](#); [Goodale 2017](#); [Lima 2023](#)).

2. Qualitative Data and Methods

This article is grounded in anthropological ethnographic research, literature review, and documental research conducted between the years 2015 and 2022. The central themes explored encompassed gender issues, physical and economic insecurity, precariousness, crime, and incarceration. We have consulted public court rulings and performed semi-structured interviews in one male prison facility in Portugal. The court rulings presented here are public and available for consultation through the provided links, with the names of victims and aggressors anonymized, as well as any other identifying data. In total, we studied and consulted over 70 public court rulings that have "domestic violence" as the main keyword in the crime description of the ruling, usually including physical abuse and/or psychological abuse as description categories.

The data presented from semi-structured interviews conducted in prison facilities were authorized by the Portuguese General Directorate of Prison Services as part of a larger study conducted across 12 Portuguese prisons, both male and female, between 2015 and 2021. The data for this article includes only male inmates' participation, and the 14 semi-structured interviews specifically selected for discussion were focused on themes such as education, socioeconomic background, justice, and criminal pathways, with men ranging from 18 to 60 years old, with national and foreigners. Using content analysis of the transcripts of the interviews, cases of men convicted specifically of domestic violence crimes were selected. In addition to this first selection, cases were also analyzed in which men spoke about their marital relationships or in which, even though the crime of domestic violence/intimate partner abuse was not the cause of the crime for which they were convicted, this topic was raised.

3. Violence against Women: Brief Overview

At the international level, domestic and gender-based violence has gained notoriety as a social problem over the past two decades (cf. [World Health Organization 2021](#)). Several scholars trace the genealogy of this issue in global, national, and local terms, and its interrelation with human rights issues, combatting gender inequality, preventing

interpersonal violence, and revealing underlying ambiguities and ambivalences (e.g., [Backe 2020](#); [Frois 2016](#); [Gribaldo 2021](#); [Lombard 2018](#)). Supranational legislative initiatives aim to combat all forms of violence and eliminate forms of gender-based discrimination by directing a group of states to implement directives.

Domestic and gender-based violence is pervasive across countries, socioeconomic strata, political regimes, and socio-cultural specificities. Violence between men and women, men over women, or women over men, although with different motivations, justifications, and even scales, cannot be circumscribed to a specific time or geography. Nevertheless, it is possible to identify some common traits among the cases where this type of violence is more prevalent: (1) a large majority of victims live in a relationship of economic dependence on the aggressor; (2) judicial agents—police, courts—tend not to be gender-neutral, showing sympathy, understanding, or even condescension towards the aggressor, even when they are exclusively female police stations, as [Santos \(2005\)](#) explains; (3) victims tend to assume some responsibility for acts of violence, excusing the aggressors while identifying themselves, at least in part, as catalysts for these situations ([Frois 2017](#); [Hume and Wilding 2015](#)); and (4) these behaviors are situated in the cultural sphere, transversal to both honor crimes and rape crimes occurring in times of war ([Scheper-Hughes and Bourgois 2003](#)).

Social sciences have contributed to both public and scientific debate, as well as legislative production. The introduction to the collection *Anthropology at the Front Line of Gender-Based Violence*, organized by [Wies and Haldane \(2011\)](#), presents an interesting systematization of these various contributions. It is also worth mentioning the various works of Sally [Merry \(2009\)](#), which highlight the complexities of gender-based violence, i.e., violence produced based on the gender of the victim and domestic violence (or intimate-partner violence or domestic abuse), i.e., physical and psychological abuse occurring in the sphere of the home, between spouses or partners taking into account its global, national, and local diversity; its cultural, political, and social implications; and how this violence has different functions and purposes (see also [Fernández 2006](#); [Renzetti et al. 2017](#)).

Like many European countries, Portugal has followed legislative changes and implemented programs for the prevention and combat of gender-based, domestic, elderly, and child violence. Classified as a public crime since 2001, domestic violence does not depend on the victim's complaint to be investigated and judged by competent authorities. Nearly 20 years have passed since this first legislative change, and over 50 years since the beginning of the Portuguese Republic Constitution, which recognized equality between men and women for the first time, abolishing the formal authority of men over women. It would be illusory to assume that in a country commonly described as traditional, Catholic, and patriarchal, changes in behaviors and mentalities would immediately accompany legislative changes.

4. The Legitimation of Violence: The Court

Despite advanced legislation on the condemnation of domestic and gender-based violence, the history of these crimes in Portugal reveals that law enforcement agencies often adopt a permissive attitude towards men's abuse of women and are ineffective in enforcing existing laws, and the Public Prosecutor's Office does not always follow up on complaints received. On the other hand, as the decisions on gender-based crimes that we will analyze below and that had extensive media coverage show, too often courts judge these cases not only based on the existing legislation but on the moral contents of hegemonic gender categories, even when these are in tension with the spirit of the law. It is thus observed that hegemonic gender values, roles, and hierarchies in Portugal are present, both in the daily lives of interpersonal relationships and in the life of public institutions and the state.

4.1. Case 1—Lack of Trauma

The first example concerns a trial for domestic violence and mistreatment committed by a man towards his wife and minor daughter during a 10-year period of marital relationship. Convicted to 4 years and 6 months of suspended sentence imprisonment, the

defendant appealed to a higher court which reduced the sentence to 3 years of suspended sentence imprisonment. In the court ruling (TRL-Process n° 856/08.9TAOER.L1.5)², it can be read as follows:

Note that in almost every situation of physical violence exercised against victim S, the consequences were always minor, not going beyond some small bruises and abrasions [. . .]. The defendant never used any instrument (of a blunt or other nature) or any kind of weapon against the victims. He only used his hands, and in most situations, the physical aggressions translated into simple “slaps”, “smacks” and “arm twists”. Only in one situation was the defendant particularly violent, as he hit victim S with a punch to the face, making her lose consciousness.

Regarding victim R. [the minor daughter], the defendant’s aggressive conduct falls within the border zone between what can be considered the exercise of parental correction power over children and what should be considered actions with criminal relevance. It is known that victims of mistreatment are (often) irreparably marked (with irreversible traumas, emotional blockages, etc.). From what has been established, it does not result that the victims have been particularly traumatized, namely, they did not need psychological assistance, although they still express their anger towards the defendant.

Based on this ruling, we see how different domains converge in the evaluation of facts, related to a moral image of family, parenthood, conjugal relationships, and, as a whole, the importance that violent acts can assume, or rather, whether they are or are not part of the sociality inscribed in these hierarchical relationships between husband and wife in the family and between generations.

In the judge’s opinion, the fact that no instruments or weapons were used in situations where there were assaults suggests that they were of little gravity, and there was no intention on the part of the aggressor to cause permanent harm to the victim. The same assessment serves to consider to what extent “spanking” and “slapping” are criminal acts or, on the contrary, should be framed as how a father/mother educates and “corrects” their children. The “victims” do not seem to show permanent trauma, being able to continue with their daily lives without seeking specialized help, so the assaults should not be severely punished.

4.2. Case 2—*Demon vs. Angel*

Pronunciation for the crime of domestic violence, slander, and mistreatment committed by a man towards the woman he had been living with for two years. The court dismissed the charges of domestic violence, slander, and mistreatment, and convicted the man of a simple assault, imposing a fine of €350. The victim appealed. The appellate court rejected the appeal with the following justification (TRL-Process n° 1354/10.6TDLSB.L1-5)³:

The fact that the defendant hit the victim with a punch on the nose, causing it to be “slightly black on the side”, and bit her on the hand (without apparent injuries), constitutes a simple offense to physical integrity that is far from being considered an abusive conduct that could be characterized as “domestic violence”. It is evident that the defendant’s conduct, even considering that the victim was holding her son (then 9 days old) in her arms, does not have the necessary severity to affirm that the appellant’s personal dignity was degraded, and therefore, her physical and emotional well-being was intolerably harmed.

One must be cautious and avoid Manichean views of situations: the accused (usually the husband or companion) is not always the demon and the offended party the angel, the innocent and defenseless victim who deserves all the credit.

Over the years, Portuguese legislation has been identifying the periodicity and multiple acts that fall within the scope of physical and psychological aggression in cases of domestic violence, which are divided into domestic violence in a broad sense and in a strict sense (cf. Portuguese Association for Victim Support). The first category includes acts such as sexual abuse of children or dependent minors, consummated homicide and attempted homicide, sexual coercion, or rape. The second category corresponds to physical abuse, threats and coercion, slander, and defamation. The objective of these classifications is to create greater rigor and standardization in the identification of these cases, contributing to the accountability of possible aggressors. This concern also aims to prevent false accusations that may be motivated by jealousy, revenge, or the manipulation of facts.

However, what this ruling establishes is different. Recognizing that there have been similar situations in the past and that the man's behavior suggests the potential for repetition in the future, the judge disregards the facts (punches) and the implied severity of their consequences ("the slightly black and crooked nose"); he disregards the fact that the newborn was in the woman's arms at the time of the assaults, to conclude that it is only "simple offenses to physical integrity" and not a domestic violence episode.

This shows a moral judgment on the legitimacy of the man's violent acts towards his partner, on the severity of the facts, but also on the personalities of the individuals involved, as exemplified by the warning to avoid "Manichean views": the defendant, the man, cannot always be considered an aggressor who should be punished; it is necessary to take into account that the victim is not, by definition, "innocent and defenseless and deserves all the credit". Essentially, it suggests that the victims' accounts and the severity of the damages they suffered should be questioned, not assuming a priori that the described consequences—in this case, the affront to personal dignity, physical and emotional trauma suffered, and the possibility of future occurrences—are true.

4.3. Case 3—*Man's Honor*

The third case concerns a crime that occurred in the northern part of the country. The reconstruction of the events is based on the judgment related to the appeal filed by the victim. In 2013, a woman had an extramarital relationship that ended a few months before she separated from her husband. The man did not accept the breakup and stalked her several times at work and at home, trying to rekindle the relationship. Throughout these months, he contacted the woman's husband, whom he informed about the love affair. The man, in turn, who was already separated from his wife, began sending her messages with insults and death threats that also targeted other family members and friends.

One day, while the woman was getting into her car, the ex-"lover" pushed her into the passenger seat and, taking the wheel, drove through several streets in the town, demanding that the woman rekindle the relationship. Moments later, while the woman was rejecting these advances, the man called her ex-husband to let him know where he was and who he was with. Immediately, a car appeared from which the ex-husband emerged with a nail-studded club. While one of them held the woman, the other beat her with the club. The woman managed to escape and was assisted by the Volunteer Firefighters, then she reported the incident to the police, and the respective criminal proceedings were initiated.

In the trial, the physical assaults and extent of the damage are proven, as well as the recording of threats witnessed by both witnesses and recorded in text messages. The weapon used during the crime was identified, as well as the existence of other weapons (bladed and firearms). The crimes of kidnapping, assault, verbal offenses, threats, and premeditation of joint action by the two men are then proven. Both were sentenced to prison terms (15 months for the ex-husband; and 12 months for the other man), suspended for an equal period, as well as ordered to pay compensation for material damages totaling approximately €10,000. The victim and the ex-husband disagreed with the sentence and appealed to the Porto Court of Appeals, where three appellate judges reviewed the case, dismissing the appeals and ratifying the appealed decision.

This ruling became famous in the Portuguese public opinion for the reasoning used by the reporting judge to justify the decision (TRP-Process n° 355/15.2. GALFLC.P1)⁴. The ruling explains, first of all, that the case at hand is not relevant compared to the majority of cases of violence occurring in domestic settings and underlines that the facts occurred in a context in which the woman had committed adultery, partly justifying the behavior of the defendants (mainly the ex-husband). Part of the ruling's reasoning is transcribed here.

Now, the woman's adultery is a serious attack on the honor and dignity of the man. There are societies where adulterous women are stoned to death. In the Bible, we can read that the adulterous woman should be punished with death. It was not long ago that the penal law (Penal Code of 1886, article 372.0) punished with a penalty that was little more than symbolic the man who, finding his wife in adultery, killed her in that act.

The different justifications presented, which could be described as mutually exclusive and clearly rooted in religious ideology and contrary to the spirit of Portuguese law, are presented as a moral evaluation of the situation and not an analysis of the facts in light of the law, as is expected of a judge in a court of law. The inequality, submissiveness, and subordination of women to men are reified with the mention of two distinct religious philosophies: Muslim practice and Catholic religion. The presiding judge refers to the Portuguese penal law of 1886 (which is more than 130 years old) to justify the actions of the betrayed man—the physical assaults, threats, and insults—by pointing to the woman's censurable behavior, on the one hand, and the natural right, thus reaffirmed, to preserve the honor of the offended man, legitimizing the violence of the acts with the violence inscribed in these religious texts. The ruling continues, precisely developing this reasoning:

With these references, it is only intended to emphasize that adultery by women is a behavior that society has always strongly condemned (and it is honest women who are the first to stigmatize adulterers) and therefore views with some understanding the violence exercised by the betrayed man, embarrassed and humiliated by the woman.

It was the disloyalty and sexual immorality of the complainant that caused the defendant X to fall into a deep depression, and it was in this depressed state and clouded by anger that he committed the act of aggression [. . .].

The victim's appeal requested that the sentences should be reviewed and increased, annulling the suspension of the sentence, and making the prison sentence effective. The judge rejected this request, seeing no basis for it, quite the contrary. He states that the two men have no criminal record and that this was an isolated, circumstantial act. The suspended sentences and fines are already sufficient sanctions, taking into account both the crime and the harm caused:

Now, the established facts allow us to characterize the defendants as law-abiding citizens who have had normative behavior and are perfectly integrated into society. Everything indicates that the acts committed were merely occasional and will not be repeated. None of them reveal negative characteristics of their personality. Contrary to what the appellant alleges, there are no particular requirements for special prevention that discourage the suspension of the execution of the prison sentences.

At the time the ruling was made public, there were several public expressions of disapproval, disagreement, and repudiation. In addition to popular demonstrations organized by non-governmental entities and civil society groups, there were expressions of repudiation from the President of the Supreme Court of Justice, the Secretary of State for Citizenship and Equality, and the President of the Republic, referring to the Portuguese Constitution in force that no longer classifies adultery as a crime. In addition to a petition that garnered 28,000 signatures, the Superior Council of Magistracy initiated a disciplinary process whose outcome is still unknown almost two years later.

It was not only a question of domestic or gender-based violence. The reasoning used was understood as legitimizing an unconstitutional patriarchal social order, and a failure of the courts as the place where the state must ensure justice and defend the rights of citizens. The text of the ruling, more than a legal text about rights, reaffirms moral positions and reifies gender dissensions and hierarchies that are thus validated in the public space by one of the most important instances of the secular state and protector of the rights of citizens. The consequences of this process are profound and significant, as values, ideologies, and ways of doing are reinforced, legitimized, and reproduced by this “state effect” (Mitchell 2003).

In cases where sentences are constructed as moral discourses perpetuating a model of society, they reproduce inequalities of various orders. We may ask how a judge in a secular state can justify an argument with religious elements. Or, how to justify the personal opinions that pervade the judgment, particularly with regard to adultery and the adulterous woman whom this judge described (in another judgment of an appeal in a case of domestic violence) as “The woman who commits adultery is a false, hypocritical, dishonest, disloyal, futile, immoral person. In short, lacking moral probity”. However, it is not important here to evaluate the judge’s motivations for writing this judgment but rather to think about how this discourse is embedded in a political field deeply marked by ambivalence and disinterest towards issues of domestic violence and gender violence.

The symbolic contents of gender categories and their practices are present in all dimensions of social life, including the state that legitimizes and reproduces them, through official categories and legislation that constitute people, bodies, and relationships (Butler 2003; Bourdieu 1989).

The narratives analyzed on court rulings, newspaper articles, and the voices of aggressors are divergent from what is believed to be the spirit of the law and the directives that guide Portuguese, European, and international legislation. Let us now consider examples in which the legitimization of violence is specifically directed towards women, and therefore moving beyond the domestic sphere.

4.4. Case 4—Physical Damage without Special Gravity

A 26-year-old woman goes to a nightclub with friends that she usually frequents. Towards the end of the night, around 3 a.m. (and already under the influence of alcohol), the bartender offers her shots with a mixture of various drinks as a courtesy of the house. She feels sick and is accompanied by the bartender and security to the VIP area sofas. She is taken to the bathroom to vomit, being assisted by one of the men. She loses consciousness and regains it on the bathroom floor without pants on, being raped by one of the men. She faints again and regains consciousness face down in the sink, being raped by the other man. She loses consciousness once more and wakes up already dressed, sitting on the sofas while the men try to wake her up. One of them takes her home by car, warning her not to talk about the sexual activities that occurred there—which he claims were consensual—as he is married, has children, and therefore has an image to maintain in the family and community.

In this case, there are records of a phone message exchange between the three, in which the woman claims to have filed a complaint with the Public Security Police and that the acts were not consensual since she was unconscious. The two men claim the opposite, that “they don’t want trouble”. The case goes to court, based on the testimonies, forensic examinations of the victim—which confirm the presence of semen and bruises on the body—and the analysis of the phones of the perpetrators and the exchange of messages between them and the victim. It was found as proven (1) the victim’s drunkenness and vulnerable state; (2) the occurrence of sexual relations with both men; and (3) the inconsistency between both testimonies and the concertation of the two versions. It was considered that the victim, who gave testimony for future reference, maintained a coherent and consistent discourse throughout the process, without making it seem that there was an intention of defamation or revenge. This last aspect was assessed, for example, by the fact that she did not request a

request for civil compensation, thus ruling out the possibility of acting for financial reasons (TRL-Process n° 3897/16.9JAPRT.P1)⁵.

The attackers were sentenced to a penalty of 4 years and 6 months, which was suspended due to, firstly, not reaching the minimum of 5 years that would make it mandatory to assign effective imprisonment; and secondly, taking into account the positive and negative valuation of the attackers, the acts committed, and the context of their occurrence.

And despite the blameworthiness of their conduct, the physical damage caused does not assume special gravity considering the healing period of the lesions caused essentially with slaps (bruises and hematomas), to which the slight fear of committing new and identical facts is added.

In addition, there is the positive trend of their respective social reports to which this court is not (nor could it be) indifferent; in fact, we are facing two individuals perfectly integrated from a family, professional, and social point of view, resulting from their contents the reinforcement of the favorable prognosis judgment that must be made regarding compliance with the penalties, convinced as we are that, in freedom, they can continue to exercise remunerated professional activities, provide for the sustenance and needs of themselves and their respective families, as well as for sound and natural social interaction, which are paramount factors in the pursuit of a harmonious, fair, and lawful life.

It is not, therefore, this court that will place the main obstacle to this goal, believing that the present conviction (following the execution of the precautionary measure) will have a meritorious and deterrent effect on the commission of new offenses by these two individuals.

Through the devaluation of the severity and gravity of the violence inscribed in the acts committed, the judge minimizes the complaint presented, sustaining his perspective that the sentences should not be increased, and the defendants do not need to serve prison time (TRP-Process n° 3897/16.9JAPRT.P1). On this point, he relies on the psychosocial evaluation reports that describe the two men as adults with paid employment and part of a family unit. By emphasizing the role of these men as heads of their families and integrated members of the community, he is simultaneously placing the victim at the opposite end of this category: the 26-year-old woman—an adult—who gets drunk, exposes herself sexually, and seeks company in nightclubs, “a mutual seduction environment” (as read in the judgment), which she would have found in the family she did not have. In other words, if the behavior of the men seems to have been an isolated episode that does not deserve greater reproach than the warning represented by the threat of a prison sentence, the woman’s behavior disqualifies her as a victim and insinuates some responsibility on her part for what happened.

What we observe through these cases is that the state, through the production of laws and their application, institutionalizes male power over women through the legal legitimization of the male perspective that shapes the law. In this line of argument, Mackinnon argues that “the state is male in a feminist sense: the law sees and treats women the way men see and treat women” (Mackinnon 1989, pp. 161–62). This does not mean that the state intentionally protects the male perspective. It means, however, that the multiple dimensions and institutions of power were built from the characteristics of socially and historically constructed masculinity. It also means that the devaluation of the subordinate situation in which women find themselves occurs precisely because the state sees and treats gender violence in the same way that men discredit and devalue the experiences of their victims.

The different modalities of masculinity associated with the state and/or the powers exercised by its various agents and institutions are based on policies that reinforce the symbolic and material conditions of male domination and the corresponding subordination of women. Ultimately, the court, by producing these sentences, becomes a vehicle for male domination, as it assumes the role of legitimizing the moral regimes of male

domination over women's lives, and does so through the exercise of forms of power and state institutions.

5. The Legitimation of Violence: The Inmates

To understand the different dimensions of violence and the perspectives of the various stakeholders, we relied on data collected from an ethnographic investigation conducted in a male prison on the central coast of Portugal, with a capacity for 70 inmates, an overcrowded establishment. Represented here are the main types of crime: homicide, attempted homicide, domestic violence, driving without a license, robbery, and drug trafficking. Of the 14 interviews conducted with inmates, most report experiences of domestic violence situations, even when it was not the main crime for which they were convicted. Thus, this ended up being a transversal theme in all conversations, to which other circumstances were not indifferent: the previous years (2014–2017) had counted 43 women killed in the context of domestic violence (adding 33 attempts of femicide). In the prison in question were some of the authors of these crimes (serving in preventive detention or already convicted) whose cases had assumed great media coverage.

In one of our interviews, one of the inmates exclaimed, "Domestic violence is the trendy crime now!" trying to justify why he and several other men there had been convicted, sharing the same perspective. Another inmate, imprisoned for robbery, stated, "Nowadays, any situation, any disagreement between a couple is immediately considered domestic violence. All couples argue, this is an exaggeration! Doctor, you're not telling me you've never been slapped?" Violence would not be the word they would use to describe their actions. Calling names (the crime of insult), slapping, and pushing were not, to them, violent actions, but rather reactions, which they understood as understandable and even expected in a situation of disagreement. A punch, a kick, or hitting with objects (such as a beer bottle) could be classified as a violent act, but it was still important to contextualize and, above all, understand the reason why it happened, the motivation: a "little too much to drink", tiredness from work, jealousy, or anger over unfulfilled household tasks.

These men found the legal classification of domestic violence incomprehensible, both because it was seen as mismatched to the facts—the "argument", the "fight" between a couple—and because of the punishment applied, which they considered excessive. They also claimed that if there was any repentance, it should be on the part of the woman—wife, girlfriend, or partner, current or former. The reasons they presented had to do with the fact that women had filed a complaint or allowed others to do so on their behalf. For none of the inmates we spoke to, there were no reasons that justified state intervention (police, social workers, courts) regarding conjugal life, the way a relationship between two people is lived.

Men convicted of domestic violence—those for whom the violence inflicted on their partners was taken into account during the trial to evaluate their past conduct—expressed profound incredulity at the evaluative judgments attributed to them. They did not recognize or accept being considered violent individuals. On the contrary, they saw themselves as men of value, not "thugs like others out there". Their identity was defined by their actions in the public sphere, that is, outside the home: honest workers and responsible citizens who pay taxes and actively participate in the community. They were family men, married with children, and responsible individuals. Being convicted of domestic violence, or domestic violence being a relevant factor in evaluating their life trajectory, was totally incomprehensible to them, as they were not criminals. In their perspective, they were providers for their households, the heads of their families, and their wives owed them obedience and subordination. These inmates share with judges the patriarchal model of family where hierarchical inequality between men and women is assumed to be "natural", and the exercise of multiple forms of power between them is considered legitimate and expected.

During field research, in addition to semi-structured interviews with inmates, their court rulings were analyzed. At that time, the collection focused mainly on filling in information that may have been missing during the interviews. However, the reconstruction of the events inscribed in the convictions presented different versions than those provided by the inmates. What the inmates had described as a “quarrel” involving some “slaps” was actually a succession of punches, kicks, death threats, insults, broken arms, thrown objects, pushed downstairs, and hair pulling. When the victims sought assistance, which did not always happen, the physical damage was documented by doctors and nurses.

Although the inmates’ versions of events were not coincident with the facts described in the convictions, their reports describe their perception of the events. In fact, for reflection on the perception of domestic violence, it is not relevant whether the inmates lied, omitted, or partially reconstructed what happened. What is relevant here is the way in which their narratives express their interpretation of the facts, which is independent of the crime for which they were imprisoned. Domestic violence is not a phenomenon that emerged in Portugal in 2001 when it was classified as a public crime. What happens from then on is that there is no longer the possibility of withdrawing a complaint and suspending investigations.

The narratives of men serving sentences in another prison were similar. Convicted of sexual crimes (involving violence), they rejected the label of “sexual aggressors” and even of violent behavior, considering that the prison sentences they received were manifestly exaggerated. In fact, it was not only the gravity of the crimes they sought to minimize or relativize; there was also a discourse of blaming the woman. Here we present two distinct cases.

The first case concerns a 22-year-old man who was at the end of a sentence lasting 3 years and 9 months for participating in the rape of a girl to whom he had given a ride. According to the ruling that reconstructed the facts, one night while leaving a bar, the man and a friend came across a couple at a bus stop to whom they offered a ride. A few kilometers later, they stopped in a wooded area and kicked the boyfriend out of the car, taking the girl with them who later reported to the police and the court that she had been raped alternately by the two men and then abandoned at the entrance of a nearby village. In the opinion of the inmate we spoke to, this version of the facts was far from reality: “She was already drunk and drugged, who knows what happened!” This meant that his conviction and incarceration were unjust and unjustified: if the woman was intoxicated, how could she be accurate in the facts? And moreover, what credibility did she have? He explained that he did not rape anyone, he only watched his friend rape the girl. And he repeated several times, “She was drunk, who knows who did what. What she deserved was a beating! [a kick]. She was the one who got me in here”. Thus, rejecting the commission of a crime, he also believes that the woman should be punished and held responsible for causing him to be imprisoned.

Another man, who was 30 years old and serving a six-year prison sentence, was the result of a complaint made by a foreign woman who accused him of rape. He said that this accusation was “completely unfounded”, as they had just been in a nightclub and agreed to have sex outside in a nearby corner. What seemed like an incident-free agreement ultimately resulted in a rape and aggravated assault conviction. This man explained that the assault was the result of a prior agreement for sex “that she later didn’t want to do”. The woman filed a complaint with the police and, having stated that she worked in a brothel, claimed that sexual practices were not part of her job. As a result, the inmate was sentenced to prison, as well as to pay €30,000 for the assaults he committed. He considered that because there was payment involved for sex with the woman in question, the subsequent breach of the agreement justified his extreme reaction, although he now claimed that this had been a behavior he described as “misplaced”. He saw his conviction as a reflection of the prejudice of the judge herself because he had resorted to a prostitute. He downplayed the situation—it made no sense for a prostitute to complain about sexual assault—and appealed to the judge’s bias, who, being a woman, would be intolerant of prostitution.

6. Conclusions

As we have seen empirically through inmates' statements and judicial rulings, violence is an ambiguous and volatile notion, subject to interpretation (both legal and moral), and, by extension, should these acts be classified as criminal (see [Nader 2002](#) on justice). This argument is particularly important in the case of gender-based violence, especially when our interlocutors are authors (even if not confessed) of this crime. To understand the complexity of the argumentation the inmates mobilized when questioned about the violence they exerted on their partners, it is necessary to understand that, for them—and, as we have seen, for judges as well—power (and violence) is constitutive of their relationship, and it becomes part of daily intimate life. It is not up to the anthropologist to question the validity of arguments—right or wrong—or to pass judgment on the person and their actions ([Bähre 2015](#)). Nevertheless, it is up to social scientists to understand the worldviews, values, and moralities through which our interlocutors make sense of their lives and attribute meaning to relationships. Moreover, it is our role to question, as ([Parnell 2003](#), p. 2) does, whether the creation of the crime category “can be separated from how states exercise power in local and international contexts and continue to participate in the creation and distribution of power”.

The different modalities of masculinity associated with the state and/or the powers exercised by its different agents and institutions are based on policies that reiterate the symbolic and material conditions of male domination and the corresponding female subordination. By producing these sentences, the court becomes a vehicle of male domination, insofar as it assumes itself as a legitimizing force for the moral regimes of male domination over women's lives and does so through the exercise of forms of power and state institutions. The topic addressed here is not new. There is extensive scientific production in the social sciences on gender-based violence, domestic violence, and how courts reproduce gender ideas of patriarchal tradition (cf. [Debert and Gregory 2008](#); [Katz 2015](#)). What our reflection brings anew is the way in which, through comparative analysis, we identify the presence and relevance of moral models that attribute meanings and expectations to what is considered gender-based violence by people in distinct contexts—in courts and prisons—and coming from vastly different academic and professional backgrounds—judges and inmates—covering a cross-section of social groups of status, class, institutions, social circles, professionals, and cultures.

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Institutional Review Board Statement: This study followed scrupulously the norms of anonymity, confidentiality, and privacy of the inmates who participated. The Informed Consent signed by the participants was archived in each inmate's individual file. This research was approved by the Ethics Committee of the Center for Research in Anthropology, Approval number: CE 1-24, Date: 25 May 2024.

Informed Consent Statement: Informed consent was obtained from all subjects involved in the study.

Data Availability Statement: Data from public rulings is made available in the Notes section. Data collected from inmates is unavailable due to privacy and ethical restrictions.

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Notes

¹ This news was retrieved from <https://www.esquerda.net/artigo/top-6-das-alarvidades-de-neto-de-moura/59999>. The court ruling is available at <https://www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/6cb04efb29c195ab80256eb50034dd38?OpenDocument> (accessed on 2 April 2024).

² Available online: <https://www.dgsi.pt/jtrl.nsf/-/06FF0F8EE0B94645802577FF0057FDE4> (accessed on 13 April 2024).

- ³ Available online: <https://www.dgsi.pt/jtrl.nsf/33182fc732316039802565fa00497eec/e8c3d2a2fde8f0a980257b710055dfd5?OpenDocument> (accessed on 5 April 2024).
- ⁴ Available online: <https://esqrever.com/wp-content/uploads/2017/10/trp-2017-vd-adultc3a9rio-lapidar-355-15-2-gaflg-p1.pdf> (accessed on 18 January 2024).
- ⁵ Available online: <https://www.dgsi.pt/jtrp.nsf/56a6e7121657f91e80257cda00381fdf/6f7c90fb3d34e281802582eb0049ac25?OpenDocument> (accessed on 5 February 2024).

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