

# Women in the Captaincy of Paraíba: a Legal History Approach to the Sources of Colonial Brazil

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## ABSTRACT

This chapter lays the groundwork for a legal history perspective for the history of women in colonial Paraíba, a captaincy of the Portuguese Empire in Northeast Brazil, based on an analysis of normativities. Using documents about women in colonial Paraíba sourced from Portuguese and Brazilian archives from the sixteenth century until the early nineteenth century, I question the mainstream understanding of women in the colonial period by arguing that there were many differences among women. I demonstrate that women in colonial Paraíba were far from static categorizations and prove that women's legal history in colonial Brazil cannot be understood without connecting gender, religion, condition and status.

## INTRODUCTION

After the Brazilian Declaration of Independence in 1822, historians and sociologists began to write about the colonial period, influenced by the nationalism of the nineteenth century. They created and reproduced a colonial discourse describing fixed types of women in the colonial period: the white bourgeois woman, the black woman, the “Indian”, and the “mulatto”.<sup>1</sup>

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1 Conceptions described by the following authors, among others: *Varnhagen*, 1857; *Abreu*, 1998; *Viana*, 2005; *Freyre*, 2006. They describe white women as maiden-like, pure, catholic, mother of many children, always at home, and a guardian of tradition; a lascivious black, seductress of the landowner; an “Indian”, catechized, silly and poorly educated; and the “mulatto”, slicker, marginal, the sexual “necessary evil” of the colonization. These definitions are described in detail in my doctoral thesis: *Silva*, *História do Direito e Colonização do Brasil: as Mulheres da Capitania da Paraíba, 1661–1822*, Lisbon 2018. In this chapter, I use the English translations for “mulato” (mulatto) and “índio” (Indian) without any modern connotation to

According to them, the colonization of Brazil placed Europeans, “Indians” and African slaves together in the American territory, generalizing their different cultures and practices. Women were described in fixed models of identity and classified into racial boxes. Furthermore, they interpreted the colonial process as a one-way relationship where the Aryan (Portuguese) “race” improved the Brazilian people, representing the salvation of the “bestial Indians” and Africans in the new world.

This traditional historiography has been dismantled since the 1970s. Scholars began to develop new approaches and created a specific women’s history<sup>2</sup> and, later, a specific postcolonial critique to the understanding of social positions of fixed races and superior classes.

However, other approaches have been able to help dismantle this construct of placing women into fixed categories. These other perspectives highlight the importance of historicizing and contextualizing gender relationships in order to avoid feminist universalism. I appeal specifically to a legal history perspective, a field that has combined women’s history and feminist jurisprudence, adding complexity and depth to the interpretation of source documents about women.

In this paper, I demonstrate my own uses and understanding of a legal history approach to women’s history in the colonization of Brazil by interpreting documents about the Captaincy of Paraíba sourced from archives in Brazil and Portugal. This captaincy was located in Northeast Brazil and was one of the first to be settled after the Portuguese arrived in Brazil in 1500 as part of the Iberian overseas expansion. The conclusions will prove that the source documents about colonial Brazil cannot be studied without interlacing gender, religion, social position, status, and other classifications.

## PLACING LEGAL HISTORY, WOMEN’S HISTORY AND BRAZILIAN COLONIALISM TOGETHER

Since the 1960s, women’s history has developed within the feminist movement itself and the sexual revolution. In the 1970s, profiting from the ethnographical developments of anthropology, the history of mentalities,

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the expressions, but according to the use of these words in the documents from this period. These words have been placed in inverted commas to reflect their historical context. When possible, I will mention more specific terms, trying not to generalize groups and identities, as this chapter argues.

2 For example, see *Dias*, 1994; *Soihet/Pedro*, 2007; *Algranti*, 1992.

and the social history stemming from the United States and the Annales School in France (albeit only from the third generation—the *Nouvelle Histoire*), the gendered dimension in historiography began to emerge, associated with the enlargement of the sources. Marxist epistemological premises also helped develop women's history in an attempt to identify symbols of capitalist oppression.

The changes to historical approaches benefited from the aforementioned feminist movement that marked the twentieth century, and which enabled women to gather together in different countries for legal reasons, to demand rights, to fight against what they called male domination, and to demand equality and the right to vote.<sup>3</sup>

During the events and activism of the 1970s, feminists also founded journals with the specific purpose of publishing women's history and feminist studies, such as *Signs* and *Feminist Studies*, which still serve as scientific landmarks for the field. They also organized meetings and conferences, such as The Berkshire Conference on the History of Women ("The Big Berks") which first took place in 1973.

Historians were finally adding women's history to the picture, making them visible in historical, social and political spaces, with a special emphasis on women's participation in social movements, the fight against famine and political amnesty. A redefinition of politics in everyday life took place, which helped rescue women's experiences, restoring their own history. Notwithstanding, in that very early stage, historians still confronted the binary and simplistic conception of power in which men are dominators and women are subordinated. This homogenized feminist perspectives in European and North American academia for a very long time.

In the 1980s, although the suffragettes' movement and their demand for the right for women to vote had long ago raised awareness, and domestic violence had widely been denounced in many parts of the globe, the movement was still failing to represent all women's voices. The myth of a unified movement and of being one single fight for "the woman" was questioned and criticized for being a white woman's issue. The black feminists movement "shocked" feminist practices and the making of history, questioning second wave feminism. There was not just one women's movement—on the contrary—class and race also shaped women's experiences. It became impossible to continue describing the experience and history of only one type of woman, namely the white bourgeois woman.

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3 For a more detailed description of the developments of women's history in different countries, see *Offen/Pierson/Rendall*, 1991.

Therefore, women's history in the 1980s involved a unique meaning of the category of "woman" itself, including, for example, women of color, Jews, lesbians, women living in poverty, and single mothers. Thus, challenging the heterosexual hegemonic implication of the white middle class, making a sole identity impossible.

The black feminist movement added the black voice and specific demands to the cause that could only be understood via an intersectional approach to the experiences of black women, taking into consideration age, color, sexual orientation, class, religion, and disability.<sup>4</sup> Finally, in 1989, Kimberlé Crenshaw coined the term intersectionality,<sup>5</sup> highlighting the multidimensional and simultaneous character of injustices and social inequalities, making clear that it was impossible to study women without giving consideration to all those influences that generated discrepancies.<sup>6</sup>

By the end of the 1990s and in the early twenty-first century, researchers were retelling the experiences of men and women from different perspectives, with specific consideration to periods of time and geographical locations, with greater attention paid to the representation of daily life, actions, practices, resistances and struggles, and including many different women.<sup>7</sup>

Later on, the concept of intersectionality was used in postcolonial theory by postcolonial feminism, one of the central points of postcolonial criticism in the study of women in colonial contexts. This field cannot be regarded simply as a subset of postcolonial studies or as a variation of feminism. It is more like an intervention that changes the configuration of feminist and postcolonial studies. Postcolonial feminist theory emphasizes the specificities of race, class, nationality, religion, gender-intersections, sexualities and their hierarchies, and epistemology, as well as the social, political, and economic issues that exist among women, their subjectivities, work, sexuality and rights.<sup>8</sup>

Scholars taking this perspective agree that "power relations of gender have intertwined with those of class, race, and sexuality and that these technologies of power have been at the heart of the histories of imperialism, colonialism, and nationalisms shaping our modern world."<sup>9</sup> The most important aspect in the study of the history of gender and women is the

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4 Davis, 1981.

5 Crenshaw, 1989; Crenshaw, 1991.

6 For more on the definition of Intersectionality, see Collins, 2015.

7 Samara, 2003; Silva, 1984; Priore, 1995.

8 Rajan/Park, 2000.

9 Pierson/Chaudhuri, 1998.

relationship between class, race and sexuality, and to take into account intersectionality. Gender is not only plural, but is also influenced by class and race.

Aída Castillo, theorist of postcolonial feminism and border identities in Latin America, has demonstrated how postcolonial theories were incorporated into Latin America.<sup>10</sup> In Latin America, colonization brought together different cultures and set off a course of acculturation of indigenous peoples who were considered essentially inferior. Indigenous peoples continue to be constructed by the academia, the media, and the law as different, pre-modern and opposed to progress. This makes it necessary to analyze how discourse strategies are used to perpetuate these colonial relations. Indigenous peoples remain marginalized, even those living in urban centers; they are economically exploited and their culture continues to be “colonized. Thus, it is evident that the concept of colonialism is not unknown in modern Latin America.

Gender analysis of postcolonial theory and its critique of nationalisms indicate the way national narratives have subordinated women to make them “guardians of tradition” and “mothers of the nation”. Castillo prioritizes the gender perspective and the analysis of power. Several postcolonial feminists point to the fact that academic feminist discourse replicates the same problems as modern discourses when, through an ethnocentric and heterosexist perspective, they appeal to the experience of the Western, white, middle-class woman as the experience of women in general.

In Castillo’s words, historicizing and contextualizing all forms of gender relations help to avoid feminist universalism. In the critique of feminist essentialism, postcolonial feminists show that these universalist perspectives of patriarchy also assume that the category of woman is a construct and inherently homogeneous, regardless of class, race and ethnicity. These colonizing discourse strategies tend to build the third-world woman as constrained to the domestic space, to victimization, ignorance and poverty and limited to tradition—the alter ego of the feminist scholar, who is liberal, modern and educated, who makes up her own mind and has control over her body and her sexuality. The problem with these representations is that they reflect a perspective that fails to integrate the specific needs of black and “Indian” women into the agenda of the feminist movement.

The emergence of the decolonial approach also sheds some light on the critique of gender, colonialism, and the development of the link between modernity and coloniality. This approach is closer to the context of South

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10 Castillo, 2008.

America and focuses on the history of the fifteenth century onwards. Maria Lugones built her theoretical approach to the concept of the colonality of power, and the way race, gender and sexuality are interlaced when re-reading the relationship between modernity and colonality, by looking at the development of these categories.<sup>11</sup>

In a similar way, albeit by analyzing another empire, Ann Laura Stoler showed how sexuality is central for colonial governance and a powerful tool for maintaining power in colonial contexts. She demonstrated how gender and sexuality were key to maintaining racially-stratified colonial order in the Dutch Indies. Her argument focuses on the statement that the personal is political in daily life practices; for example, that the prescribed instructions for acts such as bathing, breastfeeding, cooking and sleeping were intimately tied to feelings over personhood, race, and what it meant to be Dutch. She stressed the importance of understanding discourses of racism in dialogue with those of sexuality. Identities in the colony and the formal center of the empire emerged tacitly and were emphatically coded by race. In these colonial models, parenting, breastfeeding, cultural boundaries, illicit sex, orphans, and race emerge as central problems of colonial policy—knowledge of the carnal, the domestic, the intimate, was important to the colonial government.<sup>12</sup>

Parallel to all of these feminist approaches to history, feminists working with contemporary law also established their demands in the same period. While the first specific demands made by women were shaped by the feminist waves, women jurists also put forward their demands on specific issues.

Ann Scales created the *Harvard Women's Law Journal* in 1977,<sup>13</sup> which is still very active today. In 1984, Martha Fineman founded the *Feminism and Legal Theory Project*, a project that aims to connect feminist theory, practice and law. It produced the first studies on women, gender and law.

The new approach taken by the critical legal studies movement questioned the construction of law as the result of a patriarchal and dichotomous world.<sup>14</sup> In the 1980s, Frances Olsen and the feminist group *the Fem-Crits*, argued that law had a sex—like Western thought, law was based on dualisms that were sexualized. However, this way of thinking is not balanced, because it reflects hierarchies.<sup>15</sup> The problem of such a way of

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11 Lugones, 2011; Lugones, 2007.

12 Stoler, 2010.

13 Now called the *Harvard Journal of Law & Gender*.

14 Weisberg, 1993.

15 Olsen, 1990.

thinking is that the law “lied” in its pretended impartiality, objectivity and rationality. Nevertheless, law for many years was practiced almost exclusively by men, and, because of this, the law both imposed and obscured disparities of sex.

Tove Stang Dahl was responsible for establishing *Women’s Law* at the University of Oslo, which officially became an academic field in the university’s Faculty of Law in 1974. After the first students enrolled in 1975, the same faculty made classes from the women’s perspective a compulsory component of all subjects in the first year of law school. Dahl advocated for a systematization of methods for the new approach, which should be multidisciplinary, considering that the law denied women’s experiences and needs, and was not unbiased in terms of class, age, race and gender.

Although these new points of reference could agree on the necessity of a new approach between two scientific traditions, that of legal sciences and of women’s studies, they did not agree on a common methodology.

In the same way, historians and other scholars from the human sciences were already writing about how the study of history and the study of law overlap and affect one another. Embryonic ideas of women’s legal history were already being discussed in history and other fields in the 1970s and 1980s<sup>16</sup> under other denominations such as: women and the law;<sup>17</sup> women’s access to legal professions and lawmaking;<sup>18</sup> women and crime;<sup>19</sup> women and justice;<sup>20</sup> how the law has treated women; women’s participation in specific legal institutions; women’s rights during certain periods; women’s legal activism; women, conflict and resistance facing the law.

Much later, the term appeared in publications under titles referring specifically to women’s legal history and feminist legal history.<sup>21</sup> Making use of all these developments, legal historians began to organize the first conferences on women’s legal history<sup>22</sup> in order to rethink the dominant narratives of legal history and the role of law in producing and reflecting

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16 For Canada, see the work of Constance Backhouse. For Australia, Ann Genovese. For Brazil and Portugal, Maria Beatriz Nizza da Silva. For the United States, Tracy Thomas.

17 Kane/Williamson, 2015.

18 Weisberg, 1982.

19 Strange, 2018; Uribe-Uran, 2016.

20 Batlan, 2015.

21 Thomas/Boisseau, 2011; Kimble/Rowekamp, 2017; Drakopoulou, 2018.

22 In October 2007, Akron School of Law, Ohio, organized a conference: “The new face of women’s legal history”. In 2013, the 19<sup>th</sup> European Forum of Young Legal Historians had as its theme: “(Wo)men Legal History”. In 2016, the Institute of Advanced Legal Studies in London organized a one-day conference: “Doing

norms. They questioned the ways in which law historically has clarified women's rights and how the law shaped feminist discourse; how women's historical use of the law has been able to help advance feminist discourse; and how law structures shaped practices and institutions such as marriage, concubinage, divorce, motherhood and inheritance.

Although making an important contribution to the field by placing women at the center of a historical understanding of the past, this new literature focuses heavily on an English-speaking context, especially in the modern era (mid-nineteenth to mid-twentieth century). The texts highlight topics such as: the legal history of women's linear progress from oppression under the law to equal opportunity in modern times; family law; women in the legal profession; how laws were made and interpreted by men; and how gender permeated legal practices. Although all these approaches are important for modern legal history, they still need to do more to cover the colonial era and other periods, such as the early modern period.

Furthermore, many other approaches to the study of gender and sexuality deal competently with the analysis of sexuality and gender in legal history, such as gender legal history,<sup>23</sup> gay legal history<sup>24</sup>, transgender legal history<sup>25</sup>, queer legal history.<sup>26</sup> Notwithstanding, this paper only focuses on taking a women's approach to the legal history of the Portuguese Empire in a specific colonial space, benefiting from the theoretical developments highlighted in this section.

Taking into consideration these premises, I defend a women's legal history as a useful way to understand and interpret Brazilian colonial history. To do so, it is important to understand the context of the Iberian Expansion and how the Portuguese Empire came to include Brazil in the sixteenth century as part of their "conquests", as well as how legal history cannot be seen in this period as a block of written laws, but as a complex web of normativities.<sup>27</sup>

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Women's Legal History". *Vandenbogaerde/Lellouche/Duffuler-Vialle/Dhalluin/Debaenst*, 2016.

23 The term took on special interest in historical analysis following the Joan Scott paper, see *Scott*, 1986. See *Downs*, 2005.

24 *Koppelman*, 2000.

25 Scholars writing on the topic include: Regina Kunzel, Kate Redburn, Marie-Amélie Georgeis.

26 *Minto*, 2018.

27 *Duve*, 2014.



WOMEN IN THE CAPTAINCY OF PARAÍBA: DOCUMENTS AND  
INTERSECTIONAL APPROACHES IN LEGAL HISTORY

The Portuguese arrived in Brazil in 1500 as a consequence of the Iberian overseas expansion in the sixteenth century. In 322 years of formal colonialism, Lisbon maintained circulating agents and institutions, books and knowledge, as well as people to implement the model of administration and governance they had planned in Lisbon. This circulation was based on normative practices that were already part of a complex system of jurisdictions, known as the *ius commune*. In addition to the influence of religious norms and the use of Roman law interpreted by the medieval tradition, the *Iura propria* (“local laws and customs”) also played an important role in this multilayered system. Religious norms influenced everyday practices, such as marriage and divorce, particularly through casuistry that incorporated questions of the “new world” and the novelties of probabilistic thinking on a global scale.<sup>28</sup> Norms could come from the mouth of the priest in the confession, from the hand of the judge educated in Coimbra, or from the thinking of an illiterate judge without any legal education at all. They could also be found in the torture of bodies by the Inquisition, or an order of the king contradicting a written law, a possibility that would take the form of as a grace (*graça, mercê*) of the monarch.

In this space, law and practice could seem to be incongruous. Written laws stipulated that marriage, as imported from Europe, was the central event in a woman’s life. Traditional marriage in the colony was based on monogamy, concomitant with an intense persecution of bigamy.<sup>29</sup> Concubines and prostitutes were considered “bad women” by social judgment.<sup>30</sup> Sodomy, that is, practices that did not follow what were considered “good uses” of the body, such as homosexuality, could lead people to be literally “turned into ashes”, as it was phrased in the law—which meant that bigamists would be burnt at the stake.<sup>31</sup> Men could kill their wives under the protection of the law if they were found committing adultery.<sup>32</sup> Women belonged to the *imbecilitas sexus* (“weaker sex”),<sup>33</sup> and could not be

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28 Tutino, 2017.

29 Ordenações Filipinas, «fac-simile» da edição de Cândido Mendes de Almeida, Rio de Janeiro, 1870, Coimbra: Fundação Calouste Gulbenkian, 1985, livro 5, título XIX.

30 Ibid., título XVIII.

31 Ibid., título XIII.

32 Ibid., título XXV.

33 Hespánha, 2010.

trusted as men should—only honest legitimate wives could have some certain rights and protection. Marriage, especially after the Council of Trent, incorporated even more formalities to be followed and to be recognized. Many black women (and men) were enslaved, but without a systematic and specific law pertaining to their condition.<sup>34</sup>

In any case, these Portuguese recommendations would never be blindly applied with success in the colony. Actual practices never strictly incorporated a foreign model, but adapted some of the norms or established new ones. Furthermore, in daily life, people in the colonies even disobeyed norms, or certain laws simply never made it across the Atlantic.

Departing from this complex scenario, it is clearer to see that, on the ground, the reality of day-to-day life was different from what was prescribed in written laws, which themselves were not written just by one single powerful legislator. As an imperial space, laws other than the *Ordenações Filipinas*—the main body of laws compiled at the beginning of the seventeenth century—were constantly being made specifically for the colonies. Religious “laws”, such as the *Constituições arcebispaís* from Portugal, were the model for the *Constituições Primeiras do Arcebispado da Baía*, the first religious law of the colony that replicated the decisions of the Council of Trent<sup>35</sup>. Other sources of law were equally important, such as legal doctrine, or even constant pragmatical problems brought to bear by Jesuits missionaries. New institutions created for the colonies, such as the *Conselho Ultramarino* (Overseas Council), also shaped new ways of translating everyday problems into formal documents sent to the kingdom.<sup>36</sup>

Therefore, we should rather speak of legal practices that traveled to a different cultural context, where processes of translation were in place, even though they sometimes took the shape of the colonial administration.

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34 It is difficult to find a definition for the legal nature of the slave in the law of the seventeenth century because they were, on the one hand, treated as an animal or a beast, or like a child, a servant, a woman, an apprentice, a deaf mute, a demented person, or a prodigal. On the other hand, they were not different from the *peão* or other free men of lower social status. Furthermore, beyond the law, slavery was not static and shaped only by one kind of relationship between slave and owner. It is also wrong to think and say that they did not have rights in an absolute sense. For more, see *Paes*, 2019.

35 *Constituições Primeiras do Arcebispado da Bahia feitas, e ordenadas pelo Illustrissimo, e Reverendissimo Senhor D. Sebastião Monteiro da Vide: propostas, e aceitas em o Synodo Diocesano, que o dito Senhor celebrou em 12 de junho do anno de 1707.* São Paulo: Na Typographia de 2 de dezembro de Antonio Louzada Antunes, 1853.

36 For more details on the uses and importance of all these sources, see *Silva*, 2018.

Ann Stoler has shown that colonial cultures “were never direct translations of European society planted in the colonies, but unique cultural configurations, homespun creations in which European food, dress, housing, and morality were given new political meanings in the particular social order of colonial rule”.<sup>37</sup> These rules shaped what she calls the education of desire, where aspects of the most private and intimate part of people’s lives were controlled by colonial rule. This also happened in Brazil, as I will demonstrate, but there were other influences. In addition to centralized governance of the colony, the regulation of “desire” also happened in much more decentralized spheres, most of the time in both directions.

In the historiography of colonial Brazil, the production of historiographies and a specific connection between history, colonialism and women became even closer in the 1990s, marked by influences from cultural history, historical demography and the history of mentalities. Women’s colonial history reflected the documentary revolution that emphasized ecclesiastical archives over public archives, revealing all kinds of records, such as baptisms, marriage dispensations and more. However, the women’s perspective could not be analyzed directly; it could only be analyzed through mediators and the voices of men.

Taking this perspective, the latest historical discoveries critique the universality of the patriarchal family model based on the existence of numerous types of families and households.<sup>38</sup> Unlike the classical model of the patriarchal family where the husband, the “man of the house”, was the center of the family and the wife was a subordinate woman, subservient to male power, many other types of families can be described through the sources and archives. For example, some of the norms mentioned in reference to marriage were never followed in Brazil.

These examples demonstrate how far women were from static written laws that never existed in isolation in the *Ius Commune* and in the Portuguese Empire. The details of these historical documents, including the women’s names, attempt to classify condition and status, and references to local practices show how people lived a different normative life and how the colonial administration tried to solve conflicts by adapting norms and creating new ones.

To begin with, let’s think about the idea of gender, the definition of a woman in such a period, and people’s sexual orientations. Far from admitting the exclusive existence of static women and men, many sources refer

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37 Stoler, 2010, p. 24.

38 Samara, 2004.

to different interpretations of sexualities in the Portuguese Empire. Sodomy was a practice widespread in the Empire and persecuted by the Inquisition, as the trial of Gonçalo Garcia in 1799 tells us. Born in Paraíba and a sailor in the English and Portuguese armies, he voluntarily sought out the Inquisition in the colony to confess that he practiced innumerable “complete” acts of sodomy with people of the same sex in the *vazo preposto* (“prefixed vessel”) and even sometimes tried to perform the same acts with animals. He could not even state how often and where, because of the diversity of locations, times and people. But even with all this “depravity”, he said that he kept the Catholic faith, he was sorry and he wanted to save his soul. Because he confessed, he was acquitted of any secular punishment, and instead instructed in the mysteries and dogmas of the Catholic religion.<sup>39</sup> Acts of sodomy among women were more difficult to punish considering that Inquisitors could not identify the exact moment of the consummation of the act, since it did not involve ejaculation.<sup>40</sup> Nevertheless, this does not mean that it did not happen; for example, there are still many secrets of life in a convent which could explain the intimacy among women.<sup>41</sup>

Sex changes and hermaphroditism were also concepts widely discussed in the literature, the medical treatises and processes of the Inquisition. Isaac Cardoso wrote in the sixth book of *De Philosophia Libera in Septem Libros Distributa* about fetuses, the mother’s female contribution during gestation, the generation of the male and the female, hermaphrodites and sex change.<sup>42</sup> According to Cardoso, women could become men, whereas men could not become women. He was not very sure about how it could happen—it was an unknown process, hidden by nature and uncertainty—nonetheless, it was very important to him that no one confuse these with situations where women had a very developed clitoris. Amatus Lusitanus also admitted the possibility of sex changes and hermaphroditism based on the model of improvement, a movement that went from femininity to

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39 Lisbon, Torre do Tombo Archive (henceforth TTA): *Apresentação de Gonçalo Garcia*. Tribunal do Santo Ofício, Inquisição de Lisboa, proc. 13638.

40 Lisbon, Portugal, Biblioteca Nacional de Portugal (henceforth BNP): *Consulta: pode a Inquisição proceder contra mulheres que umas com as outras tiveram cópula e atos sodomíticos sendo incubas ou súcubas agentes ut viri com instrumento ou sem ele por vias anteriores ou posteriores*. Biblioteca Nacional de Portugal. *Colecção de papeis impressos e manuscritos originaes, mui interessantes para o conhecimento da historia da Inquisição em Portugal*. Códice 869, fls. 361–364.

41 For other parts of Brazil, see *Algranti*, 1992.

42 BNP: Cardoso, *De Philosophia Libera in Septem Libros Distributa*, Venetiis: Bertanorum Sumptibus, 1673. Biblioteca Nacional, microfilme, F 6008.

masculinity as a type of human advancement, describing specific cases of ambiguous genitalia, gender change and hermaphroditism.<sup>43</sup>

Women and men were also subject to different applications of laws, penalties, privileges and rights.<sup>44</sup> The identification of the physical sex interfered drastically in the application of justice, the access to rights and duties, and even in the choice of the specific jurisdiction in the colony. For example, if a cross-dressed person offered sex in public, their sex would define if she or he was committing sodomy (which also included homosexual acts), which could result in them facing the Inquisition. Therefore, there were more options than just the alternative of man or woman. Questions were raised firstly about what a body looked like and secondly, what did someone do with it and with whom.

The general ideas of this time established in laws and medical treatises about women and sexualities shaped the social and juridical treatment dedicated to gender relations, but not in isolation. Status mattered, and here we understand this concept as the division of human gender, the quality of people regarding their rights and obligations, or their situation within the political community. The status of people depended on the social groups to which they belonged, as each one performed a specific social function. The same individual could have more than one status, and, as such, several legal entities could coincide.<sup>45</sup>

Keeping this in mind, let's dive into the sources of colonial Paraíba. Since the beginning of colonization, the Jesuits would write to the kings describing diverse cases of sexual relationships between the Portuguese colonizers and the indigenous peoples.<sup>46</sup> They even asked the king to send prostitutes, orphans and all kinds of unwanted women from Portugal to Brazil, because they could arrange a very good marriage for them in the colony depending on the color of their skin. On the other side of the Atlantic they could find a "good, rich man" and marry "well". The color of the skin mattered more than social position in these situations.<sup>47</sup>

Even orphans could achieve a good position in Paraíba. For example, D. Isabel de Siqueira came to the colony to marry João de Britto Correa, a governor of the Captaincy of Paraíba. She was an orphan in Lisbon at the

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43 *Lusitano*, 2010, p. 230.

44 *Gonçalves*, 1992. Edição fac similada da edição da 1a edição de 1557.

45 *Hespanha*, 2015.

46 *Leite*, Cartas dos primeiros Jesuítas do Brasil. Comissão do IV Centenário da cidade de São Paulo, 1956–1958, vols. 1, 2 e 3; *Leite*, Novas cartas jesuíticas. De Nóbrega a Vieira. São Paulo 1940.

47 *Nóbrega*, 1955, p. 79.

Castle of Lisbon.<sup>48</sup> Female orphans were treated differently to male orphans. An example of a further distinction was whether they were legitimate, illegitimate, or born illegitimate but later legitimized. Although children were supposed to be born from a legitimized marriage, parents who did not marry according to the Council of Trent could ask the king for their daughters and sons to be legitimized. Religious men had children with single and married women, lived with them as a family and even asked the king to recognize these children as legitimate sons and daughters, because they could not marry their mothers and the children were considered illegitimate.

That is why many priests wrote to the king asking for the legitimization of children they had in colonial Paraíba, such as the priest of the Habit of St. Peter, Marcos Ferreira de Moraes, who requested the king to legitimize two children he had in a relationship with a white woman, D. Anna Francisca Xavier da Cunha in 1771. She was the former wife of Joze Rodrigues, from whom she was divorced according to the court ruling of the ecclesiastical jurisdiction.<sup>49</sup> The children, Manuel Antonio Sarmento Castro and Alexandre Joze de Moraes Sarmento, were educated and had always lived with him. Since he had no legitimate ascendants or descendants, he wanted to have his children legitimized in order to guarantee their inheritance rights, honors and nobility. The supplicant thus asked the king for a provision or letter of legitimization for his children with Anna Francisca, attaching a *treslado de escritura* (“charter”) that he had made.

All these status of filiation are important for understanding women in colonial Paraíba as they could potentially compromise their lives, as would their classification as *habitantes* (“inhabitants”). The Portuguese bureaucratic administration system classified the population according to categories that it itself had created.

I found in the baptism and marriages records of the Archdiocese of Paraíba all sorts of classifications for the people in the “new” colony: *pardo* (literally, brown), *cabra* (usually used to refer to a son of a person of African origin and a “mulatto”), “mulatto” (the son of a white person and a person of African origin), and “mamaluco” (the son of an “Indian” and a

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48 Corpo Chronologico, parte 1ª, maço 112–dec. Nº 3 do rei D. Felipe II, livro de Doações 31 (fl. 223). Transcribed and published in: *Barbosa*, 1946.

49 Lisbon Overseas Historical Archive (henceforth AHU): AHU\_CU\_014, Cx. 25, D. 1906.

white person).<sup>50</sup> By the end of the colonial period, the Portuguese administration in the Captaincy of Paraíba had divided people in official reports, classifying women and men as white, “Indians”, free blacks, black slaves, free “mulattos” and enslaved “mulattos”.<sup>51</sup>

These classifications were important because they reflected a person’s state of freedom, or whom they could and could not marry. In the eighteenth century, after the Marquis of Pombal’s political and administrative reforms, marriages between white Portuguese and “Indian” persons were registered in Paraíba after 1755, when the King allowed marriage between them without dishonor, because the earlier prohibition had not prevented these groups from having sexual relationships.<sup>52</sup>

The registers show that “Indians” intermarried with people from all different classifications of society. On 17 August 1800, Captain Antonio da Silva Lisboa, an “Indian”, married the white woman Maria Jose dos Anjos. On 4 March 1771, Joseph was born, son of the “Indian” João de Araújo and the white woman Ivana Correa—he was the paternal grandson of the “Indian” couple Paulo de Araújo and Luiza Pereira and maternal grandson of Captain Manoel Lopes Machado and Josefa Maria. Likewise, the records show that João was registered on 29 June 1772 as being born the *natural* son—meaning his parents were not married—of the “Indian” Francisco and the widow Marcelina. Josefa, daughter of the “Indian” Domingos Barbosa Correa and Francisca, was born, according to the records, on 3 February 1771.<sup>53</sup>

There are also records of baptisms of children born to “Indian” and “non-Indian”, non-white people, such as Constancia, on 17 February 1771, legitimate daughter of an “Indian” and the “cabra” Michaella da Cruz, paternal granddaughter of “Indians” and maternal granddaughter of Marcal Lopes and the “Indian” Paula da Cruz. Casimiro, registered on 11 March

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50 João Pessoa, Paraíba, Brasil, Arquidiocese da Paraíba: Paróquia Nossa Senhora da Assunção, Alhandra, Paraíba. Livro de Registros de Batizados, 05.11.1770 a 17.12.1775; *ibid.*, 26.10.1799 a 25.09.1805; *ibid.*, 1787–1813; Paróquia São Pedro e São Paulo, Mamanguape, Paraíba. Livro de Registros de Matrimônios, 1762–1819; *ibid.*, 1731–1807; *ibid.*, 1798–1806; *ibid.*, 1807–1812; Diocese de Cajazeiras, Paróquia do Bom Sucesso, Pombal, Paraíba. Livro de Batizados, ano de junho 1794 a outubro de 1796.

51 AHU: AHU\_CU\_014, Cx. 35, D. 2510. AHU\_CU\_014, Cx. 36, D. 2617. AHU\_CU\_014, Cx. 38, D. 2711. AHU\_CU\_014, Cx. 39, D. 2764. AHU\_CU\_014, Cx. 41, D. 2890. AHU\_CU\_014, Cx. 46, D. 3273.

52 Alvará régio de 4 de abril de 1755. Transcribed in: *Varnhagen*, 1857, pp. 242–245.

53 João Pessoa, Paraíba, Brasil, Arquidiocese da Paraíba, Paróquia Nossa Senhora da Assunção, Alhandra, Paraíba. Livro de Matrimônios, 1787–1813.

1771, baptized at home due to fears he would die, was the son of an “Indian” and of a “mestiça” abandoned in an “Indian” house, descendant of “Indian” and black grandparents, all incognito. On 17 February 1800, the “Indian” Pedro Roiz and the “parda” Ritta Maria were married.

These same sources prove that slave women were not only sexual slaves of their owners. They married in the Captaincy of Paraíba and baptized their children, constituting families. This was made possible by the *Constituições Primeiras do Arcebispado da Baía*, which, for the first time, allowed marriage between two slaves, as well as between a free person and freed person at the beginning of the eighteenth century. This meant that João and Ana could get married on 18 October 1798. They were from Angola, slaves of Cozme da Costa Teixeira. On 1 December 1798, Antônio and Margarida got married, slaves of the *Reverendo* Luiz Gomes de Melo, both from Angola. In the same year on 28 August, Pedro, from Angola, married Ana, a creole, slaves of the captain José Pereira de Castro.<sup>54</sup> On 24 November 1809, João, a widow, and Gracia got married, both from Angola, slaves of Manoel Pinto.<sup>55</sup> Single slave women also registered their children as the offspring of unknown fathers. In the baptismal books of Paraíba, there are records of slaves baptized as *natural*, without any information about their fathers. For example, Juliana was baptized on 8 May 1797 as the natural daughter of Luzia, slave of Maria Pires. On 20 January 1797, Joana was baptized as Barbara’s natural daughter, both slaves of Jose Antonio de Faria.<sup>56</sup>

These status and conditions are all important for analyzing gender: free, freed or slave; prostitute, single or married; orphan, natural or legitimized; “mulatto” or white, as did a person’s social position as noble or commoner, which is essential for unraveling colonial society. Colonial Brazil formed an elite, differentiated people according to their financial status in society. Considering regional specifications and Brazil’s vast territory, let’s take a look at Paraíba again.

The concept of a good man, meaning a man of pure blood and wealth, also traveled from Lisbon to the colony. They were members of the colonial elite that belonged to the so-called “good” families for several generations, keeping bloodlines pure and separate from Jews, new Christians,

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54 João Pessoa, Paraíba, Brasil, Arquidiocese da Paraíba, Paróquia de São Pedro e São Paulo, Mamanguape, Paraíba. Livro de registros de matrimônios, 1798–1806.

55 Ibid., 1807–1812.

56 João Pessoa, Paraíba, Brasil, Arquidiocese da Paraíba, Diocese de Cajazeiras, Paróquia do Bom Sucesso, Pombal, Paraíba. Livro de Batizados, ano de junho 1794 a outubro de 1796, fólios 46 e 46v.



Arabs, or black people. None of their ancestors ever worked in occupations involving a craft or trade. With this “clean” past, they could join prestigious institutions and exercise local power in the municipal councils. They could hold positions of power and prestige such as chief captain or a member of lay brotherhoods (such as *Irmandades* and *Confrarias*) and military orders, or even as judges. Men belonging to a higher social position and considered good, usually owned goods and concentrated wealth, power and prestige. For generations, they passed on a code of honor together with a lifestyle and kinship ties based on the ownership of lands and slaves.

The Captaincy of Paraíba had a group of landowners considered to be landed nobility. The occupation of Paraíba resulted from the expansion of the Captaincy of Pernambuco, based on a local elite involved in sugar plantations and enslaving indigenous persons, as well as exercising its power through its involvement in local administration.<sup>57</sup>

This elite group from Pernambuco came as conquerors in exchange for positions and lands. The elite was also composed of those who fought and won against the Dutch and indigenous peoples, having received offices from the Portuguese Crown. They were also characterized by their ownership of land, farms and slaves. This landed elite also held positions as parish priests, military officers and lawyers in the local *câmaras*, farms and local governance. The famous and wealthy Silva Coutinho family had a crown judge, Gregório, and his father was the Chief Captain of Goiana, in the Captaincy of Itamaracá. His uncle was the parish priest of the main church. Gregório married Francisca de Moraes de Aragão, daughter of Amaro Gomes Coutinho, master of a sugar mill and one of the richest men in the Captaincy of Paraíba. In 1799, he asked the king for permission to marry Francisca and administer her goods.<sup>58</sup>

Some positions could be acquired independently of social position, others not. Some depended on noble attributes, as was the case for the position of *Escrivão da Fazenda Real, Alfândega e Almoxarife da Paraíba* (“Registrar of the Treasury, Customs and Warehouse”). The Bandeira de Melo family held this position in its family for almost 150 years and was of one of the wealthiest families in colonial Paraíba. Their family history dates back to the coming of Duarte Coelho as the captain of the Captaincy of Pernambuco together with his two brothers. Bento Bandeira de Melo owned the title of Registrar of the Treasury, Warehouse and Customs. His brother, Antonio Borges Bandeira de Melo, was the sergeant-in-chief of

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57 Gonçalves, 2007.

58 AHU: AHU\_CU\_014, Cx. 35, D. 2514; AHU\_CU\_014, Cx. 35, D. 2554.

Paraíba and also a master of a sugar mill.<sup>59</sup> Their uncle, Antônio Bandeira de Melo, was a priest.<sup>60</sup> When Bento Bandeira de Melo died, leaving only his daughter Luiza Maria Rodrigues Bandeira as his heir and successor, she wrote to the king asking him to assign the office to the person who would marry her. In the meanwhile, she asked for the income from the post immediately, so she could feed herself and her sister because they were orphans.<sup>61</sup>

Marriage was one of the means used to keep the same families in power, or to further increase their local importance. But this is not the only connection between gender and social position in this period in Paraíba. The elite women of Paraíba participated actively in the colony's economic life.<sup>62</sup> In many cases, wealthy women could be the administrators of sugar mills after the death of their husbands or during their temporary absence. Many women often took the place of their husband in the administration of the business. Women owned land and ran sugarcane plantations without the interference of men. This could happen for many reasons: because they inherited the property and duties of the husband; because men were away travelling; or, simply because they owned the land themselves or via the donation of *sesmarias* ("land grants").

Women's possessions and actions to obtain goods are frequently mentioned in the documents. Widows listed their belongings in their wills, such as slaves, carts, sickles, axes.<sup>63</sup> Anna da Silveira de Moraes left some money for the marriage of her granddaughters.<sup>64</sup> Clara Spindola asked the king to confirm the limits of her *sesmaria*, since she occupied the land with cattle and horses. She wanted to use the land as her dowry, since she was a young lady and ready for a good marriage.<sup>65</sup>

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59 AHU: AHU\_CU\_014, Cx. 14, D. 1146.

60 AHU: AHU\_CU\_014, Cx. 24, D. 1842.

61 AHU: AHU\_CU\_014, Cx. 48, D. 3378.

62 Until the eighteenth century, sugar plantation owners were prominent in this elite because of the importance of the sugar business. However, after this period, they had to diversify production, expanding to the cotton business and raising cattle. By the beginning of the nineteenth century, consumption and export included not only sugar but also cotton, tanned leather, soles (prepared ox leather), flour, rice, beans, corn, tapioca, tobacco, *carrapato* oil, soap, and cattle. Therefore, we do not find a mercantile elite, as we can observe in other captaincies. In: AHU: AHU\_CU\_014, Cx. 39, D. 2764; *Diálogos das grandezas do Brasil*. São Paulo: Melhoramentos, 1977.

63 AHU: AHU\_CU\_014, Cx. 40, D. 2810.

64 Ramos/Pinto, 2012.

65 TTA: *Carta de Sesmaria*. Chancelaria de D. João V, tomo 55, fólhos 24V – 26.

Other implications of these analyses can be seen in the fact that the daughters of influential people in colonial Paraíba had easier access to complain to the king in the case of the loss of virginity under the promise of marriage. In the event that a woman lost her virginity under the promise of marriage, but this did not eventuate, they could apply for a forced marriage or monetary compensation of the dowry, according to their position. The two cases we know from the Lisbon Overseas Archives concerning this issue in Paraíba are from the daughters of important men in the colony: Josefa Rodrigues Pires da Silva, the daughter of the captain José Rodrigues Pires,<sup>66</sup> and Teresa Maria do Espírito Santo, the daughter of António de Melo Moniz, *Alferes de Infantaria paga* (“ensign”) of the fortress of Cabedelo.<sup>67</sup> However, women of less privileged social status never came to sue and denounce their “violators”, as was the case of the rape of many women by the powerful crown judge António Brederode. He used to rape honest women as he please because he was not afraid of any repercussions since he controlled the denunciation of crimes.<sup>68</sup>

Women who belonged to the lower classes became laborers, making up a large proportion of the colonial economy. In the eighteenth century, women were practically the majority of workers in all the colonial cities of Latin America. Work was divided by sex and status. If necessary, colonial women fought for positions, struggling for their own survival. Their work would not make them rich or independent, nor was it a means of social promotion but only a guarantee of some sustenance, sometimes for themselves and their children, as many women would form a family as single mothers with their sons and daughters of unnamed fathers.<sup>69</sup> Among many others, Antonio, born on 7 December, was the natural son of the “mamaluca” Tereza de Jesus, widow, and an unnamed father. Registered on 4 December 1772, Maria was the natural daughter of the “mestiça” Maria dos Santos and an unnamed father. Antonio was born on 20 December, 1771 and was the natural son of the “mamaluca” Tereza de Jesus, widow, and an unnamed father.<sup>70</sup>

The concept of work, however, needs to be analyzed carefully and adapted to the colonial context, according to social conditions. The same

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66 AHU: Pernambuco AHU\_CU\_014, Cx. 23, D. 1765.

67 AHU: AHU\_CU\_014, Cx. 27, D. 2071.

68 AHU: AHU\_CU\_014, Cx. 34, D. 2452.

69 Socolow, 2015.

70 João Pessoa, Paraíba, Brasil, Arquidiocese da Paraíba: Paróquia Nossa Senhora da Assunção, Alhandra, Paraíba. Livro de Registros de Batizados, 05.11.1770 a 17.12.1775.

work could have different forms—what was work for the woman of a certain status might not be for another. For example, embroidery could be a pastime for the richest housewives but mean the livelihood of some poor women.<sup>71</sup> In this context, the Inquisition accused Luzia Barbalha Bezerra of practicing Judaism. According to the testimonials in her trial, she was poor. She made her living working in the fields, sewing and doing lace-work, and she was used to eating whatever she had. These testimonials saved her from being convicted of practicing Judaism, because not working on Saturdays and not eating some kinds of meat or fish could constitute Judaism habits.<sup>72</sup>

Participation in economic life did not mean a free—in the liberal modern sense—and equal world among independent women, or that they earned the same as men. In general, women received less than men. They worked as bakers, innkeepers, seamstresses, saleswomen, weavers, as well as workers in taverns and bakeries.<sup>73</sup> Furthermore, whether they were slaves or not, they could also work as prostitutes. Even mothers seemed to survive by prostituting their daughters, as Adriana did in 1782. She and her son maintained a house of prostitution with her daughters under the protection of the governor in colonial Paraíba.<sup>74</sup>

In addition to status, condition and sexuality, belonging to a religion is another aspect that influences the analysis of colonial women. It was very difficult for women to join a Catholic order in the colony. The king forbade the construction of female convents in the colony because it was part of the duties of women to populate the land.<sup>75</sup> If a woman did have a calling from God, she had to ask for special authorization from the king, as was the case for Prudência Catarina de Lima. After having been called by God to enter religious life, her father, the captain Amaro de Barros Lima, asked the queen for a special authorization to send her to a convent in Baía, since there was not a single convent in the Captaincy of Paraíba in 1778.<sup>76</sup>

Notwithstanding this prohibition, women kept building *recolhimentos* by themselves, a kind of house for “good women”, where they could stay

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71 Silva, 2002.

72 TTA: *Processo de Luzia Barbalha Bezerra*. Tribunal do Santo Ofício, Inquisição de Lisboa, proc. 816.

73 Schwartz, 1988.

74 AHU: AHU\_CU\_014, Cx. 28, D. 2107.

75 Carta Régia 2 de setembro de 1603. *Não se fundem Mosteiros de Freiras na Baía e Pernambuco, mas sim Recolhimentos para donzelas e órfãs*. In: Silva, 1854.

76 AHU: AHU\_CU\_014, Cx. 26, D. 2025.

protected for a period of time without having to take religious vows (for example, when husbands were away on journeys). Maria de Jesus was responsible for a *recolhimento* in Paraíba; she wrote a letter to the king in 1754 asking for alms and described the precariousness situation of 16 women who had come together to live away from the sins of the world. Suffering from serious shortages, she asked the king for support and patronage.<sup>77</sup>

Since the main aim of the Portuguese Inquisition was the persecution of Jews and new Christians that had not truly converted, the accusation of Judaism in the colony was supposed to be judged by this jurisdiction. Without a physical tribunal in the colony, accused people had to face their trial in Lisbon, sometimes tortured and in some cases they were burned in a public ceremony. Filipa Nunes was accused of practicing Judaism because he prayed to God without mentioning the name of Jesus Christ; she kept Saturday as a holy day; and she did not eat pork, hare, rabbit or fish with skin. Mariana Páscoa Bezerra, accused of the same in 1731, was tortured naked in the *potro* until she fainted.<sup>78</sup> In these cases, regardless of gender, status or social position, they all had few options once they fell into the arms of the Inquisition.

## CONCLUSIONS

The documents of colonial Paraíba dismantle the original tale of Brazilian historiography from the nineteenth century and beginning of the twentieth century. Instead of a woman slave waiting in the slave quarters for her master to have sex with her, we discovered families composed of slaves inside these same quarters. Instead of a rich white woman making embroidery while waiting to be married, the documents revealed a woman asking the king for land to graze livestock. Religion, in its turn, surpassed other aspects of analysis—status or social position could matter much less if you were accused of practicing Judaism; but a woman from a higher social position had a better chance of becoming a nun. Furthermore, gender and sexualities are much wider and richer fields of analysis than was generally perceived after the colonial period, including the recognition and discussion of homosexuality, sex changes, and hermaphroditism—demonstrating that

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77 AHU: AHU\_CU\_014, Cx. 17, D. 1385.

78 TTA: *Processo de Mariana Páscoa Bezerra*. Tribunal do Santo Ofício, Inquisição de Lisboa, proc. 3514.

there were far more nuances among the differences between men and women.

These documents strongly contradict an approach to analyzing the legal history of women in colonial Brazil that views them as fixed types of women. Instead, the archives open up the possibility to interpret the documents taking an intersectional approach. It has now been demonstrated that to change the history of colonialism it is also necessary to avoid the essentialization of culture, as discussed by feminist postcolonial theory. This must also be applied to the Brazilian colonial context.

Using a legal historical approach, my proposal for a new interpretation of women's colonial legal history is based on several premises. Firstly, the understanding of Portuguese legal history as it simply was—multinormative. This means that the system functioned as a complex fabric of many jurisdictions and was far from the written law prescribed by Portugal; rather, it was closer to the norms stipulated in the colony, which also took into consideration a global dimension of an Empire. Although postcolonial critique revealed the importance of assuming the unbalanced relation between colonized and colonizer, as it should be, it is time to say that although the central power dictated general life in the colony, much more happened that is still being uncovered in sources related to daily life. It is also important to note that postcolonial theory is very useful for deconstructing historiographical narratives that created unequal relations which denied power and agency to those described as subaltern subjects. That is why it is important to stay closer to documents that describe everyday life, by looking for normativities on the ground. Power did not only depend on one single aspect of sex or social position, but on the way these aspects intersected and influence one another.

Secondly, it is vital to move away from the analysis of women's legal history which uses the dominant narratives closer to the modern period and English speaking interpretations, in favor of other periods and places, such as Latin America and the Iberian empires with a long-lasting perspective. Thirdly, it is essential to consider intersectional approaches to understanding women in specific times and places. As has been demonstrated, the nexus between gender, sexual choices, family status, social positions, financial status and religion seen in the documents related to Paraíba has opened up a discussion that is still in its initial steps in legal history and studies about colonial Brazil. The everyday situations presented in this paper run contrary to any pattern that can be seen in any legal history approach based only on written laws. A fully comprehensive legal historical perspective must take into consideration social groups, institutions, forms of associations, and local practices.

## REFERENCES

- Abreu, Capistrano. (1998). *Capítulos da História Colonial: 1500–1800*. Conselho Editorial do Senado Federal.
- Algranti, Leila Mezan. (1992). *Honradas e devotas: Mulheres da colônia. Estudo sobre a condição feminina através dos conventos e recolhimentos do sudeste 1750–1822*. PhD thesis, Universidade de São Paulo.
- Barbosa, Conego Florentino. (1946). Documentos Históricos. 1579. *Revista do Instituto Histórico e Geográfico da Paraíba*, 10. João Pessoa, Departamento de Publicidade.
- Batlan, Felice. (2005). Engendering Legal History, *Law & Social Inquiry*, 30(4), 823–851.
- Batlan, Felice. (2015). *Women and Justice for the Poor. A History of Legal Aid, 1863–1945*. Cambridge University Press.
- Castillo, Aída Hernández. (2008). On Feminisms and Postcolonialisms: Reflections South of the Rio Grand. In Mabel Moraña, Carlos Jáuregui, (Eds.), *Postcolonial Representations of the New World*. Iberoamericana.
- Crenshaw, Kimberle. (1989). Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics. *The University of Chicago Legal Forum*, 140, 139–167.
- Crenshaw, Kimberle. (1991). Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color. *Stanford Law Review*, 43(6), 1241–1299.
- Collins, Patricia Hill. (2015). Intersectionality's Definitional Dilemmas, *Annual Review of Sociology*, 41, 1–20.
- Davis, Angela. (1981). *Women, Race, & Class*. Random House.
- Dias, Maria Odila Leite da Silva. (1994). Novas subjetividades na pesquisa histórica feminista: uma hermenêutica das diferenças. *Estudos Feministas*, 2, 373–382.
- Downs, Laura Lee. (2010). *Writing Gender History*. Bloomsbury.
- Drakopoulou, Maria. (2018). Feminist Historiography of Law: an Exposition and Proposition. In Markus Dubber & Christopher Tomlins (Eds.), *The Oxford Handbook of Legal History*. Oxford University Press.
- Duve, Thomas (Ed.). (2014). *Entanglements in Legal History: Conceptual Approaches. Global Perspectives on Legal History* (Vol. 1). Max Planck Institute for European Legal History.
- Freyre, Gilberto. (2006). *Casa Grande e Senzala: formação da família brasileira sob o regime da economia patriarcal*. Global.
- Hespanha, António Manuel. (2015). *Como os juristas viam o mundo. 1550–1750: Direitos, estados, pessoas, coisas, contratos, ações e crimes*. Create Space Independent Publishing Platform.
- Hespanha, António Manuel. (2010). *Imbecillitas. As bem-aventuranças da inferioridade nas sociedades do Antigo Regime*. Annablume.

- Gonçalves, Regina Célia. (2007). *Guerras e açúcares. Política e economia na capitania da Paraíba, 1585–1630*. Edusc.
- Kane, Bronach, and Fiona Williamson. (2015). *Women, Agency and the Law, 1300–1700*. Routledge.
- Kimble, Sara, and Marion Rowekamp. (2017). *New Perspectives on European Women's Legal History*. Routledge.
- Koppelman, Andrew. (2000). Why Gay Legal History Matters. *Harvard Law Review*, 113(8), 2035–2060.
- Lugones, Maria. (2007). Heterosexualism and the Colonial/Modern Gender System. *Hypatia*, 22(1), 186–209.
- Lugones, Maria. (2011). Towards a Decolonial Feminism. *Hypatia* 25(4), 742–759.
- Minto, David. (2018). Queering Law's Empire: Domination and Domain in The Sexing Up of Legal History. In Markus Dubber & Christopher Tomlins (Eds.), *The Oxford Handbook of Legal History*. Oxford University Press.
- Offen, Karen, Ruth Roach Pierson, and Jane Rendall. (1991). *Writing Women's History: International Perspectives*. Basingstoke and London: Macmillan.
- Olsen, Frances. (1990). The Sex of Law. In David Kairys (Ed.), *The Politics of Law: A Progressive Critique*. New York: Pantheon.
- Paes, Mariana Armond Dias. (2019). *Escravidão e direito. O estatuto jurídico dos escravos no Brasil oitocentista (1860–1888)*. Alameda.
- Pierson, Ruth Roach, and Nupur Chaudhuri, (Eds.). (1998). *Nation, Empire, Colony. Historicizing Gender and Race*. Indiana University Press.
- Priore, Mary del. (1995). *Ao sul do corpo: condição feminina, maternidade e mentalidades no Brasil colonial*. Rio de Janeiro.
- Rajan, Rajeswari Sunder, and You-me Park. (2000). Postcolonial Feminism/Postcolonialism and Feminism. In Henry Schwartz, and Sangeeta Ray, (Eds.), *A Companion to Postcolonial Studies*. Blackwell Publishers.
- Samara, Eni de Mesquita. (2004). *A família brasileira*. Brasiliense.
- Samara, Eni de Mesquita. (2003). *Família, mulheres e povoamento. São Paulo, século XVII*. EDUSC.
- Schwartz, Stuart. (1988). Segredos Internos: Engenhos e Escravos na sociedade colonial, 1550–1835. Companhia das Letras.
- Scott, Joan W. (1986). Gender: A Useful Category of Historical Analysis. *The American Historical Review*, 91(5), 1053–1075.
- Silva, Luisa Stella de Oliveira Coutinho Silva. (2018). *História do Direito e Colonização do Brasil: as Mulheres da Capitania da Paraíba, 1661–1822*. PhD thesis, Faculdade de Direito da Universidade de Lisboa.
- Silva, Maria Beatriz Nizza da. (2002). *Donas e plebeias na sociedade colonial*. Editorial Estampa.
- Silva, Maria Beatriz Nizza da. (1984). *Sistema de casamento no Brasil colonial*. T.A. Queiroz/EDUSP.
- Socolow, Susan Migden. (2015). *The Women of Colonial Latin America*. Cambridge University Press.



- Soihet, Rachel, and Joana Maria Pedro. (2007). A Emergência da Pesquisa da História das Mulheres e das Relações de Gênero. *Revista Brasileira de História*, 27(54), 281–300.
- Strange, Carolyn. (2018). Femininities and Masculinities: Looking Backward and Moving Forward in Criminal Legal Historical Gender Research. In Markus Dubber & Christopher Tomlins (Eds.), *The Oxford Handbook of Legal History*. Oxford University Press.
- Stoler, Ann Laura. (2010). *Carnal Knowledge and Imperial Power. Race and the Intimate in Colonial Rule*. Berkeley.
- Thomas, Tracy, and Tracey Boisseau. (2011). *Feminist Legal History. Essays on Women and Law*. New York University Press.
- Tutino, Stefania. (2017). *Uncertainty in Post-Reformation Catholicism. A History of Probabilism*. Oxford University Press.
- Uribe-Uran, Victor M. (2016). *Fatal Love: Spousal Killers, Law, and Punishment in the Late Colonial Spanish Atlantic*. Stanford University Press.
- Varnhagen, Francisco Adolpho. (1857). *Historia Geral do Brazil*. (Vol. 2). E. e H. Laemmert.
- Viana, Oliveira. (2005). *Populações meridionais*. Edições do Senado Federal.
- Weisberg, Kelly. (1993). *Feminist Legal Theory. Foundations*. Temple University Press.
- Weisberg, Kelly. (1982). *Women and The Law: Property, Family, and the Legal Profession*. Schenkman.
- Vandenbogaerde, Sebastian, Iris Lellouche, Hélène Duffuler-Vialle, Sébastien Dhaluin, and Bruno Debaenst. (2016). *(Wo)men in Legal History*. Centre d'Histoire Judiciaire.

## PUBLISHED SOURCES

- Diálogos das grandezas do Brasil*. Melhoramentos, 1977.
- Constituições Primeiras do Arcebispado da Bahia feitas, e ordenadas pelo Illustrissimo, e Reverendissimo Senhor D. Sebastião Monteiro da Vide: propostas, e aceitas em o Synodo Diocesano, que o dito Senhor celebrou em 12 de junho do anno de 1707*. Na Typographia de 2 de de dezembro de Antonio Louzada Antunes, 1853.
- Gonçalves, Rui. *Dos privilegios & praerogativas q ho genero feminino tẽ por direito cComit & Ordenações do Reyno mais que ho genero masculino*. Biblioteca Nacional de Lisboa, 1992. Edição fac similada da edição da 1a edição de 1557.
- Leite, Serafim. *Cartas dos primeiros Jesuítas do Brasil*. Comissão do IV Centenário da cidade de São Paulo, 1956–1958, vols. 1, 2 e 3.
- Leite, Serafim. *Novas cartas jesuíticas. De Nóbrega a Vieira*. Companhia Editora Nacional, 1940.
- Lusitano, Amatus. *Centúrias de Curas Medicinais* (1620). CELOM, 2010, vol. I.

Nóbrega, Manuel da. *Cartas do Brasil e mais escritos*. Por Ordem da Universidade, 1955.

*Ordenações Filipinas*, «fac-simile» da edição de Cândido Mendes de Almeida, Rio de Janeiro, 1870, Fundação Calouste Gulbenkian, 1985, livro 5.

Ramos, Adauto, Pinto, Zilma Ferreira. *Processo do Pio Legado de Anna da Silveira 1671–1847*. Sal da Terra, 2012.

Silva, José Justino de Andrade. *Collecção Chronologica da Legislação Portuguesa. 1603 – 1612*. Imprensa de F. X. de Souza, 1854.

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Luisa Stella de Oliveira Coutinho Silva is a researcher at the Max Planck Institute for Legal History and Legal Theory and a qualified lawyer in Portugal and Brazil. She graduated in Law and Psychology, and received her MSc and PhD in Legal History from the Institute of History of Law and Political Thought at the University of Lisbon. She works with the Legal History of the Portuguese Expansion and Women's Legal History. Her current research project investigates Japanese and Portuguese normativities between 1540s and 1630s in a global perspective.

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## ABOUT THE INSTITUTE

### *The Max Planck Institute for Legal History and Legal Theory*

The Max Planck Institute for Legal History and Legal Theory, located in Frankfurt am Main, Germany, has three departments dedicated to the study of history and theory of law. Department II, directed by Professor Thomas Duve, studies regimes of normativity in Medieval, early Modern and Modern periods in Europe and beyond. These regimes, based on a broad concept of normativity, allow the interpretation of the history of law as a process of the translation of normative knowledge through a dynamic interaction of norms, institutions and practices in global historical perspectives.

In this department, we are developing a new project, Glocalising Normativities, which aims to construct a global history of normative produc-

tion in a vast historical space that includes places in Asia, Africa, Europe and the Americas. The project proposes focusing on localized observations of the histories of normativities within a global horizon, combining a global perspective on legal history with local case studies, based on detailed analysis of archival sources. While the case studies provide insights into how norms were produced, used, shaped, and given new significance in different contexts, the project as a whole seeks to find a more general picture of how different normative orders interacted, how institutions were created and reshaped through everyday practices, and how media and communication enabled the circulation of normative knowledge.

In the context of this project, my paper questions the traditional historiographical categorization and also lays the groundwork for the history of women in colonial Paraíba, as a local and global example of a part of the Portuguese Empire in colonial Ibero-America. From a legal historical perspective, based on the analysis of normativities beyond written laws, I demonstrate that women's legal history in colonial Brazil cannot be understood without interlacing gender, religion, social position and status, developing a specific approach for women's colonial legal history based on documents from local archives in Portugal and Brazil. I look for a local praxeology in the daily lives of women in the northeast colonial Brazil, to write a legal history of a part of the Portuguese Empire in a transnational context. The content and methodology of this paper are in line with other works in the Institute about the Iberian empires, sharing the approach based on primary sources and the concept of normativities. This approach cares deeply about how the global and the local are connected, and emphasizes how processes of translations and adaptation are important to reconstruct the normative knowledge of the past.