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The Normative Dilemmas of the Feminist Struggles Against (Trans-)Feminicide in Mexico

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In most countries, opposition to the feminist agenda for women's rights and laws against gender-based violence can be read as an indication of how threatening these socio-political mobilizations are perceived for the conception of an objective and neutral law and the autonomy of the institution. Feminist struggles for rights have criticized and pushed for profound changes in the law. However, these same efforts have visibly reinforced the institution's authority and the modern liberal notion of law. This quandary brings to light a dilemma at the heart of the feminist struggle for rights. A recourse to legal rights can potentially help amend the law's cisgendered and heteronormative violent dimensions. Nonetheless, by accepting law as an institution and normative order and thereby striving for special rights, the feminist recourse to the law stabilizes and, to some extent, reproduces the hierarchy of normative heterosexuality and the rigid binary cisgender order of masculinity and femininity.

This article[1] explores women's and feminists' struggles against feminicide in Mexico in light of the described dilemma. I analyze the dominant notions of gender and violence at the core of the Mexican case. First, I draw a historical approach, highlighting some critical moments of women's struggles to criminalize feminicide. In this section, I briefly reconstruct the genealogy of the concept in the Americas, presenting the legal definition of feminicide and violence against women in the existing legal framework in Mexico. Second, I address the challenges and problems that trans feminicide poses to the current legal framework. In this part, I discuss the violence emanating from a binary notion of gender-based violence and the binary conception of cis and heterosexual gender identity in the law. Here, I introduce two central concepts for the analysis of gender: cissexism and heteronormativity. Finally, I discuss the structural problem inherent in the criminalization of feminicide and the juridical strategy of framing women's rights against gender-based violence as special rights. This contribution unpacks the dilemma arising from women's demand for 'special' rights (e.g., women's right to a life free of violence) for which there has been no masculine equivalent, and which is thus not intended to create equal rights for all. It

explores the effects of the feminist demand for the recognition of offences against women as crimes (e.g., the criminalization of feminicide) and the related claim for harsher punishments for such crimes. To conclude, I show how the criminalization of feminicide and the recourse to punitive justice perpetuate violence by victimizing cis women and discriminating trans women. I aim to show that the punitive strategy cannot counteract the violence against women. I hold that a significant task for a feminist legal theory and feminist mobilizations against feminicide consists in confronting the essentialization and feminization of violence and contesting the binary notion of gender identity grounded on heteronormativity and cissexism.

Femicide/Feminicide in Latin America and Mexico

Violence against women is a global problem. In the case of Latin America and Mexico, gender-based violence has reached immeasurable rates and extreme forms of expression: sexual trafficking, disappearances, kidnapping, rape, deprivation of liberty, murders, torture, and clandestine burials. This kind of *sexualized violence*[2] has been the basis for theoretical reflections and political interventions of Latin American academics and activists, in accordance with Ni Un Más, Observatorio Ciudadano Nacional del Feminicidio, Ni Una Menos México Frente Nacional, among others. These killings received special legal recognition as an extreme expression of violence *against women* and *feminized bodies*.[3] What distinguishes Latin America from other regions is that since 2007, more than a dozen countries have introduced legal reforms to criminalize certain types of murders as *femicide* or *feminicide*.[4] Many aspects led to these legislative processes, for instance, a surge in these crimes, in their brutality, in armed conflicts in the region, and an inappropriate response by the state. Latin American women and feminist movements[5] have promoted and advocated these legal processes as part of a more extensive campaign against structural violence and discrimination against women, especially against poor, migrant, and indigenous women. In Mexico, the denunciation of lethal violence against women was triggered by the cases in Ciudad Juarez, on the border with the United States, in 1993 (Monárrez Fragoso 2019). Only in 2004, after overwhelming condemnation by mothers, academics, and activists, the state recognized this form of violence as structural and began a nationwide investigation.

The conceptualization of violence against women as *femicide*, first established by Diana Russell and Jane Caputi (1990), defined this form of violence as the assassinations of women by men motivated by hatred, contempt, pleasure, or a sense of ownership of women. *Femicide* was first defined as the hate killing of females perpetrated by males (Russell 2011). Later, with Jill Radford, Russell modified the initial definition into "the misogynous killing of women by men" (Russell/Radford 1992, 3). These definitions provided the starting point for worldwide theoretical and political debates and agendas. What was (and is) at stake here was the acknowledgement that these killings are not homicides of women in general but a form of *sexual*

violence in which *gender* is a determining element, and that these killings are not typical homicides but the result of systematic male violence. Radford and Russell focused their research on femicide in England and the US, examining this form of sexual violence within marriage, partnership, or family relationships. The coexistence in Latin America of the concepts of femicide and feminicide is the product of debates based on political and historical considerations. This distinction goes back to Marcela Lagarde's translation of the book "Femicide, the Politics of Woman Killing" in 1994. In her translation of the concept of femicide into feminicide, Lagarde highlights the structural violence these killings are grounded in, not only as social and cultural violence but also as political deeds. Her translation is not meant to differentiate between the homicides of males and females but to stress the state's responsibility to prevent and punish such crimes. Lagarde (2006) underlines the state's omission of, denial of, or complicity in these killings, understanding these practices as a form of *institutional violence* that leads to impunity.

In 2000, Ana Carcedo and Montserrat Sagot (2000, 9) adopted the English concept of femicide for analyzing "the murders of women committed in Costa Rica for gender violence reasons".[6] In their analysis, the authors, following Radford and Russell, supported the study of femicides as the consequence of a structural system of male oppression. For Carcedo and Sagot (ibid., 12), femicide is "the most extreme form of sexist terrorism, mostly motivated by a sense of possession and control over women". Their definition emphasizes the gender-based character of this violence, pointing out its social dimensions while rejecting any form of individualistic, naturalizing, or pathologizing definitions. The adoption of this concept in Central America generated a heated discussion among theorists and activists throughout Latin America. In 2009 in Mexico, Julia Monárrez offered an alternative explanation based on an analysis of the term, its origin, and etymology, arguing that *feminicide* is more accurate. Emphasizing the role of the Latin etymology *femininus*, she proposes a way to correctly translate it into contemporary Spanish (Monárrez Fragoso 2009, 34 et seq.). Beyond the linguistic discussion, she argues that, although all femicides/feminicides are killings of women, not all killings of women are femicides/feminicides. Not all killings of women are motivated by or connected to unequal gender relationships or gender-based violence, for example, when a woman is killed in a robbery (Luján Pinelo 2018). The core of the discussion revolves around the respective concepts/authors' emphasis on the causes and mechanisms of reproduction of this form of violence. Russell, Caputi, Radford, Carcedo, Sagot, Lagarde, and Monárrez argue that gender-based violence against women is structural and systemic, grounded in a sex-gender system that distributes power unequally. However, they do not all emphasize or focus their analyses on the state's role or the institutional violence that enables and perpetuates these murders, producing impunity. This is what distinguishes the studies of Lagarde and Monárrez in Mexico and Rita Laura Segato in Brazil and Argentina.

Segato (2016) insists on the state's role in perpetuating and increasing these killings, developing a feminist political theory of violence to explain the specific form of *sex-*

ualized violence against women and feminized bodies in the region. She shows the logic and mechanism by which sexual violence is weaponized by organized crime and the state, stressing the entanglements between political actors, the military, and criminal organizations. Sexual violence against women and feminized bodies has ceased to be a collateral effect of war. It has become a strategic objective and a characteristic mechanism in territorialization processes (Marchese/Miranda Mora 2022). Likewise, war has been transformed; it no longer responds to traditional conflicts between nation-states but is also linked to other power relations articulated around processes of control and occupation of space, including territories and bodies. In this way, sexual violence has become an instrument of war, a low-cost military strategy. Segato argues in "The War on Women" (2016, 63 et seq.) that sexualized violence is "a form of elimination without the cost of bombs or the reaction of neighboring states (…) it is part of a military strategy".

Special Rights and Criminalization

This disagreement or differentiated approach was only partially resolved in the legal concept. Some countries have classified femicide/feminicide as a separate offence, whereas others have changed existing criminal codes, adding it as an aggravating circumstance. The laws that introduce these modifications vary, as well as the sanctions and, in some cases, the elements of the crime itself. A significant advance in Latin America and the Caribbean has been the approval of laws or reforms to the penal codes that typify the crime of gender-related murder of women as an autonomous criminal offence under the denomination of femicide, feminicide, or aggravated homicide. The characteristics determining the behaviors or circumstances that qualify the criminal offence as femicide/feminicide vary between countries. As a result, the region's registers of femicide/feminicide do not necessarily refer to the same phenomenon. Different definitions and registration criteria are used in the Caribbean and South American countries; quality standards are limited, and several analysis variables lack a gender perspective (Smutt 2019). Moreover, following extensive academic and juridical debates, the aspect of the state's responsibility has disappeared, and the notions of femicide and feminicide have mostly become synonyms or interchangeable concepts for describing a *violent murder of a woman.* Thus, femicide/feminicide is a form of structural, systematic, and sexualized violence and an individual criminal act with a specific gender-based motivation.

The criminalization of women's killings has led to the formal delegitimization of male violence against women. These new laws vary significantly across the American continent. A common characteristic is that all laws criminalize femicide from a legal perspective based on international human rights law like "The InterAmerican Convention on the Prevention, Punishment, and Eradication of Violence against Women", adopted in Belem do Para, Brazil, in 1994, which defines violence against women as "any action or conduct, based on gender, that causes death or physical,

sexual or psychological harm or suffering to women, whether in public or private sphere" (Secretaría de Relaciones Exteriores 2008, art 1). In Mexico, after the first national study in 2004, the Chamber of Deputies unsuccessfully proposed the first definition for the Federal Criminal Law in 2006, which initially considered institutional violence and the responsibility of the state. Simultaneously, a group of female deputies successfully introduced the General Law on Women's Access to a Life Free of Violence in 2007, which defines different types of violence against women and establishes a guideline for coordinating various levels of government and institutions to prevent, punish, and eradicate violence against women.

Two relevant definitions of violence can be found in the General Law: First, *institutional violence* refers to "the acts or omissions of any public servants of any order of government that discriminate or have the purpose of delaying, hindering or impeding the exercise of women's human rights as well as their access to public policies aimed at preventing, attending, investigating, sanctioning, and eradicating different types of violence" (Cámara de Diputados Del H. Congreso de la Unión 2015, art. 18). Second, *feminicidal violence* is the set of conditions that can lead to feminicide (Lagarde 2006, 224); it is violence exercised by the community, individuals, institutions, and the entire network of social relations. According to this definition, the preventable deaths of women should also be considered feminicidal violence. Against this background, the General Law introduces a special right to "a life free of violence" fostered by the principles of equality and non-discrimination (Cámara de Diputados Del H. Congreso de la Unión 2015, art. 1). It also establishes principles for creating federal and local public policies and institutions to investigate and prevent gender-based violence (ibid., art. 44 & 47). For example, the Special Prosecutor's Office for the Investigation of the Crime of Feminicide was founded in 2019.

Finally, after a long debate in which different versions of the new type of crime were discussed and feminist and women's organizations tried different legal strategies, the type of crime *feminicide* was approved in the Federal Criminal Law in 2012. This new crime is contained in a specific chapter; it is not considered an aggravated homicide but rather an intentional murder of women under certain circumstances. Significantly, this type also penalizes negligent or obstructive practices by public officers, recognizing them as responsible agents for the administration of justice. In this classification, the state's role, considered in the first definitions in 2004 and the General Law, is diluted. Feminicide in the Federal Criminal Law is defined as "whoever deprives a woman of her life based on gender-based reasons" (Comisión Nacional de los Derecho Humanos 2014 art. 325), proposing a set of conditions to determine the existence of gender-based motivations. The Federal Criminal Law punishes feminicide with harsher penalties, with forty to sixty years of imprisonment and day fines in the amount of five hundred to one thousand workdays (ibid.).

Trans Feminicides

The General Law's conceptualization of *feminicidal violence* and the criminalization of feminicide in the Federal Criminal Law in Mexico represent outstanding achievements of the Mexican feminist, mothers', and women's movement. Despite the impunity and the significant challenges of their enforcement, these laws have made visible a range of obstacles women confront in accessing justice. They shed light on the different kinds of violence women face (psychological, economic, sexual, and physical) and have helped raise awareness of police and military violence against women and feminized bodies as a severe violation of human rights and *institutional violence*. Furthermore, the criminalization of feminicide and other forms of gender-based violence (such as rape, harassment, and digital violence) has enabled the social recognition of a phenomenon that has been historically ignored and culturally tolerated. Also, the identification and research of this kind of *sexualized violence* led to the formulation of special rights for women. Nevertheless, in this new and innovative set of laws, feminicide of transgender women is neither acknowledged nor prosecuted.

In Latin America, trans women are immersed in a cycle of violence, discrimination, and criminalization. Mexico has the second-highest number of *trans feminicides* after Brazil (Transgender Europe 2021). From 2008 to September 2021, 593 trans feminicides were perpetrated in Mexico, with most cases going unpunished (Letra S 2021). In this scenario, several campaigns by non-governmental trans organizations such as Observatorio de Crímenes de Odio de Letra S, Fundación Arcoíris, Casa de las Muñecas Tiresias, and Infancias Trans, among others, contributed to the legal and social recognition of their rights. One example is the Law for the recognition and care of LGBTQ+ persons in Mexico (2021), which recognizes the right to gender identity, and grants other rights, for instance, the right to personal and collective freedom, integrity, and security (Gobierno de la Ciudad de México, 2021, art. 3). Currently, the trans women's agenda revolves around the recognition of gender identity and the criminalization of trans feminicides.

In Mexico, fifteen federal states recognize the right to gender identity in their Civil Codes, starting with Mexico City in 2014. However, murders of trans women have not yet been identified and investigated as a nationwide problem. Yet since 2015, the Supreme Court of Justice has determined that all violent deaths of women must be analyzed based on a *gender perspective*. Later in 2018, the National Public Safety Council established that the Attorney General's Office must investigate all violent deaths of women under *feminicide protocols.* In 2019, the Human Rights Commission of Mexico City recommended a differentiated approach to studying trans feminicides. Two recent legislative initiatives to punish crimes against trans persons in the Mexican City Congress have come to a halt. The first one, introduced in October 2021, proposes criminalizing trans feminicides under a new law named after the murder of the transgender activist Paola Buenrostro.

A second bill from February 2022 recommends including "gender identity" and "gender expression" as aggravating elements of the crimes of discrimination and homicide. These bills propose that police and judges examine and evaluate trans women's murders considering these subjects as *trans gender people* and *women*. This means investigating and judging these cases of murder from a double perspective at the intersection of transphobia and misogyny. A transphobic murder is not synonymous with trans feminicide. In the legal sphere, this implies analyzing and designing laws that protect the right of trans women to a life free of violence and their right to gender identity, equality, and non-discrimination.

Cissexism and Heteronormativity

In recent years, academics, activists, and feminist lawyers have raised questions about the difficulties and challenges of these new laws against gender-based violence. A common problem of these laws is that they reproduce some of the problems they are intended to prevent. In these juridical concepts, i.e., special rights and types of crimes, two structural problems that produce violence can be identified: the formulation of a binary notion of gender-based violence, and conversely, the production and reproduction of a binary notion of gender identity (cissexism) and heterosexual normativity (heteronormativity). In these laws, *gender-based violence* and *violence against women* are often used interchangeably. This ambiguity is connected to the fact that men inflict most gender-based violence on women and girls. However, in its broader conceptualization, gender-based violence is violence against a person because of their gender. According to this definition, not only women and men experience gender-based violence, but any person defined by his/her/their gender identity, gender expression, sexual orientation, or sexual practices.

The problem with the legal definition of gender-based violence rests not only in its identification with violence against women but mostly in its reduction to and identification with violence against *cis* and heterosexual women. In this manner, the law reproduces and reinforces a cisgender and heteronormative conception of gender identity. Cisgender refers to the gender identity of those subjects who, as opposed to transgender persons, identify with the gender assigned to them at birth based on their genitalia. Even in cases where civil and criminal codes are formulated in neutral terms, using notions like victim, perpetrator, person, body, and partner, police, judges, and attorneys still interpret these laws according to the binary notion of gender-based violence and cisgender identity. This is how sexualized violence against LGBTQ+ people, especially transsexuals, transvestites, and transwomen, is excluded from these laws.

For Blas Radi and Alejandra Sardá-Chandiramani, a *trans femicide* can be defined as "the most visible and final expression of a chain of structural violence that responds to a cultural, social, political, and economic system based on the exclusionary binary division between genders. This system is called 'cissexism'" (Radi/Sar-

dá-Chandiramani 2016, 5). The Argentinian researchers conceive trans femicide as a form of sexual violence directed towards trans women. While its crudest expression is murder, it also includes other types of structural violence in public and private spheres. The unifying character of all these forms of violence refers to a particular kind of gender discrimination directed against trans people precisely because they question the supposed congenital and immovable nature of gender as grounded in sex. The notion of cissexism questions the dualistic ontological comprehension of sex and gender. Sex instead is exhibited as fictional, as a compulsorily imposed norm that, nevertheless, is contingent and no longer essentially fixed by biology (Guerrero/Muñoz 2018). Cissexism operates based on prejudices, values, imaginaries, and affective dimensions that exclude the trans body from the social/political order and the supposedly natural order of sex – confining trans women to the margins and punishing their deviance as non-normative identities, bodies, and desires.

Heterosexuality as a structuring social force renders bodies and subjects comprehensible (Ludwig 2011). For Judith Butler (1999, 208), the heterosexual matrix "describes all invisible norms which are constructed but presented as 'natural' – a norm that defines everyone and everything as heterosexual until proved differently. The norm inscribes other ways of living with unnaturalness, deviance, or invisibility". Drawing on Butler and Foucault, María do Mar Castro Varela and Nikita Dhawan (2011) define heteronormativity as the way heterosexuality is taken to be normative. Heteronormativity is not a straightforward account of the fact that most of the population is heterosexual, nor a sheer intimate sexual practice. Instead, it is a critical concept that unfolds how heterosexuality operates through norms or laws and within social practices of normalization that compel the subject to conform to and enact heterosexual standards and practices. The concept of heteronormativity helps to understand how heterosexuality becomes legitimized by gender and the co-constitution of heteronormativity and gendered subjects. The mutual constitution of normative heterosexuality and the rigid binary gender order establishes that subjects can only belong to one category at a time (ibid., 94). It is the dominant order in which men and women are required or forced to be heterosexual. In this sense, the binary construction of heterosexuality is deeply interwoven with the hierarchy of gender (Ludwig 2011, 45). Gender and heteronormativity work through different normative orders such as the law, morality, or religion, compelling obedience to those rules and punishing deviance. In this regard, gender (hetero)normativity produces violence. It organizes and rules the world; this administration can exclude, discriminate, punish, and kill.[7]

For example, in the case of the murder of a lesbian by her female partner in Mexico, the woman perpetrator was given exceptionally high penalties. The application of aggravated sanctions to punish gender-based violence against women committed by other women may constitute a form of discrimination against lesbians based on their sexual orientation, not to mention that the enforcement of this concept might distort the intent of the criminalization of feminicide (Toledo 2017, 53). The applica-

tion of the law is stricter in cases where women commit acts considered masculine. Lesbian and LGBTQ+ persons are punished more severely for their nonconformity. This form of subjectivation by norms reveals the extent to which sexuality, gender, and desire are attached to rights and types of crimes designed to protect only cis women grounded in heteronormativity and cissexism. These laws not only punish the alleged deviance of lesbian and bisexual women but also invisibilize and discriminate against transsexuals, transvestites, and transwomen. In addition, the lack of criminalization of trans feminicides deprives trans persons of the status of a legal personality by excluding them from the law and violating their rights, even in death.

Subordination or Discrimination

Having laid out some problems of the notion of violence and gender at the core of Mexican law, an unavoidable dilemma arises for women's and feminist agendas against feminicide. Many academics and lawyers consider the problems of the law only a matter of interpretation connected to current limitations in the conceptualization. For others, it is caused by the absence of education or sensitivity on the part of judges, lawyers, and public officers, produced by the lack of a gender perspective during the investigations, or because the political class is not interested in addressing these issues. However, the problem runs deeper. The juridical strategy appears unfit to address the issues for which it is designed. This is due mainly to the fact that a structural problem of social violence is reduced to an individual action to fit the logic of punitive justice. Cases are thus analyzed only from the legal model perspective that privileges the victim-aggressor relationship, especially in intimate relationships such as the family, partnership, or ex-partners. This model excludes feminicides perpetrated by police, military, and criminal organizations. The criminalization of such violence as an exclusively individual act has obscured other forms of violence, such as institutional and feminicidal violence. Penal justice maintains that when a type of crime is ineffective, it is only because judges, lawyers, and public servants lack the necessary knowledge and interpret it incorrectly. This ignores the role of social and political violence and overlooks the impact of the war on drugs, migratory flows from north to south, human trafficking, military occupations as part of the national security strategy, sexual exploitation, and the maquiladora (sweatshop) industry.
Furthermore, feminist demands for a criminalization of femicide and the associated call for harsher punishments have the effect of jeopardizing the demand for justice as they produce and reproduce essentialized gender subject positions. This juridical strategy ends up associating individuals with the identities of either victim or aggressor, and in- or excluding them as either normal or deviant. Additionally, in these laws, women are textually victimized since the subject of these laws is always an irremediable target of violence that the state must protect only within a specific context and a particular social and political status, that of a cis citizen who is formally employed, hence excluding sex workers, migrants, indigenous, and trans women. In

this way, the law reinforces specific forms of subjectivation: the subject of the weak and victimized cis women and the subject of the aggressive and victimizing cis men (Núñez 2018, 181), thus confining cis women to the subordinated subjective position of the (hetero)normative victim and discriminating trans women as deviant bodies. The structural problem of the law to address gender-based violence and feminicide consequently lies at the core of the normativity of the legal order. For Wendy Brown (2000), the challenge of women's and feminist's struggles in the legal sphere lies first in the law's ability to liberate and protect women without reifying identities, and second in the law's capability to recognize the differences within marked groups and to translate those differences into efficient legislation. Laws against sexualized violence and for a life free of violence involve protection by granting special rights and criminalizing violence. Yet, these laws also reinscribe the most constraining features of the designation of the cis woman and (hetero)normative victim. While such laws protect cis women, they also facilitate further regulation and discriminate against trans women and lesbians through that specific designation. This dilemma shows that these laws do not simply apply to previously cisgendered and heterosexual subjects but produce them. On the one side, by affirming special rights based on gender identity, women are interpellated by a cissexist and heteronormative conception of gender when they exercise these rights. The regulatory power of identity-based rights operates within a normative context in which "woman" is defined and reiterated (ibid., 232). On the other side, by affirming a neutral gender normativity, these laws reproduce the partial position of the white, cis, and heterosexual man by reiterating the masculine criteria of police, criminal officers, public servants, and judges. The first horn of the dilemma reveals the controlling powers of rights based on identity. To have a right as a woman implies the designation and subordination to a binary notion of heteronormative females and a binary notion of violence, which is restricted to violence against cis women. The second horn of the dilemma denounces non-egalitarian orders where rights empower diverse social groups differently, depending on their ability to assert the power that a right potentially entails. That means the more social resources and the less social vulnerability a person brings to exercising a right, the more power that practice will secure. This is clear in cases of trans feminicides, in which misogynist and transphobic forms of violence intersect, producing precariousness and vulnerability. This violence makes it impossible for trans women to have a decent education, live with their families, or hold a secure job. In this manner, the gradual chain of violence, precariousness, and vulnerability places trans women outside the protection of the law, rendering it impossible for them to exercise the rights formally attributed to them. Universally distributed rights can thus be empowering but also disenfranchising. The dilemma consists in denouncing the power of the law to transform social relations and protect women by granting special rights and criminalizing femicide. However, while this power protects only cis women, subordinating them to that position, it discriminates against trans women, rendering them invisible and deviant. A significant challenge for a feminist law theory lies in confronting the essentializa-

tion and feminization of violence. Femicide/feminicide is a form of gender-based violence perpetrated not only against women but also against feminized bodies. Feminicide is a systematic and structural form of sexualized violence (feminicidal and cissexist), weaponized by states (institutionalized violence) and criminal organizations. The normative dilemma of the current laws (criminal, civil and human rights) against feminicide is that they produce and reproduce violence by replicating and enforcing a binary notion of gender-based violence and cisgender and heteronormative identity. This implies that women and feminist politics always find themselves in a puzzling dilemma of emulating existing structures while simultaneously defying them. The task of the feminist struggles against feminicide and trans feminicide remains twofold: reform the law and its institutions and, simultaneously, resist the reproduction of a notion of gender and violence that defines the (hetero)normative cis citizen victim, and the penal model of justice that codes cis women as victims, cis men as perpetrators, and trans women as deviant. As long as the law renders trans women invisible, discriminates against them, and produces them as non-normative, it will continue to be structurally tied to violence.

Notes

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2 In her work, Rita Laura Segato (2016, 70) identifies the mechanism by which violence is sexualized, how it becomes a weapon of war, and the processes by which women's bodies become the "terrain-territory of war action itself".

3 In the process of women becoming a territory of war, the female or feminized bodies transform into sacrificial victims (Segato 2016, 82). As a result, the war is waged on the bodies of marginalized and subaltern subjects like cis women, girls, boys, or young people whose bodies are feminized. This includes trans women.

4 Costa Rica (2007), Guatemala (2008), Colombia (2008), Chile (2010), El Salvador (2012), Nicaragua (2012), Argentina (2012), Mexico (2012), Panama (2013), Bolivia (2013), Honduras (2013), Ecuador (2014), Venezuela (2014), Dominican Republic (2014), Brazil (2015), Colombia (2015), Peru (2015), Paraguay (2016), and Uruguay (2017) (Smutt 2019).

5 It is important to distinguish between these two terms because not all women's movements are feminist, nor are all feminisms driven exclusively by subjects who identify themselves as women.

6 All quotes from Spanish literature have been translated by the author.

7 For Gundula Ludwig (2011), heteronormativity should not be understood only from the perspective of the juridical understanding of power but as grounded in social relations and social struggles. Ludwig (ibid., 56) conceives heteronormative power in terms of hegemony. Drawing on Butler, Gramsci, and Foucault, she defines heteronormativity as a power formation (hegemony). Heteronormative hegemony "operates through governing as a non-juridical modus operandi" (ibid., 53). It is a contradictory formation of power and operates through technologies of the self.

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Das deutsche Völkerstrafgesetzbuch als Austragungsort transnationaler Kämpfe um die Ahndung sexualisierter Gewalt in bewaffneten Konflikten

KARINA THEURER

Einleitung

Am 13. Januar 2022 (OLG Koblenz 2022) und am 24. Februar 2021 (OLG Koblenz 2021) ergingen zwei Entscheidungen des Oberlandesgerichts Koblenz (OLG Koblenz) im weltweit ersten Strafverfahren zu Staatsfolter in syrischen Gefängnissen. Anwar R. und Eyad A. wurden wegen Verbrechen gegen die Menschlichkeit sowie wegen Beihilfe dazu zu mehrjährigen Haftstrafen verurteilt. Geführt wurde der Prozess auf der Grundlage des völkergewohnheitsrechtlich anerkannten Weltrechtsprinzips: Dieser Grundsatz ermöglicht die weltweite Ermittlung, Verfolgung und Ahndung eines international anerkannten Korpus strafrechtlicher Tatbestände unabhängig vom Tatort und von der Nationalität der Täter*innen oder Opfer vor nationalen Gerichten.[1] Historisch bedeutsam sind die Entscheidungen, weil erstmals gerichtlich festgestellt wurde, dass die syrische Regierung spätestens seit Ende April 2011 einen ausgedehnten und systematischen Angriff auf die Zivilbevölkerung führte, und weil zwei ehemalige Mitarbeiter des syrischen Geheimdienstes für dabei begangene Verbrechen gegen die Menschlichkeit verurteilt wurden.

Warum ist das Verfahren vor dem Oberlandesgericht Koblenz und die Entscheidung vom 13. Januar 2022 gerade aus deutscher Perspektive ein Meilenstein in transnationalen Normgenerierungsprozessen um sexualisierte Gewalt in bewaffneten Konflikten? Zunächst deshalb, weil zum ersten Mal in der Geschichte des deutschen Völkerstrafrechts eine Anklage wegen sexualisierter Verbrechen gegen die Menschlichkeit nach § 7 Abs. 1 Nr. 6 des deutschen Völkerstrafgesetzbuches (VStGB) nach-