

Gender(ed) Violence in Neo-Authoritarian Times

Leticia Sabsay

The London School of Economics and Political Science
l.sabsay@lse.ac.uk

Abstract:

As conservative and neo-authoritarian tendencies in Europe move across political and geo-cultural borders, we bear witness to a renewed attack on gender and sexual rights. This is a challenge to democratic citizenship that demands that we think anew the pervasive and multifaceted violence that structures the social organisation of gendered and sexual lives. How to think about the relationship between the hindering of sexual citizenship and current debates about sexual and gender-based violence in a historical present marked by a growing and revived conservative reaction? How to re-articulate a critical analysis of gender and sexual based violence that also accounts for the violence of gender? How to orient the condemnation of gender and sexual based violence towards a deepening of democracy? Taking Spain as a point of departure, this article examines recent legislative developments and argues for an expansive, albeit differentiated, approach to gender-based violence, in line with citizenship rights. Articulated in intersectional terms, this approach, it is contended, should challenge the intensification of racism and other exclusionary discourses that are gaining traction in Europe, and recognise that violence against those who experience gender and sexuality beyond normative heterosexuality also amounts to gendered forms of violence. It is along these lines that it would be possible to think of a feminist critique of violence in pursuit of a more democratic and just society.

Key words: gender, violence, sexual citizenship, heteronormativity, legislation, democracy, Spain, Europe

1. Introduction

As conservative and neo-authoritarian tendencies in Europe move across political and geo-cultural borders, we bear witness to a renewed attack on gender and sexual rights. Indeed, as the liberal-democratic frameworks that were assumed to be firmly established are called into question, gender and sexuality have become pivotal to the advancement of neo-authoritarianism, posing new challenges to democratic citizenship. This grim panorama demands that feminists think anew the pervasive and multifaceted enactments of violence that structure the social organisation of gendered and sexual lives. Taking Spain as a case in point, this article considers the relationship between the hindering of sexual citizenship and current debates about sexual and gender-based violence in a historical present marked by a growing and revived

conservative reaction. Central to this consideration is the following question: How to re-articulate a critical analysis of sexual and gender-based violence towards a deepening of democracy?

As it will become clear in what follows, part of the problem at stake in this question emerges in connection to the lack of clarity on what one might be talking about. What do we mean by gender or gendered violence, or “*violencia de género*”? And what is meant by sexual and gender-based violence? In which ways are these formulations different from “Machista” or sexist violence? What are their overlapping and differences with respect to violence against women? All these terms are omnipresent in contemporary Spanish and European media and political discourses, making the relationship between gender and violence a focal point of public debates. However, they are not as simple or self-evident as they might seem at first glance. Neither is their translation between English and Spanish clear-cut or straightforward. Proof of this is the problematic character of some political debates and juridical rulings based on the confusion of these formulations. As I show in this article, it is legislation itself that partly propounds this blurring.

To a great extent distinct from each other, while at the same time overlapping, different formulations are used interchangeably in public discourses more often than not, although sometimes one formulation is chosen over another to indicate some specificity. What is at stake in these different uses is the (usually implicit) meaning assigned to each of their key components, in particular, “gender” and “violence”; and it is precisely the plasticity of the semantic fields of each of these key terms which grant these formulations their productivity. In order to understand the political work they do in the contemporary European and Spanish contexts, in this article I offer an immanent examination of recent legislation with a focus on these implicit semantic fields towards an expansion of their democratic and anti-authoritarian potential.

Through my analysis, I develop a threefold argument. In the first place, I contend that we need a more capacious concept of gender; one that may allow us to see that the manifestations of gender-based violence are not enacted or expressed in the same manner against all women equally, nor do they manifest in the same ways towards

gender and sexual non-conforming persons. It is of central importance for the understanding and evaluation of the variegated instances and terms in which this violence is identified and/or detected as gender-based violence (by protagonists, professionals, and those close to them), whether women victims or survivors of this type of violence are girls or minors, or if on the contrary they are older women; if they belong to an impoverished social and economic context, or if they count on relevant economic or cultural capital; if they have any physical or intellectual impairment; if they are negatively racialised; if their legal status is precarious or not, but also if they count on institutional networks, social networks, family, or emotional support. It would be easy to agree that it is important as well to take into account their cultural baggage, religious beliefs, and linguistic resources among others. It is clear that these differences matter when evaluating what resources can be offered and what avenues of support and help will be feasible and most effective. But I suggest going a step further and advocate for a conceptualisation of gender-based violence that genuinely relies on a non-binary and non-heterocentric notion of gender. This notion would not only be intersectional, that is, one that takes into account gender at its intersection with race, class, and other axes through which power differentially circulates. Rather, it would allow us to come to terms with the fact that gender-based violence is not equivalent to violence against women, nor is it exercised exclusively against women. Seen in this light, such a notion would then open the path to evaluate whether trans-homo-lesbo-bi-queer-phobic violence, or violence against the LGBTQI+ collectives more broadly, could in certain circumstances, also be conceived as gender-based violence.

Following from this, the second argument that I put forward is that we also need a concept of gender-based violence in which the notion of violence is also revised. It is well established within the scholarship and in certain political instances that gender-based violence includes not only physical violence, but also verbal and psychological or emotional violence. Sexual harassment and abuse in many of their varieties are considered to be part of gender-based violence, and when violence is exerted verbally, it can be psychological, but also symbolic. Along these lines, for instance, the violence exerted virtually by misogynistic networks that operate online disseminating discriminatory views or more bluntly producing hate speech acts could be understood as a form of gender-based violence too. This possibility is founded on the notion of

gender discrimination, which, as a matter of fact, is part and parcel of the legal grounds that define violence as gender violence in this expansive form. But this move is not enough, for the application of this legal basis still tends to operate in a way that individualises violence as embodied by a perpetrator or a group of perpetrators. Discrimination, itself a form of symbolic violence, on the contrary, is often enacted through forms of institutional violence that make the attribution of responsibility futile.¹ It is this institutionalised dimension of gender-based violence that the notion of violence I propose should be able to address. My argument is not oriented toward the inclusion of all forms of discrimination against women and LGBTQI+ collectives under the heading of gender-based violence –this could be a dangerous path. But it does seem important to be able to identify the ties and intersections that exist between these two instances: on the one hand, gender-based violence as established by law and enacted by individuals; and on the other hand, the institutional enactment of a social imaginary that discriminates against sexual and gender minorities and that symbolically underestimates the subjectivity of women and minoritarian “others” and corner them to the background.

After analysing the work of these formulations and key terms (gender, and violence) in the Spanish and European Law, my third contention addresses more directly the question of how to tackle and combat gender violence in the present. In recent years, the problem of gender-based violence has acquired paramount importance on political and media agendas. In the Spanish mediatised political landscape, this has been in great part due to the questioning to which it has been subjected, with political parties and actors vocally denying the existence of a form of violence that would be specifically gendered. The regular news reports of yet another case of rape or a gender-based murder (or femicide), whose steady rate punctuate the weekly news routine, has been matched by the presence of far-right voices in the media denying the gendered nature of these crimes. Indeed, the activity of right-wingers to discredit and when possible dismantle anti-gender based violence legislation and provision has been tireless and sustained in recent years, along with the increased popularity and electoral successes of Vox, the far-right party that emerged in 2013.

However, this is not the whole story. Such media thematisation has also been driven by the renewed impulse and popularity of feminist voices. Like in other regional

contexts, feminist social movements that have historically denounced gender and sexual based violence pertinacity, have gained renewed strength over the last decade in Spain by summoning younger generations and organising calls and marches that went massive. This popularisation of feminism has not come about exempt of new challenges, though. Clearly, one of them is the anti-feminist backlash featured by conservative groups and “anti-gender ideology” campaigners. But another more difficult challenge to tackle given feminism’s recently acquired popularity pertains to the novel dispute about the meaning of the signifier “feminist” and its instrumentalisation for divergent political projects, including neoliberal, conservative and even anti-feminist ones.

This context pictures a polarised, albeit complex, panorama for a critical examination of the sanctioning of gender-based violence toward a radicalisation of the fight against it. My point in this regard is that in a context marked by conservative and neo-authoritarian logics imbued with the success of far-right discourses and the intensification of the securitarian state, it is most important than ever to fight gender-based violence in ways that also oppose punitive and carceral logics at the centre of nationalist and racist discourses. In Europe, for instance, States have intensified the persecution and criminalisation of social protest –as is the case of Spain and the citizen security law (the so-called gag law)–, and request violent forms of protection of their borders in accordance with public discourses that promote hatred against racialised “others” and migrants –most rampant in the Mediterranean shores. Over against the normalisation of these murderous impulses, it is imperative to promote a feminist democratic politics against gender-based violence that is not complicit with racist and other “othering” logics.² In a historical context marked by a political aesthetic of cruelty that finds satisfaction in hatred and the material or symbolic annihilation of difference, as much as the suffering of others, it is key to ensure that the fight against gendered modes of violence does not abide in this culture of hate.³

Articulated in intersectional terms, the approach I propose, then, should be able to challenge the intensification of racism and other violent and exclusionary practices and discourses that are gaining traction in Europe, and recognise that violence against those who experience gender and sexuality beyond normative heterosexuality also amounts to gendered forms of violence. Ultimately, the questions I grapple with in

this analysis concern the task of combating gender-based violence as part of a feminist project committed to a radical democratisation of citizenship. This is a project, I argue, that should be guided by the ideal of a more egalitarian, fair and inclusive society -not only for women, but for countless minorities and other precarious groups. It is along these lines that it would be possible to continue developing a feminist critique of violence in pursuit of a more democratic and just society.

To develop this argument, I start by focussing my attention on the notion of gender put forward in Spanish anti-gender violence legislation *vis a vis* the Istanbul Convention on violence against women, followed by an examination of patriarchy as articulated in the Law. I then move forward to a consideration of the notion of violence implicit in this legislation, and after considering these key terms, I conclude on the need to revise them so as to address the violence of gender norms at the core of citizenship towards its radical democratisation.

2. The Gender of Gender-based Violence

To comprehend the workings of “gender” as it has been mobilised in Spanish public discourse, I start by examining the national law against gender-based violence, titled in Spanish “Ley Orgánica de Medidas de Protección Integral contra la Violencia de Género.”⁴ This law was originally sanctioned in 2004, and successively updated in 2007, 2015, 2018 and 2021. It is valid across the whole territory and it is aimed to align with the Istanbul Convention (2014) and work in tandem with the State Agreement Against Gender-Based Violence (Pacto de Estado contra la Violencia de Género), approved by the Congress in 2017, and made into law in 2018. According to its most updated version, from June 2021, The Organic Law for Comprehensive Protection Measures against Gender-Based Violence, establishes in its first paragraph that:

Gender-based violence is not a problem that affects the private sphere. On the contrary, it manifests itself as the most brutal symbol of the inequality that exists in our society. *It is a violence that is directed at women for the very fact of being women*, because they are considered, by their aggressors, lacking the

minimum rights of freedom, respect, and decision-making capacity. (Boletín Oficial del Estado, 2021: n/p, my translation and emphasis).⁵

Although not explicitly stated in the Law, this definition suggests that gender-based violence is a brutal manifestation –the most brutal, the law states- of the patriarchal order. Indeed, two of the basic laws of patriarchy are anthropologically defined as: a) The norm of masculine superiority –in the text translated as existing inequality, and the consideration that women do not deserve the respect and the minimum rights that define the person; and b) the norm of control or possession of the female body – specified in the text as the consideration that women lack the right to freedom and decision-making capacity.

According to the feminist anthropologist Rita Segato (2017), patriarchy is an institution based on the control of women's bodies and the punitive capacity over women. Segato understands gender as an effect of symbolic patriarchy, which in turn is understood by the author as a founding violence. Patriarchy is a system that equates masculinity with power or authority, based as it is on the norm of male superiority and the phallogocentric comprehension of the human (i.e. maleness as the benchmark to measure humanity). This definition does not point towards the idea that all men are necessarily patriarchal, or more patriarchal than women. There is no reference to "men" here, but rather to masculinity. And yet, what this definition does not clarify is that pivotal to the institution of patriarchy thus far defined, is not just any masculinity, but what Raewyn Connell (1995, 2005) has called hegemonic masculinity. This is an adult masculinity that is presumed to be heterosexual, embodied in bodies of a certain sex assumed to be anatomically male, and depending on the context, white, or at the top of the racial hierarchy, which nonetheless is structured through whiteness understood as a paradigm. Ultimately, the masculinity at the basis of this notion of patriarchy is defined by its capacity for penetration and domination (colonial, imperial, racial, sexual, corporeal) (Segato, 2016). In psychoanalytic (and anthropological structuralism terms), this masculinity is defined as the position of the subject that is imagined as not symbolically castrated, the position of the subject that bears the phallus, the signifier of power in a phallogocentric order (Sabsay, 2016).

In parallel to this framing, the law also reinforces the epistemic authority of the gender binary associated with sexual dimorphism, and therefore colludes with hegemonic formations of the social imaginary according to which gender encompasses only two universally exclusive positions: women and men. The slippage between the dyad composed by women and men and the antagonistic pair femininity/masculinity that is co-substantial to the definition of patriarchy (also binary by definition) is effected from the beginning, already explicit in the first paragraph of the law cited above. In effect, while the title of the law frames it as concerned with gender-based violence (*violencia de género*), its very same definition immediately turns gender-based violence into violence against women: it is a violence that is directed at women for the very fact of being women, the law states. This legal confusion is constantly replicated in public discourse, despite the work that feminists have done for decades to specify sexual and gender-based violence and violence against women (Pandea, Grzemny and Keen, 2019; Frazer and Hutchings, 2020).⁶

This narrowing of gender-based violence that is reinforced in the letter of the law to correspond to violence against women points to a problem of cultural translation. Importantly, this law was updated to align with what is usually known as the Istanbul Convention, in force in Europe since 2014 and ratified by the Spanish State that same year. The Istanbul Convention is the shorthand for the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Council of Europe, 2011). The term used throughout the Convention is “gender-based violence against women,” suggesting by this specification the acknowledgment that it is not only women who might be object of gender-based violence, which in turn is understood by the Convention as a form of discrimination (Council of Europe, 2011). Gender-based violence is defined as a kind of violence that is exerted on the basis of any perceived sex or gender that suffers discrimination (Council of Europe, n/d). However, both the titles of the Spanish Organic Law and the State Agreement against Gender-Based Violence (also aimed at being in line with the Convention) liken violence against women to gender-based violence (and not gender-based violence against women, for instance), erasing in this way any nuances and differences between them.

The Istanbul Convention makes major strides in tackling violence against women. First of all, it should be noted that this is a binding legal framework at European level, which understands violence against women and domestic violence as a form of discrimination and violation of human rights. In this regard, it follows the pioneering intervention of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979, which establishes the rights of women to their integrity as human rights. Secondly, it comprises physical, sexual and psychological violence as forms of gender-based violence against women. These include rape, clitoral cutting (commonly referred to as female genital mutilation), harassment, forced marriage, as well as forced sterilisation and abortion (Council of Europe, 2011).

While the Istanbul Convention emphasises the gender-based violence perpetrated against women –hence its name– the practices that it catalogues as crimes against women’s human rights refer to a type of violence that could arguably be characterised as sexist (this is another term that is commonly used). This is a type of violence aimed at reinforcing the patriarchal order and the norm of the superiority of dominant masculinity, which is pivotal to it. In other words, the sexist violence evoked by the Istanbul Convention is patriarchal in nature and it is aimed at reassuring (hegemonic) masculine power and authority.

Seen in this light, there might be good reasons why the Spanish legislation reframed The Convention’s focus on women as gender-based violence. However, rather than invested in a more nuanced and capacious approach to gender, to the extent that it does not clarify that what is at stake is *gender-based violence against women*, the shift of terms is largely grounded in the widespread assumption that gender is organised only and exclusively in a binary way. The presumption is that the only possible object of gender-based violence are women (with cis-privilege), and the only counterpole to dominant masculinity is subordinate femininity. Hence the easiness with which all these legal frameworks enact an equivalence between gender-based violence (or patriarchal, sexist violence) and violence against women: in the Spanish case, by titling the laws as concerned with gender, while explicitly defining gender-based violence as violence against women; in the Convention, by ultimately framing

gender-based violence as violence against women. As the Convention's Explanatory Report summarises:

In the context of this Convention, *the term gender, based on the two sexes, male and female*, explains that there are also socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men. (Council of Europe, 2011: 9, my emphasis)

There are historical political reasons for this equation, and femininity is undoubtedly the quintessential counterpole of dominant masculinity. Even so, violence against women is just one manifestation of gender or patriarchal violence, and gender-based violence in the context of discrimination is not exhausted by the violence exerted against women. Rather, it goes far beyond it as it also targets other subject positions that may well challenge the patriarchal order and dominant masculinity's authority, or the normative conception and organisation of gender that is co-constitutive to (cis-hetero-) patriarchy. This realisation has led to calls to queering feminist approaches to sexual and gender-based violence (Haynes and DeShong, 2017; Graaff, 2021), with which I am surely aligned. The reduction of gender-based violence into violence against women we have noted in this legislation exercises a form of gendering and symbolic violence that hinders the principle of gender equality and freedom. This symbolic violence could be understood as part and parcel of the very same violence of gender as a field of norms.

3. Patriarchy and its Others

From the vantage point of dominant or normative masculinity, which is at the pinnacle of patriarchy, patriarchal orders, by definition characterised by the supremacy of the father and the control of families and social organisations by men, are the only possible and desirable ones. Such masculinity is therefore associated with the defence of traditional values and visions of marriage and family –understood as constitutively organised around those ascribed the status of women and men at birth, both heterosexual, and subject to traditional roles and stereotypes. In this sense, dominant masculinity conceives of itself as superior to other masculinities, and is

opposed to any way of living gender that is not “correct” or “natural” according to its parameters.

Dominant masculinity and the patriarchal order that configures it are the two core formations intended to be preserved when gender-based violence is exercised against myriad “others.” It follows from here that all of these others should be entitled to protection within the remit of anti gender-based violence laws. By the same logic, then, centring patriarchy in the conceptualisation of gender-based violence –as the law more or less implicitly does– gives way to a legal articulation of gender-based violence that may well include those manifestations of violence against: gays, whose gender and sexual practices may threaten this masculinity; lesbians, who may not embody their femininity “as it should be” and whose sexual orientation disobeys the gender mandate assigned to women; bisexuals, whose sexual orientation defies the presupposed heterosexuality of this order; intersex people, who disrupt the indisputable clarity with which it is presumed that sex can be determined; and trans people, who either produce confusion and disrupt the supposed natural alignment between gender and sex, or make visible the fragility of gender, capable of being lived in a multiplicity of ways. Trans men and women confront the most normative positions with a disturbing reality, namely that the categories of woman and man do not include only those who were ascribed those categories at birth. It is therefore by emphasising the aim and object of this violence (that is, the affirmation of the superiority of dominant masculinity, the patriarchal order, or gender normative roles, expressions and identification) that one can comprehend LGBTQI+-phobia as a manifestation of gender-based violence as well.

Like violence against women (as stated in the Istanbul Convention), this is a form of violence that also entails discrimination conceived as a crime and an attack on gender and sexual non-normative subjects’ human rights, as established by the definition of hate crimes and the application of International Human Rights Law in relation to sexual orientation, gender identity, gender expression and sex characteristics.⁷ From such a legal point of view, then, gender-based violence would not only be directed at women (lesbian, heterosexual, or trans), but rather target all those who do not “do their gender right.” Patriarchal in nature, gender-based violence is a violence that, in addition to despising femininity (in its misogynist version), despises those

masculinities and ways of living gender and sexuality that do not conform to the norm (including non-binary persons who do not necessarily identify themselves either as women nor men) and therefore suppose a fundamental threat to the patriarchal established order. An order that places dominant masculinity at the top and therefore grants more value to the lives of those who embody it while devaluing the lives of others.

By laying down this contention, I do not mean to dilute the specific violence exercised against women. Quite the contrary, pointing out the slippage of terms and punctuating what gender-based violence and violence against women may encompass, draws attention to their specificity. The specificity of violence against women should be honoured in the name of the law -especially because of the implications that it has when it intersects with sexual violence, intra-family violence, and violence within the domestic sphere. Importantly, such specification makes also visible that the homologation of gender-based violence to violence against women (presumably with cis- privilege and heterosexual) rests on a hetero-centred (if not heterosexist) and gender-excluding concept. This erasure is a form of symbolic annihilation that a democratic and inclusive feminism cannot afford, except at the cost of betraying its own principles.

What would a law against discrimination based on sexual orientation, gender identity or expression and sex characteristics, and for social equality for lesbians, gays, bisexuals, transsexuals, transgender and intersexuals look like if taking into consideration an expanded comprehension of gender-based violence? Or, more concretely, what would the Madrid Law for Comprehensive Protection against LGTBIphobia and Discrimination based on Sexual Orientation and Identity (Boletín Oficial del Estado, 2016) look like if its principles and regulatory frameworks were framed within this more capacious conception of gender-based violence? And how would the draft of the Spanish National Bill for the Real and Effective Equality of Trans People and for the Guarantee of LGTBI Rights (Boletín Oficial del Estado, 2022) be impacted if it not only addressed the discrimination to which this group is subjected within the principles of equality and recognition, but also attended to the gender-based violence of which this group is also a privileged target?⁸

Possibly, such a framing would make visible the violent, and in many cases fatal, character of discrimination, and the effects that this violence – also continuous and repeated – has on the people who are the object of it. Such legislative re-framing would do a lot to make visible the systematic and deep-rooted nature of violence against these groups and it would have significant implications in terms of protection and prevention measures, and the resources available to those who are the object of this violence. But more than this, it would also entail opening the possibility to address institutionalised modes of violence. Within this paradigm, practices such as conversion or aversion therapies, the attempt to prevent the access of trans* folk to services and shelters for victims of gender-based violence, or to gendered-prisons in accordance with the gender with which they identify, for example, would be susceptible to be included as manifestations of institutionally (if not State) sponsored forms of gender-based violence as well. What would the Spanish State Agreement to Preventing and Combating Gender-based Violence (Boletín Oficial del Estado, 2018) look like if it did not presume that the only possible victims are women? What should it include? What resources should it demand? And what type of training should it promote?

To be clear, the point here is not to encourage the blurring of any and all sorts of specificities within the category gender-based violence. This might be counterproductive. It is necessary to distinguish and typify the different forms of violence that the continuum of gender-based violence could include. It is through classification that it would be possible to identify different problems and along these differentiations develop specific policies and prevention measures. It is necessary to make these distinctions to grasp what each of these manifestations of gender-based violence involve and subsequently combat each of them in the most effective manner. But it is equally important to visualise the connections between them, as ultimately they respond to the same patriarchal logic. As pointed out by Karen Boyle (2019: 32):

[T]he too-frequent conflation of ‘violence against women’ and ‘gender-based violence’ performs a number of erasures which should be of concern to feminists. Simply naming gender does not mean that our analysis is gendered (...) just because a term starts off doing feminist work does not mean that it continues to do so.

In light of the current political conservative turn and the attack on women and LGBTQI+ rights, the task of disputing this conflation while visualising the connections between violence against women and other instances of gendered violence seems most important. This kind of feminist gendered analysis would show, in effect, the many ways in which the entanglement between violence and gender and sexuality has been pivotal to hindering access to full citizenship for many. In so doing, it would expose, I believe, that democratic States need to deepen their alleged commitment to gender equality, diversity recognition and inclusion. More to the point, it would also highlight that these battlefronts are intimately related.

A more capacious and differentiated notion of gender-based violence would be instrumental to develop solvent arguments against reactionary discourses and current campaigns against feminism and so-called "gender ideology," in turn intertwined with movements against gender and sexual diversity. As a case in point, the Spanish political party Vox, very much in line with other far right and right wing parties and groupings, sustains that feminism and in particular anti gender-based violence laws discriminate against men –allegedly susceptible to persecution just for being men.⁹ Further, Vox's view is that violence has no gender –their representatives speak instead of intra-family violence– and therefore anti gender-based violence laws and subsequent provisions should be revoked. In a similar vein, Vox also opposes the inclusion of sexual education and the recognition of gender and sexual diversity as civic values in public education curricula. One of the arguments that the party posits to defend this position is that such contents are not just an assault to (their traditional) family values, but also most pointedly, a curtailment of parental rights. In both cases, Vox inverts the terms of the conversation and disavows patriarchal violence and authority by turning them into the victimised targets of anti-discrimination oriented policies. And it does so, most significantly, by privatising the matter –in both cases, the family is centred as the main actor. It is along these lines, then, that disputing this logic of denial, a broader definition of gender-based violence would more forcefully reveal the continuities of gendered violence between the private and public spheres. Such definition would show, for instance, the connections between gender and sexual violence, between femicide and transfemicide; and crucially, it would expose gender-

based forms of violence that occur at institutional levels and the institutionalised dimensions of gender-based violence that remain invisibilised.

4. The violence of gender

What does appear as “violence” within the realm of gender sensitive laws? Which actions, behaviours or practices are considered acts of violence against women in the Istanbul Convention? What shape does violence take in the Spanish response to the Convention, as articulated in the State Agreement against Gender-Based Violence from 2017?

As I suggested earlier, the Istanbul Convention makes apparent that at the heart of gender-based violence against women is the reinforcement of patriarchal norms. The Convention includes as crimes of violence against women physical, psychological and sexual violence, including rape, clitoral cutting (most commonly known as female genital mutilation), stalking, forced marriage, as well as forced sterilisation and abortion (Council of Europe, 2011: 13-14). Paying attention to the acts and practices included in the document, it comes to light that all of them point to a core axiom of patriarchy, as earlier defined following Segato (2016, 2017), namely the control or possession of women's bodies, the denial of women's self-determination and the devaluation of their lives. They all indicate forms of coercion and imposition that suppress women's freedom and fix women in their assigned gender roles. They are actions that, as Segato suggests in relation to femicide, are also aimed at the “suppression of the feminine will [...] and the reduction of the feminine other” (2006: 4, my translation). Furthermore, the named actions and compartments indicate that gender-based violence against women –as much as gender-based violence more generally, for that matter– not only goes beyond the intimate, domestic or intra-family contexts, but is fundamentally at the heart of a series of entrenched social practices – signalling the continuity between private and public violence, as well as between individual and privatised manifestations of violence and the patriarchal imaginary that sustains them.

Significantly, the case of forced marriage, forced sterilisation, forced abortion and clitoral cutting point to the social –and thus potentially institutionalised or

normalised— character of gendered forms of violence. By listing these practices the Istanbul Convention makes an important and promising move for it gives way to the possibility of critically reflecting on myriad manifestations of gendered violence, which otherwise might pass undetected as such by force of their very normalisation.

However, in singling out these practices while sinking others into oblivion, the Convention’s document also reveals European institutions’ unbridled Eurocentrism. The document lists some of the ways in which violence against women is institutionalised in social practices such as circumcision or forced marriage, noting in Article 42 “Unacceptable justifications for crimes, including crimes committed in the name of so-called “honour”.” The Article states:

... [T]he commission of any of the acts of violence covered by the scope of this Convention, culture, custom, religion, tradition or so-called “honour” shall not be regarded as justification for such acts. This covers, in particular, claims that the victim has transgressed cultural, religious, social or traditional norms or customs of appropriate behavior. (Council of Europe, 2011: 15).

The Convention suggests that the defence of certain patriarchal cultural norms does not amount to extenuating circumstances. Furthermore, it “frames the eradication of prejudices, customs, traditions and *other practices which are based on the idea of the inferiority of women or on stereotyped gender roles* as a general obligation to prevent violence” (Council of Europe, 2011: 8, my emphasis). However, it refuses to list deeply rooted beliefs crystallised in institutional practices that also point to the control of the female body, the suppression of freedoms and the subjugation of women’s bodily integrity, such as forced reproduction. After all, by the same logic by which forced sterilisation and forced abortion are included as crimes of gender-based violence against women, the denial of the right to voluntary termination of pregnancy, namely the criminalisation of abortion, could be listed here as a form of gender-based violence against women and anybody who can get pregnant as well. What the document refuses to review is the more or less direct or indirect involvement of key institutions of civil society, such as the Catholic Church, and States’ institutions themselves in the systemic production of the field of gendered violence. The question that arises in this regard is the tension between the envisioning of violence as an

extraordinary incident attributable to an individual or group of individuals and its normalised and institutionally sponsored social life at the heart of Europe.

The work of feminists has historically consisted of reconsidering as forms of sexual and gender-based violence a number of normalised behaviours and practices within patriarchal systems that considered the dependence and submission of women something normal. Feminists have also insisted that despite the insistence on its privatisation, particularisation and exceptionalism, sexual and gender-based violence is never as private as one would like to believe. Its systematic exercise and pervasiveness depends on accomplices and accessories, pacts of silence, open secrets, turning a blind eye, as much as on institutionally based mechanisms of erasure and normalisation. One of the main tasks of feminists working on violence has been concerned with establishing links between these two instances, which point to sexual and gender-based violence social and inter-subjective dimensions (see Hall, 2015).

The normalisation of everyday sexual and gender-based violence within social institutions, for instance, in the workplace, the family or the household, is what partly explains its pertinacity and its existence in the shadows. This violence is omnipresent as an open secret, opening an undetermined space between knowing and not knowing that faces third party witnesses with a conundrum, or places them in a disturbing if not impossible position. Sexual and gender-based violence existence “in the shadows” depends in great part on mundane forms of justification or dismissal. Its on-going minimisation is widespread, be it in the private sphere, inter-subjective relationships or encounters, or in the workplace and other institutional settings such as health and education, not to mention the legal and judicial fields and the management of its happening and denunciation. “Don't get angry, it's a joke,” “you should feel flattered rather than attacked by my comment,” “you have a problem with men”... It is not difficult to listen to ordinary comments such as these, just echoing a rampant culture of harassment. “He just has a very strong character,” “he is just too jealous”: typical phrases like these are also part of the everyday, and worryingly so, disavowing as they do the violent undertones of patriarchal authority. Similarly, the dismissal of this violence and the mistreatment of those who denounce it by police forces and judicial practices have been amply documented.

This mundane life of violence replicates its continuity between inter-subjective relations and institutional spheres. It is not simply that violence is justified or minimised through more or less routine forms of normalisation or dismissal. What these commonplaces point at, most starkly, is that through its normalisation violence is not even recognised or read as such. But while this form of invisibilisation through normalisation might be easily recognised when it comes to rape culture and certain modes of sexual harassment and abuse, as well as intra-family modes of masculinist patriarchal control, it remains stubbornly undetected when it comes to States' inherece, interventions and forms of withdrawal.

Along these lines, States' regulation of people's reproductive capacities (i.e. curtailment of abortion's rights, hindrances to access to reproductive technologies or adoption rights), and sexual and gender freedoms (i.e. curtailment of rights to gender self-determination, freedom of expression and information on LGBTQI+ content in educational settings, differentiated age of consent subject to sexual object or practice) could also be well read along the lines of an invisible form of normalised violence that clearly hampers the enjoyment of full citizenship. And it is precisely the normalisation of these institutional and social on-going forms of discrimination, deprivation of rights and exclusion that makes it difficult to visibilise them as not only generative of, but themselves yielding gender-based forms of violence as well.

This is particularly relevant for LGBTQI+ collectives, particularly Trans* people, who have been subject to a number of forms of state-sponsored violence, not the least the lack or curtailment of access to gender affirming treatments and/or registry of their gender identity. It is important to remember that despite the strong campaigns against pathologisation, many European States do not yet legally recognise the right to self-determine our gender identity, and still curtail it through their medical apparatuses by subjecting the right of a person to change the name and sex on their identity documents to medical and psychiatric authorisation in addition to years of specified therapies in some cases (TGEU, 2022).

As a matter of fact, it has not been until 2022 that the Law for Real and Effective Equality of Trans Persons to honour the principle of self-determination and towards

depathologisation was finally discussed at the Congress in Spain (Boletín Oficial del Estado, 2022), and approved by the Senate early in 2023.

Significantly, this update did not come about without resounding debates and strong opposition on the part of important Socialist Party feminists and women leaders. Feminists opposed the update of the law in the name of women's rights and, in particular, because it would allegedly hinder their protections against gender-based violence.¹⁰ Over against the feminist opposition to the so-called Trans-Law, the question arises: are not these and other instances of neglect or control of gender norms entrenched forms of gender-based violence as well? And, tellingly so, are not they ones that ultimately make the violence of gender most apparent?

Feminists should be wary of arguments against gender-based violence or violence against women that dismiss or potentially reinforce the violence of gender norms, including but not limited to those that impose and guard the adoption and rooting of a naturalised version of the gender binary. By the same token, feminism cannot afford to contribute to the violence of Eurocentric dynamics of racialisation and migratisation, that is, the ascription of migration (Tudor, 2018) in the name of combating violence against women either. As I pointed out earlier, this is the case of the Istanbul Convention, which singles out certain socially institutionalised practices (which I do not condone), while obliterating others such as the restriction of abortion rights. This is another instance of manifold institutionalised ways in which the violence of gender (as a regulated field of power) may operate; in this case, as co-constituted within and through race and cultural norms.

This proposal might seem maximalist to many. And yet, feminism has nothing to gain by accepting the terms of a conversation imposed by racist or nationalist positions that insist on the alleged incompatible otherness of non-white Europeans and migrants, feeding into Islamophobia and anti-immigration discourses that appear to be the order of the day. Some who fear that the acceptance that Europe might not be exclusively Christian and white, and/or that the inclusion of negatively racialised foreigners will be the debacle of Europe's allegedly inherent white and Christian Western character, may hide behind the defence of European democratic values and women's and LGBTQI+ rights. This kind of discourse enacts forms of femonationalism (Farris,

2017) and homonationalism (Puar, 2007) that have been long denounced by feminist and queer of colour scholars. But in the current European scenario, and certainly in the Spanish one, more often than not these discourses overlap with those of gender denialists who denounce the dictatorship of "gender ideology", glimpsing in it a threat to patriarchy. Ultimately it is a White, Christian oriented, Patriarchal Europe that they long for.

Over against the current political conjuncture, it is important to foreground an intersectional analysis of violence with a trans*-feminist gender perspective. Such approach would entail, as Boyle suggests, “knowing how to identify continuities and differences within the spectrum of actors (perpetrators, victims, survivors), relationships, cultural and institutional contexts, temporalities and meanings, paying attention to who is doing what to whom, in which contexts, to which effects, and to whose overall benefit” (Boyle, 2019: 32).

5. Conclusion

In this article I have foregrounded the relationship between gender and violence as one of the central instances where the question of access to full citizenship and rights is put at stake. To the extent that gendered violence and the violence of gender are not fully addressed within legislative frameworks, the realisation of democratic inclusive citizenship will remain irremediably impoverished. Along these lines, I took the Spanish case and the legislative context of the Istanbul Convention as a case in point to argue for an expanded understanding of gender-based violence. More specifically, I have called attention to the need for a more capacious notion of gender-based violence that refuses heterocentrism and cis-sexism, as much as its articulation with racist and other exclusionary logics such as those enacted by anti-migration, Eurocentric, or nationalist impulses.

In the current European scenario, and countering the conservative turn, I proposed that a capacious and radically democratic feminist examination and articulation of gender-based violence should incorporate a critical approach to the violence of gender, understood as a field of norms. Such an approach would entail attending to the intricacies of sexual violence, gender-based violence, violence against women, but

also gendered violence at the intersection of sexuality, gender and culture, ethnicity or race. In sum, legislation concerned with gender-based violence should be attentive to avoid reproducing the violence to which normative conceptions of gender are attached.

This focus on the violence of gender –dismissed in legislation on sexual and gender-based violence more often than not– is pivotal to the democratisation of citizenship. Not only because the democratic values of citizenship are undermined when the right of some citizens to live a life exempt from violence is not fully honoured, or even imperilled, by the same legislation that is aimed to protect this right. This is also the case to the extent that the violent field of norms that gender is has a bearing on exclusionary logics of citizenship (Sabsay, 2011). It is against this exclusionary logic, nowadays embraced by manifold conservatives and neo-authoritarian forces, that a feminist democratic project should oppose

¹ The first ruling in the case of “La Manada” is a case in point. “La Manada” refers to a group rape case that took place in Navarra (Spain) in July 2016. The case caught nation-wide media attention from the beginning, but it became the object of massive coverage and public condemnation when the Tribunals sanctioned the gang rape as sexual abuse in 2018. Beyond the responsibility of the judges that ruled the case in this first instance, translating the gang rape into sexual abuse, to the extent that the reasoning of said ruling was based in law doctrine, could not this first sentence be understood as a manifestation of institutionalised gender-based violence in the legal system?

² This feminist democratic politics should, in my view, also refuse the expansion of the punitive and prison State – the idea that the fairest, if not the most efficient, response to crime is the hardening of sentences. At stake in this argument is a critique of Carceral feminism, central to Black feminist abolitionist standpoint (see Davis, 2016; Terwiel, 2019; and Wilson Gilmore, 2021).

³ For a consideration of anti-punitivist feminist struggles, aesthetics of cruelty, and the case of Ni una Menos, see my article “The Political Aesthetics of Vulnerability and the Feminist Revolt” (Sabsay, 2020: 179–199).

⁴ Throughout the article I translate Legislative references to “violencia de género” as gender-based violence.

⁵ The original text in Spanish reads: “La violencia de género no es un problema que afecte al ámbito privado. Al contrario, se manifiesta como el símbolo más brutal de la desigualdad existente en nuestra sociedad. Se trata de una violencia que se dirige sobre las mujeres por el hecho mismo de serlo, por ser consideradas, por sus agresores, carentes de los derechos mínimos de libertad, respeto y capacidad de decisión.” (Boletín Oficial del Estado, 2021: n/p. My translation, emphasis mine).

⁶ In this regard, the explanation and precisions offered by the Council of Europe (n/d) on “What is gender-based violence?” are illuminating.

⁷ See the “Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles” (Yogyakarta Principles, 2017: n/p).

⁸ Ley 3/2016 de Protección Integral contra LGTBIfobia y la Discriminación por Razón de Orientación e Identidad Sexual en la Comunidad de Madrid (Boletín Oficial del Estado, 2016: n/p); and

Anteproyecto de Ley para la Igualdad Real y Efectiva de las personas Trans y para la Garantía de los Derechos de las Personas LGTBI (Boletín Oficial del Estado, 2022: n/p).

⁹ Like other far-right groups, Vox excels in executing a rhetorical movement that, mirroring fascist discursive logic, recovers the formulas of the progressive discourses to which it opposes by inverting their terms (Paxton, 1998, 2004: 218-219).

¹⁰ See Fernández Candial (2021) for a summary of the main polemic points of debate.

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