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The Normative Dilemmas of the Feminist Struggles Against (Trans-)Femicide 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 article¹ explores women's and feminists' struggles against femicide 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 femicide. In this section, I briefly reconstruct the genealogy of the concept in the Americas, presenting the legal definition of femicide and violence against women in the existing legal framework in Mexico. Second, I address the challenges and problems that trans femicide 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 femicide 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 femicide) and the related claim for harsher punishments for such crimes. To conclude, I show how the criminalization of femicide 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 femicide consists in confronting the essentialization and feminization of violence and contesting the binary notion of gender identity grounded on heteronormativity and cissexism.

Femicide/Femicide 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 Femicidio, 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 *femicide*.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 movements⁵ 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 acknowledgment that these killings are not homicides of women in general but a form of *sexual*