

A Feminist Law Meets an Androcentric Criminal Justice System: Gender-Based Violence in Spain

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Abstract

This article discusses how practices in the Spanish criminal justice system relate to Organic Law 1/2004 on measures against gender-based violence. We examine the predominant construction of the problem and the secondary victimization¹ of women. Data were collected from two sources: participant observation at police victim support units and courts dealing with violence against women,² and in-depth interviews with abused women and legal and psychosocial professionals. Our analysis has uncovered a lack of institutional resources for detecting psychological violence and negative stereotyping of female victims. We conclude that a gender perspective should be incorporated into criminal justice system practices.

Keywords

gender-based violence, criminal justice system, feminist perspective, secondary victimization, Spain

Introduction

Since the turn of the century, the Spanish government's policies concerning violence against women have come in line with its neighboring European Union (EU) member states. These measures are fourfold. First, legal reforms were enacted to recognize and declare violent actions against women unlawful and punishable under the Criminal Code.³

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Second, information championing women's rights was promoted and disseminated among the public. The third aspect involved research focused on violence against women and the collation of vital statistics. Last, resources and support were made available to the victims of violence and their families. Their safety and well-being was ensured by the opening of battered women's shelters and the provision of support services.

Franco's fascist, right-wing, and authoritarian regime (1936 to 1975) was notably antifeminist. Franco's policies perpetuated the image of Spanish women (in personal and social spaces) as homemakers and mothers. Not surprisingly, this limited their rights and opportunities, hindered their participation in public and social decision-making processes during that time, and stalled any progress until later years.

Under Franco, women's groups were active but had very little power to influence reform. After his death in 1975, these groups began to surface, instigating and organizing acts related to feminist activism in bookstores, bars, and family-planning centers. The first National Women's Liberation Conference was held in Madrid in December 1975 (Gallego, 1983), and within this context emerged the first real feminist movements (Muñoz, 2003; Pujal, 2005).

Legal Reforms After the Franco Government (1975)

In 1981, Spain legalized divorce and gave women the freedom to escape abusive and/or violent relationships for the first time. In line with the new divorce laws, the "forgiveness for the offense" clause (the victim forgives her attacker, who cannot be tried and convicted) was also removed from the Criminal Code (Valiente, 1996a).

The issue of violence against women had not been a priority for activists in the women's movement up to the late 1970s or early 1980s. At that time, certain feminists accidentally discovered the problem of violence against women in certain cases. For instance, feminists from the Association for Separated and Divorced Women (*Asociación de Mujeres Separadas y Divorciadas*), who provided counseling and legal advice to women who wanted to initiate separation and/or divorce proceedings, found that the main objective of many of their clients was to escape situations with high levels of domestic violence (Valiente, 1996b).

In 1982, Spain began intervening directly in cases involving victims of gender-based violence. The women behind this effort were working under the government's newly formed Commission to Investigate the Ill Treatment of Women (*Comisión para la Investigación de los Malos Tratos a las Mujeres*). Subsequently, in 1983, the Institute of Women (*Instituto de la Mujer*)⁴ began opening Women's Rights Information Centers (*Centros de Información de los Derechos de la Mujer*) in key cities across Spain to address the issue of women's rights. Spain had now established its first social service resource to recognize and support women's rights, especially female victims of gender-based violence.

Policies Concerning Violence Against Women From 1982 to 1995

Among the policies implemented in Spain to address violence against women from 1982 to 1995, Article 425 of the Criminal Code outlawed domestic violence in 1989.

Regarding these policies, Valiente's (1996b) feminist perspective highlights three areas of special interest. First, initial contacts in incidents of violence against women demonstrated police attitudes such as indifference or inaction toward the crime. Second, the healthcare system provided an unprecedented opportunity to identify victims, keep track of them throughout their lives, and refer them to the appropriate services. Third, in regard to the legal system, judges and prosecutors needed to be more aware of and empathetic toward the sensitive situation these women found themselves in.

Gender-Based Violence and Organic Law 1/2004 (LO 1/2004)

Organic Law 1/2004 defined gender-based violence as violence by men against women⁵ in the context of a relationship, but not against any other member of the family. Prior to this, in 2003, the law regulating Protection Orders⁶ for Victims of Domestic Violence defined a perpetrator of domestic violence as anyone who habitually exercises physical or psychological violence against their spouse or against the person they are or were associated with through an equivalent sentimental relationship; or violence against descendants, ascendants, or siblings; or against minors or incapable persons cohabiting with them or under their custody or tutelage; or violence against persons who due to their particular vulnerability are subject to custody or care in psychosocial care centers (Bodelón, 2013).

Legal regulations granting special protection to women who have been victims (of gender-based violence) were introduced with the passage of Organic Law 1/2004. One of the main innovations of this law was the creation of specialized courts to deal with violence against women (*juzgados de violencia contra la mujer*) and of victim support units within police departments. Victims of violence could now be granted court-imposed protection measures such as restraining orders (to keep perpetrators at a minimum distance) and avail themselves of procedures to grant them custody of their children. According to Lorenzo (2005), Organic Law 1/2004 presumed that when a man abuses, threatens, coerces, or harms his partner or ex-partner, he does so from a position of assumed power or with a view to maintaining dominance. The law's intent was to provide an instrument for equity, aimed at eliminating the inequality that typically characterizes women's relations with men (Lorenzo, 2005). Three important, additional innovations were provided: financial assistance, psychosocial recovery services (i.e., legal counseling, psychological therapy, job searches, etc.), and violence prevention programs for women.

Another measure stipulated that the aggressor could also be imprisoned for 6 months to 1 year, or sentenced to 31 to 80 days of community service. In conjunction with the above law, Article 153 of the Criminal Code increased penalties for gender-based violence taking place in front of a child, in the victim's house, or when the perpetrator breaches a court-imposed restraining order (Larrauri, 2007). Penalizing the aggressor has caused controversy in some sectors of Spanish society, where it is considered positive discrimination for women and negative discrimination against men (see Constitutional Court ruling 59/2008 in Roig, 2012). According to Lorenzo

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Recent Theories on Organic Law 1/2004

Recent theories on Organic Law 1/2004 include a feminist perspective on queer theory.⁷ This law was considered feminist, as feminist organizations were its main proponents and designed its guiding principles. However, some contemporary criticisms by queer theory feminists point out that although the law considers the feminist political struggle, it nonetheless creates fictitious categories in which women and men are labeled as a stereotyped homogeneous set. This stereotyped category responds to a hegemonic heterosexual idea that does not consider alternative sex/gender positions, for example, lesbian, gay, transsexual, bisexual, intersexual (LGTBI) or other sources of structural inequality such as ethnicity, social class, and age (Coll-Planas, García-Romeral, Moreno & Navarro-Varas, 2008; Platero, 2012). As a result, gender-based violence that may occur in homosexual (or LGTBI) couples was ignored by this law, meaning that structural violence only exists because people have been divided into two sexual categories: women and men.

Masculine Sexual Power and Heterosexism as Dominant Practices in the Criminal Justice System

Although Organic Law 1/2004 may have been written from a gender perspective, it was implemented within a system of androcentric institutions resulting from the gender bias infecting legal practice and laws in Spain, as highlighted by several feminist legal scholars (Albertín, 2009; Bodelón, 2013; Cubells, Casalmiglia, & Albertín, 2010; Larrauri, 2007). Indeed, Carol Smart (2000) describes the general relationship between gender and law as a source of inequality between men and women. She argues that law is sexist and masculine, and, therefore, gendered. Indeed, the statement "law is sexist" would be justified given the unequal legal treatment received by men and women. The statement "law is masculine," however, is based on the idea that law is objective and neutral, which are masculine values when taken as universal ideas. The statement "law is gendered" involves understanding law as a producer of fixed ideas, rather than analyzing the application of law to subjects already constructed on the basis of gender.

Smart (2000) describes how the legal process translates everyday experiences into legal relevancies, while still excluding a great deal that might be relevant to the parties involved. Penal law—with its values of impartiality and objectivity and its inquisitive nature—is essentially masculine and constitutes what Gilligan (1982) called an ethics of justice, as opposed to an ethics of care. The latter seeks equitable interventions designed

to suit each individual by taking into account the particular context of each case, as opposed to a single and universal theoretical framework. That is, the ethics of care awards importance to the contextual details of situations to safeguard and promote the specific interests of those involved, especially the most vulnerable. In their interventions, neither legal authority—such as police officers, lawyers, and judges—nor legal institutions take into account the symbolic universe and gendered relationships prevalent in society. As Raewyn Connell (2009, p. 105) notes,

people engaging in everyday conduct—across a spectrum from conversation and housework to interaction styles and economic behavior—are held accountable in terms of their presumed “sex category,” and the conduct produced in the light of this accountability is not a product of gender; it is gender itself.

That is, the legal agents of the criminal justice system are involved in *doing gender*⁸ as an ongoing activity embedded in their everyday interactions.

In this regard, Smart (2000) highlighted the importance of maintaining a critical perspective on practices and discourses within the criminal justice system, without rejecting the system as a place of struggle where change can occur. Similarly, Wilcox (2006) pointed out that although state institutions and agencies reproduce sexist discourses, they remain potential spheres of action for social change.

Effects of Androcentric Discourse in the Criminal Justice System on the Secondary Victimization of Women

As we have seen, androcentric discourse is present in legal practices in Spain and influences the understanding of gender-based violence. This discourse is also present in what is known as revictimization or secondary victimization, where women once again feel victimized by questions about their testimony and/or attributions of responsibility for the violence they have suffered.

Walklate (2007) pointed out that a victimizing relationship or victimization has structural properties that cannot be reduced to the individual victims and perpetrators. Understanding abuse only by identifying certain types of violence or by checking the validity of testimonies is an oversimplification that disassociates abuse from its political meaning. Abuse is embedded in the sociohistorical subordination of women (Camps & Schmal, 2007; Mestre, 2006).

Other scholars (including Jasinski, 2001; Osborne, 2001; Pujal, 2005; Renzetti, Edleson, & Kennedy, 2001) have pointed out various ways in which gender-based violence in intimate relationships gradually takes root in different social spheres and in day-to-day life. These include such factors as the minimization and rejection of acts of violence against women by considering them normal or natural, a lack of credibility awarded to the victim's testimony, diversion of the aggressors' responsibility, forms of denial maintained within the community to avoid conflict, and the failure to consider the actual context in which people become victims of violence.

These effects are replicated in the criminal justice system, producing what has been called *secondary victimization*. For example, some international and national studies (Gill, 2005; Larrauri, 2007) have pointed out the legal system's failure to listen to women, its lack of consideration for them as victims, and its failure to accept that women can play an active part in the process of reaching a decision in court cases. Unsurprisingly, many women feel they have been treated unsympathetically by the criminal justice system (Walklate, 2007). Some have called attention to the prejudiced attitudes of certain professionals (Mahoney, Williams, & West, 2001; Russell & Melillo, 2006). Notions such as "battered woman syndrome" (Walker, 1984) have been used in the criminal justice system in ways that disadvantage some women. For example, Russell and Melillo (2006) claim that women not diagnosed with this putative condition are seen as atypical, less credible, and less reliable. Being categorized as "a female victim" has several effects, including homogenization of the experience, and/or pathologization, victimization, and marginalization, and perpetuating male dominance in relationships (Lavis, Horrocks, & Kelly, 2005).

Studies conducted by Medina (2001) and Antón (2013) identify three reasons why women/victims do not use the criminal justice system: tolerance of violence; the belief in the private and subordinate role of women; and low confidence in the justice system, including police and judges. This lack of confidence manifests itself as fear of any possible consequences of using the system: of their own or their partner's expulsion from the country or of losing their children. In addition, they fear that the community accuses them of breaking up the family.

In this article, we analyze, in the context of Spanish law, whether dominant practices in the criminal justice system are sexist or have a gender perspective. Specifically, we aim to explore the constructs and practices of the criminal justice system in Spain and some of their negative effects, especially for women. Based on the changes brought about by Organic Law 1/2004, we examine the following: How dominant practices in the criminal justice system construct gender-based violence; how some practices of secondary victimization affect abused women; and how everyday discourse and actions within the system produce and/or reproduce institutional power or dominance. We adopt a gender perspective that focuses on the inequalities women suffer solely because they are women.

Drawing on this gender perspective, we analyze the practices (actions and narratives) of legal agents in the criminal justice system to understand how the system constructs gender-based violence in heterosexual couples, detects psychological violence, and identifies women as victims (Boonzaier, 2008; Enander, 2011; Hydén, 2005; Michalski, 2004). To examine the narratives and experiences of abused women during the judicial process and the attributions and discourses that legal agents use to explain gender-based violence, we also conducted in-depth interviews with these actors. Thus, based on our observations of courtroom procedures and the accounts of victims, lawyers, and police officers, we have identified different practices, concepts, and discourses in the criminal justice system that construct the problem, the perpetrators, the victims, and some of their negative effects.⁹ They are as follows: difficulties in distinguishing gender-based violence from conflicts within the couple relationship;

the invisibility of psychological abuse; gender-based violence defined as a product rather than a process and the implications of this definition; interpretations of gender-based violence as influenced by a cultural bias about normal couple relationships; gender-based violence as psychologized or medicalized, contributing to stereotypes of victims and perpetrators; and the exclusion of emotions because they reduce objectivity and are thought to create difficulty in diagnosing gender-based violence. All these aspects will be developed in further detail in the following sections.

Method

The data were collected through participant observations and in-depth interviews with key informants (professionals in the judicial system and women who have been victims of gender-based violence) over a 14-month period, from January 2011 to March 2012, in Barcelona and Girona, Catalonia (Spain). Both cities have considerable socioeconomic and cultural diversity and large immigrant populations.¹⁰

The criminal justice system's particularly strict policies regarding confidentiality, and our lack of any prior contact with it, made gaining access difficult. We had to obtain a judge's authorization to enter courtrooms and to request official passes from the police to gain access to the victim support units. We also asked the women involved for their permission¹¹ to be present as in situ observers when they declared or testified, guaranteeing anonymity and confidentiality of information obtained.

As recommended by Hammersley and Atkinson (1983), we used field diaries to keep written records of the practices and interactions of actors (abused women and legal agents) involved in specific contexts (two courts dealing with violence against women, one Provincial High Court,¹² and two specialized police stations). Two researchers¹³ conducted 45 observations, as shown in Table 1. Each observation lasted between 4 and 5 hr, and the interactions took place in the following contexts:

- a. between the abused women and police officers when the former were filing their complaint;
- b. in the courts, when the women declared before the judge, prosecutor, and lawyers;
- c. in the police station and courthouse waiting rooms, where the researchers engaged in informal conversation with the women, accompanying family members, prosecutors, and lawyers. Sometimes the researchers also engaged in informal conversation with the accused men and those accompanying them.

The key informants we interviewed included abused women, judges, lawyers, and police officers (details about interview participants are provided in Table 2). We interviewed 13 legal agents: four female judges; three female lawyers with experience in cases of intimate partner violence; and six members of specialized police units (three coordinators, two women and one man, and three women police officers from victim support units). In addition, we interviewed 12 abused women: six women with a long history of violence (more than 5 years), and six women with a short history (less than

Table 1. Location and Number of the Observations Conducted.

Location	Number of observations
Criminal examining magistrates' courts (or specialized magistrates' courts) of violence against women (one in Barcelona and one in Girona)	15
One Provincial High Court (Girona)	4
Lawyers' meetings with female victims (in two courts)	10
Victim support units in two specialized police stations (one in Barcelona and one in Girona)	16
Total Number of Observations	45

Table 2. Individual Interviews With Key Informants.

Interviewees	Number of interviews
Women with a long history of abuse (>5 years)	6
Women with shorter histories of abuse (<5 years)	6
Lawyers specializing in domestic violence	3
Judges examining cases of domestic violence	4
Coordinators of specialized police forces in victim support units	3
Police officers from victim support units	3
Total Number of Interviews	25

5 years). We selected and grouped the women for this research according to the length of their abuse, as recommended by Echeburua, Amor, and De Corral (2002), who point out that more than 5 years of violence in a couple's relationship can be considered chronic violence.

The interviews were carried out in the police stations where the violence was reported and in the courts. We had to request permission from the police commissioner (*Director General de la Policía*) to go to the police stations. Once we had obtained this, the first 2 days were problematic because the police did not notify the researchers when a woman came to file a report. To remedy this lack of communication, the researchers talked to the police officers on duty to establish some rapport and trust, which led to them being granted access when women came in to report abuse.¹⁴ The interviews were held in a private room at the courthouse, the police station, or the victim support unit. These in-depth interviews improved our understanding of the different issues emerging during the participant observations. We used the contacts made during the observations to select the interviewees. In addition, we also asked for permission from Women's Rights Information Centers to interview women who used their services. The staff explained the objectives of our research to the women, and we then met with them another day.

Interviews lasted between 1 and 1.5 hr and were audio-recorded and transcribed for analysis. In the interviews with legal agents, we asked for their conceptions and beliefs concerning violence against women (possible causes, profiles of victims, and perpetrators, etc.), detailed descriptions of their work, their evaluation of the interventions, the coordination of their work with other services, and their views on victims and perpetrators. We asked the women about their history of violence, their experience with the legal system and other services, their evaluations of the service they had received, and their views on the resources they might need to recover from the violence. Six of the women had finished high school, and six had a primary school education only. Two women were domestic cleaners, two were housewives, four worked in a bar or shop, and four were professionals (one pharmaceutical industry manager, a fitness trainer, a financial assessor, and a teacher).

Analysis of the qualitative data involved a number of different stages. First, two members of the research team, authors of this article, read a small number of transcripts to identify dominant themes across all interviews. Second, a set of key categories and subcategories were identified, and a coding framework established. This phase of the analysis was lengthy, flexible, and evolving; that is, it permitted the inclusion of new categories and the revision of existing ones. Third, all interviews were coded, not only to maintain data consistency and reliability but also to clarify questions of interpretation raised by discussion of these data.

Findings and Discussion

Our analysis is focused on the Spanish criminal justice system and the dominant practices that emerged from participant observation and interviews during our fieldwork. We were especially interested in identifying concepts and practices that construct perpetrators and victims, as well as the effects of the system on the secondary victimization of women. Moreover, we identified different practices of secondary victimization: (a) difficulties distinguishing gender-based violence from conflicts in the couple relationship, (b) psychological violence made invisible, (c) violence defined as a product rather than a process, (d) a cultural bias regarding how couple relationships should be, (e) gender-based violence viewed as a psychological and/or medical problem, and (f) emotions being excluded rather than recovered for analysis and intervention.

Difficulties Distinguishing Gender-Based Violence From Conflicts in Couple Relationships

Some of the reported cases of violence were perceived and categorized by the judicial authorities as unresolved relationship conflicts rather than gender-based violence. In one case, the man declared that the woman had attacked him verbally and physically; in another, the woman had shown anger toward her partner. In such situations, the woman's credibility was often questioned. Moreover, legal agents often believed that they had been called upon to act in ways they did not consider part of

their role, such as mediators. The following comment from a female judge illustrates such a situation:

These are cases of social problems or problems of couple relationships which end up in the courts, especially cases of messy separations or fights that they've been having for years and years but today they've decided to report—especially women. It should be stressed that in all of these cases, previous mediation would be necessary, as they are not problems of violence against women (as we understand domestic violence). (Court Observation number 1, p. 1)

Two issues may contribute to these difficulties in differentiating gender-based violence from mere couple conflict: police or legal agents' lack of experience and/or sensitivity and their disbelief in the women's complaints.

Lack of experience and/or sensitivity. Police and legal agents frequently demonstrate a lack of experience with and/or sensitivity toward cases of gender-based violence. As Smart (2000) and other authors have pointed out, androcentric and heteropatriarchal perspectives and practices are dominant in many legal systems. Albertín (2009) argues that some agents of the criminal justice system have little understanding of the inequalities between men and women. Gender-based violence is misconstrued as an argument between equals, as if the parties occupied the same position of power, and as if the historical disadvantage of women were irrelevant. In this respect, a female lawyer commented,

We have found that the public defender doesn't have a gender-based perspective. Besides this, in court, the sight of a man in handcuffs produces more pity for him than for a woman who remains calm during her statement. In fact, the judges who specialize in violent cases often ask me to explain why a woman has not separated or left him. Perhaps women with few economic resources, who have children, they're dependent, aren't they? Some legal agents have no idea of the cycle of violence, of the honeymoon state, of gender perspective about violence. I'm no expert either, but they just don't have any guidance on violence issues.

Women's complaints are not believed. Some of the interviewed members of the legal profession (e.g., judges, police) told us that women (sometimes on the advice of lawyers) lodged false complaints of violence to obtain an advantage during separation proceedings (e.g., the right to child custody, to remain in the marital home, or to receive child-support payments). Such women were labeled manipulative. Not only did they lose their victim status, but they sometimes came to be seen as having incited or motivated violence. According to one female judge,

... What we often find is not what I would call false reports of women, but rather reports that seek to obtain a financial benefit for the woman, because it is a quick way to solve the problem of the child support and the right to live in the family home . . .

The difficulty in differentiating a conflict between equals from gender-based violence is demonstrated by the protocol used by members of the Spanish criminal justice

system. Only the facts—specific acts—are listed in the complaints, leaving the process that led to the assault invisible. That is, the everyday life of the couple may contain multiple manifestations of everyday sexism or a dependent relationship that is concealed behind the particular facts or specific acts listed in the protocol.

Psychological Violence Made Invisible

In most of the accounts given by the abused women in interviews, they described experiences of “invisible violence” (Giberti & Fernández, 1989). These included instances of sexual abuse and other practices such as insults, threats, continuous scorn, manipulation, and harassment. Bonino (2005) defines this as everyday sexism. A female judge spoke to us about this type of violence:

I think domestic violence exists from the moment there is a lack of respect for a person; neither physical violence nor the usual psychological violence is necessary.

A woman victim articulated her experience of psychological abuse as follows:

I was always frightened of him [her husband], inside the house but also in public places . . . And I know this because my husband always carries a jackknife in his pocket. He used to carry it always, and I don't think he has got rid of it now. He always has one at home . . . in the past he used to have a collection. Every time I saw them or I saw him with the knife in his hand, I started trembling, and he would say to me: “No . . . I'm not going to do anything to you.”

Many accounts given by the women we interviewed revealed situations of habitual and constant unease with their partner, even when the partner's actions could not be considered abusive or violent according to the legal statutes. These continuous acts of violence (invisible or psychological) generate an unease that can lead to psychological problems for women who suffer them. The following extract, in which a woman links her emotional problems to her relationship with her partner, offers one example:

Public prosecutor: Before being with him, were you already in treatment?

Victim: Before? No. Since I have been with him, I have been treated for depression and for bulimia.

Another woman repeatedly pointed out that her partner was the source of her unease:

I want him to leave me alone. I want him to live his life and I will live mine. I don't want to see him. I don't want him to get close to me or my children. I want him to leave me alone.

Although some women described such psychological violence, it was effectively invisible in the courtroom because, as required by the legal-criminal system, there was a lack of empirical and demonstrable evidence or facts to provide clear proof

of violence. Moreover, historically, such acts of psychological violence have been naturalized or normalized. That is, they form part of what is considered normal behavior in couples, constituting a way of being that is natural or biological in men and women (Renzetti et al., 2001). Wasco et al. (2004) argue that some evaluation methods used by the judicial system do not adequately detect psychological violence or the risk of violence. The protocol used in the legal system to collect evidence from victims selects information likely to be upheld as fact and, thus, legally relevant (Taruffo, 2007).

We learned of two instances (involving a female lawyer and a male police officer, respectively) in which victims had been allowed to construct a narrative that revealed psychological abuse and risk. The lawyer gathered female clients' testimonies in the form of a life story. In this narrative format, it was easier to identify the sustained psychological abuse her clients had experienced. The lawyer made use of these accounts to sustain and defend the claim of abuse:

Lawyer: I make women write down what they've been through before going to the police station, from what they first remember, from their first memory. They are surprised at what they write. And from this story we single out the most relevant facts.

Interviewer: Do they write this down at home?

Lawyer: There or here, they sit down and start writing. And they put their thoughts in order by doing that. I have an account of the facts for when we go to the police station. If they forget something, I can remind them about it.

The main values of the criminal justice system are objectivity, impartiality, and universality, which are based on empirical knowledge. Psychological violence is very difficult to demonstrate, and is, therefore, minimized and poorly documented. It is important to prepare women's declarations so that the process of continued violence does not remain invisible without objective facts (that can be demonstrated).

Violence Defined as a Product Rather Than a Process

In our observations, legal agents in present-day Spain still focus on discrete events, without attending to the context or process of the violence. Such fragmentary information produces a narrow perspective, limited to facts that can be demonstrated or evidenced, as a female judge points out:

We work with evidence, with proven things: medical reports, accurate information . . . to apply the law.

This judge's comment indicates that she limits herself to objective facts that can be empirically demonstrated within the justice system. These facts must be misdemeanors (e.g., insults, slander), threats (e.g., coercion), or injuries, according to Organic Law 1/2004. As we mentioned above, although this law also recognizes psychological

violence as a manifestation of gender-based violence, it is very difficult for judges to consider this as proof or evidence in a trial or legal process. Implementation of Organic Law 1/2004 should require more specific and detailed knowledge of the facts, and more information regarding the prolonged situation of abuse (Gilligan, 1982). According to this author, the values of impartiality and objectivity and the interrogatory nature of penal law are all essentially masculine and constitute an ethics of legality, as opposed to an ethics of care, more focused in the sociohistorical conditions of the people. These features ensure that a person is considered in subjective terms, as a subject of justice and not only as an object of it. In this regard, it is important to prepare women's declarations so that the process of continued violence does not remain invisible before objective facts (that can be demonstrated).

Understanding of this phenomenon is, therefore, hindered, and the situation of violence is reduced to a stimulus-response dynamic in which the process and sociohistorical nature of the phenomenon is ignored. If it were possible to see and understand intimate relationships between genders through social and historical conditions of inequality, it would help legal agents to understand how identities are constructed, and which domination effects actually exist. In doing so, legal agents would be able to frame their judicial decisions more properly.

According to Cavanagh (2003), women who experience violence for the first time tend to be shocked and confused; they struggle to make sense of an act that is incongruous with the expectations and hopes they had for their relationship. Emotional responses such as fear, indecision, disbelief, and confusion can be bewildering to others and misinterpreted as inconsistencies or contradictions in women's behavior, resulting in a loss of credibility and reliability. At the same time, legal professionals often do not understand why victims return to their partners (Bennet, Goodman & Dutton, 1999; Bodelón, 2013; Cubells, Albertín, & Casalmiglia, 2010). The following example from our courtroom observations shows how an abuse victim's vacillating behavior discredited her in the eyes of the legal system. The judge continually questioned the woman's actions and decisions, producing a recriminatory effect. The progression of events, as recounted by the woman, led the judge to discredit her.

Judge: Why didn't you report it the first time, the hitting?

Victim: I hoped the relationship would get better.

J: Why did you request the protection order?

V: My husband told me he would kill me and keep the child.

J: Is it true that you requested the protection order long after he had supposedly hit you?

V: Yes.

J: . . . that on the previous occasion, when the police officers were going to enforce the protection order and accompany your husband to your home to collect his personal

belongings and then leave, you said no, that they shouldn't enforce it and you withdrew the charges?

V: Yes.

A Cultural Bias Regarding How Couple Relationships Should Be

Legal agents' understanding and interpretation of interpersonal relationships enter into the process of assessing cases of gender-based violence. In our observations, we identified both standardized and normalized views of love and couple relationships and stereotypes and prejudices regarding people from other cultures being used to justify and stigmatize their violent behavior. These issues are illustrated in the following sections.

The standard of normality for couple relationships. Many of the criminal justice system agents we interviewed held to a particular standard of normality for couple relationships, which served as a reference when they passed judgment on a violent relationship. Their expectations regarding couple interactions tell them whether the relationship is one of love, or another type of relationship not based on love. If a woman does not assume her expected roles (within the family, within the relationship), legal agents tend not to consider violence in an intimate relationship as gender-based violence.

For example, one prosecutor told us he could not understand couple relationships that were not "similar to his own," thereby assuming his own relationship to be the only parameter for "normal relationships" and explaining his low opinion of those who did not fit within the parameters of the relationship he defined as normal:

Observation made by one researcher in court: He (prosecutor) tells me about a case in which he defends a husband who has been reported several times by his wife for small acts: a slap, threats . . . The prosecutor said, "With this, the woman manages to demonstrate the normal status of the [psychological] abuse, but I am confused. I don't understand how they can be back together. After something like this, I can't imagine my own wife calling me again to have dinner one evening, as if nothing had happened. I don't understand . . . and even less so her giving me a watch as a present . . . like with this couple. I really can't understand it!" Observer's comment: I think it's hard for him to put himself in the place of others, to understand relationships . . . although he doesn't deny there is abuse. (Court Observation number 11, p. 41)

Ideal of romantic love. In some of the situations we observed, legal agents included the concept of romantic love in case assessments. Romantic love is associated with unconditional devotion, passion, faithfulness, and lack of emotional self-control (Wood, 2001). In our study, it was occasionally used by agents in the criminal justice system as an explanatory framework for men's aggression against women.

The public prosecutor points out differences in interpretation of romantic love and how it can be applied in informal legal discussions. For example, in one case a prosecutor stated,

"It would be the same for me. In a couple there is usually one who dominates and another who is in love and cannot leave that relationship . . . And of course, the husband, who probably had dominated the situation or was in love, cannot approach her for 5 years . . .!"

Observer's comment: As if the public prosecutor were implying how difficult it is for this husband to comply with the restraining order imposed on him. (Court observation number 7, p. 28)

Being in love justifies the control that the man exercises over the woman, or the fact that the woman stays together with the man who attacks her. The concept of romantic love is used to justify violence or even the negative and costly effects (physical violence, domestic arrangements for children, monetary obligations, etc.) it can have on the abuser, as in the previous example regarding the restraining order.

Minimizing violence through cultural prejudice. Certain legal and criminal justice personnel displayed cultural biases concerning violence in couple relationships. That is, they believe that conflictive relationships are a normal situation for couples from certain cultural backgrounds. In our study, this was especially the case with these agents' interactions with immigrants. Some of the comments made by legal agents when referring to violence in the couple relationship minimized that violence. ("It's become normal behavior." "They don't attach any importance to it." "Relationships have always been like this." "[It's a] cultural matter in the couple relationship.") The following is an excerpt from an interview with a police officer:

For instance, individuals from the Latin American community are generally used to fighting because it's their way of life in their country of origin, because it forms part of their culture. They are people who drink too much. They usually meet in groups and get emotional, and become aggressive. These kinds of victims usually report the case although they finally end up living with the aggressor, because the abuse is occasional. This type of violence is more accepted and forms part of the cultural way of understanding the relationship, the couple.

Construing partner violence as simply a "way of life" for members of certain cultural groups is not only based on invidious stereotypes, it is also likely to lead professional personnel to discount the negative impact of such violence or to be more pessimistic and, thus, more laissez-faire about intervening in it. As Antón (2013, p. 43) points out, "it is necessary to analyze how patriarchy operates differently in different cultures because, otherwise, if the culture is identified with patriarchy there is the risk of abuse being attributed to culture."

Gender-Based Violence Viewed as a Psychological and/or Medical Problem

In our interviews and participant observations, we identified some individual attributions that explain the gender-based violence that had taken place. Personal problems

and psychological disorders, consumption of psychoactive substances, the stereotypical view of the battered woman, and stereotypes regarding women in general are used to reduce the credibility of the women's testimony or to minimize the responsibility of the perpetrators. Such explanations and attributions contribute to gender-based violence being understood as a one-off issue or an individual couple's problem, rather than a social and structural one. Some examples are provided in the following sections.

Personality problems. Comments made by both legal agents and abused women sometimes attributed psychological violence to the personal problems or personality problems of either the victim or the aggressor. In the words of one female prosecutor,

Sometimes there are people, for example, women, who aren't well psychologically, with relationship problems, loneliness . . . and they redirect their problem in this way, apparently saying that the problem is someone else who is hurting them . . . When women come with psychological treatment and abuse problems, it's necessary to look and listen closely, given that they have their judgment conditioned by depression or psychological problems.

The credibility of declarations made by some women who report abuse and have been previously diagnosed with a psychological disorder is questioned because their psychological problem is seen as the reason for their experience of violence or at least for accentuating it. In these cases, the disorder is not considered a consequence of the abuse. In contrast, in the case of male perpetrators, a psychological disorder can be used to reduce criminal responsibility, as shown in the following paragraph.

Some abused women attributed their partners' violence to a psychological disorder. In this case, women's perceptions of abuse function to justify their partner's actions. One woman told us the following:

My ex-husband was in medical treatment because he had had a schizophrenic breakdown. When he didn't take his medicine, he was more violent with me. Every day he came home, there were beatings, he broke things. . . .

Also, when the man takes psychoactive substances, some women or legal agents use this to justify his violence toward his partner, as shown in the following section.

Psychoactive substance abuse. Perpetrators' abuse of psychoactive substances (e.g., alcohol and cocaine) is also a common reason given by legal agents and victims when judging men's violence toward their female partners. Some of the legal agents we interviewed pointed to a correlation between violence and the use of toxic substances. Identifying substance abuse as a factor that triggers violent behavior tends to exonerate the perpetrator. At the same time, attributing gender-based violence to intoxication depoliticizes this gender-based violence by rendering it a matter of individual pathology.

In our research, we mainly found cases associated with substance use, violence, and, as we pointed out in the previous section, ethnic stereotypes, as shown in the following extract:

A female judge said, “. . . for example, this is the case of men who come from Latin-American cultures meeting at the bar and coming home drunk. They then argue with their wife and end up acting aggressively towards her.”

Battered woman stereotypes. We found that the way the victim presents herself, the impression she makes, and how she displays her emotions all directly affected the assessment of her case as credible or not. Jenkins and Davidson (2006) report that legal agents often expect women to be ultrafeminine; they expect passive, helpless victims characterized by emotional fragility. In the following extract, a judge declares that he does not believe the victim based on her physical appearance and emotional reactions, which do not correspond to his stereotype of an abused woman:

[The woman's] interrogation session, both by the defense and the prosecution, was conducted in complete tranquility. She was calm, serene, and answered without any gesticulation or exaggerated behavior. This does not fit with the fear, the mistrust, and the reduced capacity for initiative unfortunately present in abused woman syndrome, and which, unfortunately, I have known throughout my time as an examining magistrate. Also telling was her physical appearance during the three trials she attended. L.D. did not just come dressed up; she came each day in a different dress, very fashionable, wearing rings, bracelets, nice earrings, and big glasses. All these demonstrate L.D.'s ability to envision the outside world, understand it, and adapt to it, which certainly does not coincide with the image of someone who has been through 6 months of abuse.

In another type of case, McDermott and Garofalo (2004) point out that when a woman appears passive, confused, and depressed, some legal agents may doubt her capacity to act. In the following extract, a female police officer describes the condition she identifies in an abused woman:

. . . If they are victims of psychological abuse, they usually present voided personalities, very indecisive. . . . Maybe she is sure when she makes a complaint, but she's unclear about what her partner has done wrong against her. She doesn't know how to differentiate . . . as she really doesn't know what the partner has done wrong.

In these cases, the symbolic and material resources that women use to deal with violence are not explored.

These stereotypes go beyond the criminal justice system. They perceive women as manipulators or instigators who provoke men's behavior, not as women dependent on a bond (Dawson, 2006). This social construct has consequences in legal contexts, where women are seen as manipulative and cheating, turning men into objects of revenge and lying to gain benefit:

Sometimes the man deserves pity because he comes to the police station and you see that it is the woman who is bad. Very often they are the ones who provoke and pester until . . . and they sometimes also lie to harm him . . . such as when they call him to collect his clothes,

and when he picks them up, they call us to arrest him because they have a restraining order.
(Police station observation, 2)

Another stereotype concerns the country or place of origin, age, socioeconomic level, and culture attributed to the woman pressing charges. These social categories influence the credibility of the woman's testimony and undermine her overall credibility, as noted in the following comment made by a judge with regard to South American victims of violence:

My experience with South American women is that they are so complicated . . . Sometimes they lie . . . one day they say one story, another day they change it . . . (Court observation number 6, p. 24)

Emotions Being Excluded Rather Than Recovered for Analysis and Intervention

The emotions shown by women seem to be crucial in assessing the credibility of their testimony. Legal agents rely on the apparent emotions that victims display to draw inferences regarding their testimony. The following extract, taken from an interview with a female judge, demonstrates how crying is associated with confusion and spontaneity, and how emotions are evaluated to understand a woman's situation, all of which appear to form part of reliable testimony:

. . . There is the type that begins to cry in despair, and I think that a lot of the time, they're not able to identify dates or times, or specific places because they continuously suffer abuse, and what's more, they go back and forth in time when they tell their stories and they're not able to say if they were punched in the stomach, or in the shoulder, because they no longer remember what happened that day. I believe they're the ones who make the most plausible statements . . .

Expressing emotions was of fundamental importance at other times and places because they guided the decisions made by legal agents. In the following example, the researcher asked the police officer taking victims' statements in the victim support unit what criteria and indicators were used to assess credibility in a case of abuse. The police officer replied as follows:

What the woman says, her nonverbal communication, her sensitivity, her capacity to express her emotions when faced with what has happened . . . [pause] everything as a whole.

In field observations, we noticed that abused women in police stations expressed more emotions and communicated more personal aspects than in the courtroom. Emotions are neutralized and ignored in court, because the legal process seeks objectivity and neutrality, and emotions are considered biased (as also shown in studies by Konradi, 1997; and Martin & Powell, 1995).

A female judge said, "We are here to judge cases, to check the proof and testimonies and try to distinguish whether there is violence or not. We can't get carried away by emotions or empathy with the potential victim."

Many times in the criminal proceedings we witnessed, emotions were neutralized or ignored because of their potential to alter the objectivity of the trial. According to Gilligan (1982), this is the result of an androcentric ideal of justice.

One of the consequences of this is that women view the process as intimidating, impersonal, and humiliating. Gillis (2006) reported the same idea:

Abused woman: I felt misunderstood by my own lawyer, by the prosecutor . . . It seemed as if it was me who had been the abuser. They spoke to me in a tone and a way as if they didn't believe me . . . Everything was very impersonal and cold . . .

The legal approach to gender-based violence should incorporate emotions, not because they reduce objectivity, but as elements that inform about the case and the context in which violence takes place. Emotions become factors that facilitate the detection of gender-based violence in cases of invisible violence (Cavanagh, 2003; Giberti & Fernández, 1989).

We also have observed that agents' emotions should be taken into account. Some legal agents experience ambiguous feelings about the emotions provoked by their work with victims and perpetrators (Erez & Rogers, 1999). On one hand, they feel that they must protect the woman victim; on the other, they experience frustration or feel that they have failed because they do not understand how the woman can return to her partner. There is a need to understand how to guide emotions and seek the support of other professionals to work through these emotions.

Female judge: . . . You have to try to learn to dissociate yourself from the outcome, because I get angry when a woman comes and doesn't want to testify after all the investigation¹⁵ that I have done! For this reason, in my profession or any other, you have to dissociate yourself from the outcome. Because I don't have the last say, do I?

Conclusion

In this article, we have shown the undesirable and negative consequences for women of the implementation of a law with a gender perspective (LO 1/2004) in a predominantly patriarchal legal system. The negative effects of the law's implementation are reflected in the secondary victimization and criminalization of women in various ways. We suggest that gender-based violence is often presented as if it were a personal problem between the perpetrator and the victim, or a psychological problem of one or the other. However, this psychologization or medicalization of gender-based violence contributes to strengthening existing stereotypes about victims and perpetrators.

From the perspective of the legal authorities, violence is often interpreted as an act that occurs as a result of being in a relationship; it is not viewed as being related to the context of unequal conditions for women and men (Casado & Agustín, 2006). In this

way, legal agents interpret violence as a conflict that occurs within the couple, a result of being in a relationship, and not because the victim is a woman.

This article suggests that some limitations exist in the Spanish criminal justice system, although they may also be common to legal systems in other countries. Despite the fact that specific legislation on gender-based violence differs significantly across the legal systems of the EU member states, an effort to reform this legislation to adapt it to the provisions of Directive 99/2011/EU is currently underway (Freixes & Román, 2014). In this regard, it would be desirable for all countries to assume and include this understanding of gender-based violence in the definition of their prevention, care, and treatment policies and in their legal approach to it.

We believe that introducing this feminist or gender-based perspective is a necessary step toward a more sensitive criminal justice system. It provides an understanding of invisible violence and develops methodologies for action research that increase the likelihood of successful cooperation between different professionals (legal, psychosocial, health, education; Williams, 2004). In addition, gender-based violence goes beyond specific signs of violence or couple conflicts; it is related to social structure and to the different categories that cross over or intersect with the sex-gender category. Thus, class, racism, gender, and sexuality structures cannot be treated as independent variables because, as Platero (2012) points out, the oppression of each one of these is inscribed in the others (e.g., from different categories that intersect: being a woman/suffering intimate partner violence/being an immigrant/being poor/being old). In this sense, it would be interesting to extend this study to a wider sample of women with different intersectional categories. Taking a feminist perspective as a point of departure, we would highlight four key elements to change within the system in Spain:

- a. The criminal justice system does not pay enough attention to the woman's experience. If a woman brings charges, there is, at the very least, a subjective experience of unease that must be investigated. Furthermore, the system must take into account invisible violence, that is, violence that is hidden due to it having been normalized or naturalized within the couple relationship, also called everyday sexism (Bonino, 2005). Listening to women and considering them active agents in the process of recovering from violence must be a priority.

It is also necessary to start from the idea of a common experience: Gender-based violence occurs in a social context of male domination, but is also suffered by a wide range of women with different cultural and social reference points (Antón, 2013).

- b. Problems generated by the judicialization of domestic violence. Implementation of Organic Law 1/2004 is considered to have excessively judicialized the treatment of women within the system.

Women in our sample feel that their credibility as victims is continually questioned by the criminal justice system. Furthermore, as Blay (2013) points out, the response they receive from the system discourages some victims from reporting gender-based

violence to the police, as it means initiating a criminal process with consequences that cannot be controlled by the victim (such as a more aggressive response from her attacker, a lack of protection for her children, family rejection for reporting her partner, etc.). This excessive judicialization¹⁶ limits the autonomy and control that women have over their own lives and undermines their ability to make decisions (Bodelón, 2013). One consequence of this is that legal agents are overwhelmed in their day-to-day work, especially because they fail to understand that the contextual framework of gender-based violence is not only that of this couple's interaction, but that of the unequal sex-gender relationships that occur in couples. These legal agents view their work in terms of speed of response and effectiveness, meeting routine protocols, not wanting to see beyond the physical proof and the objective evidence provided by the victim. They, therefore, feel uneasy when women file a complaint and then do not want to testify against their partner in court, or when there is a restraining order against the perpetrator, and the victim and perpetrator go back to living together. Legal agents must develop an awareness of the problem from a gender perspective through awareness training about these issues and identify procedures that better meet women's needs and discriminate between gender-based violence and other types of violence.

- c. Resources (e.g., protocols) are needed to make visible those characteristics and nuances that indicate a relationship of domination between partners. A change in both the sensitivity of members of the criminal justice system and the protocols to detect everyday sexism and psychological violence may be useful in identifying gender-based violence. This would require taking account of lawyers' reports in the judicial process, and collecting and incorporating situations of psychological violence and risk assessments in protocols used by the police. It would also be necessary to include in the protocols registration forms that take into consideration all the processes involved in gender-based violence; that is, protocols that not only collect lists of objective facts, but also the history of the violence, as a way to view it as a process.

We have seen the difficulties legal agents have in detecting gender-based violence. Therefore, a way must be found to detect it prior to criminal proceedings, for example, (a) through the work of psychosocial teams that explore each particular case; (b) via good connections and communication between psychosocial professionals in the care network and the victim and perpetrator; and (c) by including information from the woman's informal network (children, relatives, friends). We also believe that support teams and experts who work in courts (psychologists and social workers) should be tasked with addressing this lack of consideration of the emotional and material resources women use to confront violence. Certain legal practices should be modified, such as the creation of protocols to retrieve narrations or accounts that are more in keeping with the exact experience of the people involved, or the retrieval of emotions as tools that help understand the consequences of the phenomenon, give meaning and significance to the victim's testimony, and enable the construction of subjectivities that break with certain victim-aggressor stereotypes.

- d. Gender perspective awareness training, together with reflexive practice by legal agents, is needed in the criminal justice system. Reflexive practice is the ability to question one's own beliefs, prejudices, and actions in daily practice and transform oneself into the subject (Albertín, 2009). If legal agents were able to do this, it would help prevent secondary victimization in the criminal justice system. In conclusion, we argue that Organic Law 1/2004 may have been created from a gender perspective, but its application is based on an androcentric and heteropatriarchal system. This system creates resistance to implementing the law, which in turn translates into many of the limitations we have observed here. The statement "law is gendered" does not only mean that it treats women unequally, but also that the principles underlying law are masculine (objectivity, impartiality, and neutrality discourses). This results in the law minimizing psychological violence against women, justifying men's aggressive behavior by establishing causes such as personality problems or drug consumption, not considering the fact that men and women do not have equal historical backgrounds, only taking into account objective facts and empirical data rather than procedural, relational, or interactive situations between partners, and using universal models to define violence (ethnocentric practices). This hegemonic discourse is at variance with the feminine discourse (subjectivity, experience, emotions, and ethics of care), which generates huge conflicts and fissures within the criminal justice system.

Finally, we have to recognize the limitations of this study. It has been carried out in Catalonia (one of the autonomous regions that make up Spain). In this sense, it would be appropriate and desirable to extend this study to the rest of the country to make visible and know the singularities and particularities of the law's application in other parts of Spain.

Author's Note

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Notes

1. Secondary victimization has been defined as negative social or societal reaction to primary victimization. It is experienced as a further violation of the victim's legitimate rights or entitlements (Montada, 1994). Indeed, the criminal justice system is often characterized as causing secondary victimization among crime victims (Orth, 2002).

2. These kinds of magistrate courts deal specifically with violence against women (*juzgados de violencia contra la mujer*). They represent a partnership approach to gender-based violence against women and children that includes the police, prosecutors, court staff, the probation service, and specialist support services for victims. Magistrates sitting in these courts are fully aware of the approach and have received additional training.
3. *Código Penal*, in Spanish.
4. The Instituto de la Mujer is an independent body attached to the Ministry of Labour and Social Affairs with responsibility for taking forward equal opportunities policies.
5. It provided for action against violence that is a manifestation of the discrimination, the inequality, and the power that characterizes relationships between men and women.
6. Organic Law 27/2003 provides protection of a civil and criminal nature. Court decisions incorporate measures restricting freedom of movement of the perpetrator to prevent repeated offenses against the victim, as well as measures aimed at providing security, stability, and legal protection to the victims. This protection is accorded to victims despite nonformalization to the civil marriage process (Freixes, 2014).
7. A theory that breaks with the notion that there are only two sex-gender polarities (man-woman); it is critical of the position maintaining sex-gender binary categories, holding that "there are multiple sex-gender identities" (Preciado, 2011).
8. "Doing gender" (West & Zimmerman, 1987) refers to the process of constructing sex-gender. Thus, sex-gender is not a trait with which people are born, but something they do in their daily lives, a continuing construction in their daily practices, assuming, for example, male- or female-assigned roles.
9. The law has also had many positive effects. In this article, we present some positive applications of the law; however, the focus is on aspects of the criminal justice system that constitute secondary victimization.
10. We did not conduct any interviews with immigrant women who had suffered gender-based violence in our study, but the agents in the criminal justice system often referred us to interventions with immigrant women (South Americans or North Africans). We, therefore, consider it important to mention this here as it provides an understanding of some agents' views on victimization. In Catalonia, it is estimated that immigrant women are twice as likely to suffer gender-based violence as Spanish women (Antón, 2013).
11. To conduct the participant observations and undertake the interviews, we explained the research purposes and objectives, and what we would do with the information obtained. All doubts and questions raised by participants were resolved by the researchers. All informants gave their verbal consent.
12. Trials in this court are reserved for particularly serious cases.
13. The research team (four members) are the authors of this article. Two of these researchers conducted the fieldwork.
14. In Spain, although the criminal courts are separate from the family courts, in cases of gender-based violence, the criminal courts have jurisdiction over all issues related to the family, such as marital separation, child custody, and child-support payments.
15. Investigative judges (*jueces de instrucción*) in Spain investigate the crime with all the evidence and declarations before the trial is celebrated.
16. Judicialization refers to a process where an issue is addressed and solved judicially instead of being done otherwise, for example, in a political way.

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