
Sexual politics in the twenty-first century: Practices of silencing

Itziar Altuzarra Alonso^{*}

Abstract

This paper examines the spectrum of sexual violence that permeates women's lives, among others, often unnoticed by most of society. To do so, I revisit arguments from Kate Millet's *Sexual Politics* (1970) and Susan Brownmiller's *Against Our Will: Men, Women and Rape* (1975), which to a large extent gave rise to the theoretical contention that under conditions of patriarchy there is a constant coercive factor in sexuality, which is a hostile sphere for women. I go on to examine current practices of silencing that can be seen as surreptitious ways of perpetuating this continuum of sexual violence: testimonial epistemic injustice, hermeneutical epistemic injustice, the legal discourse of gender-based violence and the naturalistic discourse of sexuality. I conclude that current legal feminist scholarship has the imperative challenge of imagining new frames of reference that allow us to collectively and socially interpret this entire spectrum of violence outside the legal framework.

Key words: legal feminism; sexual violence; epistemic violence

1. The string ball of sexual violence¹

Reflecting on sexual violence immediately creates a dilemma regarding the possible uses of the concept of '(sexual) violence' itself, that stems from the fact that our feminist theorizations are, to a greater or lesser extent, permeated by legal logic that imposes certain ways of thinking about and addressing violence.

On the one hand, taking the 'continuum of (sexual) violence' as an analytical category and using it to point out the most subtle forms of patriarchal oppression carries the risk that this conceptualization will be assimilated and instrumentalized by punitive logic to justify and strengthen the culture of punishment, since the punitive prism proclaims that if something is labelled as 'violence' the legitimate response is punishment. On the other hand, the idea of a spectrum of violence is useful for recognizing naturalized and invisible power relations that are often excluded from public debate, as well as for grouping together behaviours as belonging to the same system of patriarchal oppression. That is, it is valuable for exposing the scaffolding of white heteropatriarchal violence. Therefore, rejecting the idea of a continuum of sexual violence

^{*} PhD researcher, University of the Basque Country (EHU), Spain. Email: itziar.altuzarra@ehu.eus

¹ Although used in a different way, when employing this metaphor I am influenced by Maria Lugones and her use of terms related to meshwork and weaving, such as 'intertwining' (Lugones 2008, p.2) or 'intermeshing' (p.12). In this paper, I try to emphasize the interweaving formed by the concomitant and synergistic relationship of different phenomena that underpin the system of sexual violence and that lack so much strength separately.

as a starting point for analysis due to concerns about its punitive use can also distance us from its great theoretical and political potential.

However, a collective demand for the extensive use of the concept of '(sexual) violence' needs to be linked to a political strategy that counteracts the risks of instrumentalizing violence for punitive purposes. In this line, the fact that the 'continuum' approach has on occasions given rise to moralizing feminist perspectives, or that it has been instrumentalized by some groups to reproduce and feed the punitive turn in legal reform, does not imply that this is its only possible use and does not preclude its strategic political use for the theoretical understanding of the different dimensions of sexual violence. Consequently, I adopt the term 'continuum' from Liz Kelly's (1987, 1988) work to describe sexual violence as a spectrum and to indicate its extension and scope beyond previous analytical categories and legal codes. And, at the same time, I maintain an approach that does not associate the use of the term 'violence' with a punitive response.

This article elaborates on the idea that sexuality, as it is currently politically configured, urges women² to endure a constant state of violence in a way that violence is not an exception – as it is generally presented by legal discourse, for instance – but the normal and usual way of relating to sexuality.³ This theoretical position has its origins in the radical feminist argument of the 1970s that states that there is a constant element of coercion underlying patriarchal sexuality. However, I distance myself from any interpretation that tends to naturalize this coercive situation. Instead, I politically frame it within the current social and historical context and observe the importance of resistance behaviours and practices that subvert that hegemonic scheme. I understand there to be a whole web of factors, diverse in nature but interconnected, that sustain and legitimize the violence of the heteropatriarchal sexual order. In this sense, some of the different ways of perpetuating the structural violence that exists in sexuality include its naturalization, trivialization,

² The paper tackles the sexual violence experienced by bodies that are socially perceived as women. Nevertheless, they are not the only bodies subjected to the sexual violence of white, capitalist heteropatriarchy, since it is also exercised against non-heterosexual, transgender and gender non-conforming people. These distinct forms of violence respond to very different functions: while sexual violence against 'feminine' bodies is aimed at reinforcing gender hierarchy, sexual violence against queer people is aimed at perpetuating gender heteronormativity (Butler [1990] 1999, p.xiii). Further, in this article I do not attempt to universalize or homogenize the experience of this type of violence, which varies according to our position on different axes of oppression such as race and class. Finally, using the binary women/men does not imply that I am assuming these categories as natural and fixed, but in fact my aim is to expose their socially constructed and contingent character.

³ In contrast to the usual signification of violence that refers to physical violence that is not legitimized by the colonial, patriarchal and capitalist world order, throughout this paper I use a very broad concept of violence that relates not only to physical violence and violence in which there is a specific subject exercising that violence, but also to violence that is deeply disseminated and internalized in society. That is the reason why I use this concept interchangeably with coercion and hostility. Thus, I refer to the spectrum or continuum (Kelly 1987, 1988) of sexual violence of white, capitalist heteropatriarchy, which suggests a more extensive way of understanding violence: some concrete examples that illustrate the various forms this continuum of violence can take are the objectification of 'feminine' bodies, the so-called orgasmic gap (Damonti, 2020) and the white imaginary of black hypersexuality (Srinivasan 2022, p.42).

eroticization, individualization and simplification. Therefore, this paper seeks to shine a light on how this complex set of threads currently weaves the string ball of sexual violence.⁴

From the second half of the 20th century onwards, one strand⁵ of the Anglo-US feminist movement began to deepen its theorisation of the incessant and sustained coercion that exists in sexuality, and the profound systemic questioning this entails. However, the harmonization and interweaving of entangled threads is so forceful that it prevents fundamental insights of feminist theory around patriarchal sexuality from permeating the collective social consciousness, and thereby most of this violence continues to be hidden or passively endured. In this sense, I reflect on diachronic epistemic injustice⁶ as one of the principal threads that form the string ball of sexual violence. Like each of the threads, epistemic injustice serves an important function but does not have major implications if it acts in isolation. Therefore, this paper also briefly notes other current forms whereby the current spectrum of sexual violence remains virtually unscathed despite the fact that feminist discourses have already described, questioned and dismantled it with theoretical rigour and force more than five decades ago. Specifically, I mention the legal framework of violence against women or gender-based violence resulting from the process of institutionalization of feminism and I refer to the impact of the contemporary and hegemonic naturalistic discourse of sexuality.

The focus of this paper is the ongoing neglect and oblivion of twentieth-century feminist theorists who began to theorize on the political character of sexual violence. I argue this has occurred for two reasons. Firstly, this is because of the 'social type' to which the authors belong as epistemic subjects, a fact that has important consequences for their epistemic reliability but also for the hermeneutical tools collectively available. Secondly, the very critical and counter-hegemonic character of the content of these early feminist works contributes to this phenomenon of disregard and oblivion, since these revolutionary theoretical arguments activate reactionary actions of a system that is not willing to collapse. These two aspects act in an interrelated way due to the fact that in this case, the machinery of epistemic injustice is activated when the knowledge that is attempted to be spread confronts the entrenched rules of the heteropatriarchal system of white supremacy. Thus, I identify practices of silencing that operate as tactics that keep the string ball of sexual violence wound in the face of the attacks of the feminist critical voices that intend to unravel it. Above all, it has to be underlined that non-white feminist authors have been and continue to be the most disregarded and overlooked by the epistemic community, ignored even

⁴ I understand the notion of 'sexual violence' very broadly, including experiences that perniciously affect sexuality but are not necessarily acts of a sexual nature per se. In addition to behaviours attributable to specific individuals, I also include sexuality-related beliefs that are subtly diffused through collective thinking and cultural production.

⁵ I refer to 'one strand' of the feminist landscape because the racism in which the movement was structured meant that many black and brown US women of the 20th century had to struggle to make their experiences, perspectives and academic contributions part of hegemonic feminist thought. This marginalization of course continues to this day.

⁶ I draw the term 'epistemic injustice' from Miranda Fricker's ([2007] 2017) renowned work of that name. This book identifies two forms of epistemic injustice - testimonial and hermeneutical - which I use in this paper. Concretely, I apply Fricker's analysis to the case of early Anglo-US feminist authors and their theorization with regard to the constant of violence in sexuality.

within feminisms themselves. There are countless works that address this oppression, just one of them being bell hooks' *Ain't I a Woman: Black Women and Feminism* ([1981] 2020).

Contrary to what one might think, being feminists does not keep us shielded or sealed off from the images of the patriarchal collective social imaginary and its surreptitious ways of perpetuating violence. On the one hand, our beliefs, however firm they may be, do not remain impervious to collective notions whose contrary content is barely perceptible (Fricker [2007] 2017, p.72). In this sense, despite individual convictions, collective social prejudices maintain a certain hold on our social perception (Fricker [2007] 2017, p.73) and thereby on our epistemic practices. Indeed, thinking that, due to our sophisticated feminist or antiracist beliefs, our actions will never be influenced by patriarchal or racist ideas makes it even more difficult to identify the influence of the latter (Fricker [2007] 2017, p.73). Hence, legal feminist scholars are, to a greater or lesser extent, inadvertently part of this subtly perpetrated and meticulously disseminated violence. The obscure and complex techniques that the heteropatriarchal system employs for the continuation of the system itself – such as co-optation – sometimes unwittingly cause legal feminist scholars to articulate their efforts and debates towards historically patriarchal places. For this reason, I study those threads that contribute to the disregard of the foundations of legal feminism and thus also affect contemporary legal feminist scholarship.

2. Voices of the 1970s

To illustrate the western trend of feminist theoretical contributions that first exposed the political nature of violence in sexuality, I revisit two milestones of radical feminism from the 1970s. On the one hand, I consider Susan Brownmiller's contribution in *Against Our Will: Men, Women and Rape* (1975), the book in which she ambitiously develops a historical-political analysis of rape.⁷ This theoretical trip through time is not intended to summarize their contributions but to put them in conversation with the current juncture. My intention is to highlight the relevance of some of the insights that I find useful for the strategy of current legal feminism, although this requires some level of preliminary explanation. On the other hand, by analysing sexual narrations in cultural production in *Sexual Politics* ([1970] 1995), Kate Millet concludes that sexuality is portrayed as an empty, physical and biological domain but conversely it has a strong political⁸ meaning (p.67). This political content is related to the fact that heterosexual sexual relations represent and reproduce the existing power relations between dominant men and subordinate women (pp.68-69).

Hence, according to Millet all heterosexual sexual interactions are principally composed of acquired responses that obey specific cultural scripts that could be reduced to masculine aggressiveness and feminine passivity (pp.81-82). In line with this, Brownmiller (1975) points out

⁷ Taking into account the authors I have chosen, I approach their theoretical contribution from the context of white US women authors, without any pretension to extrapolate or universalize their experience.

⁸ In this paper I conceive 'politics' in a wide-ranging way. In this sense, my interpretation is in line with the one given by Millet: 'power-structured relationships, arrangements whereby one group of persons is controlled by another' ([1970] 1995), p.23).

very distinct, even opposing, behavioural patterns assigned to men and women that construct masculine and feminine sexualities. She observes that according to the cultural images that we assimilate, masculine equals violent (pp.267, 293) and violence is presented as ‘the true nature of man’ (p.302). On the other hand, (white) feminine sexuality is characterized as ‘beautiful passivity’, which is an idea that belongs to wider social mandates that require women to remain quiet and obedient spectators (p.310). Nonetheless, this command of passivity only applies to white women. Drawing on Angela Davis, Srinivasan (2022, pp.37-42) explains that the white mythological construction of black sexuality is based on ‘black hypersexuality’, one of the foundations on which race is built and which serves to exert racist and sexual violence. For Brownmiller, the allocation of these characters is not casual but ‘men control the definitions of sex’ (p.323) in order to ensure that they protect the perpetuation of the system of domination. Therefore, women are compelled to perceive our own sexuality through the masculine gaze (p.323) and become unwitting collaborators. Consequently, we could affirm that these two authors, among others,⁹ unearthed the revolutionary idea that gendered power relations permeate sexuality, a politically constructed field that presents dynamics of oppression-submission in which men's sexuality plays an active, even violent, role and women's sexual role is to submit. In other words, this breakthrough showed how the internalization of patriarchal ideology surreptitiously works to achieve a self-segregation of sexuality between men and women.

In this reasoning, both authors address the meaning of rape. More succinctly, Millet stated that rape is nothing more than one form of materialisation of sexual violence that illustrates the aggressiveness of sexual politics ([1970] 1995, pp.100, 102). On the other hand, Brownmiller develops an exhaustive historical account of rape, which according to her is a political act because it has a political function: ‘a conscious process of intimidation by which all men keep all women in a state of fear’ (1975, pp.15-16). For her, men demonstrate and perpetuate their dominance through rape, and rape facilitates men's control over women's sexualities (p.267). Today it is possible to understand that, in these works, Brownmiller and Millet drew a line of connection between rape and the whole field of sexuality. In this sense, being a practice of sexual violence that successfully keeps women in a state of continuous fear, the act of rape is only one of the many forms that masculine coercion takes in sexuality. Millet and Brownmiller unveiled the link that exists between sexuality and rape, describing how both concepts are underpinned by the same gender power relations. Therefore, one central idea is that masculine hostility is a constant factor in sexuality and what changes is the frankness with which it is exposed. Put differently, sexual violence does not only appear in what is considered to be rape but also occurs in more ordinary sexual experiences. We now know that identifying this terrifying relation provided a solid theoretical basis for feminism and – among other contemporary components¹⁰ – made it possible that later, with the advent of US feminist legal theory in 1980 onwards, legal feminists could question the way sexual crimes were conceptualized and criminalized, as well as the masculine norms implicit in the law and in society (Chamallas [1999] 2013, p.21). During that period the legal protection of women's bodies was one of the most central claims within feminism

⁹ For example, Davis ([1981] 1983) and Dworkin ([1981] 1989) also tackled this and other related issues.

¹⁰ These included the aftermath of the civil rights movement that mostly took place in 1960s and the incorporation of women into the legal world (Chamallas [1999] 2013, p.33).

(see, e.g., The Milan Women's Bookstore Collective [1987] 1990; MacKinnon 1989; Smart 1989).¹¹

By way of example, the influence of this theoretical tradition can be noted in the particular volatility and mutability of the meaning of rape, which has broadened considerably in recent years to encompass an increasing variety of scenarios. Thus, at the present juncture, the latest legislative trend reformulating the crime of rape that is widespread in the West is to give the legal element called 'sexual consent' a determining role in the crime such that its presence determines the existence or not of the offence, and to re-expand the scope of the term.¹² However, despite the broadening of its meaning, the 'otherness' of rape, which is the traditional example of sexual violence, is maintained and thereby the 'otherness' of sexual violence is maintained too. That is to say, violence in sexuality continues to be understood collectively as something far removed from other sexual experiences, as being exceptional and extraordinary, inflicted in a very concrete way and by a specific subject. In this and other ways, the horrifying constant of masculine coercion present across the sphere of sexuality under patriarchal conditions, that became known after the first half of the 20th century, remains hidden or goes unnoticed at a collective level. Hence, sometimes forms of violence that are understood to be more subtle are not visible to the perpetrators themselves. Indeed, often this violence is not noticeable to the individuals who suffer it, and on other occasions its supposed inexorability invites them to endure it with resignation. Many women thereby remain subjected to the system of sexual oppression and continue to have a complex and hostile relationship with their own sexuality that is not even openly questioned or debated. Consequently, the ideas put forward by Millet and Brownmiller, among others, remain highly relevant in the context of legal feminism today.

In fact, when, as a feminist, I first came across these and other texts from that period of time, I observed that, despite having been written 20 years before I was born, they were not at all anachronistic – which is of great significance in itself. What is more, not only were they applicable to the present context but also they offered more answers than the current hegemonic legal feminist discourse did. In this sense, I experienced a double process of feminist learning. The first stage was the gradual encounter with feminism as a counter-hegemonic thinking that seeks to critique the oppressive reality produced by the patriarchal status quo. The second began when I came across these earlier feminist texts and understood that the hegemonic feminism is not sufficient to understand the complexity of women's experiences in sexuality today. Consequently, there is a paradoxical scenario in which these contributions to feminist theory in the 20th century were the basis for the subsequent theorization of sexual violence and yet, despite this, are seldom sufficiently considered or utilized by legal feminist scholarship today. As a result, these theoretical notions, which have not yet penetrated the collective imagination, continue to be revealing and have great potential for feminist political action. Some would argue that this relates to the de-radicalization of feminism, which has to do with its process of institutionalization and

¹¹ As we have already pointed out with regard to the concept of '(sexual) violence' itself, and as we will develop in the following sections, this seemingly 'logical' progression of feminist thinking towards its translation into the legal sphere has had unexpected effects on feminist epistemology.

¹² Legal modifications in this direction have been enacted in countries such as Sweden (2018), Greece (2019), Denmark (2020) and Spain (2022).

juridification. Following this line, in this paper I argue that the most critical thinking today is to take the arguments of these past decades and reflect on why these arguments and their authors have been forgotten and relegated to the past. By so doing I also rethink the contemporary legal feminist strategy.

3. Epistemic sexual violence: practices of silencing

Some of the best-known authors in the field of feminist epistemology include Sandra Harding, Nancy Hartsock and Donna Haraway, who have emphasized the importance of reflecting on our epistemic behaviours. Nonetheless, it is inadequate to develop a section on epistemic violence without highlighting the contribution made by the decolonial feminist school of thought.¹³ From this view, Kristie Dotson provides a broad definition in terms of the epistemic subjects who may experience this type of violence: '[e]pistemic violence is a failure of an audience to communicatively reciprocate, either intentionally or unintentionally, in linguistic exchanges owing to pernicious ignorance' (Dotson 2011, p.242). According to her, due to the epistemic gap 'an audience may or may not meet the linguistic needs of a given speaker', which makes speakers vulnerable (Dotson 2011, p.238). Complementing this theoretical basis, I find it essential to underline the social character of epistemology. This relates to the fact that we cannot consider epistemic subjects individually, since they all belong to a social category that conditions them in their production of knowledge but also in their credibility when it comes to the transmission of this knowledge. In other words, there is a direct relationship between social power and epistemic interactions (Fricker [2007] 2017, pp.18, 29-36).

In this section I approach epistemic violence in relation to the abusive and undue harm caused to the speaker's capacity as a knowledge bearer. For this, I examine into two practices of epistemic injustice¹⁴ that were described by Miranda Fricker and that I argue currently function as forms of sexual violence: testimonial epistemic injustice and hermeneutical epistemic injustice. A very common way to address the epistemic level of sexual violence is to study the epistemic violence perpetrated against women during legal proceedings in which women have reported sexual violence (see, e.g. Arellano 2022). However, I focus on the epistemic violence that is exercised in the generation of feminist knowledge aimed at theorising and confronting the broad spectrum of sexual violence. Furthermore, since predominant epistemic discourses make it difficult to disarticulate the broad spectrum of sexual violence that earlier authors unearthed, they are also part of the system of sexual violence itself. As a consequence, considering sexual violence as the set of practices that unjustly harm the ways in which many women live and experience sexuality but which are not necessarily acts of a sexual nature, I talk about epistemic sexual violence.

¹³ In this perspective, Spivak's insight on epistemic violence appears crucial: '*the remotely orchestrated, far-flung, and heterogeneous project to constitute the colonial subject as Other*' (Spivak 1988, p.280). More recently, Claudia Brunner (2021) reviews the conceptualization of this type of violence, focusing on the decolonial approach.

¹⁴ Instead of violence here I use the term *injustice* because it is the concept used by the author who provides the theoretical framework on which I rely in this paper, Miranda Fricker.

A) The first thread: testimonial epistemic injustice in the theorization of sexual violence

If we were to draw a diagram of levels of testimonial epistemic injustice, contributions of racialized women would occupy the highest levels. Therefore, as a European author, I have the responsibility to recognize the hegemony of white, Eurocentric epistemology and to accept the imperative of undoing these neocolonial epistemic structures that generate so much injustice. Referencing Xavier Guillaume (2019), Brunner (2021, p.207) reflects on the current global academic infrastructure and how it is mainly commodified by a small number of US and UK actors who expect scholars around the world to assimilate their form of knowledge production, and hence maintain an imperial order. This structure results in the situation that some of the epistemic injustices suffered by non-white feminist knowledges stem from universalising Western feminisms. In this sense, Millet and Brownmiller, white feminists in a Western epistemic context, can be seen as epistemic subjects who simultaneously belong to two groups that might at first seem incompatible: the epistemically privileged and the epistemically marginalized (Fricker [2007] 2017, pp.245-251). In this paper I focus on the latter of these two conditions, in which not being the paradigmatic epistemic subject for the prevailing discourses immediately diminishes a certain amount of what we might call *epistemic capital*.¹⁵

In this sense, the concept of testimonial epistemic injustice allows us to delve into our own epistemic practices as feminist authors. In terms of the omission of the two aforementioned feminist scholars and their contributions, this type of injustice is a damage caused to their ability to contribute knowledge, that stems from unequal power structures and the systemic biases they generate (Fricker [2007] 2017, p.27). When we are dealing with a negative identity prejudice, that is, when there is a widely accepted pejorative idea or association of a social group, the credibility of the speakers of that group is undermined (Fricker [2007] 2017, p.70). A pernicious prejudice that is widely assumed in the West is the idea that projects feminine bodies as emotional and irrational subjects, which influences our reliability as bearers of knowledge.¹⁶ This happens even when one's own individual beliefs are contrary to this collective negative bias (Fricker [2007] 2017, p.72). This fact is clearly illustrated when this epistemic damage to 20th century women authors comes from current feminist scholarship itself. To refer to this phenomenon, Miranda Fricker speaks of 'residual internalisation', which exists 'when a member of a subordinate group continues to harbour a kind of half-life [...] of the oppressive ideology, even when their beliefs have moved on' (Fricker [2007] 2017, p.72). That is, the oppressor ideology continues to influence our social perception of the oppressed epistemic subjects even if we are aware of the existence of the negative prejudice and still even if we ourselves are part of the oppressed social group affected by the negative prejudice. In fact, the latter two circumstances - perceiving ourselves as feminists ideologically opposed to oppressive collective biases towards women as epistemic subjects, and identifying ourselves as feminist authors who at different levels also experience the implications

¹⁵ I use this expression as a variant of Bourdieu's reflection on 'The forms of capital' (1986).

¹⁶ Fricker ([2007] 2017, p.63) herself uses as an example in her work that presenting women as intuitive ends up evoking the notion that they are irrational. In this sense, we can observe that the stereotypical image that projects women as passive and unwise subjects and mere compliant spectators of men's actions is so deeply rooted in the social imaginary that it permeates all aspects of social life, including the sphere of sexuality, as we saw before, and the epistemic field, as we now observe.

of unjust epistemic practices – can hinder our self-perception as an audience who, despite everything, also has its social perception altered and collaborates in this testimonial epistemic injustice. Fricker points out that this residual prejudice gives rise to the most surreptitious forms of testimonial epistemic injustice, so that we may end up epistemically venerating subjects or images opposed to our beliefs (Fricker [2007] 2017, pp.74-75). In contrast to the more unnoticed side of the testimonial epistemic injustice of legal feminist scholarship, this rejection of these authors of the 1970s also occurs in a more deliberate way. Rephrasing Dotson's (2011, p.242) concept, intentional 'testimonial silence' would occur when an audience deliberately does not identify a speaker as knowledgeable. Firstly, being aware that Millet and Brownmiller are epistemically partially marginalized subjects, and considering the rigid dynamics of academic structures, many authors might have intentionally chosen to mention authors with greater epistemic reliability instead of citing these women authors, in order to avoid the risk that their own epistemic credibility might be affected or that the rigorousness of their academic works might be undermined. Secondly, within current feminist scholarship, references to authors from the radical feminist theoretical tradition can imply certain assumptions; this fact can create a dissuasive effect that induces the non-identification of these authors as subjects of knowledge. All this would – at least partially – explain why current legal feminist scholarship continues to reference the work of white men philosophers and tends to forget the contributions of authors such as Millet and Brownmiller.

On the other hand, even if our particular context does not allow us to be fully aware of these collective biases, the dissonance between our beliefs and shared prejudices can also play in our favour (Fricker [2007] 2017, p.73). Miranda Fricker hopes that the beliefs of the audience will, at some point, act as a corrective force ([2007] 2017, p.77). In this vein, our feminist beliefs opposed to patriarchal oppressive biases can help us ask why we perceive women authors to have less epistemic reliability than men authors. Similarly, our anti-racist beliefs opposed to racist oppressive prejudices can help us ask why we perceive black women authors to have less epistemic credibility than white women authors.

B) The second thread: hermeneutical epistemic injustice in the theorization of sexual violence

Miranda Fricker's work also helps to identify hermeneutical epistemic injustice in relation to the way in which hegemonic legal feminism understands, interprets and problematizes the spectrum of sexual violence – unveiled by Kate Millet and Susan Brownmiller, among others – in a deficient manner. To this end, I again point to the influence of social power on our epistemic practices: given that meanings are constantly open to resignification, those with social power have the possibility of influencing forms of collective social interpretation such that material advantages become epistemic advantages (Fricker [2007] 2017, p.238). Thus, power relations affect the available hermeneutical resources shared by society and the powerful have interpretative tools to understand and give collective meaning to their social experiences (Fricker [2007] 2017, p.237). In contrast, non-powerful social groups misinterpret their collective social experiences as personal deficiencies and thereby fail to understand the significance of their own experiences (Fricker [2007] 2017, pp.243-244).

In this sense, Fricker recognizes that in women's history the sharing of experiences was a direct response to the fact that much of their experiences were strange and unnameable, so the process of sharing these interpretations awakened dormant resources that gave these experiences social meaning (Fricker [2007] 2017, p.239). Hence, these women collectively challenged the epistemic order and were able to understand many of their experiences, which were incomprehensible up to that time (Fricker [2007] 2017, p.239):

without such an understanding [the experience] is profoundly disturbed, confused and isolated [...] the hermeneutical disadvantage makes her unable to comprehend the abuse she is subjected to, which in turn prevents her from protesting against it (Fricker [2007] 2017, p.244).

Extrapolating this theoretical notion to the constant of coercion in sexuality under conditions of patriarchy, women's unequal and inferior participation in the epistemic practices through which the social meanings of sexuality are diachronically generated - having very different possibilities of participation depending on their race and social class - results in a detrimental understanding of their own sexual experiences. From the 1950s onwards, through the theorization of the political and violent character of patriarchal sexuality, authors such as Millet and Brownmiller managed to diminish the gap in hermeneutical resources for a better understanding of sexuality. However, after appropriately recalling the valuable past consciousness-raising work of the feminist movement, in which many women collectively took a great step towards overcoming the absence of collective hermeneutical resources, Fricker points out that we currently enjoy '*a hermeneutical position of relative comfort*' ([2007] 2017, p.239, emphasis added). While it is true that we possess comparatively more tools for interpreting and making political sense of sexuality today, I argue that the neglect or denial of such theoretical contributions about the continuum of violence by the collective thinking in general, and by legal feminist scholarship in particular, results in the vast majority of women today remaining in a state of hermeneutical emptiness and sexual uncertainty. Moreover, since Brownmiller's denouncement in 1975 (p.323), women still do not participate equally in the creation of meanings and definitions of sex. Instead, these definitions continue to be consolidated through patriarchal discourses that legitimize the internalization of gendered power relations. As many 20th century women writers critically pointed out, this assimilation results in many women contributing to the same system of sexual violence that oppresses us.

From my particular geographical, social and epistemic context, I observe how the vast majority of women with whom I exchange testimonies related to sexuality have a problematic relationship with this extensive sphere of their lives. I am talking about problems and concerns as varied as the women with whom I interact and which encompass the relationship with one's own body, self-esteem, objectification (read dehumanization), racist and fat-phobic canons of beauty, the eroticization of masculine aggressiveness, the marginalization of women's sexual pleasure, the need for masculine validation, or the way of facing sexual violence perpetrated by specific subjects and which occurs in infinite intensities, to give just a few examples. Some of these experiences have evident patriarchal roots for most women, but many others are disguised as individual,

personal experiences or, at best, as unimportant or bearable behaviours. That is, many of these experiences of structural sexual violence are neither identified nor understood as such, but in fact are considered individual or inexorable, and thereby are isolated and silenced. Put differently, the vast majority of these sexual experiences are not profoundly interpreted and their social meaning remains invisible. Thus, this lack of interpretative resources places us in a situation of hermeneutical epistemic injustice that does not allow us to perceive the structural character of all these experiences of oppression, whose visibilization is essential as a prior step to the disarticulation of the spectrum of sexual violence, as we can learn from the theorists of the second half of the 20th century. Moreover, although the current form of hermeneutical injustice possesses some very useful theoretical tools from the feminist past to overcome this interpretative hole, the interest in keeping this interpretation hidden prevents these tools from penetrating the collective consciousness and reaching spaces for the generation of social meanings and knowledge. Consequently, we women remain somehow in the epistemic penumbra of which Fricker speaks ([2007] 2017, p.241).

Dismantling this situation of hermeneutical injustice is further complicated due to the fact that socially powerful men have no interest in having this hermeneutical vacuum resolved and in fact carry out positive actions that perpetuate and legitimize existing misinterpretations (Fricker ([2007] 2017, p.246). That is, they not only create but also protect the social meanings attributed to certain sexual behaviours that are in their interests. In this sense, we observe that what is and is not currently interpreted as sexual violence, as well as the level of seriousness we assign to different forms of sexual violence, are distorted interpretations that are biased by dominant social interpretations. Hence, also through the intervention of other axes of oppression, the paradigmatic case of rape in the collective thinking is constructed in relation to the odd, marginalized or non-white rapist who does not know the woman he rapes (MacKinnon 1989, p.181). In contrast, sexual relations that derive from the blackmail of the white male colleague or the boyfriend who takes advantage of a vulnerable state caused by psychotropic substances are not collectively constructed or interpreted – often not even by the injured person – as cases of rape or sexual violence, or at least not of the same gravity. That is, powerful men assign rape a social meaning different from what they usually do (MacKinnon 1989, p.181). Similarly, for instance, the orgasmic gap or the sense of risk and hostility in nightlife spaces are not identified as sexual violence per se, but are constructed as acceptable minor concerns. In short, the powerful social type has no interest in adequately interpreting the constant coercion in sexuality that authors such as Millet and Brownmiller addressed, but in fact has a positive interest in maintaining the limited and biased interpretation of the violence that many women experience with regard to their sexuality. In other words, in the collective social thinking we can find the absence of adequate interpretation, as well as the active will for this void to continue. The privileged social type also has an interest in perpetuating unequal participation in hermeneutical exchange and in the generation of meanings. Thus, paraphrasing Fricker ([2007] 2017, p.246), the collectively shared set of social meanings effectively meshes to keep sexual experiences of violence in the dark. This situation, which Fricker would call a situation of *'persistent and pervasive hermeneutical marginalisation'* ([2007] 2017, p.249, emphasis added), occurs because there is a structural bias in the very resources of interpretation that are collectively available. As a result, the group that

experiences the concrete harmful experiences also has inadequate interpretations of their own experiences. However, the white supremacist pact agreed upon by white men and white women, as well as the exploitative pacts maintained by the higher social classes mean that these experiences and interpretations of experiences vary so much depending on race or social class, among others, that the epistemic injustice they experience cannot be placed on the same level. In this way, collective interpretations are shaped by groups with greater hermeneutical power who want to perpetuate their power (Fricker [2007] 2017, p.250).

Consequently, among other effects, these surreptitious epistemic strategies manage to interfere in current legal feminist scholarship by hindering theoretical reflection. This fact is of paramount importance because we will hardly be able to vigorously oppose an enemy we do not know and cannot identify. Likewise, we will never be able to identify our enemy if we are not able to perceive our experiences of violence from the social and collective dimension. For this reason, at the beginning of this paper I specify my interpretation of the concept of sexual violence, which departs from the hegemonic legal framework that is often assumed in the absence of any clarification. This circumstance illustrates the staggering magnitude of the power of legal discourse over our way of structuring social interpretations, which I discuss in the following subsection.

C) The third thread: the legal framework of gender-based violence or violence against women and the institutionalization of feminism in the theorization of sexual violence

The power of law to influence the ways in which the social meanings of sexual experiences are shaped has been studied by poststructuralist feminist scholars.¹⁷ In particular, I deal with the legal system as one of the forms of legitimization and reproduction of the hermeneutical epistemic injustice that impedes the collective interpretation of the complex spectrum of sexual violence unveiled by feminist authors in the 20th century. This relationship between law and hermeneutical injustice exists since the socially powerful group that, as discussed, actively works to keep sexual experiences of violence in the dark is the same social group that laid the foundations of modern law, i.e. white, heterosexual men from the middle and upper classes. Thus, the prejudiced and biased misinterpretation of the concept of sexual violence is collectively justified and propagated, among other ways, through the legal system, which symbolically and materially imposes its patriarchal, racist and classist way of interpreting sexual violence, and which also relies on the naturalistic discourse of sexuality that we will briefly observe in the following section. The power of law is so forceful and influential that when we, even within legal feminist scholarship, talk about ‘sexual violence’, it is usually in the context of the traditional examples of rape or sexual assault. Seldom do we problematize the violence that goes beyond legal limits, the violence that we suffer in our daily sexual interactions, or our pernicious experiences regarding our sexuality that do not involve specific individuals or concrete sexual interactions, as discussed above.

¹⁷One example of this thinking is Weedon & Hallak (2021) which describes the principles and methods of a feminist poststructuralist approach to the study of gender and sexuality.

First, I contend that the legal construction of the notion of sexual violence is very limited because it narrows the spectrum of violence to very specific acts. Noting the limited legal construction of 'sexual violence' and its implications does not mean that it is desirable for the law to tackle or criminalize the entire continuum of sexual violence; what underlies my reflection is not a punitive approach. Indeed, the ultimate intention is to argue that understanding violence in its complexity requires actions outside legal frameworks and the logic of punishment. However, in order to reach this ultimate goal it is imperative to problematize and reflect on the current narrow regulation and its implications for social perceptions of sexual violence. In this line, the legal construction of sexual violence prevents the general public from recognizing the breadth of the phenomenon, and if they do recognize it they do not give it sufficient importance. Put differently, instead of paying attention to all dimensions of the issue of sexual violence, it only looks out for very specific forms of materialization of this violence that are selectively categorized as crimes. Consequently, the rest of the spectrum of sexual violence and the operations of power that inhabit the most ordinary sexual interactions remain unchallenged and thus perpetuated because they are experienced as personal deficiencies. Furthermore, as Millet already asserted in 1970 ([1970] 1995, p.100), these concrete behaviours classified as crimes are presented as individual, pathological or exceptional deviations that have no collective meaning. And this is an inherent, characteristic feature of modern law. Hence, contradictorily, despite the fact that most Western national and international legal mechanisms already recognize the structural character of this violence, it is well known that the methodology of the current legal system itself prevents it from providing a response that takes this dimension into account, and thereby it only addresses violence as if it was composed of isolated, unconnected, concrete events. That is, by its own way of acting, the law abstracts violence from its structural character and prevents it from being conceptualized as an extensive continuum of coercion. In fact, Brownmiller observes that, the legal system itself shows that hostility is a constant factor in patriarchal sexuality. For her, the law's great difficulty in distinguishing between willing and unwilling sex has a revealing significance: this happens because they are not that far from each other, since both share a common denominator of violence. She explains that in the legal system there is an underlying assumption that men naturally proceed aggressively and women respond passively (Brownmiller 1975, p.384-385).

In addition to this, in extricating a very specific part from the continuum of sexual violence and formally calling this small part 'sexual violence', legal discourse creates the idea that the rest is not violence. In this sense, since the current legal system frames the crime of rape within the legal framework of violence, this legal categorization contrasts with Millet's and Brownmiller's theoretical contribution on the asymmetry of power that underlies the entire spectrum of sexuality, as this legal regulation distances rape from patriarchal sexuality and presents it as something alien and isolated. In this same line, subsequent publications such as those by the radical feminist Catharine MacKinnon and the poststructuralist Carol Smart delved into the political content of law and the convergence between sexuality and violence, arguing that legally framing rape as violence but not as part of sexuality eliminates the idea that there is violence in the latter (MacKinnon 1989, pp.171-174; Smart 1989, pp.43-44). The law is a mechanism that reinforces this separation between rape - understood as violence - and sexuality, which makes it difficult to see or understand the violence that exists beyond legal limits. In other words, to call

only part of it 'violence' implies that the remaining part of this violence is understood to be *normal* sex and remains unchallenged. As a result, this continuum of sexual violence that was exposed by feminist authors in the second half of the 20th century is divided by law into (1) the coercion that is not tolerable because it is not socially accepted and therefore would be understood as sexual violence and (2) the coercion that is permitted because it is considered a natural part of sexual interactions. In other words, the criminal justice system does not address the whole problem but draws this dividing line between formally recognized 'sexual violence' and '*normal* sex', and thereby perpetuates the violence that exists in the latter. Consequently, many practices of the spectrum of violence are not considered as violence and are therefore normalized and silenced, whilst their social-political dimension remains hidden. Thus, we observe that, like in the case of hermeneutical injustice, current law collaborates in the individualization of women's experiences and prevents their social and collective interpretation. Hence, the legal system hinders the development of interpretative tools for subjects to understand the magnitude of the spectrum of violence they themselves experience - much less to confront it - and protects the status quo of patriarchy. In this sense, suggesting that this legal framework of 'gender violence' or 'violence against women' - which has taken so long to be recognized and which feminism is still trying to reform and improve - is preventing us from fully understanding violence may be contentious, but it could also result in structurally impacting changes.

From all these observations it can be deduced that effectively addressing the inefficiency of the legal regulation of sexual violence is not a matter of time; it is not related to the slow, gradual evolution of the law that develops under the promise of a hypothetical future perfect regulation of sexual violence. Instead, the inability to put an end to this problem has to do with the very *raison d'être* of modern law, which responds to a specific political rationality, to a specific historical-geographical context, and to the interests of a specific form of social organization, whose needs and covenants it represents. This circumstance is compounded due to the fact that, although feminist positions are very diverse in terms of their level of engagement with law (Halley 2016, p.257), feminism has traditionally taken law as its primary legitimate tool to fight against the white heteropatriarchal order. Much of the feminist debates on sexual violence are constructed from an eminently juridical approach, which conditions our meanings, our analytical categories and our ways of reasoning. Hence, the process by which feminism has entered into hegemonic political-legal institutions has shaped the feminist discourse of the 1970s about the continuum of coercion, to the point that there is currently an evident argumentative disruption between this knowledge of the feminist past and current discourse of hegemonic legal feminism, which accepts the authority of law as the only truth of the events and thereby reinforces it. Hence, this oblivion could be related to a possible co-optation of feminism through its institutionalization, a process that has resulted in the adoption of measures that do not stand out for a radical revision of legal culture or methodology, but rather are based on a solid formalism that reduces the room for manoeuvre for criticism (Campos 2008).

In short, current legal measures that are self-described as feminist - often informed by legal feminist scholars - also individualize and pathologize sexual violence and, through selective criminal intervention, limit the consideration of 'gender-based violence' to very specific acts. In

addition to serving the criminalization of certain social groups – through, for example, the racialization of sexual violence – and perpetuating logics of punishment, all this hinders the recognition of the broad spectrum of sexual violence and prevents the questioning of other power operations that inhabit the most everyday sexual interactions.

However, the recent outbreak of the #MeToo movement has brought people's sexual experiences to the centre of the dialogue. Indeed, this flood of testimonies has led to unexpected consequences for the international feminist agenda. First, it has enhanced the distrust that already existed toward the legal system in addressing women's interests and their sexuality (Jaramillo 2021; Popova 2019). This has resulted in the search for alternatives to the traditional legal system to address sexual violence (e.g. Daich & Varela 2021). Above all, this international message has recalled the potentiality of sharing experiences about the ubiquity of sexual violence and how it impacts daily sexual behaviours. As can be seen, it is an epistemic and awareness-raising strategy that reminds us of that employed by feminist authors in the second half of the 20th century.

D) The fourth thread: the naturalistic discourse of sexuality in the theorization of sexual violence

The two radical authors discussed in this paper also challenged the 'natural' justification of sexual violence. For them, the operations of patriarchal power in sexual practices often go unnoticed or are experienced in silence because the entrenched naturalistic narrative hinders their political analysis and problematization (Millet [1970] 1995, pp.73-82; Brownmiller 1975, p.302). Therefore, it is important to understand that sexual practices go beyond the field of sexuality itself and are deeply influenced by the political context. To speak and theorize about the political character of the field of sexuality in such a critical way is currently not very common in legal feminist scholarship. This relates to the fact that a great part of feminism has departed from these theorizations and is to some extent captured by the patriarchal power of law and the naturalistic discourse around sexuality on which it is based.

It is notable that the aforementioned feminist authors of the last century laid the foundations for the notion of the social construction of sexuality, a perspective widely accepted by many sectors of feminist scholarship. In fact, these foundations served for later generations of feminist scholars to continue defining this same message.¹⁸ Nevertheless, paradoxically, at other times feminist scholarship continues to incorporate the naturalistic discourse of sexuality into its discourses, viewing this sphere as a biological and apolitical space. This discourse that presents sexuality as a pre-existing biological domain alien to gendered power relations is so powerful that sometimes we interiorize these dynamics as *normal* sex and we are not even able to question them. Consequently, the social and political dimension of sexuality has not been fully incorporated into the legal feminist collective thinking and is in constant tension with the essentialist discourse, which often presents sex as an innocuous and untouchable sphere with respect to patriarchal ideology. In this sense, current legal feminist scholarship has largely assumed the political character of exceptional behaviours that are considered sexual crimes but continues to maintain a profound naturalistic perspective regarding everyday experiences that negatively affect the

¹⁸ To mention a few examples, in 1994 Leonore Tiefer published 'Sex is not a natural act' and latterly, in 2018, Nicola Gavey addressed the cultural imperatives of sex in the book *Just Sex? The Cultural Scaffolding of Rape*.

sexuality of women bodies. This is why many current feminist authors understand that it is still necessary to insist on this feminist knowledge about the political character of sexuality that permeates our daily lives (e.g. Román 2022). This need to repeat the social constructivist perspective of sexuality makes it clear that hegemonic discourses have not allowed these contributions of the feminist past to permeate the collective social thinking of feminism.

It is important to clarify that unearthing the patriarchal content of the most everyday sexual acts and questioning their immovable naturalness does not necessarily mean judging the decisions women make regarding their sexuality, nor the criminalization of all these ordinary sexual manifestations. Although it is true that a perverse use of this idea, together with the current logic of punishment, can strengthen the current trends of criminalization, this possibility cannot lead us to unthinkingly accept the discourse that naturalizes different forms of sexual violence, nor to leave in the epistemic shadow many harmful experiences related to sexuality. As said before, the objective is to highlight the limitations inherent to the current law in order to think of strategies outside of it.

4. Some thoughts for the future: echoing and reinterpreting the voices of the 1970s

The arguments presented by *Sexual Politics* and *Against Our Will: Men, Women and Rape* are aimed at challenging the hegemonic sexual model of the 20th century and, as I have tried to present throughout this paper, continue to have the potential to defy the present sexual order, and indeed they appear useful to rethink the current western hegemonic feminist discourse too.

In relation to these two authors, in addition to their membership of a devalued social category of epistemic subjects, testimonial and hermeneutical injustices are also activated due to their level of questioning of taken-for-granted truths; the more a contribution questions hegemonic beliefs, the more likely it is to be discarded by the system. To combat these epistemic behaviours so detrimental to the feminist struggle, current feminist legal scholarship needs to re-examine the criteria and pillars on which it relies and incorporate new tactics into its strategy. Put differently, it requires different forms of epistemic action. Regarding testimonial injustice, Fricker's term 'testimonial sensitivity' (p.24), invites us to conduct an intense task of self-awareness that is useful to become aware of how our residual patriarchal and racist biases subtly affect us and influence our judgments of credibility towards others, despite our possession of sophisticated feminist knowledge (Fricker [2007] 2017, pp.24 & 73). Understanding how surreptitious these biases can become enhances our ability to identify and correct them. Concerning hermeneutical injustice, the most complex and unnoticed form of silencing, legal feminist scholarship urgently needs to generate frames of reference and analytical categories that allow us to understand the entire spectrum of sexual violence; not only that perpetrated by concrete and individualized subjects, but also that disseminated in society, which is more difficult to confront since it is a less identifiable enemy.

The fact of focusing on sexual violence that goes beyond the limits of the law and that is not legally identified as such does not pursue the objective of criminalizing it, but rather the construction of

feminist knowledge regarding the interpretation of our own sexual experiences that in fact serve to redirect our struggle outside the law. Nowadays we have an analytical concept of 'sexual violence' that is totally vitiated by the law, whose narrow meaning has to do with very specific behaviours selectively chosen and perpetrated by specific individuals. Therefore, on the one hand, the law identifies for us the group of behaviours that constitute an attack against our sexuality but, at the same time, in our life experiences we find other conduct that also harmfully affects our way of living and our sexuality. Due to this contradictory circumstance, we do not have a sufficiently clear understanding of the dimensions, the scope or the political character of the sexually harmful experiences we live. Indeed, there is some ambiguity about whether or not the events we experience constitute sexual violence, and we are confused about the impact of the patriarchal information we continue to receive from the sexual behavioural models and scripts that permeate the collective imaginary. As a result, many women live in a state of constant uncertainty about our own sexual decisions. Consequently, it is crucial to generate a useful analytical category for the collective understanding of the whole spectrum of violence as a way to overcome the current hermeneutical epistemic injustice. In this sense, Liz Kelly's (1987, 1988) term *continuum* is useful to understand the constant, expanded and generalized character of sexual violence suffered by women bodies. That is, the very term *continuum* conveys the idea that violence is the norm and it is not composed of exceptional cases, as the current legal notion of violence against women leads us to think. The law does not deny the existence of this violence but reduces it to failures or breakdowns in a state of absence of violence, although in reality violence is the norm.¹⁹ These forms of epistemic resistance can be understood as fundamental tactics that are part of the larger task of deconstructing the traditional epistemic structures that perpetuate hegemonic patriarchal, racist, and classist discourses about what sexual violence is and is not. To do this, we also need a greater commitment to the identification and dismantling of the epistemic privilege of bodies read as white. Put differently, making good use of any level of epistemic credibility we possess implies addressing the critiques that have been articulated over the last five decades by black feminisms, decolonial feminisms, and queer theory. That is, we must have an active attitude aimed at avoiding the inadvertent importation of colonial, binary and essentialist baggage.

In conclusion, this social interpretation of the constant of violence in patriarchal sexuality, and hence this understanding of violence as a continuum disseminated in society in different intensities, requires reconciliation with the arguments of the feminist past that laid the foundations of this argumentation and that have remained hidden, not only from the collective social imaginary but also from a great part of feminism. Likewise, it appears important to start honest conversations about the subjective sexual experiences of women's bodies in order to identify the dynamics of oppression and submission that are silently present in the most everyday sexual interactions. Examining the ubiquity of the violence of the current patriarchal sexual order leads to a better understanding of the sexual experiences of women, and by extension a better comprehension of common sexual narratives. Additionally, problematizing *normal*/sex, currently generally conceived as a space liberated from social conventionalisms, has the capacity to blur the

¹⁹ I draw this idea from the explanation provided by Fricker ([2007] 2017, pp.75-76) by referring to Judith Shklar and her reflection on our understanding of justice according to Aristotle's codification.

formal-legal limits of sexual violence, to reveal the coercion that exists beyond them, and thereby to question the construction of knowledge of the dominant traditional mechanisms, as well as to consider its impact on subjectivities. Reincorporating the theoretical contributions of this feminist past into the hegemonic narrative of the current feminist movement would mean to show the patriarchal political character of the sphere of sexuality, the exposure of which is crucial to interpret reality and address current challenges related to sexual violence. In the same way, exposing the political and coercive character of sexuality does not have to imply a moralizing or judgemental attitude, since we have to keep in mind that deeply understanding our oppression does not mean that it does not affect us or is not part of us. In fact, deeply understanding the patriarchal character of our sexuality and enjoying the same character, which inevitably constructs us, can be a concrete feature of our feminist historical-geographical context, and this can also encourage us to embrace the contradictions that we already observe in ourselves and in others. In this respect, these feminist scholars of the 1970s also made valuable contributions that are worth revisiting from an epistemic perspective; they developed a process of collective awareness through the sharing of personal experiences in order to give them a social meaning. Such a reincorporation would liberate many women from the burden of interpreting many fractions of sexual oppression as personal shortcomings. All this requires the elaboration of frames of reference beyond legal discourse that are functional to unravel the social threads that make up the string ball of sexual violence.

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