

# **PROSECUTING SURVIVORS: A DISCURSIVE ANALYSIS OF THE JUDICIAL ACCUSATION AGAINST CLAUDIA CORTEZ**

By Diana Romina Puerto Michaut

Submitted to

Central European University

Department of Gender Studies

*In partial fulfillment of the requirements for the Erasmus Mundus Master's  
Degree in Women's and Gender Studies (GEMMA)*

Main Supervisor: Erzsébet Barát (Central European University)

Second Supervisor: Alejandra Moreno Álvarez (Universidad de Oviedo)

Vienna, Austria

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## **ABSTRACT**

This thesis is a study of the logic of prosecution of women who are survivors of gender-based violence and engage in self-defense, for which they are taken to court. It analyzes how the state, through its justice system, builds criminal cases against these women by disregarding the history of gender-based violence they have endured from their male partners. I will address the topic through the analysis of the judicial case “Prosecutor vs. Claudia Cortez”, which took place in 2019 in Mendoza, Argentina. A critical discourse analysis of the Prosecutor’s closing argument speech is conducted with the aim of deconstructing the logic of the argumentation to expose the masculinist values it reiterates.

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## **SIGNED DECLARATION**

I hereby declare that this thesis is the result of original research; it contains no materials accepted for any other degree in any another institution and no materials previously written and/or published by another person, except where appropriate acknowledgment is made in the form of bibliographical reference.

I further declare that the following word count for this thesis are accurate:

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Signed

DIANA ROMINA PUERTO MICHAUT

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## INTRODUCTION

This thesis is a study of the logic of prosecution of women who are survivors of gender-based violence and engage in self-defense, for which they are taken to court. I analyze how the state, through its justice system, builds criminal cases against these women by disregarding the history of gender-based violence they have endured from their male partners. I will address this logic through the analysis of the judicial case “Prosecutor vs. Claudia Cortez”, which took place in 2019 in Mendoza, Argentina.

The case against Claudia Cortez represents a paradigmatic milestone in the judicial history of the Province of Mendoza. Claudia Cortez survived thirty years of gender-based violence perpetrated by her husband, during which she never received assistance from any state agency. In June of 2018, her partner attempted to sexually abuse her yet again. She avoided the act, defending herself with a kitchen knife within her reach. As a result of the injury received, the aggressor husband, Carlos Pelayes, died. Claudia Cortez was charged with the crime of aggravated homicide, which, if proven, would imply life imprisonment. Furthermore, she was not judged by a single judge but by a popular jury. Prior to this case there had been only two cases of trial by jury in Mendoza, but in those cases, men were judged for the crime of femicide. Claudia Cortez then became the first woman to be judged under this modality and the first person to be acquitted. In the absence of similar precedents, it is necessary to analyze the social and political significance of the Cortez trial and see what effect it may have for future judicial practices.

The actual text I will analyze is the speech delivered by the Prosecutor of this case, the state representative, during the closing arguments of the trial. I conduct a critical discourse analysis, from a feminist perspective, to deconstruct the logic of his argumentation and expose the masculinist values it reiterates in the Argentinian judicial system. The analysis is focused on what the state-supported legal discourse says about women survivors of gender-based violence who engage in self-defense. I will explore the identities constructed within the juridical discourse of the prosecution, the ideological work that is done through the rhetoric of argumentation, and what the legal discourse implicates about the act of defense by the survivor of gender-based violence.

In Chapter 1, I provide the legal context of the case, situating it within the Argentinian legal system, describing the legislation that is applicable to this judicial precedent. I explain the international and national legislation that oblige the state of Argentina to prevent, combat and eradicate violence against women.

In Chapter 2, I outline the theoretical framework that derives from a feminist conception of violence against women, women as survivors, their acts of self-defense, patriarchal ideology, and the symbolic values it promotes.

In Chapters 3, 4, and 5, I conduct my analysis of the Prosecutor's closing argument speech. First, I examine the identities that emerge as a result of this discourse, reflecting on the distinction between Claudia Cortez as the 'responsible victim' and as the 'woman murderer.' I will point out how the aggressor's responsibility for the violence inflicted upon Claudia Cortez is downplayed by the Prosecutor only to enhance the alleged culpability of the victim of gender-based violence. Chapter 4 will be dedicated to analyzing how the juridical and patriarchal discourses appear conflated in the Prosecutor's closing argument, reiterating heterosexist and misogynistic values. Claudia Cortez's act of self-defense as construed by the Prosecutor will be analyzed in Chapter 5. In the Conclusions, I will summarize the key findings and aim to explain what the Cortez case tells us about the logic behind the state prosecution and women's resistance to patriarchal violence.

Finally, let me take the opportunity and give a trigger warning to the reader about certain contents they may encounter in this thesis: episodes of violence against women, the use of drugs and sexual abuse. I have tried to portray these topics in a respectful manner, nevertheless, this content may be difficult for some readers.



# 1. THE LEGAL SYSTEM OF ARGENTINA: STATE OBLIGATIONS, WOMEN'S PROTECTION AND SOCIAL CONTROL

## 1.1 Legal framework of the protection of women against violence in Argentina

The protection of women against gender-based violence through legal instruments has a recent historical development in Argentina. In 1994, a reform of the Constitution<sup>1</sup> produced the transformation of the legal structure. A series of international human rights instruments were incorporated into this legal text, and thus, a “block of constitutionality” (Bidart Campos 1996, 5) was formed. This implied that the pinnacle of the legal system was constituted by the text of the Constitution as well as the content of the human rights instruments that were integrated into it. As a result, human rights became especially protected. The constitutional reform entailed the inclusion of eleven human rights instruments into Article 75, paragraph 22 of the Constitution: the American Declaration of the Rights and Duties of Man, the Universal Declaration of Human Rights, the American Convention on Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and its Optional Protocol, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child.

In particular, the explicit incorporation of the CEDAW<sup>2</sup> Convention constituted a milestone in the recognition of women's human rights. Its text defined discrimination against women, enumerated a series of human rights and called on states to actively combat inequality. By ratifying the Convention, the state of Argentina undertook the obligation to refrain from engaging in practices of discrimination against women—ensuring that public authorities would act in conformity with this obligation—and be committed to abolishing any regulation or practices which could constitute this type of discrimination, in terms of Article 2. The CEDAW Committee, in charge of the implementation of the Convention's norms, has interpreted the text to adjust the normative aspects to an evolving reality. General Recommendation No.19, issued by this Committee, expressly recognized violence as a form of discrimination, indicating that

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<sup>1</sup> Law 24.430. National Constitution of Argentina. Official Bulletin of the Republic of Argentina N° 28057, January 10, 1995.

<sup>2</sup> Law 23.179. United Nations. Convention on the Elimination of All Forms of Discrimination against Women. Official Bulletin of the Republic of Argentina N° 25690, January 3, 1985.

“The definition of discrimination includes gender-based violence.”<sup>3</sup> Furthermore, in General Comment N°8 of Recommendation 19 it was established that “The Convention applies to violence perpetrated by public authorities. Such acts of violence may breach that State’s obligations under general international human rights law and under other conventions, in addition to breaching this Convention”.

At the North-South American regional level, in 1996 Argentina reaffirmed its commitment to combat violence against women by ratifying the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, also known as the Convention of “Belém do Pará.”<sup>4</sup> This Convention conceptualizes violence against women as “any act or conduct, based on gender, which causes death or physical, sexual, or psychological harm or suffering to women, whether in the public or the private sphere.” (Article 1). It provides a typology of violences, stating that the definition includes physical, sexual, and psychological forms, while clarifying that it can take place within the family or domestic unit, within the community (including workplace, educational institutions, or health facilities), and can even be perpetrated or condoned by the state, regardless of where it occurs. In this sense, the inter-American system provided a tool to legally frame the phenomenon of violence against women and articulated particular protection mechanisms. Regarding the duties of member states, it imposed the obligation to refrain from practices of violence against women, ensuring the compliance of state officials, and called upon them to adopt the necessary measures to eliminate “customary practices which sustain the persistence and tolerance of violence against women” (Article 7).

These global and regional precedents served as inspiration for the drafting of Law 26.485 on “Comprehensive protection to prevent, punish and eradicate violence against women in the areas in which they develop their interpersonal relationships”<sup>5</sup> in Argentina. The enactment of this law in 2009 marked a key moment in the history of the Argentinian women’s movement and represented an outstanding achievement of feminist struggles (Rovetto 2019, 90). Its text includes concepts, legal obligations, and procedures, as well as guidelines for the elaboration of public policies. An essential element of this law was to introduce — for the first

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<sup>3</sup> United Nations. Committee on the Elimination of Discrimination against Women. General Recommendation No.19. January 30, 1992.

<sup>4</sup> Law 24.632. Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women. Official Bulletin of the Republic of Argentina N° 28370, April 9, 1996.

<sup>5</sup> Law 26.485. Comprehensive protection to prevent, punish and eradicate violence against women in the areas in which they develop their interpersonal relationships. Official Bulletin of the Republic of Argentina N° 31632, April 14, 2009.

time at the national level — a definition of violence against women in the legal system, creating a tool that legal practitioners could use in different professional areas, such as court rooms, investigation or policy making. Its definition of violence against women provides the conceptualization I will use throughout this thesis. Article 4 indicates that violence against women is constituted by:

Any conduct, by action or omission, based on gender reasons, which, directly or indirectly, both in the public and private spheres, based on an unequal power relationship, affects their lives, freedom, dignity, physical, psychological, sexual, economic, or patrimonial integrity, political participation, as well as their personal security. Those perpetrated by the State or by its agents are included. Indirect violence is considered, for the purposes of this law, any conduct, action, omission, disposition, criterion, or discriminatory practice that puts women at a disadvantage with respect to men.<sup>6</sup>

Another important element of this law is the classification it provides, describing in detail and distinguishing between types (Article 5) and modalities (Article 6) of violence. A type of violence references the aspect of personal life that is affected, encompassing physical, psychological, economic, or patrimonial, sexual, symbolic, and political violence. Whereas the modality designates the general fields of life within which that violence can be framed. The law mentions the domestic sphere, institutions, the workplace, public spaces, and includes in this section violence against reproductive freedom, obstetric violence, violence perpetrated through mass media, and public-political forms of violence as well.

The third aspect of this legal conceptualization worth highlighting is the inclusion of the concept of gender. This element in the definition is an innovation in comparison with to the CEDAW and the Belem do Pará Conventions because they did not contain references to “gender reasons” or “unequal power relations” in their definitions. The Argentinian law points out the cultural construction of gender that shapes behaviors, expectations, and values regarding women’s life in society, while recognizing it as the source of inequalities and violence against them. By adopting this stance, it was made possible to incorporate into the legal system a feminist perspective, which identifies a social and political system that promotes unbalanced power relations between men and women — known as patriarchy — as the constitutive

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<sup>6</sup> Translation is my own.

foundation for gender-based violence. After the enactment of the law, the Presidential Decree<sup>7</sup> regulated its implementation in 2010 and described the unequal power relations of gender as “sociocultural historical practices based on the idea of the inferiority of women in relation to men” (Article 4) and indicated that the practices which promote gender inequality can be expressed through norms, messages, discourses, symbols, and images, among others (Article 2). Taking into consideration that the Argentinian legislation refers to violence against women as a phenomenon which is cut across by gender mandates, I shall use “gender-based violence” and “violence against women” interchangeably in my thesis.

Framing violence against women from a feminist perspective in national and international legal instruments, in order to highlight the state’s responsibility in eradicating it, has been a decisive step in the history of the women’s movement (Fuster and Penchanski 2019, 59). The feminist movement has managed to make the existence of a patriarchal system visible and succeeded in speaking to the power of state institutions, making them explicitly recognize the existence of cultural practices that position women in a lower social status. Thanks to a history of feminist mobilization (Foresti 2021, 32), it is now clear that the state of Argentina is bounded by international obligations to protect women from gender-based violence and must, therefore, implement all necessary measures to prevent and eventually eradicate it from society.

One recent manifestation of Argentinian feminism is the “Ni Una Menos” (Not One Woman Less) movement. “Ni Una Menos” is a social movement aimed at raising awareness of the alarming number of femicides in Argentina. It achieved major public visibility on June 3<sup>rd</sup>, 2015, where an estimated 200,000 thousand (Chenou and Cepeda-Mámela in Frain 2020, 27) women participated in a massive protest to demand state intervention in the prevention of violence against women. They claimed urgent action by state officials because at that time it was said that a woman died every thirty hours due to patriarchal violence (Asociación Civil La Casa del Encuentro 2020, 49).

A significant milestone of this movement was the enactment of Law 27.499,<sup>8</sup> also known as the “Micaela Act,” which is meant to guarantee that all state officials receive gender sensitive training. The advocacy in support of this law was carried out by activists of the “Ni Una Menos” movement after the femicide of Micaela García, a twenty-one-year-old girl who

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<sup>7</sup> Decree 1011/2010. Regulation of Law 26.485. Official Bulletin of the Republic of Argentina N° 31947, July 20, 2010.

<sup>8</sup> Law 27.499. Micaela Act. Mandatory training on topics of gender and violence against women. Official Bulletin of the Republic of Argentina N° 34031, January 10, 2019.

was murdered by a man who had been in prison and was released by a judge who made his decision by disregarding medical evidence<sup>9</sup>.

Her death caused an immense social upheaval, as it was understood not only as the result of the actions of a single man but in the wake of the negligence of state sponsored institutions (Lezcano 2021, 2; Ni Una Menos, 2018<sup>10</sup>). There were prosecutors, judges, and many judicial operators who participated in the case but failed to do so in protection of Micaela García. As a result, Law 27.499 orders the realization of mandatory training on gender related topics and gender-based violence for all state officials. This means that every member of the executive, legislative and judicial branch of the state of Argentina, regardless of their place within the state hierarchy or structure, must receive this training in a sustained and permanent manner. The “Micaela” Act intends to reach every worker within the state structure, from public school teachers, to bank employees, doctors, and firefighters. Despite this general mention of recipients, feminists and social activists understand that the Act is intended to reach particularly judicial actors and members of the justice system. A relevant aspect of the law spells out in fact that the training is mandatory. It expressly articulates that it is not possible to refuse to attend the workshops, without having a justified explanation. Its obligation is imposed by framing the refusal as a serious misconduct, making it plausible to receive disciplinary sanctions.

## 1.2 The trial by jury: a social and legal innovation

The trial by jury system in Argentina is a constitutional mandate (Article 24, 75 paragraph 12, and 118) that was included in the original text of the Constitution established in 1853, however, it was not immediately realized in practice. The implementation of this system is a recent phenomenon that is slowly spreading throughout the country. It has been argued that this judgement system has been brought into the public scene in a context where the criminal justice system is undergoing a legitimacy crisis (Porterie and Romano 2018, 14). So far, only eight out of the twenty-three provinces have approved legislation to establish a trial by jury system for criminal proceedings (Arduino and Lorenzo 2022, 1). In the Province of Mendoza this system was implemented by order of Provincial Law 9106<sup>11</sup> in 2018, which outlines its general functioning. In this section I will provide an overview of its characteristics.

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<sup>9</sup> “Diputados Aprobó La “Ley Micaela”, Otra Herramienta Contra La Violencia De Género”. *Official Press of Diputados Argentina*. December 18, 2018. [https://www.diputados.gov.ar/prensa/noticias/noticias-podio/noticias\\_0885.html](https://www.diputados.gov.ar/prensa/noticias/noticias-podio/noticias_0885.html)

<sup>10</sup> “Ni Una Menos” Manifiesto, March 9th, 2018. <https://niunamenos.org.ar/manifiestos/8m-2018/>

<sup>11</sup> Provincial Law of Mendoza 9106. Trial by Popular Jury. October 16, 2018. <http://www.jus.mendoza.gov.ar/documents/855520/861790/LEY+JUICIO+POR+JURADOS+POPULARES+para+sitio+con+logo+nuevo.pdf/e34b7d36-3a3c-4ba4-a0a4-ff762980347f>

The traditional judging system in criminal law is commonly known as a bench trial system, where the judgement is made by one single judge or rather a chamber of judges, integrated out of at least three judges in the Argentinian legal system. These judges are trained professionals, specialized in criminal law, with years of experience in the field. They must issue a written and substantiated ruling, supported by legal arguments, and based on the proven facts of a given case. In Argentina, they are entitled to decide upon which facts have been proven and the conviction that the defendant will receive if found guilty, in accordance with the legal stipulations of the Penal Code.<sup>12</sup>

The trial by jury system rests on the premise of citizen participation in the justice system. The judicial branch is often seen as the part of the republican state over which citizens have less influence, since the executive and legislative branches are chosen by their direct vote. Therefore, this system becomes a site of direct participation in the realization of justice (O'Malley 2018, 1109). A jury is composed of ordinary citizens with no legal background. In fact, Article 5 of Law 9106 expressly forbids the participation of individuals related to legal practice, such as lawyers or public notaries. This is a legal body composed of peers, individuals of equal status, who are drawn at random from a public list. As outlined by the legislation of Mendoza, such a jury has twelve members with an equal gender representation, therefore, six women and six men. The members undergo a selection process for each trial carried out by the prosecution and the defense (Section II – Law 9106).

According to the Mendoza provincial law, a jury's responsibility is to decide if the facts being discussed in court have been proven and whether the defendant is guilty. The reason for this is that in Mendoza the only type of crime that is judged under this modality is aggravated murder, to which a life sentence is attributed. Article 80 of the Penal Code of Argentina includes twelve scenarios that can constitute this crime; the killing of a person with whom one currently maintains or has maintained a couple relationship is defined in paragraph 1 of Article 80. Therefore, if a person is prosecuted for aggravated murder in Mendoza, as is the case with Claudia Cortez, they will face a trial by jury, who will ultimately have to decide on the life imprisonment of the accused. But perhaps one of the most relevant characteristics of the legal framing of this institution in the local legislation is that its decision must be unanimous. All twelve jurors must agree on the proven facts and criminal responsibility for the defendant to be convicted. Even in the case that only one juror disagrees, the legally required unanimity will

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<sup>12</sup> Law 11.179. Penal Code of the Nation of Argentina (updated version). Official Bulletin of the Republic of Argentina N° 8300. November 3, 1921.

not be fulfilled—a situation known as a deadlocked jury—, giving as a result an acquittal of the person under judgement.

Deliberation is a key component of the jury's functioning. Unlike a bench judge, its verdict is a result of a dialogical process (Liu 2022, 6). Through their deliberations, the jurors will have to engage in dialogue and discussion to construct a collective resolution, which may imply the task of convincing each other, so that they can aim at adopting a unanimous decision. The arguments and positions sustained by each member will never be known by the parts of the criminal proceeding nor by the public, considering the secrecy mandated by law.

Porterie and Romano (2018, 70) have argued that the jury trial system represents a form of control over the justice system, where each part is now constrained strictly to their role indicated by law, leaving less room for customary legal practices that resulted from informal agreements among the professional parties. Additionally, it has pulled criminal cases out from behind the old benches and desks of the judiciary and propelled them into the light of public attention. It has raised the bar of expectations of both prosecutors and defense lawyers, who are now demanded further preparation to present their case to non-expert citizens. The logic of their arguments, their presentations, and even their language (Brugniere 2022, 184) must be portrayed in a simple manner if they are to convince ordinary women and men into adopting their stance.

### **1.3 The law as discourse with a gendering strategy**

From a formal analysis of norms, the incorporation of the CEDAW Convention and the “Belem do Pará” Convention created new instruments for the protection of women's rights. Moreover, having Law 26.485 fully in force, they seem to be a cause for celebration in virtue of women's rights finally recognized. However, the satisfaction is ambiguous when analyzed from the point of view of the actual cases and situated social practices. An examination that goes beyond the formal texts seems to find more shadows than lights when comparing what the norms say and the ways in which they become a reality. Displacing a formal vision in order to formulate a critical review of law, understanding it as a social practice, allows us to raise new questions about the permeability that these legislative advances have had in the social tissue.

The legal discourse is anchored in the political, constituted within the framework of the discourse of power (Álvarez 2013, 23). The law as a praxis is not only found in the legislative product or judicial rulings, but can be experienced in its language, acts, and communication processes. Understanding law as discourse helps to understand the functioning of power relations ‘beyond’ the norms since law – by itself – does not allow us to access them (Foucault

1990, 86). Assuming this point of view invites us to assess this constitutive dimension of legal practices that seems to exceed the normative, as if a given text, through the analysis of actual case studies. The aim is to deconstruct the logic of judicial discursive practices, unraveling at the same time the discourses beyond the legislative field that run through them, in order to show the order of values they reiterate and propose how we think they should be.

Alicia Ruiz has affirmed that “The law is a social discourse and, as such, gives meaning to people’s conduct and turns them into subjects” (Ruiz 2013, 9). This critical perspective is interested in analyzing how the law contributes to the production of social meanings, and it is based on the awareness of the law’s specific position, as the legitimizer of state practices. Juridical discourse bestows authority and allows for the realization of certain conducts while discouraging others. My thesis will look into how the legal discourse creates meanings in a particular judicial case, based around the idea that “Both a law and a court case are anything but a neutral description of problems that have occurred in reality. It is always a “reconstruction” of reports, testimonies, confessions, opinions contributed to a process, in which other social discourses intervene” (Ruiz 2013, 15). A legal proceeding, envisioned through a public trial does not constitute a pure and simple reflection of events, as a formal vision of the law would suggest, rather it emerges as the outcome of a variety of discourses, power relations, and ideological investments that run through the judicial practice. As a result, the actors involved, their social positions and the portrayal of their actions come to be represented in a manner that sustains specific values, which can be reiterated through a relatively different logic of assumptions and expose what that articulation is disregarding or even omitting.

This thesis is interested in examining how the concrete judicial practices function in relation to women. From a feminist perspective, this standpoint can help us understand the persistence of discriminatory social practices against women even when positive changes to the law have erased the biases of inequality and have expressly recognized equality (Facio 1999, 32), as we have seen happened in the case of Argentina. In addition, framing the law as discourse enables inquiries regarding the ways in which it produces gender(ed) differentiation. From this perspective, the legal system does not attend to gendered subjects that already exist in the social context and regulates their behavior retrospectively, rather it has an active role in shaping and reinforcing those identities as well as establishing the relations among the social subjects it comes to position. As Carol Smart has argued, the law assembles “gendered subject positions as well as [...] subjectivities or identities to which the individual becomes tied or associated.” (1997, 34). In this sense, the question of what a woman is or is not becomes a



question of what the woman is understood to be in a specific context, from which certain legal effects and reactions of the criminal justice system will be set off. Thus, categories such as “victim” or “murderess” are a result of a discursive production of the “law as a gendering strategy” (Smart 1997, 35).

## 2. CRIME AND CRIMINALS IN A PATRIARCHAL SOCIAL ORDER

### 2.1 Women offenders through the lens of feminist criminology

On the basis of inquiring how the legal system functions in concrete and situated practices, while highlighting that the law operates as a “technology of gender” (de Larutetis quoted in Smart 1992, 34), feminist scholars have focused on the lived experience of women within the criminal justice system. They argue that their involvement with criminality is deeply enrooted in their social status (Chesney-Lind 1986, 87). Factors, such as youth, poverty and a history of violence are an essential element of the chain of events that have led women to be prosecuted and charged with a crime. Given the aim of this thesis, I will focus on the incidence that gender-based violence has had in the criminalization of women who commit crimes in that context.

Feminist scholars in the field of criminology have documented women’s experience with the criminal justice system when facing charges for the deaths of their violent partners when trying to defend themselves from yet another violent attack. In her book titled *“When Battered Women Kill”*, Angela Browne as early as 1987, gave voice to the stories of U.S American women who were undergoing criminal charges for homicide by focusing specifically on their “actions in the context of their position as victims” (1987, 12). Her work contributed to understanding the ‘battered’ participants’ perception of danger, which led them to act in self-defense. In Argentinian jurisprudence, this perception of danger is often disregarded by the judiciary. For example, if this perspective had been considered by the criminal judges who convicted Vanesa Ruiz Casas<sup>13</sup> to twelve years of prison—a woman who defended herself from an attack where her partner verbally abused her, broke electrical objects around the house, and shoved her to the ground—then perhaps their decision would have stated otherwise. Ruiz Casas appealed the conviction and was released by decision of the Supreme Court of Justice of Mendoza in 2017. Similar circumstances can be found in the judicial precedent of “María Laura Gómez”, solved by the Superior Tribunal of Justice of the Province of San Luis in 2012<sup>14</sup>, or the “Maria Lescano” case in 2019 (Oyola 2022, 159). Both women were being physically assaulted by their partners when they grabbed a kitchen knife to repel the aggression, causing a lethal injury to the respective aggressors, and later convicted for murder.

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<sup>13</sup> Case file N° 13- 03696013-7/1, titled “Fiscal C/ Ruiz Casas, Vanesa Yanina P/ Homicidio Agravado Por Ser La Víctima Persona Que Mantenía Relación De Pareja Mediando Convivencia S/ Casación”. Supreme Court of Justice of Mendoza. September 7, 2017.

<sup>14</sup> Case file N° 44-I-2010, TRAMIX INC. N° 55879/1, titled “Incidente – “G M L S/ Homicidio Simple – Recurso De Casación”. Superior Tribunal of Justice of the Province of San Luis. February 28, 2012.

Browne's findings point out the paradox of the justice system's reaction, arguing that it was "the same system that failed to protect them from their partner's violence" the one who "immediately arrested and prosecuted them when they responded in their own self-defense" (1987, 159). This claim is applicable to the Argentinian context, as can be seen in the precedent "Rojas Echeverrieta,"<sup>15</sup> solved by the Supreme Court of Justice of Mendoza in 2014. Cinthia Rojas Echeverrieta had filed thirty police reports against her male partner which were left unattended. Her partner attacked her while she was cooking and after defending herself with a kitchen knife, a chamber of judges convicted her to eight years of prison. The criminal justice system disregarded her petitions and only intervened when the death of the aggressor was produced. Furthermore, she was released after the Supreme Court solved her appeal and pronounced her acquittal. The "N.R."<sup>16</sup> case solved in 2013 in the Province of Santiago del Estero reflects a similar experience lived by a woman who was accused of simple homicide after having issued numerous police and administrative reports before child protection offices, against her male partner.

Another scholar, Elizabeth Leonard (2002) documented the individual trajectories of "imprisoned battered women" (11) in the United States who were convicted for the murder of their violent partners. Regarding the homicide prosecution, the author's findings suggest that women are often disbelieved by judicial operators when they claim a self-defensive action and that there is a lack consideration of the evidence that proves the history of an abusive relationship (Leonard 2002, 122). This was the case with the judicial precedents of "María Cecilia Leiva"<sup>17</sup> and "Ana María Pérez Cabrera"<sup>18</sup> in Argentina, where first instance judges minimized women's testimony when they argued a history of gender-based violence and convicted them to twelve years of prison. As a result of her research Leonard concludes: "Ongoing gender-sensitive, domestic violence education is indicated for all representatives of the criminal justice system" (2002, 116). Her recommendation aims at the need to guarantee that law enforcement officers be adequately trained to understand and handle cases involving gender-based violence contexts. This makes the analysis of judicial practices in Argentina

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<sup>15</sup> Case file N° 110.919, titled: "F.C/Rojas Echeverrieta, Cinthia Yasmín P/Homicidio Simple S/Casación.". Supreme Court of Justice of Mendoza. June 23, 2014.

<sup>16</sup> Case titled "Fiscal C/ N.R P/ Homicidio Simple". Excma. Cámara de Juicio Oral en lo Criminal y Correccional de Segunda Nominación. Santiago del Estero. November 18, 2013

<sup>17</sup> Case titled "Leiva, María Cecilia s/ homicidio simple". Corte Suprema de Justicia de la Nación. Buenos Aires, November 1, 2011.

<sup>18</sup> Case titled "Perez Cabrera, Ana María s/ psa homicidio calificado por mediar relación de pareja s/ rec. extraordinario c/ sentencia n° 12/19 de expte. corte n° 100/18". Corte Suprema de Justicia de la Nación. April 15, 2021.

particularly relevant, as it is a country where legislation such the “Micaela Act” is in place, as examined in Chapter 1, which can be considered as a fulfillment of this policy recommendation.

The outcome of the judicial precedents analyzed above indicate that in the Argentinian legal system women experience the “abuse-to-prison pipeline” (Saar et. al 2015, 5). This term has been used by human rights organizations to illustrate how young girls enter the criminal justice system in virtue of their previous victimization. Acting in self-defense is one of the main causes of their criminalization (Vafa and Epstein 2023, 9).

The different academic studies have different approaches, though, to the cases and develop various concepts when discussing the life of the women who have endured violence from their male partners and were involved in criminal activity as a result of their defensive actions. First, studies often refer to the women in these situations either as “battered women” (Nathoo 1997, 47; Ostoff 2002, 1522; Browne 1987, 12) or victims (Downs 1996, 3), without questioning the implications of the two terms. This type of framing highlights the effect of the violence as constitutive of the identity of the protagonists, which, paradoxically, carries along with it a negative value judgement regarding their lack of agency and ability of making decisions for themselves – which is clearly not the case with the women who have survived a long history of violence and are determined to appeal their judgement.

Second, the situation women are experiencing is often represented as “intimate partner violence” (Tyson, Kirkwood, and McKenzie 2017, 561; Shulz 2021, 8; Tarrant 2021, 704) or as “intimate violence” (Sutherland 2021, 8). These conceptualizations allow for both men and women to be placed on either side as if involved in some alleged reciprocity, where the only requirement is that they be involved in some sort of affective or sexual relationship. Instead, I shall analyze these relationships within a patriarchal system and provide a feminist understanding of violence against women as a gendered practice. I will make use of the terms and definitions contained in the Argentinian legal system, as I explained in Section 1, Chapter 1.

And finally, the actions that the women carry out are referred to as “killing” (Nathoo 1997, 50; Browne 1987, 12) or “assaulting” (Ostoff 2002, 1523). There is no reference to the context or the motives for this action, which can lead to treating them at the same level as any type of incident that results in death, such as intended murder, accidental death, etc., erasing the specific circumstance of the criminal act, i.e., the history of endured violence inflicted on the women defending themselves.

This thesis will aim at challenging the ideological effects of these nominalizations from a feminist point of view, which will allow to broaden the scope and situate the actual case

chosen within a structural patriarchal system, enhancing the chance of acquitting the woman. The major concern with the terms outlined previously is that they depoliticize the phenomenon in which the lives of women are inscribed and abstract the violence away from its gendered relations of power. Therefore, I will refer to the context as gender-based violence instead of intimate partner violence, to the women as survivors (Leonard 2002, 57; Hoff 1991, 56) rather than victims, and to the action they perform as an act of self-defense instead of killing. By using these terms, I intend to focus on the gendered aspects of the violence and to develop “an interpretation of violence through gender” (Engel Merry 2009, 3). I also wish to highlight an active position of women and their agency in overcoming these situations—by means of the term survivor, rather than illustrating them as passive participants (Gonzalez and Yanes 2013, 56)—implicated in the term victim (Thompson 2010, 328). This context will allow for an integral comprehension of self-defense, seen as an act aimed at repelling an unjust aggression, and of the immediate violence committed by the violent partner, as well as the one mediated by the legal procedure they come to be involved in.

## **2.2 Patriarchal ideology as the sustenance of violence against women**

The feminist position that I adopt for the analysis that I will carry out is based on the assertion that the social relations between men and women are embedded in a system of multiple relations of power conceptualized as patriarchy. Sylvia Walby has defined it as “A system of social structures and practices in which men dominate, oppress, and exploit women” (1990, 20). The author suggests that patriarchy can be analyzed from an abstract perspective, where it can be explained as constituting “a system of social relations”; on a more concrete level, where she identifies six “social structures” that are formed by “the patriarchal mode of production, patriarchal relations in paid work, patriarchal relations in the state, male violence, patriarchal relations in sexuality and patriarchal relations in cultural institutions”; and finally, on the most concrete level where particular patriarchal practices are carried out within those structures. Furthermore, she distinguishes a public form of patriarchy, taking place in state institutions, from a private form, illustrated by relations that take place within households (1990, 24). A main characteristic of patriarchy is its changing and adapting nature, which has been highlighted by Walby, pointing out the shifts from one form to another that have been produced in different historical moments (1990, 173), contesting those who sustain that the private/public distinction is theoretically useless and attribute it a universal and homogenous character. This conceptualization of patriarchy as a historically changing system, differentiating, amongst other things, what counts as private and public forms of gendering,

allows us to frame social relations among men and women in a situated historical context, where the inequality that places women in an inferior position of power remains. In this sense, male violence against women is seen as “an important basis of men’s control over women, that is, essentially, the basis of the system of patriarchy” (Hanmer quoted in Walby 1990, 157).

Patriarchy is organized by unequal gender relations, but it has also been explained in terms of constituting an ideology due to the fact that it serves to sustain heterosexist values as natural, desirable or unchangeable. Kate Millet (2000, 26) explained this ideological dimension of patriarchy as a manifestation of power in virtue of which both sexes seem to adhere, as if willingly, to the standards of sexual politics. She claims that social subjects are socialized into adopting differentiated personalities and activities, and as a result the status of male superiority and female subordination is obtained. Ideology is taken here as the opposite of force, in the sense that it shapes “temperament, role and status” (2000, 26) by making the inequality appear as given, rather than imposing it through regulated practice or even by direct violence.

Furthermore, patriarchal ideology has also been conceptualized in practical terms as “(a) a set of beliefs that legitimizes male power and authority over women in marriage, or in a marriage-like arrangement, and (b) a set of attitudes or norms supportive of violence against wives who violate, or who are perceived as violating the ideals of familial patriarchy.” (Smith quoted in McKee 2014, 71). This definition highlights the connection between ideology and the legitimization of a social order that sustains that power is associated with maleness. In this sense, sexist values such as female inferiority or the breach of gender roles can be seen as the effect of this ideological manifestation of patriarchy.

Recently, Gwen Hunnicutt (2009) has proposed a “resurrection” of a theory of patriarchy to explain violence against women. She contests the formulations that resulted in the abandonment of this term by feminist scholars and proposes an actualization of the term and its implications in line with current developments. Two of the author’s arguments have particular relevance for the analysis I will conduct. In the first place, Hunnicutt claims: “A theory of patriarchy must contend with the potential divergence of structure and ideology. Varieties of patriarchal ideology may exist apart from structural conditions. Patriarchal ideology may endure despite structural gains in gender equality” (2009, 555). Regarding this point, the author is suggesting that there is no straightforward connection between women’s social and political achievements, such as the entry into the labor market or an increase in government representation, and a decrease in the violence they experience. The presence of an ideological component accounts for the persistence of violence despite these gains, or a reconfiguration of the hegemonic gender relations of power. In the second place, Hunnicutt criticizes the

traditional perspective of powerless victims and dominating or overpowering aggressor stating that “There are labyrinths of power dynamics in patriarchal systems. Violence against women cannot be understood as a simple formula of “oppressor and oppressed.” Patriarchal systems must be envisioned as “terrains of power” in which both men and women wield varying types and amounts of power” (2009, 555). This affirmation can help to understand that because power has multiple manifestations in a variety of spaces, women who have endured gender-based violence and may appear subjugated at one moment, can display means to override their situation in another.

### **2.3 Criminalization as a symbolic restoration of gender**

Framing violence against women in the context of a patriarchal social order provides a conceptualization that brings forward the controlling nature of this system towards women, shaping their values and behaviors. Discipline over women’s bodies and conduct is a key factor of patriarchy, who establishes consent through ideology, as analyzed in the previous section, or through violence (Millet 2000, 26). The ideological form takes us to consider the symbols and values regarding femininity that are promoted by this system in connection to the functioning of criminal justice. The efforts of feminist criminologists have been directed at showing how the criminal justice system can reiterate that patriarchal mandate of control, by promoting certain formulations of a criminal act as well as deciding on who is to be considered a criminal (Chesney-Lind 2006, 9). From this perspective, and pondering a critical perspective of the law, what is said about women and their criminal actions, but overall, how it is said becomes crucial to understand how criminality functions as a way of sustaining a patriarchal order (Chesney-Lind 1986, 78).

“What messages are we sending when it’s the survivor of sexual abuse who is the one who gets locked up?” questioned Rebecca Epstein<sup>19</sup> when explaining the recent implications of the abuse-to-prison pipeline. From a feminist perspective, gender-based violence against women serves as a systematic tool to put women in ‘their place’ and keep them there, affirming the gender mandate imposed by the patriarchal systema (Leonard 2002, 125). This mandate is further accentuated if the aggressor is the State and if the violence is enacted through the judicial system, due to the social reach of State actions and the presumption of legality that institutions

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<sup>19</sup> “How sexually abused girls are still ending up in jails and prisons”. The Washington Post. April 10, 2023. <https://www.washingtonpost.com/dc-md-va/2023/04/10/how-sexually-abused-girls-are-still-ending-up-jails-prisons/>

hold in that its actions are to be governed by law. Hence the importance of analyzing the messages — both explicit and implicit — sent by the institutions that claim to protect women.

Maintaining a critical perspective of the law, as outlined in Chapter 1, this thesis assumes that the legal system is bestowed with a “symbolic efficacy”, as defined by Mauricio Villegas. The efficacy of the law in its symbolic aspect provides a conceptual tool that warns us about the invisible effects of legal acts, since it argues that the law, in addition to fulfilling an instrumental function for changing behaviors, is also a “symbol aimed at representation” (García Villegas 2014, 50). Villegas explains this type of legal efficacy by claiming that “its force lies in the mental impact produced by the legal discourse, with the capacity to establish the difference between the licit and the illicit, the just and the unjust, the true and the false and understood as a fundamental part of legitimate legal-political institutions” (García Villegas 2014, 50). So, in so far as this symbolic power exists in law, and law is a practice traversed by power relations, including the structural power of patriarchy, it is possible to affirm that the symbolic weight of law is an element that can reinforce the social subordination of women.

Rita Laura Segato has explored the symbolic messages that reinforce a patriarchal system and the means it displays for this task. She argues that every act of violence is an “utterance with communicative intent” (2003, 56). In this sense, by conducting an analysis of the crime of rape as a “moralizing crime” (Segato 2003, 139), the author claims that an episode of patriarchal violence is organized through a vertical axis based on domination, embodied by the power the aggressor displays over his victim, as well as a horizontal axis, referring to the bond among equals occupying the status of masculinity — characterized by alliance, competition and one that also constitutes a mandate in the patriarchal system (2003, 253). In this scheme, two interconnected messages can be identified. On one hand, the message aimed at the woman victim of gender-based violence communicates power, domination, and control, and on the other hand, the message directed at the male peers communicates a confirmation of the perpetrator’s masculinity, i.e., his entitlement to power and even force, affirming his status.

In the Argentinian legal system, what is symbolically promoted about women, both implicitly and explicitly, has undergone a specific legal reform, understanding that the messages conveyed can also constitute violence. Among the types of violence against women, Law 26.485 conceptualizes symbolic violence as “That which through stereotyped patterns, messages, values, icons or signs transmits and reproduces domination, inequality and discrimination in social relations, naturalizing the subordination of women in society” (Article 5, paragraph 5). Furthermore, the law recognizes that such violent acts can be perpetrated by state officials, defining this situation as institutional violence:



Institutional violence against women: Violence committed by officials, professionals, personnel, and agents belonging to any public body, entity or institution, whose purpose is to delay, hinder or prevent women from having access to public policies and exercising the rights provided for in this law. Also included are those exercised in political parties, trade unions, business, sports and civil society organizations (Article 6, paragraph b)

This approach tells us that the norm does not conceive violence in a narrow form, but, due to its feminist standpoint, is able to contemplate broader ways of enforcing women's subordination in society through violence that mobilizes the naturalization and legitimization of a patriarchal system and acknowledges that State institutions can constitute the perpetrators of that violence.

## **2.4 Research design and Methodology**

In this section I will describe the methodological aspects of my thesis. Given that a case study will be conducted, I will first present the life-story of Claudia Cortez and describe the series of events that led to her criminal accusation. I will then provide the reasons for the methodological approach and the categories of analysis chosen.

Claudia Cortez was born in 1969 in the province of Buenos Aires, Argentina. She met Carlos Pelayes when she was seventeen-years old and had been in a relationship with him for almost thirty years, making him her lifelong and only partner—since she had never been involved in another relationship. Throughout that time, they had three children, Franco was 24 years old, Tomas was 18 and the youngest one, Mateo, was 7 at the time of trial. Claudia Cortez had graduated from high school and had been accepted into university; she wanted to become a social worker. However, this aspiration was frustrated due to her husband's constant jealousy towards her classmates and control of her daily activities. Claudia Cortez had always worked and was in fact the main source of income in her household. For the last ten years she had been working in a retail store inside a shopping center. In 2018, she was diagnosed with cancer, as doctors had found a tumor in one of her breasts, for which she started medical treatment.

Claudia Cortez is a woman who survived severe violence perpetrated by her husband, enduring physical, psychological and sexual abuse for almost thirty years. The control he exercised over her was nearly absolute, for instance, she never possessed a cellphone nor the keys to her house. I do not intend to reproduce the violence she experienced in my work; therefore, I will limit myself to describing certain events only in support of my argument. I will do so in the most respectful manner possible, but this is where the reader should be aware. On

June 28<sup>th</sup> of 2018, Carlos Pelayes arrived home under the influence of alcohol and drugs, irrupted into the bedroom where she was sleeping, and attempted to sexually abuse Claudia Cortez, yet again. She avoided the act, defending herself with a kitchen knife that was within her reach. As a result of the injury received, the aggressor died. Following the criminal investigation carried out by the state Prosecutor, Claudia Cortez was charged with the crime of aggravated homicide, which, if proven, would imply life imprisonment, as is indicated by the Penal Code of Argentina. Furthermore, due to the recent legislation of Mendoza establishing the trial by jury in criminal jurisdiction, she was not judged by a bench trial judge but by a popular jury. A public trial was held against her on May 14, 15 and 16<sup>th</sup> of 2019, nearly one year after the events happened. During that year, she was under home arrest in her parents' house and was only allowed to leave for the purpose of attending her medical appointments and taking her children to school.

I have chosen the Cortez case as a microstudy of the gendering of violence under Argentinean law because it represents a paradigmatic milestone in the judicial history of the Province of Mendoza. Prior to this case, there had been only two cases of trial by jury in Mendoza, in which men had been judged for the crime of femicide. Claudia Cortez became the first woman to be judged under this modality and the first person to be acquitted. In the absence of similar precedents, it is necessary to analyze the social and political significance of the Cortez case, taking into account the effects that her trial may have on future judicial practices.

The homicide investigation, the criminal charges, and the presentation of the accusation during the public trial were all promoted by the Prosecutor, the state representative, as is indicated in the Penal Procedure Code of Mendoza. I wanted therefore to focus exclusively on how the state built a case against a gender-based violence survivor. The logic of the Prosecutor's arguments that sustained Claudia Cortez's accusation will reveal how women survivors, the violence they have experienced, and their self-defensive actions, are being construed in the eye of the heteronormative practices of the judiciary.

In the textual analysis, I will apply the method of critical discourse analysis. This approach provides tools for a qualitative analysis of the ideological investments of meaning and for considering language use not only as a medium but as the stake of political struggle against gender-based violence. The main principles of critical discourse analysis have been summarized by Fairclough and Wodak (1997, quoted in Van Dijk 2015, 467) as follows:

1. CDA addresses social problems.
2. Power relations are discursive.
3. Discourse constitutes society and culture.

4. Discourse does ideological work.
5. Discourse is historical.
6. The link between text and society is mediated.
7. Discourse analysis is interpretative and explanatory.
8. Discourse is a form of social action.

Drawing on Wodak and Reisigl (2017, 89), I consider discourse as

a cluster of context-dependent semiotic practices that are situated within specific fields of social action; socially constituted and socially constitutive; related to a macro-topic; linked to the argumentation about validity claims such as truth and normative validity involving several social actors who have different points of view.

This approach requires to situate my data within the social context of the judiciary in Mendoza, Argentina, embedded in the power relations of gender that contribute to the heteropatriarchal ideological production of the meaning of the concept of ‘victim’. My reflections on the judicial practice in relation to gender-based violence in Argentina in this chapter is meant to situate the particular case against Claudia Cortez in its historical context.

Critical discourse analysis is essential for the analysis I will conduct given the theoretical framing of the law as a type of discourse, which makes it possible for me to deconstruct the logic of the given judicial discursive practices. This methodological approach will provide insight into the rhetorical organization of the Prosecution’s accusation against Claudia Cortez (Tonkiss 1998, 250). The data I will analyze is the speech delivered by the Prosecutor during the closing arguments of the trial. My source is the official recording of the final part of the trial posted on YouTube by the account of the Judicial Branch of the Province of Mendoza (@SIJUMTV). The video is publicly available here: [https://www.youtube.com/watch?v=ci\\_7jBCbkh4&t=501s&ab\\_channel=SIJUMTV](https://www.youtube.com/watch?v=ci_7jBCbkh4&t=501s&ab_channel=SIJUMTV).

It could be argued that I could have based my analysis on the full recording of the trial. However, the material of the full trial consists of approximately 3 days of footage, and that would exceed not only the length but the purposes of this research. The duration of the trial would have included the entire process of jury selection (also known as the “voir-dire” hearing), the full interrogation of witnesses and experts carried out by both prosecution and defense, as well as the instructions given to the jury during every step of the procedure, all of which would have exceeded the scope of an MA thesis. Instead, I have chosen the Prosecution’s closing arguments, since they summarize what was previously discussed throughout the trial and enable a comprehensive understanding of the logic informing the procedure. In particular, the

Prosecutor's speech contains the "richness of textual detail" (Tonkiss 1998, 253) necessary to conduct this analysis, providing the telling insight into how the state has constructed the criminal accusation against Claudia Cortez.

It could also be raised that I could have used the paper file of the case for my data. First, this would not be pertinent because this file constitutes a record of the previous stages of the trial, and it is not the trial per se. It contains the documentation of the investigation carried out by the state according to Mendoza's Penal Procedure Code, but it is not a judgement. The information presented would include anything from legal notifications and scheduling of appointments for physical and psychological examinations, to police acts and 911 online communication. These are elements of proof that certainly contributed to supporting the Prosecution's accusation of Claudia Cortez but there is no interpretation of them within this record. My interest lies in the account of the facts that the state presented as the 'truth', by drawing together and emphasizing particular components. Second, considering the time passed since the trial and the time of writing this thesis, it is most likely that the file has been stored in the archives of the judiciary of Mendoza, which involves a difficult process of authorization. Consequently, I have selected publicly available information as data for this research. That public access could also make my interpretation more accountable in the eye of feminist activists interested in the case in the future.

In the following three chapters of analysis, there are direct quotes of the Prosecutor's speech in Spanish. The translation to English is my own. I carried out the actual text analysis in the Spanish version of the text. On occasions, there are losses in the specificity of meaning when a translation occurs (Van Nes et al. 2010, 314), which I have tried to overcome by clarifying expressions used by the speaker and by providing the quotes in the original language in footnotes.

### 3. CONSTRUCTED IDENTITIES: WHO IS THE “VICTIM” AND WHO IS THE “AGGRESSOR”?

David Howarth (2000, 53) argues that “subjects are the function and effect of discourse”. This means that social subjects are not given entities that are simply presented in a transparent manner through language, rather their identity is constructed within a discourse and emerges as one of its consequences. Consequently, in so far as it is possible to articulate different versions of what we understand subjects to be, what versions of ‘Claudia Cortez’ and ‘Carlos Pelayes’, the two protagonists of the facts accounted for in the trial, are being presented in the Prosecutor’s closing argument speech? In this chapter I will study the identities formed within this discourse and the consequences of the given articulation for the verdict of conviction or acquittal, which the jury must decide upon. The importance of analyzing this topic derives from the fact that a specific articulation of social subjects shapes how institutions make sense of them, and therefore, react towards them (Cameron 2014, 465).

In this judicial case, the moment of the closing argument speech represents the final phase of the trial, where defense and prosecution address the jury one last time to convince them of their accounts of the facts. The Prosecutor, who is the state representative, is formulating his speech with the aim of sentencing Claudia Cortez for the crime of aggravated homicide. Fathoming the meanings associated with her identity is relevant because her articulation as a criminal would imply a life imprisoning sentence.

I shall argue that there is a two-fold characterization of Claudia Cortez: on the one hand, she is portrayed as a helpless and passive victim of gender-based violence, and, on the other, she is presented as a homicidal killer who acted with premeditation and intent. I will demonstrate that this distinction serves the purpose of depicting the accused woman of this case as a ‘responsible victim’, as it discounts the implications of what she has lived through and is displayed to favor her conviction. In contrast, I shall propose a critique that allows for the construction of Claudia Cortez’s identity as a survivor of gender-based violence, who lived through years of violence from her husband and is being criminalized for acting in her own defense.

#### 3.1 Claudia Cortez: a victim of her own

A recurring topic that appears foregrounded throughout the trial against Claudia Cortez is the context, or rather the history of gender-based violence her life was inscribed in. Both the defense and the prosecution agreed on the fact that she suffered thirty years of abuse and that this was inflicted on her by her husband, Carlos Pelayes. He perpetrated physical assault, such

as hitting and burning her, psychological abuse through name calling, insults and control, as well as economic violence and sexual abuse. The long-term violence is evidenced through different means of proof, such as the testimonies of her three sons, family members, and friends, along with psychological examinations. As a result, the fact that the violence had a long history in her life is not a proposition that is debated among the parties of the legal proceeding.

When referring to this context, the Prosecutor positions Claudia Cortez as a victim of gender-based violence by explicitly using this term throughout his closing argument. But what does being a victim of gender-based violence *mean* to the Prosecutor? What specific meanings of victim are being mobilized here? Situating her as the affected part of the relationship entails a series of assumptions and, unexpectedly, responsibilities on her behalf, according to his perspective. ‘Victim’ in his conceptualization is a powerless woman who needs to be taken care of by others around her. The Prosecutor claims:

We know that it is an anonymous, free, public hotline, it was not necessary for her to report [him], anyone could have reported. And also, in this we have a tension. We do not want to invade the scope of another, but at the same time we do not care for the other when we do not do what is within our reach.<sup>20</sup>

In this passage the Prosecutor is referring to the use of Line 144, which is a national telephone help line 24/7 that provides assistance and information on gender-based violence. He implies that even though Claudia Cortez never asked for help or reported Pelayes to the authorities, anyone could have done it for her – if they had cared for her. At first glance this may seem as a commonsense response to adopt when encountering a woman enduring violence from her husband, however, it implies a series of assumptions of what the protagonist can or wants to do; it portrays more about what others think she wants rather than what she is actually expressing. Had Claudia Cortez mentioned that she wanted to report her husband? A survivor perspective, rather than one stressing on the woman’s victimization, implies seeing that even in a situation where the woman is being consistently subjected to different types of violence, she is the only person who should decide on the course of action (Gonzalez and Yanes 2013, 56), by reason that she is the subject of her lived experience and the only one who knows the implications of her situation. The logic presented by the Prosecutor entails that her wishes could

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<sup>20</sup> All translations into English are my own. The original text in Spanish: “Sabemos que es una línea anónima, gratuita, pública, no hace falta que denunciara ella, podía denunciar cualquiera. Y también en esto tenemos una tensión. No queremos invadir el ámbito de otro, pero a la vez tampoco cuidamos al otro cuando no hacemos lo que está nuestro alcance.”

have been disregarded and her actions discounted for: it displaces her from the center of the situation, transforming others into the decision makers of her life choices.

Furthermore, the appeal to the act of caring for one another, tellingly, emphasizes the image of someone who cannot take care of herself. Caring, as it is used here, involves someone who can provide for the needs of another when she is not able to do so in the appropriate manner. This representation of the woman as the one who is cared for, implicates her as the “object of protection” (Helms 2013, 233). Furthermore, this focalization, indirectly, shifts the gaze from the perpetrator to the inadequate behavior by the woman’s relations. Adding to this context full of missed opportunities of help, the Prosecutor also recalls the testimonies of Claudia Cortez’s brothers, which he uses only to stress their benevolent act of having offered her financial support should she leave him. “[The brothers] they also told her to ask for help, to report him, to divorce him, that they would take care of the children's finances, and that she should let go of Pelayes, to not look for him anymore”<sup>21</sup> he recalls. They are implicated as sources of good advice who told her what to do and offered direct solutions to her problems, yet she did not make use of them.

Another textual element that contributes to this framing of victim revolves around the idea of Claudia Cortez being submissive. For that, the Prosecutor turns to the ‘expert opinions’ of psychologists who have been consulted for this trial. It is noteworthy to point out that, instead of going into details, this time the Prosecutor summarizes the content of the reports in broad strokes by calling it “the opinion of the experts” or “what science says”. As a result, it is not possible to attribute these sayings to any particular individual and so they cannot be made accountable for their ‘expert opinions’. Their ‘technical’ input concluded that being submissive was part of Claudia Cortez’s personality. The idea of submissiveness entails that she was a person who complied with others’ orders, enhancing once again the lack of ability to carry out her own decisions. This trait brings forth the weakness of the victim as well as her lack of power (Thompson 2000, 328), as it highlights her dependency towards the male perpetrator.

In sum, Claudia Cortez becomes here the woman-victim, in need of protection and assistance. Yet, she is framed as a passive recipient of violence, who is unable to act for herself by not reporting her husband’s abuse due to her ‘submissive’ character. According to the logic of the argumentation, she must be cared for by others who seem to know better. This apparently “protective” position in fact reiterates her imaginary lack of agency. It accentuates a fragile

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<sup>21</sup> Original text in Spanish. “...ellos también le habían dicho que pidiera ayuda, que lo denunciara, que se divorciara, que ellos se hacían cargo de la economía de los hijos, pero que lo dejara ir a Pelayes, que no lo buscara más”.

position by taking away capacity and will. Moreover, this stance does not promote the idea of autonomy and respect for the survivor's decisions—whichever they may be and regardless of people's support of them. Claudia Cortez is portrayed as someone incapable of dealing with her situation, mobilizing the idea of passivity, dependence, and vulnerability only trying to accentuate the jury's expected consternation at her reaction in self-defense.

The details of her “submissive” personality are conjured up only to support the Prosecutor's perspective that Claudia Cortez is a victim who is “responsible”. He explicitly uses this term when referring to acts that he thinks she should be held accountable for, which implicates the acts as given. Claudia Cortez is ultimately argued to be responsible for remaining in a toxic relationship, of allowing the violence to take place as well as allowing it to happen to her, which in the end, led to her killing her husband. When discussing the relationship between Claudia Cortez and Carlos Pelayes the Prosecutor argues:

Cortez' psychological [test] would prove what has been proven, that she was a victim of gender-based violence. But she still looked for him and she kept on waiting for him. And she is still part of a dysfunctional and harmful relationship, but she is also responsible. [...] The relationship is dysfunctional and the responsibility is fifty percent of each party's.<sup>22</sup>

Norman Fairclough (2004, 55) suggests that having a common ground of understanding is a key component of social interactions. Being in a position that holds social power entails the ability to construct that commonality and give meaning to what is implicit. The author distinguishes three types of assumptions that play a key role in constructing that common ground of understanding: assumptions regarding what exists (existential), assumptions revolving around the idea of what is, can or will be the case (propositional), and assumptions about what is desirable (value) (Fairclough 2004, 56). Fairclough also states that all of these can be connected in a way that makes a text seem consistent (2004, 57). These concepts and classification can unravel the implied meanings in this fragment of the Prosecutor's speech because it rests on a series of assumptions regarding Claudia Cortez's behavior.

First, through this articulation, the Prosecutor implies that Claudia Cortez should have been the one to end the gender-based violence. He is placing the responsibility of acting to solve the situation on her instead of on the state, which is where it should be, as is mandated by the

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<sup>22</sup> The original text in Spanish: “El psicológico de Cortés iba a demostrar lo que se ha demostrado, que era víctima de violencia de género. Pero ella lo sigue buscando y ella lo sigue esperando. Y ella sigue siendo parte de una relación disfuncional y nociva, pero ella también es responsable.”



Argentine legal system, analyzed in Chapter 1. Second, there is an assumption that Cortez was free to leave any time she wanted without any constraints and interference by the partner and that she had where to move onto. This is a propositional assumption that is shaping a common understanding of what the couple's situation 'was', and it is at the same time intertwined with a value assumption which states how the woman should have behaved—to save herself. Consequently, she comes to be implicated to stay willingly in the relationship and, by an implied parallel, when the time came, equally willingly, she killed him. By not contemplating the functioning of the cycle of violence (Walker 2009, 91) or the multiple motives that may have influenced the survivors' permanence in that relationship, the idea of a voluntary act is the one that guides the Prosecutor's reasoning.

And third, the Prosecutor's logic describes the marriage relationship as if both parties had equal power and contributed to the same extent to its "dysfunctional" nature. Framing the relationship as a bond between equals hides the unbalanced power relations of gender (Sutherland 2021, 8) that sustained it for thirty years. The Prosecutor rarely evaluates the acts of violence that the husband, Carlos Pelayes, perpetrated against the wife, Claudia Cortez, and when he does so—as will be analyzed in the following section—he downsizes his responsibility. What is more, he infers that the reason for the violence in the marriage is to be located in Cortez, who "allowed" for the assaults to continue. The alleged equal relationship comes to be reversed at the expense of the female survivor of an abusive relationship: "If there is one who hits, it is because there is another who lets herself be hit"<sup>23</sup> he affirms. The claim that is formulated like some commonsense truism is removing responsibility from Pelayes, the perpetrator of hitting, leaving him free of charge and blaming the victim for her 'fate'. This patriarchal framing of violence shifts the focus of responsibility on the survivor and makes her guilty of 'inviting' the violence. The Prosecutor's argumentation disregards considerations of Carlos Pelayes' acts of violence and decenters his figure from the discussion of the facts of the trial, indirectly implicating Claudia Cortez guilty of inflicting the crime of violence on herself.

### **3.2 Carlos Pelayes: the aggressor**

For Claudia Cortez to be a victim, someone must enact the role of the perpetrator. That is Carlos Pelayes, Cortez's husband, and father of their three children. In the Prosecutor's closing argument speech, there is evidence mentioned that Pelayes had a history of being the aggressor in the marriage, yet this is de-emphasized and his actions are devalued. In this section I will

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<sup>23</sup> Original text in Spanish: "Pero si hay uno que pega, es porque hay otro que se deja pegar".

foreground the elements that support the construction of Carlos Pelayes as an aggressor contained within the Prosecutor's formulation, and then, I will expose the significance of the long history of his violent acts in Claudia Cortez's life, in particular, their relevance for the events under investigation.

Some direct references are included throughout the Prosecutor's speech, functioning as intertextual components speaking in the voice of witnesses, supporting the articulation of Pelayes as a violent husband. The Prosecutor acknowledges his violence when he refers to the couple's sons, who recognized that their father was "violent, a drug addict and with 'bad habits', despite their love for him"<sup>24</sup>. Even Pelayes' parents and brothers' account of the fact that he was controlling and abusive is mentioned. And the assessment of the husband by one of the psychologists, is also quoted to have affirmed that he was impulsive and "a parasite" who lived off his wife's labor and income.

There are mentions of the husband's violent behavior towards Claudia Cortez in episodes of name-calling and physical assault. When analyzing the testimony given by Cortez's brothers, the Prosecutor gives an account of—what he considers—the two most severe events of violence in the history of the marriage but only to indirectly undermine the credibility of the wife. One is when Pelayes cut off Cortez's fingers by slamming a door on them, and the other is when he attempted to set her on fire by exploding the kitchen oven. However, in the Prosecutor's account of the facts, there is not a direct mention of Pelayes' intervention nor is there a direct attribution of responsibility to him:

What a coincidence that the most serious events that took her to the hospital, which was when her fingers were cut off by the door and when the oven exploded – when he tried to burn her –, precisely the two that are the most serious of all, the brothers don't know of, but they talk about others!<sup>25</sup>

The phrases "her fingers were cut off by the door" and "the oven exploded" are of particular interest within this quote. Pinelli and Zanchi (2021, 122) have studied the representation of survivors and aggressors of gender-based violence in the media by analyzing specific argument structures. The authors claim that grammatical constructions have a symbolic function in that they associate forms of grammar with meanings. For example, the phrases "Ana

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<sup>24</sup>Original text in Spanish: "Los propios hijos dicen que su padre era violento, drogadicto, que tenía hábitos "tumberos", pero lo amaban".

<sup>25</sup>Original text in Spanish: "¡Qué casualidad que los hechos más graves que la llevaron al hospital, que fue cuando le cortaron los dedos con la puerta y cuando le explotó el horno - que la había tratado de quemar -, justo de esas dos que son las más graves los hermanos no la saben y cuentan otras!"

closed the door”, “The door was closed by Ana” and “The door closed” have different meanings because they foreground the subject of the material act of closing in strategically different ways: the three formulations can be placed on a scale of actor visibility from active responsibility to spontaneous event, which happens when an event is presented as something that occurred without someone’s active intervention. The last two are identified as passive and anti-causative constructions and, when used to represent gender-based violence, they serve to diminish the perpetrator’s responsibility by backgrounding or eventuation. So, when the Prosecutor recalls the event as a matter of “what happened to Cortez’s fingers”, he stresses the object and the effect of the action but omits the fact that Pelayes was the one who pushed the door intentionally.

In addition, I would also like to adapt Pinelli and Zanchi’s (2021) analysis and make it into a two-way approach by highlighting that reducing Claudia Cortez to her particular body part, i.e., “her fingers”, produces the effect of mitigating the husband’s violence at the expense of the woman’s dehumanization. Similarly, when the Prosecutor mentions the explosion of the oven, there is a linguistic act of eventuation by enunciating that act as an attempt (“tried to”). This modality implicates failure and, consequently, there is no need to worry about a “potential only” harm, which has the effect of further amplifying the invisibilization of the perpetrator. The oven did not simply explode by accident, Pelayes was the one who provoked the event and caused Claudia Cortez’s injuries—but that is made into a passing comment instead of elevating it to the highest level of the sentence structure and making its propositional content into a much more visible statement. I underline that the husband did not only “try” to burn Cortez; he in fact succeeded in doing so, which is indirectly evoked by the fact that she went to the hospital afterwards. Yet, even if both events are judged important enough to illustrate how violent the husband was and the severity of his violent history, the Prosecutor presents them strategically in a way that diminishes and almost eliminates Pelayes’ responsibility.

Another element of the Prosecutor’s characterization of the husband is the open reference to his substance abuse. In fact, the knife which caused the lethal injury to his clavicular area, in what turned out to be the medical cause of death, was regularly used by him to process cocaine. The use of drugs, however, is mentioned by the Prosecutor only to preclude or diminish at least any sympathy the listeners, members of the jury, may feel for Cortez:

We also know that the toxicology test showed that Mrs. Cortez had consumed cocaine that day. Did she say that Pelayes forced her to use cocaine that night? No. Mrs. Cortez also consumes drugs. She did not say that that night she was forced to

take cocaine to have sex, which is what always happened when she was forced to do so.<sup>26</sup>

The Prosecutor explicitly reports that being forced to consume cocaine was something Claudia Cortez was constantly subjected to by the husband, Carlos Pelayes. However, the topic of drug use is judged differently according to who the agent is. When Cortez is said to consume cocaine, this is used *against* her to enhance the image of a criminal and to highlight the fact that she was in this condition on the night Pelayes died, becoming even more blameworthy. However, the fact that Pelayes consumed drugs and repeatedly obliged his wife to do so is overlooked and not evaluated in the Prosecutor's argument. Consequently, it seems that just because that night she was apparently not forced to consume any drugs but did so willingly, the history of the existing pattern of the husband's violence through substance abuse is rendered insignificant.

Regarding the presentation of Carlos Pelayes, we can say that he is depicted as someone who had been involved in criminal activity in the past. According to the Prosecution, Carlos Pelayes had been imprisoned numerous times, and there was evidence of more than seven criminal proceedings against him, which makes him a repeated offender. Apparently, none of these charges were pressed by Claudia Cortez because the Prosecutor repeatedly mentions that she never reported her husband to the authorities. In fact, this behavior is taken to be presented as an element of judgement against her, as I have discussed previously.

Finally, it is important to foreground Pelayes' most discounted criminal act in the history of the relationship: the events of sexual assault. Claudia Cortez's main reason for pleading self-defense is that she was sexually attacked by Carlos Pelayes that night in an attempted rape and she repelled his imposition. This is what was happening moments before the lethal injury: she was defending herself, preventing a sexual assault.

The sexual assault is minimized in the argumentation of the Prosecutor. He never expands on this topic by giving any details or presenting a thorough analysis of how this relates to Claudia Cortez's (re)action. Despite reiterating her account of the facts insistently throughout the trial, the attempted rape is trivialized in the Prosecutor's argumentation and is barely mentioned. In addition, when he does make reference to it, he does so by using the passive construction, which, one could argue underscores the imposed nature of the act; nevertheless,

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<sup>26</sup>Original text in Spanish: "Sabemos también que la señora Cortés, el toxicológico tenía cocaína ese día. ¿Dijo que esa noche Pelayes la obligó a consumir cocaína? No. También se droga a la señora Cortés. No dijo que esa noche la forzaron a tomar cocaína para tener relaciones, que era lo que siempre pasaba cuando la forzaban."

the choice to make the perpetrator invisible, unnamed, imprints the violent situation with an impersonality that works to free Pelayes of responsibility for the act:

“So, that night during that discussion, when she was forced to have sexual intercourse and she didn’t want to...”<sup>27</sup>

“She did not say that that night she was forced to take cocaine to have sex, which was what always happened when she was forced.”<sup>28</sup>

“It’s true, she was forced that night to have sexual intercourse, she did not want to.”<sup>29</sup>

Furthermore, the sexual assault was *not* something the prosecution looked into during the investigation. The Prosecutor dedicates a brief segment of his closing argument to the analysis of Claudia Cortez’s testimony. It is only there where he formulates a brief account of the overall events: “He arrived, wanted to have sexual relations, she didn’t want to, they broke into a fight and she says “I defended myself.”<sup>30</sup>. This is followed by a lengthy formulation of judgment towards her for not having ended the relationship. At one point, the Prosecutor explicitly acknowledges that Cortez had mentioned the sexual abuse to three different people throughout the investigation but there is no detail of what the prosecution did as a consequence of receiving this information. He indicates that she mentioned it to Dr. Herrera who provided her with medical assistance on the night of the events, to Dr. Profili, who is the legal psychologist and one of the expert voices of the trial, and she narrated it in the initial testimony given to the police. Yet, the Prosecution bypassed this information without any attention and never enquired into this event. If Claudia Cortez persistently expressed her version of the events, but they do not appear in the Prosecution’s closing argument, were they believed? From reading the argumentation, it is not possible to comprehend how Claudia Cortez lived the sexual assault, which indicates that her account of the facts was not considered when building the accusation at all (Tarrant 2021, 732).

### 3.3 Claudia Cortez: the murderess

I have pointed out that within the frame of gender-based violence Claudia Cortez and Carlos Pelayes were portrayed as victim and offender, respectively. However, the ultimate case

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<sup>27</sup>Original text in Spanish: “Bueno, esa noche en esa discusión, cuando querían forzarla a tener relaciones y ella no quería...”.

<sup>28</sup>Original text in Spanish: “No dijo que esa noche la forzaron a tomar cocaína para tener relaciones, que era lo que siempre pasaba cuando la forzaban”.

<sup>29</sup>Original text in Spanish: “Es verdad, a ella la querían forzar esa noche a tener relaciones, ella no quiso”.

<sup>30</sup>Original text in Spanish: “Él llegó, quiso tener relaciones, ella no quiso, se generó una discusión y ella dice “Yo me defendí”.

for the Prosecutor is that of homicide separated from the case of gender-based violence. What is at stake in keeping the homicide self-sufficient as much as possible is reversing the roles of the perpetrator and the victim. The homicide charges pressed against Claudia Cortez are founded on the thesis that she deliberately killed her husband. This allows for a new way of presenting Claudia Cortez, downplaying her figure as someone who suffered gender-based violence. Let us analyze how the identity of a lying murderess is constructed.

After formulating an introduction to his closing argument, the Prosecutor goes directly to presenting his case. His hypothesis of the events that happened on June 28<sup>th</sup>, 2018, the night of the fatal encounter, states that Claudia Cortez killed her husband on purpose and made it look as if he had had a heart attack to conceal the result of her actions. He substantiates it with two elements.

Firstly, on the results of the forensic report. The necropsy indicated that the wound in Pelayes' clavicular zone was caused in a way different from what Cortez described in her testimony: "She caused a wound in the aorta, in the clavicular area, but we cannot defy the laws of physics. The blow was this way [performs the movement] according to her, but this does not coincide with what science says, it does not coincide with the results of the necropsy."<sup>31</sup> This statement implies that Cortez lied when narrating the events. Additionally, another one of Cortez's lies, following the logic of the Prosecutor, is inferred from the alteration of the crime scene. It seems that Pelayes' body was originally on the bed, according to the 911 call transcripts, but when the emergency doctors arrived at the house they found it on the floor, in front of the bed. The Prosecutor believes that from the time the call was made until the medical aid arrived, Cortez had approximately an hour to modify the original scene and make it appear as if Pelayes had had a heart attack.

Secondly, he presents the motive of the crime. The element of intent is constitutive of the crime of homicide, and it must be demonstrated in court for the defendant to receive the full punishment that corresponds to this crime. Otherwise, it could be interpreted that the death was caused by an unintentional act or an accident. In this case, the personal motive of the crime is synthesized by the Prosecutor. He suggests that Claudia Cortez deliberately hurt her husband because she was tired of all the years of abuse, and so, she decided to put an end to it:

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<sup>31</sup> The original text in Spanish: "...le provocó una herida en la aorta, en la zona clavicular, pero no podemos desafiar las leyes de la física. El puntazo fue de esta forma (hace el movimiento) según ella, pero esto no coincide con lo que dice la ciencia, no coincide con la necropsia".

“She was a victim of gender-based violence, but another certainty is that she faked a cardiac arrest, that she manipulated the crime scene and that she experienced firsthand what all psychologists and psychiatrists have said: it was the straw that broke the camel's back. She was fed up with the abuse, she said enough, but saying enough does not justify the fact that she killed her husband.”<sup>32</sup>

From this perspective, she is seen to know what she had done, she was aware that she had stabbed her husband and that he died on the spot. Everything that followed was a mounted theatricality. However, if this were the case, the question that remains unanswered in this logic is: Why now? What made Cortez, allegedly, want to kill her husband right there at that precise moment? If she was truly set out to do it, as the Prosecutor suggests, any opportunity should have been appropriate. The prosecution arrives at the conclusion of an intended act by undermining not only the long history of violence endured by the wife but the particular rape's attempt that occurred that night before the injury. So, if in the series of events there was a sexual assault by the husband, a fight, and a knife wound, but the first two are omitted in the analysis, all there is left is an apparently volitional act aimed at causing an injury with a lethal effect. As has been pointed out in similar cases, it is as if the sexual attack never existed in the eyes of the state (Tarrant 2021, 735).

As a consequence of the act of killing, the notion and position of a victim is configured. Pelayes is now dead because of this event and comes to be framed as the terminally affected party of the relationship. In the Prosecutor's actual words, Pelayes is *the* victim<sup>33</sup> and what has happened constitutes a tragedy. The association of the words victim and tragedy evokes an image of great suffering, pain, and distress, appealing to the emotions of the members of the jury: this death is a “family tragedy, but this is also a tragedy that involves society” he claims<sup>34</sup>. Further implications of this idea will be examined in the following Chapter. However, in this analysis we can point out that the Prosecutor is signaling a grieving process that is taking place on a family level in virtue of the loss of a beloved member. Three people, i.e., the children, have “lost their father” and Pelayes' parents and siblings have also lost their son and brother, respectively. The construction of the violent husband as a victim is enhanced by his family

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<sup>32</sup>Original text in Spanish: “Ella era víctima de violencia de género, pero también otra certeza es que ella fingió un paro cardíaco, que ella manipuló la escena del crimen y ella vivenció en carne propia lo que han dicho todos los psicólogos y psiquiatras: fue la gota que colmó el vaso. Se hartó del maltrato, dijo basta, pero decir basta no justifica el hecho de que mató a su marido.”

<sup>33</sup>Original text in Spanish: “La familia de la víctima. ¿Qué va a decir la familia de la víctima?”

<sup>34</sup>Original text in Spanish: “Esto es una tragedia familiar, pero esto también es una tragedia que implica a la sociedad”.

members' testimony where they affirm that "[the wife] was absolutely the violent one, while he was a good person, and he was kind". Certainly, his family members were likely to portray a positive image of Carlos Pelayes, but as I mentioned before, they also acknowledged his violent habits and criminal record. Within this discourse of victim-blaming, their testimony is utilized by the Prosecutor to strengthen the idea that the man who was once an aggressor is now a decent person who died wrongfully.

### 3.4 Conclusions

In this chapter I have described the identity constructions of Claudia Cortez and Carlos Pelayes that result from the Prosecutor's discourse. As I argued initially, there are two different versions of Claudia Cortez. On the one hand, she is the powerless victim who endures violence from her husband. Through the Prosecutor's framing of Claudia Cortez as a gender-based violence victim, we observe that she is caught immersed in a single meaning of the term which implies passivity and dependence. This conception limits the understanding of who the women involved is and what she can do. However, this conceptualization is twisted at her expense and instrumentalized for the purpose of showing her 'responsibility' in allowing for the violence to take place. She has tolerated years of abuse and is judged for not having acted in time to end this situation, which eventually implicates her as the one who inflicted pain on herself. These assumptions on which the victim blaming is built constitutes a "privatization of violence against women" (Hoff 1990, 32), a perspective of the phenomenon that entails the idea that women are individually responsible for what is happening to them, displacing their experience from the broader social context.

On the other hand, she is shown as a cunning murderess who decided to kill her husband and cover up the crime. By omitting a consideration of the history of violence she endured, as well as not pondering the context of sexual abuse in which the injury towards Carlos Pelayes took place, the state representative is able to depict Claudia Cortez's actions as intended, in support of the criminal accusation that aims for her conviction. There is an isolation of her experience, through discursive strategies that dehumanize her and disregard her testimony, and also of the events that took place on the night of June 28<sup>th</sup>, which are devoid of in-depth investigation of a sexual assault perpetrated on the woman.

The effect of this conceptualization is that Claudia Cortez's identities are presented as two separate and apparently unrelated realities. She is incapable at one point and suddenly is strong enough to kill someone. This logic echoes the sexist meaning of 'woman' as unpredictable, unruly being (Amorós 1991, 31). I argue that because these depictions of Claudia



Cortez are presented this way and not challenged, it is not possible to understand this woman as an agent and, therefore, make sense of her actions in a moment where her physical integrity was threatened. Through this compartmentalized analysis of who she is it is not possible to trace the processes she went through and interpret them within a continuum of violence (Kelly 1987, 48). If we go beyond the dichotomy and “blur the boundaries” (Moe 2004, 119) that separate the categories of victim and offender, we would be able to see that what led Claudia Cortez to a criminal act is highly influenced by the violence she had endured. There were scarce possibilities of surviving a sexual attack perpetrated by her husband inside their home and she acted with what was within her reach. As Gardner and Belknap (2002, 483) have argued, fixed categories of victimization and offending sponsored by legal practices do not give account of the fluidity that survivors of violence experience. A survivor of gender-based violence who engages in self-defense that results in the death of the aggressor is never exclusively one identity or the other, since these are the effects of a discourse, rather there is a continuance between the two, whose implications must be considered from a legal perspective to avoid unjust prosecutions. In Cameron and Kulik’s (2003, 88) terms, the fact that Claudia Cortez killed Pelayes does not make her a killer, punishable by law. It makes her a *survivor* of gender-based violence who stood up for herself and was pushed to a position where death emerged as the result of an act of ending her sufferings.

In regard to the strategies of framing Carlos Pelayes’ identity in the context of gender-based violence and in the homicide accusation, similar patterns can be observed. In the context of violence, Pelayes’ identity as the aggressor is constructed within the Prosecutor’s discourse only to be depreciated in the overall argumentation. There are elements mentioned which prove that he was violent against Claudia Cortez, but his responsibility as the perpetrator is diminished by use of passive and anti-causative argument constructions of non-visibility. There is a strong emphasis on the fact that Claudia Cortez knew the type of man she was involved with, as if her awareness of what he was like should entail that she accepted living with the risks. At the same time, the Prosecutor portrays the situation as if Pelayes had been like that from the start and there was nothing anyone could do to change his ‘character’. His identity appears anchored in personality traits but—indirectly, due to that reason of essentialization—is never questioned or challenged. Lastly, framing Carlos Pelayes as the victim of a deliberate tragic event serves the purpose of substantiating the persecutor’s argumentation in favor of Claudia’s conviction. By mobilizing emotions and family testimonies, he comes to be able to frame an actual violent husband as the blameless recipient of an intended and undeserved action that ended his life, thus making the wife’s act condemnable.

#### 4. IDEOLOGICAL DICHOTOMIES: THE EMERGENCE OF THE LEGAL DISCOURSE FROM WITHIN A PATRIARCHAL PERSPECTIVE

The analysis that has explored the Prosecutor's speech so far has shown a discursive strategy that removes responsibility from the male aggressor and attributes it to the woman survivor. The contradictions in his overall argumentation, regarding Claudia Cortez's two-sided characterization as a victim of gender-based violence and as a murderess, were resolved at the expense of the woman who survived years of abuse. Neglecting the gender-based violence context despite the evidence, overlooking the male aggressor's actions in sexual abuse over the years, and blaming a woman for the abuse inflicted upon her are elements which allow me to argue that there is another ideological scheme organizing the argumentation, exposing that the legal discourse does not stand on its own but is embedded in patriarchal social order of regulating how women should behave within the context of gender-based violence.

As I pointed out at the beginning of this thesis, the perspective of the law from which I analyze this case involves its conceptualization as a praxis, that is constituted by multiple discourses of power, aimed at the social production of meaning (Álvarez 2013, 20), that legitimizes the emerging unequal relations among the participants involved as if desirable or unavoidable (Facio and Fries 1999, 8). It involves understanding that the legal discourse does not derive its power exclusively from the written law. Its force is anchored in the political and social context; that is, it is traversed by other types of discourses. This "heteroglossic" characteristic of any particular discourse (Gee 1999, 25) allows us to identify these other embedded voices and to comprehend their practical consequences. Assuming a feminist standpoint makes me argue that the practice of law is anchored in a discursively mediated social and political system of domination, exploitation, and oppression of women, organized as patriarchy (Walby 1990, 20), whose conceptualization then contributes to shape gender relations and sustain inequalities. Patriarchy as an ideology has been conceptualized by Jesse Robert McKee, who claims that it "consists of patriarchal values like egalitarianism or misogyny", but also includes personal attitudes such as that manifested "towards the feminist movement or attitudes about the use of violence against a female intimate partner" (McKee 2014, 72). So, if the legal discourse contains elements of other discursive formations, what traces of patriarchy are there to deconstruct, in order to point out the patriarchal ideology present in the Prosecutor's speech?

The aim of this chapter is to expose how the juridical and patriarchal discourses appear conflated in the Prosecutor's closing argument and reinforce each other. I shall argue that the

patriarchal ideology is a constitutive element of his speech which is reiterated by elements producing and reproducing heterosexist, misogynist values—disguised under a veil of “reason”, “truth”, and “science”, all appealing to some alleged “disinterestedness”—as well as hostile attitudes towards what is presented to be a “feminist ideology”, which, then, comes to be implicated as “biased” and, as such, to be eradicated from the deliberation of the court case by the force of this “reason”. By examining the way in which legal practices reflect and shape gender I will demonstrate how the political agenda of the patriarchal system is collapsed into the juridical discourse, helping to legitimize the latter. Through my analysis of the Cortez case, I intend to answer the call of feminist scholars that have stressed on the need for developing a theory that exposes how specific formulations of criminal issues are far from “impartial” and contribute to sustaining the given patriarchal system (Cheney-Lind 2006, 9).

At this point in the trial, the Prosecutor is directing his words to the jury, whom he is trying to convince, but Claudia Cortez as well as the judge, the defense lawyers, and the general public, are also present in the room listening to his argumentation, “overhearing” what the Prosecutor has to say directly to the jury. For the task proposed in this chapter his closing argument speech provides the most valuable data because of the conditions in which it is given. He does not read or present a memorized speech, rather gives a spontaneous oral presentation, drawing on a line of thought that is presented in a Power Point presentation. The slides are displayed on a screen for everyone to see and the Prosecutor explains the main ideas summed up in the bullet points. Yes, he has prepared the presentation in advance, but the articulation is a result of his momentarily thoughts portrayed as if a free flow of ideas. This way of presenting the speech enables me to expose the routine understanding of the system, allowing a disclosure of the explicit (conscious) and implied (unconscious) views of gender relations, exposing what he believes to be the “truth” and common sense, with nearly no restraints. The Prosecutor presents the case through the lens of his individual bias, beyond his awareness of the ideological investment he is caught in (Maio et al. quoted in McKee 2014, 71).

#### **4.1 The family**

In Chapter 3, when analyzing the framing of Claudia Cortez as a cunning murderess, I outlined how the idea of a “family tragedy” is presented in the Prosecutor’s speech. I described how he uses the figure of the “family” to strengthen the husband’s position as a decent man who had died due to a wrongful act. Now, I will elaborate on the significance of this concept to show how the figure of the family is used against Claudia Cortez in the argumentation, as if its “external enemy”, and therefore a “murderess” in the eye of the law.

There are three key moments where the Prosecutor reminds the audience that the events of the trial constitute a family tragedy. First, in the introduction of his closing argument speech he affirms “[t]he starting point is simple. This is a family tragedy; however, this is also a tragedy that involves society. It is a family tragedy because obviously we are talking about three people that have lost their father and will eventually lose their mother with a life imprisonment”<sup>35</sup>. Second, he refers to it when reviewing the testimonies given by Cortez’s sons. He states that during the eldest son’s interrogation he omitted mentioning details of what happened on the night of June 28<sup>th</sup>, 2018, and instead elaborated on his parents’ violent relationship, as if to divert the focus of attention. He presents this with what seems to be an empathic and comprehensive attitude towards this decision, by claiming “[o]bviously, what else will they say? Because this is the family tragedy they are living, without a mother and without a father”<sup>36</sup>. And third, he recalls the words of Pelayes’ brothers and parents from a similar perspective: “[i]t is logical, we could not expect anything else if they are a family that lost their own son, their own brother, their own father, but they are not unaware that he was violent either”<sup>37</sup>.

The family that comes to be represented in the Prosecutor’s speech can be characterized through different elements. In the first place, it is framed within a nuclear family model, consisting of a husband, a wife, and children. This notion presumes heterosexuality, taking for granted that family results from the union of a woman and a man as if necessarily brought about for the purpose of procreation. Heterosexuality is taken as obvious and naturalized, following the normative model (Cameron and Kulick 2003, 59), and presented as the base upon which all families are built. In second place, the conceptualization enhances the relations among its members, such as parentage or brotherhood as if obvious. In this sense, family involves a sense of belonging; it is constituted by a network of kinship relationships that connect people and from which an identity can be derived. So, in this sense, Pelayes is not only a man—let alone an aggressor—but he is someone’s son, brother, and father.

But what are the consequences of this “family” concept for Claudia Cortez? From the quotes, we can infer that the family is used in relation to Cortez’s sons and Pelayes’ siblings and parents, but Claudia Cortez is never associated with the term “family tragedy” and thereby

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<sup>35</sup> Original text in Spanish: “El punto de partida es sencillo. Esto es una tragedia familiar, pero esto también es una tragedia que implica a la sociedad. Es una tragedia familiar porque obviamente estamos hablando de tres personas que perdieron a su papá y que eventualmente perderían a su mamá con una prisión perpetua”.

<sup>36</sup> Original text in Spanish: “Obvio ¿Qué es lo que van a venir a decir? Porque es la tragedia familiar que están viviendo, sin padre y sin madre”.

<sup>37</sup> Original text in Spanish: “Es lógico, no podíamos esperar otra cosa si están una familia que perdió su propio hijo, su propio hermano, su propio padre, y pero tampoco desconocen que era violento”.

she is excluded from the realm of the very concept. Despite being the protagonist of the trial, her experience is left out of the analysis, implicating that she has not suffered any kind of tragedy. In so far as family is a synonym of system of relations, she is isolated, absent, and excluded from the network of kinship. Claudia Cortez is not integrated into the family in this sense. This is very important for the point that the Prosecutor derives the sense of tragedy from a presumed affection that is shared by the family members. If the family is originated in a romantic union of love between a woman and a man, which is also directed towards their children, then the death of a loved-one is seen to cause pain, sorrow and can ultimately constitute a tragedy. However, the idea of “tragedy” is never understood in relation to the violence that Cortez suffered. It appears as a result of the incident of death, but never associated to the years of physical and psychological abuse directly aimed at Claudia Cortez, and indirectly lived by her three children. There is a systematic omission in considering what traditional family life has entailed for Claudia Cortez. For her, being part of a family has signified abuse, control, and violence for over thirty years. The Prosecutor specifically backgrounds the violence that she experienced in the family. From a feminist perspective, the Prosecutor’s words show how Claudia Cortez was expected to act like the “gender-appropriate” (Cameron and Kulick 2003, 50) wife that is conflated with the figure of the mother, thereby hiding the implications of the violence of the husband, precluding the relevance of the history of her lived experience of gender-based violence.

If the family comes about via kinship relationships, then Claudia Cortez is positioned as the wife of Carlos Pelayes and the mother of their three children. In the closing argument, a gender difference arises when characterizing Pelayes and Cortez in terms of family relations. When using the family relations to describe Pelayes, the Prosecutor highlights his role as a beloved man, whose life was significant to those around him and in virtue of which he will be missed, while disregarding his violent behavior towards the wife (and indirectly towards the children) and his criminal record. However, when Claudia Cortez is defined in these terms, the logic of the argumentation foregrounds her as blameworthy for the killing her husband, as well as highlights that she allegedly did not fulfill the appropriate gender-roles—which, indirectly and retroactively justifies the omission of her as an amicable wife or loving mother. This systematic foregrounding and backgrounding is legitimized by the Prosecutor’s claim stating that the nuclear family will now cease to exist, disintegrated by the wife (Claudia Cortez). Hence his logic implicates the propositional assumption (Fairclough 2004, 56) that her biggest crime is that the family will cease to exist because of the actions she committed, as the first quote indicates. The nuclear family indirectly comes to be annihilated by the mother on the

account of killing the father and facing life imprisonment. The jury should not feel any sympathy for her.

The Prosecutor presents this notion of family as if derived from a cultural common sense and formulates a connection between family and society. He suggests that the event under investigation constitutes a family—implicating private—situation that was confined to a household but has come to involve society because it constitutes a crime. The private lifestyle has entered the social realm in virtue of this crime and therefore society, through its state institutions, must act and condemn its author. The logic of this argument implies that if the event of the trial had not occurred, then the state would not have had to intervene, thus leaving the situation of perpetual violence that was taking place within the private context unattended and its primary sufferer, the woman, unprotected. The family/society distinction is organized by the private/public division, locating women in the private realm, which is attributed less social relevance and power in comparison with the public arena mostly occupied by men, within a patriarchal system (Fries and Facio 1999, 39). The Prosecutor's systematic organization of the spaces reiterates a hierarchical relation between the two contexts, taking away any relevance of what occurred within the private-family sphere in virtue of the fact that the main figure affected by this violent situation was a woman, Claudia Cortez.

#### **4.2 Justice “or” medicine**

To achieve a conviction for Claudia Cortez the Prosecutor must not only provide the jury with evidence that proves she is guilty, but also convince them to interpret the elements he selects in line with his logic. Ultimately, when he addresses the jury, he tries to persuade them to assume his perspective of the world, which in this case translates into a particular stance regarding the meaning of justice and what justice is founded upon. In this section, I will explore the Prosecutor's discursive strategy of dichotomizing and point out what he gains by establishing a competing version of justice and medicine.

The first idea I will examine is formulated during the introduction of the Prosecutor's closing argument. Following the explanation of the “family tragedy”, he indicates to the jury how they must carry out the task of judgement in deliberating on this case:

This is what [where] we must be aseptic. Aseptic means: when after an accident a surgeon has to amputate a leg, he isn't thinking about whether this person was a soccer player and perhaps won't have the possibility of playing anymore. He

operates. He does what he has to do. He abstracts from everything else to faithfully fulfill his task.<sup>38</sup>

The way in which the Prosecutor starts his speech gives a clear insight into what he understands the judicial process to be. For this, it is important to reflect on the use of the medical metaphor “aseptic”. He invites the jury to proceed, when analyzing the evidence of this case, like allegedly detached physicians in the operation theatre. The metaphor proposes a legal decision based on objectivity and neutrality of medicine, which is implicated similar to jurisprudence in this regard. These are characteristics of the law which are commonly appealed to and thereby reproduced in legal settings. Practitioners and theorists alike constantly insist on how the law must be applied by impartial decision makers who do not get involved in the case.

However, feminist legal scholars have pointed out how these standards share a male-centric point of view. MacKinnon (1987, 50) argues that objectivity entails an act of objectification. Turning something into an object, whether it is a woman’s body or an event, is an activity set out for dominance and control, typically male practices within the social system. In addition, the object is defined as such by whoever is in the position of the observer, constituting the subject. MacKinnon contends that the only social subjects are men, whereas women constitute otherness, other than subjects. So, they are uniquely positioned as the only ones who can adopt a stance of objectivity. Consequently, when the Prosecutor invites the jury to be “objective” he is drawing on a perspective that is inherently masculine, disguised under the liberal formulations of the law as “gender neutral”. He is indirectly asking the jury to objectify Claudia Cortez’s lived experience and detach themselves from the possible consequences of their decisions for the life of a human subject. The “everything else” they must abstract from, in the light of ‘justice’, in fact entails disregarding their sympathy for the woman, the emotional burden of deciding on a life imprisonment. The ideological work of this term is carried out by making the jury believe that they are not part of the situation that is taking place. It intends to place de six men and six women outside of the trial and stress a subject-object distinction.

Now, I would like to draw attention to the part of the Prosecutor’s speech that is the review of the statements provided by the psychologists and psychiatrists that intervened during the trial, or as he calls them “the experts”. The term is associated with value free, unbiased

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<sup>38</sup> The original text in Spanish: “Esto es entonces lo que nosotros tenemos que ser asépticos. Asépticos quiere decir: un cirujano cuando luego de un accidente tiene que amputar una pierna, no está pensando si esa persona era un futbolista y a lo mejor, no va a tener más la posibilidad de jugar. Lo opera, hace lo que debe hacer, se abstrae de todo lo demás para poder cumplir fielmente con su labor”.

statements of “truth” through the activity they are imagined to do on a regular basis, i.e. produce “science”. At the beginning of the investigation, they were asked to determine whether Claudia Cortez was in adequate health condition to go through the trial. This is to be performed in every criminal proceeding as part of the overall medical evaluations. However, in this case, it is of particular relevance because at the time of the trial Claudia Cortez was diagnosed with cancer. Their task consisted in defining whether the trial would be harmful to her health and their reports concluded that it would not. As a matter of fact, in the video recording I used as the source of data for this thesis she can be seen wearing a headscarf to protect her head, due to the loss of hair caused by medical treatments.<sup>39</sup> The Prosecutor claims:

Beatings do not cause cancer. This is an important fact because it is not proper that we men are to be blamed for so many things, the only one missing is also being blamed for causing breast cancer due to beatings. Dr. Profili, a legist, also said it. So, there is no need to ideologize medicine either. We cannot fight against the laws of reason, of physics, nor against medicine. Pelayes did not give her cancer, he did not.<sup>40</sup>

There are two relevant points in this quote that I would like to discuss in support of my argument. In the first place, I shall examine the positioning of the Prosecutor as part of the social group “men”. Teun Van Dijk (2015) claims that discourse analysis is a useful tool to “bridge the gap” between the macro (social order) and micro (jurisprudence) levels of an event (Cortez’s case) because in everyday practice they function in an intertwined manner. One of the ways of doing this is to analyze the dynamic created between a social group and its actual members. The group voice is said to be expressed through a particular individual, meanwhile speakers are understood to engage in language use as part of a social group (Van Dijk 2015, 468).

The Prosecutor could be speaking as a member of the justice system or as a lawyer, but what is foregrounded most in this text is his belonging to the social group of “men”. “We men are attributed so many things”. Why does he decide to bring himself in, as personally involved? Why now? Having membership in relation to other groups, why is it this one that prevails? The

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<sup>39</sup> In fact, one of Claudia Cortez’s defense lawyers mentions in court that, when she met her client for the first time, Claudia Cortez had plenty of hair, indicating that as time went by her health condition deteriorated due to the disease.

<sup>40</sup> Original text in Spanish: “Los golpes no causan cáncer. Dato importante, porque tampoco es bueno que a los hombres que se nos atribuyen tantas cosas, lo único que falta es que se nos atribuya que podemos causar cáncer de mama por golpe. Y lo dijo también el Dr. Profili, que es un legista. Entonces tampoco tenemos que ideologizar la medicina. No podemos luchar contra las leyes de la razón, de la física, no tampoco contra la medicina. No le provocó cáncer Pelayes, no es así”.



Prosecutor comes to speak on behalf of his male social group of because it is this group's reputation that his argumentation implies as attacked. He reacts to an imagined accusation against men who, according to his perspective, are unfairly attacked and attributed "many things" although it is not entirely clear by whom (I will elaborate on the latter point in the next section). Moreover, let us not lose sight of the fact that he is giving account of events that happened to a "fellow man", who happens to be the deceased of this case, Carlos Pelayes—and also a violent aggressor, which would set them apart, but male homosocial bonding is to prevail. In truth, Pelayes is the man who is supposedly under attack but not able to defend himself, so by standing up to the accusations the Prosecutor indirectly comes to advocate for *him*, "the victim" of this case, symbolically occupying his place. The reality is that none of the participants of the trial has accused Carlos Pelayes of giving Claudia Cortez cancer.<sup>41</sup> Yet, he responds and defends "something". I argue that this "something" is constituted by his male experience; it is the "patriarchal pact" (Amorós 1991, 25) that implies complicity among men who behave in unison to maintain their social and political privileges, a pact that is the primary sustenance of the patriarchal system. His belonging to the privileged group which is under attack causes him to speak up in its name, which in this case translates to defending the violent wife aggressor. Regardless of who the man "victim" is and what he has done, the masculine pact prevails and affirms its presence through the voices of its constituents.

In the second place, in the analysis of the stated fragment I want to foreground the Prosecutor's idea of an "ideologized medicine". What social and political meaning is given to this notion? This is the first time that such a term appears in his closing argument speech, however, it will not be the only one. The Prosecutor utilizes the idea of ideology in contrast to "law, reason, physics, and truth", which, if connected to the use of the term "aseptic" as he proposed at the beginning of the speech, allows for us to infer that he is taking ideology to be a synonym of "false or objectionable beliefs" (Cameron 2014, 449). He is formulating a distinction between a form of knowledge that he understands to be objective, neutral, and based on indisputable truths given by reason, and its counter opposite. On one side of this dichotomy would lie disciplines such as physics and medicine that are associated with fact-based, evident, and absolute truths. He suggests that the other side is constituted by a biased—and therefore not valid—interpretation of these self-evident truths, influenced by ideology. This illustrated

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<sup>41</sup> This is, considering the complete recording of the final day of the trial. The word "cancer" is only used by the Prosecutor in the cited quote and in a final allocution given by Claudia Cortez where she explicitly acknowledges that Pelayes did not give her cancer, but he did in fact hit and kick her. In this recording there is no evidence of participants in the trial formulating this accusation.

dichotomy is not innocent. It has in fact its own ideological investment: by rejecting a connection between the disease and the violence, supported by this ‘objective’ and ‘science-based’ approach, he removes guiltiness from the figure of Pelayes, making him appear as a less condemnable man. Cancer is only brought into the discussion to be associated with an unreasonable logic apparently sustained by the “ideologized medicine”. He construes his own formulated deduction as an exaggeration, something that is absurd and senseless, traits which are typically attributed to feminine behavior by the dominant patriarchal culture (Fries and Facio 1999, 23). The Prosecutor never considers Claudia Cortez’s lived experience of cancer, what it was like for her to have a breast tumor and endure physical violence from her husband, nor does he take into consideration the deterioration of her health after being under house arrest for nearly one year, at the request of the prosecution. The existence of cancer is instrumentalized for the purpose of enhancing the invalidation of an inexistent perspective of medicine, to preclude interpreting it as a health condition that increased the vulnerability of this woman, who had been subjected to the husband’s violence while being sick.

Moreover, medicine and justice receive a similar treatment in the Prosecutor’s speech. In the segment presented in the final part of the closing argument the Prosecutor finishes by claiming:

I simply ask that we do justice. Justice has a blindfold on its eyes precisely because it does not know to whom it is applied, precisely because justice does respect the principle of equality before the law. That justice is not ideologized. That is justice in its natural state. That is why I am going to ask you, that when you give a verdict, you do so by declaring Mrs. Cortez guilty of the crime I have just mentioned. No further statements and thank you very much.<sup>42</sup>

Now we see that, in addition to medicine, justice can also be “ideologized”. In a similar manner as before, he suggests that there is a “natural” version of justice—in a pure, absolute state—and an “ideological” version of it—when “instrumentalized”. He supports his claim by recalling the allegory of “blind justice”, which is perhaps the most popular imagery of the justice system. Let us remember that justice, as an act and value, is often personified as a woman wearing a blindfold and carrying a scale on one hand and a sword on the other. “Lady Justice”

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<sup>42</sup> Original text in Spanish: “Yo les pido simplemente que hagamos justicia. La justicia tiene una venda en sus ojos justamente para no saber a quién la aplica, justamente porque la justicia sí respeta el principio de igualdad ante la ley. Esa justicia no está ideologizada. Esa es la justicia al natural. Por eso es que voy a pedirles que al momento de dar el veredicto, lo hagan declarando la culpabilidad de la señora Cortés por el delito que les acabo de mencionar. Nada más y muchas gracias”.

or “Justitia”, drawing on the Roman mythology, is known as a symbol of impartiality expected of judges when applying the law (Cappers 2012, 180), which is represented by the blindfold that prevents her from seeing. In this quote, the Prosecutor argues that those who impart justice should not see who it is being directed at, and instead should only be guided by the events and proof presented before them. So, in this particular case, the Prosecutor is suggesting that the jury not ‘see’ who Claudia Cortez is. This entails asking them to disregard the fact she is a woman who had endured physical as well as psychological assaults from Pelayes and who was being sexually attacked by him on the night of June 28<sup>th</sup>.

The principle of equality before the law is appealed to by the Prosecutor as emerging from his supported “natural” version of justice. He implies that it stands for equality, while the “ideologized” form does not. Equality as presented by the Prosecutor, and as sustained by the legal system, entails giving equal treatment to all recipients of justice. As I analyzed in Chapter 3, the Prosecutor has claimed that such equality existed among the parties of the marriage relationship. To him Pelayes and Cortez were equal, the one who assaulted and the one who was forced to survive were equal. I would like to recall that the principle of equality demands giving similar treatment to those considered equal, and such a relationship of equality does not exist between a gender-based violence survivor and an aggressor (Sutherland 2021, 8). Carlos Pelayes restricted Claudia Cortez’s relationships with friends and family members, denied her access to a telephone, and legally owned the house where they lived: they were not under equal circumstances. Even the legal definition provided by Law 26.485 states that violence is based on unbalanced power relationships between women and men. Therefore, such a claim for equality entails sexist implications in detriment of the woman, which results from not attending to the situation lived by Claudia Cortez. In addition, we must remember that the ideological root of this conception of equality resides in taking the male model as a measure of what can be the subject of the law (Fries and Matus 1999, 66). In order to be equal, one must be equal to *him*, therefore the standard itself is set out to exclude women’s lived experience.

All in all, as with his portrayal of medicine, the Prosecutor presents a dichotomy between accounts of justice in sight of foregrounding his own perspective. The ideological investment made in this distinction gives as a result an account that is presented as the ‘legitimate’ way to do justice, which ultimately leads to convicting a gender-based violence survivor to prison for the rest of her life in virtue of overlooking her health condition and her history of enduring violence, as well as considering her legally equal to her aggressor.

### 4.3 The “ideology”

According to the Prosecutor's logic, ideology can contaminate medicine and justice, producing distorted results. The question that remains is: which "ideology" is the Prosecutor referring to? What are the implications of this "ideology"? I reach the answer to these questions by reviewing one of the final parts of his closing argument speech. His words are reproduced here:

We have an enormous current issue. And I believe that what you are going to do today is going to be historic. Why? We have legislation that responds to a great extent to demagogy, to political interests, to sectorial interests. We discuss whether language has to be inclusive, which is a whole discussion for the Royal Academy [of the Spanish Language]. So I ask myself, when the Preamble of the Argentine Nation [should say Constitution] says "We", is it "us" (men and women) or does it mean that it is only us, men?<sup>43</sup> The Preamble should say "we [masculine—nosotros—, and feminine—nosotras]". The Penal Code, because then Mrs. Cortez could not be here, because the Penal Code says "He who kills another", it does not say "he/she". So, what I am saying is, we have many discussions that are naive, that have other interests that do not make the concept of humanity. We worry about why people are killed. That is, we look for the motive. But we are not concerned about the fact that we kill each other. Where is the principle of equality before the law? What happened to the children, to the young people who also have a convention that protects them? But if a madman, a degenerate, comes along and kills a 12-year-old child, he is not sentenced to life imprisonment. Where is the protection of the child? Where is equality? Do you know anyone more vulnerable than a child? Well, however, it's not life imprisonment. There is also one thing that struck me and I am going to say it. Why are you sitting like that? Because we can have two worldviews: did matriarchy begin or is it patriarchy guarding women? I don't understand why you are sitting like that. I don't understand why they don't let you sit the way you want. Or what, is a male juror going to influence a female juror? Oh, I don't understand why you are sitting like that, but it seems ridiculous to me. It seems absurd to me. I think we're blowing situations out of proportion and I go back to the same thing. I wish we have the opportunity for six people, men, six women, to have a frank, sensible, open discussion. Your deliberation is secret, we will never know what you say, but this has a social connotation and this is what makes us prove that socially, respecting fully gender -female and male- you reach a guilty verdict. These

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<sup>43</sup> Note on the grammatical distribution of the Spanish language: In the original text the Prosecutor uses the Spanish feminine and masculine versions of the word "we", which is what I have highlighted in this translation.

facts cannot go unpunished “only” [air quotes] because Mrs. Cortez was a victim of gender-based violence, something that no one has ever questioned.<sup>44</sup>

Political interests, inclusive language, equality, patriarchy, and gender are terms the Prosecutor is using to implicate feminism. The “ideology” that he fears will obscure the jury’s judgement is no other than the ideas promoted by the feminist movement. His strategy consists of bringing this imaginary enemy into the discussion by contesting its “arguments”, pointing out the “absurd” and irrational consequences it has provoked in the public debate with its “naïve” discussions, and presenting his own stance as the ‘logical’, ‘reasonable’ one, thus emerging victorious in the ideological battle. Through his characterization of feminism, he aims to portray its dangerous implications for society, accentuating a rejection towards it and discouraging the jury to adopt this perspective when deciding on Claudia Cortez’s final sentence.

The Prosecutor sets up the world unequivocally into “two worldviews”. We see here competing discourses over validity, where what is at stake is no longer the evidence of the case, the testimonies, or the medical reports, rather it is the paradigm through which—he fears—the jury will interpret such elements. Furthermore, what is at stake in the adoption of one or the other will ultimately bear down to the life imprisoning of Claudia Cortez or her release.

Once again, the ideological binary opposition is formulated, only this time the opposition is set up between “humanity” over, and against, “feminism”. The concept of

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<sup>44</sup> Original text in Spanish: “Tenemos una problemática actual enorme. Y yo creo que esto va a ser histórico lo que van a hacer ustedes hoy. ¿Por qué? Tenemos una legislación que responde en muchísima medida a demagogia, a intereses políticos, a intereses sectoriales. Discutimos si el lenguaje tiene que ser inclusivo, que es toda una discusión para la Real Academia. Entonces yo me pregunto cuando el preámbulo de la Nación Argentina dice “Nos” ¿Somos nosotros? ¿O quiere decir que somos solo los varones? El Preámbulo tendría que decir nosotros nosotras. El Código Penal, porque entonces la señora Cortés no podría estar acá, porque el Código Penal dice “El que matare a otro” no dice “él/la”. Entonces, lo que digo es, tenemos muchas discusiones que son ingenuas, que tienen otros intereses que no hacen al concepto de humanidad. Nos preocupamos de por qué se mata a la gente. Es decir, buscamos el motivo. Pero no nos preocupa ya de por sí que nos matemos los unos a nosotros. ¿Dónde quedó entonces el principio de igualdad ante la ley? ¿Qué pasó con los niños, con los jóvenes que también tienen una convención que los protege? Pero si viene un loco, un degenerado y mata a un nene de 12 años, no se lleva a prisión perpetua. ¿Dónde está la protección del niño? ¿dónde está la igualdad? ¿Conocen alguien más vulnerable que un niño? Bueno, sin embargo, no es prisión perpetua. También hay una cosa que me llamó la atención y voy a decirla. ¿Por qué están sentados así? Porque podemos tener dos visiones del mundo ¿Empezó el matriarcado o es el patriarcado que custodia a las mujeres? No entiendo por qué están sentados así. No entiendo por qué no los dejan sentarse como quieren. ¿O qué, va a influenciar un jurado varón a una jurado mujer? Oh, no entiendo por qué están sentados así, pero me parece ridículo. Me parece absurdo. Creo que estamos exagerando las situaciones y vuelvo a lo mismo. Ojalá tengamos la oportunidad de que justamente seis personas, hombres, seis mujeres, tengan una discusión sincera, sensata y abierta. Su deliberación es secreta, lo que ustedes digan no lo vamos a saber nunca, pero esto tiene una connotación social y esto es lo que hace que mostremos que socialmente, respetando todo el género -femenino y masculino- lleguen a un veredicto de culpabilidad. Estos hechos no pueden quedar impune “solo” (hace señal de comillas con las manos) porque la señora Cortés era víctima de violencia de género, cosa que nadie ha discutido jamás”.

humanity appears in the Prosecutor's speech in open contradiction with the "ideology" he declares to be fighting. It is used in the sense of a compassionate, sympathetic attitude towards each other, which is what he understands society has lost sight of—due to the advance of feminism. Let us remember that the basis for his case are liberal values of reason, truth, and nature, which can all be found rooted in a humanist philosophical conception. Humanity is understood to be what derives from being human, however the human model supported by this perspective locates a white, bourgeois, heterosexual, abled man as the measure of all things (Braidotti 2013, 25). In fact, this is evidenced in the Prosecutor's Freudian slip when he states, "I wish we had the opportunity for six people, men, six women, to have a frank, sensible, open discussion". Moreover, in the Prosecutor's speech, humanity is associated with the value of life. So, if the condition of being "human" and "life" are promoted by the Prosecutor on the one hand, then its opposite—feminism—comes to be implicated in losing sight of humanity and in *death*, which he finds delivered by Claudia Cortez's act of killing her husband.

His overall attitude towards the feminist movement, as claimed by McKee (2014, 72) reveals a patriarchal ideology, which is expressed in the Prosecution's contestation of the debates feminism has ignited as a social and political movement aiming for gender equality. I will examine the topics of language and 'laws in favor of group interests' to exemplify this logical move. Feminism, as framed by the Prosecutor, is said to distort language. Through its "naïve" debates around the gender of words feminism places the focus of attention on topics that are not relevant for society, from the Prosecutor's perspective. As a matter of fact, feminism does challenge language. In 2018 the Argentine feminist movement raised the issue of sexism in language, promoting a social debate on how the Spanish language excludes women and contributes to shape gender inequality by erasing them from speech, and promoting alternative ways of language use (Tosi 2019, 3). The Prosecutor trivializes such discussions around language, which questions a principal foundation of the patriarchal system, to divert attention from the fact that a feminist critique is able to disrupt the meaning of victim and criminal, pointing out that male aggressors, such as Carlos Pelayes, are not victims and that victims can turn into survivors when they are threatened, such as Claudia Cortez.

According to his exclusionary logic, feminism, paradoxically, represents only "sectorial and political interests"—those of women—and has, unfortunately, gained enough influence to pass laws that represent exclusive interests of women, implying not only that laws should be (gender-)neutral, but that such legislation is undesirable because it considers the needs of a few only, the few who do not consider society as an integrated unit—the unit that in fact is male. It was feminists who mobilized thousands of people on the streets in 2015 and began the "Ni Una

Menos” (Not One Woman Less) movement (Mason-Deese 2020), who pushed for a definition of “femicide” through a reform of the Penal Code<sup>45</sup>(Terzian 2017, 14) and who constantly demand effective compliance of Law 26.485 to combat, prevent and eradicate violence against women. The Prosecutor claims that this legislation responds to “sectorial interests” implicating its uselessness. What is ultimately an achievement of an organized movement of women demanding the right to protection and to a life free of violence comes to be represented as a “demagogic” proposal of a specific group, in fact trying to defend the masculinist entitlement to law-making and jurisprudence.

#### 4.4 Conclusions

The initial interrogation that guided this chapter consisted in asking how I could affirm that patriarchal ideology was present in the Prosecutor’s closing argument speech. If there were any doubts left that the Prosecutor embodies a male-centric perspective, guarding their interests and privileges in a patriarchal system by sustaining gender hierarchy through discourse, we can now confirm this argument. Throughout the analysis I have illustrated that the underlying assumptions in the definitions of key issues surrounding the family, the justice system and women’s social movement are rooted in patriarchal conceptions.

The Prosecutor’s characterization of the heterosexual family is sustained by a patriarchal ideology in the sense that it presents Cortez and Pelayes’ family following a normative model where the role of the woman conflates with the role of mother, whose assigned gender role implies the obligation to serve and live under the subjugation of the husband, which additionally in this case implies enduring violence. As Kate Millet argues “Patriarchy’s chief institution is the family. It is both a mirror of and a connection with the larger society; a patriarchal unit within a patriarchal whole” (2000, 33). With these words the author draws a parallelism between the function of the family as an institution and that of patriarchy as a system: they are both set out for the control of women. “Family” for Claudia Cortez has favored a domestic system of oppression in which the male head was able to inflict violence with impunity, and when she indirectly annihilated it, she faced reprisals disguised under the veil of the criminal justice system. She transgressed her socially assigned gender role by putting an end to the abuse, through means that made the nuclear family also disappear, and the system responded through the state in order to restore the patriarchal order and control over her (Segato 2003, 32). Moreover, the Prosecutor disregards the implications of violence and suffering that

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<sup>45</sup> Law 26.791. Penal Code. Modifications. Official Bulletin of the Republic of Argentina N°32543. December 14, 2012.

being part of a family involved for Cortez and he uses the family unit to show Carlos Pelayes as a key part of a network, thus supporting a less incriminating construction of his persona.

The Prosecutor's main strategy of argumentation is creating dichotomies, from which he draws on to glorify his own masculinist stance and present it as the only valid, because allegedly 'human', option. The sides of his distinction are presented as opposites and, therefore, irreconcilable. First, he illustrated family and society, resembling a division between the private and the public, and then he rejected "ideologized" versions of medicine and justice, in comparison to the "natural" ones. In general, he presents two perspectives of the world. One he finds is based on truth, reason, and evidence, that applies the law with impartiality to all citizens regardless of gender and status, through objectivity and neutrality. The other perspective he qualifies as ideological, and defines it in terms of exaggerations, absurdity, and senselessness. His use of the notion of "ideology" is set out to reiterate values that represent a contamination of the medical sciences and of the justice system. He presents his version of the case as the 'clean' approach, by disguising the sexist discourse strategies that objectify Claudia Cortez's life. Thus, the dichotomy serves the purpose of drawing the boundaries between what is desirable and what is not. For that, he needs to establish why he is right to be prosecuting a woman who endured a lifetime of abuse, judging her for murder, instead of acknowledging that the state did not intervene when it could have done so over the course of thirty years. But despite the physical violence committed against her by her late husband, the symbolic violence of the trial enacted against her by the Prosecution, and the cancer she is fighting, Claudia Cortez is still alive.



## 5. THE SYMBOLIC VALUE OF CLAUDIA CORTEZ'S SELF-DEFENSE

*"I am here for all of the women who are dead because they could not defend themselves."*

Claudia Cortez

In recent years, the "Ni Una Menos" (Not One Woman Less) movement in Argentina has placed the topic of violence against women on the public agenda and has advocated for an integral state-driven protection (Mason-Deese 2020, 1). It claims for the compliance of Law 26.485, which highlights the state's role in preventing, combating, and eradicating this phenomenon from society. Moreover, its public struggle has achieved an increase in awareness of women's autonomy (Arduino 2017, 22). Consciousness regarding women's bodies has led to understanding its defense as an act of resistance to a patriarchal system that promotes its objectification. In a system where women's bodies are commodified and disposed of, an act that hinders that patriarchal appropriation defies its material and symbolic basis.

Claudia Cortez defended herself against an act of patriarchal violence, as I have been arguing consistently throughout this thesis. Despite the prosecution's attempt at framing the events as an intended murder, the circumstances of the case if read through a gender perspective allow to affirm that the reason she became involved in a criminal context was her situation of victimization in virtue of gender-based violence. In this Chapter, I will examine how the plea of self-defense, posited by Claudia Cortez's defense, is construed by the Prosecutor. I shall expose what the legal discourse implicates about the act of defense by the survivor of gender-based violence. I will examine the situated meanings attributable to this framing by the women in society that may be in the same situation as Claudia Cortez (Gee 1999, 53). In other words, the question I am exploring in this Chapter is: Would other women be encouraged to defend themselves from acts of gender-based violence or would they be dissuaded to do so in sight of the legal charges pressed against Claudia Cortez? I will not answer this question unequivocally, but I will foreground some elements of the interpretative context of the Cortez case that give insight into what is at stake when the prosecution carries out this type of judgement.

The circumstances that make this judicial precedent unique lie in the fact that prior to this case there had been only two cases of trial by jury in Mendoza, in which men were found guilty of the crime of femicide<sup>46</sup>. Claudia Cortez became the first woman to be judged under this modality of jurisprudence and the first person to be acquitted. All three cases of trial by

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<sup>46</sup> The "Peteán Pocovi" case (P-42989/18) of May 3, 2019, and the "Ortega Ragonesi" case (P-124158/16) of May 11, 2019.

jury received heightened media attention, covering their three-day development, and contributed to enhancing public awareness of its realization. Publicity was also enhanced by state institutions. In fact, uploading the audio-visual recording of the events of the last day of the trial, where the closing arguments took place, constitutes a telling example of the state's action of publicity<sup>47</sup>. The Cortez case received social attention<sup>48</sup> because gender-based violence and murder would be discussed in the judiciary this time, allegedly, in case of a female perpetrator.

### 5.1 The “unnecessary” self-defense

The category of self-defense is regulated in the Argentinian Penal Code. Article 34, paragraph 6 states that a person shall not be punished if they acted in protection of themselves or their rights provided that a series of requirements occur. The law requires the presence of illegitimate aggression, i.e., the presence of an act that has no legal authorization. In second place, for the application of self-defense, the law requires a “rational necessity of the means required to prevent or repel such an aggression” (Article 35, paragraph 6.b). This requirement is essential because it elaborates the characteristics of the means used in the act of defense. Legal scholars have explained that there must be a relation of proportionality between the instrument used for the attack and the instrument used for the defense (D'Alessio 2005, 392), i.e., if one is attacked with a bare fist, that person defending themselves would not be justified to respond with a gun. And, as the law expressly indicates, the means utilized can be implemented with the aim of repelling an attack which has already begun or rather to prevent that attack from happening. Finally, Article 36 paragraph 6.3 of the Penal Code of Argentina demands a lack of sufficient provocation on behalf of the person defending themselves, which implicates that the person who was forced to exercise a defense must not be responsible for causing the action of the one who attacked. If these requirements are fulfilled in a particular situation, the judge will decide on a defendant's lack of criminal responsibility and, therefore, pronounce them not guilty.

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<sup>47</sup> Summary information of all the trials by jury that have taken place in the Province of Mendoza can be found in the official website of the Judicial Branch of Mendoza here: <http://www.jus.mendoza.gov.ar/web/juicios-por-jurados/juicios-realizados>.

<sup>48</sup> Media coverage can be found here: <https://www.universidad.com.ar/absolvieron-a-la-mujer-que-mato-a-su-marido-tras-sufrir-violencia-de-genero74>; <https://www.infobae.com/sociedad/policiales/2019/05/14/mendoza-un-jurado-popular-debera-resolver-la-pena-de-una-mujer-victima-de-violencia-de-genero-que-asesino-a-su-marido/>; [https://tn.com.ar/policiales/asesino-su-marido-la-absolvieron-y-revelo-el-calvario-que-vivio-me-consideraba-su-esclava\\_963020/](https://tn.com.ar/policiales/asesino-su-marido-la-absolvieron-y-revelo-el-calvario-que-vivio-me-consideraba-su-esclava_963020/)

Even though the closing argument speech by Claudia Cortez's defense lawyers is not taken as data for the analysis of this thesis—for reasons explained in Chapter 2, Section 4—it is important to point out their main argument. The Defense argue that on the night of June 28<sup>th</sup>, 2018, Cortez acted in self-defense and did not intend to kill her husband. In their analysis of the case, they contextualize the event by historizing the violence towards Cortez over the thirty years of marriage and present the death of Pelayes as an unwanted result of a self-defensive action. The defense finds all the legal requirements of the law of self-defense to be adequately fulfilled and demands the acquittal of Claudia Cortez. The Prosecutor contests this claim and provides his own detailed account of the legal figure of self-defense, trying to convince the jury that the legal exception is not applicable to this case:

Legitimate defense. For there to be self-defense, there must have been an illegitimate aggression provoked without a right to do so. It's true, she was forced that night to have sexual intercourse she did not want to. But look at the second requirement. Rational necessity of the means used. It means that when one defends oneself, first of all it is an exceptional case, it is in a situation of such magnitude and gravity that in the absence of the State, I am allowed to defend myself, but I have to do it in a rational and necessary way. Do you know what necessary means? That I have to use out of all the means at my disposal, the least harmful one. Cortez could have pushed him. Cortez could have sought the help of her sons. Cortez could have broken the jar on his head, she could have hit him with a stick. But, in the darkness of that gloomy room with the child beside her, in all that environment, the first thing she finds is the knife that was under her husband's clothes, at the other end of the bed, at the other end of the chest of drawers? Was that the least harmful means Mrs. Cortez could have used? No. To impede or repel it. Was it a situation of imminent danger? I mean, if I don't stab him now, will he kill me? No. No! It was the same situation of more than thirty years ago, which she knew perfectly well how to handle. That's why I say again, it's not self-defense, it's the straw that broke the camel's back. Cortez said enough was enough. And that's what happened. And obviously there was not a sufficient provocation on the part of Cortez to somehow explain Pelayes' aggression, which he obviously had no right to force her to have sex.<sup>49</sup>

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<sup>49</sup> Original text in Spanish: “La legítima defensa. Para que haya legítima defensa se necesita que haya existido una agresión ilegítima provocada sin derecho. Es verdad, a ella la querían forzar esa noche a tener relaciones, ella no quiso. Pero vean el segundo requisito. Necesidad racional del medio empleado. Quiere decir cuando uno se defiende, primero que ya es un supuesto excepcional, es en una situación de tal magnitud y de tal gravedad que ante la ausencia del Estado, me permitan que me defienda yo, pero lo tengo que hacer de una manera racional y necesaria. ¿Saben que quiere decir necesario? Que yo tengo que usar de todos los medios que tengo a mi alcance,

The Prosecutor provides an examination of the three legal requirements of legitimate self-defense and comes to the conclusion that there are only two circumstances that can be proven in this case – illegitimate aggression and insufficient provocation on behalf of the one who exercises the act of defense; while the proportionality has not been sufficiently fulfilled in his reading. Regarding the first two, the Prosecutor’s speech portrays a superficial recognition, acknowledging that they existed, without considering any relevance to their implications. Concerning the attack perpetrated by Pelayes, he seems to agree with the claim that Claudia Cortez was the recipient of an illegitimate aggression, as Article 34 paragraph 6.a of the Criminal Code indicates. However, this fact is expressed by using passive voice (Pinelli and Zanchi 2021, 125). As I analyzed in Chapter 3, this grammatical construction disregards an agent’s involvement in a given action and has the effect of removing their responsibility. So, when the Prosecutor explains the sexual attack with these terms he diminishes the responsibility of Carlos Pelayes, the perpetrator of the illegitimate aggression, whose name in fact is not even mentioned in this part of the speech. Let us keep in mind that the focus of the law is placed on the action performed by the agent, so if the Prosecutor had wanted to subsume the events within the legal figure of self-defense, considering this first requirement fulfilled, he should have elaborated on what that action was and in what ways it was illegitimate. All that would have resulted in depicting Claudia Cortez as the affected and injured party. Instead, by using the passive construction, the illegitimate aggression — which is the causative event that triggered the subsequent reaction of self-defense — is overlooked and is given no validity. Claudia Cortez comes to be objectified for the purpose of downplaying the account of the sexual attack: she is positioned as the recipient of this grammatical construction but is never presented to occupy the position of a subject whose bodily integrity was violated.

Concerning the second condition, the lack of provocation of the assault, one could argue that the Prosecutor does recognize that Pelayes did not have a right to force his wife to have sex. Yet, acknowledging the sexual violence does not mean that its actual implications for Cortez are taken into account. It may appear “obvious” that Pelayes did not have the right to

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el menos lesivo. Cortés lo podía empujar. Cortés podía buscar el auxilio de sus hijos. Cortés podía romperle la jarra en la cabeza, podía pegarle con un palo. Pero ella en la oscuridad de esa habitación lúgubre con el niño al lado, ella en todo ese ámbito ¿Lo primero que encuentra es el cuchillo? Que estaba bajo de la ropa de su marido, en la otra punta de la cama, de la cómoda. ¿Ese era el medio menos lesivo que pudo usar la señora Cortés? No. Para impedirla o repelerla. ¿Era una situación de un peligro inminente? Quiere decir, si no le doy el cuchillazo ya ¿me mata? No. ¡No! Era la misma situación de hacía más de 30 años, que sabía perfectamente cómo manejarla. Por eso le vuelvo a decir, no es legítima defensa, es la gota que colmó el vaso. Cortés dijo basta. Y eso fue lo que pasó. Y obviamente no hubo una provocación suficiente por parte de Cortes para que de alguna manera se explicara la agresión de Pelayes, a la cual obviamente no tenía ningún derecho a forzarla a tener relaciones sexuales.”

force Cortez, but the reality is that he did force her, and this is not given any merit in the Prosecutor's speech.

The Prosecutor's central argument revolves around the means that Claudia Cortez used to defend herself and its proportionality regarding the attack. I argue that the propositions he presents to support his case are traversed by sexist assumptions, which lead to the result of not justifying the actions that this woman performed to prevent rape. Through his framing of the events, the Prosecutor implies that the situation that preceded Claudia Cortez's action is not severe enough to activate an action of self-defense. The exceptional "magnitude and gravity" required by the law is not met. According to his logic, when a man arrives home in the middle of the night, under the influence of drugs and alcohol, and attempts to sexually abuse his wife, there is no sufficient reason to repel him. This interpretation of the law implicates a misogynist bias that trivializes the danger Cortez was exposed to before her act of defense that resulted in Carlos Pelayes' death. What happened to her is depicted as not important *enough* to be protected by the law.

Fiona Leverick (2006) has discussed the issue of proportionality in self-defense, raising the question of whether killing to prevent rape should be justified and on what grounds. The author identifies multiple reasons that have been given in support of the permissibility of this action, which may at first sight seem as uncontested. She explains how justifications such as the bodily harm suffered by the victim or the possibility of not recovering from psychological damage can be challenged in particular settings and would be overturned by potential counterparts. Leverick argues that the root of the justification of killing to prevent a sexual attack lies in the objectification and dehumanization experienced by the victim (Leverick 2006, 157). The humiliation experienced by the person being reduced to a mere object for the perpetrator's purposes is equivalent to a deprivation of their personhood. So, when the Prosecutor rejects Claudia Cortez's lived experience as legitimate grounds for self-defense, he comes to refuse seeing the denial of her humanity and personhood in that act, thereby adding to Cortez's dehumanization through his legal framing.

Furthermore, in addition to claiming that a sexual assault is not a valid reason for triggering a defensive response, the Prosecutor provides what he understands to be the legitimate explanation for the refusal to interpret the act of self-defense as necessary. Carlos Pelayes' attack is not grave enough to pose an imminent danger to Claudia Cortez because she has had a history to handle it: "It was the same situation of more than thirty years ago, which she knew perfectly well how to handle". The prosecution is now enacting the element of victim-blaming. The Prosecutor presents the thirty years of violence only to trivialize them and to put

the blame on the victim for “forgetting” how to survive; the gender-based violence goes without being challenged, framed as an ordinary situation in Cortez’s life. He takes the violence for granted, portraying it as if fixed within her life instead of examining its consequences, implications and, most importantly, precluding the key responsibility of the perpetrator—Carlos Pelayes—in causing and keeping that situation going on for such long time. Stopping the violence is, once again, a burden placed on Claudia Cortez. What is left out of this formulation but can however be inferred from the logic of his argument, is that “handling” the situation would have meant giving in to sexual abuse. The woman’s consent and desires, in addition to her perception of danger (Tarrant 2021, 727), come to be annihilated in this masculinist scenario where the death of the husband could have been prevented had she only agreed to being raped by a violent man – one more time. Claudia Cortez is expected by the Prosecutor to have sexual intercourse with her husband, complying with the expectation of the obedient wife (Facio quoted in Campos 1999, 528).

## **5.2 The symbolic efficacy of the legal proceedings through a gender perspective**

The Prosecutor’s examination of the requirements of self-defense evidences a narrow analysis of the events that took place in Claudia Cortez’s life. He interprets what happened on the night of June 28<sup>th</sup> by subtracting those facts from the context of gender-based violence and portrays Cortez’s self-defense in a frame that rests on sexist assumptions and victim-blaming. The actual case of sexual aggression, paradoxically, precisely because of its history in their relationship, is not given any validity and the Prosecutor blames her for not having ceded to it. The self-defensive action is depicted as disproportionate, unnecessary, and avoidable had she only responded affirmatively to her husband’s imposition. The Prosecutor’s logic is that a sexual attack to a woman has no legal relevance if there is a history of gender-based violence within the household. Against that history, the victim’s self-defense is argued to be an overreaction in response to the aggression and the ‘reasonable’ way of avoiding it would have been to give in to the male imposition. Based on these sexist assumptions and conclusions, the Prosecutor comes to infer that the actions of Claudia Cortez *should not have existed*, they should have never taken place.

I argue that what is being conveyed by the legal discourse of the Prosecutor is a discouragement of a woman’s self-defense, as such an act poses a resistance to the power relations that sustain a gender hierarchy. Women’s self-defense against the male perpetrator should not be recognized in the eye of the law because it challenges the subordinate position of women and has the potential to overturn the dynamics of gender-based violence, resulting even

in the death of the aggressor. The case of Claudia Cortez's prosecution can be read as a response to the ways she escaped the gender-appropriate model of being not only a woman, a wife, but a "good victim" (Osthoff 2002, 1522) of gender-based violence. If by the gendering reason of women's proper life, women are not allowed to use violence in order to stop an act of violence against them (Leonard 2002, 126), then Claudia Cortez breached that mandate. Rather than giving in to yet another sexual assault, as the Prosecutor suggested, she displayed the means necessary to impede the assault. Her use of force cannot be argued in similar terms to those used when characterizing the violence inflicted upon her by the male perpetrator (Osthoff 2002, 1526). Pelayes was proven to be a violent batterer throughout many years with a criminal record, while Cortez had never incurred in criminal activity before this trial and was placed under judgement in virtue of the previous conditions that victimized her. Cortez also defied the socially assigned gender role of 'wife' prescribed by the institution of the family. Instead of behaving like the self-sacrificing obedient wife who yields to her husband's violence at the expense of her own life, eventually, she defied the male authority. Furthermore, her actions resulted in the elimination of the family, on the account of causing her husband's death and facing a life imprisoning sentence.

Finally, Claudia Cortez has not behaved as a "good victim", according to the Prosecutor's logic because, allegedly, she did not make use of all the state resources that he understands were available for her to seek help. He is promoting an accusation without applying the gender perspective that this type of case requires—something that is mandated by law 26.485. This is a key argument in the Defense's argument that the Prosecutor disagrees with:

The Executive Branch has 243 health posts, all trained with a gender perspective, 24 hospitals, 11 [woman] shelters, subsidy plans and the 144 line which is anonymous and free of charge. Do we not have a gender perspective? Yes, we do, what happens is that Mrs. Cortez did not use it and we cannot be held responsible for that. All this is what Mrs. Cortez had at her disposal as any of us and she could not use it or she decided not to use it or she had a limitation to use it, but we are not responsible.<sup>50</sup>

The Prosecutor is implying that Cortez did not look for help to end the violence that was inflicted upon her, placing the burden of stopping this violent situation on her shoulders once

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<sup>50</sup> Original text in Spanish: "El Poder Ejecutivo tiene 243 puestos sanitarios, todos capacitados con perspectiva de género, 24 hospitales, 11 refugios, planes de subsidio y la línea del 144 que es anónima y gratuita ¿no tenemos perspectiva de género? Si, sí la tenemos, lo que pasa es que la señora Cortes no la usó y de eso no podemos hacernos responsables nosotros. Todo esto es lo que tenía a disposición la señora Cortés como cualquiera de nosotros y no pudo usarla o decidió no usarla o tuvo una limitación para usarla, pero no somos los responsables nosotros."

more, implicating the responsibility of the victim for not defending herself. The propositional assumption (Fairclough 2004, 56) behind his claim is that seeking help through institutional channels is what victims should do and once they do so their complaints would be listened to without any doubt. The act of attributing a particular behavior to an individual in reason of belonging to a specific group constitutes a normative stereotype (Arena 2016, 55). It is not only being said what a woman is like because she is part of the group “victims”, which would constitute a descriptive stereotype (Arena 2016, 54), but there is an imposition as to what she should behave like. So, in the logic of the Prosecutor a good victim of gender-based violence would have made use of these state resources, reported her husband to the police and waited patiently for the judicial system to offer a response while living with the perpetrator under the same roof—the place where she was most in danger. Claudia Cortez is construed as a “bad victim” of gender-based violence because she stood up for herself, challenging the Prosecutor’s masculinist logic.

This expectation is not only yet another misogynistic act of the legal system trying to tell women how they should behave (Facio and Fries 1999, 7) but it is also an unrealistic expectation disregarding the reality of women in the present-day context of Argentina, where recent statistics indicate that 81% of femicides take place within the family household and in a context of domestic violence (Oficina de la Mujer, Corte Suprema de Justicia de la Nación 2021). This reality of women in the country, where 83% of the femicides that occurred in 2022 were perpetrated by a partner or ex-partner (Observatorio de Femicidios de la Defensoría del Pueblo de la Nación 2022), indicates that women surviving gender-based violence is the exception, not the rule. So, what could have happened on the night of June 28<sup>th</sup> had Claudia Cortez not defended herself? Considering that a potential of lethality exists in every relationship where a woman is subjected to violence (Leonard 2002, 128), if Claudia Cortez had not reacted in her own defense, the actual circumstances suggest that we might have mourned her death. Her situation exemplifies another case of a woman “we may otherwise be burying” (Center for Women’s Justice 2021, 7).

Thus, in virtue of having breached the gender mandates of femininity, obedient wife, and good victim the criminal justice system was displayed to reinstate the symbolic force of those mandates. The status of subordinate women was altered, and the intervention was necessary to reestablish the order of gender (Segato 2003, 32). Claudia Cortez’s trial is not an act of ordinary penal judgement, it is meant to function as a symbolic act of discipline directed at a woman who released herself from the gendered restraints of the patriarchal system. The symbolic efficacy of the trial, or in other words what the juridical discourse is evoking (Villegas



2014, 55), is a legitimization of the criminalization of a woman who exercised resistance to the prevailing social order, while symbolically consolidating the patriarchal authority over her. As far as the Prosecution is concerned, the message sent to the many women who may be facing the same violence as Claudia Cortez is a warning against the use of force to end the male perpetrated violence in defense of their life. It tries to reiterate the gendered boundaries of normative femininity whose major element is victimhood, following a conduct of obedience and passivity—tolerating the blows, insults, and control over their bodies and lives, in similar terms as the message that is articulated by the male aggressor through each act of violence (Leonard 2002, 125).

Furthermore, the systematic treatment that the woman survivor of this cases receives in the Prosecutor's speech, who accuses her based on sexist assumptions of how a woman should behave when being attacked, by blaming her for the violence and discouraging self-defense can be qualified as an act of symbolic violence perpetrated by a state representative, in terms of Articles 5 and 6 of Argentinian Law 26.485. Considering the discursive strategies he utilizes, I argue that the Prosecutor is enacting violence through speech, where there may be no explicit confrontation with the woman, but there is certainly an injurious potential. His speech, directed at times at Claudia Cortez and at times at "feminists" as a social group, by undermining the testimony of a woman who survived sexual abuse and overlooking the criminal responsibility of the male perpetrator, goes beyond formulating a criminal accusation to belittle Claudia Cortez as a human being. The Prosecutor exercises symbolic violence that is enacted through speech but at times is explicitly accompanied by a bodily performance, as can be seen in what I describe as "the feather performance". When the Prosecutor analyzes what he considers as inconsistencies in Claudia Cortez's testimony, he affirms:

And the question that stuck with Dr. Santiago Ríos. "Carlos Carlos, my love, why did you leave me?" Because you stabbed him Mrs. Cortez [turns to her] that's why he left you. Because she stabbed him and she knows it. So it's a rehearsed question or scream. This is the modification of the scene. The arrest of Mr. Pelayes was almost as easy and his situation as fragile as dropping this feather [takes a feather out of his suit pocket and drops it]. That is how long it would have taken Pelayes to be arrested.<sup>51</sup>

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<sup>51</sup> Original text in Spanish: "Y la pregunta que le quedó grabada al doctor Santiago Ríos. "Carlos Carlos, mi amor, por qué me dejaste?" Porque lo apuñaló Señora Cortés [gira hacia ella] por eso la dejó. Porque lo apuñaló y ella lo sabe. O sea que es una pregunta o es un grito ensayado. Esta es la modificación de la escena. Que quedara

As I have signaled in the quote, the Prosecutor literally turns to face Claudia Cortez and speaks directly towards her. In general, this conduct is not observed in the delivery of the speech because his primary audience is the jury. But on this occasion, he confronts her directly. He does so to rhetorically answer the question she was screaming in emotional shock while facing her husband's injured body, and he does so when pulling out a white feather from his pocket. When the Prosecutor pulls out the feather and lets it fall on the ground, he attempts to illustrate how easy it would have been for Pelayes to go to jail. Apparently, easy, gracious, and fast. This acting out reinforces the argument that makes Cortez responsible for not having used what was at her disposal and at the same time, indirectly, trivializes her hardships as if light like a feather. The Prosecutor taunts Claudia Cortez, abusing the power invested in his function, crossing the boundary of persuasion into direct aggression, enhancing the violent effect through a bodily act. As Judith Butler claims: "If the speaker addresses his or her body to the one addressed, then it is not merely the body of the speaker that comes into play: it is the body of the addressee as well" (1997, 12). Therefore, it is the Prosecutor who is "comporting his body toward the other" and thus "exposing the body of the other"—in this case Claudia Cortez— as a body that is "vulnerable to address". Butler further suggests that "As an instrument of violent rhetoricity, the body of the speaker exceeds the words that are spoken, exposing the addressed body as no longer (and not ever fully) in its own control" (1997, 13).

### 5.3 The acquittal of Claudia Cortez

Despite the history of enduring gender-based violence, the year-long criminal investigation and facing an accusation saturated with sexist assumptions and victim blaming, Claudia Cortez at last saw justice at the end of the trial, when she was acquitted and declared free of criminal charges.

As I pointed out in Chapter 1, the trial by jury procedure described in Provincial Law N° 9106 indicates that the jury must gather to deliberate after the prosecution and defense have presented their closing argument speech. The instructions given to the jurors specified that their decision had to determine whether the facts of the accusation were proven and whether the accused was guilty (Article 33, Law 9106). The jury who intervened in the case of Claudia Cortez spent approximately six hours deliberating and was not able to reach a unanimous decision. The moderating judge even offered to give the jury new instructions in case they required clarification on a particular aspect, but the jury refused the offer. They stated that

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detenido el señor Pelayes era casi tan fácil y tan frágil su situación como dejar caer esta pluma [saca pluma del bolsillo del traje y la deja caer]. Eso es lo que tardaba Pelayes en quedar detenido".

unanimity could not be reached because there were opposing positions among the jurors, which could not be reconciled. Thus, the case of a deadlocked jury was declared, resulting in the acquittal of the defendant. Claudia Cortez was released on May 15<sup>th</sup>, 2019, as a result of this situation. She became the first person to be acquitted in the history of trials by jury in Mendoza and her trial is, to the time of writing this thesis, the only case where the situation of a deadlocked jury has taken place.

The result of this trial represents a beacon of hope for women survivors who engage in self-defense. The statistics of violence against women indicated that Claudia Cortez was most likely to be a victim of femicide, but instead she became a survivor. The judicial precedents of criminalization of gender-based violence survivors in Argentinian courts presented her conviction as the most plausible outcome, yet she was released. It goes beyond the scope of this research to examine what made Claudia Cortez's acquittal possible, but it does indicate that her voice and lived experience were not surpassed by the logic of the prosecution.

#### **5.4 Conclusions**

In the first place, in this chapter I have described what the legal discourse of the accusation against Claudia Cortez portrays about her act of self-defense. Far from considering the context in which this event took place, we have seen how in the logic of the Prosecutor this act was isolated from her history of gender-based violence, giving as a result an interpretation that leads to qualifying the death of Pelayes as an intended murder.

The Prosecutor fails to examine the aggression that Claudia Cortez received on the night of June 28<sup>th</sup>, 2018, leaving the woman's physical integrity and well-being devoid of importance and validity. Her actions are associated with a feminine overreaction. The analysis of the means utilized in the defense rests on misogynist assumptions of how a woman being attacked should behave, construing the situation as if she had better alternatives. The necessity of repelling the attack and the real possibilities that were available to Cortez inside the bedroom are never pondered. The history of gender-based violence is taken for granted and used against the victim, implying that her knowledge of Pelayes enabled her to "deal" with the situation once more. The Prosecutor's strategy of victim blaming is configured by the trivialization of Claudia Cortez's lived experience (Heyes 2016, 365).

In second place, I also aimed to highlight the value of the act of self-defense. This action is what transformed Claudia Cortez, a life-long survivor of gender-based violence, into a presumed criminal. Rather than fulfilling its legal obligations in the protection of women against patriarchal violence, the state only intervened in this case when Cortez managed to

escape the cycle of violence. The prosecution built their case on sexist assumptions and victim-blaming, rather than investigating the roots and context of the events. By reinstating the mandates of femininity, wife, and good victim the trial became a site of discipline for Cortez, with a symbolic force. The symbolic efficacy of the trial examined through a gender perspective consists in discouraging women to defend themselves, by the threat that if they do so they will face the display of the state apparatus, and the criminal justice system will remind them, through re-victimization and blame, of the ‘proper’ gender roles they must live up to. The case against Claudia Cortez serves as an illustration of Vafa and Epstein’s claim when examining the messages sent by state institutions to survivors who are criminalized. The authors argue that this type of prosecution “reinforces the message that survivors receive from their abusers: that they are responsible for what has happened to them; that no one will believe them if they try to escape or seek help; that they will be punished for the abuse they survived; that their lives do not matter” (Vafa and Epstein 2023, 25).

The quote at the beginning of this chapter was pronounced by Claudia Cortez herself during her final address to the jury, before they went off to deliberate on her case. I believe it best represents the value of her defense. People in Mendoza are used to reading news about femicides and women being assaulted by their partners. Mourning the deaths of friends, family and co-workers has become a disgraceful reality in recent years. But when the Cortez case made the headlines, we encountered a woman that was not dead. The context of this case, in addition to the national statistics, would have made it very plausible for that outcome to take place, yet this was not the case with Claudia Cortez. She was alive, and despite the horrible circumstances she had gone through, she now had an opportunity to tell her story. She stood up for herself, defended her body not only in that final fight against her violent husband but in court again, and stopped patriarchal violence...and that is the most powerful message women can learn from her case.

## CONCLUSIONS

The focus of this thesis has been on the logic of the prosecution of Claudia Cortez—a woman survivor of gender-based violence—enacted by the state representative in the criminal proceedings. Rather than focusing on quantitative studies of women’s conviction (Browne, 1989) or examining court rulings (Leonardi and Scafati, 2019) as previous studies have done, my interest was in analyzing the rhetorical organization of the state accusation. I exposed how the state tried to build a criminal accusation against a woman with a long history of surviving gender-based violence. As Judith Butler has argued, the discourse of state jurisprudence and that of the law is not neutral but productive of what is publicly speakable in the name of “justice” (Butler 1997, 77). From such a critical perspective of the language use of the law, I intended to examine what the situated judicial discursive practices portray about the woman survivor and her act of self-defense, trying to sacrifice her yet again in the interest of maintaining hegemonic values of masculinity.

In Chapter 3, I explored the identities that were constructed within the Prosecutor’s closing argument speech. Regarding the figure of Claudia Cortez, I demonstrated her two-folded characterization. She is depicted as a passive and dependent victim of gender-based violence, while at the same time judged as ‘responsible’ not only for the crime of aggravated homicide, but for having ‘allowed’ the violence to take place, ultimately implicating that she inflicted the violence upon herself. As a result, the responsibility of the perpetrator and husband, Carlos Pelayes, appears downplayed in the overall argumentation and his responsibility for the violence is diminished. The state-sponsored legal accusation finds the woman survivor as criminally responsible by blaming her—instead of the aggressor—for the violence, isolating the events of the trial from the history of gender-based violence and disregarding the responsibility of the male perpetrator.

Chapter 4 was dedicated to examining how juridical discourses appear from within a patriarchal perspective in the Prosecutor’s argumentation. Here, the main strategy utilized consisted in creating a binary distinction between family and society, while setting up competing accounts of medicine and justice. His logic drew on this dichotomization, opposing ‘reason’ and ‘truth’ to ‘ideology’ only to present his own stance as the only possible valid one. The patriarchal ideology embedded in the legal discourse reinforces the legitimization of sexist values. When applied to this case, this implicates a reinforcement of the traditional family role for a woman who endures violence from her husband, without analyzing the concrete and real circumstances in which the apparently criminal action was embedded.

In Chapter 5, I aimed at exposing the logic that informed the Prosecutor's interpretation of Claudia Cortez's self-defense. Instead of considering the implications that yet another sexual abuse may have had on her, he assessed her actions only to judge them as disproportionate. I provided a reading of Claudia Cortez's resistance to the gender mandates of femininity, wife, and "good victim", in the face of the symbolic power of the law that reiterates these mandates. The message that other women survivors of male perpetrated violence are hoped by the Prosecution to understand is a discouragement from their own self-defense, inviting them to see that the violence Claudia Cortez experienced inside the household as well as in the court room may happen to them as well if they imitate her actions.

The case of Claudia Cortez case appears as symptomatic of the permeability of feminist ideas in the social tissue and in situated legal practices as well. At the same time, it indexes the challenges that the women's movement faces in the task of contesting the dominant patriarchal ideology of gender-based violence. Women may have achieved equality on a formal level, and practitioners may even litigate with the support of protective laws on their side, but in everyday practices the actual discourse still portrays masculinist values that undermine the validity of women's lived experience. Despite the feminist advance as demonstrated by "Ni Una Menos" (Not One Woman Less) in Argentina, patriarchy is there, fighting the crack in male entitlement. In the end, we can say that real, situated, justice was realized, holding out the promise of a woman's life in peace for the future ahead.

## BIBLIOGRAPHY

- Álvarez, Luciana. 2013. *Derechos a La Diferencia: El Caso Indígena En El Discurso Jurídico Argentino*. Buenos Aires: Biblos.
- Amorós, Celia. 1991. *Hacia Una Crítica de La Razón Patriarchal*. 2nd ed. Barcelona: Anthropos.
- Arduino, Ileana and Lorenzo, Leticia. 2022. “Juicio Por Jurados y Cuestiones de Género. Ni Romantizar La Participación Ni Reivindicar Rutinas Burocráticas.” *Revista Atípica* 4. <https://www.pensamientopenal.com.ar/doctrina/90643-juicio-jurados-y-cuestiones-genero-ni-romantizar-participacion-ni-reivindicar>.
- Arduino, Ileana. 2017. Las Dinámicas de la Violencia. *Revista Acción*. <https://accion.coop/pais/voces/las-dinamicas-de-la-violencia/>.
- Arena, Federico José. 2016. “Los estereotipos normativos en la decisión judicial: Una exploración conceptual.” *Revista de Derecho (Valdivia)* 29 (1): 51–75.
- Asociación Civil “La Casa del Encuentro”. 2020. “Por Ellas. 10 Años de Informes de Femicidios En Argentina.”. Ciudad Autónoma de Buenos Aires: <https://www.porellaslibro.com/libros/porellas2020-spanish.pdf>.
- Barros, Mercedes and Martínez, Natalia. 2020. “Let’s Not Talk about It. Feminism and Populism in Argentina.” *Baltic Worlds XIII* (1): 77–84.
- Bidart Campos, German. 1996. *Manual de La Constitución Reformada*. Buenos Aires: Ediar.
- Braidotti, Rosi. 2013. “Posthumanismo. La Vida Más Allá Del Individuo.” In *Lo Posthumano*. Barcelona: Gedisa.
- Browne, Angela. 1989. *When Battered Women Kill*. New York: Free Press.
- Brugniere, Agustina. 2022. “La Importancia Del Lenguaje Llano En Un Contexto de Juicios Por Jurados.” In *Homenaje al Dr. Gustavo Letner: Juicio Por Jurado y Las Nuevas Generaciones*, 1st ed., 183–200. Ciudad Autónoma de Buenos Aires: Jusbaire.
- Butler, Judith. 1997. *Excitable Speech. A Politics of the Performative*. New York: Routledge.
- Cameron, Deborah and Kulick, Don. 2003. *Language and Sexuality*. Cambridge: Cambridge University Press.
- Cameron, Deborah. 2014. “Gender and Language Ideologies.” In *The Handbook of Language, Gender, and Sexuality*, 279–96. John Wiley & Sons, Ltd.
- Campos, Carmen. 1999. “Criminología Feminista ¿Un Discurso (Im)Posible?” In *Género y Derecho*. Santiago de Chile: La Morada. Corporación de Desarrollo de la Mujer.
- Capers, Bennet. 2012. “Blind Justice.” *Yale Journal of Law & the Humanities* 24 (1): 179/190.
- Center for Women’s Justice. 2021. “Women Who Kill: How the State Criminalizes Women We Might Otherwise Be Burying.”

[https://static1.squarespace.com/static/5aa98420f2e6b1ba0c874e42/t/602a9a87e96acc025de5de67/1613404821139/CWJ\\_WomenWhoKill\\_Rpt\\_WEB-3+small.pdf](https://static1.squarespace.com/static/5aa98420f2e6b1ba0c874e42/t/602a9a87e96acc025de5de67/1613404821139/CWJ_WomenWhoKill_Rpt_WEB-3+small.pdf)

- Chesney-Lind, Meda. 1986. “‘Women and Crime’: The Female Offender.” *Signs: Journal of Women in Culture and Society* 12 (1): 78–96.
- Chesney-Lind, Meda. 2006. “Patriarchy, Crime, and Justice: Feminist Criminology in an Era of Backlash.” *Feminist Criminology* 1 (1): 6–26.
- Corte Suprema de Justicia de la Nación. Oficina de la Mujer. 2021. “Informe Registro Nacional de Femicidios de La Justicia Argentina 2021.” Buenos Aires.
- D’Alessio, Andrés José. 2005. *Código Penal de La Nación Comentado y Anotado. Tomo 1*. 1st ed. Buenos Aires: La Ley.
- Defensoría del Pueblo de la Nación Argentina. 2022. “Informe Anual 2022.” Buenos Aires. [https://dpn.gob.ar/documentos/Observatorio\\_Femicidios\\_-\\_Informe\\_Final\\_2022.pdf](https://dpn.gob.ar/documentos/Observatorio_Femicidios_-_Informe_Final_2022.pdf).
- Downs, Donald Alexander. 1996. *More than Victims: Battered Women, the Syndrome Society, and the Law*. Chicago: University of Chicago Press.
- Facio, Alda and Fries, Lorena. 1999. “Feminismo, Género y Patriarcado.” In *Genero y Derecho*. Santiago de Chile: La Morada. Corporación de Desarrollo de la Mujer.
- Facio, Alda. 1999. “Hacia otra teoría crítica del Derecho.” In *Género y Derecho*. La Morada. Corporación de Desarrollo de la Mujer.
- Fairclough, Norman. 2003. *Analysing Discourse: Textual Analysis for Social Research*. 1st ed. Routledge.
- Foresti, Rosana. 2021. “Con Barbijo No Callamos.” *Ab-Revista de Abogacía* 5 (8): 31–39.
- Frain, Kayla. 2020. “How a Tweet Brought People to the Street: Social Media and the Success of Ni Una Menos.” *Undergraduate Journal of Global Citizenship* 3 (2): 1–39.
- Frank Tonkiss. 1998. “Analysing Discourse.” In *Researching Society and Culture*, 245–60. Sage.
- Fries, Lorena and Mathus, Veronica. 1999. “Supuestos Ideológicos, Mecanismos e Hitos Históricos Fundantes Del Derecho Patriarcal.” In *Género y Derecho*, 61–77. Santiago de Chile: La Morada. Corporación de Desarrollo de la Mujer.
- Fuster, Lucia, and Penchansky, Celina. 2016. “Ahora es el momento. Día Internacional de la No Violencia de Género.” *Bordes. Revista de Política, Derecho y Sociedad*, November, 57–63.
- Gaarder, Emily, and Belknap, Joanne. 2002. “Tenuous Borders: Girls Transferred to Adult Court” *Criminology* 40 (3): 481–517.
- Gee, James Paul. 1999. “Chapter 2: Discourse and Social Languages” and “Chapter 3: Situated Meanings and Cultural Models.” In *An Introduction to Discourse Analysis*, 11–57. Routledge.



- Gonzalez, Patricia, and Yanes, Aleyda. 2013. *Violencia contra las mujeres. Quien calla otorga*. Mendoza. [https://bdigital.uncuyo.edu.ar/objetos\\_digitales/5270/violencia-contra-las-mujeres-quien-calla-otorga5-2.pdf](https://bdigital.uncuyo.edu.ar/objetos_digitales/5270/violencia-contra-las-mujeres-quien-calla-otorga5-2.pdf)
- Helms, Elissa. 2013. "Conclusion." In *Innocence and Victimhood: Gender, Nation, and Women's Activism in Postwar Bosnia-Herzegovina*, 225–245. Madison, Wisconsin: The University of Wisconsin Press.
- Heyes, Cressida J. 2016. "Dead to the World: Rape, Unconsciousness, and Social Media." *Signs: Journal of Women in Culture and Society* 41 (21).
- Hoff, Lee Ann. 1991. *Battered Women as Survivors*. London: Routledge.
- Howarth, David. 2000. "Foucault's Archaeology of Discursive Practices." In *Discourse*, 48–84.
- Hunnicut, Gwen. 2009. "Varieties of Patriarchy and Violence Against Women: Resurrecting 'Patriarchy' as a Theoretical Tool." *Violence Against Women* 15 (5): 553–73.
- Kelly, Liz. 1987. "The Continuum of Sexual Violence." In *Women, Violence and Social Control*, edited by Jalna Hanmer and Mary Maynard, 46–60. Explorations in Sociology. London: Palgrave Macmillan UK.
- Leonard, Elizabeth Dermody. 2002. *Convicted Survivors*. Albany: State University of New York Press.
- Leonardi, María Celeste, and Scafati, Ezequiel. 2019. "Legítima Defensa En Casos de Violencia de Género." *Revista Intercambios*, 18.
- Leverick, Fiona. 2006. "Killing to Prevent Rape." In *Killing in Self-Defence*, 143–58. Oxford University Press.
- Lezcano, Sofía. 2021. "Construyendo nuevas subjetividades: el caso de la Ley Micaela." *Actas de Periodismo y Comunicación* 7 (2).
- Liu, Yingxi. 2022. "Does the Modern Jury Represent a Successful Exercise in Democracy?" *Academic Journal of Humanities & Social Sciences* 5 (13).
- MacKinnon, Catharine A. 1987. *Feminism Unmodified. Discourses on Life and Law*. Cambridge, Massachusetts: Harvard University Press.
- Mason-Deese, Liz. 2020. "Not One Woman Less-From Hashtag to Strike." *Spheres. Journal for Digital Culture*.
- McKee, Jesse Robert. 2014. "Patriarchal Ideology and Violence Against Women: A Theoretical Contribution Using Longitudinal, Individual-Level Analyses." Old Dominion University Libraries.
- Michel Foucault. 1990. *The History of Sexuality. Volume 1: An Introduction*. New York: Vintage Books.
- Millett, Kate. 2000. *Sexual Politics*. Urbana: University of Illinois Press.

- Moe, Angela M. 2004. "Blurring the Boundaries: Women's Criminality in the Context of Abuse." *Women's Studies Quarterly* 32 (3/4): 116–38.
- Nathoo, Harnishakumari Rasiklal. 1997. "Battered Women Who Kill." M.Sc., Ann Arbor, United States.  
<https://www.proquest.com/pqdtthss/docview/2566014802/abstract/7E3ADC67487144E3PQ/15>.
- O'Malley, Kathleen M. 2018. "Trial by Jury: Why It Works and Why It Matters Foreword." *American University Law Review* 68 (4): 1095–1110.
- Osthoff, Sue. 2002. "But, Gertrude, I Beg to Differ, a Hit Is Not a Hit Is Not a Hit: When Battered Women Are Arrested for Assaulting Their Partners." *Violence Against Women* 8 (12): 1521–44.
- Oyola, Luciana Carolina. 2022. "Mujeres Que Se Defienden Frente a La Violencia Machista: Caso María Lescano." In *Jornadas Justicia Penal, Géneros y Enseñanza Del Derecho*, 159–66. Ciudad Autónoma de Buenos Aires: Instituto de Estudios Comparados en Ciencias Penales y Sociales.
- Pinelli, Erica and Zanchi, Chiara. 2021. "Gender-Based Violence in Italian Local Newspapers: How Argument Structure Constructions Can Diminish a Perpetrator's Responsibility." In *Discourse Processes between Reason and Emotion*, edited by Patrizia Anesa and Aurora Fragonara, 117–43. Cham: Springer International Publishing.
- Porterie, Sidonie and Romano, Aldana. 2018. *El Poder del Jurado: Descubriendo el juicio por jurados en la provincia de Buenos Aires*. Buenos Aires: Instituto de Estudios Comparados en Ciencias Penales y Sociales.
- Reisigl, Martin and Wodak, Ruth. 2017. "The Discourse-Historical Approach (DHA)." *The Routledge Handbook of Critical Discourse Studies*, January.
- Rovetto, Florencia Laura. 2019. "Cuando sube la marea feminista: resistencias y disputas de sentido en tiempos macristas." In *La Argentina de Cambiemos*, edited by Esteban Iglesias and Juan Bautista Lucca, 85–102. Rosario, República Argentina: UNR Editora: Centro de Estudios Comparados.
- Ruiz, Alicia. 2013. *Teoría Crítica Del Derecho y Cuestiones de Género*. Vol. 6. Colección Equidad de Género y Democracia. Mexico: Suprema Corte de Justicia de la Nación, Tribunal Electoral del Poder Judicial de la Federación, Instituto Electoral del Distrito Federal
- Saar, Malika Saada, Epstein, Rebecca, Rosenthal, Lindsay and Vafa, Yasmin. 2015. "The Sexual Abuso to Prision Pipeline: The Girl's Story." Center on Poverty and Inequality. Georgetown Law.
- Sally Engle Merry. 2009. "Introduction" in *Gender Violence and Social Movements*. 1-25. Wiley-Blackwell.
- Schulz, Jessica Michelle. 2021. "A Critical Discourse Analysis of Intimate Partner Violence and Sexual Violence Discourse on the Websites of Two Institutions of Higher Education." Ph.D., Ann Arbor, United States.

<https://www.proquest.com/pqdtthss/docview/2549087385/abstract/1E22215BF538451APQ/5>.

- Segato, Rita Laura. 2003. *Las estructuras elementales de la violencia: ensayos sobre género entre la antropología, el psicoanálisis y los derechos humanos*. 1a. ed. Buenos Aires: Universidad Nacional de Quilmes: Prometeo 3010.
- Smart, Carol. 1992. "The Woman of Legal Discourse." *Social & Legal Studies* 1 (1): 29–44.
- Sutherland, Bridget. 2021. "'She Made the Decision to Stay': Resisting Rhetorics of Spatiality and Victim Blaming in the Effort to End Intimate Violence." Ph.D., Ann Arbor, United States.  
<https://www.proquest.com/pqdtthss/docview/2572619675/abstract/C977D5D234754E27PQ/1>.
- Tarrant, Stella. 2021. "Why Intimate Partner Violence Is Difficult to See as Grounds for Self-Defence: Old Common Law Legacies." *New Zealand Universities Law Review* 29 (4): 703–41.
- Terzian, Polly. 2017. "The Ni Una Menos Movement in 21st Century Argentina: Combating More than Femicide." Dickinson College Honors Theses. Paper 288.
- Thompson, Monica. 2010. "Life after Rape: A Chance to Speak?" *Sexual and Relationship Therapy*, August.
- Tosi, Carolina Luciana. 2019. "Marcas discursivas de la diversidad: Acerca del lenguaje no sexista e inclusivo y la educación lingüística: aproximaciones al caso argentino".
- Tyson, Danielle, Kirkwood, Deborah, and Mckenzie, Mandy. 2017. "Family Violence in Domestic Homicides: A Case Study of Women Who Killed Intimate Partners Post-Legislative Reform in Victoria, Australia." *Violence Against Women* 23 (5): 559–83.
- Vafa, Yasmin, and Epstein, Rebecca. 2023. "Criminalized Survivors: Today's Abuse to Prison Pipeline for Girls." Rights4Girls and Georgetown Center on Gender Justice & Opportunity.
- Van Dijk, Teun A. 2015. "Critical Discourse Analysis." In *The Handbook of Discourse Analysis*, edited by Deborah Tannen, Heidi E. Hamilton, and Deborah Schiffrin. John Wiley & Sons, Inc.
- Van Nes, Fenna, Tineke Abma, Hans Jonsson, and Dorly Deeg. 2010. "Language Differences in Qualitative Research: Is Meaning Lost in Translation?" *European Journal of Ageing* 7 (4): 313–16.
- Villegas, Mauricio García. 2014. *La eficacia simbólica del derecho: sociología política del campo jurídico en América Latina*. Instituto de Estudios Políticos y Relaciones Internacionales, Universidad Nacional de Colombia.
- Walby, Sylvia. 1990. *Theorizing Patriarchy*. Oxford: Basil Blackwell.
- Walker, Lenore E. 2009. *The Battered Woman Syndrome*. 3. ed. New York, NY: Springer.