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Silvana Tapia Tapia: Feminism, Violence Against Women, and Law Reform: Decolonial Lessons from Ecuador

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How does feminism relate to the increasing reliance on criminal law as the primary response to gender-based violence? For many feminists, violence against women is the quintessential violation of women's human rights and, as such, criminalisation and punishment are useful tools to convey the gravity of the abuse and provide justice to victims (e.g., Bunch and Reilly 1994). This approach – generally described as “carceral feminism” (Bernstein 2018) or, for its influence on domestic and international penal policies, “governance feminism” (Halley et al. 2018) – has not gone unchallenged. Various feminists have questioned the movement's embrace of the state's penal powers. Decolonial, black, poststructuralist, intersectional, and queer feminists have shown how criminal law fails to tackle the root causes of gender-based violence and aligns feminists with patriarchal penal institutions (Davis et al. 2022; Gruber 2020; Iyer 2016).

In recent years, some feminists have not just resisted the use of criminal law to tackle violence against women, but have also actively promoted the abolition of the criminal justice system, which they describe as promoting a violent, racist, patriarchal and capitalist order of social control. Feminist abolitionist groups have been created to offer non-penal approaches to address violence in everyday life. Books, academic and not, have also been written on this topic, with a recent and celebrated example being *Abolition. Feminism. Now.* (2022) by Davis, Dent, Meiners and Richie. Yet the focus has generally been on the US and the Global North more generally. Little has been written in English about feminist abolitionism that decentres North America and Western Europe. Silvana Tapia Tapia's book, *Feminism, Violence Against Women, and Law Reform: Decolonial Lessons from Ecuador*, is not only such a much-needed work, but also a ground-breaking contribution to feminist decolonial thinking. By advancing a “decolonial feminist abolitionism” (163) that foregrounds the experiences of Ecuadorian and Latin-American feminists, the book offers unique and original insights to anyone committed to exposing and resisting oppression across the world.

In fact, Tapia Tapia's book does not explicitly adopt an abolitionist stance until the very last page – rather, the book presents itself as a critique of “carceral feminism” from a decolonial perspective. However, I opted to read it as an abolitionist book, to allow it to unleash its radical potential and its important normative hints towards a different, non-penal feminist future. While most Global North-based abolitionists see the critique of penal institutions as a part of a broader struggle against racism and capitalism, Tapia Tapia expands this approach by redirecting her critique against colonial and even human rights discourses. For Tapia Tapia, to effectively abolish penalty, we need also to engage in a continuous process of “unlearning” “coloniality” and (Western/liberal) human rights (163).

Drawing on Peruvian sociologist Quijano, Tapia Tapia argues that the continuity of colonial power in a post-colonial era – coloniality – “is realised through the dominance of Eurocentric epistemes, legal apparatuses, and categories such as gender, race, and class” (5). Tapia Tapia convincingly demonstrates that, even in countries with left-leaning, “post-neoliberal” governments, coloniality underlies many justifications of penalty, including appeals to liberal legality, the language of human rights and constitutional guarantees. She states that the “coloniality of liberal legalism” and human rights “curb the decolonial potential of post-neoliberal projects” (14). They also cast criminal law as a progressive and necessary tool to address violence against women, while masking its highly problematic effects. Therefore, she concludes, “in order to interrogate our investment in criminal justice, we should first interrogate our investment in human rights ... as an element of colonial power” (161).

Tapia Tapia's feminist abolitionism emerges through two main claims. The first is *abolitionist* and critical: it resembles Foucault's notorious critique of enlightened penal reforms, which become vehicles of more pernicious control: "to punish with an attenuated severity perhaps, but in order to punish with more universality and necessity" (Foucault 1991, 82). Tapia Tapia resolutely rejects what she describes as "rights-based penalty" (Chapter 4), namely a minimal penal apparatus constrained by constitutional principles and suited to defend human rights. She explains that Latin-American feminists justify their resort to penal mechanisms on the assumption that criminal law can be humanised and redirected towards women's rights violations. However, in Tapia Tapia's account, this supposed humanisation is what gives penalty a veil of acceptability, thereby masking that criminal law – even when oriented at protecting human rights – always prolongs coloniality and hinders women's access to meaningful protection and reparations. And if, for Tapia Tapia, criminal law can never be tamed (and any attempt in this sense results in entrenching penalty as the solution to unwanted violence and displacing other approaches to justice), the only way forward can only be abolition.

The second claim is *feminist* and normative. Tapia Tapia contests the thesis advanced by Halley et al. (2018) that explains the role of mainstream/governance feminism in promoting criminal law in terms of a co-option of feminist campaigns by the neoliberal state. According to Tapia Tapia, Latin-American feminists do interrogate criminal justice as the main course of action to counter gender-based violence. While they reject law-and-order politics, many of them accept "rights-based penalty", as they see it as a progressive, human rights-grounded tool. In turn, the state does not subsume feminist ideas, but simply accommodates them as long as they are in line with its dominant discourse – hence, Ecuadorian feminists' apparent success in criminalising violence against women (in line with the dominant discourse), while failing to have abortion decriminalised (at odds with the dominant discourse). This argument serves to differentiate Latin-American "carceral" feminists from their Global North peers. It also implies that mainstream feminism, at least in Latin America, is less compromised with the penal state and still maintains its emancipatory potential, as it uses criminal law strategically within a supposedly human rights framework, while resisting the state's selective and instrumental use of feminist demands. Put differently, while Halley (2006) may be open to "taking a break from feminism" (1), at the risk of throwing the baby out with the bathwater, Tapia Tapia is very invested in saving the metaphorical baby and ensuring that the next bath is not tainted by penalty.

While these claims may appear as radical and provocative, Tapia Tapia carefully grounds them in empirical evidence, which she gathered through years of multi-method and interdisciplinary research. The book's method combines archival research with text analysis of parliamentary records, historic and current legislation, case law and academic commentaries, as well as observation and in-depth interviews with feminists leading the struggle against violence against women in Ecuador. Tapia Tapia skilfully reconciles her roles as scholar and activist by combining her deep theoretical and doctrinal expertise with her direct involvement in the debates and campaigns she discusses.

Another methodological point of reference is Foucault's genealogical analysis. The book indeed traces a genealogy of feminist campaigns against gender-based violence in Ecuador, revealing not just what happened but also how things could easily have been otherwise. Chapter 1 explores the continuities and discontinuities between today's approach to violence against women and the use of law to regulate the family in Latin America between the 19th and early 20th century. It reveals how coloniality has long shaped the legal framing of family violence, with criminal law used either to protect or punish women based on their conformity to their expected roles of mothers of white-like citizens. Chapter 2 demonstrates that today's focus on criminal law to address violence against women is less obvious than it may appear if assessed from a historical perspective that is still close to us in time. Tapia Tapia

shows that in the campaigns of Marxist, indigenous and “maternal” feminists from the 1970s to the late 1980s, criminal law was seen as the problem, not the solution. As we learn in Chapter 3, the turn to criminal law in feminist advocacy in the 1990s was influenced by various factors, including the transnational convergence of discourses of anti-impunity, public health, psychology and women in development. Moving from the transnational to the Ecuadorian context, first Tapia Tapia shows how conservative governments reframed feminist campaigns against gender-based violence into initiatives to protect the family. Later, in Chapter 4, she illustrates that even the “post-neoliberal” government in power between 2007 and 2017 embraced the penal approach to violence against women. As she writes, “Andean principles could have disrupted the dominant discourse; instead, a right-based penalty prevailed” (84). In Chapter 5, the pervasiveness and supposedly benevolent nature of rights-based penalty are presented as the reason why leftist feminists – who were otherwise invested in social redistribution – ended up endorsing criminalisation for gender-based violence in the drafting of a new Ecuadorian penal code. Chapter 6 concludes the book with a strong indictment of the current operation of rights-based penalty, based on empirical findings on women’s experiences of reporting domestic violence to Ecuador’s specialised courts. While the criminalisation of gender-based violence does not seem to lead to more incarceration, it does however result in fewer services and protection for women, as well as their increased insecurity and material abandonment.

Feminism, Violence Against Women, and Law Reform is a stimulating and carefully argued book. However, I would like to point out two aspects that could have been more clearly articulated in Tapia Tapia’s analysis. First, while she strives to “save” feminism, even in its liberal, mainstream manifestations, by explaining and, thus, somehow justifying its resort to criminal law, she is not as forgiving with human rights. Human rights, in Tapia Tapia’s account, are “an element of colonial power” and “key in masking the most problematic aspects of penalty” (161). These claims do not seem to leave room for human rights to be “saved”. However, I wonder whether the nuanced approach she uses with feminism could also have been applied to human rights. After all, human rights do not have a trans-contextual nature, but their concrete meaning is continuously shaped by the discourses and practices around them. They can be interwoven with penalty and coloniality, but it is possible to think of human rights practices and discourses – especially stemming from the social margins and the global peripheries – that are not. Are human rights “fellow travelers” (Whyte 2019) or are they simply “powerless companions” (Moyn 2015) of penalty and coloniality? While Tapia Tapia often seems to assume the former, there are some indications throughout the book that may lead us to reconsider the role of human rights less as a component of colonial power and more as a malleable discourse that can be (mis)used to justify it.

Second, Tapia Tapia acknowledges that Ecuadorian feminists appeal to criminal law for its symbolic and expressive power but downplays this aspect by claiming that “the central concern of criminal law” is actually “social control” (102). However, penalty “is a cultural as well as a strategic affair; ... a realm for the expression of social value and emotion as well as a process for asserting control” (Garland 1990, 4). A critique of penalty that focuses only on its social control effects risks overlooking why, despite its well-known “collateral damage” (156), criminal law is so pervasive in our society, even among progressive, feminist groups. If emotions are at the core of penalty, which becomes a domain for the expression of social values and public recognition of claims, a successful abolitionist strategy should address how this symbolic, but vital function can be performed without criminal law. However, Tapia Tapia does not discuss this issue. In doing so, she overlooks one important reason why non-penal alternatives struggle to gain political support: they may be more effective methods of social control, but they do not replace penalty in conveying and evoking social values and sentiments.

Overall, *Feminism, Violence Against Women, and Law Reform* is a pivotal contribution to the field of feminist abolitionism and holds remarkable potential to inspire new activism and research. By foregrounding the experience of Ecuador and extending the critique to encompass coloniality and human rights, the book provides a refreshing and thought-provoking analysis. As the best pieces of critical empirical scholarship can do, Tapia Tapia makes radical arguments while being generous and nuanced in her engagements with the feminists she interviewed and the scholars she discusses. Animated by genuine concern for Latin-American feminists' lived experiences, she not only challenges the link between feminism and penalty, but also offers practical insights to nurture the emancipatory and redistributive potential that she shows is also present in "carceral" feminist agendas.

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