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SEXUAL ABUSE AS A CRIME AGAINST HUMANITY AND THE RIGHT TO PRIVACY

Over the last three decades, rape and sexual abuse of women as repressive practices during war and dictatorial regimes are gradually being recognized as specific forms of human rights violations. Increasingly they come to be considered as crimes against humanity within the international regime of human rights law. In Argentina, although the existence of such crimes has been known since the nineteen eighties, only now is testimony in trials against repressors being taken as evidence for specific rape-based convictions. Under these circumstances, the women involved face a personal and political dilemma, between the urge to talk and the right to intimacy and silence. The political and moral character of rape emerges jointly under these circumstances, posing a paradoxical situation.

Testimonies about sexual violence as a form of State terrorism are being heard at the trials in Argentina on the cusp of first decade of the century. But how to interpret them? Why now, many will ask. Do they tell us something we did not know and that has emerged only now? Or are the media paying more attention to them?

What happened during the dictatorship? How have the victims been treated by the justice system and by society? Are there recurrent patterns across different countries? How do we think of the victims of these humiliations? Which elements of a gender theory can be helpful when we discuss and try to interpret the topic? Repeated rape, enforced nudity, groping – of women, but also of men – have been and continue to be common practice in secret detention centres and elsewhere. A number of themes are interlinked here: the political aspects of gendered violence, the cultural climate of the period, changes in the rules of the international human rights laws and transformations of subjectivity. The aim of this paper is to contribute to the debate about the dilemmas that this topic poses for all concerned. The focus is on Argentina, even though there are references to other countries, not in order to make explicit comparisons, but to weave a web of relations and influences.

Rape as political practice

In a text about former Yugoslavia, Julie Mostov analyses the sexualization of the nation and the desexualization of the body. Her starting point is that nation and gender are co-constituents: the nation is always gendered and national myths are rooted in images and metaphors of traditional gender roles.¹ “[T]he nation’ naturalizes constructions of masculinity and femininity: women physically reproduce the nation, and men protect

and avenge it. At the same time, this notion of nation collectivizes and neutralizes the sexuality of female (and, to some extent, male) members of the nation” (Mostov 2000: 89). In former Yugoslavia, the policy of national identity led “ethnocrats” to try to establish borders and defend them. They did this by eroticizing the link with the nation – the masculine heroism of the soldier embracing his rifle, the feminized image of the idealized motherland. In this complex game, which I will not discuss in detail here, the female body becomes the mother who gives birth to the sons of the nation, but also the place where the Other can be penetrated; hence the necessity of protecting and disciplining women, keeping a watch on them and controlling them.

In the nationalist discourse and the policies of national identity, violation of women and the erasing of borders that occurs with “impure” children who are the result of enforced or eroticized sexual relations with that menacing Other is before anything else a violation of the nation. It is also an affront to the men who have not been able to defend the borders. That is why the mass rape reported by Bosnian women has nothing to do with sexual pleasure. They are invasions across the border of the Other (and occupation of the Other’s symbolic space, property and territory), a violation of their masculinity and, by extension, of the nation’s sovereignty and autonomy (Mostov 2000).

In the Southern Cone, the military presented itself as defenders of the nation against ideological invasions, the “viruses and bacteria” that were infecting the nation from the outside. A double strategy eliminating those infected needed to be deployed. Imprisoned women were not only carriers of this “international subversion”, but also partners of “subversive elements” who had to be destroyed and degraded. The testimonies show that women were kept close to their partners in order that the latter would hear at close quarters the humiliations to which the torturers subjected their women. On their part, the torturers, whose nicknames were based on animal metaphors (“*puma*”, “*tigre*”, and so forth), had to show that they fulfilled their roles of saviours and defenders of the nation.

In any of these cases, rape during torture is not merely an individual or group activity to satisfy the lust of the torturers. The acts of rape did not stem from an overflow of sadistic arousal on the part of the ones who carried out the torture. They were acts based on the almost “scientific” knowledge of the devastating effect on personality that such acts cause and were part of a political strategy to destroy the enemy by annihilating the cultural basis that defines women as part of a community.

What next?

We know that such acts were carried out under the dictatorship in Argentina and that the cases were not isolated (Crenzel 2008). In the trial of ex-army officers of 1985 there were testimonies that gave evidence to the fact that torture often involved sexual organs, not only because of their sensitivity and to maximize physical pain, but doubtless also because these body parts have a very special symbolical status. There were also testimonies of rape and sexual abuse.

In the cultural climate of the time, rape was part and parcel of torture. It was not seen as a specifically gender-related act. The main focus was on the enforced

disappearances as the epitome of State terror. The denunciations and the search for “truth and justice” concentrated on those who had committed this ultimate heinous crime. Compared to this, all the rest seemed of less importance, painful and full of suffering, but not worth the same amount of attention. At the same time, the rules of law and the cultural climate of the time saw rape as an affront to one’s “private honour” (*honor privado*). Moreover, the most visible space in the public sphere was not taken up by victims (whose testimonies were doubtless fundamental in the trial of 1985), but by the mothers, grandmothers and other family members of the detainees/disappeared. These took part in the process of investigation in order to give testimony to what happened to their sons and daughters, partners and other relatives, but not to themselves, even if they *had* been direct victims.

Changes in the international interpretative framework²

In the national and international rules of law, what today we take for granted is, in reality, the result of recent victories. Although there are numerous antecedents in international humanitarian law condemning the rape of citizens, since the early nineties the prohibition of rape has become an integral part of it. In the course of this process, there has been international recognition that rape is a crime, a crime against humanity, although a specific international treaty was never signed as happened with others crimes such as genocide, apartheid, enforced disappearances and torture.

In 1993 the United Nations Security Council incorporated rape in its considerations when it was discussing the creation of the Yugoslavia Tribunal. In truth, the full international recognition of rape as crime happened because of the way it was dealt with in the late nineties at the international tribunals (in former Yugoslavia, Sierra Leone, and Rwanda) and at the International Court of Justice. Moreover, the theme also emerged in the women’s rights movement, both at the CEDAW (Convention on the Elimination of All Forms of Discrimination against Women) and the Beijing Platform for Action (1995). There are equally important cases of jurisprudence in the Inter-American Commission on Human Rights.³

In many of these documents and regulations, sexual violence is interpreted in terms of an attack on “modesty”, “dignity” or “honour”. But the paradigm is shifting. In 2008, the Security Council recognized sexual violence as a matter of security and unanimously voted in favour of a resolution that states that in some cases sexual violence perpetrated on women and girls is “as a tactic of war to humiliate, dominate, instil fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group”. In other words, we are witnessing the beginnings of a new interpretative framework that has shifted from a concept linked to personal morality to one where politics and the collective are central.

Institutional testimonies. Sexual violence in trials and commissions

In the eighties there were testimonies of rape, uttered and interpreted in the framework of torture. No special emphasis was put on the interrogation nor was there

an urge to speak out. This has changed with the transformation of the international institutional climate. When the Peruvian Truth and Reconciliation Commission, active between 2000 and 2003, was founded, it managed of incorporating considerations of sexual violence. This decision is in contrast with the ones made earlier by CONADEP (National Commission on the Disappearance of Persons) in Argentina or the Rettig Commission in Chile that were “blind” to matters of gender. As Julissa Mantilla, who sat on the Peruvian commission and was responsible for the matter, indicates, there was an international framework that facilitated awareness and sensitivity with regard to matters such as these (Mantilla 2010). This ensured that the topic of rape was a central element of the Final Report of the Commission, in which it was concluded that “in certain contexts, such as arbitrary detention, execution and various forms of torture, sexual violence occurred in a generalized way and was repeated and persistent” (Mantilla 2010: 24).

The Commission came a long way and it was not easy; it broke with the idea that “women do not speak”. But when they speak, they tend to describe the suffering of their relatives and the disruptions of their daily lives. Often, the details of these sufferings show that they either take place over a long period of time or else are part of a more permanent form of injustice. As a result, the Commission was interested in allowing the women to talk “about themselves”, to which end specific strategies were elaborated (Mantilla 2010).

It is evident that the women in question talked, but not necessarily about their own condition as victims nor about sexual violence.⁴ First-hand accounts are difficult to obtain wherever you go; in general, what can be found are reports of what was going on or what happened to “other” women, in Peru, in Argentina and elsewhere. Why do women talk about it as witnesses but not as victims? The explanations range from shame to feelings of guilt; in addition, rape is never a one-off or isolated act: it is part of other atrocities such as massacres and testimonies can obfuscate the act of rape (Theidon 2007).

The main characteristic of the Commissions of Truth and the trials is that they are centred on the category of “victim” and fall within the interpretative framework of a “breach of human rights” that emphasizes physical integrity. This creates a tension between the first-person account of the “individual victim” and the more totalizing character of women’s memories. The focus on categories of victimization needed to organize the mass of information that must be handled produces standardized and normalized narratives; it also produces the silencing of other experiences that do not fit the pre-established framework. There is little space that allows for the integration of narratives (and silences) of rape within the wider framework of women’s action in defence of their communities and their families.⁵

Different contexts, the same dilemmas?

Personal memories of torture and incarceration are strongly marked by the centrality of the body. The possibility of incorporating them into the area of social memories presents victims with a paradox: the act of repression violated their privacy and intimacy, destroying the cultural division between public space and private experience. To overcome the void created by repression implies the possibility of elaborating

a narrative memory of the experience, which is necessarily public in the sense that it must be shared and communicated to others, who will not be the “others” who tortured them nor anonymous “others”, but “others” who can, in principle, understand them and look after them. In order to be able to speak out, one needs a space of confidence, a space where being listened to is central.

However, those who do the listening still remain “others”, an alterity. The recuperation of “normality” implies the reconstruction of selfhood, intimacy and privacy. The silences in the personal narratives are, in that respect, fundamental. Often, rather than being memory lapses, they are personal choices, a “way of managing one’s identity” (Pollak and Heinich 1986: 5) linked to the process of “recuperating shame” (Amati Sas 1991). How can we combine the need to construct a public narrative that at the same time permits the recuperation of intimacy and privacy?⁶

In a personal testimonial, those who suffered directly themselves start to speak and narrate their experience and suffering. It is, at the same time, both a fundamental source of information about what happened – it can be used as evidence in court – and an exercise in personal and social memory and as such the construction of a narrative that tries to make sense of the past. Not all women can or want to speak, whatever the circumstances or space. The “management of identity” and the right to silence are also part of this story: silences born out of fear, often and in many places; silences produced by a long history of domination; silences caused by the need to look after near and dear ones; silences as a personal choice and self-affirmation.⁷

From the point of view of society and its institutions, first-person testimonies are fundamental when it comes to formulating judicial proofs or attempts to find out the “truth” of what happened. The international recognition of sexual violence as a crime against humanity makes it possible to incorporate testimonial proofs systematically in trials. In fact, in Argentina various people have already been sentenced and there are on-going trials where these crimes have been judicially recognized. This type of testimony is indispensable.

Should one ask about rape? Opinions are divided. According to Julissa Mantilla (2010), women do not talk because they are not asked. Nowadays in court the question *is* asked. That was not the case twenty years ago. Neither was it the case with fieldwork or interviews conducted for oral history, which normally leave space for silence.

Talking about Chile, Lorena Fries writes:

Women who spoke about [rape] did not want their case to be brought to justice for various reasons. One of them was that they have stronger expressions of identity such as that of being a militant. According to that logic, they prioritize, that is the word they use, they *prioritize* a form of unity-in-militancy as opposed to a unity or solidarity of gender that may undermine this unity-in-militancy. Another reason is that they do not trust the Justice system, not only because it still has very close ties to the dictatorship, but also because women do not trust the judiciary when it comes to sexual violence. It is therefore difficult for them to imagine the courts of justice as a space for redress. (Fries 2010: 29)

This quotation brings to the fore the presence of a much larger temporal continuum and highlights the optimism brought about by the rupture. On the one hand, there is a continuity between pre-existing sexual violence, the brutality of

political sexual violence in dictatorships and the levels of violence directed at women in today's society. On the other hand, the sentences for rape in current trials combined with a preoccupation with sexual violence in everyday life expressed through various institutional initiatives are cause for optimism.

Sexual violence, private or public?

One question remains unanswered, which brings us back to the initial topic of this paper: why is sexual violence privatized? Why think that violence suffered by women in the course of political processes is not a public topic? Talking about this, Rita Segato states that "one of the reasons that this happens is that rape is literally seen as sexual violation. It is one of the great changes that need to be brought about. . . . The confusion between the moral and the purely physical or even military dimension of sexual aggression stops us from acting" (Segato 2010: 38).

Historical changes of notions of morality and the definition of the boundary between public and private are slow processes full of conflict and generating new tensions. In our current society, in which the mass media is engaged in a "publicization" of private life via talk shows and reality shows that trivialize feeling and intimacy, the risk is run that the testimonials fall into the trap of (excessive) exhibitionism and sensationalizing the horrific. If State terrorism and repression violated the intimacy of human bodies, then the process of (re)construction demands that we also construct new notions of morality, redefine spaces of intimacy and the border between the private and the public. In this context, in which we cannot rely on interpretative frameworks or alternative ethics, the exigency that "one must speak out and talk" presents us with dangers of which we must be aware.

The question that must be asked is not whether or not sexual violence actually took place, but rather how to approach the process of testimony: how many personal testimonies are necessary? How much detail is needed? For what audience? Beyond the juridical value as proof in trials, there is a social and judicial pressure on women to "talk" and to recount details and circumstances. And it is here where the (moral emotional, political) dilemma becomes obvious, since the pressure to talk is exerted on women whose subjectivity is torn between a desire to expose the body in intimate detail before a social gaze (which can turn to sensationalizing the horrific) and the urgency to maintain or recuperate a humiliated intimacy, to be kept for themselves or shared with whomever they wish to do so, away from the cameras, away from the public gaze of mass exhibition.

Notes

- 1 As far as this image is concerned, what stands out for me is the hermaphroditism of the "Fatherland" (*patria*).
- 2 This section is based on various international documents, and especially on the collection and analysis by Viseur-Sellers, 2009.
- 3 The most often-quoted cases are those by Raquel Martí de Mejía vs. Peru and Penal Miguel Castro vs. Peru.
- 4 Of the 17,000 testimonies, the number of reported rape cases was relatively low: only 538. Eighty-three per cent of the violations were perpetrated by the Armed Forces.

- 5 This integration of women's experience is more evident in in-depth ethnographic studies rather than in hearings of commissions and trials. Theidon shows cases in which acts of rape implied an attempt by the women involved to protect their relatives (Theidon 2007).
- 6 "If the concentration camp experience is an extreme case of all human experience, testimonials are no less so. . . . The requirement to talk about humiliating memories and the difficulty to do so can easily create a feeling of obligation to testify, but also of having to justify oneself in relation to the evoked facts and, as a result, to feel oneself not a witness but accused" (Pollak 1990: 186).
- 7 Faced with the Commission of Truth in Peru that insisted that "talking is good", many Andean women felt that talking was dangerous and that words can often function as weapons. Silence was powerful and protected them (Theidon 2007).

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