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Gender  
and Ethnolinguistic  
Lawfare

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&  
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L'aparell estatal  
contra les comunitats  
etnolingüístiques i el gènere

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## SPECIAL ISSUE/NÚMERO MONOGRÀFIC

Gender and ethnolinguistic lawfare

L'aparell estatal contra les comunitats etnolingüístiques i el gènere

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# \_ CONTENTS / Í N D E X

## ARTICLES

- Gender and ethnolinguistic lawfare: Weaponizing the law/ L'aparell estatal contra les comunitats etnolingüístiques i el gènere: la llei com a arma 7  
*Esther Monzó-Nebot & Melissa Wallace*
- Women's challenges and gender inequality implications in the UK Home Office's streamlined asylum process: A practice-based posthuman perspective 119  
*Deborah Giustini*
- Linguistic rights, translation, and State-sponsored violence in Mexican prisons 155  
*Milena Ang & Miguel Vázquez*
- Lawfare lingüístic contra el llenguatge inclusiu a la trinxera d'X 187  
*Eva J. Daussà & Renée Pera Ros*
- Unveiling discrimination: A critical analysis of transgender laws and the marginalization of hijras in the Indian subcontinent 223  
*Anne Hardgrove*
- Género e interseccionalidad en la traducción e interpretación de lenguas indígenas en México 265  
*Lorena Córdova-Hernández, María Elizabeth López Curiel & María Leticia Briseño Maas*



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## Gender and ethnolinguistic lawfare: Weaponizing the law / L'aparell estatal contra les comunitats etnolingüístiques i el gènere: el dret com a arma\*

Esther Monzó-Nebot 

Melissa Wallace 

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## **Gender and ethnolinguistic lawfare: Weaponizing the law**

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### **Abstract**

This article treats the concept of lawfare in relation to gender and ethnolinguistic identities, examining how legal systems are employed to perpetuate power imbalances and suppress marginalized communities. By focusing on various case studies and theoretical frameworks, the study explores the role of ideologies and how moral panic and moral injury manifest in legal responses to gender nonconforming individuals, women, and ethnolinguistic minorities. The article critiques how the law is weaponized as a tool of oppression, particularizing in areas such as language rights, gender equality, and access to justice. Through an interdisciplinary approach, the authors demonstrate how legal frameworks and institutional actions often reinforce societal norms that exclude vulnerable groups, rather than protecting them. As a framework to the special issue Gender and Ethnolinguistic Lawfare, this article offers a critical perspective on the relationship between law, identity, and power, contributing to a deeper understanding of how the rule of law perpetuates or challenges social hierarchies.

**Keywords:** Lawfare, gender, ethnolinguistic communities, rule of law, ideology, ideological fantasies, moral panic, moral injury

## Resum

Aquest article tracta el concepte de *lawfare* en relació amb les identitats etnolingüístiques i de gènere. S'hi examina com es fan servir els sistemes jurídics per perpetuar els desequilibris de poder i reprimir les comunitats marginades. A partir de diversos estudis de cas i marcs teòrics, l'article explora el paper de les ideologies i les fantasies ideològiques en la manera com el pànic moral i les lesions morals es manifesten en les respostes del dret davant identitats de gènere no binari, les dones i les minories etnolingüístiques. L'article analitza de forma crítica la utilització de l'aparell estatal com a arma d'opressió, en particular, en àmbits com els drets lingüístics, la igualtat de gènere i l'accés a la justícia. Mitjançant un enfocament interdisciplinari, les autores mostren que els marcs jurídics i les actuacions institucionals sovint reforcen les normes que exclouen els grups vulnerables, en lloc de protegir-los. L'article, que emmarca les contribucions incloses en el monogràfic «L'aparell estatal contra les comunitats etnolingüístiques i el gènere», ofereix una perspectiva crítica sobre la relació entre dret, identitat i poder, i contribueix a una comprensió més profunda de com l'estat de dret perpetua les jerarquies socials o hi fa front.

**Keywords:** *Lawfare*, aparell estatal com a arma, gènere, comunitats etnolingüístiques, estat de dret, ideologia, fantasies ideològiques, pànic moral, lesions morals

## 1. Introduction: Language and gender in power asymmetries

The French Declaration of the Rights of Man and Citizen (French Republic. Assemblée nationale 1789) has been widely celebrated as a cornerstone of *universal* rights, especially because it was one of the first documents to declare equality at birth and because of its influence on modern democracies. However,

while declaring universal rights, the text ironically excluded vast segments of the population, and it particularly left non-dominant language speakers and women behind in a wake of broken promises. One of the Declaration's glaring shortcomings is the elevation of French as the sole legitimate language of governance, education, and public life, effectively marginalizing speakers of regional or minority languages, reinforcing linguistic hierarchies, and curtailing their access to the political and civic realms (see Grégoire 1794). Another failing is its denial of basic political rights to women, most notably the right to vote (see Gouges 2014). This oversight was no accident; it reflected the deeply entrenched patriarchal values of the time, which conceived of political agency as the domain of men. Furthermore, privileging the dominant language ideology, the Declaration conflated language with identity, culture, and national unity (Jaffe 1999). The so-called universal rights were in fact constructed around the experiences and needs of a narrow demographic: elite, French-speaking men.

These issues—linguistic exclusion and gender inequality—are not relics of the past but have continued to shape political struggles into the present. Today, minoritized language activists often fight for the preservation and recognition of their linguistic identities while perpetuating cisheteronormative and androcentric views (Makoni 2014; Bradley 2023). Similarly, gender-affirmative movements may achieve legal victories that recognize gender rights, while such recognitions fail to address the linguistic dimensions of exclusion, ignoring the unique struggles of ethnolinguistic minorities within their ranks (Tasa-Fuster 2024). Whether in language rights campaigns that overlook the challenges of gender identities or in laws that recognize gender rights but embrace monolingualism, the intersections of language and gender highlight a stark reality: language and gender are features we use to establish the *wedoms* and *theydoms* into which society is organized—hierarchically.

This special issue focuses on the role of legal norms, their enactment and implementation, or their contestation by institutions and the public in our collective evolution toward more inclusive societies, where traditionally neglected and marginalized identities are given a real chance to participate in democratic projects. Considering that the prosperity or poverty of nations is

largely determined by the inclusivity or exclusivity of their institutions (Acemoglu & Robinson 2012), this issue examines how institutions and legal systems behave when they have the chance to either contribute to the inclusivity and prosperity of their societies or resist the efforts conducted by social movements, in ballot boxes, parliaments, and in the international arena, thus entrenching the inequalities enshrined in conservative ideologies. In such contexts, *lawfare* is understood as the actions taken by State, institutional, and social actors, usually driven and instrumentalized by elite agendas, to resist societal changes toward inclusive and democratic ideals by instrumentalizing the rule of law. By exploring lawfare, we aim to further our collective understanding of how societies both advance and resist a landscape of changing values and increased opportunities for those traditionally oppressed.

To begin, this article's point of departure is an acknowledgement that language is not a neutral medium of communication; instead, it is deeply intertwined with power, identity, and social stratification (see, e.g., Spivak 1988; Lakoff 2000). Scholarship in sociology (Foucault 1969; Bourdieu 1978), sociolinguistics (Heller 1995; Blommaert 1999; Romaine 2001; Joseph 2004; Flores 2013), anthropology (Geertz 1973; Hymes 2001), political science (Anderson 1976; Scott 1992), and translation and interpreting studies (Venuti 1986; Baker 2006) has established that language functions as a key ideological tool that obscures and naturalizes the underlying power relations at play, shaping our perception of reality while maintaining social structures that privilege certain groups over others (Žižek 1989). Through language, ideological constructs embed themselves in everyday discourse and interactions, becoming unconscious fantasies (ibid., 27) that present social hierarchies as seemingly natural or inevitable rather than as products of specific historical, economic, and political forces. Žižek posits ideology as a force that operates beneath the surface, powered by ideological fantasies that structure how individuals perceive reality and influence what is held as common sense and legitimate, two features which are key in the preservation of the status quo (Gramsci 1999; Zürn 2018). Language sustains the prevailing morality of societies by framing as marginal the ideas that dominant ideologies marginalize. Similarly, language is used to legitimize the foundations of those ideologies—specifically,

the beliefs about norms, values, and roles that make existing social structures seem natural and inevitable. When these beliefs are accepted, unequal power dynamics are reinforced, and the mechanisms that produce them are concealed.

Ideologies influence what is said, and also how certain linguistic forms become accepted. Indeed, language operates as a form of capital that entrenches power dynamics by seemingly *naturally* vesting certain languages, particular varieties, or linguistic forms with more value, conferring symbolic power onto those who have mastery of the valued forms (Bourdieu 1978). Accordingly, the ability to speak in a prestigious dialect or language can confer social status and access to economic or political opportunities, while those who speak stigmatized dialects or minoritized languages may be excluded or marginalized (Lippi-Green 1994; 1997). In this way, beliefs about languages and their varieties attune behaviors by propagating perceptions that uphold the value socially given to specific individuals, thereby feeding the unconscious ideological fantasies that shape and support a given society's power structures and social inequalities (Irvine & Gal 2000).

In this sense, struggles over language, language varieties, and linguistic norms are not just about linguistic differences. They are struggles about broader social conflicts concerning human beings, their identities, and their positions within hierarchies in a given historical moment and sociocultural space. The positions and possibilities in such struggles are intimately related to the resources each social group and its members have historically accrued, and their vested interest in the current resource distribution may dictate their capacity and willingness to engage in or resist changes in language and their roles within decision-making spaces (Monzó-Nebot & Mellinger 2022). Ultimately, language issues are inherently political and social. Language becomes a site of contestation where social hierarchies are negotiated, resisted, or reinforced, linking linguistic struggles to broader questions of equity, dignity, access, and power distribution in society.

Historical analyses have demonstrated that a nation's prosperity or poverty is largely influenced by how inclusive or exclusive its institutions are (Acemoglu & Robinson 2012). Furthermore, the moral and political evolution of



societies toward the appreciation of diversity is closely intertwined with the development of democratic ideals (Inglehart & Welzel 2005) which emphasize equality, participation, and the protection of individual and collective rights (e.g., de Tocqueville 1835 [2013]; Mill 1859 [2001]; Lipset 1959). As societies have embraced democracy, they have progressively expanded the scope of inclusiveness by recognizing the inherent dignity and worth of all individuals, regardless of race, gender, ethnicity, ability, or socioeconomic status. Historically, many democracies began as exclusive systems, often limiting participation to certain privileged groups (see also Meylaerts 2011). A case in point is the French Declaration of the Rights of Man and Citizen mentioned at the beginning of this introduction, but also more recent landmarks of human rights, particularly the Convention on Refugees (United Nations General Assembly, UNGA 1951), have failed to recognize conditions that solely impact women, thereby drastically curtailing their likelihood of being granted refugee status (Webber 2012).

Over time, movements for civil rights, gender equality, and social justice have pushed democratic societies and their institutions to extend rights and opportunities to previously marginalized populations. The moral underpinnings of democracy—such as respect for human autonomy and the collective good—have been crucial in fostering political systems that seek to represent and empower all citizens. As these values evolve, the push for more inclusive laws, policies, and institutions continues to grow, resulting in greater representation, social justice, and equality. Inclusive societies, in this sense, are a reflection of the maturation of democracy, where the commitment to universal rights and participatory governance creates a more equitable and just social order.

In the wake of rising interest in the role language plays in creating and sustaining social hierarchies and inequalities, the interrogation of language policies (including regulations, beliefs, and practices; see Spolsky 2004) and legal regimes as they impact women, gender nonconforming people, and LGBTQ+ communities has focused on intersectional issues (e.g., Napier et al. 2024). Compounding issues of language access, this intersectional lens refracts the complexities of how, for example, migrants who face new cultures while

wielding (few or) no political rights navigate and experience both social and institutional spaces (Heller 2009; Abji 2016; Pöllabauer 2024).

Despite the increasing visibilization of the (intersectional) struggles of many gendered and ethno-linguistic communities, geopolitical trends mark an uptick in violence, exclusion, and inequity. The rule of law is being instrumentalized against specific ethno-linguistic communities, broadly writ, and against women, gender nonconforming people, and LGBTQ+ people in particular (Vitikainen 2020; Lythgoe 2022). The extreme vulnerability experienced by these communities is a result of ideological systems materialized in political and institutional regimes espousing stances which are anti-immigrant, anti-woman, anti-queer, anti-minority, and racist. Such stances can take the form of the willful withholding of language access to the vulnerable and the undocumented (Wallace & Hernández 2017; Abji 2020; Oliviero 2021; Belous & Fatás-Cabeza 2024; Wallace 2024), the advancing of carceral crimmigration agendas (Pakes & Holt 2017; Abji 2020; López-Sala & Barbero 2021), policies of invasive surveillance (Broeders 2007; McDowell & Wonders 2009; Latonero & Kift 2018; Heyman 2022), securitization (Farny 2016; Ghezelbash et al. 2018; Madoerin 2020; Edmunds 2021), criminalization (Gentile 2014; Olivares 2016; Berti 2021), containment (Ben-Arieh & Heins 2021; Piguet 2021), and the externalization of borders (Carr 2012; Salamon 2017; Ybarra 2018; Aris Escarcena 2022; Yin 2022). All of these examples highlight the need to continuously interrogate how institutions that are at least nominally democratic and inclusive end up acting in ways that are demonstrably not in alignment with human rights and democratic values. In other words, in spite of some nation-states' and institutions' commitment to the international system of human rights, under what circumstances do they turn a blind eye to the will of their societies to prosper morally, politically, legally, and economically in ways that are inclusive?

The papers in this special issue offer various case studies, methods, and theoretical frameworks which marry insights from legal studies, migration studies, sociology, gender studies, queer studies, history, and translation and interpreting studies. In applying various theoretical lenses, the contributions here refract particular vulnerabilities of gendered and linguistically minoritized communities within justice systems, vis-à-vis institutions, and in society at large. Drawing on

government data, media campaigns, governmental protocols, and legislation, a variety of ethnographic, critical, and theoretical frameworks are leveraged to closely examine the ways in which specific gendered and ethnolinguistic communities are oppressed, by State actors as well as by bureaucrats, activists, and the media. Lawfare is examined from an intersectional perspective as it plays out in the contested spaces of asylum offices, carceral landscapes, in the Twittersphere (now the Xsphere), in the media, and in the courtroom. This special issue focuses on the plight of gender nonconforming people and women, especially speakers of Indigenous languages, and on particularly vulnerable ethnolinguistic communities, migrants, and language mediators who strive to practice in a justice-forward way within cisheteronormative, patriarchal spaces: spaces that can be conceived of as contested as they represent sites of conflict, fear, resistance, and vulnerability. Collectively, the articles offer insights into the myriad ways that gendered and ethnolinguistic lawfare privileges monolingualism and cisheteromascularity, resulting in systems which are complicit in the creation and sustaining of social spaces in which language and gender become *negative* social capital (Wacquant 1998; see also MADRE et al. 2019; Salazar González 2022). By elucidating the ways in which legal instrumentalism—the manipulation of the law by governments and private entities in order to achieve undemocratic aims—is wielded by some sectors of societies, the articles in this volume challenge the widely held notion that “the law is concrete, normative and objective in a manner that political ideologies are not” (Matthews 2023, 25), revealing a multitude of ways in which the law can be weaponized as a tool of oppression, reinforcing discriminatory practices and legacies of colonial domination and thus impeding, instead of advancing, the common project of a just and equitable society.

This article is organized into six sections. In the present introduction the authors seek to establish a conceptual framework by examining how language and gender intersect with power asymmetries. The second section examines the concepts of moral panic and moral injury in gendered and ethnolinguistic struggles, delving into how societal fears and anxieties about gender and ethnolinguistic identities are exploited by presenting rights as threats to the moral fabric of society, thereby causing injury to those already oppressed. The

third section defines lawfare as the strategic use of legal systems to maintain exclusion and codify discrimination, focusing on both national and international legal frameworks. In the fourth section, entitled “Dimensions of lawfare,” we broaden the scope of lawfare, including legislative, judicial, and societal tactics. The fifth section, “Lawfare against gendered and ethnolinguistic communities,” presents the case studies included in this special issue, which focus on the ways legal frameworks harm women and people with gender nonconforming identities within specific ethnolinguistic groups. Finally, the conclusion synthesizes the findings, calling for reforms in legal systems to ensure they promote justice and inclusivity instead of reinforcing existing social hierarchies.

## **2. Moral panic and moral injury in gendered and ethnolinguistic struggles**

Ebonics, now broadly known as African American Vernacular English (AAVE), is a distinct dialect used primarily by African Americans. The so-called Ebonics controversy erupted in the United States in December of 1996 (Fox 1997; Taylor 1998; Seymour, Abdulkarim & Johnson 1999; Vaughn-Cooke 2010) when the Oakland Unified School District in California passed a resolution recognizing AAVE as a legitimate language system and proposed that it be used in teaching students who were native AAVE speakers. The goal was to improve their educational outcomes by using AAVE as a bridge to teach Standard American English. The decision sparked a nationwide moral panic, with media, politicians, and the public reacting with outrage and fear. Despite AAVE being a well-documented dialect with consistent grammatical rules and structure, much of the public discourse misrepresented it as “slang” or “broken English.” Critics accused the school board of promoting “bad English” and “lowering standards,” arguing that recognizing AAVE would lead to the degradation of educational quality and further marginalize African American students. Many saw the move as a threat to the unity of English as a national language, fearing that it would lead to a fragmentation of linguistic standards and social divisions.

Rather than focusing on the benefits that the use of AAVE might have for children, their literacy, and their prospects in society, or even on their ability to

learn standard English, the measure was framed as a threat to the status quo. A moral panic is characterized by widespread fear and concern that certain behaviors or groups pose a danger to the moral fabric of society (Cohen 2011) and is triggered by the emotional investment of individuals in the status quo, even when they are disadvantaged by it (Žižek 1989). The moral panic in this case was driven by underlying racial and class anxieties, with language becoming a proxy for broader concerns about social order, cultural identity, and relations between racialized groups (Wright 1998; Smitherman 2017). The debate exposed societal resistance to recognizing and valuing linguistic diversity when it comes to language varieties associated with marginalized communities. It highlighted how language differences can become focal points for societal fears and anxieties, especially when they challenge the status quo by seeking to provide opportunities for traditionally oppressed identities.

Despite our collective progress, including moral progress, our current systems are the heirs to past oppressions that have left a deep imprint on status quos around the globe. Throughout history, language has been a tool for cultural assimilation, control, and marginalization. For example, Spanish imperialism in Latin America systematically suppressed Indigenous languages and cultures, promoting Spanish as a marker of colonial authority (Mignolo 2000). Similarly, France's attempts to eradicate Breton as part of its policy of national linguistic unification marginalized Breton speakers (Judge 2007), much like the ongoing tensions over the status of the Catalan language in the Spanish State (Tasa-Fuster & Bodoque 2016; Woolard 2016). In New Zealand, the revitalization of the Māori language (te reo Māori) has been a key component of efforts to reclaim Indigenous identity after centuries of English-language dominance (Albury 2016). Under apartheid in South Africa, the use of Afrikaans in education and government was enforced, reinforcing racial segregation and oppression (Wildsmith-Cromarty & Balfour 2019). At the 1880 Milan Conference, educators banned the use of sign language in schools, promoting oralism and denying Deaf communities their linguistic and cultural rights (Lane 1984). Such ethnolinguistic struggles reflect the deep political and cultural tensions around language, and how languages become a symbol of tensions between social groups (see Castelló-Cogollos & Monzó-Nebot 2023).

Language is indeed a symbol of a social identity (Bourdieu 1978), and it intersects with other social markers that organize individuals into social hierarchies. For instance, in India, language has long played a pivotal role in reinforcing caste-based hierarchies. Historically, the upper castes' association with Sanskrit—the liturgical and scholarly language—stood in stark contrast to the vernacular languages spoken by the lower castes, embedding linguistic differences within the caste system itself. Even in modern India, fluency in English can act as a gatekeeper to social mobility, particularly in accessing higher education and employment, further entrenching both class and caste divisions. This linguistic stratification reflects broader social inequalities, as access to prestigious language varieties often determines one's socioeconomic opportunities (Sharma 2022).

One of the most powerful markers of social identity is that of gender, and one specific variety of language that has been traditionally stigmatized across ethno-linguistic communities is women's language (Lakoff 1973). Sociolinguistic studies have shown how language reflects and reinforces gender hierarchies (Cameron 1994; Tannen 1995; Cameron 1996; Eckert & McConnell-Ginet 2003). Gendered expectations about how men and women should speak—including, for example, that women should be polite, indirect, and non-assertive—are deeply tied to moral norms that reinforce patriarchal structures, confining women to subordinate roles in both public and professional spheres. When women deviate from prescribed speech patterns—being assertive rather than passive, or speaking in spaces dominated by men—this often triggers a moral panic, one in which their language is labeled as “aggressive” or “unfeminine.” This panic reflects an underlying anxiety about shifting gender roles and the threat such changes pose to patriarchal structures. The moral injury (as described by Litz et al. 2009) lies in the personal harm women experience when their speech is policed, ridiculed, or dismissed. This personal harm is compounded by its collective counterpart, when these reactions are publicly witnessed or conveyed through narratives, leading to their normalization as expected behavior. Such punitive responses serve as a disciplinary measure, forcing women to either conform to restrictive norms or face exclusion from social and professional spaces (see, e.g., Babcock & Laschever 2003). This double bind perpetuates gender inequality by

making language a tool for both maintaining patriarchal control and inflicting psychological and social fear and harm on women who defy social norms—and even upon those who comply with what is expected of them. This double bind lays the same trap for queer, nonbinary, and gender nonconforming people (Fasoli, Hegarty & Frost 2021). By normalizing and legitimizing punitive reactions to both stereotyped characteristics and non-compliance with these stereotypes, patriarchal societies ensure that the lower status they assign to non-dominant gender identities remains entrenched (Ridgeway 2014; see also Monzó-Nebot & Debussy 2024; Monzó-Nebot & Dowd 2024).

Despite advances in women's rights, in twenty-first century androcentric societies, attempts to work toward gender equality tend to trigger punitive responses from broad sectors of societies. Initiatives to develop gender-fair languages have encountered similar resistance to the one triggered by the legitimation of AAVE, revealing deeper societal tensions. Gendered languages like Spanish, French, and Catalan have established a masculine default that uses language to perpetuate the androcentric normalcy that has traditionally prevailed in these communities. When progressive movements advocate for alternatives to reflect gender diversity, such as using gender-neutral pronouns or making non-dominant gender identities visible through language, opponents usually voice a moral panic that is readily disseminated, portraying these changes as an attack on cultural heritage, tradition, and social norms, and asserting that altering language destabilizes the moral order (Erdocia 2022). Media and political discourse amplify these anxieties, with conservative factions framing inclusive language as a radical, destabilizing force. Institutions like language academies, viewed by some as defenders of tradition and by others as barriers to progress, add to the controversy, while social media intensifies the polarization, creating a battleground for identity politics and ideological conflict (see Daussà & Pera Ros in this special issue).

The examples provided signal that language not only functions as a marker of identity but also as a gatekeeper of power. It serves as a "shibboleth," a means of distinguishing between insiders and outsiders within specific communities (see, e.g., Chappell 2022). For example, Monzó-Nebot (2021) illustrates historical cases where the pronunciation or usage of certain words can determine whether

someone is perceived as a legitimate member of a group, sometimes with fatal consequences. The power of words can indeed be wielded as a tool of moral panic or social injury. In other cases, specific words or speech patterns become stigmatized, often to justify exclusion or marginalization: recall, for example, Donald Trump's inflammatory and xenophobic wielding of the term "the China virus" during the global Covid-19 pandemic. Capitalizing on prevailing ideologies, such usage reflected social hierarchies targeting, degrading, and invalidating specific identities through their association with negative values. Although such slights may seem subtle, they legitimate disadvantages (and advantages), reinforcing the ideological fantasies that justify existing hierarchies and causing long-term moral and physical injury upon both the stigmatized groups and society at large, which is brought further away from the conditions that can ensure its prosperity. As a key tool for reinforcing stereotypes and controlling marginalized identities, linguistic practices contribute to the complex dynamics of power, identity, and behavior.

The intersection of moral panic and moral injury is often sharply illustrated by ethnolinguistic struggles. The repression of languages spoken by minoritized communities—such as the prohibition of Kurdish in Turkey or Indigenous languages in colonial settings—often stems from fears that these languages pose a threat to national unity or State authority (Fishman 1991; Gal 1998). The resulting policies, which seek to assimilate or eradicate linguistic diversity, inflict profound moral injury on the communities affected. The erasure of language is not just a loss of communication; it severs ties to cultural heritage, identity, and autonomy (see, e.g., Sheneman & Robinson 2024). The moral injury is the deep sense of dislocation and alienation that comes, in these cases, from being forced to abandon one's language under threat of marginalization or punishment. Such moral injury has long-term consequences for both mental and physical health (Leclerc et al. 2000; Geronimus 2023), with both language and access to translation services having been recognized as social determinants of health (Marmot & Friel 2008; Federici 2022).

Ultimately, language operates at the nexus of moral panic and moral injury by shaping societal perceptions of identity and difference. The fear of linguistic divergence fuels societal anxieties, leading to the stigmatization and exclusion



of those who deviate from the dominant social norms. For those on the receiving end, the moral injury is both personal and collective, as the individuals and groups affected endure the psychological harm of being devalued and the material consequences of being excluded from full participation in society. The effects are long-lasting and impact future generations inheriting the undisrupted social norms (Butler 2009) and the potential rupture from moral and cultural traditions, disconnecting future generations from their past (MacIntyre 1988; 2007). In turn, moral injury is inflicted upon societies when their ideological fantasies are exploited and reinforced to serve the interests of those occupying the top echelons of the social ladder, with deleterious impacts on societies' inclusiveness and their collective prospects. Whether along lines of gender, ethnolinguistic identity, or both, language and gender become a battleground where social anxieties and personal harm intersect, perpetuating systems of inequality and exclusion.

### **3. Legal frameworks as the codification of social anxieties**

Legal systems are not just neutral arbiters of justice, but rather a medium through which various social groups assert their power (Unger 1996; Ewick & Silbey 1998; Kennedy 1998; 2007). These systems play a central role in both perpetuating moral panic and inflicting moral injury. Through legislation, judicial decisions, and policy enforcement, the legal system formalizes and enforces societal anxieties. The anxieties codified include those related to language and gender identities. In turn, codification in legal norms often bolsters dominant social norms and further stigmatizes marginalized groups, thereby criminalizing dissidence (Foucault 1975), especially dissidence against the system of privileges (Wacquant 2009). While legal systems can promote justice and equality, they are equally capable of entrenching exclusionary norms when used to control, discipline, and shape the behavior of subaltern classes, exploiting dominant societal anxieties such as insecurity (Foessel 2010) and instability (Wacquant 2022).

The power dynamics embedded in dominant ideologies are institutionalized through legal frameworks, which turn societal moral panics into tangible

regulations that shape the lives of individuals and communities. Many countries have enacted language policies that elevate a dominant language while suppressing minoritized languages, turning cultural anxieties into legal mandates that marginalize minoritized identities. For example, in France, language laws like the 1994 Toubon Law (French Republic 1994) mandate the exclusive use of French in public spaces, reflecting a nationalistic moral panic around the preservation of French identity (Harrison & Joubert 2019). Similarly, in Turkey, the prohibition of Kurdish in official settings and education until recent reforms created a legal environment that stigmatized Kurdish identity, framing it as a threat to national unity (Mowbray 2006). In Alghero, the prohibition of Catalan during Italian fascism and later policies to marginalize the language aimed to suppress regional identities that were viewed as incompatible with the centralized vision of the nation-state (Bosch i Rodoreda 2002; Farinelli 2009). China's policy toward Tibetan and Uyghur languages highlights a similar approach, where the government has promoted Mandarin as the sole language of instruction in schools and public life (Bovingdon 2010). Similarly, in Malaysia, the prioritization of Malay over other languages has been a tool of nation-building at the expense of the cultural and linguistic rights of minority communities (Gill 2014). In Latin America, and despite constitutional recognition of Indigenous languages in many countries, Spanish has historically dominated the public sphere, particularly in education, limiting the transmission of Indigenous languages to future generations (Tasa-Fuster 2023). Specifically in Mexico, language policies have long been used as instruments of assimilation, resulting in the erosion of languages like Nahuatl and Maya and the undermining of Indigenous cultural autonomy (Hidalgo 2006; Kleinert & Stallaert 2024; see also Córdova-Hernández, López Curiel & Briseño Maas in this special issue). In Guatemala, the repression of Mayan languages during the civil war era, combined with the privileging of Spanish in official domains, reflected broader efforts to suppress Indigenous identities and foster a homogeneous national identity (England 2003).

Policies that undermine specific language communities are also enacted in supranational territories. In the European Union (EU), the linguistic regime has been described as one of full multilingualism (Goffin 1994; Apostolou 2011) or as

a model of ethnolinguistic democracy (Fishman 1993). However, only twenty-four spoken languages are officially recognized by the EU, despite over 230 languages being spoken within the member States' territories (Anderson 2004), and none of the more than thirty signed languages recognized in the member States (European Union. European Commission 2022) has been included in the EU's official linguistic regime (de Wit 2024). Moreover, proposals that would reduce the rights of certain communities, particularly the most vulnerable, are regularly put forward (Gazzola 2016). In the international arena, most spoken languages and all signed languages face the same status at the United Nations (UN). Nevertheless, using one's own language in diplomatic negotiations is recognized as a significant asset; conversely, when a language is neglected or unrepresented, then unequal resource distribution among linguistic communities becomes patent. This is evident in the UN where, despite German not being an official language, German-speaking countries have funded their own translation service headquartered at the New York office since 1975 (see United Nations n.d.). All in all, laws and policies that uphold linguistic exclusivity or fail to protect against linguistic discrimination distribute resources in ways that reinforce societal norms marginalizing non-dominant groups, deepening the moral injury by denying individuals the right to express and experience their identities fully, and undermining individuals' and communities' cultural heritage and autonomy. By devaluing non-dominant identities in the legal and social imaginaries and perpetuating social exclusion, these legal mechanisms can cause lasting moral injury.

While national legal systems show a tendency to entrench these societal anxieties, the international system, often referred to as the UN system, offers a contrasting approach by attempting to establish more inclusive norms and standards for member States. In this way, it has played a crucial role in offering a forum for nations to jointly overcome their social anxieties and plant the seeds of prosperous societies throughout the planet (Annan 2005). The international system is a global framework of institutions, agreements, and norms that govern international relations, promote peace, and address global challenges. At its core is the United Nations, an intergovernmental organization established in 1945 to maintain international peace and security, develop friendly relations among nations, and foster international cooperation in solving global issues

(United Nations 1945). Despite the limits posed by the need for consensus and by power differentials among States, UN treaties and conventions, as well as customary (non-codified) international law, have enshrined ideals in legal norms to protect marginalized groups, foster gender equality, and ensure nondiscrimination. For example, the Universal Declaration of Human Rights (UNGA 1948) has been instrumental in shaping national constitutions and legal frameworks by embedding principles of human dignity and equal rights. The Convention on the Elimination of All Forms of Discrimination Against Women (UNGA 1979) has pushed countries to adopt laws that protect women's rights, while the International Convention on the Elimination of Racial Discrimination (UNGA 1965) has served as a model for national anti-discrimination legislation, and the Convention on the Rights of Persons with Disabilities (UNGA 2007a) has led to the widespread incorporation of inclusive policies for signed languages in national systems. These examples illustrate the values of international law, which functions as a transformative force encouraging nations to adopt more inclusive legal measures and align with global standards that promote justice and equality.

However, legal frameworks on their own cannot move societies forward. In acknowledgment of these limitations, the international system has developed a complex framework of multilateral negotiations as well as training, inspection, and review processes to assess countries' progress and encourage further improvement. This system has influenced the development of domestic governance, policies, and social conditions in varying degrees across different countries (Risse-Kappen 1995). For example, after the end of apartheid, South Africa worked to reshape its governance and align with international human rights standards. The UN played a key role in influencing the country's policies by "giving moral standing to voices around the world demanding racial equality, economic progress and social justice for all South Africans" (United Nations 2004) through its universal periodic review process (UPR), a mechanism of the UN Human Rights Council. Through UPR recommendations and other UN human rights instruments, South Africa adopted policies to ensure equal rights for all citizens and combat discrimination. This has included enacting the Promotion of Equality and Prevention of Unfair Discrimination Act (Republic of South

Africa 2000), which explicitly references international human rights norms and establishes the basic legal framework to combat discrimination generally and specifically, to combat racism, sexism, and ableism. Another case in point is Bolivia, a country with a high proportion of Indigenous people, many of whom speak Indigenous languages. For ages, these languages were marginalized in favor of Spanish. However, Bolivia has become a leader in Indigenous language rights under the government of Evo Morales, the country's first Indigenous president. Bolivia's policies have been influenced by the UN Declaration on the Rights of Indigenous Peoples (UNDRIP, see UNGA 2007b), which has helped shape the legal and political framework for autochthonous language protection (Hermosa Mantilla 2014). In 2009, Bolivia adopted a new Constitution that declared Bolivia a Plurinational State and granted official status to all 36 Indigenous languages alongside Spanish (Bolivia 2009), a success which Chile was close to emulating some years later (Espinoza Alvarado 2023). This move aligns with UNDRIP's emphasis on the right to language and self-determination for Indigenous peoples. The UN's International Year of Indigenous Languages (2019), spearheaded by UNESCO (2018), further encouraged Bolivia's efforts to promote Indigenous languages through education and public services. Bolivia also ratified the International Labour Organization (ILO) Convention 169 on Indigenous and Tribal Peoples (1989), which mandates the protection of autochthonous languages and cultures in law and practice.

However, national legal systems have also used domestic laws and constitutional frameworks to resist standards on human rights, environmental protection, and inclusivity promoted by international law, particularly when such changes are perceived as challenging cultural norms, sovereignty, or political interests (Koskeniemi 2011). For instance, some countries reject international treaties on human rights, such as the Convention on the Elimination of All Forms of Discrimination Against Women, citing cultural or religious reasons that prioritize traditional gender roles (Otto 2009; Schulz et al. 2022). Similarly, in areas like climate change, some States have resisted binding international agreements like the Paris Agreement, arguing that such commitments could threaten national economic interests or industrial growth (Eckersley 2012; Dimitrov 2016). This tension between national sovereignty and international legal obligations

highlights how domestic legal systems can act as weapons to resist progress, using constitutional provisions or judicial rulings to protect the interests of their national elites and limit the influence of international norms in the path toward more egalitarian societies (Fraser 2010). In such cases, national legal frameworks are often posited as guardians of domestic values, while international law is portrayed as an external force that challenges local autonomy (Wet 2005; Hopgood 2013).

This resistance to international norms underscores a broader trend whereby legal systems often function as mechanisms to sustain the existing power structures and the status quo, rather than promoting change. Through laws, governments codify values, hierarchies, and rights that reflect the prevailing balance of power, making it difficult for marginalized or less powerful groups to challenge their oppression (Foessel 2010; Wacquant 2010; 2011; Foessel 2018). However, legal systems are not static; they change when societal pressures—such as social unrest, economic shifts, or moral evolution—necessitate reforms to preserve overall stability (Hobsbawm 1990; Godenzzi & Sichra 2015; Tasa-Fuster 2024). When the existing legal order becomes misaligned with the evolving needs or demands of society, such as in periods of civil rights movements, gender equality struggles, or labor reforms, the law adapts to mitigate potential instability and ensure continued social cohesion. In this way, legal changes occur not necessarily to promote justice or equality but to recalibrate the system to maintain peace, order, and control in a changing society.

Even when legal frameworks make space for greater inclusion, gender and ethnolinguistic identities often face compounded moral injury when institutions are slow to adapt to social changes or when they actively resist them. In cases where social movements push for greater inclusion—such as calls for gender-neutral language (see Daussà & Pera Ros in this special issue) or the recognition of minority languages in public institutions (Kleinert & Stallaert 2024)—institutional resistance against these changes can perpetuate harm (see Córdova-Hernández, López Curiel & Briseño Maas in this special issue). When the rule of law is used to counter rather than advance the values that can make societies more inclusive, and that have been agreed upon internationally, we refer to this as lawfare.

Legal systems are instrumental in transforming moral panic about language and gender into concrete structures of power that regulate social behavior and the opportunities offered to people with different identities. Laws that enforce conformity with the status quo or that fail to protect diversity often perpetuate the harm caused by these instances of moral panic. These legal frameworks inflict moral injury by devaluing and marginalizing non-dominant identities. When legal and policy frameworks codify societal anxieties around language and gender, the rule of law becomes a vehicle for sustaining exclusionary power dynamics, creating lasting impacts on individuals and communities struggling for recognition and equality. Thus, as elaborated above, the law is a double-edged sword, capable of both upholding but also dismantling moral panic.

#### **4. Dimensions of lawfare**

In 1931, the Spanish Republican Constitution introduced an unprecedented array of rights, freedoms, and socially-oriented reforms. Following the 1931 elections, the Republican government sought to build a more inclusive and egalitarian society by establishing a legal framework that significantly expanded democratic rights for traditionally marginalized groups, particularly women and ethnolinguistic communities (Herrera 2003; Ramírez Jiménez 2005; Aguado 2008; Pérez Trujillano 2018). The Constitution extended universal suffrage to women, recognized the right to divorce, promoted land redistribution, and granted regional autonomy, officially recognizing minority languages like Catalan and Basque. These measures represented a decisive shift away from Spain's historical pattern of concentrating power in geopolitical and religious elites through absolutism, dictatorship, and religious dominance. However, legal frameworks are but one of the necessary ingredients. As Acemoglu and Robinson (2012) argue, the prosperity or poverty of nations is largely shaped by the inclusivity of their institutions, rather than geography, culture, or policies alone. With institutions unprepared for the changes introduced in legislation, the Spanish Second Republic's efforts were soon derailed as the judiciary systematically undermined the Constitution's authority, using rulings to advance

a conservative agenda and preserve power within the existing elite (Pérez Trujillano 2024).

The use of lawfare in this case relied on the tactical manipulation of legal frameworks and institutions to achieve political and, ultimately, military objectives. This form of lawfare was not unique to Spain and has been practiced globally throughout history, including in national courts to resist the application of international law (Alter 2014). In contrast to the *de jure* lawfare addressed in section 3, such “derivative” or “soft” lawfare (Gloppen 2018) exploits courts and legal mechanisms to selectively apply justice to delegitimize political rivals or obstruct reform (Zaffaroni, Caamaño & Vegh Weis 2021). It has been used to maintain power or suppress opposition in various contexts. For instance, in post-colonial Africa, authoritarian regimes frequently used the judiciary to silence dissent (Campbell 2003; Hyden 2005; Slocum-Bradley 2008; VonDoepp 2009). Similarly, during the civil rights movement in the United States, legal challenges were used to resist desegregation efforts (Patterson 2001; Klarman 2004). In Latin America, especially under military dictatorships, legal proceedings were manipulated to justify human rights abuses (Wright 2023). Such tactics exemplify how the rule of law can be weaponized to preserve the status quo and prevent inclusivity.

Recently, lawfare has been increasingly used and understood as a tool for lobbying through mass media, aiming to shape public opinion and garner support for regressive ideas by leveraging legal battles and their representation in the media (Zaffaroni, Caamaño & Vegh Weis 2023; see also Hardgrove in this volume). By orchestrating high-profile legal cases and strategically leaking information, conservative groups have sought to influence public discourse and sway popular sentiment in favor of their positions (del Clot 2023; Matthews 2023). This method capitalizes on the media’s ability to amplify legal battles, framing them as moral and societal issues that require urgent attention. In this sense, lawfare is a strategy that replaces physical violence with legal and procedural maneuvers aimed at causing political death and judicial incapacitation of opponents (Zaffaroni, Caamaño & Vegh Weis 2021) while instilling fear of dissent (Foessel 2010). Thus, lawfare becomes a means of not only pursuing legal victories but also of mobilizing public support and legitimizing reactionary



policies, thereby reinforcing the power of conservative elites to reintroduce or strengthen political and social agendas that entrench inequalities, usually profiteering from them.

In scholarly debates, the concept of lawfare has recently gained important traction (Contreras 2023). The term appeared in its “modern incarnation in 2001” (Dunlap 2005, 823). However, the use of law as a weapon of war “goes back all the way to Hugo Grotius,” one of the founding figures of international law (Kittrie 2016, 4). The term was originally coined in relation to the military sphere, describing “a method of warfare where law is used as a means of realizing a military objective” (Dunlap 2001). Since then, lawfare’s definition has expanded and has come to include social, policy-based, mediatic, and psychological warfare of a sort, often aimed at conquering, recovering lost ground, or winning people’s “hearts and minds” (Tirado Sánchez 2021, introduction), capitalizing on ideological fantasies and moral anxieties in an effort to advance specific ideological agendas. It is, in essence, a tool for long-term ideological warfare, where the rule of law is weaponized to challenge or reinforce hegemonic power (Matthews 2023, 25).

In 2018, Siri Gloppen established a three-fold classification of lawfare in an attempt to systematize the varied and multi-level approaches to it. She distinguished between legislative lawfare, court-centered lawfare, and societal lawfare. Legislative lawfare includes the enacting of targeted legislation, constitution-making, decrees, and treaties that provide benefits to those in power (either companies or State actors), the use of rights arguments in legislative and policy processes, or the pushing for sub-national legislation by opposition parties of legislative and policy processes, and advocacy and lobbying efforts aimed at influencing political parties, government bodies, or contributing to law and policy development. Court-centered lawfare can take several forms, including those of selective prosecution, appeals to overturn decisions, and judicial activism. It can manifest as constitutionality testing and litigation to challenge incumbents or advance policy objectives. Strategic litigation, often involving international courts, can be leveraged to push for policy changes or resist certain laws. Finally, societal lawfare can take the form of rights-focused electoral campaigns, media campaigns, and the “branding” of legal narratives

to shape public opinion. It can also use media and electoral campaigns focused on rights to shift public discourse, at the same time as it is within its purview to exercise rights-based advocacy, demonstrations, art, sensitization training, and civil disobedience as part of broader social movements. Figure 1 summarizes Gloppen's three-fold classification of lawfare.



Figure 1. Modalities of lawfare (adapted from Gloppen 2018, 8)

The different actions that can be taken at each of these levels are open to different agents, be they States, political actors, or grassroots organizations and private individuals (examples of what Gloppen terms “from below”). These actions can be leveraged by powerful groups (to preserve their privilege) and also by marginalized groups (to advance human rights and social justice; see Matthews 2023). For example, the passing of legislation, litigation processes, court judgments, and the enactment of policies represent tools to which all groups may have a certain degree of recourse. However, from the perspective of this special issue, these uses constitute lawfare only when they are weaponized to cause harm—whether through the suppression of rights, the manipulation of legal systems to undermine democratic opponents, or the deliberate exploitation of legal loopholes to evade accountability. Lawfare involves the strategic misuse of legal frameworks as a means to achieve objectives that would traditionally require force, making the law itself a battleground where power is contested. In such cases, the intention is not merely to achieve justice or to protect rights, but rather to impose damage, inflict suffering, disadvantage, or deprivation, create

or secure an imbalance of power, and sustain inequities. Reducing privileges that are enjoyed by some at the expense of others, on the contrary, does not seek harm, but rather aims at levelling the playing field. The use of the rule of law for these goals is not considered within the scope of lawfare as understood in this volume.

## **5. Lawfare against gendered and ethnolinguistic communities**

The current volume takes issue with the pervasive misuse of the rule of law for strategic, discriminatory reasons, including State-sponsored sexism and violence against gendered and linguistically minoritized communities. When lawfare targets gendered and ethnolinguistic groups, when States and other entities codify or perpetuate misogyny, racism, classism, ableism, and monolingualism—thereby entrenching vulnerability and discrimination to maintain the cisheteronormative patriarchal status quo (Richter-Montpetit 2014; Contreras 2023)—moral injury is inflicted upon those targeted and on society as a whole, making it less inclusive and encroaching upon its potential to thrive. Weaponizing the rule of law and implementing discriminatory practices creates increased disadvantages for those who occupy lower steps of the social ladder, particularly women and LGBTQ+ people. Discrimination can stem from laws which explicitly limit access, rights, and opportunities to these same communities (Zúñiga-Fajuri 2014; Thomson 2016), but also from judicial and public campaigns that prey on their vulnerability.

The authors in this special issue cast a critical eye upon these contested spaces, these realms of confluence between social worlds, democratic ideals, and the law, shedding light on how democratic backsliding can occur in many spheres. In the first article of this volume, for example, Deborah Giustini scrutinizes the impact of the UK Home Office's new streamlined asylum process on women. Despite attention to gender-based issues in official guidelines, the system exhibits hostility and inadequacy in addressing the unique obstacles encountered by asylum-seeking women. Giustini's conceptual piece adopts a posthumanist, practice-based theoretical framework, critically examining the complex relationship between gender, power-perpetuating State language

policies, and the technological bureaucratization of linguistic access. Her article argues that the Home Office policy not only reinforces women's marginalized, vulnerable position, but also reduces the resources at their disposal in the asylum process by withdrawing the support of interpreting, language advocacy, and cultural mediation. As the author reveals, "the implementation of the new asylum-seeking practice transfers the burden of language from the justice sector to women, feeding a climate of sociomaterial exclusion that significantly restricts the right of female asylum seekers to be adequately heard" (Giustini 2024, 122 f). Giustini makes the case that digital exclusion and low proficiency in the host country's dominant language disproportionately harms women migrants, thinking through how practices—in this case social, institutional, legal, and technological—can generate deleterious gendered inequalities, placing the burden of language access entirely upon asylum seekers. Their needs and particularities are neglected, but here "negligence implies liability," and the resulting enforced silence constitutes "an act of institutional (institutionalized) violence" (Wallace & Monzó-Nebot 2019, 7). Giustini's work is a testimony to the "relevance of translation and interpreting in the legal public services of modern democratic societies" (ibid.).

The second article is another critical examination of linguistic violence, this time against incarcerated women, which also supports the indispensable nature of translation and interpreting in democratic societies. Using a unique survey of incarcerated people in Mexico (ENPOL, or Encuesta Nacional de Población Privada de la Libertad) conducted in 2021, Milena Ang and Miguel Vázquez home in on the plight of female prisoners who are speakers of Indigenous languages, delineating how a lack of translation and interpreting services prolongs women's time in custody, foments isolation, and, most egregiously, contributes directly to increased predatory behavior from authorities in the form of bribery, torture, and sexual violence. The analysis conducted by the authors reveals that reported instances of these types of violence are considerably higher for women who are speakers of Indigenous languages than for any other group analyzed in the national dataset. Forging a clear link between a lack of translation and interpreting support to sexual violence and attempted rape, the authors contend that State-sponsored linguistic violence enables physical and sexual violence.

Thus, the State's monolingual legal system and the monolingual practices of the institutions coalesce to transform language into "a tool that allows the most coercive of State institutions, the carceral system, to physically confine someone without any possible defense" (Ang & Vázquez 2024, 169). For these women, low proficiency in Spanish creates vulnerabilities throughout their time in the penal system, and the neglect and abuse perpetrated by authorities plays a key role in their lasting and profound moral injury and physical damage. This article reveals that linguistic violence is not merely a violation of due process but a tool that enables State-sponsored physical and sexual violence against Indigenous women. Importantly, it demonstrates how linguistic violence facilitates other forms of abuse and provides evidence that Indigenous women who do not receive translation services are more likely to experience severe abuses, highlighting a critical and underexplored area of intersection between language rights and human rights within carceral contexts.

While the first two articles in this special issue focus primarily on women of intersecting identities, Eva J. Daussà and Renée Pera Ros extend their lens to that of nonbinary individuals, focusing on language ideologies and how they operate in social debates. Their examination of functional lawfare plays out in non-legal settings, in communion with the dictates of powerful language authorities: in this case the Institute of Catalan Studies (Institut d'Estudis Catalans, or IEC). The article underscores how gender-neutral language (GNL) serves as a site of linguistic lawfare, revealing how official language policies are weaponized to maintain societal power imbalances. In examining linguistic normativity as lawfare, Daussà and Pera Ros provide an insightful examination of the debate around inclusive language in the context of the Catalan language, focusing on the ideologies that sustain advocacy for specific linguistic forms and turning a critical gaze upon the authorities who enact language norms and their own undergirding ideologies. These authorities are misusing their normative powers to wage lawfare against specific groups of speakers who are experiencing active rejection to their identities and life trajectories. Recent announcements about masculine-default language norms, proposed by the IEC, unleashed myriad responses in the Twittersphere (now the Xsphere). As a counterpoint, a 2023 guide to gender-neutral language in Catalan similarly spurred a proliferation of public

debate on social media, informing the conversations that form the basis of the data set that is mined in this contribution. Daussà and Pera Ros's contribution elucidates how individuals weaponize institutional positions to advance their own ideologies, showing how linguistic forms (and the related ideologies) carry social meaning and trigger discrimination against specific social groups. At the same time, they place linguistic institutions under the spotlight, demonstrating how, by adhering to an agenda that dismisses the legitimacy of gender-neutral language, official discourses perpetuate not only linguistic disempowerment but also social marginalization, reinforcing "socio-psychological hierarchies within a community, thereby legitimizing, directly or indirectly, (verbal) violence, invisibility, and the exclusion of individuals with a gender identity different from the male one" (Daussà & Pera Ros 2024, 212, our translation).

In the special issue's fourth article, historian Anne Hardgrove also considers instances of lawfare against communities who fall outside the traditional gender binary. Hardgrove takes us to the Indian subcontinent, scrutinizing the historical and ethno-linguistic marginalization of the hijra, a third-gender community in South Asia. Utilizing a postcolonial theoretical framework, the study integrates gender and class analysis to explore key legal developments, drawing on examples from both colonial and contemporary legislation in India and Pakistan. Hardgrove's transdisciplinary approach combines linguistic and narrative analysis with ethnographic participant observation, cataloguing critical events in the modern transgender movement in post-independence times in addition to delineating legacies of British colonial lawfare against the hijra. By including discussions of legislation, activist campaigns, and participant observation, Hardgrove contends that certain transgender communities leverage the (often negative) social status of the hijra to influence discriminatory legal frameworks, thereby advancing their own acceptance, assimilation, and normalization. This case study underscores the complexity of alliances within genderqueer groups in postcolonial South Asian societies, challenging the assumption that these groups are natural allies and shining a critical light onto certain modern transgender rights movements.

The final article in the special issue on gender and ethno-linguistic lawfare takes us back to judicial settings in Mexico, where authors Córdova-Hernández,

López Curiel, and Briseño Maas analyze the experience of Indigenous women translators and interpreters in the Mexican public justice system from an intersectional perspective which takes into account aspects of gender in translation. The authors employ Hill Collins' and Bilge's 2016 model on the four domains of power: the interpersonal, the disciplinary, the cultural, and the structural. Their intersectional analysis of language access policy in the Mexican system reveals conditions of oppression, exclusion, and institutional violence toward speakers of autochthonous languages, especially Indigenous women. To complement their policy analysis, they adopt a qualitative perspective with a narrative approach in exploring the identity-related, cultural, and professional experiences of Indigenous women who act as language mediators in the courts. Findings reveal the challenges and strategies employed by Indigenous women translators and interpreters in Mexico's public justice system. They shed light on their professional and personal struggles against gender, ethnolinguistic, and social class discrimination: "Indigenous women interpreters and translators are, above all, women who are in a constant struggle for the realization of their human, collective, and linguistic rights (Córdova-Hernández, López Curiel & Briseño Maas, 285, our translation). Their analysis also highlights how they reverse and resist discrimination in their daily lives and in their professional practice: "Although many of them have overcome family and community barriers to become professionals, their condition as Indigenous women still places them in conditions of discrimination and exclusion" (ibid.). The article further illuminates the failures in the unfulfilled promises of language access for certain populations. Against this backdrop, the authors emphasize the resilience and determination of Indigenous women in their pursuit of professional and human rights, which can inspire further research and recognition of their crucial role in justice and social equity.

## **6. Toward vigilance: Exposing lawfare, disrupting oppression**

The examination of lawfare in this introductory article has highlighted the multifaceted ways in which the law can be weaponized against marginalized

communities, particularly those defined by gender and ethnolinguistic identities. Lawfare, as detailed throughout the volume, operates not merely as a tool of oppression but as a deliberate strategy to maintain existing power structures and reinforce societal hierarchies. By amplifying societal fears, including those around security and stability (Wacquant 2009; Foessel 2010), legal frameworks are manipulated to suppress dissent, especially from marginalized communities, in this way reinforcing existing hierarchies and regressing democratic freedoms. The exploration of lawfare reveals how legal systems, imagined as the means to provide justice and equality, can instead serve as mechanisms of exclusion and harm. In that sense, lawfare stresses the dual nature of the rule of law as both a mechanism for social justice and a tool for maintaining existing power structures and marginalization.

As defined in this introduction and used throughout this special issue, lawfare refers to the strategic manipulation of legal systems and norms to sustain and reinforce oppressive structures, thereby inflicting harm. Lawfare often serves conservative agendas, typically benefiting more powerful State and non-State actors, and is used to undermine human rights and democratic processes. The tools of lawfare include the codification into law of ideologies that run contrary to inclusiveness and democratic values, as well as the judicialization of politics, where courts and legal mechanisms become primary arenas for political and social conflict and for resisting democratic progress. Additionally, lawfare involves using the legal system to sway public opinion in favor of conservative agendas, thus legitimizing and supporting regressive legislation and legal actions, and ultimately political and economic oppression. Through these means, lawfare influences public policies, shapes social behaviors, and impacts political outcomes.

In line with this conceptualization, this special issue takes a lawfare lens and zooms in on the experiences of gendered and ethnolinguistic communities, examining spaces of contentious socio-political struggles in the face of discrimination and exclusion in order to underscore the moral implications of legal debates on language and gender. The contributions highlight how even apparently democratic attempts may exacerbate the vulnerabilities and injustices faced by specific social groups whose identity relies (also) on



their gender and ethnolinguistic identities. They further underscore how the targeted use of lawfare against women, LGBTQ+ individuals, and speakers of minoritized languages demonstrates a concerted effort to undermine their rights, limit their opportunities, and suppress their identities, in this way exploiting societies' instances of moral panic and resulting in moral injury to those affected and to societies at large.

The contributions to this special issue underscore the need for critical engagement with the role of legal systems in perpetuating inequality. They do so by focusing on the specific nexus of gender and ethnolinguistic lawfare across borders, systems, and languages. The articles challenge the perception of the law as an impartial arbiter, instead revealing its potential as a weapon in ideological battles. The insights provided here call for a re-evaluation of legal frameworks to ensure they serve the cause of justice and equity, rather than being co-opted to entrench discrimination and marginalization. The exploration of gender and ethnolinguistic lawfare presented in this special issue highlights the urgent need for vigilance and advocacy to protect the rights of marginalized communities. By exposing the ways in which the rule of law can be used to harm rather than help, this issue aims to contribute to the ongoing struggle for a more just and inclusive society in which legal systems are truly instruments of justice and equality.

We expect that this special issue will stimulate ample dialog around the weaponization of laws, (language) policies, and practices within systems in which gendered and ethnolinguistic communities continue to labor against the application of lawfare. Open debates across spheres and with varying stakeholders, such as those contained in this special issue, help to open dialog, inspire critical analysis, and secure protections for vulnerable populations. The challenges and damaging tactics revealed in the contributions, collectively, call for more transdisciplinary research in order to secure the linguistic rights of gendered and ethnolinguistic communities who can otherwise become lost in the criminal justice system, who lose rights to services, education, and healthcare, or whose very status as undocumented people positions them as eminently vulnerable (see also the articles in Ruiz Rosendo & Martin 2024). The only mechanism of

survival for some of these identities may be to pay close attention to all the mechanisms of social control and identify potential for agency within the imposed constraints (Scott 1985; Butler 1993), particularly the moral injury inflicted by lawfare.

While the contributions herein shed ample light on particular instances of gender and ethno-linguistic lawfare, the breadth and depth of contributions across systems, borders, and languages makes it abundantly clear that the lawfare of ethno-linguistic discrimination targeting women, nonbinary people, and LGBTQ+ people represents an area to which substantially more interdisciplinary research should be directed. Although a fair amount has been written about securitization, criminalization, and crimmigration (the criminalization of immigration) with respect to migrant women and LGBTQ+ people and even lawfare targeting abortion and women's reproductive rights, several areas of inquiry continue to be relatively unexplored.

By way of example, the backlash caused by lawfare leveraged against gender studies and gender-aware curricula (e.g., in the United States, the United Kingdom, Hungary) have yet to be fully explored. Activism and labor markets, also unexplored sites of potential reprieve, represent potential safe spaces where legal instrumentalism might take a turn for the positive. The question of safe spaces is, in fact, an urgent one. Are there safe ethno-linguistic enclaves for women, nonbinary people, and LGBTQ+ people within labor markets, education, or other arenas of social engagement? What is the role of women- and LGBTQ+-led activism in embracing ethno-linguistic diversity? What does the lived reality for women and LGBTQ+ people in ethno-linguistic borderlands contribute to conversations about justice and democracy? What of justice systems which reinforce social hierarchies and impart injustice upon gender-based and ethno-linguistic communities? In what ways are invisible crimes perpetrated against migrant women and LGBTQ+ people? What are the individual and collective harms caused by the social discrimination arising from monolingual bias, including microaggressions against migrant women and LGBTQ+ people based on accentism, audism, and linguicism? What are the relationships between monolingualism and heteronormativity and their impact on people's perceptions and self-regulated behaviors vis-à-

vis language and gender diversity? How does the use of technology sustain or disrupt gendered and ethnolinguistic communities?<sup>1</sup> Such questions warrant sustained interrogation, challenging scholars to critically examine how legal systems are manipulated to perpetuate gendered and ethnolinguistic oppression. As long as legal frameworks are wielded to reinforce social hierarchies, marginalized communities will continue to endure harm, and societies will remain unable to fulfill their potential. This special issue calls for vigilance against lawfare, while demonstrating that legal systems can—and must—evolve to genuinely uphold justice and equality for all.

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<sup>1</sup> Regarding the latter question, the reader may refer to the chapters in Tasa-Fuster, Monzó-Nebot, and Castelló-Cogollos (2023), Monzó-Nebot and Tasa-Fuster (2024a; 2024b) and the upcoming issue of *Just. Journal of Language Rights & Minorities, Revista de Drets Lingüístics i Minories* edited by Giustini and Jiménez-Andrés (2026, forthcoming).

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## L'aparell estatal contra les comunitats etnolingüístiques i el gènere: el dret com a arma / *Gender and ethnolinguistic lawfare: Weaponizing the law*

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## L'aparell estatal contra les comunitats etnolingüístiques i el gènere: el dret com a arma

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### Resum

Aquest article tracta el concepte de *lawfare* en relació amb les identitats etnolingüístiques i de gènere. S'hi examina com es fan servir els sistemes jurídics per perpetuar els desequilibris de poder i reprimir les comunitats marginades. A partir de diversos estudis de cas i marcs teòrics, l'article explora el paper de les ideologies i les fantasies ideològiques en la manera com el pànic moral i les lesions morals es manifesten en les respostes del dret davant identitats de gènere no binari, les dones i les minories etnolingüístiques. L'article analitza de forma crítica la utilització de l'aparell estatal com a arma d'opressió, en particular, en àmbits com els drets lingüístics, la igualtat de gènere i l'accés a la justícia. Mitjançant un enfocament interdisciplinari, les autores mostren que els marcs jurídics i les actuacions institucionals sovint reforcen les normes que exclouen els grups vulnerables, en lloc de protegir-los. L'article, que emmarca les contribucions incloses en el monogràfic «L'aparell estatal contra les comunitats etnolingüístiques i el gènere», ofereix una perspectiva crítica sobre la relació entre dret, identitat i poder, i contribueix a una comprensió més profunda de com l'estat de dret perpetua les jerarquies socials o hi fa front.

**Keywords:** *Lawfare*, aparell estatal com a arma, gènere, comunitats etnolingüístiques, estat de dret, ideologia, fantasies ideològiques, pànic moral, lesions morals

**Abstract**

This article treats the concept of lawfare in relation to gender and ethnolinguistic identities, examining how legal systems are employed to perpetuate power imbalances and suppress marginalized communities. By focusing on various case studies and theoretical frameworks, the study explores the role of ideologies and how moral panic and moral injury manifest in legal responses to gender nonconforming individuals, women, and ethnolinguistic minorities. The article critiques how the law is weaponized as a tool of oppression, particularizing in areas such as language rights, gender equality, and access to justice. Through an interdisciplinary approach, the authors demonstrate how legal frameworks and institutional actions often reinforce societal norms that exclude vulnerable groups, rather than protecting them. As a framework to the special issue Gender and Ethnolinguistic Lawfare, this article offers a critical perspective on the relationship between law, identity, and power, contributing to a deeper understanding of how the rule of law perpetuates or challenges social hierarchies.

**Keywords:** Lawfare, gender, ethnolinguistic communities, rule of law, ideology, ideological fantasies, moral panic, moral injury

**1. Introducció: la llengua i el gènere en les asimetries de poder**

La Declaració dels Drets de l'Home i del Ciutadà (República Francesa. Assemblea Nacional 1789) s'evoca comunament com a pedra angular dels drets universals, sobretot, perquè va ser un dels primers documents a reconèixer la igualtat des del naixement i per la influència que ha exercit en les democràcies modernes. Tanmateix, tot i declarar drets *universals*, el text exclouia irònicament

vastos segments de la població i, sobretot, deixava enrere les dones i les persones parlants de llengües no dominants en un llegat de promeses incomplides. Una de les deficiències flagrants de la Declaració va ser l'enaltiment del francès com a única llengua legítima del govern, l'educació i la vida pública, amb la qual cosa es marginaven, en la pràctica, les comunitats parlants de llengües regionals o minoritàries i es reforçaven les jerarquies lingüístiques limitant-ne l'accés als àmbits polític i cívic (vg. Grégoire 1794). En va ser una altra deficiència que negava els drets polítics bàsics de les dones, en especial, el dret a vot (vg. Gouges 2014). Aquest descuit no va ser casual; reflectia els valors patriarcalcs profundament arrelats de l'època, que concebien l'agència política com a domini dels homes. Alhora, imposant la ideologia de la llengua dominant, es fusionava una llengua amb la identitat, la cultura i la unitat nacional (Jaffe 1999). En definitiva, aquests anomenats *drets universals* s'havien construït al voltant de les experiències i necessitats d'un grup demogràfic restringit: homes d'elit francòfons.

Aquestes qüestions (l'exclusió lingüística i la desigualtat de gènere) no són relíquies del passat, sinó que han continuat configurant els conflictes polítics fins al moment present. Avui dia, l'activisme en pro de les llengües minoritzades sovint lluita per la preservació i el reconeixement de les identitats lingüístiques alhora que perpetua les visions cisheteronormatives i androcèntriques (Makoni 2014; Bradley 2023). De la mateixa manera, els moviments que defensen l'afirmació de gènere poden aconseguir victòries jurídiques que reconeixen drets de gènere, però que també ignoren les dimensions lingüístiques de l'exclusió i les lluites singulars de les minories etnolingüístiques que formen part de la seua força (Tasa Fuster 2024). Ja sia en campanyes de drets lingüístics que passen per alt els reptes d'identitats de gènere específiques o en lleis que reconeixen els drets de gènere però abracen el monolingüisme, les interseccions de la llengua i el gènere posen de manifest una realitat que no admet pal·liatius: la llengua i el gènere són trets que fem servir per establir els grups de *nosaltres* i *altres* en què s'organitza la societat —jeràrquicament.

Aquest monogràfic se centra en el paper de les normes jurídiques, de la promulgació i la implementació o el qüestionament de les lleis per part de les institucions i la població general en la nostra evolució col·lectiva cap a societats més

inclusives, en les quals les identitats tradicionalment desateses i marginades tinguen opcions reals de participar en projectes democràtics. Tenint en compte que la prosperitat o la pobresa de les nacions ve determinada en gran mesura pel caràcter inclusiu o excloent de les seues institucions (Acemoglu & Robinson 2012), aquest número estudia com es comporten els sistemes jurídics i les institucions quan tenen l'oportunitat de contribuir a la inclusió i la prosperitat de les seues societats o resistir els esforços realitzats pels moviments socials i a les urnes, els parlaments i en l'àmbit internacional a fi de consolidar les desigualtats consagrades en les ideologies conservadores. En aquests contextos, el *lawfare*, o l'ús il·legítim de l'aparell estatal, s'entén com les actuacions escomeses per agents estatals, institucionals i socials, impulsades i instrumentalitzades, per regla general, per servir als interessos de les elits, mitjançant la instrumentalització de l'estat de dret a fi de resistir les transformacions socials que abracen ideals inclusius i democràtics. Amb l'exploració d'aquests usos, pretenem millorar la nostra comprensió col·lectiva de com les societats avancen i es resisteixen en un paisatge de valors canviants i d'augment d'oportunitats per a les persones tradicionalment oprimides.

Per començar, el punt de partida de l'article és el reconeixement que la llengua no és un mitjà de comunicació neutre, sinó que es troba profundament entrelaçada amb el poder, la identitat i l'estratificació social (vg., p. ex., Spivak 1988; Lakoff 2000). Des de la sociologia (Foucault 1969; Bourdieu 1978), la sociolingüística (Heller 1995; Blommaert 1999; Romaine 2001; Joseph 2004; Flores 2013), l'antropologia (Geertz 1973; Hymes 2001), les ciències polítiques (Anderson 1976; Scott 1992) i els estudis de traducció i interpretació (Venuti 1986; Baker 2006), ha quedat establert que la llengua funciona com una eina ideològica clau que oculta i naturalitza les relacions de poder subjacents, que configura la nostra percepció de la realitat alhora que manté estructures socials que beneficien determinats grups sobre d'altres (Žižek 1989). Mitjançant el llenguatge que emprem, les construccions ideològiques s'incorporen en el discurs i en les interaccions quotidianes, convertint-se en fantasies inconscients (íbid., 27) que presenten les jerarquies socials com a aparentment naturals o inevitables més que no com a productes de forces històriques, econòmiques i polítiques específiques. Žižek planteja la ideologia com una força que

opera sota la superfície, impulsada per les fantasies ideològiques que estructuren com els individus perceben la realitat i influeixen en allò que es considera sentit *comú* i *legítim*, dos trets que són clau en la preservació de l'*statu quo* (Gramsci 1999; Zürn 2018). El llenguatge sosté la moral imperant de les societats presentant com a marginals les idees que les ideologies dominants marginen. De la mateixa manera, s'utilitza per legitimar els fonaments d'aquestes ideologies, concretament, les creences sobre normes, valors i rols que fan que les estructures socials existents semblen naturals i inevitables. Quan aquestes creences s'accepten, les dinàmiques de les desigualtats de poder queden reforçades i els mecanismes que les produeixen romanen ocults.

Les ideologies influeixen en el que es diu, i també en com s'accepten determinades formes lingüístiques. De fet, la llengua funciona com una forma de capital que consolida les dinàmiques de poder, dotant de més valor certes llengües, varietats particulars o formes lingüístiques, de manera aparentment natural, i conferint poder simbòlic a qui domina allò que es valora (Bourdieu 1978). En conseqüència, la capacitat de parlar un dialecte o llengua de prestigi pot atorgar un estatus social i l'accés corresponent a oportunitats econòmiques o polítiques, mentre que les persones que parlen dialectes estigmatitzats o llengües minoritzades poden quedar excloses o marginades (Lippi-Green 1994; 1997). D'aquesta manera, les creences sobre les llengües i les varietats d'aquestes sintonitzen els comportaments propagant percepcions que mantenen el valor que s'atorga socialment a individus específics i així s'alimenten les fantasies ideològiques inconscients que configuren i donen suport a les estructures de poder i les desigualtats socials d'una societat determinada (Irvine & Gal 2000).

En aquest sentit, els conflictes lingüístics, tant si se centren en llengües, com si ho fan en varietats o normes determinades, no són només per les diferències lingüístiques. Són pugnes per conflictes socials més amplis sobre els éssers humans, les seues identitats i les seues posicions dins les jerarquies en un moment històric i un espai sociocultural determinats. Les posicions i possibilitats en aquestes lluites estan íntimament relacionades amb els recursos que cada grup social i els individus que hi pertanyen han acumulat històricament, i el seu interès personal en la distribució actual dels recursos pot dictar la seua

capacitat i voluntat de participar o resistir davant els canvis en la llengua i el llenguatge, com també els seus rols dins dels espais de presa de decisions (Monzó-Nebot & Mellinger 2022). En definitiva, les qüestions lingüístiques són intrínsecament polítiques i socials. La llengua esdevé un espai de contesa, on es negocien, es resisteixen o es reforcen les jerarquies socials, de manera que les lluites lingüístiques es vinculen a qüestions més àmplies d'equitat, dignitat, accés i distribució del poder en la societat.

Les anàlisis històriques han demostrat que la prosperitat o la pobresa d'una nació està influïda en gran mesura per com d'inclusives o d'exclusives són les seues institucions (Acemoglu & Robinson 2012). A més, l'evolució moral i política de les societats cap a l'apreciació de la diversitat està estretament lligada amb el desenvolupament d'ideals democràtics (Inglehart & Welzel 2005) que posen l'accent en la igualtat, la participació i la protecció dels drets individuals i col·lectius (p. ex., de Tocqueville 1835 [2013]; Mill 1859 [2001]; Lipset 1959). A mesura que les societats han anat adoptant la democràcia, han ampliat progressivament l'abast de la inclusió reconeixent la dignitat i el valor inherents de totes les persones, amb independència de factors racials, ètnics, de gènere, capacitat o estatus socioeconòmic. Històricament, moltes democràcies van començar com a sistemes excloents, i sovint reservaven la participació a determinats grups privilegiats (vg. també Meylaerts 2011). N'és un exemple la Declaració dels Drets de l'Home i del Ciutadà esmentada a l'inici d'aquesta introducció, però també hi ha fites més recents dels drets humans, en concret, la Convenció sobre l'Estatut dels Refugiats (Assemblea General de les Nacions Unides [AGNU] 1951), on no s'han reconegut condicions que afecten específicament les dones, reduint-ne així dràsticament les possibilitats d'obtenir l'estatus de refugiades (Webber 2012).

Amb el temps, els moviments pels drets civils, la igualtat de gènere i la justícia social han empès les societats democràtiques i les seues institucions a estendre els drets i les oportunitats a poblacions abans marginades. Els fonaments morals de la democràcia, com el respecte per l'autonomia humana i el bé col·lectiu, han estat claus a l'hora de fomentar sistemes polítics que pretenen representar i empoderar tota la ciutadania. A mesura que aquests valors evolucionen, l'avanç cap a lleis, polítiques i institucions més inclusives continua creixent, la

qual cosa dona lloc a guanys en representació, justícia social i igualtat. Les societats inclusives, en aquest sentit, són un reflex de la maduració de la democràcia, on el compromís amb els drets universals i la governança participativa crea un ordre social més equitatiu i just.

En un panorama amb un interès major pel paper que exerceix la llengua en la creació i el manteniment de les jerarquies i les desigualtats socials, l'escrutini creixent de les polítiques lingüístiques (incloses les regulacions, les creences i les pràctiques; vg. Spolsky 2004) i com els règims jurídics afecten les dones, les persones no binàries i les comunitats LGBTQ+, els aspectes interseccionals han agafat protagonisme (p. ex., Napier et al. 2024). El prisma interseccional refracta, per exemple, com la llengua s'afegeix a les complexitats que acaren les persones migrants quan s'enfronten a cultures que no coneixen i on gaudeixen de pocs drets polítics (si en tenen cap) i recorren i experimenten tant els espais socials com els institucionals (Heller 2009; Abji 2016; Pöllabauer 2024).

Malgrat la major visibilitat de les dificultats de moltes comunitats etnolingüístiques i de gènere i les seues interseccions, les tendències geopolítiques marquen un augment de la violència, l'exclusió i la desigualtat. L'estat de dret s'està instrumentalitzant contra comunitats etnolingüístiques específiques, a grans trets, i contra les dones, les persones no binàries i les persones LGBTQ+ en particular (Vitikainen 2020; Lythgoe 2022). L'extrema vulnerabilitat que experimenten aquestes comunitats és el resultat de sistemes ideològics materialitzats en règims polítics i institucionals que adopten postures contràries a la immigració, a les dones, a les persones *queer*, a les minories i a les persones racialitzades. Aquestes postures poden articular-se en la denegació deliberada de l'accés lingüístic a les persones vulnerables i en situació irregular (Wallace & Hernández 2017; Abji 2020; Oliviero 2021; Belous & Fatás-Cabeza 2024; Wallace 2024), l'avanç de programes d'immigració carceraris (Pakes & Holt 2017; Abji 2020; López-Sala & Barbero 2021), de polítiques de vigilància invasiva (Broeders 2007; McDowell & Wonders 2009; Latonero & Kift 2018; Heyman 2022), seguretat (Farny 2016; Ghezelbash et al. 2018; Madoerin 2020; Edmunds 2021), criminalització (Gentile 2014; Olivares 2016; Berti 2021) i contenció (Ben-Arieh & Heins 2021;



Piguet 2021), i d'externalització de les fronteres (Carr 2012; Salamon 2017; Ybarra 2018; Aris Escarcena 2022; Yin 2022). Tots aquests exemples posen de manifest la necessitat d'interrogar contínuament com les institucions que almenys són democràtiques i inclusives nominalment acaben actuant d'una manera que no s'alinea ni amb els drets humans i ni amb els valors democràtics. En altres paraules, malgrat el compromís d'alguns Estats nació i institucions amb el sistema internacional de drets humans, en quines circumstàncies fan els ulls grossos a la voluntat de les seues societats de prosperar moralment, políticament, legalment i econòmicament de maneres inclusives?

Els articles d'aquest monogràfic ofereixen estudis de casos, mètodes i marcs teòrics diversos que combinen els coneixements procedents del dret, dels estudis sobre la migració, de la sociologia, dels estudis de gènere, dels estudis *queer*, de la història i dels estudis de la traducció i la interpretació. En aplicar diverses perspectives teòriques, les contribucions que s'hi presenten reflecteixen les vulnerabilitats particulars de les comunitats de gènere i minoritzades lingüística-ment en els sistemes judicials, davant les institucions i en la societat en general. A partir de dades oficials, campanyes mediàtiques, protocols governamentals i legislació, s'hi aprofiten una varietat de marcs etnogràfics, crítics i teòrics per examinar de prop les maneres en què comunitats específiques etnolingüístiques i de gènere són oprimides, tant per agents estatals com per buròcrates, activistes i mitjans de comunicació. S'hi examina el *lawfare* des d'una perspectiva interseccional tal com es desenvolupa en espais de contesa, como són les oficines d'asil, els escenaris carceraris, l'univers Twitter (ara X), els mitjans de comunicació i les sales de tribunals. Aquest número se centra en la difícil situació de les persones de gènere no binari i les dones, parlants de llengües indígenes i pertanyents a comunitats etnolingüístiques minoritzades, i persones migrants particularment vulnerables, com també en les mediadores lingüístiques que s'esforcen per exercir de maneres que facen avançar la justícia en espais cisheteronormatius i patriarcals: espais que es poden concebre com a controvertits, ja que representen llocs de conflicte, por, resistència i vulnerabilitat. Col·lectivament, els articles permeten aprofundir en la infinitat de maneres en què els usos il·lícits de l'aparell estatal contra les comunitats etnolingüístiques i

el gènere privilegien el monolingüisme i la cisheteromascunitat, donant lloc a sistemes còmplices de la creació i el manteniment d'espais socials en què la llengua i el gènere esdevenen capital social negatiu (Wacquant 1998; vg. MADRE et al. 2019; Salazar González 2022). En dilucidar les maneres en què alguns sectors de la societat exerceixen l'instrumentalisme jurídic (la manipulació del dret per part de governs i entitats privades per assolir objectius antidemocràtics), els articles d'aquest volum desafien la noció àmpliament estesa que «el dret és concret, normatiu i objectiu d'una manera que les ideologies polítiques no ho són»<sup>1</sup> (Matthews 2023, 25); en fer-ho, revelen multitud de maneres en què el dret pot esdevenir una arma d'opressió que reforça pràctiques discriminatòries i llegats de dominació colonial i, així, obstaculitza, en comptes de fer avançar, el projecte comú d'una societat justa i equitativa.

Aquest article està organitzat en sis apartats. En aquesta introducció, les autores busquen establir un marc conceptual explorant com s'entrecreuen la llengua i el gènere amb les asimetries de poder. El segon apartat estudia els conceptes de *pànic moral* i *lesions morals* en els conflictes de gènere i amb comunitats etnolingüístiques, aprofundint en com es capitalitzen les pors i les ansietats socials sobre el gènere i les identitats etnolingüístiques presentant-ne els drets com a amenaces al teixit moral de la societat, amb la qual cosa es lesiona qui ja pateix opressió. El tercer apartat defineix el *lawfare* com l'ús estratègic dels sistemes jurídics per mantenir l'exclusió i codificar la discriminació, centrant-se en els marcs jurídics nacionals i internacionals. En el quart apartat, titulat «Dimensions del *lawfare*», n'ampliem l'abast conceptual per sumar a les tàctiques legislatives les judicials i socials. El cinquè apartat, «El *lawfare* contra les comunitats etnolingüístiques i el gènere», presenta els estudis de cas inclosos en aquest monogràfic, que se centren en la manera com els marcs jurídics perjudiquen les dones i les persones amb identitats de gènere no binari de grups etnolingüístics específics. Finalment, el darrer apartat sintetitza les conclusions i demana reformes en els sistemes jurídics per garantir que promoguen la justícia i la inclusió en comptes de reforçar les jerarquies socials existents.

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<sup>1</sup> La traducció al català de les cites en altres idiomes és de les autores.

## 2. Pànic moral i lesions morals en els conflictes de gènere i etnolingüístics

L'ebònic, conegut ara generalment com a anglés vernacle afroamericà (AAVE, per les sigles en anglés), és un dialecte diferenciat que utilitza principalment la població afroamericana dels Estats Units d'Amèrica del Nord (EUA). L'anomenada *controvèrsia sobre l'ebònic* va esclatar als EUA al desembre del 1996 (Fox 1997; Taylor 1998; Seymour, Abdulkarim & Johnson 1999; Vaughn-Cooke 2010) quan el Districte Escolar Unificat d'Oakland (Califòrnia) va aprovar una resolució que reconeixia l'AAVE com un sistema lingüístic legítim i en va proposar l'ús en l'ensenyament de l'alumnat que el parlara com a llengua pròpia. L'objectiu era millorar els resultats d'aprenentatge d'aquest alumnat utilitzant l'AAVE com a pont per ensenyar l'anglès estàndard americà. La decisió va provocar pànic moral a tot el país, i els mitjans de comunicació, els personatges polítics i el públic hi van reaccionar amb indignació i por. Tot i que l'AAVE és un dialecte ben documentat amb regles i estructures gramaticals coherents, gran part del discurs públic el va representar erròniament com a *argot* o *anglès deficient*. Les veus crítiques van acusar el consell escolar de promoure un *mal anglés* i de baixar el nivell, i van argumentar que reconèixer l'AAVE comportaria la degradació de la qualitat educativa i marginaria encara més l'alumnat afroamericà. Una gran part de la població va veure en el moviment una amenaça per a la unitat de l'anglès com a llengua nacional; temien que incorporar l'AAVE a les aules comportaria una fragmentació de les normes lingüístiques i la pronunciació de les divisions socials.

En lloc de centrar-se en els beneficis que l'ús de l'AAVE podria portar per a l'alumnat, la seua alfabetització i les seues perspectives en la societat, o fins i tot per a la seua capacitat d'adquirir l'anglès estàndard, la mesura es va plantejar com una amenaça a l'*statu quo*. El pànic moral es caracteritza per una por i inquietud generalitzades que es desencadenen per la idea que comportaments o grups determinats suposen un perill per al teixit moral de la societat (Cohen 2011), i per l'afecció emocional que els individus senten envers l'*statu quo*, tot i que aquest els perjudique (Žižek 1989). El pànic moral en aquest cas va ser impulsat per les ansietats racials i de classe subjacents, i la llengua es va convertir en un indicador d'interessos més amplis respecte a l'ordre social, la identitat

cultural i les relacions entre grups racialitzats (Wright 1998; Smitherman 2017). El debat va destapar la resistència de la societat a reconèixer i valorar la diversitat lingüística quan es tracta de varietats lingüístiques associades a comunitats marginades. També va fer palés que les diferències lingüístiques poden convertir-se en l'epicentre de les pors i les ansietats de la societat, especialment, quan desafien l'*statu quo* buscant oferir oportunitats a les identitats tradicionalment oprimides.

Malgrat el progrés col·lectiu, inclòs el progrés moral, els nostres sistemes actuals són els hereus d'opressions passades que han deixat una empremta profunda en els *statu quo* d'arreu del món. Al llarg de la història, la llengua ha estat una eina per a l'assimilació, el control i la marginació culturals. Per exemple, l'imperialisme espanyol a l'Amèrica Llatina va suprimir sistemàticament les llengües i cultures indígenes i hi va promoure l'espanyol com a senyal de l'autoritat colonial (Mignolo 2000). Així mateix, els intents de França d'erradicar el bretó com a part de la seua política d'unificació lingüística nacional van marginar-ne les i els parlants (Judge 2007), de manera semblant a les tensions actuals sobre l'estatus de la llengua catalana a l'Estat espanyol (Tasa Fuster & Bodoque 2016; Woolard 2016). A Nova Zelanda, la revitalització de la llengua maorí (*te reo Māori*) ha estat un component clau dels esforços per recuperar la identitat indígena després de segles de domini de la llengua anglesa (Albury 2016). A Sud-àfrica, el règim de l'apartheid va imposar l'ús de l'afrikaans en l'educació i el govern, la qual cosa va reforçar la segregació racial i l'opressió (Wildsmith-Cromarty & Balfour 2019). Al Congrés de Milà de 1880, el sector de l'educació va proscriure l'ús de la llengua de signes a les escoles, la qual cosa va promoure l'oralisme i va negar a les comunitats sordes els seus drets lingüístics i culturals (Lane 1984). Aquestes lluites etnolingüístiques reflecteixen les profundes tensions polítiques i culturals que es generen al voltant de la llengua i com les llengües esdevenen un símbol dels conflictes entre grups socials (vg. Castelló-Cogollos & Monzó-Nebot 2023).

La llengua és, efectivament, el símbol d'una identitat social (Bourdieu 1978), i s'entrecreu amb altres classificadors socials que organitzen els individus en jerarquies. Per exemple, a l'Índia, la llengua ha jugat durant molt de temps un paper fonamental en el reforç de les jerarquies basades en castes. Històricament,

l'associació de les castes altes amb el sànscrit (la llengua litúrgica i erudita) les distingia per oposició a les llengües vernacles parlades per les castes inferiors, de manera que les diferències lingüístiques es van incorporar al sistema de castes. Fins i tot a l'Índia moderna, un bon anglés pot obrir la porta a la mobilitat social, especialment, en l'accés a l'educació superior i als llocs de treball, de manera que contribueix a consolidar les divisions de classes i castes. A la fi, l'estratificació lingüística reflecteix desigualtats socials més àmplies i l'accés a varietats lingüístiques de prestigi sovint determina les oportunitats socioeconòmiques a què es poden accedir (Sharma 2022).

Un dels classificadors més poderosos de la identitat social és el de gènere i una varietat específica de la llengua que s'ha estigmatitzat tradicionalment arreu de les comunitats etnolingüístiques és la llengua de les dones (Lakoff 1973). Els estudis sociolingüístics han demostrat com la llengua reflecteix i reforça les jerarquies de gènere (Cameron 1994; Tannen 1995; Cameron 1996; Eckert & McConnell-Ginet 2003). Les expectatives de gènere sobre com haurien de parlar dones i homes (per exemple, que les dones han de ser educades, indirectes i no assertives) estan profundament lligades a normes morals que reforcen les estructures patriarcals, la qual cosa situa les dones en rols subordinats tant en l'àmbit públic com en el professional. Quan les dones es desvien dels patrons de parla prescrits (són assertives més que no passives o parlen en espais dominats per homes) sol desencadenar-se el pànic moral i se n'etiqueten les formes lingüístiques d'*agressives* o *no femenines*. Aquest pànic reflecteix una ansietat subjacent envers els canvis en els rols de gènere i l'amenaça que aquests canvis representa per a les estructures patriarcals. El dany personal que s'infligeix a les dones quan se'n controla, ridiculitza o rebutja el discurs provoca lesions morals (descrites en Litz et al. 2009). A més, el dany personal s'agreuja amb el seu homòleg col·lectiu, quan les reaccions punitives que les castiguen per desviar-se de la norma són presenciades públicament o es transmeten a través de narratives, la qual cosa estableix aquestes respostes com a comportament esperat i, així, es normalitzen. Les respostes punitives d'aquest tipus serveixen com a mesura disciplinària que obliga les dones a ajustar-se a normes restrictives o a acarar l'exclusió dels espais socials i professionals (vg., p. ex., Babcock & Laschever 2003). Aquesta arma de doble tall perpetua la desigualtat de gènere

fent de la llengua una eina tant per mantenir el control patriarcal com per infligir por i danys psicològics i socials a les dones que desafien les normes socials, i també a aquelles que compleixen el que se n'espera. També les persones *queer*, no binàries i transgènere es troben amb el mateix parany (Fasoli, Hegarty & Frost 2021). Mitjançant la normalització i la legitimació de les reaccions punitives a les característiques estereotipades i a l'incompliment dels estereotips, les societats patriarcals asseguren que l'estatus inferior que s'assigna a les identitats de gènere no dominants es mantinga arrelat (Ridgeway 2014; vg. també Monzó–Nebot & Debussy 2024; Monzó–Nebot & Dowd 2024).

Malgrat els avanços en els drets de les dones, en les societats androcèntriques del segle XXI, els intents de treballar per la igualtat de gènere tendeixen a provocar respostes punitives d'amplis sectors de la societat. Les iniciatives per desenvolupar llenguatges inclusius des de la perspectiva del gènere han trobat una resistència similar a la provocada per la legitimació de l'AAVE i, amb això, han revelat tensions socials més profundes. Llengües amb gènere gramatical com l'espanyol, el francès i el català han establert el masculí com a forma per defecte, de manera que la llengua s'utilitza per perpetuar la normalitat androcèntrica que tradicionalment ha prevalgut en aquestes comunitats. Quan els moviments progressistes defenen alternatives que reflecteixen la diversitat de gènere (com ara l'ús de pronoms de gènere neutre o la visibilització de les identitats de gènere no dominants a través del llenguatge), l'oposició sol expressar un pànic moral que es difon fàcilment, presentant les alternatives com a atacs al patrimoni cultural, la tradició i les normes socials, i escampant que aquest llenguatge modificat desestabilitza l'ordre moral (Erdocia 2022). Els mitjans de comunicació i el discurs polític amplifiquen aquestes angoixes, amb faccions conservadores que emmarquen el llenguatge inclusiu com una força radical i desestabilitzadora. S'afegeixen a la polèmica les institucions, com poden ser les acadèmies de la llengua, vistes com a defensores de la tradició o com a barreres al progrés, mentre que les xarxes socials intensifiquen la polarització creant un camp de batalla per a la política identitària i el conflicte ideològic (vg. Daussà & Pera Ros en aquest monogràfic).

Aquests exemples indiquen que la llengua no només funciona com a marcadora d'identitat, sinó també com a guardiana del poder. La llengua

funciona com un xibòlet, un mitjà per distingir entre les persones de comunitats específiques i les foranes (vg., p. ex., Chappell 2022). Per exemple, Monzó-Nebot (2021) il·lustra casos històrics en què la pronunciació o l'ús de paraules específiques poden determinar si es percep algú com a membre legítim d'un grup o no, amb conseqüències que, de vegades, han estat letals. El poder de les paraules també es pot fer servir com a eina del pànic moral o dany social. Hem viscut casos en què s'estigmatitzen paraules o patrons de parla concrets, sovint per justificar l'exclusió o la marginació: recordem, per exemple, l'ús inflamatori i xenòfob de Donald Trump de l'expressió «virus de la Xina» durant la pandèmia global de covid-19. Aprofitant les ideologies predominants, aquest ús reflectia jerarquies socials que posaven en el punt de mira identitats específiques i les degradaven i invalidaven associant-les a valors negatius. Encara que aquests menyspreus puguen semblar subtils, legitimen desavantatges (i avantatges), reforcen les fantasies ideològiques que justifiquen les jerarquies existents i causen danys morals i físics a llarg termini tant als grups estigmatitzats com a la societat en general, que s'allunya més i més de les condicions que poden assegurar-ne la prosperitat. Les pràctiques lingüístiques són eines clau per reforçar els estereotips i controlar les identitats marginades, i contribueixen a les complexes dinàmiques que s'estableixen entre poder, identitat i conducta.

Els conflictes etnolingüístics solen exposar de manera ben clara la convergència entre el pànic moral i les lesions morals. La repressió de les llengües de les comunitats minoritzades, com ara la prohibició del kurd a Turquia o de les llengües indígenes en els contextos colonials, sovint prové de la por que aquestes llengües suposen una amenaça per a la unitat nacional o l'autoritat estatal (Fishman 1991; Gal 1998). Les polítiques resultants, que pretenen assimilar o erradicar la diversitat lingüística, causen profundes lesions morals en les comunitats afectades. L'esborrat de la llengua no suposa només una pèrdua en termes de comunicació; trenca els vincles amb el patrimoni cultural, la identitat i l'autonomia dels grups (vg., p. ex., Sheneman & Robinson 2024). Les lesions morals constitueixen un sentiment profund de desarrelament i alienació que prové, en aquests casos, de l'obligació d'abandonar la llengua sota l'amenaça de marginació o càstig. Tant la llengua com l'accés

als serveis de traducció s'han reconegut com a determinants socials de la salut (Marmot & Friel 2008; Federici 2022) i aquestes lesions morals tenen conseqüències a llarg termini tant en la salut mental com en la física (Leclerc et al. 2000; Geronimus 2023).

En última instància, la llengua opera com a frontissa del pànic moral i les lesions morals en configurar les percepcions socials de la identitat i la diferència. La por a la divergència lingüística alimenta les ansietats socials i condueix a l'estigmatització i l'exclusió de qui s'allunya de les normes socials dominants. Per a qui rep el dany, les lesions morals són tant personals com col·lectives, ja que els individus i col·lectius afectats pateixen el dany psicològic de ser devaluats i les conseqüències materials de ser exclosos de la plena participació en la societat. Els efectes són de llarga durada i afecten les generacions futures que hereten les normes socials sense correcció (Butler 2009) i pateixen una ruptura potencial amb tradicions morals i culturals, la qual cosa desconnecta les generacions futures del seu passat (MacIntyre 1988; 2007). Al seu torn, les lesions morals s'infligeixen a les societats quan se n'exploten i se'n reforcen les fantasies ideològiques a favor dels interessos de qui ocupa els nivells més alts de l'escala social, amb efectes nocius per al potencial inclusiu de les societats i les seues perspectives col·lectives. Ja sia pel gènere, per la identitat etnolingüística o les dues, la llengua i el gènere esdevenen un camp de batalla on les ansietats socials i els danys personals s'entrecreuen, perpetuant sistemes de desigualtat i exclusió.

### **3. Els marcs jurídics com a codificació de les ansietats socials**

Els sistemes jurídics no són només àrbitres neutrals de la justícia, sinó més prompte un mitjà a través del qual alguns grups socials afirmen el seu poder (Unger 1996; Ewick & Silbey 1998; Kennedy 1998; 2007). Aquests sistemes tenen un paper central tant en la perpetuació del pànic moral com en la inflicció de lesions morals. Mitjançant la legislació, les decisions judicials i l'aplicació de polítiques, el sistema jurídic formalitza i fa complir les inquietuds de la societat. Les angoixes que codifica comprenen les relacionades amb la llengua i les identitats de gènere. Al seu torn, la codificació de les normes



jurídiques sovint reforça les normes socials dominants i estigmatitza encara més els grups marginats, fins i tot criminalitzant la dissidència (Foucault 1975), en especial, la dissidència contra el sistema de privilegis (Wacquant 2009). Tot i que els sistemes jurídics poden promoure la justícia i la igualtat, són igualment capaços de refermar normes d'exclusió quan s'utilitzen per controlar, disciplinar i modelar el comportament de les classes subalternes amb l'explotació de les ansietats socials dominants, com ara la inseguretats (Foessel 2010) i la inestabilitat (Wacquant 2022).

Els marcs jurídics converteixen els pànics morals de la societat en regulacions tangibles que configuren la vida dels individus i les comunitats, institucionalitzant així les dinàmiques de poder integrades en les ideologies dominants. Les inquietuds culturals entorn de la llengua s'han convertit en molts països en mandats legals que marginen les identitats minoritzades a través de polítiques lingüístiques que eleven una llengua dominant alhora que suprimeixen les llengües minoritzades. Per exemple, a França, lleis lingüístiques com la Llei Toubon de 1994 (República Francesa 1994) exigeixen l'ús exclusiu del francès en els espais públics, la qual cosa reflecteix un pànic moral nacionalista al voltant de la preservació de la identitat francesa (Harrison & Joubert 2019). De la mateixa manera, a Turquia, la prohibició del kurd en els entorns oficials i l'educació fins a reformes recents va crear un entorn jurídic que estigmatitzava la identitat kurda, emmarcant-la com una amenaça per a la unitat nacional (Mowbray 2006). A l'Alguer, la prohibició del català durant el feixisme italià i les polítiques posteriors de marginació de la llengua pretenien suprimir identitats regionals que es consideraven incompatibles amb la visió centralitzada de l'Estat nació (Bosch i Rodoreda 2002; Farinelli 2009). La política de la Xina envers les llengües tibetanes i uigurs fa palés un enfocament similar, on el govern ha promogut el mandarí com a única llengua de l'ensenyament a les escoles i la vida pública (Bovingdon 2010). De la mateixa manera, a Malàisia, la prioritització del malai sobre altres llengües ha estat una eina de construcció nacional a costa dels drets culturals i lingüístics de les comunitats minoritàries (Gill 2014). A l'Amèrica Llatina, i malgrat el reconeixement constitucional de les llengües indígenes a molts països, l'espanyol ha dominat l'esfera pública històricament, en especial, en l'educació, limitant la transmissió de les llengües

indígenes a les generacions futures (Tasa Fuster 2023). En concret, a Mèxic, les polítiques lingüístiques s'han utilitzat durant molt de temps com a instruments d'assimilació i l'erosió de llengües com el nàhuatl i el maia ha minat l'autonomia cultural indígena (Hidalgo 2006; Kleinert & Stallaert 2024; vg. també Córdova-Hernández, López Curiel & Briseño Maas en aquest monogràfic). A Guatemala, la repressió de les llengües maies durant l'època de la guerra civil, combinada amb el privilegi de l'espanyol en els dominis oficials, va ser reflex d'esforços més amplis per suprimir les identitats indígenes i fomentar una identitat nacional homogènia (England 2003).

Les polítiques que debiliten determinades comunitats lingüístiques podem trobar-les també en territoris supranacionals. A la Unió Europea (UE), el règim lingüístic s'ha titllat de *multilingüisme integral* (Goffin 1994; Apostolou 2011) o de model de *democràcia etnolingüística* (Fishman 1993), però, de les més de 230 llengües orals que es parlen als territoris dels Estats membres (Anderson 2004), només 24 són oficials de la Unió, i no ho és cap de les més de 30 llengües de signes que es reconeixen en aquests Estats (Unió Europea. Comissió Europea 2022; de Wit 2024). A més, constantment es plantegen propostes que reduïrien els drets d'algunes comunitats, en concret, les més vulnerables (Gazzola 2016). En l'àmbit internacional, la majoria de les llengües orals i totes les llengües de signes s'enfronten al mateix estatus a les Nacions Unides. Tanmateix, utilitzar la llengua pròpia en les negociacions diplomàtiques és un avantatge reconegut com a significatiu, de manera que els descuits reflecteixen la desigualtat en la distribució de recursos entre comunitats lingüístiques. Ho podem veure amb l'alemany a les Nacions Unides, on aquesta llengua no és oficial, però els països de parla alemanya financen el seu propi servei de traducció amb seu a l'oficina de Nova York des del 1975 (vg. Nacions Unides s.d.). A la fi, les lleis i les polítiques que defensen l'exclusivitat lingüística o que no protegeixen contra la discriminació lingüística distribueixen recursos de maneres que reforcen les normes socials que marginen els grups no dominants, intensifiquen el dany moral en negar a les persones el dret a expressar i experimentar plenament la seua identitat i en minen el patrimoni cultural i l'autonomia. En devaluar les identitats no dominants en els imaginaris jurídics i socials i en perpetuar l'exclusió social, aquests mecanismes jurídics poden causar lesions morals duradores.

Per bé que els sistemes jurídics nacionals mostren una tendència a consolidar aquestes inquietuds socials, el sistema internacional, sovint conegut com a *sistema de les Nacions Unides*, ofereix un enfocament diferent en intentar establir normes i estàndards més inclusius per als països membres. Aquest sistema ha jugat un paper decisiu a l'hora d'oferir un fòrum perquè les nacions puguin superar conjuntament les seues ansietats socials i plantar les llavors de societats pròsperes arreu del planeta (Annan 2005). El sistema internacional és un marc global d'institucions, acords i normes que regeixen les relacions internacionals, promouen la pau i treballen en reptes globals. Les Nacions Unides són el nucli d'aquest sistema, una organització intergovernamental creada el 1945 per mantenir la pau i la seguretat internacionals, desenvolupar relacions amistoses entre les nacions i fomentar la cooperació internacional per resoldre problemes d'abast mundial (Nacions Unides 1945). Malgrat els límits que imposa la necessitat de consens i les diferències de poder entre Estats, els tractats i convencions de les Nacions Unides, com també el dret internacional consuetudinari (no codificat), han consagrat ideals en normes jurídiques per protegir els grups marginats, fomentar la igualtat de gènere i garantir la no discriminació. Per exemple, la Declaració Universal dels Drets Humans (AGNU 1948) ha estat fonamental en la configuració de les constitucions i els marcs jurídics nacionals en incorporar principis de dignitat humana i igualtat de drets. La Convenció sobre l'Eliminació de Totes les Formes de Discriminació contra les Dones (AGNU 1979) ha empès els països a adoptar lleis que protegeixen els drets de les dones, mentre que la Convenció Internacional sobre l'Eliminació de la Discriminació Racial (AGNU 1965) ha servit de model per a la legislació en la matèria i la Convenció sobre els Drets de les Persones amb Discapacitat (AGNU 2007a) ha donat lloc a la incorporació generalitzada de polítiques inclusives per a les llengües de signes en els ordenaments nacionals. Aquests exemples il·lustren els valors del dret internacional, que ha esdevingut una força transformadora en instar les nacions a adoptar mesures jurídiques més inclusives i alinear-se amb els estàndards globals que promouen la justícia i la igualtat.

Tanmateix, els marcs jurídics per si mateixos no poden fer avançar les societats. En reconeixement d'aquestes limitacions, el sistema internacional ha desenvolupat un marc complex de negociacions multilaterals, així com pro-

cessos de formació, inspecció i revisió per avaluar el progrés dels països i fomentar-ne una millora contínua. Aquest sistema ha influït, en graus diferents en diferents països, en el desenvolupament de la governança, les polítiques i les condicions socials en els àmbits nacionals (Risse-Kappen 1995). Per exemple, després de la fi de l'apartheid, Sud-àfrica va treballar per remodelar-se i alinear-se amb les normes internacionals de drets humans. Les Nacions Unides van exercir una influència clau en les polítiques del país «donant categoria moral a les veus d'arreu del món que demanen igualtat racial, progrés econòmic i justícia social per a tota la població sud-africana» (Nacions Unides 2004) a través del seu procés d'examen periòdic universal (EPU), un mecanisme del Consell de Drets Humans de les Nacions Unides. Mitjançant les recomanacions de l'EPU i altres instruments de drets humans de les Nacions Unides, Sud-àfrica va adoptar polítiques per garantir la igualtat de drets per a tota la ciutadania i combatre la discriminació. Entre d'altres, va promulgar la Llei de promoció de la igualtat i prevenció de la discriminació injusta (República de Sud-àfrica 2000), que fa referència explícita a les normes internacionals de drets humans i estableix el marc jurídic bàsic per combatre la discriminació en general i, específicament, el racisme, el sexisme i el capacitisme. N'és un altre exemple Bolívia, un país amb una alta proporció de població indígena, gran part de la qual parla llengües indígenes. Durant anys, aquestes llengües van ser marginades a favor del castellà. Tanmateix, Bolívia s'ha convertit en líder de drets lingüístics indígenes sota el govern d'Evo Morales, el primer president indígena del país. Les polítiques de Bolívia han estat influïdes per la Declaració de les Nacions Unides sobre els Drets dels Pobles Indígenes (UNDRIP, vg. AGNU 2007b), que ha ajudat a configurar el marc jurídic i polític per a la protecció de les seues llengües (Hermosa Mantilla 2014). El 2009, el país va aprovar una nova Constitució que declarava Bolívia Estat Plurinacional i atorgava l'oficialitat a les 36 llengües indígenes juntament amb l'espanyol (Bolívia 2009), un èxit que Xile va estar a prop d'emular alguns anys més tard (Espinoza Alvarado 2023). Aquesta mesura s'alinea amb l'èmfasi que la UNDRIP fa en el dret a la llengua i l'autodeterminació dels pobles indígenes. L'Any Internacional de les Llengües Indígenes de Nacions Unides (2019), liderat per la UNESCO (2018), va encoratjar encara més els esforços de Bolívia per promoure les llengües indígenes a

través de l'educació i els serveis públics. El país també va ratificar el Conveni 169 de l'Organització Internacional del Treball (OIT) sobre els pobles indígenes i tribals (1989), que imposa la protecció de les llengües i les cultures indígenes *de jure* i *de facto*.

Tanmateix, els sistemes jurídics nacionals han utilitzat en altres casos les lleis nacionals i els marcs constitucionals per resistir les normes de drets humans, la protecció del medi ambient i la inclusió que promou el dret internacional, especialment, quan aquests canvis es perceben com un desafiament a les normes culturals, la sobirania o els interessos polítics (Koskeniemi 2011). Per exemple, alguns països rebutgen els tractats internacionals sobre drets humans, com la Convenció sobre l'Eliminació de Totes les Formes de Discriminació contra les Dones, invocant raons culturals o religioses que prioritzen els rols tradicionals de gènere (Otto 2009; Schulz et al. 2022). De la mateixa manera, en àmbits com el canvi climàtic, alguns Estats s'han resistit als acords internacionals corresponents, com l'Acord de París, argumentant que aquests compromisos podrien amenaçar els interessos econòmics nacionals o el creixement industrial (Eckersley 2012; Dimitrov 2016). Aquesta tensió entre la sobirania nacional i les obligacions internacionals posa de manifest que els sistemes jurídics nacionals poden actuar com a armes per resistir el progrés, utilitzant disposicions constitucionals o sentències judicials per protegir els interessos de les seues elits nacionals i limitar la influència de les normes internacionals en el camí cap a societats més igualitàries (Fraser 2010). En aquests casos, els marcs jurídics nacionals sovint es posicionen com a guardians dels valors propis, mentre que el dret internacional es presenta com una força externa que desafia l'autonomia local (Wet 2005; Hopgood 2013).

Aquesta resistència a les normes internacionals subratlla una tendència més àmplia en la qual els sistemes jurídics solen funcionar com a mecanismes per mantenir les estructures de poder existents i l'*statu quo*, en lloc de promoure el canvi. Amb les lleis, els governs codifiquen valors, jerarquies i drets que reflecteixen l'equilibri de poder predominant, cosa que dificulta que els grups marginats o menys poderosos puguin desafiar l'opressió que pateixen (Foesel 2010; 2018; Wacquant 2010; 2011). Tanmateix, els sistemes jurídics no són estàtics; canvien quan les reformes esdevenen necessàries davant les pressions

socials, com ara els disturbis socials, els canvis econòmics o l'evolució moral (Hobsbawm 1990; Godenzzi & Sichra 2015; Tasa Fuster 2024). Quan l'ordenament jurídic existent no s'alinea amb les necessitats o demandes socials en evolució, com ocorre en períodes de moviments pels drets civils, de lluites per la igualtat de gènere o de reformes laborals, el dret s'hi adapta per mitigar la inestabilitat potencial i garantir una cohesió social sostinguda. D'aquesta manera, els canvis jurídics no es produeixen necessàriament per promoure la justícia o la igualtat, sinó per recalibrar el sistema i mantenir la pau, l'ordre i el control en una societat canviant.

Fins i tot quan els marcs jurídics fan espai per a una major inclusió, les identitats de gènere i etnolingüístiques sovint s'enfronten a lesions morals agreujades quan les institucions tarden a adaptar-se als canvis socials o quan s'hi resisteixen activament. En els casos en què els moviments socials impulsen una major inclusió (com les crides per un llenguatge de gènere neutre, vg. Daussà & Pera Ros en aquest monogràfic, o el reconeixement de les llengües minoritzades a les institucions públiques, vg. Kleinert & Stallaert 2024), la resistència institucional contra aquests canvis pot perpetuar el dany (vg. Córdova-Hernández, López Curiel & Briseño Maas en aquest monogràfic). Quan l'estat de dret s'empra per oposar-se als valors que poden fer que les societats siguin més inclusives, i que s'han acordat internacionalment, en diem *lawfare*, l'ús il·legítim de l'aparell estatal per a la repressió.

Els sistemes jurídics són fonamentals per transformar el pànic moral sobre el llenguatge i el gènere en estructures concretes de poder que regulen el comportament social i les oportunitats que s'ofereixen a les persones amb identitats diferents. Les lleis que imposen la conformitat amb l'*statu quo* o que no protegeixen la diversitat sovint perpetuen el dany causat pels casos de pànic moral. Aquests marcs jurídics provoquen dany moral quan devaluen i marginen les identitats no dominants. Quan es codifiquen en lleis i polítiques les ansietats socials relatives a la llengua i el gènere, l'estat de dret es converteix en un vehicle per mantenir dinàmiques de poder excloents, amb efectes duradors en les persones i les comunitats que lluiten pel reconeixement i la igualtat. Així, com s'ha exposat més amunt, la llei és una arma de doble tall, capaç de mantenir el pànic moral, però també d'aplacar-lo.

#### 4. Dimensions del *lawfare*

El 1931, la Constitució de la Segona República espanyola va introduir una sèrie de drets, llibertats i reformes de caire social sense precedents. Després de les eleccions de 1931, el Govern de la República va intentar construir una societat més inclusiva i igualitària mitjançant l'establiment d'un marc jurídic que ampliava significativament els drets democràtics dels grups tradicionalment marginats, en particular, les dones i les comunitats etnolingüístiques (Herrera 2003; Ramírez Jiménez 2005; Aguado 2008; Pérez Trujillano 2018). La Constitució va estendre el sufragi universal a les dones, va instaurar el dret al divorci, va promoure la redistribució de terres i va concedir l'autonomia regional, alhora que reconeixia oficialment llengües minoritzades com el català i el basc. Aquestes mesures van representar un canvi decisiu que s'allunyava del patró històric espanyol de concentració del poder en les elits geopolítiques i religioses mitjançant l'absolutisme, la dictadura i el domini religiós. Tanmateix, els marcs jurídics són només un dels ingredients necessaris. Com afirmen Acemoglu i Robinson (2012), la prosperitat o la pobresa de les nacions està condicionada en gran mesura pel caràcter inclusiu o excloent de les seues institucions, més que no per la geografia, la cultura o les polítiques per si soles. Amb unes institucions poc preparades per als canvis introduïts en la legislació, els esforços de la Segona República espanyola prompte descarrilarien, ja que el poder judicial va soscavar sistemàticament l'autoritat de la Constitució, utilitzant les sentències per fer avançar un programa conservador i preservar el poder en mans de les elits (Pérez Trujillano 2024).

L'ús del dret com a arma en aquest cas es basava en la manipulació tàctica dels marcs i institucions de l'Estat per aconseguir objectius polítics i, a la fi, militars. Aquesta forma de *lawfare* no va ser una exclusiva de l'Estat espanyol, sinó que s'ha practicat globalment al llarg de la història, fins i tot en els tribunals nacionals per resistir l'aplicació del dret internacional (Alter 2014). En contrast amb el *lawfare de jure* abordat en el tercer apartat, aquesta forma *derivada* o *suau* del *lawfare* (Gloppen 2018) explota els tribunals i els mecanismes jurídics per aplicar selectivament la justícia i deslegitimar rivals polítics o obstruir reformes (Zaffaroni, Caamaño & Vegh Weis 2021). Aquests usos

repressius de l'aparell estatal s'han exercit per mantenir el poder o suprimir l'oposició en diversos contextos. Per exemple, a l'Àfrica postcolonial, els règims autoritaris utilitzaven sovint el poder judicial per silenciar la dissidència (Campbell 2003; Hyden 2005; Slocum-Bradley 2008; VonDoepp 2009). De la mateixa manera, durant el moviment dels drets civils als EUA, es van utilitzar recursos jurídics per resistir els esforços de dessegregació (Patterson 2001; Klarman 2004). A l'Amèrica Llatina, especialment en les dictadures militars, es van manipular procediments jurídics per justificar violacions de drets humans (Wright 2023). Aquestes tàctiques exemplifiquen altres formes en què l'estat de dret es pot utilitzar com a arma per preservar l'*statu quo* i evitar el progrés de la inclusió.

Recentment, el *lawfare* s'ha utilitzat i s'ha entès cada vegada més com una eina de pressió que utilitza els mitjans de comunicació de masses amb l'objectiu de donar forma a l'opinió pública i obtenir suport per a idees regressives aprofitant les batalles jurídiques i la seua representació als mitjans (Zaffaroni, Caamaño & Vegh Weis 2023; vg. també Hardgrove en aquest monogràfic). Mitjançant l'orquestració de casos judicials de gran repercussió mediàtica i la filtració estratègica d'informació, els grups conservadors han intentat influir en el discurs públic i en el sentiment popular per orientar-lo a favor de les seues postures (del Clot 2023; Matthews 2023). Aquest mètode aprofita la capacitat dels mitjans d'amplificar les batalles jurídiques i presentar-les com a qüestions morals i socials que requereixen una atenció urgent. En aquest sentit, el *lawfare* és una estratègia que substitueix la violència física en maniobres jurídiques i processals destinades a provocar la mort política i la incapacitació judicial de l'oposició (Zaffaroni, Caamaño & Vegh Weis 2021), alhora que inculca la por a la dissidència (Foessel 2010). Així, el *lawfare* esdevé una eina no tan sols per cercar victòries judicials, sinó també per mobilitzar el suport públic i legitimar polítiques reaccionàries, de manera que reforça el poder de les elits conservadores per reintroduir o enrobustir programes polítics i socials que consoliden les desigualtats, normalment, traient-ne profit.

En els debats acadèmics, el concepte de *lawfare* ha guanyat recentment una força notable (Contreras 2023). Tot i que l'ús del dret com a arma de guerra «es remunta a Hugo Grotius», una de les figures fundadores del dret



internacional (Kittrie 2016, 4), el terme va aparéixer en la seua «encarnació moderna l'any 2001» (Dunlap 2005, 823). *Lawfare* es va encunyar originalment en relació amb l'àmbit militar, per descriure «[u]n mètode de guerra on el dret s'utilitza com a mitjà per aconseguir un objectiu militar» (Dunlap 2001). Des d'aleshores, se n'ha ampliat la definició, i ara descriu una mena de guerra social, política, mediàtica i psicològica, sovint destinada a conquerir, recuperar el terreny perdut o guanyar «els cors i les ments» de les persones (Tirado Sánchez 2021, introducció), aprofitant les fantasies ideològiques i les angoixes morals en un esforç per fer prosperar programes ideològics específics. Es tracta, en essència, d'una eina per a una guerra ideològica a llarg termini, on l'estat de dret esdevé una arma per desafiar o reforçar el poder hegemònic (Matthews 2023, 25).

El 2018, Siri Gloppen va establir una classificació triple de *lawfare* en un intent de sistematitzar enfocaments variats i amb distints nivells. Hi va distingir entre el *lawfare* legislatiu, el centrat en els tribunals i el social. El *lawfare* legislatiu inclou la promulgació de legislació específica, els processos constituents, l'aprovació de decrets i tractats que beneficien els sectors dominants (empreses o agents estatals), l'ús d'arguments sobre drets en els processos legislatius i polítics, l'impuls de legislació de nivell inferior a l'estatal per partits de l'oposició en temes vinculats a processos legislatius i polítics, i la defensa pública i l'ús de les influències per actuar sobre partits polítics o òrgans governamentals, o contribuir al desenvolupament de lleis i polítiques. El *lawfare* centrat en els tribunals pot adoptar diverses formes, com ara l'acusació selectiva, els recursos per anul·lar decisions i l'activisme judicial. Pot manifestar-se com a exàmens de constitucionalitat i litigis per recórrer nomenaments o fer avançar objectius polítics. Els litigis estratègics, en què sovint es recorre a tribunals internacionals, es poden aprofitar per impulsar canvis de política o resistir determinades lleis. Finalment, el *lawfare* social pot adoptar la forma de campanyes electorals centrades en drets, campanyes mediàtiques i la creació de narratives jurídiques per modelar l'opinió pública. També pot recórrer als mitjans de comunicació i les campanyes electorals centrades en els drets per reorientar el discurs públic i exercir la defensa dels drets, o a les manifestacions, l'art, la formació de sensibilitats i la desobediència

civil com a part de moviments socials més amplis. La figura 1 resumeix la classificació triple de *lawfare* de Gloppen.

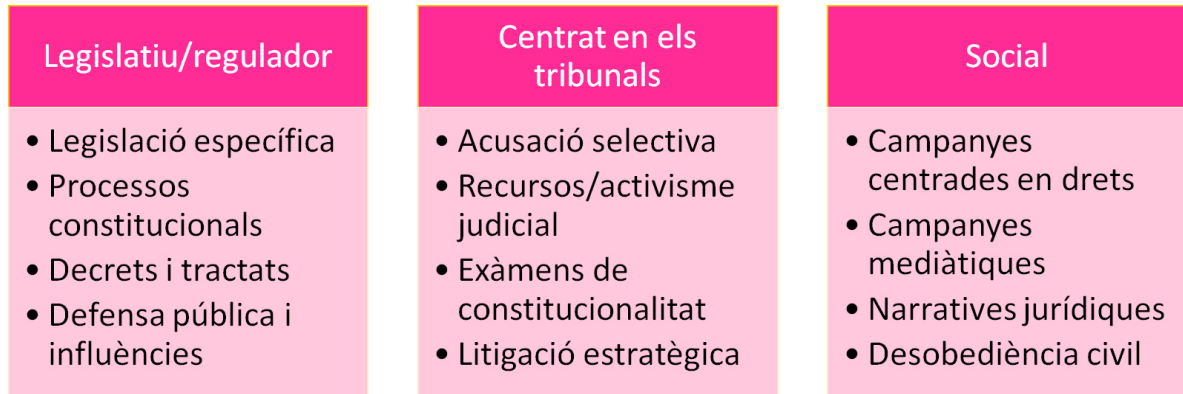


Figura 1. Modalitats del *lawfare* (adaptat de Gloppen 2018, 8)

Les diferents actuacions que es poden dur a terme en cadascun d'aquests nivells són a l'abast de diferents agents, ja sia Estats, agents polítics o organitzacions de base i particulars (exemples del que Gloppen denomina «des de baix»). Aquestes actuacions poden aprofitar-les grups poderosos (per preservar els seus privilegis) i també grups marginats (per promoure els drets humans i la justícia social; vg. Matthews 2023). Per exemple, l'aprovació de legislació, la intervenció dels tribunals, les decisions judicials i la promulgació de polítiques representen eines a les quals tots els grups poden tenir un cert grau d'accés. Tanmateix, des de la perspectiva d'aquest monogràfic, aquests usos només constitueixen *lawfare* quan s'utilitzen com a arma per causar danys, ja sia mitjançant la supressió de drets, la manipulació dels sistemes jurídics per socavar l'oposició democràtica o l'explotació deliberada de les llacunes del dret per eludir responsabilitats. El *lawfare* implica un ús estratègic il·lícit dels marcs jurídics com a mitjà per assolir objectius que tradicionalment requeririen la força, de manera que el dret esdevé un camp de batalla on es disputa el poder. En aquests casos, la intenció no és merament que es faça justícia o protegir drets, sinó més prompte causar danys, infligir patiment, desavantatges o privacions, crear o assegurar un desequilibri de poder i mantenir les

desigualtats. Per contra, quan es pretén reduir els privilegis dels quals gaudeixen uns grups a costa d'altres, el propòsit no és fer mal, sinó anivellar el terreny de joc i, en aquest monogràfic, no en parlem en termes de *lawfare*.

## 5. El *lawfare* contra les comunitats etnolingüístiques i el gènere

Aquest monogràfic qüestiona l'ús il·legítim generalitzat de l'estat de dret per raons estratègiques i discriminatòries, inclòs el sexisme patrocinat per l'Estat i la violència contra les comunitats de gènere i lingüístiques minoritzades. Quan el *lawfare* ataca grups etnolingüístics i de gènere, quan els Estats i altres entitats codifiquen o perpetuen la misogínia, el racisme, el classisme, el capacitisme i el monolingüisme (consolidant així la vulnerabilitat i la discriminació per mantenir l'*statu quo* patriarcal cisheteronormatiu; Richter-Montpetit 2014; Contreras 2023), s'infligeixen lesions morals a aquests grups i a la societat en conjunt, fent-la menys inclusiva i arrabassant-ne el potencial de prosperitat. Utilitzar l'estat de dret com a arma i implementar pràctiques discriminatòries crea més desavantatges per a qui ocupa els esglaons inferiors de l'escala social, en especial, les dones i les persones LGBTQ+. La discriminació pot provenir de lleis que limiten explícitament l'accés, els drets i les oportunitats d'aquestes mateixes comunitats (Zúñiga-Fajuri 2014; Thomson 2016), però també de campanyes judicials i públiques que s'alimenten de la seua vulnerabilitat.

Els articles d'aquest número proposen una mirada crítica a espais de contesa, àmbits de confluència entre els mons socials, els ideals democràtics i el dret, per aclarir com es pot produir el retrocés democràtic en una varietat d'àmbits. En el primer article, per exemple, Deborah Giustini analitza l'impacte sobre les dones del nou procés d'asil simplificat del Ministeri de l'Interior britànic. Malgrat l'atenció a les qüestions de gènere en les directrius oficials, el sistema es mostra hostil i insuficient per abordar els obstacles particulars que troben les dones sol·licitants d'asil. El treball conceptual de Giustini adopta un marc teòric posthumanista basat en teories de la pràctica, que examina de manera crítica la relació complexa entre gènere, polítiques lingüístiques estatals que

perpetuen el poder i la burocratització tecnològica de l'accés lingüístic. El seu article argumenta que la política del Ministeri de l'Interior del Regne Unit no tan sols reforça la posició marginada i vulnerable de les dones, sinó que redueix, a més a més, els recursos de què disposen en el procés d'asil en retirar el suport a la interpretació, la defensa lingüística i la mediació cultural. Com revela l'autora, «la implementació de la nova pràctica de sol·licitud d'asil transfereix la càrrega lingüística del sector de la justícia a les dones, tot alimentant un clima d'exclusió sociomaterial que restringeix significativament el dret de les dones sol·licitants d'asil a ser escoltades adequadament» (Giustini 2024, 125 i s.). Giustini argumenta que l'exclusió digital i una baixa competència en la llengua dominant del país d'acollida perjudica de manera desproporcionada les dones migrants; l'article examina detingudament com les pràctiques (en aquest cas, socials, institucionals, jurídiques i tecnològiques) poden generar desigualtats de gènere lesives, posant tota la càrrega de l'accés lingüístic sobre les espatlles de les sol·licitants d'asil. Se'n descuiden les necessitats i particularitats, però «la negligència implica responsabilitat» i el silenci forçat que en resulta constitueix «un acte de violència institucional (i institucionalitzada)» (Wallace & Monzó-Nebot 2019, 8). L'obra de Giustini és un testimoni de la «rellevància de la traducció i la interpretació en els serveis públics jurídics de les societats democràtiques modernes» (ibid.).

El segon article és un altre examen crític de la violència lingüística, aquesta vegada, contra les dones empresonades, que també dona suport al caràcter indispensable de la traducció i la interpretació en les societats democràtiques. Mitjançant una enquesta singular de persones empresonades a Mèxic (ENPOL, o Encuesta Nacional de Población Privada de la Libertad) realitzada el 2021, Milena Ang i Miguel Vázquez tracten la difícil situació de les recluses que parlen llengües indígenes i demostren que la manca de serveis de traducció i interpretació allarga el temps de presó de les dones, en fomenta l'aïllament i, el més flagrant, contribueix directament a augmentar el comportament depredador de les autoritats en forma de suborn, tortura i violència sexual. L'anàlisi realitzada per l'autora i l'autor revela que els casos denunciats d'aquests tipus de violència són considerablement més elevats entre dones que parlen llengües indígenes que en qualsevol altre grup analitzat en el conjunt de dades de

l'Estat. L'article forja un vincle clar entre, d'una banda, la manca d'accés a la traducció i la interpretació i, de l'altra, la violència sexual i la temptativa de violació, la qual cosa permet afirmar que la violència lingüística patrocinada per l'Estat obri la porta a la violència física i sexual. Així, el monolingüisme del sistema jurídic estatal i les pràctiques monolingües de les institucions s'uneixen per transformar la llengua en «una eina que permet a les institucions més coercitives de l'Estat, el sistema carcerari, confinar físicament algú sense cap defensa possible» (Ang & Vázquez 2024, 169). Per a aquestes dones, una baixa competència en espanyol crea vulnerabilitats en tot el seu recorregut pel sistema penal, i la desatenció i els abusos perpetrats per les autoritats tenen un paper clau perquè les seues lesions morals i físiques siguin duradores i profundes. Aquest article revela que la violència lingüística no és només una violació de les garanties processals, sinó també una eina que facilita les condicions perquè s'exercisca la violència física i sexual patrocinada per l'Estat contra les dones indígenes. És important destacar que aquest treball demostra que la violència lingüística obri la porta a altres formes de maltractaments i proporciona proves que les dones indígenes que no reben serveis de traducció tenen més probabilitats de patir abusos greus, la qual cosa posa de manifest una zona crítica i poc explorada d'intersecció entre els drets lingüístics i els drets humans en contextos carceraris.

Mentre que els dos primers articles d'aquest monogràfic se centren principalment en dones d'identitats caracteritzades per interseccions, Eva J. Daussà i Renée Pera Ros estenen la seua anàlisi a les persones no binàries, centrant-se en les ideologies lingüístiques i com operen en els debats socials. Estudien el *lawfare* funcional que es desenvolupa en entorns no jurídics, en comunió amb els dictats de les autoritats lingüístiques: en aquest cas, l'Institut d'Estudis Catalans (IEC). L'article subratlla que el llenguatge de gènere neutre serveix com a camp per al *lawfare* lingüístic i revela que les polítiques lingüístiques oficials s'utilitzen com a arma per mantenir els desequilibris de poder regnants en la societat. En examinar la norma lingüística en el marc del *lawfare*, Daussà i Pera Ros ofereixen un examen lúcid del debat sobre el llenguatge inclusiu en el context del català, centrant-se en les ideologies que sostenen la defensa de formes lingüístiques específiques i dirigint una mirada crítica a les autoritats

que promulguen les normes lingüístiques i a les seues pròpies ideologies subjacents. Aquestes autoritats estan fent un ús il·lícit dels seus poders normatius per utilitzar-los com a arma contra grups específics de parlants que experimenten un rebuig actiu a les seues identitats i trajectòries vitals. Les declaracions recents de l'IEC en relació amb el llenguatge masculí com a llenguatge per defecte van desencadenar una infinitat de respostes a l'univers de Twitter (ara X). Com a contrapunt, una guia del 2023 sobre el llenguatge de gènere neutre en català va estimular de la mateixa manera una proliferació d'opinions públiques a les xarxes socials, donant forma a les converses que constitueixen la base de les dades que s'analitzen en aquesta aportació. L'article de Daussà i Pera Ros dilucida com els individus transformen les postures institucionals en armes per promoure les seues pròpies ideologies i mostra com les formes lingüístiques (i les ideologies corresponents) tenen un significat social i desencadenen la discriminació contra grups socials concrets. Al mateix temps, col·loquen les institucions lingüístiques en el punt de mira, i demostren que, en adherir-se a una visió programàtica que descarta la legitimitat del llenguatge de gènere neutre, els discursos oficials aconseguixen perpetuar no només el desempoderament lingüístic, sinó també la marginació social, reforçant «les jerarquies sociopsicològiques dins d'una comunitat i, així, legitimar, directament o indirecta, la violència (verbal), la invisibilització i l'exclusió de les persones que tenen una identificació de gènere diferent de la masculina» (Daussà & Pera Ros 2024, 212).

En el quart article del monogràfic, la historiadora Anne Hardgrove també considera casos de *lawfare* contra comunitats que queden fora del binarisme tradicional de gènere. Hardgrove ens porta al subcontinent indi i hi estudia la marginació històrica i etnolingüística de la població *hijra*, una comunitat de tercer gènere del sud d'Àsia. Utilitzant un marc teòric postcolonial, l'estudi integra l'anàlisi de gènere i classe per explorar progressos jurídics clau, basant-se en exemples de la legislació colonial i contemporània de l'Índia i el Pakistan. L'enfocament transdisciplinari de Hardgrove combina l'anàlisi lingüística i narrativa amb l'observació participant etnogràfica, catalogant esdeveniments crítics en el moviment transgènere modern en temps posteriors a la independència, a més de delimitar els llegats del dret colonial britànic contra

la població hijra. Basant-se en l'anàlisi de legislació, campanyes activistes i observació participant, Hardgrove afirma que certes comunitats transgènere aprofiten l'estatus social (sovint negatiu) de les hijres per influir en els marcs jurídics discriminatoris, i fan avançar així la seua pròpia acceptació, assimilació i normalització. Aquest estudi de cas subratlla la complexitat de les aliances dins dels grups de gènere *queer* en les societats postcoloniales del sud d'Àsia. Els resultats de l'article qüestionen la suposició que aquests grups són aliats naturals i aporten una visió crítica sobre certs moviments moderns de drets transgènere.

L'article final del monogràfic sobre els usos il·lícits de l'aparell estatal contra les comunitats etnolingüístiques i el gènere ens trasllada als entorns judicials de Mèxic, on les autores Córdova-Hernández, López Curiel i Briseño Maas analitzen l'experiència de les dones indígenes traductores i intèrprets en l'Administració de justícia mexicana des d'una perspectiva interseccional que té en compte els aspectes de gènere en la traducció. Les autores utilitzen el model de 2016 de Hill Collins i Bilge per estudiar els quatre dominis del poder: l'interpersonal, el disciplinari, el cultural i l'estructural. L'anàlisi interseccional de la política de disponibilitat lingüística en el sistema mexicà revela condicions d'opressió, exclusió i violència institucional cap a les persones parlants de llengües indígenes, especialment, les dones indígenes. Per complementar l'anàlisi de les polítiques, l'article adopta una perspectiva qualitativa amb un enfocament narratiu per explorar les experiències identitàries, culturals i professionals de les dones indígenes que actuen com a mediadores lingüístiques als tribunals, que «són, sobretot, dones immerses en una lluita constant per la materialització dels seus drets humans, col·lectius i lingüístics» (Córdova-Hernández, López Curiel & Briseño Maas, 285). Els resultats revelen els reptes que acaren aquestes dones: «Tot i que moltes d'elles han superat les barreres familiars i comunitàries per convertir-se en professionals, la seua condició de dones indígenes encara les col·loca en una situació de discriminació i exclusió» (ibid.). Alhora, les dades permeten explorar les estratègies que utilitzen les dones indígenes traductores i intèrprets en l'Administració de justícia de Mèxic. L'article indaga en les seues lluites professionals i personals contra la discriminació de gènere, etnolingüística i de classe social, i destaca com aquestes dones reverteixen i resisteixen la discriminació en la

seua vida quotidiana i en la seua pràctica professional, alhora que ressalta els fracassos de les promeses incomplides d'accés lingüístic per a determinades poblacions. En aquest context, les autores subratllen la resiliència i la determinació de les dones indígenes en el seu afany per promoure els drets professionals i humans, la qual cosa pot inspirar més investigacions i el reconeixement del paper fonamental d'aquestes dones en la justícia i l'equitat socials.

## 6. Un projecte de vigilància: destapar el *lawfare* per trasbalsar l'opressió

L'examen dels usos il·límits de l'aparell estatal d'aquest article introductori ha posat de relleu que el dret es pot utilitzar de maneres polifacètiques com a arma contra les comunitats marginades, especialment, les definides per identitats de gènere i etnolingüístiques. El *lawfare*, tal com s'exposa al llarg del monogràfic, no només exerceix opressió, sinó que funciona com una estratègia deliberada per mantenir les estructures de poder existents i reforçar les jerarquies socials. En potenciar les pors de la societat, incloses les ansietats sobre la seguretat i l'estabilitat (Wacquant 2009; Foessel 2010), els marcs jurídics es manipulen per suprimir la dissidència, especialment, la de les comunitats marginades, reforçant d'aquesta manera les jerarquies existents i fent retrocedir les llibertats democràtiques. L'estudi del *lawfare* revela que els sistemes jurídics, imaginats com a mitjans per oferir justícia i igualtat, poden servir com a mecanismes d'exclusió i dany. En aquest sentit, els usos il·límits de l'aparell estatal subratllen la natura dual de l'estat de dret com a mecanisme de justícia social i com a eina per mantenir les estructures de poder i la marginació existents.

Tal com es defineix en aquesta introducció i s'utilitza al llarg del monogràfic, el *lawfare* fa referència a la manipulació estratègica dels sistemes i les normes jurídiques per mantenir i reforçar les estructures opressores de maneres que causen danys. El *lawfare* sol estar al servei de programes conservadors, sol beneficiar agents estatals i no estatals que ocupen les posicions amb més poder i s'utilitza per socavar els drets humans i els processos democràtics. Els processos del *lawfare* abasten la codificació en lleis d'ideologies contràries a la



inclusió i els valors democràtics, com també la judicialització de la política, en la qual els tribunals i els mecanismes jurídics esdevenen l'escenari principal d'un conflicte polític i social i de la resistència al progrés democràtic. A més, el *lawfare* fa servir el sistema jurídic per influir en l'opinió pública a favor de programes conservadors, per legitimar i donar suport a legislació i actuacions judicials en pro de valors regressius i, en definitiva, a l'opressió política i econòmica. Amb aquests mitjans, el *lawfare* influeix en les polítiques públiques, modela els comportaments socials i influeix en els resultats polítics.

En línia amb aquesta conceptualització, aquest monogràfic examina des del *lawfare* les experiències de les comunitats etnolingüístiques i de gènere i s'hi analitzen espais de conflictes sociopolítics on es discrimina i s'exclou determinades comunitats. En aquesta anàlisi, se subratllen les implicacions morals dels debats jurídics sobre llengua i gènere. Les contribucions d'aquest número destaquen com fins i tot intents aparentment democràtics poden agreujar les vulnerabilitats i les injustícies a què s'enfronten grups socials específics la identitat dels quals depèn (també) del seu gènere i grup etnolingüístic. A més, remarquen que l'ús específic del *lawfare* contra les dones, les persones LGBTQ+ i les persones parlants de llengües minoritzades demostra esforços concertats per socavar-ne els drets, limitar-ne les oportunitats i suprimir-ne les identitats explotant el pànic moral de la societat, la qual cosa provoca lesions morals als grups afectats i a les societats en general.

Els articles d'aquest monogràfic subratllen la necessitat d'un compromís crític amb la funció dels sistemes jurídics en la perpetuació de la desigualtat. Ho fan centrant-se en el nexa específic de l'ús il·legítim de l'aparell estatal contra les comunitats etnolingüístiques i de gènere a través de fronteres, sistemes i llengües. Els articles qüestionen la percepció del dret com a àrbitre imparcial i en revelen el potencial com a arma en batalles ideològiques. Les idees que s'hi ofereixen demanen una reavaluació dels marcs jurídics per garantir que aquests serveixen a la causa de la justícia i l'equitat, en lloc de ser cooptats per consolidar la discriminació i la marginació. L'exploració del *lawfare* que presenta aquest monogràfic palesa la necessitat urgent de fiscalització del poder i defensa dels drets de les comunitats marginades. En exposar les maneres en què l'estat de dret es pot utilitzar per perjudicar la població més que no per

ajudar-la, aquest monogràfic pretén contribuir als esforços continus perquè les societats esdevinguin més justes i inclusives, i on els sistemes jurídics siguin autèntics instruments de justícia i igualtat.

Esperem que aquest monogràfic estímul un diàleg de gran abast al voltant dels usos de la legislació, les polítiques (lingüístiques) i les pràctiques com a armes en sistemes en què les comunitats de gènere i etnolingüístiques continuen treballant contra el *lawfare*. Els debats en diferents àmbits i amb diferents parts interessades, com els que conté aquest monogràfic, ajuden a obrir el diàleg, inspirar anàlisis crítiques i garantir la protecció de les poblacions vulnerables. Els reptes i les tàctiques perjudicials revelades en les contribucions, col·lectivament, demanen una investigació més transdisciplinària per tal d'assegurar els drets lingüístics de les comunitats etnolingüístiques i de gènere que altrament es podrien perdre en el sistema de justícia penal, les que perden els drets a serveis, l'educació i l'assistència sanitària, o les persones que, per no tenir situacions regularitzades, tenen posicions eminentment vulnerables (vg. també els articles recollits en Ruiz Rosendo & Martin 2024). L'únic mecanisme de supervivència d'algunes d'aquestes identitats pot ser que prestem la màxima atenció a tots els mecanismes de control social i trobem possibilitats d'actuació dins de les limitacions imposades (Scott 1985; Butler 1993), en especial, les lesions morals infligides pel *lawfare*.

Les contribucions d'aquest monogràfic examinen amb detall casos particulars d'usos il·líicis de l'aparell estatal contra les comunitats etnolingüístiques i el gènere, focalitzant en una gran varietat de sistemes, fronteres i idiomes. Així, fan palés que els usos il·líicis de l'aparell estatal com a forma de discriminació etnolingüística, específicament, contra dones, persones no binàries i persones LGBTQ+, representen un àmbit al qual s'hauria d'adreçar una recerca substancialment més interdisciplinària. Malgrat que s'han dedicat ja moltes pàgines a les polítiques de seguretat, criminalització i crimmigració (la criminalització de la immigració) focalitzant en les dones migrants i les persones LGBTQ+, i fins i tot sobre el *lawfare* contra l'avortament i els drets reproductius de les dones, continua havent-hi diverses àrees d'investigació per explorar.

A tall d'exemple, encara no s'ha estudiat plenament el retrocés causat pel *lawfare* contra els estudis de gènere i els currículums amb perspectiva de gènere

(per exemple, als Estats Units, el Regne Unit o Hongria). També calen més coneixements sobre si l'instrumentalisme jurídic podria conferir un gir positiu en espais potencialment segurs com l'activisme i els mercats laborals, possibles refugis que romanen inexplorats. Explorar els espais segurs és, de fet, una tasca urgent que obre interrogants: Hi ha enclavaments etnolingüístics segurs dins dels mercats laborals, l'educació o altres àmbits de participació social per a dones, persones no binàries i persones LGBTQ+? Quin és el paper de l'activisme liderat per dones i LGBTQ+ en l'adopció de la diversitat etnolingüística? Què aporta la realitat viscuda per les dones i persones LGBTQ+ en les zones de fronteres etnolingüístiques a les converses sobre justícia i democràcia? Què ocorre amb els sistemes judicials que reforcen les jerarquies socials i imparteixen injustícia a les comunitats etnolingüístiques i de gènere? De quina manera es cometen crims invisibles contra dones i persones LGBTQ+ migrants? Quins són els danys individuals i col·lectius causats per la discriminació social derivada del biaix monolingüe, incloses les microagressions contra dones migrants i persones LGBTQ+ que genera l'accentisme, l'oralisme i el lingüisme? Quines són les relacions entre el monolingüisme i l'heteronormativitat i el seu impacte en les percepcions i comportaments autoregulats de les persones en relació amb la llengua i la diversitat de gènere? Quins efectes té l'ús de la tecnologia en el manteniment o l'alteració de les comunitats etnolingüístiques i de gènere?<sup>2</sup> Aquestes preguntes justifiquen una interpel·lació contínua que insta la comunitat acadèmica a examinar críticament com es manipulen els sistemes jurídics per perpetuar l'opressió de gènere i etnolingüística. Mentre els marcs jurídics s'utilitzen per reforçar les jerarquies socials, les comunitats marginades seguiran patint danys i les societats continuaran sent incapaces d'assolir el seu potencial. Aquest monogràfic demana vigilar el poder i fiscalitzar els usos potencialment il·legítims de l'aparell estatal, alhora que demostra que els sistemes jurídics poden evolucionar (i ho han de fer) per defensar veritablement la justícia i la igualtat per a totser.

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<sup>2</sup> Pel que fa a aquesta darrera pregunta, podeu consultar els capítols inclosos en Tasa Fuster, Monzó-Nebot i Castelló-Cogollos (2023), Monzó-Nebot i Tasa Fuster (2024a; 2024b) i el monogràfic de *Just. Journal of Language Rights & Minorities, Revista de Drets Lingüístics i Minories* de pròxima aparició editat per Giustini i Jiménez-Andrés (2026, en preparació).

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## Women's challenges and gender inequality implications in the UK Home Office's streamlined asylum process: A practice-based posthuman perspective

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## **Women's challenges and gender inequality implications in the UK Home Office's streamlined asylum process: A practice-based posthuman perspective**

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### **Abstract**

This conceptual article scrutinises the challenges faced by women seeking asylum in the United Kingdom, focusing on the impact of the Home Office's streamlined asylum process. Despite mention of gender-based issues in official guidelines, the system exhibits hostility and inadequacy in addressing the unique obstacles women encounter. Through a posthuman, practice-based theoretical framework, the article examines recent gender-based concerns raised about the Home Office's use of questionnaires, machine translation, and informal linguistic assistance in lieu of interpreted asylum interviews for selected nationalities. It also highlights the implications of technologisation and bureaucratisation on linguistic access, arguing that the revised asylum-seeking process not only reinforces women's marginalised position but also diminishes crucial resources like interpreting, in turn contributing to gendered power asymmetries between asylum seekers and the justice system. The article contends that this approach transfers the burden of language understanding to women, contributing to a climate of sociomaterial exclusion that curtails the rights of female asylum seekers to be adequately heard.

**Keywords:** Gender inequality, streamlined asylum process, UK Home Office, practice theory, posthumanism, sociomateriality

## 1. Introduction

Women fleeing human rights abuses and seeking asylum in the United Kingdom is a well-established phenomenon (United Nations High Commissioner for Refugees, UNHCR 2015). Although gender-based claims are acknowledged in the Home Office's asylum-seeking guidelines (UK Home Office 2018), asylum-seeking women encounter distinctive obstacles in a system which is particularly hostile and unresponsive to their needs. These include difficulties in disclosing personally- and culturally-sensitive information; recurring dependence on one's husband for legal status claimant procedures; and a culture of disbelief surrounding the credibility and unique circumstances of women's stories, paired with the trivialisation of gendered forms of persecution, including rape, domestic abuse, forced marriage, and honour crimes (Hunt 2008; Baillot, Cowan & Munro 2012; Maryns 2013; de Angelis 2020). Furthermore, communicative difficulties arising from language, culture, and narrative convention differences make interpreting part and parcel of the asylum experience (Inghilleri 2005; 2007; Jiménez-Ivars & León-Pinilla 2018; Killman 2020). Specifically, interpreting is configured as a space for praxis that facilitates women's narration and sensitive disclosure in culturally and linguistically appropriate ways (Celik & Cheesman 2018), upholding the quality of legal and social support (Todorova 2020).

While the asylum system in the UK has traditionally relied on interpreting (Inghilleri 2005; Killman 2020), recently concerns have been raised about the Home Office's *streamlined* asylum process; that is, the use of questionnaires in lieu of official interpreter-mediated interviews to clear the backlog of 117,000 asylum applications as of 2023 (Ozkul 2023). Claimants are required to reply in English by relying on machine translation or informal language assistance within twenty working days, pending asylum refusal. The circulating translation and interpreting discourse has been quick to underline the perils of mistranslations and the necessity of employing qualified professionals in such a high-stakes context (Chartered Institute of Linguists, CIOL, & Institute of Translation and Interpreting, ITI 2023; National Register of Public Service Interpreters, NRPSI 2023). Nevertheless, this discourse has neglected

to acknowledge several core implications of the bureaucratisation and technologisation of asylum processes: namely, that they are central to the exercise of institutional and gender-unequal power, and that they have direct implications for female asylum seekers.

This conceptual article questions the UK Home Office's streamlined asylum process, analysing the complex relationship between gender and the technologisation and bureaucratisation of linguistic access. It argues that the UK Home Office measures not only reinforce women's marginalised position, but also reduce the resources at their disposal in the asylum process by withdrawing the support of interpreting. My argument is grounded in practice theory (Schatzki 2002; Nicolini 2012) and its convergence with posthumanism, especially in its feminist version (Haraway 1991; 1997; Barad 2003; 2007). This convergence has been conceptualised as posthuman practice theory (Gherardi 2017). Posthuman practice theory grants equal onto-epistemological status to humans and non-humans, providing the context for a discussion of the constitutive entanglement of the social and the material. Harnessing the explanatory potential of such a perspective, the article problematises how the revised, technologised, and bureaucratised asylum-seeking practice and the lack of formal language assistance are implicated in the sociomaterial challenges faced by women asylum seekers. Women's high degree of digital exclusion stands out, as it prevents access to important information, advice, and support through technology, including machine translation itself (Choudhry 2022; GSMA 2023). The challenges are compounded by women's small support networks, often contingent on domestic partners and potential exploitative marital situations (Ogbe et al. 2021). They are further exacerbated by limited access to legal advice (Tastsoglou, Petrinioti & Karagiannopoulou 2021) accompanied by low levels of financial means (Hunt 2008) and forced reliance on local communities' *linguistic charity* in lieu of formal interpreting and intercultural mediation services. These challenges often lead women to experience loss of their voice (McKinnon 2009; Maryns 2013).

Overall, the article contends that the implementation of the new asylum-seeking practice transfers the burden of language from the justice sector to women, feeding a climate of sociomaterial exclusion that significantly restricts the

right of female asylum seekers to be adequately heard. The theoretical harness of a posthuman practice approach contributes by tracing the ramifications of constantly-evolving migration and language policy, highlighting that we cannot view them in isolation but rather that we must consider them as embedded in institutional forms of power, contexts of socio-material and discursive deprivation, and their larger configurations (Boéri & Giustini 2024). To address these challenges and ensure that women asylum seekers navigate complex procedures and communicate their experiences effectively, it is crucial to ensure the provision of language support practices that do not further compromise their agency.

This article is organised as follows. Having established a foundation through this introduction, the article does not reprise well-established theorisations of asylum interpreting. Rather, it first outlines a posthuman, practice-based theoretical framework. Then, it discusses the interrelation between gender inequality implications and the technologisation and bureaucratisation of asylum practices in the United Kingdom. In so doing, the article concludes by elaborating on the application of a posthuman practice perspective to the streamlined asylum-seeking process in the United Kingdom. The intention is to contribute to scholarly discourse by offering a renewed analytical perspective within the confines of this framework.

## **2. A practice-based, posthuman approach: Framing the assemblage of sociomaterial inequality**

This article brings together converging ideas from practice theories (Schatzki 2002; Nicolini 2012) and posthumanism (Haraway 1991; 1997; Barad 2003; 2007) as posthuman practice theories (Gherardi 2017). These approaches present interconnected questions about “sociomaterial entanglements” (Orlikowski 2007, 445), which help to frame how women’s gendered struggles and the lack of formal language assistance might coalesce in asylum seeking.

Posthumanism encompasses critical socio-philosophical theories focused on understanding how the human, the non-human, and the technological are

articulated in the world. Notably, posthumanism “marks a refusal to take the distinction between ‘human’ and ‘non-human’ for granted” (Barad 2007, 32). While a humanist approach conceives of humans as sites of embodied understandings, posthumanism interrogates how all the social and material elements hold together and acquire agency in being entangled. Posthumanism owes much of its conceptual underpinnings to the pioneering work of feminist scholars including Donna Haraway (1985; 1991; 2016) and Karen Barad (2003; 2007), who have led it through the traditions of science and technology studies and new materialism.<sup>1</sup> Ontologically, posthumanism attends to the production of reality by people and things (Cozza & Gherardi 2023), recognising that as knowing subjects, we are becoming with the world and that “the becoming of the world is a deeply ethical matter” (Barad 2007, 185). A key contribution of posthuman thought has been to demonstrate how all matter is interlinked, mutually dependent, and co-evolved, whether this is the impact humans have on technology and vice versa, or how gender, sexuality, and social relations have all been reconfigured through the incorporation of technology (Haraway 1985; 2016) and the ethics of these developments as they affect humans, the law, policies, and the social order.

In turn, practice theories are ontological orientations that take *practices* as the lens for understanding social life. Practices are open-ended, organised sets of materially mediated doings, sayings, and ways of relating, which are socially legitimised among people (Nicolini 2012). While the intellectual grounds of practice theories include the work of Marx, Heidegger, Wittgenstein, Latour, Bourdieu, and Giddens, it is the second generation of practice theorists (Schatzki 2002; Nicolini 2012; Shove, Pantzar & Watson 2012) that has insisted on “the critical role of the body and material things in all social affairs” (Nicolini 2012, 4). Practice theories decentre the role of actors to argue instead that it is the interrelation of materials, individuals, and purposeful

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<sup>1</sup> The former explores the development and impact of science and technology in their historical, cultural, and social contexts. The latter attends to the interrelation of matter and discourse as an underexplored scholarly question.



action that plays an active role in equally constituting and perpetuating practices as the very fabric of the social. This principle of symmetry in the performative accomplishment between humans and nonhumans, jointly shared by posthuman and practice approaches, is epitomised by the concept of *sociomateriality*. Popularised by Wanda Orlikowski (2007) together with Susan Scott (Orlikowski & Scott 2008) in the practice-oriented tradition of organisation studies, sociomateriality is inspired by the feminist onto-epistemologies of Donna Haraway (1991; 1997) and Karen Barad (2003). Sociomateriality—purposely written without a hyphen—emphasises the entanglement of the human and the material subject, both being equal and mutually-influencing actors in creating meaning and in shaping social (inter)actions (Gherardi 2017).

Hence, posthumanism and practice theory converge through their sociomaterial roots in a relational epistemology. This relational epistemology, dubbed “posthuman practice theory” (Gherardi 2017), assumes that human beings and things coexist as entities that interact and impact each other in a constitutive entanglement. In other words, sociomateriality becomes the *glue* that connects the human and non-human (including technological) elements of a practice. Importantly, another point of convergence between the two approaches into a posthuman practice approach relates to the sociomaterial co-dependencies of practices.

From one side, practice-oriented scholarship is sensitive to the political, historical, institutional, and material conditions of practices: context matters (Nicolini & Korica 2021). By *context*, it is meant that practices never exist in isolation; they always associate with one another in larger formations (Shove, Pantzar & Watson 2012). For instance, meal planning practices are linked to grocery shopping, driving, or walking to the supermarket, navigating grocery store aisles, storing food, etc. These practices form configurations; the way individuals plan, shop for, store, and cook groceries contributes to their existence and is influenced by historical, cultural, and social contexts. Notably, practice theory suggests that large societal issues such as inequality are outcomes of the ways practices combine into varying sociomaterial textures of advantage (i.e., access to material resources) and modes of participation

of human agents (i.e., the social) (Nicolini 2012; Shove 2023). It follows that the “grand categories of social theory—power, ideology, class relationships, legitimation, alienation, patriarchy” (Pred 1981, 20) should “be treated as features and expressions of the range of practices enacted in society” (Shove 2023, 109). Hence, forms of inequality result from the sociomaterial organisation of everyday life; that is, from practices combining across social, political, institutional, legal, and other contexts, and from the ways that human beings are associated with them. For instance, in the asylum-seeking process, individuals who are more proficient in navigating practices entangled with legal systems and who have better access to related resources including money, translation, interpreting, and legal aid may have an advantage over those who lack access to the practices and resources in these domains. In sum, practices empower certain sociomaterial courses of action (including those positioned to take them) over others. They shape a distinctive space for collective and individual agency, even though access to such agency (that is, power by any other name) is unevenly distributed (Nicolini & Monteiro 2017).

From the other side, posthumanism shares a political critique of issues of power, domination, and exclusion with the emancipatory ethos of practice scholarship. For instance, by stressing the gendered location of the human subject, feminist posthumanism does not adhere to a “notion of equality that assumes an unproblematic belonging to the same category of humanity” (Braidotti 2017, 21). Instead, as Karen Barad argues (2003), meaning and matter are inextricably fused; that is, they are always “intra-acting” in practices. Intra-action understands agency as not an inherent property of a human, but as a dynamism of forces (Barad 2007, 141) in which all designated *things* (human and non-human) are constantly influencing each other. Famously, Barad uses the example of linguistic and discursive practices—which are most relevant to this article—to argue against a separation of the social and the material world, proposing instead that they are mutually constitutive. It is not just that these entities interact; they *intra-act*, dynamically defining each other in the process. In the context of the gendered challenges of the streamlined asylum process in the United Kingdom, as I shall show, intra-

action has important implications for issues of linguistic access, power, and inequality. In fact, with intra-action comes a responsibility—or responsibility—an ethical need to acknowledge that sociomaterial practices may give rise to conditions of possibility for some people and exclusion for others (Haraway 1997; Barad 2007). From a posthuman perspective, we cannot merely pay attention to what and who matters, but we need to consider what and who is *excluded from mattering* because of how conditions of participation in practice are shaped.

Against this backdrop, this article conceives of streamlined asylum practices as an onto-epistemological viewpoint rather than an empirical phenomenon only, in which “meaning and matter, the social and the technological, are inseparable and they do not have inherently determinate boundaries and properties; rather, they are constituted as relational effects performed in a texture of situated practices” (Gherardi 2017, 40). The conceptual affordances of posthumanism and practice theory inform the article as an apparatus for approaching relations of power and language that perform gendered becomings. In the following sections, this paper draws upon a corpus of seventy secondary data sources: academic and policy reports, governmental documents, law and migration associations’ documents, and media articles to develop its arguments and theoretical insights. Given the study’s conceptual nature, emphasis is placed on a posthuman, practice-based interpretation of these sources rather than on specific methodological procedures such as coding. The secondary sources were selected because they hold both empirical rigor and analytical force in mapping gendered experiences of asylum seeking. As Lenz Taguchi and St. Pierre (2017, 643) argue, using “concept as method” articulates an onto-epistemological arrangement that does not necessarily begin with systematised, instrumental methodologies commonly used in social science inquiry. Instead, the concept can orient the researcher’s thinking, including towards unconventional research practices. The absence of a traditional methods procedure is consistent with the study’s aim to offer an exploratory encounter to advance onto-epistemological knowledge on gender, technology, and communication. Thus, the article invites us to consider the points raised as resources to think with.

### 3. The streamlined asylum process in the United Kingdom

Societies are witnessing high indices of asylum seeking: armed conflicts, human rights violations, famines, and natural disasters are causing millions of people to flee. The number of forcibly displaced individuals worldwide increased from 41.1 million in 2010 to 114 million in 2023—a 178% rise in thirteen years (UNHCR 2023a). Asylum seekers—not “refugees” until the host country government accepts their claim—may never be able to return to their country of origin (UNHCR 2016).

In the past decade, the UK has experienced a significant increase in the number of asylum-seeking applicants. In September 2023, 75,340 applications (relating to 93,296 people) were recorded, 111.8% more than in 2019 (British Refugee Council 2023). To claim asylum, individuals must apply upon their arrival, or as soon as it would be unsafe to return to their country. The more a claimant waits, the more likely the application is to be refused (UK Home Office 2023a). The first step is the screening, a meeting with an immigration officer. During the screening, claimants are photographed, have their fingerprints taken, are asked why they want asylum, and are required to submit supporting written evidence, including travel documents, IDs, birth and marriage certificates or school records, and proof of a UK address. If their application is positively assessed, the claimant will undergo one or more asylum interviews (in-person encounters with authorities) until the final adjudication. Claimants must wait for the outcome, reporting to a caseworker regularly. Thousands wait years for a final decision.

For asylum applicants, part 11 of the UK Immigration Rules, paragraph 339ND states that the Home Office—the ministerial department of the British Government responsible for immigration, security, law, and order—must provide, at public expense, professional interpreter services wherever and whenever necessary (UK Home Office 2023b). The Home Office works with its own Interpreter Language Services Unit as well as commercial providers and public sector bodies (e.g., the National Register of Public Service Interpreters, NRPSI) to ensure the best sector-wide ethical and quality standards (UK Parliament 2021). In fact, the role of professional interpreters

is pivotal in asylum contexts where individuals may recount deeply sensitive and traumatic experiences. By engaging professional interpreters, the Home Office aims to support individuals in sharing their narratives without apprehension of interference or bias. While acknowledging the potential involvement of community members as ad-hoc interpreters in certain instances, the standard practice is to employ professionals to safeguard asylum seekers' testimonies.

This situation is now compounded by the *legacy backlog*, meaning cases awaiting an initial decision, which has reached a record high. In September 2023, 165,411 people were waiting for an outcome (British Refugee Council 2023). To address the backlog, the Home Office decided to streamline the processing of applications by December 2023. This process makes fast decisions for claims lodged before 28 June 2022 from seven countries: Afghanistan, Eritrea, Iran, Iraq, Libya, Syria, and Yemen. On 26 July 2023, the policy extended to add Sudan (UK Home Office 2023c).

The streamlined asylum process is based on a questionnaire, substituting the interview(s). To date, 12,500 people have received a questionnaire with the request to complete and return it within twenty working days. An extension of ten working days can be granted upon application. If more evidence is necessary, interviews might be undertaken. Since the process implementation, the media has reported that, while 75% of the questionnaires were returned to the Home Office within the timeframe, only 10% were properly completed (Dathan 2023, cited in Hodgson 2023). While allegedly poorly completed questionnaires are not grounds for asylum refusal (Jenrick, Minister of State for Immigration 2023), the need to seek more information defeats the policy aims: to make swift decisions without a substantive interview (Immigration Law Practitioners' Association 2023; UK Home Office 2023c, 4). Moreover, an asylum claim can be treated as implicitly withdrawn if caseworkers attempted to contact a claimant "at least once on all possible contact methods available" and the questionnaire is not returned (Immigration Rules, 5 October 2023, para 333C). A withdrawn claim is worse than a refusal because claimants then have no right of appeal (Refugee Action 2023, 3).

The questionnaire has been singled out for overwhelming claimants with complex requests, being prefaced by a cover letter and five pages of instructions. It contains forty-two questions that the Home Office requests applicants to "please explain" since the questions "are important to answer in your response" (Streamlined asylum process letter template, 23 February 2023, n 27, cited in Hodgson 2023, 10). A most pressing issue relates to the questionnaire being in English. Presently, the Home Office does not plan to translate it into other languages (Immigration Law Practitioners' Association 2023). In the words of Robert Jenrick, concerning the questionnaire: "It is standard practice for the Home Office to communicate with asylum seekers in English" so that staff can consider the information submitted (2023, 2). The application must be submitted alongside identity documentation with accompanying translations from individuals who are highly unlikely to have funds for them (Immigration Law Practitioners' Association 2023). Furthermore, the questions are often phrased in dependent clauses containing legal expressions that claimants may be unfamiliar with; for instance, concerning human trafficking and modern slavery. It also makes several demands of people who speak or write little or no English, such as: "Do you have any documents or other evidence to confirm your country of origin? If not, why? If you don't fear officials in your country such as the government or police, can you obtain documentary evidence such as a birth certificate, national ID card, passport or driver's licence?" The UNHRC equally states that,

the questionnaires are poorly designed, lack clear instructions and are only available in English [...] some of these weaknesses, along with information technology system issues, may mean the Home Office is unable to achieve the expected decision-making increases from the new questionnaires. (House of Commons Public Accounts Committee 2023, 10).

Furthermore, the questionnaire has dismayed legal experts, as it places unreasonable demands on vulnerable individuals who cannot access legal advice and language assistance on time (Syal 2023). Currently, the UK is facing a shortage of free immigration advice, in which qualified professionals assist individuals through legal aid and translation support. Many asylum seekers wait for months for an appointment (Refugee Action 2023, 5). Through

the new streamlined asylum policy, they are invited instead to “seek support with understanding the language through community links such as charity organisations, non-governmental organisations, friends, family, online translation tools and other networks” (Jenrick 2023, 3) to complete the questionnaire. However, only immigration advisors registered at Level 2 (who are permitted to do casework but not advocacy and representation) or solicitors are qualified to assist in this regard (UK Office of the Immigration Services Commissioner 2022). Language assistance must not stray into immigration or asylum advice, which may damage the claim and the people involved and may lead to criminal charges (Right to Remain 2023). Therefore, asylum charities increasingly refrain from providing translation assistance to people wanting to complete the questionnaire themselves (Hodgson 2023). They also advise asylum seekers not to resort to friends or community members’ linguistic assistance, since lack of training in legal terminology may result in mistakes, misunderstandings, and mistranslations (Refugee Action 2023, 6). Still, the urgency due to the compressed timeline compels claimants to submit the questionnaire without immigration advice, often resulting in not being able to put their best case forward (Hodgson 2023, 17). Non-profit organisations such as the British Refugee Council and Right to Remain have produced translated guides to the questionnaire, including answers to frequently asked questions and a template letter to request a deadline extension from the Home Office in the Amharic, Arabic, Armenian, Dari, Tigrinya, Farsi, Kurdish Kurmanji, and Kurdish Sorani languages. Translated questionnaire forms cannot be submitted to the Home Office; the form must be submitted in English.

#### **4. The streamlined asylum-seeking process in the United Kingdom: Gendered implications and impact on women**

##### *4.1 Linguistic dependency and lack of credibility*

Throughout the past decade, one third of UK asylum applicants have been women (UK Home Office 2017; European Council on Refugees and Exiles 2022). Women claim asylum mostly due to gender-based harm, inflicted for political,

religious, or racial reasons, or for same-sex sexual conduct; or for reasons which are in themselves gender-based, such as domestic violence, forced marriage, female genital mutilation, and "honour"-based crimes. Additionally, women claim asylum where the harm (e.g., imprisonment) is not gender-based but the reason is (e.g., violation of a dress code, or the activities of a male relative) (Clayton et al. 2017). Within the asylum process, women are considered a highly vulnerable group because they face specific barriers in disclosing violence and in accessing specialist support services, and because they are at greater risk of continued abuse and financial instability (British Refugee Council 2021).

Women and men also experience different migration patterns. These patterns result from the gender norms that permeate our world and shape women's employment trajectories, their caring responsibilities, their family roles, and their lives overall (Reis 2020). While inequality affects women everywhere, displaced women experience the sharper edge of the social divide. They struggle to find employment<sup>2</sup> and to rebuild their lives as they confront the double stigma of being both a woman and a refugee, at the same time as they carry the trauma of adapting to a new country, community, and culture while fleeing violence. Displaced women also shoulder a disproportionate share of unpaid care and domestic work (British Refugee Council 2022).

Speaking the host country language is arguably an important skill that asylum seekers need to navigate its society and labour market. Available evidence suggests a disadvantage for female asylum seekers. In the United Kingdom in 2014 the share of refugee women who only had basic or no knowledge of English was larger than among refugee men (26% and 18%, respectively) (Liebig & Tronstad 2018, 26). This disadvantage lingers on. In the United Kingdom, asylum seekers are provided free language learning up to Level 2<sup>3</sup> (an advanced level) through English for Speakers of Other Languages

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<sup>2</sup> Asylum seekers cannot be employed, even for a voluntary organisation, unless they are granted permission under Paragraph 360 or 360C of the Immigration Rules.

<sup>3</sup> Level 2 here refers to an advanced language proficiency level equivalent to C1 in the Common European Framework of Reference for Languages (CEFR), indicating a high degree of fluency and comprehension.



(ESOL) classes. However, most ESOL providers report growing waiting lists of more than 1,000 students due to a lack of funding (Dono 2023). Additionally, eligibility for free classes requires learners to have been in the United Kingdom for at least six months, which clashes with the twenty working day timeline of the questionnaire. Learners must also demonstrate either unemployment or qualification for specific means-based benefits. Despite many female asylum seekers having a desire to acquire better English language skills, their class participation can also be impeded by the absence of past formal education, domestic and childcare responsibilities, travel distance, economic inaction, and self-regulated reluctance to engage with mixed-sex classes (Choudhry 2022; Dono 2023). These factors can constrain women's linguistic autonomy, with repercussions on the asylum process, adding to the "hostile environment"<sup>4</sup> of immigration in the United Kingdom (Reis 2020).

Without opportunities to access ESOL classes or translation and interpreting services, many asylum-seeking women turn to informal sources of language support (Baillott & Connelly 2018) such as friends, community, or family members. In addition to placing the burden of linguistic labour on women, these practices may affect confidentiality and claimants' safety, particularly when concerning domestic violence or sexual crimes. In the streamlined asylum process, these dynamics can further decrease women's opportunities to tell their stories via the questionnaire. The act of transposing a traumatic experience to a community or family member, or entrusting it to a machine translation tool—practices that the Home Office itself suggests, despite their questionable legal and ethical validity (Jenrick 2023, 3)—can be severely challenging. Community and family members' assistance may result in inaccurate renditions. They may have personal biases or conflicts of interest that could influence what they convey, and how, in the questionnaire writing. Communities' cultural norms and social dynamics may also limit women's ability to express themselves freely. Information about

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<sup>4</sup>"Hostile environment" refers to legal restrictions the UK implemented in 2012, including increased application costs, punitive measures for the undocumented, and prioritising immigration checks over services like healthcare.

gender and sexual violence may be reported selectively (or not at all) due to guilt, stigma, and fear of being ostracised. Finally, women may fear retaliation in a newly-found community if gender-sensitive information is shared, leading to self-censorship and partial narratives. For instance, as McFadyen (2019) highlights, women may see disclosing gender-related information (including forced marriage, rape, and domestic violence) as a dishonour for both her family and the wider community. Hence, women may avoid at all costs disclosing the violence they suffered in the questionnaire and to language assistants due to the stigma attached.

This entails considerable financial and economic insecurity risks, as well as a less secure immigration status. Most female asylum seekers arrive in a context of family migration as two-thirds (68%) are on family and dependant visas (Liebig & Tronstad 2018). Women's immigration status and income, thus, are often tied to a man's, increasing financial dependence, the likelihood of becoming victims of coercion and control, and the necessity of depending on husbands or male family members' claims, bills, tenancy agreements, and bank accounts, or being expected to delegate these matters to them (Reis 2020, 5). In Baillot and Connelly's report for the British Refugee Council, 90% of survey respondents had dealt with cases involving a perpetrator who was a partner or ex-partner, while 60% of respondents had worked on cases where extended family members were the perpetrator(s) (Baillott & Connelly 2018, 27). Perpetrators often use women's limited language proficiency and insecure immigration status to prevent them from communicating with authorities, manipulating fears about deportation back to their home countries (Baillott & Connelly 2018).

Finally, while the decision-making process is fraught with administrative difficulties that affect both women and men, the former are disproportionately affected by incredulity about their experiences and a lack of advisors with expertise on gender issues (Reis 2020). The primary role of asylum caseworkers and immigration judges is to assess whether fears or experiences of persecution fall under the asylum protocol. They do this by evaluating evidence and narratives, as well as the claimant's credibility in terms of likeliness of the story and emotionality (McKinnon 2009). The issue of credibility is especially controversial in the case of women due to a culture of disbelief, "a set of practices, structures,

and power relations [which] manifests itself pervasively within the asylum system,” and which erases comprehension of “systems of persecution, especially gender persecution [...] by those making the decisions” (McFadyen 2019, 178–179). McFadyen underlines that only 30% of female asylum seekers in the United Kingdom are granted refugee status at the initial stage. Recent studies juxtapose the higher level of rejection of women’s asylum claims to men’s to the *double negative* culture in operation in the British judicial system, the attitude that “asylum seekers are lying, and that women are lying” (McFadyen 2019, 169). The double negative, paired with the lack of language assistance in the streamlined asylum process, may silence female narratives.

Furthermore, botched renditions into English, either due to informal language assistance or machine translation, can exacerbate institutional mistrust. The Home Office argues that silence, incoherence, and inconsistencies within narratives damage the claimant’s credibility, particularly if the translated version alters the meaning or the circumstances of an applicant’s words (Refugee Action 2023). Since it is common that mistakes by professional interpreters resulting in inconsistencies in an applicant’s account are used by the Home Office as grounds for refusal (Immigration Law Practitioners’ Association 2023), similar language-driven occurrences can further feed rejection. According to the Minister of State for Immigration (2023), while minor errors in translation and in non-native English submissions will not be considered, core discrepancies between questionnaires and evidence submitted will impact someone’s credibility. For example, Refugee Action warns asylum seekers that the UK Visa and Immigration may think they are not telling the truth if “you use incorrect words in English, or if an online translation tool alters the meaning of your words” (2023, 4).

In sum, the new procedure places the burden of linguistic access onto asylum seekers, despite both research and policy evidence showing that language barriers impact the ability of ESOL speakers to navigate the asylum process, including legal and immigration advice. Yet, while language is central to the storytelling practices that compound both asylum seeking and the questionnaire, the gatekeeping of interpreting services and face-to-face interviews in favour of tech-mediated and/or informal language assistance may impede women from communicating independently of external influence.

#### 4.2 Access to legal aid

Changes to how some nationalities can lodge an asylum claim have made it an additional challenge for women to access legal representation. When a person claims asylum, they are encouraged to find a solicitor to build a strong argument. Recent analyses show that 40% of applicants in the United Kingdom are being denied legal aid due to austerity policies. Since 2022, there has been a deficit in legal aid provision related to 24,000 new asylum applications (Crosby Medlicott 2022). Those who do not speak English and cannot access legal aid on time are still expected to arrange for completing the questionnaire. However, evidence collected on the first six months of the streamlined asylum process shows that law and immigration experts always advise claimants to wait for legal assistance (Hodgson 2023). Assistance is vital to ensure continuity between a claimant's initial screening interview, the content of the questionnaire, and anything reported at later stages, preventing any adverse conclusions being drawn as to internal consistency.

However, it is harder for women than for men to access legal aid because their cases, mostly linked to gender-based violence, are less likely to succeed. Despite the 2002 Guidelines to Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (UNHCR 2022), gender-based violence is not officially recognised under the United Nations Refugee Convention (United Nations 1951). The complexity of such cases remains a strong deterrent for solicitors. Women must fit their gendered experiences into court precedents, which may not reflect their actual experiences (Anker 2002; McKinnon 2009). It is also difficult for women to provide evidence for persecution that has occurred privately or deals with embodiment, such as domestic violence, rape, and sexual assault. Additionally, without legal assistance, a woman is unlikely to bring forward evidence such as how survivors of gender-based and sexual violence are treated in her society. In its report *Gender Gaps in Access to Civil Legal Justice*, the Women's Budget Group (Haque 2023) conducted an online survey of 115 organisations, services and individuals in the field and found widespread concern about women's barriers to justice. Among respondents, 85% said vulnerable women, including

asylum seekers, were unable to access civil legal aid. Furthermore, 77% reported that many women's circumstances reach a crisis point before they receive any legal help.

#### *4.3 Digital access and the use of machine translation*

In many forcibly displaced communities, women face multiple barriers to the digital ecosystem. These barriers stem from limited access to digital devices, affordability, low digital literacy, and sociocultural norms (Alam & Imran 2015; Singh 2017; United Nations High Commissioner for Refugees, UNHCR 2023a). Regulatory country requirements such as those in the United Kingdom also mandate that an individual's identity be authenticated before accessing a mobile connection (i.e., SIM registration). For forcibly displaced women without valid IDs, these requirements significantly hinder their access to technology. As a result, many use informal workarounds such as asking local people to buy SIM cards on their behalf, which can lead to exploitation, including transactional sex for mobile connections (UNHCR 2023b). Deep-rooted gender norms may also discourage women from accessing technologies; access to devices is often dependent on male gatekeepers (GSMA 2023). Similarly, female asylum seekers in the United Kingdom tend to have lower levels of access to the Internet (Choudhry 2022). Nonetheless, the Home Office encourages them to seek language support through online translation tools to complete the questionnaire (Jenrick 2023, 3). These intersectional challenges raise questions about the fairness of a process that fails to account for women's lower levels of digital and linguistic access, perpetuating a system that risks jeopardising their right to seek asylum, or exacerbating their dependence on third parties.

Substituting face-to-face interpreted interviews with written questionnaires and machine translation may add to the struggles and isolation that typically compound female refugees' experiences. Machine translation, deviating from the conventional practices involving interpersonal interactions with officials and interpreters, can affect women's embodied narratives. Entrusting such narratives to automated systems may intensify voicelessness and unfamiliarity

with technological materiality. It is likely to contribute to a heightened sense of vulnerability, as women may fear handing over their deeply personal stories to an entity that lacks the nuanced understanding inherent in human interaction, with no control over the output. As a structural counterpart, insights drawn from the US context warn about machine translation-related dynamics which may well extend to jurisdictions with similar asylum claim processes, such as the United Kingdom. In the United States, Respond Crisis Translation reported that they have seen cases of women's asylum applications being rejected because of machine translation mistakes (Deck 2023). In the case of a Pashto-speaking woman who had fled Afghanistan, a machine translation tool had interpreted an "I" in her written statement as "we," causing a discrepancy with subsequent interviews and making it seem as if the application was for more than one person. The discrepancy was large enough to result in asylum rejection. They also recalled the case of an asylum-seeking woman who described her perpetrator in a case of domestic abuse as "mi jefe" in her application. The expression is a Spanish colloquialism for "my father," yet the translation rendered it literally as "my boss," and asylum was denied (Bhuiyan 2023).

Beyond individual cases, systemic reliance on machine translation in the UK immigration system may be problematic for the following reasons. First, machine translation does not have cultural awareness. Written statements, such as those required by the questionnaire, particularly if using regional colloquialisms, metaphors, idioms, or turns of phrase, may not make any sense if taken literally or if decontextualised. It is crucial, however, to recognise that advocating for human interpreters in asylum proceedings is not solely rooted in the assertion that machine translation makes mistakes. Acknowledging that both machines and humans are prone to errors is a realistic perspective. However, the argument in favour of human interpreters is grounded in the accountability and transparency they offer, elements that are essential in the delicate context of asylum applications, providing a mechanism for oversight and recourse. In the event of an error, individuals involved trace responsibility back to the interpreter, allowing for corrective measures and fair assessments. In contrast, the opaqueness of machine translation-generated mistakes poses a significant challenge. Improving machine translation systems is a complex task, often

requiring advanced technical expertise and resources that may not be readily available in the context of asylum proceedings. This is particularly the case for *low resource* (that is, “minority”) languages, which perform poorly in machine translation due to the limited (or no) volume of parallel data employed to train neural models (Forcada 2023; Ranathunga et al. 2023). Most of the languages spoken by the nationalities included in the streamlined asylum process in the United Kingdom, such as Pashto, fall into the low resource language category. Consequently, asylum seekers in need of translation assistance for these languages may encounter limitations even in accessing the online applications, thus finding themselves at even more of a loss. Additionally, the matter is not simply about access to and the role of technology, but about establishing a system that allows for the proactive mitigation of errors, to avoid mistakes and lack of linguistic resources (including in neural language models) that may result in a denial of the fundamental right to seek asylum. Since the Home Office frequently weaponises small language technicalities to justify deportation, there is a significant risk that the lack of training data for low resource languages, as well as mistakes produced by machine translation which remain unaccounted for, may lower application standards, particularly in terms of credibility, which disproportionately affects women.

Finally, a word of caution about intersecting inequalities. The transition from an oral to a written process in asylum seeking may disproportionately disenfranchise illiterate women. This issue is particularly pertinent in contexts where gender disparities intersect with limited access to education, resulting in greater illiteracy rates among women. Among the eight expedited countries, Eritrea, Iran, Iraq, Libya, and Syria show relatively medium to high levels of female literacy. However, in Afghanistan the literacy rate among adult females (aged fifteen above) is 23%, in comparison to 52% for men (World Bank 2023). Under Taliban rule, Afghanistan has also banned girls from schooling beyond the age of eleven, with implications for literacy rates. Similarly, 41% of males and 61% of females in Yemen cannot read and write (Al Alsimah & Governorates 2020), while in Sudan 45.2% of women and girls aged fifteen twenty-four are illiterate (UNICEF 2020).

Policy and research evidence found illiteracy to be a barrier in women’s ability to learn English and to access English courses in the United Kingdom. Not reading in

their mother tongue (functional illiteracy) means they could only gain information from personal interactions: printed information in their native languages is still inaccessible as a result (Dono 2023). The consequences of illiteracy, including the inaccessibility of information, disenfranchise women from conveying their narratives in the written format of the questionnaire and to comprehend related written legal documents. Additionally, women lacking literacy skills in their native language and in English encounter significant barriers in utilizing both speech-to-speech, text-to-speech, and speech-to-text technological translation solutions in the source and target languages. Illiteracy and digital illiteracy can also compound each other. Women's inability to read or write may extend to an unfamiliarity with utilising digital devices, which further restricts their ability to navigate online tools, including accessing information or electronic documentation. Consequently, illiterate women face heightened barriers in communication and information retrieval, exacerbating their marginalisation vis-à-vis the already vulnerable category of female asylum seekers.

## **5. Discussing the streamlined asylum process through a gender-based posthuman sensitivity**

In this section, this article draws upon a practice-based, posthuman approach to re-articulate the Home Office's streamlined asylum process as a politics of re-materialisation of gender inequality and of de-responsibilisation of the legal system. Women's asylum claims can be understood as gendered questions of intra-action, in which human and non-human elements of practices including law, language, and translation tools impact on the power dynamics between asylum seekers and decision-makers. As I detail in the following discussion, this "entanglement of discursive processes, material contexts, animate bodies, social norms and practices [...], context and positionality" (Strom, Mills & Ovens 2018, 5) is inseparable from female asylum seekers' experiences as a question of sociomateriality (the co-constitution of the social and the material).

The streamlined asylum process, ostensibly aimed at expediting refugee status determination, solidifies power dynamics shaped by both State and



judicial influences, thereby constraining women's agency. The bureaucratized practices of the judicial system, primarily by substituting interviews with questionnaires, are intertwined with the absence of formal interpreting mechanisms, leading to women's reliance on informal practices including community-based linguistic assistance and machine translation for navigating the asylum process. This reliance elucidates that practices inherently carry power dynamics by associating with one another across contexts (Nicolini & Monteiro 2017). In transposing power from the institutional settings of the asylum and justice systems, the streamlined asylum process enables specific sociomaterial courses of action, including limiting the agency of certain practitioners. In asylum seeking, the use of machine translation especially becomes a sociomaterial practice that wields considerable power, as it substitutes interpreting practices that were tasked with carrying the linguistic and cultural aspects embedded in claimants' narratives. As women lose the opportunity to engage with interpreting, their agency and narratives become entangled with the material practices imposed upon them by the immigration and judicial systems, primarily through the forced use of digital devices and machine translation to both access online information and lodge asylum claims.

Notably, these materialities do not only force women to renounce one social and communicative practice (interpreting) for a more bureaucratized one (the questionnaire); it also alters the traditional dynamics of linguistic exchange between asylum seekers and the asylum system. In this altered exchange, the bureaucratized and technological interventions empower only the agency of specific actors who already control the practices of the system, and enjoy labour carried out elsewhere. This is the case of decision-makers and institutional workers, who can manage asylum claims in their native English by relying on machine-translated content and the linguistic labour of women, migrant communities, and legal aid associations alike. Yet, women are forced to deal with the complexities of their own stories and asylum claims via alternative practices and tools, irrespective of their legal right to interpreting. Thus, the sociomaterial relationship becomes unbalanced in that female asylum seekers must bear the brunt of digital, bureaucratic, and linguistic impositions.

Indeed, the issue is “not simply about responsible actions in relation to human experiences of the world; rather, it is a question of material entanglements of how each intra-action matters in the reconfiguring of these entanglements” (Barad 2007, 160). In fact, the reconfiguration of material entanglements (as through questionnaires and machine translation) clashes with female asylum seekers’ capability to fully exercise their agency as a dynamism of forces, or intra-action (Barad 2007, 141). Rather than seeing humans and *things* constantly working together, exchanging and diffracting, here we witness an asymmetrical influence of the material-digital and the bureaucratic over the human. Institutions, asylum seekers, and communicative practices should be working—intra-acting—inseparably to produce effective intra-action (in the sense of linguistic and legal understanding). Yet, this does not materialise, especially for two reasons.

First, the ability to utilise digital tools is not uniformly distributed, meaning that the Home Office practices promote a texture of disadvantage which exacerbates women’s challenges when interacting with machine translation. Moreover, the digital literacy disparities between migrant men and women in the United Kingdom can aggravate this power dynamic, as those proficient in navigating technology hold an advantage in the asylum process. Women may also feel compelled to trust their claims to male family and community members, since they are often reliant on men’s digital skills and online access opportunities. In this process, the technological interface may become a barrier rather than a facilitator of genuine intra-action.

Neither is the support of emerging English speakers in the local migrant community in lieu of formal translation and interpreting support necessarily a benefit for women. The completion of the questionnaire through language assistance becomes a significant nexus where practices intersect and produce further gendered challenges, power dynamics, and social influences. The engagement of community and family members in questionnaire writing validates a practice that not only introduces potential inaccuracies in the representation of traumatic, gendered experiences but which may also be fraught with personal biases and conflicts of interest, influencing the conveyed narrative. Within this assemblage, affective and normative factors such as guilt, stigma, and fear of ostracisation—legitimised practices within certain social

milieus—play a significant role, contributing to selective reporting or outright avoidance of certain information. Recognising these sociomaterial dynamics is crucial for understanding and addressing the complex inequalities that women face, particularly since the constant scrutiny of their claims through the lens of *credibility* transposes deeply gendered practices back into the asylum process. This scrutiny is rooted in institutionalised practices fostering incredulity towards women’s experiences of violence and trauma, as existing literature highlights (Anker 2002; McKinnon 2009; Baillot, Cowan & Munro 2012; McFadyen 2019). Overall, the sociomaterial understanding of gender as a dynamic process, intertwined with discursive practices (the narration of abuse and displacement, the entrustment of narratives), points to the significance of interactional achievements in the assessment of women’s asylum claims, and how these circulate back and forth between the asylum process and women’s embeddedness in local communities.

Yet, Home Office practices of streamlined asylum claims seem to remove the *socio-* from the equation of sociomateriality (Haraway 1991; 1997; Barad 2003; Orlikowski & Scott 2008), stunning the reconfiguration of more positive forms of intra-action in the process. They force the use of machine translation and informal language assistance in the completion of questionnaires (the material dynamics) but do not necessarily account for women’s embodied skills (digital literacy), their agency, and their socio-cultural contexts. The resultant isolation of material and social practices compromises a gender-equal commitment to understanding and redressing their lived experiences and to avoid their marginalisation as vulnerable individuals (see British Refugee Council 2021). This lack of commitment and gender awareness leads to a partial exoneration of the immigration and judicial systems, which absolve themselves from addressing language and gender barriers and providing necessary, targeted support. Indeed, this neglect only serves to complicate matters ethically and legally, resulting in a lack of inclusive decision-making in asylum cases and of institutional responsibility. Conversely, the lack of appropriate gender- and language-sensitive practices shifts the responsibility to the asylum seekers, who, without experience in this difficult process, have to go through it because their stay in the United Kingdom is premised upon it. This triggers vicious

connections in asylum seeking that may lead to practical consequences not previously imagined by the Home Office and by practitioners who are closely involved in the asylum granting process. Adhering to the new sociomaterial practice of streamlined asylum seeking without adequately considering the needs of female claimants sets in motion a feedback loop where the very practices intended to aid asylum seekers further marginalise those it should protect. Achieving more equitable gender procedures and linguistic access thus emerges as a pivotal factor influencing the trajectories of intra-action, creating opportunities for female asylum seekers to reconfigure power relations and action within the asylum process.

Overall, this study suggests there is no innocence in the way the streamlined asylum process constructs the entanglement of particular decisions and actions which influence practices of linguistic and technological access. It is, effectively, a question of material entanglements and of how each intra-action between female asylum seekers, language access, technology, and bureaucracy impact the reconfiguring of these entanglements (see Barad 2007, 160) and the ways that practices in and beyond the asylum process contribute to gender inequalities, precluding and potentially altering certain outcomes for women. It is, in fact, through the combination of these practices (and the removal of supportive ones), plus the ways women become associated with them in the process, that power asymmetries and gender inequality are exacerbated and perpetuated in the asylum context (see Shove 2023). If we want practices that empower, rather than constrain, sociomaterial courses of action (including those positioned to take them), then we need an enactment of a full spectrum of possibilities for claimants; for example, through the provision of interpreting, translation, and intercultural mediation services. In other words, to forge a distinctive space for women's agency, we need "responsibility—the ability to respond to the Other—and accountability—that is, accounting for what matters and what is excluded from mattering" (Cozza & Gherardi 2023, 43, also Haraway 2016, 34). In this regard, responsibility and accountability mean acknowledging and taking stock of the benefits, as well as the harms inflicted by practices associated with and underpinning the asylum and legal systems, both materially, socially, linguistically, and discursively—therefore accounting for assembled practices that reproduce gendered, unequal, and silencing outcomes.

## 6. Conclusion

In conclusion, this article has attempted to put sociomaterial activity at the centre of considerations of women's probable trajectories under the new streamlined asylum process in the United Kingdom. Leveraging a posthuman practice-based perspective, the article suggests that the bureaucratic, linguistic, technological, and gender practices that interconnect throughout the streamlined asylum process are not a neutral assemblage but a profound materialisation of inequality. Unveiling the lived experiences of women within the asylum-seeking apparatus lays bare the social and material complexities of a gendered and inequitable system, emphasising the imperative for a comprehensive and humane approach that addresses the tangible and nuanced dimensions of the asylum-seeking journey. To this extent, future scholarship could further examine the intersectionality of gender, language, and technology within asylum-seeking processes, questioning how various factors such as socioeconomic status, education level, and cultural background intersect with the technologisation of language access. Additionally, researchers could interrogate approaches to mitigating women asylum seekers' marginalisation, including policy-based language support initiatives and culturally-sensitive technological solutions. Finally, longitudinal studies could examine the long-term impacts of language policy changes on the outcomes of women seeking asylum, shedding light on their effectiveness and equity over time.

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## Linguistic rights, translation, and State-sponsored violence in Mexican prisons

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## Linguistic rights, translation, and State-sponsored violence in Mexican prisons

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### Abstract

This article examines linguistic violence experienced by incarcerated Indigenous language speaking women in Mexico. Drawing from a survey of incarcerated individuals, we demonstrate that, despite constitutional guarantees for language access, non-Spanish speakers often lack access to translation services. This deprivation is a form of linguistic violence. Furthermore, we find such linguistic violence correlates with predatory behavior from authorities—specifically physical and sexual violence. This predatory behavior is reported more frequently by female Indigenous language speakers than any other group. We propose two reasons why this might be the case: limited Spanish proficiency traps these women in prolonged legal limbo, increasing their interactions with potentially abusive authorities, and the language barrier fosters isolation, hindering their ability to report abuses. This phenomenon illustrates how linguistic violence paves the way for physical violence.

**Keywords:** translation; gender; prison; women; violence; Mexico

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## 1. Introduction

Existing literature has shown that carceral systems across the world engage in violations to due process (Sung 2006; Sarkin 2008), and that these violations often target racialized (Cheliotis & Liebling 2006) and gendered minorities (Croux et al. 2020). Such literature has frequently noted that these violations are exacerbated when the State also engages in linguistic violence, specifically by failing to provide interpretation and translation services in the criminal justice system (Ackermann 2010). After all, absent these services, prisoners who do not speak the court's language might not be adequately informed of their rights or the charges they are accused of, are prevented from issuing statements regarding their own cases, and are unable to access legal representation. Thus, linguistic violence has been directly linked to violations to due process and other forms of legal oppression.

In this article we study the consequences of linguistic violence by looking at the case of Indigenous language (IL) speakers in Mexican State prisons, particularly women. Mexico is home to over seven million IL speakers (Instituto Nacional de Estadística y Geografía, INEGI 2020), and it was only in 2001 that the Constitution recognized the right to be assisted in criminal proceedings by a defender or interpreter with knowledge of the accused's language and culture. Sixteen years after this recognition, the Mexican State has simply failed in enforcing this right (Comisión Nacional de Derechos Humanos, CNDH 2022). We investigate whether this failure is associated with another undesirable outcome: predatory behavior from authorities in the form of bribery, torture, and sexual violence. Using a unique survey of incarcerated people in Mexico conducted in 2021 (ENPOL, or *Encuesta Nacional de Población Privada de la Libertad*), our analysis shows that this is the case: reported instances of these abuses are considerably higher among female IL speakers than any other group.

We then suggest two possible mechanisms by which these abuses come about. First, women who do not speak Spanish and have no access to an interpreter who speaks their language spend longer periods in pretrial

detention,<sup>2</sup> which increases contact between them and the authorities. Second, women who do not speak Spanish are more likely to report fewer visits from the outside and higher rates of bullying by fellow prisoners, so it is possible they are unable to communicate to anyone either inside or outside of the carceral system to report these abuses. Overall, our argument and evidence illustrate how linguistic violence leads to physical violence, furthering a circle of oppression and abuse.

## 2. Translation, predatory behavior, and gender in Mexican prisons

On 3 August 2006, Jacinta Francisco Marcial, a forty-three-year-old indigenous Hñä-hñú woman, was detained in the Mexican state of Querétaro along two other Indigenous women on charges of kidnapping six federal agents of the Federal Agency of Investigation (AFI). Upon investigating how three women could have overpowered six highly-trained (and probably armed) federal agents, the National Commission of Human Rights (CNDH, following the Spanish acronym) reported that the accusations relied on hearsay testimony and false witnesses (CNDH 2009). Even when Jacinta spoke hñähño (Otomi) and had limited comprehension of Spanish at the time of the arrest, she was not assisted by an interpreter. Instead, she was asked to sign documents in Spanish while the assigned public defender “sat in the corner of the room, without saying anything” (Amnesty International 2009).

It is widely documented that Indigenous people in Mexico live in precarious economic conditions. A 2023 document reports that eight out of ten Indigenous language speakers live below the poverty line, and six out of ten live in extreme

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<sup>2</sup> Pretrial detention (*prisión preventiva oficiosa*) is a judicial measure intended to prevent the defendant from fleeing before their trial. Unless the defendant is accused of a serious crime—in which case it is mandatory—pretrial detention can be applied at the judge’s discretion, with a maximum duration of two years (see Mexico 2020, art. 19). In practice, judicial decisions often rely on biases and lack substantial evidence, undermining the significance of the case and resulting in the incarceration of innocent individuals in many instances.

poverty (Instituto Nacional de las Mujeres, INMUJERES 2021). Even for those who are indirectly affected by the carceral system—family and community members, for example—the cost of a criminal trial and its aftermath might be prohibitive. After all, getting from their communities to courthouses or prisons, for example, implies an extraordinary (and impossible to some) expenditure for transportation (Sieder & Sierra 2011). Encounters with Mexican carceral institutions are even more cumbersome for Indigenous women, whose experiences are compounded by their racial and gender identities. Existing literature, for example, has found that incarcerated women are unfairly accused, endure prolonged periods without trial, face social isolation, are extorted for higher bribes by corrupt officials, and are, overall, more vulnerable to exploitation within a system that prioritizes maintaining a facade of justice administration (Ang & Blajer de la Garza 2024).

In addition, Indigenous people might face an additional language barrier. A judicial process levied against an Indigenous language speaker who is not assisted by an interpreter or defender that can communicate with them is a clear violation of due process (Marcos Escobar 2012). This barrier is even more cumbersome for women: the 2020 census revealed that the illiteracy rate of Indigenous women is almost 20%, almost five times higher than the 4.1% illiteracy rate among non-Indigenous women (INMUJERES 2021). This suggests Indigenous women might be less likely to follow and understand judicial processes conducted in Spanish, especially if these rely on written documents. Furthermore, as Chenaut (2012) has argued, members of Indigenous communities who speak Spanish might do so only in some contexts (for example, in specific social interactions), which indicates they might have limited competence and little chance to successfully fight a charge or face a trial.

In this context of racial, gender, and economic oppression, instances like Jacinta's are distressingly common in Mexico. According to data from the Human Rights National Commission, in 2015 there were 8,500 members of Indigenous communities incarcerated in Mexico (CNDH 2022), and in 2021, the *El País* newspaper reported that almost six thousand Indigenous people in Mexican prisons had not had access to an interpreter while facing a criminal process (Espinosa 2021). Yet, few studies have assessed (1) the prevalence of

Indigenous speakers in prisons, (2) the access—or lack thereof—to translation and interpretation, and (3) whether translation could prevent predatory abuse. In the studies mentioned, for example, it is not clear whether they refer to self-identified Indigenous individuals, or individuals who speak an Indigenous language. This oversight is understandable because until very recently, there were almost no aggregate data on incarcerated people in Mexico. As a result, most studies referenced here use as evidence either a single state or a handful of cases, which prioritizes detailed description over broader patterns of abuse or violence.

### **3. Evidence and methods: A survey study of the incarcerated**

Our article precisely seeks to contribute to existing literature in this regard by addressing the three items listed above. In order to do so, we rely on a unique survey of Mexican prisoners: the National Survey of the Incarcerated Population (*Encuesta Nacional de Población Privada de la Libertad*), hereafter referred to as ENPOL, conducted by the National Institute of Geography and Statistics. ENPOL (INEGI 2021a) is a nationally-representative survey of incarcerated individuals—meaning individuals that are confined either because they have been charged with a crime, or they have been convicted of one—over eighteen years old. The survey was conducted orally and in person between June and July of 2021, and participation was voluntary. The survey included questions on sociodemographic characteristics, details of their arrest, arraignment, trial, and incarceration, as well as the respondents' experiences with authorities and other inmates during these processes. The survey successfully finished 82.96% of the planned interviews (response rate) which resulted in information on 61,449 respondents across all states in Mexico. INEGI is a public but autonomous Mexican institution, so we have no reasons to suspect bias in their reporting of the results.

This does not mean that the survey is not without limitations. Crucially, the available dataset only contains successfully finished interviews but, in their methodological report, INEGI lists as a possible reason to not complete an

interview that the detainee did not speak Spanish (INEGI 2021b). We cannot know if people were excluded from the sample because of this reason, nor how many may have been excluded nor, importantly, whether they spoke an Indigenous language (as opposed to a foreign language). Instead, the ENPOL dataset contains instances of respondents that speak an Indigenous language and that reported the need for interpretation during criminal proceedings. We acknowledge that ENPOL likely does not include respondents who speak an IL and no Spanish, but we believe that if this biases our findings, it is likely that the bias works against our argument. That is, as we show below, the ENPOL survey shows a systematic pattern of linguistic violence that is associated with physical violence. We argue that if we found this association among inmates who speak an IL and enough Spanish to answer a survey, the true association might be even more significant for inmates who cannot speak Spanish.

For the purposes of this article, we have chosen to disregard the 5,995 inmates that are held in federal facilities (*fuero federal*) and instead focus on the 55,417 respondents that are held in state reclusion centers (*fuero estatal*). We do so because the population that we want to focus on are better represented in state prisons: of the 328 female respondents who speak an Indigenous language, only fifteen are held in federal facilities. Although we have no reason to believe that experiences of language violence, isolation, and predatory behavior are different across jurisdictions, we simply do not have sufficient data to explore whether or not this is the case.

Table 1 shows the distribution of respondents according to the two sociodemographic characteristics of interest: sex and whether the respondent reported speaking a national language other than Spanish. As can be seen, we use the variable *sex*—which takes only male or female as values—as a proxy for gender. This variable does not acknowledge the biological reality that sex is not binary and the social reality that gender is on a spectrum. However, the gender data available in the ENPOL survey is not detailed enough to allow us to carry out a more finely-grained analysis.

In addition, we use the answer to the question “Do you speak a national language other than Spanish...?” (see INEGI 2021b, especially question 1.12) to categorize respondents according to their language. Thus, we note that the numbers

presented in the first column indicate respondents who reported speaking an Indigenous language (IL) and not Indigenous respondents. This is worth mentioning because the relationship between indigeneity and language has been at the heart of oppression and violence in Mexico. After all, the post-revolutionary Mexican State—largely building on one of its central ideologies, *mestizaje*<sup>3</sup>—sought to incorporate Indigenous individuals and communities into the so-called modern State by implementing policies such as Spanish-language public education (see, for example, López Caballero 2021). After decades of such policies, Indigenous languages dwindled at a much faster rate than Indigenous identities.

As a result, in 2022 Mexico, only 7.1 million (30.8%) of the 23.2 million people who self-identify as Indigenous speak an Indigenous language (INEGI 2022). This discrepancy between Indigenous self-identification and language is mirrored in the survey: 10,813 respondents self-identified as Indigenous, but only 2,708 (25%) of them reported speaking an Indigenous language. Given that our argument centers on the relationship between language and violence, our sample of interest consists precisely of IL speakers.

The table shows that, of the 55,377 surveyed inmates under state jurisdiction, 80.24% (44,436) are male, and 19.76% are female (10,941). Around 95% of the sample reports speaking only Spanish, although this percentage is slightly higher among women (97.1%) than men (93.6%). Thus, the percentage of male speakers of Indigenous languages is double that of females—6.4% versus 2.9%. Again, since ENPOL is not a prison census, but a survey, it cannot accurately describe the make-up of the prison population, but it can shed light on patterns of characteristics and relationships about those incarcerated.

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<sup>3</sup> The ideology of *mestizaje* considers all Mexicans to be *mestizos*, descendants of both European and Indigenous blood. It is an “ideology that ostensibly unifies people of European and indigenous descent into a single, equal Mexican subject while constitutively regarding indigenous people as racially inferior and in need of ‘civilization’ and ‘modernization’ to become more European” (Ang & Islas Weinstein 2023, 6).

	IL speakers	Spanish speakers	Total
Female	313 (2.9%)	10,628 (97.1%)	10,941
Male	2,852 (6.4%)	41,584 (93.6%)	44,436
Total	3,165	52,212	55,377

Table 1. Distribution of languages reported in ENPOL, by sex

Table 1 shows the (somewhat obvious) fact that Indigenous speakers are a (numerical) minority group in prisons. Their status as a minority is even more evident when considering both the geographical spread of incarceration and the differences between men and women. Figure 1 illustrates this difference by showing the concentration of incarcerated IL speakers by state and sex. Unsurprisingly, states with higher numbers of IL speakers (for example, Oaxaca, Yucatán, and Chiapas) also include higher number of IL speakers in the sample. But the map also shows that there are a considerable number of states where the number of surveyed women is quite low: respondent samples in Aguascalientes, Baja California Sur, Durango, and Guanajuato have only one IL-speaking female, and Campeche, Coahuila, Colima, Querétaro, and Tlaxcala have none. Since the data presented here come from a sample of incarcerated individuals, we cannot affirm that these states only have one female IL speaker in the prison, but we can suggest that the female IL population is likely to be quite low.

The map shows geographical dispersion of IL speakers, but it groups all languages under the umbrella term “indigenous.”<sup>4</sup> Yet in Mexico, 364 variants of sixty-eight Indigenous languages belonging to eleven distinct families are

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<sup>4</sup> For an excellent discussion on the term *indigeneity* as a political and historical category, see Patricia Tovar’s interview with Yásnaya Elena A. Gil (Tovar 2019).

spoken (Excélsior 2018; INEGI n.d.), so not all IL speakers communicate with each other. To illustrate the variety of Indigenous languages represented in the sample, figure 2 shows the languages spoken by the 313 female IL speakers surveyed, by state.

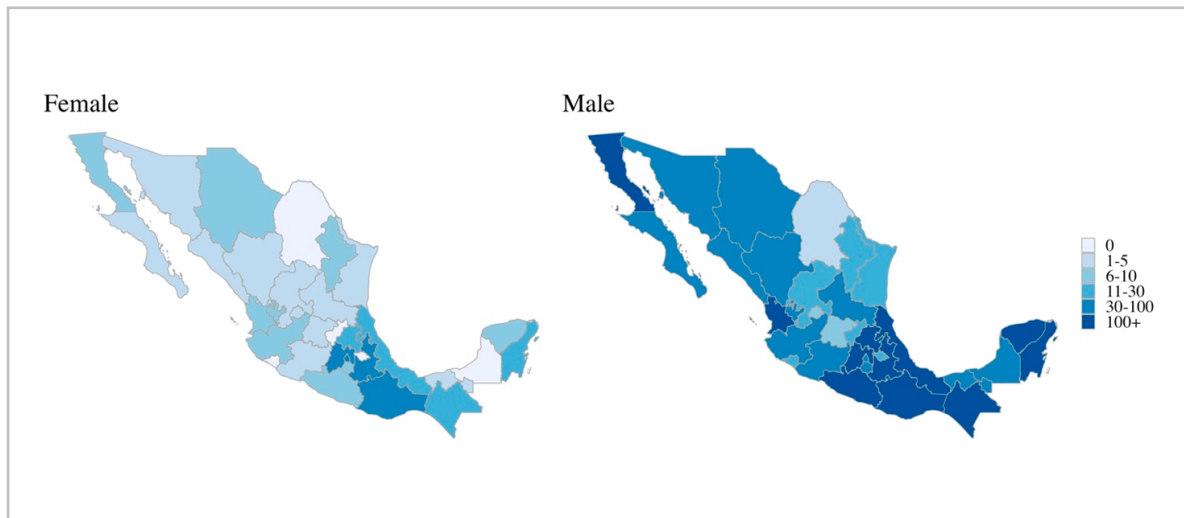


Figure 1. Geographical distribution of IL speakers in Mexico, by sex

Source: Own using ENPOL data and mxmaps

We take the numbers presented so far as evidence of possible linguistic isolation, a term commonly used in immigration studies to describe the lack of communication people experience when the language spoken in their household or community is not the dominant one (see, for example, Siegel, Martin & Bruno 2001; Nawyn et al. 2012). Outside of prisons, linguistic isolation has been linked to relevant social outcomes such as economic deprivation (Shihadeh & Barranco 2010), educational achievements (Drake 2014), and even entrepreneurship (Mora & Dávila 2005). Within the literature on incarceration, linguistic isolation has been linked to social isolation (Gallez 2018), healthcare access (Yildiz & Bartlett 2011; Watt et al. 2018), and poor enforcement of due process (Martínez-Gómez 2018).

Consistent with the literature referenced above, the ENPOL data shows that linguistic isolation is associated with experiences of discrimination, and we also find that this association is even stronger among women. Eighteen percent of



female IL speakers report having suffered language discrimination while in prison, considerably higher than the 0.7% female and 0.5% male Spanish speakers who reported language discrimination, and even higher than the 8.8% of male IL speakers who reported language-based discrimination. Furthermore, female IL-speaking respondents also reported higher rates of discrimination suffered due to either age, skin color, physical features, ethnicity, gender, religion, or socioeconomic status. In short, female IL speakers reported higher rates of all types of discrimination except due to disability, sexual orientation, or because of the charges faced. Tellingly, we find a linguistic component of discrimination *even among those who self-identify as Indigenous*. That is, considering only respondents who self-identify as Indigenous, those who speak an Indigenous language report ethnicity-based discrimination eight times more frequently than those who speak Spanish.

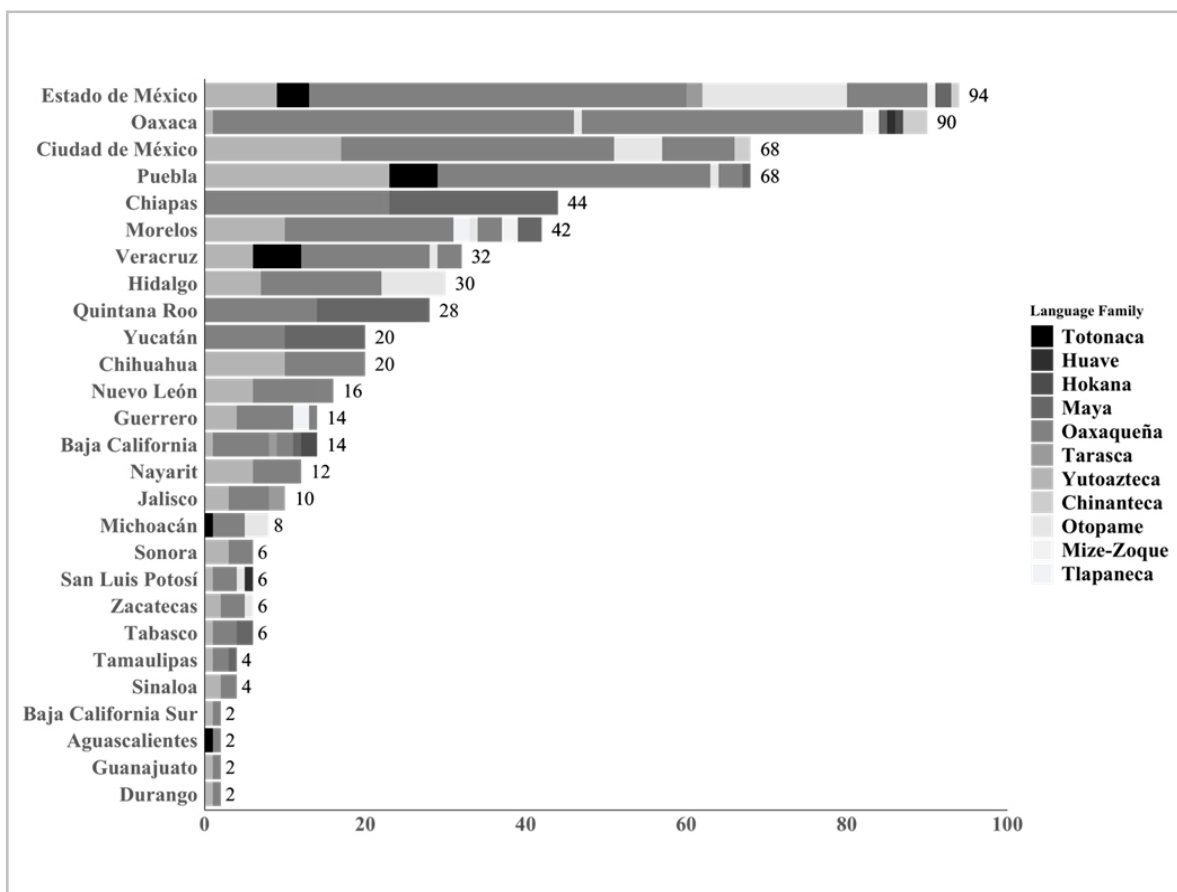


Figure 2. Families of languages spoken in sample (females, by state)

Source: Own using ENPOL data.

Like most carceral systems in the world, Mexican prisons confine those who are deemed—or suspected of being—criminals. But the analysis presented in this section suggests that your gender and which language you speak can worsen life while imprisoned. For women who speak an Indigenous language, prison can be more (linguistically) isolating, and it can engender discrimination. The next section continues with this discussion, emphasizing the role that the Mexican State plays in worsening their experience.

#### **4. Access to translation: The failure of the Mexican State**

One way in which linguistic isolation could be reduced—although perhaps not eliminated altogether—is through the implementation of policies that are cognizant of language differences. Case studies of Western countries have found that providing language assistance in judicial and carceral proceedings in the form of translated prison directives and policies, translated brochures (Martínez-Gómez 2018), or literacy programs in different languages (Turnbull & Hasselberg 2017) would better enforce human and linguistic rights, while decreasing linguistic isolation. But of course, providing interpretation and translation during a criminal proceeding, from the moment charges are formulated through any appeal process, is a pillar of linguistic rights, human rights, and due process. Interpretation is the *sine qua non* of a fair process: absent interpretation, detainees do not know which crimes they are being accused of, what is the evidence presented against them, and, crucially, what their rights are.<sup>5</sup>

Despite Mexico's vast language landscape, and a rarely-enforced law that established the right of IL speakers to be tried in their own language (Giovine Yáñez 2008), it was not until a constitutional reform in August 2001

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<sup>5</sup> Importantly, some scholars have acknowledged that translation can be a tool of empowerment, but that it can also perpetuate judicial ethnocentrism by making justice via modern or Western procedures instead of communal or indigenous ones (Favila-Alcalá 2020).

that the Constitution enshrined the right of IL speakers to be assisted during criminal proceedings by an interpreter or a defender with knowledge of the language spoken by the accused. Yet, as of 2024, we could not find a single state that has built the necessary infrastructure to systematically and universally provide linguistic assistance to IL speakers. That is, some states do provide interpretation and language-appropriate services on an ad-hoc basis (see, e.g., Kleinert & Stallaert 2015; Ang 2023), and there are efforts led by civil society to train and share information regarding interpretation during a criminal process (see Kleinert & Stallaert 2024) but, to our knowledge, there are no State-led policies, protocols, or procedures to ensure that non-Spanish speakers are identified and their linguistic rights enforced. This failure has been amply noted, and even the National Human Rights Commission issued a recommendation in 2021 noting the need to build an office with infrastructure and a budget to enforce the linguistic rights of people facing a judicial process (CNDH 2021).

How frequent, then, is access to translation and interpretation services among IL speakers? ENPOL data can provide an answer, albeit a somewhat limited one. The survey asked respondents whether they had the need for a translator—and whether they had been provided with one—upon arriving at the Ministerio Público (MP),<sup>6</sup> the station where detainees are taken after arrest and where their charges are read (MP agents, sometimes referred to as *fiscales*, are the equivalent of states' attorneys in the US). As a clarification, although the survey uses the term *translator* (“traductor”) in both questions (INEGI 2021b, especially, questions 4.1.14 and 4.1.16), in colloquial Mexican Spanish, *traductor* can refer to written translation and/or spoken interpretation. We choose to translate this specific use of *traductor* as *translation services*.

The question of access to translation services while at MP is useful because, first, it disentangles speaking an Indigenous language from requiring linguistic

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<sup>6</sup> After the 2008 overhaul of the judicial system, *Ministerios Públicos* became *Fiscalías*. In colloquial language, however, *fiscales* are still referred to as MP agents, and ENPOL uses the term *Ministerio Público* in the questionnaire, which is the term we use in this article.

assistance, a distinction that is sometimes overlooked. In addition, the question also provides information about access to translation in the crucial moment where charges are formulated and when detainees' rights are communicated, a moment where linguistic rights become instrumental in guaranteeing due process (Rubio-Marín 2003). Ideally, of course, we would like to assess whether translation services were provided throughout the entire process—detention, arrival at MP, trial, and appeals—not just while being presented at the MP. Unfortunately, this data is simply not available

Females			
Had translation?			
Needed translation?	No	Yes	Total
No	256 (100%)	0 (0%)	256 (100%)
Yes	<b>34 (63.0%)</b>	20 (37.0%)	54 (100%)
Total	293 (93.6%)	20 (6.4%)	313 (100%)
Males			
Had translation?			
Needed translation?	No	Yes	Total
No	2,196 (100%)	0 (0%)	2,196 (100%)
Yes	<b>352 (59.7%)</b>	238 (40.3%)	592 (100%)
Total	2,612 (91.6%)	238 (8.4%)	2,850 (100%)

Table 2. Access to translation services for IL speakers as reported in ENPOL, by sex

Table 2 shows the importance of distinguishing between people who speak an Indigenous language and people who require translation. The table shows that 256 respondents, or 82.6% of the 313 female IL speakers, reported they did not need translation at the MP. In the case of male IL-speaking inmates, 2,196 out of the 2,850 (77.1%) reported not needing translation services. To be clear, any IL speaker—regardless of whether they speak Spanish or not—has the inalienable

right to face the State in their own language.<sup>7</sup> The enforcement of this right is even more crucial in criminal trials, where stakes are high, where the language used is highly technical, and where cultural translation is paramount.<sup>8</sup>

Most importantly, the table also shows that of the fifty-four female respondents who reported needing translation services, thirty-four (63%) were not given access to them. This is a very similar percentage to that of male IL speakers who reported needing translation services: 352 out of 592 of them did not receive the desired services (59.7%). These numbers clearly show a failure on the part of the Mexican State to enforce linguistic rights, a failure that has been recognized as a systematic violation to due process of the members of Indigenous communities (Marcos Escobar 2012). However, we also want to emphasize that this failure is also linguistic violence, and a State-sponsored one at that. In using the term *linguistic violence*, we do not mean the use of offensive or mean words when talking to someone (Corsevski 1998). Rather, we mean the use of language—in this case Spanish—as a tool that allows the most coercive of State institutions, the carceral system, to physically confine someone without any possible defense.

Before we move on to the next section, we acknowledge that the sample does not include everyone who was detained or taken to the MP, only those whose process resulted either in pretrial detention or in a guilty verdict. This bias could mean that people who receive translation and interpretation while at the MP are *less* likely to end up in prison (for example, because they can better fend off charges) and therefore, *less* likely to be included in ENPOL. If this were the case, then the numbers reported in table 2 would be biased downwards, meaning that a larger proportion of people in need of translation services receive such

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<sup>7</sup> This right is recognized by human rights doctrines as well as by the Mexican Constitution (Mexico 2020, article 2).

<sup>8</sup> By *cultural translation*, we mean correctly interpreting concepts that might not exist in a given culture. An example is what Chenaut has coined as *conflict of cultural logics* to describe how the same activity can have vastly different meanings across cultures. For example, consuming peyote is a sacred Wixárika ritual, but for the Mexican State, it is a crime (Chenaut 2012). For an argument on cultural translation, see Killean and Grey's case study of the Khmer Rouge tribunals (2023).

services and ENPOL simply does not capture them. For this reason, we want to emphasize that the conclusions that we draw from the data are applicable only to people who are incarcerated and not to all IL speakers who encounter the criminal justice system.

## 5. Linguistic violence as enabler of predatory behavior

What are the consequences of this linguistic violence? In this section, we explore how having no access to translation services might enable further abuses by authorities. Specifically, we are interested in three types of abuses by the Mexican state: (1) bribery, (2) torture and physical violence, and (3) sexual violence, and in evaluating whether the effects of linguistic violence are gendered.

Why do we focus on these three outcomes? In a general sense, the criminal justice system can victimize those that are passing through it almost at every point of the justice process. Existing literature has extensively documented the existence of bribery and physical violence at the time of arrest, during the arraignment at the MP, while on pretrial detention, at trial, and then while in prison (Bergman, Azaola & Magaloni 2003; Azaola & Bergman 2009; Forné & Padilla Oñate 2019). Furthermore, empirical studies have found that the Mexican authorities often focus their predatory efforts on women (Azaola 2003), and on Indigenous women more specifically (Ang & Blajer de la Garza 2024). Yet, none of these studies has examined whether failing to provide a crucial service—translation—is connected to extracting money via bribery, forcing confessions through torture, and sexually assaulting detainees.

### 5.1 Bribery

Table 3 shows the prevalence of bribe-seeking—either asking for a bribe or insinuating that a bribe would be welcomed—while at MP. The prevalence is shown by groups of interest, and groups are formed by sex, need, and access to translation. The numbers shown are within-group percentages, which means, for

example, that 14.7% of women who needed but did not have access to translation reported having been asked for a bribe, whereas 15.1% of women who needed and received translation reported being asked for a bribe.

	Asked for a bribe	Insinuated they wanted a bribe
Female IL speaker, did not have translation	14.7%	2.9%
Female IL speaker, did not need translation	15.1%	6.2%
Female IL speaker, had translation	15.0%	5.0%
Female Spanish speaker	12.9%	6.6%
Male ILS, did not have translation	14.7%	6.8%
Male IL speaker, did not need translation	9.8%	5.0%
Male IL speaker, had translation	8.4%	2.9%
Male Spanish speaker	10.9%	5.8%

Table 3. Report of bribery while at MP (either asked for or insinuated) as reported in ENPOL

Table 3 shows, first, that bribe seeking while at MP is not as common as one would have thought. In Mexico, petty corruption—the corruption that occurs in the daily interaction between low-level bureaucrats and citizens—is so frequent that it does not generate social disapproval (Moreno-Jaimes 2022). But table 3 shows that nearly 15% of respondents report having been asked for a bribe, a percentage that seems low given how normalized bribery is. And, of course, the percentage of respondents that report an insinuation of a bribe are even smaller. Furthermore, we see no discernible pattern across groups, meaning that we have no evidence to conclude that gender, language, or access to translation increases bribe-seeking by authorities, at least not in the MP.

### 5.2 Torture and physical violence

A second form of predatory behavior from authorities comes in the form of torture and physical violence, a widespread practice commonly used to extract confessions in Mexico (Ruiz Torres & Azaola 2013; Magaloni & Rodriguez 2020). Figure 3 shows the prevalence of different forms of torture and physical violence while at the Ministerio Público by sex. Female respondents are shown in the top panel, and male respondents in the bottom panel. The horizontal axis depicts specific forms of torture asked about on the ENPOL survey, and the vertical axis shows the within-group prevalence in percentages. In this way, for example, 15% of females who needed translation but were not provided with it reported having been bound or tied by the authorities, whereas 12% of females who needed and received translation services reported being bound or tied. The main group of interest, women who needed translation, are identified by the solid markers—a dot for those who did not have access to translation and a square for those who did. The hollow markers are for IL speakers who did not need translation (dot) and for respondents that reported speaking Spanish (squares).

What figure 3 shows, first and foremost, is an appalling prevalence of torture experienced by those incarcerated, with up to 30% of respondents in some groups reporting having been subjected to it. But the figure also shows a pattern that suggests that linguistic violence is, indeed, associated with physical violence: the group with the highest proportion of reported acts of torture for all acts (except one—burning) are those who experienced linguistic violence (marked with the solid black dots). This pattern is true for both sexes: in both the upper and lower panel the group that reports more frequently being tortured are those who did not have access to translation services. The evidence, therefore, suggests a strong link between linguistic violence and torture by the authorities that is unfortunately suffered similarly across genders.

Before presenting the final measure of predatory behavior, we want to discuss two limitations to the analysis presented in this subsection. First, this subsection deals with the relatively small (643 respondents, 54 females and 617 males) subsample of individuals who reported needing translation services. In small samples, single individuals carry more weight due to the mere fact that there are



fewer individuals in total. Thus, we must acknowledge that the observed pattern could be due to one or two respondents in our group of interest, rather than a reflection of an actual association.<sup>9</sup> Second, our analysis describes an observed association between linguistic violence and other forms of violence committed by the authorities. As such, this analysis does not aim at showing causality and it should not be taken as proof of it.

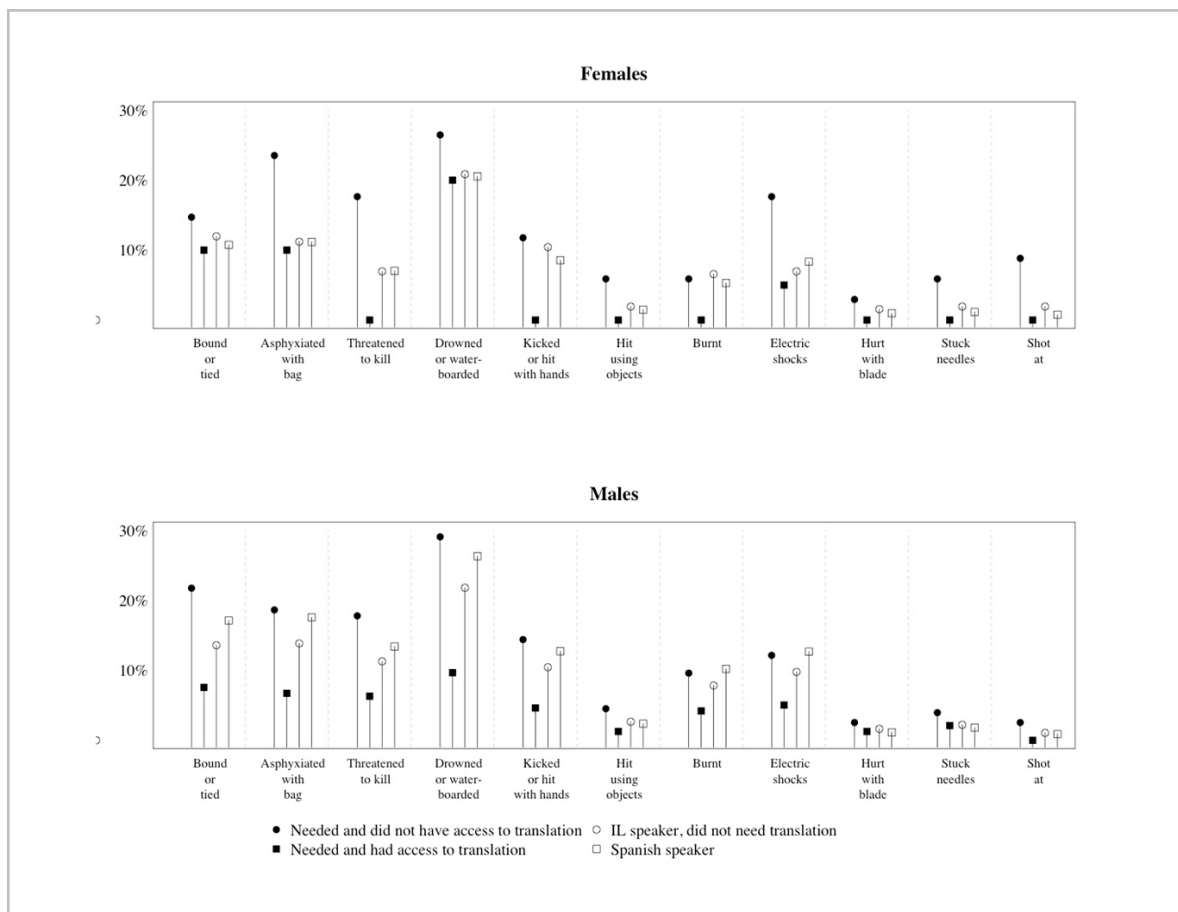


Figure 3. Torture and physical violence while at MP, by groups

<sup>9</sup> In order to evaluate whether this pattern was merely a product of one or two observations, we conducted a similar exercise as the one depicted on figure 3 but using reports of psychological violence (for example, authorities threatening to hurt respondents or respondents' families). We found very similar results as the ones presented here: the group that most frequently reported psychological violence was those who experienced linguistic violence, suggesting that the pattern is systematic and not due to sample size.

### 5.3 Sexual violence

So far, we have analyzed two types of predatory behavior: bribery and torture. In our analysis, we found no evidence that people who needed but did not have access to a translator were more frequently asked for bribes, and this lack of association was shared for both men and women. However, we did find that linguistic violence was, in fact, associated with physical violence, specifically in the form of torture, but that this was not necessarily gendered, meaning that this was true for both men and women. We now turn to evaluate whether linguistic violence relates to a type of violence that is often gendered: sexual violence (Heberle 2014).

Table 4 depicts the percentages of respondents who reported three different types of sexual violence: sexual harassment or attempted rape, whether the authorities committed sexual organ abuse, and whether the authorities raped them or forced them to carry out other sexual acts. In this table, there is a clear association between linguistic violence and sexual violence.

	Sexual harassment/ Attempted rape	Genital torture	Forced sexual activity / Rape
<b>Female, needed and did not have access to translation</b>	<b>23.5%</b>	<b>8.8%</b>	<b>11.8%</b>
Female, needed and had access to translation	8.5%	4.2%	5.8%
Female, IL speaker, did not need translation	0.0%	0.0%	0.0%
Female, Spanish speaker	10.4%	3.1%	3.6%
<b>Male, needed and did not have access to translation</b>	<b>6.2%</b>	<b>7.1%</b>	<b>5.1%</b>
Male, needed and had access to translation	1.9%	6.1%	1.7%
Male, IL speaker, did not need translation	0.8%	1.3%	1.3%
Male Spanish speaker	2.1%	7.7%	1.4%

Table 4. Reported sexual violence while at MP based on ENPOL data

For every category of violence, females that were victims of linguistic violence were the group with the highest prevalence of reported sexual abuse by the authorities. This pattern can be seen in table 4, which shows that 23.5% of females that experienced linguistic violence reported sexual harassment or attempted rape by the authorities, twice as many as female Spanish speakers, and three times as many as females who needed and had access to translation. A total of 9% of them reported genital torture, and 12% reported being raped by the authorities.

Crucially, when considering only men or only women, victims of linguistic violence consistently report higher levels of sexual violence—a pattern very similar to the one depicted in figure 3. There is, simply put, an observable systematic association between linguistic violence and specific forms of physical violence. We find no evidence that this association is gendered when it comes to torture or physical violence since both men and women seem to suffer this at similar rates. Unfortunately—if unsurprisingly—we find that sexual violence is more prevalent for women than for men.

## **6. Is linguistic violence an enabler of other forms of violence?**

Before we conclude, we would like to discuss two possible ways in which linguistic violence might enable physical violence. First, existing research has pointed out that confining people in spatial proximity to those with whom they share social bonds decreases isolation (Cochran et al. 2016; Young & Turanovic 2022), and that being incarcerated far from home isolates women in rural areas (for an example from the US, see Beichner & Rabe-Hemp 2014). Thus, it could be that female IL speakers are isolated—as we have shown, they are distributed across the Mexican territory—so they might not have an opportunity to denounce abuses to people outside of prison.

Two pieces of evidence suggest that this could be the case. Although we have no data on spatial distance between social networks and reclusion centers, we do find that 41.2% of female IL speakers are incarcerated outside of the state they were born in. In contrast, 30% of respondents in other groups

reported being incarcerated in a state different than the one in which they were born, suggesting that isolation might be more likely for female ILS. Furthermore, we find that 56.4% of Spanish-speaking inmates report having received at least one external visit in the twelve months prior to the survey. In contrast, only 47.8% of IL speakers report having been visited in the previous year, a difference of 8%. Therefore, we find evidence that female IL speakers are more socially isolated, which could explain how physical violence is enabled by linguistic violence.

A pertinent illustration of this phenomenon can be found in the testimonies presented in Rosalva Aída Hernández's work, *Bajo la Sombra del Guamúchil*, where the experiences of incarcerated Indigenous women are documented. One such narrative is that of Altagracia, an Indigenous woman from Guerrero entrenched in poverty. Despite her efforts to establish a small grocery store, she resorted to drug trafficking alongside her daughter to provide for her family's basic needs, as her husband abandoned his responsibilities and left her to bear the financial burden alone. Following their arrest, Altagracia's husband deserted her, liquidating their store's assets and neglecting their seven children. Throughout her incarceration—which at the moment of the interview spanned seven of the ten years of her sentence—Altagracia endured profound isolation, devoid of familial support (Hernández Castillo 2010, especially Cadena 2010).

The second way in which this association might be coming about is institutional in nature. Non-Spanish speakers often spend longer periods waiting to be tried precisely because the criminal justice system (prosecutors, judges, and even overworked defenders) take time in providing interpretation or translation services. This, in turn, can increase the opportunities for authorities—specifically the MP—to engage in predatory and abusive behavior. To evaluate whether this delay could be explaining abuses, we studied the time spent between detention and sentencing. This is the period in which *fiscales* or MP agents are more likely to be in contact with detainees: before sentencing, MP agents have to build a case, bring charges, question the suspect, etc., but once sentenced, incarcerated people are mostly in contact with prison personnel.

Our analysis of this variable shows a very clear gendered and linguistic pattern in line with our expectations. The females that had been sentenced had spent on average, 21.8 months between detention and sentencing, whereas males had spent 19.2 months, a two-month difference. When we consider the linguistic characteristics in addition to gender, we can see that these differences are exacerbated: female IL speakers spent 25.1 months awaiting sentencing. The rest of the sociodemographic groups had spent around twenty-one months between detention and sentencing (21.7 for female Spanish speakers, 21.6 for male IL speakers, and 21.1 for male Spanish speakers). All in all, female IL speakers spent four months longer waiting for their sentencing than any other group.

## 7. Discussion and conclusions

Scholars and activists alike have denounced the Mexican State for failing at protecting Indigenous languages (Marcial Pérez 2023), eroding the identity and culture of Indigenous communities.<sup>10</sup> In this article, we show that due process is one more area in which this failure occurs. Using the case of Mexican prisons, we have shown that a necessary right to respect due process—the right to be informed of charges and the criminal process in one’s own language—is not universally enforced in Mexico. In examining this, we contribute to research that has documented how racialized individuals have lower access to both publicly-provided services, such as healthcare and education, and opportunities like employment (Solís, Güémez & Campos-Vázquez 2023). We have also claimed that this lack of access to translation, which is a form of State-sponsored linguistic violence (within the definition of lawfare in this volume, see the introduction by Monzó-Nebot & Wallace), is associated with reports of physical and sexual violence. Our findings, we note, echo Roche’s study on State-sponsored language oppression—the “social death of racialized populations”

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<sup>10</sup> See, for example, Roselia Vázquez’s intervention during the 2020 Fair of Indigenous Languages (Instituto Nacional de Lenguas Indígenas, INALI 2020).

(Roche 2022, 37)—and its connection to physical violence, torture, and death (Roche 2022; see also Gravlee 2009).

To conclude, we go back to the story of Jacinta. In 2009, three years after her detention and after a trial where no translation or interpretation were provided, and no evidence was presented, Jacinta was finally released. A decade following her arrest, a federal court resolution compelled the Office of the Attorney General (PGR) to issue a public apology and provide reparations for the harm inflicted upon Jacinta. Unfortunately, as our analysis shows, not all women can rally this same type of support, so a considerable number of them are still incarcerated, isolated, and subject to physical abuses. Apologies and reviews of specific cases like the one Jacinta received are welcomed but not enough to stop linguistic and physical violence.

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## **Lawfare lingüístic contra el llenguatge inclusiu a la trinxera d'X**

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## **Lawfare lingüístic contra el llenguatge inclusiu a la trinxera d'X**

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### **Resum**

El llenguatge de gènere neutre (LGN) es proposa com a eina per ajudar a combatre el biaix de gènere codificat en el llenguatge tradicional, representatiu de pràctiques i ideologies socials androcèntriques. Alhora, ofereix l'oportunitat d'expressar identitats més enllà de les limitacions imposades per les estructures rígides dels esquemes binaris i cisheteronormatius. Majoritàriament, però, els discursos oficials s'adhereixen a una agenda conservadora que no se sent interpel·lada per les reivindicacions vinculades a l'LGN. Argüim que, com a resultat, s'afegeix el desapoderament lingüístic a la marginació d'unes poblacions que de per si ja estan socialment força marginades, i s'hi fomenta la confrontació social. Utilitzant la xarxa social d'X com a baròmetre de les ideologies subjacents a les diferents posicions, presentem una anàlisi temàtica reflexiva basada en 150 piulades produïdes l'any 2023 i 2024. Els resultats indiquen que, mentre que hi ha veus que veuen la utilitat de l'LGN per visibilitzar identitats silenciades i expressar el compromís per l'equitat social, altres s'hi resisteixen, fent-se ressò de les posicions oficials sobre la base de nocions d'autenticitat lingüística i legitimitat autoritativa. A més, malgrat la presentació com a debat lingüístic, moltes actituds semblen, en canvi, estar utilitzant l'oficialitat per reforçar pràctiques discriminatòries contra les identitats generitzades.

**Paraules clau:** no-binari, català, gènere neutre, xarxes socials, empoderament lingüístic



## Abstract

Gender-neutral language (GNL) has been proposed as a tool to help to counter gender bias encoded in traditional language, which reflects androcentric social practices and ideologies. It also allows for the expression of identities beyond the limitations imposed by the rigid structures of binary and cisheteronormative frameworks. Despite its potential, official discourses mostly adhere to conservative agendas, largely ignoring the claims associated with GNL. We argue that, as a result, linguistic disempowerment ensues, marginalizing already oppressed populations and fostering social confrontation. We conducted a reflective thematic analysis of 150 tweets from 2023 and 2024 on the social network X to gauge underlying ideologies. Our findings reveal a divided response: some voices recognize the value of GNL in promoting visibility of silenced identities and expressing a commitment to social equity, while others resist it echoing official positions based on notions of linguistic authenticity and authoritative legitimacy. Furthermore, despite framing GNL as a linguistic debate, many attitudes seem instead to be using officialdom to reinforce discriminatory practices against gendered identities.

**Keywords:** non-binary, Catalan, gender-neutral language, social media, linguistic empowerment

## 1. Introducció

La secció filològica de l'Institut d'Estudis Catalans (IEC) va fer públic, el 27 d'octubre del 2023, un comunicat en el qual insistia que, en català, el gènere masculí és la forma no marcada per representar tant grups mixtes com referents de gènere desconegut o sense especificar. Aquesta posició es coneix com la del *masculí genèric*. L'IEC reaccionava a les veus cada cop més esteses que,

tot denunciant el biaix androcèntric d'aquest ús tradicional, proposaven la revisió de la norma consensuada en la gramàtica normativa per promoure un nou consens que visibilitzés les persones que tenen una identitat diferent de la masculina. Entre aquestes propostes, i seguint el model d'altres llengües, s'hi troben la del femení genèric, la duplicació de formes, o l'ús creixent de neomorfemes per representar tant significats genèrics com individus d'identitats de gènere no-binàries. Tot i que la major part del comunicat es dedica a ratificar el consens de la institució sobre el caràcter genèric del masculí, l'IEC també s'hi manifesta respecte al neomorfema, tot declarant que «queda fora del marc normatiu i gramatical» i que no es tractava de «cap estratègia natural del català, sinó que s'ha creat manipulant el funcionament intern de la llengua i, per tant, contradiu [...] les normes internes del català» (IEC 2023).

Aquest anunci va aixecar molta polseguera a X (com sol passar en aquesta xarxa social) i va rebre tot tipus de respostes. Molta gent va celebrar la posició de l'IEC al·legant el seny, el sentit comú i la professionalitat de la secció filològica. D'altres, en canvi, van criticar la decisió de l'IEC i li van retreure que es pronunciés sobre aquest assumpte d'una manera tan conservadora. Sobtava especialment que titllés de «no natural» un canvi originat dins d'un grup d'usuariis<sup>1</sup> de la llengua, mentre que altres canvis (com la reforma d'algunes expressions racistes o despectives per a col·lectius neurodivergents o amb diversitat funcional) no s'havien considerat cap imposició, ni una tasca aliena a l'evolució natural de la llengua. Semblava, doncs, que no era el canvi en si, sinó qui el proposava, el que havia tingut més pes en la decisió institucional.

Un parell de mesos abans del comunicat de l'IEC, s'havia publicat la primera proposta de codificació gramatical del llenguatge de gènere neutre (en endavant, LGN) en català (Moyano 2023), que incloïa una justificació de la seva motivació. La publicació de la guia també va desencadenar tot tipus de reaccions (positives, negatives, despectives, curioses, escèptiques, etc.)

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<sup>1</sup>En aquest article utilitzem les formes de llenguatge no-binari.

per part dels mitjans de comunicació i de les xarxes socials. Encara que l'IEC no en fa al·lusió directa, és molt probable que la publicació d'aquesta guia, que vol omplir un buit normatiu, i la intensificació del debat per part de lis usuariis de la llengua, precipités la clarificació de la posició oficial sobre el fenomen.

En aquest article analitzem aquest debat entorn l'LGN, les ideologies i actituds lingüístiques que el sostenen i el que posen de manifest pel que fa als diferents mecanismes de legitimitat que intervenen en les dinàmiques de poder en qüestions de llengua. Després de posar en context i exposar les posicions oficials, presentem un breu estudi temàtic reflexiu de reaccions a la xarxa social d'X per tal de sospesar la presència d'aquestes mateixes ideologies entre lis usuariis de la llengua.

## 2. La normativitat lingüística com a *lawfare*

El llenguatge és inherentment variable; no només en el sentit que canvia amb el temps, sinó també que, en qualsevol moment donat i dins d'una comunitat de parla, conté una multitud de formes funcionalment equivalents, sense que aquesta heterogeneïtat interna impedeixi la comunicació ni faci col·lapsar el sistema gramatical. És ben sabut que la dominància d'una forma per sobre d'una altra d'equivalent es deu, no a qüestions estrictament lingüístiques, sinó a les preferències de lis sevis usuariis (Heller 2018).

Mentre que la *mà invisible* de la comunitat lingüística va exercint-hi la seva força formativa *des de baix*, en moltes llengües hi ha diversos agents amb autoritat institucional per dictar, *des de dalt*, el valor de les diferents varietats existents i, especialment, de la varietat normativa. Així, Spolsky (2004; 2012) defineix la política lingüística com el conjunt d'intents institucionals d'influenciar la forma d'una llengua i de controlar el funcionament de les seves varietats dins la comunitat d'ús. En detecta tres àrees d'influència principals: la normativa gramatical, les creences i actituds lingüístiques, i els dominis en els quals la llengua té (o ha de tenir) presència en la pràctica. Avui dia s'entén que aquesta activitat no es limita tan sols a les iniciatives governamentals, sinó que s'hi inclou tota

planificació i regulació que afecti les diferents dimensions personals i socials on la llengua hi jugui un paper més o menys central i, per tant, se senti la necessitat de regular-ne l'ús; per exemple, la vida familiar, l'activitat professional i associativa, i la comunicació dins dels diferents organismes polítics existents (Duchêne & Heller 2012; de Varennes 2012; Smith-Christmas 2016; King 2019; Monzó-Nebot & Debussy 2024).

Quan es considera la qüestió de la gestió oficial de la llengua, el primer que cal fer és diagnosticar els processos de construcció d'autoritat (Arendt 2006; Erdocia & Soler 2022) que doten certs agents (i no d'altres) de legitimitat per prescriure, per exemple, quines formes lingüístiques s'haurien de privilegiar dins d'una comunitat com a *normatives* i quines d'altres no (el que Haugen [1961] anomena *codificació lingüística*), i de quines formes lingüístiques se'n fomenta el prestigi (tot elevant-les a registre culte o educat) i de quines no (les *actituds i creences* de què parla Spolsky i la *ideologia de la varietat estàndard* que assenyala Milroy 2001). Quan els parlants interioritzen com a legítimes les directrius dels agents designats (mitjançant el reconeixement de la seva autoritat), aquestes es converteixen en les idees hegemòniques sobre la llengua, a les quals se sol referir per tenir l'última paraula en els debats lingüístics que puguin sorgir.

Sovint, les idees sobre les formes i funcions de les varietats lingüístiques, en realitat, no són sobre les varietats en si, sinó sobre la gent que les fa servir, i el mateix es pot dir en el camp de la normativa, que no pot evitar estar influïda per les ideologies (lingüístiques i més) de qui la formula. És a dir, que qualsevol intent de codificació en forma de norma prescriptiva sovint (o inevitablement) respon a una agenda política (Heller 2018). Un exemple malauradament freqüent consisteix a marginar o invisibilitzar certes poblacions i individus mitjançant l'estigmatització de la seva forma de parlar i l'exclusió d'aquesta en el procés d'elaboració de la normativa oficial (Lippi-Green 1997). En aquest cas, l'acció de la normativa lingüística no és diferent d'altres casos que, en el camp del dret polític, també practiquen el *lawfare* discriminatori envers determinades idees o poblacions. En el cas de certs grups que pateixen una manca d'acceptació dels seus estils o trajectòries vitals, l'estigmatització de les seves varietats lingüístiques afegeix

més llenya al foc de la marginalització de les seves realitats humanes, i convida a reproduir o incrementar el seu rebuig social. Malgrat l'alt cost en termes d'exclusió i estigmatització, la normativa tendeix a exercir un poder convincent sobre la població, que la rep sense qüestionament i hi atorga l'aurèola de veritat objectiva (almenys fins que n'augmenta la seva informació sobre el tema, vg. Monzó-Nebot & Llanos-Guerrero 2022). D'aquesta manera, una forma lingüística determinada pot ser ratificada o disputada en referència a estructures de poder institucionalitzades, tancant el cercle pel qual el procés de legitimació influeix en les pràctiques lingüístiques (Woolard 2016).

El veritable problema, però, no és l'ús de la llengua com a arma conscient contra certes poblacions, sinó les conseqüències, conscients o inconscients, de la interacció entre llenguatge, cognició i pràctiques socials. En el cas de la relació entre els usos lingüístics i la categoria del gènere sociopsicològic, hi ha nombrosos estudis que demostren que utilitzar el masculí genèric per referir-se a totser (incloses les persones que no tenen una identitat masculina) reproduïx la mentalitat androcèntrica que estableix que l'home ocupa una posició central per norma i defecte, mentre que els altres gèneres (les dones, per exemple) en són l'excepció (per exemple, Boroditsky, Schmidt & Phillips 2003; Stahlberg et al. 2007; Everett 2011; Kaufmann & Bohner 2014; Coady 2018; vegeu-ne una revisió en català a Monzó-Nebot 2021). D'altra banda, també tenim força evidència, basada en una gran diversitat de llengües, de l'efectivitat d'utilitzar un llenguatge més neutral de gènere (com, per exemple, un epicè, si existeix, o els neomorfemes i neopronoms) a l'hora de reduir l'estereotipació i la discriminació lligades al gènere (Stahlberg & Sczesny 2001; Gustafsson Sendén, Bäck & Lindqvist 2015; Sczesny, Formanowicz & Moser 2016; Brutt-Griffler & Kim 2018; Shoham & Lee 2018). Existeixen també veus que asseguren que, per a alguns individus i grups (notablement, feministes, persones transgènere, no-binàries o d'alguna altra manera no conformadores en el seu gènere), utilitzar un llenguatge més neutral de gènere ofereix una oportunitat molt valuosa d'expressar-se i d'exercir les seves identitats de gènere més enllà de les limitacions imposades per les estructures rígides del gènere binari i (cishetero)normatiu

(Butler 1990; Zimman 2018).<sup>2</sup> Alguns estudis fins i tot vinculen l'adopció de les innovacions lingüístiques que combaten el biaix de gènere, especialment, si s'acompanya de l'acceptació d'un cert nivell de variació interna, amb l'índex de vitalitat lingüística en el cas de les llengües petites o minoritzades (Popič & Gorjanc 2018; Hornsby 2020).

Cal també considerar el paper amplificador dels mitjans de comunicació (Erdocia & Soler 2024), sobretot, en el cas dels mitjans públics, que, per coherència, tendeixen a promoure les mateixes ideologies dels governs que els subvencionen. D'igual manera, en el sector privat, els responsables de divulgar publicacions i, per exemple, etiquetatge i publicitat de productes, tendirien a moure's entre la normativa vigent i les preferències de lis sevis consumidors, i també poden tenir un paper decisiu. En canvi, les xarxes socials es desmarcarien d'aquesta dinàmica i poden servir més com a baròmetre que com a instrument de les ideologies i usos lingüístics imperants (Dovchin 2020), i posar de manifest l'evolució en les preferències de lis usuariis. En resum, en una societat consumista on trobem tot tipus de mitjans, és fascinant observar com els individus interactuen amb les normes vigents, lingüístiques i d'altre tipus.

En tot això és important tenir present que, mentre que la normativa oficial deriva la seva autoritat de la legitimació política i la tradició cultural i intel·lectual (Erdocia & Soler 2022), mitjançant les seves eleccions lingüístiques i manifestant les seves idees al respecte, lis parlants de la llengua poden exercir la seva agencivitat per qüestionar l'encert i pertinència de les decisions oficials, i exercir-hi un canvi *ipso facto* —potser amb l'esperança d'assolir, en un futur, el reconeixement dels qui tenen el poder normatiu. En fer-ho, són ben conscients que estan desa-

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<sup>2</sup> Volem agrair el comentari d'uni de lis revisoris anònims de l'article, que ens recorda la rellevància d'«algunes nocions de la teoria psicoanalítica pel que fa al llenguatge: per exemple, la diferenciació lacaniana entre significat i significat; però sobretot la idea de l'inconscient estructurat com a llenguatge i com aquest (el llenguatge) és constitutiu de realitat i alhora el seu reflex (de la realitat). Des d'aquest marc teòric es pot reforçar encara més la idea d'aquesta reciprocitat dialèctica en un sentit marxista: com el canvi social transforma el llenguatge, i el llenguatge transforma la societat». Si bé no seguim el fil d'aquesta connexió en aquest treball, considerem que aquest angle enriqueix la comprensió teòrica del tema, i en prenem nota per a futures reflexions.

fiant la llei, potser amb l'objectiu exprés de debilitar el *lawfare* contra les comunitats marginades, tot visibilitzant i ressignificant les seves pràctiques lingüístiques. Això és el que ens trobem, per exemple, en el cas de la *Guia gramatical de llenguatge no-binari* (d'ara endavant, GGLNB), que fa un esforç de sintetitzar els usos de l'LGN i desplegar-ne tota la seva dimensió gramatical.

Mitjançant una activitat sostinguda, les formes lingüístiques emprades passen a caracteritzar una comunitat de pràctica lingüística, en l'accepció clàssica del terme (Eckert & McConnell-Ginet 1998; 2007). Amb el temps, i si se'n consolida i regularitza l'ús, aquesta forma de parlar pot arribar a acceptar-se, com a mínim, com a varietat dialectal —en principi, susceptible, com totes les altres varietats, de guanyar la tómbola normativa. En tot cas, si no ho fa (o fins que no ho faci), encara pot constituir-se en una varietat dialectal reconeguda, sobretot, si acceptem que dins d'una comunitat lingüística hi pot haver més d'una normativa (és a dir, una *policentralitat de la norma*, seguint Muhr 2016) encara que les formes tinguin diferent estatus oficials (del Valle 2014). De moment, però, i com veurem en la secció següent, les respostes institucionals no sembla que es deixin doblegar per aquests intents d'apoderament d'aquesta comunitat de pràctica particular i les variants gramaticals que la representen.

### 3. El discurs institucional sobre l'LGN

Les institucions amb autoritat oficial reconeguda sobre qüestions lingüístiques varien pel que fa a l'actitud vers les propostes d'eliminar la desigualtat de representació de gènere en el llenguatge i evitar el biaix masculí. Potser la que més aviat es va pronunciar va ser l'acadèmia de la llengua sueca, en el context de l'anomenada *revolució hen*, quan, després d'un rebuig inicial i enmig de la polèmica social, el 2014 va anunciar la inclusió, al seu diccionari històric, del neopronom *hen* per completar el paradigma de gènere ocupat tradicionalment (en la tercera persona singular) pel masculí (*han*) i el femení (*hon*), tant com a genèric com per referir-se a persones d'identitat de gènere no-binari; d'afegit, hi va fer recomanacions (tot i que no prescripcions) sobre la seva flexió de cas. A partir de llavors, com a mínim un estudi (Gustafsson Sendén, Bäck

& Lindqvist 2015) ha demostrat que, amb molt poc temps, la resistència inicial al llenguatge no sexista estava donant pas a actituds més positives i l'ús del pronom neutre de gènere estava augmentant a mida que se'n normalitzava la pràctica.

Un any després (el 2017), i a l'altra banda de l'Atlàntic, la prestigiosa societat americana de dialectologia, que a manca d'haver-hi una acadèmia de la llengua anglesa representa una de les autoritats lingüístiques reconegudes, va omplir els titulars dels diaris en incloure el pronom de gènere neutre *they* (flexionat paradigmàticament com a *them/their*) en el seu llibre d'estil; tot seguit, el diccionari de referència d'anglès americà Merriam-Webster l'escollia com a «paraula de l'any» 2019. Per acabar-ho de rematar, el 2020 la societat americana de dialectologia li atorgava el títol de paraula de la dècada per al decenni que acabava amb aquest any.

En contrast, la Real Academia de la llengua espanyola (RAE) s'ha pronunciat consistentment en contra de tot el que no fos el masculí genèric i la binaritat de gènere gramatical, titllant les pràctiques de reduplicació o neoflexió d'in-necessàries i farragoses, i els neomorfemes d'aliens a la llengua espanyola, a més de ser «absurdes, ridícules i totalment ineficients»<sup>3</sup> (Moretti 2018) –malgrat el suport d'alguns sectors de la comunitat acadèmica internacional (Serrano & Montes 2022).

D'igual manera, l'acadèmia de la llengua francesa s'hi va posicionar fermament en contra, qualificant eloqüentment el llenguatge inclusiu com a «aberració lingüística» (Académie française 2017), una imposició d'un «grup d'elit» «obsessionat amb el gènere», que en promou un canvi «brutal, arbitrari i no concertat», que «violava els ritmes de l'evolució del llenguatge», «mutilava la respiració i la lògica de la llengua», «ofenia la democràcia del llenguatge» i «inhibia l'expressió més ampla del pensament»; les víctimes principals de l'LGN eren, segons l'Acadèmia, «persones amb discapacitats cognitives [...], estrangers que volen aprendre [francès]», i, a més, dificultaven l'expansió d'aquesta

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<sup>3</sup> La traducció al català de les cites *verbatim* originalment emeses en altres idiomes ha corregut al nostre càrrec.



llengua a l'Àfrica en favor de l'anglès com a llengua franca (Carrère d'Encausse & Lambr 2021).

A Alemanya, a l'agost del 2021, diversos *Länder*<sup>4</sup> prohibien l'LGN a les escoles i dictaven que lis mestres l'havien de marcar com a incorrecte —malgrat que se n'havia estès la utilització a la publicitat del carrer, als anuncis de feina i a la universitat. La raó que s'adduïa era que aquestes formes (asteriscs, comes, lletres subratllades i neomorfemes) no tenien cabuda dins de les convencions ortogràfiques de l'alemany i podien provocar errors gramaticals, per exemple, en els articles i els pronoms associats. Tanmateix, a altres *Länder*, se'n reconeix i encoratja l'ús. El resultat és una gran varietat d'actituds i de pràctiques a les aules, amb mestres acatant i d'altres resistint les directives oficials de manera idiosincràtica (Wiemann 2023).

En alguns casos, la politització de la norma lingüística i l'ús de *lawfare* per oprimir aquells que en difereixen es fa encara més explícita quan són les pròpies figures polítiques que utilitzen la seva visibilitat i, finalment, el seu poder, per influir-ne el debat. A l'Argentina, per exemple, el govern progressista del president Alberto Fernández va aprovar una resolució en què es recomanava l'adopció d'un llenguatge inclusiu que «elimina el biaix i la jerarquitització entre gèneres» (Argentina. Instituto Nacional de Asociativismo y Economía Social 2020). Per tal d'assegurar que la resolució no acabés en paper mullat, el president mateix utilitzava LGN en els seus discursos i, a partir del 2021, el seu govern va posar a disposició de lis ciutadans no-binariis la possibilitat de corregir el seu gènere oficial en els documents nacionals d'identitat i passaports, tot indicant-hi l'especificació x quan els binaris *home* i *dona* no els representaven. Sobre el terreny, un extens qüestionari distribuït per les xarxes socials que mesurava les actituds vers l'LGN i la seva adopció a l'Argentina va trobar que en creixia l'acceptació (Bonnin & Coronel 2021).

Tot i així, la fragilitat legal dels col·lectius socialment (i lingüísticament) vulnerables queda de manifest en el cas mateix d'Argentina, ja que, amb el canvi

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<sup>4</sup> Els *Länder*, també anomenats *Bundesländer*, són els diferents estats que componen la República Federal d'Alemanya.

de govern a l'hivern del 2023, una de les primeres accions del nou president Javier Milei, simpatitzant de grups de l'extrema dreta americana, va ser denunciar el que anomenà «l'agenda de gènere» feminista i dels col·lectius *queer*,<sup>5</sup> amb l'excusa que aquesta s'havia utilitzat com a arma política pels sectors de l'esquerra progressista en el tema de la legalització de l'avortament del 2020. Milei va promoure, específicament, la prohibició de l'ús del llenguatge inclusiu en l'Administració (Argentina. Ministerio de Defensa 2024). La decisió, l'arrelà en «l'obligatorietat de l'idioma castellà, conforme a les normes de la Reial Acadèmia Espanyola», per tal d'eliminar «formes incorrectes del llenguatge» que atempten contra la claredat, brevetat i concisió de, per exemple, les comunicacions en l'àmbit de defensa nacional (CanalB 2024). L'al·lusió a la RAE d'entre les vint-i-quatre acadèmies de la llengua espanyola existents —i no, per exemple, a l'Academia Argentina de Letras del país, establerta el 1931 i reconeguda dins de l'Asociación de Academias de la Lengua Española des del 1999— grinyola, especialment, en un context en què la sensibilització per la descolonització pendent és un tema sempre present.

Un altre exemple, el trobem en el domini del francès, també esmentat més a dalt. Per si el rebuig oficial de l'acadèmia de la llengua no fos suficient, el president de la nació mateix, Emmanuel Macron, va aprofitar la inauguració del museu de la llengua francesa, a la tardor del 2023, per manifestar-se a favor del masculí genèric i en contra del llenguatge inclusiu i de l'LGN (Birken 2023). La il·legalització de l'LGN ha arribat fins i tot a la seu del Senat francès, on actualment (2024) hi ha sectors que la promouen «en el nom de salvaguardar la llengua francesa, per tal de preservar la seva claredat i intel·ligibilitat». En la promoció de la legislació es considera que els canvis lèxics i tipogràfics del llenguatge inclusiu presenten una «ideologia que posa en perill la claredat de la llengua», i suposen un «perill mortal» per a la llengua, motiu pel qual creuen que «cal la intervenció de la legislatura» (Gingins 2023). La politització del tema és evident, i lis adversariis polítics esdevenen adversariis lingüístiquis, com es pot veure en

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<sup>5</sup> En aquest article utilitzem *queer* com a terme paraigua per a les identitats de gènere o orientacions sexuals que surten del binarisme i la (cis)heteronormativitat.

la resposta a X del líder del partit populista d'esquerreres France Insoumise, que, davant la iniciativa reguladora impulsada per la seva contrapartida d'extrema dreta, clama: «la llengua pertany a aquells qui la parlen!» (Mélenchon 2023).

Altres entitats amb poder polític més restringit també hi han dit la seva, generalment, publicant guies d'estil. Per exemple, hi ha algunes propostes per incloure l'LGN a l'ensenyament (Parra & Serafini 2021; Silva & Soares 2024) i hi ha una nova consciència per evitar categories dicotòmiques en el disseny de la recerca (Ansara & Hegarty 2014), com també en proves de laboratori i en informes mèdics (Imborek et al. 2017). En el domini del català, en canvi, tant la Universitat Autònoma de Barcelona (Marçal, Kelso & Nogués 2008 [2011]) com la Universitat de Barcelona (UB 2023), en el seus llibres d'estil, aposten pel masculí genèric, en línia amb l'IEC, fins i tot a la contra de les formes duplicades en masculí i femení afavorides per l'Administració de l'Ajuntament de la seva ciutat (Ajuntament de Barcelona 2024), que, d'altra banda, tampoc no recull les propostes per a persones no-binàries, ni es fa ressò de les objeccions vers el biaix causat per l'ús del masculí genèric (però sí que menciona l'impacte lingüístic de la discriminació amb base racial o cap a persones amb capacitats físiques i cognitives diverses).

#### **4. Empoderament lingüístic: la *Guia gramatical de llenguatge no-binari***

La necessitat i els efectes d'adoptar un llenguatge que visibilitza una part de la població de parlants històricament invisibilitzada, amb la intenció de combatre pràctiques d'exclusió per raons de gènere, queden recollits a la GGLNB. Malgrat el títol, aquesta publicació no és un simple tractat lingüístic sobre les conseqüències gramaticals dels anomenats neomorfemes i neopronoms (en la seva diversitat), sinó que també inclou una primera part on es fa una explicació de les raons del fenomen en el seu context lingüístic i cultural, i la necessitat de la seva normalització.

Lis autoris de la GGLNB, a més de la pròpia experiència personal i els seus coneixements professionals, recullen el testimoni obtingut a partir d'un formulari contestat per més de quaranta persones no-binàries transgènere, és a dir,

que, en la seva identificació de gènere, se situen fora de la dicotomia binària d'home-dona (o masculí-femení). El terme més utilitzat per autoreferir-se és el de *persona no-binària* o, tal com fa l'anglès, *persona enabé* (*nb*, el nom de les lletres). A la GGLNB es recullen alguns neologismes que es fan servir per evitar malgeneritzar els individus enabé, i se'n destaca el paper visibilitzador de la pràctica, així com la satisfacció dels individus enabé quan se'ls generitza correctament. Tanmateix, se'n menciona també un ús com a genèric. És important assenyalar aquest doble ús, perquè, com ja hem vist, els organismes oficials tendeixen a manifestar-se respecte a l'expressió del genèric (per exemple, Junyent 2021; IEC 2023; UB 2023, etc.) a favor del masculí genèric, mentre que el llenguatge referit a les identitats no-binàries no sembla haver arribat al debat oficial, com si la malgenerització no es reconegués com a problema —reflectint un cop més la invisibilització d'aquestes persones no només en el llenguatge, sinó a la societat mateixa.

La GGLNB presenta, doncs, una proposta en què es recullen els canvis morfològics i lèxics<sup>6</sup> que han adoptat les persones que se situen fora de la dicotomia binària de gènere tant per a referir-se a si mateixes com en el cas que no es conegui el gènere del referent o que hi hagi un grup amb individus de diversos gèneres. A més de neologismes lèxics com, per exemple, *are* o *xare* quan no s'és ni pare ni mare, o *maridi/mulleri* per a referir-se a la parella, o *totser* enlloc de tothom, hi ha recollits els neopronoms *elli*, *li*, *mevi*, *totis*, etc. en tot el seu paradigma flexiu de nombre i cas. Tot i que s'hi reporten certes alternatives, es presenta el paradigma flexiu del neomorfema nominal *-i* com el més usat; així, enlloc del genèric *tots els meus amics*, es recull *totis lis mevis amiguis*, *i*, per referir-se a persones no-binàries o de gènere no especificat, *elli*, *li mevi amigui*, en lloc d'ell/a, el/la meu/va amic/ga, i *lis mevis amiguis* com a genèric o per referir-se a un grup mixt o del qual es desconeixen els gèneres.

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<sup>6</sup> La GGLNB també recull alternatives discursives i sintàctiques com a part del llenguatge no sexista, com ara la duplicació o triplicació, els mots col·lectius i metonímics o epicens, les oracions de relatiu amb *persona que...*, que anomenen llenguatge no-binari indirecte seguint López (2019), però en aquest article ens centrem sobretot en les innovacions morfològiques.

Els assajos i el recull de respostes del formulari deixen clara la importància de dotar la llengua de recursos lingüístics perquè les persones no-binàries no pateixin la malgenerització sistemàtica, i per evitar que les persones que no són de gènere masculí se sentin excloses quan es fa una referència genèrica o invisibilitzades si es tracta d'un grup mixt. Poder referir-se lingüísticament a un mateix de la manera correcta ocasiona un sentiment de visibilització, normalitat i inclusió que contrasta amb les experiències d'alteritat, exclusió i marginació que aquestes persones pateixen a la seva vida diària (fins i tot, dins de les pròpies famílies). Exercir l'agentivitat com a usuari de la llengua per establir una forma representativa inclusiva ofereix una rara illa d'empoderament en un oceà de discriminació (Daussà 2021).

La publicació d'una guia que recull els usos de l'LGN en tota la seva complexitat gramatical pretén advocar per una normativitat alternativa. En ancorar la seva legitimitat en els mateixos parlants, tot recollint usos ja existents, i en justificar la seva necessitat en les experiències d'un col·lectiu que exigeix el reconeixement dels seus drets d'usuari, la GGLNB defensa una pluricentralitat normativa pel que fa a la llengua catalana que desafia el monopoli d'autoritat d'organismes com l'IEC. En la seva funció de performativitat identitària (Butler 2009), l'LGN reclama l'autoritat de l'usuari de determinar la forma que ha de tenir la seva llengua per tal de continuar sent un instrument d'expressió i de creació de realitats.

En resum, la implementació de l'LGN sovint provoca reaccions, tant positives com negatives, que, més enllà de les formes lingüístiques, es dirigeixen a les usuàries de la llengua. Si bé aquestes reaccions no són exclusives del cas català, és interessant veure com també s'hi donen, i examinar-ne les peculiaritats que, com a llengua minoritzada, hi pugui presentar (Hornsby 2020; Daussà & Pera-Ros 2024). El posicionament dels agents oficials exerceix una gran influència sobre la població, sigui atorgant legitimitat als arguments que s'hi alineen o bé desqualificant altres variants. Tanmateix, la batalla política no té cap efecte si no té suport a les trinxeres del carrer, i és per això que en la resta d'aquest article ens centrem en les reaccions expressades a la xarxa social X, parant atenció especial a l'ús de la normativa

com a *lawfare* per a la discriminació lingüística, i a les reaccions de defensa i estratègies d'empoderament de les persones afectades. En el nostre estudi fem esment especial a les entrades que directament o indirectament es refereixen a la GGLNB, perquè és l'únic treball que ha presentat metòdicament un recull d'usos i perquè la publicació del llibre va posar (i manté) el tema de nou a la taula de debat públic. Ens interessa també examinar l'efecte que la publicació d'una guia que, per definició, planteja una normativa alternativa a l'oficial ha tingut sobre l'opinió pública.

## 5. X: la veu del poble

Per al nostre estudi ens hem basat en l'anàlisi de 150 piulades en català publicades entre el 3 de setembre (dia en què es va anunciar la publicació de la GGLNB) i el 10 de març del 2024. Vam trobar la majoria de piulades aplicant el mètode de mostra de criteri intencional (Palys 2008), tot cercant termes clau com *llenguatge no-binari*, *IEC masculí genèric*, *IEC no-binari*, *Gramàtica no-binari* o *llenguatge inclusiu*. Vam trobar altres piulades addicionals aprofitant les possibilitats logarítmiques d'X, i seguint els fils de les piulades anteriors. La neteja de les dades va consistir en l'eliminació de piulades repetides, piulades de la mateixa persona dient el mateix i clarejat del missatge. Es van eliminar piulades d'institucions, associacions polítiques o socials, articles periodístics, etc., ja que el nostre interès radicava en les opinions d'individus. Un cop teníem suficients piulades il·lustrant un tema, paràvem de recollir-ne piulades, tot i que en fèiem seguiment comparatiu de les que seguíem trobant. La saturació de categories es determinava quan notàvem que la generalització del tema quedava suficientment demostrada relativament a la mida de la mostra, al voltant de les 10-15 instàncies de recollida formal. Les piulades van ser capturades individualment o en el fil on apareixien mitjançant la funció de captura de pantalla, anonimitzades i numerades de manera individual abans d'arxivar-les, d'acord amb la regulació de protecció de dades vigent. El projecte va ser avaluat pel comitè d'ètica en la investigació de la Universitat d'Amsterdam,

que va considerar que el treball quedava legitimat per la clàusula que han d'acceptar els usuaris d'X en crear un compte, per la qual donen la seva autorització per tal que s'utilitzin els continguts de les seves publicacions per a la recerca (sense especificar-ne el tipus).<sup>7</sup>

Tal com vam fer en un estudi similar (Daussà & Pera-Ros 2024), hem aplicat una anàlisi temàtica reflexiva (Braun & Clarke 2006; Clarke & Braun 2017), tot seguint el procés de sis passos de Kriger i Varpio (2020): familiarització amb les dades, generació de codis i detecció, revisió, denominació i definició de temes. El període previ de familiarització va durar aproximadament un any, durant el qual vam detectar els temes recurrents en el debat sobre l'LGN en general i vam generar els codis d'identificació inicials. Tot seguit, durant el període de recollida de la mostra, vam anar revisant els temes fins arribar a la denominació i definició de temes finals, que reflectien més acuradament el debat després de les declaracions oficials de l'IEC i la publicació de la GGLNB. En el refinament i la definició de temes per a l'anàlisi, ens vam guiar per conceptes existents a la literatura rellevant, com ara la puresa i l'autoritat, i sobretot en els ja assenyalats, tot i que no en referència a l'LGN, en estudis sobre el català o llengües i situacions semblants (Milroy 2001; Heller 2006; Woolard & Frekko 2013; Hawkey & Kasstan 2015; Walsh 2016; Woolard 2016), així com el de la performativitat del llenguatge i el seu efecte empoderador (Butler 1990) i, finalment, el concepte de *lawfare* lingüístic. La taula següent resumeix els temes analitzats, que desenvolupem tot seguit en la presentació amb exemples il·lustratius de cada tema. Per últim, presentem una conclusió amb la intenció d'emmarcar la significació de les dades de la xarxa social davant les posicions oficials més àmplies ja presentades anteriorment.

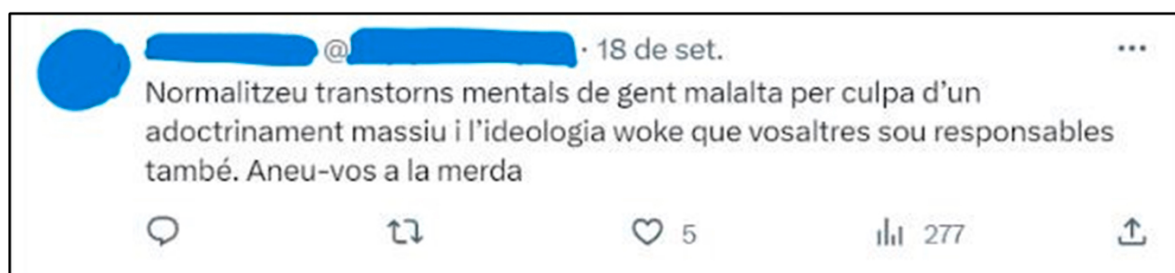
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<sup>7</sup> La Universitat d'Amsterdam no ha publicat les seves directrius per a l'avaluació ètica de la investigació, però els seus criteris són els mateixos que exposa la publicació de la Universitat d'Aberdeen en el document accessible a [socialmediaresearchethics \(stmarys.ac.uk\)](https://socialmediaresearchethics.stmarys.ac.uk) (Townsend & Wallace s.d.). Per a un tractament general sobre l'ús de les dades extretes de les xarxes socials, vegeu Iphofen (2020).

	Tema	Definició
1	Atac <i>ad hominem</i> a través de la seva llengua (LGBT-fòbia)	Insults i amenaces cap a la comunitat <i>queer</i> mitjançant el rebuig de la seva varietat lingüística
2	<i>Lawfare</i>	Utilització de la norma lingüística de l'autoritat per excloure o marginar la varietat lingüística d'una població tot desacreditant-ne la legitimitat
3	Pluricentralitat de la norma	Reconeixement que la forma lingüística pot estar determinada a través de més d'una font que la legítimi
4	Empoderament lingüístic	Reapropiació de la legitimitat lingüística
5	Català com a llengua minoritzada	El canvi lingüístic vist com a degradació de la llengua o bé com a signe de vitalitat
6	El català i altres llengües	Comparació amb altres llengües per justificar i legitimar (la forma de) la llengua catalana
7	Comparació amb altres lluites socials	Comparació amb altres iniciatives que cerquen la igualtat social

Taula 1. Temes derivats de l'anàlisi reflexiva

El primer que cal destacar és la polarització de les reaccions vers el tema de l'expressió de gènere en el llenguatge, que, en certa manera, podria ser deguda al mitjà observat. Cal també remarcar que, entre les reaccions negatives, hi ha força gent que rebutja la proposta de l'LGN amb actituds profundament despectives i ofensives, que, més enllà del llenguatge en si, s'estenen a les poblacions associades amb el seu ús. La piulada 1 n'és un exemple, on, a més de negar l'existència de la identitat no-binària, tot equiparant-la amb lis delinqüents sexuals, s'utilitza el trastorn mental com a insult. També cal destacar l'ús de la paraula *woke*, utilitzada per certs sectors conservadors i d'extrema dreta per invalidar i designar els moviments progressistes.



Piulada 1. Insults a la comunitat LGBTQ+ i a altres grups

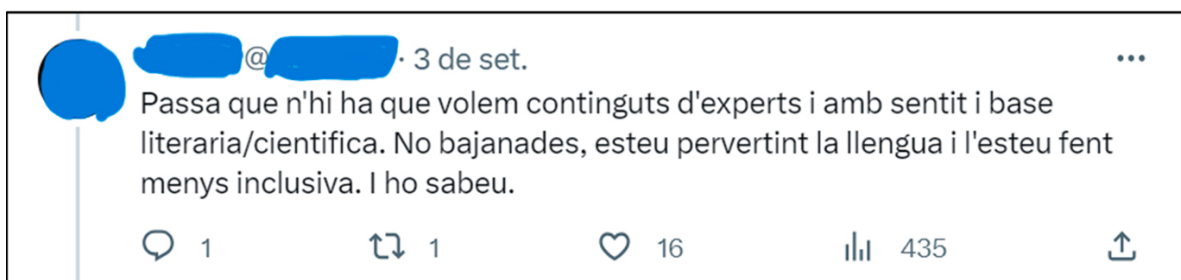


De vegades, l'insult passa la barrera de l'amenaça, com en la piulada següent, on es proposa d'identificar per la seva manera de parlar les persones que tenen intenció de marginalitzar, tot insultant-les de passada:



Piulada 2. Insults i amenaces personals i grupals

El primer tema que ens trobem fa referència a qui posseeix la legitimitat per assumir el paper d'autoritat lingüística sobre aquest assumpte. En primer lloc, s'assenyala que aquesta recau sobre persones expertes (lingüistes i altres perfils científics i professionals suposadament fidels a la institució), mentre que qualsevol altra iniciativa es descarta com a acció intencionalment maliciosa.



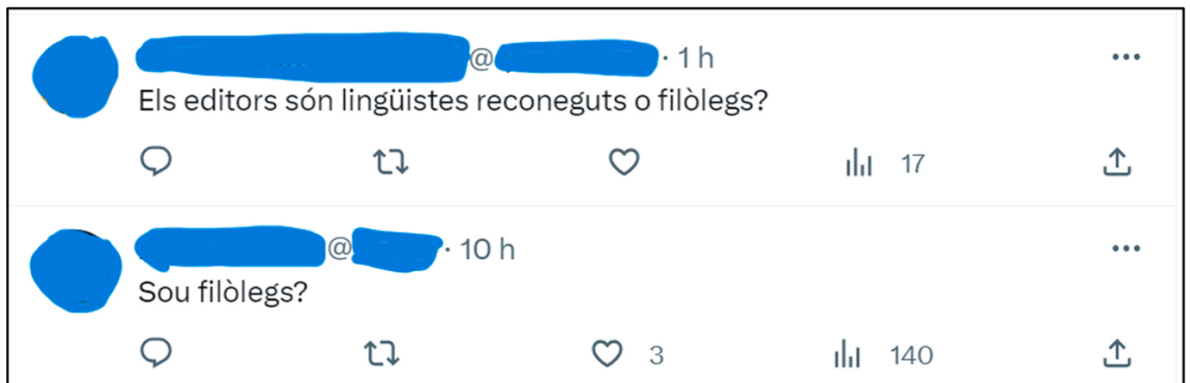
Piulada 3. Legitimitat de les persones expertes

La veu experta de l'IEC sobre el tema no es qüestiona mai (a diferència d'altres propostes prescriptives anteriors, com ara amb la reforma dels diacrítics, que va ser rebuda amb àmplia discòrdia per part de l'is usuaris) i es pren com a autoritat científica malgrat les veus divergents d'alguns professionals (Ortega 2022).

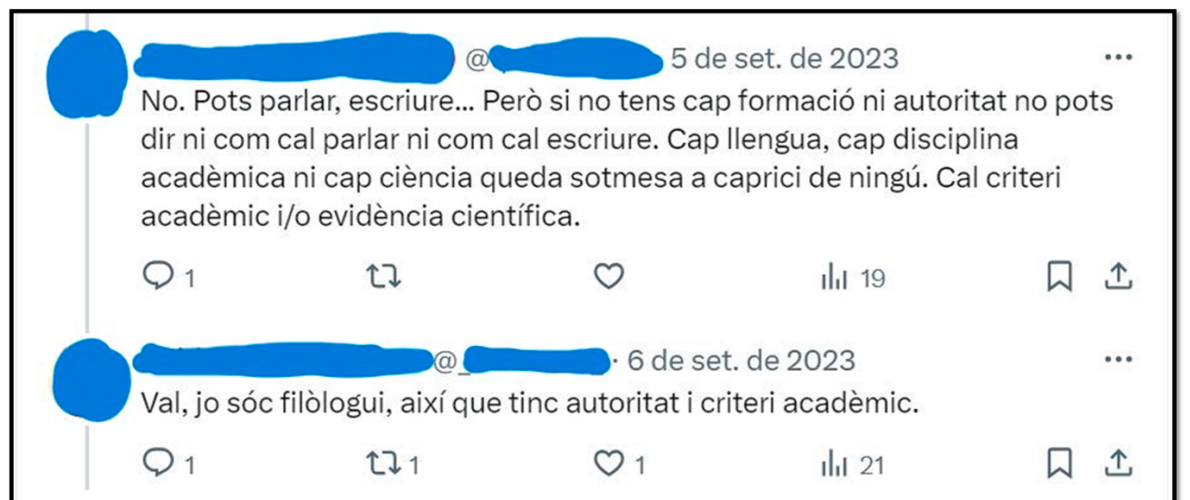


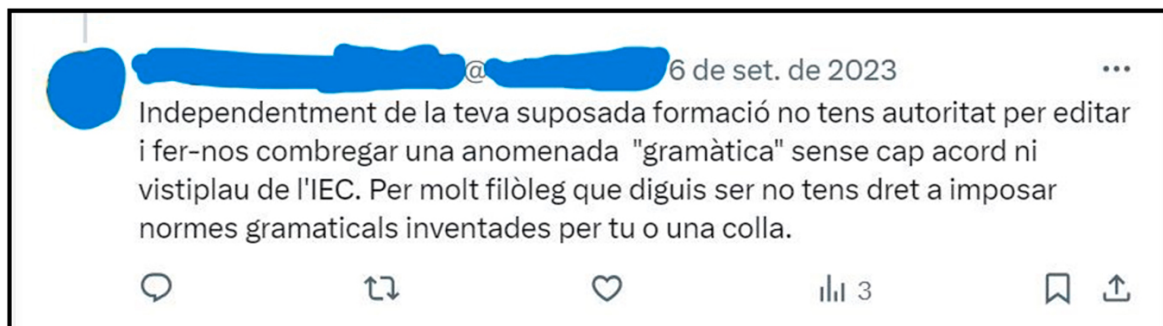
Piulada 4. Autoritat inqüestionada de l'IEC

D'altra banda, i tot i que a la GGLNB hi participen professionals de la llengua com ara filòlogus, lingüistes, traductoris i editoris, la seva autoritat és qüestionada. La piulada 5, per exemple, no és una pregunta amb intenció informativa, sinó de confrontació. I la piulada 6 desacredita directament l'autoritat de les proponentes de l'LGN:



Piulada 5. Qüestionament d'autoritat de la GGLNB

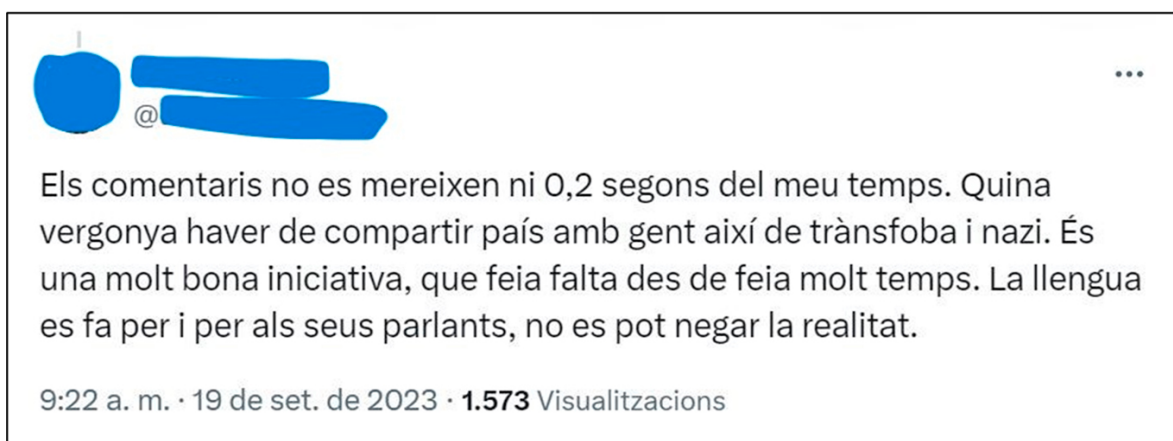




Piulada 6. Desacreditació de la GGLNB

Interpretem que comentaris com aquests, clarament fets amb intenció de desacreditar la GGLNB, donen suport al *lawfare* lingüístic segons hem definit anteriorment. Utilitzen l'autoritat de lis lingüistes i filòloguis per deslegitimar l'LGN, tot reconeixent només un canvi o una norma si és dictada per la institució oficial.

D'altra banda, el menyspreu sembla mutu. Lis partidaris de l'LGN també expressen desdeny per les opinions i les idees de lis seus retractoris, amb llenguatge igualment poc subtil, entenent que van més enllà de qüestions lingüístiques.



Piulada 7. Menyspreu cap als atacs i aquells que els perpetren

Tanmateix, el que la piulada 7 posa sobre la taula (amb la darrera frase) és l'ancoratge de la legitimitat no en lis expertis, sinó en «els seus parlants» [sic]. El reconeixement d'una alternativa a la norma oficial com a única seu d'autoritat, trenca una llança a favor de la pluricentralitat normativa i porta a veure el debat sobre el tema com un guany en si mateix.



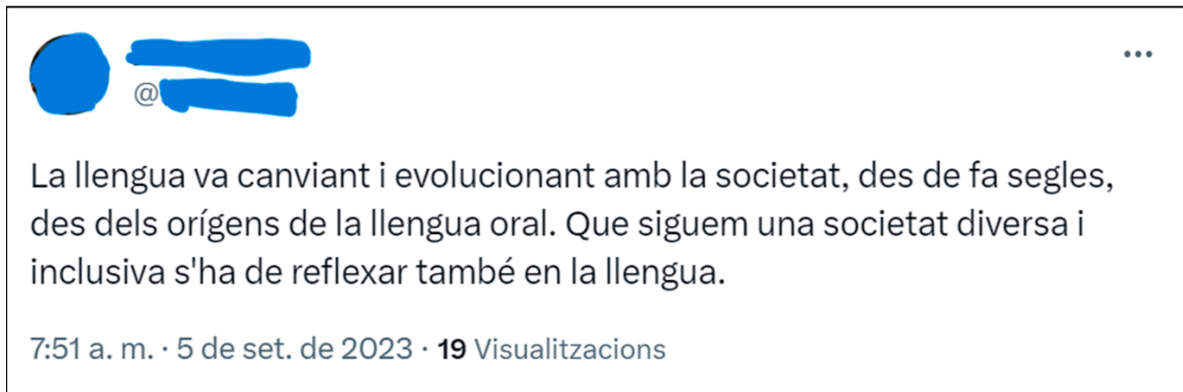
Piulada 8. Pluricentralitat de la norma

Aquest desafiament de la norma oficial només es pot fer des d'una posició d'empoderament que concep lis parlants com a possibles agents de canvi. Així doncs, les piulades 7 i 8 són clars exemples de la reapropiació de l'autoritat lingüística: les persones que les van escriure creuen i defensen que la llengua pertany a totis lis parlants i que, per tant, són lis parlants mateixis qui tenen la legitimitat i el dret d'adaptar el llenguatge a les seves identitats i necessitats.

A voltes, l'agent del canvi s'identifica com el col·lectiu «la societat». Hi ha un debat sobre què compta com a «canvi natural» de la llengua. Com hem vist abans, l'IEC, en el seu comunicat, descarta que un canvi (*aquest canvi*, si més no) proposat per un col·lectiu de parlants (*aquest col·lectiu*, si més no) pugui entendre's com a natural, mentre que no dubta de la legitimitat de la seva pròpia intervenció (per definició, *des de dalt*). El debat es veu reflectit a l'arena social.



Piulada 9. Il·legitimitat del canvi



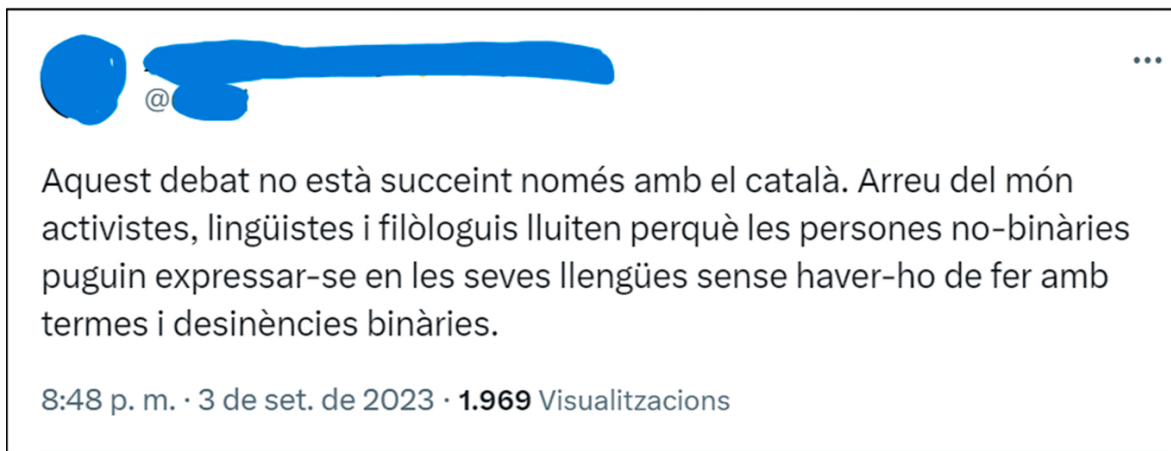
Piulada 10. Canvi lingüístic per acció col·lectiva i reflex social

En alguns casos, s'esmenta l'empoderament que es deriva de la reapropiació de l'autoritat lingüística, en reconèixer el dret inherent i l'autoritat legítima que té toti usuari de modificar la llengua i d'adaptar-la a les seves necessitats, fer-se sentir i enfrontar-se a la marginació social.



Piulada 11. Canvi lingüístic promotor de progrés social

El fet que es proposin neomorfemes o neopronoms, i que es busqui la manera d'expressar allò que fins al moment estava invisibilitzat, mostra que el català és una llengua que pot avançar i transformar-se, i que la comunitat lingüística vol veure-s'hi representada sense haver de recórrer a altres llengües. D'una banda, la participació del català en un debat tan actual contribueix al fet que sigui vist com una llengua viva i activa tant internament com en el pla internacional, la qual cosa podria veure's com a indicativa del seu grau de vitalitat lingüística.



Piulada 12. Vitalitat de la llengua

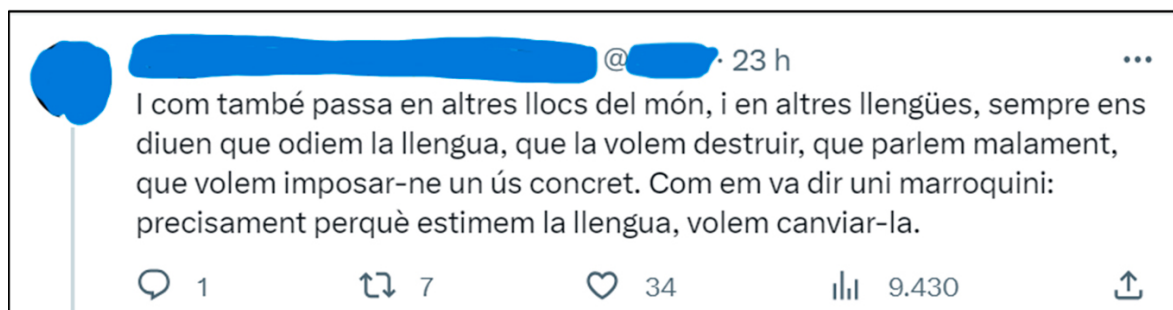
D'altra banda, i com trobem en altres llengües, s'acusa l'LGN de destruir i pervertir la llengua. En el cas del català, es ressalta, a més, la situació de minorització lingüística com a argument contrari a l'LGN; trobem la idea de l'LGN com una degradació i es considera que el català, com a llengua minoritzada, no pot assumir un repte com aquest, la qual cosa implica que aquests intents de fer el català més flexible n'afecten negativament la vitalitat i contribueixen a la seva minorització.



Piulada 13. Degradació de la llengua



Tanmateix, aquests arguments són rebuts amb la condescendència de qui s'ho ha sentit dir abans:



Piulada 14. Resposta als atacs

Sovint els partidariis de l'LGN proven de trobar-hi la legitimitat normativa en la trajectòria d'altres lluites socials, com els moviments feministes o antiracistes (o, com la piulada següent, antiespecista), tot recordant que moltes pràctiques que trobem normatives avui dia es van originar des de la marginalitat. Engrescadis per aquests paral·lels, alguns usuariis assenyalen que aquesta proposta no és més que un pas més en una trajectòria netejadora de la llengua que encara està a les beceroles:



Piulada 15. Altres lluites socials pendents

En resum, en el camp de les xarxes socials, trobem arguments tant favorables com contraris a l'LGN. Si bé hem trobat un major nombre de piulades de rebuig a l'LGN (i de suport a la normativa), també hi ha piulades que expressen la necessitat que el català hi doni cabuda, com fan tantes altres

llengües arreu del món, o que celebren que hi hagi aquesta iniciativa. No totes les persones que celebren la publicació del llibre mostren el mateix grau d'entusiasme o de convicció, però; per exemple hi ha algunes persones que no acaben d'estar del tot convençudes amb la proposta, però creuen que és positiu que es busqui la manera de combatre la iniquitat social i les maneres com s'implementa a través del llenguatge.

## 6. Conclusió

En el nostre estudi, hem adoptat una perspectiva d'etnografia crítica (Martin-Jones & da Costa Cabral 2018), que té com a objectiu vincular la recerca etnogràfica sobre ideologies i normes socials més àmplies amb l'anàlisi de pràctiques lingüístiques específiques. Així, ens fem ressò del que Ricento (2000) assenyala com un dels objectius de la recerca sobre política lingüística en totes les seves manifestacions (en el nostre cas, pel que fa a la normativa dictada per les institucions). Aquest autor assenyala que l'anàlisi de les polítiques lingüístiques i les seves conseqüències poden posar de manifest desigualtats en la planificació/regulació lingüística. Finalment, i seguint Creese (2008) i Creese i Copland (1997 [2017]), entenem l'ús del llenguatge com a pràctica social situada, i no com a objecte deslligat del context en què es troba. Així, entenem que les decisions normatives sobre la forma de la llengua no reflecteixen només gustos estètics o reticències purament lingüístiques, sinó actituds lligades a les persones que l'utilitzen.

Hem vist com la normativa lingüística pot fer-se servir per reforçar, des de la posició d'autoritat, pràctiques que contribueixen a la creació i el manteniment de les jerarquies sociopsicològiques dins d'una comunitat i, així, legitimar, directament o indirecta, la violència (verbal), la invisibilització i l'exclusió de les persones que tenen una identificació de gènere diferent de la masculina. En aquest sentit, l'acció de les autoritats lingüístiques són un tipus de *lawfare* còmplice d'altres pràctiques d'exclusió institucional discriminatòries que impedeixen la construcció d'una



societat igualitària que representi la diversitat de gènere inherent a les societats, mitjançant la regulació de la vida lingüística d'aquells que en formen part.

Les dinàmiques lingüístiques, però, no depenen tan sols dels vaivens polítics. Per tal de combatre el desempoderament social i institucional històric, i avançar la construcció d'un món més igualitari, existeixen actuacions que permeten a alguns individus i grups de recuperar l'empoderament a través d'unes pràctiques lingüístiques. Aquestes pràctiques aporten la representació i l'assertivitat d'identitats que queden fora de l'hegemonia d'una comunitat de parla. En seria exemple que s'adoptin i es promoguin accents, paraules, expressions o estructures lingüístiques que visibilitzen una identitat ignorada o exclosa per una normativa que, o bé va amb retard respecte als signes dels temps, o bé s'hi pronuncia obertament en contra ja sigui per motius ideològics varis, per inèrcia o per arrelament tossut a un passat que ja no és vigent. En aquest article, ens hem centrat en la pràctica contrahegemònica d'efectuar la realitat diversa del gènere i de normalitzar les identitats generitzades. Ho hem fet des d'una perspectiva programàtica que reconeixeria la poli-centralitat de la norma en una comunitat lingüística respectuosa amb la seva diversitat interna. Hem considerat tant les posicions oficials sostingudes per processos d'autoritat hegemònics, com les que arrelen la seva legitimitat en l'ús i la necessitat social, representades aquí per la GGNLB, ja que és l'únic esforç que existeix de presentar una alternativa desplegada en tot el seu paradigma gramatical. Tot seguit, hem recollit les reaccions de lis usuaris de la xarxa X, considerant que reflectien els arguments del debat social sobre aquest fenomen. Si bé hem trobat arguments tant favorables com contraris a l'LGN, ens han interessat les dinàmiques de poder basades en l'existència d'una normativa que hauria de donar suport a les persones que vetllen perquè la seva llengua no perdi el tren del temps, en lloc d'emudir-les. L'alternativa pot ser ben bé que es vagi produint un degoteig mortal cap a altres llengües que els ofereixen la possibilitat d'expressió i l'acolliment que els són negats en la llengua que s'estimen.

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## Unveiling discrimination: A critical analysis of transgender laws and the marginalization of hijras in the Indian subcontinent

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## **Unveiling discrimination: A critical analysis of transgender laws and the marginalization of hijras in the Indian subcontinent**

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### **Abstract**

This article examines the historical and legal marginalization of the hijra, a third-gender community in South Asia, with a particular focus on the Indian subcontinent. Utilizing a postcolonial theoretical framework, the article analyzes contemporary lawfare dynamics between hijra and transgender activists in India and Pakistan. The study integrates gender and class analysis to explore key legal developments, drawing on examples from both colonial and contemporary legislation in India and Pakistan. The article argues that despite increased legal recognition of transgender rights, hijra remain marginalized as transgender activists seek acceptance as members of the middle class, often at the expense of hijra communities. By exploring legislative interventions and the narratives around activist endeavors, lawfare is analyzed at two levels, legislative and social, demonstrating how transgender activism can perpetuate discrimination against hijras in both Pakistan and India. The analyses underscore the complexity of alliances within genderqueer groups in postcolonial South Asian societies, challenging the assumption that these groups are natural allies. Ultimately, the article reveals the complex intersection of gender, class, and legal strategies, critiquing the role of lawfare in perpetuating social divisions and calling for more inclusive approaches to gender rights.

**Keywords:** hijra, transgender, third gender, lawfare, India, Pakistan

## 1. Introduction

Hijra, a historically recognized third-gender community in South Asia, have played significant roles in both religious and social spheres for over 2000 years. Most hijra are generally understood to be born as intersex or assigned male at birth, sometimes undergoing castration (Kalra 2012b). Hijra wear female clothing, makeup, and jewelry (Iyer 2009). Though they consider themselves to be neither male nor female, many hijra prefer to use the pronoun she or the equivalent in regional vernacular languages (Reddy 2005), although neutral pronouns are favored by some (Ghalzai 2020) and others switch between female and male pronouns (Pamment 2010).

In India, hijra are a common sight in residential and commercial areas alike. Hijra play a role in religious contexts, as they are considered to have the power to bless or to curse important life passages, including births and weddings (Nanda 1999). They tend to work within a small group when performing rites outside of households that have experienced the birth of a baby. Hijra will approach a household from the outside lane or street, remaining at the door while they sing and dance. Part of the routine typically involves the threat to raise their skirts and expose themselves to the middle-class homeowner unless the family offers up some payment (Pamment 2010). In addition to offering blessings and good fortune, the hijra ostensibly come to the household to inquire if a baby may be a hermaphrodite—intersex—and to see if the infant's natal family might surrender them to be raised within the hijra community (Reddy 2005).

Like their cisgender counterparts, transgender people in India and elsewhere in the global modern world live in family units, including natal and extended families, nuclear families, and, like other professional people, with roommates (Hines 2007; Bakshi & Dasgupta 2019). Hijra, in contrast, usually leave their birth families and become part of a household of other hijra (Reddy 2005). Such hijra households are headed by a guru with the others as followers (Nanda 1999). Opting for such guru-disciple units—highly denigrated under British colonialism (Hinchy 2021)—they typically leave their family support networks and resources behind, which contributes to the painful marginalization of hijra outside mainstream society.

Historical contexts and social roles played by the hijra have changed over the centuries, reflected in varying subcategories as well as shifting and relative degrees of privilege and prejudice. Under Mughal (1526–1858) and British (1757–1947) governments, the legal status of hijra fluctuated. For example, they carried out important roles in the courtly life of Muslim empires, but under British rule, hijra were legally criminalized (Hinchy 2021). After the end of British colonialism in 1947, the independent nations of Pakistan and India have alternately enacted and repealed laws affecting the political rights and social standing of hijra (Reddy 2005). These legal and legislative acts include India's 2014 legal recognition of hijra as a category of third sex individuals, in response to the Supreme Court's *National Legal Services Authority vs. Union of India* and Pakistan's 2018 Transgender Persons (Protection of Rights) law.

Most recently, movements in South Asia to affirm transgender rights, along with similar movements for dignity and social inclusion, have ironically compounded the challenges the hijra face (e.g., Puri 2016; Hossain 2017). We might expect that greater social, political, and legal acceptance for gender nonconforming individuals, both globally and across the nations of the Indian subcontinent would, by extension, also improve the social status of hijra, and thus facilitate a rise out of the poverty and marginalization that plague their communities. This article, however, examines two critical events showing how societal anxieties against hijra are leveraged in both legislative efforts and activist movements.

The goal of this article is to examine how gender lawfare is used by both the State and activist movements in the cultural-historical environment of the Indian subcontinent, taking transgender versus hijra dynamics as a focal point in exploring legislative interventions and social movements. Following Wilkerson's framework for analyzing caste (2020), which identifies caste as an underlying infrastructure that perpetuates social hierarchy and inequality, this article lays bare the techniques, the effects, the history, and the consequences of lawfare in societies characterized by deep hierarchies and rigid and enduring structures that dictate the roles and status of individuals within society, exacerbated by colonial exploitation. An emphasis is placed on how

well-meaning laws are deeply influenced by the reigning societal anxiety and moral panic directed at hijra, usually associated with sex work (Nanda 1999), and how, in fighting back against the legacies of colonial legislation, transgender groups leverage the caste system and legal frameworks rather than critically expose their discriminatory roots and effects. In the case of the hijra, activists' lawfare strategies become almost a default consequence of how modern legal systems operate in postcolonial societies such as in Southern Asia. Despite the hijra's longstanding role in legitimizing global transgender movements (Ryan 2020), they find themselves increasingly marginalized when compared to affluent transgender groups striving for social integration. As visible bodies in public spaces, hijra have struggled to attain the same level of acceptance that wealthier transgender communities have managed to secure.

Aligning with the definition of lawfare provided in the introduction to this special issue (Monzó-Nebot & Wallace 2024), this article critiques legislative and activist efforts to improve transgender and hijra rights in India and in Pakistan. The introduction of this article provides an overview of the hijra community's historical significance and current marginalization in South Asia. Following this, the theoretical and methodological frameworks section explains the use of postcolonial theory, cultural anthropology, and narrative analysis to investigate the issue of lawfare. The third section explores the cultural and historical context of hijra, detailing their ancient origins, colonial disruptions, and present-day struggles. First, the legal changes imposed on hijra under colonial rule are examined against the background of how hijra figured into the courtly lives of the Mughal Empire (1526–1858), which ruled the Indian subcontinent prior to the British.<sup>1</sup> The inclusion of ethnographic insights into middle-class responses to hijra in public spaces provides examples of the

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<sup>1</sup> One note on chronological terminology is important here. I use the nomenclature *India* when referring to the pre-Independence, politically-undivided subcontinent before 1947. After the 1947 independence, India refers to the nation-state of India, separate from the new nation-state of Pakistan which came into existence in 1947. South Asia is a post-independence policy term coined to refer to the entire subcontinent, to clarify its multi-country providence.

pernicious effects of systemic exclusion through microaggressions. Section four focuses on the analysis of critical events in the modern transgender movement in post-independence times, first in Pakistan and then in India, to which I apply a narrative analysis framework. Unravelling the tensions at play within such events, comprising the narratives of social movements and legislation, exposes beliefs and practices about transgenderedness within South Asian societies, helping to illuminate implicit biases, accommodations, fears, and cultural conundrums that lie at the root of developing legislative rights for genderqueer-presenting and genderqueer-identifying individuals. The discussion in section five synthesizes these insights, emphasizing the role of lawfare in shaping transgender rights at the expense of hijra communities. Ultimately, I conclude that laws and activism are, of course, foundational to the struggle for rights and recognition in modern democratic societies, and I problematize some of the legal changes and challenges which have helped define transgender lives and livelihoods.

## **2. Theoretical and methodological frameworks**

My theoretical approach to the study of gendered lawfare draws upon the academic fields of postcolonial history, literary analysis, and cultural anthropology. Postcolonial studies are particularly relevant to the study of sexuality and gendered lawfare, as European colonialism was typically critical of local gender and sexual practices that ran counter to the metropole's imagined superiority, especially including its presumed heteronormativity (Han & O'Mahoney 2018). Colonial rulers passed legislation in an attempt to govern the sexual life of colonized men and women (McClintock 1995). A relevant example is the British relegation of India's once highly educated and highly compensated courtesans to the status of prostitutes (Oldenberg 1990), and the importation of British homophobia in the form of anti-sodomy laws. Such laws served to criminalize same-sex sexual acts (Arondekar 2009), and were especially facilitated by the Indian Penal Code (1860, section 377. Unnatural Offences).



Postcolonial literary theory (Said 1978 [2003]; Mani 1998) provides examples of how critics can read against the grain of colonial logic, examining absences and silences in the creation of narrative structure and discursive logics (Butalia 2000). This awareness of discourse analysis from postcolonial theory helps to situate contemporary issues of sexuality and power, including those related to the hijra, in light of lingering legacies of colonialism and imperialism. In terms of critical analysis, I draw from theoreticians who examine the creation and assertion of authority through narrative strategy (White 1990). In addition, cultural anthropology, with its emphasis on immersive ethnographic study, provides insights into how beliefs and behaviors are embedded in social life. It is especially valuable for analyzing moments of tension or “critical events” (Das 1995), which expose unresolved tensions within cultures, often rooted in both pre-colonial and colonial pasts. Finally, the ethnographic lens helps us to understand how transgender individuals and hijra situate themselves and each other against contemporary norms of respectability and vie for sexual citizenship.

When examining lawfare in the postcolonial context of India, this particular blend of frameworks is especially well suited on two grounds. First, during British colonial rule in India, the British simultaneously codified knowledge about social groups and subjected Indians to the disciplinary power of the colonial State. Governance was prioritized over an understanding of social organization, making lawfare a central tool of the colonial project. Second, the operative and discursive effects of speech acts—whether in legislation or within activist movements—can serve to disparage hijra while making claims for the rights of other transgender communities. These discursive statements are rooted in colonial legacies that intentionally undermine marginalized social groups in an attempt to impose legal norms of respectability.

Like my theoretical framework, my research methods are interdisciplinary. Using a historical lens, and cognizant of change over time, I combine narrative analysis with ethnographic participant observation. My goal is to examine the hijra through three scalar perspectives—legislative interventions, activist approaches, and everyday interactions—to identify social meanings that can help to interpret activists’ lawfare and how it leverages both moral panic and legislative lawfare.

In the analysis of this article, activist efforts in Pakistan to reform the role of hijra and a photo campaign in India to address the social stigma of transgender individuals, are placed under the spotlight along with the unintended consequences of both actions and their interaction with legislative frameworks. In exploring these critical events, I rely on the contextual and experiential framework provided in section 3 to conduct a narrative and visual analysis of the photos and written captions to invite interpretations about the implicit and explicit messages being sent to the audience of viewers. For Pakistan, personal conversations with one of the foremost spokespeople for transgender rights, including a formal presentation to an academic audience of professors and students, along with representations of her work in the media, provide insight into contentious issues dividing transgender and hijra in that country.

In addressing sensitive issues, including marginalized religious and sexual identity, it is important to reiterate my own respect for the hijra and modern transgender communities alike as they struggle for sexual citizenship. To take a critical perspective necessitates being cognizant of positionality: this includes my own, but this cognizance is especially essential when it concerns that of various actors and stakeholders in various transgender movements. As such, I bring to this article extensive ethnography done among middle-class Indians in urban areas (Hardgrove 2004). From these participant observations I provide an analysis of two moments I experienced with hijra in order to highlight my own perspective along with the precarious role of hijra in the Indian subcontinent, and to elucidate some of the everyday microaggressions hijra face in gaining acceptance in public life. In each of these two examples, my positionality was marked by middle-class privilege and participation in majority socio-linguistic groups, in Hindi in Varanasi and in Bengali in Kolkata (formerly, Calcutta). Experiencing participant-observation encounters with hijra while living in the Indian subcontinent helped me contextualize middle-class tensions toward hijra, as well as notions of respectability and acceptability, that exclude hijra from an inclusive public life.

I maintain that any academic's work reflects the conditions of one's own society, the world from which we write. As a cultural anthropologist and historian, I see my work as being also a history of the present. Stating these conditions

helps to bring biases and positionality to the forefront. As such, I wish to make one acknowledgment plain from the start. However imperfect, in many ways the South Asian legal frameworks on hijra and transgender are far more inclusive than the socio-legal space from which I write in the United States. Current state-level policy debates in some parts of my country run counter to the trends discussed later in this article. Rather than attempting to afford some protection, some state officials seek to eliminate the legal status of transgender people. These perceptions mark an appreciation of my object of study which coexists with its critical examination.

### **3. Cultural and historical context of hijra: Ancient traditions, colonial disruptions, and a disturbing present**

This section aims to contextualize the hijra community vis-à-vis its deep historical roots, while also addressing the significant changes and challenges brought by colonialism and contemporary social forces. It is structured to first explore the ancient antecedents of the hijra, tracing their roles in South Asian cultures, religious practices, and social systems. Next, this section delves into the disruptions caused by British colonialism, when hijras were stigmatized and criminalized under new legal frameworks. Finally, the section transitions to the present-day struggles faced by the community, highlighting the marginalization they continue to endure in the face of modern laws and social movements, which sometimes exacerbate rather than alleviate their hardships. Against these historical and contemporary contexts, my ethnographic work illustrates the social norms that marginalize hijras in the present. The section frames the hijra's evolving identity and place within South Asian society.

#### *3.1 Ancient antecedents: Literary and linguistic references to hijra in ancient India*

By looking to the past, or to other cultures, to find historical or cross-cultural examples of nonconforming individuals, academics and activists seek links to

lineages of ancestors in establishing historical precedence. The example of hijra—often labeled India’s third gender—is frequently and readily referenced, highlighting its thousands year-old tradition and the casting of non-cis historical actors in leading roles (Vanita 2001).

Ancient texts written in Sanskrit, the literary language of ancient India, discuss a category of people known as *Tritiya Prakriti* or what is commonly now translated as the “third sex” (Wilhelm 2010). This third sex referred to in ancient times is a rather imprecise, broad categorization of people who are neither cis-female nor cis-male. Some of the third sex are men who have sex with men, practicing same-sex sexual acts. Others are feminine men who wait on aristocratic women (Wilhelm 2010). In her translation of the Kama Sutra sex manual, which presents examples of sexual activity on the part of masculine women and feminized men, Wendy Doniger uses the broader term “third sexuality” (Vatsyayana 2009). LGBTQ+ activists and scholars, including Ruth Vanita, have turned to the Kama Sutra to illustrate ancient precedents to same-sex love (Vanita 2001), demonstrating that non-heteronormative sexualities have long existed in Indian culture. Another interpretation of *Tritiya Prakriti*, rather than focusing solely on its categorization of individuals outside the male-female binary, emphasizes its connection to the concept of *shakti*, or creative feminine energy.

The ancient epic Ramayana, dating back two thousand years in written form, and older still in its oral traditions, depicts a group of hijra as the most stalwart adherents as Ram was cast out and banished from his kingdom. The transformation of Shiva into an androgynous half woman, half man, shows divine inspiration for those who defy any simple gender binary (Doniger 2009). In these ancient tales and texts, hijra are portrayed as loyal protectors and fierce warriors who fight off maleficent demons. In this epic literature, beloved across class and caste throughout India, hijra are among important forces of good. Across Hindu beliefs and practices generally, both male and female energies play an important role in the conceptions of divine powers. As such, hijra may well be among the world’s longest-standing gender nonconforming traditions, as documented in sources extending back thousands of years as oral narratives which later became written down in Sanskrit around 200–300 AD.

In a later period of history, Muslim rulers governed in India for over one thousand years (711 AD – 1858 AD), introducing new cultural, artistic, and governance practices that became mainstreamed across the subcontinent. During medieval times, transgender individuals played a role in Muslim courtly, aristocratic life, and became known as *khwaja sira*. The *khwaja sira*s were essentially eunuchs who lived in the women’s portions of the wealthy household known as *zenana*. The *khwaja sira* were not the same as *hijra*, and the two co-existed.

The *khwaja sira*s were male-identified and worked in a variety of capacities—as guards, attendants, military officials, and government administrators under the Mughal Empire (1526–1858) and for independent, princely states (Khan 2019). Like the *hijra*, the *khwaja sira*s also lived in chosen household groups, organized around a leader (*guru*) and students or disciples (*chele*) (Khan 2019; Hinchy 2021). As the Mughal Empire waned and British rule intensified across northern India, the *khwaja sira*s faded from prominence as a social group, with *hijra* remaining the umbrella term for people who were gender nonconforming.

A historical view of the evolution of and exact origins of the term *hijra* are less certain. The *Oxford English Dictionary* lists two definitions. The original use of the Arabic word, *al-hijrah*, referred to Muhammad’s journey to Medina from Mecca, signifying Muhammad’s departure from his non-Muslim community and the start of a greater Muslim geographical area.<sup>2</sup> The people who accompanied Muhammad were known as *muhajir*, part of a larger migration or crossing. The term *muhajir* was adapted in post-Independence times to describe the elite Urdu-speaking population of Northern India who migrated to the new nation of Pakistan after 1947, becoming cultural, linguistic, and political power brokers in the multilingual nation. In its second definition, *hijra* came into English from Urdu, and referred to castrated men, eunuchs, who were female-identified.<sup>3</sup> In regional languages, including Marathi, the word *hijra* carries with it connotations of impotence.<sup>4</sup> The connection between the

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<sup>2</sup> *Oxford English Dictionary*, s.v. “Hijra (n.1), sense 1.a,” <https://doi.org/10.1093/OED/3648798859>.

<sup>3</sup> *Oxford English Dictionary*, s.v. “Hijra (n.2), sense 1.a,” <https://doi.org/10.1093/OED/4691099695>.

<sup>4</sup> *Oxford English Dictionary*, s.v. “Hijra (n.2), sense 1.a,” <https://doi.org/10.1093/OED/1039869515>.

two words is linked to its etymology, derived from Latin and Arabic, to refer to leaving or abandoning one's country.<sup>5</sup> Being a hijra is, by definition, to cut all of one's ties to one's origins, and to enter into a liminal state which is necessarily apart from the family of origin.

One large gap in the historical knowledge about hijra becomes evident when tracing the change of the expression *third sex* to *hijra*, from Sanskrit to Persian and Arabic literature, as the term *hijra* gained prominence and took hold as the most common, operative term for the third sex. Scholars of Hinduism (Doniger 2009) generally agree that the hijra are the likely cultural heirs of the third sex in ancient literature, yet without a clear genealogy. Likewise, scholarship that can trace the lives of khwaja sira in Urdu and Persian history and literature would be helpful in understanding how that category of people coexisted with and differed from those called *hijra*. Such future lines of investigation remain open for scholars with appropriate language skills.

### 3.2 *The plurality of nonbinary gender traditions in South Asia*

The Indian subcontinent is a productive context to examine issues of lawfare for nonbinary people. The region is home to a multitude of intertwined traditions and texts associated with third gender and gender nonbinarism in multiple religious traditions, some of which date back thousands of years. As such there is no denial about the existence of people who find themselves outside of standard definitions of male and female. In fact, there is a long history of legislation, starting in colonialism, to regulate and to discipline genderqueer bodies and, in more recent times, to acknowledge, protect, and help communities find acceptance and attain human rights, along with sexual citizenship.

I locate my work within the larger movement for queer rights and the diversities, heterogeneities, solidarities, bridges, barriers, and animus that

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<sup>5</sup> *Oxford English Dictionary*, s.v. "Hijra (n.1), Etymology," November 2023, <https://doi.org/10.1093/OED/1064839200>.

one finds therein. Scholarship on the rich non-heteronormative religious texts and practices includes investigations of homoeroticism in ancient societies in religious traditions of Hinduism (Doniger 2009) and Islam (Almarai & Persichetti 2023). Work examining gender pluralities in contemporary religious traditions (Dutta, Khan & Lorway 2019; Ewing 2021; Meher & Acharya 2022) points to evidence of structural violence and complex needs yet unaddressed by social services falling behind legislative reform. These patterns of structural violence extend across the region, and are reflected in violations of human rights. For instance, in Bangladesh, such violations are common (Amanullah et al. 2022), particularly in the wake of “straightening” tactics deployed against bisexuals and other sexual minoritized people (Alam & Marston 2023).

In exploring queer rights, access to essential services like health care emerges as one of the most pressing concerns, including mental health and suicidal ideation (Kalra 2012a; Gomes de Jesus et al. 2020; Halli et al. 2021; Arvind et al. 2022). Sexual health issues abound, ranging from HIV/AIDS to access to hormone therapy (Rajueni et al. 2022) and gender affirmation care (Jain 2022). The politics of nonbinary bodies’ claiming public space (Atluri 2012), sexual expression and representation (Gairola 2019), and the medicalization and subsequent de- and re-criminalization of homosexual sex acts (Waites 2010; Chandran & Narrain 2016; Yadav & Kirk 2018) has been largely affected by South Asia’s long history of British colonialism and orientalism.

Beyond issues of healthcare access and representation, the legal landscape plays a critical role in shaping the lives of gender minorities. South Asian nations arguably have had the most ambitious legal reforms, ostensibly to protect the rights of third gender individuals. However, colonial legacies of homophobia, including stigma about sex work, have proven harder to extinguish. As Saria (2019) notes for India, the Transgender Persons (Protection of Rights) Bill (India. Government of India 2016) reinstates heterosexist bias by normalizing medical sex reassignment. Jain (2020) maintains that a mandatory pre-legislative review by stakeholders, including transgender and gender nonconforming people, would help prevent drafts of new legislation from failing the very people it is supposed to protect.

### 3.3 Being seen: Hijra in historical legislation in India

As the previous example illustrates, legislative frameworks have both protected and yet disciplined hijra and their bodies. It was during the period of British colonialism in South Asia that the beginnings of systemized lawfare against hijra took root. British legal systems and rulings were partly inspired by legal frameworks in the British metropole, including the importation of the practice of taking legal action against same-sex sexual activity among men, or sodomy (Indian Penal Code, section 377).

In colonial India, part of British lawfare toward colonial subjects was to document and solidify the distinctions between various castes and communities, fossilizing and cementing what was once a more flexible and ever-changing social hierarchy (Dirks 2001). The significance of this change is that identities that were once malleable became essentialized and reified in a fixed hierarchy. Entrenching stereotypes and power imbalances, the change made it much harder for groups to improve their overall community image vis-à-vis other groups.

This heightened importance of caste and community can be seen in loan words from Hindi into English, including *pariah* or *thug*, which are used as pejoratives to describe social undesirables. Before British rule, pariah was the Tamil-language name of low-caste hereditary drummers excluded from religious festivals. Thugs were professional bandits who the British felt were essentially prone to violent acts (Lloyd 2008). The modus operandi of British colonialism reshaped local identities into stereotyped sociological groups enshrined in legal instruments, thus using lawfare to codify British ideological fantasies (see the introduction) and disadvantage local subjects.

Much like the thugs, India's transgender population were also targeted as having essentially violent tendencies and criminal intent. The British in India used the umbrella term eunuch to describe transgender people. Jessica Hinchy's study of hijra across northern India during colonial times (2021) demonstrates the negative and very cruel effects of British rule on transgender people. The British categorized all gender nonconforming people under the



category of *eunuch* in drafting English-language legislation. Furthermore, by defining this heterogeneous group as a criminal tribe, under the Government of India Criminal Tribes Act (India. Government of India 1871), the British literally outlawed their very existence (Hinchy 2021). According to Hinchy, hijras' very existence and presence in public was construed as obscene and offensive, and devaluing them contributed to entrenching the caste system (Wilkerson 2020). Cross-dressing was seen as an act of intentional deceit and was criminally banned. To the colonial government and to elite men writing editorials to the newspapers, the figure of the hijra stood for lurid depravity, in that it was assumed that hijra routinely kidnapped, castrated, and enslaved Indian boys (Hinchy 2021). Such assumptions disseminated the internalized belief in the superiority of the upper caste, the colonizers, and the inferiority of the lower caste, the hijra, thus supporting the caste system (Wilkerson 2020). Furthermore, the guru-student structure commonplace to hijra living arrangements was considered to be a form of slavery, fundamentally incompatible with modern bourgeois respectability (Hinchy 2021). Being stigmatized as criminal under the British created a lasting association of undesirability and fearfulness toward the hijra.

Recent times have seen a shift in political will, and possibly in public sentiment. For example, in 2014, the Supreme Court of India established the right of people to choose the third gender as a legal status, which was an important victory in terms of the ability of hijra to represent themselves legally on government identity cards and other legal documents. However, scholars have noted that subsequent legislation in Pakistan, the 2018 Transgender Persons (Protection of Rights) bill, required applicants to produce a certificate from a licensed physician certifying that gender-reassignment surgery had taken place (Baumgart & Farooqi 2020). The requirement for this kind of paperwork raises numerous problems. Practically speaking, hijra are a medically underserved community, living at the margins of civil society. As people who scrape together a meagre living through day labor, the challenge of raising the money needed to see a doctor and get a certificate—along with a probable bribe, as Baumgart and Farooqi (2020) note—could be nearly insurmountable. The requirement reduces transgender identity to biology and,

of course, to people who were able to accumulate the funds to have surgery in the first place, which is financially prohibitive for the vast number of people who would opt for it. Of course, transgender men remain virtually absent in the conversation, almost entirely invisible even to activists (Baumgart & Farooqi 2020).

### 3.4 Finding rights for transgender people in Pakistan

Uzma Yaqoob, Executive Director of the Forum for Dignity Initiatives (FDI) based in Islamabad, is the country's leading organizer of transgender people in Pakistan. The goal of FDI is to promote both gender and sexual equality for gender nonconforming people. Despite the 1973 Constitution devoting several dozen articles to the protection of human rights, including gender, religion, caste, and creed, significant gaps remain in providing protections for the diverse populations under the umbrella term *transgender*. While transgender women are the most visible in Pakistani society, others who are gender nonconforming or transgender men are the least visible (Yaqoob 2023). Social stigma, discrimination, marginalization, and violence are common. Yaqoob cited the statistic that over 315 people had been killed in the last seven years (Yaqoob 2023). The violence often occurs in the context of sex work, where the victim is often accosted by a gang associated with the client. Typically, in these tragic situations, the client will refuse to pay, and will tease, harass, and eventually kill the sex worker (Yaqoob 2023).

The realities of lawfare in the operative definitions of transgender and hijra are far from merely semantic. The definitions and wording of legislation very literally could make the difference in seeking justice, especially when seeking emergency medical care. Yaqoob and her organization—in what became a cause célèbre—worked directly with a trans woman named Julie, who came to FDI for help in 2016 after being gang raped at gunpoint outside of Faisalabad, in east Central Punjab. According to a Rutgers photo essay, Julie was abandoned by her family, who rejected her gender nonconformity, at the age of ten. Only a brother and sister accepted her. In order to survive, she

worked as an entertainer by dancing at parties, engaging in sex work, and begging on the streets (Mehboob 2020). Julie wished to pursue legal justice but found no support for her cause until she approached FDI. The police refused Julie's request to register a complaint, which is the first step in the legal system, claiming that only women could be raped, and a transgender woman could not. The police asked her to leave, would not listen to her story, and would not administer a rape kit. A protest was planned in Faisalabad, but only a very few people turned out to support her. After blocking the road for two hours, the police eventually decided to file the complaint and to proceed with medical testing. The problem that Julie ran into was that there was nothing in the Pakistani legal code criminalizing the rape of transgender people. Yaqoob described to a reporter at *The Guardian* that the only recourse was to turn to a British colonial-era law that criminalized male same-sex sexuality (India. Government of India 1860, Section 377; Saleem 2016).

In addition to Julie's case, other dramatic cases of injustice towards transgender people have attracted public attention. A print story appearing on National Public Radio's website in the United States described the case of a transgender activist who was shot several times in public. The hospital staff lost valuable time debating whether to treat the patient in the women's ward or in the men's ward. In their indecision, she died (Ingber 2018).

These tragic 2016 incidents illustrate how the legal system, rather than offering protection, was weaponized against transgender individuals in both codifying fantasies that demonize them and in failing to implement potentially helpful legislation in critical situations. Clearly, the current code of law—a combination of colonial and post-independence Sharia law—did not have provisions for transgender people to find representation and rights. These cases of discriminatory lawfare—and many such others—resonated with many Pakistani intellectuals. The social alarm led the government of Pakistan to begin working on passing comprehensive legislation for transgender people. After an initial draft was prepared by a government representative, there were understandable complaints that members of the transgender community themselves were not consulted. The bill was later amended after input from the community.

### 3.5 *Ethnographic insights: Meeting and seeing hijra*

In addition to formally recognized, broad forms of discrimination that emerge from national legislation and public debate over hijra are the minutia of cruelties in everyday life and, to borrow the apt expression, death by a thousand cuts. Documenting the daily lives of hijra is a crucial step toward understanding how this beleaguered community persists despite suffering the systemic effects and generational trauma of lawfare. How do middle-class people engage with hijra in public life? What are the microaggressions that hijra endure in daily experiences? A growing number of ethnographers have done fieldwork among hijra in both Pakistan (Roy 2015) and in India (Reddy 2005), ground-breaking research work due to the precariousness of both hijra lives and livelihoods. Outside of academic researchers or sex clientele, it is highly unusual for the average person to associate with hijra in any public way unless they work in some kind of advocacy role or clandestinely seek services of sex work, which speaks to the degree to which the hijra are truly socially isolated. It is very different than the interactions people have across different castes, because even the people of the highest caste, such as a wealthy homeowner, would have normal, daily contact with the Dalit (former untouchable) servants who come into homes to clean and work.

The most familiarity the average person in India has with hijra is if a troupe of hijra were to show up for a birth or wedding, in which they would be paid and sent off as fast as possible. With modern high-rise living, even those types of encounters are increasingly more infrequent. But in daily living in South Asia, especially if one leads a middle-class existence and walks or takes public transportation, encounters with hijra are common, albeit liminal experiences. It is perhaps my positionality as an outsider to Indian culture—though with close ties in it—that has afforded me opportunities to engage with people not commonly part of mainstream society. While studying intensive advanced Hindi in the Ganges city of Varanasi (Banaras), I had the unprecedented experience of spending an hour with a working hijra as part of a group of international graduate students. The director of my language school arranged for weekly, Hindi-only speaking visitors to come and present to the class and discuss their

occupations. One week a hijra came to our school and discussed what it was like to work and live in the hijra community. Toward the end of the session, she began to sing and to suggestively lift her skirts above her ankles unless our group would pay, which of course we eagerly did, as part of the ruse. What struck me the most about this person was how impoverished and under-educated she was. The woman had only spent a few years in school before leaving her natal family and beginning to work. While living in Pune, New Delhi, and Kolkata, and during visits to Karachi and Dacca, I would see hijra on city streets and public transportation.

Years later, during three years of ethnographic fieldwork in India, I often rode on public minibuses which noisily sputtered down Kolkata streets. The buses were shabby, hot, humid, and crowded, costing only a few rupees to ride. Getting a seat was somewhat of a sport, often a spectator one. There were two doors to enter and exit the bus, which was a good thing when the bus merely slowed down rather than stopping for its passengers to scramble aboard. One day I jumped on and entered the bus through the second door, toward the back. As usual, many people were standing. To my amazement, a row of three seats was available, save for a woman sitting in the middle. Exuberant with this minor victory, I sat down next to her, taking a moment to catch my breath and take in my surroundings. After a few moments, I realized I was sitting next to a hijra, whose tall, angular body was clad in a neat sari. The fact that only a clueless foreigner, me, was willing to sit down next to a hijra spoke volumes. A rare, coveted, empty seat became a non-viable space for the more bourgeois-inclined members of middle-class Bengal society on board. Though I often engaged in light-hearted Bengal small-talk with female seatmates as a way of passing the time as the bus ambled down traffic-congested, bumpy streets, I knew enough that it was better not to speak to her. Often hijra strike an aggressive, defensive persona in public spaces outside of their performances. I did decide to stay seated, and considered the range of messages I communicated by remaining in the seat. Any intended message of solidarity, of acceptance and accommodation, likely fell on deaf ears. More than likely, most in the crowd would have assumed that I was naïve, did not recognize my seat mate for a hijra, and did not keep an appropriate distance from the imminent danger that a hijra would have signaled.

I provide this brief vignette as an everyday example of the uneasy socio-legal place of the hijra, who are part of the transgender population in the religiously diverse Indian subcontinent. Everyone on that bus, except for me, apparently, could instantly recognize the woman as a hijra. There was no trouble, either physically or verbally. I do not recall anyone making snide comments or remarks. This is perhaps what Indians and South Asians mean by their societies being “tolerant.” No one contested that the hijra claimed her seat, as is anyone’s right. And yet, no one else sat down next to her either. While I did make a move to claim space in her proximity, I, too, did not partake in the usual chit-chat that people engage in. My own default was that of my middle-class Indian counterparts. That ethnographic moment of tension, when creating a “cultural mistake” of sitting next to her, gave me valuable insight into why most middle-class people react negatively to and disengage from hijra.

#### **4. Analysis of critical events**

This section analyzes two critical events that illustrate the ongoing tension between hijra and transgender communities in South Asia, focusing first on Pakistan and then on India. The first case, one of legislative lawfare, explores the legislative efforts in Pakistan to protect transgender rights, highlighting the consequences of these reforms for the hijra, whose traditional identities and livelihoods are increasingly marginalized by State interventions. The second case, where lawfare is used by social movements, examines an Indian photo campaign, where transgender activists sought to distinguish themselves from hijra in their pursuit of middle-class respectability. These cases are presented in this order to emphasize the broader geopolitical and cultural dynamics at play in South Asia, showing how national contexts shape the specific forms of lawfare enacted against hijra. Together, they provide a comparative framework for understanding how legal and activist movements, despite aiming for inclusivity, can perpetuate exclusion within gender-nonconforming groups.

The critical event that I choose to analyze first refers to the post-independent nation of Pakistan, in the context of legislation that has arisen in the face of

global transgender movements. Taking a bill that emerged from the awareness created by the media as to hijra's difficulties and lack of access to adequate legal protection, several critical questions arise. The second critical event occurred in cyberspace, yet with tangible effects on human bodies. A 2016 internet photo campaign in India, organized in response to proposed legislation on transgender rights, led to an unexpected backlash when it appeared that hijra were being characterized as incapable of sexual assimilation, and compared negatively to their more modern transgender counterparts. In both cases, the transgender rights movement purports to eclipse hijra who remain in traditional roles.

#### *4.1 Legislative interventions into the lives of hijra in Pakistan*

Like most postcolonial societies, Pakistan is full of contradictions on gender and sexuality. In comparison with India, Pakistan has a far greater gender separation than India. This is true from middle-class dinner parties in Karachi (Ring 2006), to public buses where men sit on one side and women on the other. Generally speaking, women are far less visible in public in Pakistan than they are in India. Transgender people in Pakistan face similar obstacles of acceptance and stigmatization. At the same time, Pakistan has a number of well-known transgender television personalities and comedienne who have attracted widespread popular audiences. These include news anchors, beauty queens, and actors.

The situation in Pakistan has produced many examples of lawfare against transgender people. Laws in Pakistan that may have appeared to be helpful to hijra have actually proved to be harmful. Faris Khan points out that between 2009 and 2012, transgender people experienced widening attention from both the public and from government agencies. Advocacy groups brought welcome attention to the poverty and plight that characterizes life for many hijra (Khan 2019). At the same time, the government also attempted to regulate and discipline hijra, which was largely unwelcome. Khan uses the term "translucent citizenship" to describe the uneasy place of the hijra in civil society. Though equal rights from the Pakistani State were desirable, hijra still

sought to cultivate a distance from mainstream society. Privacy and being left alone were essential to hijra identity. In Khan's ethnographic work, he found that many gender nonconforming people preferred to be called *khwaja siras* (Khan 2019). Adopting this name accomplished a number of objectives. As Khan notes, the monikers of "transgender" and "LGBTQ+" carried distinctive Western connotations and were seen as unwanted foreign imports and as a legacy of imperialism. Furthermore, as a nation formed in 1947 as a Muslim homeland, legal charges of blasphemy against Islam are a commonplace tool of oppression against minority groups.

The legislation that was ultimately passed by Pakistan (Islamic Republic of Pakistan 2018) was perhaps the most comprehensive, empathetic government action to recognize the rights of transgender people. The bill allowed people to choose a third gender that would be accepted by national forms of identification, including national identity cards and passports. The bill outlawed discrimination against transgender people at educational institutions, in the workplace, in health care, and on public transportation. One of the biggest victories of the bill was that it eliminated the need for a genital medical evaluation done by a committee of lawmakers and medical providers. Unfortunately, the Islamic Court in 2023 struck down the bill, leaving transgender rights in a legal limbo. Pakistan's Islamic courts placed a stay on the transgender laws of 2018, leaving in their wake an uncertain future for transgender rights.

In Pakistan, there is a noteworthy tendency toward the erasure of one genderqueer group in favor of another in the realm of activism and advocacy among transgender allies. In her work as a proponent of transgender rights, Uzma Yaqoob is one of the leading activists in Pakistan to promote support for transgender communities, including hijra. Her approach to her work with hijra is to encourage the mainstreaming of the community in terms of their choice of occupations. Specifically, she advocates that they should renounce sex work in framing a bid for respectability. It is only when hijra can enter the modern workplace, she argued, and be accepted into professional training programs and occupations, that hijra will truly escape their very marginalized and precarious social and economic status (Yaqoob 2023).



And yet, if hijra were to abandon their traditional occupations of singing and dancing for entertainment, as well as begging, would they still be considered hijra? Being full members of the economy and society depends upon accessing educational programs which train people for modern professions. Most hijra are rejected by their families and left to navigate civil society on their own, a tragic reality hardly conducive to success in the extremely competitive, mainstream education system. At one level, the advice for hijra to stop being hijra and simply be transgender bodies otherwise integrated into mainstream professions is a practical one. This is where the colonial legacy of the stigmatization of hijra identity comes into play. Such stances beg certain questions. Must a tradition predating the British by thousands of years be destroyed? Is the only "solution" for hijra to be found in their very eradication? In other cases of British denigration of Indian sexual customs, such as of Hindu temple dancers and high-class courtesans, performance traditions have been reborn as dance lessons and coming-of-age recitals for upper-middle class girls in India and its diaspora. This process happened by deliberate anti-colonial nationalists who were successful in moving dancing from temples to auditoriums, while those doing the performances changed from temple dancers and prostitutes to high-caste, middle-class Brahmins (Weidman 2006). This nationalist move preserved an art form which dated back to ancient times but removed it from its colonial associations with lower-status temple performers. Is it possible that, as transgender identity in general becomes more familiar and acceptable in public life, in a distant lawfare-free future we can imagine a hijra repertoire of song and dance being mastered as an art form in itself, for public performance? Like the temple dancers, this move might save their artistic legacy, if not the hijra themselves (see, e.g., Roy 2015; 2017).

However, legacies of British lawfare against hijras, in criminalizing them, intersecting and denigrating their livelihoods including sex work in general, have made it difficult if not impossible for hijra to be assimilable into modern bourgeois society. Their origins in ancient times, their social organization in hijra households, in addition to the lawfare they have endured since British times, set hijra apart from society and entrench the caste system. According to anthropologist of Pakistan Tahir Naqvi, the hijra function almost like a medieval

guild.<sup>6</sup> Hijra live together as a socio-economic household unit to practice their craft, which includes singing and dancing at births and weddings. Less openly discussed, and far more controversial, their livelihoods include the practice of sex work with male clients. Abdullah et al. (2012) identify two divisions of Pakistani hijra. *Khusrapan hijras*, considered true hermaphrodites, reject commercial sex work, while *Zananapan hijras*, who identify as women at heart, often do. It is the sex work aspect of the hijra livelihood that is perhaps the most troubling to activists like Uzma Yaqoob, because hijra are frequent victims of violence from their sex work clientele (Yaqoob 2023). There are no easy answers to the thorny question of how the economic and social plight of hijra can be changed and improved in order to secure financial well-being and safety from people who would prey upon them. To comply with minimum ethical standards, campaigns to claim respect for any transgender group should not rely on the erasure of another.

#### 4.2 Responding to a transgender bill in India's parliament

On August 2, 2016, India's Lok Sabha or Lower House issued a draft of a new Transgender Bill (Transgender Persons [Protection of Rights] Draft Bill, India. Government of India 2016), aimed at generating discussion among the legislative body of Parliament. The proposed bill aimed to provide a legal definition of transgender people, outlaw discrimination against them, guarantee individuals the right to be recognized as transgender, and make provisions for people to have their transgender status recognized on their government identification cards. More interesting than the bill itself, for my purposes in this article, is a response to the legislation from transgender activists. In considering this rejoinder, I use narrative analysis to pinpoint how the kinds of speech acts and performative utterances are used in it as a way to tease out strategies and consequences of lawfare at play between two genderqueer constituencies.

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<sup>6</sup> Tahir Naqvi, personal communication, San Antonio TX, 30 March 2023.

There were a number of issues in the proposed bill that gave transgender rights supporters pause. Stakeholders pointed out that the definition of transgender in the draft legislation was too dependent upon stereotypes of what trans activists euphemistically called in their response the “Indigenous Cultural Transgender communities of India,” or in other words, hijra (Das 2016). This particular wording used by the transgender activists, which curiously excludes naming the hijra directly, is intentionally oblique and also intentionally biased against the hijra. In wanting to distinguish themselves from hijra, trans activists would not even name the hijra in their response. Nor were other common or regional terms used. The unspoken intent was to separate hijra from a broader, transgender community who were explicitly not hijra, but who rather identified as a group who were educated and aspired to professional occupations. The use of this peculiar phrase also taps into potentially pejorative connotations toward more traditional indigenous groups. In most circumstances, the word indigenous in the context of the South Asian subcontinent is reserved for India’s diverse tribal peoples who have remained outside mainstream society, some subsections of which remain hunter-gatherers, and others who were not historically absorbed into India’s caste system but became Christian under British colonialism. Using the term *indigenous* as a stand in for the term *hijra* also serves to tap into colonial stereotypes of other non-mainstreamed and stigmatized groups.

In 2016, transgender activists led by Neysara Rai, an engineer from Bangalore in South India, launched the website Transgender India (Das 2016). After finishing higher education, Rai came out as transgender to her family and revealed child abuse at the hands of relatives, only to be asked if her plan was to become a hijra. The immediate family took her to a range of faith-based and medical science practitioners, hoping to find a way to dissuade her from gender-reaffirming surgery and transition. In recognition of the fact that education of the Indian public on transgender identity was severely lacking, Rai created a network with initially five other transgender people from across India. The goal of these activists was to promote a campaign aimed at improving the public perception of transgender people (Das 2016). Transgender India’s response to the proposed legislative action was a widely-discussed and controversial

internet photo campaign called “I am not a Hijra.” Though the original post has been removed from the Transgender India website and also from Facebook, Borges (2016) has reproduced fifteen of the seventeen images, which are available for analysis.

A series of photographs of transgender women, shown in a variety of feminine clothing styles against domestic and other backgrounds, set out to challenge mainstream stereotypes of transgender people. In each photograph, the subject held up a handwritten sign, in English, that typically covered their face, neck, and usually shoulders, which are considered sexualized body parts for women in South Asia. Only clothing, hands, and perhaps a wisp of hair revealed any identifying characteristics. Each sign consisted of three phrases written in capital letters, with the beginning and ending identical. The start of each sign read “I am Trans\*” followed by a statement. Below are written descriptions of the statements included in the fifteen photographs, along with my description of what the photographed people were wearing:

Wording on sign held in front of face	My description of the clothing and image
and I draw a six-figure salary every month.	a stylish, buttoned work blazer
BUT I AM A HUMAN FIRST.	a beautiful white empire-waisted sun dress
& I AM NOT A SEX WORKER.	a dress with a fitted bodice
& I AM PHYSICAL TRAINER.	a polo shirt and exercise skirt, Nike socks and sneakers
& I AM A SURGEON.	a short dress with a doctor's coat and stethoscope
& I AM ASEXUAL.	a white dress with geometric pattern cinched at waist
& I DON'T LIKE MAKE-UP.	a flowery t-shirt over a flabby stomach and body
& I HAVE MY OPINIONS & DESIRES TOO.	a black burqa covering face, showing eyes and hands
& I AM BRAVE ENOUGH TO ACCEPT IT.	an androgynous plaid shirt, in front of an escalator
I GET RAPED TOO.	a fitted black tunic over black leggings, a star tattoo

<b>&amp; I'm not confused about my gender.</b>	a handloom cloth worn as head scarf, plaid shirt, jeans
<b>&amp; I AM A DAUGHTER, SISTER, WIFE &amp; MOTHER.</b>	a sari and matching blouse, traditional regional style
<b>&amp; I'M NOT LOOSE .</b>	a fitted salwar-kameez with an elegant dupatta
<b>&amp; I AM FORCED TO WEAR MEN'S CLOTHES 24/7.</b>	long sleeve button down shirt, amid store mannequins
<b>&amp; I AM A CORPORATE EMPLOYEE.</b>	a pink top with silver metallic stripes
<b>BUT I'M NOT A SEX MANIAC.</b>	a striped top and denims, standing on a pavement
<b>&amp; MY RIGHTS ARE WOMEN'S RIGHTS TOO.</b>	a sarong-style strapless mini-dress

Table 1. "I am Trans\*" photo campaign slogans and attire of activists

The first column of this table reproduces the hand-printed or cursive wording on the signs held by the photographic subjects in the Transgender India education campaign, as republished in Borges (2016). Capitalization and punctuation follow the original. The second column lists my descriptions of the clothing worn by the photographed individuals holding the signs. Each of these handwritten posters was clearly tailored to an upper-middle class, Westernized, English-educated audience. In my reading of the photo campaign, subtle differences of implied class and educational status emerge through wording, punctuation, and sartorial choices. The use of capital letters in most of the signage gives the impression of a more activist agenda to a public audience, whereas the title case lettering in two of the signs creates a more personalized feel. In terms of clothing, Western-style dresses signify a nod to globalization, in finely tailored "export quality." The dresses tend to be more revealing of skin and legs, perhaps signifying the wearers' comfort in a sexualized feminized body. Other clothing styles, such as the sari and salwar kameez (tunic over pants), radiate a sense of beauty, professionalism, and respectability through nationalistic style. More casual Western outfits signify comfort and perhaps a slightly lower middle-class sensibility, possibly more in keeping with the clothing more often found outside big cities and in provincial towns. Taken in

their totality, the unwritten message conveyed by each photo presents one of gainful employment and middle-class respectability, albeit among a range of income levels and degrees of professionalization. But the final line of each and every sign held by each person delivered perhaps the sharpest one-two punch: "I am NOT a hijra."

In these statements, there is zero presumption of ambiguity, allyship, or solidarity. Not being a hijra arguably presented an unassailable claim to a respectable, non-sex working, non-begging, affluent, fully modern selfhood, and as a bold claim to sexual citizenship in a bourgeois public sphere. The captions tap into and reinforce the negative stereotypes of hijra as beggars and sex workers, scorned by educated middle-class people. Sociologists (including Mount 2020) studying the "I am not a Hijra" campaign by Transgender India conclude that the patriarchal assumptions of binary gender ideology have led transgender women to aspire to conventional roles for middle-class women, including living in familial households and holding professional employment in offices. Since these options are not yet feasible for hijra, these aspirations are based on their respectability and normativity, opposite to that of the hijra (Mount 2020). These actions to increase one's social position based on appearance, education, and appropriated status signs replicate the caste flexibility of what classic anthropologists of India called *Sanskritization*, whereby lower-caste people might emulate the habits of an aspirant caste, in an attempt to raise the status of their caste vis-à-vis others in the larger hierarchical system (Srinivas 1987).

Yet, when viewing "I am not a Hijra," from a historical perspective, as an attempt to influence the originally proposed legislation, the campaign takes on a somewhat different, nuanced perspective. Of course, there is no disputing the overtly anti-hijra sentiment of the photos and their captions. Nevertheless, if we see the Transgender India activists as responding to the hijra-specific language of the introduced legislation, another point is clear. Owing to their longstanding history and visibility in Indian society, the default stereotype of a transgender person, even among the transgender curious themselves, are hijra. Many people, if not most people, do not realize that there are other ways of being transgender outside of the role of hijra, which stereotypically implies a lifetime of begging and sex work.

I interpret from the similarity of the photographs, in their presentation, that these transgender participants were part of a well-choreographed campaign with a coherent message, rather than any kind of organic, individualistic self-expression. Notably, only a couple of photographs presented people wearing a sari, considered the most professional of women's attire yet also, when worn on a transgender body, associated with the chosen wardrobe of hijra. With one exception, that of a person standing in front of a backdrop of other people in an unidentifiable workspace such as backstage at a theater, each person was portrayed individually, perhaps as a stand-in for the modern political subject. Hijra often work and appear in public in small groups, reflecting their *guru-chela* (teacher-disciple) familial structure. A plurality of transgender people pictured together would immediately call to mind a group of hijra, as they most typically work together and move through public spaces in groups. Picturing transgender people as individuals, rather than as a part of a transgender group, strategically negates any association with hijra.

Both the socio-economic class and occupation status emphasized in the posters held by people is what is the most significant. Poverty-stricken, day laborer hijra suffer extreme marginalization that keeps them wedded to traditional economic activities of publicly blessing marriages and childbirth, begging in public spaces such as in traffic, and behind-the-scenes sex work. But the point of the photo essay is to show that in stark contrast, by means of the assertion that "I am not a Hijra," the modern transgender subject is integrated into the modern political economy as a professionally skilled and compensated contributor to society. In the photos whose posters do not reference occupational status, there is a concerted effort to show how the person contributes to a bourgeois domestic sphere. In the only photo that shows the face, a burqa revealing eyes and a mouth, the transgender woman sits in a chair at a table in a well-appointed, immaculate kitchen. This Westernized room is a far cry from the much more basic kitchens ubiquitous across South Asia, where much food preparation and consumption are done on the floor. The class dimension of the photos, as signifier of wealth and Westernization, use economic status as part of a way to normalize and mainstream transgender people into upper middle-class lifestyles. The English language used on the signs, in the

unhesitating handwriting of a native speaker, reflects a global sensibility of an elite class whose chosen medium of expression is the global cosmopolitan. At the same time, the proposed acceptance of transgenderedness is predicated upon the very explicit rejection of hijra identity. Here we see the transgender activists appeal to the bourgeois sentiments of potential allies with the assurance that they are not hijra, meaning they will not disrupt family weddings and births, they will not demand payment with the threat of exposing themselves. By rejecting all association with hijra they both refuse to be labelled according to a traditional identity, and imply that trans identity is more closely aligned to the binary gender norms of modernity. There is an implicit forced teaming between the subject of the photograph and the viewer. Both can agree and remain complicit that the hijra remain unworthy of respect.

## 5. Discussion

Both activists and spokespeople for gender affirmation have benefitted from the rich scholarship and extensive documentation on hijra and their traditions dating back from ancient India. Yet the hijra, of course, do not only exist in history as historical “examples.” Across South Asia, in the modern nation-States of India and Pakistan which are examined here, approximately three million hijra live and work in traditional occupations in India and a couple hundred thousand hijra do the same in Pakistan (Rhude 2018). Hijra are embedded in the daily experience of South Asian traditions, by singing, dancing, and showering blessings on households with new babies, Hindu temples, new business ventures, and weddings. Doniger (2009) even points to an example of how a municipal government once employed hijra as door-to-door revenue collectors, based upon their reputation and finely-honed skills of getting people to part with their money.

The scope of this article has been to discuss the social and rights-related reality of hijra against the background of some of the debates and lawfare that arise in the transgender movement in South Asia. Different sets of laws, along with cultural distinctions, have produced a variety of legalities under



which transgender people live, establishing a hierarchical classification among them and entrenching the caste system (Wilkerson 2020). The critical events analyzed show how, struggling to cope with intersectionality, legal structures reinforce intersectional asymmetries that have legal and social faces.

On the one hand, there are distinct social tensions between the hijra and the gender-affirming movement which have emerged in the struggle for rights and legal recognitions. In line with Hinchy (2021), I argue that, for the photo essay described in 4.2, depicting each transgender person appearing as a single individual was a strategy to disrupt the stereotype that they might be part of a larger group of hijra, a deliberate positioning aimed at freeing themselves from certain stigma while at the same time reinforcing the stigma by becoming complicit with it.

On the other, hijra communities, which operate outside traditional family structures and mainstream workplaces, encounter further marginalization within legislative reforms designed to support transgender individuals. Pakistan's legislative reforms demonstrate that while strides have been made to support transgender rights, these reforms often fail to accommodate the unique socio-economic and cultural realities of hijra. By prioritizing a middle-class, Westernized model of transgender identity, the legal structures unintentionally exclude hijra from protections, further alienating them from both the legal sphere and bourgeois transgender communities.

This exclusion reflects a broader problem: legal frameworks tend to homogenize transgender identities, overlooking the intersection of class, traditional roles, and cultural heritage. For hijra, whose livelihoods are deeply embedded in non-mainstream occupations such as performing blessings or engaging in sex work, the binary legal approaches reinforced by new transgender laws are incompatible with their social structures. Consequently, these legal interventions do little to affirm hijra's status or address their specific forms of exclusion. Instead, they often perpetuate the marginalization of hijra by aligning transgender rights with norms that implicitly demand assimilation into middle-class respectability. This legal and social invisibility further reinforces the perception of hijra as being outside the scope of "legitimate" gender identities worthy of state protection, creating a schism between

different gender-nonconforming groups and diminishing the potential for broader solidarity.

The struggle for the rights of transgender people, along with hijra, is far from over. Part of the power of the lawfare of the transgendered against hijra comes from a clash of social organizational structures found among each group. The transgender population who act as activists have found ways to affirm their gender identity without joining the ranks of the hijra, and therefore remain a part of bourgeois society. Their choice of educational paths, occupations, and professions echo those of cis-gender people. By contrast, the guru-student model of hijra social organization, which dates back millennia, is, by definition, antithetical to family-centered social structure, either traditional, extended, multi-generational families or smaller, nuclear ones. Hijra work with other hijra to bestow blessings and curses in religious landscapes. It makes sense for hijra to live in community together. Transgender people, on the other hand, are often integrated into their natal family unit. Transgender lives conform more easily to their cisgender family members' expectations and to middle-class environments, where professional careers are expected. Certainly, transgender people face unwarranted discrimination and other forms of lawfare, both legally and socially. But to put it in terms of the language of intersectionality, transgender lives do not carry the additional burdens of implicit poverty and social marginalization of the hijra. The lawfare enacted upon transgender people is notable, albeit less repressive than the doubly-punitive lawfare on the hijra, and transgender people contribute to it for their own gain.

Because hijra inhabit a traditional social and cultural space outside the mainstream of the middle-class domestic sphere in South Asia, the hijra offer a convenient foil for the modern transgender rights movement. Unfortunately, this cultural position has had the effect of establishing the hijra as a legal target as well. The trans activists who position themselves in opposition to hijra by declaring emphatically that they are not hijra are seeking cultural, social, and legal allyship among modern bourgeois South Asians. This is the basis of the lawfare waged against the hijra: denying them a place in modern law as a means to secure protections for other transgender people.

## 6. Conclusions

In modern South Asia, hijra are no longer, and perhaps have never been, the only transgender population. In urban middle-class spaces, a new kind of gender-affirming movement has taken hold across mainstream society. The rise of non-hijra transgender activists in India represents a new chapter in a centuries-old tradition of gender nonbinary identities. Quite unlike the hijra, there are those transgender individuals, as we have seen globally, who are mainstreamed yet experience gender dysphoria while living in the sex assigned to them at birth. Transgender people globally share much in common in navigating worlds organized by gender binaries. The hijra, on the other hand, are removed from so many of the structures of bourgeois life that they are even further marginalized. Even in legislation purportedly trying to improve their social standing, lawfare roadblocks are erected to further marginalize those who do not conform with the law. In the case of India's legislation, a main drawback is that the government demands proof of gender affirming surgery before it will change the sex assigned at birth. If desired by the person themselves, most people would not be able to afford such expensive medical treatment, compounding the intersectional blindness of the law.

It is noteworthy that hijra are perhaps the most important group cited by Western transgender movements, but are the most likely to face increased discrimination and erasure in South Asia because of the way that those transgender movements have been framed (Roy 2015). The reason that hijra are most often invoked by proponents of rights for transgender people is due to their history of gender nonconformance across millennia. Looking to the ancient past is, after all, that most modern of moves, as it establishes legitimacy through claims of historical depth (Anderson 1976).

However, this article explored a case in which middle-class transgender individuals have ultimately relied on discrimination against the hijra as a tool to legitimize their own rights, leveraging legal frameworks shaped by social discriminatory discourses. Ironically, this transgender activist movement, and the gender-inflected lawfare that accompanies it, comes at the explicit expense of and rejection of the hijra. Instead of claiming solidarity with hijra, the

living representatives of centuries-old gender nonconforming traditions, some transgender activists cast themselves as standing in opposition to the hijra, claiming a higher status than their better known yet disparaged counterparts. Many people who identify as transgender are firmly middle class (Borges 2016). As such, more mainstream transgender communities project a public image that is typically impacted by fewer intersectional issues of marginalization, in stark contrast to the stigmatized employment of sex work, economic instability, and poverty that are part of the characteristics frequently associated with being hijra (Borges 2016). Here transgender people weaponize a status of limited and relative privilege, at least vis-à-vis their hijra counterparts.

The lawfare at play between some transgender activist groups against the hijra in the search for acceptance, assimilation, and normalization is a useful example of how genderqueer groups are not natural allies in postcolonial societies. Transgender people identify themselves separately from hijra, and hijra identify themselves separately from transgender people. Employment and class status are key. Transgender acceptance in the second critical event analyzed here is predicated upon the social death of the hijra, as people rendered non-commensurate to the dictates of modernity and individual rights. In order to achieve upwardly mobile status, transgender people emphasize respectability, as opposed to the exclusion and stigmatization of hijra. In attempting to gain social acceptance, transgender people's publicity campaigns have both implicitly and explicitly reinforced the negative stigma of hijra, reinforcing inequalities. Being recognized and protected by the law as well as having the right to educational and employment opportunities provide a significant advantage for those who are able to live in their families of origin and benefit from the dignity and respect of socially legitimate structures. Hijra, on the contrary, lack such benefits, which exposes them to further vulnerabilities based on the class they cannot inherit from their families, the traditional roles they are assigned, and the cultural heritage they represent. If hijra are to be given increased opportunities, provisions are needed to address such intersectional disadvantages.

Law is an important tactic, but not the only one, that can serve to make life more inclusive for disadvantaged social identities. The public refusal to sit

next to a hijra on a Kolkata bus shows that there are still many societal norms and moral anxieties about sexual citizenship that law in and of itself cannot fix. Becoming worthy as an acceptable body on public transportation would mean being treated warmly, being invited into the ubiquitous conversations that characterize Bengali society, and yes, being sat next to. Capitalizing on the moral panic introduced by the colonizer's lawfare, as well as the current social and legislative lawfare, has continued to stigmatize the hijra. Moving toward a more equitable framework for all gender-nonconforming communities in South Asia requires confronting and addressing the intersectional disparities that fuel the legislative stigmatization of hijra, thereby alleviating the colonial legacy of moral anxieties and preparing societies to become more inclusive.

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## Género y esferas del poder en la traducción e interpretación de lenguas indígenas en México

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## **Género y esferas del poder en la traducción e interpretación de lenguas indígenas en México**

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### **Resumen**

Este artículo analiza, desde una perspectiva de género interseccional y de género en la translación, experiencias de traductoras de lenguas indígenas en los servicios públicos de justicia mexicanos. Se desarrolla un enfoque cualitativo a partir del análisis de narrativas sobre experiencias identitarias, culturales y profesionales de traducción e interpretación de lenguas indígenas extraídas de estudios publicados y recogidas en conversaciones registradas en un diario de campo. La presentación de los resultados se realiza desde la interseccionalidad, retomando la propuesta de Hill Collins y Bilge (2019) sobre las cuatro esferas del poder: *a*) ámbito interpersonal; *b*) ámbito disciplinario; *c*) ámbito cultural, y *d*) ámbito estructural. Los resultados muestran que, en la intersección de las relaciones de poder y las categorías de grupo etnolingüístico, género y clase social, y frente a las tendencias históricas de discriminación y exclusión de las mujeres y las lenguas indígenas, las traductoras e intérpretes indígenas generan estrategias para revertir las discriminaciones tanto en su cotidianidad como en su práctica profesional desde dos procesos interdependientes: por un lado, a partir del fortalecimiento de su agencia social y política para el fomento y reconocimiento de su profesionalización; por el otro, promoviendo una lucha constante para el cumplimiento de sus demandas étnicas, de género y lingüísticas.

**Palabras clave:** translación en lenguas indígenas, género, interseccionalidad, mujeres traductoras e intérpretes, México

## Abstract

This paper examines the experiences of women translators of Indigenous languages in the Mexican public justice system through an intersectional gender and gender-in-translation lens. Using a qualitative approach, it draws on the analysis of identity-related, cultural, and professional experiences related to the translation and interpretation of Indigenous languages based on excerpts from the relevant literature and conversations recorded in a fieldwork diary. The results are grounded in Hill Collins and Bilge's (2019) intersectional framework, specifically their proposal of the four domains of power: (a) interpersonal, (b) disciplinary, (c) cultural, and (d) structural. The findings reveal that Indigenous women translators and interpreters, positioned at the intersection of power relations involving ethnolinguistic group, gender, and social class, and in the context of historical discrimination and exclusion of women and Indigenous languages, develop strategies to resist these forces in both their daily lives and their professional practice. These strategies encompass two interconnected processes: enhancing their social and political agency to promote and recognize their professionalism, while also advocating for their ethnic, gender, and linguistic rights.

**Keywords:** translation in Indigenous languages, gender, intersectionality, women translators and interpreters, Mexico

## 1. Introducción

La traducción y la interpretación de lenguas indígenas forman parte de las políticas del Estado mexicano y están siendo instrumentales para comenzar a revertir las condiciones de discriminación y racismo en los servicios públicos de justicia y en la formación profesional de las traductoras y traductores indígenas (Córdova-Hernández, Vásquez Jiménez & Velasco García 2022). La traducción y la interpretación de lenguas indígenas son un derecho humano

(de Pedro Ricoy & Andrade Ciudad 2020) y, en México, constituyen un campo profesional y de estudio en expansión. Sin embargo, su desarrollo no puede proseguir sin considerar que, así como existen brechas lingüísticas, educativas y laborales que deben atenderse, también concurren diferentes tipos de violencias y relaciones de poder asimétricas hacia las mujeres intérpretes y traductoras indígenas que llegan a incursionar en el ámbito jurídico.

Las mujeres traductoras e intérpretes indígenas tienen experiencias identitarias, comunitarias y profesionales que pueden ayudar a documentar las barreras a las que se enfrentan y la manera en que han podido superarlas para adentrarnos en el fortalecimiento de su práctica de traducción e interpretación de lenguas indígenas. Analizar las experiencias de las traductoras e intérpretes indígenas en los servicios públicos mexicanos nos permite conocer su papel como traductoras y agentes del cambio social en un sistema colonial-patriarcal (Quijano 2000). Asimismo, conocer su experiencia es un paso necesario para promover la construcción de una justicia *en el lenguaje* (Santana 2022; véase Monzó-Nebot 2024), es decir, generar condiciones para que las jerarquías lingüísticas en general y etnolingüísticas en particular comiencen a modificarse (Baker-Bell 2020), reconociendo que el uso del español como lengua de comunicación en los procesos jurídicos que atañen a las personas hablantes de lenguas indígenas no es neutral, ni representa a toda la ciudadanía.

La traslación de lenguas indígenas es un campo productivo, desde la perspectiva de género y la interseccionalidad (Hill Collins & Bilge 2019), para analizar críticamente la política lingüística de la traslación (Grin 2017).<sup>1</sup> Las políticas de la traslación en Estados multilingües como México abarcan todo el complejo de traducciones y estrategias de traducción, así como sus objetivos y efectos entre las personas que habitan en dicho Estado (Meylaerts 2018).<sup>2</sup> El análisis crítico de estas políticas a través de las experiencias de las traductoras indígenas permite

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<sup>1</sup> En México se utiliza el término *traducción* para referirse al ámbito de la lengua escrita e *interpretación* para referirse al ámbito oral (Schrader-Kniffki 2018). Nosotras aquí utilizamos esta diferencia, aunque emplearemos también *traslación* para aglutinar ambas actividades.

<sup>2</sup> Entendemos *política de la traslación* como la toma de decisiones en torno a la traducción —que concierne a «la formación de los traductores, las condiciones de producción y recepción de los



conocer cómo el monolingüismo institucional hacia los pueblos indígenas genera condiciones de opresión, exclusión y violencias racializadas hacia las y los hablantes de estas lenguas, sobre todo, si son mujeres indígenas (Bidaseca 2014). En ese contexto, la traslación en lenguas indígenas dentro de los servicios públicos de justicia fortalece la agencia social y política para promover el cambio y la justicia social hacia los pueblos (Schrader-Kniffki 2018). Sin embargo, la práctica de la traslación no está exenta de reproducir los modelos institucionales patriarcales que ejercen diferentes niveles de poder y, con ello, de dominación. De esta manera, desde los feminismos indígenas, se puede afirmar que existen demandas de género, étnicas y lingüísticas por responder (Moore Torres 2018; Hernández Castillo 2021).

Este artículo analiza el poder ejercido desde el aparato estatal contra el avance en igualdad e inclusividad (*lawfare*), tanto en la codificación de derechos en la legislación como en la aplicación de los derechos codificados a través de las instituciones (véase la introducción a este número monográfico de Monzó-Nebot & Wallace), desde una perspectiva de género interseccional e interdisciplinar (Ferguson 2017). Para ello, se examinan las experiencias de traductoras de lenguas indígenas en los servicios públicos de justicia mexicanos. Retomamos los feminismos de color para hacer referencia a la intersección entre género, origen étnico, clase y sexualidad y las múltiples formas de dominación de las mujeres (Lugones 2008, 75). El concepto de interseccionalidad permite describir la ubicación de las mujeres racializadas dentro de los sistemas convergentes de discriminación que generan vulnerabilidades específicas derivadas del racismo y el patriarcado (Crenshaw 1991). Asimismo, se desarrolla un enfoque cualitativo de abordaje narrativo a partir del análisis documental de las experiencias (identitarias, culturales y profesionales) de traducción e interpretación de lenguas indígenas recogidas en investigaciones

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textos, la circulación de las traducciones a través de las editoriales, el mercado laboral, las ideologías y estrategias adoptadas en el proceso de traducción [...], así como los textos elegidos para ser traducidos y los marginados por los sistemas culturales» (dos Santos & Francisco 2018, 2943)– y a la formación de intérpretes y la interpretación en servicios públicos de justicia, salud y agrarios, entre otros.

publicadas y en conversaciones registradas en un diario de campo (Martínez-Guzmán & Montenegro 2014; Lencina 2020). La exposición teórica y de resultados se basa en la propuesta de Hill Collins y Bilge (2019) sobre las cuatro esferas de poder: *a*) interpersonal, *b*) disciplinario, *c*) cultural y *d*) estructural. Estas esferas son interdependientes y se traslapan en las experiencias aquí mostradas.

## 2. Género, traslación e interseccionalidad: Las cuatro esferas de poder

A lo largo del tiempo, se ha considerado que la profesión de la traducción y la interpretación, sobre todo, ejercida por mujeres, tiene un rol social inferior (Jaoudi 2022). Por un lado, las traductoras y traductores se tienen por reproductoras y reproductores de un discurso carente de originalidad, pues el texto que traducen no es de su autoría (Simon 1996). Por el otro, las mujeres somos evaluadas desde un modelo institucionalizado que genera múltiples formas de subordinación (Fraser 2015). A partir de ello, la teoría feminista de la traslación critica la cultura de la hegemonía patriarcal (von Flotow 1991; Castro Vázquez & Ergun 2017) y redefine la traducción y la interpretación como prácticas para la producción primigenia de significados que ayudan a reconocer procesos de dominación social masculina a partir de visibilizar en los usos del discurso la voz de las traductoras e intérpretes (Andone 2002; Wallace 2002; Brufau Alvira 2011).

La traslación feminista y la traducción interseccional son prácticas que involucran, por un lado, un ejercicio académico e individual, a la vez que un activismo personal (Santaemilia 2022); por el otro, un esfuerzo por desarrollar una traducción orientada hacia la igualdad y la esperanza (Lucero García 2015). La traslación feminista toma una perspectiva interseccional al enfatizar la observación de las diferentes dimensiones identitarias y ejes de opresión —etnicidad, nacionalidad, lengua, entre otras— que tienen lugar en contextos de violencia institucional, injusticia social y colonización lingüística existentes en la práctica misma de la traslación o en ausencia de esta (Baril 2017).

Los estudios de género en la traducción son un enfoque que motiva a la re-escritura de las experiencias de las mujeres traductoras e intérpretes, tanto en

contextos coloniales como decoloniales (Godayo 2008). Desde esta perspectiva, la traducción es una herramienta política para reconocer en sus prácticas elementos de gramática de género, textos misóginos, procesos de traducción del cuerpo femenino y las ideologías subyacentes, entre otros aspectos (Federici & Santaemilia 2022). Desde la década de 1990, las teorías feministas en la traducción se han utilizado en distintos contextos históricos y culturales y han sido la base para el surgimiento de otras tendencias de traducción que resisten a la heteronormatividad (*queer*, lésbicas y gays, entre otras) (Irshad & Yasmin 2022). Estas investigaciones en traducción han sido muy productivas en el ámbito literario, pero limitadas en el de la interpretación (Dowd & Monzó-Nebot 2023; Susam-Saraeva et al. 2023; Monzó-Nebot & Dowd 2024) e igualmente reducidas en el caso de la traslación en los servicios públicos y, sobre todo, en el de las lenguas indígenas.

De acuerdo con Hill Collins y Bilge (2019), la interseccionalidad es un instrumento que permite conocer cómo las relaciones de poder se entrelazan y se traducen en divisiones sociales y categorías que adquieren significados a partir de dichas relaciones: racismo, sexismo, heterosexismo y explotación de clase. En específico, en este artículo se utiliza para explicar la posición social de las traductoras e intérpretes indígenas y su relación con el poder que pueden ejercer y la opresión a la que se las somete. Al hacer referencia a las traductoras e intérpretes indígenas y sus particularidades sociales y culturales como mujeres y como miembros de un grupo etnolingüístico, nos interesa desarrollar una perspectiva crítica que permita comprender la intersección del género con otras categorías sociales y culturales que «son definidas a través del concepto de sujeto masculino hegemónico, aun cuando muchas veces se pretende que éstas no tienen género» (García-Peter & Villavicencio-Miranda 2016, 17).

### 2.1. *Ámbito interpersonal del poder*

En el ámbito interpersonal del poder «destaca la naturaleza múltiple de las identidades individuales y cómo las combinaciones de las categorías de clase, género, raza, sexualidad y ciudadanía sitúan de forma distinta a

cada persona» (Hill Collins & Bilge 2019, 19-20). Si las lenguas indígenas han sido excluidas de los modelos de desarrollo de los estados latinoamericanos modernos, los cuales derivan de sistemas políticos coloniales y patriarcales (Arias 2020), las traductoras e intérpretes indígenas se han socializado en contextos de dominación, por lo que su formación identitaria surge de múltiples tensiones y contradicciones. Aunque en el siglo XXI varios estados latinoamericanos han implementado legislaciones que garantizan el uso de las lenguas indígenas en los servicios públicos o proyectos de desarrollo (véase, por ejemplo, Zajícová 2017), existe una herida colonial en la que, desde un sentido de supervivencia y sanación colectiva, las mujeres actúan para sus familias, comunidades y barrios (Aatar 2021).

En el ámbito interpersonal, «se producen estrategias de racismo y de resistencia cotidiana» (Hill Collins 2000, 299). En el caso de las traductoras indígenas mexicanas, su práctica en los servicios públicos emana de la organización colectiva y comunitaria. Por un lado, para facilitar el acceso a la justicia estatal de las y los hablantes de lenguas indígenas (Matías Juan 2019). Por el otro, como una respuesta colectiva para la defensa del territorio y formas específicas de vida, desafiando así sistemas y códigos de violencia interpersonal y estructural (Sieder 2017). Por ejemplo, las mujeres tzeltales y ch'oles que participan en el Centro de Derechos de la Mujer de Chiapas, una asociación civil de los Altos de Chiapas, «han construido una posición política que les permite visualizarse como sujetas de derechos y como defensoras y promotoras de derechos humanos. Además de poder participar en los grupos de análisis de la realidad y de discusión de los casos jurídicos» (Saavedra Hernández 2022, 31).

En el ámbito interpersonal, existen relaciones de poder históricamente fijadas (Hill Collins & Bilge 2019) y las traductoras indígenas se organizan para revertir algunas condiciones de injusticia social y de género que siguen enfrentando tanto en espacios estatales como comunitarios y familiares. De acuerdo con Tyulenev (2016), el campo de la traducción y la interpretación puede entenderse desde la agencia porque este campo es una acción social humana. Sin embargo, la agencia de las mujeres traductoras e intérpretes indígenas no se reduce a facilitar procesos de interacción o mediación lingüística en los servicios pú-

blicos, pues a través de su formación como traductoras e intérpretes pueden participar en espacios que permiten generar acciones de triangulación comunicativa en beneficio de sus comunidades.

## 2.2. *Ámbito disciplinario del poder*

El ámbito disciplinario es «una forma de gobernar basada en jerarquías burocráticas y técnicas de vigilancia» (Hill Collins 2000, 298). En cuanto a los pueblos indígenas, desde el siglo xvi, se les sometió a un proceso disciplinario que comportó la ruptura de los testimonios orales y visuales que fundamentaban la práctica historiográfica india para ser sustituidos por el relato de la civilización y la escritura alfabética (Rivera Cusicanqui 1987). En México, la política lingüística colonial hizo uso de la traducción e interpretación en lenguas indígenas, sobre todo, náhuatl-español, como solución a problemas comunicativos y de control territorial. Aunque la traducción e interpretación entre la población indígena y no indígena se consideraba importante, los ejércitos colonizadores consideraron que las traductoras y traductores de lenguas indígenas podían ser traidoras o traidores, pues la mayoría de estas actoras y actores sociales fue secuestrada y evangelizada para facilitar la mediación lingüística entre el ejército colonizador y la población indígena (Payàs & Garbarini 2012).

A pesar del tiempo transcurrido, las traductoras y traductores de lenguas indígenas poseen el estigma de ser personas poco confiables para cualquiera de las partes a las que prestan sus servicios (por ejemplo, grupos colonizadores pero también los colonizados, la judicatura pero también las personas imputadas, el personal médico pero también pacientes, etc.). En términos disciplinares, donde la burocracia es la principal forma de organización política (Hill Collins 2000), se ha promovido la ética deontológica y «los códigos de ética [...] incluyen: la imparcialidad, la neutralidad, la confidencialidad, la fidelidad a la enunciación original y el profesionalismo» (Murillo Gallegos, Zimányi & D'Amore 2018, 36). En los servicios públicos de justicia mexicanos, que son espacios monolingües y monoculturales, se estigmatiza a traductoras y traductores a partir

de poner en duda sus conocimientos, sus habilidades traductológicas y, sobre todo, su neutralidad (Rivera Cusicanqui 1987). Asimismo, aunque desde hace más de dos décadas existen fundamentos legales para promover y asegurar la traducción e interpretación de lenguas indígenas en los ámbitos jurídicos, esto no evita que las funcionarias y los funcionarios cometan acciones racistas y discriminatorias que las traductoras e intérpretes indígenas median y sufren (Kleinert & Stallaert 2015).

En suma, en el ámbito disciplinario, las traductoras indígenas navegan entre sistemas jurídicos patriarcales-coloniales (Sieder 2017), donde existe una constante violación de los derechos de las mujeres indígenas para acceder a la justicia. Por ejemplo, por ser mujeres, tienen menos derechos comunitarios sobre el manejo o posesión de la tierra o, en casos de violencia sexual, no existe claridad sobre cuándo intercede la justicia comunitaria y cuándo la justicia estatal. También al defender sus derechos humanos (derechos a la salud, educación y medio ambiente, etc.) se enfrentan a una disciplina que las sitúa al pie de la jerarquía.

### 2.3. *Ámbito cultural del poder*

El ámbito cultural del poder consiste en «el mito de la igualdad de oportunidades para competir» (Hill Collins & Bilge 2019, 22). Por ejemplo, a partir del año 2000, con el establecimiento de políticas neoindigenistas y multiculturales en el Estado mexicano, se dio paso a la descentralización institucional, las reformas económicas y la incorporación de líderes y profesionales indígenas a las instituciones estatales. No obstante, a la par de diversificarse, se debilitaron agendas y demandas étnicas a nivel nacional, regional y local. En ese contexto, en el caso del movimiento de las mujeres indígenas, ellas bajaron «su perfil y han vuelto a refugiarse en las demandas inmediatas, locales, menos beligerantes, como una estrategia para no amenazar la frágil unidad indígena ante “un enemigo” común, identificado como la sociedad no indígena, el estado y las instituciones» (Bonfil 2004, 56). De esta manera, aunque en este proceso de multiculturalización los pueblos indígenas y las lenguas

comenzaron a ganar espacios de representación e impulso identitario gracias a las políticas de reconocimiento del momento, no surgieron políticas pluralistas que imprimieran cambios profundos relacionados con la diversidad étnica, religiosa, de género o lingüística, entre otras (Hernández Castillo, Paz & Sierra 2004).

El mito de la igualdad de oportunidades (Hill Collins & Bilge 2019) con respecto a las mujeres indígenas y sus mecanismos de resistencia para ingresar a la educación superior se ilustra en el caso de una mujer zapoteca de la Sierra de Oaxaca, documentado por Romero Rodríguez, Briseño Maas y López Cadena (2023). Si bien la educación formal es obligatoria en México hasta el nivel medio superior (bachillerato), la mayoría de las mujeres indígenas no continúan con estos niveles de estudio y, mucho menos, con los niveles universitarios, entre otras razones, porque muchas familias no confían en su comportamiento cuando abandonan su comunidad para continuar con su formación profesional:

Lo más difícil fue convencer a mi papá y hermanos; en mi pueblo, las mujeres deben quedarse en su casa o la familia es objeto de burlas. Cada que yo los convencía, sus amigos y demás familias los burlaban y llegaban a repetir que vendría «panzona» [embarazada], que me volvería prostituta o que me secuestrarían para meterme de puta y volvíamos a comenzar hasta que logré que al menos me dejaran salir con advertencias. (Romero Rodríguez, Briseño Maas & López Cadena 2023, 1799)

Las jóvenes indígenas, además de resistir las condiciones o barreras del exterior, deben enfrentar los imaginarios hacia las mujeres y los roles que deben cumplir dentro de sus familias y comunidades. Si lo anterior se traslada al área de la traducción e interpretación de lenguas indígenas, las traductoras e intérpretes indígenas no han estado exentas de dichas dificultades para desarrollarse como profesionales de este campo, sobre todo, porque deben responder tanto a las expectativas y necesidades familiares y comunitarias como a los retos que implica interactuar en contextos hegemónicos y de discriminación y exclusión.

#### 2.4. *Ámbito estructural del poder*

El ámbito estructural del poder «consiste en una constelación de prácticas organizadas que [opera a través de leyes y políticas de las instituciones sociales y] trabaja para mantener una distribución desigual e injusta de los recursos sociales» (Hill Collins 2000, 301). El proceso de institucionalización tiene lugar, en primer lugar, en las estructuras que guían el comportamiento social y configuran las identidades del individuo (Cruz-Suárez, Prado-Román & Díez-Martín 2014); y, en segundo lugar, en el desarrollo de un marco jurídico que da pautas para la redefinición de las relaciones de poder y el proyecto nacional de sociedad (Laurent 2021). En lo que respecta a esta segunda vertiente, en México, la Ley General de Derechos Lingüísticos de los Pueblos Indígenas (México 2003) es el eje rector de las políticas lingüísticas del país en materia de lenguas indígenas. Asimismo, desde el año 2008, se realizaron reformas dentro del sistema de justicia, con las cuales se comenzó a impulsar el desarrollo de juicios orales para hablantes de lenguas indígenas que enfrenten un proceso penal: «este modelo procesal crea un espacio de encuentro entre el Estado mexicano y los pueblos indígenas, así como una nueva economía del castigo que invisibiliza la violencia (i)legítima ejercida por el Estado sobre personas indígenas en conflicto con la ley y sus sistemas de justicia» (Sierra 2023, 4).

En este contexto, se pueden realizar dos afirmaciones. Por un lado, el sistema de juicios orales para personas hablantes de una lengua indígena es un medio para materializar el derecho a comunicarse en la lengua propia y gozar de la asistencia de intérprete dentro de un sistema de justicia que aún privilegia el sistema de justicia institucional del Estado, aunque reconoce la pluralidad de los sistemas normativos indígenas (Colín 2021). Por el otro, a partir del mandato de instrumentos jurídicos, se brinda asistencia de interpretación a las personas hablantes de lenguas indígenas, pero, en este proceso, existe falta de intérpretes, traductoras y traductores formadas o especializadas en el ámbito de la justicia y, sobre todo, hay una ausencia de servicios de interpretación (Flores 2020). La capacitación, profesionalización y contratación tendrían que ser parte de la materialización de la institucionalización de la traslación de lenguas indígenas. Sin embargo, en los ámbitos de justicia, como comenta Sierra (2023),



las y los agentes estatales hacen referencia a la falta de recursos para garantizar los servicios, pero también queda en el criterio de cada jueza o juez si la autoadscripción de las personas imputadas es suficiente para contar con la asistencia de un intérprete en el proceso judicial. Aunque algunas instituciones gubernamentales y organizaciones de la sociedad civil comienzan a desarrollar procesos de capacitación continua y profesionalización, aún falta superar barreras para que los procesos de determinación de la necesidad, contratación y pagos se ajusten a criterios de equidad y permitan garantizar los servicios de traducción e interpretación. Las condiciones para interpretar lenguas indígenas en los espacios de justicia distan de ser idóneas (Gómez 2023) y la distribución de los recursos para el acceso a la justicia en lenguas indígenas aún es desigual e injusta.

### **3. Abordaje contextual y metodológico**

En México, una década después de la proclamación de la Ley General de Derechos Lingüísticos de los Pueblos Indígenas (México 2003), Kleinert señala con respecto a la formación de intérpretes, traductoras y traductores dentro de los servicios públicos:

La interpretación comunitaria, social o también llamada en los servicios públicos (ISP) en México no ha recibido todavía ni la atención ni las oportunidades de formación que ofrecen la mayoría de disciplinas afines, como pudiera ser la lingüística, la traducción e interpretación de lenguas extranjeras, la enseñanza de lenguas o la antropología. [...] Por ello, el trabajo de interpretación se ha llevado a cabo de manera informal, no profesional, sin un código de ética o conducta, sin remuneración, ni tabulada ni acordada y en el casi nulo reconocimiento. (Kleinert 2013, 530)

A pesar de la ausencia de profesionalización y programas de estudio, es importante reconocer que se realizaron esfuerzos desde la sociedad civil para atender a hablantes de lenguas indígenas a través de diplomados de formación de intérpretes legas y legos (Kleinert & Stallaert 2015; Kleinert 2016;

Kleinert & Stallaert 2024). Sin embargo, estos ejercicios eran limitados si se comparan con la acelerada emergencia o engrosamiento de programas de lingüística indoamericana, enseñanza de lenguas y educación intercultural bilingüe (Chamoreau 2014).

En este contexto, la formación de traductoras, traductores e intérpretes indígenas se comienza a formalizar después del 2015 con el desarrollo de programas de estudios específicos a nivel de posgrado (Córdova-Hernández, Vásquez Jiménez & Velasco García 2022) y, recientemente, a nivel de licenciatura en el sistema de universidades interculturales y en la Universidad de las Lenguas Indígenas de México (Bermúdez 2023). Con un desarrollo de tan corto período, el interés por conocer las perspectivas y experiencias de este gremio aún es reducido (Alejo Carlos 2019; Espinosa Monsiváis 2019; Martínez Gutiérrez & Kleinert 2023). En el caso específico de las mujeres intérpretes y traductoras indígenas, este interés parece aún menor, lo que abunda en lo que establece Bonfil (2004) acerca de que, pese al desarrollo de las políticas multiculturales, las mujeres indígenas deben sortear o negociar sus intereses de género por las necesidades inmediatas locales o regionales.

Si bien dentro de las políticas multilingües se desarrollaron políticas que son benéficas ante los procesos de desplazamiento y discriminación lingüística hacia los pueblos indígenas, estas no fueron políticas transversales sino políticas que seguían una lógica castellanizante, propiciando la «construcción de una élite de profesionistas indígenas que sólo busca cumplir con el *statu quo* establecidos por las instituciones del estado» (Córdova-Hernández, López Gopar & Sughrua 2018, 40). Dentro de las políticas y planificación nacionales, el desarrollo de investigaciones basadas en lingüística descriptiva y enseñanza de lenguas es la tendencia que se ha privilegiado, por lo que el alcance de la traducción e interpretación de lenguas indígenas y la profesionalización de sus hablantes en esta área han sido menos amplios y no es hasta la última década cuando se ha comenzado a fortalecer su profesionalización.

En términos académicos, para la traducción e interpretación de lenguas indígenas en los espacios de justicia, los estudios especializados hacen referencia a la problemática que enfrentan las personas hablantes de lenguas indígenas en los espacios públicos y las necesidades de formación profesional, pero

pocas veces se describe cómo las mujeres intérpretes y traductoras indígenas experimentan este campo de mediación lingüística y cultural. En términos de política y reconocimiento cultural, se privilegia la atención de los problemas considerados más inmediatos o de alcance general —territoriales, económicos, educativos, jurídicos, etc.—, entre ellos, los lingüísticos (Warren & Jackson 2003), pero se dejan de lado las discusiones y el análisis de las tensiones en torno al género y los procesos a los que se enfrentan las mujeres traductoras e intérpretes indígenas, reduciendo su vulnerabilidad social y su activismo a la dimensión étnica.

Este estudio aborda desde un enfoque cualitativo y narrativo el análisis documental de experiencias (identitarias, culturales y profesionales) de traducción e interpretación de lenguas indígenas en México recogidas en estudios publicados y en conversaciones espontáneas registradas en un diario de campo (Martínez-Guzmán & Montenegro 2014; Lencina 2020). Nuestra propuesta analítica surge de la necesidad de cartografiar y visibilizar las referencias existentes en torno a la experiencia de mujeres indígenas en el ámbito de la traducción e interpretación de lenguas indígenas y, a su vez, la ausencia de ellas.

En la presentación de nuestro estudio, nos centramos en los testimonios vertidos en el libro *Historias... Traductores indígenas de México* (Alejo Carlos 2019), así como en el análisis de artículos científicos y de divulgación en el que se documentan iniciativas de traducción y en conversaciones registradas en el diario de campo de la primera autora de este artículo. Este diario se desarrolló entre febrero de 2020 y diciembre de 2023. En él, con el consentimiento de las implicadas, se documentaron testimonios derivados de conversaciones con traductoras e intérpretes indígenas que participaron dentro de tres talleres y un diplomado interinstitucional organizados por la Universidad Autónoma Benito Juárez de Oaxaca y el Instituto Nacional de Pueblos Indígenas o la Secretaría de las Culturas y las Artes de Oaxaca, que aportaron su visto bueno a la recopilación de datos y su presentación en el presente artículo.

En específico, en este artículo presentamos cuatro fragmentos (uno de un artículo académico, dos del libro sobre testimonios de traductoras y

traductores indígenas y uno del diario de campo) en los que se mencionan procesos o situaciones de traducción o interpretación. El primero (Favila-Alcalá 2020) se refiere a las contradicciones que surgen a partir de un encargo de traducción con impacto en los derechos de las mujeres y su conocimiento de los mismos, pero donde las mujeres no participan del proceso traductor. Los tres fragmentos restantes (Alejo Carlos 2019 y diario de campo) hacen referencia a cuáles han sido las situaciones, reacciones y procedimientos que han puesto en marcha en los procesos de interpretación jurídica y cómo sus experiencias personales y profesionales influyen en los procesos que emprenden como traductoras.

Nuestro análisis de las experiencias de traductoras e intérpretes indígenas sirve para conocer la posición social de las mujeres indígenas en general y las traductoras en particular en dominios hegemónicos de poder como son los servicios públicos de justicia. Los fragmentos que presentamos a continuación permiten cuestionar los grandes relatos (culturales o científicos), posibilitando la emergencia de relatos cotidianos contextualizados que sacan a relucir las diversidades inherentes (Martínez-Guzmán & Montenegro 2014; Lencina 2020). Como se verá a continuación, los fragmentos seleccionados permiten observar cómo las esferas del poder se traslapan y, con ello, muestran las tensiones entre las políticas de la traslación de lenguas indígenas y las situaciones de exclusión y discriminación a las que se ha sometido a las mujeres intérpretes y traductoras indígenas.

#### **4. Experiencias de mujeres traductoras/intérpretes de lenguas indígenas**

Las opresiones sociales, institucionales o comunitarias que enfrentan las mujeres indígenas mexicanas son organizadas por el ámbito estructural, justificadas por el ámbito cultural, gestionadas por el ámbito disciplinario y diseminadas en la experiencia cotidiana por el ámbito interpersonal (siguiendo la clasificación de Hill Collins & Bilge 2019). Dentro del ámbito estructural, las políticas de la traducción de lenguas indígenas producen procesos contradictorios pues, por un lado, se reconoce la necesidad de la traducción e interpretación en lenguas

indígenas, pero, por el otro, la distribución de los recursos es desigual y justifica las barreras para la traducción de textos jurídicos y el acceso a la justicia en lenguas indígenas, pues, dados los niveles de bilingüismo y poca práctica de lectura alfabética tanto en estas lenguas como en español, los productos de la traducción son poco o nada consumidos en el ámbito de las comunidades indígenas tanto rurales como urbanas.

Un ejemplo claro de las políticas de traducción en lenguas indígenas y las contradicciones que esta genera al privilegiar el *statu quo* y no la materialización de derechos de las mujeres indígenas es la traducción del español al mazahua de la Ley de Acceso de las Mujeres a una Vida Libre de Violencia (México 2007) en el Estado de México, documentado por Favila-Alcalá (2020). El texto fue traducido por un hombre mazahua y, debido a que las mujeres mazahuas cuentan con bajos niveles de alfabetización tanto en español como mazahua, se justificó la ausencia de las mujeres del proceso y no se desarrolló ningún recurso alternativo o no escrito para facilitar su participación. Aunado a este ejercicio de poder desde el nivel estructural, es importante señalar que, en el proceso de traducción, surgieron limitaciones por el presupuesto y el recurso humano, desde los procesos de búsqueda de equivalencias de la terminología jurídica hasta las ideologías<sup>3</sup> que rezuman en las decisiones en torno a las variantes dialectales del mazahua que se utilizan o la concepción sobre la violencia en las comunidades indígenas del traductor (Favila-Alcalá 2020).

Al respecto, el traductor de la Ley justificó el uso del recurso bilingüe (español-mazahua) para la publicación del texto meta:

El motivo —dijeron— es que la mayoría de las mujeres indígenas es bilingüe (español < > lengua indígena), pero no sabe leer ni escribir en su lengua. Además, mencionaron que llevan a cabo pláticas informativas con respecto al contenido de la traducción. En ese sentido, en vista de que la dependencia se compone principalmente de personas no hablantes de una lengua indígena, puede suponerse

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<sup>3</sup> Sobre las ideologías lingüísticas en el activismo vehiculado a través de la traducción y la interpretación, véase Andrade Ciudad, Howard y De Pedro Ricoy (2017).

que tales pláticas se desarrollan en español. Así, se demuestra que la lengua de acceso sigue siendo la hegemónica. Además, el traductor comentó que quienes saben leer y escribir el mazahua y el español son los hombres de la comunidad, pues son quienes tienen mayor contacto con el mundo no indígena. Tanto los niveles de analfabetismo (en español y en mazahua) como el limitado tiraje de traducciones limitarán el alcance de la traducción y su impacto en la vida de las comunidades. Además, en repetidas ocasiones, el traductor hizo hincapié en el hecho de que la ley es totalmente ajena a la realidad de su pueblo, pues se trata más bien de un instrumento con el cual se pretende asimilar a los pueblos indígenas a las prácticas sociojurídicas occidentalizadas. Al respecto, mencionó lo siguiente: «En nuestra visión indígena entre lo masculino y femenino no existe exclusión, todo depende desde la mirada que se tenga de la dinámica social y cultural en que le mire». (Favila-Alcalá 2020, 63-64)

Desde el ámbito estructural del poder, traducir documentos jurídicos que atañen a mujeres es importante. No obstante, lo es igualmente que ellas participen en todo el proceso de la traducción, no solo en algunos momentos, como la consulta. Así, aunque se haya realizado la traducción del documento jurídico antes mencionado, se sigue reproduciendo, en términos de Quijano (2000), un modelo colonial-patriarcal. En términos del ámbito cultural del poder, se utiliza tanto la traducción en sí misma como la introducción de la visión indígena para invisibilizar las desigualdades de género existentes.

A pesar de lo anterior, es importante notar que las políticas de la traducción han tenido efectos positivos en algunas experiencias aquí mostradas. Por ejemplo, desde el ámbito interpersonal del poder, la participación y formación como intérpretes y traductoras motiva a las mujeres indígenas a fortalecer su agencia pública y laboral. Es el caso de Catalina Martínez Ortega, traductora triqui, documentado por Edith Matías Juan (2019), intérprete y traductora zapoteca.

Este trabajo y la oportunidad de participar en interpretaciones y traducciones me ha servido para fortalecerme como persona, para fortalecer mi identidad, me ha permitido darme a conocer como triqui; me ha dado la oportunidad de convivir y apoyar a mis paisanas y paisanos que también han tenido que dejar la comunidad. Pienso que es muy importante seguir actualizándome con la información

e ir apropiándome de algunos conceptos relacionados con la interpretación de lenguas. (Matías Juan 2019, 13)

La formación como intérpretes y traductoras fortalece la agencia de las mujeres indígenas para participar tanto en el campo profesional como en la mediación de conflictos que pueden vivir en la comunidad (Sieder 2017). Ellas reconocen la necesidad de mantener su formación continua (Saavedra Hernández 2022). Sin embargo, es necesario recordar que el papel de mediadoras genera el estigma de persona poco confiable e incluso traicionera para las dos partes (comunidad o servicios públicos) a las que presta sus servicios.

En el ámbito disciplinar del poder y las ideologías de la traducción, subyace la desconfianza y la idea de que las traductoras e intérpretes deben tener imparcialidad y una práctica correcta en términos de la transmisión del mensaje. Al respecto, María Elizabeth López Curiel, abogada, traductora e intérprete, comenta:

Una de las dificultades más considerables en los juicios orales en los que he participado es conocer la variedad en la que se realizará la interpretación. Por ejemplo, aunque hablo mixteco, no tengo la oportunidad de intercambiar algunas palabras con el acusado antes del juicio. Por lo tanto, no sé si mi variedad es inteligible con la del acusado. Como a veces no nos entendemos al 100% en el momento del juicio, el acusado me dice en mixteco que no entiende, así que tengo que repetir la información. En una ocasión, tuve que repetir la información e intercambiamos más palabras. Hice la interpretación más larga de lo esperado, y el juez se enfadó y me dijo que debía concentrarme sólo en la información requerida. Aunque el juez no conoce el idioma, se da cuenta de que repito o me esfuerzo demasiado por decir algo. No sabe lo que quiero decirle al acusado, así que piensa que estoy manipulando la información y desconfía de mí. (María Elizabeth López Curiel, *Comunicación personal*, 20 de septiembre de 2022)

El caso de López Curiel es interesante porque denota que, independientemente de que cuenta con una formación jurídica y las herramientas de la traducción e interpretación, hay actitudes y procedimientos de las servidoras públicas y servidores públicos que demuestran cierto grado de intolerancia al uso de una lengua distinta al español y con una ideología lingüística en torno a que

la métrica del mensaje en español debe ser la métrica del mensaje en lengua indígena; en otras palabras, que la construcción sintáctica del mensaje debe ser la misma. De esta forma, no basta con potenciar la formación continua de traductoras, traductores e intérpretes, sino que hay que motivar un cambio en el monolingüismo ideológico de las servidoras públicas y servidores públicos (Monzó-Nebot 2023), negociando y reflexionando sobre cómo se interpreta en lenguas indígenas en un proceso judicial y reconociendo la existencia de la diversidad de las traducciones del derecho, en particular, las ascendentes y las descendentes, esto es, las que instrumentan las desigualdades de poder y pueden (o no) cuestionarlas (Monzó-Nebot 2024).

Dentro del ámbito interpersonal, las traductoras indígenas con formación jurídica y traductológica han tenido que disputar los espacios educativos con personas de clase social acomodada y, sobre todo, hombres blancos, mestizos e incluso indígenas (Rain Rain 2020). En el ámbito disciplinar, enfrentan el estigma de desconfianza por parte de las personas empleadas en los servicios públicos. Sin embargo, en términos interseccionales, las traductoras legas e incluso aquellas que cuentan con mayor formación también han prestado sus servicios en contextos y situaciones de opresión importantes, por ejemplo, al interpretar en espacios de justicia estatal. Al respecto, María Morales Domingo, traductora mam, comenta lo siguiente sobre su experiencia de interpretación en el Centro de Reinserción Social Koben del estado de Campeche:

La verdad sentí feo, me empezaron a temblar las piernas, pues no sabía qué iba a hacer, me ganaron los nervios cuando entré a las oficinas, mi primera interpretación en el juzgado fue en el sistema tradicional sobre violencia familiar, fue una experiencia muy fuerte en vista de que yo había sido violentada, en esa ocasión tuve que interpretar a la víctima, a la mujer violentada, así que cuando inició le pregunté su nombre, le pregunté si me entendía ya que las dos hablamos Mam y me respondió que sí, vi a la mujer tranquila y yo estaba muy nerviosa, y pensaba y me preguntaba, ¿por qué estoy tan nerviosa si ella está muy tranquila?, oraba en silencio y le decía a Dios «¡ayúdame porque aquí no sé dónde estoy metida!». Se presentaron la jueza, el defensor y el ministerio público, me dijeron cuál era mi papel, me entregaron el expediente y ahí sí estuvo bien duro porque le tuve que



interpretar todo lo que ahí decía y era mucho, yo me concentré en el expediente, no me preocupé de quien me estaba viendo, yo sólo hice mi trabajo con profesionalismo. (González 2019, 120-121)

En el ámbito interpersonal y cultural de poder, las mujeres intérpretes indígenas se identifican con las víctimas y personas imputadas; sobre todo, porque sus historias de vida se encuentran enmarcadas por las múltiples formas de violencia por condiciones de género y de catarsis emocional que deriva en activismo político (Kleinert & Martínez Gutiérrez 2024). Asimismo, el ámbito de la institucionalización en el que se desarrolla la interpretación muestra la manera en que las mujeres experimentan tensión, en especial, porque en muchos de sus procesos de interacción social han estado estigmatizadas por la carencia de habilidades para desarrollar una buena práctica, por ser indígenas y, sobre todo, por ser mujeres.

## 5. Conclusiones

Las mujeres intérpretes y traductoras indígenas son, ante todo, mujeres que se encuentran en constante lucha por la materialización de sus derechos humanos, colectivos y lingüísticos. Aunque muchas de ellas han superado las barreras familiares y comunitarias para profesionalizarse, su condición de mujeres indígenas aún las coloca en condiciones de discriminación y exclusión cuando prestan servicios de interpretación en los servicios públicos o en los encargos de traducción institucional debido a la resistencia ejercida en las instituciones contra sus derechos. En este contexto, es importante reiterar que no generar las condiciones necesarias para que la traducción e interpretación de lenguas indígenas en los servicios públicos de justicia cuente con recursos humanos, lingüísticos y tecnológicos que garanticen los derechos humanos y lingüísticos de la población indígena es un mecanismo que utiliza la fuerza del Estado para promover la simulación y la permanencia de prácticas castellanizantes, colonizantes y patriarcales en el uso político del sistema legal que atiende a dicha población.

El análisis de sus experiencias desde las esferas del poder de Hill Collins y Bilge (2019) nos muestra que aún las traducciones e interpretaciones en lenguas indígenas se siguen realizando en el contexto de la inmediatez, con las condiciones impuestas por las instituciones y en respuesta a sus necesidades y tiempos, ignorando las necesidades de las comunidades indígenas y eludiendo su responsabilidad frente a ellas al negarles los servicios que podrían darles voz, lo que supone una violencia institucional materializada en la negación dolosa de traducción e interpretación (Wallace & Monzó-Nebot 2019), lo cual se observa también en otros lugares del globo (Li 2018; Conway, Daly & McEvoy 2021; Veglio 2024; Wallace 2024). Así, se recrean injusticias en el ámbito de la justicia tanto para quienes necesitan de la asistencia de interpretación en los servicios públicos como para las propias mujeres traductoras e intérpretes indígenas que prestan (o deberían prestar) esa asistencia. En ese sentido, en México e incluso en otros contextos latinoamericanos (de Pedro Rico y Andrade Ciudad 2020), el seguimiento de las normas legales y la imposibilidad de reconocer la capacidad de agencia a las traductoras e intérpretes es una instrumentalización de la justicia para continuar reproduciendo perspectivas universalistas y el descrédito de las personas hablantes de lenguas indígenas, sobre todo, porque se privilegia la traducción de textos legales que pocas veces consume la población general, incluida la población indígena.

Los servicios públicos de justicia son espacios institucionales de herencia colonial y patriarcal, donde, a pesar de las políticas multilingües, las prácticas de translación no representan a la población indígena o no son apropiadas para ella. En los espacios de justicia estatal, persisten y se imponen ideologías en torno a que las traducciones e interpretaciones son equivalentes y se pueden realizar sin conocer y reconocer los patrones culturales y de género de las comunidades de hablantes. En ese sentido, incrementar los estudios de género en la traducción e interpretación de lenguas indígenas permite visibilizar el ejercicio de violencia institucional desde el aparato estatal por la falta de reconocimiento de las deudas históricas que el Estado mexicano presenta hacia la población indígena y sus derechos lingüísticos y, particularmente, a las mujeres y traductoras indígenas que se desenvuelven en espacios y servicios públicos de justicia bajo lógicas del modelo patriarcal y colonial.

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