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Legal-Economic examination on gender issue: costs, failures & paradoxes

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Abstract

This is a critical review on gender issue, to understand and to evaluate the impact of the gender interventionism, with its costs, failures, paradoxes and other unwanted effects. This review uses the theoretical and methodological frameworks from New-Institutional approach (Law & Economics, Public Choice, Constitutional Economic, etc.), to build bridges between Economy, Law and Politics, without confusion among the social spheres and under the principle of reality, which rejects economic thaumaturgy, political romanticism and state paternalism. There is a historical-comparative review on the development of coercive implementation based on gender perspective and its agenda, from a macro-view to a micro level, focusing the attention on the Spanish case. There is a final statement of its results, to clarify what kind of incentives have been given the gender bills and policies, the level of efficiency and institutional quality to solve social problems, the risks of an endless agenda and other unwanted effects, but foreseeable according to the principle of reality.

Keywords: economic/state interventionism; gender issue; gender paradox; New-Institutional approach; women's rights; cis and trans feminism.

1. Introduction

Is it possible to rationally analyze legislation and public policies that are increasingly driven by emotions and perception? Can certain imposed consensus issues be critiqued? Are there unquestionable taboo concepts or bullet concepts capable of stifling any discussion? "Sapere aude" (dare to think) was one of the great university mottos (Sánchez-Bayón, 2010a), appropriated by the Enlightenment to bequeath us with logos (or modern individual technical rationality). However, it seems that Economics, Politics, and Law today revolve around private matters of collectives, transformed into public matters and grounded in pathos (or shared postmodern sentiment). Hence, one of the great challenges today is to understand both logos and pathos, facilitating communication between them without fear of external censorship (cancelation) or internal silence (the spiral of silence).

One of the aforementioned taboo concepts could well be the issue of gender, referring to a major social problem with multiple facets. It goes beyond the prevention and repression of machismo (itself a loose concept ranging from abuse and femicide to compliments and specific quotas and aid). Much of the doctrine argues that it is an agenda aimed at subverting the established order in the West, based on discriminatory and oppressive hetero-patriarchal capitalist approaches (Johnson and Zubiaurre, 2012; Laje, 2022). Currently, it is even more confusing as it intersects with another agenda aimed

at subverting the established order, namely, climate change and degrowth (Mellor, 1992 and 1997; Koch, 2019; Fullbrook and Morgan, 2021; Keen, 2021). Furthermore, it undergoes a 180-degree hermeneutic shift, moving from cis-gender (cis) feminist postulates to trans-gender (trans) feminist postulates. Therefore, to better understand such a diffuse and controversial issue, championed from a position of pathos (shared sentiment), this study offers an assessment of the juridic-economic effects of the gender issue from a neo-institutional perspective. This approach aims to address it through logos (individual rationality) and methodological individualism (which necessitates delving deeper and identifying the specific foundations and actors involved). To facilitate the transition from pathos to logos and improve communication, two metaphors are employed to elucidate the meaning and scope of the gender agenda, regulation, and public policies in light of government intervention: a) the cobra effect; b) the boiled frog syndrome.

- a) Cobra Effect (Siebert, 2001)¹: refers to the perverse incentives created by regulations and public policies that result in greater harm. While these initiatives may have started with good intentions, due to their normativism (confusing what ought to be with what is), coupled with poor design and implementation, they can ultimately produce unintended and adverse effects. This review alludes to the case of the unintended consequences of the gender agenda (e.g., why gender regulation, justified for greater protection of women, can end up reducing sentences and releasing rapists, leading to revictimization, see epigraph 4). This is not an anecdotal occurrence but rather relates to: a) Campbell's Law (1976), regarding the use and misuse of gender violence indicators; b) Lucas's critique (1976) of the naivety of attempting to predict the effects of a change through public policies based on observed relationships in historical data (especially when dealing with aggregates, which connects to Arrow's Impossibility Theorem and the Austrian School with its human action, as well as the Virginia School or Public Choice and its endless agenda, see the next point); c) Mises's (1949) and Buchanan-Tullock's (1962) theorems, which suggest that the greater the state intervention to address a specific problem, the higher the risk of that problem becoming expansive and chronic (see epigraph 2).
- b) Boiled Frog Syndrome (Quinn, 1996): If a frog is placed in a pot of boiling water, it will immediately jump with all its might to escape. However, if the frog is placed in lukewarm water that is gradually heated, it will not realize the danger until it is too weak to escape and ends up boiled. Applying this metaphor to society, when there is an interventionist government (from the perspective of neo-institutionalism in New Political Economy, see epigraph 2), progressive and programmatic changes are induced². These changes span from the issue of gender (a socio-cultural construct) to cis-gender feminism (the promotion of biologically heterosexual women) and trans-gender feminism (similar, but for transgender women – anyone who identifies and perceives themselves as a woman). Consequently, the paradox studied here emerges: the greater the state intervention in gender matters, the less freedom women (heterosexual) have, and the greater their vulnerability and dependency. This strategy of control and loss of rights and freedoms is carried out in line with the strategy of the endless agenda (Anderson, 1986), the slippery slope (Volokh, 2003), and the Overton window (Russell, 2006; Benon, 2013). It aims to introduce into the institutional agenda (leading to new regulations and public policies for its implementation) issues that are of interest only to special interest groups and pressure groups, but not to society as a whole (because they are statistically insignificant or lack any real institutional tradition or support, relying solely on constructed majorities, Buchanan and Tullock, 1962). Progress is made programmatically, introducing gradual

1. During colonial India, in an effort to eradicate the danger posed by cobras, the British government offered a reward for each captured specimen. This initiative inadvertently led to the emergence of a lucrative business of breeding these venomous snakes. Upon realizing the unintended consequences, the British authorities withdrew the public incentives, and the cobra breeders, seeking to dispose of their stock, released the snakes. This, in turn, resulted in an even greater cobra infestation (Siebert, 2001; González and Sánchez-Bayón, 2021). A similar narrative is recounted in Indochina concerning rats and the mismanagement of the French colonial administration (Vann, 2003).

2. Induced Changes through an Artificially Expansive Institutional Agenda, Driven by Special Interest Groups or Political Programs Based on Intractable yet Threatening Issues (Anderson, 1986).

and opinion-shaping changes until society accepts the proposed social engineering transformation (transitioning from something private and inconceivable publicly to something acceptable and institutionalized, such as gender, with the support of an official promotion body, e.g., the Ministry and State Secretariat for Equality and the Institute for Women in Spain, the Minister for Gender Equality in France, and similar bodies in Luxembourg and Denmark - but not in Hungary, Poland, and Romania). To achieve this 180-degree socio-political shift, according to cultural economics (with a particular emphasis on behavioral economics among heterodox approaches and paradigmatic renewal, Sánchez-Bayón, 2020a, 2021a-b, and 2022a-c), cognitive biases are often exploited (Kahneman, 2011; Kahneman et al., 1982) along with nudges (Thaler, 2015; Thaler et al., 2009). According to the Austrian School of Economics, the tedium of boom periods and their subsequent crises (caused by induced bubbles) is also utilized as an opportunity to accelerate social transformation (Huerta de Soto et al., 2021; Alonso et al., 2023).

Therefore, it is emphasized that this is not a study of taking a position but rather an application of the resources provided by neo-institutional analysis. Hence, a critical review is offered through the combination of Comparative Political Economy, Comparative Law, and Human Rights. These disciplines are interconnected, focusing on the development of social exchanges and their institutionalization, with the minimum common goal of advancing the *ius humanism* culture and personal and social well-being from multidisciplinary perspectives (Sánchez-Bayón, 2010a, 2012, and 2014; Sánchez-Bayón and Pazos, 2013).

The novelty of this review lies in its neo-institutional approach, which marked the end of political romanticism (distrusting politicians and their personal agendas, as well as state paternalism and the trap of dependence). It also considers incentive analysis, efficiency, institutional quality, Buchanan-Tullock theorems regarding the endless agenda, and the lack of incentives for politicians to solve problems while emotionally intensifying them (thereby allowing for the allocation of more budget, positions, client networks, etc., see epigraph 2).

2. Theoretical and Methodological Frameworks: A Neoinstitutional Review

Comparative Law and Comparative Political Economy share common roots (Sánchez-Bayón, 2022a-d). Consequently, they also share theoretical and methodological frameworks, such as analytical techniques like methodological individualism, including the analysis of legality (legitimacy, validity, and effectiveness) and legal classification (exegesis, hermeneutics, and heuristics). Additionally, they employ techniques for institutional evolutionary analysis, such as case studies or profiles (Peláez and Sánchez-Bayón, 2012; Sánchez-Bayón, 2015). These techniques have been embraced by other legal sciences and transferred to economics, as elucidated in the early manuals of Principles of Political Economy (Sánchez-Bayón, 2020a-b and 2021a). They remain essential in Comparative Political Economy, as will be evident with the neo-institutionalists, a significant portion of whom are legal scholars, including figures like Coase (Nobel laureate in Economics) and Tullock, among others. In the realm of research techniques in the field of Legal Sciences and in defense of its distinct methodological characteristics compared to the Natural Sciences and Engineering, it is worth highlighting the contributions of another heterodox approach closely related to the neo-institutionalists, namely the Austrian School (Huerta de Soto, 2000). The Austrian School, which also includes legal scholars, from Menger to Mises and Hayek (Nobel laureate in Economics) and contemporary proponents like Huerta de Soto, champions an economics based on human action (Menger, 1883; Mises, 1949; Huerta de Soto, 2009).

Regarding Human Rights, while their origin in positive law can be traced back to the natural rights of the Law of the Indies, promoted by the School of Salamanca (Clavero, 1992 and 2002; Sánchez-Bayón, 2010a and 2022d), the current model aligns with the contemporary proposal of the United Nations (Sánchez-Bayón and Pazos, 2012). This modern framework has garnered support from the major monotheistic religions, including Jews, Christians, and Muslims (Sánchez-Bayón, 2010b).

These mentioned disciplines are reinterpreted here to analyze the gender paradox issue through the

neo-institutionalist approach (recall that it is considered a heterodox approach – despite being mainline or foundational, Boettke et al., 2016; Sánchez-Bayón, 2022a-b), unlike the mainstream or orthodox thinking, neoinstitutionalism, along with the Austrian School, is one of the few lines of thought capable of dispelling the romanticism of politics and state paternalism by revealing the hidden interests of its constituent actors³. The neo-institutionalist approach encompasses the following currents and approaches: a) Law & Economics (Coase, 1937 and 1960; Posner, 1973 and 1979) allows for questioning the incentives, efficiency, and institutional quality of regulation and public policies, as well as the costs associated with public goods and how they can be improved through property rights reallocations. b) Public Choice (Anderson, 1986; Buchanan and Tullock, 1962) serves to examine how collective decisions are made (based on the maximization of interests by economic agents operating within the state, such as bureaucrats, politicians, and interest groups). It considers beneficiaries and those adversely affected (given the costs of consensus), taking into account hypotheses like the endless agenda, client networks, omnibus laws, the spoils system, nepotism, etc. c) Constitutional Economics (Brennan and Buchanan, 1985; Buchanan, 1987 and 1990) advocates for reducing excessive regulation and promotes shorter and clearer laws that establish basic and manageable rules. This approach allows for more exchanges, fewer consensus costs, information costs, and opportunity costs. It also helps avoid second-round perverse effects, such as increased informality and corruption.

3. 3. Historically Compared Results and Narratives: Gender Fallacies

The gender paradox unfolded in Anglo-Saxon countries during the cultural wars (in the tumultuous years of the Cold War, 1960–80, Sánchez-Bayón, 2017 and 2019a-b), leading to a crisis in their model of interventionist welfare state economics (due to its hyper-regulation, coupled with expansive deficits and debt), necessitating its reformulation since the 1980s (to avert default and state bankruptcy, Sánchez-Bayón, 2020c). The issue at hand is that, with the prosperity of the 2000s and the return to interventionism (along with comprehensive politicization and the syndrome of the contented elite, Ortega y Gasset, 1929), there has been a revival of cultural wars (Laje, 2022) during the Obama administration and the resurgence of destructive identity politics (Fukuyama, 2018; Lilla, 2017; Sánchez-Bayón, 2019b)⁴. Furthermore, the subsequent crisis was exploited to accelerate the implementation of the gender agenda (Trillo-Figueroa, 2009). In the Nordic countries, the studied paradox reached its zenith with globalization (in the 1990s – as they were relatively impoverished compared to Western Europe before the Cold War), leading their interventionist model to the same crisis of unsustainability (due to hyper-regulation and hyper-indebtedness), necessitating a revision and reformulation in the 2000s, subsequently following the Anglo-Saxon path, with a certain revival of the issue (but this time,

3. The prominent architect of the welfare state economics and Nobel laureate in Economics, Hicks, refrained from delving into the "black box" that is the State, whereas neoinstitutionalists, driven by reasonable skepticism (as to why the same individual, when participating in the public sector, is perceived as angelic and altruistic, but when engaging in the private sector, is seen as malevolent and selfish), and through the lens of methodological individualism, discovered that within the State, the following actors/agents operated with their own agendas: a) bureaucrats (whose utility maximization is contingent upon an increase in budget and a larger subordinate workforce); b) politicians (whose maximization is contingent upon garnering votes, often by establishing clientelist networks); c) lobbies or interest groups (whose maximization depends on the pursuit of public rents or the transformation of their goods and services into public goods, funded by public budgets).

4. The progressive anti-libertarian plan in the United States has witnessed the following milestones (shifting from a citizen normalization based on freedom and legal equality – as specified in the 14th Amendment to the U.S. Constitution – to the exaltation of communal differential traits, demanding compensation for alleged infringements, along with identity privileges): a) Affirmative action or positive discrimination, through protests in favor of minorities in the 1960s, which ultimately disrupted the traditional American way of life (it marks the age of innocence lost); b) Reserve action or quota policies, designed to promote minorities during the cultural wars and up until the 2000s when it was curtailed by Justice O'Connor; c) Reverse action or inversion policies, intended to rebalance power relations, preventing the promotion of white heterosexual males (who were seen as having benefited from Enlightenment rationality and its social construction), and promoting political correctness and inclusive language (intensifying since the 1990s due to federal support from the Clinton administration); d) Identity politics or identity-based policies, grounded in the alternative use of the law, where the focus shifted from freedom and equality to customized equity (leading to the design of authorship crimes, hate crimes, memory crimes, etc.). Among the latest manifestations of these anti-libertarian identity policies (exported to the rest of the world), movements such as "Me Too," "Black Lives Matter," "Green New Deal," etc. should be noted (Sánchez-Bayón, 2019b).

imbued with green nuances in the gender discourse, e.g., ecofeminism: opposing capitalist development in favor of a reproductive socialist model, Mermelstein, 1970; Lindbeck, 1971; Mellor, 1992 and 1997; Sánchez-Bayón, 2022a-b). The major problem lies in the fact that the Anglo-Saxon and Nordic experiences, when transplanted without context, have been extending since the 2000s (intensifying with the Great Recession of 2008 and UN Women, see *infra*), both in the Mediterranean and Latin American worlds (without antibodies and with a greater risk of socio-political systemic failure).

The following section examines the implications of transvaluation (Nietzsche, 1888) and integral politicization (Ortega y Gasset, 1929)⁵, focusing on the gender fallacies (in the Anglo-Saxon and Nordic world) and how the gender paradox has manifested in each context. Finally, it elucidates how feminism has undergone a process of whitewashing and has transitioned from cis to trans mode, exacerbating the current gender paradox.

Concerning the gender fallacies, let us begin with the very nomenclature, with one of the primary points of reference being the case of Joan Ruth Bader Ginsburg, a Justice of the Supreme Court of the United States (U.S.). She pursued her legal education at Harvard, although she graduated from Columbia (where she also taught), and soon began collaborating with the American Civil Liberties Union-ACLU, leading the women's rights section (later renamed gender equality). While working as a professor at Rutgers, she founded the Women's Rights Law Reporter in 1970, in addition to litigating six cases of gender discrimination before the Supreme Court (1973-76). In 1980, she was appointed by President Carter as a judge of the District of Columbia Circuit Court of Appeals, and in 1993, President Clinton nominated her for the Supreme Court. The first case that brought Ginsburg notoriety and led to the rebranding of gender equality from gender equality was *Moritz vs. Commissioner* in 1972: it involved the defense of an unmarried man to whom the tax authorities denied a caregiver deduction for his elderly mother based on his gender. Due to the prevailing sensibilities of the time and to maintain seriousness in the argumentation, Ginsburg chose to replace the biological term "sex" with the grammatical term "gender"⁶. Following her victory, this terminology was subsequently adopted by ACLU and in her classes at Columbia.

This transition marked a shift from discussions centered on gender equality or equal rights between sexes (as advocated by movements like suffrage, egalitarianism, women's rights, etc.) to the consideration of gender equality (leaving the matter of sex to the homosexual cause, although it will be reconnected through cultural deconstruction and lesbian feminism and the queer cause or self-perception of sexual identity: LGBTQ+ and the destruction of heteronormative order, De Lauretis, 1994 and 1996; Halperin, 1995; López, 2008; Soh, 2020, see *infra*) has ultimately evolved into a discourse of gender inequity, which is the alternative use of law according to various authors and activism (Millet, 1970; Valcárcel, 1991 and 2009; Johnson and Zubiaurre, 2012; MacKinnon, 2017). This has given rise to positive discrimination and quotas in favor of women, but not men (reverting back to 1972 when Ginsburg won her case). It is no longer a matter to be resolved by the judiciary, thus violating legal principles of separation of powers and legal certainty, but rather it has been assumed by the administration (also infringing upon the legal principle of non-arbitrariness of public authorities, e.g., Article 9 of the Spanish Constitution of 1978-CE). How was all of this achieved? Through the whitewashing of feminism and its flexible causes, with a malleable agenda (Figuroa-Trillo, 2009).

These perspectives have been disseminated in the Anglo-Saxon world through Cultural Studies (e.g., Feminist & Gender Studies, Gay & Lesbian Studies, Queer Studies – there are even Men's Studies, Lauri and Hickey-Moody, 2015), and in the Nordic world, the public entity known as the Nordic Institute for Knowledge about Gender-NIKK played a crucial role (along with its periodic publication

5. This entails making the private public (such as matters related to sex, family relations, etc.) and increasing state intervention in all social spheres.

6. Traditionally, grammatical gender encompassed six categories: masculine, feminine, neuter, common, epicene, and ambiguous. However, under the influence of the LGBTQ+ movement and transgender feminism, the UN has expanded recognition from five categories (masculine, feminine, homosexual, transgender, and queer) to more than 100 (e.g., non-binary: third gender, trigender, pangender, fluid, agender, etc.). Big Tech companies like Meta (formerly Facebook) offer more than 50 gender options.

NIKK magazine). This institution began in 1995, based at the University of Oslo and funded by the Nordic Council, originally as the Nordic Institute for Women and Gender Research, but it soon took a feminist and gender hermeneutical turn (focused on inequality, abortion, pornography, and prostitution). It eventually became highly ideological and constructivist⁷ As a result, it ceased to receive funding and was dissolved in 2011, with its funds redirected to support other research programs in public policy that were more representative of reality. The University of Gothenburg and the Gender Research Secretariat of Sweden won the bid, and this program persisted from 2012 to 2015 with a less contentious tone. Ultimately, as the real issue was not gender but rather declining birth rates and the lack of work-life balance, public policies were refocused on addressing these concerns.

Regarding feminism and its whitewashing⁸, it is worth noting that: a) Historically, feminism has predominantly leaned towards socialism, at least in its mainstream or dominant stream - (transferring the antagonistic dialectic from employer-worker to man-woman, with one of its pioneers being Simone de Beauvoir, 1949)⁹; b) Feminism has taken various forms throughout its history, from the sexual liberation movement in which Beauvoir participated in the 1960s to the gender movement, lesbian feminism, and transgender feminism promoted by scholars like Butler and De Lauretis at the University of California, Lorde at the City University of New York, Wittig at the University of Arizona, Sedgwick at the University of Duke and Boston, and others, around the 1990s (López, 2008; Valcárcel, 2009; Johnson et al., 2012); c) feminism has been used to criticize the Western world¹⁰ (accusing this civilization of being sexually repressed and eventually turning into a hetero-patriarchal oppressor through issues such as rape, pornography, and prostitution, Millet, 1970; MacKinnon, 1989 and 1993, in reality, this critique aims at gaining control over sexual power). It's paradoxical since the Western world has been the only civilization that has promoted equal rights, unlike others (Huntington, 1993 and 1996); d) the reformulation of feminism has mutated according to the critical needs of each moment programmed to establish the new revolutionary subject - each more and more hybrid¹¹ and advance on the slippery slope, with results such as the gender paradox.

After the end of the Cold War, socialism didn't engage in self-critique (despite the refutation

7. The controversy reached its peak with the airing on Norwegian public television of the seven-episode docu-drama called "Hjernevask" (Brainwash). It sparked debates in the parliament, and shortly thereafter, the decision was made to dissolve the organization.

8. Using resources such as: a) Weasel concepts (Hayek, 1952a-b): Similar to the animal that sucks the egg and leaves the shell behind, socialism maintains the use of concepts and institutions but empties them beforehand so that they can mean whatever is desired at any given moment. b) Polylogisms (Mises, 1957): Socialism attempts to make people believe that each collective has its own logic, and only by belonging to it can one understand it from its perspective—something curious since the majority of socialist leaders have never come from the proletariat. If someone criticizes, then ad hominem attacks are employed to discredit them socially. c) Veils of confusion (Sánchez-Bayón, 2015 and 2017): This refers to a concept from Cold War counterintelligence, denoting the concealment of truth through discursive distortions. This necessitates an exercise of revelation or lifting the veils of confusion. Among these veils, one can highlight concepts like memory and post-truth, Newspeak, and doublethink, etc. d) Transvaluation (Nietzsche, 1888): The inversion of good into bad and vice versa (as well as private into public, as advocated by neo- and post-Keynesians). e) Integral politicization (Ortega y Gasset, 1929): Expanding politics into all social spheres.

9. Similar to Sartre, her partner, who compulsively wrote "Being and Nothingness" (1943) and "Existentialism is a Humanism" (1946), Beauvoir (1963) acknowledges the influence (with details of conversations—although both actually borrow from Erasmus, who in turn drew from Tertullian's Apologetics: "fiunt, non nascuntur christiani"). She also imitates the style of a free and careless essay (with incorrect citations, text arrangement, the relationship between arguments, and their veracity and coherence). The dialectical relationship of oppression between employer and worker (i.e., the Hegelian master-slave relationship appropriated by Marx and Engels), Beauvoir extended to male-female relationships (one-the other), comparing them to the Nazi and white slave-owner (man) vs. Jewish and black slave (woman) relationship. Her argumentation is replete with anachronisms and transvaluations. There is a key contradiction in defining women based on the biological component of having a uterus while simultaneously asserting that women are not born but made (through cultural role assignments: daughter, wife, mother, etc., all of them rejected due to her own lesbian, pedophilic agenda, etc)

10. Critique or deconstruction (Derrida, 1967; Rorty, 2003); even re-signification (Halperin, 1995).

11. It is worth remembering that in the Western secular tradition (Greco-Roman), hubris was the punishment of confusion and madness that the Olympic deities imposed on humans who aspired to be like them. This also occurred in the sacred or Judeo-Christian tradition (e.g., the Tower of Babel). Nowadays, hybridization consists of fragments of socialism (from any of its Internationals), puritanism, queer vision, plus climate alarmism and racial issues, which define the current Woke ideology or "awakened" -self-proclaimed as social justice warriors (although due to their life attitude, they are often labeled as the "crybabies" of the snowflake generation, seeming to align more with Ortega y Gasset's "satisfied gentleman" of 1929).

of its principles of historical materialism and dialectical materialism, Sánchez-Bayón et al., 2017). Instead, it shifted toward relativism and multiculturalism (Boghossian, 2006; Kymlicka and Donaldson, 2014; Joppke, 2020; Butler et al., 2020) and intersectionality (Laclau and Mouffe, 1987; Butler, 2009; see *infra*), seeking new dissatisfied and/or marginalized collectives to nurture the new hybrid and directed revolutionary subject, replacing the liberated worker who had transformed into a small capitalist bourgeoisie or middle class. Unlike previous pro-women's rights movements like suffrage¹², socialism went from instrumentalizing women as part of the new revolutionary subject to constituting them (under feminist perspectives) to reconnect them with other "oppressed minorities," especially (homo)sexuals (reversing the progress of the 1970s). This strategy was called intersectionality: it is a subversive plan for integrating marginalized groups to create a renewed larger revolutionary subject capable of building majorities, accessing institutions, and imposing its own agenda through regulatory changes and public policies. To understand all of this, the transition from traditional cisgender feminism to the emergent transgender feminism is explained below (later attacking the cisgender from the transgender perspective, labeling it as *terf* or hateful, while the cisgender has self-renamed as radical: this tension involves the natural vs. cultural, see *infra*).

Transgender feminism, like all ideas stemming from cultural socialism or the Fourth International Socialist (also known as situationism, based on Sartre's homonymous writings, 1947-76), originates from the culture wars and is based on a counter-critique of the West through pathos (shared sentiment that mobilizes). It starts with the recognition of a supposedly marginalized and violated collective at some unspecified past time, which must now be repaired through compensation in the form of privileges (e.g., quotas, preferences, remunerations). This is no longer about common rights shared by all human beings by virtue of their dignity (such as human rights). Instead, we are witnessing a medieval legal regression in which various regimes or statutes (*iura propria*) exist depending on whether one "belongs" ¹³ to a class, a guild, or any other distinguishing collective (Sánchez-Bayón, 2019a-b). In this case, attention is paid to a supposed minority (the transgender community), which has become a majority thanks to the strategy of intersectionality (Laclau and Mouffe, 1987; Butler et al., 2000 and 2016). Initially, it brought together feminism and LGBTQ+ expressions, eventually imposing queer radicalism – radical because it is more transgressive and goes to the root of the cultural critique of the West. This argumentative leap is often attributed to Butler (1990, 2004, and 2009)¹⁴ (from women's studies to gender studies – and reconnection with queer narrative), but it was already present in Beauvoir and her hidden agenda ¹⁵.

12. In Spain, it was Deputy Clara Campoamor who succeeded in achieving full women's suffrage (since the Primo de Rivera dictatorship, women could vote in municipal elections and be elected as councilors, e.g., Teresa Aspiazú, councilor in Málaga since 1924). However, this faced strong opposition from the left (the Spanish Socialist Party [PSOE] tasked Victoria Kent and Margarita Nelken with attacking Campoamor and her proposal for full women's suffrage, believing it would benefit the right due to the influence of the Church on women). On the other hand, the change was realized with the support of the right (Campoamor published in *La Tribuna*, where she met her mentor, the multifaceted Carmen de Burgos Seguí, from the Generation of '98, who in turn drew inspiration from the literati and intellectuals Emilia Pardo Bazán and Concepción Arenal, both of whom had university education in the 19th century). Another pro-women's rights movement in Spain was led by female teachers (organized through the Society of Saint Vincent de Paul or via Father Poveda), who encountered obstacles in their career advancement, notably the Free Institution of Education (as did Concepción Arenal, who remained a mere collaborator).

13. Literally: the community prevails over the individual, erasing the separation achieved during the Enlightenment (Sánchez-Bayón, 2008-13 and 2012).

14. This literature professor from the University of California and Columbia University has been highly visible and influential, not only for the hermeneutical shift from cis to trans but also for labeling cis feminism as *terf* (trans-exclusionary radical feminist or transphobic). Similar to Beauvoir (with her bisexuality and involvement with minors, see the next note), Butler has her own queer agenda (as an androgynous lesbian who reinterprets herself as "fluid").

15. . S. Beauvoir was Sartre's partner but also had relationships with other feminists (while writing "The Second Sex" – Sartre was involved with Lena Zonina, a KGB agent). She had to move, following her conviction in the Sorokin case in 1943 (one of her students, seduced into having sexual relations with her and Sartre, although there were dozens of cases, referred to as "fresh meat" by Beauvoir herself in her memoirs – some of whom ended up with mental disorders due to their experiences: Natalie Sorokin, Bianca Lamblin (born Bienenfeld), Deirdre Beir, Olga Kosakiewicz, etc.; Lamblin, 1993, 1996, and 2004; Seymour-Jones, 2009; Bonnet, 2015), which left her disqualified from teaching (although there were later attempts to rehabilitate her – even turning her into a feminist martyr). She recidivated and supported pedophiles in the 1969 Marseille case (literature

The imposition of trans feminism over cis feminism has resulted in: a) Cis feminism has been rebranded by trans feminism as "terf" (trans-exclusionary radical feminist or transphobic), while cis feminists have self-identified as radical. b) Spaces, quotas, and benefits reserved for cis women have been lost to anyone who claims to identify as a woman (e.g., access to changing rooms, participation in women's sports and competitions, adapted entry tests for law enforcement, firefighters, etc.). c) Women's Studies (within the fields of Philosophy and Literature and/or Cultural Studies, in the Anglo-Saxon and Nordic worlds) have been surpassed by Feminist and Gender Studies (gaining academic independence), with the current mainstream being trans feminism (which is the most critical of the West, labeling it as cis hetero-patriarchal). It's worth concluding this point with a reflection from an academic who was canceled (see figure 1): "We don't need to shut down universities, but we do need to get rid of useless gender studies" (Prof. M. Adams, University of North Carolina, was accused of hate speech, experienced harassment and threats until he was fired, and ultimately died from a gunshot wound at his home). The problem, in cases like the Spanish one and according to the neo-institutionalist perspective (see section 5), is that Feminist and Gender Studies extend beyond the university and have become a public service (funded by public sector budgets and regulated with policies to ensure their employability), being required in areas such as: a) Supplementary education in schools and high schools. b) Architectural studies. c) Government tenders and contracts. d) Workplace inspections in companies, and more. As a result, the gender perspective has become integrated into current bureaucracy.

4. 4. Discussion of Results

4.1 Macro or Global Level: UN Women and the Fifth Generation of Human Rights

Traditionally, within the United Nations (UN), there existed actions and specialized entities dedicated to the promotion of women's rights (e.g., the Division for the Advancement of Women in 1946, the United Nations Development Fund for Women - UNIFEM in 1976, the International Research and Training Institute for the Advancement of Women - INSTRAW in 1976, the Office of the Special Adviser on Gender Issues and Advancement of Women - OSGI in 1997, among others), in addition to the specialized system for women's rights (such as the Declaration on the Elimination of Violence against Women in 1967, the Convention and Committee on the Elimination of All Forms of Discrimination against Women - CEDAW in 1979 - in force since 1981 -, the Commission on the Status of Women - ECOSOC, and so forth). The objective was to ensure equal rights and their enforceability (not to generate new rights or privileges but to effectively realize the existing rights for women)¹⁶. However, in 2010, it was decided to consolidate all actions under the umbrella of UN Women, self-identified as the "UN Entity for Gender Equality and the Empowerment of Women"¹⁷. This marks a hermeneutical shift, already implicit (e.g., in the World Health Organization and its campaigns on family planning and reproductive rights - euphemisms for abortion and population reduction in poor countries), imposing the perspective of cisgender feminism (e.g., pro-abortion, anti-prostitution, and anti-pornography), and above all, transgender feminism (e.g., pro-identity autonomy, anti-Western hetero-patriarchy - capitalist and Christian). At that time, it served as a springboard for the Chilean socialist Michelle Bachelet, who accepted the first appointment as Executive Director of UN Women in 2010, only to resign in 2013 when she ran for the presidency of her country (and won, thanks to that platform).

professor G. Russier corrupted, kidnapped, and embezzled funds from minors) and the 1977 Versailles case (involving child abuse, with Beauvoir, Sartre, Foucault, Barthes, Derrida, etc., providing support). Additionally, her agenda included pro-abortion activism, eugenics, and more.

16. The special iushumanist regime for women is part of a specific treatment adapted beyond the common rules of the general framework. It is justified because there are certain groups of individuals who are more susceptible to vulnerability (due to the failure of interposito legislaionis and ultra vires activism in the form of granted charters). Historically, they have been discriminated against or have been unable to directly assert their rights (e.g., women, children, indigenous peoples, the elderly/senior citizens, persons with disabilities). The main problem with this special regime lies in the risk of judicial activism, alternative use of the law, legal uncertainty, administrative interdiction, positive discrimination, and so forth.

17. UN Women: <http://www.unwomen.org/>

This distortion is not new, but it has intensified with UN Women. An illustrative example of this evolution can be found in the International Women's Day (finally established on March 8th of each year). This celebration has two origins, civil suffragists (non-state, as was attempted to hybridize in the 1960s by the USSR and China, requiring labor force): a) Anglo-Saxon world: March 8th, 1857, is commemorated for the fire in a textile factory in New York (which claimed the lives of 123 women and 23 men), as well as March 8th, 1908, with the major strike of seamstresses and their commemorative march (under the slogan "Bread and Roses"); b) Nordic world: March 8th, 1915, is remembered for the women's protests, demanding the end of World War I and the return of their husbands and sons (under the slogan "Bread and Peace"). The UN took these origins into account to establish the official International Women's Day and World Peace Day in 1975, which has been celebrated annually since 1977. However, the context changed with UN Women and the protests that started in 2011, reinterpreting it from a socialist perspective (or rather Woke)¹⁸, with slogans advocating for working women (hence the emphasis on strike rather than citizen demonstration), pro-abortion (eliminating the genuine biological component of women), anti-prostitution (motivated by puritanism and control over sex), and so forth.

The aforementioned example serves as a preliminary consideration, laying the groundwork for reflection on the cause promoted for the recognition of a fifth generation of human rights¹⁹: ethno-cultural and gender rights. It should be noted that human rights (from the subjective dimension of law and its theories of personhood and legal relationships) are legal guarantees in the reciprocal relationship between the State and citizens (the right of one party is the obligation of the other), based on human dignity and individualized in each case (in their exercise and enforceability). They possess characteristics such as their innate nature, non-renounceable status, and inalienability, among others. Therefore, they are not concessions granted by the State but rather faculties inherent to each human being from conception (extending to the unborn or unconceived), protecting them in their relationship with public authorities against possible unjust and/or arbitrary actions, thereby allowing the cessation of their violation, as well as facilitating their redress and better protection and promotion. However, from the perspective of formalistic state positivism (Sánchez-Bayón, 2010c), a series of limitations have been admitted to the exercise of human rights, such as those related to the theory of the Order (Romano, 1918).

In principle, the established limits on the exercise of human rights include public order, public safety, public health, and public morality, as well as exceptional situations such as a state of emergency, among others. Another established limit is the peaceful exercise of rights, as any deviation from this may be construed as a waiver. Returning to the issue of a fifth generation of human rights, it is evident that it does not fit within the traditional framework of human rights. These rights are not universal rights inherent to every individually identifiable human being by virtue of their human dignity; instead, they appear as privileges of specific communities (which require a legal representative for their exercise), based on the quality of life, and they can be negotiated with each government (with their regime potentially varying in space and time). Furthermore, these rights are not exclusive, as their prerequisite is not freedom or property but rather state provision funded by third parties. This purported fifth generation of rights conflicts with previous generations, particularly the first generation, as it restricts freedom of expression, academic freedom, and scientific research, among others, by promoting (self) censorship and the spiral of silence due to fear of reprisals, ranging from harassment

18. Remember the hybridization of Woke ideology and its hyper-moral mix of socialist remnants, puritanism, and queer pride.

19. Traditionally, doctrine has recognized up to four generations of human rights: a) 1st gen. civil and political rights, developed since the bourgeois liberal revolutions of the late 18th century; b) 2nd gen. economic and social rights, promoted since the late 19th century as a result of demographic transition and the consolidation of the nation-state; c) 3rd gen. cultural and environmental rights, advocated since the 1960s; d) 4th gen. technological and bioethical rights, emerging since the 1970s (in reality, revisiting the earlier generations in light of technological impact); e) 5th gen. ethno-cultural and gender rights, blossoming in the 2000s (and intensifying since 2010, with UN Women), whose legal foundations do not align with traditional theories of human rights: they are not articulated from logos, legal equality, and universality but rather from pathos, equity, and community particularity.

or cyberbullying to public cancellation (erasure from public life, see the next table).

Table 1. Cancellation Effect (Generation Idiocy and Generalized Fear due to the Woke Movement)

Profesores acosados y cancelados en EE.UU. tras COVID-19:
1.- Mike Adams (Prof. Criminología, Univ. North Carolina): acusado de “discurso de odio” (por declaraciones en redes sociales: “no hay que cerrar universidades, sino estudios inútiles como los de género”; “no hay cambio de sexo, es mutilación genital”). Fue prejubilado, siguiendo el acoso y murió de un disparo
2.- Peter <u>Boghossian</u> (Prof. CCSS, <u>Portland State Univ.</u>): ridiculizó revistas de Estudios Culturales e introdujo crítica <u>Woke</u> en clase. Tuvo que dimitir y mudarse.
3.- Bruce <u>Gilley</u> (Prof. <u>Hia.</u> , <u>Portland State Univ.</u>). Escribió sobre beneficios del colonialismo (reproduciendo a <u>A. Smith</u>) y fue acusado de colonialista y supremacista blanco; fueron retiradas sus publicaciones y reducida su docencia al mínimo.
4.- Gregory Manco (Prof. Matemáticas, Univ. St. Joseph de Filadelfia): en Twitter, con una cuenta anónima criticó reparaciones de esclavitud y el entrenamiento de sensibilidad racial. Fue despedido.
5.- John <u>Staddon</u> (Prof. Psicología y Neurociencia, Univ. <u>Duke & APA</u>): cuestionó el feminismo <u>trans</u> (con declaraciones tipo: “ <u>Hmm ... ¿Visión binaria del sexo es falsa? ¿Cuál es la evidencia? ¿Hay un cromosoma Z?</u> ”). Fue retirado de comités y del trato con el público (incluida buena parte de su docencia).
6.- Charles <u>Negy</u> (Prof. Psicología, Univ. Florida Central): criticó idea racismo sistémico y privilegio blanco. Fue despedido pese a ser catedrático.
7.- Leslie Neal <u>Boylan</u> (Decana Enfermería, Univ. Massachusetts): mandó un email tras los disturbios de <u>Black lives matter</u> durante los confinamientos (dijo: “todas las vidas importan”). Fue despedida.
8.- <u>Maitland Jones</u> (Prof. Química, Princeton & NYU): hubo una queja del alumnado por sus clases difíciles y sus bajas notas (los estudiantes “se sentían humillados y sin derecho a buena nota”, criticándole de “hetero-patriarcal represor”). Fue despedido.
9.- Et al.
Profesores acosados y cancelados en España:
1.- Educación Universitaria: libros como <i>Nadie nace en un cuerpo equivocado</i> de J. <u>Errasti</u> y M. Pérez, <i>El laberinto del sexo</i> de P. de Lora, han sido tachados de <u>tránsfobos</u> , retirados de bibliotecas y <u>vandalizados</u> (v.g. Biblioteca de la <u>Ftad. CC. Políticas</u> de la UCM). Dichos profesores vieron canceladas sus respectivas conferencias y presentaciones de libro, bajo amenazas de la asociación estudiantil <u>Trans-MariBiBollo-RQTR</u> .
2.- Educación Básica y Bachillerato: J.L. Barrón (Prof. Biología, Instituto Público Complutense de Alcalá): suspendido de empleo y sueldo por afirmar que sólo hay dos sexos.
3.- Et al.

Source: Own elaboration

4.2 Micro or Local Level: Evaluation of Recent Spanish Regulation and Its Effects

Considering the Anglo-Saxon and Nordic origins (both of socialism and feminism, as well as gender issues and queer perspectives), attention is now directed towards the Spanish case, as an illustration of the effects of cultural transplation. Initially, some notes are provided regarding the reception and development of the subject matter. This is followed by an exposition of the key milestones in the legal and institutional framework. Finally, the analysis of legality (legitimacy, validity, and efficacy) and economic analysis of the law (incentives, efficiency, and institutional quality) are carried out, along with the public choice assessment (review of the Buchanan-Tullock theorems, evaluation of consensus costs for public service, including its winners and losers, and the exploration of alternatives).

Regarding the reception of the subject matter, the first transplants began during the administration of González (1982-96, PSOE), introducing regulations favoring positive discrimination (e.g., Equality

Plans since 1983, the creation of the autonomous body, the Institute of Women, via Law 16/1983, of October 24). The Organic Law 9/1985, of July 5, amending Article 417 bis of the Penal Code (decriminalizing abortion)²⁰. was approved. During Rodríguez Zapatero's administration (2004–11, PSOE), inclusive language was introduced (under the influence of the President of the Basque Government, Ibarretxe, PNV), and cis feminism was promoted, along with its pro-abortion and anti-prostitution agenda. The Ministry of Equality was established in 2008 (with the Institute of Women falling under its purview, the State Secretary for Equality in 2010, etc.). Additionally, the Organic Law 1/2004, of December 28, on comprehensive protection measures against gender violence (establishing gender violence courts), was passed, along with the Organic Law 3/2007, of March 22, on effective equality between women and men²¹, and the Organic Law 2/2010, of March 3, on sexual and reproductive health and voluntary termination of pregnancy²². Under the current administration of Sánchez (2018–2023), the Ministry of Equality was reinstated in 2020, along with the Directorate-General for Sexual Diversity and LGTBI Rights (awarding the Rainbow Recognitions, along with their corresponding gratifications). The following regulatory package was approved²³: a) "Yes Means Yes" Law (Organic Law 10/2022, of September 6, on comprehensive guarantee of sexual freedom – with correction of errors on October 5, 2022, and amended in April 2023)²⁴, eliminated the need for a medical examination and the crime of sexual abuse, reclassifying all instances as sexual assault. It is now sufficient to have an administrative declaration to obtain this status and access assistance and benefits. b) New Abortion Law (Organic Law 1/2023, of February 28, amending Organic Law 2/2010)²⁵, strengthened the provision of abortions in public healthcare, removed the requirement for parental authorization for minors from the age of 16, restricted healthcare personnel's right to conscientious objection, and introduced sick leave for incapacitating menstrual periods and free access to contraceptive pills. c) Transgender Law (Law 4/2023, of February 28, for real and effective equality for transgender individuals and the protection of the rights of LGBTQ+ people)²⁶, codified the so-called fifth-generation rights – although it did not comply with the requirement for an organic law to develop rights. It removed any requirements for requesting a change of gender in the Civil Registry (allowing minors from the age of 16 to do so freely and with judicial authorization from the age of 12). Additionally, it granted access to assisted reproduction and promoted awareness in the educational and healthcare domains, among other provisions.

The legal analysis, the economic analysis of the law, and the public choice opinion are then carried out:

a) Analysis of Legality:

- Legitimacy: It does not correspond, preserving only the appearance. There is no widespread conviction that this is law; it is merely legality. There is a legal facade, but it conflicts with fundamental rights, general principles of law, Natural Law, and conscientious objection (Hayek,

20. Official State Gazette-BOE: BOE-A-1985-14138 Organic Law 9/1985, of July 5, amending Article 417 bis of the Penal Code.

21. BOE: BOE-A-2007-6115 Organic Law 3/2007, of March 22, on effective equality between women and men.

22. BOE: BOE-A-2023-5364 Organic Law 1/2023, of February 28, amending Organic Law 2/2010, of March 3, on sexual and reproductive health and voluntary termination of pregnancy.

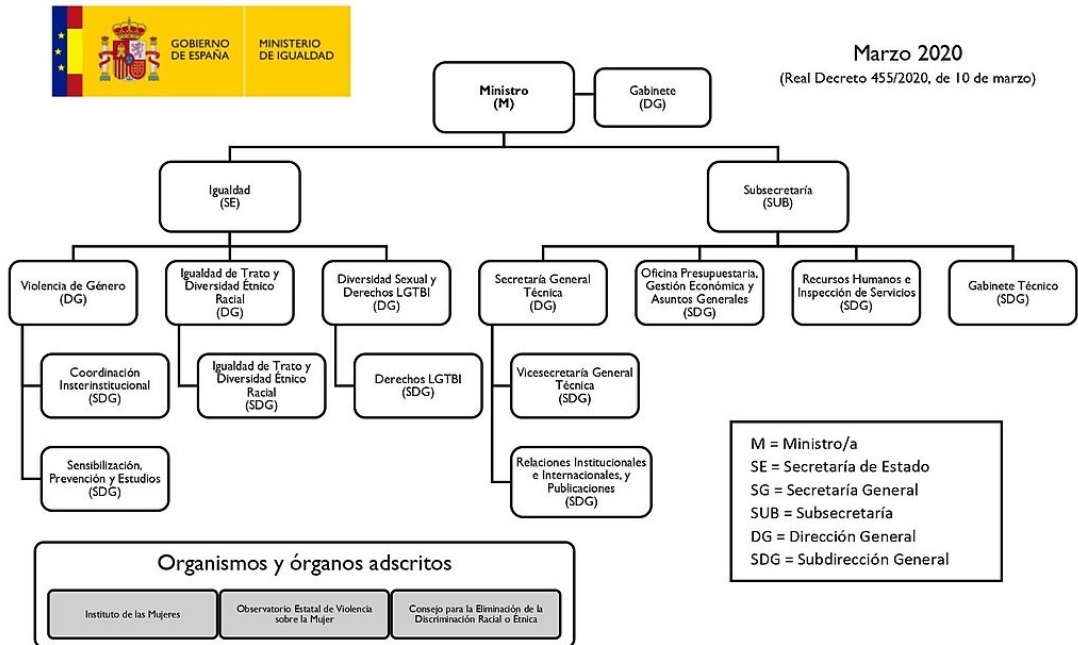
23. Ángela Rodríguez (Martínez), "Pam," Secretary of Equality, stated on the Buenismo Bien program of Cadena Ser (August 3, 2022): "We have legislative diarrhea. We don't know how long we will be in government" (...) "people like me are not in government" (...) "being in government is an anomaly" (...) "Precisely because we know we won't be in government for long, we have the legislative diarrhea that we have. We are constantly trying to do many things, lest it ends tomorrow" (URL: Cadena SER: Listen to Buenismo Bien; Inés Arrimadas on Twitter: "- We know that being in government is an anomaly" - "People like me are not in government" - "And that's why we have the legislative diarrhea that we have, lest it ends tomorrow" Ángela Rodríguez, Secretary of State for 'Equality'. There is no need to add anything else women <https://t.co/avM9dKq3xc> / Twitter).

24. BOE: BOE-A-2022-14630 Organic Law 10/2022, of September 6, on the comprehensive guarantee of sexual freedom.

25. BOE: BOE-A-2023-5364 Organic Law 1/2023, of February 28, amending Organic Law 2/2010, of March 3, on sexual and reproductive health and voluntary termination of pregnancy.

26. BOE: BOE-A-2023-5366 Law 4/2023, of February 28, for real and effective equality for transgender individuals and the protection of the rights of LGBTQ+ people.

Figure 2. Organizational Chart of the Ministry of Equality of Spain (March 2020).



Source: Ministry of Equality (2020)^a.

a. Following the Buchanan-Tullock theorems (regarding the maximization of utilities by bureaucrats, politicians, and pressure groups), since 2020, there has been an expansion in the number of positions and dependent organizations, as well as advisors (URL: Organizational Chart Ministry of Equality (transparencia.gob.es)), in addition to an increase in budget allocations each year (in 2023, it has a minimum budget of 592.1 million euros, taking into account discretionary funds as well, URL: https://www.sepg.pap.hacienda.gob.es/Presup/PGE2023Ley/MaestroDocumentos/PGE-ROM/doc/1/3/29/2/2/N_23_E_R_31_130_1_1_2_3.PDF). For comparison, see the figures in this section

1973–79).

- **Validity:** It does not correspond either in terms of the competent authority, instrument handled, or adherence to the procedure (Sánchez-Bayón, 2019a; Sánchez-Bayón and Peña-Ramos, 2021). If it is the government that promotes the initiative, it should be treated as a bill, requiring prior institutional reports for its registration with the Congress's Table (which were omitted due to their unfavorable nature, e.g., the Council of State, CGPJ), subsequently moving to the Committees (subject to voting and amendments) and then to the Senate (with similar procedures and the possibility of veto, reverting to the Congress). To circumvent these initial requirements, however, it was processed as a legislative initiative of the government's parliamentary group and under an expedited procedure to avoid amendments. Nevertheless, within a month, errors had to be corrected, and within six months, both substance and procedure had to be modified.
- **Effectiveness:** It is not observed due to its temporary nature (requiring error correction within a month and substantive and procedural modification within six months), as well as the need for constant review of convictions and case-by-case examination by the judiciary (see Figure 3). Its so-called perverse effects could not have been avoided with a mere transitional provision, as it would have violated Article 2 of the Spanish Penal Code of 1995–CP and Articles 9, 17, and 25 of the Spanish Constitution of 1978–CE. In addition to the above, there is the risk of rectification through appeals of unconstitutionality and protection or questions of unconstitutionality before

the Constitutional Court, due to possible violations of Articles 14, 17, 24, and 25 of the CE (regarding legal equality, legal security, presumption of innocence, police and judicial guarantees, etc.). To complete the matter, reference is made to the economic analysis of law (especially regarding perverse incentives and institutional quality, such as relativistic incentives), and the public choice opinion (concerning consensus costs, especially hidden costs and the winner-loser relationship).

Figure 3. Adverse Effects of the "Yes Means Yes" Law (Sentencing Reductions and Releases until May 2023).



Órgano	Reducciones condena*	Excarcelaciones*	Órgano	Porcentaje de revisiones que implican reducción de condena*
Tribunal Supremo	20	No aplica	Tribunal Supremo	42,6%
Audiencia Nacional	1	0	Audiencia Nacional	14,3%
T.S.J.	118	5	T.S.J.	27,7%
Audiencia Provincial	940	103	Audiencia Provincial	30,8%
TOTAL	1.079	108	TOTAL	30,9%

*Resoluciones confirmadas a 01-V-2023

*Solo computados aquellos órganos que han informado del total de revisiones efectuadas

Source: CGPJ (2023) ^a.

^a. CGPJ: <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/Consejo-General-del-Poder-Judicial/En-Portada/Los-tribunales-han-acordado-1-079-reducciones-de-pena-en-aplicacion-de-la-Ley-Organica-10-2022>; <https://www.europapress.es/nacional/noticia-cgpj-cifra-ya-1079-rebajas-pena-108-excarcelaciones-ley-solo-si-si-20230511142726.html>

b) Economic Analysis of Law:

- Incentives: Toughening a penalty does not always lead to deterrence or prevention; instead, it often results in individuals opting for transgressions that compensate for the assumed risk. If the crime of sexual abuse (related to behaviors without violence or threats to sexual autonomy) is abolished, and all such acts are reclassified as sexual assault, then any behavior could be considered sexual assault. This creates a perverse relativistic incentive, where if any act violating personal autonomy can be prosecuted as sexual assault, then there might be an incentive to use violence or threats, given the risk of conviction in such cases (e.g., it does not deter "wolf pack" incidents - referring to the case that prompted the "Yes Means Yes" law - but may actually encourage them or even more perverse behaviors, according to the risk-benefit equation, García-Pablos, 1991 and 2011). The relativistic incentive intensifies with related regulations, such as the transgender law, where, as Secretary of State Rodríguez "Pam" suggests, if rape occurs between a cisgender woman and a transgender woman, then it is not considered rape (as it is intra-gender and lacks the male perpetrator - in line with socialist ideas of authorship and alternative use of the law). The perverse effects of this relativistic incentive are exacerbated by requests from prisoners to change prisons²⁷.
- Efficiency: Legal efficiency (related to improving legislative technique and safeguarding rights) requires that, due to the principle of proportionality, among others, if an existing offense is subsumed into another, the sentencing range must be adjusted, which is why sentences have

27. Assumptions that are already beginning to manifest in Spanish prisons and have been reported by the Association of Penitentiary Administration Technicians: a) self-declared trans women rapists demand to be transferred to women's prisons, increasing the risk of sexual assault (as has already occurred in Scotland with this type of regulation); b) cisgender women request to be identified as trans in order to enter male units, where they engage in sexual exchanges for remuneration (thus promoting prostitution).

been reduced and there have been releases. As of May 1, 2023 (six months after the law came into effect), out of 3,900 inmates convicted of sexual freedom crimes, there have already been 1,079 sentence reductions and 108 releases (see previous figure). This means that one-third of offenders (1 in 3 rapists) have benefited from the enacted regulation (a number that will increase until 100% of the cases are reviewed, in addition to other types of benefits - and hidden costs of the regulation to society - related to the transgender law, see previous and subsequent sections). Therefore, legal efficiency is failing, not only because revisions have been required (soon after its processing) due to typographical and grammatical errors but also due to conceptual and legal theory failures (violating basic legal principles)²⁸, leading to greater insecurity (for the reasons stated, e.g., reduced sentences and releases). Even in forensic practice, procedural and interpretational distortions are occurring (e.g., the application of the yes law not only results in reduced sentences but also favors the interpretation of continued offenses, the impossibility of invoking aggravating factors, etc.).

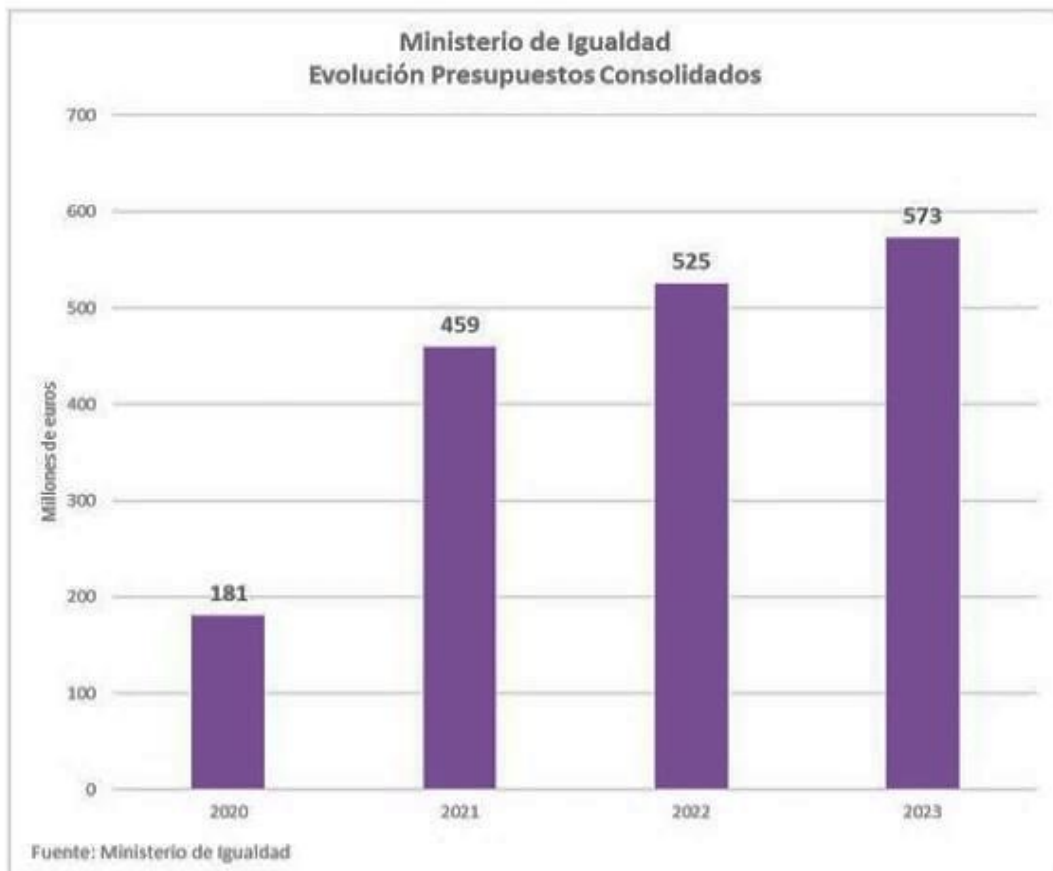
Regarding economic efficiency (doing more with less), it should be noted that in 2008, the budget of the Ministry of Equality was 43 million euros, with very few registered cases. In 2009, it nearly doubled to 78 million euros, with an increase in cases (to justify the budget increase). In 2019, when the Ministry of Equality regained its independence, its budget increased to 181 million euros, and both direct and indirect victims were counted, while the number of female victims of gender-based violence decreased (see subsequent figures). In 2023, the budget was increased by 500%, with an allocation of 592.1 million euros. Therefore, with the current institutional architecture, regulation, and public policies, not only are real costs increasing, but transaction costs, information costs, opportunity costs, etc., are also rising (see the public choice opinion), paradoxically, despite the increase in the number of advisors and members of the Ministry of Equality, along with its budget allocations.

The previous graphs reveal that we are not achieving more with less (there is economic inefficiency - even the risk of corruption and waste). It turns out that as budgets increase, new beneficiaries are sought (client networks, according to neo-institutionalists), allowing the justification of such an increase, even though the problem remains unresolved (it may even seem to be increasing as a social issue, thus increasing the budget for more positions and subsidies - again, according to the suspicion of neo-institutionalists and their theorem on the endless agenda, Anderson, 1986). In this sense, Campbell's law and Lucas's critique (see epigraph 1) seem to be equally applicable.

- Institutional quality: it cannot be argued that this is the first regulation that considers autonomy of will - as has been done in the "yes means yes" law and its interpretation by the State Secretary for Equality and the Government Delegate for Equality - because that is the cornerstone of private law codification (simply consult traditional manuals from Jurisprudence faculties, Sánchez-Bayón, 2010a, and their updaters in Law faculties such as Professors Albaladejo, Lasarte, Lacruz, Díez-Picazo). As for its application to sexual relationships in Spanish law, the requirement for consent has its roots in Roman law and Canon law (as a cause of annulment of marriage and sexual offense), with an idiosyncratic manifestation that arises with Castilian common law regarding the breach of a marriage promise (which is why a maiden consented to engage in relations under such a promise, and if it was breached, imprisonment could be imposed; in contemporary times, in a significant part of the family of civil law, this requirement is still maintained in matrimonial matters). Furthermore, the innovative regulation lacks originality, except for its effects of weakening, disaffection, and deinstitutionalization (due to veils of confusion such as doublethink and newspeak, or the concepts of weasel words and polylogisms,

28. Given the trend towards an alternative use of the law and the promotion of crimes of intent (e.g., if one is male, there is a predisposition to commit sexual assault), with the aforementioned regulations (e.g., gender violence law, "yes means yes" law, transgender law), the risk of violating equality and legal security, the presumption of innocence, objectivity, and the burden of proof, etc., increases. Other universal principles violated include "agere licere et ultra vires," "horror vacui," etc.

Figure 4. Evolution of the Ministry of Equality's Budget (2020–23)



Source: La Moncloa-Government of Spain (2023)^a

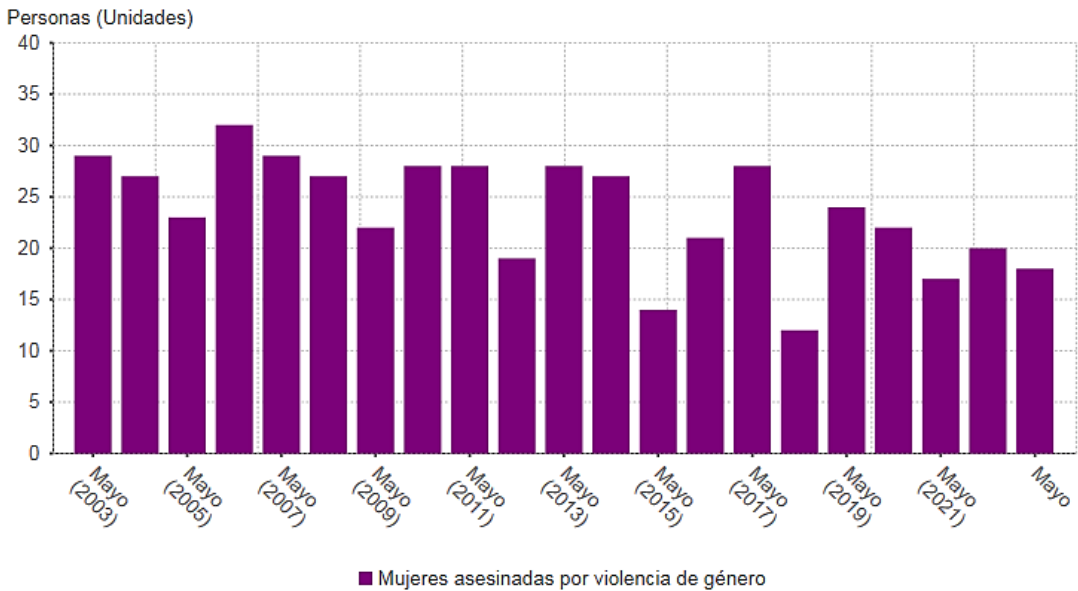
a. La Moncloa-Government of Spain: La Moncloa. 07/10/2022. The Equality budget for 2023 increases by 9%, reaching the historic figure of 573 million [Press/Current Affairs/Equality]. This represents an underreporting of the actual budgets, as it does not account for discretionary funds (see note 27) – thereby adversely affecting transparency, accountability, institutional trust, etc.

see note 8), promoting precisely the opposite of what was announced, as it generates greater legal insecurity and blurs institutional boundaries and their relationships (e.g., the risk of false accusations as retaliation for breakups or undue advantage in divorce proceedings, etc.).

c) Public Choice Analysis:

Given the premise of suspicion towards politics and politicians (addressing the matter realistically, without any romanticism), in the case of gender issues and their agenda, Buchanan-Tullock's theorems on the cost of consensus are fulfilled, with their effects in the form of a spoils system, dependence, and client networks, omnibus laws or catch-all laws, etc. It has been demonstrated that with the "yes means yes" law (in combination with the transgender law), not only have explicit changes been made to the Criminal Code, the Criminal Procedure Law, the Gender Violence Law, etc., but also, implicitly (and invalidly, for not following the proper procedure), to the Civil Procedure Law, the Constitution, etc. Regarding the assessment of consensus costs for public

Figure 5. Death trend of women due to gender violence (2003–21)



Source: Ministerio de Igualdad y Epdata (2023)^a

a. Epdata: Gender violence – data and statistics (epdata.es)

service²⁹, it should be noted that this is regulation for minorities by minorities³⁰: in 2019, Spain had a population of 47 million inhabitants, yet regulations were prepared for less than 50 cases of women's deaths due to gender-based violence (judicially declared, only 24), and fewer than 400 cases of medically diagnosed gender dysphoria. This means regulating for less than 0.00005% of the population (in cases of judicially declared women's deaths due to gender-based violence) and 0.0008% (in cases of medically diagnosed gender dysphoria). In statistical terms, this would be considered "irrelevant and negligible" (not so in terms of human dignity, as each life is an invaluable treasure). Perhaps it would have been more appropriate (at least in statistical terms) to regulate mortality due to occupational accidents (721 cases in 2019), traffic accidents (1,755 cases in 2019), or suicides (3,539 cases in 2019), where it happens that most cases involve males, so they may be at greater risk than females (but such data would undermine the social alarm established by the gender discourse). In any case, all the scenarios presented remain minority cases, as legislation must

29. The greater the consensus required (especially with the "yes means yes" law and the transgender law, as they affect fundamental rights and therefore have a constitutional reservation, Article 81 of the Constitution), the higher the costs (more concessions will have to be made, and the resulting outcome will be less satisfying). Among the costs to consider are: a) opportunity cost (funds are allocated to what is prioritized on the agenda for ideological or fashionable reasons, taking away from what is urgent and essential); b) hidden costs (undesirable effects, such as perverse incentives that affect institutional quality and trust in the system); c) information cost (as more requirements are demanded and attention must be paid to them, less attention is devoted – once again – to what is urgent and essential, making it increasingly less worthwhile and introducing risks such as informality, corruption, etc.); d) satisfaction and resource overuse cost (having to reach consensus and fund collectively leads to the consumption of things one does not desire but does so because others consume and one does not want to miss out, e.g., consumption is not the same in a restaurant where everyone pays for their own meal as it is when sharing the bill); e) political inanity cost (politicians often lack their own discourse, adopting what they consider to be the majority opinion in political discourse, typically embracing the loudest one, that is, the most extreme; hence, they are unwilling to bear the cost of dismantling established discourses and agendas); f) etc.

30. Data from 2019 from the Ministry of Labor, Social Security, and the National Institute of Statistics (URL: Spain in Figures 2019 [ine.es]); INSST: Analysis of Occupational Accident Mortality in Spain. 2017–2019 [insst.es]; DGT: In 2019, 1,755 people died in traffic accidents [dgt.es]; National Statistics Institute [ine.es], etc.) are used.

Table 6. Statistical Data on Gender-Based and Domestic Violence.

Víctimas y personas denunciadas en violencia de género y violencia doméstica según sexo. Serie 2015-2019

Valores absolutos y tasas de variación (%)

	Año 2015	Año 2016	Año 2017	Año 2018	Año 2019	Tasa de variación 2019/2018
Violencia de género						
Víctimas (mujeres)	27.624	28.281	29.008	31.286	31.911	2,0
Personas denunciadas (hombres)	27.562	28.201	28.987	31.250	31.805	1,8
Violencia doméstica						
Víctimas	7.229	6.863	6.909	7.388	7.654	3,6
Hombres	2.677	2.574	2.596	2.792	2.906	4,1
Mujeres	4.552	4.289	4.313	4.596	4.748	3,3
Personas denunciadas	4.981	4.643	4.908	5.093	5.395	5,9
Hombres	3.736	3.342	3.590	3.696	3.885	5,1
Mujeres	1.245	1.301	1.318	1.397	1.510	8,1
Personas denunciadas y víctimas a la vez	259	187	217	221	192	-13,1
Hombres	151	119	146	134	106	-20,9
Mujeres	108	68	71	87	86	-1,1

Source: Ministry of Justice of Spain and National Institute of Statistics-INE (2019)^a

a. INE: Domestic Violence and Gender-Based Violence Statistics (EVDVG) [ine.es]; it appears here that Campbell's law and Lucas's critique, as well as the suspicion of the endless agenda, etc., are being fulfilled.

be general and for all citizens, not ad hoc or ad hominem (unless it concerns an alternative use of the law and crimes of intent).

The most adversely affected by the proposed gender regulatory package are: a) directly, cisgender women and children (due to reduced sentencing and the release of sexual offenders - which makes sense with the hidden agenda, as noted by Beauvoir); b) indirectly, the citizenry, which has to bear the growing waste of public funds on a minority cause managed for the amplification of the problem rather than its resolution (if the problem were to end, so would the positions, budget allocations, subsidies, and grants, etc.)³¹; c) society as a whole (even humanity), as its well-being is reduced by not directing efforts towards concrete problems that can be solved (e.g., the United Nations' Sustainable Development Goals prioritize zero hunger, improved health and education, with gender issues coming after). Furthermore, in the case of the gender issue, the Peacock and Wiseman hypothesis (1961 and 1979) of displacement effect is observed: researchers noted that public spending does not grow linearly but exponentially during periods of crisis or alarm; this has been confirmed during wartime or threats such as COVID-19 (Bagus et al., 2021 and 2022), as well as in response to alerts such as climate change or femicides due to male violence.

31. Within the Corresponsables Plan, million-dollar campaigns have been conducted, such as the "el hombre blandengue" (the soft man) campaign (URL: Equality. 08/09/2022. "El hombre blandengue" Campaign [Communication/Campaigns]); Sensitization Campaigns (URL: Campaigns and Sensitization Materials - Government Delegation against Gender Violence (igualdad.gob.es)); "#EntoncesQuién" (URL: #EntoncesQuién - Government Delegation against Gender Violence (igualdad.gob.es)); "Ahora que ya nos veis" (Now that you see us) campaign (URL: Equality. 08/03/2023. "Ahora que ya nos veis, hablemos" Campaign [Communication/Campaigns]); "El verano también es nuestro" (Summer is also ours) campaign (featuring diverse body types), and a household chore distribution registration app (with a design cost of over 211,000 euros, plus a similar advertising campaign cost), among others.

5. Conclusions

As introduced at the beginning, the concepts-bullet, as mentioned by the Anglo-Australian economist Colin Clark, who, despite being one of the pioneers of current econometrics, stated that some words have the emotional impact of a bullet, with the power to kill any rational discussion: the gender and queer issues (now hybridized) could indeed be high-caliber projectiles. Why is this so? Without delving into their ontology and epistemology (based on anti-thesis or opposition to others – hence inauthentic), it is sufficient to note their opposition to any objective elements (by rejecting biological and genetic foundations, among others), and their defense of a constructivist and subjective perception foundation (based on the individual's perception and feelings at any given moment). This leads to a relativism and indeterminacy that is difficult to manage – albeit conducive to ideological polarization. Therefore, in the face of emotional bullets, a bulletproof vest is offered, based on rationality, as derived from neo-institutional approaches and their methodological individualism, along with their principle of reality. This allows for the detection of foundations and involved agents (without romanticism or illusory constructions or wishful thinking), breaking down costs, failures, paradoxes, and other undesirable (yet implicit and foreseeable, given the inspiring interventionism or social engineering).

Among the fallacies of the gender issue, exacerbated by state intervention in the matter and its management failures, the gender paradox stands out. As observed, it consists of the more the state intervenes in gender matters (now led by transgender feminism), the greater the loss of sexual autonomy for cisgender women (those genetically and biologically aligned with their gender). Additionally, their political-legal vulnerability and dependence on state guardianship also increase. This paradox has been confirmed in the Anglo-Saxon and Nordic world, where it originated, but it has also been transplanted to the Mediterranean and Latin American regions, resulting in significant harm and high costs, as evidenced by the Spanish case study (confirming the cobra effect, Campbell's law, or Lucas's critique). As a result of the increase in positions and advisors within the Ministry of Equality and its associated budget (rising from 43 million euros in 2008 to 592.1 million euros in 2023) to implement its regulatory package (including the "yes means yes" law, the transgender law, etc.) and corresponding public policies (e.g., "el hombre blandengue," "diverse bodies," "#EntoncesQuién," "Household Chore Distribution Registration App"). As seen through the neo-institutional analysis (which starts from the premise of distrust of power, rejects romanticism in politics and state paternalism, and assumes the realistic view of the hidden and endless agenda of state actors), it becomes evident that the gender issue serves more as an incentive for the social problem, with perverse incentives such as the exacerbation of sexual offenders, rather than seeking an effective resolution of the problem. According to Public Choice theory, politicians, along with lobbying groups and established client networks, lack incentives to solve the reported problem because doing so would not increase the budget allocated to it but rather jeopardize the continuity of positions, advisors, subsidies, and grants, etc. In essence, when there is a higher level of public intervention based on the intensification of the alarm over the growth of the problem (given the increase in indicators such as the number of gender-based violence victims – in line with Campbell's law), it ultimately places women in a position of greater dependence on the state, as has been confirmed.

According to Harvard Professor of Psychology, S. Pinker (as he has reiterated in his interpretations on the subject), the gender issue has self-proclaimed itself as "the only way to promote equality, while fighting against biology, language, and common sense, and intimidating anyone who disagrees." Historically, there have been other movements advocating for women's equal rights (e.g., suffrage, egalitarianism). Still, when the cause was monopolized by socialism, with its feminism, the class struggle was shifted to relations between men and women, ultimately subverting the established order as oppressive hetero-patriarchal. This is somewhat contradictory because it is in the West where greater equality of rights between men and women has been achieved. It is possible that, as in other manifestations of real socialism, there is an experiment in hymenopteran strategy (referring to winged insects conditioned for collectivization and submission to higher hierarchy). A new revolutionary subject is spoken of, for which the fight is waged (in this case, through intersectionality, it has shifted

from cisgender women to transgender women). Still, in reality, the hybridization of subjects is used to gain power, and once the socialist elite is established, all others must form a submissive collective obedient to the agenda of centralized coercive planning (as denounced primarily by Mises). In this regard, due to their heterodox nature, the theoretical and methodological frameworks of not only neo-institutionalists but also the Austrian School of Economics, anarcho-capitalists, culturalists, etc., prove interesting and useful.

As future lines of research, the empirical aspect will be further explored, delving into more comparative cases of the implementation of the gender issue in the Mediterranean and Latin American regions. This will help determine whether the paradox can be elevated to a general principle or if it remains merely an empirical observation.

In conclusion, there is the Nordic paradox. Remember the Nordic Institute for Gender Research (NIKK), and one of the reasons for its dissolution was its denial of the biological component (exacerbating the gender issue), as evidenced in its reports and, especially, in the docu-drama "Lavado de cerebro" (Brainwash). The public debate that followed centered on the aforementioned Nordic paradox: in developed and egalitarian societies (like the Nordic ones), women tend to freely choose studies and professions related to interpersonal interaction and multitasking (e.g., education, healthcare, social work), while men tend to choose professions related to manipulating things (e.g., natural sciences, engineering, transportation, construction). Only in developing countries do women tend to choose STEM careers out of necessity for future employment, not necessarily due to personal preference. Therefore, it is not a constructivist issue of discrimination but rather one related to biology and freedom of choice. According to the Nordic paradox, it made more sense to finance public policies aimed at promoting childbirth and work-life balance, as mentioned earlier.

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