



The Few and the Best of the Bodily Contract

On the Unrepresentable in Parliamentary Democracy

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RESEARCH

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ABSTRACT

This article examines the relationship between parliamentary democracy and corporeality through the problem of the unrepresentable body. Taking the 14th Spanish Legislature (2019–2023) as a case study, it analyses the corporeal configuration of parliamentary representation in terms of sex-gender, race, and dis/ability. The article argues that modern/colonial constitutionalism produces a democracy without bodies, where representation operates as substitution and where passive suffrage remains governed by an implicit bodily norm. Through a rereading of Rousseau's social contract, Carole Pateman's sexual contract, racial and colonial contract theories, and Bernard Manin's elective aristocracy, the article proposes the notion of the bodily contract as a heuristic category for understanding the exclusion of corporeal difference from democratic representation. This exclusion is framed as a hermeneutic ontological injustice: certain bodies are not merely underrepresented but rendered unintelligible as subjects of representation. Against this bodily aristocracy of the few and the best, the article advances bodily democracy as an anti-oligarchic principle. Such a principle places corporeality, relationality, and situatedness at the centre of constitutional thought, challenging the abstract inclusions and concrete exclusions through which parliamentary democracy has historically been organised.

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What is the relationship between parliamentary democracy and corporeality? This is the question that could begin this text. The answer could also be: the unrepresentable. In parliamentary democracies, corporeality is not part of the idea of representation. We know that whoever is elected as a representative/parliamentarian stands before the congress or parliament through their body. However, the body itself has no relevance in parliamentary democracy. Therefore, the initial question can be rephrased as follows: is there a bodily legitimacy to occupy a parliamentary seat in the representation of the people?

On the basis of this question, the aim of this text is to reflect on the logic behind the exclusion of corporeality from democratic representation, through the case study of the 14th Spanish legislature (2019–2023). To do this, we will first consider the 14th Spanish Legislature's corporeal configuration. We will then look at what might be called *Rousseau's laughter* or the representational system of modern/colonial constitutionalism. This section will focus on the theoretical proposals of the social contract, the sexual contract and the racial contract. The idea of the bodily contract will also be proposed as a tool for analysis. Finally, the conclusions will lead us to defend a *bodily democracy* as an anti-oligarchically situated principle that breaks with a constitutionalism that, as David Sánchez Rubio argues, is based on abstract inclusions and concrete exclusions ([Sánchez Rubio 2018, 107–110](#)).

Our starting point is the *parliament of bodies* proposed by María Galindo. It is a project of social transformation from the frontier, within the framework of the constitutional process in Bolivia. In a *Constitución Política Feminista del Estado* (Feminist Political Constitution of the State),¹ constructed by the voices that have been excluded from history, especially 'Indians, whores and lesbians',² the appeal is not made from a position of victimhood but from the perspective of 'those who want to seek in society the point of rupture, break and rebellion, and not reconciliation, silence and comfortable complicity with our own subjugation'. How should one construct these voices? Or, in other words, how should one listen to these voices?

In this *constitutional text*, in which the voices of the excluded are heard, we find concepts such as autonomy, the abolition of the sexual contract (manifested, for example, in the abolition of the institution of marriage, while maintaining free unions regardless of gender), the rotation of domestic work and the direct representation of citizenship or the right not to belong (or the right to mix). However, in order to achieve this, it is necessary to place the body at the centre. What María Galindo proposes is a critique of *democracy without bodies* and *politics without bodies* ([Galindo 2017](#)). Placing the body at the centre does not mean asking how to add rights but instead who the subject is: the subject who is excluded or included, as well as the subject who decides on this inclusion or exclusion. It is about leaving behind the identity of representation ([Galindo 2017, 16](#)). Contrary to the *European idea of rights*, for example, by situating the colonial axis, it is transformed into an *offer* of inclusion and tolerance through rights ([Galindo 2017, 34–38](#)). For this reason, Galindo denounces the fact that the increased inclusion of indigenous people in the Bolivian parliament does not imply a diversity of positions. In her words,

'One of the historical characteristics of this parliamentary agenda is the absence of a body. The body does not count, it is not part of democracy [...]. The problem is not how many women, how many indigenous people or how many queers there are in a parliament, but the dynamics and the logic

of representation under which this supposed “participation” is constructed”.
(Galindo 2017, 95 and 100)

Therefore, the politics of representation can rely on diversity, but this diversity will always be understood as the *other* (Galindo 2021, 34). This politics of representation is nothing more than a *politics of substitution*. This is why Galindo argues that ‘the body concentrates unrenounceable and liberating sovereignties that urgently need to be made politically explicit’ (2017, 106). This is why he will say that, in the parliament of bodies, ‘one breathes, conspires and transpires’ (Galindo 2021, 102). This is the axis on which, at the end of this text, we will propose an anti-oligarchic bodily principle.

DEMOCRACY WITHOUT BODIES IN SPAIN’S 14TH LEGISLATURE

On Sunday, 28 May 2023, the municipal elections held in the Spanish state resulted in a victory for the right and the extreme right in the national territory. In view of this, the President of the Spanish Government, Pedro Sánchez Pérez-Castejón, appeared at the Moncloa Palace to announce that, in view of the results of the previous day’s elections, early general elections would be called for Sunday, 23 July. On 30 May, the *Boletín Oficial del Estado* (BOE) (Spain’s official state gazette) published the decree dissolving the Cortes Generales and calling general elections. This decree ended the 14th Spanish Legislature and gave rise to the configuration of the 15th Legislature.

In the weeks that followed, there were at least two points of negotiation: (1) the creation of electoral coalitions such as SUMAR, a Spanish left-wing electoral coalition coordinated by the Vice-President of the Government, Yolanda Díaz; and (2) the adjustment of the electoral lists in each constituency. Although point 1 is important, for the purposes of this text, it is point 2 that is of interest: who will exercise the right established in Article 23.2 of the Spanish Constitution: ‘Likewise, they [the citizens] have the right to have equal access to public functions and positions, with the requirements established by law’. We are talking about passive suffrage, or the right to stand for election, to be voted for and thus gain access to public service, in this case, as a member of the Spanish Congress or Senate.

Thus, back to the question: who? To do so, let us look at the electoral lists of the four most representative parties in the previous elections in November 2019. We choose the XIV Legislature because, as it has already ended, the data we have can be considered closed. The four parties with the highest representation in the Spanish Congress are: Partido Socialista Obrero Español (PSOE), Partido Popular (PP), Unidas Podemos and Vox. Similarly, the focus will be on the four most populous provinces (remember that the constituency is provincial): Madrid, Barcelona, Valencia and Seville. These four constituencies are the ones with the largest population and, therefore, the largest number of elected deputies: 37 in Madrid, 32 in Barcelona, 16 in Valencia and 12 in Seville. In these electoral lists, we will look at³: (1) gender (and whether parity and a zipper system are used), (2) race and (3) dis/ability. To determine each element, the data to be highlighted will be: (1) name and assigned sex (we will differentiate between cis and trans persons⁴); (2) national origin (also family) or ethnic origin (especially Roma population); and (3) whether any type of dis/ability has been declared (this element is the most complex to take into account, as the privacy of the person is at stake, in addition to the fact that there are dis/abilities with *passing*⁵). The results to which we will pay attention will be those of male and female deputies elected to the Spanish Congress according to the electoral list published in the BOE.⁶ Let us turn to the data:

MADRID

Party and Members	Sex/Gender	Race	Dis/Ability
PSOE 10	4 cis men ⁷ 6 cis women	–	–
PP 10	4 cis men ⁸ 6 cis women	–	–
Vox 7	4 cis men ⁹ 3 cis women	–	–
Unidas Podemos 5	3 cis men ¹⁰ 2 cis women	–	–

BARCELONA

Party and Deputies	Sex/Gender	Race	Dis/Ability
PSOE 8	4 cis women ¹¹ 4 cis men	–	–
PP 2	2 cis women ¹²	–	–
Vox 2	2 cis men ¹³	1 ¹⁴	–
Unidas Podemos ¹⁵	–	–	–

VALENCIA

Party and Deputies	Sex/Gender	Race	Dis/Ability
PSOE 4	2 cis men ¹⁶ 2 cis women	–	–
PP 4	1 cis woman ¹⁷ 3 cis men	–	–
Vox 3	2 cis men ¹⁸ 1 cis woman	–	–
Unidas Podemos 2	1 cis man ¹⁹ 1 cis woman	–	–

SEVILLE

Party and Deputies	Sex/Gender	Race	Dis/Ability
PSOE 5	3 cis women ²⁰ 2 cis men	1 ²¹	–
PP 2	2 cis women ²²	–	–
Vox 2	1 cis woman ²³ 1 cis man	–	–
Unidas Podemos 2	2 cis woman ²⁴	–	–

*Own elaboration.

From the data, we can extract the following with regard to the 68 people elected as deputies between Madrid, Barcelona, Valencia and Seville:

1. Representativeness by sex/gender: of the 68, 32 were cis men and 36 were cis women. So, more cis women were elected: 52.9%. However, eight cis men (53.3%) were at the top of the list compared to seven cis women (46.6%). No trans men or trans women were elected.
2. Representativeness by race: of the 68 deputies, only two could be included in this variable. One for Vox (of Guinean descent) and another for the PSOE (of Roma ethnicity).²⁵ This is only 2.9% of the total.
3. Representativeness by dis/ability: there are no data on this variable.

These data show that the gender gap in parliamentary representation is gradually narrowing, although it does not correspond to the most important positions (head of list) in each electoral list, nor does it allow the entry of transgender people. With regard to the variables *racialisation* and *dis/ability*, the data change. For example, in the XIV Legislature in the Spanish Congress of Deputies, there is only one male and two female Roma deputies with relevance, who represent 0.8% of the total in terms of functional diversity or disability. The most visible face in Congress was Pablo Echenique (Unidas Podemos), who was born in Argentina and diagnosed with spinal muscular atrophy. His visibility was due not only to his position at the head of Unidas Podemos but also to his location in the Congress of Deputies building itself, which it is not adapted for wheelchair users.

With these facts in mind, I want to explore how representation is configured in the constitutional system that I will call *modern/colonial*²⁶ and how a democracy without bodies is constructed as the ontological limit of constitutionalism. Representation will then be approached through two ideas: Carole Pateman's sexual contract and Bernard Manin's elective aristocracy. These two ideas will lead us to posit the concepts of *bodily contract* and *bodily aristocracy* as a form of representation in modern/colonial constitutional systems that implies the limitation of passive suffrage to *the few and the best of bodily normativity* (sex-gendered, racial and ableist).

ROUSSEAU'S LAUGHTER IN MODERN/COLONIAL CONSTITUTIONALISM

REPRESENTATION AND SOCIAL CONTRACT

Why does Jean-Jacques Rousseau laugh, and what makes him grimace? Perhaps Martin Heidegger has something to do with it. The German philosopher argued that modernity is *the age of representation* (Heidegger 2012). This is undoubtedly a key idea for constitutionalism. It should not be forgotten that it was Rousseau who laid the foundations of enlightened politico-legal thought and who, according to Franz Wieacker, established 'the logical possibility of a contractual bond and of a duty to comply with what has been agreed on the principles of a formal, individualistic anthropology' (2000, 239). As we know, this is still an iusprivatist vision, but it suffices to understand the contract within the framework of a civilising mission (Supiot 2007, 130–139). Rousseau's first operation was to create the idea of the people as an association of men (not women) with a general will in search of the common good. Let us turn to Rousseau's own words:

‘There is often a great a difference between the will of all and the general will. The one takes into account only the common interest; the other is concerned with private interest, and is nothing but the sum of private wills. But take away from these same wills the more and the less, which destroy each other, and the general will remains as the sum of the differences’.
 (Rousseau 2007, 58)

However, this general will as an exercise of sovereignty – remember that Thomas Hobbes established the inextricable link between constitution and sovereignty (Fioravanti 2011, 79) – cannot be alienated or represented (Rubio Carracedo 1990, 194). In a sense, the representative model means that the people cease to be sovereign:

‘Power can be transferred, but not the will [...]. Sovereignty cannot be represented, for the same reason that it cannot be alienated; it consists essentially in the general will, and this cannot be represented; it is itself or it is another; there is no middle ground’. (Rousseau 2007, 55 and 122)

Rousseau’s point, moreover, is that this category of the people and the general will cannot include those whose sex is presented as naturally weak. This leads to a difference between public space and private space, the space of reason and the space of emotion, masculine space and feminine space, with clear consequences for the modern configuration of the state and legal systems. What has this meant? Blanca Rodríguez Ruiz rightly points this out:

‘The exclusion of women from the public sphere is therefore not a circumstantial defect in the construction of the state, as was the exclusion from active citizenship of men who did not reach a certain level of income or education. On the contrary, the demarcation introduced by modernity between the public and domestic spheres, as masculine and feminine terrains[,] respectively, structural to the construction of the state in its republican tradition’. (Rodríguez Ruiz 2019, 24)

Here, we have several elements of great importance for constitutionalism: the subject, the contract or the will. These elements are linked to the idea of representation in a context in which rationalism becomes the hegemonic form of modernity. From Edmund Burke in England, where representation was conceived not in terms of individuals but of the nation (privileging the aristocracy and private property), to the Abbé Sieyès in France, who broke with aristocratic privilege but maintained that freedom and property were prior to the state and therefore had to be protected by it, the idea of political representation took different forms. For the French thinker, only the general will of the people can be represented. However, the representative state must above all be unitary. Moreover, such representation is the most appropriate form of government given the conditions of commercial societies (Manin 2008, 13), but it is a kind representation that must be tamed so as not to threaten minority rule (Morgan 2006, 159). On the other hand, James Madison, following this idea of representative government as the most preferable, pointed out that, ‘under such an arrangement, it may well happen that the public voice, expressed by the representatives of the people, will be more consonant with the public good than if it were expressed by the people themselves, called together for the purpose’ (Madison 2009, 52). Rousseau’s laughter is contagious.²⁷

This model of representation, which underlies the modern/colonial constitutional system, is based on a subject that is presented as abstract, neutral, objective, impartial and universal but which is nothing other than a concrete subject with a set of determined characteristics (Winter Pereira 2022). Hence, the intervention made by Carole Pateman in *The Sexual Contract*, published in 1988. What Pateman does is to incorporate the sex-gender axis into the configuration of modern representation. A few brief lines will help us to bear witness to the silences, omissions and exclusions of Rousseau's social contract.

The sexual contract establishes the distinction between the public and the private, the rational and the emotional, the individual and the relational, the active and the passive. Each division will have a hierarchy: the private, domestic, emotional, relational, passive part of the woman will be subordinated to the other part, which will be occupied by the man. This subordination is based on a contract between men, a fraternal pact, which means that only men enjoy full citizenship from the outset, relegating women to the private space of the domestic. The sexual contract therefore establishes a dichotomous hierarchy of the sex-gender system (Rubin 1975), which makes women's subordination structural. The social contract would thus be a political fiction of modern patriarchy (Pateman 2019, 397). In Pateman's words, 'the original contract is a sexual-social pact, but the history of the sexual contract has been repressed [...]. The social contract is a history of freedom, the sexual contract is a history of subjection [...]. Civil freedom is not universal; it is a male attribute and depends on patriarchal law' (Pateman (2019, 35 and 37). Freedom and subjection, then. Freedom for men and submission for women. The social-sexual contract, in short, establishes men's right over women and men's right of access to women's bodies. Hence, there is the need to read the social contract from a sexual point of view; otherwise, the patriarchal element would be brought into the private sphere. That is the story of this founding myth of the representation of modern/colonial constitutionalism.

The sexual contract will therefore have a direct impact on the basic mechanism of representation, such as choice. Bernard Manin's reading is key here, although he does not explicitly include the intersection of sex and gender. In his 1995 text, *Principes du gouvernement représentatif*, Manin addresses a series of fundamental questions: when and how elections take place, how decisions are made by representatives and how they relate to the desires of those they represent. These are questions, or principles, that articulate the representative form of government as the form that triumphs over the lottery (Moreno Pestaña 2019).

In this triumph, with the modern construction of constitutionalism in the processes carried out in England, the United States and France, the principle of distinction was imposed, according to which the citizens (in masculine) who exercised representation had to be distinguished citizens (the best) – that is, socially different from those (few) citizens who voted and were, then, represented. Representation, it should be noted, maintained certain differences between the countries concerned (Pitkin 1967). Although the right to vote was gradually extended between the 19th and 20th centuries, representation did not grow because mechanisms were established (legal and cultural in terms of property titles, payment of a sum of money, as well as gender, race, etc.) so that those who acted as representatives had a better social position than those who voted (Manin 2008, 119–163).

The conquest of universal suffrage – the ability to vote in conditions of formal equality and without distinctions of class, race or gender – has, to some extent, *masked the possibility of a non-egalitarian or aristocratic dimension to elections*²⁸: a distinction between those who vote and those who are voted for, or what Manin calls the *elective aristocracy* (Manin 2008, 181–185). Democracy and representation are not a natural pair. As Hanna Pitkin argues, ‘yet[,] for much of its history[,] both the concept and the practice of representation have had little to do with democracy or freedom. Representation does not have to mean representative government’ Pitkin (1967, 2).

This *elective aristocracy* is still reproduced today to such an extent that, in the most recent municipal elections in Spain, in May 2023, in the Community of Madrid, its president, Isabel Díaz Ayuso, demanded a sum of 1,500 euros from each person who wanted to be on a Popular Party electoral list in the starting positions.²⁹ To this, we must add a cross-reading between Pateman and Manin: is sex–gender a category that affects the elective aristocracy? Is this elective aristocracy sexualised? A brief historical review gives us a quick answer in the affirmative. The right to active and passive suffrage has historically been denied to women. This is a truism. The question is whether, once the right to vote has been won, women have been able to vote in elections.

Precisely because the elective aristocracy is a sexual aristocracy (Manin with Pateman), parity and quota policies had to be implemented through legislation to correct the sexual part of the elective aristocracy. The first thing to do is to distinguish between quotas and parity. Quotas are a temporary instrument to mitigate some of the effects of the representative system built on the male subject. As Article 4 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) states,

‘The adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be deemed to be discrimination within the meaning of the present Convention, but shall in no way entail the maintenance of unequal or separate standards; such measures shall be discontinued when the objectives of equality of opportunity and treatment have been attained’.

It is therefore a temporary measure to correct an inequality that will cease to exist once equality of opportunity and treatment is achieved. As stated in the CEDAW Committee’s 2004 Recommendation 25,

‘Measures taken by States parties under article 4, paragraph 1, shall be aimed at accelerating the equal participation of women in the political, economic, social, cultural, civil or any other field.... Such measures should not be considered necessary in perpetuity, although the meaning of the term “temporary” may in fact result in the application of such measures over a long period of time. The duration of a temporary special measure must be determined in the light of its functional result in solving a particular problem and not by setting a specific time limit’. (Paragraphs 18 and 20)

Parity, on the other hand, goes a step further. Although it shares a common goal with quotas in ensuring that women have a greater presence in the public space of democratic institutions, it differs from them in that it challenges the patriarchal foundations of the modern state, particularly the liberal principle of unity of representation (Rodríguez Ruiz 2023, 68). As Blanca Rodríguez Ruiz argues, ‘parity is based on the recognition

that the male profile of political representation is a fundamental problem in the state' (2017, 142). In contrast, quotas suggest, to some extent, that women are part of the problem rather than the gendered structure of citizenship (Rodríguez Ruiz 2017, 145). Parity policies therefore focus on redefining the public space of representation.

This is the objective of the Spanish Organic Law 3/2007, of 22 March, on the Effective Equality of Women and Men, in its additional provision 2.1, which amends the Organic Law on the General Electoral System, 5/1985, of 19 June. It thus introduced an article 44 bis which makes it compulsory in elections to establish a 'a balanced composition of women and men in such a way that the total number of candidates of each sex on the list is at least forty percent' (article 44 bis of the Organic Law on the General Electoral System, as amended by the Organic Law on the Effective Equality of Women and Men).³⁰ Parity, as an instrument to guarantee a minimum presence of women and thus redefine the public space of representation, has also been declared constitutional by the Spanish Constitutional Court in Ruling 12/2008, in the face of arguments that sought to uphold the exclusivity of male representation by appealing to formal equality, ideological freedom or the freedom of internal organisation of political parties.

However, the Constitutional Court has defended the constitutionality of parity on the basis of Article 9.2 of the Constitution and affirmative action in the framework of an anti-discrimination right and not on the basis of the structural subordination established by the representation system. This leads to a certain distortion of parity by making it similar in its purpose to quotas. As Blanca Rodríguez Ruiz points out, 'our Constitutional Court thus followed the general trend in constitutional jurisprudence, which resists approaching electoral parity in terms of redefining the representative public space, in order to theorise it from the perspective of the deconstruction of gender and its fundamental role in the construction of the modern state' (2017, 151). Apart from this interpretation by the Constitutional Court, parity has not necessarily translated into a greater presence of women in representative institutions, nor into increased political power for women or the adoption of more gender-sensitive policies (Rodríguez Ruiz 2023, 70–75).

BODILY CONTRACT

The aristocracy that Bernard Manin speaks of also has an ontological component that constitutionalism, including Spanish constitutionalism, has not been able to think about, precisely because the pillars of modernity prevent it from doing so. The configuration of the modern subject and its translation into the subject of constitutionalism overlooks the fact that human existence is corporeal. That is the ontological limit of constitutionalism. If, as David Le Breton argues, 'each society, in its vision of the world, designs a particular knowledge of the body' (Le Breton 2021, 17), modern society and constitutionalism look to abstraction and close their eyes to the body. In the end, the question can be reduced to how a *being* is normative in order to avoid a *being-being* – how René Descartes triumphs over situationality and relationality. It is therefore necessary to proclaim a need for presence, for a right to appear, as Judith Butler (2015) has put it, which overturns the subject of law constituted by a property that excludes non-subjects.

In this sense, even Carole Pateman's construction of the sexual contract produces ontological exclusions precisely because Pateman does not break out of the Western or modern/colonial tradition. There are at least two exclusions in Pateman's work, one explicit and one implicit. The first is her exclusion of trans and intersex people, and of

bodily, sexual and gender diversities in general. In the conclusions of her work *The Sexual Contract*, Pateman states:

‘The individual as owner is separate from his body, which is either of one sex or the other. A human body, except in cases of indeterminate birth, is not male or female at the same time, no matter how that body is dressed or how it is placed in the social structure, even if it can now be stripped of male or female characteristics; if men are not satisfied with their “gender orientation” they can become “transsexuals”, simulacra of women. The “individual” is constructed from a male body, so that his identity is always masculine’ (2019, 403).

In this extensive quotation from Pateman, we find the same logic of exclusion as in the social contract reproduced in the configuration of the idea of the sexual contract. It has already been said that Rousseau’s laughter is contagious. In this case, Pateman assumes sexual binarism as a bodily or natural binarism, such that, ‘except in cases of indeterminate birth’, as she herself points out, all human beings are determined by a biology read in a binaristic key. Here, Pateman excludes both intersex people, whom she describes as ‘indeterminate’, and trans people, whom she describes as men who are dissatisfied with their orientation and whom she goes so far as to describe as ‘simulacra of women’. Incidentally, this idea of simulacrum was very common in the context of the Spanish judiciary in the 1990s, when it spoke of *female fiction* to refer to trans women ([García López 2015](#)). Pateman thus reproduces the logic of exclusion that the social contract has exercised against women, also excluding bodily, sexual and gender diversities.

But more to the point, the body Pateman is referring to is a white body. This is Pateman’s second exclusion. As Breny Mendoza has rightly argued, social contract theory has been built on the usurpation of indigenous territories and the extermination of indigenous peoples (2023, 222–223). The colonial fact is not relevant to Pateman’s theorising. Thus, [Robert Nichols \(2005\)](#) speaks of the colonial contract based on the occupation of land and the physical and/or epistemic elimination of indigenous peoples. Similarly, [Charles W. Mills \(1997\)](#) argues how modern contractualism – from Hobbes to Kant via Rousseau or Locke – has contributed to legitimising the domination, oppression and exploitation of non-white populations. In the same vein, Cida Bento has pointed out how ‘branquitude and its perpetuation over time is due to a pact of non-verbalised compliance between white people, aimed at maintaining their privileges’ ([Bento 2022, 18](#)). This is what the Brazilian author calls the *pact of whiteness*, or the narcissistic pact between whites, structured by the denial of racism and the denial of responsibility for its maintenance. What does whiteness mean here? A good definition is provided by Lia Vainer Schucman: ‘being white and occupying the symbolic place of whiteness is not something that is determined by genetics alone, but above all by the positions and social places that the subjects occupy’ (2020, 60). Whiteness, as a social position or place, is therefore an indispensable element of the device of racialisation ([Carneiro 2023](#)).

This critique helps us to argue that the social contract is not only sexual but also colonial, in that it includes race as a variable.³¹ Likewise, the elective aristocracy is not only sexual but also colonial, in that it excludes racialised people. However, to go further, what is being proposed here is that the social contract and elective aristocracy are corporeal – that is, they are maintained on the basis of a particular kind of normatively established corporeality: the cis-heterosexual, white, property-owning,

normatively able-bodied male. In such a bodily contract and aristocracy, sex-gender, race and ability intersect. *The few and the best* will present a kind of *bodily contract*.

The category of the *bodily contract* is posited here as a tool for redressing a *hermeneutic ontological injustice*. What would such an injustice consist of? Miranda Fricker has put forward the idea of epistemic injustice as that which occurs when the subject's capacity to transmit knowledge is nullified. Fricker analyses two types of injustice in knowledge from socially situated contexts: (1) testimonial injustice and (2) hermeneutic injustice. The first injustice 'occurs when prejudices lead a listener to accord a speaker's words a diminished degree of credibility' (Fricker 2017, 17). The second, hermeneutic, injustice operates at an earlier stage: 'when a gap in collective interpretative resources places someone at an unfair disadvantage in terms of understanding their social experiences' (Fricker 2017, 18). In testimonial injustice as a credibility deficit, this power is fed by *identity bias*. On this basis, 'a speaker suffers from receiving diminished credibility from the listener due to the identity prejudice poured on the listener' (2017, 22). However, this prejudice must be persistent and systemic: 'a widely accepted dismissive association of a social group with one or more attributes, which embodies a generalisation that, by virtue of some affective investment on the part of the subject, offers some kind of resistance to (usually epistemically culpable) counterevidence' (Fricker 2017, 69–70). The second type of injustice, hermeneutic, involves a 'gap in collective hermeneutic resources (i.e. a gap in the tools of social interpretation that we share)' (Fricker 2017, 25) or 'the injustice that some significant parcel of one's social experience is hidden from collective understanding because of a structural identity bias in collective hermeneutic resources' (Fricker 2017, 254). That is to say, there is a gap in collective hermeneutic resources, which means that, unlike testimonial injustice, in which there is a direct action of the subject and therefore the harm is from individual to individual (which triggers the analysis of the guilt or not of the subject with whom the interlocution takes place), in hermeneutic injustice, there is no direct involvement of an agent but rather of collective hermeneutic resources.

Following Miranda Fricker's categorisation, one could speak here of *ontological injustices* of the same two types as epistemic injustices. First is a kind of testimonial ontological injustice, such as that in which a subject is placed in a position of weakness (lack of credibility about their life or ontological prejudice) and for which the Constitution designs a normative model of social protection. On the other hand, we would find hermeneutic ontological injustices for those situations in which it is not a deficit of subjectivity but rather the complete annulment of subjectivity. In this hermeneutic ontological injustice, we could situate the bodily contract: all those subjectivities that are excluded from the very category of subject. The bodily contract thus serves to problematise the hermeneutic ontological injustice that we find in the modern/colonial constitutional system and, in the specific case, in the system of parliamentary representation-substitution.

Let us return to parity legislation as an example of the bodily contract. Perhaps we could ask whether parity would reproduce the fantasy of individuality – to use Almudena Hernando's term (2022) – or, on the contrary, favour relational identity. For it would seem that both equality in the law and equality in the application of the law start from an already-given subject. Here, as a hypothesis, it can be argued that parity, as developed by the Spanish Constitutional Court, is an anti-discriminatory instrument *ad intra* but discriminatory *ad extra*. What does this mean? It means that parity is constructed as an instrument of a constitutionalism that assumes an already-given subject, a subject that meets the requirements of the subject of modernity; a Cartesian

subject still in the key of abstraction and separation from corporeality. Moreover, it is an instrument that does not structurally question subordination.

Which women fall within the scope of parity policies? Which subject is the subject of equality? Although article 9.2 of the Spanish Constitution establishes the obligation of the public authorities to carry out actions in pursuit of substantive, real and effective equality (Rodríguez Ruiz 2017, 25), would this obligation not be neutralised by the concept of the subject and the exclusionary logic? Or does article 9.2 participate in the very logic of exclusion? For if, for example, equality before the law aims at equal legal treatment, this implies the presupposition of comparable subjects? How should one compare when there is no recognised subject? How should one compare when the body is denied?

On the other hand, while trying to correct the negative elements (*ad intra*), towards the outside (*ad extra*) it maintains the modern/colonial constitutional conception: the logic of ontological exclusion of those subjectivities that do not even enter the sphere of the legal subject. Would not parity, as upheld by the Spanish Constitutional Court, reproduce a certain *sticky floor* of representation? Who stays on the floor of constitutional representation while others break through its glass ceiling? This raises the question that parity policies may be a good instrument *ad intra*, but they reproduce the idea of individuality *ad extra* of the corporeal contract and thus do not redefine public space and citizenship beyond the merely institutional. In this way, there is a differentiated integration (those who can break the glass ceiling) and a selective exclusion (those who stay on the ground and pick up the glass) (Watkins 2018), whose centre of gravity is corporeality. A representative example has already been given in the analysis of the disembodied democracy of the 14th Spanish legislature, where white women have managed to break through the glass ceiling of constitutional representation, albeit in a deficient way (testimonial ontological injustice, as most of them are not heads of list), while racialised women still cannot even consider it (hermeneutic ontological injustice).

In the *bodily contract*, aristocracy also manifests itself by setting ontological limits to representation in modern/colonial constitutional systems, which imply the limitation of passive suffrage to *the few and the best in the bodily normativity*. The heuristic category of the bodily contract allows us to articulate two other tools: intersectionality and relational autonomy. The first because it places the body at the centre, not only from its material position but also the perceptions that we have and have been constructed about the body. The second because it escapes from the individual and puts bodies in relation, understanding them as something collective, fluid and even disordered (Rodríguez Ruiz and Winter Pereira 2024).

A PROPOSAL FOR BODILY DEMOCRACY AS AN ANTI-OLIGARCHIC PRINCIPLE

In an extraordinary text, José Luis Moreno Pestaña challenges us to *return to Athens* to think about the lottery as an anti-oligarchic democratic mechanism. He concludes that the Athenian experience, in which the lottery for the election of offices, rotation and accountability converged, represented an anti-oligarchic principle: ‘a principle of correction of the excesses of political capital, but a principle that must always be vigilant’ (Moreno Pestaña 2019, 278). He outlines three axes that would constitute an anti-oligarchic test: knowledge, motivation and moral qualities. The first axis, which

he calls the *Oedipus/Creon tangent*, raises the knowledge that those who participate in the assembly must have. The second axis, a *political epistemology of the specialist*, is concerned with guaranteeing the use of the floor and with the elements that encourage or discourage participation. Finally, the third axis deals with the moral qualities to achieve an unmanipulated participation, or the *principle of anti-factitious motivation of the political libido* (Moreno Pestaña 2019, 20–24). These three axes – which do not prescribe an action but an interrogation – articulate an anti-oligarchic principle that operates ‘a principle of detection of the oligarchic corruption behind the aristocratic garb of the few who claim to be better’ (Moreno Pestaña 2021, 21).

Here, we would like to go one step further than Moreno Pestaña’s proposal: are all bodies epistemically read the same? Moreno Pestaña refers to Pierre Bourdieu and his concept of *place effects* (Moreno Pestaña 2021, 28–29). Bourdieu focuses on the spatial dimension of social processes. The places inhabited by individuals and groups are understood as expressions of social space. However, these spaces manifest social differences and distances: social structures that become hierarchical spatial structures that organise and qualify. In Bourdieu’s words:

‘The structure of space thus manifests itself in the most diverse contexts in the form of spatial oppositions, in which the inhabited (or appropriated) space functions as a kind of spontaneous symbolisation of social space. In a hierarchical society, there is no space that is not hierarchical and that does not express social hierarchies and distances, in a way that is (more or less) deformed and, above all, obscured by the *naturalisation effect* of the permanent inscription of social realities in the natural world: in this way, certain differences produced by historical logic can seem to arise from the nature of things (just think of the idea of the natural border). This is what happens, for example, with all the spatial projections of the social difference between the sexes (in the church, at school, in public places and even at home)’. (Bourdieu 2007, 120)

In such a way that the position of an agent in social space is translated into physical space. Let us think about how our cities are configured and about the social image of those who live in one or another part of the city. Let us also think about the opposition between the city centre and the periphery. So, there is a struggle for the appropriation of space. Read more about Bourdieu:

‘Gains in space can take the form of *location gains*, which in themselves can be analysed in two classes: rents (known as situation rents) which are associated with being located next to scarce and desirable agents and goods (such as educational, cultural or health facilities); *position or rank gains* (such as those ensured by a prestigious address), a particular case of the symbolic gains of distinction which are linked to the monopoly possession of a distinctive property [...]. The capacity to dominate space, in particular by taking possession (materially or symbolically) of the scarce goods (public or private) that are distributed in it, depends on the capital possessed’ (Bourdieu 2007, 122).

As a result, those who lack capital are kept at a distance and thus tied to less-desirable or scarce goods. Lack of capital ‘chains one to a place’ (Bourdieu 2007, 123). In short, certain spaces are invested with privileges by power, while others are abandoned and

their goods and services restricted. This means that the elite continue to reproduce themselves in the same spaces: their daughters and sons go to the same schools, for example. Something similar happens in political conflicts. As Moreno Pestaña argues, 'the struggle to occupy privileged spaces, and to exclude competitors from them, is the hallmark of a large part of political conflicts' ([Moreno Pestaña 2021, 28](#)).

Let us now go one step further. What feminisms teach us is that our bodies are also spaces and spaces in struggle. If, with Michel Foucault, we have learned how technologies work on the body (2005) or, with Gilles Deleuze and Felix Guattari, the territorialisation of the body (2008), it is with feminisms and the decolonial perspectives developed, especially in Latin America, that we have understood the role of the body. This is why Anibal Quijano argues that the body is precisely the decisive level of power relations (2000). Hence, the need for a *corpo-politics of knowledge* ([Castro-Gómez and Grosfoguel 2007](#)).

But this body is racialised and also gendered, as María [Lugones \(2008\)](#) has argued. Race, class, sex-gender or ability mark bodies. Let us remember Gloria Anzaldúa and how her feminism was not based on disembodied abstractions but on bodily realities (1987). The body is therefore a territory – a body-territory ([Comunidad Mujeres Creando Comunidad 2014](#); [Colectivo Miradas Críticas del Territorio desde el Feminismo 2017](#)). If the body is a territory, then place effects are also produced. The body is also a social space. Building on Bourdieu, there is no body that is not hierarchically situated and that does not express social hierarchies. Bodies therefore produce social distances that are taken for granted (naturalisation effect). If Bourdieu said, as we quoted earlier, that 'gains in space can take the form of *gains in location*' (2007, 122), then bodily gains through, for example, *cis-passing* in relation to trans people can take the form of gains in location. It will be the body-territory that also determines the ability to access goods and services, such as parliamentary representation itself. This means that those bodies that lack capital (sex-gender, race, ability, etc.) are kept at a distance, associated with less-desirable or scarce goods. In our object of study, these bodies are marginalised or excluded from political representation.

How can we ensure that the political spaces of representation are not spaces of selective and exclusive bodies? How can we avoid *the few and the best of the bodily contract*? The fantasy of sexual binarism, of whiteness, of ability, are the elements that make up the bodily contract and that originate in a bodily aristocracy. It will be necessary to think in an anti-oligarchic principle in which the body is placed at the centre. It will be necessary to think in a *somatopolitical* key, in the coordinates drawn by Paul [Preciado \(2008\)](#).

Monique [Wittig \(2006\)](#) has shown us how the heterosexual political regime works, in which heterosexuality is not something connatural to bodies but a political production of certain institutions. The heterosexual contract, manifested, for example, in marriage, will impose reproduction as the axis of social vertebration, as well as binarism. Hence Wittig's assertion: 'lesbians are not women' (2006, 57), insofar as they are, at the time of Wittig's writing, excluded from the institutions of the heterosexual contract. However, to take this a step further, what the bodily contract establishes is a bodily political regime that determines certain corporealities as natural through their imposition by institutions. The very representation in the Congress of Deputies tells us which bodies are representable and which are not, hence the importance of Paul [Preciado's \(2008\)](#) concept of *somatopolitical regime* as the regime (or set of juxtaposed regimes) of the production of the body.

Preciado proposes three types of regimes that exist at three different moments: (1) the sovereign regime (until the 17th century), (2) the biopolitical disciplinary regime (17th–20th centuries) and (3) the pharmacopornographic regime (since the Second World War). Preciado points out that ‘the post-World War II somatopolitical context (of the technopolitical production of the body) seems to be dominated by a series of new technologies of the body (biotechnologies, surgery, endocrinology, etc.) and of representation (photography, cinema, television, cybernetics, etc.) that infiltrate and penetrate everyday life as never before’ (2008, 66). However, as far as we are concerned, the institution of representation today is an institution built on the foundations of the liberal revolutions of the late 18th century and traversed by a distinctly modern/colonial technology of the production of the body. The technologies of the body that Preciado raises are present in the Congress of Deputies, it is true, but these same technologies of the body have been operating since the origins of the modern institution of representation through the *body-that-cannot-be-represented*; a possibility imposed as a duty: it *must not be represented*. The unrepresentable body, insofar as its ontological, epistemological and axiological status is below the line of non-being, in the *zone of non-being*, to use Franz Fanon’s (2009) expression. In this way, bodies are hierarchised as spaces are hierarchised, creating social distance (*the few and the best*) and access to goods and services (parliamentary representation). In short, the institution of parliamentary representation would be a technology of somatic production – hence the need to think about it by placing bodies at the centre.

Again, following Bourdieu, two forms of resistance to the effects of place are posited. The first would be a struggle for appropriation on an individual basis through spatial mobility, which will depend on the capital one possesses (Bourdieu 2007, 123). On the other hand, it can also take place in a collective form that has an impact on the political construction of space (Bourdieu 2007, 124). Similarly, the somatic struggle for political representation can take place individually or collectively. In the first case, we are looking from above: the individual success of a racialised, functionally diverse or trans person in occupying a political space of representation will be due to the capital accumulated, for example, in the form of *passing* (whether of race, sex–gender or ability). This is a purely individual and testimonial struggle because it does not go to the heart of the bodily contract. To some extent, the way in which the Constitutional Court has configured parity works on this individual level: the glass ceiling is shattered, but the system works because there is a sticky floor on which many others are left to pick up the broken glass. On the other hand, the second, collective, form is based on relationality, on the body-territory and not the body-individual, in order to try to disarticulate the bodily contract. This second form is a gaze from below, as proposed by María Galindo and discussed in the introduction to this text. It is not a question of a body becoming one of *the few and the best*, but of every body simply becoming one. That is, it is not about reproducing the bodily aristocracy by passing but about constructing a plebeian gaze out of our bodily realities, situated and related through a pluriversalism of confluence (Sánchez Rubio 2010). How can we guarantee the material conditions for the sustainability of representation? This is the question that urges us to answer, but in order to think about it, we must first silence Rousseau’s laughter.

NOTES

- 1 Available at <https://hemisphericinstitute.org/es/emisferica-11-1-decolonial-ge-sture/11-1-dossier/e111-dossier-constitucion-politica-feminista-del-estado-el-pais-imposible-que-construimos-las-mujeres.html> (visited 28 July 2023).

- 2 The non-English texts to which the author had access have been translated by the author in this paper.
- 3 The website of the Congress of Deputies will be used for this purpose. For data by constituency, the report of the Ministry of the Interior will be used: https://www.interior.gob.es/opencms/pdf/archivos-y-documentacion/documentacion-y-publicaciones/publicaciones-descargables/elecciones-y-partidos-politicos/10N_Elecciones_generales_2019_Fichas_analisis_electoral_Resultados-definitivos_126_20_002_4.pdf (accessed 11 June 2023).
- 4 The word *cis* is used to avoid trans being understood as an exception. On this, https://www.pikaramagazine.com/2020/10/cistrans-algunas-consideraciones-linguisticas/?fbclid=IwAR2_j5NQfgCZo5nTllouSTvCrhlxPPoAu90zb9peYukRwAekXSt-3RHf1w (accessed 11 June 2023).
- 5 On the idea of *passing* in sociology, see Ginsberg (1996) or Renfrow (2004).
- 6 <https://www.boe.es/boe/dias/2019/10/09/pdfs/BOE-A-2019-14480.pdf>.
- 7 Head of list cis man.
- 8 Head of list cis man.
- 9 The first three places went to cis men.
- 10 Head of list cis man.
- 11 Head of list cis woman.
- 12 Head of list cis woman.
- 13 Head of list cis man.
- 14 Ignacio Garriga Vaz de Conceição. His mother is of Guinean origin, although he was born in 1947, when Equatorial Guinea was still a Spanish colony. In 2021, he left his seat as a Member of Parliament.
- 15 Unidas Podemos presented itself politically in *En Comú Podem*.
- 16 Head of list cis man.
- 17 Head of list cis woman.
- 18 Head of list cis man.
- 19 Head of list cis man.
- 20 Head of list cis woman.
- 21 Beatriz Micaela Carrillo de los Reyes, from Palma del Río (Córdoba). President of the Federación Estatal de Asociaciones de Mujeres Gitanas, Vice-President of the Consejo Estatal del Pueblo Gitano. Member of the Board of Trustees of the Instituto Gitano de Cultura Gitana.
- 22 Head of list cis woman.
- 23 Head of list cis woman.
- 24 Head of list cis woman.
- 25 There are other Deputies/Parliamentarians of Roma ethnicity: Sara Giménez (Ciudadanos) and Ismael Cortés (En Comú Podem). Other racialised Deputies/

Parliamentarians include Najat Driouech (ERC), Basharat Changue (CUP), Jessica González (En Comú Podem), Luc André Diouf (PSOE) and Luc André Diouf (PSOE).

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- 26 The expression is taken from Alejandro [Medici \(2012\)](#).
- 27 Rousseau's laughter and its contagiousness is a good image to show how the idea of representation proper to modern/colonial constitutionalism actually proposes a physical limitation of the possibility of access to a seat. For this reason, María Galindo's point, already discussed in the introduction to this text, is taken up here: representation means substitution.
- 28 An example within our constitutional doctrine is a classic article by Pedro de [Vega \(1985, 25–45\)](#) where he focuses on representation from the side of those who can vote and not those who can be voted for.
- 29 <https://elpais.com/espana/elecciones-madrid/2023-04-25/el-pp-de-ayuso-pide-a-sus-diputados-y-concejales-1500-euros-por-ir-en-puestos-de-salida-el-28-m-la-llaman-la-dolorosa.html> (visited on 12 June 2023).
- 30 The Organic Law on Equal Representation of Women and Men in Decision-Making Bodies is in the process of being approved.
- 31 A good example is provided by Cristina María [Zamora Gómez \(2022\)](#) in her analysis of the European Union's refugee policies in terms of fraternity as a principle of whiteness.

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The author has no competing interests to declare.

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