

Research Article

**Male-Centred Norms and Intimate Partner Femicides
A Case Study in German Homicide Law**

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Abstract

This paper explores how male-centred norms shape the legal treatment of femicide, conducting a case study of German criminal law's response to intimate partner femicide through a feminist criminology lens. Focusing on the legal framework of homicide in the German Criminal Code (StGB), it critiques the doctrinal understanding of the statutory term 'despicable reasons' in the context of femicide as both reflecting and perpetuating gendered biases. Drawing on case law and feminist criminological scholarship, the paper shows how the gendered concept of 'normal psychological motives' operates as a presumption against classifying intimate partner femicide as aggravated murder (§ 211 StGB). The paper proposes a revision of case law that recognises the gendered link between emotion and violence, not as a presumption against 'despicableness', but as a relevant factor in assessing whether the overall circumstances reflect patriarchal notions of entitlement, thereby rendering the motive 'despicable'.

Keywords: Criminal Law – Femicide – Feminist Criminology – Gendered Emotions –

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General Strain Theory

Introduction

One of the most pressing research agendas of feminist criminology is the phenomenon of femicide, commonly defined as the ‘killing of women and girls because of their gender’.⁶⁸⁸ In 2020, 47,000 women and girls worldwide were killed by their intimate partners or family members.⁶⁸⁹ One possible response to this urgent problem is seen in the criminal law. Legal systems around the world show different ways of addressing lethal violence against women.⁶⁹⁰ Countries in the Americas have been leading the effort with the introduction of specific femicide offences.⁶⁹¹ Some European countries have followed this example⁶⁹², while others, like Austria and the Netherlands, have implemented aggravating circumstances when the victim is an intimate partner.⁶⁹³ Others, like Spain, have introduced aggravating circumstances based on gender-based motives.⁶⁹⁴

When evaluating these legal responses to femicide, the perspective of feminist criminology can expand the traditional angle of legal research. It can potentially reveal

⁶⁸⁸ See Shalva Weil, ‘Research and Prevention of Femicide across Europe’, in *Femicide across Europe: Theory, Research and Prevention*, ed. Shalva Weil et al. (Policy Press, 2018), 1, <https://doi.org/10.51952A/9781447347163>.

⁶⁸⁹ Office on Drugs and Crime (UNODC), ‘Killings of Women and Girls by Their Intimate Partner or Other Family Members.’, United Nations, 2021, <https://www.unodc.org/unodc/frontpage/2021/November/unodc-research-2020-saw-every-11-minutes-a-woman-or-girl-being-killed-by-someone-in-their-family.html>; for Europe cf. Marieke Liem et al., ‘Patterns of Female Homicide Victimization in Western Europe’, *International Criminology* 4, no. 2 (2024): 177–90, <https://doi.org/10.1007/s43576-024-00127-3>.

⁶⁹⁰ There is no big comparative study completed yet, cf. the ongoing project Konstanze Jarvers et al., ‘The Criminalization of Femicide: A Comparative Legal Perspective’, Max Plank Institute for the Study of Crime, Security and Law, accessed 24 July 2025, <https://csl.mpg.de/en/projects/criminalization-of-femicide>

⁶⁹¹ See e.g. Santillán Andrade Julián Rodolfo et al., ‘Analysis between Femicide and Feminicide in Comparative Criminal Law’, *Kurdish Studies* 12, no. 1 (2024): 1, <http://dx.doi.org/10.47152/rkkp.62.3.4>; Patsilí Toledo Vásquez, ‘Femicide/Feminicide and Legislation’, in *The Routledge International Handbook on Femicide and Feminicide*, ed. Myrna Dawson and Saide Mobayed (Routledge, 2023), 412, <https://doi.org/10.4324/9781003202332>.

⁶⁹² Croatia as the latest example, Iva Čatipović and Mirjana Kučer, ‘Femicide as a Separate Criminal Offense: A Milestone in Croatia’, Magazine, *Woman Against Violence Europe*, 4 April 2024, <https://wave-network.org/femicide-criminal-offense-croatia/>

⁶⁹³ Cf. Vásquez, ‘Femicide/Feminicide and Legislation’, 412–13.

⁶⁹⁴ Cf. Vásquez, ‘Femicide/Feminicide and Legislation’, 413.

gender biases leading to failures in adequate criminalisation, to lay the groundwork for future change. Combining legal studies and feminist criminology, this paper focuses on the response to femicide by the German criminal law of homicide⁶⁹⁵. In Germany, femicide has long been a topic of public concern.⁶⁹⁶ Similar to Spain, in late 2023, the German legislator changed a sentencing provision to recognise ‘gender-specific’ motives as aggravating circumstances for all crimes.⁶⁹⁷ Recently, laws strengthening access to help centres for women have been passed by both legislative chambers.⁶⁹⁸ Calls for a specific offence of femicide, however, have not been answered.⁶⁹⁹

Femicide may be punished either as aggravated murder⁷⁰⁰ (*Mord*) under § 211 *Strafgesetzbuch* (German Criminal Code, ‘StGB’), carrying a mandatory life sentence or as murder (*Totschlag*) under § 212 StGB, punished with prison between one and fifteen years.⁷⁰¹ The newly introduced gender-specific aggravating circumstances (§ 46 StGB) only become relevant when determining the sentence within the range under murder (§ 212 StGB).⁷⁰² Therefore, the labelling of femicide as murder

⁶⁹⁵ For an overview in English, see Antje du Bois-Pedain, ‘Intentional Killings: The German Law’, in *Homicide Law in Comparative Perspective*, ed. John Horder (Hart Publishing, 2007), <https://ebookcentral.proquest.com/lib/ed/detail.action?docID=1772419>

⁶⁹⁶ SWR, ‘Weltfrauentag: Zahlreiche Veranstaltungen in BW - SPD Fordert Lebenslange Haft Für Femizide.’, 8 March 2023, <https://www.swr.de/swraktuell/baden-wuerttemberg/weltfrauentag-forderung-haertere-strafen-femizide-100.html>

⁶⁹⁷ Cf. the new § 46 StGB, changed by Gesetz Zur Überarbeitung Des Sanktionenrechts – Ersatzfreiheitsstrafe, Strafzumessung, Auflagen Und Weisungen Sowie Unterbringung In Einer Entziehungsanstalt, BGBl. 2023 I. no. 203. Accessed 25 July 2025. <https://www.recht.bund.de/eli/bund/bgbl-1/2023/203>

⁶⁹⁸ Deutschlandfunk, ‘Gesetz Für Besseren Schutz von Frauen Vor Gewalt Gebilligt.’, 14 February 2025, <https://www.deutschlandfunk.de/gesetz-fuer-besseren-schutz-von-frauen-vor-gewalt-gebilligt-100.html>.

⁶⁹⁹ Hanna Welte, ‘Femizide Im Fokus’, *Verfassungsblog*, 17 September 2024, <https://verfassungsblog.de/femizide-neues-mordmerkmal/>

⁷⁰⁰ There is no uniform terminology in the English language, cf. for example Michael Bohlander, *The German Criminal Code: A Modern English Translation* (Bloomsbury, 2008), <https://ebookcentral.proquest.com/lib/ed/detail.action?docID=1772746>; du Bois-Pedain, ‘Intentional Killings: The German Law’. I use murder for *Totschlag* and aggravated murder for *Mord* here to make it more convenient for an international audience, however awkward this terminology may be for a German lawyer. Equally, I do not engage with the dispute between case law and doctrine about the nature and relationship of §§ 211, 212 StGB, since it has no relevance in this context.

⁷⁰¹ When qualified as the latter (§ 212 StGB), the gender-specific motives (§ 46 StGB) must be considered when determining the sentence.

⁷⁰² There is no clarity so far, how courts are dealing with the broad idea of gender-specific aggravating circumstances, cf. Leonie Steinl, ‘Die Aktuelle Novellierung Der Beweggründe Und Ziele Des Täters Im Rahmen Des § 46 Abs. 2 S. 2 StGB’, *NStZ* 45, no. 3 (2025): 129–34.

(§ 212 StGB) or aggravated murder (§ 211 StGB) did not become obsolete, since aggravated murder holds symbolic value, expressing the highest degree of culpability and the mandatory life sentence.

Qualifying a killing as aggravated murder (§ 211 StGB) requires *inter alia* the motive of ‘despicable reasons’ (*sonstige niedrige Beweggründe*). This broad and catch-all term carries heavy moral connotations and conceptions of ‘normal’ behaviour. The open and indeterminate nature of the term ‘despicable reasons’ makes the labelling of femicide in Germany an interesting case study for the persistence of gendered norms and ideas in criminal law. To allow a more in-depth analysis, I mainly examine cases involving the killing of women in the context of the break-up of an intimate partner relationship, commonly referred to as intimate partner femicide.⁷⁰³

I argue that the doctrinal understanding of the statutory term ‘despicable reasons’ in the context of femicide both reflects and perpetuates gender biases. The gendered concept of ‘normal psychological motives’ operates as a presumption against classifying intimate partner femicide as aggravated murder under § 211 StGB. I propose a revision of case law that recognises the gendered link between emotion and violence, not as a presumption against ‘despicableness’, but as a relevant factor in assessing whether the overall circumstances reflect patriarchal notions of entitlement, thereby rendering the motive ‘despicable’.

My argument is based on relevant case law⁷⁰⁴, critical scholarship, and the contributions of feminist criminology.⁷⁰⁵ Importantly, I focus solely on the case law of the Federal Supreme Court of Germany (*Bundesgerichtshof, BGH*).⁷⁰⁶ The *BGH* is the

⁷⁰³ It is also the most common form of femicide in Germany, see Karin Herbers et al., ‘Tötungsdelikte an Frauen Durch (Ex) Intimpartner’, *Kriminalistik* 61, no. 6 (2007): 377.

⁷⁰⁴ German case law in Criminal law is almost exclusively available in German; This means all terms and quotations are my translations. German case law in this article is cited similarly to the common style in German scholarship; for criminal law terms, see fn. 13.

⁷⁰⁵ For a historical summary of feminist criminology: Michael Burman and Loraine Gelsthorpe, ‘Feminist Criminology: Inequalities, Powerlessness, and Justice’, in *The Oxford Handbook of Criminology*, 7th ed, ed. Alison Liebling et al. (Oxford University Press, 2023), 2023. <https://doi.org/10.1093/oxe/9780198860914.001.0001>

⁷⁰⁶ In Civil Law jurisdictions, a detailed exegesis of singular, specific judgments is rare. Instead, case law is used to describe the settled understanding of the interpretation of the law expressed in the whole body of case law and systematised by doctrinal scholarship.

highest instance of criminal law matters in Germany and reviews the application of the law by lower courts. Even though its decisions are not binding precedent in the sense of the common law tradition, they hold a *de facto* binding effect on lower courts.⁷⁰⁷ The chosen doctrinal analysis approach is naturally limited since it leaves out the resulting ‘law in action’ in lower courts and has limited explanatory potential for the underlying social practice, restricted to what judges write in their judgments. To the extent possible, these shortcomings are mitigated through the inclusion of criminological findings.

This paper is structured into two main parts: The first part dives deeper into the legal framework of intimate partner femicide (A). The second part presents my critique of the case law and the ‘normal psychological motives’ (B).

A. The Legal Framework in Germany – Law, Empirical Data and Critique

In the first half of the paper, I outline the legal framework in Germany concerning intimate partner femicide. I begin by providing further details on the relevant statutes and their interpretations by the *BGH* (1). Then, I present empirical data regarding intimate partner femicide and convictions in Germany (2). Finally, I conclude this section with a brief overview of existing critiques of the case law (3).

1. The Law

In the context of femicide and the criminal law, it is important to note that Germany has adopted the ‘Council of Europe Convention on preventing and combating violence against women and domestic violence’, also known as ‘the Istanbul Convention’.⁷⁰⁸ The contracting states commit themselves *inter alia* to tackle gender-based violence⁷⁰⁹, including femicide.⁷¹⁰ The convention is not directly applicable in Germany

⁷⁰⁷ For a comparative overview of precedent: D. Neil MacCormick et al., eds, *Interpreting Precedents: A Comparative Study* (Routledge, 2016), <https://doi.org/10.4324/9781315251905>

⁷⁰⁸ Council of Europe, ‘Convention on Preventing and Combating Violence Against Women and Domestic Violence’, CETS 210, Istanbul, May 11, 2011, <https://www.coe.int/en/web/istanbul-convention>.

⁷⁰⁹ Cf. Article 1 of the Istanbul Convention; Inga Schuchmann and Leonie Steinl, ‘Femizide – Zur Strafrechtlichen Bewertung von Trennungsbedingten Tötungsdelikten an Intimpartnerinnen’, *Kritische Justiz* 54, no. 3 (2021): 315, <https://doi.org/10.5771/0023-4834-2021-3-312>

⁷¹⁰ Cf. Article 46 lit. a. of the Istanbul Convention.

but binds only the state as a subject of international law. However, the commitments are taken seriously in political and scholarly discourse, and they exert significant influence on the courts' interpretation of the law.⁷¹¹

In general, the law concerning criminal liability for killing another person is exclusively found in the StGB. There is neither a specific offence labelled 'femicide' nor a crime like an aggravated form of domestic abuse. Offences like assault, aggravated assault, etc., may also apply in cases of intimate partner violence, but hold a less severe sentence. Within the law of homicide, the baseline offence is murder (§ 212 StGB). It only requires the intentional killing of another human being and carries a prison sentence of one to fifteen years. When a femicide is qualified as murder (§ 212 StGB), under the new § 46 StGB, gender-specific motives of the perpetrator can lead to a harsher punishment within the sentence range.⁷¹² There are other offences, such as § 222 StGB, punishing negligent killings and alleviated forms of murder, such as § 213 StGB and § 216 StGB. There is one aggravated form of murder, namely, aggravated murder, § 211 StGB. To fall under aggravated murder, the killing must meet specific qualifying factors. These concern the *mode* of the killing, such as killing deviously, cruelly or using means capable of causing widespread destruction; or subjective *motives* such as killing out of a lust for killing, sexual gratification, greed, to enable or to cover up the commission of another crime or other despicable reasons.⁷¹³ In the realm of femicide, deviousness and 'despicable reasons' are most important. If the perpetrator of a femicide is found to meet either of these two criteria, they regularly get a mandatory life sentence. There is no other criterion in § 211 StGB that potentially captures the concept of femicide. Deviousness, as understood in doctrine, may lead to the same result but is not inherent in the situation constituting femicide.⁷¹⁴ For the present purposes, I will therefore only look at 'despicable reasons'.

In general, 'despicable reasons' is an open-textured and deliberately broad. The term ensures that motives that are not enumerated in § 211 StGB but are equally severe

⁷¹¹ Schuchmann and Steinl, 'Tötungsdelikten an Intimpartnerinnen', 323.

⁷¹² Cf. Steinl, 'Novellierung Der Beweggründe'.

⁷¹³ du Bois-Pedain, 'Intentional Killings: The German Law', 66.

⁷¹⁴ Julia Habermann, 'Möglichkeiten Der Sanktionierung von Femiziden Im Deutschen Strafrecht', *Neue Kriminalpolitik* 33, no. 2 (2021): 197, <https://doi.org/doi.org/10.5771/0934-9200-2021-2-189>

are still included in aggravated murder.⁷¹⁵ As the wording already implies, 'despicable reasons' carry heavy moral connotations and conceptions of 'normal' behaviour. The vagueness of this term has been critiqued.⁷¹⁶ However, the case law of the *BGH* has clarified its meaning and rendered it more workable in judicial practice.

Case law regarding the general aspects of § 211 StGB is well settled: 'Despicable' reasons are motives which are generally recognised to be of the basest sort or utterly contemptible.⁷¹⁷ Whether such motives guided the perpetrator must be inferred from an overall assessment of all external and internal factors relevant to the motivation for the offence, including the circumstances, the living conditions and the personality of the offender.⁷¹⁸ The motive for the killing is frequently accompanied by psychological reactions like anger, hatred, envy, and despair. These 'normal psychological motives' will not be regarded by the courts as 'despicable' unless they are based on 'despicable reasons' themselves.⁷¹⁹ The underlying motive for the killing can no longer be seen as 'despicable' if the killing proves to be still somehow humanly comprehensible according to the overall circumstances under normative patterns of interpretation.⁷²⁰ Since those standards are still somewhat vague, the courts operate with roughly five groups of cases:⁷²¹ Cases of unrestrained selfishness or blatant recklessness, blatant disproportion between the killing and the reason for the crime, racially motivated killings, denial of the personal value of the victim and arbitrary selection of persons not involved in a conflict.

All that has been said about 'despicableness' was not specific to femicide or partner femicides. However, there is also a considerable body of case law regarding intimate partner femicides and 'despicable reasons'. The starting point for those cases is that femicide in general or intimate partner femicide is not considered to fall into any of the above categories by default. Instead, it must be decided on a case-by-case basis

⁷¹⁵ Cf. du Bois-Pedain, 'Intentional Killings: The German Law', 68.

⁷¹⁶ Anette Grünwald, *Das Vorsätzliche Tötungsdelikt* (Mohr Siebeck, 2010), 89.

⁷¹⁷ BGH, *NJW* (2019): 3464; for English see du Bois-Pedain, 'Intentional Killings: The German Law', 68.

⁷¹⁸ Schuchmann and Steinl, 'Tötungsdelikten an Intimpartnerinnen', 316; BGH, *NStZ* (2019): 724.

⁷¹⁹ BGH, *NStZ* (2015): 690, 692; Schuchmann and Steinl, 'Tötungsdelikten an Intimpartnerinnen', 317.

⁷²⁰ E.g. BGH, *NStZ* (2019): 204.

⁷²¹ Schuchmann and Steinl, 'Tötungsdelikten an Intimpartnerinnen', 317.

whether the perpetrator's motives meet the general criteria.⁷²²

Looking at intimate partner femicides following a break-up, the *BGH* case law tends to be quite hesitant in situations where a man kills his (former) intimate partner.⁷²³ An earlier formulation by the *BGH* expressed the rationale that by killing the victim, who had or intended to break up, '[...] the defendant deprives himself of what he actually does not want to lose'.⁷²⁴ The wording has rightly been critiqued for implying a patriarchal sense of entitlement over women.⁷²⁵ Since 2008, the *BGH* has not used this formulation.⁷²⁶ However, the fact of a victim-induced break-up is still counted against 'despicableness'.⁷²⁷ Because of 'despair and inner hopelessness'⁷²⁸, the perpetrator is not regarded as reaching the threshold of 'despicableness'. This way, when the break-up originated from the (killed) intimate partner, the lethal reaction to that breakup, dominated by despair and emotion, is explicitly held *not* to be a sufficient 'despicable reason' to convict the perpetrator under § 211 StGB.

Interestingly, in another category of cases, the courts are more willing to classify such femicides as 'despicable': The so-called 'honour-killings'.⁷²⁹ In those cases, men with 'foreign', non-European cultural backgrounds kill their wives after they try to break out of a relationship. Their motive is found to be dominated by a patriarchal claim to power and claimed possession of the female victim. In those situations, such motives

⁷²² Florian Rebmann, 'Trennungstötungen als Mord – nun auch in der Rechtsprechung?', Deutsches Institut für Menschenrechte, 2023, 7, https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/GGDB/Rebmann_Entscheidungsbesprechung_10_07_2023.pdf; cf. Schuchmann and Steinl, 'Tötungsdelikten an Intimpartnerinnen', 316.

⁷²³ For a detailed discussion Julia Habermann, *Partnerinnentötungen und deren gerichtliche Sanktionierung eine vergleichende Urteilsanalyse zu Partnerinnentötungen als Form des Femizids* (Springer, 2023), 122–26.

⁷²⁴ Most frequently cited case BGH, *NStZ* (2004): 34; also e.g. BGH, *NStZ-RR* (2005): 340, 342.

⁷²⁵ Habermann, 'Sanktionierung von Femiziden', 194.

⁷²⁶ Schuchmann and Steinl, 'Tötungsdelikten an Intimpartnerinnen', 318; however, another decision BGH, *StV* (2021): 111 irritated with the formulation 'unfounded claims of [] ownership', critically discussed in Habermann, *Partnerinnentötungen*, 125.

⁷²⁷ BGH, *NStZ-RR* (2018): 177; BGH, *NStZ* (2019): 204; BGH, *NStZ* (2019): 518; BGH, *NStZ* (2024): 673; Steinl, 'Novellierung Der Beweggründe', 131; see also Rebmann, 'Trennungstötungen als Mord', 7.

⁷²⁸ E.g. BGH, *NStZ* (2004): 34, BGH, *NStZ-RR* (2007): 14; BGH, *NStZ* (2024): 673.

⁷²⁹ Cf. Julia Kasselt, *Ehre Im Spiegel Der Justiz. Eine Untersuchung Zur Praxis Deutscher Schwurgerichte Im Umgang Mit Dem Phänomen Der Ehrenmorde* (Duncker & Humblot, 2016).

regularly reach the threshold of 'despicableness'.⁷³⁰ The emphasis here, however, is not on the general idea of femicide, but on the alleged underlying patriarchal values of a 'foreign' background.

In conclusion, the legal framework does not automatically label intimate partner femicides as aggravated murder *per se*. Instead, it views the emotional reaction to the partner's break-up as pointing away from being 'despicable', implying a degree of understanding for those killings.

2. The Empirical Data

Before turning to the critique of the case law, it is useful to first examine the available crime statistics and conviction rates. Official statistics in Germany do not give conclusive evidence relating to intimate partner femicide. The criminal statistic by the police (*Polizeiliche Kriminalstatistik*) includes information about suspects and victims. This way we can, e.g. see that around 85% of the perpetrators of homicide are male⁷³¹, and from 2015-2017, every second to third female homicide victim was or had been in a relationship with the perpetrator.⁷³² This data, however, does not provide any information about convictions and sentences. In turn, the official conviction statistic (*Strafverfolgungsstatistik*), on the other hand, does not include any variable of gender and relationship status for perpetrators and victims.⁷³³ Therefore, official statistics do not give a full picture regarding intimate partner violence or femicide.

Instead, we must turn to criminology scholarship. *Kasselt* investigated case-law

⁷³⁰ BGH, *NStZ* (2002): 369; BGH, *NJW* (2006): 1008, 1011; BGH *NStZ* (2020): 86; BGH, *NStZ* (2020): 617; Schuchmann and Steinl, 'Tötungsdelikten an Intimpartnerinnen', 325; also Habermann, 'Sanktionierung von Femiziden', 196.

⁷³¹ Bundeskriminalamt (BKA), 'Polizeiliche Kriminalstatistik 2024. Tatverdächtige Nach Alter Und Geschlecht', version 1.0, 4 February 2025, https://www.bka.de/SharedDocs/Downloads/DE/Publikationen/PolizeilicheKriminalstatistik/2024/Bund/Tatverdaechtige/BU-TV-01-T20-TV_xls.xlsx?__blob=publicationFile&v=3; Habermann,

Partnerinnentötungen, 57.

⁷³² Habermann, *Partnerinnentötungen*, 58–59.

⁷³³ Habermann, *Partnerinnentötungen*, 6.

dealing with the so-called honour killings but used intimate partner femicide as a comparator.⁷³⁴ Two-thirds of intimate partner femicide perpetrators from her sample were convicted of murder (§ 212 StGB), one-third of aggravated murder (§ 211 StGB). Almost two-thirds of the latter convictions were characterised as ‘devious, and one third involved ‘despicable reasons’.⁷³⁵

The most recent and comprehensive work is *Habermann’s* from 2023.⁷³⁶ She looked at 472 male perpetrators of homicide who were sentenced between 2015 and 2017, comparing intimate partner femicide⁷³⁷ with other kinds of homicide. 33% of all 472 homicides were intimate partner femicides. One-third of these perpetrators were convicted of aggravated murder (§ 211 StGB) and two-thirds were convicted of murder (§ 212 StGB). Other kinds of homicides were split 50/50.⁷³⁸ The findings of *Habermann* and *Kasselt* therefore align. For aggravated murder (§ 211 StGB), *Habermann* further shows that in half of all intimate partner femicide cases, ‘despicable reasons’ were discussed but only affirmed in one out of seven cases (46% of aggravated murder convictions contained ‘despicable reasons’).⁷³⁹ For murder (§ 212 StGB), *Habermann* did not find a significant difference in sentence length between intimate partner homicide and other homicide cases. Interestingly, intimate partner homicide in the context of a break-up carried a murder sentence which was, on average, ten months longer compared to other kinds of homicide.⁷⁴⁰

These empirical findings demonstrate two important things for the present paper: Firstly, the data backs up the claim that intimate partner femicides are significantly less likely to be convicted as aggravated murder (§ 211 StGB) than other kinds of homicide. Since *Habermann’s* study was mainly quantitative,⁷⁴¹ it cannot tell us why or with what justification courts declined to punish intimate partner homicides as aggravated murder

⁷³⁴ Kasselt, *Ehrenmorde*.

⁷³⁵ Kasselt, *Ehrenmorde*; useful summary, Habermann, *Partnerinnentötungen*, 226.

⁷³⁶ Habermann, *Partnerinnentötungen*.

⁷³⁷ *Habermann* uses a German phrase that would be translated to intimate partner ‘homicide’. Importantly, she does not only focus on intimate partner femicides in the context of break-ups like this paper does.

⁷³⁸ Habermann, *Partnerinnentötungen*, 300, 406.

⁷³⁹ Habermann, *Partnerinnentötungen*, 304, 412.

⁷⁴⁰ Habermann, *Partnerinnentötungen*, 410–11.

⁷⁴¹ Habermann, *Partnerinnentötungen*, 411.

(§ 211 StGB). This data, however, supports the hypothesis that there is a difference in the legal standards that make it more likely for courts to deny a conviction for aggravated murder (§ 211 StGB) due to ‘despicable reasons’ in cases of all intimate partner femicides.⁷⁴² Secondly, *Habermann* shows that on a sentencing level in the case of murder (§ 211 StGB), an imbalance cannot be found. On the contrary, even before the introduction of aggravating, gender-specific circumstances in sentencing, the sentences in break-up cases seem higher than for other forms of homicide. These findings show that this paper is right to focus on the labelling of femicide as aggravated murder as the most pressing issue.

3. The Critique

It is interesting to note that the critique of this practice has yet to reach the attention of broad, mainstream scholarship.⁷⁴³ The critique can be put into three different categories. First, there is the general critique of arbitrary results in the case law of break-up femicide cases, which have been labelled as ‘*laissez-faire, laissez-aller*’ and detached from any general rules.⁷⁴⁴ Proposed solutions suggest considering the perpetrator's previous behaviour and thus establishing a normative account of ‘responsibility’ for the break-up.⁷⁴⁵ Interestingly, this critique was explicitly rejected by the *BGH*.⁷⁴⁶ The second level of criticism builds upon the fact that femicide, especially following a break-up, can easily be put into existing categories. Here, it is also critiqued that ‘honour-killings’ are treated differently from femicides in a ‘domestic’ setting.⁷⁴⁷ These scholars demand a generalist approach to the underlying patriarchal structures

⁷⁴² Her subgroup of break-up intimate partner femicide shows that, compared to other forms of homicide, despicable reasons are more likely to be discussed in judgements but equally likely (around 30%) to be affirmed in the end, cf. *Habermann, Partnerinnentötungen*, 306-307 (Tables 11.28, 11.29).

⁷⁴³ Critical voices are found mostly in journals and not in extensive general commentaries that are the most common form of doctrinal scholarship (Dogmatik) in Germany; making this point: *Habermann, ‘Sanktionierung von Femiziden’*, 194.

⁷⁴⁴ Hartmut Schneider, ‘Trennungstötungen Als Mord: Eine Rechtsprechungsanalyse Und Eine Anregung an Den Gesetzgeber.’, *Zeitschrift Für Rechtspolitik* 54, no. 6 (2021): 185.

⁷⁴⁵ Schneider, ‘Trennungstötungen Als Mord’, 185; Anette Grünwald, ‘Niedrige Beweggründe Bei Tötung Des Intimpartners: Anmerkungen Zu BGH NStZ 2019, 518’, *NStZ* 39 (2019): 518.

⁷⁴⁶ BGH, *NStZ* (2019): 518.

⁷⁴⁷ Jens Foljanty and Christina Lembke, ‘Die Konstruktion Des Anderen in Der ‘Ehrenmord’-Rechtsprechung’, *Kritische Justiz* 47, no. 3 (2014): 298; Kasselt, *Ehrenmorde*; also see Schuchmann and Steinl, ‘Tötungsdelikten an Intimpartnerinnen’, 325.

of intimate partner femicide without ‘othering’ cases with a foreign cultural background.⁷⁴⁸ Finally, there is a more general critique of these cases and their underlying gender perspectives.⁷⁴⁹ The courts’ emphasis on the break-up is patriarchal because it labels female behaviour as right or wrong.⁷⁵⁰ Therefore, the woman’s (constitutional) freedom to end a relationship is not respected, and ideas of male possession over female partners are confirmed.

In conclusion, the first half of this paper showed how the legal framework does not label intimate partner femicides as aggravated murder (§ 211 StGB) *per se*. Instead, the legal standard sees the emotional reaction to the partner’s break-up as pointing away from being ‘despicable’, implying a degree of understanding for those killings. These findings can partly be mirrored in the empirical data showing that intimate partner femicide is less often punished as aggravated murder (§ 211 StGB) than other forms of homicide. There are already different strands of critique levelled against the case law. However, I want to build on the existing critique and highlight another problem of the *status quo*. As *Habermann* proposed,⁷⁵¹ we must determine what role emotions such as anger and despair should play in the assessment of ‘despicableness’ in intimate partner femicide at all.

B. Male-centred Norms and Beyond

After outlining the legal framework in Germany, the second half presents my critique of current legal practice. I begin with insights from feminist criminology on gendered violence and emotion (1). Building on this, I critique the gendered interpretation of ‘normal psychological motives’ in case law (2). Finally, I propose possible solutions (3).

⁷⁴⁸ Schuchmann and Steinl, ‘Tötungsdelikten an Intimpartnerinnen’, 326; Habermann, *Partnerinnentötungen*, 134.

⁷⁴⁹ Habermann, ‘Sanktionierung von Femiziden’.

⁷⁵⁰ Schuchmann and Steinl, ‘Tötungsdelikten an Intimpartnerinnen’, 327.

⁷⁵¹ But has not yet done, Habermann, ‘Sanktionierung von Femiziden’, 199.

1. Insights from Feminist Criminology

Feminist criminology has made it impossible to disregard gender as a fundamental analytical category in the study of crime. Feminism has thus reoriented the criminological perspective on sex, showing its importance for understanding crime patterns and rates, involvement in crime, and victimisation experiences.⁷⁵² By now, feminist criminology research is a vast, ever-growing field. For this paper, it will suffice to rely on a few basic points about gendered violence and intimate partner femicide.

The most fundamental finding is that males offend significantly more than females.⁷⁵³ Not only do they offend more, but differently: Women are more likely to engage in property crimes than violent or drug crimes, whereas men are thought to be responsible for up to 82% of violence against the person offences.⁷⁵⁴ Men are more likely to become victims of crimes in general, but importantly, women are the typical victims of certain specific crimes. One of these types is intimate partner and family violence. One of the most extreme forms of victimisation of women is femicide.⁷⁵⁵ Data suggests that worldwide in the year 2020, some 47,000 women and girls were killed by their intimate partners or family members.⁷⁵⁶ Intimate partner femicides are therefore the most common form of femicide. Specifically, men are more likely to respond to a break-up with lethal violence. Those intimate partner femicides usually occur in domestic settings and are preceded by a confrontation in that setting. This lethal violence is thought to be a reaction to a loss of control and possession over the female partner. It follows the logic of 'if I can't have her, no one can'.⁷⁵⁷

Emotion as a reaction and reacting to that emotion is another important aspect within

⁷⁵² Burman and Gelsthorpe, 'Feminist Criminology', 376.

⁷⁵³ Lisa M. Broidy and Robert Agnew, 'Gender and Crime: A General Strain Theory Perspective', *Journal of Research in Crime and Delinquency* 34, no. 3 (1997): 275, <https://doi.org/10.1177/0022427897034003001>

⁷⁵⁴ Barbara A. Koons-Witt and Peter J. Schram, 'The Prevalence and Nature of Violent Offending by Females', *Journal of Criminal Justice* 31, no. 4 (2003): 361, [https://doi.org/10.1016/S0047-2352\(03\)00028-X](https://doi.org/10.1016/S0047-2352(03)00028-X)

⁷⁵⁵ See Weil, 'Research and Prevention of Femicide across Europe', 1–2.

⁷⁵⁶ Office on Drugs and Crime (UNODC), 'Killings of Women and Girls by Their Intimate Partner or Other Family Members.'

⁷⁵⁷ James W. Messerschmidt, 'Masculinities and Femicide', *Qualitative Sociology Review* 13, no. 3 (2017): 70.

the research on gendered violence. Analysis of the connection between emotion and deviance is often based on general or gendered strain theory.⁷⁵⁸ Broadly, strain theory looks at deviance as a reaction to external pressure of various sorts. This research shows that males and females who are exposed to external stress react similarly with anger, guilt, etc., but they differ in the way they cope with these emotions. Males tend to externally react to strain while females tend to deal with it internally, reducing their propensity to cope through criminal acts.⁷⁵⁹ And – again – they react with different types of offences. Interestingly, there is research explicitly pointing out the interchangeability of gender socialisation and gender identity within that research.⁷⁶⁰

2. Critiquing ‘normal psychological motives’

With these insights in mind, I now turn back to the legal practice described in (A). The *status quo* holds that lethal violence expressing emotions like anger, hatred, despair and envy is not in itself sufficient to establish ‘despicable reasons’. These ‘normal psychological motives’ must build upon ‘despicable reasons’ themselves. As shown above, the *BGH* treats the emotional and lethal reaction in cases of intimate partner femicides following a victim-induced break-up not as building upon such ‘despicable reasons themselves’. Instead, the case law stresses the conflicting motives, ‘despair and inner hopelessness’ of the perpetrator killing a person, whom he does not actually want to lose. This way, courts raise the threshold to classify intimate partner femicide as ‘despicable’. *Steinl* has previously argued that the standard of the *BGH* takes the fact of the separation out of the context of ‘normal psychological motives’ and uses it in the perpetrator’s favour, independently of the underlying motivation of the

⁷⁵⁸ Broidy and Agnew, ‘Gender and Crime: A General Strain Theory Perspective’, 275.

⁷⁵⁹ Stacy De Coster, and R. C. Zito, ‘Gender and General Strain Theory: The Gendering of Emotional Experiences and Expressions.’, *Journal of Contemporary Criminal Justice* 26, no. 2 (2010): 227, <https://doi.org/10.1177/1043986209359853>; Deena Scott and Toniqua Mikell, ‘Gender and General Strain Theory: Investigating the Impact of Gender Socialization on Young Women’s Criminal Outcomes.’, *Journal of Crime and Justice* 42, no. 4 (2018): 393, <https://doi.org/10.1080/0735648X.2018.1559754>

⁷⁶⁰ Scott and Mikell, ‘Gender and General Strain Theory’; Michael L. Swinehart and Travis J. Mowen, ‘Doing Gender and Doing Crime: The Influence of Biological Sex and Gender Identity on Crime’, *Deviant Behavior* 45, no. 10 (2024): 1482, <https://doi.org/10.1080/01639625.2024.2306294>

offender.⁷⁶¹

I seek to build on this and give further support for why reference to the idea of ‘normal psychological motives’ itself is misplaced in the context of intimate partner femicide and effectively hides the actual underlying gendered dimension of intimate partner femicide following a break-up. Consistent with strain theory (‘strain → negative emotion → deviance pathway’),⁷⁶² we can make out three underlying elements: A trigger event in the form of the break-up as ‘strain’, an emotional reaction as ‘negative emotion’ and the use of lethal violence in acting out on those emotions as ‘deviance pathway’. All of them are casually connected. The event of a break-up by the intimate partner triggers an emotional response. This emotional response leads to a lethal response, killing the partner.

The starting point of my critique is that the courts’ concept of ‘normal psychological motives’ for killings, such as anger, hatred, despair and envy, is labelling the specific connection trigger-emotion-violence as ‘normal’.

As a normative concept, the doctrine of ‘despicable reasons’ operates through contrasts: the somewhat normal versus the utterly contemptible. For instance, the emotionally hurt husband killing his wife out of pure desperation is still somehow humanly comprehensible, whereas the patriarchal migrant killing his wife is framed as unthinkable. Although even the comprehensible killing remains punishable under murder (§ 212 StGB), the ‘normal’ motives for killing a person are still not considered to be ‘good’. However, because they retain some degree of comprehensibility, they do not meet the threshold of moral reprehensibility required for aggravated murder (§ 211 StGB).

But what kind of ‘normal’ are courts contemplating in the case of intimate partner femicide? The case law in intimate partner femicide implies that it is ‘normal’ – and

⁷⁶¹ Steinl, ‘Novellierung Der Beweggründe’, 130–31; Schuchmann and Steinl, ‘Tötungsdelikten an Intimpartnerinnen’.

⁷⁶² Broidy and Agnew, ‘Gender and Crime: A General Strain Theory Perspective’, 151; Christopher Posick et al., ‘Do Boys Fight and Girls Cut? A General Strain Theory Approach to Gender and Deviance’, *Deviant Behavior* 34, no. 9 (2013): 685, <https://doi.org/10.1080/01639625.2012.748626>

therefore somehow comprehensible – to act upon emotions caused by rejection with lethal violence. The connection between emotional distress and the resulting killings is somewhat considered ‘normal’. This normative idea of ‘normal’ obscures the fact that the normality often tends to be male-centric. Here, the feminist criminological findings become especially relevant. As criminological research suggests, men and women deal differently with external stress and triggered emotions.⁷⁶³ Both genders may react with violent behaviour, but serious violence is a predominantly male problem.⁷⁶⁴ The connection between strain, emotion and violence is itself deeply gendered.

Thus, when the *BGH* is invoking ‘normal psychological motives’ such as despair and inner hopelessness, practically presuming the absence of ‘despicable reasons’, the court is doing so with a male understanding of what is ‘normal’. Without reflecting on gendered psychological differences, the *BGH* is normalising the break-up-emotion-violence connection. While dealing with cases of gendered violence, Courts further cement a male understanding of the ‘normal’ that prevents them from getting to the root of the actual problem: The male imbalance of killings following a break-up by an intimate partner.

One response to this critique could be that the law is (implicitly) or should be split in half,⁷⁶⁵ and the applicable standards of ‘despicableness’ are gendered themselves. Following this logic, ‘normal’ is implicitly adjusted to the individual perpetrator: Normal psychological motives for killings *for men*. However, the standard neither implicitly is nor should it be split in half.

First, even if such a split would be a good idea, courts do not make this distinction

⁷⁶³ From the perspective of modern control theory cf. Michael R. Gottfredson and Mikaela S. Nielsen, ‘Intimate Partner Violence, Femicide, and General Theories: Issues for Research and Policy From the View of Modern Control Theory’, *Journal of Contemporary Criminal Justice* 40, no. 2 (2024): 247–71, <https://doi.org/10.1177/10439862241245838>

⁷⁶⁴ De Coster, and Zito, ‘Gender and General Strain Theory’, 227; Scott and Mikell, ‘Gender and General Strain Theory’, 393; critical regarding the gendered connection between ‘self-control’ and violence, see Laura M. Gullledge et al., ‘Self-Control and Intimate Partner Violence: Does Gender Matter?’, *Deviant Behavior* 44, no. 5 (2022): 785–804, <https://doi.org/10.1080/01639625.2022.2102454>

⁷⁶⁵ Or potentially into many more parts.

explicit. It is unlikely that they do so *implicitly*, but at the very least, they use a generic, non-gendered wording of ordinance. Courts do not acknowledge a gendered reality in human behaviour in these cases, instead referring to the male reality as universal.

Second, making this distinction along gender lines would cement gender differences instead of solving them. As pointed out above, there is evidence that the gender gap does not so much depend on *biology*, but on *socialisation*. It is not the male brain unable to resist violence, but masculinity in a patriarchal society, that makes men more likely to react with lethal violence. But if socialisation is the problem, why would we be content with applying two different standards depending on gender? A particular group being statistically more likely to commit certain offences does not mean that the criminal courts hold back from punishing them. Even though there is overwhelming evidence that economic strain and poverty increase the likelihood of (minor) property crimes like theft, the courts still identify these crimes as theft.

In general, criminal law represents one possible option to combat gendered violence and hardship. The state shall nudge and steer behaviour by punishing harmful behaviour and encouraging righteous behaviour. In a free and equal society, it is expected of everyone to accept a partner's free decision to part ways, even if it means emotional distress and heartbreak. This applies to all genders equally. Even if men are statistically more likely to react in a certain way, the fact remains that intimate partner femicides are unwanted behaviour and should be labelled accordingly, no matter by which gender they are committed (especially since differential behaviour is a product of socialisation and therefore changeable).

All of this means that the courts should abandon their repeated overreliance on 'normal psychological motives' of perpetrators who kill in 'despair and inner hopelessness'. Not only because it paints a picture of a spontaneous, desperate and somehow comprehensible act of defence which does not square with reality.⁷⁶⁶ But because the underlying idea of 'normality' itself is gendered, and is therefore an inadequate answer to gendered violence. Courts must be open to the possibility that lethal violence as an

⁷⁶⁶ Disputing the spontaneous character of most femicides including following a break-up, Habermann, *Partnerinnentötungen*, 404.

emotional reaction to a woman exercising her right to freely and independently decide over her relationship can (and often will) indeed be ‘despicable’.

3. The Possible Solutions

The starting point of any solution is a change within the case law of the *BGH*. The broad statutory concept of ‘despicable reasons’ already brings the necessary tool in German criminal law to adequately label femicide.⁷⁶⁷ Currently, however, criminal courts are unable to accurately label intimate partner violence because references to ‘normal psychological motives’ in case law obscure their view of the problem in the first place. The gendered connection between emotion and lethal violence shows that ‘normal psychological motives’ are themselves part of the gendered dimension of crime.

Importantly, I do not go as far as arguing for an understanding that sees every emotional, lethal response in the context of femicide as ‘despicable’ *per se*. Such an approach would fail to map the diversity of femicide cases accurately and, on its own, would not reach the threshold of culpability necessary for aggravated murder (§ 211 StGB). Instead, the gendered connection between emotion and lethal violence should be another factor to be considered when courts are determining whether the overall circumstances hint towards patriarchal ideas of entitlement and are therefore rendering the motive ‘despicable’.⁷⁶⁸

Whether a certain case shows those characteristics is to be determined by the particular court. This proposal, however, is contrary to the current practice of counting the gendered connection of violence and emotion in favour of the perpetrator as ‘the normal’ and raising the threshold for ‘despicableness’. A recent and promising *obiter dictum* of a different senate hints towards some movement in the right direction within

⁷⁶⁷ Of course, there remains the legitimate argument of a symbolic signal that a specific offence would bring. In case of an effective change of the case law and a swift and coherent solution, I am of the view that the German criminal law does not necessarily need a signal beyond the recently introduced ‘gender-specific’ motives in the new § 46 StGB.

⁷⁶⁸ Making a similar point, Steinl, ‘Novellierung Der Beweggründe’, 130–31; Habermann, *Partnerinnentötungen*, 413; Habermann, ‘Sanktionierung von Femiziden’, 194; Rebmann, ‘Trennungstötungen als Mord’, 10.

the case law of the *BGH*.⁷⁶⁹ Other judgments seem to be continuing the old line of case law.⁷⁷⁰ Overall, it seems too early to tell which direction the *BGH* will take.⁷⁷¹

On a second level, a change in the case law must be accompanied by a broad doctrinal discussion. Scholarship needs to establish a robust doctrinal category of femicide and its different forms.⁷⁷² Especially in Germany, the doctrinal discussions (*Dogmatik*) are an important driver of inspiration and change for courts.⁷⁷³ Such a discussion should be in a dialogue with the social sciences,⁷⁷⁴ and centre around categories of patriarchal motives, ideas of possession of women and gendered connection of emotion and violence.⁷⁷⁵

Finally, these solutions nevertheless remain superficial. For a more lasting change, general awareness of the gendered perspective of violence within the legal profession should be fostered. Such an approach may take many forms, like workshops and training for practising judges and prosecutors,⁷⁷⁶ more female voices in courts and a legal education that goes beyond doctrinal understanding of the law and towards critical reflection of the law through a feminist lens. Only if all of those levels are working in sync can violence against women be accurately addressed within the existing legal framework and practice.

⁷⁶⁹ The 5th senate of the BGH is turning in the outlined direction: BGH, *NStZ* (2023): 340; sceptical concerning the message in victim induced break-ups, Rebmann, 'Trennungstötungen als Mord', 10–11.

⁷⁷⁰ See e.g. the 1st senate in BGH, *NStZ* (2024), 673.

⁷⁷¹ Hopeful that the new legislation concerning aggravating circumstances might also affect case law concerning despicable reasons, Steinl, 'Die Aktuelle Novellierung Der Beweggründe Und Ziele Des Täters Im Rahmen Des § 46 Abs. 2 S. 2 StGB'.

⁷⁷² Calling to give up the exclusive focus on 'honour-killings' in legal commentary Habermann, *Partnerinnentötungen*, 136–37.

⁷⁷³ For an interesting example in the American discourse and the provocation defence, see e.g. Carolyn B. Ramsey, 'Comparative Insights on Feminist Homicide Law Reform', *The Journal of Criminal Law & Criminology* 100, no. 1 (2010): 33–108, <https://heinonline.org/HOL/P?h=hein.journals/jclc100&i=35>.

⁷⁷⁴ See Habermann, *Partnerinnentötungen*, 414–15.

⁷⁷⁵ Habermann, *Partnerinnentötungen*, 406.

⁷⁷⁶ Proposing points for police intervention in prevention of separation conflicts in Germany Stefanie Horn et al., 'Intimate Partner Homicide: Risk Constellations in Separation Conflicts and Points of Intervention for the Police', *Policing: A Journal of Policy and Practice* 18 (2024): 1–11, <https://doi.org/10.1093/police/paae029>.

Conclusion

This academic endeavour was limited in different ways. It only looked at a specific form of femicide and one specific response by one country's criminal law in shaping the punishment of aggravated murder (§ 211 StGB). However, building on existing critique, I was able to show an underlying understanding of 'the normal' biased towards a male-centred norm that leads to an implicit assumption against femicide as aggravated murder (§ 211 StGB). As a solution, I proposed a change in the *BGH* case law that reflects the gendered connection between emotion and violence, not precluding femicide from being recognised as aggravated murder under § 211 StGB.

Additionally, I hinted at further changes in scholarship and judicial training. Beyond the proposed solutions, these findings show the need to see feminist critique holistically. The gendered reaction to strain and emotion highlights the fact that male perpetrators are also affected by patriarchy. This means a holistic solution ought not to lose sight of male mental health, role modelling and specific male struggles and counter those factors leading to gendered connection of emotion and violence.

Although limited in its approach, this paper demonstrated more generally how feminist criminology can decisively impact criminal law and the study of crime and punishment. It can reveal gendered biases within the existing legal framework and point towards possible solutions. Future research in Germany can put this analysis conducted here on a broader footing and expand these ideas further to different kinds of femicides, other jurisdictions and gendered violence in general.

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