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Why Does the Method Matter?

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WHY DOES THE METHOD MATTER?

LORENA FRIES AND VERÓNICA MATUS

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I. THE PLACE AND THE HISTORY

This paper discusses the pedagogy of law based on our experience in education and training on women's rights and human rights, since 1986, at La Morada. The legal education and training programs at La Morada have been quite diverse and have been directed at poor women and legal professionals. La Morada's programs have sought to provide practical tools to help address women's concrete problems, while also aiming to pose new theoretical challenges to what is called the science of law.

Nonetheless, there is a common element that runs through these programs. It is our experience and awareness of discrimination and exclusion, as women, from which we have ventured into the education and training processes. Our gender status has been the starting point for all the education and training. Nonetheless, the certainty of discrimination is not enough; we seek to transform that reality and bring about a different life for women and men. This desire, which gives direction to the education/action process, sets a goal toward which to strive. Gender status and the concrete situations of discrimination that affect different groups of women will be examined from the standpoint of the law, which is the specific focus of the training.

All legal training is based on the premise that the process of legal training reinforces and reproduces gender roles. In addition to other normative systems, it establishes the fabric of a given set of societal arrangements. Its norms impose guidelines and conduct that help shape a single accepted female identity. Women have not been present either in the creation or legitimization of legal rules. They are relegated by ideological determination to the world of biological and social reproduction and the private sphere, while the world of the law is set aside for males. The fact that there are women in the legal profession speaks to the fact that female attorneys and judges, and women in general, have learned the lesson well. They have learned the lesson of obedience from their historic oppression, and which is expressed in the mandate that arises from their role to be-for-others.¹

The law imposes on men and women different models for existing and being in the world. The women's model has a given place and given roles, which are undervalued in comparison to the men's roles. The law is the voice of the patriarch, it is like God, it is everywhere, and it weighs on us even when we don't see it. These roles shift back and forth between public and private spheres, with all the power of its humanity, with its body and its word. Women have been and are defined by the law, their body expropriated and their word silenced. In this regard, the function the law fulfills as a symbolic and material power is to discipline the conduct of women so that they accept subordination as "natural."²

Women's sexuality and their capacity to gestate and give birth is regulated by both family law and criminal law. Any other avenue for expressing their sexuality and reproduction is illegitimized by the law. In marriage, the woman serves the roles of mother and spouse, limiting her own life experiences. She is identified as naturally different, and this difference is used to dominate her. Thus, as family law dictates how to be a woman in the patriarchal system, criminal law sets forth punishment for any woman who goes beyond the limits set by the law.

The law's basis is similar to other disciplines and paradigms. All have made the healthy, rich, adult, white, heterosexual male the parameter of the human being. In all of the paradigms, the male view of the world has been heralded as the only objective vision. From this standpoint, distinctions have been established and

1. Marcela Lagarde: "Cautiverio de las mujeres: Madresposa, santas, putas y locas."

2. Natural in the excessively biologically focused sense of the word.

hierarchies have been imposed for all those who cannot assimilate into it. The patriarchal system considers gender difference total, and turns this difference into discrimination. Nonetheless, while the law exhibits the same androcentrism as other social disciplines, it stands apart from them in two important ways. First, the law takes cognizance of itself in a self-supporting manner. Second, the law resolves matters in the world of its creation by taking the legal rule as a statement of reality. The law, more than any other social discipline, is ideology and power in the guise of science. Its justifications and arguments are self-sustained through a deductive logical method, which begins and ends with the legal rule.

The law, however, does not create social comity that is based on a respect for difference as an inherent trait of human beings. Both legal reform and law enforcement are required. The most important need is for a change in legal training, which currently strives to maintain and reproduce the gender system. Any analysis of the law must include both the ideological assumptions underlying the law and the specific mechanisms by which the law is taught. These two considerations constitute a whole, and should be addressed together to ensure social comity.

But how did we get here? What did they teach us in school and how did they do it? The process begins before law school because of the value and social prestige associated with the legal profession. Its prestige is based on characteristics typical of a male-dominated world: mastery of the language; power over others to defend, serve, or punish; a knowledge based on reason; and the link between the law, the state, money, tradition, and ritual. Women's opportunities for this career, beyond the individual histories, required trailblazing, or at least complementing our culturally and judicially determined destiny. In the course of the career, the characteristics mentioned above were confirmed, making this option for males one which women should feel privileged to accede. The great challenge women faced was to assimilate to the male paradigm. Often during law school, our professors expressed their displeasure of women in the classroom and commented that our proper place was in the home as wife and mother.

We were taught a patriarchal law whose final lesson was to abide by, internalize, and convince ourselves that the only way to do justice was to do it like men and for men. Of course, they did not put it explicitly in these terms. But little by little, from conversations, evaluations, the atmosphere of the school, and the content of the material we were taught, we were disciplined to accept the legal language as neutral. We learned that all legal rules are objective, that

the differences are “natural,” and that they require distinct and discriminatory treatment, especially with respect to women. They told us that legal differences are not arbitrary; but in fact the fruits of a logical and mathematical process of systematization and creation that is not based on any type of preference or option.

All individuals who have studied law have experienced this process. However, it has had a different impact on women and men. Over the years, the men appear to grow physically larger, with their voices becoming ever more imposing and assertive, while women grow more timid, proper, prim, and dedicated. Women’s questions in the classrooms always sounded different because they were based on the context and specific realities of other human beings. Our male colleagues, in contrast, presented questions with no context that were a reformulation of universal values. For women, leisure time offered a moment for discreet reflection on intimate matters. For men, however, it was a time for debate, for taking positions on burning issues. During the oral exams, done at a podium before which the student feels tiny, there were two possibilities: to know the subject matter including the codes, doctrine, currents, and cases; or to cry and beg, using feminine strategies, which the evaluating committee usually displayed understanding and gave a passing grade. All in all, whether your grades were good or bad, the social discredit associated with being a female law student prevailed over the particular characteristics of each woman.

Many students, both male and female, responded to the political climate and dictatorship by combining study with political activity. As a result, the Catholic church offered both free legal services for low-income individuals and training courses in labor rights, women’s rights, and human rights, which provided women an opportunity to rethink the law from these perspectives. The main criticism of the law by women outside the legal profession is how far removed the law is from their lives, the limitations it imposes on them, and the idea that the law only establishes obligations for women. Surprisingly, many women’s concerns involved advocating her right to sleep alone and to have a bidet.³ During our evolution into feminists, we faced a crisis: the aversion to law, its culture, and its rituals. Only by working in the area of human rights were we able to feel as if we were not engaged in traditional legal work. It should be noted that human rights issue was not a subject for study in law school until 1990.⁴

3. A bidet is a feminine sanitary facility for genital hygiene.

4. With the advent of democracy, the main law schools have included human rights law in their curricula.

Similarly, the political context in Chile engendered in women an awareness of the relationship between dictatorship, authoritarianism, and patriarchy. In the years prior to Pinochet, political involvement took the form of militant activism, which only questioned the law to the extent it did not express the ideology the militants professed. Later, during the years under study, military activists emphasized the power and authoritarianism of the law. One studied the law to learn how to use and apply legal rules efficiently. Criticism of, and inquiry into, their function, paradigm, and goal clashed with the most rampant positivism, or with the most conservative versions of natural law. Neither of the two currents could provide answers to our indignation and impotence; one focused exclusively on analyzing the existing legislation, while the other provided the regime with ideological underpinnings.

The rise of non-governmental organizations (“NGOs”) that focused on legal work resulted from the law school faculty’s refusal to permit debate and creative dialogue about of law and society. NGOs made it possible to initiate what has become one of today’s sources of renewal of Chilean law and legal education.

In addition, a women’s movement was taking shape which made democracy its main objective and began to reveal the gender discrimination women had faced historically. We worked, learned, and finally defined our role as professionals, and we elaborated on what we had learned in school.

II. IDEOLOGICAL ASSUMPTIONS OF THE LAW AND METHODOLOGICAL LINES FOR ITS TEACHING

A. Methodological Assumptions

The law is an ideology which, through its legal rules and normative systems, defines, maintains, and reproduces a given culture. The law imposes a hidden model of differentiated comity for men and women, through its system of logical integration. The mechanisms that maintain and reproduce the gender system hide under its apparent neutrality and universality. Only from another perspective—that of diversity as an essential element of such comity—can one inquire into and reveal the relationship between the law and women.

1. Dichotomization

The relationship between men and their surroundings is one in which the “other” is defined by negation. The ranking of the