

THE LAW: AN ART OR A SCIENCE?

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I. MY INITIATION INTO THE ART OF NOT THINKING AND THE SCIENCE OF MEMORIZATION

I still have the notebook I used for my first exam as a law student. The course was called “Introduction to the Study of Law” and the exam consisted of a single question: “Is the law an art or a science?” I was fascinated by the question. I was convinced that, through my response, I could demonstrate not only that I had read more than the recommended texts, but also that I could develop my own ideas on the subject. I thought that I would definitely do well on the exam and I congratulated myself on my good fortune. How wrong I was!

I had good reasons to trust my ability. Prior to attending law school, my studies in Modern Literature trained me to critically analyze literary texts while learning to develop my own ideas through weekly essays. This was why I was so pleased with the question. I was certain that I could synthesize the professor’s lectures and the texts we had read during the first weeks of the semester, analyze them, and

then express my own views on the law. I remember thinking that even if law courses were totally boring compared to the stimulating classes on English, Greek, and Russian literature I had taken in what already seemed like another life, at least the exams were interesting.¹

Although many weeks passed before our notebooks were returned to us, each day the professor began class with a monologue about how disappointed he was in us, how unprepared we were, and how hard it would be for us to learn to be good lawyers since we did not have what it took to become partners in one of the "prestigious" law firms in the country. As a matter of fact, the professor himself had not achieved this highly coveted goal—possibly because his last name was not among those that decorated the doors of those firms—but this did not stop him from believing himself to be an authority on the qualities needed to be a good professional in the legal field. Featured on his list of requirements was the ability to choose the proper tie for each occasion, the ability to behave like a gentleman at all times, membership in a country club, having a "dignified" hair cut, and a whole series of other issues that led us to understand that fellow students who were not from the "correct" social class, and all women regardless of our social class, were *a priori* ineligible to join the best law firms.

At last the day arrived for our exams to be returned. More than six weeks had passed during which time the anxiety of each student had approached ulcer-producing proportions, not to mention gastritis, and other somatic illnesses. The professor informed us that since some students did an excellent job on the exam, he was unable to use a curve that would improve the standing of the more mediocre exams. He obliquely led us to see the exam as a test of our intellectual ability, or lack thereof, compared to the other students, rather than simply a measure of what we had learned.

I remember that despite the professor's comments, I remained fairly confident that I had done well on the exam. One can imagine my surprise when I heard my name among the worst exams. Still disbelieving, I retrieved my notebook and there was the grade. A five on a ten-point scale. It was the first time in my life I had received such a bad grade. But what I had the most difficulty believing was what the professor had written, or rather, not written, on my exam notebook. There was no explanation or comment on my synthesis of the ideas of the studied authors, only three large red Xs on the three

1. It would be interesting to investigate whether there is a direct correlation between how much students of a particular discipline or school are allowed to think and how much power they wield upon graduation.

pages where I had developed my thesis that the law was neither a science nor an art. At the bottom of the last page there was a terse comment, also in red: “no one asked for your opinion.”

After crying bitterly all night, I went to find him the next day to ask for an explanation. With the authority of knowing himself to be right, he answered that although he felt that my analysis was excellent, I had to understand that a first year student could not express opinions; she had to educate herself first. “It’s a shame,” he told me, “if you had just left it at your magnificent synthesis of the studied authors, I would have given you a ten.” He explained to me in a fatherly way that since it was his duty to teach me to be a “good professional,” he also had to teach me to respect the unwritten rules of our profession. He reiterated to me that despite the fact that I was a woman, I could become a good lawyer, perhaps in the area of family or labor law, if I first learned a little humility.

The following five years served to reinforce what this first professor taught us:

1. You will memorize rather than make any attempt at analysis, research, or questioning.
2. You will listen passively in classes erroneously termed “magisterial” [*magistrales*]² and will reproduce the material in exams.
3. You will study the norm without regard for social context.
4. You will read and repeat the one valid doctrine, which is the one dictated by your professor.
5. You will forget ethics and justice and you will adhere to the norm above all else.
6. You will accept the law as a science.
7. You will renounce the law as an instrument of social change.
8. You will employ reason as the only method of understanding reality.
9. You will assume a position of neutrality and you will commit yourself to objectivity.
10. You will renounce all that is personal.

I gradually became aware of many other messages that made many leftist colleagues, men and women, lose their desire for justice, replacing it with their unconscious acceptance of other values. I understood that even though I had been advised from the beginning that I must wait to learn more before expressing my opinions, what

2. The dictionary defines “*magistral*” as that which is accomplished with mastery or skill [*maestría*]. Most classes that I attended in law school were devoid of magisterial qualities.

was really required was a willingness to pretend not to see what was really being taught and to accept facts that were absolutely or relatively false, as truths. The truth was not that I should refrain from expressing ideas until I had more legal training in the final years of law school, but rather, I should remain silent until I had internalized the metadiscourse and values that are taught subliminally in most law schools to this day.

II. THE BODY OF LAW AND OTHER INJURIES TO THE BODY

My involvement with a feminist group most helped me to preserve my critical judgement. Gender-based analysis helped me to understand, as clearly stated by Frances Olsen,³ “that Western thought is a dichotomous structure composed of two opposing, hierarchical, and sexist/sexualized poles.”⁴ According to Olsen, if we take one of these dichotomies as an example, “that of culture/nature, which holds that the world is divided into things, facts, and behaviors placed in the cultural setting or things, facts, and behaviors placed in the natural setting,” we can demonstrate that “for the patriarchal value system, not only are the things, facts, and behaviors situated in the cultural setting more important than those in the natural setting, but men are situated in the former context while women are ‘relegated’ to the undervalued natural setting.” And, of course, by placing men in the cultural setting, they become the parameter that defines humankind.

Years later I would realize that comments that I considered to be trivial or innocuous were laying the foundations for a professional identity based on mutual distrust and competition. The message was aimed at making us believe that a trial between two big companies, for example, was far more intellectually stimulating than defending families that had been evicted from a property. In this way, one could convince herself that if she chose to work at the service of the powerful, it was not for the money but rather for the challenge posed by difficult cases. Strategies like this forge in the student an admiration for lawyers who win difficult cases. From there, admiration for lawyers who earn lots of money is only a step away.

3. Unofficial translation of Frances Olsen, *The Sex of Law*, in *THE POLITICS OF LAW* 453 (1990).

4. I must add here that a classic example of dichotomous thought was given by Professor Rocio Villanueva who countered vigorously my critique of legal education based solely on the teaching of positive law. According to her dichotomous understanding of things, my critique was not only a critique of positivism but also included the proposal to eliminate the teaching of positive law. At no time did I advocate this. My critique absolutely did not imply a return to natural law. I think that it is possible to teach positive law and think ethically.

In most law schools, education is based on positive law because of the dual belief that those studying law are going to become litigators, administrators of justice, or legal specialists, and that knowledge of positive law is what makes a good lawyer. This is the case even though there is no reliable research on the professional aspirations of those entering law schools nor on the supposition that the best lawyers are those with the best understanding of positive law.

It is said that courses on the history, philosophy, or sociology of law, and even human rights, are peripheral to professional training and only serve to make future lawyers more well-rounded. Evaluations of Latin American law schools since the 1950s reveal that the education offered does not prepare students to litigate upon graduation.

The vast majority of law schools have undergone curricular reform and have introduced new pedagogical methods as a response to negative studies. These reforms, however, have not eliminated the problems identified by the studies, such as unethical legal professionals, a view of norms outside of their original context, traditionalistic legalism, dogmatism, and the lack of a defined legal criteria.⁵

As a result, the proposed reforms have only a tangential effect on the teaching of law. Although the discourse that identifies problems with legal education attempts to implement proposals to address them, the structural causes of the situations identified as problems by this discourse are not explored in any depth. As Humberto Peña Taylor said, "it is worth pointing out that, in any event, it is not enough to identify problems—as this critical discourse does—without clearly identifying the power strategy that appears to have created them as such since, from the standpoint of perpetuating that strategy, they are not, in fact, problems."⁶

And what is this power strategy that would enable us to understand the structural causes of these problems? It is only from a gender-based perspective that we can discern power relationships based on the male domination of the female, as well as other relationships of domination/subordination associated with gender. Clearly the strategy is determined by the patriarchal rationality that conditions us to view and understand the world in a dichotomized, sexist/sexualized, and hierarchical way.

5. Collection of diagnostics on legal education in Colombian, Costa Rican, Guatemalan, Ecuadorean, and Panamanian schools. ILANUD, 1991.

6. Humberto Peña Taylor, *Hacia una Transformación de la Perspectiva Crítica Sobre el Derecho*, PORTAVOZ, July, 1995, at 26.

And why is it important to refer explicitly to the patriarchal rationality? Because if we can see that among the facts, values, and behaviors that are overvalued in our patriarchal societies are the production of objects, even weapons, that destroys nature in the name of progress, and in the control of emotions, even if through the use of carcinogenic chemicals, we realize that overvaluing the masculine not only harms women but is the root of almost all problems we are facing today.

From a gender-based perspective we can see how, through an ostensibly de-politicized and neutral study of existing norms, the student is familiarized with the categories and concepts of a given law and with a method by which to identify the norms applicable to a given problem. What is taught is an overvaluation of the facts, values and behaviors associated with males. In this system, the legal field and the laws themselves are identified with a superior hierarchy - the masculine side of the duality. As Olsen⁷ states, it may be that "Justice" is represented by a woman, but according to the prevailing patriarchal ideology, the Law is masculine, not feminine. The law is conceived as rational, objective, abstract, and based on principles, which is how men describe themselves; and the law cannot be irrational, subjective, contextualized, or personalized, as men say that women are.

Moreover, as most of the diagnostics and the majority of people who have attended law school point out, students, both male and female, are not taught in the classroom how to practice law. What is it, then, that they are taught, and to what ends?

Before answering this question, I want to say that I do not believe the answer lies in importing the legal education model used in the United States, which is currently so much in vogue. I have at least two reasons for this. The first is that the legal education in the United States only appears to have a more practical focus.⁸ And even if it did, learning to litigate should not be the central feature of a legal education. The second reason is that the professionals produced by United States law schools are not necessarily the model that people interested in justice would want to emulate.

Returning to the question of what is actually taught in law school and what purpose is accomplished by this education, some might think that the problems identified by the studies are attributable to poor planning, poorly-designed curricula, lack of vision, deficient

7. Unofficial translation of Olsen, *supra* note 3.

8. For further reading on this subject, see Duncan Kennedy, *Legal Education as Training for Hierarchy*, in *THE POLITICS OF LAW* 38-58, 1990.

pedagogy, or even lack of faculty hours since professors in Latin American countries generally cannot dedicate much time to teaching. However, although there is some truth to all of these reasons, I think that there is a pedagogy in place with precise, although inexplicit, objectives. It is a pedagogy that compels the student to (1) place subjects in a hierarchy and accord the corresponding degree of prestige to those who specialize in different branches of law; (2) maintain the erroneous belief that law is confined to the *norma agendi*, perpetuating the idea that law is apolitical, neutral, and objective; and (3) maintain the idea that success in this profession is due primarily to personal effort. This obscures the fact that the legal profession caters to the political authority and may even be the political authority. It is structured in such a way that only those who are willing and able to uphold the system will have power in the legal field.

These objectives must be met in order to maintain patriarchal power, which is precisely one of the objectives of the law: to create, maintain, and perpetuate power relations in our societies. But of course, this cannot be stated openly because it would be impossible to sustain one of the most important myths about the law: that it is objective, neutral, and rational. I want to reiterate that this logic dichotomizes, sexualizes, and creates a hierarchy of thought. In addition, I want to emphasize this logic because this way of conceiving and understanding reality is so dominant that we have virtually lost the ability to realize that it is one way of understanding, one logic, and not the only way of understanding and the only logic.

A profound reflection about the type of education actually given to future lawyers is essential to truly reform legal education. But more importantly, an honest and critical reflection about the law itself is needed. I am convinced that introducing the gender perspective into law schools would enable this reflection process to occur and, consequently, would resolve many of the problems that have been identified.

III. REVEALING THE SECRETS FOR A NEW PARADIGM

Incorporating the gender perspective means eliminating the androcentric perspective that permeates all human activities. It is not easy to do this, however, because the very concept of gender is dynamic and multifaceted. It requires using our brains, our senses and our feelings. In Latin American culture, only the cognitive power of rationality is valued. It is more complicated still when it must be accomplished in a formal education system where methods

of acquiring knowledge other than through reasoning are rarely taken into account. The gender perspective implies learning how to acquire knowledge a different way and the first step in this method is increased awareness. I will outline six steps that help to incorporate the gender perspective into a legal text or context, although the last five are really intellectual and rational aids to the process of becoming aware.

A. Step 1

Become aware of the female gender's subordination to the male gender in one's personal experience. Raising awareness is a subjective process of opening up to something previously unknown. It requires looking at that "something," and at ourselves, honestly, even when it hurts. Increased awareness about sexism means understanding it rationally and emotionally in addition to feeling it inside one's body, which is where gender is experienced. This is essential to understanding that the discrimination women face and the subordination of women not only affects women but dehumanizes men and is destroying the world. Consciousness-raising is also gratifying in that it expands the possibilities of vital experiences.

In the classroom, a professor may select from a number of exercises developed by feminists to raise awareness about how we have internalized sexism. These exercises enable women to realize that their individual and personal experience of submission is actually a collective, political experience of oppression. It enables men to realize that many situations they accept as natural are privileges emanating from a complex system of male domination.

To develop this first step, professors should encourage their male and female students to begin with their own concrete experiences in the area under discussion in order to reflect later on the collective experience and arrive at the generalizations and abstractions needed to begin to theorize. This consciousness-raising process includes the disarticulation of masculine discourse in order to rearticulate the meaning of our experience as beings actively involved in the construction or deconstruction of society.

The process of becoming aware can begin in any law course whether administrative, criminal, labor, etc. It should be aimed at making students wary of all patriarchally-created and imposed structures and institutions. This wariness will raise doubts in their minds about the supposed neutrality of these institutions and facilitate their understanding of power relationships. It is only when

power relationships are exposed that strategies can be developed to eliminate them and replace them with egalitarian relationships.

Moreover, professors should promote the organization of feminist awareness groups since, as Elizabeth Schneider says, "feminist awareness groups start from personal, concrete experience and insert that experience into a theory, assigning, through this process, new meaning and form to theory based on experience and experience based on theory."⁹ Of course, men can embark on this process by becoming aware of their privileges, of the services they receive from women, and the "price" they pay for these services, a price women and the world also pay.

The first introductory classes must foster an awareness of the law as androcentric, meaning that it is premised on the male perspective and uses the male of the species as the parameter for what is human. Therefore, "generic" laws, those that supposedly emanate from the needs of all men and women, apply to all human beings, and affect both sexes equally, are not gender neutral, but rather are derived from the male gender, male needs and interests as representative of the species as a whole.

Building awareness will help the students see that women are less familiar with their rights, and that even when they are aware of them, they do not enjoy the same access to the justice system. The laws themselves are androcentric and, ultimately, have generally not reflected women's needs, potential, or characteristics. The legal problems women experience are not wholly due to the fact that legal officials and police discriminate against them when applying generic laws. They are also attributable to the laws that do not exist, to all the institutions that have not been created, and to the lack of a legal doctrine based on the perspective of women as a subordinated gender. But, most importantly, it is due to the fact that these generic laws, as with everything generic in a patriarchal society, are actually gender-specific, and that gender is male.

The process of becoming aware must lead male and female students to understand that, totally contrary to what is stated in the legal field, one's sex is relevant because it determines whether one will have more or less power in a society. This means that gender must be understood as a social category because the relationships between the sexes, as with relations between classes, races, and ethnic groups, are socially constructed, rather than natural, occurrences. And in the case of gender relations, one gender has far more power

9. Katherine T. Bartlett, *Feminist Legal Methods*, 103 Harv. L. Rev. 864 (1990) (citing Elizabeth Schneider).

and privilege than the other. This cannot be irrelevant in the legal sphere, since this is precisely the field in which power relationships are regulated.

B. Step 2

This step requires deepening understanding of sexism and its manifestations—identifying and questioning aspects of legal doctrine, legal principles and fundamentals—and the investigations upon which these principles and doctrines are based, that exclude, hide, or subordinate women.

It is necessary to address these issues in depth because sexism is so broad and generalized that it is manifested in many different ways. For example, Margrit Eichler¹⁰ identifies seven ways that sexism is reproduced: (1) androcentrism, (2) over-generalization and/or over-specification, (3) insensitivity to gender, (4) the double standard, (5) gender-appropriate behavior, (6) sexual dichotomism, and (7) family-ism.

Androcentrism is perhaps the most widespread of these manifestations. It occurs when a study, analysis, or research project is conducted from the masculine perspective and presents masculine experience as the central human experience and, ultimately, as the only relevant one. Research performed on the female population, when it is carried out, relates only to the needs, experiences, or concerns of the dominant male gender.

Androcentrism may take two extreme forms: misogyny and gynopia. The former is total repudiation of the feminine, and the latter, the inability to perceive the feminine perspective or making the feminine experience invisible. This form of sexism is not solved by adding a chapter or article about women to a particular code or law, presenting the point of view of a token woman, or by enumerating the terrible suffering of women in a specific situation. It cannot be resolved by eliminating legal "protections" without replacing them with corrective remedies based on the true needs of women.

Androcentrism, with its two extreme forms, is commonly found in university courses, and especially in law schools. These institutions introduce the white, heterosexual male—a property owner of the dominant religion, physically unfettered, and with interests and experiences comparable to the dominant population—to the legal system. When women, children, the elderly, the handicapped, the

10. Margrit Eichler, *NONSEXIST RESEARCH METHODS* (1988).

poor, etc. are studied, they are approached as problematic "sectors" of "general law." Sometimes these groups are not studied at all.

Androcentrism can be solved by analyzing facts from the gender perspective. This means analyzing them by asking what implications or effects the fact has on each sex and on the other forms of domination and subordination. When we ask how women and men have experienced this fact, or similar ones, how they have resisted it, and what relationship exists between both experiences, perceptions ultimately emerge that take into account the needs and experiences of both sexes.

Over-generalization occurs when a study that analyzes only the behavior of the masculine sex presents the results as valid for both sexes. This method has been used systematically by researchers, distorting such important disciplines as history, anthropology, sociology, medicine, criminology, etc. This form of sexism occurs, for example, when the needs of a group of male workers are analyzed and then presented as valid for the entire working class. Over-specification is the flip-side of over-generalization. It occurs when a quality, need, or interest that is universal is attributed to only one sex.

This type of sexism can be resolved by specifying which sex was used as a model for the study, or adopting language that includes both sexes when both are included. It is important to emphasize that this form of sexism cannot be addressed by the use of generic terms alone. The feminine gender must also be present in the paradigm.

Over-generalization is frequently found in the latest legal texts which no longer speak in masculine terms to avoid over-specification, but instead speak in generic terms—supposedly gender-inclusive language—in such a way that it is impossible to discern if there are differences between the sexes with respect to the use of a law, or the breaking of a law, etc. The premise for this practice is that men and women are equal and both are included under the generic term, when, in reality, the continued use of the masculine terms would have been better because the paradigm continues to be masculine.

Insensitivity to gender is present when the gender variable is ignored as a socially significant or valid variable, and facts are not analyzed from a gender perspective. Insensitivity occurs in nearly all studies of the effects of specific laws or policies. In these cases the authors forget that men have been the paradigm for the human experience and androcentrism results. Insensitivity is also reflected in the failure to include the idea that the sexes have a gender and, ultimately, the effects of any act are experienced differently by each sex. If sexual roles, the value of each gender, the different use of

time and space by each sex, the female sex's lesser power, gender structures, and androcentrism are taken into account in the creation and application of laws, etc., it is obvious that a law cannot have the same effect on both sexes. When the gender variable is not accounted for, it is impossible to identify the problems of one sex because the information is simply not there.

Insensitivity frequently occurs in legislative matters when the existence of women is disregarded in the promulgation of "generic" laws. But insensitivity also occurs when laws are promulgated that take women into account or grant them a right. For example, bills that increase maternity leave without taking additional measures to avoid negatively affecting access for women to the labor market are gender-insensitive. Although the legislation grants women a much-needed right, by failing to consider the gender structure of the labor market, it also causes women harm by impairing their access to employment.

The double standard problem is similar to what many of us know as dual morality. This occurs when the same behavior, identical situation or human characteristic is valued differently for each sex, based solely on sexual dichotomism or gender-appropriate behaviors.

Gender appropriate behavior is manifested by establishing appropriate behavior for each sex, as its name indicates, based on the premise that certain behaviors or human characteristics are more appropriate for one sex than for the other.

Sexual dichotomism is treating each sex as diametrically opposed and without common characteristics.

The double standard, sexual dichotomism, and gender-appropriate behaviors are manifestations of sexism that are closely related to the process of patriarchal socialization in which dichotomized traits are assigned to each sex. For example, women are often characterized as passive, emotional, and dependent, while men are described as aggressive, rational, and independent. Attributes are placed on a spectrum with those on the masculine side considered socially superior. Expectations of behavior for each sex are based on this duality.

C. Step 3

The purpose of this step is to make women visible, but in doing so, non-paradigmatic men are also made visible. This step begins with the premise that androcentrism is present in the conception and explanation of any human act and women must be brought to the center of the discussion of the human experience. To accomplish

this, we must identify what concept of woman the law contemplates as "the other" in the masculine paradigm of human beings and analyze its effects on women of different sectors, races, sexual orientations, visible handicaps, ages, etc.

All women are not equal. Women have varying degrees of power because they belong to different classes, races, ethnic groups, age groups, sexual orientations, creeds, or abilities, which are privileged or disadvantaged. We cannot, therefore, be content with a gender-based analysis that does no more than inquire into the gender-neutrality of a law or principle or how it affects the woman. We know that gender is a status that is defined by race, class, ability and also defines these same factors.

The awareness that women are unequal among themselves leads us to ask the following questions of legal texts. Which women are excluded by the text? Which women are favored by it? How does this text affect a visibly handicapped woman, a female head of household, an indigenous woman, a widow, an adolescent, etc.? Bear in mind, there are rights accorded to some women that discriminate against other women. This is the case, for example, of the right of a married woman to use her husband's name preceded by "de." Among other things, this "right" allows for ongoing discrimination against single women.

D. Step 4

In this step, we must identify the concept or stereotype of "woman" presented to society in order to find practical solutions to exclusion, to address the problems and needs of women, and to promote any image of women that does not institutionalize inequality.

Many women fear legislating in favor of women because "protections" for the woman-mother, the woman-reproducer, or the woman-family have been confused with protections or laws for the woman-person. The identification of the woman person with the woman-family is precisely one of the manifestations of sexism that we discussed in Step 2: "family-ism." It may be true, although unnatural, that women are more closely tied to the family than men. However, this does not mean that a woman does not have needs as a person that differ from the needs of the family, or the needs of the man, even though they may be similar. Family and woman are not synonyms. Men and women are equally human and equally different.

For this reason, it is necessary to be aware of the ideological difference between corrective measures based on the fact that women should enjoy certain legal privileges that compensate for social

inequality because they have experienced exclusion, discrimination, and inequality, and protective measures based on the belief that women are biologically different from men and should therefore be treated as inferior beings. One must also clearly examine how the law treats real biological differences between men and women in order not to confuse the need to treat each sex differently, limiting the human rights of women because they are the biological reproducers of the human species.

In other words, one must be clear about the ideological difference between legislating to "protect" a weak being and legislating in response to needs that only women feel as full-fledged members of humanity. In the first case of this second point, the legislation is androcentric because it is based on the man as the standard for humanity, while the woman is "the different one," "the other" who requires special protection (as defined by men). In the second case, legislation includes a gender-perspective because it recognizes that men and women may have different needs. Furthermore, it does not favor the needs of one sex over those of the other and does not use men's needs as the standard for human needs since it is based on the notion that women and men are equal and different. In this case, neither sex is the paradigm for humankind; rather, each is seen as one of two sexes that comprise the human species, neither of which represents the whole of humanity.

E. Step 5

Teach law as a legal system or phenomenon that is much broader than the *norma agendi* and is comprised of three components: formal-normative, structural, and political-cultural. These components are dialectically inter-related in such a way that one component is constantly influenced, limited, or defined by the others at the same time that it influences, limits, or defines the others. This relationship occurs to such a degree that it is impossible to understand the content and effects of a specific law, legal principle, or legal doctrine without taking into account all three components.

The formal-normative component of the law is synonymous with what legal scholars call the *norma agendi*, meaning formally-promulgated laws. The *norma agendi* includes parts of constitutional law, international treaties, substantive or procedural law, decrees, regulations, and collective agreements.

The structural component of the law is the content that courts, administrative offices, police, and administrative justice officials attribute to the rules and principles found in the formal-normative

component when selecting, applying, and interpreting them. In this sense, the structural component includes unwritten laws that have not been promulgated by any legislative assembly or formally created in a negotiation process, but which are taken into account by those who administer justice.

The cultural component of law is the content that people attribute to the law through legal doctrine, customs, attitudes, traditions, and their own understanding of the law. This component includes the way people use existing laws. But, more importantly, this component has to do with the unwritten laws that the majority obey, revoked laws that continue to have effect in daily life, and unwritten laws produced by the relationship between written laws and customs. Thus, this cultural component contains unwritten laws that have not been formally promulgated, but which, besides being obeyed by the majority of people, are formally reinforced by laws in the formal-normative component. In some cases, these laws are more effective than those written in society's legal codes.

In this step, the analysis of the text in question must take into account the other two components. An analysis of proposed legislation, the formal-normative component, should examine its effects on the cultural and structural components. If it is a legal doctrine, the cultural component, be aware of how it has permeated the formal-normative component and how it influences the structural component.

Let's say, that the class is analyzing certain articles of Code X. We will take into account all aspects of the three components in order to present an idea of the content that people and the courts attribute to this particular text. To accomplish this, ask some of the following questions, beginning with those easiest to answer. If, after having answered only some of these questions, we find that the article is biased toward the male gender, it will not be necessary to answer all of the questions. If, however, we do not find a sexist bias at first glance then we must ask all of these questions, as well as others, in order to be totally convinced that the end result of the text will not discriminate against women. Remember, begin with the premise that sexism exists and is present in all human activities so that the task is to identify and eliminate it wherever possible.

1. The Cultural Component

The following questions are relevant to our discussion. With respect to those who drafted the law, we must ask who drafted it; how many women participated; were women or men present who were

committed to eliminating discrimination against women; what did the male drafters of the law think about inequality between men and women; what were their objectives in wanting to change the status quo; what people or things did they want to protect; and which privileges are retained, which are modified, and which are eliminated?

With respect to the legal doctrine that could serve to support or block the law the following questions should be raised: what has been written about the conduct that this law intends to regulate; what does current legal doctrine say on the subject; and are there contradictions between the different ideas expressed?

Laws found in the cultural component which have not been formally promulgated must be scrutinized by the following questions: how do most people feel about the conduct that the law intends to regulate; how do men and women differ in this regard; do decision makers really know what women think about this conduct or is the masculine voice the only one that has been heard and registered; upon what myths is the conduct based; are there social, religious, or traditional rules that regulate this conduct; and does the proposed legislation refer to these social, religious, traditional rules?

2. The Structural Component

For those who are going to interpret and apply the law in question, we ask ourselves: who are they; how have they acted in the past regarding the conduct that is to be regulated; what are their attitudes toward sexism; for example, do they believe that sexism affects the way that justice is administered or do they see it as an isolated phenomenon; what procedures exist for interpreting this law; what material conditions exist for its application and enforcement; and if none exist, is this text worthwhile?

With respect to women's access to the justice system, we ask ourselves: does the text of this article or law contemplate the difficulties that women face when dealing with the justice system; does it take into account how little value is placed on women's words, their difficulty expressing themselves, their reduced access to providing "overwhelming evidence," and their low self-esteem compared to men; does it take into account that women don't have the same opportunities men have to travel to population centers, approach the police, and speak as equals to public officials; and does it take into account the consequences a woman might suffer even if she is able to gain access to the justice system?

3. The Formal/Normative Component

With respect to the language of the article or law, we must ask ourselves: is what is being granted truly a right; if it is a right, why is it only being granted to women; what stereotypes does this "right" reinforce; who is the model or paradigm for the subject of the rights or obligations contemplated in this law; does this law contemplate the differences between men and women and the differences between women; what other laws regulate the same or similar conducts and are there contradictions; does this law confuse women with families; and is it truly gender-neutral?

F. Step 6

Make the analysis a collective process, so that not only women and enlightened men from different sectors can enrich it at the same time that they use it for popular legal education, but, more importantly, to continue building awareness. This consciousness-raising process is the step that must precede any analysis of a legal text. Without a prior understanding that women are subordinated and discriminated against because of their sex, it is impossible to embark on a process of questioning the legal system from the gender perspective.

Making the analysis a collective process, with different groups of women and men who are in solidarity and aware of their privileges, will increase the chances that the text will not exclude a certain sector, group, or class of women. This step can be carried out in a formally organized workshop seminar, or informally, over a cup of coffee. It can also be accomplished by being alert to the views expressed by women belonging to groups or classes other than the group of women, or men in solidarity, who developed the original analysis.

Careful attention must be paid to the issue of men who may be in solidarity. As with the law, oftentimes these men have a pro-woman attitude on the surface, while deep down they continue to see themselves as the paradigm of humankind or believe that their privileges are "natural." For example, many men proudly state that they completely "support" their female partner and are happy that she is "fulfilled" in her job, profession, or as the person she is. Nonetheless, even a cursory examination of his behavior at home reveals that this "support" does not mean that this man shoulders his share of the domestic chores or the care of the children, that he is aware of his companion's different emotional or sexual needs, or that he is truly aware of the privileges and services he receives from other

women by virtue of belonging to what is considered the superior sex.

Since broadening perspectives and theorizing about experiences is a consciousness-raising process, the latter is the first and final step of any feminist methodology. It is the first step for the reasons already stated. It is the final step because analyses are, in a certain sense, theories. But they are also experiences that must be articulated outside the original group in order to resume the process of collectively sharing and theorizing about these experiences so that the resulting theory can be used to reevaluate and modify past experiences.