

GENDER AND LAW: THE SOCIAL SCIENCE PERSPECTIVE

MIREYA SUÁREZ

I. INTRODUCTION.....	307
II. FORMATION OF THE FIELD	308
III. INSTITUTIONALIZATION OF THE FIELD: ADVANCES AND PERSISTENT OBSTACLES.....	313
IV. CONCLUSION: THE RIGHT TO EQUALITY AND THE RIGHT TO BE DIFFERENT.....	316

I. INTRODUCTION

One of the most important developments in the social sciences in Brazil over the past twenty years is an intellectual and political field that includes women's studies, and subsequently, gender studies. These two areas of study are more than two benchmarks in the development of the field. They currently comprise political positions that, while different, continue to share common themes such as a critical posture toward differences and inequalities between men and women, a critique of the androcentric focus of diverse disciplines, and a tension between the principle of equality and the right to be different.

This presentation demonstrates that the specific emphasis on women's rights, which figures prominently in women's studies, has always been troublesome to academia because it defeats the expectation that women are the caretakers, runs counter to universal law, and imperils the traditional concept of human rights. For these reasons, two prerequisites exist for incorporating these areas of study into the teaching and research agenda of different social sciences: first, that feminist enunciation must include the rights of all to the same degree as it did women's rights and, second, the concept of gender must substitute that of women.

This article describes and interprets the events surrounding the

emergence and consolidation of this intellectual field. Its development begins with the idea that the contradiction between the principle of equality and the right to be different is an inevitable consequence of the fact that, since the principle of equality is a cultural imperative, the right to be different must necessarily be constructed within its enunciative context.

II. FORMATION OF THE FIELD

The systematic formation of this intellectual and political field began in the late 1970s and early 1980s. Universities created courses and research groups and scientific associations organized working groups, to examine the social status of women in the areas of work, health, and education, and to critique sexual stereotypes, male domination, and the privatization of the feminine sphere of activity. Prior to this time, there was no dearth of pioneering initiatives. Such initiatives were relatively isolated. One such effort is the research project launched in the early 1960s by Heleieth Saffioti in the School of Philosophy, Sciences, and Literature of Araraquara, which culminated with the 1969 publication of *A Mulher na Sociedade de Classes*.

Several circumstances converged to facilitate the incorporation of women's issues into the teaching and research agenda of academic communities. The most frequent occurrence was that of foreign publications focusing on the status of women in Brazilian social science circles. A review of bibliographical references found in Brazilian publications from the 1970s reveals the weight accorded the French, English, and North American classical feminist thought, as well as studies about women conducted mainly by female anthropologists, sociologists, and historians from those countries (Castro et al., 1992; Heilborn, 1992). The impact of foreign publications is partially explained by the fact that the internationalization of research topics and cognitive paradigms is common practice in science. A second political reason was extremely important: to justify the proposed truth. At the time the intellectual field was founded, the use of foreign bibliography only somewhat fulfilled regular cognitive functions but it was an effective means to legitimize the indigenous voice (Castro et al., 1992).

Less ordinary, but more rooted in social custom than the resonance of foreign publications, was the impact on the social sciences produced by the growing female presence in the public sphere, as a result of women's massive influx into the workplace and/or their involvement in different social movements. Between

1970 and 1985, the number of working women tripled, increasing from 6.1 million to 18.4 million (Suárez et al., 1992). The massive influx of women into the workplace gave them social visibility, and at the same time, facilitated their activities as public actors. Women's public activities appeared *ipso facto* to be a form of resistance, independent of the content of their enunciations. In addition, around the mid-1970s, a greater number of women began to participate in the feminist movement and in numerous other movements that emerged throughout the decade. They not only participated locally in neighborhood organizations, but also in the larger movements of blacks, indigenous populations, and landless workers.

The Movement of Landless Workers [*Movimiento de los Trabajadores Sin Tierra*] of Rio Grande do Sol is a notable example due to the high incidence of female participation in the workplace and because the inequalities between men and women are explicitly situated in the context of discussions of the assumptions of associationism (Araújo et al., 1994). As Pinto points out, even when the predominant mouthpiece for resistance to traditional gender roles is the feminist movement, "popular, social movements have also been sources of acts of resistance to gender-based inequality."

Assuming that it is incumbent upon social scientists to comment on processes of social and cultural change, it is not surprising that they took the lead in incorporating women's studies into their teaching and research agendas. The attention that the majority of both male and female academics paid to the phenomenon that society laid at their doorstep, was motivated by the desire to understand and explain the accelerated modernization process occurring in the country. The change observed in feminist activities reflected this process and had repercussions in many areas, from family structure to masculine prerogatives, and even to the need to respond more quickly to labor market pressures.

Meanwhile, the small but significant feminist sector in academic communities had additional political motivations. For these female academics, women's studies were also justified because they exposed inequalities in male-female relationships. They also provided the necessary basis to critique cultural norms as well as governmental actions, and proposed legislative reforms. Academic feminism was openly critical and judgmental. It involved the organization of women not for the benefit of all, but rather to defend the academics' rights as women. It sparked disapproval from the outset, in part because its overtly political nature broke with the standard of objectivity that science holds dear. The main reason for disapproval,

however, was that its emphasis on lobbying about women's issues ran counter to traditional expectations of women as caretakers. It also jeopardized the principle that true law is universal and all individuals are equal before the law. Nonetheless, the fact that academic feminists formed part of the broad and dense civic mobilization for democratization of the country attenuated the focus on the women's lobby and consequently, the resistance of colleagues toward women's studies.

During the mid-1970s and early 1980s, the military regime was losing impetus. At the same time the most diverse social groups became increasingly resolved in their critique of, and search for, alternatives to the regime. The most broad based proposal was that democracy establish firm roots in the autonomous organization of civil society through the creation of a plurality of associations and groups capable of acting independently of partisan organizations, principally, the government and the military (Arato: 1995).

Feminism found fertile ground and enjoyed great legitimacy in this ideological context. It became comprehensible and legitimate as part of a plurality of associations and groups that, acting as new political subjects, strove for a democratic society which was obviously for all people. The initial incomprehensibility of feminism was a product of both its own discourse, as well as how this discourse was interpreted by its audience.

Costa (1994:3) notes that the rise of the feminist movement in the 1970s was "strongly influenced by the ideals of arguments that emerged in Europe and the United States in the 1960s which proposed a broader transformation of human relationships and the elimination of different types of social discrimination between the sexes." Such ideals strongly formed the content of the Brazilian movement. The national political scene, in which the feminist movement co-existed with diverse popular movements that articulated specific platforms and demands through the traditional language of class struggle, was no less influential. Several analysts point out the Brazilian feminists' commitment to this language in the 1970s and, therefore, their commitment to broader political platforms (Hahner, 1990; Soares et. al., 1995). Bruschini and Rosenberg (1980:115) suggest that feminist enunciations had to adhere to broad based causes to command respect:

Feminine reasoning commands attention to the degree that it responds to society's economic-political-cultural structure directly linked to militant work on the feminine issue. The delimitation of the feminine space is not proposed in search of a specificity belonging solely to the woman/being but rather to her social being. This principle

patently differentiates the positions espoused here from those defended in the U.S.A. or in Europe and associates Brazilian women's struggle with other movements existing in the country which challenge force and power relations. (emphasis added).

The demands of many other social groups were joined to the specific demands of women. Each lost its specificity, when taken together as illustrative examples of widespread oppression, they began to be interpreted as resistance to institutionalized power structures, more than as the politicization of the differences within civil society. Paoli reflects on the way that civil space was conceived in this period (1982:50) and illustrates the invisibility of issue-specific demands.

Condemnation of the silence imposed on civil society in contemporary Brazil and the identification of its mechanisms, obscure the differences and extreme heterogeneity inside civil society itself, building worlds that bridge the differentiation among social classes. If these constitute, in their opposition, a recognized battlefield, their internal fragmentation is lost in the invisibility of their fragments; there are some social groups which are not only deprived of power, but are also deprived of meaning as possessors of a collective identity. They are the poor workers without stable activity, women and their domestic spaces, the elderly, children, blacks, homosexuals, the insane, the criminals. . .

The invisibility of the specific demands of women and other sectors of civil society reveal, as da Matta pointed out in the same period (1982), that the system is deeply averse to differences, and therefore incapable of living with an individualism that presupposes a multiplicity of projects, desires, and wills in the public sphere. Nonetheless, the difficulty in recognizing the specific demands of women is due not only to a generalized aversion to differences, but also to the profound illegitimacy that surrounds the feminist lobby because the paucity, suffering, and repression of human beings are seen as evils afflicting all of humankind, not only women. In this cognitive context, women's efforts to win people over to feminist causes are perceived as an offense that ruptures the loyalty owed to their fellow human beings. Women's demands that differ from those of impoverished workers, the insane or criminals are not just ignored, but are seen as a betrayal.

Bruschini and Rosenberg (1980) contend that during the 1970s and much of the 1980s, feminist discourse's adherence to the classic language of class struggle, or the universal cause, attenuated the emphasis on the women's lobby that exists in any feminist movement and, as a result, commanded respect. In this political climate,

women's studies were incorporated into the academic agendas of the social sciences as just one line of investigation within the broader framework of human rights and citizenship.

By the second half of the 1980s, when the military regime lost authority in the face of civil society's demands for democratic rights, the political climate changed. Diverse groups in this society began to highlight their individuality from vastly different perspectives. The battle over wills began to lose its collective nature and acquire increased individuality. In this new political climate, the feminist perspective became more individualized as it increasingly emphasized women's efforts to win people over to feminine causes. It began to encounter resistance from many who perceived this as a break from the loyalty women owe to fellow human beings. In the academic milieu, women's studies no longer commanded respect. Academic feminism found, however, the gender-based approach, one by which it could reassert its legitimacy. This approach, in and of itself rich in analytical terminology, is distinguished from the female-based approach by many characteristics. Of these, the viewpoints of both women and men, as well as the more prominent of the relationships in which they are involved, deserve emphasis. Commenting on two recent works on domestic violence, Suárez and Bandeira (1998) write that:

Concern became more pronounced in the present decade but profound changes are observed in their enunciations having to do with the widespread adoption of the concept of gender relations in the social sciences. As Machado points out ". . .the emergence of a new view can be noted that emphasized the violence contained in affective relationships over women's right to security. In other words, there is more talk of *violent couples* than of *women victims of violence*." Grossi's article also notes this change when it observes that the subjects surrounding *women's issues* now include *masculinity* and *homoerotic experiences* and that some research groups now seek to approach the issue from the lens of the subjectivity of those involved, as is evident in the notion of *conjugal violence*.

Even though the existence of the feminist movement was a motivating force for women's studies in the university setting, and several people now working in research groups participated in the feminist movement, the relationship between academic feminism and the movement became quite tense, when the academics supplanted the concept of women's rights with that of gender relations.

III. INSTITUTIONALIZATION OF THE FIELD: ADVANCES AND PERSISTENT OBSTACLES

In 1979, the first research group was founded in the Pontificia Universidad Católica de Rio de Janeiro. Its name, "Women's Studies Group" [*Núcleo de Estudos de la Mujer*], indicates the strongly politicized nature of this group. In that way it is similar to many others that were founded during the 1980s. The libertarian reflection the group engaged in was aimed at promoting an egalitarian society and was reflected in demands for women's access to spaces traditionally occupied by men, particularly in the labor force and the political arena. In the 1980s, many groups of this sort formed at different federal universities including Ceará, Bahia, Rio Grande do Sul, Santa Catarina and Minas Gerais, as well as the University of Brasilia.

Introducing the concept of gender as a privileged analytical category spurred anew the formation of university based groups. Beginning in 1990, there was a proliferation of research groups whose names contained the word gender, as well as women. More frequently, however, the names only included the word gender. These name changes reflect the de-politicization of this area of study and academia's abandonment of the feminist project (Costa, 1994), and/or the pluralization of the feminist movement itself. Whatever the case, women's or gender research groups have been interlocutors in the difficult dialogue between women's movements and academic communities.

Progress in the institutionalization of gender studies is also reflected in their inclusion in the curricula of different disciplines, mainly sociology, anthropology, and social psychology. In the late 1980s and early 1990s, courses on the status of women and gender relations were introduced in different areas of study. These courses, generally optional, were initially attended by only female students. The number of male students increased dramatically, when programs offering these subjects began to include topics such as gender relations and masculinity. Recently, it has been observed that topics related to gender have been included in traditional courses of study, such as social organization, class, ethnicity, politics, social change, and social theory itself.

Perhaps the most significant indicator of progress in institutionalizing gender studies has been its incorporation into the heart of the extremely traditional scientific associations. National Association of Graduate Studies and Research in the Social Sciences [*Asociación Nacional de Pos-Grado e Investigación en Ciencias Sociales*]

formed three working groups: "Women and the Labor Force" in 1979, "Women and Politics" in 1980, and "Gender Relations" in the early 1990s. Different working groups have also been founded in the national associations of anthropology, history, sociology, and social psychology. The establishment of these different working groups has improved contact between people working on gender issues, generated funds for research and contributed to the dissemination of research findings.

The groups find different ways to maintain close links to different disciplinary fields and, more specifically, to scientific communities in those fields. For the past ten years, the Carlos Chagas Foundation has organized an annual competition to finance research on gender issues. The competition is financed with Ford Foundation funding. Additionally, since its founding five years ago, the *Revista de Estudos Feministas* has made an important contribution which has significantly increased the possibility of disseminating existing research.

The adoption of the gender perspective by Brazilian social sciences is a fact. However, it is an approach to research and teaching that is seen as less worthwhile than the traditional approaches. It is legitimate but, in a certain sense, less important, making the subject adopting it less empowered. This is illustrated by the cautious participation of members of the research groups on women and/or gender, in the operational difficulties faced by the groups, and in what has elsewhere been called the descriptive handling of gender issues (Suárez, 1994).

The working groups created within the scientific associations and principally, the research groups are places for academic activity undertaken by women in conjunction with other women. This situation creates a certain degree of isolation that complicates sharing information and maintaining the interdisciplinary approach of the research groups. Dialogue with other disciplines such as sociology, anthropology, social psychology, and literature, all of which include men and women in similar proportions, is easier than dialogue with such fields as law and medicine, which are predominantly male. The lack of systematic interchange with these fields is, without doubt, an enormous limitation to understanding gender issues from an interdisciplinary perspective.

The conditions in which the research groups operate leave much to be desired. Their insertion into the university structure is varied and extremely caustic, depending more on the initiative and creativity of the interested parties than on thoughtful deliberations by

collegiate decision-makers. In addition to this, most research groups lack sufficient material and human resources. The people working with them are often contracted by other disciplinary fields, which means that they frequently have to work a double shift if they want to keep the group active. Due to these difficulties, many groups lack continuity in their work.

The concept of gender has become generalized in Brazilian social sciences. Its basic premise is that the differences and relations between men and women are factual constructs. This view is widely shared by members of academic communities. At the same time, its use as an analytical category to construct or define research objectives remains quite limited. Gender relations and differences among social customs are currently defined and described by a large number of research projects that deal with the most diverse subjects, from the family, to class, race/ethnicity, religion, politics, and even processes of change, art and folklore. Nonetheless, most of these works approach gender relations and differences as givens, and not as problems that should be subject to reflection. This descriptive use of the concept of gender leads researchers to confirm that gender roles exist but makes it difficult to understand how it is that these roles are constructed and reconstructed.

Reflecting on the popularity of the concept, Costa (1994:8) has written:

When they imported the concept of gender, woman academics threw it out there without first assimilating it or rendering it more comprehensible to a significant portion of the women's movement. The category of gender immediately began to figure in all areas of the movement as a substitute, pure and simple, for the word woman. Labor union negotiating platforms started to incorporate *gender-based demands!!!* The demands of popular movements and even the feminist movement itself followed suit. Once more women became invisible.

Alternatively, the concept of gender has become popular because it makes invisible not women themselves, but their demands for differentiated rights. What is attractive about gender studies is the implied promise that they will take into account, equitably, the human condition and not the specifics of gender. This occurs because the demand for differentiated rights is contrary to prototypes of femininity, as well as to efforts reaffirming the concept of humankind.

Women's concerns with their own well-being, stripped of altruistic egalitarianism, contradict the fictitious gender image that portrays women as possessing an inherent generosity and tendency to seek

solutions to the problems that afflict all people. Besides this, the dominant principle of equality contradicts the principle of diversity, which is only made legitimate, or purified, when it is invoked as a way of attaining equality.

IV. CONCLUSION: THE RIGHT TO EQUALITY AND THE RIGHT TO BE DIFFERENT

Referring to the literary work by Lya Luft, De Medeiros Costa (1994:2) commented that the female personalities in Luft's book are perceived as "backwards," on the wrong side of "right," and that all of them end up idealizing their lives through the narrative of the experience of "living life backwards." By mastering language, these personalities rise up against the norm in search of their liberation. "Would I be brave enough," Guísela asks herself, "in my final ritual, to open my mouth, as I never opened my legs, and give birth to my own purification?"

Lya Luft's fiction helps illustrate allegorically two of the recurrent connections between women and rights. The first is "women without the right to be themselves" and the second is "women insurgents against unequal rights." Studies about women emphasize the latter connection and gender studies the former, but both are present as requisite concerns of the political and intellectual field to which they belong.

A significant portion of the research produced in the field emphasizes the principle of being different as reflected in demands for recognition of the right to be different. This is exemplified by the enormous amount of literature on its own construction and on the context of the place of enunciation in the specificity of the world vision (Mohanty, 1992). In response to social inequalities, another significant portion of the studies produced in the field appeals to the principle of equality which is reflected in demands for equal access to positions traditionally held by men, principally those of work and politics.

Different authors have pointed out that the two connections involve the contradiction of simultaneously affirming the right to be different from men and the right to be equal to them before the law. In fact, the inevitable tension between the principle of equality and the right to be different (Jelin, 1996) leads to the peculiar construction of an undifferentiated difference. (Rinfret-Reynor et al., 1994). Jelin (1996:193) has noted that the contradiction is a

fertile one since it is part of the dynamic process of debate, dialogue, and argumentation that is taking place and that "the recognition of the contingent nature of the struggles and demands should not, meanwhile, imply abandoning ideals and utopias." Among the contingencies that feminist platforms must confront is the western culture's discomfort with the right to be different, and that is being interpreted as being equivalent to the women's lobby. The emphasis on the principle of equality is a cultural imperative and, consequently, any enunciation of rights that fails to take it into account is perceived as illegitimate to some degree. In order to be acceptable under these terms, the right to be different has to be enunciated in the context of indeterminate or universal rights. This context not only introduces a contradiction to feminist enunciation, but also to the enunciation of these universal rights.

Ultimately, it is good to keep in mind that contradiction is not necessarily detrimental and that it is found on the threshold of the most noble cultural constructs. The alternative proposal that the definition of rights should begin, not with gender differences, but with the place of enunciation of the subjects, has been borne of the search for solutions to resolve the tensions between the principle of equality and the right to be different. As Bordo (1990) understands it, our narratives and demands are different because they emanate from different points of enunciation. Recognizing this fact leads us to the need to politicize the differences that exist between women and men, as well as those that exist among women and among men.

