

# CONCEPTUALIZING THE LAW FROM A GENDER PERSPECTIVE: CONCEPTIONS REGARDING VICTIM AND ACCUSED

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## I. INTRODUCTION

Although operating in different legal systems, feminist legal critics in Latin America and the United States share a common concern regarding criminal law which should be brought into the classroom, as criminal law expresses much of the symbolic and coercive force of the law. The following ideas are inspired by the legal methodology for gender analysis developed by Alda Facio<sup>1</sup> and by the efforts of women attorneys and activists who have sought for decades to democratize the law from the starting point of a profound respect for human rights.

To speak of victims and the accused places us at the center of criminal law. Classic doctrine does not distinguish between men and women with respect to their place in criminal procedure. The assumption of non-distinction derives from the centrality of the principle of equality before the law as the basis of justice. However, in practice, criminal law is laden with important gender-based

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1. ALDA FACIO MONTEJO, CUANDO EL GÉNERO SUENA CAMBIOS TRAE (UNA METODOLOGÍA PARA EL ANÁLISIS DE GÉNERO DEL FENÓMENO LEGAL) (2nd ed. 1996).

connotations, many of which stem from its most basic conceptions of criminal law, while the most important ones are imported from the social order.

The ideas presented in this essay are inspired by experiences and analyses of a specific type of relationship—that established between the accused and the victim in the context of proceedings in which the sexual liberty or integrity of women is treated. In such crimes, women are for the most part positioned as victims and men are in the role of the accused; the opposite situation is an exception to which we will allude below. We will move from this specific field to more general hypotheses regarding criminal law.

To understand the substantial, as well as subtle, nature of the distinctions made by criminal law between women and men in their status as victim and accused, one must take a few steps outside the logic of criminal law. Legal sociology is very helpful in addressing the polemic. The concepts used in this debate are derived from the intellectual issues regarding the law posed by feminist theory, which has often been incorporated into legal sociology. Much of the research on criminal practice has had recourse to the methodology of legal sociology, inspired by feminist theory. This "contact with reality" has made clear the limitations of the law when it comes to responding to social issues that stem from the systematic discrimination that affects the lives of women.

In the opinion of Carol Smart,<sup>2</sup> the encounter between feminist theory and the law has faced numerous problems. I will summarize some of the problems she raises. The first is the explicit or implicit rejection of theoretical analysis as a method of studying the law. This point focuses on the greater or lesser importance attributed in the law school classrooms to conceptual discussion, especially when there is a predominant belief that the students need to know, first and foremost, the "black letter law." The second problem is the direct resistance to feminist theory in law school classrooms. In the eyes of many, the law is inherently just, and therefore the problem of discrimination has already been resolved. Smart identifies this as a "liberal" position. The third problem is that certain positions within feminism see theoretical work as a masculine activity, and steer away from such discussion, focusing their concerns on the practical and the concrete. These problems will continue to arise in the relationship between law and feminist theory. It should be noted that the rejection of theoretical analysis, due either to devotion to the letter of the law or to a pragmatic radicalism, leads to

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2. Carol Smart, *La Mujer del Discurso Jurídico*, in *MUJERES, DERECHO PENAL Y CRIMINOLOGÍA* (Elena Larrauri ed., 1994).

an impasse in the process of learning that should be avoided in the academic training of law students.

From the standpoint of feminist theory of legal sociology, other challenges are presented. One of these challenges relates to the various conceptions of the law. It is important to bear in mind developments regarding the "alternative use of the law," or the production of what has been called "alternative law." In my years at the Latin American Institute for Alternative Legal Services (ILSA), I have had the opportunity to meet many critical legal studies theoreticians and activists who moved between both of those fields.<sup>3</sup> In some way, as we approach the end of the 20th century, we feminist attorneys are also facing the challenge of "using" and/or "transforming" the law by introducing new theoretical perspectives that originate in the historical, social, and personal experience of women, who had hitherto been confined to the domestic corner of society, with voices muddled by male authority in the public and private spheres.

Following Smart's interesting logic, it would appear that the arrival of feminism to the law in a more or less organized fashion (many women became attorneys and discovered that they could play a role in advancing the status of women in their work as attorneys), has turned the law into a "field of struggle" and not just an "instrument of struggle." I believe that one could read in these expressions the difference between those who seek "to make alternative use of the law" and those who set out to produce an "alternative law." In practice, neither of these positions is to be found in pure form, and many feminists who find themselves in the field of law are fostering initiatives in all possible settings. Some are jurists, others litigate, still others have entered the judiciary or state office, while others teach law or work with the law in interdisciplinary fields.

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3. Both movements are of interest for constructing the notion of gender justice. In Latin America, a major movement is under way that calls into question the operation of the legal system. This movement postulates that the state is not the only law-maker. The notions of "legal pluralism," "alternative law," and "alternative use of the law" have won followers in the region, because they respond to the aspirations of broad popular sectors that find little understanding of their needs in state policies. These concepts are part of a "critical theory of the law" that seeks to elaborate a legal discourse with the objective of social transformation (Wolkner 1994). In addition, one finds the arguments of a different origin, taken up by diverse women's groups inspired by feminist theory. The articulation of these arguments has brought pressure to bear on the state for the purpose of gaining access to certain legal products to solve immediate problems that cannot await the transformation of the justice system as a whole. Many of the tasks taken on by legal services have been aimed at serving the urgent demand for justice put forth by women. The tension between the two points of view is inevitable, for the critical legal studies theorists have focused more on the overall economic aspects of exploitation, from an all-encompassing perspective. They have paid less attention to critiques that call into question the oppression and subordination pointed out by women, which do not always directly correspond to economic exploitation. Gladys Acosta Vargas, *Una Luz al Final Tunel: La Justicia de Genero*, in *DERECHOS HUMANOS DE LA MUJER: PERSPECTIVAS NACIONALES E INTERNACIONALES* (Rebecca J. Cook ed., 1997).

We have undertaken to study the law as such, discovering its inconsistencies and internal weaknesses, but also gauging the power of legal reasoning. The goal is to determine whether the law can be pushed forward within its own potential, or whether a transformation is required on such a scale that the law would cease to be what it is today.

Evidently, our view is from a perspective external to the law. In our opinion, the law as a closed system does not have the capacity to resolve the social problems that arise in women's experiences. The law has been constructed by "others." In other words, the law has been constructed by men from Western culture interested in maintaining the order they themselves have created.<sup>4</sup> However, it is inadequate to say that it is male per se. In the process of its development, the law has become a complex historical product and does not always act in favor of men and against women. It is more accurate to recognize that the law has a gender, and that it has the capacity to create gender categories.

The detailed analysis of laws, legal doctrine, legal culture, and legal practice have led us to discover the existence of contradictions between diverse interests within the law. It is, then, a question of finding the most adequate way to have an impact on all the components of the law so that we women, as well as other subjects of the law who have suffered discrimination, may find solutions to specific controversies<sup>5</sup> that limit our lives. This struggle explains the presence of a significant feminist movement that seeks legal reform, despite the not very encouraging results of the socio-legal analyses that have been conducted regarding the contribution of the law in improving women's quality of life.

The central debate regarding our interaction with the law is characterized by an open, unfinished perspective. The approach is also one of dialogue with reality and reaffirmation of experiences and social practices that transform. This should be transmitted to those who are beginning their legal education. There is nothing worse for the law itself than absolutism as to its content.

## II. CRITERIA FOR SELECTION IN CRIMINAL LAW

The starting point for a critical assessment of criminal law lies in the relationship between society and the law. The criminal system continuously selects those it will place on trial and those it will protect.

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4. Latin American law has followed the steps of European Law with slight adaptations. It is essential to develop the historical perspective on the law to understand the normative transformations.

5. It is important to recognize that the law is only relevant in relation to the protection of specific legal interests, and that its breadth and scope should be the result of a democratic debate within each society.

This operation is highly complex. The difficulty in attaining consistency between the definition of criminal conduct and the enforcement of such measures leads to a situation favorable for the proliferation of discrimination beyond that established in the law.

Many Latin American criminal law experts have undertaken to analyze the role of law in society. If we follow the reasoning of Eugenio Zaffaroni in his influential Criminal Law Manual of 1986, there exists an interest in developing an analytical and global view of the function of criminal law. From his point of view, Latin American legal thinking on criminal law has been inspired by foreign ideas that have been adapted to the region. These ideas include the theory of "retributionism" (the penalty as retribution based on the principle of culpability, with a strong tendency to technocratism); the theory of "danger" (those who attack the system should be given harsh treatment—ideal for dictatorships or strong-man regimes); the theory of "criminal law for the security of the citizenry" (explains problems based on the fear of communism and sees internal enemies everywhere); and finally, "Latin American critical criminal law studies" (a new theory, including several theoreticians of "alternative law" as adherents). Each theory includes positions with respect to how legal interests should be ordered, and each theory develops its own approach to the definitions of crimes in the criminal codes, and ways of impacting them. However, it seems that "critical Latin American criminal law studies" has shown the most potential for analyzing the treatment of women, despite inevitable tensions that arise from the scant or non-existent gender-sensitivity of many of its spokespersons.<sup>6</sup>

It is not possible to imagine a fair criminal justice system amidst political systems that are democratic merely in form; and this is a serious problem in Latin America. We suffer from a lack of interaction between society and the system that controls and regulates social life. This gap allows selectively coercive criminal justice systems to develop in light of what is considered "social and political order," quite distant from what real people (women and men from different co-existing cultures) need. The priority of such a system is not to answer to human needs, but rather to maintain an "order."

Criminal law is a product of society and politics and corresponds to

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6. It is surprising to read Chilean treatise writer Juan Bustos Ramírez when he refers to the definition of the crime of rape in the Spanish Criminal Code. He states that "it would appear fair to encourage a narrow interpretation, considering the seriousness of the penalty for rape, which is the same as for homicide. Most of the situations that may arise could be left to the category of dishonest abuses (*abusos deshonestos*), a crime that carries at most a light prison sentence." JUAN BUSTOS RAMÍREZ, *MANUAL DE DERECHO PENAL PARTE ESPECIAL*. (1986). This type of relativism is found in much of the legal reasoning of judges, who are reluctant to impose severe sentences and, in effect, foster widespread impunity for the crime of rape.

the specific circumstances in each country. Nothing could be further from the claimed "objectivity" which is sought. For example, analysis reveals that changes needed with respect to crimes that affect the lives of women only occur under certain conditions, and require well-designed political negotiations if they are to be successful. Even then, there is always a lingering doubt as to the efficacy of the criminal law provision in question because of the way it will be distorted in practice.

### III. THE INTERMEDIATION BETWEEN THE ACCUSED AND THE VICTIM IS IN THE HANDS OF THE STATE

The most important issue to fully understand is the degree to which criminal law can adequately treat people. In this connection, I would like to note that if human rights were truly respected, women would enjoy more effective guarantees in their treatment by the criminal justice system. Yet the system has not been designed to respect human rights. Rather, it has been designed as a mechanism for conflict resolution that generally liquidates the powerless, but which offers certain negotiable privileges that are transferred into the system from the social power base available to certain individuals outside of the system.

To illustrate this point, one could consider the difference between the treatment accorded a criminal offender with economic power and one who has no such power, or the treatment accorded an accused who is a member of the police or armed forces. It is also interesting to note how an indigenous person who has committed a crime is treated. In summary, accused persons are treated differently, subtly or openly, depending on their social or economic background. The same holds for women, but the panorama is different depending on who is on the other side of the dispute. In addition to racial, social, and economic privileges that affect the system, other factors come into play, such as the devaluing of what happens to women and the sexist prejudices prevalent among the decision-makers in the process. When those factors are considered, the state loses its intermediating role, and simply "tips the scale" against women.<sup>7</sup>

The case of women who have suffered sexual abuse is paradigmatic, and will continue to be the subject of concern for those of us who call for categorical respect for human rights. Treatment of such cases is

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7. I share the opinion of Brazilian attorney Leila Linhares in this connection. Referring to the situation in Brazil, she states that the judiciary expresses traditional social values that discriminate against women. The results of research done by CEPIA show astonishingly little distance between commonly-held opinions (among non-lawyers) and the opinions of judges in this context.

based on an extra-legal value judgment that could be called into question. The relationship between victim and accused is not based on the infraction itself, nor even on enforcement of the law, but on the idea of "social order." I would like to draw on a Peruvian example:<sup>8</sup>

**CASE (from the judicial archives of Lima)**

Angela denounces an attempted rape by a midshipman from the Peruvian Navy.

Angela's version: She took a taxi, inebriated, and practically fell asleep during the drive. The driver strayed from the route and tried to rape her. As she resisted, some persons gathered around the vehicle, and at that moment the assailant pulled out his weapon and accused her of being a terrorist.

The version of the accused: He picked her up in the street because she needed help. During the drive, she threatened him to hand over the car, saying that if he refused she would set off a bomb in the car.

Investigation: The police took up the investigation of the case in response to the complaint that the assailant lodged regarding her alleged status as a terrorist, and reached the conclusion that Angela was not a terrorist (there was no evidence that she had handled explosives, and nothing compromising was found in her home).

The Prosecutor: The prosecutor believes that Angela's innocence with respect to the crime of terrorism had been proven, but did not engage in further scrutiny of the version of the accused. Instead, he called into question Angela's conduct, and proposed a lesser penalty for the accused than that indicated by law for attempted rape, yet gave no legal justification.

The Judge: As there was no other evidence of attempted rape beyond Angela's statement, the judge found that there was no attempted rape. The injuries that Angela displayed were interpreted as resulting from her resistance when being detained by the policeman after he alleged that she was a terrorist. Resolution: Acquittal for the accused.

On appeal, the Superior Prosecutor focused on attributing responsibility to Angela for having provoked the situation (she was inebriated), and relied on the opinion of a witness (a work colleague of Angela's) who stated that when she was intoxicated, she was very aggressive. The Correctional Court (the court of last resort for cases such as this one) accepted the argument of the Prosecutor and upheld the acquittal.

For the authors of the book, this is a typical case of discrimination

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8. ABRAHAM SILES VALLEJOS, *CON EL SOLO DICHO DE LA AGRAVIADA* (1995).

against an adult woman and a display of how a policy of impunity with respect to the crime of rape operates. If we analyze it from the standpoint of the relationship between victim and accused, we see the inability of the state to provide an adequate solution to the conflict through the prosecutor and the judges. It is especially notable that the law is deprived of much of its authority or power. Moreover, the word of the accused has no value. If we focus on the attitude of the accused (a member of the Navy), we perceive that the state is not even interested in punishing him for having mobilized the police, without cause, by accusing the victim of terrorism. At no point was it suggested that he improperly distracted the attention of the courts with a false accusation. His story was relevant, whereas the woman's word was quickly dismissed with the argument that she was inebriated. It is treated as inappropriate for a woman to become inebriated and also demand respect. To what extent do cultural and arbitrary considerations come into play in enforcing the criminal law? The case could be reevaluated based on a proper weighing of the evidence, with respect for the laws in the respective instances. The case might then present a good pedagogical device for teaching law students what not to do. Yet it does not suffice to study each element in dissociation from the others, because the important thing is to understand the interplay of numerous factors that leads to discrimination each time women enter into contact with the criminal law system.<sup>9</sup>

It would be interesting to explore ideas that have been expressed on law and the victimization of women, and also to review the bountiful, albeit recent, literature on studies of cases in which women are the accused. Anything we may say here is still hypothetical and exploratory, but it is important to begin to develop new frameworks in Latin America to allow continued study of the law with a critical perspective.

If the law were merely sexist or dominated by male figures, one could begin a reform process, so that it might cease to have such attributes.<sup>10</sup> However, it is more complicated than that, for the law assigns social roles; gender differentiation also springs from the law. In this connection, Carol Smart has studied the genesis of the legal concept of "single mother,"<sup>11</sup> based on the historical experience of England and the development of theories regarding the subjects of the law which took place during the 19th century. The example she presents

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9. It is enlightening to read the chapter "Dentro de la ley todo," which sets forth case law on rape cases from 1930 to 1990. SILVIA CHEJTER, *LA VOZ TUTELADA. VIOLACIÓN Y VOYERISMO* (1990).

10. In Latin America, the contributions of C. Mackinnon with respect to the "objective and neutral" constructs, which undergird the male vision of the law, have received insufficient attention.

11. In reality, the category of "single mother" reveals the content of what it means to be a "bad mother."

demonstrates the social importance of the standards developed by the law.

#### IV. WOMEN AS VICTIMS: CRIMES AGAINST SEXUAL LIBERTY

Earlier we used an example to illustrate how the justice system, in operation, departed from the realm of the law and situated itself in the realm of social prejudice. Yet if the conceptual corpus of the crimes related to sexual liberty is analyzed, we can find elements that are most useful to the legal discussion on the relationship between the victim and the accused in critical terms. These are examples of issues relating to sexual crimes and the victim/accused relationship that form part of a democratic debate to vindicate the capacity of citizens to take "legislative initiative":

Their nature as "private" crimes: This is an important aspect that is currently the subject of much debate. There are two major types of arguments. One position holds that these crimes should be "public," and therefore, the procedural impetus to investigate them should come from the state (on its own initiative) and not the party affected. Another position, from within feminism, suggests that the entire process "victimizes" the person affected, increasing suffering rather than offering mechanisms for reparation. This position considers the key problem to be the failure of the criminal procedure to attend to the person injured. This position makes clear that comprehensive measures must be developed to address this larger problem in order to argue for the classification of crimes against women as public, rather than abandoning the criminal justice system altogether.

Pardon by the offended party: This element is less polemical than the previous one, for the only form of pardon that traditionally appeared in the criminal codes of Latin America was granted upon the marriage of the victim to the rapist, or to one of the rapists (in the case of a gang rape). This solution offered by the law was anachronistic and easily rejected. The most important arguments against such a legal remedy relied on the assertion that the legal interest at issue was sexual integrity, not the loss of opportunity to contract marriage resulting from the loss of one's virginity. It should be noted that the discussion of this point touches upon a major issue in criminal law—the diversity of criminal penalties. We are seeing the focus change from deprivation of liberty as an effective means of punishing and transforming conduct, to an increase in the prevalence of other types of penalties.

In this context, a pardon by the offended party could be translated into economic compensation from the aggressor. In such a situation, the woman should be allowed to choose, as Elena Landaurri notes. It is

important that the reparation be based on the decision of the person affected, so long as he or she is guaranteed the real freedom needed to make this decision.

In this connection, it is necessary to make a break with criminal law policy that victimizes women, stripping them of any standing<sup>12</sup> to argue (one's word is worth nothing if not accompanied by reliable evidence) and placing the burden of proof upon them.<sup>13</sup> To the contrary, it will be necessary to develop a criminal system that guarantees, from the outset, the right of victims to have all the technical assistance and support needed to be able to make their way through the criminal justice system without falling victim to new aggressions.<sup>14</sup>

In broader terms, the discussions of the relationship between victim and accused require the adoption of a position on what it is we are demanding of the criminal law in the name of women. If we call for equality in criminal law, in the words of Landaurre, paraphrasing MacKinnon, we run the risk that the law will be used to the detriment of women (e.g., vengeful equality). If we pressure for a criminal law of difference, we emphasize that women are different, and in need of special treatment.<sup>15</sup> Taking a position requires a more careful study of how criminal law treats women. We must explain why criminal law offers so much resistance to finding solutions to conduct that represents an attack on the integrity and liberty of women. In addition, we must understand why women are so distrustful of the protection afforded them through criminal law.

Attacks on the sexual liberty and integrity of women have such a destabilizing effect on individuals and on society that they merit and urge us to take short-term actions with a view to achieving immediate results. Hence, the debates are focused on improving and expanding the definition of criminal conduct, making punishment minimally consistent in the various criminal codes<sup>16</sup> and facilitating the prosecution of the accused by well-trained police conscientious of their role, as well as by judges sensitive to gender issues. In general, these are

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12. For example, the restrictions in Ecuador and Bolivia on lodging criminal complaints against members of one's nuclear family.

13. This is a widely-debated point in the legal community, because the central nature of the constitutional principle of presumption of innocence creates an obstacle to shifting the burden of proof in the case of sex crimes.

14. The empowerment of the victims is an important element in the effective transformation of the operation of criminal law.

15. Elena Landaurre, *Control Formal...Y el Derecho Penal de las Mujeres*, in MUJERES, DERECHO PENAL Y CRIMINOLOGIA (1994).

16. It is important to recall the discussions on neo-criminalizing trends (increasing sentences) and tendencies to minimize the intervention of the criminal justice system, especially in the area of infractions known as "offenses to sexual morality," such as adultery and seduction.

feasible goals with the appropriate strategies. As a successful example, almost all Latin American countries have signed and ratified the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, opening the way to much needed reforms of domestic laws. Yet the larger problem is the operation of the system. Even if we have a good definition of what constitutes rape, if the word of the accused is accorded more evidentiary weight than the word of the victim, we will not have advanced much.<sup>17</sup> The same holds when the sexual morality of judges is introduced into the courts, and serves as a filter for interpreting laws at every level of the judiciary, despite the absence of any provision calling for such an approach.

Although we have been looking at the situation of women harmed (victims) by assailants (the accused), we must be mindful of the attitude of judges in those cases in which the woman becomes the accused by virtue of acts of legitimate self-defense brought on by prior acts of violence. The requirements of legitimate self-defense are generally interpreted in such a manner as to bar the possibility of a defense for the woman. Focus is placed on the present existence of the assault (immediate defense), and the means of attack (proportionality of the defense). This aspect should also be studied to prevent manipulation and discrimination of the criminal justice system in relation to women.

The advances in the criminal law, for the improvement of the treatment of crimes that affect women's sexual integrity and liberty, enjoy the support of progressive jurists and legislators. However, the capacity of criminal law to support respect for the human rights of women, and specifically for the right to a life free from violence, need to be evaluated in greater depth.

#### V. PROPOSALS FOR DEVELOPING A CRITICAL PERSPECTIVE OF THE CRIMINAL LAW AS TO THE RELATIONSHIP BETWEEN ACCUSED AND VICTIM IN CRIMES AGAINST THE SEXUAL LIBERTY OF WOMEN

The legal system's loss of legitimacy for women who become aware of the limitations on their rights and of the impunity that prevails when they demand respect for those rights poses serious problems of societal frustration that require top priority political attention. This frustration is not limited only to the administration of justice. Rather, the entire political institutional system systematically treats women's demands as marginal, relegating them to "women's" spaces, with scant overall impact. The defenselessness of women, understood as their diminished

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17. CONSELHO NACIONAL DOS DIREITOS DA MULHER, QUANDO A VITIMA E MULHER. ANALISE DE JULGAMENTOS DE CRIMES DE ESTUPRO, ESPANCAMENTO E HOMICIDIO (1987).

possibilities for defense against the loss of their rights, cannot be solved by a simplistic interpretation of access to the mechanisms of the administration of justice. These are not just issues of legal representation or reforms to the procedural law. Rather, they relate to the lack of a conception of justice that incorporates sensitivity to women's loss of rights resulting from the dynamics of violence in family or affective relationships, and those losses of rights that stem from discrimination.<sup>18</sup>

The relationship between the victim and the accused is defined by the substantive level of criminal law, and therefore criminal procedure should not be treated as autonomous. The criminal law system as a whole requires major transformations, and it would be most helpful if the debates on substantive issues also had an impact on procedural law. The great transformation which is needed involves regaining equilibrium in the accused-victim relationship so that the criminal law guarantees for the protection of the accused against abuse by penal institutions do not become tools for an attack on the rights of the victims. More empirical sociological studies should be undertaken to identify the key problematic situations.

The process as a public act must be highlighted, because it reflects the conscience of society in a microcosm. What transpires between women and men in the context of criminal procedure is related to what occurs in society, but it cannot be evaluated solely from the legal perspective. It is essential to develop and teach feminist theory as it relates to legal sociology, so as to grasp the influence of cultural stereotypes and to bring about changes in the mentality of the users of the legal system (litigating attorneys, professionals in law-related fields, and judges) regarding gender justice.

As a democratic debate on criminal law and its social function unfolds, immediate changes are needed in the meantime. The imbalance in the treatment afforded men and women as victim or accused has led to policies of impunity that pose serious risks to democratic governance, demanding specific measures with capacity to change this situation. There are many possibilities for immediate change. Some examples are technical assistance and support to the victim from the beginning of the process; proper judicial weighing of the evidence; greater procedural weight granted to women's testimony; and greater decision-making capacity for the victims. In general, the whole evidentiary system should be reviewed looking not only at the rights of the accused but also at the rights of the victim.

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18. Vargas, *supra* note 3.

We seek new ways of constructing justice in a manner consistent with human rights, close to the everyday experience of persons, and with diverse notions of conflict and reparations. This perspective, also called "law for social tolerance," is integral and assumes the challenge of serving both parties to the conflict. The process of eliminating subordination of women requires integrating justice into the rules and procedures of the legal system, and into all other institutions that impact social life.<sup>19</sup> The debate is open for discussion of the various positions.

One must address the close link between feminist critiques of the law and the consolidation of women as citizens with the ability to make decisions regarding the rules of society and the state. This link makes clear that the analysis as to the real nature of the legal substratum should be maintained and, at the same time, a response must be formulated to the underlying question: to what point can the legal apparatus, revealed for what it is, be used as a means or tool for women's liberation? The urgent need for a response on the issue of the relationship between victim and the accused is crucial in this regard. The legal method we use for women must be valid for everyone and should free the process from discrimination on any other basis.<sup>20</sup> So, the goal is not simply to build a system that incorporates the voice of women, but rather to build one that allows for a democratic inter-relationship that results in a form of justice that provides the means for reconciliation among all human beings. This is a task that calls for the development of critical awareness, and the law school classrooms to provide an especially appropriate place to carry out this task.

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19. Changing institutional norms entails recognizing that there is no single way to resolve the contradictions and tensions generated by women's demands (Jelin, 1993). The effort will only be successful if posed as a coordinated effort, recognizing the contributions of the feminist community and of the institutional framework that seeks to give impetus to development processes in such disadvantageous conditions.

20. MERCEDES CARRERAS, *APROXIMACION A LA JURISPRUDENCIA FEMINISTA* (1995).

