



## Transforming Women's Legal Status in Latin America: Integrating Gender into Doctrine and Education

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In Latin American, legal doctrine and commentary play prominent roles in the understanding, application, and presentation of the law. The modification and reinterpretation of laws are formally achieved through adaptation of legal codes. The interplay of legal theory and policymaking is therefore critical to shaping the direction of legal change. However, all of these realms are characterized by a lack of gender equality related to pervading social norms, resulting in laws and legal systems that do not take into account the experiences and needs of women.

Furthermore, men with traditional views tend to dominate the legal field throughout the region, holding most of the key administrative and teaching positions in law schools, as well as the majority of leadership and decisionmaking positions in the legislature and judiciary. In order to address this gender bias, legal doctrine that incorporates an understanding of women's rights must be created and disseminated. In developing new concepts of the law and legal institutions that address the impact of gender throughout society, Latin American feminists are challenging positivist views of the law.<sup>1</sup>

The Women and International Law Program, established in 1984 at American University's Washington College of Law, aims to incorporate the experiences of women in all aspects of legal education, contribute to research and advocacy on women and the law, and promote awareness of the ways that laws affect women's lives. Through changing the ways of thinking and teaching in law schools throughout Latin America, the Women and International Law Program seeks change in all aspects of the region's legal culture. The law school's Gender and the Law Specialization, established in 1997 within its LL.M. (a Master's program in International Legal Studies), is the only advanced legal degree in the United States that focuses on gender. In addition, the law school's clinical teaching program is one of the strongest in the United States. In 1997, the Women and International Law Program launched the "Transforming Women's Legal Status in Latin America" project to address significant problems of violence against women and gender bias in legal systems throughout the region.<sup>2</sup>

### Examples of gender discrimination in the law in Latin America

- ▶ In some countries, the law requires rape victims or victims of domestic violence to obtain an official medical certificate within 48 hours of the alleged offense, verifying their claims.
- ▶ In some countries, such as Brazil and Ecuador, domestic violence is seen as a crime that must be brought as a private action, or is limited and understood as pertaining to the private sphere. In other countries, such as Guatemala, domestic violence is seen as a health problem, and not a crime.
- ▶ Across the region, marital rape is usually not recognized as a crime, and laws governing persecution or sexual harassment are minimal.
- ▶ There are restrictive laws that require women to obtain the authorization of their husbands in order to pursue a profession or work outside of the home in countries such as Bolivia, Guatemala, Panama, and the Dominican Republic.
- ▶ There are differences with respect to access to the administration of justice, diminished penalties or the absence of penalties when the victim is a woman in countries such as Bolivia, Brazil, Costa Rica, Ecuador, Panama and Paraguay.

<sup>1</sup> Positivism recognizes the legitimacy of only those laws enacted by duly elected authorities for the governance of society. In contrast, feminism views the law as existing on three levels: laws passed by the legislature, laws applied by judges and administrative agencies, and persistent social norms.

<sup>2</sup> The initiative grew out of collaborative efforts of the Pan-American Health Organization and the Washington College of Law to strengthen the legal sector's capacity to address the causes and consequences of violence against women.

## Objectives

During the grant period of 1997-99, the objectives of the project were to:

- ▶ Build a bridge between academic institutions and women’s legal groups in Latin America;<sup>3</sup>
- ▶ Encourage a systematic exchange of experiences and methodolo-

gies among those teaching and writing about the law with a gender perspective;

- ▶ Provide an opportunity for women’s rights advocates committed to legal research and education;

- ▶ Support efforts to create legal doctrine that embodies an understanding of gender.

## Activity Design

The project was based on four integrated components.

- ▶ The Pan-American Conference on “Transforming Women’s Legal Status” was held at the Washington College of Law in November 1997. Participants examined Latin American legal systems from the perspective of gender, as well as the challenges of integrating women’s human

rights into law school curricula and legal doctrine.

- ▶ Teaching, Research, and Advocacy Fellowships at the Washington College of Law were awarded to notable Latin American women’s rights advocates interested in legal research and education.
- ▶ Regional Fellowships were awarded to enable advocates and

legal scholars writing and teaching from a gender perspective to join the faculties of Latin American law schools and law institutes.

- ▶ A Spanish-language textbook entitled *Genero y Derecho (Gender and the Law)* was compiled and published for legal educators and law students—the first of its kind written by Latin American legal scholars.

## Results

### “Transforming Women’s Legal Status”

The conference facilitated meaningful exchange among Latin American legal academics and women’s rights advocates. Working groups developed proposals on curricula and held teaching demonstrations on family law, criminal law, constitutional law, international law, and women and the law. Latin American law teachers worked together to integrate theories of gender into various legal areas and to experiment with new pedagogies.

The three-day workshop that preceded the conference enabled North American and Latin American feminist law teachers to exchange perspectives on developments in their field through a series of

roundtable discussions and teaching demonstrations.<sup>4</sup> Participants acquired concrete tools for introduc-

ing a gender perspective into their own curricula and producing workable course outlines.



Project director and head of Working Group of Inter-American Women Activists at conference

<sup>3</sup> Including women’s rights institutes and legal clinics such as the *Corporacion Desrollo de la Mujer* in Chile and the *Centro Municipal de la Mujer* in Argentina.

<sup>4</sup> Seventeen selected papers and teaching materials were published for post-conference distribution in the *American University Journal of Gender, Social Policy and the Law* (1999 Vol. 7:1) and may be translated into Spanish and published by the University of Palermo Law School in Buenos Aires, Argentina.

### Fellowships

The project awarded Teaching, Research, and Advocacy fellowships for the 1998 academic year to bring three scholars to the Washington College of Law. The fellows participated in the new LL.M specialization in Gender and the Law, which includes courses incorporating international, comparative, and domestic approaches to legal issues of importance to women's lives. The goal of these fellowships was to provide women's rights advocates with a solid footing in gender theory, women's human rights, and educational theory. For example, a Chilean lawyer who had worked on domestic violence issues at the *Instituto de la Mujer* (Women's Institute) in Santiago continued her research on mediation in family conflict and developed strategies to establish domestic violence clinics. Another fellow, a Peruvian women's rights activist who had worked with the Peruvian Congress on legislation, examined no-fault and fault-based systems of divorce with regard to distribution of property. Both of these fellows worked at the Women in Development Office's Program on Domestic Violence at the Inter-American Development Bank (IDB), where they evaluated and analyzed training programs for judges.

Upon completing their LL.M degrees, these two fellows opted to spend their second year in Regional Fellowships as faculty members at

law schools in their countries, enabling them to combine academic coursework with legal scholarship and the development of curricula. Four other two-year fellowships were awarded to women in Argentina, Brazil, Costa Rica, and Guatemala.

In Latin American law schools, there is a need to both infuse gender concepts into traditional courses and to formulate introductory courses specifically on gender and the law. To this end, a fellow at the University of San José in Costa Rica, for example, opted to teach a mandatory course from a gender perspective, introducing specific examples of current women's issues and portraying women as subjects of the law. Another fellow at the *Universidade Luterana do Brasil* (Lutheran University of Brazil) planned several colloquia on gender and pedagogy for law faculty and is working closely with its academic committee to introduce a new course on domestic violence.

### Gender and the Law

Law professors, practitioners, and fellows have emphasized the need for and interest in texts and materials on gender and the law throughout Latin America. The project therefore developed the *Gender and the Law* textbook, which contains articles written by Latin American legal scholars on gender issues and analyses, as well as on the ways that assumptions about gender shape the structure, operation, and conse-

quences of the law.<sup>5</sup> Topics include theories of power, equality, and discrimination; the impact of international human rights norms on the promotion and protection of women's rights; the ways in which laws shape and reflect the rights of women within the family; and a comparative study of criminal codes. The project will work actively in the latter part of 1999 to promote the use of the textbook, especially among professors who do not consider themselves feminists.

### Conclusions

The "Transforming Women's Legal Status" project laid a strong foundation for modifying Latin American legal education and doctrine. It facilitated exchange among academics and advocates working in the field of women's human rights, who also were given the opportunity to enrich their understanding of legal theories and education and to develop legal doctrine that reflects the needs and priorities of women. In the short term, the project has helped to increase the number of both law professors in Latin America teaching from a gender perspective and law courses focusing on women's rights. In the long run, these efforts will lead to a new cadre of legal practitioners, judges, and policymakers who are knowledgeable about making gender-equitable decisions and interpreting and applying the law in a nonbiased way.

## Recommendations and Lessons Learned

The following recommendations for continued work on the project could best be achieved if other universities and scholars become participants and proponents of the approach:

### ► Expand the regional network.

The project should expand its reach to other Latin American countries, to include those whose legal and educational systems are in various

stages of development, in order to build a truly regional network of legal educators and scholars. At the same time, the project needs to support the development of a critical

<sup>5</sup> This effort was coordinated by the *Concertación Inter-Americana de Mujeres Activistas* (CIMA) (Working Group of Inter-American Women Activists). Formed in 1997, CIMA is a Costa Rican-based network of Latin American advocates, legal educators, and legal practitioners.

mass of teachers and scholars in gender and the law in each particular country. Fellowship and networking opportunities should be extended to all countries in the region.

► **Extend the fellowships to women in public life.** Women's capacities should be expanded to contribute to strengthening civil society, particularly in countries that are making the transition to peace and democracy. The LL.M program and fellowships should meet the needs of legal advocates interested in legislative reform and direct services for women. Forums should be established to foster cooperation and dialogue among scholars, activists, and policymakers.

► **Widely distribute *Gender and the Law*.** The textbook can begin to address the critical need for materials appropriate for legal education. The more widely the text is used, the more

legitimacy the ideas contained within it will have. Gender perspectives will become an increasingly accepted part of legal thought only if they are integrated into legal studies and more law teachers are exposed to concrete gender perspectives on the law.

► **Develop sustainable mechanisms to bring fellows together.** The project should create a network of gender law teachers and scholars that meets regularly. This network could provide support and guidance to those in isolated situations, stimulate the development of theoretical and strategic programs, reach out to law teachers and scholars who know little about gender, and create links to advocacy efforts throughout the region. A short-term, follow-up activity would be a conference to bring together fellows who can share and explain their course materials, pedagogy, and institutional strategies.

The following lesson can be applied to similar efforts:

► **Integrating gender is a long and complex process.** While there is a need for both specialized courses and the adaptation of traditional courses, regional fellows have emphasized that this work must adapt to constantly changing institutional and national contexts. It is imperative to garner institutional support within the faculty and administration of both public and private law schools through regular meetings and open discussions. In Latin America, it has been easier to secure acceptance and support at smaller, private law schools than in larger public law schools. The latter, however, present opportunities for the greatest impact because they enroll the majority of students and often set national standards for legal education.

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