

PUTTING GENDER
THROUGH LAW SCHOOL
REFLECTIONS ON LEGAL
EDUCATION AND GENDER
EQUALITY IN SLOVENIA

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Putting gender through law school.
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ABSTRACT

The article builds on the claim that law is one of key instruments available in the pursuit of gender equality. One of many factors shaping the degree to which law is successful in this capacity concerns the issue of how law is understood and used by those most responsible for its formulation and application, i.e. legal profession. In order to fully utilise law's capacity for promoting gender equality we also need to pay attention to the process of legal education. This article aims to, firstly, reaffirm this need in the particular context of legal education in Slovenia where issues of legal education in general are rarely the focal point of in-depth research and discussion and even more so in connection to gender and/or equality. Secondly, it lays the groundwork for further research in this context by (re)focusing the attention from questions of equal representation to gender responsive content of legal education.

KEYWORDS

gender equality, legal education, legal profession, sociology of law, feminist legal theory

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1. Introduction

In Slovenia, there has not been much in-depth discussion on gender and law¹. Even less so if we narrow our focus from law in general to legal education in particular. Or perhaps issues concerning the intersection of gender studies and law simply seldom manage to come to the forefront. Even on those rare occasions when gender is invoked in the context of legal education and manages to catch the public eye, however, the discourse – at times – seems to be nothing less than bizarre.

This may be aptly illustrated by reference to a line of thought that the former Slovenian Judge at the European Court of Human Rights outlined in a series of books, articles and interviews over the last couple of years. On several occasions he has diagnosed the feminisation of the judiciary (which he contributes to, roughly, «the feminising cocktail of all sorts of pesticides»²) as one of the central ailments of the current allegedly poor state of the rule of law in Slovenia. He writes: «Particularly in law this is reflected in the feminisation of the profession that was once typically male, because law, as a virtual reality, is a direct expression of the mentality of those that originally created it»³. In a recent interview, he elaborated that «[j]urists were once something completely different from today’s senior legal nurses who are experts on [legal] literalism»⁴. Not surprisingly, in his view, one of the major factors fuelling this development is the process of legal education. «Here [in Slovenia], the source of the problem is the law school. An acquaintance said that all evil comes from the law school. It is because the enrolled population entering law school is not sieved. [...]»⁵. According to him, «the law school gives degrees to people who have neither the required cognitive, nor volitive or moral tools to be, for example, a judge»⁶. Thus, in this context, the focus is as much on law as a normative system as it is on those who “operate” it. Broadening his focus and commenting on

¹ For a recent notable exception see, for example, the “International Conference on Comparative Legal Review and the Judicial Protection of Gender Equality”, available at: <http://ipes-si.org/blog/2020/12/14/international-conference-on-comparative-legal-review-and-the-judicial-protection-of-gender-equality/> (accessed 29 April 2021).

² ZUPANČIČ 2020.

³ ZUPANČIČ 2013, 68.

⁴ ZUPANČIČ 2020. He continues by cautioning against overgeneralising as «there are still some judges that do a decent job». However, it is worth noting that in Slovene language “nurse” [sestra] is grammatically feminine and is a gender specific job title, i.e. limited to women, while a “judge” [sodnik] is grammatically masculine and although commonly used to also include women who hold such office, Slovene language has a specific female title for a female judge [sodnica].

⁵ ZUPANČIČ 2012.

⁶ ZUPANČIČ 2020.

the general political situation in Slovenia, he further explains, for example, that «[i]n Confucian philosophy the balance between the male and female principle (Yang & Yin) is key for any and all harmony. Now we are in a situation where the female Yin has prevailed and society is therefore out of balance»⁷.

I can think of no better example as a way of introducing the issues I aim to highlight on the following pages. This article is conceived as a manifesto of sort; an acknowledgement of the need to address the many issues of gender equality in the particular context of legal education in Slovenia and – at the same time – an appeal to (re)focus our attention from the balance of numbers and proportions of students we are teaching at law schools and include (also) questions of what we are teaching them (about gender and the law) and how. I take the above illustration as a crude reminder, firstly, of the fact that in the absence of a comprehensive discussion of the gendered realities of law – inside and outside the law school classroom – we leave future generations of judges and lawyers at the mercy of speculative conspiracy theories that will fill the void. And, secondly, the introductory example can serve to remind us that looking at the process of legal education through the lens of gender equality should entail more than the question of (equal) representation or participation.

2. *Law in pursuit of gender equality*

Discussing the need to include gender issues in legal education rests on the fundamental claim that law has an important role to play in achieving gender equality. Although this is an important issue it is neither self-evident nor uncontroversial, therefore I will briefly elaborate how I understand it for the purpose of this article before proceeding to the field legal education.

First, in order to assess the role of law for fostering gender equality, it is necessary to understand what we mean by gender equality. However, pinning down the exact meaning of this concept proves difficult because of its «diverse and contested nature»⁸. An in-depth analysis of the conceptual issues concerning gender equality would exceed the scope of this article. Instead, building on the premise that gender equality is a so called essentially contested concept⁹, it will have to suffice that I highlight the importance of the process of a «discursive construction of gender equality»¹⁰.

«In its travels, the concept of gender equality grows out of different interpretations elaborated by a variety of institutional and civil society actors, following earlier tracks and understandings that have become dominant or embedded into common sense. The concept is labelled in different ways; it is institutionalized, mainstreamed or benchmarked. Be it intentional or not, for principled, practical or strategic reasons, gender equality concepts are thus fixed; they are shrunk within or stretched beyond particular labels and bent to fit particular policy frames. This makes the understanding of gender equality and the processes shaping its meaning a complex matter»¹¹.

We are thus faced with different theoretical visions or frames that provide very different answers to fundamental questions like “what is the problem of gender inequality” and – more importantly for the premise of this article – “how could this problem be solved”¹². Even though

⁷ ZUPANČIČ 2020.

⁸ VERLOO, LOMBARDO 2007, 22.

⁹ GALLIE 1955, 167-198.

¹⁰ LOMBARDO et al. 2009, 3.

¹¹ LOMBARDO et al. 2009, 6.

¹² VERLOO, LOMBARDO 2007, 23.

a universal and timeless meaning of gender equality eludes us, what is vital for the premise of the present article is the following observation: in most interpretations of gender equality as a political ideal in Europe throughout the last decades, law has figured prominently as a tool that can contribute to realising this ideal in practice.

This is most obvious with more formal conceptualisations of gender equality, for example, as the principle of equal treatment which builds on the idea of fundamental “sameness” of women and men that (only) requires a fair (re)distribution of rights and opportunities without prejudice to gender. In this context the pursuit of gender equality is essentially based on an antidiscrimination model¹³ that is centred around the prohibition of different forms of discrimination and enforced through law.

The primacy of law as an instrument for addressing gender inequalities fades in the light of more substantive interpretations of the principle of equality. Such is, for example, the vision of gender equality that builds on affirming difference and diversity of social groups that should be integrated in the fabric of our political institutions and therefore directs our attention to the problematic norm upholding the status quo that needs reversal¹⁴. It is argued that in this context, where the gender blind strategy of equal treatment clearly becomes insufficient, positive action measures are recognised as an essential tool for achieving gender equality¹⁵. The concept of positive action¹⁶ shelters a wide variety of policies and initiatives that deliberately use gender to address the disadvantaged situation of women¹⁷. Although such measures are not (necessarily) required by law and are more often than not facilitative rather than (re)distributive in nature, their implementation requires a legal basis which also provides certain restrictions on their use. As these measures are sometimes understood as a breach of the principle of equality, their legality or constitutionality is often called into question and they may become subject to judicial review¹⁸.

The need to «de-centre law»¹⁹ as the primary instrument for promoting gender equality becomes even more apparent if we are willing to pursue substantive equality even further. For example, conceptualising gender equality through the politics of transformation²⁰, requires us to broaden our gaze because the problem is «structural and stems from the institutionalisation of hierarchical relations between men and women»²¹. In turn, what is needed is an understanding and transformation of the institutional mechanisms that engender the world to bring about genuine structural change. Clearly, this requires instruments that go beyond remedies provided by (antidiscrimination) law, such as challenging discriminatory practices in court, that are – for the most part – focused on the individual victim and backward-looking²². In this context, gender mainstreaming as a strategy of integrating gender perspective into the preparation, design, implementation, monitoring and evaluation of policies, regulatory measures and spending programmes, with a view to promoting equality between women and men, is frequently identified as a viable alternative²³. Gender mainstreaming was initially understood as a political commitment and implemented without any enforcement mechanisms of legal nature in place²⁴. However, in some contexts this strategy has to some extent also acquired a “legal aspect” in the

¹³ KANTOLA, NOUSIAINEN 2012, 36.

¹⁴ VERLOO, LOMBARDO 2007, 22-24. See also, for example, SQUIRES 1999, 115 ff.

¹⁵ JACQUOT 2015; VERLOO, LOMBARDO 2007.

¹⁶ A label favoured by the EU.

¹⁷ MCCRUDDEN 2011, 157-180; FREDMAN 2011.

¹⁸ GERAPETRITIS 2016, 199 ff.

¹⁹ SMART 1989, 5.

²⁰ WALBY 2009, 36-51.

²¹ JACQUOT 2015, 6.

²² FREDMAN 2011.

²³ VERLOO, LOMBARDO 2007, 23-24; JACQUOT 2015, 6-7.

²⁴ WADDINGTON, BELL 2011, 1520.

form of the so called positive duties²⁵ that are imposed by law on some (mostly) public bodies and require them to proactively incorporate a gender aspect into their activities²⁶.

Regardless of the difficulties with defining the core concept, there is no question that a broad range of tools are necessary to address the numerous challenges in very different contexts concerning gender inequality in our society. As noted, for example, by the European Commission, «advancing non-discrimination and equal opportunities [...] relies both on a sound legislative basis and on a range of policy tools», which include, among others, awareness-raising, gender mainstreaming, data collection and positive action measures²⁷. My claim so far is simply that the law – though by no means the only or even the most important instrument for fighting gender inequality – is intertwined with most other policy instruments and strategies, for example, as illustrated above, by providing an institutional framework for other measures or setting boundaries on their implementation.

Before concluding this section, a short disclaimer is in order. Whether or not law as a social institution can be considered an appropriate instrument for delivering genuine gender equality at all is a contested issue in the broad field of gender legal studies in general²⁸ and feminist legal theory in particular. In short, the problem at hand is about «challenging a form of power without accepting its own terms of reference»²⁹. Or as Audre Lorde metaphorically voiced it, «the master's tools will never dismantle the master's house»³⁰. However, even if we conclude that law, as an irredeemably patriarchal institution, is inherently incapable of delivering gender justice, this does not change the fundamental point I am trying to make: law is an important factor – as either a valuable asset or a challenging obstacle – to be reckoned with in our quest for gender equality³¹.

3. *From the professional guardianship of law³² to legal education*

To understand to what extent and how law is important for achieving gender equality a sociologically inspired outlook is indispensable, because we need to account not just for the “architecture of law”, but also the “social spheres” and the “legal environment” that mediate its implementation³³. For example, as Bourdieu argues, the entire social universe he calls the “juridical field” cannot be neglected «if we wish to understand the social significance of the law» as a symbolic order³⁴.

In the previous section I referred to law as an “instrument” or a “tool”. I will continue with this instrumental narrative in order to shift our attention from law as a system of rules to the

²⁵ FREDMAN 2008; WADDINGTON, BELL 2011; ELLIS 2005.

²⁶ See, for example *Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation (Recast)*, 204, 2006, OJ L: «Member States shall actively take into account the objective of equality between men and women when formulating and implementing laws, regulations, administrative provisions, policies and activities in the areas referred to in this Directive».

²⁷ European Commission, “Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Non-Discrimination and Equal Opportunities: A Renewed Commitment {SEC(2008) 2172}, COM/2008/0420 Final” (OPOCE, 2008).

²⁸ BUCHLER, COTTIER 2012, 40-42.

²⁹ SMART 1989, 5.

³⁰ LORDE 2018.

³¹ Cf. BAER S. 2010.

³² I borrow this phrase from one of the chapter titles in Roger Cotterrell's *Sociology of Law – An Introduction*, see COTTERRELL 1992, 179.

³³ GALLIGAN 2006.

³⁴ BOURDIEU 1987, 816.

social context in which these rules are applied. Namely, I want to focus on those who handle these tools or instruments in practice. In particular, it is the members of the legal profession³⁵ that have a privileged position in different institutional contexts in which law is shaped. To put it metaphorically: «Lawyers are the mechanics of the legal system. They drive and help finetune the engine, knowing that if it is not in working condition, it will not reach its destination»³⁶.

Accordingly, it is not difficult to see why the legal profession is one of the most researched aspects of law³⁷, particularly in more sociologically oriented studies. As is sometimes argued, the legal profession is the active and/or dynamic aspect of the legal system³⁸, it is directly involved in the process of legal production and application, it contributes to the meaning of law as a system of rules and its effectiveness. If we turn to Cotterrell once more:

«We can conclude that lawyers are of vital importance [...]. First, they are interpreters and mediators, in the numerous social institutions that the state seeks to regulate, of legal doctrine created by state agencies. In this sense they carry legal ideology into numerous fields of social life served by often strongly contrasting forms of legal practice»³⁹.

We sometimes talk about the legal profession as if it was a singular entity. This is hardly the case. It is not a monolithic social unit in which everyone is on a single career path sharing a “collective conscience”, but rather a diverse group of individuals with distinct interests, values etc. Metaphorically speaking, however, they share a so-called origin story, a defining common experience in the process of legal socialization. From a comparative perspective, obtaining a university law degree in the process of formal education has become virtually the universal manner of qualifying to practice the law⁴⁰ and it is thus the central socialising context for integrating participants into the legal profession and the world of law. In addition to providing knowledge of legal doctrine, different practical skill, such as legal reasoning, and other attributes of legal work, the process of legal education contributes to developing a professional, «juridical identity»⁴¹ and creating a specific «juridical gaze»⁴².

We could conclude that «[i]n the last analysis, the law is what the lawyers are. And the law and lawyers are what the law schools make them»⁴³. Although this claim is clearly an oversimplification and reality is never as one-dimensional as it suggests, it is hardly a stretch to consider the process of legal education as a point of reference for discussing the legal profession and its influence on the practice of law. In fact, the significance of legal education as one of the factors shaping law has long been recognised in sociology of law and social theory in general. For example, as Weber noted when discussing the process of rationalization of law, «[t]he prevailing type of legal education, i.e. the mode of training of the practitioners of the law, has been more important than any other factor»⁴⁴.

To summarise the argument so far, in order to be able to fully utilise law’s capacity for

³⁵ «The legal profession refers to the whole of occupational roles purposely oriented towards the administration and maintenance of the legal system, including judges, lawyers, counselors, as well as experts of legal education and scholarship» DEFLEM 2008, 182; HESSE 2004, 29-32.

³⁶ ZACHARIAS 2009, 1604.

³⁷ DEFLEM, 181.

³⁸ RÖHL 1987, 371.

³⁹ COTTERRELL 1992, 203 f.

⁴⁰ ABEL 1989, 85-90.

⁴¹ BÖNING, SCHULTZ 2019, 198.

⁴² BANAKAR 2015, 222.

⁴³ Attributed to Felix Flankfurter, EDWARDS 1992, 34.

⁴⁴ WEBER 1978, 776.

promoting gender equality, we should pay attention to the process of legal education and training in which the foundations of the so called professional (internal) legal culture⁴⁵ are formed, i.e. the «mental attitudes, beliefs, and expectations [...] that are connected to, and perhaps determine, the use of legal tools and instruments»⁴⁶. However, it seems that in Slovenia – for the most part – we have yet not taken this argument seriously and the potential of incorporating the gender perspective into the process of legal education remains predominately unexplored.

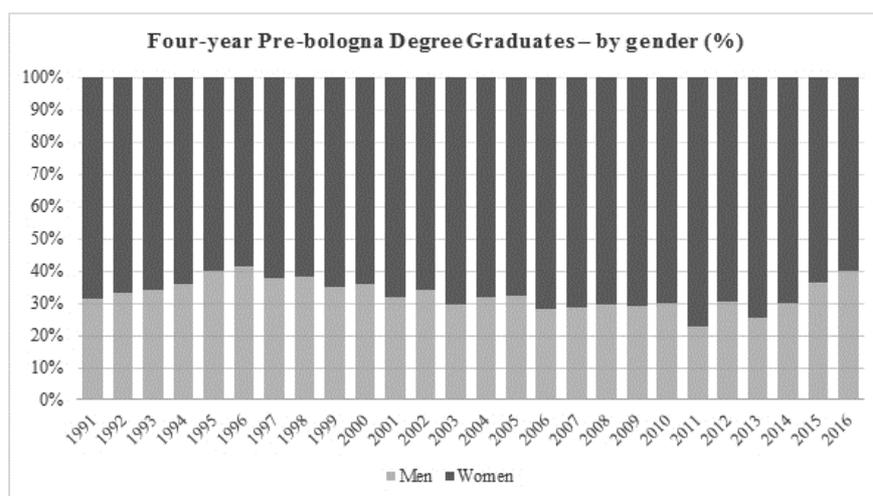
4. Gender equality in legal education: equal participation ... and beyond

The point of departure for a discussion on the role of gender in the legal profession and legal education is often the participative dimension of substantive equality⁴⁷. As noted by some scholars, it is «widely accepted that the legal profession should be representative of the significant personal and group differences that constitute the broader society»⁴⁸. This is about balanced presence or representation of women and men in legal education and consequently in different legal professions.

Comparative studies of the legal profession have established that there have been significant changes in this context in the last decades across Europe and beyond. For example, as Menkel-Meadow has written already in 1989:

«One of the most dramatic changes in the legal profession in recent years has been the influx of women. In many countries women now constitute close to half of all law students, although it will be the turn of the century before this representation is fully mirrored among practitioners»⁴⁹.

In Slovenia, twenty and some years after the turn of the century this process seems complete. Not only do women make for more than half of all law students, but they are also the majority in most legal professions. I will only briefly illustrate a part of this complex transformation in the context of legal education by referring to the situation in the country's largest and oldest law school, i.e. Faculty of Law, University of Ljubljana.



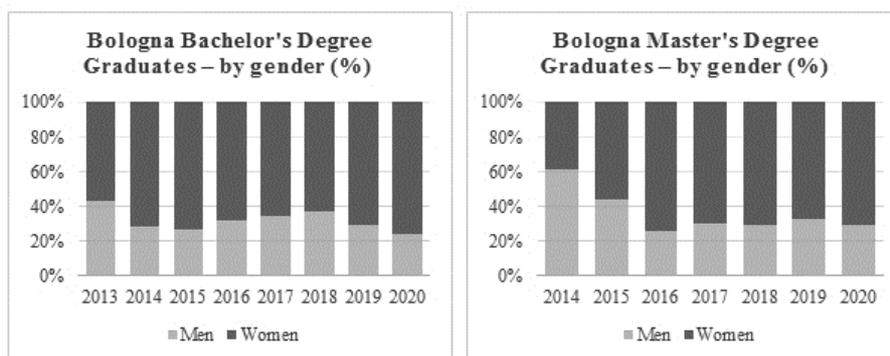
⁴⁵ The distinction between “external” and “internal” legal culture was developed by Lawrence Friedman, however as pointed out by David Nelken: «Friedman has increasingly argued that the importance of “internal legal culture” as a factor in explaining socio-legal change tends to be exaggerated, usually by legal scholars who have an investment in doing so». NELKEN 2014, 258.

⁴⁶ FRIEDMAN 2016, 208-212.

⁴⁷ FREDMAN 2011, 25-33.

⁴⁸ BHABHA 2015, 13.

⁴⁹ MENKEL-MEADOW 1989, 196.



As these figures⁵⁰ clearly demonstrate, since the early 90's the proportion of women among graduates has increased significantly and women now account for almost two thirds of those who finish their law studies at the University of Ljubljana. For some, this situation by itself appears to be enough to start flirting with apocalyptic observations about the «world being out of balance» because «the female Yin has prevailed»⁵¹. For others, this might signal at least that we have managed to purge male domination from the law school or help to explain why gender (in)equality is rarely raised as an issue in the domain of legal education.

However, focusing only on the number of female law students or graduates in comparison to their male counterparts is at the very least misleading. While today in most countries women «constitute the majority of law students», as noted in a study on the representation of women and men in legal professions across the EU in 2017, «there are reports that they still feel alienated in legal education and complain about sexism in the faculties and old-fashioned teaching»⁵². Clearly, in the context of gender equality securing equal participation is more than a “numbers game”. What is required is *meaningful* participation⁵³. Equally important as a balanced proportion of male and female students in the law school are their respective experiences and other aspects that shape their roles in this social setting. Allow me to briefly illustrate this by providing a handful of examples.

Firstly, regardless of their number, male and female students can occupy different positions within the context of legal education that are linked with and give access to different forms of capital to borrow from Bourdieu⁵⁴. Thus, for example, it would be relevant to see the gender composition of the faculty's student council, the body of student tutors, the editorial board of the main student law journal, extracurricular activities etc. Secondly, for discussing meaningful participation in the context of legal education, the level of involvement and performance of students during their studies are important factors. For example, significant gender differences in law school academic performance would suggest potential gender-specific barriers in the process of legal education that hinder women or men in their study achievements. Thus, indicators such as GPA (grade point average) or academic honours and awards for students have been used in research of legal education along gender lines⁵⁵. However, is not only about the end result(s). Equally significant in this context are classroom dynamics, in particular students' participation and contribution in class as well as student-teacher interaction in

⁵⁰ Faculty of Law, University of Ljubljana (2021): Share of graduates by gender of Bachelor's degree, Master's degree, and pre-Bologna degree in Law in the period 1991–2020, [unpublished dataset].

⁵¹ See above, introductory illustration at the beginning of the article.

⁵² GALLIGAN et al. 2017.

⁵³ See, for example, WALD 2011, 1105.

⁵⁴ «The force attached to an agent», writes Bourdieu, «depends on his various “assets”, differential factors of success which may give him an advantage in the competition, that is to say, more precisely, the volume and structure of capital in its various forms that he possesses». BOURDIEU 2004, 33 f.

⁵⁵ See, for example, GUINIER et al. 1994, 22 ff.; SCHULTZ 2003, 276 ff.

general. Existing empirical studies have often confirmed disparities in experiences of male and female students in this regard and how this aspect of legal education relates to other dimensions of their studies, such as academic performance⁵⁶. Thirdly, by highlighting the student-teacher interactions⁵⁷ it becomes clear that the position and experiences of students cannot be taken separately from other factors that together determine the educational process at a law school. In this context, as just indicated, one of the most important aspects are the law teachers who, if we follow Duncan Kennedy, «model for students how they are supposed to think, feel, and act in their future professional roles»⁵⁸. Therefore, we simply cannot discount issues, such as gender diversity among the teachers (as well as researchers and other staff), their knowledge of and views on those aspects of teaching law that are relevant for gender equality etc., when discussing gender in legal education. Although these are just some considerations, they illustrate the need to look at the broader social, cultural and intellectual environment at a law school in order to uncover patterns that shape the experience of students, such as the potential existence of widespread gender stereotypes⁵⁹.

However, as some researchers have observed, «[i]n many jurisdictions there is a surprisingly modest amount of empirical research which examines aspects of the law student experience and the lived experience of being a legal academic»⁶⁰. I would argue that this is certainly true for Slovenia.

Whether all these issues can indeed be regarded as belonging to the participative dimension of equality is not decisive for the premise of this article. As long as we subscribe to a multidimensional conception of substantive equality⁶¹, it could be argued that most of the issues mentioned above are located where the participative dimension overlaps with other aspects of substantive equality, such as redressing disadvantage by redistributing different kinds of resources, promoting respect for dignity by redressing social stigma, stereotyping, and humiliation, or accommodating difference with the aim of transforming the gendered social structures⁶². As this section has illustrated, what is decisive is the fact that framing the issue of gender (in)equality solely as a question of (equal) representation can only carry us part of the way.

5. *Beyond equal participation: an example*

When addressing the issue of gender (in)equality in the context of legal education, it is clearly not enough to focus on the gender balanced participation in the law school and the broader social context of higher education. Particularly if we are interested in utilizing the potential of law as a tool for promoting gender equality, as is the case in this article, the “character” and content of legal education are of equal importance. To put it plainly, it is important to look at what we are teaching to students at law schools concerning gender and the law and how we go about doing it.

I cannot think of a better way to illustrate why this is important than by considering an example. In order for students to adequately understand the complex issue of sexism and how

⁵⁶ See, for example, BASHI, ISKANDER 2016, 400 ff.; PURVIS 2012, 1695 ff.; BALACHANDRAN et al. 2019; WORKING GROUP ON STUDENT EXPERIENCES 2004.

⁵⁷ On the importance of student-teacher interaction see, for example, ISRAEL et al. 2017, 332-356.

⁵⁸ KENNEDY 1982, 602.

⁵⁹ See, for example, SCHULTZ 2003, 302 ff.

⁶⁰ COWNIE 2010, 854-875.

⁶¹ See, in particular, FREDMAN 2016, 712-738; FREDMAN 2011.

⁶² FREDMAN 2016, 727-734.

law can serve to address it they must develop specific knowledge and skills as well as a particular outlook not only on law, but also on gender.

For law students, the first major challenge – although by no means characteristic only of this issue – is the absence of a clear legal reference. For example, as noted by the Council of Europe, although «numerous countries have introduced criminal or other sanctions for different acts of sexism, including sexist hate speech», sexism generally «does not have a specific legal definition and it is not subject to specific criminalisation or comprehensive legal treatment»⁶³. This requires of students to have an in-depth overview of the legal system, particularly of legal remedies available to aggrieved individuals and how they relate to one another without losing sight of “the big picture”. It is not only about being able to master different fields of law and jump from one legal context to another, such as dealing with sexual harassment in labour law, finding the limits of (sexist) hate speech in constitutional law, addressing gender stereotyping in advertising and marketing at the intersection of competition, consumer and media law, taking into account the gender-specific nature of domestic violence when applying penal law etc. More fundamentally, the challenge is being able to recognize the underlying issue in all these instances that connects them (to some degree), i.e. the idea that a person or a group of persons is inferior because of their sex, which is the cornerstone of all sexist social practices⁶⁴.

Thus, the challenges of preparing law students for dealing with the manifold manifestations of sexism go beyond the bare *legal* complexity of the issue at hand. How students understand the concept of sex and/or gender, its meaning and role in today’s society, will significantly shape how they will construe legal issues, for example, in cases of sexual harassment or domestic violence, in their future professional work. To fully take advantage of law as a tool for promoting gender equality, «[g]ender needs to be understood as a fundamental organising principle of society, and laden with historically unequal power relations between women and men which also underpin the construction of educational systems as well as national and international legislative frameworks, their interpretation and implementation»⁶⁵.

Unless gender and other related concepts, such as gender biases and/or stereotypes that are at the core of all sexist attitudes, practices and behaviour, are directly addressed, it is unlikely that this message will come across in the process of legal education. This indicates that we need to reach across disciplines when thinking about teaching law and – at least to some degree – incorporate the insight of social science and humanities into the legal curriculum, for example, by building on gender studies⁶⁶ to introduce to law students «the theories used in the discussion of gender as a concept as well as of the media and modes by which gender is part of our lives»⁶⁷.

However, enabling students to recognize different manifestations of sexist attitudes and behaviour, to understand where they originate from and how they affect our lives is not enough. They must be ready and able to apply this knowledge to the legal context – to understand specifically how law relates to these social phenomena. In other words, students should not only be able to identify stereotypical gender constructions in legislation or jurisprudence of courts, but also to critically analyse shortfalls in the body of law with regard to its impact on precluding or facilitating sexist attitudes and social practices⁶⁸, such as using gender specific job descriptions to encourage only certain applicants to apply or excluding women from clinical drug trials. This is characteristic of more sociologically oriented approaches to engaging with

⁶³ GENDER EQUALITY UNIT COUNCIL OF EUROPE (ed.) 2016.

⁶⁴ “Recommendation CM/Rec(2019)1 of the Committee of Ministers to Member States on Preventing and Combating Sexism” (Council of Europe, 2019).

⁶⁵ HUMBERT 2020; On the complexities of framing gender see also, for example, SQUIRES 1999, 54 ff.

⁶⁶ BUCHLER, COTTIER 2012.

⁶⁷ CRANNY-FRANCIS et al. 2003, xii.

⁶⁸ SCHULTZ 2018, 227-230.

law⁶⁹. Thus, adequately addressing sexism in the process of teaching law is about not only incorporating insight from social sciences and humanities, but also to cultivate a more interdisciplinary approach to engaging with law. This includes, firstly, revisiting the content of the curriculum or broadening the focus of our “gaze” on legal institutions (the “what”), such as marriage or freedom of expression, to also take into account, for example, their social effects. Secondly, however, this also requires re-examining methodological issues (the “how”), for example, discussing the limits of doctrinal legal analysis or introducing the students to feminist methodology⁷⁰ etc.

In addition, as indicated above, for students to recognize how law can contribute to dismantling sexism in its varied manifestations, they need to develop a particular outlook on law as a social institution, to learn about «the possibilities and limitations of the “equality machinery”, state and international institutions for creating gender justice»⁷¹. To a large degree this concerns the general image of law that is being presented at law school, i.e. about the nature of this social institution, its functions etc. This image could be considered as part of legal culture or legal ideology «as an overlay of currents of ideas, beliefs, values and attitudes embedded in, expressed through and shaped in practice [...] of developing, interpreting and applying legal doctrine within a legal system»⁷². We must thus think about what type of ideas regarding law are sustained in the social practice of legal education. For example, if we fully accept law’s commitment to neutrality, then counselling and support programmes aimed only at women who suffered sexual harassment in the workplace might be challenged as legally suspicious, because they appear to automatically exclude men. If law is primarily understood as a conservative social mechanism for maintaining social stability as opposed to an instrument of social change, then there is no particular need to introduce gender-sensitive language to legislative drafting until there appears to be a change in conventional language rules and use that would challenge the understanding of masculine forms as default or gender-neutral⁷³. If thinking about law is premised on a rigid public/private divide, to what extent will legal intervention to address gender stereotyping in advertising and marketing practices of private companies be acceptable?

6. *Integrating the gender perspective into legal education: a blind spot?*

The above illustration was intended to demonstrate why it is important to think about integrating the gender perspective into the process of legal education. Hopefully, it was also enough to indicate that there are different possibilities of how we can approach this, none of them without significant challenges. We could consider the extended passage below as a characteristic example of what integrating the gender perspective into the law curriculum would entail:

«Gender is an issue across the entire discipline. It should be one focus of the degree in the basic courses (Introduction to Law, History of Law, Sociology of Law, Philosophy of Law and Methodology). In other areas, the gender perspective should be an integral element of all seminars and lectures with regard to questions of justice and critique. This applies in particular to constitutional law, European law, human rights, criminology, family law, social law, labour law,

⁶⁹ However, as Rosemary Hunter points out: «Despite the persistence of gender as an organizing principle of experience within the socio, it remains the case that too much socio-legal work fails – in the same way that law does – to take gender into account.» HUNTER 2013, 213.

⁷⁰ See, for example, BARTLETT 1991, 370-403; BAER J. 2011; BARNETT 1998, 19-28.

⁷¹ SCHULTZ 2018.

⁷² COTTERRELL 2006, 88 f.

⁷³ See, for example, MENEGATTI, RUBINI 2017; PETERSSON 1999.

industrial law or equality issues, as gender aspects are particularly relevant in these areas. [...] It makes however sense to offer an extended optional course which can be well integrated into Bachelor or even better Masters of Law [...] programme»⁷⁴.

Scholars from different institutional contexts have produced similar proposals⁷⁵. We are even witnessing inspiring attempts at the level of international cooperation, for example, by establishing a joint master's study programme on "Law and Gender" with an original programme curriculum and developing syllabi for all the courses, an accompanying textbook, setting up a Gender Equality Legal Clinic etc.⁷⁶. While these initiatives are guided by a common goal, it would be difficult to argue that they share a singular vision. However, the fact that there is no consensus on how to best approach these challenges, should not be seen as problematic. I tend to agree with those who argue that it is important that law schools have enough room to adjust the implementation of the core goals and values to their particular institutional context, because «[i]n a sense, what matters is not so much the choice of subjects as the content and approach of those subjects»⁷⁷.

Despite the obstacles and difficulties, it seems that gender-sensitive content and pedagogy have gradually started to find their way into law schools. However, in Slovenia, on the few occasions when discourse on gender equality has touched upon law, and more specifically legal education, these issues have not yet surfaced. In fact, it would be difficult not to agree with the conclusion that efforts to integrate a gender perspective into the content of legal education have been very limited.

On the one hand, the process of legal education in general is seldom the focal point of in-depth research and discussion within the legal community. In addition, on the rare occasions⁷⁸ when the legal curriculum is the subject of (potential) change, sometimes accompanied by academic discussion⁷⁹, the dimension of gender responsive content and pedagogy is not one of the issues that are brought up.

On the other hand, although discourse on gender equality in Slovenia is well established in social scientific research as well as in the policy making process, it has – for the most part – side stepped the particular difficulties and opportunities of mainstreaming gender specifically into the process of legal education. Focusing on issues of education, for example, scholars working in the academic fields of sociology, education, social work, etc. have performed valuable research on how gender is construed in research on education⁸⁰ or about the complexities of gender inequality in the field of education⁸¹, on how gender is conceived by academic institutions⁸², how specific discourse shapes fundamental elements of the educational process, such as academic achievements⁸³, even how feminist approaches have been integrated at the level of curriculum in Slovenian faculties of education⁸⁴. However, as indicated above, challenges

⁷⁴ SCHULTZ 2018.

⁷⁵ See, for example, VUJADINOVIĆ 2015; CATELANI, STRADELLA 2014; AUCHMUTY 2003.

⁷⁶ "New Quality in Education for Gender Equality – Strategic Partnership for the Development of Master's Study Program Law and Gender" available at: <http://lawgem.ius.bg.ac.rs/> (accessed 2 May 2021).

⁷⁷ AUCHMUTY 2003, 392.

⁷⁸ For example, the implementation of the Bologna process principles in Slovenia, or the currently ongoing process of formal accreditation of the new, unified Bachelor and Master programme in law at the University of Ljubljana.

⁷⁹ See, for example, KRANJC, IGLIČAR 2005; KRANJC 2004; ACCETTO 2017.

⁸⁰ VENDRAMIN, ŠRIBAR 2005.

⁸¹ HRZENJAK 2013.

⁸² GABER 2018.

⁸³ VENDRAMIN, ŠIMENC 2016.

⁸⁴ PERGER et al. 2020.

concerning institutionalizing the gender perspective in teaching and research in law tend to be to some extent specific and findings from other fields may not be easily transferable.

It thus seems that there is a gap instead of an intersection between the two segments of the conceptual couple “law and gender” at least when applied to the context of legal education. There is discussion on law – sometimes touching upon the importance of legal education, including the “what” and “how” we teach in law schools. There is discussion on gender – often taking into account the context of (higher) education in general because it is considered a gateway for economic and social opportunity. However, these two worlds seldom collide. The legal profession, including legal scholars, tends to monopolize the first discussion, while mostly being completely uninterested to participate in the second one. And, on the other hand, it seems that sociologists, other researchers and policy-makers interested in gender studies are mostly content with leaving all legal aspects exclusively to the lawyers.

7. Conclusion

In way of conclusion, let me return to the illustrative example from the introduction to this manifesto. Having reviewed my argument sketched on the pages above, I am almost inclined – somewhat paradoxically – to agree with the author of the introductory remarks on most issues. Almost.

For example, I am sure that even many feminist writers would agree that law «as a virtual reality, is a direct expression of the mentality of those that originally created it» and therefore it should not come as a surprise that the legal profession «was once typically male». However, instead of thundering about the dangers of the recent changes in the composition of the judiciary, I think we should take this as a call to investigate the manifestations of male bias integrated into the very fabric of law⁸⁵. I could get behind the claim that «society is [...] out of balance». However, certainly not because we are in a situation where «the female Yin has prevailed». In fact, I am probably not alone in arguing that (gender) balance never existed – and that remains true until today. In order to arrive at this conclusion, however, one must look beyond what I called the “numbers game” in legal education or the legal profession in general and take note of all other factors that influence our position in what Bourdieu called the juridical field⁸⁶. It should further come as no surprise that I agree with the diagnosis about the law school being «the source of the problem». Although I trust that it is evident from what I have argued in this article, I would like to reiterate that what I consider to be the problem is somewhat different from manufacturing «senior legal nurses» (i.e. women) instead of old-time «jurists» (i.e. men). And finally, I firmly believe that in the process of legal education it is absolutely vital that we focus on developing the «cognitive, [...] volitive [and] moral tools» which will enable our students to become good judges – and, as I have aimed to demonstrate, legal gender competence should be included in the toolbox.

The reason underlying this article was not only to draw attention to or even mock discourse of this type. It is a genuine appeal to engage with issues of gender in the context of law and legal education, because the absence of a real discussion does not leave us in a vacuum of neutrality, but on a trajectory of backsliding in the pursuit of gender equality. Thus, this manifesto is aimed at stirring the debate and laying the groundwork for much needed further research on these issues.

⁸⁵ See, for example, BAER J. 1999, 39 ff.

⁸⁶ BOURDIEU 1987.

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