Engendering the study of human rights: why women law professors matter

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It is my honor to contribute to this volume that pays tribute to Professor Cecilia Medina Quiroga who shaped my career more than any other academic and who today is my good friend. While she has undoubtedly had an extraordinary impact on international human rights law adjudication and on legal scholarship, when thinking of what I wanted to write about for this edition I decided quickly that I wanted to examine the importance of women law professors in Latin America, particularly those that teach human rights law. This decision flows from the understanding that without the education I received from her and without her guidance and mentorship I probably would not be where I am in my career today.

I could say that I was lucky to have had her as a teacher but that would not exactly be true; luck had little to do with it. Halfway through 1997 Manuela Cuvi (also writing herein) and I, frustrated with the lack of human rights courses at the University of Chile, decided to take matters into our own hands. Professor Medina Quiroga had recently returned to the Law School after a prolonged absence but was not slated to teach that year. Manuela and I, along with a handful of other female law students, knocked on her office door one afternoon and when she answered, we begged her to teach us human rights law. Thankfully, she accepted and for the next few years she took time out of her busy schedule to teach us, and we pored over the hundreds of pages of reading she would assign us, for no academic credit.

Those biweekly sessions were an oasis in what was otherwise an extremely formalistic and hierarchical education. For one thing, we sat around a table! For another, those sessions were the first ever where I was asked what I thought about the law. Finally, Professor Medina Quiroga was the first law Professor to ever make me consider how the law affected me as a woman and how that experience was different from the narratives contained in my law textbooks. Until that point I had managed to go through four years of law school without ever considering that my identity mattered in examining the law.

Case in point: almost twenty years after the fact I still remember sitting in the third row of my Constitutional Law class and listening to my Professor tell the auditorium that the first phrase of the Chilean Constitution "Men are created free and equal in dignity and rights", need not be amended to include the words "and women". His reasoning was that the proposed amendment was unnecessary because —as everyone knew— the human group "women" was already subsumed in the human group "men". No-one challenged him. All one hundred and ten students in the room, including me, wrote his words down. We memorized them for the exam.

I recently sat down and counted how many women had taught me during my five year law degree at the University of Chile in the 1990s. I took a total of 32 courses over that five year period and I was taught by a woman in just four of them: Roman law, public international law and labor law (two years). I should mention that this does not mean that I studied human rights, gender and the law or women's rights with a male Professor; when I studied law there was no option to take those courses at all, they simply were not offered on the course list. I did, however, spend entire academic years studying mining law (one year), tax law (one year), commercial law (two years) and economics (a whopping three years). I even had to spend a semester studying accounting. The cumulative benefit to my professional career of studying these particular obligatory subjects has been close to zero. Today I teach in the field of international human rights law and I don't do my own taxes.

Clearly the problems with my legal education were not limited to the lack of female voices; the rigid nature of the course curriculum that considered that the University need not educate on gender or on human rights issues but that it could not release lawyers into the world without a solid knowledge of business related law was certainly a problem. My Law School was trying to train lawyers that would have the basic skills necessary to succeed and to contribute to society; when those that designed the curriculum imagined what those lawyers would look like, they imagined themselves and taught us to be as much like them as possible. They taught us to see the law like they did and to face the type of problems that they faced in the way that they faced them. Their experience was masculine so I got a masculine education in the law. It did little to prepare myself for the challenges that I would face in my career as a woman lawyer.

But even if we set aside for a moment the fact that my law school curriculum was designed to recreate predominantly male priorities, there still remains the problem that hardly any women were teaching even those sub-

jects. There is a lot to be said about what applying a woman's experience can offer to the study of contracts, torts and procedure[1]. Perhaps my many years of economics would have taught me something about why women and children disproportionately live in poverty[2], perhaps my tax law class would have examined how taxation perpetuates economic structures that discriminate against women[3]; certainly my criminal law class would have featured fewer rape jokes.

Fast forward twenty years and the problem is not gone. While law school curricula have become more flexible in most parts of the world and now include a greater variety of courses on human rights and gender (albeit mostly elective courses), academia in general remains a predominantly masculine profession and legal academia is overwhelmingly masculine all over the world and particularly in Latin America. A good question to ask at this point is why so few women are teaching law, particularly in Latin America. Another question is why it is important to have women law teachers.

I. WHERE ARE THE WOMEN?

Most of the literature that attempts to explain why women are missing from law school faculty comes from the north. US Scholars have organized several conferences and symposiums dedicated to trying to explain the gender gap in academia and to formulate strategies for overcoming it[4].

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1 For example: J. Resnik. *Revising the Canon: Feminist Help in Teaching Procedure*, Introduction to a Symposium, 61 University of Cincinnati Law Review 1181 (1993); L. Mulcahy and S. Wheeler (2005) *Feminist Perspectives on Contract,* Cavendish Publishing, London; L. M. Finley. *Break in the Silence: Including Women's Issues in a Torts Course*, Yale J. L. & Feminism, 1989.

2 United Nations Development Program, Human Development Report 2014, Sustaining Human Progress: Reducing Vulnerabilities and Building Resistance, 2014, 39-40, 172-179; I. Tinker (Ed.). *Persistent Inequalities; Women and World Development*, Oxford University Press 1990.

3 See, for example: J. G. Stotsky. *Gender Bias in Tax Systems* (september 1996). IMF Working Paper, Vol., pp. 1-22, 1996; L. A. Davis. *Feminist Justification for the Adoption of an Individual Filing System*, A *Note*, 62 S. Cal. L. Rev. 197 (1988-89).

4 See, for example: J. Resnick. *A Continuous Body: Ongoing Conversations About Women and Legal Education*, 53 J. Legal Educ. 564 2003; M. Angel. *The Glass Ceiling for Women in Legal Education: Contract Positions and the Death of Tenure*, 50 J Legal Educ. 1 2000; Law Stories: Reflections of Women in Legal Education: Stories from Four Decades of Section Chairs, 80 UMKC L. Rev. 659 2011-2012; Taking Stock: Women of All Colors in Legal Education, 53 J. Legal Educ. 467 2003; R. K. Neumann, Jr.

While the structure of law schools and the particularities of the legal profession generally are different in different parts of the world, many of the hurdles that women in legal academia face are the same wherever they are.

The first is, of course, that because of the generalized gender bias that all women operate under in patriarchal societies, women are more likely to be considered incompetent than men are. This leads to women having to prove their abilities to a greater extent than men generally have to. This presumption is compounded when the woman in question is also a woman of color, or a working class woman, or a disabled woman[5]. While affirmative action hiring plans are often successful in populating universities with a more diverse faculty, they can contribute to the idea that women, people of color or disabled teachers were not hired for their merits alone[6].

Further to having to prove their academic credentials, women academics often also have to prove their *commitment* to the job. In many places in the world employers will assume that women will focus on having and raising children rather than dedicating themselves to furthering their careers. For employers, maternity means maternity leave, refusing to work long hours or being unable to travel. Likewise, women are generally more likely to relocate because of a male partner's job. These presumptions are based on gender-biased appreciations of women in the workplace and can operate to deter any employer, including law schools, from hiring and promoting women to the highest available positions.

Academic appointments to junior positions often rely on where the candidate received their law degree, what grades they obtained and whether they were awarded prizes or clerkships as opposed to what ideas the candidate has. The problem here is that these selection criteria are often infused by their own gendered bias, particularly if we take into account that the

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Women in Legal Education: What the Statistics Show, 50 J. Legal Educ. 313 2000; J. A. Durako. *Second-Class Citizens in the Pink Ghetto: Gender Bias in Legal Writing*, 50 J. Legal Educ. 562 2000; M. E. Deo. *Looking Forward to Diversity in Legal Academia*, Berkeley Journal of Gender Law & Justice, 29 Berkeley J. Gender L. & Just. 352 2014; Symposium: Black Women Law Professors: Building a Community at the Intersection of Race and Gender, a Symposium, 6 Berkeley Women's L. J. 1 1990-1991.

5 See for example: G. Gutiérrez y Muhs, Y. Flores Niemann, C. G. González, and A. P. Harris (Eds). *Presumed Incompetent: The Intersections of Race and Class of Women in Academia*, The University Press of Colorado (2012).

6 D. Kennedy. *A Cultural Pluralist Case for Affirmative Action in Legal Academia.* 1990 Duke L. J. 705, 720, 1990.

law schools that these candidates graduated from are institutions that are biased towards male priorities[7]. When teachers are hired, those that are not male often feel the pressure to present themselves as masculine as possible in order to conform to a law schools expectation of what a professor should look like.

> "Teachers are overwhelmingly white, male and middle class, and most (by no means all) black and women law teachers give the impression of thorough assimilation to that style, or of insecurity and unhappiness. Students who are women or black or working class find out something important about the professional universe from the first day of class: that it is only minimally pluralist in cultural terms. The teacher sets the tone - a white, male, middle class tone. Students adapt. They do so partly out of fear, partly out of hope of gain, partly out of genuine admiration for their role models. But the line between adaptation to the intellectual and skills content of legal education and adaptation to the white, male, middle class cultural style is a fine one, easily lost sight of"[8].

The presumption of incompetence rears its ugly head again in student evaluations of women law teachers. One study found that:

> "Legal academia [...] seems to be particularly resistant to viewing women as equally competent. Research shows that student evaluations of women faculty tend to be more hostile than those of male faculty. Comments on their appearance, pieces of 'advice', and vicious personal attacks are not uncommon. When women law professors do receive positive comments, they are much different in nature from the comments received by male professors. Whereas men are most often praised for their 'mastery of the subject matter', women are usually praised for being enthusiastic and approachable. Furthermore, the same negative attributes in men and women may be interpreted differently by students. For example, what may pass as theoretical musings from men often is interpreted as confusion when it comes from women. Because women lack the presumption of competence, they are continuously being challenged, resulting in a hostile 'prove it' atmosphere"[9].

Women are faced therefore with the pressure to assimilate to male dominated legal academic culture and at the same time still fail to satisfy its requirements[10].

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7 See for example the classroom experience described by D. Kennedy, *Legal Education and the Reproduction of Hierarchy*, New York University Press, 19 (2004).

8 *Ibid.* 62-63.

9 C. H. Farley. *Confronting Expectations: Women in the Legal Academy*, 8 Yale J. L. & Feminism 333,334 1996.

10 D. B. McBrier. *Gender and Career Dynamics Within a Segmented Professional Labor Market: the Case of Law Academia*, Social Forces, June 2003, 81(4) 1244: "Overall, women appear to be caught in a double bind: female professionals exhibiting stereotypically feminine qualities may be evaluated as unprofessional and less

Duncan Kennedy writes that law schools, through a number of mechanisms reproduce and repopulate the hierarchies that exist in wider society[11]. One of the ways in which this manifests when considering women in legal academia is that even where a law school hires women teachers the majority of tenured professors are still men and women occupy lower level or adjunct positions in a larger proportion than men do[12]. Additionally, women are often assigned to teach subjects that are widely considered female, such as gender and the law, women's rights, family law, children and the law, etc. many of which are elective courses. This perpetuates the idea that these areas of the law are female as well as less important than the core courses.

Latin American legal academia has characteristics that are idiosyncratic and that in addition to those already mentioned, make access to faculty positions even more difficult; in particular, the stubborn reliance that some law schools have on faculty members that only teach part time, as an aside to their very successful private practices. When I studied law this was the most common type of law professor: one that practiced the type of law that they taught and took a few hours off each week to come and tell us how to do it. The advantage of this type of professor was obvious at the time; they were undoubtedly very good at what they did, they saw teaching as a matter of prestige rather than a career and they did not need to be well remunerated for their teaching because they made more than enough in their main jobs. They were law professors *ad honorem* in the purest sense of the words; they taught for the honor of it.

Reliance on the *ad honorem* professor leaves law schools short in several areas, not least of which is legal research which of course suffers where the academic cannot dedicate a large amount of time to it. But more impor-

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competent, while those engaging in more masculine pursuits and/or exhibiting stereotypically masculine traits may face disapproval for perceived autocratic, domineering, and unladylike behavior because of their failure to fulfill the expectations associated with their sex".

11 Kennedy *supra* note 7 at 87.

12 See in general in reference to the USA: Women in Legal Education: R. K. Neumann Jr., *What the Statistics Show*, 50 J Legal Educ 313 2000; D. C. McBrier. *Gender and Career Dynamics within a Segmented Professional Labor Market: The Case of Law Academia, Social Forces*, June 2003, 81(4): 1201-1266; M. Angel, *The Glass Ceiling for Women in Legal Education: Contract Positions and the Death of Tenure*, 50 J. Legal Educ. 1 2000. For other disciplines, see for example: P. M Huang. *Breaking Through Glass Ceilings and Maternal Walls in Academia*: Focus Group Findings, Center for WorkLife Law.

tantly for the purposes of this paper, employing law professors that are the most successful in legal practice makes legal academia replicate the power structures that make older white men the most successful practitioners. It ensures that only the wealthiest practitioners teach, marginalizing those that practice in poorly remunerated areas of the law and those that are not able to climb the economic ranks of practice because of bias, namely women, racial minorities, queer and trans practitioners, disabled lawyers, etc. In addition, if the academic salaries paid to successful practitioners are setting the standard for all other academic salaries, then low wages are another reason women will not be attracted to legal academic jobs if they are not already independently wealthy or professionally successful enough to work for little pay.

II. WHY WOMEN MATTER:

Turning now to the second question, that of why it is important to have women law professors, we should acknowledge that law school serves purposes beyond the mere transmission of ideas about the content of the law. Most law schools also purport to teach students how to think like lawyers, a claim that usually comes down to a fixed set of strategies developed by legal elites[13]. Further, law schools train students to function in legal practice. Thus, the structures and formalities of the classroom often mimic the hierarchical organization of the courtroom and the law firm, with the judge/senior-partner/professor as the object of exorbitant amounts of respect and deference[14]. Exams, whether written or oral, are often about transmitting arguments from memory much in the same way that they are in trial. Further, law schools are the first places where the community of legal elite comes together, where the groups that will write and enforce legal rules in the future meet and interact for the first time. In this sense, law schools provide future lawyers with their first understanding of what is possible in the world of the law, what is not possible and the rules that must be adhered to in order to form part of the community. Law school is about much more than learning the letter of the law; if that's all it took, a library card would suffice to make a good lawyer.

Given this understanding of the purpose of law schools, the first reason to increase the numbers of women law professors is one of political

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13 Kennedy *supra* note 7 at 5-26.

14 *Ibid.* at 35-41.

representation. Kennedy puts it best when he says that "people should be represented in institutions that have power over their lives"[15]. This is independent of the merit of the scholar in question or the usefulness of that scholar as a role model for students who share particular traits with that scholar. If an institution is going to claim to be democratic, as political institutions do, then they cannot offer positions of power mostly to wealthy straight white able-bodied males. The law school loses legitimacy as a political institution if it structures itself in an undemocratic way: where students, who are in a subordinated position come from different social groups but teachers, who hold power over how the professional lives of students progress, come from mostly one social group. There is a good argument therefore for diversity as a political end in itself.

Having women professors of law also serves a symbolic purpose in that their hiring demonstrates to students, female and male alike, that women can and should occupy positions of academic excellence. For many women law students the lack of female role models limits their understanding of the possibilities of their careers. They are less likely to imagine academia as a viable career option if they do not see women teaching and if they do not have access to women who have already achieved the goal of becoming professors. In addition to being role models for all students, women law professors can also serve as mentors for those women who want to become legal academics, advising them as to how to navigate the hiring and promotion process with its gendered particularities.

All of these arguments —political representation, symbolism, role models and mentoring— are equally compelling when considering other social groups that are scarce among law school faculty. It goes without saying that law schools should be trying to hire law professors that represent the multitude of groups that exist in society and that their students come from. In order to do this, they should understand and embrace the fact that law professors (just like all people) have multiple identities. Hiring women means hiring black women, lesbians, disabled women, working class women, etc.

The preceding arguments could all be invoked in support of a wide-reaching program of affirmative action hiring that seeks to radically change the composition of law school faculties all over the world. These arguments could, however, be countered by claims that they undermine

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15 Kennedy *supra* note 6 at 705. Kennedy writes here about racial diversity but acknowledges that his argument can be made with regards "to gender, sexual preference, social class and ethnicity within the 'white community'" at 713.

the meritocracy that should inform the appointment of law teachers and indeed of anyone who aims to teach anything. Surely —those that hold this view would say— we should be hiring the best people for the job, regardless of their sex, race, sexual orientation or degree of disability. The answer to this statement must be that it depends entirely on what your understanding of *the best people* is. The best people to impart an education based on straight white male priorities are probably straight white males. But studying the law should be about how the law impacts all people, not just the ones that look like those that wrote the law.

Thus, a second group of arguments in favor of diversifying law school faculties looks to what women (and people of color, queer people and differently abled people) can tell us *about the law*, about what it does, how it works and how we should change it.

Martha Minow, when referring to racial diversity in academia explains that "...an African American professor is needed, many argue, because that person will bring cultural perspectives otherwise missing from the law school community. That perspective will enrich the classroom, the scholarship, the counselling of students who share that background, and the counselling of students who do not share that background"[16]. The key idea here is that different groups of people experience the law in different ways and in order to provide the best legal education possible, law schools need to provide students and society with a wide range of perspectives through which to understand the law.

Feminist legal scholars have already gone a long way to contributing perspectives to the study of the law that were previously neglected:

> "Inspired by the movement for women's rights and by feminist scholarship in other fields, feminist legal scholarship began in the 1970s to challenge the overt exclusion or subordination of women. Legal scholars argued that gender distinctions in law lacked justification for denying equal treatment given basic similarities between men's and women's abilities and interests. By the late 1970s feminist legal scholarship was specifically criticizing the pretense of neutrality in legal standards that use the male experience as the benchmark for universal human experience and, in effect, marginalize women or treat as deviant any difference drawn in relation to men"[17].

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16 M. Minow. *Not Only for Myself: Identity, Politics and the Law*, The New Press, 13 (1997).

17 M. Minow. *Making all the Difference: Inclusion, Exclusion and American Law*. Cornell University Press, 211 (1990).

Take, for example, the work of Catharine Mackinnon whose framework uncovered the gender bias in the law[18], Hilary Charlesworth and Christine Chinkin who explained how that bias informed international law[19], and Kimberlé Crenshaw, whose work on intersectionality theory illuminated how the oppression of black women was greater than the sum of sexism and racism[20], to name only a few. Each of these scholars revolutionized the ways in which we understand the law by illuminating dynamics that were invisible before because of a lack of diversity in the experiences of legal scholars.

None of this is to say that if law schools hire women those women will necessarily be good at understanding gendered legal problems and articulating gender critiques of the law[21]; the problem is more complex than merely adding women to the faculty and hoping for the best. But it is safe to say that perspectives on law (and on life in general) are informed by experiences and women are more likely to have experiences that make gender dynamics apparent and important to us.

III. WOMEN IN HUMAN RIGHTS EDUCATION

Human rights law, be it domestic or international, suffers from the same gender bias that all law suffers from. It is made, enforced and taught mostly by men and so it is coded with male supremacist understandings, just like all other areas of the law[22]. Women's rights for example, are often understood as different, lesser rights than mainstream human rights. Sometimes women's rights are relegated to special laws and treaties, their adjudication to special women's bodies, their study to special women's courses. Issues

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18 C. Mackinnon. *Towards a Feminist Theory of the State*, Harvard University Press, 1989.

19 H. Charlesworth and C. Chinkin. *The Boundaries of International Law*, Manchester University Press, 2000.

20 K. Crenshaw. *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, University of University of Chicago Legal Forum 139-67 (1989).

21 In the same way as adding women to the judiciary is not a quick way to eliminate male supremacy in the judiciary. See for example P. Palacios Zuloaga, *The Path to Gender Justice in the Inter-American Court of Human Rights*, 17 TEXAS J. WOMEN & L. 227 (2008).

22 For an in depth analysis of this idea in domestic law see Mackinnon, *supra* note 18. In international law see: H. Charlesworth, C. Chinkin and S. Wright. The American Journal of International Law vol. 85, No. 4 (Oct., 1991).

regarding the violation of women's rights are often understood as private matters as opposed to public matters and excluded from the protection of the state[23]. As a result, students of human rights law often graduate with understandings of how rights are violated and what should be done about it that are also coded, meaning that they prioritize male experiences and male priorities.

There are many examples of this in human rights law and practice but for the purposes of illustrating my point I will mention one that is specific to Latin America. In 2003 the Chilean government opened a second truth commission aimed at gathering information about human rights violations committed under Pinochet's regime and offering reparations to victims. The first truth commission, which published its report in 1991, had dealt only with those —on both sides of the regime— who had been killed or forcibly disappeared[24]. The second commission, widely referred to by the name of its chairman Bishop Sergio Valech, looked instead at victims of political imprisonment and torture and aimed to establish a truth narrative regarding torture in Chile and to create a list of victims that were eligible to receive state-funded reparations payments. The Commission set about its work by training professionals in how to interview survivors and then by calling all those who considered that they had suffered political imprisonment and torture to come and tell their stories and submit a claim for reparations. The Valech Commission had two objectives: first, like most truth commissions, it aimed to provide an alternate account of the dictatorship that focused on its human rights violations and second to provide financial compensation for victims. It faced two important objections: first, that the report of the Commission would single out individuals as perpetrators without giving them the benefit of due process and second, that dishonest people would take advantage of the opportunity and file false claims for compensation. The Commission dealt with both of these objections by deciding and publicizing that: a) their report would not name perpetrators and that the transcripts of victims' interviews would not be made public for fifty years, giving all those involved ample time to die, and: b) that the names and national identity numbers of all those whose claims were con-

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23 C. Mackinnon, *supra* note 18 at 35-36.

24 Informe de la Comisión de la Verdad y Reconciliación (1991-Chile), *available* at http://www.ddhh.gov.cl/ddhh_rettig.html.

sidered substantiated enough to receive state reparations would be included in a list, which would be published[25].

The decisions made by the Valech Commission might seem perfectly reasonable but they raise concerns once you look at them with a gendered perspective. The first way in which the Commission's work proved to be inadequate for women is that the interviewers did not ask survivors about sexual violence and instead allowed them to freely narrate their mistreatment as they saw fit[26]. It was only when the process has closed and the information received by the Commission was collated that they realized that almost all of the women that testified claimed to have been victims of some form of sexual violence[27]. The Commission itself recognized that:

> "...we believe that the number of women who were raped is much higher than the cases in which they told of being raped, because of the aforementioned circumstances [many women do not want to talk about sexual violence] and because there are numerous testimonies from prisoners that claim to have watched rapes being committed in a large number of locations"[28].

One problem about not training interviewers to ask about sexual violence is that it leaves the contours of that treatment up to victims, meaning that victims don't always know that what happened to them qualifies as sexual violence or they don't know that what happened to them was wrong, or unusual or in fact, torture. Furthermore, it fails to recognize that victims may not want to detail treatment that they consider shameful if it has not been made clear to them that they will not be judged or re-victimized for doing so. The interviewers were strangers, the retelling of abuse was undoubtedly re-traumatizing for some victims and the issue of sexual violence is still very much taboo in Chilean society. Therefore, not training interviewers to ask about sexual violence undoubtedly contributed to allowing the extent of such violence to remain hidden.

It is not known exactly why the Commission chose not to ask about rape and sexual abuse but rather than being a conscious decision to omit gender violence, it probably has more to do with a common understanding of what torture looks like which is a masculine construct. When people thought of torture under dictatorship in the 70s and 80s, they thought

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25 Informe de la Comisión Nacional sobre Prisión Política y Tortura ("Valech Report") (Gobierno de Chile 2004).

26 Valech Report *supra* note 25 at 38-41, 291.

27 *Ibid.* at 290-297.

28 *Ibid.* at 291. Translation by author.

more of beatings and electric shocks than of rape and sexual harassment. This would explain why the Commission was not expecting almost all women to spontaneously narrate instances of sexual violence. In addition, if they were not expecting this finding with regards to women, it goes without saying that they weren't expecting men to describe being victims of sexual violence too[29].

If the Commission, in designing its procedures, had understood the prevalence of sexual violence as a means of torture and cruel, inhuman and degrading treatment and if it had understood the consequences of this type of violence for survivors, it may well have designed a different transparency mechanism to avoid false submissions. As it stood, those who submitted claims for reparations agreed that, while the content of their testimonies would be kept secret for fifty years, once their claim was approved their names and national identity numbers would be published. This measure was presumably to serve as a vehicle for others to hold claimants accountable. In practice however, we have to understand the impact of this transparency measure in conjunction with the fact that virtually all women, and some men, were victims of sexual violence. It is reasonable to believe that victims of sexual violence might not want their names and ID numbers to be published in the newspaper, particularly if twenty to thirty years after the events their friends and families were not aware of what had happened to them. This is not just a measure that would affect survivors of sexual violence, the argument could also be made that many survivors of non-sexual violence would prefer to remain anonymous rather than deal with the stigma and shame of being outed as torture victims. In any case, the lack of gendered reasoning in the planning of the Commission's work sheds doubt on its findings as to the prevalence of political imprisonment and torture during the regime and particularly on its findings as to the percentage of victims who were female[30]. It isn't unreasonable to believe that women who were raped or sexually abused during their detentions would forgo the approximately two hundred dollars a month in reparations payments in exchange for their experiences remaining private.

What the Valech Commission needed was people trained to identify gender issues when they were setting up and designing their procedures: specialists in human rights and transitional justice that were *also* gender-aware. If they had relied on professionals like this, the "obvious" nature of the

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29 *Ibid.* at 287-280.

30 *Ibid.* at 561.

transparency requirements that the Commission imposed upon victims of sexual violence would have been called into question before victims were subjected to them. If the Commission had even had the inkling that their work might have gendered implications, and even if they themselves recognized that they were not able to employ a gendered analysis, they could have reached out to women's organizations that were working with women survivors to ask for help. At the time at least two Chilean women's NGO were doing this work[31].

My point in telling this story is to say two things: first, that the lack of gender awareness can cripple even the most well-meaning of attempts to address human rights violations; second, that we shouldn't have to resort to gender specialists to vet our well-intentioned plans to repair human rights violations. We should all have a basic understanding of gender theory and of the ways in which women's human rights are violated and the ways in which we should address those violations. Further, the responsibility of training lawyers to be able to see and address gender issues lies squarely with law schools. Gender theory should form part of the general law school courses that all students must pass in order to graduate.

There are several examples of how the application of a gendered perspective has radically changed the way that we understand human rights law but I will limit myself to mentioning two herein that Professor Medina herself participated in. The first one dates back to the year 2000 when the UN Human Rights Committee released General Comment 28[32]. General Comments contain official interpretations of the treaty that each UN body is called upon to monitor, garnered from their experience. They often contain what the monitoring body understands to constitute violations of each right and what they expect states to report on when coming before it. General Comment 28, written by the Human Rights Committee that Professor Medina served on, examines in detail how women can become victims of violations of each of the rights contained in the International Covenant on Civil and Political Rights. In other words, General Comment 28 rereads the ICCPR from the perspective of women. For example, when referring

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31 C. Carrera. "Un Secreto a Voces: Violencia Sexual como Tortura durante la Represión Política en Chile", *Revista Mujer Salud*, Red de las Mujeres Latinoamericanas y del Caribe 1/2005 (which refers to a research project on women as victims of sexual violence as torture under the Chilean regime undertaken by two chilean women's NGOs at the time).

32 Human Rights Committee, General Comment 28, Equality of Rights between Men and Women (art. 3), U. N. Doc. CCPR/C/21/Rev.l/Add.10 (2000).

to the right to life the HRC requests that states inform on maternal mortality, clandestine abortions, "female infanticide, the burning of widows and dowry killings" among other ways in which women are killed or allowed to be killed[33]. Its examination of the right to be free from torture and other cruel, inhuman and degrading treatments includes domestic violence, rape, sexual and reproductive freedoms and genital mutilation[34]. Its examination of the right to freedom of movement includes requesting states to inform the Committee about whether adult women need the consent of anyone else to get a passport[35].

General Comment 28 was enlightening for many. Not only did it illuminate the ways in which women's rights were being violated all over the world, it also shed light upon the fact that up until that point violations of rights had been imagined in a supposedly neutral way, which was in reality a masculine way.

A second example of the way in which applying a gendered analysis can radically improve the understanding of human rights law was seen in 2009 when the Inter-American Court of Human Rights, which Cecilia Medina presided over at the time, issued its ruling in the *Case of the Cotton Field v. Mexico*[36]. The case dealt with the widespread disappearances and murders of women in the border town of Juárez, which has been labeled a mass femicide by women's organizations[37]. For decades now, young women have been disappearing in and around Juárez and if their bodies are found, they show signs of sexual violence; yet the state has failed to take action to protect women or to carry out an investigation that is capable of determining what happened to them and who is responsible for their disappearance. The *Cotton Field* case told of three victims of this femicide.

The Inter-American Court of Human Rights has a long history of dealing with examples of gross and systematic violations of human rights such as the ones presented but this case had elements to it that, when looked at through a gendered lens, forced the Court to alter its prior jurisprudence. For one thing, no-one was arguing that state agents themselves had perpetrated the femicides, but rather that the state had allowed them to happen. In its ruling, the Court found that the indifference and negligence that

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33 *Ibid.* ¶ 10.
34 *Ibid.* ¶ 11.
35 *Ibid.* ¶ 16.
36 *Campo Algodonero*, Inter-Am. Ct. H. R. (ser. C) No. 205.
37 Femicide is understood broadly as the killing of women because they are women.

state officials exhibited towards these crimes contributed to the violence suffered by women in the area.

> "it has been established that, when investigating this violence, some authorities mentioned that the victims were 'flighty' or that 'they had run away with their boyfriends,' which, added to the State's inaction at the start of the investigation, allows the Tribunal to conclude that, as a result of its consequences as regards the impunity in the case, this indifference reproduces the violence that it claims to be trying to counter, without prejudice to the fact that it alone constitutes discrimination regarding access to justice. The impunity of the crimes committed sends the message that violence against women is tolerated; this leads to their perpetuation, together with social acceptance of the phenomenon, the feeling women have that they are not safe, and their persistent mistrust in the system of administration of justice"[38].

Additionally, the Court held that violence against women was a form of discrimination in and of itself[39] and that an investigation that would fulfill the requirements of Mexico's international obligations required the deployment of a gendered analysis[40].

Finally, after finding that the state of Mexico was responsible for several violations of the American Convention on Human Rights and of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, the Court had to decide on which reparations to order the state to carry out. It is here that perhaps the most important jurisprudential innovation was set out. Prior to the *Cotton Field* case, the norm in reparations for human rights violations was based on the principle of *restitutio in integrum*, whereby the state was ordered to do everything possible to return the victim or their next of kin to that state in which they were in before the violation took place. This objective could be achieved as the Court saw fit, by ordering the state to take a variety of measures including the payment of compensation, the provision of medical and psychological services, the restitution of property, etc. In this case, however, seeing as the Court found that the social circumstances in which the victims lived, namely the degree of sexism that informed cultural understandings of the lives of women in Juárez, had contributed to their victimization, it made little sense to attempt to return the victims and their families to that state of affairs. The Court ruled instead that the state should undertake transformative reparations aimed at improving the lives of women instead:

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38 *Campo Algodonero supra* note 36 at ¶ 402.

39 *Ibid.* ¶ 402.

40 *Ibid.* ¶ 388-389, 455.b).

> "...bearing in mind the context of structural discrimination in which the facts of this case occurred, which was acknowledged by the State [...], the reparations must be designed to change this situation, so that their effect is not only of restitution, but also of rectification. In this regard, reestablishment of the same structural context of violence and discrimination is not acceptable"[41].

This was the first time that the Court made clear that not only the understanding of what constitutes a violation of human rights but also the reparation of that violation should both involve a gendered analysis.

The preceding three examples have sought to illustrate the importance of being able to deploy a gender perspective when thinking about human rights and how our understandings of what is allowed and not allowed — ultimately, what is fair— change when we are able to understand how the law affects women. I have included them in this paper on women in legal academia because I believe that gender justice should not be a task that is assigned only to those that choose to dedicate themselves to women's rights activism. Gender awareness changes the way that we as lawyers experience the law: it changes how we understand its content and its impact and it changes how we think about reforming it. As such, it should be a skill that all lawyers, regardless of their sex, are able to deploy in their work. The only way that we are going to be able to get a whole generation of lawyers to consider gender in their day to day lives is to make sure that we teach gender analysis to all law school students.

IV. CONCLUSIONS

In 1992 a group of Harvard Law Students sued their law school over the lack of diversity in their faculty. They argued, in general terms, that by not providing them with a diverse faculty, the school

> "deprived them of the educational benefits of association with an integrated faculty [and]... it especially denies women and minority students full and equal educational opportunities because it creates an educational environment that is insensitive and intolerant of difference, that perpetuates badges of inferiority and reduces the students' professional and business opportunities"[42].

While the efforts of these particular students are notable, it seems unfair to place the burden of pushing for the diversification of law school faculty

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41 *Ibid.* ¶ 450.

42 The Harvard Crimson "Law School Goes to Trial Over Hiring", Feb 26 1992.

on students who —like 20 year old me— probably won't know what they're missing. It is the obligation of law school administrators to present students with professors that will offer them a wide range of experiences and perspectives to inform their understanding of the law.

All disciplines are infused with the perspectives of the human groups that dominate them and law is no different. Within the law, all areas of study and practice are coded with privilege, because the law is made, enforced and taught by people who have those privileges —but the law is applied to us all—. It affects different groups of people in different ways. In order to teach law effectively, therefore, faculties need perspectives on the law from women, from people of color, from queer people, from working class people, from people with disabilities. Studying law with teachers from these groups will offer students an array of understandings of the law that they simply won't get without diverse faculties.

Thus, in order to offer a legal education —particularly an education in human rights— that will enlighten students to the experiences of people who do not benefit from the privileges that infuse the law, law schools must first validate those experiences by hiring and promoting teachers from those groups and then they must make sure that students are exposed to those teachers. It will radically change the way that students understand the law —like Professor Medina Quiroga's classes changed my understanding of the law— and that will undoubtedly be a good thing: for the students themselves, for their future clients and for society in general.