



Gender and the Law: a test-bed for providing law students with a broad gender perspective

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1. RESUM:

Scholars from three complementary disciplines (Legal History, Private Law and Criminal Law) have been working together since 2017 to provide UPF Law students with a broad gender perspective which helps them develop priceless professional and personal skills. The optional course “Gender and the Law”, entirely taught in English, is based on readings, real cases and activities that students are presenting and discussing. It has achieved an unprecedented degree of commitment and popularity.

2. ABSTRACT:

Scholars from three complementary disciplines (Legal History, Private Law and Criminal Law) have been working together since 2017 to provide UPF Law students with a broad gender perspective which helps them develop priceless professional and personal skills. The optional course “Gender and the Law”, entirely taught in English, is based on readings, real cases and activities that students are presenting and discussing. It has achieved an unprecedented degree of commitment and popularity.

3. PARAULES CLAU: 4-6

Gender perspective, Legal History, Private Law, Criminal Law, English

4. KEYWORDS: 4-6

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5. DESENVOLUPAMENT:

The UPF is a leading public university chosen by outstanding students from all Catalonia and other parts of Spain. The Law School offers a prestigious four-year bachelor of Laws to around 260 students per cohort, apart from other degrees such as Criminology or Industrial Relations.

For a decade, only a compulsory course titled “Gender and Criminal Justice” has been offered to 3rd-year students of Criminology –an ineludible module due to the nature and goals of their bachelor–. Meanwhile, several scholars of the Law School have been (and keep on!) making excellent research on gender issues and promising predoc and postdoc students are also focusing on topics such as mistreatments and gender based violence, new family patterns, current issues on the identity of persons who do not fit in a binary-gendered society, etc. Nevertheless, neither the bachelor of Laws nor the dual degree in Law and Economics/Business –with around 90 students per cohort– were proposing any module where the gender perspective would be pivotal or very relevant (similarly for the UPF Economy and Business School, Oliveras, Crespo, Muñoz, 2018).

Amazingly, for some core modules such as Criminal Law or Family Law, analysing contents under gender perspective or not doing so had for long exclusively depended upon the lecturer. So, a wake-up call was urgently needed, to provide students with indispensable skills.

In 2017, the Faculty, led by Dean prof. Anna Caballé, realised that some new optional courses had to be implemented to meet complementary needs: a) transversality (enhancing cooperation among lecturers from different specialisations); b) additional teaching in English for the sake of internationalisation (both at home and abroad); c) social responsibility (offering students appropriate tools to better answer the main contemporary challenges, to work for a better world); d) minors, which had just been implemented at the UPF; e) linking lecturing and science, so that scholars would be sharing with society the results of their research. Many of these needs were reflected in the Strategic Plan of the UPF written for its 25th anniversary.

Three lecturers working on different sections (Legal History, Private Law and Criminal Law) answered the call opened by the Dean with a proposal of a module entirely taught in English titled “Gender and the Law” which would try to fill the mentioned disgraceful gap within the UPF



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legal studies. A similar course (“Género y Derecho”, taught in Spanish) was to be implemented at the UAB in the academic year 2018-2019. These were pretty new experiences in Spanish Law Schools, where few attempts had formerly been made to introduce a gender approach at certain Law courses (Saldaña, 2010; Ménendez / Germán, 2012; Cantó, 2013; Requena, 2016).

From 2017 on, both the contents and methodology of an innovative course focused on providing Law students with a broad gender perspective progressively developed so that the optional course is nowadays at the top of popularity at the UPF Law School. Almost 90 students chose it in the academic year 2018-2019 (edition 1.0), which is a lot (even too much) for an optional course, where a frequent interaction among lecturers and students is convenient. Therefore, the Law School doubled the course for the academic year 2019-2020 (editions 2.0 and 2.1) –it had 64 students in the 1st trimester and 46 in the 2nd one– and for the academic year 2020-2021 (editions 3.0 and 3.1) –49 students in the 1st trimester and 52 in the 2nd one, lower than in previous years due to the unexpected fall of incoming international mobility–. In the academic year 2021-2022 the module will also be taught twice. Not only lectures, but all readings and activities are in English and most contents of the course are analysed from a comparative law perspective (e.g., how different legal systems deal with the registration of intergender individuals at birth certificate). Thus, international students are more than welcome: There is a magnetic multinational community discussing any topic from different legal systems. Being “Gender and the Law” a course offered within the UPF [Minor in Gender Studies](#), students from other Social and Human Sciences faculties are also welcome, which makes sense in a course where notions of Political Sciences, Humanities, Journalism and Economy become basic during the sessions.

The course is worth 5 ects, which at the UPF Law School implies 32 hours of activity in the classroom –virtual classroom in 2020-2021, of course– and overall 125 hours of work for any student. The module structure is simple: 1) A 90’ introductory session where the three lecturers present their respective sections, materials and activities; 2) Section I (Historical and Cultural approach), composed of six 90’ sessions; 3) Section II (Private Law from a Gender perspective), composed of six 90’ sessions; 4) Section III (Criminal Law from a Gender perspective), composed of six 90’ sessions; 5) A common conclusive session to let students linking contents, skills and



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reflections arisen throughout the whole term; 6) A 120' open book final exercise.

Each section is delivering 33% of the final grade. Globally, 50% of the grade depends on continuous assessment and 50% on a final exercise which usually requires writing general essays on some of the most relevant topics discussed in class –some students prefer oral interviews–. All lecturers (the three authors and occasionally Laura Esteve and Patsili Toledo) are proposing sessions based on readings, case-based learning and other participative activities.

Several measures have been implemented to strongly link the three sections of the module and make sure students perceive a cohesion of both contents and methodology: a) The above mentioned common introductory and conclusive sessions; b) each lecturer uses the final minutes of his/her section to pass the torch to the colleague in charge of the following section so that topics already discussed are publicly recalled and topics to come are announced (we had better say “reannounced”); c) each lecturer makes comments about what his/her colleagues already presented or may present later; d) frequent use of case-law, especially relevant on a course aimed at analysing some legal institutions from a gender perspective, as most of the rulings show that application of Law by courts has been and still is male-centered and strongly influenced by gender stereotypes –e.g. the victims’ testimony is rather not believable when solving crimes against women’s sexual freedom– (Aguilera, 2012; Bowman, Rosenbury, Tuerkheimer, Yurackoon, 2017; AQU Catalunya, 2018: 33); e) relatively similar assessment exercises are proposed in all sections so that it is easy for students to know what they are expected to do.

It is convenient to outline what happens in the introductory session: through true/false or multiple choice questionnaires, each lecturer asks a couple of questions to students in order to make them realise the gaps they have and will be glad to fill up throughout the term. The success of different versions of this innovative experience has been pointed out in legal courses, where students need extra motivation to learn about social problems they probably never faced or imagined (Fraile, 2016; Macía, 2016; Urdánóz, 2016).

Once the general terms of the course have been introduced, we shall be summarizing the contents of the three sections. **The 1st one** provides students with a cultural and historical introduction on the religious, social, economic and juridical roots of the structures based on



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women's subjection which have prevailed in the Western world for millenia. The point of departure is a methodological reflection about the limits of historical sources –and consequently historiography– since women have left few traces in a world conceived by and for men. Afterwards, five keywords (Identity, Alterity, Capacity, Responsibility and Sorority) are attentively developed. First, students get to know how the identity of either women or men –including several “subidentities” depending on noble, religious, urban or rural contexts– has been shaped and ruled throughout the Middle Ages and the Early Modern Era. Secondly, cases of people who did not fit into the traditional binary male/female –historically labeled as hermaphrodites, sodomites and similar denigrating concepts– and legal and social consequences of their deviate “behaviours” are analysed. Thirdly, traditional family structures are presented so that students can identify rules rooted either in Roman Law or in posterior legal, judicial, doctrinal or consuetudinary layers regarding nuptial agreements, economic and domestic roles for both partners in couple's life, consequences of widowship and separations, (scarce) opportunities for women to scape discipline administered by their parents or their husbands, the limited space they were granted in a professional world whose grammar was almost absolutely masculine, etc. Fourthly, students check to what extent women's very restricted capacity in private law was transferred into historical both substantive and procedural criminal law; harsh repression of crimes such as witchcraft and adultery is especially criticized. In fifth place, moving towards early liberal times (from liberal revolutions until the early twentieth century), students check first attempts for feminine empowerment in educational and professional domains, later the suffragist movement and other progresses; both individual initiatives and collective actions are taken into account; attention is paid not only to effective sorority but also to women reluctant to their peers' empowerment and to (scarce) masculine supports or solidarities. All along this cultural and historical section, in addition to two readings in common for all students and eight elective ones to be discussed in class, Roman, Gothic, Renaissance, Baroque or Contemporary Art –mainly literature, sculpture, painting, photography and opera– is regularly used. Students are asked either to comment on cultural suggestions of the lecturer or to prepare contents on their own. Thus, very successful presentations on roles attributed to women by contemporary opera composers such as Georges Bizet or Giacomo Puccini (figure 1 below) or by Spanish –universal!– authors such as Joan Miró, Pablo Ruiz Picasso or Salvador Dalí (figure 2 below) have been issued.



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Once students are aware of the religious, medical, scientific, mental, social and legal obstacles which have very recently been –or are just being– removed or overcome, they are happy to get into the contemporary private law and criminal law sections.

The 2nd section of the course, which deals with Private Law from a Gender Perspective, focuses on some institutions of contract law, as well as personal and family law, given its capacity for perpetuating gender stereotypes and promoting dependency relationships. The starting point of this section is that Law, as society itself, is a male-centered structure, as figure 3 below shows. This slide, the first one of the materials corresponding to this section of the course, compares important legal events from the past and the present and evidence that there is something in the Law which reproduces the dominating system of power. From this point of view, the Law is not really autonomous because the legal system reflects, expresses and reinforces power relationships with sexual content. Therefore, if the Law reflects these power relationships, applying the rules implies reinforcing the asymmetrical power in favour of the elites.

Relying on a Case-based learning methodology, this section uses recent rulings decided by prominent courts, as well as other suggestive readings, to encourage discussion and critical opinion on topics such as freedom not to contract and discrimination because of sexual orientation (see figure 4 below). After the analysis and oral presentation of three crucial rulings on the topic, the students must be able to solve the conflict among the right not to be discriminated against regarding access to goods and services and freedom of contract, which includes the freedom not to contract. This same methodology is used to analyse the remaining course's contents, which include the legal status of transsexual, transgender and intersex persons, among other categories; the consequences of regulating same-sex marriage and civil partnerships; the economical and personal consequences of family breakdown for women, with special attention to gender asymmetries in the domestic sphere; and sex, reproduction and parenthood, especially focusing on the consequences of assisted reproductive technologies for women, the analysis of controversial practices such as surrogacy and the new challenges regarding the legal concepts of “mother” and “father”.



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The assessment of this section of the course combines different methodologies in order to test different competences, from individual reports on several leading cases which must be orally presented to other students, to some teamwork activities on a hard case or a controversial topic which raises clear gender issues. This task is especially rewarding, as students are divided into teams, assigned different roles and asked to defend positions which do not always fit with their own ones. Apart from promoting empathy, this task allows them to develop their analysis and synthesis abilities, construction and use of legal and non-legal arguments favouring the role they have been assigned, oral and writing communication and, last but not least, teamwork. Once the simulation is concluded, the students are asked to give their personal answer to the question raised. Therefore, they can confirm by themselves that defending a position is not probably as easy as it was before this activity. The last session of this section consists of a questionnaire developed through multiple choice questions on two selected readings which deal with the same topic from different perspectives. This methodology allows us to assess in an objective manner if the students have internalised some of the basic contents of the course.

The 3rd section of the course, dealing with Criminal law from a Gender Perspective, focuses on some relevant topics, which are terribly too frequent in the news. These topics are as follows: The concept of gender-based violence according to Criminal Law; The crime of forced marriage; The different sexual crimes from a gender perspective; Gender-based victims and Criminal justice system. One of the cross-cutting aspects of this part of the course is the concept of consent. This is a fundamental issue not only to determine the existence of a gender-based crime -let us think, for example, of sexual crimes- but also to incorporate in the study of law a methodology based on the gender perspective. The assessment of this section also combines different teaching methodologies: mandatory selected readings and individual reports on these readings; teamwork activities and orally presentations; and also an assessment test.

As mentioned above, the first topic addressed in this third section is the concept of gender-based violence. It must be taken into account that the students of our course come from different countries and, therefore, each of them knows -or at least has studied- the characteristics of a particular legal system. In this sense and with the support of readings of different legal origin,



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students can realize the difficulty of defining the concept of gender-based violence and the gender biases that exist in criminal law (see figure 5 below). Moreover, the concept that the legislator (or legislators) handle does not coincide with the one that is sometimes used from the doctrine. Since the students have to read two readings before the session, the discussion that is usually generated in class about this controversial conceptual question is really interesting and also this task encourages a critical point of view so necessary for university students.

Forced-marriages are another issue discussed in this third section. For many years we have talked about the concerns of this phenomenon. But recently with the proliferation of laws and different measures against domestic and gender-based violence, the concerns about the legal approach to forced-marriage have increased a lot. In fact international regulations consider the gender-based violence perspective to also handle cases of forced-marriage. Students analyze this topic not only through (mandatory and complementary) readings (that they have read before attending the class), but also through documentaries selected for this purpose. Thus, after a brief explanation by the lecturer in charge of the section, the readings are debated in teams. This debate is structured based on questions previously formulated by the lecturer.

The study of sexual crimes from a gender perspective is the third topic studied in this section. For these purposes, judicial decisions are discussed on controversial aspects such as the distinction between sexual assault and sexual abuse. On some occasion, if a Spanish judicial decision has been selected, some of the students are in charge of translating the facts and explaining them to their foreign colleagues. Finally, the third section of this course is also dedicated to studying the way in which victims of gender violence approach the criminal justice system (figure 6 below). This topic makes students understand that, sometimes, the justice system, with its own (formal) rules, neglects the specific needs of victims of gender violence.

So far the specific teaching offer on Gender at the UPF Law School has been characterized by its optional character. The insufficient number of gender-based compulsory courses explains that, in practice, optional courses are only enrolled by a (large) minority of highly motivated students. Since these courses are optional and mainly offered in English, their scope is rather limited (for more information, see: UCA de Dret, [Jornada sobre la perspectiva de gènere a la docència](#), 2019)).



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While compulsory gender-based courses are not offered (AQU Catalunya, [Marc General per a la incorporació de la perspectiva de gènere en la docència universitària](#), 2018), “Gender and the Law” becomes an essential first step to provide our students with the broad gender perspective which has for too long been missing.



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5.1. FIGURA O IMATGE 1

Why the Scandal ?



Carmen, played by Elna Garanca at The Metropolitan Opera, 2010

- Carmen was a stubborn free woman, and a seductress
- This representation of woman didn't please at all the bourgeois public of the Opéra-Comique
- Used to operas with happy endings, portraying well-behaved ladies
- Bizet tried to counterbalance the provocative character of Carmen with the consensual character of Micaëla, a young blond peasant girl
- Murder of Carmen on stage was seen as the summit of immorality

5.2. FIGURA O IMATGE 2

Painting as a way of expression



Retrato de Olga en un sillón (1917)

Idealized and melancholic



Gran Desnudo en Sillón Rojo (1930)

Disfigured and aggressive



El Sueño (1932)

Sensual and erotic



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5.3. FIGURA O IMATGE 3



Rome, 1957. Source: "Fifty anniversary of the Roma Treaty", *El País*, 25 March 2007



Madrid, 2019: Opening of the Spanish judicial year
Source: *AMJE*, 9 Sept. 2019



Madrid, 2020: Opening of the Spanish judicial year
Source: *El HuffPost*, 7 Sept. 2020

5.4. FIGURA O IMATGE 4

Masterpiece Cakeshop, Ltd., et al. vs. Colorado Civil Rights Commission et al. 584 U.S. ____ (2018)



Associated Press file; AP/Molly Kaplan, ACLU



5.5. FIGURA O IMATGE 5

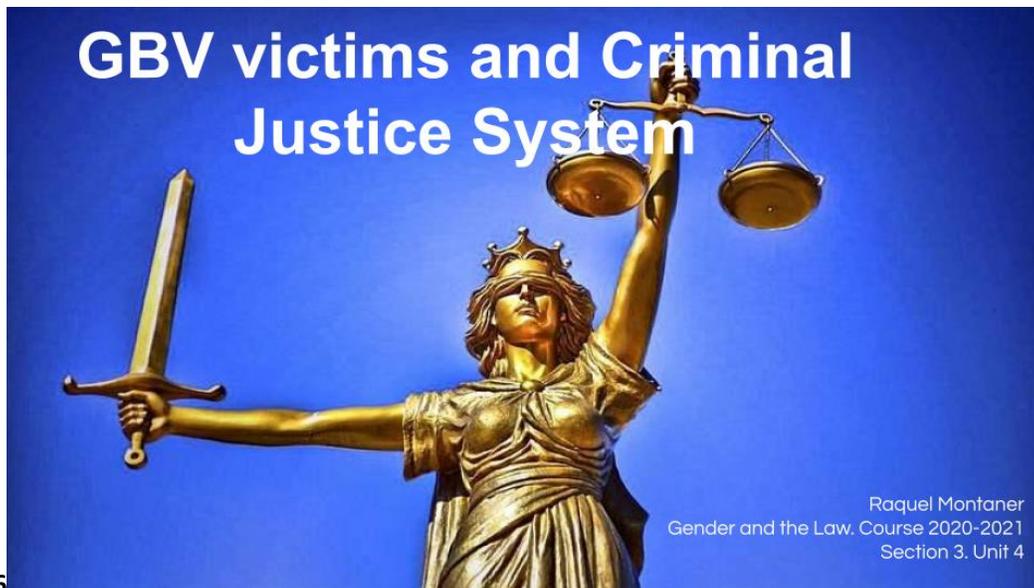


**“gender-responsive approach”
... *in Criminal Law?***

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5.6. FIGURA O IMATGE





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