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Feminist constitutionalism as an instrument for the educational transformation of spaces of intelligibility in law

O constitucionalismo feminista como instrumento para transformação educacional dos espaços de inteligibilidade do direito

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Abstract

The aim of this work is to focus on the gender perspective as a field of research, which is necessary for the pedagogical transformation of the space of legal intelligibility, based on the interweaving of feminist constitutionalism, legal education and Law. The importance of considering a gender perspective in the field of Law, especially in the classroom, lies not only in the methodological innovation that legal education must acquire, but also in the perception of how the legal system deals with its absence or limited presence. The method used is based on the assumption that if feminist constitutionalism reads and interprets the Law from a gender perspective, is it possible to use it as a tool in the learning process in legal education? In this context, this study contains a theoretical dialogue, and the first part aims to understand the challenges that patriarchy poses to the reading, reflection and interpretation of the Law. Furthermore, it is important to demonstrate what an expressive space of intelligibility means and its relation to a legal education perspective related to feminist constitutionalism as one of the possible areas of this educational transformation. Finally, it is proposed to integrate gender research with feminist constitutionalism as a learning opportunity to teach analysis of how a gender perspective can be a rich tool for thinking about the Law outside of traditional constitutional interpretation.

Keywords: Gender perspective; Constitutional law; gender equality; feminist constitutionalism; legal education.

Resumo

O trabalho tem como objetivo examinar a perspectiva de gênero como campo de estudo necessário para uma transformação educativa dos espaços de inteligibilidade do direito, tendo como base os entrelaçamentos entre a abordagem oferecida pelo constitucionalismo feminista, o ensino jurídico e o direito. A importância de uma perspectiva que considere o gênero no direito, especialmente, em sala de aula, não está apenas na novidade metodológica

que o ensino jurídico tem a ganhar, mas também na percepção de como o sistema jurídico trata sua ausência ou presença limitada. A metodologia adotada parte da seguinte hipótese: se o constitucionalismo feminista serve para ler e interpretar o direito com perspectiva de gênero, é possível aplicar ele também como instrumento no processo de aprendizagem no ensino jurídico? Neste contexto, o estudo é caracterizado como teórico-dialógico e a primeira parte serve para entender quais os desafios que o patriarcado impõe na leitura, reflexão e interpretação do direito. Além disso, é importante demonstrar o que significa a expressão espaço de inteligibilidade e como ele se conecta com a perspectiva de ensino jurídico aliado ao constitucionalismo feminista como um dos campos possíveis para essa transformação educativa. E, por fim, recomendar os estudos de gênero em interface com o constitucionalismo feminista, como possibilidade pedagógica de ensino a fim de analisar como a perspectiva de gênero pode ser um rico instrumento para pensar o direito, para além de uma leitura constitucional tradicional.

Palavras-chave: Perspectiva de gênero; direito constitucional; igualdade de gênero; constitucionalismo feminista; ensino jurídico.

1 Introduction

Feminist constitutionalism is a movement that brings together constitutional law professors and scholars from different countries to reinterpret the epistemological, theoretical, methodological and dogmatic canons of contemporary traditional constitutionalism. Traditional constitutionalism was, and to some extent still is, a movement without women and without a gender perspective. Since modern times, constitutions have been designed and developed for abstract subjects of a clearly defined gender: men. The constitutional discourse was born in the context of the liberal revolution of the late 18th century and continues to this day with indifference to differences reflected in the different treatment of services and goods, jobs, security, political participation and even structures and formation of law. Thus, the classical constitution is exclusionary.

This is a field that has been beaten – explored beyond its boundaries in the sense of being beaten. The challenge of feminist constitutionalism is precisely to break the silence that has long been imposed on women – both as agents and subjects of rights – in constitutional theory and the power space that defines it. In this case, we need to build a constitutional trajectory that includes a gender perspective, a constitution that tells our trajectory in the first person.

Debate on the topic was dominated by speeches that used derogatory terms associated with the specter of *gender ideology*¹. A shallow and biased debate aimed at taming the body from anti-diversity stigma and gender dichotomies based on human genitalia. Such discussions must take place from a realistically critical and reflective perspective, where scientific knowledge about education is prioritized “as a fundamental strategic condition for reducing national and international economic and social inequality”².

Therefore, this article has chosen to deepen reflections on the gender perspective as a necessary perspective for the educational transformation of the space of legal intelligibility, based on the interweaving of feminist constitutionalism, legal education and statutory approaches. The calling process is the first step, but not the last. It is not enough to announce the genre, it is necessary to capillarize legal education with, and from, it.

¹ The gender ideology located here is a theory that explains how gender is a social and not a chromosomal (biologizing) construction. The way in which conservative and anti-progressive sectors take the gender discourse is in the sense of a scientific anomaly that must be fought by conservative sectors of society.

² ROSEMBERG, Fúlvia. Educação formal, mulher e gênero no Brasil contemporâneo. *Revista Estudos Feministas [online]*, v. 9, n. 2, p. 515-540, 2001. Available in: <https://doi.org/10.1590/S0104-026X2001000200011>. Access at: 09 set. 2022.

The importance of considering gender in the Law, especially in the classroom, lies not only in the new method that legal education must adopt, but also in how it deals with its absence or limited presence. This means using educational resources that can identify how asymmetries of voice, power, and ability affect the exercise of citizenship by people, especially those who experience gender-based violence on a daily basis.

Finally, it is necessary to define what the space of intelligibility in the Law means and how it relates to the possibilities offered by feminist constitutionalism. The space of intelligibility is understood as a learning space where the structural elements of social relations are examined within the framework of legal philosophical reflection. It is to understand the Law as a multidimensional collective construct with a moral and philosophical foundation. The procedures, the judicial system, the political arena, and legal education are examples of spaces of legal intelligibility.

Legal education for this work is the transformational space of legal classes and professionals, and feminist constitutionalism as a representation of principles and concepts discussed from a gender perspective (but not only!) can transform its form and content. In other words, the intelligibility of legal concepts exists because something has to be done in response to a certain assumption described above, and not just because of what someone (in this case, a teacher) “should” do, for example, the structural elements of the essence - teaching. reflection to be learned in the classroom as well. So, “the intelligibility of the legal concept includes the law in both its potential and actual moment, i.e. normative transformations ‘affect behavior through morality.’”³

Feminist constitutionalism will be considered as an epistemological possibility in the space of intelligibility of legal education. Broadly speaking, feminist constitutionalism is an emerging and evolving field that questions the meaning of the constitution from a gender perspective and addresses other possibilities in the constitutional field. The methodology used is based on the assumption that if feminist constitutionalism reinterprets and interprets laws from a gender perspective, is it possible to use it as a tool in the learning process in legal education?

The study offers theoretical dialogues, and the first part aims to understand the challenges that patriarchy poses to the reading, reflection and interpretation of the Law. Furthermore, it is important to demonstrate what the expression space of intelligibility means and how it connects with the perspective of legal education allied to feminist constitutionalism as one of the possible fields for this educational transformation from the reproduction of legal knowledge and everyday epistemicide in classroom. Finally, the integration of gender studies with feminist constitutionalism is proposed as a learning opportunity to analyze how a gender perspective can be a rich tool for thinking about justice outside of traditional constitutional interpretation.

2 To read, challenge and reflect legal education: patriarchy and the interpret(action) of law

Assessing how legal education should be streamlined from a gender perspective has two main implications: inclusion and diversity. The first, which suggests that the presence of cisgender women may not change the way in which gender inequality is recognized and its impact in legislation, but it can certainly create a basis for it in the most favorable intelligible space. The second reason is the constant necessity to capillarize the spaces of intelligibility of Law with the component of diversity. Legal education is one of the

³ COSTA, Elcias Ferreira da. *Do conteúdo de inteligibilidade do conceito a que corresponde a realidade jurídica ao Direito como propriedade metafísica do existir humano*. 2004. Tese (Doutorado em Direito) - Universidade Federal de Pernambuco, Recife, 2004. Available in: https://repositorio.ufpe.br/bitstream/123456789/3862/1/arquivo5033_1.pdf. Access at: 03 out. 2022. p. 91.

most important platforms for building elements in the search for social justice, especially for those who are not bound by authoritarian normative standards in their relationships and life projects.

In this context, it is not enough to simply declare that there are other genres in the classroom, several efforts must be combined to promote a broad, diverse and active debate in the field that raises and the movement that gives ownership of this struggle: women's rights constitutionalism. The proposal is seen as a means and an opportunity for feminist hermeneutics to understand and interpret laws and constitutions from the perspective of women's speech in the broadest sense. In this sense, one must think about how to rethink legal education to identify and challenge elements of legal doctrine that suppress or negate the guidelines for difference that feminist constitutionalism suggests the broader law should provide for reading.

The genre includes many elements that require a complex and critical perspective to properly understand how its framework is closely related to the segmental model of patriarchy. It is important to understand that it is not enough to improve the conditions of legal education without understanding the synergy between dominance and exploitation imposed by patriarchal visions⁴ that distort reading and reflect reality.

It is undeniable that correcting gender inequality in the organization of social life "requires significant social inversions at the political, technological, economic and symbolic levels"⁵, which in turn means understanding how patriarchy has shaped social life in general, especially for women⁶. In this sense, taking into account the legitimacy of existence as a subject and the limitations of gender, we can reflect on the consequences of the subjugation of women to men in the patriarchal structure, whether it is a system of multiple forms of oppression or as an A-visual tradition framework for dominant and dominated male subjects.

The concept of patriarchy is often invoked in feminist studies to explain the position of women and the basis of male dominance⁷. A symptom of this logic is the lack of cis and trans women as lawyers in legal education. The policy under consideration is completely divorced from gender equality issues and is based on the logic of (reproductive) control of the female body. Productive work is "according to the organized conditions of work and conditions of production"⁸.

Moreover, the domestication of teaching and learning process is inherently feminine, making these women responsible for the education of children and youth, overwhelmed and exhausted from the daily care of their children. One must wonder how the patriarchal reality puts women in the position of "carers". This gender division is reflected in the relationship between paid and unpaid productive work, where "the image of men as breadwinners and women as carers and women as secondary workers is reinforced"⁹. Feminist and gender studies attempt to shed light on this complexity by highlighting women's inequalities as determinants of access to and provision of care. According to Pereira in a study developed in collaboration with the Institute of Applied Economics (Ipea, in portuguese)

The use of care as an object of study also contributes to a broader perspective on the social organization of care work, its historical changes and persistence and impact on the care giver and/or asking and receiving care giver and/or care giver and their cheerful attitude towards their citizenship status and happiness. Traditional forms of distribution play a role in reproducing inequality and hierarchy between social groups. Thinking about nursing leaves room for redistributive proposals, mostly from public policy for this purpose.¹⁰

⁴ BLANCO LOBO, Montserrat. ¿Y las relaciones de género? *Cuadernos Inter.c.a. Mbio*, Costa Rica, v. 3, n. 4, p. 161-169, 2006. p. 162.

⁵ "requiere una importante inversión social a nivel político, técnico, económico y simbólico" [Tradução nossa]. BLANCO LOBO, Montserrat. ¿Y las relaciones de género? *Cuadernos Inter.c.a.Mbio*, Costa Rica, v. 3, n. 4, p. 161-169, 2006. p. 163.

⁶ BLANCO LOBO, Montserrat. ¿Y las relaciones de género? *Cuadernos Inter.c.a. Mbio*, Costa Rica, v. 3, n. 4, p. 161-169, 2006. p. 163.

⁷ MORGANTE, Mirela Marin; NADER, Maria Beatriz. O patriarcado nos estudos feministas: um debate teórico. *In: ENCONTRO REGIONAL DE HISTÓRIA DA ANPUH-RIO: SABERES E PRÁTICAS CIENTÍFICAS*, 16., 2014, Rio de Janeiro. *Anais [...]*. Rio de Janeiro: ANPUH, 2014. Available in: http://www.encontro2014.rj.anpuh.org/resources/anais/28/1399953465_ARQUIVO_textoANPUH.pdf. Access at: 22 jan. 2017. p. 1.

⁸ FEDERICI, Silvia. *O ponto zero da revolução: trabalho doméstico, reprodução e luta feminista*. São Paulo: Elefante, 2018.

⁹ VASCONCELOS, Marcia. *Responsabilidades familiares*. Brasília: Secretaria de Políticas para as Mulheres, 2009.

¹⁰ PEREIRA, Bruna Cristina Jaquetto. *Economia dos cuidados: marco teórico-conceitual (relatório de pesquisa)*. Rio de Janeiro: IPEA,

As biology presupposes gender equality, women are and remain underrepresented in the collectively constructed space of the law. For Santos and Oliveira, “historically, men have had greater political power, choice and decision-making in emotional life, and social recognition in professional activity”¹¹. Also Author and Author

Some roles are considered women’s roles, especially related to housework (sometimes not considered work in society) and occupations that focus on caring for others (in the development of the so-called natural roles of wife, mother and homemaker). One has to ask: Who pays for the care economy that women do? In this view, which makes a woman inferior, she should serve her family and children or others.¹²

Therefore, gender categories need to be understood in a complex way, not only in relation to the relations and characteristics of organs and genitalia, but also in relation to sociality and culture. Thus, gender is a category that “helps to denaturalize and historicize inequality between men and women”¹³. It is necessary to shed light on the different dimensions of social life in order to understand how female subordination and male dominance emerged throughout history, and to try to explore how heterosexual models shape what we understand about law and, more specifically, teaching law.

Gender identity is sometimes a paradoxical process, as its recognition in traditional models does not guarantee a level playing field. However, we must be careful with rhetoric that ultimately worsens people’s precarious conditions¹⁴. Incorrect or superficial understanding of the complexity of inequality can lead to legal and/or governmental solutions that further exacerbate destabilizing conditions. The gender agenda can be used to distract from how the State itself contributes to the instability of the lives of some structures.

If, on the one hand, to recognize is to allocate normative attention, on the other, it is to imprison an evaluation that is sometimes pathological and sometimes associated with a kind of charity or State philanthropy. Defining what makes recognizing a gender perspective important is critical as it connects with legal practices and, ultimately, who judges people.

What feminist constitutionalism inspires in the legal classroom is exactly what powerful ideas inspire: it is impossible to forget that claims about the oppression experienced by women come in many forms. It is irreversible, that is, feminist constitutionalism makes visible the traces of oppression, the processes of inequality and the consequences of the creation of legal and scientific knowledge in such a way that one cannot fail to notice that the struggle is not limited to men - women binary code but also includes categories by race, culture and social class.¹⁵

In this way, the feminist constitutionalism is integrative, starting with epistemological keys¹⁶ related to constitutionalism, includes in a significant way a focus on diversity and inclusion, and is based on the configuration of academic spaces Analysis that includes the following questions: where are white and black women in the spaces of learning and social transformation proposed by science? Where are the women and, especially, the black women speakers in academic discussion spaces, such as congresses, seminars, etc? Where are the women occupying leadership positions in the student movement? Which white and black

2016. Available in: <http://repositorio.ipea.gov.br/handle/11058/7412>. Access at: 03 set. 2022. p. 11.

¹¹ SANTOS, Silvana Mara de Moraes dos; OLIVEIRA, Leidiane. Igualdade nas relações de gênero na sociedade do capital: limites, contradições e avanços. *Revista Katálysis [online]*, v. 13, n. 1, p. 11-19, 2010. Available in: <https://doi.org/10.1590/S1414-49802010000100002>. Access at: 07 set. 2022.

¹² AUTHOR; AUTHOR, 2022.

¹³ SANTOS, Silvana Mara de Moraes dos; OLIVEIRA, Leidiane. Igualdade nas relações de gênero na sociedade do capital: limites, contradições e avanços. *Revista Katálysis [online]*, v. 13, n. 1, p. 11-19, 2010. Available in: <https://doi.org/10.1590/S1414-49802010000100002>. Access at: 07 set. 2022.

¹⁴ BUTLER, Judith. *Corpos em aliança e a política das ruas: notas para uma teoria performativa de assembleia*. 4. ed. Rio de Janeiro: Civilização Brasileira, 2019.

¹⁵ DAVIS, Angela. *Mulheres, raça e classe*. São Paulo: Boitempo, 2016.

¹⁶ MACKINNON, Catharine A. Prefácio. In: BAINES, Beverly; BARAK-EREZ, Daphne; KAHANA, Tsvi (ed.). *Feminist constitutionalism: global perspectives*. New York: Cambridge University Press, 2012.

professors are part of the scientific committees and are in decision-making positions? Finally, it is transformative because it changes the way the law is rationalized in the classroom.

3 The (re)production of legal knowledge and everyday epistemicide in the classroom

Feminist constitutionalism is a movement through which it is possible to understand which contributions were evidenced in the production of legal knowledge and which were intentionally devalued, denied and hidden. This purposeful concealment of the knowledge, inventions and discoveries and political achievements of historically subordinated groups is an epistemicide.

The term epistemicide refers to how the production of knowledge is constructed according to a single epistemological model, from the extermination of African populations and the contributions of the African diaspora to the philosophy of science, as opposed to the evaluation of the knowledge of white Europeans and primarily North America. From “destroying certain forms of local knowledge to devaluing others, the cultural diversity and rich perspectives found in the multi-faceted worldview they implement”¹⁷ in the name of colonialist design. This deliberate erasure is a product of the structural racism and sexism that dominate Brazilian social relations.

It was from there that Carneiro argued that this white, male, European-American knowledge was created for white, European-American men. It is limited not only by production but also by who has access to it¹⁸. Therefore, it is impossible not to link the disqualification of knowledge created by the governed state with the disqualification of the collective or individual status of a person capable of education. The denial of others resonates

The processes of production of cultural poverty continue: denial of education, especially quality; production due to mental retardation; different mechanisms for blacks as carriers and creators of knowledge and damage to self-esteem due to lack of material and/or current discriminatory processes in the education sector that lead to cognitive decline. Thus, cognitive killing stifles or robs the rationality of the vanquished and impairs the ability to learn¹⁹

To deprive others of their ability to learn is to deprive them of their humanity. As we learn, we humanize ourselves, become who we are, and evolve. By denying access to epistemological diversity, thought is shaped so that we continue to defend a universal epistemology that only validates the world with the social status of a particular group, making it difficult for those outside it to see themselves as subjects. To counter cognitive decay, one must defend e.g. young Black women’s college career as an opportunity to fight against the system and challenge its existence, concealment, denial, and silence in the process of creating knowledge and changing its reality:

Far from overcoming stigma and stereotypes, entering college is a moment of final intellectual confrontation with these mechanisms that plague Black people in learning. There is the purity of knowledge, the self-fulfilling prophecies, the exclusive authority of white speech, the ghosts to be confronted without mediation.²⁰

¹⁷ SANTOS, Boaventura de Sousa; MENESES, Maria Paula (org.). *Epistemologias do Sul*. São Paulo: Editora Cortez, 2010. p. 183.

¹⁸ CARNEIRO, Aparecida Sueli. *A construção do outro como não-ser como fundamento do ser*. 2005. Tese (Doutorado em Educação) – Universidade de São Paulo, São Paulo, 2005.

¹⁹ CARNEIRO, Aparecida Sueli. *A construção do outro como não-ser como fundamento do ser*. 2005. Tese (Doutorado em Educação) – Universidade de São Paulo, São Paulo, 2005.

²⁰ CARNEIRO, Aparecida Sueli. *A construção do outro como não-ser como fundamento do ser*. 2005. Tese (Doutorado em Educação) – Universidade de São Paulo, São Paulo, 2005. p. 123.

Intersectionality²¹ involves a methodological concept that understands people in terms of their senses and how they encounter systemic oppression. The elements that make up intersectionality are race, class, and gender, but not in ways that aggregate vulnerability. The dynamics of exclusion arising from a logical conundrum (women; black women; lesbian black women...), where subjects are perceived as based on their vulnerability rather than systematic oppression, are critiqued through intersectionality. Akotirene defines intersectionality as

Other constructs capture the identity of racial affiliation. This is about the experience of racialization to invite us to move away from the private boxes that hinder global struggle and serve the guidelines of Western heterogeneity, and to make room for the political solitude of black women as they are articulated through the dynamic overlap of groups. identities. (...) Cutting is not a theoretical story about the marginalized. Ancestral culture avoids thinking about the “black problem”, the “woman problem” and the “transvestite problem”. Let’s learn from the thinker Grada Kilomba that differences are always interconnected and that everyone is different from each other. A precise argument for intersectionality that is not interested in differences in identity, but in inequalities imposed by oppressive matrices.²²

A necessary confrontation so that works like this, written by white people, are consistent ways of questioning their whiteness, insofar as the deconstruction and reconstruction of spaces of intelligibility based on feminist constitutionalism must necessarily come from these peoples who are hidden and silenced on a daily basis. Another person’s vulnerability can also be an important trigger for unacknowledged or silent struggles. Vulnerable groups are the set of values that activate the “constituent” political cells²³.

There is no neutrality in the construction of constitutional subjects working in the intelligible space of legal education. The term “abstract” comes directly from the naturalization of the conditions and subjects involved in the formulation, development and implementation of the constitution. Feminist constitutionalism is fertile ground for asking far-reaching questions about who, for whom, and from which perspective the law is directed, written, and defined. It is necessary to enrich the space of intelligibility with a diverse component that makes it difficult for the system to recognize power asymmetry and essentially includes the subjects involved in the process.

One of the main criticisms of the universalist view of the interpretation of legal justice is that by distinguishing between people by origin, gender, choice and personal circumstances, we legitimize a separate and sometimes pathological view. Critics argue that a gendered explanation implies a continuum of vulnerability, meaning that vulnerability will never cease to be vulnerability, and that the State itself will be absolved of the responsibility to reduce these gender asymmetries²⁴.

However, Dworkin²⁵ makes an argument to support the idea of compensatory discrimination as a way of justifying legal decisions based on concepts of equality and inequality²⁶. For him, the understanding of compensatory discrimination as a pathological or humiliating tool is an argument derived from the classical notion of equality, which attempts to establish the premise of justice without understanding that the topic does not constitute a circle of discussion.

Of course, the State can be expected to adopt an inclusive, equitable and targeted stance to encourage action that reduces asymmetries between people. Legal education is an understandable place for law and

²¹ It will not be a specific objective of the work to debate the limits of multicultural or identity perspectives in the struggle for social justice. There are countless authors who seek to understand how the overlapping of social identities and related systems of oppression, domination or discrimination establish the way in which societies are configured.

²² AKOTIRENE, Carla. *Intersseccionalidade*. São Paulo: Jandaíra, 2021. p. 49-50.

²³ DAVIS, Angela. *Mulheres, raça e classe*. São Paulo: Boitempo, 2016.

²⁴ BROWN, Kate. Re-moralising ‘vulnerability’. *People, Place & Policy*, v. 6, n. 1, p. 41-53, 2012.

²⁵ Dworkin did not address the term vulnerability in his theoretical production, but rather the advantages and disadvantages of adopting certain arguments, whether principles or policies. Dworkin is thought of here as a way of injecting moral content into the concept of vulnerability that I defend in this work.

²⁶ DWORKIN, Ronald. *Levando os direitos a sério*. 3. ed. São Paulo: WWF Martins Fontes, 2010. p. 357.

legal curricula, especially in Brazilian public colleges²⁷, and should include topics and propositions designed to provide new and enriching perspectives, thus leading to a confrontation with the opacity of Law²⁸. For Lage and Rocha

Unlike state neutrality, state intervention has an educational function, as it not only reduces discrimination and promotes equality, but also serves as a model for similar private sector initiatives. Far from reflecting an auxiliary character, it reflects the ideal of reproduction, which suggests the demolition of archaic structures and presents itself as an achievement of civilization.

The history of feminism allows us to rethink the collective construction of women's identity, differentiated and alienated from hegemonic patriarchal culture, allowing us to better face the challenges of the new millennium.²⁹

In this sense, feminist constitutionalism proposes to confront traditional views rooted in the meaning of heterosexual patriarchy and to place the role of the state and especially the constitution at the center of the debate in the pursuit of social justice. The question that legal education must always ask itself is this: How to reflect the factors that threaten the exercise of civil rights? To this end, when feminist constitutionalism raises the "woman question"³⁰, it exposes the reality of rights that are assumed to be universal but are in fact capillary with a logic that consistently ignores these factors. Claimed political equality does not reflect the historical, institutional and methodological chasm that imposes the unequal distribution of various conditions revealed by gender perspectives.

4 Feminist constitutionalism as a instrument of transgression of spaces of intelligibility in law

Feminist theorists do not hesitate to argue that it is through "changing legal and constitutional structures that the justice system can adapt to gender issues and challenges"³¹. This realignment of legal thinking must come from law schools and colleges that promote "feminist constitutionalism in the profession, so that gender permeates all areas of judicial sciences"³².

This inclusion will make it easier for lawyers to approach the federal constitution from a gender perspective. In this sense, a gender perspective means understanding how statements of gender are "embedded in compositional processes and constitutions that lead to forms of emancipation and legal empowerment or subordination"³³, indicating that, unlike biological sex, any woman can express herself as she wishes, "every

²⁷ The Brazilian public colleges have a tradition of being parameters of innovative argumentative construction and a symbol of excellence in education in Brazil. Legal education also needs to be rationalized by valuing best practices in order to allow for the broad flowering of legal knowledge and technique.

²⁸ CARCOVA, Carlos Maria. *La opacidad del derecho*. Madrid: Trotta, 1998.

²⁹ LAGE, Fernanda de Carvalho; ROCHA, Maria E. Guimarães Teixeira. A mulher e o Poder Judiciário no Brasil. In: SILVA, Christine Oliveira Peter da; BARBOZA, Estefânia Maria de Queiroz; FACHIN, Melina Girardi (coord.). *Constitucionalismo Feminista: expressão das políticas públicas voltadas à igualdade de gênero*. Salvador: Juspodivm, 2020. v. 2. p. 234.

³⁰ BARTLETT, Khataryne T. Feminist Legal Methods. *Harvard Law Review*, Boston, v. 103, n. 4, 1990. Available in: https://scholarship.law.duke.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1119&context=faculty_scholarship. Access at: 02 out. 2022.

³¹ BARBOZA, Estefânia Maria de Queiroz; DEMETRIO, André. Quando o gênero bate à porta do STF: a busca por um constitucionalismo feminista. *Revista Direito GV*, v. 15, n. 3, 2019. Available in: <https://doi.org/10.1590/2317-6172201930>. Access at: 07 set. 2022.

³² BARBOZA, Estefânia Maria de Queiroz; DEMETRIO, André. Quando o gênero bate à porta do STF: a busca por um constitucionalismo feminista. *Revista Direito GV*, v. 15, n. 3, 2019. Available in: <https://doi.org/10.1590/2317-6172201930>. Access at: 07 set. 2022.

³³ BARBOZA, Estefânia Maria de Queiroz; DEMETRIO, André. Quando o gênero bate à porta do STF: a busca por um constitucionalismo feminista. *Revista Direito GV*, v. 15, n. 3, 2019. Available in: <https://doi.org/10.1590/2317-6172201930>. Access at: 07 set. 2022.

woman regardless of her biological sex or sexual orientation at birth, can express herself as a person endowed with fundamental rights and responsibilities from her own and indivisible arena of speech”³⁴.

The question is not how gender should be recognized, but how it threatens the dehumanizing system of normalization. The unstable conditions created by gender are constructed on the basis of male dominance, “not to be explained by the inferior nature of women, but by the recognition of their potential and the resulting fear”³⁵.

The challenge is to frame legal education from a gender perspective as a means to (transform) the space of legal intelligibility, given the fact that so many rights are being taken away and cis and trans women and trans men are attacked every day in public and private spaces. It is important to understand that it is not enough to simply remove the cloak of invisibility from the gender agenda and recognize who has power and visibility (cisgender people). It must be questioned what material conditions are set and which are fulfilled.³⁶

Feminist constitutionalism manifests itself as an expression of coalitional feminism³⁷ that points directly to how the law is unconsciously or consciously encouraged not to recognize the asymmetry of voice, power, and ability to confront gender perspectives. Instead, it is also not a concise or exclusive reading. Feminist constitutionalism politicizes space through an ongoing program of oppression or repression. The movement questions the normality of traditional patriarchal practices in order to impose a sense of justice detached from reality and to limit the right to fight against them or at least recognize them. In the words of Lage and Rocha

A pluralistic society cannot be conquered by an exclusive hierarchy. Not only women can judge women, and not only men can judge men. This is a simplified version that really means opening up a wide experience. Not only in the judicial system, but in all powers, it is a distortion that only one branch dominates. Gradually, the peculiarities of this large part begin to spread as if they were universal in all parts of society. It is at this point that justice becomes biased. Women, blacks, and gays do not exist to have people judge them as “equal,” but to allow justice to be found as a social group as diverse as the society that is expected of it.³⁸

Feminist constitutionalism is a **powerful idea**. What does it mean? This means that it is an irreversible, integral and transformative philosophy. It is an **irreversible idea** because a perspective can be criticized, but it cannot be forgotten or forgotten. Comprehensible spaces only capillarize powerful ideas so that the subjects and subjects involved reflect where they are and how the space interacts with them. The reform of legal education, based on the interpretation of women’s constitutionalism, is not a one-time event, but an eternal event. Understandings of the non-discussion of gender and the absence of women³⁹ in power structures and legal discussions persist and change the way legal reflection occurs in the classroom.

Feminist constitutionalism is an **integrative idea**. Because a reading of feminist constitutionalism is not an atomized or disjunctive reading. It’s about women, but not just about women. In other words, gender is something that directs our attention to the interconnected causes of asymmetries of voice, power, and abi-

³⁴ PETER, Christine. Constitucionalismo Feminista ressoa no Supremo Tribunal Federal. *Consultor Jurídico*, 29 dez. 2018. Available in: <https://www.conjur.com.br/2018-dez-29/observatorio-constitucional-constitucionalismo-feminista-ressoa-supremo-tribunal-federal>. Access at: 05 set. 2022.

³⁵ CARNEIRO, Aparecida Sueli; CURY, Cristiane. O poder feminino no culto dos Orixás. In: NASCIMENTO, Elisa Larkin. (ed.). *Guerreiras de natureza*: mulher negra, religiosidade e ambiente. São Paulo: Grupo Editorial Summu, 2008. p. 128.

³⁶ SANTOS, Silvana Mara de Moraes dos; OLIVEIRA, Leidiane. Igualdade nas relações de gênero na sociedade do capital: limites, contradições e avanços. *Revista Katálysis [online]*, v. 13, n. 1, p. 11-19, 2010. Available in: <https://doi.org/10.1590/S1414-49802010000100002>. Access at: 07 set. 2022. p. 12.

³⁷ The expression “coalition feminism” is an expression that aims to condense the various feminist movements through the co-option of agendas in order to provide greater political capacity within the democratic arena. It brings together Marxist, liberal, ecofeminist, black feminism, etc.

³⁸ LAGE, Fernanda de Carvalho; ROCHA, Maria E. Guimarães Teixeira. A mulher e o Poder Judiciário no Brasil. In: SILVA, Christine Oliveira Peter da; BARBOZA, Estefânia Maria de Queiroz; FACHIN, Melina Girardi (coord.). *Constitucionalismo Feminista: expressão das políticas públicas voltadas à igualdade de gênero*. Salvador: Juspodivim, 2020. v. 2. p. 235.

³⁹ Black, indigenous, trans women and etc.

lity between people. Feminist constitutionalism is seen as a non-essentialist platform of struggle that integrates questions from the intersection of how rights can and should be understood as distinct identities that are not based on biological determinism. The struggle is integrative, and feminist constitutionalism becomes visible and crosses the horizon of traditional constitutionalism configured in a limited way. McKinnon,

Feminist constitutionalism will be driven by the principle of substitution. It will strategically but accurately correspond to male supremacy. This will require the basic equality of women as the central theme of the document and the underlying reality of the social order, active participation in a society that is considered unequal between the sexes, in which all basic inequalities are involved. By keeping it context-sensitive, it is not distracted by essentialist questions about whether women are equal (...) ⁴⁰

Finally, feminist constitutionalism is a **transformative idea**. Because it defines advice, values and expectations in legal knowledge. Feminist constitutionalism is propositional because it allows changing the logic of legal thought to provide a new reading of the constitution, so that legal education can also serve as a tool to analyze how the subject is situated in the sphere of law. Giving advice requires caution and constant consideration of human cause and effect. Feminist constitutionalism can be an important tool for analyzing attitudes, that is, reading the law from the perspective of the subject or the absence of the subject and justice as we understand it.

Values are related to the political goal of a particular movement and are elements that express a vision of life. Politics has the power to reinforce social norms, and this drive for a society with less asymmetry of voice, power, and ability is shaped by institutions and social norms. According to Stiglitz, “in many societies, the most disadvantaged groups are primarily those who are discriminated against in some way”⁴¹. He understands that the extent of such discrimination is influenced by social norms and political goals supported by government decisions.

A feminist constitutionalist perspective seeks to identify factors that undermine the exercise of citizenship. It is a lens that can illuminate the fragile recognition of rights or the silence that comes from a sterile reading of the constitution into people’s lives. The genre reading analyzes the asymmetry in order to propose a reflection on what conditions must be provided in order to achieve the protection of subjects unpopular in traditional constitutional discourse and the exercise of human dignity. Feminist constitutionalism emerged as a set of values and concepts that challenged traditional legal systems and institutions to reflect the position of people within the legal system.

Gender issues in law are not limited to individual legal strategies or facts. Essentially, the issues are related to moral principles that embody an invisible and silent justice. That is, feminist constitutionalism does not support sexism, on the contrary. The opposite of feminism is not machismo. Feminism seeks to identify what causes the asymmetry of voice, power, and ability that transcends the heterosexual divide. Commit to inclusion and diversity as structural pillars of the feminist constitutional movement. It must be understood that “diversity and inclusion without fundamental change, without radical change, will achieve nothing”⁴². This means that it is not enough to include large numbers of white and black women on the undergraduate, graduate, and university faculty. We cannot simply ask these marginalized or subjugated women to enter these spaces of scholarly production, just to exist in them requires rethinking the male, cis, and white-prioritized forms of scholarly production and dissemination.

In these terms, it is necessary to demarcate feminist constitutionalism as the connecting key that allows a broader reading of how the law can articulate inclusion, diversity and equality. He argues that historically

⁴⁰ MACKINNON, Catharine A. Prefácio. In: BAINES, Beverley; BARAK-EREZ, Daphne; KAHANA, Tsvi (ed.). *Feminist constitutionalism: global perspectives*. New York: Cambridge University Press, 2012. p. x.

⁴¹ STIGLITZ, Joseph E. *O preço da desigualdade*. Lisboa: Bertrand Editora, 2016. p. 117.

⁴² DUVERNAY, Ava. Ava DuVernay interviews Angela Davis on this moment, and what came before. Entrevistada: Angela Davis. *Vanity Fair*, New York, 26 aug. 2020. Available in: <https://www.vanityfair.com/culture/2020/08/angela-davis-and-ava-duvernay-in-conversation>. Access at: 03 out. 2022.

constructed equality in relationships has rendered most people invisible or limited in their ability to recognize the desire to be invited to discuss the meaning of such equality. If the interested parties cannot benefit from the prescribed constitutional guarantees, justice cannot be achieved. An example of this political goal is Schwartz's consideration of women's domestic work in Brazilian law, where she states

Increasing awareness of equality in society, joining new political subjects, often ultimately results in dissatisfaction with sections of society that tend to view the "other" as less legitimate, thus denying him full, conditional citizenship rights. The "difference" they bring⁴³

There is a poor sense of equality in our current legal doctrine⁴⁴. Equality cannot be understood only formally or ceremonially but is also related to underlying social inequality. This recognition is an important part of the quest for social justice and protection, but it fails to adequately understand how social engineering impoverishes, discriminates against, and oppresses certain groups. The impact of equality on people needs to be assessed because

[...] to protect women's rights, it is not enough to make a positivist reinterpretation of the norms that require it, but, in turn, the judicial operator must be involved in solving the problem, going beyond the normative dermis to understand in that forms the law and judicial practices, and in particular the evidentiary, reproduces or not the social roles and stereotypes that oppress women, affecting access to justice and the right to a fair decision.⁴⁵

Feminist constitutionalism confronts celebratory equality that ignores or silences the debate, for example, on identity guidelines, which in different periods was understood from different approaches, whether economic, utilitarian, rational, consequentialist, etc. The constitution is not blind, but sensitively defines the exclusion criteria, which is a celebration of equality.

The Identity guide provides a methodological framework for visualizing elements in the form of notation of formal equality. This is evident from the gender perspective offered by feminist constitutionalism, as the threat of gendered vulnerability is normatively contained when it is acknowledged in a limited or tacit manner. Political resistance, by introducing gender discussions and reflections, threatens the established legal logic based on supposed equality. Equality as a requirement for the exercise of citizenship is not an anti-sexist policy, but an essential component of a homogenous policy that ignores gender and its impact on access to rights, as particularly "blacks, women, the poor, LGBTQIA, minorities and religious minorities, indigenous peoples and people from under castes and groups have never enjoyed the benefits of full citizenship"⁴⁶.

What can be expected from the everyday application of feminist constitutionalism in spaces of legal intelligibility such as legal education? Expecting that with these values you will be able to benefit from the education system, it will become more provocative, thoughtful and purposeful. In other words, gender is not a single classroom or curriculum issue. It should always be a source and a place for reflection on the law, and it can also be an important platform for reflection on justice. Mackinnon,

If constitutionalism is too restrictive to take seriously the legal questions raised by the nature of gender inequality (.), then feminism has become a thing to do, not a flag to wave. Fortunately, feminism as a banner has become popular as a way to limit gendered work so it can be ignored, a way to give the rest of the world to unlabeled people so they can continue to do what they think. for more, undisputed and unchanging.⁴⁷

⁴³ SCHWARCZ, Lilian Moritz. *Sobre o autoritarismo brasileiro*. São Paulo: Companhia das Letras, 2019. p. 174-175.

⁴⁴ FINEMAN, Martha A. The vulnerable subject: anchoring equality in the human condition. *Yale J. L. & Feminism*, n. 20, 2018. Available in: <https://heinonline.org/HOL/LandingPage?handle=hein:journals/yjfem20&div=4&id=&page=>. Access at: 03 out. 2022.

⁴⁵ RODRIGUES PEÑARANDA, María Luisa. El debido proceso con enfoque de género en Colombia. In: SILVA, Christine Oliveira Peter da; BARBOZA, Estefânia Maria de Queiroz; FACHIN, Melina Girardi (coord.). *Constitucionalismo Feminista*. expressão das políticas públicas voltadas à igualdade de gênero. Salvador: Juspodivm, 2020. v. 2.

⁴⁶ COLLINS, Patricia Hill; BILGE, Sirma. *Interseccionalidade*. 1. ed. São Paulo: Boitempo, 2021.

⁴⁷ MACKINNON, Catharine A. Prefácio. In: BAINES, Beverley; BARAK-EREZ, Daphne; KAHANA, Tsvi (ed.). *Feminist constitu-*

The need to transform legal education from the perspective of diversity and inclusion advocated by feminist constitutionalism is presented. This requires a continuous, critical, and enthusiastic pedagogical transformation, understanding that no learning space is possible without consideration of all bodies, all races, classes, and genders. Transformation must begin with education, so that we can consciously organize educational spaces in such a way that people are aware of their ability to make a difference.

5 Conclusion

Education is transformation. If education is seen as exclusionary and non-emancipatory, the right to transformative education is seriously violated. For Nussbaum, the purpose of education is to change, shape and confront reality through democratic principles. The reductionist dogmatism that positions education only as promoting the market and profit must be confronted.⁴⁸

Education based on principles that promote respect, kindness and human dignity in all forms should be pursued. According to educator Paul Freire, “education doesn’t change the world, education changes people and people change the world.” In this context, the goal of education should be to empower and free people from their material conditions of life, race, class, gender, social status, place of residence, etc., which are essential for strengthening democratic practice.

The main problem with considering a gender perspective in legal education is that it is not just a litigation strategy or an isolated legal fact. The crux of the problem is that they refer to historically established legal structures that impose silence, restriction, sexism, elitism, and the exclusion of justice⁴⁹. Furthermore, feminist constitutionalism is this collective and not episodic mode of relationship, it is not reduced to a biological particularity or an episode of a distinct body, but is, “in fact, a mode of relationship that repeatedly places some aspect of this distinction in focus”.⁵⁰

Feminist constitutionalism is a theoretical force that evaluates how men and women are treated in terms of legal dynamics. What does it mean? This means that the criticism must be expressed in a broad interpretation of gender and legal relations, in addition to the fact that men and women do not have equal rights. A relationship that affects people and broadly seeks social justice.

Feminist constitutionalism insists that the degree of asymmetry between men and women is also related to the degree of mediocrity in a system that perpetuates violence. For example, if a large proportion of rape cases go unprosecuted, there may be a false and limited understanding of who and why rape is being committed. If women believe that systems of protection and condemnation do not foster an atmosphere of safety and acceptance, there is a risk that the recognition of gender perspectives is not enough to address fragile situations. Gender transformation of education is needed.

Women’s lives need educational transformation. Finally, the role of women was necessary to create the constitution of feminism. After all, we would have no idea of ourselves without our conditions. And the proposal is not “to limit feminism to one area, even if the space is larger than before, it will be another way to maintain male dominance as a discourse of power that was neutral and tolerant”⁵¹. Therefore, legal education needs to be thought of from a challenging, purposeful and transformative perspective, that is, the creation of a space of legal intelligibility based on such radical claims as feminist constitutionalism, in order

tionalism. global perspectives. New York: Cambridge University Press, 2012. p. xi.

⁴⁸ NUSSBAUM, Martha. *Sem fins lucrativos*: por que a democracia precisa das humanidades. São Paulo: Martins Fontes, 2015.

⁴⁹ DWORKIN, Ronald. *Levando os direitos a sério*. 3. ed. São Paulo: WWF Martins Fontes, 2010. p. 357.

⁵⁰ BUTLER, Judith. *Corpos em aliança e a política das ruas*: notas para uma teoria performativa de assembleia. 4. ed. Rio de Janeiro: Civilização Brasileira, 2019.

⁵¹ MACKINNON, Catharine A. Prefácio. In: BAINES, Beverly; BARAK-EREZ, Daphne; KAHANA, Tsvi (ed.). *Feminist constitutionalism*. global perspectives. New York: Cambridge University Press, 2012. p. xii.

to be able to expand the entire structure of education. The pursuit of social justice is the main purpose of the Law.

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