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ISSN 2175-6058
DOI: <http://dx.doi.org/10.18759/rdgf.v22i2.2080>

THE PARADIGM OF LEGAL SCIENCE IN A GLOBAL DIGITAL SOCIETY¹

*O PARADIGMA DA CIÊNCIA JURÍDICA EM
UMA SOCIEDADE GLOBAL DIGITAL*

Juana María Gil Ruiz²

SUMMARY

Digital society development is transforming reality in a manner that impacts all aspects of our society: the economic, the social, the political and, in consequence, the legal. Not surprisingly, this digital revolution compels us towards a general rethinking of the paradigms of legal science, which must now be examined in the light of this new reality. At the same time, the urgent need to respond to binding international commitments that have been acquired in an effort to demonstrate a commitment to inclusive societies and non-exclusionary citizen models inevitably requires incorporation of the principle of gender mainstreaming, which can only be understood from the iusfeminist methodology from which it originates. This inevitably leads us to consider the relationship between a concept of law that regulates (or should regulate) our social and individual life, and a jurist-agent model that, by its own action or omission, will shape and legitimise the same and, consequently, the need for critical, meditative thinking in the area of philosophy of law.

Keywords: Digital society. Philosophy of law. Training, university. Critical jurist. Concept of law. Gender mainstreaming.

I. LEGAL TRAINING IN THE EUROPEAN CONTEXT

On occasion, a theoretical ideology - however promising and ambitious it may appear - runs the risk of being relegated to “wishful thinking limbo” or, even worse, of becoming an inescapable excuse for ideological positions taken by economists who, by implementing this ideology in their own way, impose their model of the future³ over any other option. I believe this has been the case with the Bologna “formative” ideology and its goal of establishing a European Higher Education Area. We still remember the initial declarations - following the signing of the famous, brief Bologna Declaration of the 19th of June 1999 - which exalted the value of education as a public good and called for state responsibility in university matters in an effort to achieve a long-desired level of social cohesion through the development of equal opportunities.

The establishment of a common educational area in Europe was intended to make national higher education systems more compatible and comparable and, as a result, more competitive. These good intentions have been relegated to the background, however, as the focus has shifted to the mere homologation of degrees in order to facilitate the movement of workers, the organisation of training that leads directly to employment, the reduction (and devaluation) of degrees to two levels (undergraduate and postgraduate) or three cycles⁴, and, in my opinion the most serious of all, the neglect and abandonment of essential disciplines in the comprehensive formation of the individual-citizen. To all this we should add the *impersonalisation* of virtual teaching - which threatens to impose itself - following the Covid-19 pandemic, which will force us to “dispense” with highly qualified teaching staff in favour of an imposed standardisation of digital thinking⁵.

As far as Spain is concerned, the country continues to be immersed in a process of reform of university curricula with the aim of achieving the harmonisation and modernisation promoted by Europe. Along these lines, and where the legal sciences are concerned, on the 8th of May, 2015, the Declaration of the XXII Conference of Deans of Law Faculties in Spain was signed in Barcelona, and features three issues that are considered of crucial importance in terms of preserving the quality of the law degree

in Spanish universities; these being: “(a) the need to maintain the Law degree at 240 credits as a result of Royal Decree 43/2015, of the 2nd of February, (b) the devaluation of the law degree in the state project of equivalences in MECES (QF-EHEA in Europe), and (c) the State exam for access to the legal profession”. It was also decided that the Ministry of Education, Culture and Sport should adopt the necessary measures to guarantee “a solid legal education and harmonise the law degree with the current system of access to the profession of lawyer and solicitor”⁶.

The university seems to have lost the starring role that the architects of the EHEA originally envisaged for it, having been usurped by other private and not-so-private institutions⁷ in an area increasingly more given over to online teaching and technology-based distance learning. This would require us to recognise - much to our regret - that the new role of the university today would be limited to that of a mere dispenser of European degrees aimed at the world of employment.

Returning to the Declaration of the XXII Conference of Deans and Deans of Law Faculties in Spain in 2015... What measures guarantee solid legal training, accredit the acquisition of legal competences and bring the law degree in line with the current system of access to the profession of lawyer and solicitor? What model of “lawyer” is the starting point? What are these legal competences that the profession of “lawyer and solicitor” require? What is understood by solid legal training, in the context of a contemporary, digital, globalised and *mercantilised* society such as the current one? The purpose of this paper is to try to answer these questions. In order to do so we must first ask ourselves what model of lawyer the market demands in the context of digital societies and what competences should he or she acquire; what roles do the various types of legal knowledge play, in particular the philosophy of law, and, finally, what particular vision of law should be held.

Digital society decides on and chooses the professional it is interested in to “solve” the technical problems generated by the interaction between law and unstoppable digitalisation, and this in turn conditions both the selection of the essential knowledge required and even the idea of law itself. Why not proceed in the opposite direction? Why not reflect on what kind of law a global, digital, democratic society demands and, on

the basis of this reflection, decide on the essential knowledge required and the consequent jurist model. We cannot forget, as Goldfarb points out, that “law is conceived as a profession because it is designed to serve a public good. Among the obligations that the legal profession places on lawyers is that they work to give meaning to concepts such as justice, equality before the law, and equal access to justice. The integrity of the legal system depends on lawyers doing this”⁸. With this in mind, the dilemma, perhaps, centres on whether to opt for the freedom to decide which model of law - since there is no single, univocal definition of law - and society we desire, or whether, on the contrary, we choose to leave everything in the hands of the market - and its new algorithmic tools - as the only competent entity in terms of determining the characteristics of law and the profile of the lawyer-agent. The choice will determine the role, essential or otherwise, of philosophy of law in the formation and shaping of the legal operator.

II. CHARACTERISTICS OF LAW AND THE HYBRID JURIST IN THE GLOBAL DIGITAL AGE

Whether what we have in mind is a traditional dogmatic jurist or what is known as a technocratic jurist, it is fair to say that the model of jurist we are currently promoting in our law faculties could not even be considered a well-formed archetype, but rather a Dantesque mixture of 19th century fossil - since it is based on the theoretical assumptions of 19th century legal thought - and the technical superficiality of a jurist dedicated to a market that requires him or her to wallow endlessly (without posing major dilemmas) in daily chores. The jurist trained in universities, unfortunately, is little more than a burdened son of both a bygone era and an era that rushes headlong, and superficially, towards the attainment of degrees, masters, courses, abilities, competences, skills, etc., that allow them to wear a disguise in an effort to resist the demands of a demanding, globalised - precariousness-inducing - and alienating market⁹.

According to this, the law - transmitted and strengthened via our law faculties - is, and continues to be, despite glimpses of modernity -

a dogma, the meaning and value of which must be understood and, if necessary, adapted, bearing in mind its essence, social circumstances and historical evolution. And in this academic approach to the teaching of law it is precisely the concept of law itself that is lost for the sake of the law, as the text takes precedence over principles and recourse is made to categories and concepts insofar as these allow the jurist to operate more easily within the positive text.

Doctrine continues to constitute the access route to legal texts, or, to be more rigorous, the access route to unimpeachable application of the same, there being no room or possibility for innovation of possible legal responses nor interplay of principles and rules, largely due to the sacralisation of legal science and the ignorance of what law is as an ontological reality. And here lies a large part of the current problems generated by what are referred to as “regrettable sentences” or controversial judicial pronouncements, which are little more than the result of clumsy thinking and reflection on the law and its application centred on the mere text of the law and its conceptual systematisation, and the determination not to review the postulates of a legal science that has established itself as unquestionable after so many centuries of uninterrupted, reinforced existence.

However, it is no less true that law, in contemporary societies, presents itself with special characteristics that deserve to be highlighted and which call for a new type of legal professional and, consequently, specific training designed to cover these needs. Some of these have to do with the complex process of *economic globalisation* and the consequent *overflowing of state borders*. Along with the emergence of new legal subjects at the international level - large corporations, multinationals, non-governmental organisations - many of the traditional regulatory functions of the state cannot be performed without international collaboration, cooperation and coordination. This means that, in parallel with globalisation of the economy, there is also globalisation of legal problems. This phenomenon of legal globalisation is evidence that we live in a world that is more legally integrated, and in which legislative policies and legal conflicts can only be considered in global terms, largely because of their *incommensurability* or borderless nature.

The 2030 Global Agenda for Sustainable Development evidences the need for commitment to working together on both legal and political levels in an effort to combat the greatest challenge facing the world today, the eradication of poverty, leaving no one behind. Not surprisingly, UN Member States committed to a plan of action for people, planet and prosperity, and with the intention of strengthening universal peace and access to justice, “are determined to end poverty and hunger worldwide by 2030, to combat inequalities within and between countries, to build peaceful, just and inclusive societies, to protect human rights and promote gender equality and the empowerment of women and girls, and to ensure the lasting protection of the planet and its resources”.

At the same time, digital society is producing a transformation of reality with an impact on all areas of society: economic, social, political and, therefore, legal. The digital revolution requires a general rethinking of the paradigms of legal science, which must now be read in the light of this new reality. The possibilities for a new type of governance, the discovery of new roles for legal rules, the modulations of legitimacy and the democratic principle, especially in the case of interference by the platforms that manage social networks, the role of the digital society in the generation, transmission and even the application of law, or the discovery of satisfactory models for public decision-making or for the enhancement of real equality are some of the questions that require a scientific reconstruction of the new paradigms of legal science in the face of the challenges of the digital society.

It is also true that formal legitimisation of the liberal state was succeeded by the *material legitimacy* of a social state that demands intervention for the realisation of certain economic and social interests, which has undoubtedly produced an explicit politicisation of state legislation. Law has lost the aura of autonomy and is increasingly seen as a protector of private interests, as a material guarantor of equation in citizens’ living conditions, even if this means a significant increase in intervention. Not surprisingly, so much state intervention marks yet another characteristic of the legal landscape in the context of contemporary societies that must be taken into account. We are talking about an enormous profusion of legislative provisions, an enormous

legislative tide that identifies a complex process of *growing juridification of social and individual life*. And all this requires expert jurists who have been trained in areas not covered by the traditional academic training centred on the great general codes of the 19th century. Now we are talking about a new era, what Irti already described as the age of decoding¹⁰: a rushed and multiform flowering of legislative provisions - as Laporta¹¹ would say -, countless regulations and countless plans of special social, economic, cultural and political relevance that dramatically outstrip the traditional laws born with the vocation of duration and stability and to be perpetuated over time.

Curiously, however, an instrument for limiting freedom - such as the law, with legitimate power to impose itself - which is also growing at an exorbitant rate, would “theoretically” require a jurist to reflect on the meaning of the law, the reason for its intervention, the ambivalence and dichotomy between the guarantee of freedom and the deprivation of freedom, the role that the state should play in the protection and safeguarding of citizens’ rights and freedoms. In short, to answer the question of whether such intervention - in crescendo - guarantees greater levels of justice or whether, on the contrary, it only contributes to bureaucratising a reality - separate and distant from the citizenry - by densifying the legal phenomenon.

And this must be so because so much legal intervention - so much state interference in the different spheres of the individual - has generated positive¹², though also negative¹³ effects. There can be no doubt that the law has served, and continues to serve, to regulate conflicts and make real and effective coexistence a possibility by embracing a functional dimension of the law in a broad sense. But it is also true that legal colonisation seems to continue inexorably to invade areas previously governed by individual autonomy, thereby annulling spaces of privacy.

The “popular” response to these questions responds to the crisis of law in our times, and to the crisis of the beleaguered welfare state. Citizens have begun to distrust the legal mechanism, assuming the maxim that so much law - such as is the case in our times - has not guaranteed higher levels of justice, but rather just the opposite. We are talking about a generalised disbelief in the law, which qualifies the law not as an instrument

of justice, but as an element of power in the hands of financial - oligarchic - minorities to whom it serves. This disbelief in the law manifests itself in a twofold process: disenchantment and disenchantment with the law. As with Cinderella, nothing is really what it seemed to be, and neither is the law what it was purported to be - a normative and moral reality at the service of justice (disenchantment); moreover, not only does it not serve justice, but it is seriously ineffective in serving justice (disenchantment). In short, the desirable and desired normative and moral reality at the service of justice has lost its magical halo and has become the gourd of political and ideological power. Consequently, law, as a form of social control, has begun to lose ground in favour of other more subtle, gentle, but often more all-encompassing¹⁴ forms of ordering social life that leave the individual abandoned to greater degrees of defencelessness.

Nor should we forget that, in general terms, governance - and more so in the context of the digital society - is related to the loss of state centrality and the dissemination of normative and regulatory powers that characterise the political-institutional phenomenology that accompanies globalisation¹⁵.

This whole scenario places the Law, with a capital 'L', and, I would add, the - democratic - rule of law itself, in check, and should put us in a state of alert in order that we may protect what should be an ontological reality, beyond the requirements of a market that appeals to state deregulation for the sake of its own jurisdiction. Let us not forget the power acquired by other channels - "informative" or "cultural" - that threaten justice and freedom, and the consequent eagerness of certain oligarchic minorities to seize control of them within a framework of digital development. Indeed, there is growing concern about the negative influence that social media can have on democratic processes and the damage they can do to fundamental rights. We are well aware of the power of the platforms that oversee social networks, their influential manipulation and generation of cultural changes, the fabrication of *fake news* and the impact of these on politics¹⁶ and law itself.

However, as computational expertise would suggest, beginning with its creator Ada Lovelace¹⁷, there is nothing more obedient than an algorithm; the algorithm does not decide, it computes. This being the case, it

would be appropriate for institutions and organisations that are entrusted with employing algorithms in their production and marketing processes to do with respect for a series of basic principles. Not surprisingly, in 2017, the Association for Computing Machinery (ACM) focused the key issues on: ethical configuration to avoid harmful biases, validation and testing to avoid discrimination, public information to avoid third-generation data that not even the affected person knows about (right to be forgotten), accessibility and the possibility of using the panic button to halt the service, and, of course, auditing and management accountability to avoid serious violations of human rights (sexism, discrimination, protection of minors...). In Cathy O'Neil's¹⁸ words, "People often think (algorithms) are objective, true and scientific, but it's a marketing gimmick. We all have prejudices, and that's why sexism or any other kind of bigotry can be coded."

This issue becomes more complex when we consider the algorithmic responsibility that conditions the content of information and, consequently, predisposes the popular inclination towards voting for certain political parties, the need for training and binding ethical codes of conduct, the responsibility of the programmer vs. the orders of economic power, or, of course, the unstoppable intervention of registry, operational and decisional jurisprudence with the pretension that the machine will resolve legal problems by itself, which would mean the end of judicial independence controlled by the economic and ideological oligarchic powers.

Against this backdrop, and despite the obvious need to opt for a model of a thinking, critical and prudent jurist who understands and pursues law as an instrument of social transformation - rather than a mere technique of social organisation - and who reinforces the meaning and value of the beleaguered rule of law in an effort to establish mechanisms to control the power of the large global agents that oversee social networks and promote a productive and positive relationship between social networks, democracy and rights, curiously enough, a new professional is chosen - a computer manager - who must adapt and recycle him or herself in order to respond to the most varied and specific social and economic demands. And this is so due to the fact that all these social, political and economic transformations require new legal forms and professionals in order for them to function and be legitimised. The more outdated the legal

institutions become, the more essential the technical mediation function of the jurist will become: a sort of “economic consultant”, “public policy analyst” and “legal computer scientist”, among other skills.

The aim, then, is for the jurist to acquire technical professional expertise that does not go beyond the instrumental rationality of the social system in force, as little attention will be paid to the study of those elements of social and political theory that constitute the parameters of the critical judgement of the law. In this way, teaching reform continues to be centred - and committed - to strict “specialisation¹⁹ that trains competent jurists for the management of business and administration in its various sectors, that eliminates dysfunctional subjects from the system, (and) that incorporates into the teaching of law other types of knowledge traditionally framed within the economic and social sciences”²⁰ (now also computer and information sciences). Faced with this panorama, it is clear that the future of philosophy of law was condemned to ostracism, in the same way that a prosperous horizon could be glimpsed for Administrative Law, Commercial Law or European Community Law; areas which, after all, currently enjoy an enviable state of health.

In the current circumstances it would appear that legal criticism can only take place as a purely instrumental exercise of reason aimed at demonstrating and correcting the inefficiency or social dysfunctions of the law. It is a “critique” that may be of interest to a jurist who is not politically committed - even when his action has political consequences -, focused on the technical interest of making the law operative, but not to a professional focused on the practical interest of human emancipation. The choice of one type of training or another will have repercussions on the model of jurist that is chosen, and consequently on the concept of law that is embraced, simultaneously providing it with, and receiving, feedback.

In Kantian metaphorical words: “Once nature has removed the hard shell from this kernel for which she has most fondly cared, namely, the inclination to and vocation for free thinking, the kernel gradually reacts on a people’s mentality (whereby they become increasingly able to act freely), and it finally even influences the principles of government, which finds that it can profit by treating men, who are now more than machines, in accord with their dignity”²¹.

III. EPISTEMOLOGICAL CHALLENGES FOR NEW LEGAL PRACTICE

This, however, has not been the only setback that should be taken into account in the implementation of the EHEA model. Alongside it, the lack of public funding to accompany the spirit of the declaration should be highlighted, as well as the omission of something that is of capital importance, despite the fact that it has been overlooked in the analysis of the failure of its implementation. The implementation of the Bologna Process overlooked the need to include a European dimension or to articulate teachings that would contribute to socialise European citizenship, examining the need to nurture common values and interests for the whole of Europe. And this important oversight relates specifically to the urgent need to activate teaching from the perspective of critical - iusfeminist - thinking that accompanies philosophy of law and to incorporate a new vision of law in order to transform this teaching.

Not in vain, Europe adopted one of the international commitments assumed at the IV World Conference on Women, held in Beijing in 1995, which undoubtedly marked a before and after in the way of understanding the legal phenomenon, as well as in the planning of institutional policies that enable the attainment of effective citizen equality. It called on all governments and other actors to integrate gender mainstreaming into legislation, public policies, programmes and projects and to analyse the consequences for women and men respectively before making decisions. This commitment is part of the arduous evolution of recognition of women's rights as citizens with a capital "C", and not merely as an *addendum* to a legal system designed from the outset to exclude them. This recognition implies the admission that the human template was limited to the claims, demands and interests of *equals*, versus the claims of *others*, absent from the standards upon which rights are erected, and not manageable by simply "incorporating" them into the liberal model of rights. In this manner, the principle of equality and non-discrimination between women and men, a universal legal principle, has been integrated as an *objective* in all the policies and actions of the European Union and its Member States since the entry into force of the Treaty of Amsterdam.

This objective is particularly relevant in the context of the global digital society in which we find ourselves and where women are not well positioned. Gender biases²² in algorithms, even prior to data collection, leave out many women as well as a significant portion of the less affluent population. As the old computer science adage “garbage in, garbage out” (if you input garbage data, the output will be garbage) goes, “if you don’t include women in the data, there will be no women in the analysis, they don’t exist”²³. This gynopia of artificial intelligence clearly harms women, as citizens, as it neither originates from them nor considers them, albeit in its design, in the consequences and costs that a scarcity of women scientists will imply, in the lack of inter-sectoral thinking that exists behind the algorithms and the non-questioning of these - they are considered neutral -, thereby perpetuating patriarchal values and exclusions throughout the digital society. So, as Andrew Selbst puts it, “Correcting discrimination in algorithmic systems is not something that can be solved easily. It is an ongoing process, just like discrimination in any other aspect of society.”²⁴

The aim of this aforementioned principle of gender mainstreaming is therefore to prevent a legal and/or political measure - even if it is formally egalitarian - from being applied in such a way as to curtail or minimise women’s rights as citizens, within the framework of a law traditionally designed to exclude them. In this sense, moreover, “the European Commission, faced with the realisation that political decisions which in principle appear to be non-sexist can have a different impact on women and men, despite the fact that such consequence was neither foreseen nor desired, approved a Communication²⁵ on gender mainstreaming in the European Union - introducing it in the Treaty of Amsterdam (1997) - as a first step towards the realisation of the EU’s commitment to integrate the gender perspective - in a mainstreamed fashion - in all Community policies and drew up a Guide²⁶ to Gender Impact Assessment designed to be used within the Commission in an effort to avoid unintended negative consequences that favour situations of discrimination and to improve the quality and effectiveness of Community policies.”²⁷

This commitment to effective gender equality has therefore become one of the priorities of the European political agenda, having been

integrated into its *acquis communautaire*, and extending from the Treaty of Amsterdam (art. 3.2)²⁸, to the Treaty of Lisbon (art. 8)²⁹, not forgetting other directives of significant interest³⁰ in this respect that oblige member states to transpose what has been subscribed to as a priority objective of the European Union. The objective of promoting equality between men and women and of pursuing discrimination is therefore elevated to the level of *global priority* to the point of conditioning all EC policies, so that the goal of equality will not be achieved through one or several specific actions but rather by integrating it into all actions and confirming the highest level of European protection for reasons of gender in comparison with other system categories³¹. And this cannot be otherwise if it is to be consistent with the Treaty on European Union (Lisbon, 2009) and with the Charter of Fundamental Rights of the European Union - which it endorses in Article 6.1 - which states (Article 23 of the Charter) that “equality between women and men must be ensured *in all areas*, including employment, work and pay” and that “the principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.”

At the same time, and reinforcing the progress of this new legal approach, the 2030 Agenda for Sustainable Development approved by the UN General Assembly establishes 17 clear, interrelated goals which require gender equality as the backbone and fundamental axis for achieving the agreed temporary-international challenge: the eradication of poverty. However, as the UN Secretary General himself points out, “as long as women do not enjoy economic and social empowerment in the world of work, at home and in the community, growth will not be inclusive and we will not succeed in eradicating poverty”³². Consequently, the principle of gender mainstreaming, a binding principle embraced by all the countries that endorsed the agreements reached at the Fourth World Conference on Women in Beijing, re-attracts each of these objectives to which all legislative measures and political action adopted by them in the immediate future must be directed. And the ultimate rationale for this responsibility derives from viewing equality as “a human right composed of different elements: equality as substantive equality or equality of results, equality

as discrimination and equality as state responsibility”³³, and goes beyond its mere vision as a systemic principle.

Along these lines, The Spanish legislature, driven by international and European requirements, has recently opted for a new anti-subordination law that must incorporate - as it cannot be otherwise - the gender perspective in a transversal and mainstream fashion. But this supposes a new way of practising law and of thinking about law and, of course, it is not intuitive, but rather requires the obligatory gender training that must, and can only, derive from the critical - iusfeminist - theory of law from which it originated. This new legal practice - new anti-discrimination and anti-subordination law - requires a break from the primitive and outdated working structure for the functioning of the legal phenomenon that is still dogmatically incorporated by law faculties. A revision is required, following a re-conceptualisation of the basic criteria of equality that it deals with and that has traditionally been coined in Western thought since Aristotle, and of discrimination - centred in an individual context, rather than in a structural, group context -, and this incorporates an additional degree of difficulty that is particularly relevant.

And this is so because this working model will be based on an open, inclusive and plural model of citizenship (traversed by the various system categories), and by the consequent - and courageous - explicit recognition that the existing legal and social framework omits more than half the citizenship, and can therefore not be considered collective. We cannot continue patching up a seriously defective structure that has been conceived and sustained on the interests, demands and claims of part of the citizenship that projects its shadow over the excluded. In the face of this situation of structural exclusion, the law cannot respond with legal “antiseptic” that can never eradicate the original structural cancer, but rather by means of deconstructive measures that discredit a structure that has historically been crystallised and legitimized by itself.

This is undoubtedly an arduous and monumental task that we have just begun to undertake from the perspective of law³⁴ and legal critical thinking³⁵ and that, centred on gender mainstreaming, is based on two fundamental axioms: the first is based on the recognition of the masculinity of the legal system, which in itself requires a critical review³⁶, and the

second, on the inadequacy of the traditional mechanisms of gender-based anti-discrimination protection in the name of gender equality, which necessitates a global review of the law and the commitment to a new anti-subordiscrimination law. In this respect, and in the words of M.A. Barrère, “two strategic lines of revision deserve particular attention. One, which would require a shift from the legal concept of discrimination (based on difference in treatment) to that of subordination (based on difference in status). The other, which would require a broadening of the hegemonic concept of affirmative action that extends beyond mere equal opportunity.”³⁷

These and other issues, however, are still not being addressed in a standardized manner by law faculties, nor does their formalisation - from the point of view of quality - seem to be a matter of concern when it comes to revising the students’ training curriculum, a fact that will later have repercussions on the work of legal operators³⁸; and this, despite the fact that the Bologna implementation process insisted on the importance of including content and teachings that would contribute to socializing European citizenship, examining the need to nurture common values and interests for the whole of Europe with the ultimate aim of improving the quality of life and reducing inequality. On the contrary, the lack of knowledge of this new legal practice and of the necessary gender training that our legal agents should adopt is dissolving the sense and strength of the principle of gender mainstreaming as a *facilitator* of a new legal and political framework by “blurring” consequences and, at the same time, legitimizing the status quo that should be eradicated.

And this is so because the express consecration of this principle implies the logical assumption of all its consequences: the universality of equality and the integration of the gender dimension. With regard to the former, we are speaking not only of a subjective universality that affects all public powers, but also of an objective universality that addresses all the branches of the legal system. The latter calls for the need to integrate the gender dimension in the legislative, executive and judicial branches³⁹, which requires the elaboration of duly contrasted ex ante gender impact reports and effective judicial control. And, of course, we speak of the need to integrate the principle of equality in

the interpretation and application of the rules - as stated in article 4 of the LOIMH - as an informing principle now “explicitly” included⁴⁰ in the legal system, thereby enhancing the complex nature of legal equality (art. 1.4 of the Civil Code) as a right, a principle and a value. To be able to carry out all these tasks with the rigor and commitment required by the binding principle of gender mainstreaming in the framework of digital development, however, requires, as an unavoidable premise, the gender training of all operators - legal and non-legal - who intervene during the elaboration and application of the law. This training is both a priority and an essential responsibility of iusfeminism within the indisputable framework of legal and political philosophy.

IV. GENDER TRAINING AND PHILOSOPHY OF LAW

As soon as we delve into the requirements of this new legal and political practice, we will discover the necessary intervention of legal philosophy, since the traditional functions assigned to it have to do with the concept of law as well as knowledge and assessment of the same. It is indisputable that philosophy of law has fundamentally worked on the idea of justice and has centred a good part of its efforts on reflecting on just law - since a science of justice is not possible - but this task - both fundamental and necessary - has not been the only one faced by the discipline. Philosophy of law “is also, and in general, a juridical axiology, a theory of the values connected with the world of law. It is also legal ontology insofar as it tries to offer a concept of law that transcends the immediacy of the legal systems in force; in other words, it attempts to understand the specificity of the legal. And finally, it is legal methodology, i.e. critical reflection on the presuppositions and objectives of the science of law in general or of the particular legal sciences, as well as the interpretation and application of law.”⁴¹

The need for commitment to the development of this new law, therefore, obliges us to begin, curiously enough, with what should always have been the starting point of this reflection, i.e. what we understand by law. Returning once again to the obligatory work that must be carried out

in the context of the European global priority objective, this ontological question, specific to the philosophy of law, “is a challenge that goes beyond having good laws or good judicial decisions for women. It means making this discipline a transforming instrument that shifts the current sexual, social, economic and political models towards a human coexistence based on the acceptance of the other person as a legitimate other and on collaboration as a result of this respect for diversity.”⁴²

While the ontological function par excellence of the philosophy of law will always be alive, since the pursuit of the objectives of law will forever remain unfinished, the axiological and methodological functions are required with greater insistence these days, and call for those responsible for the attainment of this new legal paradigm - from the legislative, executive and judicial branches - to incorporate the critical and methodological slogans, from a knowledge perspective, supported by critical (iusfeminist) theory of law.

This means incorporating the category of gender and the iusfeminist theoretical framework into the law and “analysing from the perspective of a subordinate being, that is, from the perspective of a being who occupies a place of lesser power and privilege than a man/male of the same class, race, ethnicity, sexual choice, age, ability, belief, etc., and also, in many respects, of lesser power than all men/males of all classes, races, ethnicities, etc., without neglecting the analysis of the situation of the dominant sex and the relations between the two sexes”⁴³, surpassing the paradigm that takes as generic, as a template of humanity, as a model of rationality - typical -, the masculine, and the remainder, as exception - the atypical.

The traditional hegemonic conceptions of law - dogmatic, centred on the linguistic and conceptual rationality of law⁴⁴ - have shown themselves to be insensitive and blind to gender discrimination and gender relations, and their decontextualised or literal interpretations that “emanate from a predominantly idealist-essentialist methodology, and are transmitted through the writings (manuals, treatises) of its cultivators⁴⁵, promote covering legal activism that is legitimised in academic elitism that clashes head-on with the ideals of constitutional and democratic justice”⁴⁶. Undoubtedly, this whole dogmatic-elitist framework of interpretation has been nurtured by this archaic training we have been denouncing

and which required, to paraphrase Laporta in 1971⁴⁷, that the law student should learn the French garden by heart, instead of being taught to be a good gardener.

Therefore, a change is required in two directions: in the conception of law that is transmitted in universities, but also in legal methodology, which allows us to rethink the status of legal science and the recovery of the practical dimension of what is legal. We cannot interpret legal rules and the concepts contained in them as something disconnected from the reality in which they are born and must be applied, and neither can we legitimise - by omission - the negative effects that certain interpretations can produce, and which dilute the binding, transforming sense of principle that has been agreed on and ratified by many countries around the world.

This means breaking with the idea that philosophy of law is marginal to, absent from or almost floats around what law really is, as it necessarily stems from the data provided by legal science and legal sociology. But it also implies accepting that there are normative proposals that are not empirically falsifiable, and that therefore require rational and philosophical enquiry. Neither of these knowledge areas, therefore, is at odds with the other; on the contrary, they are mutually dependent parts of an entirely symbiotic relationship. Philosophy of law must rely on legal science, insofar as the latter provides philosophy with the living testimony of legal experience. It must also rely on the results of legal sociology for an adequate philosophical understanding of law. Conversely, philosophy of law helps the jurist become aware of the meaning and sense of law for the individual and for society and of his or her influence as an active agent of this machinery, and also contributes to establishing and offering a dynamic, fertile meaning to empirical sociology of law.

Recovering these inescapable objectives of philosophy of law is most likely the key to restoring the position that the discipline should never have lost with regard to the training process for students and legal agents. Another key would be not allowing - at the same time - the intrusion of others who now postulate themselves as experts in the traditional epistemological and, curiously, at times despised areas of the discipline. While, in the name of brevity, this is not the time to dwell on this, proof that the urgent intervention of philosophy of law⁴⁸ is required

in this new working framework lies in the need to revise legal-scientific categories which, undoubtedly, groan under the strain⁴⁹ when subjected to a mere process of verification and/or falsification - such as the case of aggravated assault in cases of gender violence, or the reformulation of some of the typical requirements for these cases, such as the criterion of habitual offence⁵⁰. The same applies to the deconstruction of categories and institutions - such as “discrimination” and the family - that, while purportedly neutral, are, in fact, androcentric and conceal power relations.

A legislative effort in this respect - valid but leaving much room for improvement - is of little use to me if the operators of the law, the jurists who have to act, whether from the legal practice, the public prosecutor’s office and/or the judiciary, lack the knowledge and the commitment⁵¹ that the new anti-discrimination law implies and that must come from the hand of critical - iusfeminist - theory of law from which it is gestated and ascribed to the philosophy of law⁵². Nor does the dogmatic teaching of 19th century categories help, as this is nurtured by sacrosanct, ancient legal science that continues to be transmitted in law faculties generation after generation to the detriment of a philosophy of law that is threatened with extinction in curricular training programmes.

Unfortunately, all this new legal work requires revision, reconceptualisation, demolition of outdated categories and application of a new legal thinking, with a permanent focus on the norm and the concrete fact, under the umbrella of gender mainstreaming as a guarantee of citizen equality, without exclusions, and, more than ever, this is the obligation of philosophy of law and the universities. However, this gap has still not been adequately filled – not to mention standardised - by the universities⁵³ despite the spirit of the Bologna Decree and the stipulations contained in organic laws that require such changes and which recognise that “universities will include and promote training, teaching and research in gender equality in all academic areas”. More specifically, and for reasons of proximity, Article 20.2 of the Law for the Promotion of Gender Equality in Andalusia⁵⁴, amended by Law 9/2018, of the 8th of October - which insists on special training in social and legal sciences - concludes that “The Andalusian university system will adopt the necessary measures to include teaching on equality between women and men in the appropriate

university curricula; in particular, in official undergraduate, Master's and doctoral degree courses in social and legal sciences.”

With respect to the extra-university framework, the training required is covered in a sectoral and endogamous manner, either by private institutions - created for this purpose and financially supported by users and public administrations - or by civil servants⁵⁵ who conform to the executive profile of those who must finally implement the measures authorised for this purpose.

On the 28th September, 2021, and along the lines advocated in this text⁵⁶, Decree 822/2021 was approved, which establishes the organisation of university education and the quality assurance procedure. According to article 4.2 of the decree, these plans must be based on democratic principles and values and Sustainable Development Goals, in particular:

- a) respect for *human rights and fundamental rights*, democratic values - freedom of thought and teaching, tolerance and recognition of and respect for diversity, *equality for all citizens, the elimination of all discriminatory content or practices, the culture of peace and participation*, among others
- b) respect for *gender equality in accordance with the provisions of Organic Law 3/2007, of the 22nd of March, for the effective equality of women and men*, and the principle of equal treatment and non-discrimination (...)

Paragraph 3 of the same article also requires that:

“These values and objectives must be incorporated as *transversal* content or competences in the format decided by the centre or university in the various official courses offered, as appropriate and always taking into account their specific academic nature and the training objectives of each degree”.

Paradoxically, and despite its relevance, as I have on occasion had the opportunity to mention and denounce, the debates relating to philosophy of law in our universities focus either on the disappearance of the same - as useless and pompous - or its phagocytisation - through intrusiveness and neglect - within the framework of the formal implementation of regulated legal study programmes, including the ongoing, specialised training of legal operators.

Be that as it may, there are law-related questions that legal science will not be able to answer despite the intrusion - albeit epistemological and academic - of other areas of knowledge into the functions of the philosophy of law. Some are worth mentioning: "the way in which law and social structures of subordination intersect, the way in which these issues manifest themselves in people's lives, the legal problems they generate, and the impact that law and the legal profession can have in reinforcing or resolving these issues."⁵⁷

The jurist, with a capital J, must understand that his or her action and position as a critical operator of the law⁵⁸ can fulfil an irreplaceable function by revealing power relations, by betting on equality to the detriment of discrimination, by not bowing down to existing law if this serves to subjugate individuals and, consequently, by instituting subjects of law *versus* beings lacking in legal charity.

Unquestionably, if it is assumed that law is simply a mere technique of social organisation and that the function of the jurist is that of mere executor of the same, it makes no sense - quite the contrary - to consider the acquisition of knowledge relating to legal philosophy. If, on the contrary, a conception of law that is, by necessity, linked to values of justice, freedom and equality were to be embraced, - looking into the eyes of the citizens - the need to encourage critical-alternative thinking would be unavoidable for any proposal worthy of a regulated revision of legal curricula and ongoing training.

On the one hand, and as Tamar Pitch states, "The struggle against injustice and for change necessarily involves both the social and economic conditions and the universe of thought that makes these possible, comprehensible and legitimate"⁵⁹. On the other hand - or perhaps not so *other* - and, as Alan Turing advocated, "It seems to me that the original question, "Can machines think?, is too meaningless to merit discussion. However, I believe that, by the end of the century, the meaning of words and professional opinion will have changed so much that it will be possible to speak of thinking machines without controversy"⁶⁰. In short, law and education go hand in hand: Critical capacity or legitimisation? This is the dilemma.

NOTES

- ¹ This paper forms part of the framework for the Project PID 2019-108526RB-I00/AEI/10.13039/501100011033, *Violencias de género y subordinación estructural: implementación del principio del gender mainstreaming (Gender-based violence and structural subordination: implementing the principle of gender mainstreaming)*, and the project I+D+iFEDER-Junta de Andalucía-Consejería de Economía y Conocimiento/B-SEJ-165-UGR18, *Derecho antidiscriminatorio y Género: retos y desafíos contra las violencias de género (Anti-discrimination law and gender: The challenges of gender-based violence)* and Principal person responsible: Juana María Gil Ruiz.
- ² Professor of Philosophy of Law at the University of Granada. jgil@ugr.es
- ³ In this regard, see Pérez Luño, A.L., *Trayectorias contemporáneas de la Filosofía y la Teoría del Derecho*, Tébar, Madrid, 2007.
- ⁴ While the original English version simply distinguishes between two cycles (undergraduate and graduate), subsequently the preferred practise has been to refer to two levels (undergraduate and postgraduate) or three cycles (bachelor, master and doctorate).
- ⁵ In this sense, and in line with Moreno González, G., "The perils of online teaching as the norm", in *eldiario.es*, "The exception that is online teaching must not become the norm subsequent to the current health crisis, at least if we want to preserve the last redoubt of civilisation and engine of social transformation that is the university."
- ⁶ The reduced duration of the first cycle has not succeeded in emphasising or underlining the knowledge considered essential if one is to be able to understand and evaluate the legal phenomenon - beyond how this is specified in the context of each contemporary society - but rather the insistence on the content of the practical subjects of the degree. Not to mention the inertia in "inventing" double degrees, reducing study time, distracting teaching staff and students with bureaucratic demands and excesses of "pursued" work and collecting courses, seminars and free configuration credits in a sort of multi-purpose "curricular invention". In this sense, the educational archetype would be *Bildung*, which includes not only the necessary specialised professional training but also the personal growth of the individual, even through science itself. The individual is not isolated on the fringes of the world but is in permanent contact with an environment that can be strengthened by the individual's own personal growth as a trainee. On this German idea of *Bildung* in educational approaches, see Abellán, J. "Wilhelm Von Humboldt and the idea of the university" in De Oncina Coves, F. (Ed.), *Filosofía para la Universidad, Filosofía contra la Universidad (de Kant a Nietzsche)*, Dykinson, 2008, pp. 273-296.
- ⁷ I refer, by way of example, to the compulsory training being provided - sometimes in the form of a Master's Degree - for the legal profession by the bar associations, or the training provided by the Judicial School prior to specialisation in the judiciary, among others.
- ⁸ Goldfard, P., "Back to the Future of Clinical Legal Education", *Boston College Journal of Law & Social Justice*, 2012, 32 (2), p. 302.
- ⁹ The jurist thus becomes not only a victim but an agent, "at the service of the reproduction of the advanced industrial society, with fewer social costs, with fewer risks, more functional, in short", see Saavedra, M. and Maresca, M., "Sobre la ciencia jurídica dominante en las Facultades de Derecho: la crisis de la reforma", *Anales de la Cátedra Francisco Suárez*, 1980-81, nº 20 y 21: La crisis de las Facultades de Derecho, p. 93. Reprinted in the special anniversary edition, *ACFS: Uno de 50*, Granada, 2016.
- ¹⁰ See Irti, N., *La edad de la descodificación*, Bosch, Barcelona, 1992
- ¹¹ Laporta, F., "Notas sobre el estudio y la enseñanza del Derecho", *Sistema*, nº 24-25, 1978, p. 111.
- ¹² In any event, if excess of law gives rise to a certain unease, it is no less true that the absence of law leaves matters, rights and interests that should be protected by the legal system to the altruism of the parties, A good example of the importance of this legal intervention can be found in the genesis of labour law as a protector of the interests of the working class against the excesses of the employer; or the treatment of gender violence in the context of couples, incorporated into our legal *acquis* not too long ago.

- ¹³ J. Habermas takes this line in his well-known work *Theory of Communicative Action II*.
- ¹⁴ In this regard, see Foucault, M., *Microphysics of Power and Discipline and Punish*.
- ¹⁵ In this respect, see De Julios Campuzano, A., "El paradigma jurídico de la globalización", in Beloso Martín, N. and De Julios Campuzano, A., *¿Hacia un paradigma cosmopolita del derecho?: pluralismo jurídico, ciudadanía y resolución de conflictos*, Dykinson, Madrid, 2008, pp. 49-75.
- ¹⁶ In this regard, and by way of example, recently, on the 16th of April, 2020, and as a result of the avalanche of fake news surrounding the coronavirus, the Guardia Civil issued instructions from the General Staff to all command posts to draw up a monographic report on the cybersecurity actions of the service branch linked to Covid-19. In order to compile this report, and with the controversy all too well known, the branch was ordered to compile the "identification, study and monitoring in relation to the situation created by Covid-19 of disinformation campaigns, as well as publications denying hoaxes and fake news likely to generate social stress and disaffection towards government institutions". Subsequently, the Minister of the Interior denied these terms - also put forward by the former Chief of Staff of the Guardia Civil, General José Manuel Santiago, in his appearance on the 20th of April, 2020 - on the understanding that this report would focus "on fake news likely to generate social stress and disaffection towards state institutions".
- ¹⁷ The woman who conceived the first algorithm, Ada Lovelace (1815-1852), the first computer programmer, stated in the report quoted by the mathematician Alan Turing, who created the basis of the computer system: "The Analytical Machine does not pretend to create anything. It can do what we know how to command it to do". See Turing, A., *Can a machine think?*
- ¹⁸ O'Neil, C., *Weapons of Math Destruction. How Big Data Increases Inequality and Threatens Democracy*.
- ¹⁹ This endemic evil of technical specialisation will not only affect formal university education, but will also extend to the master's degree and other specialised courses taught by professionals - of greater or lesser prestige - that are blossoming in an exorbitant - and degenerate - manner in our educational panorama.
- ²⁰ See Saavedra, M. and Maresca, M., *op.cit.*, p. 93.
- ²¹ See Kant, I. (1784), "An answer to the question, what is enlightenment?"
- ²² For more relevant information, see Maffia, D., "Sesgos de género en la Inteligencia Artificial", en Maffia, D. *et al.*, *Intervenciones feministas para la Igualdad y la Justicia*, Editorial Jusbaire, 2020, pp. 319-336.
- ²³ In this regard I recommend reading Díaz Martínez, C. and Díaz García, P., "Hombre es a mujer como inteligencia es a lucirse. Los big data y la desigualdad de género", in Maffia, D. *et al.* (comp.), *op.cit.*, pp. 297-318.
- ²⁴ See Selbst, A *et al.*, "Fairness and Abstraction in Sociotechnical Systems", en AT 19: Abstract for the *Conference on Justice, Responsibility and Transparency*, Nueva York, 2019. Available at <https://dl.acm.org/citation.cfm?id=3287598>
- ²⁵ Official communication, "Incorporating equal opportunities for women and men into all community policies and activities", COM (96) 67 of the 21st of February, 1996.
- ²⁶ Guide to Gender Impact Assessment of the European Commission, 1998.
- ²⁷ Explanatory Memorandum to Law 30/2003, of the 13th of October, on measures to incorporate gender impact assessment in the regulatory provisions drafted by the government. The information between dashes and the incorporation of informative-legal notes are mine.
- ²⁸ Article 3(2) of the Amsterdam Treaty: "In all the activities referred to in this Article, the Community shall aim to eliminate inequalities and to promote equality between men and women".
- ²⁹ Article 8 of the Lisbon Treaty: "In all its activities, the Union shall aim to eliminate inequalities and to promote equality between men and women".
- ³⁰ Directive 2006/54 of the European Parliament and of the Council of the 5th of July, 2006, on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), Article 29 states: "Gender mainstreaming: Member States shall actively take into account the objective of equality between men and women when formulating and implementing laws, regulations, administrative provisions, policies and activities in the areas covered by this Directive". DOUE-L-2006, 81416.
- ³¹ In this respect, see art.157 of the TFEU *versus* art.19 of the same treaty.

- ³² See the prologue by António Guterres, UN General Secretary, to the *Report on the Objectives of Sustainable Development*, 2018. Available at www.unwomen.org
- ³³ See Facio, A., 2014, *La responsabilidad estatal frente al derecho humano a la igualdad*, Collection Reflexiones contemporáneas, Mexico, 2014, p. 19.
- ³⁴ Rubio, A., “De la Igualdad Formal al Mainstreaming”, in *Políticas de Igualdad de Oportunidades entre Hombres y Mujeres de la Junta de Andalucía*, Instituto Andaluz de Administraciones Públicas y Consejería de Justicia, Seville, 2003, pp. 9-36.
- ³⁵ In this sense, the term anti-subordiscrimination has already been widely accepted by the legal-political doctrine, which supports the renaming of the new model of anti-discrimination law in this way. The contributions of Barrère Unzueta, Gil Ruiz, Rubio Castro, Morondo, Rodríguez, La Spina or De la Cruz-Ayuso, among others, are worth mentioning.
- ³⁶ In this respect, see the well-known article by Smart, C., “Women of Legal Discourse”, where she identifies the three phases or stages through which critical feminist thought on law has passed. The first of these lies in the statement “Law is sexist”, the second highlights that “Law is masculine” and, finally, a third stage that argues that “Law has gender”. Along these lines, and focussing on a context of gender violence in the couple relationship, I allow myself to refer to some of my works: Gil Ruiz, J.M., “The Woman of Legal Discourse: a contribution from the Critical Legal Theory”, *Quaestio iuris*, vol. 08, nº 03, Rio de Janeiro, 2015, pp. 2114-2148, DOI: 10.12957/rqi.2015.18806; “La Violencia de Género en el contexto familiar y la agresión de la Ciencia Jurídica”, *Archiv für Rechts- und Sozialphilosophie*, Vol. III, Beiheft Nr 108, 2007, pp. 201-212; “Derechos humanos, Violencia de Género y maltrato jurídico”, *Anuario de Filosofía del Derecho*, XXI, 2005, p. 53-81; o “La violencia jurídica en lo privado: un análisis desde la teoría Crítica”, *Directos & Deveres*, Revista do Centro de Ciências Jurídicas da Universidade Federal de Halagaos, Maceió-Alagoas, nº 2, 1998, pp. 29-66.
- ³⁷ See Barrère, M.A., *Feminismo y Derecho. Fragmentos para un Derecho antidisriminatorio*, Ediciones Olejnik, 2019, p. 39.
- ³⁸ As stated in section II, point 13 of the CEDAW General Recommendation on women’s access to justice of the 23rd of July, 2015, “(...) the lack of access to quality, gender-competent legal counsel, including legal aid, as well as the deficiencies often observed in the quality of justice systems (e.g. gender-blind decisions or judgments due to a lack of training, delays and excessive length of proceedings, corruption, etc.), are all factors that impede women’s access to justice. Therefore, quality justice would require - paragraph II, point 14, d.- “(...) that justice systems are contextualized, dynamic, participatory, open to practical innovative measures, gender-sensitive and responsive to women’s increasing demands for justice.”
- ³⁹ For more detailed information, please refer to my book, Gil Ruiz, J.M., *Las nuevas Técnicas Legislativas en España. Los Informes de Evaluación de Impacto de Género*, Tirant lo Blanch, Valencia, 2012.
- ⁴⁰ In this regard, we must remember that the 1978 Constitution enshrined equality between women and men as a universal principle. O.L. 3/2007, of the 22nd of March, 2007, on the effective equality of women and men “reminds us”, stating explicitly in Article 4, that equality of treatment and opportunities between women and men is an informing principle of the legal system and, as such, must be observed in the interpretation and application of the rules. Along these lines, see Montalbán Huertas, I., “Interpretación y aplicación del principio de no discriminación entre mujeres y hombres. Incidencia de la Ley Orgánica 3/2007, de 22 de marzo”, *Diario LA LEY*, año XXVIII, nº 6781, 18th of September, 2007.
- ⁴¹ See López Calera, N.M., *Filosofía del Derecho (I)*, Editorial Comares, Granada, 1992, pp. 35-36.
- ⁴² See Facio, A. and Fries, L. (Ed.), *Género y Derecho*, LOPM Ediciones, Santiago de Chile, 1999, p. 22.
- ⁴³ See Facio, A., *Cuando el género suena cambios trae. Metodología para el análisis de género del fenómeno legal*, ILANUD, San José de Costa Rica, 1992, p. 42.
- ⁴⁴ In this respect, see Ruiz Resa, J.D., “El peculiar estatuto de la dogmática jurídica”, in Ruiz Resa, J.D. (ed.), *Política, economía y método en la investigación y aprendizaje del Derecho*, Dykinson, 2014.
- ⁴⁵ A good example of what is denounced here can be found in the Prologue written by the criminal lawyer Enrique Gimbernat Ordeig to the 10th edition of the 1995 Penal Code, which together with the modifications introduced by Organic Law 15/2003 of the 25th of November, published by the Tecnos publishing house, “issues a series of value judgements in relation to gender violence

which go beyond the right to freedom of expression, as they violate the constitutional principle of equality between women and men and represent a serious attack on human dignity". These words in quotation marks belong to the Director of the Andalusian Women's Institute, who issued a letter denouncing and expressing concern about the seriousness and harm of this commentary and requesting its revision. Nevertheless, it continues to be reprinted without having been removed by the publisher. Allow me to quote from the letter to illustrate the above-mentioned cowering, elitist-academic legal activism: "The social alarm at the aforementioned assessments is justified because we are dealing with a manual designed for academic use and, as such, is aimed at a young public that is more easily influenced, and because these clearly sexist opinions, which are vexatious towards women, are included in the book's prologue and invite, from there, a biased reading of the incorporated modifications.

(... in this he) invites us to consider the exercise of violence against women as minor, everyday acts to be taken as a matter of course: most of the minor threats and coercion exercised by a man on a woman within a couple's relationship have nothing to do with a « *tool to maintain discrimination, inequality and power relations of men over women* », but are due to pedestrian reasons such as *which school the children should go to or how to react to possible bad school marks, to questions of domestic economy - « my dear: we have difficulties to pay the mortgage, and if you don't reduce expenses you'll find out what's good for you...»*

Later on, he laments the fact that the conduct of *giving a single push to a partner* has been transformed from a misdemeanour into a crime of injury. In general, he argues that he considers the postulates of feminism to be *radical*, entering the field of criminal law like an elephant in a china shop, and ends up *identifying feminism with National-Catholicism*.

⁴⁶ See Rubio, A., "Haciendo real el principio de igualdad. Interpretación con perspectiva de género", en https://www3.poderjudicial.es/search/pjpublicaciones//2018/06/22/CF16048/5_PDF/CF1604801.pdf.

⁴⁷ Cf. Laporta, F., "Notas sobre el estudio y la enseñanza del Derecho", *Sistema*, nº 24-25, 1978, p. 111.

⁴⁸ Among the prominent voices within the academy, worthy of note are, among others, the consolidated iusfeminist thinking of female legal philosophers such as Ana Rubio, Maggy Barrère, Encarna Bodelón, Cristina Sánchez, Elena Beltrán, Silvina Álvarez and Juana María Gil. In this regard, see Gil Ruiz, J.M., "La Filosofía del Derecho: entre un nuevo Derecho amenazado y una Ciencia jurídica desfasada", *Anuario de Filosofía del Derecho*, CGPJ, Madrid, 2014, pp. 241-270..

⁴⁹ A good example can be found in the recent debate surrounding the La Manada sentence, finally classified as multiple rape (continuous crime of sexual assault), not sexual abuse, during the San Fermín festivities, according to the SC ruling of the 21st of June, 2019.

⁵⁰ A response from the perspective of philosophy of law to the worrying proposals put forward by scientific doctrine is urgently needed. In this sense, Dolz Lago considers that art. 153 of the Spanish Criminal Code "is a clear violation of the non bis in idem principle, by allowing the assessment of habitual offences to take into account facts that have already been prosecuted, including, perhaps, acquittals, facts that have already expired, or mere suspicions". Dolz Lago, M.J., "Violencia doméstica habitual: mitos y realidades", *LL*, 2000-3, pp. 1785. In this respect, Marín de Espinosa Ceballos proposes modifying Art. 153 and making it explicit that violent acts that have already been the object of a previous conviction will not be taken into account in order to assess habituality. Marín de Espinosa Ceballos, E.B., Hamdorf, K., "El elemento de habitualidad en el delito de malos tratos del Código Penal suco", *CPC*, nº 71, 2000, p. 430. For my position on this, see Gil Ruiz, J.M., "The Woman of Legal Discourse: a contribution", *cit*.

⁵¹ In the words of Ricardo Guastini, "No normative text can be applied without having been previously interpreted (...) Interpretation is neither a simply cognitive activity nor one of automatic application, but rather, it is a highly discretionary activity. (...) Moreover, judicial discretion will depend on the culture (the prevailing methodological orientations) of the judiciary. It is precisely there where judges have assimilated the principle of fidelity to the law and where they are more inclined to follow personal political orientations, independently of the policy of the law pursued by the legislator". See Guastini, R., "Legitimación y Jurisdicción en la Teoría del derecho", *La crisis del Derecho y sus alternativas*, CGPJ, Madrid, 1995, p. 315.

- ⁵² In this respect, see Gil Ruiz, J.M., “Introduction of gender perspective into juridical academic degrees: towards a regulated education”, *Education and Law Review*, 2014, 10.
- ⁵³ My position on this matter was already expressed in my article “Formación en Derecho Antidiscriminatorio: carencias e incumplimientos institucionales” (Training in Antidiscriminatory Law: Institutional deficiencies and non-compliances), *Academia*, Revista sobre enseñanza del Derecho nº 26, 2015, pp. 49-77.
- ⁵⁴ This article 21, paragraph 2 of Law 12/2007, of the 26th of November, for the promotion of Gender Equality in Andalusia, was modified by the sole article 16 and 17 of Law 9/2018, of the 8th of October, with emphasis on the special training in the area of social and legal sciences. BOE-A-2018-15239
- ⁵⁵ Along these lines, and focusing on the necessary gender training that members of the judiciary should incorporate, O.L. 3/2007 of the 22nd of March for the effective equality of women and men introduced modifications in the LOPJ and in the Statute of the Basic Ministry of the Public Prosecutor’s Office, with the objective that the selective exams should include the study of the principle of equality between women and men (article 310 LOPJ). As far as the Judicial Career was concerned, Ongoing Training Plans would complete this gender training with annual courses given by the Judicial School on the jurisdictional protection of the principle of equality between women and men and gender violence (Article 433 bis.5 LOPJ). Further along these lines, and due to the need to fill this training gap, the LOPJ has again been modified by O.L. 5/2018, of the 28th of December, on urgent measures in application of the State Pact on gender-based violence and will oblige judges to accredit their training in gender perspective in order to obtain any specialisation. This compulsory training will also be required for prosecutors who wish to enter the judicial career through specialisation. However, this training is imparted by members of the judicial career itself, and is considered by members of organisations specialising in gender violence to be inbred and sectorial, “as the design of the training has been done without the participation of entities, bodies or experts in this type of violence who do not belong to the judicial system”. In the words of Yolanda Besteiro, President of the Federation of Progressive Women in *Diario Público*, on the 30th of July 2019, “We fear that the training will be very endogamous and legal, when ideally it would be a broader training in gender perspective and equality that would provide in-depth knowledge about the victims and abusers, how they operate, how they act, how the cycle of gender violence works. This was not what was intended when several of us, as experts, went to the parliamentary sub-committee for the State Pact and presented our opinion. It was not about training in the law, but rather training in gender perspective in a much broader way, precisely so that the agents in question could acquire elements that would enable them to assess the risk and adequately protect the victims”. See also the SHADOW Report to the GREVIO-Istanbul Convention, sent on the 10th of June 2019 to the CEDAW Committee, signed by more than 200 NGOs. Available at <https://cedawsombraesp.wordpress.com/2018/07/31/informe-sombra-al-grevio-convenio-de-estambul-encuentro-estatal-madrid-sabado-6-de-octubre-2018/>
- ⁵⁶ The initial proposal (article 3.4) of the Royal Decree establishing the Organisation of Official Degrees in the Spanish University System, presented in May of 2020, seems to me to be more accurate, if possible. See, in this respect, GIL RUIZ, J.M., “Reconfigurar el derecho repensando al jurista: retos de la sociedad global digital y compromisos internacionales vinculantes”, *AFD*, 2021 (XXXVII), pp. 170-171.
- ⁵⁷ See Goldfard, P., *op.cit.*, p. 305.
- ⁵⁸ Cf. Cardinaux N. and Palombo, M.A., “El pensamiento crítico: llaves, rutas y señuelos”, *Academia*. *Revista sobre enseñanza del Derecho*, 10, 2007, p. 133.
- ⁵⁹ See Pitch, T, *Un derecho para dos. La construcción jurídica de género, sexo y sexualidad*, Trotta, Madrid, 2003, p. 21.
- ⁶⁰ Turing, A., *op.cit.*, p.6.

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Recebido em: 17-2-2022

Autor Convidado

Juana María Gil Ruiz

Doctorado en Derecho, con la primera Tesis de Género en el Área jurídica de la Universidad de Granada. Licenciatura en Derecho. Profesora Titular de Filosofía del Derecho de la Universidad de Granada y colaboradora del Instituto Andaluz de la Mujer. Asesora de la Dirección General de Violencia de Género en Andalucía y Vocal del Observatorio Andaluz de Violencia de Género. Pertenece al Comité Científico de la prestigiosa Revista Jurídica Anales de la Cátedra Francisco Suárez. Ha sido Vicedecana de Relaciones Internacionales de la Universidad de Granada. Actualmente merecen destacarse su investigaciones vinculadas a proyectos de investigación I+D+i del Ministerio de Ciencia e Innovación, del CGPJ, y de la Dirección General de Violencia de Género en Andalucía, que garantizan la transferencia del conocimiento. Ha disfrutado de estancias en el extranjero como Academic Visitor en distintas Universidades: Faculté de Droit et des Sciences Sociales de Poitiers y Paris IV (Francia); Faculty of Law and Centre for Social and Legal Studies at Oxford University y en el University College London (UK); en el Centro di studi e iniziative per la Riforma dello stato en Roma (Italia); y en el Instituto Max-Planck de Hamburgo (Alemania). Email: jgil@ugr.es

Universidad de Granada (Spain)

Campus Universitario de Cartuja,
Calle Prof. Vicente Callao, 3, 18011
Granada, Espanha

