

**Social and Legal Sciences**

**Guides to  
mainstreaming gender  
in university teaching**

# **Law and Criminology**

**M. Concepción Torres Díaz**

**Xarxa Vives**  
d'universitats



**THIS COLLECTION OF GUIDES IS PROMOTED BY THE GENDER EQUALITY WORKING GROUP OF THE XARXA VIVES D'UNIVERSITATS [VIVES NETWORK OF UNIVERSITIES]**

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## SUMARY

PRESENTATION	4
1. INTRODUCTION	7
2. GENDER BLINDNESS AND ITS IMPLICATIONS	8
3. GENERAL PROPOSALS FOR INCORPORATING THE GENDER PERSPECTIVE INTO TEACHING	11
4. PROPOSALS FOR INTRODUCING A GENDER PERSPECTIVE INTO THE TEACHING OF LAW AND CRIMINOLOGY	26
4.1 Law Degree	26
4.1.1 Specific objectives	26
4.1.2 Contents	26
4.1.3 Modes of organizing teaching dynamics and methods	29
4.1.4 Evaluation proposals	30
4.2 Criminology Degree	30
4.2.1 Specific objectives:	31
4.2.2 Content:	31
4.2.3 Modes of organising teaching dynamics and methods	34
4.2.4 Evaluation proposals	38
05. TEACHING RESOURCES	39
6. TEACHING HOW TO CARRY OUT GENDER- SENSITIVE RESEARCH	42
07. PEDAGOGICAL RESOURCES	44
7.1 Webography	44
7.2 Bibliography	45
8. FURTHER INFORMATION	51

## PRESENTATION

What is the gender perspective and what relevance does it have in teaching undergraduate and graduate programmes? When applied to a university setting, the gender perspective or gender mainstreaming is a comprehensive policy to promote gender equality and diversity in research, teaching and university management—all areas affected by different gender biases. As a cross-cutting strategy, it involves all policies taking into account the characteristics, needs and interests of both women and men, and distinguishing biological aspects (sex) from culturally and historically constructed social representations (norms, roles, stereotypes) of femininity and masculinity (gender) based on sexual difference.

*The Xarxa Vives d'Universitats* (XVU) (Vives Network of Universities) encourages a cohesive university community and reinforces the projection and the impact of academe in society by promoting the definition of common strategies, especially in the gender perspective scope of action. It should be highlighted that policies that do not take into account these different roles and diverse needs and are, therefore, gender-blind do not help to transform the unequal structure of gender relations. This also applies to university teaching, where we offer students a compendium of knowledge to understand the world and intervene in their future professional practice, providing sources of reference and academic authority and seeking to promote critical thinking.

Knowledge transfer in the classroom that is sensitive to sex and gender offers different benefits, both for teachers and for students. On the one hand, deepening the understanding of the needs and behaviours of the population as a whole avoids partial or biased interpretations—both theoretically and empirically—that occur when using man as a universal reference or when not taking into account the diversity of the female or male subject. In this way, incorporating gender perspective improves teaching quality and the social relevance of (re)produced knowledge, technologies and innovations.

On the other, providing students with new tools to identify stereotypes, social norms and gender roles helps to develop their critical thinking and skill acquisition that will enable them to avoid gender blindness in their future professional practice. Furthermore, the gender perspective allows teachers to pay attention to gender dynamics that occur in the learning environment and to adopt measures that ensure that the diversity of their students is addressed.

The document you are holding is the result of the biannual 2016-2017 work plan of the XVU Gender Equality Working Group, focused on gender perspective in university teaching and research. At an initial stage, the report entitled *La perspectiva de gènere en docència i recerca a les universitats de la Xarxa Vives: Situació actual i reptes de futur (2017)* [Gender Perspective in Teaching and Research at Universities in the Vives Network: Current Status and Future Challenges], coordinated by Tània Verge Mestre (Pompeu Fabra University) and Teresa Cabruja Ubach (University of Girona), found that the effective incorporation of gender perspective in university teaching remained a pending challenge, despite the regulatory framework in force at European, national and regional levels of the XVU.

One of the main challenges identified in this report in order to overcome the lack of gender sensitivity in curricula on undergraduate and postgraduate programmes was the need to train teachers in this skill. In this vein, it pointed out the need for educational resources that help teachers provide gender-sensitive learning.

At the second stage, these guidelines for university teaching with a gender perspective has been prepared, under the coordination of Teresa Cabruja Ubach (University of Girona), M. José Rodríguez Jaume (University of Alicante) and Tània Verge Mestre (Pompeu Fabra University). Altogether, eleven guides have been developed—with between one to four guides for each field of knowledge—by expert lecturers and professors from different universities in applying a gender perspective in their disciplines:

#### ARTS AND HUMANITIES:

HISTORY: Mónica Moreno Seco (Universitat d'Alacant)

ART HISTORY: M. Lluïsa Faxedas Brujats (Universitat de Girona)

PHILOLOGY AND LINGUISTICS: Montserrat Ribas Bisbal (Universitat Pompeu Fabra)

PHILOSOPHY: Sonia Reverter-Bañón (Universitat Jaume I)

#### SOCIAL AND LEGAL SCIENCES:

LAW AND CRIMINOLOGY: M. Concepción Torres Díaz (Universitat d'Alacant)

SOCIOLOGY, ECONOMICS AND POLITICAL SCIENCE: Rosa M. Ortiz Monera and Anna M. Morero Beltrán (Universitat de Barcelona)

EDUCATION AND PEDAGOGY: Montserrat Rifà Valls (Universitat Autònoma de Barcelona)

### SCIENCES:

PHYSICS: Encina Calvo Iglesias (Universidade de Santiago de Compostela)

### LIFE SCIENCES:

MEDICINE: M. Teresa Ruiz Cantero (Universitat d'Alacant)

PSYCHOLOGY: Esperanza Bosch Fiol and Salud Mantero Heredia (Universitat de les Illes Balears)

### ENGINEERING:

COMPUTER SCIENCE: Paloma Moreda Pozo (Universitat d'Alacant).

Learning to incorporate the gender perspective in subjects merely implies a reflection on the different elements that constitute the teaching-learning process based on sex and gender as key analytical variables. In order to review your subjects from this perspective, the guidelines for university teaching with a gender perspective provide recommendations and instructions that cover all the following elements: objectives; learning outcomes; content; examples and language used; selected sources; teaching methods and evaluation, and management of the learning environment. After all, incorporating the principle of gender equality is not just a matter of social justice but also teaching quality.

Teresa Cabruja Ubach, M. José Rodríguez Jaume  
and Tània Verge Mestre, coordinators

## 1. INTRODUCTION

This guide contains recommendations for the incorporation of a gender perspective into the degrees of Law (and rights) and Criminology and, by extension, into the teaching of legal sciences. For the author, Professor María Concepción Torres Díaz of the University of Alacant, higher education that integrates this perspective reevaluates traditional learning and knowledge, redraws the mental and symbolic frameworks of legal thought and makes it possible to reflect on the terms upon which the subject of law has been constructed. Before delving into the different legal branches and categories that comprise the official studies of the law and criminology degree, this guide proposes an analysis of historical legal texts as a general recommendation from which it is possible to develop a gender-sensitive view of teaching and determine which persons have been (and are) recognised as persons in legal discourse. The guide exemplifies the above via a wide selection of legal texts for each of the branches of law over a wide period of time. Some interesting annotations, made from a gender perspective, are provided on the Criminal Code of 1944 and the recently approved Pact Against Gender Violence, to give just two examples.

Specific proposals for the implementation of a gender perspective in teaching are presented, taking as a reference the subjects Constitutional Justice and Constitutional Interpretation and Freedom of Belief Law (Degree in Law) and Gender Violence and Victimology (Degree in Criminology). The author has gathered numerous examples for each of the sections for which teaching is intended (objectives, contents, organisational methods in the classroom, teaching and evaluation methods and resources). There are also many pedagogical resources referenced. Additionally, in the final section (Further Information, Section 8 of the guide) many of the ideas stated in the previous sections are expanded on and supported with documentary evidence, making this a guide of tremendous didactic value.

## 2. GENDER BLINDNESS AND ITS IMPLICATIONS

The World Declaration on Higher Education in the 21<sup>st</sup> Century: Vision and Action, approved by the World Conference on Higher Education in October 1998 at UNESCO, identified the consolidation, participation and promotion of women's access to higher education as one of the primary objectives in the field of education. Of particular significance is section b) of Article 4 of the aforementioned declaration as it includes the need to "consider gender aspects in different disciplines". Article 4 also promotes gender studies as a specific field of knowledge with a strategic role in the transformation of higher education and society. In the same vein, we should mention Recommendation CM/Rec (2007) 13, of the Committee of Ministers of the Member States of the European Union, relating to the integration of the gender dimension in education, in which it advises governments of member states to revise their respective legislations to apply strategies and measures tailored towards promoting and encouraging the integration of a gender perspective at all levels of education, including, therefore, higher education. With regard to the field of law, it is also worth mentioning Law 14/2011, of 1 June, on science, technology and innovation – specifically the thirteenth additional provision – in which gender (or the gender perspective) stands at a cross-cutting category in higher education and research, meaning that its relevance must be considered in all aspects of education and research.

From this perspective, to ignore gender as a category of critical analysis in higher education and academic research implies a commitment to higher education and research that is uncritical towards the patriarchal mode of socialization and the sex/gender system. It implies remaining in a position of so-called 'gender-blindness'. According to De Barbieri<sup>1</sup>, gender blindness can be recognised when the production and transmission of knowledge in academia obviates (or ignores) the contributions of women in a clear sphere of power – as creators and generators of knowledge – as is the case with academia. And this is where we need to go deeper, because a gender perspective implies an opening up to new epistemologies and new paradigms of knowledge – such as feminism – which, in the fields of law and criminology, reevaluate traditional knowledge and learning. From an epistemological perspective we should talk about contributions that have coincided in questioning (1) the prevailing objectivism in traditional sciences, (2) the neutrality of science and (3) the apparent sexual abstraction of the knowing subject and of the subject/object of knowledge, i.e.:



1. Theories from a feminist perspective, in which the most relevant figures are Sandra Harding<sup>2</sup> and Evelyn Fox-Keller<sup>3</sup>.
2. Theorists of feminist empiricism like Elizabeth Anderson<sup>4</sup> and Louise Anthony.
3. Postmodern feminism embodied by figures such as Donna Haraway<sup>5</sup> and Susan Hekman.

Extrapolating these considerations into the field of teaching and research in law and criminology, it is worth mentioning feminist legal theorists like Frances Olsen<sup>6</sup>, Tamar Pitch<sup>7</sup>, Carol Smart<sup>8</sup>, Catharine MacKinnon<sup>9</sup> and Alda Facio<sup>10</sup>, among others. Research into these theories has laid the groundwork for unmasking the patriarchal dimension of law and the rights and implications that this has for the lives of women. In the specific field of feminist criminology it is once again worth mentioning Carol Smart and her book *Women, Crime and*

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- 2 Harding, Sandra (1987). "Is There a Feminist Method?." *Feminism and Methodology*. Bloomington / Indianapolis: Indiana University Press.
  - 3 Keller, Evelyn and Longino, Helen (eds.) (2004). *Feminism and Science*. New York: Oxford University, p. 244.
  - 4 Anderson, Elizabeth (1995). "Feminist Epistemology: An Interpretation and a Defense." In *Hypatia*, 10, pp. 50-80: <http://onlinelibrary.wiley.com/doi/10.1111/j.1527-2001.1995.tb00737.x/full> (accessed: 22/12/2017). See also Anderson, Elizabeth (1995), "Knowledge, Human Interests and Objectivity in Feminist Epistemology." In *Philosophical Topics*, 23, pp. 27-58: <https://philpapers.org/rec/andkhi> (accessed: 20/12/2017).
  - 5 Haraway, Donna (1995). "Conocimientos situados: la cuestión científica en el feminismo y el privilegio de la perspectiva parcial." In Haraway, Donna (1995). *Ciencia, cyborgs y mujeres. La invención de la naturaleza*. Madrid, Cátedra, ch. 7, pp. 303-346. It is worth noting – in accordance with the objectives of this guide – the definition of objectivity or objective knowledge from a feminist perspective, understanding by that the situated or positioned rationality.
  - 6 Olsen, Frances (1990). "The Sex of Law." In Kairys, D. (ed.). *The Politics of Law*. New York: Pantheon, pp. 452-467.
  - 7 Pitch, Tamar (2003). *Un derecho para dos: la construcción jurídica de género, sexo y sexualidad*. Madrid: Trotta.
  - 8 Smart, Carol (1994). "La mujer del discurso jurídico." In Larruri, Elena (coord.). *Mujeres, derecho penal y criminología*. Madrid: Alianza Editorial, pp. 167-177.
  - 9 MacKinnon, Catharine (1983). "Feminism, Marxism, Method and the State: Toward Feminist Jurisprudence." In *Sings: Journal of Women in Culture and Society*, VIII, pp. 635-645. See also MacKinnon, Catharine (2006), *Are Women Human? And Other International Dialogues*. Cambridge: Harvard University Press.
  - 10 Facio, Alda (2000). "Hacia otra teoría crítica del Derecho." In Herrera, G. (coord.). *Las fisuras del patriarcado. Reflexiones sobre feminismo y derecho*. Papers in the gender programme of FLACSO organised for the seminar Gender and Law: Reflections from Theory and Practice. Ecuador, pp. 15-44.

*Criminology*<sup>11</sup>, from 1977, as she has been recognised as the initiator of this strand of knowledge within criminological studies in general. In this work she criticises the gender stereotypes that have marked scientific studies in this branch of knowledge, influenced by the androcentrism of the theories of Lombroso and Ferrero regarding the construction of women as an object of knowledge in the criminogenic phenomenon. Of particular interest is her critical analysis, from a gender perspective, of the joint work of the abovementioned authors – *The Female Offender*, 1895<sup>12</sup> – because it associates delinquent women with certain social constructs, justified on the basis of women’s biological differences, without taking into account the power structures of the sex/gender system and how they operate (and have operated) in cases of women who commit crimes. It should also be noted that the gender perspective in criminology compels us to correlate this area of study with other branches of knowledge, such as victimology, which is achieving growing recognition as an autonomous discipline.

From the above we can draw the conclusion that it is necessary to implement a gender perspective in university studies in law and criminology. Since implementation of a gender perspective implies redrawing mental and symbolic frameworks of legal thought which have traditionally been articulated under (gender-biased) premises of neutrality, objectivity and impartiality, this implementation must be in research as well as in teaching and knowledge transfer. In addition, implementation of a gender perspective involves rethinking the legal/political subject, in other words, the subject of law and the subjects of rights. This should be carried out from three perspectives:

- From the position of women in legal narratives and discourses. That is, from the position of women in and before the law.
- From the construction of women as legal/political subjects. That is, by critically reflecting on the legal subjectivity that is predicated as autonomous from the principles of normative or legal equality that obviate the normative heteronomy underlying the construction of women’s law when the sex of legal subjects is disregarded.
- From a critique of legislative effectiveness when the gender perspective as an interpretive criterion in law, and a specific guarantee of women’s rights, is disregarded.

11 Smart, Carol (1977). “Women, Crime and Criminology: A Feminist Critique.” In *Social Work*, volume 22 (4), 1 July 1977, pp. 331-332.

12 Lombroso, Cesare and Ferrero, Guglielmo (1895). *The Female Offender*. New York: D. Appleton.

### 3. GENERAL PROPOSALS FOR INCORPORATING THE GENDER PERSPECTIVE INTO TEACHING

1. We currently have a significant number of references that focus on the necessary inclusion of a gender perspective in the disciplines of law and criminology. The following is a list of those that are directly related to the purpose of this guide. An extensive analysis of these can be found in Section 8 of this guide (Further Information).
  1. On 14 December 2017, the General Council of Spanish Lawyers presented the guide *Enfoque de género en la actuación letrada. Guía práctica de la abogacía* (Gender Focus in Legal Practice. Practical Guide for Lawyers).<sup>13</sup>
  2. Reports by the General Council of the Judiciary – a group of experts in domestic violence and gender – have, for several years, insisted on the need to provide judges, and other professionals working in the courts, with training in the gender perspective. These documents make a direct appeal to the importance of implementing the gender perspective in case analysis, as well as in the interpretation and application of legislation, etc.
  3. Practical guide to Organic Law 1/2004, of 28 December, on comprehensive protection measures against gender violence. It is worth mentioning Section XI.2 which, under the heading ‘Interpretation of Rules from a Gender Perspective’, appeals to regulatory changes undertaken in the Spanish legal system and, in particular, to Organic Law 1/2004, of 28 December, on comprehensive protection measures against gender violence, and Organic Law 3/2007, of 22 March, for the effective equality between women and men. These rules have an important constitutional weight since they aim – from within the framework of the anti-discrimination law – to guarantee effective and real equality.

In addition to the above-mentioned list, the Practical Guide to Organic Law 1/2004 recalls the international dimension of this objective when it is included in:

4. The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul, 11 May 2011).

<sup>13</sup> See General Council of Spanish Lawyers (2017) *Enfoque de género en la actuación letrada. Guía práctica de la abogacía*: <http://www.abogacia.es/wp-content/uploads/2017/12/guia-enfoque-de-genero-3.pdf> (accessed: 20/12/2017).

5. The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW, 1979).
  6. The report of the Secretary-General of the United Nations of 6 July 2006 calling for specialized training in the field of gender for legal practitioners, which states verbatim that “law enforcement will be strengthened if systematic training in gender sensitivity is provided”.
  7. General Recommendation No. 33 of the Committee on the Elimination of Discrimination against Women (CEDAW), of 3 August 2015. Regarding women’s access to justice, Section B.21 refers to “enshrining obligations for States parties to adopt appropriate legal and other measures to eliminate all forms of discrimination against women by public authorities and non-state actors as individuals, as well as organizations and enterprises.” The observation is made that the current moment calls for regulatory effectiveness from a gender perspective.<sup>14</sup> This justifies the need to implement a gender approach – at both bachelor’s and master’s level – in law and criminology. This should be done for the practical and professional dimension of both disciplines, as well as for the direct impact they have on the recognition, protection and guaranteeing of people’s rights.
2. Given that this guide is aimed at the implementation of a gender perspective in teaching and research in the field of law and criminology, it is essential to start with the conceptual (and therefore regulatory) definition of two concepts that are key: sex and gender. Current practice reveals confusion regarding the two terms, which are often used interchangeably. This is a problem that reduces the potential for social transformation towards effective and real equality.
- The concept of sex alludes to the biological distinction between women and men. Therefore, this is a concept that appeals to the natural

<sup>14</sup> Torres Díaz, María Concepción (2017). “Iusfeminismo y abogacía: los retos de la perspectiva de género en las profesiones jurídicas.” Paper in the summer course Crisis de las Profesiones Jurídicas en un Mundo en Transformación: Dinámicas Locales y Transnacionales, Instituto de Sociología Jurídica, Oñati, 17-18 July 2017: <http://www.abogacia.es/wp-content/uploads/2017/06/Azken-egitaraua-Programa-definitivo.pdf> (accessed: 20/11/2017). See also Torres Díaz, María Concepción (coord.) et al. (2017). *Memoria de la Red Docente Género e Igualdad en Derecho Constitucional y Libertad de Creencias 2016/2017*. In Roig-Vila, R. (coord.). *Memòries del Programa de Xarxes-I3CE de qualitat, innovació i investigació en docència universitària. Convocatòria 2016-2017*. Alacant (Alicante): University of Alacant, Institute of Education Sciences (ICE), pp. 184-197.

differences between women and men. These differences, though they should not be accompanied by any negative connotations, have – from the perspective of the sociosexual structuring of reality – generated a social and discriminatory inequality for women and for those groups that deviate from compulsory homosexuality.

- The concept of gender<sup>15</sup> has been (and remains) a troubled<sup>16</sup> one. However, it is important to identify gender as being the cultural construction surrounding biological sex that the patriarchal form of socialization has articulated via the assignation of different and discriminatory character traits, positions, tasks and roles for women and those who have dissociated themselves from the sociocultural assignment of gender roles assigned to their biological sex, or for those whose gender does not correspond to the biological sex they were assigned at birth.
3. In the legal field, it is important to specify how gender has become a category of legal analysis<sup>17</sup>. A fundamental category if we wish to understand – from a critical perspective – the sociosexual structuring of reality and the wider implications for women’s legal and political subjectivity. Despite the fact that legal and formal equality – equality at the regulatory level – is practically a reality (at least in Europe), effective and real equality remains a goal to be achieved. Obviously, this has consequences in terms of laws and rights, especially when the recipients of legal discourse – judicial, legislative, administrative, contractual, criminal, and so on, are women.
- 3.1 At this point, a first approach to introducing a gender perspective into law and criminology teaching and research is to reflect on the terms on which the legal subject has been constructed. An analysis of this construction becomes essential in determining the regulatory model of the human element. That is why it is important to analyse historical legal texts (declarations of rights, constitutions, laws, judgements, etc.) in order to determine on which terms legal and political subjectivity has been recognised, and which people have been (and are) subjects of rights. In short, which people have been (and are) recognised as persons in the eyes of legal discourse. Hence the need for a critical reflection from a gender perspective. Some of the aforementioned historical legal texts are

15 Stoller, Robert (1968). *Sex and Gender*. New York: Science House.

16 Turbet, Silvia (2003). *Del sexo al género. Los equívocos de un concepto*. Madrid: Cátedra.

17 Multiple authors (2014). *Igualdad y democracia: el género como categoría de análisis jurídico-co. Estudios en homenaje a la profesora Julia Sevilla*. Valencia: Corts Valencianes.

mentioned below. Others are also listed as suggested reading in Section 8 of this guide (Further Information).

Critical reading highlights the importance of reviewing texts from the critical perspective of the gender approach even before delving into the technical complexity of the study and analysis of the different branches and legal categories studied in law and criminology degrees.

1. *The Declaration of the Rights of Woman and the Female Citizen* (1791) by Olympe de Gouges, written in response to the exclusion of women from the *Declaration of the Rights of Man and of the Citizen* (1789).
2. *A Vindication of the Rights of Woman* (1792) by Mary Wollstonecraft, in response to the report of Charles Maurice de Talleyrand-Périgord (1791), presented to the French Constituent National Assembly, which failed to recognise the civil and political rights of women, and granted them limited citizenship for the performance of various domestic tasks and care work. In the essay, Mary Wollstonecraft argues in favour of women's education.<sup>18</sup>
3. The analysis and study of the Declaration of Seneca Falls or the Declaration of Sentiments (1848) by Elizabeth Cady Stanton and Lucretia Mott. As in the previous cases, this declaration arose from women being excluded from having their legal and political subjectivity recognised in the United States Declaration of Independence (1776). This exclusion had a direct impact on the lives of women, since they could not vote or be voted for, nor hold public office, etc.
4. The speech by MP Clara Campoamor, on 1 October 1931,<sup>19</sup> in the Constituent Assembly<sup>20</sup> in defence of votes for women: a call for recognition of one of the most important political rights.
5. Also of interest from a teaching and research perspective, and as a point of contrast, are the speeches of MP Victoria Kent, who advocated for the postponement or restriction of women's suffrage; and those of MP

18 On the education of women during the Enlightenment, see the work of Jean-Jacques Rousseau, written in 1792, in which he articulated two different models aimed at men and women. Rousseau, Jean-Jacques, (2015). *Emili o de l'educació*. Vic: Eumo.

19 Full text of Clara Campoamor's speech of 1 October, 1931: [https://elpais.com/sociedad/2006/10/01/actualidad/1159653602\\_850215.html](https://elpais.com/sociedad/2006/10/01/actualidad/1159653602_850215.html) (accessed: 20/11/2017).

20 The full speeches of the MPs cited can be found on the Congress of Deputies website: [http://www.congreso.es/est\\_sesiones/](http://www.congreso.es/est_sesiones/) (accessed: 22/12/2017).

Guerra del Río. It should be noted that after Spanish women's right to vote was recognised in 1931, and this policy being in force for three years, the right wasn't granted again until the elections of 15 June 1977.<sup>21</sup> This explains the regulatory setbacks in the legal status of women during the 40 years of Franco's dictatorship.

6. The speech by Simone Veil<sup>22</sup> – Minister for Health, Social Security and Family (1974-1979) under the government of President Valéry Giscard d'Estaing – in the French Assembly on 26 November 1974<sup>23</sup> in defence of the right to abortion.
7. In Spain, the parliamentary work of the 27 Spanish female MPs and senators in the constituent legislature (1977-1979), the first Spanish democratic Constitution. It is essential at this point to consult (and read) parliamentary speeches such as those of representative Teresa Revilla regarding the approval of Article 14 of the Constitution (precept that constitutionalised equality as a fundamental right), in the Committee on Constitutional Affairs and Public Liberties at its meeting of 18 May 1978.<sup>24</sup>

3.2 It is necessary to go deeper into the classification of the legal subject, above all from a constitutional perspective – key at the present moment – taking into account the conception of the Constitution as a pact of social coexistence, a pact that presupposes mutual recognition under conditions of equality and freedom of the subjects who grant and create the pact and of the subjects for whom it is intended. Analysis of that pact, from the study of Spanish historical constitutionalism – and, by extrapolation, from the rest of constitutionalism – highlights, once more, the exclusion of women. An exclusion (or obliviousness) that has direct effects on the lives of women who have not been recognized as holders of rights under the same terms as

21 21 Royal Decree Law 20/1977, of 18 March, on electoral rules: <https://www.boe.es/buscar/doc.php?id=boe-a-1977-7445> (accessed: 10/01/2018). Regarding the electoral results of these elections, see the information contained on the website of the Congress of Deputies: <http://www.congreso.es/consti/elecciones/generales/resultados.jsp?fecha=15/06/1977> (accessed: 10/01/2018).

22 Veil, Simone (2004). *Les hommes aussi s'en souviennent. Une loi pour l'Histoire*. Paris: Editions Sotck.

23 Find more information on Simone Veil's speech and the parliamentary debates regarding the passage of the law at: [http://www2.assemblee-nationale.fr/14/evenements/2015/anniversaire-loi-veil/la-loi/le-dossier-legislatif#node\\_9808](http://www2.assemblee-nationale.fr/14/evenements/2015/anniversaire-loi-veil/la-loi/le-dossier-legislatif#node_9808) (accessed: 20/12/2017).

24 Consult the speech made by MP Teresa Sevilla, and other parliamentary speeches at: [http://www.congreso.es/public\\_oficiales/l0/cong/ds/c\\_1978\\_069.pdf](http://www.congreso.es/public_oficiales/l0/cong/ds/c_1978_069.pdf) (accessed : 20/12/2017).

men. An exclusion that gave (and has given) legal legitimacy to legislative developments of the human element that exclude and discriminate against – in general – women in various areas of social interaction, such as the civil, employment, criminal and family spheres, among others. Examples of legislative developments that discriminate against women include the following:

- 3.3 The Civil Code, which was in force in Spain until 1975, in which the right of the husband to correct<sup>25</sup> his wife and his children, was recognised to a certain degree. A right of correction – held by the *pater familias* – gave legal cover to gender violence in the emotional or cohabitational spheres. Reference should also be made to progressive advances in the legal status of married women after that date and, above all, after the approval of the Spanish Constitution in 1978.
8. Law 56/1961, of 22 July, on Political and Professional Rights for Women.<sup>26</sup>
9. Law 96/1966, of 28 December, which removes the limitation set out in Section C), No. 2, Article 3 of the law of 22 July in 1961 on women's rights.
10. Law 14/1975, of 2 May on the reform of certain articles of the Civil Code and the Commercial Code regarding the legal situation of married women and the rights and duties of spouses.
11. Law 30/1981, of 7 July, which modifies the regulation of marriage in the Civil Code and determines the procedure to be followed in cases of nullity, separation and divorce.

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25 See Article 57 of the 1889 Civil Code, in force – albeit with some modifications – until 1975, which literally says: “[...] the husband must protect his wife and she must obey her husband”. Alongside this precept it is worth noting others from the same regulation that outlined a legal construction of the female subject in the field of private law that equated her with minors or disabled subjects. We cite as an example the following precepts: a) Article 58: “The woman is obliged to follow the husband wherever he establishes his residence [...]”; b) Article 59: “The husband is the administrator of the assets of the conjugal community [...]”; c) Article 60: “The husband is the representative of the wife [...]”; d) Article 61: “Nor can the wife, without her husband’s licence or permission, for a fee or for profit, dispose of her assets, or be bound [...]”.

26 It should be noted that this law permitted married women to work, as long as they had the permission of the husband (marital leave). However, certain prohibitions related to certain types of professions or careers remained.



12. Law 13/2005, of 1 July, amending the Civil Code on the right to marriage.<sup>27</sup>
13. Law 15/2005, of 8 July, amending the Civil Code and the Law on Civil Procedure in matters of separation and divorce.
14. Law 3/2007, of 15 March, regulating the rectification, in civil registers, of the reference to the sex of persons,<sup>28</sup> etc.

3.4 In the same vein, it is worth mentioning some precepts of the 1944 Criminal Code, in which the concept of uxoricide, collected in Article 428 – a precept in force until 1963 – stated: “The husband who, surprising in adultery his wife, kills the adulterers, or one of them, in the act, or causes them serious injuries, will be punished with exile. If he causes them injuries of another class, he will be exempt from punishment.” The legal definition of uxoricide revealed who the criminal legislator was thinking about when it came to drawing up the legislation and, in this sense, whose legal rights he was seeking to protect.

15. Closer to us in time, it is worth extrapolating these critical reflections to the legal construction around the subject of sexual consent<sup>29</sup>, or to the typification of sexual harassment.
16. With regard to sexual harassment, it was not until 1995 that it was criminalised by the Spanish Criminal Code. The original working of Article 184 CP stated: “Whoever requests favours of a sexual nature, for himself or for a third party, in an occupational, teaching or service-provision relationship, in a continual or habitual manner, and who through this behaviour inflicts on the victim an objective and seriously intimidating, hostile or humiliating situation, he should be punished, as the perpetrator of sexual harassment, with 12 to 24 weeks of prison or a fine of six to twelve.”

27 From the point of view of the legal and political subjectivity of subjects, it is interesting to analyse the legislative evolution of this topic through the study of laws, such as that of 15 July in which Articles 2 and 6 of the Vagrancy Act of 4 August 1933 were modified; and Law 16/1970, of 4 August, on dangerousness and social rehabilitation.

28 Regarding this subject, see the regional regulatory developments – such as Law 8/2017, of 7 April, integral to the recognition of the right to gender identity and expression in the Valencian Community, in which the right to self-determination of gender of persons who manifest a gender identity other than the one they were assigned at birth is recognised.

29 Torres Díaz, María Concepción (2017). “Sobre el consentimiento sexual (y algo más).” *In Agenda pública: analistas de actualidad*. Retrieved from: <http://agendapublica.elperiodico.com/consentimiento-sexual-algo-mas/> (accessed: 20/12/2017).

17. In the field of criminal law it is worth calling on the evolution in the legal treatment of gender violence. An evolution that did not dare to break with the sociosexual structure of the sex/gender system<sup>30</sup> until the approval of Organic Law 1/2004, of 28 December, on comprehensive protection measures against gender violence. A law that, despite being approved unanimously in parliament, has been widely questioned in the field of professional legal practice by those who apply it and interpret it in specific cases. All this despite the constitutional endorsement of the highest interpreter of the Spanish Constitution via the Constitutional Court Ruling STC 59/2008, of 14 May. It is necessary to go deeper into two essential aspects of this ruling. One, to try and clarify what gender<sup>31</sup> contributes as a category of legal analysis in the area of violence against women and, two, to see under which terms the Constitutional Court rules on the penal precepts questioned. Exploring both issues adds value to this practical guide to implementing a gender perspective (read more in Further Information).
18. Upon reaching this point, it becomes necessary to review the regulatory changes initiated in 2015<sup>32</sup> which recognised – despite

30 Torres Díaz, María Concepción (2015). “Mujeres y derechos humanos ante la violencia de género o la crisis como excusa frente al contrato sexual.” *Journal Les cahiers de civilisation espagnole contemporaine. De 1808 au temps présent*, no. 15: <http://journals.openedition.org/ccec/6000> (accessed: 17/12/2017).

31 Torres Díaz, María Concepción (2016). “¿Qué desvela el género en el análisis de la violencia contra las mujeres?,” *Agenda Pública: analistas de actualidad*. Retrieved from: <http://agendapublica.elperiodico.com/3045-2/> (accessed: 20/12/2017).

32 Among the regulatory changes of 2015 it is worth mentioning: a) Discrimination on the grounds of gender is introduced as an aggravating circumstance of criminal responsibility (Article 22.4 CP); b) Forced marriage is typified (Article 172.bis CP); c) The crime of harassment known as stalking is regulated (Article 172 ter. CP); d) Offences related to intrusion into privacy are modified by criminalising the dissemination of images obtained with consent but without the victim’s authorization for dissemination: *sexting* (Article 197.7 CP); e) The manipulation of technical devices whose objective is to enforce the serving of sentences, or provide security or precautionary measures, is classified as a crime of breach of sentence (Article 468.3 CP); f) When it comes to minor insults and unfair harassment, we leave the criminal field, except in the case of gender-based violence, which becomes classified as minor offences (Article 172.3 CP); g) Gender is included as one of the motivations that lead to the committing of so-called hate crimes against certain groups or persons (Article 510 CP), etc. On this subject, see Torres Díaz, M. C. (2015). “¿Qué cambia tras la modificación del Código Penal en materia de violencia de género?,” In *Agenda pública: analistas de actualidad*. Retrieved from: <http://agendapublica.elperiodico.com/que-cambia-tras-la-modificacion-del-codigo-penal-en-materia-de-violencia-de-genero/> (accessed: 20/11/2017). From the point of view of modifications to the protection of minors

some shortcomings – women’s right to a life free from gender-based violence.<sup>33</sup> The implementation of a gender perspective in the analysis of these changes is indispensable in seeking legislative effectiveness from a series of precepts in which the legally protected right is not that of ‘family peace’, as it was called when the Criminal Code addressed domestic abuse and violence, but the guaranteeing of women’s equality, freedom and safety.

19. In addition, it is worth reflecting in this section on the content of the measures included in the State Pact Against Gender Violence approved by the Congress of Deputies in October 2017. This pact also requires continued critical analysis from this methodology as future potentialities of the measures requiring regulatory modifications are observed<sup>34</sup>. This is especially true of modifications that act to extend the regulatory concept of gender violence to conform to international norms.

3.5 In the field of employment and social security, the struggle for effective, real equality has been just as great, as has the evolution. And this is an area that has outlined and prefigured an economic and productive regulatory model<sup>35</sup>, fully available and traditionally without obligations in the field of reproduction and care. That explains women’s difficulties in joining the labour or professional sphere on an equal footing. This is a fundamental area for the recognition of the legal, political and economic subjectivity

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living in environments of gender violence, it is necessary to review Law 26/2015, of 28 July, on the modification of the system of protection for children and adolescents and Organic Law 8/2015, of 22 July, amending the system of protection of infants and adolescents.

33 Torres Díaz, María Concepción (2014), “El derecho a una vida libre de violencia de género como derecho fundamental: crítica constitucional desde el paradigma feminista.” Multiple authors (2014), *Igualdad y democracia: el género como categoría de análisis jurídico. Estudios en homenaje a la profesora Julia Sevilla*. Valencia: Corts Valencianes, pp. 641-655.

34 The State Pact Against Gender Violence proposes regulatory modifications articulated for a practical approach from a critical analysis based on a gender perspective. That is: a) Suppression of the mitigating factor of a confession in crimes of gender violence; b) Suppression of the mitigating factor of reparation for damage in crimes of gender violence; c) Application of aggravating circumstance of Article 22.4 of the Criminal Code in cases of sexual assault or sexual abuse; d) Elimination of the requirement of bail in the personation of state-level associations in procedures of gender-based violence; i) Reinforcement of specialization in the judicial field, etc.

35 Torres Díaz, María Concepción (2012). “Estado social y sujeto productivo: un apunte constitucional desde la perspectiva de género.” *Actas del VIII Congreso Estatal Isonomía sobre Igualdad entre Mujeres y Hombres. El género en la economía o la economía de género*. Castelló de la Plana: Universitat Jaume I, pp. 50-58.

of women, especially when effective and efficient measures and policies continue to be demanded in order to eradicate the gender pay gap<sup>36</sup>, for example, or when measures and policies in favour of a true reconciliation of personal, family and professional life – and in matters of co-responsibility – continue to be advocated for<sup>37</sup>. In the same vein, critical analyses from a gender perspective should be considered with regard to:

1. The classification of maternity as an illness, and the subsequent workplace discrimination in categorising maternity leave or high-risk pregnancy leave as absence from work when calculating productivity-based remuneration and incentives. On this issue, reference should be made to recent rulings of the Constitutional Court (STC 2/2017,<sup>38</sup> of 16 January) and the Supreme Court (STS 10/2017,<sup>39</sup> of 10 January) that did not hesitate to classify these business practices as discriminatory on the grounds of sex.

36 On the gender pay gap, see ruling 145/1991 of the Constitutional Court, of 1 July. Protection resource no. 175/1989. The Central Labour Court judgment issued in petition against the judgement dictated by Labour Court no. 3 of Madrid, in actions regarding recognition of rights derived from collective agreement. Analytical synopsis: violation of the principle of equality. Wage discrimination on grounds of sex. More recently the judgement of the Superior Court of Justice of the Canary Islands, which, in November 2017, annulled the distribution of different productivity salary bonuses in a hotel in Tenerife to the maids (women) and waiters (men) who received 139 euros and 640 euros in bonuses respectively. It is worth bearing in mind that Iceland – one of the most gender-equal countries according to the Global Report on the Gender Gap 2017 (World Economic Forum), and with longstanding and specific legislation aimed at eliminating the gender pay gap (since 1967) – still had to pass a specific law obliging companies to prove that they pay their employees the same for the work they do. Failure to comply with the law – which came into force on January 1, 2018 – exposes companies to significant financial sanctions.

37 See Law 39/1999, of 5 November, for the reconciliation of work and family life. See also Article 44 of Organic Law 3/2007, of 22 March, on the effective equality between women and men, which expressly speaks of the rights to reconcile personal and family life with work.

38 See STC 2/2017, of 16 January, Second Chamber, Appeal for Protection 2723-2015 brought against the judgement handed down by the Social Chamber of the Superior Court of Justice of Andalusia which dismissed, in petition, the claim of compensation for damages. Contravention of the right not to suffer discrimination on the grounds of sex: [https://www.boe.es/diario\\_boe/txt.php?id=boe-a-2017-1885](https://www.boe.es/diario_boe/txt.php?id=boe-a-2017-1885) (accessed: 20/11/2017).

39 See Supreme Court Ruling STS 10/2017, of 10 January, Sala IV social: <http://www.poderjudicial.es/cgpj/es/poder-judicial/noticias-judiciales/el-tribunal-supremo-considera-discriminatorio-no-computar-la-baja-maternal-a-efectos-de-retribucion-de-incentivos> (accessed: 20/11/2017).

2. Discrepancies in terms of conceptualization as gains on contributions made to social security – or to any other pension system – which are included in the income statement, taking into account the fact that they form part of the salary under the terms of Article 26 of the Workers' Statute.
3. Recent jurisprudential interpretations regarding the conceptual and normative delimitation of “working from home”<sup>40</sup>, for the purpose of recognising the compensation set out in article 1438 of the Civil Code in cases of divorce in the separation of property regime.
4. Advances in the jurisprudential doctrine regarding the right to a widow's pension for women who are victims of gender violence, despite not receiving a compensatory pension at the time of the causer's death, and despite not complying with requirements set out in the exceptional regime for accreditation of the status of victim of gender violence. This is in accordance with Article 174.2 of Royal Legislative Decree 1/1994, of 20 June, approving the revised text of the General Social Security Law (repealed provision) and current Article 220.1 of Royal Legislative Decree 8/2015, of 30 October.

3.6 In the field of tax law and fiscal policies, a gender perspective reveals the terms in which the tax and benefit system has been designed in accordance with a prefabricated family model and according to roles assigned to men and women within it. This model has legitimised, through the tax system itself, the economic dependence of women.

The Personal Income Tax (IRPF) has been a clear example of this. Its design has followed an androcentric family model that is patriarchal and traditional – husband/breadwinner and wife/dependent – which reinforces the sociosexual division of labour through joint taxation systems. Under this system, the income of the husband, traditionally the family's main breadwinner, has benefited from tax relief by joint taxation and from the so-called “tax relief for a dependent wife” when she did not receive income from outside the home. Obviously, the progressive commitment to individual taxation systems, a result of the greater incorporation of women into the labour market and new family models, seeks to overcome the objections outlined from a gender perspective. In connection with this,

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<sup>40</sup> See – among others – STS 534/2011, of 14 July, STS 135/2015, of 26 March and STS 136/2017, of 28 February.

the following extract from the preamble of Law 35/2006, of 28 November – on personal income tax and partial amendment of the corporate tax laws regarding the income of non-residents and on inheritance – is illustrative. Section II, under the heading “Objectives and Relevant Aspects of Reform” states:

“Regarding this consideration of personal and family circumstances, mention should be made of the joint taxation option. The policy of non-discrimination on the grounds of gender, as well as the simplification of tax management, could justify the review. However, the current treatment of tax is maintained in order to avoid numerous injured parties in marriages in which one of the members cannot enter the labour market (...).”

3.7 In the light of all that has been stated – and fully in touch with contemporary reality – the implementation of a gender perspective in the field of teaching and research in law and criminology requires a critical analysis of the policies implemented in Spain to regulate substitute gestation or surrogate pregnancy,<sup>41</sup> initiatives that advocate the regulation or legalization of prostitution, regulatory proposals that give legal cover to the figure of the sexual assistant aimed at people with functional disabilities, the financing of the freezing of eggs for workers as a measure of maternity protection and as a way to put men and women on the same level in the equality programmes of some companies, etc. Obviously, all these examples urge us to go deeper and to critically reflect on legal discourses regarding the legal construction on women’s bodies.<sup>42</sup> It is clear that women’s bodies have been (and remain) sexual bodies and reproductive bodies in the eyes of the law. Therefore, a body/object (not a subject) that is susceptible to regulation/legislation and, therefore, susceptible to alien discourse. A heterodesignated body that does not hesitate to guarantee the social order established through legal narratives which – under a guise of neutrality – utilise it to guarantee the desires (not the rights) of others. It is necessary

41 See the non-legislative motion presented by the UPyD (Union, Progress and Democracy) parliamentary group for the creation of a regulatory framework for surrogacy (2015). See also the non-legislative proposal on surrogacy by the Ciudadanos (Citizens) parliamentary group in the Madrid Assembly (2016). More recently, see the bill regulating the right to pregnancy by surrogacy presented by the Ciudadanos parliamentary group in Congress (2017).

42 Torres Díaz, María Concepción (2017). “El discurso jurídico sobre el cuerpo de las mujeres o la artificiosa construcción del derecho a la gestación por sustitución,” Academic Conferences Gestation by Substitution: Legal Issues for Discussion. University of Vigo, 20 October 2017: <http://tv.uvigo.es/es/serial/3208.html> (accessed: 10/01/2018).

to question the law from a perspective of iusfeminism, in order to decipher the terms in which women think (or have thought) and how that thought has been transferred (or reflected) in legal discourse<sup>43</sup> via laws, judgments, opinions, reports, etc.

3.8 In the same line of critical reflection it is also important to note the fragile recognition of women's sexual and reproductive rights in the field of law and criminology. This circumstance, revealed in previous paragraphs, evidences the weak consolidation of women as legal/political subjects. Examples of this include constitutions such as that of Chile<sup>44</sup>, in which life is constitutionally protected from the moment of conception, having a direct impact on the rights of women – as people and, therefore, as holders of rights – to decide freely on whether they should be mothers or not. Along the same lines, we should recall the preliminary draft of the organic law for the protection of the conceived and unborn, and of the rights of pregnant women, presented on 20 December 2013<sup>45</sup>, which threatened achievements in the recognition of the legal and political subjectivity of women in the sexual and reproductive sphere and evidenced the constitutional exclusion of the sexual reality of humanity (*mixitude*)<sup>46</sup>. Circumscribing all these considerations, it should be remembered that the appeal of unconstitutionality raised by the Popular parliamentary group against the current Organic Law 2/2010 of 3 March, on sexual and reproductive health and the voluntary termination of pregnancy, is still pending a decision by the Constitutional Court.

All this shows the potential for analysis offered by the implementation of a gender perspective in the field of law and criminology, a perspective that

43 Torres Díaz, María Concepción (2017). "Las mujeres y el discurso jurídico ante la violencia de género: entre la concesión y el reconocimiento de derechos." Paper presented at the III Research Forum of IUIEG Researching on Gender-based Violence, 8-9 November 2017. University of Alacant: <http://vertice.cpd.ua.es/185422> (accessed: 14/12/2017).

44 Article 19 of the Constitution of the Republic of Chile, which literally states: "The Constitution guarantees all persons: 1) The right to life and the physical and mental integrity of the person. The law protects the life of the unborn (...)"

45 Torres Díaz, María Concepción (2014). "Mujeres y derechos sexuales y reproductivos: cuerpos y subjetividad desde la periferia constitucional," León Alonso, M. and Sgró Ruata, M. C. (comp.). *La reforma del aborto en España: perspectivas de un debate (re)emergente*. Córdoba (Argentina): Católicas por el derecho a decidir, pp. 119-148.

46 On *mixitude*, see Martínez Sampere, Eva (1999). "La legitimidad de la democracia paritaria," paper presented at the Workshop on Sex-based Equality and Discrimination of the Conference of the Spanish Association of Constitutional Law, Alacant (Alicante), 28- 29 April 1999.

allows the experiences of women – situated knowledge –<sup>47</sup> to be positioned at the centre of critical legal discourse in a system of interpersonal and institutional relations that has obviated the sexual reality of the recipients of public regulations and policies. From among the general proposals for implementing a gender perspective in law and criminology, the following items should be highlighted:

- Comparative analysis and study of declarations of rights, historical constitutions, etc. in order to determine under which terms the legal and political subjectivity of the subjects of law is recognised (and has been recognised).
- Analysis and study of the historical and social context in which these documents are agreed, with a special emphasis on the position and place occupied by (or assigned to) women.
- Analysis and study of texts – and speeches – prepared by (or featuring) women in response to historical (and current) legal grievances due to a lack of recognition of their subjectivity.
- Critical reflection on the legal construction of the concept of *person* and its apparent neutrality from the sex/gender system.
- Critical reflection on the pedagogical value of norms and on the capacity for sociosexual formation of a reality that has been historically androcentric and that has therefore remained in accordance with a system that is *uncritical* of the structural discrimination of the sex/gender system.
- Analysis and study of basic legal categories related to the legal subjectivity of subjects and, in particular, of categories such as autonomy/heteronomy of subjects, recognition/granting of rights, etc.
- Critical reflection on the necessary distinction in the rules of categories such as sex and gender in which gender stands as a cross-cutting category of legal analysis.
- Analysis of power structures implicit in legal discourse and narratives.

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47 Torres Díaz, María Concepción (2016). “Pensar la Constitución desde los conocimientos situados: revisión epistémica sobre derechos y participación,” presentation given at the Parity and Democracy Conference: An Invitation to the Future, as part of the XIII Meeting of the Feminist Network of Constitutional Law within the Public Ethics and Democracy Forum). *Diàlegs d’Estiu 2016*, Alacant (Alicante), from 19 to 21 July 2016: <https://forumestiugva.org/2016/07/12/466/> (accessed: 20/12/2017).



- Analysis and study of the potentialities of the paradigm shift in interpreting and implementing legislation from a gender perspective – iusfeminism or legal feminism.
- Analysis and study of the advances, from a regulatory point of view (international and national), in the field of equality and in the eradication of any form of discrimination.
- Analysis and study of the potential of the concept of discrimination and structural discrimination when it appeals directly to due diligence at the state level.
- Analysis and study of obstacles and resistances to the implementation of the feminist paradigm – iusfeminism or legal feminism – in the daily practice of the following forums: parliamentary, judicial, administrative, political, business, economic, and cultural.

## 4. PROPOSALS FOR INTRODUCING A GENDER PERSPECTIVE INTO THE TEACHING OF LAW AND CRIMINOLOGY

In view of the above, in this section proposals are developed for the implementation of a gender perspective into the official teaching of the bachelor's and master's degrees in Law and Criminology. The items put forward in each of the selected subjects in order to exemplify the inclusion of a gender perspective are as follows: course objectives, course content, organisational modalities of teaching dynamics, teaching methods, and evaluation proposals.

### 4.1 Law Degree

The subject of Constitutional Justice and Interpretation is discussed below. An analysis of the subject Right to Freedom of Beliefs is presented in Section 8 of this guide (Further Information).

**Subject: Constitutional Justice and Interpretation.**<sup>48</sup> Optional subject studied in the fourth year of the Law Degree at the University of Alacant in the Public Law itinerary. The subject code is 19038 and it has 6 ECTS assigned.

#### 4.1.1 Specific objectives

- Study of the compliance, guardianship and application of constitutional legal norms, and of the mechanisms of constitutional control and guardianship.
- Study of the supreme and legislative nature of the Spanish Constitution to which all the powers of the state must be subject.
- Study of the legislative effectiveness of constitutional precepts by means of constitutional control of the state powers, the examination or control of the constitutionality of laws, the resolution of conflicts between powers and organs of the state, as well as the constitutional protection of rights and freedoms.

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<sup>48</sup> Information about the subject from the website of the University of Alacant: <https://cvnet.cpd.ua.es/Guia-Docente/?wlengua=ca&wcodasi=19038&scaca=2017-18> (accessed: 20/12/2018).

### 4.1.2 Contents

The subject is divided into five teaching units:

- Teaching Unit 1. Constitutional justice: concept, origin and evolution.

Alongside the legal categories and *idées-forces* of this teaching unit, the implementation of a gender perspective forces us to reflect, for example, on how the different models of constitutional justice, articulated around guaranteeing constitutional supremacy via limits on state powers, have proved insufficient to identify, visualize and therefore control patriarchal power and the sex/gender system.

- Teaching Unit 2. Models of constitutional justice. The Constitutional Court: comparative law.

Alongside the study of the different models of constitutional justice and of the composition, organization, election and legal status of the members of the Constitutional Court, we should reflect from a gender perspective on the under-representation of women judges in the Constitutional Court which makes it impossible to speak of a “principle of balanced presence or composition”. On this point it is worth noting that the first Spanish Constitutional Court (1980) consisted of 11 male magistrates and a single female magistrate, and that this remained the case until the third partial renewal of the Constitutional Court (1989), in which women disappeared altogether from the highest body for constitutional interpretation and it consisted of 12 male magistrates. In the sixth partial renewal (1998), a female magistrate once again formed part of the highest body for constitutional interpretation, alongside 11 male magistrates, until 2001, when something remarkable happened and – for the first time ever – two female magistrates joined the Constitutional Court at the same time. From this perspective it is worth reflecting on the role and work of the Constitutional Court as a guarantor of women’s rights, bearing in mind that it stands as the supreme interpreter of the constitution and the final stage for the protection of fundamental rights at the national level.

- Teaching Unit 3. Function of constitutional justice. The legislative and supreme character of the Constitution. The control of constitutionality.

The analysis of the role of constitutional justice from a gender perspective forces us to reflect on the role of the highest constitutional interpreter in recognising – via jurisprudence – the sexuation of legal subjects and its

effects by analysing specific cases, as well as the capacity for irradiation to the rest of the powers of the state.

As long as women – as judicial-political subjects – remain in a state of constitutional otherness to the legal/universal subject, this issue will remain significant. For this reason, effective and real equality has not been articulated – in its constitution – since the recognition of two equally different subjects (without the need for one to follow the model of the other). The current moment – from a gender perspective – calls for a redefinition of the subject ‘persona’ and a resignification of the category ‘sex’ as a biological fact that implies a mutual difference between subjects without the need for a pattern of reference to which it is necessary to adapt, or in which it is necessary to fit.

- Teaching Unit 4. Constitutional Interpretation: concept and criteria of interpretation. Instruments of constitutional interpretation. Gender perspective.

Alongside the traditional criteria of legal interpretation postulated by Savigny and collected in Article 3.1 of the Civil Code (grammatical, systematic, teleological, historical and evolutionary), a gender perspective in the analysis and study of this teaching unit forces us to introduce a gender perspective as a criterion for constitutional interpretation. From this point of view it is essential to explore the regulatory basis of the gender perspective as an interpretative criterion and. To this end, articles 1.1, 9.2, 10.1, 10.2, 14 and 96 of the CE should all be put forward as precepts with an important international dimension. In addition, it is necessary to specify the centrality of the teleological criterion and the evolutionary criterion – both related to the requirement for an interpretation that is more favourable to the exercising of fundamental rights, and for an interpretation that is in line with the social reality of the time in which the rules are to be applied. In this section, the analysis of the principle of proportionality takes into account a judgement of suitability, a judgement of necessity and a judgement of proportionality *stricto sensu*, providing added value to the review of constitutional jurisprudence.

- Teaching Unit 5. The resolutions of the Constitutional Court.

From a gender perspective, this study is projected on each of the procedures for which it is competent to know the Constitutional Court<sup>49</sup>, the types of

49 Torres Díaz, María Concepción (2016). “La justicia constitucional desde el estudio crítico de casos: análisis jurisprudencial.” In Tortosa Ybáñez, María Teresa; Grau Company, Sal-

resolutions of the Constitutional Court, the meaning of the resolutions, the effects and the extent with respect to the other powers of state. Special attention is also paid to the essential elements and methodology that should be followed in order to judge from a gender perspective. The centrality of the issue analysed in this unit acquires a special value given that the Constitutional Court is the articulator of constitutional justice with the ability to expel from the legal system any rules contrary to the constitutional text, a sort of negative legislator. From the point of view of the protection of fundamental rights and, therefore, from a recognition of the legal and political subjectivity of subjects, the Constitutional Court is ultimately capable of guaranteeing and making fully effective those rights and freedoms, with a direct impact on the lives of persons – and therefore women – at the national level.

#### 4.1.3 Modes of organizing teaching dynamics and methods

Teaching and knowledge transfer in the subject is based on continuous teacher-student interaction. Therefore, all the activities proposed for the classroom require the active participation of students. The study of the legal categories and key ideas extracted from each didactic unit is carried out directly through the reading of the original sources; in other words, sentences and other resolutions passed by the Constitutional Court which have been previously selected by the faculty. The work is to be done in groups of five to six people. Groups should be made up of a balanced proportion of students of both sexes. Each group will choose a representative who will hold the position of spokesperson. This position will be rotated for each new session. After studying the assigned rulings and carrying out a joint analysis in accordance with the given parameters, each group will make a brief presentation and any conflictive elements that may be open to legal/constitutional debate will be identified. The other activities suggested for working in the classroom are also participatory: completion of legal/constitutional questionnaires; group presentations of each of the 11 procedures that the Constitutional Court has jurisdiction over; guided participation in the virtual academic forums of debate; the writing of an essay about one of the proposed readings, etc. This model of continuous student-teacher interaction from a gender perspective pursues the following objectives: a) Encourage group work made of a selection of students that is diverse – not only from a sex/gender

perspective; b) Encourage co-responsibility for the activities assigned to each member of the group because each student's work depends on the group mark as well as the individual mark; c) Encourage dialectics and strategies for the public presentation of findings and conclusions; d) Encourage critical analysis using legal/constitutional categories; e) Answer legal questions raised by using instruments that are valid in law, especially constitutional law; f) Apply a gender perspective in legal reasoning as an essential tool with a constitutional basis; g) Foster a capacity for dialogue and alternative conflict resolution mechanisms; h) Encourage proactive and participatory learning dynamics; i) Encourage the search for, and management of, basic sources in constitutional law: codes, laws, manuals, doctrinal articles, rulings, etc.

#### 4.1.4 Evaluation proposals

The assessment of each subject is designed to follow a model of continuous evaluation. From a gender perspective there are several items to consider when determining final marks: participation, involvement, capacity for empathy, capacity for criticism or self-criticism, capacity for improvement, etc. To this effect, the distribution of the percentages for each of the proposed activities is exemplified below:

- Evaluative activities for continuous assessment: 60% of the final mark.
  - Final report of activities (includes groups analysis of rulings, questionnaires for a constitutional foundation, synopsis of doctrinal articles, etc.): 25% of the final mark.
  - Individual essay on one piece of recommended reading: 15% of the final mark.
  - Group presentation of the procedures over which the Constitutional Court has jurisdiction: 15% of the final mark.
  - Participation in forums: 5% of the final mark.
- Objective test of knowledge: 40% of the final mark.

## 4.2 Criminology Degree

Below we will look into the subject of Gender Violence. There is an analysis of the subject of Victimology in Section 8 of this guide (Further Information).

**Subject: Gender Violence.**<sup>50</sup> optional subject studied in the fourth year of Criminology at the University of Alacant. The subject code is 18533 and it has six ETCS assigned.

#### 4.2.1 Specific objectives:

1. Conceptually and normatively define gender violence;
2. Differentiate between gender-based violence and other types of interpersonal violence;
3. Provide students with the tools necessary for identification, detection and intervention;
4. Analyse the complexity of the subject in the different areas of interaction;
5. Understand the normative modifications in the penal, civil and administrative fields and the evolution of these;
6. Eliminate myths and stereotypes related to gender violence.

#### 4.2.2 Content:

The subject is structured around four thematic modules:

- Module I. 1.1. Approach to the concept of gender violence. 1.2. Structural causes of violence against women. 1.3. Forms and manifestations of violence against women: a) violence in the community; b) violence committed or tolerated by the state; c) violence in armed conflicts; d) multiple violence and discrimination; e) domestic violence. 1.4. Gender-based violence throughout the lifecycle: a) prenatal; b) early childhood; c) second childhood; d) adolescence; e) adult stage and maturity; f) seniority and regression.

A proper conceptualization of gender-based violence requires mention of the international framework. The United Nations Declaration on the Elimination of Violence against Women, adopted by the UN Assembly in 1993, defines violence against women in Article 1 as follows:

“[...] Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether

<sup>50</sup> Institutional information on the subject can be found at: <https://cvnet.cpd.ua.es/Guia-Docente/?wllengua=ca&wcodasi=18533&scaca=2017-18> (accessed: 20/11/2017).

occurring in public or in private life.” The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (held in Istanbul on 11 May 2011) made a similar pronouncement in Article 3, Section A. In addition it is worth referencing General Recommendation No.19 of the Committee on the Elimination of Discrimination against Women, in which gender-based violence against women is defined as “violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.” At the regional/international level, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará Convention, 1994) defines violence against women as follows: “Any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.” (Article 1). Article 2 goes on to state that violence against women shall be understood to include physical, sexual and psychological violence: a) that occurs within the family or domestic unit, or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the women, including among others, rape, battery and sexual abuse; b) that occurs in the community and is perpetrated by any person, including, among others, rape, sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and; c) that is perpetrated or condoned by the state or its agents regardless of where it occurs.

- Module II. 2.1. Concept of gender violence in the intimate/cohabitation sphere of the partner or ex-partner. Types of violence. Dynamics of gender violence. Cycle of gender violence. 2.2. Battered woman syndrome: psychological and psychiatric repercussions. 2.3. Detection protocols in cases of gender violence. Risk prediction. 2.4. The aggressor in gender violence. 2.5. Children as victims of gender-based violence.

The gender perspective obliges us to reflect critically on the particularities of gender violence in the intimate and cohabitational sphere, involving a partner or ex-partner, within the framework of Organic Law 1/2004, of 28 December, which implemented comprehensive measures against gender-based violence. It is crucial to identify the most common types of violence in the sphere of intimate partner violence. It is also important



to acknowledge the difficulties inherent in detecting, identifying and reporting these types of violence; to recognise the stages of the cycle of violence theorised by Lenore Walker, including stages of tension, explosion and honeymoon; and to understand the multiple dependencies of victims of gender violence: affective/emotional, economic, etc. Problems in predicting risk and the increased level of risk at moments of breakup must be acknowledged. Finally, minors living in environments with gender violence should be conceptualised as direct victims of the violence suffered by mothers, especially when – as in many cases – they are instrumentalised by the aggressor in order to continue exercising power and control over the mother.

- Module III. 3.1. Conceptual definition: gender violence and domestic violence. 3.2. Criminal policy for the prevention and repression of gender-based violence, with special reference to Organic Law 11/2003 and Organic Law 1/2004, amending the Criminal Code. 3.3. Examination of the treatment of violence and other manifestations of gender in the Spanish Criminal Code.
- 3.4. Provisional release. 3.5. Data protection and limitations on advertising. 3.6. The measurements of home abandonment, removal and suspension of communications.

From a gender perspective, it is essential to analyse the evolution of the legal treatment of violence against women at the hands of partners or ex-partners, especially since Law 11/2003 and, even more specifically, after Law 1/2004. It is also important to examine the evolving legal implications of the conceptualization of this occurrence as gender-based violence and, particularly, as a type of sex/gender-system discrimination and a violation of women's human rights. Analysis of criminal offences after Law 1/2004 and, more recently, after amendments to the 2015 Criminal Code, should be made. Conflicting issues to be analysed from a gender perspective include: a) probative difficulties and the effects they have on the credibility of victims, b) problems with the demands of some courts to accredit an intentional sexist element not stipulated in the criminal type, c) legal aspects regarding the statement of the victim/witness and his/her ability to disprove the aggressor's presumption of innocence when there are no other pieces of evidence, d) critical reflection on police risk assessment and police assessment of the evolution of risk, i) critical analysis of so-called 'cross-reporting' or 'counter-reporting' as a strategy

for defending aggressors to neutralize the application of Law 1/2004, f) the legitimate defence of victims and the differentiation between defensive injuries and offensive injuries, g) conflicting aspects in gender violence of the application of Article 416 of the Criminal Procedure Act regarding the waiver of the obligation of the victim to testify, h) critical analysis of the objective requirements for obtaining a protection order and, specifically, the requirement of objective risk accreditation to achieve non-subjectivity/intuitiveness; i) legal and procedural effects of the waiver of the process by victims, and consolidation of crimes of gender violence as public crimes and, therefore, automatically prosecutable, etc.

- Module IV. 4.1. Courts for violence against women and procedural specialities: creation, powers under criminal law, powers under civil law. 4.2. Specialities in criminal law: speedy trials: actions of the Public Prosecutors Office and specialities of the procedure. 4.3. Specialities in civil law. 4.4. Victim protection and security measures: criminal, civil and administrative.

The gender perspective obliges us to reference some specific aspects of the criminal and civil law competences of courts for violence against women. One essential aspect is that of the procedural particularities relating to speedy trials and the opportunity (or lack of one) for this type of procedure to be used in the field of gender violence. This is especially pertinent because – on many occasions – the duration of the situations of violence reported is not taken into account, and the focus is only on the last-reported incident. Regarding measures for the protection and safety of victims, it is necessary to take into account the statistical data of the types of measures (criminal and civil) adopted in the courts for violence against women published quarterly by the Observatory of Domestic and Gender Violence of the General Council of the Judiciary. As for the civil measures, criticisms focus on the reluctance to abolish the regime of visits of aggressors or to deprive them of parental authority, despite regulatory changes in this regard in 2015. These factors suggest that a certain sector of the judiciary still retains objections to identifying the aggressor's control and domination over the victim as key elements in gender-based violence, unless it makes it possible to differentiate *aggression* from *violence* and conceptualize it as “extended” (having a direct impact on the children) and “continuous” through time, in contrast to the widespread belief that these are one-off, random events.

#### 4.2.3 Modes of organising teaching dynamics and methods

Proposals for teaching from a gender perspective revolve around group work of comparative analysis of the laws, judgements, rulings, administrative resolutions, etc., relating to gender violence. Group analysis allows students the opportunity to interact and generates a rich variety of contributions to the texts and documents under analysis. Comparative analysis of documents makes it possible to reflect critically on the evolution in approach to this type of violence, and how far this evolution has been successful in achieving legislative effectiveness for the eradication of gender violence. As with the organizational proposals discussed in previous paragraphs, the idea is to work with groups of people of both sexes in order to broaden the perspectives of students with different personal, teaching and professional trajectories. The objective is to make teaching proactive and participatory, generating changes to teaching methods so that the students themselves are the protagonists of learning.

Here are some examples of teaching methods and classroom resources for exploring the issues raised:

- STC (Judgement of the Constitutional Court) 59/2008, of 14 May 2008, in which the Constitutional Court endorses the constitutionality of Article 153.1 of the Criminal Code in its wording of the Comprehensive Law. Analytical synopsis: equality and non-discrimination, equalising unequal right, gender violence, etc.
- STC of 1 February 2016, which considers that the integration of the minor has not been assessed in the Act issued by the Provincial Court of Madrid (Section 22) which agreed the return of the child. Analytical synopsis: international abduction of minors, annulment of the act of delivery of the minor to his father, assessment of the best interests of the minor.
- Judgement of the Supreme Court, Civil Chamber, Section 1a (04/02/2016). Analytical synopsis: guardianship and custody, gender violence, shared custody declared incompatible with the father's conviction for threatening behaviour.
- Judgement of the Supreme Court, Social Chamber (20/01/2016). Analytical synopsis: The Supreme Court grants a widower's pension to a victim of gender violence who separated before LO 1/2004, when there were allegations of ill treatment, regardless of whether her husband is acquitted.

- Judgement of the Supreme Court (SC), Criminal Chamber (30/09/2015). Analytical Synopsis: The Supreme Court endorses the deprivation of parental authority by means of criminal law in murder attempts against a partner that are witnessed by the children, recognising that the Supreme Court's case law has not been very inclined to adopt this penalty, without prejudice to what may be agreed in civil proceedings. The Supreme Court announces that new wording given in Article 55 of the Criminal Code and introduced in the 2010 reform, which provides for the deprivation of parental authority in crimes of 10 or more years of prison, must be applied when there is a direct relationship between the crime and the deprivation of this right.
- Judgement of the Supreme Court, Criminal Chamber (31/10/2012). Analytical synopsis: the SC declares that female circumcision is not culture but mutilation and discrimination of the grounds of sex, and that mistake of law is not applicable.
- Judgement of the Supreme Court, Criminal Chamber (14/03/2012). Analytical synopsis: attempted homicide; domestic abuse; threats; the crime of domestic violence is a type of crime that does not end in a concrete action and a causal result; contemplate the continued aggression which affects the physical integrity, dignity and mental stability of the victim, within the situation of a relationship.
- Judgement of the Provincial Court of Asturias, of 20 January 2017. Analytical synopsis: the first judgement in Spain to apply the aggravating factor of gender contempt from Article 22.4 of the Criminal Code in the 2015 modification. The third judicial sentence states: "there exists in the accused the aggravating factor of gender contempt from Article 22.4 of the Criminal Code. This is a component introduced by Organic Law 1/2015, of 30 March, in force since 1 July 2015, which is founded on the greater guilt of the author for the greater reprehensibility of the motive that drives him to commit the crime."
- Judgement of the Superior Court of Justice of Andalusia of 19 December 2016 (Administrative Litigation Chamber). Analytical synopsis: specification of gender-based crimes as crimes affecting public safety; state responsibility; the protection of the right of everyone – especially women – to live safe from violence, in both the public and private spheres, is a matter of public safety and therefore the responsibility of the state.

- Judgement of the Inter-American Court of Human Rights. Case of González et al (Campo Algodonero) vs. Mexico, 16 November 2009. Analytical synopsis: due diligence in the investigation of the facts by the state; state liability for acts by individuals; discrimination and violence against women; gender stereotypes, femicide, etc.
- Judgement of the Inter-American Court of Human Rights. Case of Velázquez Paiz et al vs. Guatemala, 19 November 2015. Analytical synopsis: due diligence; state responsibility, prejudiced and stereotyped assessments of women as types of violence and discrimination in terms of access to justice on gender grounds.
- Judgement of the European Court of Human Rights. Case of Aydin vs. Turkey. Lawsuit no. 23178/94, Judgement of 25 September 1997. Analytical synopsis: due diligence by the state; forced nudity, gynaecological examination, deprivation of liberty, sexual violence, etc.
- Judgement of the European Court of Human Rights. Case of Opuz vs. Turkey, 9 June 2009. Analytical synopsis: the European Court of Human Rights considered that the violence suffered by the claimant had reached a sufficient level of severity to be classified as ‘inhuman treatment’ under Article 3 of the European Convention on Human Rights. In addition, the European Court of Human Rights considered – for the first time – that acts of domestic violence were not only constitutive of violence according to the European Convention of Human Rights’ precepts, but also according to the principle of non-discrimination in the enjoyment of rights enshrined in Article 14 of the European Convention of Human Rights.
- Judgement of the Supreme Court of Justice of Colombia, of 4 March 2015. Analytical synopsis: recognition of femicide; murder of a woman on grounds of gender; crime of passion argument is rejected.
- Other references to the case law of the Spanish Supreme Court that should be taken into account are: a) Judgement of the Supreme Court 2003/2018, of 24 May (Criminal Chamber), in which the High Court expressly applies, for the first time, the gender perspective in a case of attempted murder; b) Judgement of the Supreme Court 188/2018, of 18 April (Criminal Chamber), in which the Supreme Court conceptually defines the expression “in the presence of minors” when stating the application of this aggravating factor in the case of gender violence; c) Judgement of the Supreme Court 1263/2018, of 7 July (Administrative Litigation Chamber), in which the

Supreme Court orders the Spanish state to pay compensation of 600,000 euros in moral damages to a woman whose ex-partner murdered their daughter during the visitation regime, after the father had been convicted of gender-based violence.

#### 4.2.4 Evaluation proposals

Assessment of the subject is designed to follow a model of continuous evaluation. From a gender perspective, the items to be taken into account coincide with those of previous paragraphs regarding evaluation proposals for the subjects discussed. On this, it is worth reiterating aspects such as participation, implication, capacity for empathy, capacity for criticism and self-criticism, capacity for improving, etc. The distribution of percentages for each of the proposed activities is represented below:

- Evaluation activities for continuous assessment: 60% of the final mark.
  - Group analysis of judgements, synopsis of doctrinal articles, etc.: 25% of the final mark.
  - Group presentation of one of the proposed topics related to the didactic units: 20% of the final mark.
  - Participation in virtual academic forums for legal debate: 10% of the final mark.
  - Participation and interaction in class: 5% of the final mark.
- Objective test of knowledge: 40% of the final mark.

## 5. TEACHING RESOURCES

In accordance with what has been set out in this guide we will now focus on the criteria that should be followed when selecting specific resources for the incorporation of a gender perspective into the teaching of law and criminology. Here we provide some guidelines:

- Gender-sensitive language as an instrument for communicating and transferring knowledge, as well as a tool for creating a symbolic and referential imaginary of co-existence, is key in the field of law and criminology. Given the androcentric and patriarchal tendencies of both academic disciplines, critical reflections on legal and criminological language are elements that should be taken into account throughout the learning process. The guidelines developed and provided by many universities to promote non-sexist, non-discriminatory language are good starting points for raising awareness among students about the importance of making this fact visible through the use of language.
- Regarding the selection of practical examples for teaching, or the selection of materials for transferring theoretical knowledge to students in a way that is more connected to reality, it is desirable to escape from the stereotyped examples that abound in the differentiating socialization of the sex/gender system. In this sense, we should focus on examples that highlight the potential of gender as an instrument for social transformation and the legal consolidation of legal subjects.
- The breakdown by sex of quantitative data in law and criminology provides enriching readings that highlight the importance of critical analysis and numerical visibility when it comes to the effects of gender-blind law-making and case resolution on subjects. Gender-based analysis of cases – through an interpretative or applicative route – and of the drawing up of legislation, makes possible the formation of statistics. It is then easy to observe changing trends in the final results with a direct impact on the lives of people as legal subjects.
- Regarding the selection of materials for working in the law and criminology classroom, it is important to specify the following:
  - Alongside the typical materials used in both academic disciplines (laws, rulings, judgements, reports, etc.), a gender perspective calls for the use of other types of materials such as news selection, press

headlines, documentaries, etc. These make it possible to bring to the classroom examples related to the theoretical contents provided. These complementary materials provide students with an understanding of the topicality of the issues treated in class, as well as helping students understand the importance of critical reflection and of extending their reflections outside the classroom.

- The usage or recommendation of reading material beyond the traditional manuals and codes helps to shape a critical mentality regarding the differentiating socialization inherent in the sex/gender system. When it comes to law and criminology, the use of essays, biographies, travel books, and so on, is an enriching, useful and enjoyable method of transferring knowledge. Here are some examples of reading materials that lend themselves to a critical analysis of the genre:

<i>The Intimate Enemies of Democracy</i> by Tzvetan Todorov	<i>The Orphan Millennium. Essays for a New Political Culture</i> by B. De Sousa Santos
<i>Pensamiento crítico, constitucionalismo crítico</i> by Carlos de Cabo Martín	<i>Sexo y filosofía. Sobre mujeres y 'poder'</i> by Amelia Valcárcel
<i>L'Occident et les autres</i> by Sophie Bessis	<i>Defence Against Power. Towards a Constitutional Resistance</i> by Ermanno Vitale
<i>Fruta prohibida. Una aproximación histórica al estudio del Derecho y del Estado</i> by Juan Ramón Capella	<i>Capital in the Twenty-First Century</i> by Thomas Piketty
<i>Hacia una nueva política sexual: les dones davant la reacció patriarcal</i> by Rosa Cobo	<i>Filosofia, crítica y (re) flexiones feministas</i> by Luisa Posada Kubisa
<i>Neoliberalismo sexual. El mito de la libre elección</i> by Ana de Miguel	<i>My Homeland Was an Appleseed</i> by Herta Müller
<i>Living on Borrowed Time</i> by Zygmunt Bauman	<i>Freedom</i> by Zygmunt Bauman
<i>Masculine Domination</i> by Pierre Bourdieu	<i>The Second Sex</i> by Simone de Beauvoir



<i>The Sexual Contract</i> by Carole Pateman	<i>Patria</i> by Fernando Aramburu
<i>The Foreign Daughter</i> by Najat El Hachimi	<i>The Golden Notebook</i> by Doris Lessing
<i>The Edible Woman</i> by Margaret Atwood	<i>Wuthering Heights</i> by Emily Brontë
<i>The Red-Haired Woman</i> by Orhan Pamuk	<i>When the Recluse Comes Out</i> by Fred Vargas
<i>The Order of the Day</i> by Éric Vuillard	<i>Fortunes of Feminism</i> by Nancy Fraser

- A selection of films for recommended viewing. The symbiosis of the seventh art (cinema) with law and criminology has extraordinary potential when it comes to the transfer of knowledge and the promotion of participatory and collaborative work in the classroom. This is especially true when complementary activities related to theoretical concepts in the films are carried out post-viewing. This can take the form of tests, commentaries on clips, and so on. Sharing of guided activities makes it possible to observe the different narratives and it encourages the critical positioning of students. Here is a selection:

<i>Witness for the Prosecution</i> , directed by Billy Wilder (1957)	<i>Anatomy of a Murder</i> , directed by Otto Preminger (1959)
<i>To Kill a Mockingbird</i> , directed by Robert Mulligan (1962)	<i>In the Name of the Father</i> , directed by Jim Sheridan (1993)
<i>Philadelphia</i> , directed by Jonathan Demme (1993)	<i>The Rainmaker</i> , directed by Francis Ford Coppola (1997)
<i>If These Walls Could Talk</i> , directed by Nancy Savoca (2013)	<i>Dead Man Walking</i> , directed by Tim Robbins (1995)
<i>North Country</i> , directed by Niki Caro (2005)	<i>Te doy mis ojos</i> , directed by Icíar Bollaín (2003)
<i>Sleeping with the Enemy</i> , directed by Joseph Ruben (1991)	<i>Princesas</i> , directed by Fernando León (2005)
<i>En tierra extraña</i> , directed by Icíar Bollaín (2014)	<i>The Bookshop</i> , directed by Isabel Coixet (2017)

## 6. TEACHING HOW TO CARRY OUT GENDER- SENSITIVE RESEARCH

This section contains some guidelines for the development of a law and criminology bachelor's or master's dissertation in which research is carried out from a gender perspective. It is important to take into account the chosen topic and the approach to be taken. Inclusive language should be used, and women visibilized, throughout the development of research, especially when including contributions from people who are experts in the field or who have already researched the subject. For this reason, it is vital to begin from a draft or work plan that contains the following sections:

- **Introduction.** Section intended to contextualise the research to be developed, in which an attempt will be made to answer the following questions: the reason for the chosen subject, motivations for researching the subject, contemporary relevance of the research, etc. It is vital to introduce some considerations related to the gender perspective in this introductory section because it highlights gender mainstreaming as a category of analysis in the design of research activity.
- **Objectives.** In this section the provisional objectives of the research are established. These objectives must include a gender focus. Therefore, when specifying them it is important to put forward critical reflections regarding the ways in which women and men are affected by the regulations analysed, the developments in the case law selected, their effects and consequences, and so on.
- **Foundational hypothesis.** It is important to put forward a starting hypothesis during the preliminary part of the research. The implementation of the perspective in the hypothesis from which it is based can be advantageous because it provides the person carrying out the research with a cross-sectional analysis of development with which to finally validate (or not) the hypothesis.
- **Status of the issue.** This is where the essential aspects that establish the current status of the subject under research can be presented. In law and criminology, it is usual to start from the subject's regulatory status, applied and interpretative results, legal gaps, and so on. Therefore, this section is crucial for implementing the gender perspective as it allows us to examine the starting situation using the logic of analysis in order to sensitise critical

elements from the sociosexual asymmetry of the sex/gender system from the outset.

- **Methodology.** At the methodological level, the gender perspective makes it possible to design analytical strategies in which the views on the topic to be investigated are plural and positioned from the location of the subject carrying out the research. Therefore, in this phase, the gender perspective makes it possible to appeal directly to the epistemic privilege referred to by different feminist epistemologies. These provide added value to the proposed research when the methodology takes into account the sociosexual asymmetry of the sex/gender system. Despite the fact that research in the field of law is usually descriptive (qualitative analysis), it is important – from a gender perspective – not to banish quantitative analyses because these make it possible to disaggregate data by sex, for example, when observing the effects of apparently gender-neutral regulatory applications.
- **Analysis and discussion of results.** During this phase, the gender focus ensures that the analysis and discussion of results evaluates the differentiated socialisation of women and men. This means that if laws or regulatory applications, or interpretations of these, are analysed in the face of existing deficiencies, it must be borne in mind that the laws are not (and never have been) neutral towards the subjects to whom they are directed. Moreover, from the perspective of law and criminology, the gender approach makes it possible to introduce a general critique of the symbolic model and the legal narratives that have been (and are being) created and the place occupied by (or assigned to) the target subjects.
- **Conclusions.** This section should summarize the relevant concluding points after the discussion and the results analysis have been carried out. In the conclusions, the gender approach will make it possible to gather proposals for improvements in the fields of law and criminology that are in accordance with the vision and pluralistic dimension of sociosexual reality.

## 7. PEDAGOGICAL RESOURCES

### 7.1 Webography

- Spanish Ministry of Health, Social Services and Equality. Data on gender-based violence: <http://www.violenciagenero.msssi.gob.es/ca/violenciaenCifras/victimtasMortales/home.htm>
- Institute of Women: <https://www.inmujer.gob.es/en/home.htm>
- General Council of the Judiciary. Observatory against Domestic and Gender-based Violence: [http://www.poderjudicial.es/portal/site/cgpj/menuitem.87fc234e64fd592b3305d5a7dc432ea0/?vgnextoid=5ce6dd47358eb210VgnVCM100000cb34e20aRCRD&vgnnextlocale=en&vgnextfmt=default&lang\\_chosen=en](http://www.poderjudicial.es/portal/site/cgpj/menuitem.87fc234e64fd592b3305d5a7dc432ea0/?vgnextoid=5ce6dd47358eb210VgnVCM100000cb34e20aRCRD&vgnnextlocale=en&vgnextfmt=default&lang_chosen=en)
- Constitutional Court of Spain: <https://www.tribunalconstitucional.es/en/Paginas/default.aspx>
- Spanish Ombudsman: <https://www.defensordelpueblo.es/en/>
- Spanish State's Attorney General's Office: <https://www.fiscal.es/>
- General Council of Spanish Lawyers: <http://www.abogacia.es/>
- Inter-American Court of Human Rights: <https://www.corteidh.or.cr/index.cfm?lang=en>
- European Court of Human Rights: <https://echr.coe.int/Pages/home.aspx?p=home>
- European Union Agency for Fundamental Rights: <https://fra.europa.eu/en>
- Feminist Network of Constitutional Law: <http://feministasconstitucional.org/>
- Association of Women Judges of Spain: <http://www.mujeresjuezas.es/>
- Women's Link Worldwide: <https://www.womenslinkworldwide.org/en>
- Femicide: <http://feminicidio.net/>
- Feminist Tribune: <http://www.tribunafeminista.org/>

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## 8. FURTHER INFORMATION

References to Section 2, Gender blindness in law and criminology and its implications:

### **Regarding new and feminist epistemologies, see:**

NICOLÁS LAZO, Gemma (2009). “Debates en epistemología feminista: del empirismo y el standpoint a las críticas postmodernas sobre el sujeto y el punto de vista.” In Nicolás Lazo, Gemma, Boledón, Encarna *et al.* (coords.). *Género y dominación: críticas feministas del derecho y el poder*. Barcelona: Anthropos (Observatory of the Penal System and the Human Rights, OSPDH), pp. 25-62.

### **On the necessary implementation of a gender perspective in the teaching of law and criminology, see:**

TORRES DÍAZ, María Concepción (2013). “Epistemología feminista en la aplicación e interpretación normativa: la integración de la perspectiva de género en las ciencias jurídicas.” In TORTOSA YBÁÑEZ, MT.; ÁLVAREZ TERUEL, JD.; I PELLÍN BUADES, N. (coords.). *XI Jornades de Xarxes d’Investigació en Docència Universitària: Reptes de Futur en l’Ensenyament Superior*. Alacant (Alicante): University of Alacant, pp. 624-636.

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### **On the position of women in law and before the law, see:**

TORRES DÍAZ, María Concepción (2016). “Las mujeres en y ante el Tribunal Constitucional.” In *Agenda Pública: analistas de actualidad*: <http://agendapublica.elperiodico.com/las-mujeres-en-y-ante-el-tribunal-constitucional/> (accessed: 20/12/2017).

### **On the category of gender as a specific guarantee of women’s rights, see:**

TORRES DÍAZ, María Concepción (2018). “Acoso sexual y acoso por razón de sexo diez años después de la Ley Orgánica 3/2007.” In VENTURA FRANCH, A. and GARCÍA CAMPÁ, S. (coords.). *El derecho a la igualdad efectiva de mujeres y hombres*. Pamplona: Aranzadi, pp. 187-228.

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References to Section 3, General proposals for incorporating the gender perspective into the teaching of law and criminology:

**Regulations that refer to the inclusion of the gender perspective in law and criminology:**

Working Group on Equality, General Council of Spanish Lawyers. *Enfoque de género en la actuación letrada. Guía práctica de la abogacía*, working group created in 2017 in response to the need to increase gender perspective training among legal staff, especially practicing lawyers.

Mexican Supreme Court of Justice of the Nation (2013). *Protocolo para Juzgar con Perspectiva de Género. Haciendo realidad el Derecho a la Igualdad*.

- The reports of the General Council of the Judiciary – Group of Experts in Domestic and Gender Violence – including:
  - Reports from 2013-2015 on fatalities of gender-based or domestic violence at the hands of partners or ex-partners;
  - Analysis of sentences handed down in 2015 relating to homicides or murders by partners or ex-partners and of minors at the hands of their parents. The following lines of the study are worth highlighting: “Analysis of the sentences handed down in 2015 relating to homicides and/or murders among partners/ex-partners”, which show that: “[...] These studies help us to see that violence between partners or ex-partners is rooted in gender and is asymmetrical in terms of the sex of its perpetrators. Therefore, these types of studies cannot be gender-blind or gender-neutral when it comes to the sex of actors”;
  - Practical guide to Organic Law 1/2004, of 28 December, on comprehensive protection measures against gender-based violence (2016).

- Practical guide to Organic Law 1/2004, of 28 December, on comprehensive protection measures. The direct quote from Article 4 of Organic Law 3/2007, of 22 March, cited above, is obligatory, since under the heading “Integration of the principle of equality in legislative interpretation and application” the aforementioned precept becomes the guiding principle in stipulating that:

“Equal treatment and opportunities for women and men is an informing principle of the legal system and, as such, must be integrated and observed in the interpretation and application of legal rules.”

- Istanbul Convention (previously cited), especially Article 6, which stipulates:

“Parties shall undertake to include a gender approach in the implementation and evaluation of the provisions of this Convention and to promote and effectively implement policies of equality between women and men and the empowerment of women.”

For the purposes of this guide, Article 14, which stipulates:

“1. Parties shall take, where appropriate, the necessary steps to include teaching material on issues such as equality between women and men, non-stereotypes gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, gender-based violence against women and the right to personal integrity, adapted to the evolving capacity of learners.”

Regarding the training of professionals in the field of law and, by extension, the field of criminology, Article 15 of the Istanbul Convention is revealing. It urges the provision and strengthening of appropriate training for professionals who deal with victims and perpetrators. This is in order to help professionals detect and prevent gender-based violence, support victim’s rights, prevent secondary victimization, promote equality between women and men, and so on.

- General Recommendation No. 33 on women’s access to justice, of the Committee on the Elimination of Discrimination against Women (CEDAW), of 3 August 2015. This is from Section B.22:

“Women, nonetheless, face many difficulties in gaining access to justice as a result of direct and indirect discrimination [...]. Such inequality is apparent not only in the discriminatory content and/or impact of laws, regulations, procedures, customs and practices, but also in the lack of capacity and

awareness on the part of judicial and quasi-judicial institutions to adequately address violations of women's rights [...]". It goes on to say that "[...] judicial institutions must apply the principle of substantive or de facto equality, as embodied in the Convention, and interpret laws, including national, religious and customary laws, in line with that obligation [...]".

### **Critical reflection from a gender perspective of historical legal texts:**

From the *Seneca Falls Declaration or Declaration of Sentiments* (1848), by Elizabeth Cady Stanton and Lucretia Mott, the following extracts are especially significant:

"The history of mankind is a history of repeated injuries and usurpations on the part of man toward woman, having in direct object the establishment of an absolute tyranny over her. To prove this, let facts be submitted to a candid world:

"He has never permitted her to exercise her inalienable right to the elective franchise.

He has compelled her to submit to laws, in the formation of which she had no voice.

He has withheld from her rights which are given to the most ignorant and degraded men, both natives and foreigners.

Having deprived her of this first right of a citizen, the elective franchise, thereby leaving her without representation in the halls of legislation, he has oppressed her on all sides.

He has made her, if married, in the eye of the law, civilly dead.

He has taken from her all right in property, even to the wages she earns.

He has made her, morally, an irresponsible being [...]. In the covenant of marriage, she is compelled to promise obedience to her husband, he becoming to all intents and purposes, her master – the law giving him power to deprive her of her liberty, and to administer chastisement."

From the speech by Simone Veil in the French Assembly on 26 November 1974, the following extract is particularly significant:

"[...] I would like first of all to share with you a belief held by all women – and I am sorry to do so before an Assembly almost exclusively made up of men: any woman seeking an abortion does so with a heavy heart. Just listen to women. It has always been a tragedy and it will remain a tragedy."

Simone Veil's words highlight the perversity of not taking into account the sex of legal subjects in recognising the full legal and political subjectivity of women. It should be noted that this appeal for the decriminalization of the voluntary termination of pregnancy was made in front of an audience composed mostly of men. Men who don't become pregnant, don't give birth and whose personal autonomy was not affected by the law under debate in parliament at that time.

The speech made in the Spanish parliament by MP Teresa Revilla regarding passing of Article 14 of the Spanish Constitution (the precept that constitutionalised equality as a fundamental right) in the Commission of Constitutional Subjects and Public Liberties in the celebrated session of 18 May 1978:

“Ladies and gentlemen, with the passing of this article, Spanish women are finally acquiring the entirety of their rights. It is true that the vote has been unanimous, without dissent, as our society has been demanding. But we women are not going to give thanks for that... Now we look towards the future, and in the future we just want to be [...]”.

**On Spanish historical constitutionalism and the situation (exclusion-position) of women, see:**

- a) Constitution of Cádiz, 19 March 1812 (in force from 1812 to 1814, from 1820 to 1823 and from 1836 to 1837);
- b) Constitution of 18 June 1837 (in force from 1837 to 1845);
- c) Constitution of 23 May 1845 (in force from 1845 to 1868);
- d) Constitution of 6 June 1869 (in force from 1869 to 1873);
- e) Constitution of 30 June 1876 (in force from 1876 to 1923);
- f) Constitution of 9 December 1931 (in force from 1931 to 1939).

We propose a comparative and critical analysis, taking into account the following items:

- a) On legal and/or political subjectivity: who are the legal subjects in each text? Are they explicitly identified? Are there implicit or explicit exclusions? Who were the subjects who agreed to/granted the constitutional text, declaration of rights, etc.? Who were they aimed at?
- b) On rights and freedoms: is there a specific title that includes the list of rights? What kind of rights does it collect? Civil, political, economic, cultural, social, etc.? Rights to freedom, guiding principles, etc.? Legal configuration

rights? Beneficial rights? Is there talk of universality in any type of rights? First, second, third generation rights, etc.?

- c) On guarantees and safeguards of rights: are there mechanisms for guaranteeing and/or safeguarding rights enshrined in the constitutional text and/or declaration of rights? What kind of guarantees? Do all rights have the same guarantee mechanisms? Are there cases of limitation, deprivation, suspension of rights? In what terms are constitutional values and principles enshrined?

**On the exclusion of women from the constitutional pact, see:**

FEMINIST NETWORK OF CONSTITUTIONAL LAW (2017) “Positioning of the Feminist Network of Constitutional Law Regarding the Necessary Reform of the Constitution:” [http://feministasconstitucional.org/wp-content/uploads/2017/12/RFDC\\_posicionament\\_RefConst-4-deseembre-2017..pdf](http://feministasconstitucional.org/wp-content/uploads/2017/12/RFDC_posicionament_RefConst-4-deseembre-2017..pdf) (accessed: 10/12/2017).

**An in-depth study into the category of the legal subject is necessary, especially from the constitutional point of view. By extrapolation, this study should be extended to the rest of the legal system:**

The legal definition of uxoricide in the 1944 Criminal Code made it clear who the lawmaker was concerned with when drawing up the code and which was the legal good he sought to protect. Similarly, it is important to reflect on the terms under which the law (and its architects) considered women when drawing up certain precepts in the field of criminal law, especially during the period when adultery, cohabitation without marriage<sup>51</sup>, contraceptive use<sup>52</sup>, offences of sexual freedom – labelled at the time ‘crimes against honesty’ – and so on, were penalised in Spain.

Regarding Article 184 of the Spanish Criminal Code of 1995, in its original version, it is worth pointing out that it left many conducts of sexual harassment – suffered by women simply for being women – in a state of limbo. The fact is that conducts in which no sexual behaviour is requested, or hostile environment sexual harassment, were excluded from criminal classification, as were conducts in which there was no relationship of superiority or workplace or academic hierarchy (horizontal or peer sexual harassment was not included). Similarly,

<sup>51</sup> Law 22/1978, of 26 May, on the decriminalisation of adultery and concubinage.

<sup>52</sup> Law 45/1978, of 7 October, in which Articles 416 and 343bis of the Criminal Code are amended.



cases in which harm did not fall directly on the person being harassed were also excluded. Obviously, it is thanks to the pressure exerted by women and feminists<sup>53</sup> who, observing the terms under which the precept was applied, questioned its legislative effectiveness, leading to successive modifications of the precept through Organic Laws 11/1999, of 30 April, and 15/2003, of 25 November. However, it was not until Organic Law 3/2007, of 22 March, for the effective equality between women and men, that sexual harassment, and harassment on grounds of sex, become core categories of approach in matters of equality and against all forms of discrimination. Situations of sexual harassment, and harassment on the grounds of sex, reveal the structural inequality of the sex/gender system<sup>54</sup> (and the violence) to which women are subjected in areas outside the private or domestic spheres, such as the educational/academic spheres and the workplace/professional spheres.

### **Further information on two aspects of the STC 59/2008, of 14 May**

With respect to gender as a category of legal analysis in the area of violence against women, it is essential to differentiate between sex and gender. This distinction is significant because it enables reflection from the “hermeneutics of suspicion”<sup>55</sup> and facilitates the questioning of apparent sexual neutrality from which political, economic, social, cultural, and personal relationships have been built.

From this perspective of analysis, the gender category transfers the debate around violence against women to the public/political space and transforms it into a debate that enters the political agenda and, therefore, the realm of power. The approach is changing. The reluctance to conceptualize violence against

53 On the pressure to classify sexual harassment as a crime, it is worth recalling the efforts of academic feminists in the 1970s who conceptually defined harassment as intrusive and unwanted behaviour by men that impacted on women’s lives. It is worth referencing this definition by Catharine MacKinnon in 1979 “[...] the unwanted imposition of sexual requirements in the context of a relationship of unequal power”. See MacKinnon, Catharine (1979). *Sexual harassment of Working Women*. New Haven: Yale University Press

54 Torres Díaz, María Concepción. “Acoso sexual y discriminación estructural.” In *Agenda Pública: analistas de actualidad*: <http://agendapublica.elperiodico.com/acoso-sexual-discriminacion-estructural/> (accessed: 23/12/2017). See also Pernas, Beatriz. “Las raíces del acoso sexual: las relaciones de poder y sumisión en el trabajo.” In Osborne, Raquel. *La violencia contra las mujeres (Realidad social y políticas públicas)*. Madrid: UNED, 2001, pp. 53-75.

55 Puleo, Alicia. “El concepto de género como hermenéutica de la sospecha: de la biología a la filosofía moral y política”. *Revista Arbor. Ciencia, pensamiento y cultura*. Vol. 189, no. 763: 2013: <http://arbor.revistas.csic.es/index.php/arbor/article/viewArticle/1871/2022> (accessed: 20/12/2017).

women as being gender-based grows, because such a recognition would involve questioning privileges and ways of being, while at the same time making visible asymmetries of power in the emotional/cohabitational spheres. Hence the importance of exploiting the potential for analysis of the term 'gender' in this specific area: it enables us to discover what is cultural about gender beyond the sexual reality of our bodies, and it reveals the error of using the terms 'sex' and 'gender' indiscriminately or speaking of gender solely and exclusively as grammatical gender. Extrapolating all these considerations to the legal field, the gender category lays the groundwork for conceptualising violence against women as a violent manifestation of inequality, as a form of structural discrimination, and as a specific violation of women's human rights.

As regards the second issue raised – the terms under which the Constitutional Court pronounces on the criminal precepts in question – it is necessary to focus on the terms of the constitutional endorsement of Organic Law 1/2004, of 28 December, on comprehensive protection measures against gender-based violence. It is worth studying the pronouncements made by the maximum constitutional interpreter, particularly SSTC 59/2008, 127/2009, 45/2010 and 79/2010, as they provide factors that should be taken into consideration.

The legal foundations of the Constitutional Court recall its doctrine of constitutional equality, noting the consolidation of the so-called equalising unequal right. On this point it is important to remember legal base 5 of the Constitutional Court Judgement STC 59/2008, which states that equality is the subjective right of citizens to obtain equal treatment, and which compels and constrains public authorities to respect all citizens. This legal base requires that the same factual situations be treated identically in their legal consequences and states that there must be sufficient justification for introducing any differences between them, emphasising that any such justification must be well-founded and reasonable, in accordance with generally accepted criteria and value judgements, and with consequences that are not disproportionate.

In line with the above, the Constitutional Court points out that not every difference in legal treatment represents constitutionally prohibited discriminatory treatment. If there is a justification for the differentiating measure, and if it is proportionate and appropriate to the purpose it is intended to achieve, then such differing treatment may be justified. On this point, the Constitutional Court is forceful and states that the regulatory option adopted by the legislature in 2004 cannot be described as unreasonable, given that:

[...] aggressions by the man towards the woman who is, or was, his significant other are more serious than any other in the same relational sphere, because they correspond to a deep-rooted violence that is a manifestation of discrimination, the situation of inequality and the power relations of men over women.

### **On the jurisprudential doctrine regarding the recognition of the widowhood pension:**

TORRES DÍAZ, María Concepción (2017). “Pensión de viudedad y violencia de género, o cómo acreditar la condición de víctima.” *Tribuna Feminista*: [www.tribunafeminista.org/2017/02/pension-de-viudedad-y-vg-o-como-acreditarla-condicion-de-victima/](http://www.tribunafeminista.org/2017/02/pension-de-viudedad-y-vg-o-como-acreditarla-condicion-de-victima/) (accessed: 22/11/2017).

### **On discourses related to women’s bodies:**

The words of Rousseau in *Emilie, or On Education*, when he stated, in the midst of the Age of Enlightenment, that:

“Male is male only at certain moments, the female is female all her life, or at least during her entire youth.”

Closer to our own time, Italian lawyer L. Ferrajoli is also worth quoting:

“[...] woman’s body has always been a field of conflicts and legal, ethical, and political discourses, as well as medical practices, pedagogical interventions, rules, disciplines, and so on.”

### **On the concept of the person, from a human rights perspective, see:**

MACKINNON, Catharine (2007). *Are Women Human?: And Other International Dialogues*. Harvard University Press.

References to Section 4, analysis for the inclusion of a gender perspective in the subject of the right to freedom of religious belief (law degree)

**Subject: Right to Freedom of Belief.**<sup>56</sup> Compulsory subject studied during the second year of the Bachelor’s Degree in Law and in the combined degrees of Law and Criminology; and Law, Administration and Company Management at the University of Alacant. The subject code is 19038 and it has 6 ECTS assigned.

<sup>56</sup> Information on the subject can be consulted at: <https://cvnet.cpd.ua.es/guia-docente/guadocente/index?wcodest=c102&wcodasi=19009&wlengua=és&scaca=2017-18> (accessed: 20/12/2017).

### Specific objectives

1. To understand the meaning and scope of freedom of belief and the principle of state neutrality;
2. To understand the fundamental legal provisions on neutrality and freedom of belief at the regional, state, European community and international levels;
3. To apply comparative methodology in the study of freedom of belief;
4. To apply the perspective of neutrality as a methodology of analysis;
5. To respect and defend the principle of equality and non-discrimination, and
6. To respect and defend human dignity and the equality of people, as well as the plurality of ideas and convictions.

### Contents

The subject is divided into four blocks and a total of ten teaching units:

- Teaching Unit 1. Freedom of belief: general framework and conceptual definition

When taking into account the double dimension – objective and subjective – of freedom of belief (and thought) from the gender perspective, it is necessary to explore the following questions: a) What is the definition of a person as a subject whose rights are recognised?; b) Have women been (or are they) persons on the same terms as men?; c) Have women been (or are they) fully autonomous subjects in the area of beliefs?; d) How has the differentiated socialization of women and men due to the sex/gender system affected recognition of the full autonomy of women?; and e) How does the autonomous recognition of freedom affect issues such as the use of the Islamic veil, hijab, etc.?

- Teaching Unit 2. Fundamental principles of freedom of belief

From a gender perspective, here are the issues that could be raised: a) From the point of view of freedom of belief as an informing principle of the legal system, what limits (if any) should be established regarding religion and the full recognition of the legal and political subjectivity of people and, specifically, women?; b) How to marry principles of equality and non-discrimination of beliefs with gender equality?, and c) Why

not undertake to recognise the sexuation of legal subjects in light of the regulatory abstraction of the model of human being from the principle of state secularism?

- Teaching Unit 3. Freedom of belief in the international and European sphere

From the critical and analytical framework of feminist epistemology, this unit can be used to reflect on the following questions: a) Who are the persons referred to in the Universal Declaration of Human Rights with the capacity to exercise freedoms of thought, conscience and religion without the limitations prescribed by the sex/gender system?; b) What place do women occupy as persons in external manifestations of rights such as religious freedom or freedom of worship?, and c) What limits should be placed on certain practices, rites or cults that discriminate against women due to a cultural or patriarchal construction built on biological sex?

- Teaching Unit 4. Freedom of belief in Spanish law: constitutional configuration and legal protection

Using feminist epistemology as a critical paradigm, the analysis should be focused on the following aspects: a) Who are the titular subjects of Article 16 CE?; b) Under which terms is the ownership and exercise of the rights of women recognised in Article 16 CE?; c) How is the legislative development of religious freedom specified through Organic Law 7/1980?; d) Do women find limitations in the exercise and manifestation of freedom of thought in the external dimension?; e) Does freedom and equality affect women and men in the same way as legal subjects?; f) Is it necessary to identify differences regarding the exercise of rights of ideological and religious freedom as a result of the sexuation of legal subjects?, and g) Are there preconditions for the exercise of these rights according to people's sex?

- Teaching Unit 5. Freedom of conscience and conscientious objection

From a gender perspective, the issues under discussion would be the following:

a) What are the implications of disregarding the sexuation of subjects in the area of conscientious objection in healthcare, particularly healthcare related to the voluntary termination of pregnancy?; b) In what terms are women recognized as persons with full legal ownership of rights vis-à-vis other constitutional legal assets eligible for protection?; c) What are the implications of disregarding the sexuation of legal subjects in

conscientious objection in the field of pharmacy?, and d) Under which terms does recognition of conscientious objection to dispensing the post-coital pill prevail with regards the right to life, physical and moral integrity, sexual and reproductive health, etc. of women as sexual subjects with reproductive capabilities subject to constitutional recognition and protection?

- Teaching Unit 6. Freedom of expression

From a gender perspective, the issues under discussion are: a) How does freedom of expression in the workplace, as a manifestation of freedom of belief, affect women's freedom?; b) What conditions are observed when it is women who gain access to the economic or productive sphere as sexual subjects?, and c) Regarding the field of family law as an exponent of law of private or domestic spaces, is it necessary to identify limitations prescribed (not written) by the sex/gender system in the exercising of freedoms such as freedom of expression that are clearly linked to ideological or religious freedom?

- Teaching Unit 7. Freedom of education

Using feminist epistemology as a critical paradigm, analyses should focus on the following questions: a) Under which terms does freedom of belief and thought take into account the differentiated socialization of the sex/gender system and its effects on the field of education?; b) What are the parameters of legal analysis from the constitutional point of view when effective and real equality leads to sex differentiated education?; and c) When would objections of conscience prevail over the right to education in specific cases, such as in education for citizenship?

Teaching Unit 8. Freedom of belief and the matrimonial system

From a gender perspective, issues that can be explored are: a) How to guarantee effective and real equality in the intimate or domestic sphere; b) From the point of view of the legal regime of religious marriages, how to establish mechanisms of protection; c) In which terms should it be stated that raising the minimum age of marriage is a guarantee for the free exercise of rights such as freedom of belief and thought?, and d) Is there a risk of cultural relativism?

- Teaching Unit 9. The collective dimension of freedom of belief: meeting, demonstration and association.

With feminist epistemology as a critical paradigm, the focus should be on these elements: a) Do women exercise the rights of assembly and association on the same terms as men?, and b) With regard to freedom of belief and religious fact, what limits do women come up against as legal subjects?

- Teaching Unit 10. The legal-state concept of religious denomination. The Register of Religious Entities

From a gender perspective, the following questions could be raised: a) How do agreements between the Spanish state and the Vatican affect women (and their rights)?; b) How do agreements between Spain and other religious denominations, such as the Federation of Evangelical Religious Entities of Spain and the Islamic Commission, affect women and their rights?, and c) Has the structural discrimination of the sex/gender system been taken into account in these agreements in an attempt to overcome them?

### **Organizational modalities and teaching methods**

Teaching and knowledge transfer in this subject is based on continuous teacher-student interaction. Therefore, all activities proposed in the classroom require the active participation of students. The study of each of the legal categories and of the key ideas in each teaching unit is carried out directly through the reading of original sources: the judgements and other resolutions – previously selected by teaching staff – of the European Court of Human Rights, The Constitutional Court and the Supreme Court. The work should be done in groups of five or six. Each group should be composed of students of both sexes in a balanced ratio. Each group should select a spokesperson, and this position should be rotated in each practical class. The objective, after studying the assigned judgements and carrying out the joint analysis in accordance with the parameters given, is to make a brief presentation and identify the conflicting elements that are subject to legal or constitutional debate.

With regards teaching methods or resources for exploring issues raised in more detail, it is necessary to work with rulings of the Constitutional Court such as the following:

1. STC 53/1985, of 11 April. Previous appeal of unconstitutionality. Filed by 55 MPs against the final text of the draft amendment of Article 417bis of the Criminal Code. Private voting. Analytical synopsis: absence of a gender perspective. Special reference to the concept of a person as a holder of

rights. The woman as a legal person in relation to the unborn baby as a protected legal personality.

2. STC 59/2008, of 14 May. Question of unconstitutionality. Raised by Criminal Court no. 4 in Murcia, in relation to Article 153.1 of the Criminal Code, drafted by Organic Law 1/2004, of 28 December, on comprehensive protection measures against gender violence. Analytical synopsis: express allusion to the concept of gender. Gender as a category of legal analysis in constitutional jurisprudence.
3. STC 151/2014, of 25 September. Appeal of unconstitutionality filed by more than 50 MPs of the Popular parliamentary group in congress against the Regional Law of Navarra 16/2010, of 8 November, leading to the creation of a registry of professionals relating to the voluntary termination of pregnancy. Analytical synopsis: the right to conscientious objection as a manifestation of the right to ideological freedom and as justification for objecting to cases of voluntary termination of pregnancy.

### **Evaluation proposals**

Assessment of the subject is designed to follow the continuous evaluation model. From a gender perspective, there are several categories that should be taken into account when marking or assessing: participation, involvement, capacity for empathy, capacity for criticism and self-criticism, capacity for improvement, etc. To this end, here is an example of percentage allocation for each of the proposed activities:

- Continuous assessment activities: 60% of the final mark
- Group analysis of sentences, synopsis of doctrinal articles, etc.: 25% of the final mark
- Individual essay on one of the recommended readings: 15% of the final mark
- Group presentation on one of the topics proposed relating to the teaching units: 15% of the final mark
- Participation in forums: 5% of the final mark
- Objective test of knowledge: 40% of the final mark



References to Section 4, analysis for the inclusion of a gender perspective in the subject of Victimology (Criminology Degree)

**Subject: Victimology.** Compulsory subject, studied during the third year of the Criminology Degree and the fourth year of the Combined Degree in Law and Criminology at the University of Alacant. The subject code is 18526 and it has 7.5 ETCS assigned.

### Specific objectives

1. To understand the theoretical foundations, and the field of application, of victimology;
2. To analyse the primary dimensions, processes and typologies of victimology;
3. To describe the most-used research methods in the field of victimology;
4. To understand the psychological and psychopathological consequences derived from the different processes of victimization;
5. To understand the basic techniques of prevention, evaluation and psychological intervention with victims;
6. To train criminology professionals to direct and coordinate the activity of victim assistance offices;
7. To understand the influence of victimology on criminal law and interaction with other disciplines;
8. To understand the legal treatment received by the victim in criminal proceedings, and
9. To understand the systems of public compensation to victims of crime, as well as other procedures for damage reparations.

### Contents

The subject is organised in four thematic blocks:

#### 1. Introduction to victimology

A gender perspective in the field of victimology requires attention to be paid to the concept of victim and, especially, to the concept of victim of crime. The evolution of the concept itself, and the break with gender-neutral treatment, provides data that should be taken into account, particularly

when consulting crime statistics, especially those of crimes relating to the freedom and sexual autonomy of persons.

## 2. Psychology's contributions to victimology

The power relation of the sex/gender system and the effects this has on the construction of spaces forces us to reflect on the concept of vulnerability, especially when applied to certain people and the situations of risk to which they are exposed. At this point we should reflect on how some people or groups are affected by situations of sociosexual vulnerability, whether in the economic, social, psychological or relational spheres.

## 3. Evolution of the legal treatment of the victim

With regard to the legal treatment of the victim, it is essential to take into account Law 35/1995, of 11 December, on aid and assistance to victims of crimes of violence and crimes against sexual freedom. Section I of the explanatory memorandum is especially revealing from a gender perspective. It states:

"The victim of the crime has suffered a degree of neglect since the criminal system replaced private revenge with fair and dispassionate public and institutional intervention as a way of resolving conflicts created by the violation of criminal law. But, from a global perspective, the punitive claim of the state must address the social and communal issues behind the crime, in order to prevent it and rehabilitate the offender of course, but also to redress – if possible – the damage suffered by the victim. In many cases, the social abandonment of the victim after the crime, the labelling, the lack of psychological support, the intervention in the process, the need to relive the crime during the oral trial [...] produce effects as painful for the victim as those that derive directly from the crime itself." It is worth mentioning here the passing, most recently, of Law 4/2015, of 27 April, on the Status of Victims of Crime, a regulation that has been a turning point in terms of legal treatment and consideration of victims of crime. Of particular interest is the recognition of the following extra-procedural rights: a) the right of victims to information, in a broad sense, regarding public administrations or support staff; b) the right to information about resources and services for the safeguarding and protecting of rights; c) in gender-based violence, the right to comprehensive social assistance; d) rights relating to employment and social security benefits; e) rights to information relating to accreditation of victim status; f) rights to information on the Active Insertion Income Programme, and g) rights to information

regarding the possibility of changing surnames due to additional provision 20a of the Organic Law on comprehensive protection measures against gender-based violence (LOIVG), which modifies the working of Article 58 of the Civil Registry Act; etc.

#### 4. Analysis of the position of victim in the criminal justice system

From a gender perspective, attention should be paid to rights of a procedural or criminal nature articulated around Law 4/2015: a) right to non-secondary victimisation (or revictimization), which consists of trying to avoid forcing the victim to make unnecessary statements in court; b) the right to information in a language that is comprehensible to the victim; c) in matters of gender-based violence, the right to receive specialised legal advice from assistance personnel and, specifically, from the Office for the Support of Victims of Crime (OAVD) and law enforcement bodies; d) the right to a single legal representative during all phases of the process and in all instances and areas (penal, civil, administrative, workplace, immigration, etc.); e) the right to be informed about the various actions and, in particular, about those affecting the procedural situation of the aggressor; f) information regarding the right to be a party to the process and its effects on the right to request investigation diligence; g) information on the right to free legal aid (extension and effects); h) the right to be informed of the following aspects: dismissal of the trial, date and place of the trial, judgements delivered (first instance or appeal), etc.

### Modes of organizing teaching methods

From a **gender perspective**, and in line with what we have discussed so far, teaching proposals focus on group work of comparative analysis of laws, judgements, verdicts, administrative decisions, etc. in the field of victimology. Group analysis promotes student interaction and generates an enrichment of contributions to the texts and documents under analysis. A comparative analysis of documents enables us to reflect critically on the concept of victim, birth and evolution; on the treatment the victim receives in the field of criminal (and criminal procedural) law; and on the connection with the differentiated socialisation of the sex/gender system and the asymmetrical power relations this provokes. On this point it is important to take into account the traditional concealment or invisibility of victims of crime – especially victims of crimes against sexual freedom or crimes of gender violence; the prejudices generated in this environment which can affect the credibility of victims and generate doubts about the experiences they share; the unwillingness (or inability) to listen to stories that reflect the sociosexual

reality of the experiences; the relationship between victim and perpetrator; the contributions and contraindications of restorative justice; and the myths that contribute to primary victimization, secondary victimization (or institutional gender violence), etc. As in the organisational proposals for the subjects discussed in the previous paragraphs, the aim is to form groups of people of both sexes, from a variety of personal, teaching and professional backgrounds, to increase the diversity of perspectives. Teaching should be proactive and participatory, in the service of generating changes in didactic methods, and students should be protagonists of the learning process.

### **Evaluation proposals**

Assessment of the subject is designed to follow a model of continuous evaluation. From a gender perspective, factors to be taken into account coincide with those discussed in previous paragraphs. These include participation, involvement, capacity for empathy, capacity for criticism and self-criticism, capacity for improvement, and so on. Here is an example of percentage allocation for each of the proposed activities:

- Continuous assessment activities: 60% of the final mark
- Group analysis of sentences, synopsis of doctrinal articles, etc.: 25% of the final mark
- Quantitative (statistical) and comparative analysis of victims and perpetrators in reports from official institutions and bodies: 20% of the final mark
- Comparative group analysis on the pros and cons of victimisation or restorative justice: 20% of the final mark
- Objective test of knowledge: 40% of the final mark

**Gender blindness in the field of law and criminology makes it necessary to implement a gender perspective in university studies in these disciplines, both in the teaching and knowledge transfer and in research.**

*The Guide of Law and Criminology to mainstreaming gender in university teaching* offers proposals, examples of good practices, teaching resources and consultation tools to redraw the mental and symbolic schemes of legal thought that have traditionally been articulated under biased premisses about gender, neutrality, objectivity and impartiality.



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