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Violence against women and the feminist critique of Law: a brief analysis of Brazilian academic production

Violência contra mulheres e a crítica jurídica feminista: breve análise da produção acadêmica brasileira

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Abstract

This article analyzes the feminist legal scholar production in Law, especially the studies on violence against women, starting from the 1970s. It explores both the emergence of feminism and the studies on violence and gender in Brazil and also examines the growth of this field and the potentialities for new feminist approaches in Law.

Keywords: Feminist critique of Law; Violence against women; Rights of women.

Resumo

O presente artigo analisa a produção acadêmica feminista no campo do Direito, em especial, os estudos sobre violência contra mulheres, a partir da década de setenta, buscando explorar a emergência do feminismo e dos estudos sobre violência e gênero no direito brasileiro. Examina também o crescimento desse campo e as potencialidades para novas abordagens feministas no Direito.

Palavras-chave: Crítica feminista ao direito; Violência contra as mulheres; Direitos humanos das mulheres.



Introduction¹

This work is an effort to map out and analyze² feminist legal studies, with emphasis on works about violence against women that have been published since the 1970s. This is a necessary task since feminist production in this field is significant, although not sufficiently recognized by malestream³. Furthermore, we consider it important to bring up the historical path of construction of feminist perspectives in legal studies, as a process of cumulative and constant construction that continually gains prominence. We emphasize that this work certainly does not encompass all feminist production in this field, but those that we could access through our own research up to now and were of help to shed some light on the main characteristics of the intellectual trajectory of Brazilian feminist legal studies.

There is still much to be done about the reconstruction of the genealogy of Brazilian legal feminisms. Here, we only aim to identify the early contours of feminist critical legal thought, its articulation with the struggle for women's human rights in Brazil and pinpoint the potentialities of this field in a more recent development.

We consider as academic feminist production those works thus considered in their theme, editorial line or theoretical-methodological approach (SILVA, 2013). We prioritized analyzing academic production delivered in book formats, articles that were published in academic journals and reports produced by feminist advocacy actions⁴.

We have identified that pioneer Brazilian authors using a feminist legal approach have different educational backgrounds, whose works⁵ are both inserted in an academic environment and in the context of feminist political action strategizing. Consequently, we can clearly see Brazilian feminist critique of political-legal institutions

¹ We wish with this work to pay homage to the pioneers of Brazilian legal feminism.

² This work is a result of some of our previous studies (SEVERI, 2018; CAMPOS, 2017).

³ We use *malestream* instead of *mainstream* (SMART, 2000) to highlight the male privileged position in Law.

⁴ The expression *advocacy* is used by feminist movements to refer to a broad and diverse set of political actions of women's movements with the aim of influencing public debate as also political, social and cultural actors and institutions in order to generate political and institutions changes in civil society and in the State, based on the feminist agenda's specific content and proposals.

⁵ There are several ways of referring to such studies, according to the historical moment and the theoretical discussions that underlie them: woman and women's studies, gender studies, studies on gender relations or gender theories.



and identify some of feminist legal scholar pioneers⁶ in studies on women, gender, relations and domestic violence, a growing interdisciplinary field since the mid-1970s.

The classification of the types of interactions that happen between feminism and Law in Latin American, established by Isabel Cristina Jaramillo (2000), helps us to analyze the Brazilian case. According to her, we have: a) feminism as Law critique; b) Law as a tool of feminism. Jaramillo also divides feminist critical legal studies in two parts: a critique of Law general elements (feminist critical legal theories) and critiques of particular juridical (and political) institutions. Among the production that discuss the uses of Law, she also distinguishes those that approach the strategic and the nonstrategic use of Law by feminisms.

Brazilian feminist academic production on Law, despite its recent expansion, may seem rather small or incipient when compared to the strength of Global North feminist legal studies. This is because the studies gathered under the axes of feminist jurisprudence or feminist legal theory have been consolidated as an important theoretical field of legal criticism since the late 1980s in the United States, in some European countries and in the United Kingdom.

We consider that Brazilian feminist analyses of Law are being consolidated as a delimited field of research in the legal academy. On the one hand, they have been made in dialogue with a vigorous interdisciplinary field in Brazil since the mid-1970s: the so-called studies on women, gender and violence against women - and, on the other hand, they have been strongly associated with the feminist strategies of political-legal mobilization for the affirmation of women's human rights.

This field of study also emerged from the dynamics of Brazilian feminism and its interaction with European and North American feminisms, which was marked by a process of reception-assimilation and conflict-differentiation-accommodation. According to Bila Sorje and Maria Luiza Heilborn (1999), in the United States the so-called Women's Studies emerged from protests that took place in universities in the 1960s along with racial studies, questioning the scientific foundations of the social sciences. In Brazil, studies on women and gender arose along with other left mobilization agenda, such as the criticism of social inequalities and political authoritarianism. Social research aimed at the foundation of public policy proposals and specific normative changes were

⁶ We named legal scholars those important Brazilian feminists who have built a critical framework on Law not only from within universities, but mainly from their political performance and legal knowledge.



also more recurrent among Brazilian feminists, in relation to the North American emphasis on epistemological criticism.

Concerning the interaction between feminism and Law, our argument is that Brazilian feminist legal scholars focused less on legal theory or epistemology issues, and more on the elaboration of critical analyzes about specific legal institutions and the strategic use of legal discourse. This can be clearly perceived when we analyze, for example, the discussions about the theoretical production on domestic violence. They reflect, to a large extent, the conceptual contributions of feminism to national and international laws about human rights and the notions of the subject of rights, citizenship, public space, democracy and access to justice.

Brazilian academic production on women, gender and violence has grown considerably since the 1970s in several areas. This was due to the conditions created by the re-articulation of the Brazilian feminist movement in this same period and to the greater importance given to the theme of violence against woman (BANDEIRA, 2014; BRUSCHINI; UNBEHAUM, 2002).

We hope that this work can help to strengthen a still incipient research agenda on Brazilian feminist legal thought and on the theoretical and methodological contributions that studies on violence, gender and feminism have brought to Law.

1. Overview of legal-feminist studies, gender relations and violence against women in the years 1970-1990

The resurgence of the feminist social movement, especially since 1975, has been articulated with social struggles for democracy (for example, the struggle for Amnesty). It was based on some theoretical Marxist aspects and also on American and European feminist perspectives, in this case spawned mainly by the exile of Brazilians abroad.

Debating democratic freedoms, Brazilian feminists launched newspapers to spread their ideas. In São Paulo, two important newspapers, *Brasil Mulher* and *Nós, Mulheres*, began to reflect feminist discussions. According to Maria Paula Araújo (2000), those newspapers innovated in language and for spreading a new political conception that explained the relations between public and private domains. They politicized what was, until then, considered personal matters and politicized emotions, personal



relationships, and family ties. They also dealt with changes in everyday life and issues of the domestic sphere and with themes such as love, sex, pain, frustration. This way, they sought to give attention to personal experiences.

Dialoguing with Marxism, these journals addressed the theme of the female labor force or female wage labor, but also incorporated other subjects such as maternity, reproduction, sexuality, daycare, schools and health, as we can read in the passage below from the newspaper *Nós mulheres*:

We demand good daycare centers and schools for our children, collective laundries and restaurants at popular prices, so that, together with men, we can take on the responsibilities to society. (*Nós mulheres*, 1976, page 2).

This is also the arrangement of works produced by the pioneering Brazilian scholars with a feminist approach. For example, Heleieth Saffioti, a sociologist, published the book *A mulher na sociedade de classes: mito e realidade* in 1969, which soon became one of the main references in discussions on the status of women in the realm of work. She analyzes how the “sex factor” works in class societies to get rid of the female labor force in the market. For her, the capitalist organization produces a hierarchy between sexes as a kind of expropriation and determines the roles that a woman plays in the family (sexuality, reproduction and child socialization). Thus, the condition of the woman, both as the “worker” figure and the “inactive” figure, are built from a hierarchy of sex differences (SAFFIOTI, 1969). This book became a reference for the Brazilian academic reflection on the feminine condition in class societies and for feminist groups that emerged in that period throughout the country and influenced a number of scholarly feminist approaches.

The support given by United Nation for holding the Conference on Brazilian Women in The International World Women Year (1975) led Brazilian feminists to approach the discourse on women’s right and to include it in feminist political strategies. The close involvement of the feminist movement, which was becoming bigger and more transnational, in national and international human rights networks has strengthened feminist advocacy, which from then on started to condemn discriminatory Brazilian laws and to propose new ones, using human rights as a tool to denounce and demand investigations into women rights violations (PITANGUY, 2002; BARSTED; HERMAN, 1999). It is in this context that the Brazilian feminist critical legal studies will come about.



Silvia Pimentel, author of the book *A evolução dos direitos da mulher* (1978), is one of the first feminist legal scholars to use the feminist approach in the Brazilian academy. In this work, she analyzes the evolution of women's rights in Brazil and around the world. She is mainly concerned with researching the rights granted to women by Law, analyzing the position of women in the social structure, and finally reflecting on axiological aspects of gender rights equality and the level of participation of women in society. She develops her arguments at legal, sociological and axiological levels, with few references to international feminist hot topics of the time. For example, when she reflects on equality before the law, she reviews the constitutional debate without referring to discussions about equality and difference issue, an important subject discussed among global north theorists of the same period.

In the 1980s, concomitantly with the struggle for democracy and for a constituent assembly, Brazilian feminists started to fight for rules that could guarantee gender equality in the new Constitution⁷.

Silvia Pimentel's other book *A mulher e a constituinte* (1985) is a result of her activity inside the feminist movement for democracy in Brazil. In this work, a comparative study on women's rights in the Brazilian constitution and other countries provides the basis for some proposals for changes in the constitution to strengthen democracy. Referring to the legal equality principle she states:

The article 153 from the current constitution is insufficient: 'all are equal before the law without distinction of sex [...]'. It is important that the new Constitution affirms that women and men have the same rights regarding family, social, economic, political and cultural life (PIMENTEL, 1985, p. 11).

This passage expresses the 1980s Brazilian feminist movement concern about the relevance of including the demands of women in the new constitution for a proper democratic society.

Pimentel also affirms that legal equality (legal recognition) alone is not enough to change women's condition in Brazilian society; it would be also necessary to guarantee a set of rights such as the right to public daycare, labor rights and other measures that could introduce social tools for the socialization of domestic and care activities. Collective laundries and restaurants, for example, would be a necessity that should be guaranteed by the new Constitution (PIMENTEL, 1985). This would allow

⁷The strong feminist performance in the Brazilian constituent assembly was known as Lipstick lobby.



decent working conditions for men and women, who would then be less concerned with the conditions of childcare and work relations. In these proposals for the new Constitution, we can clearly see socialist feminism's influence on Pimentel's thinking⁸.

Similarly, Florisa Verucci and Ediva Marino in *Os Direitos da mulher* (1985) analyze the condition of women in many legal fields and criticize civil, criminal, labor and social security law that still discriminate women. The proposal of the book is to provide a perspective of the development of women's rights in the decade, [but that] is hampered by the fact that "a decade in law is insignificant" (VERUCCI; MARINO, 1985, p.5). In this period, they call attention to the promulgation of the law on divorce and the draft bill on married women included in the new civil law project. Regarding the proposal to amend the penal code, the authors reflect on feminist ideas and affirm:

All feminists agree that rape can no longer be considered a crime against accepted behavior and should be penalized as a crime against persons, as in the most advanced legislation, such as Italian and Swedish ones, where rape, in addition to being considered a qualified aggression, cannot be defended with the classic claim that the woman provoked the crime. (VERUCCI, MARINO, 1985, p.5).

As we can see, the authors harshly criticized the proposal for a new penal code that would continue treating rape as a crime against "accepted behavior". They also argued that physical violence against women practiced by their partners in their domestic setting should be treated by law and by authorities as a bodily injury crime rather than as a private matter between couples, leaving them unpunished. They also affirmed that the beating of women is not adequately dealt with either by law, Brazilian society or even by the police, who would not take this kind of reporting seriously.

Considering women's homicide as a crime of passion and claiming legitimate defense of honor as a legal strategy to free criminals from conviction is something that Verucci & Marino also strongly oppose.

Three remarks are clearly emphasized in Verucci & Marino studies, which are: a) the rejection of the framing of female homicide as crime of passion and repeal of the legitimate defense of honor thesis; b) the recognition of rape as a crime against persons and not as a crime against customs; c) a review of the treatment given by criminal law to bodily injury crimes, especially when committed by intimate partners against women.

⁸ It is also remarkable the influence of Heleieth Saffioti's thinking.



Without this, 'the so difficult equality', to quote Fanny Tabak and Florisa Verucci's phrase, would not be achieved.

Silvia Pimentel, Florisa Verucci and Ediva Marino writings expressly refer to the legal changes necessary to achieve legal and material equality between women and men. The law is seen as a tool for social change capable of transforming the legal status and the female condition. According to Fanny Tabak and Florisa Verucci:

The law may serve to extend the rights already recognized, to combat different forms of discrimination based on sex, to penalize violations of these rights and to punish attacks on women's physical, psychological and mental integrity. (TAKAK, VERUCCI, 1994, p.47).

According to this perspective, the Law is considered to be a path for concrete change, as it would effectively secure and broaden rights, serving as an instrument to fight discrimination and penalize violations. Legal feminism embraces a profound legal reform in all fields. According to them, the constitution should enshrine legal equality between women and men in all other areas such as civil, family and criminal law. At the same time that feminist legal scholars fought for equality in the new constitution, they also sought reforms, especially in civil and criminal law, as a strategy for dealing with violence against women. In the book *A mulher e o direito* (1987), Florisa Verucci takes up the analysis of women's rights and gives more attention to the issue of the barriers against the decriminalization of abortion in Brazil.

Specifically in the field of criminal law, Ester Kosovski may perhaps be considered the first feminist criminologist. In her 1983 book *Adultério*, she claims that it would be "patriarchal society's main taboo, one that persists in the legal prohibition of a man or woman having sex outside marriage" (KOSOVISKI, 1983, p. 24). She investigated the historical reasons for the criminalization of adultery and advocated its decriminalization. It is interesting to note that when Ester talks about family, marriage and divorce there is little reference to foreign feminist authors, revealing a reflection and theorization made from national issues, since adultery was an important topic to Brazilian women.

In addition to the national debate, Brazilian feminist legal scholars have also followed the feminism agenda on internationally recognized human rights, especially the sexual and reproductive ones. The works that exemplify this approach are: *Cladem: Mulher e Direitos Humanos na América Latina*, organized by Silvia Pimentel (1992) and



As mulheres e os Direitos Humanos, organized by Leila Linhares Barsted and Jacqueline Herman (1999).

From the 1990s onwards, some works started to highlight issues related to health, sexual and reproductive rights. This may be due to the interaction that took place in the process of mobilization around the constituent assembly, between feminists and social movements, activists and scholars that fought for a public health system. In addition, Brazilian feminists, unlike those of the global north, do not address the abortion issue as an individual and universal right, but as a public health problem because of the risks to women's health and physical and emotional suffering. Such framework, according to Bila Sorj (2002, p. 103), seemed to best fit the struggle for abortion decriminalization within Brazilian social reality, marked by social inequalities, and mobilize support and coalitions, especially between the left and important sectors of the Catholic Church, which share a social and political agenda with other social struggles. According to her:

The discursive strategy of the feminist movement avoids producing conflicts rooted in different systems of moral understanding, whose resolution tends to be a zero-sum game, precisely because of the doctrinal character that underlies them. The struggle for abortion in the country focuses mainly on arguments about social justice and, to a lesser extent, on the affirmation of individual rights that are expressed in the sovereignty of individuals over their own bodies, from which the right to abortion is a necessary consequence.

This kind of approach on sexual and reproductive rights can be found in the following documents: *Direitos humanos, ética e direitos reprodutivos*, organized by Denise Dora and Domingos da Silveira (1998); *Mulher, Saúde e Cidadania: cuide da sua saúde e conheça seus direitos*, organized by Leila Linhares Barsted, Jacqueline Hermann and Ruth Mesquita (1997); *Cairo-Brasil: 5 anos de experiências relevantes em saúde, direitos reprodutivos e sexuais*, organized by the National Feminist Network of Health and Reproductive Rights (SOS-CORPO, 1999) and *Cadernos Themis - Direitos Sexuais*, organized by Denise Dora (2002). Most of these works were organized by authors affiliated to feminist NGOs founded in the 1990s⁹ and which, in the early 2000s, are articulated around feminist advocacy actions to create Maria da Penha Law.

⁹ For example, the works edited by CEPIA, AGENDE, SOS-Corpo e THEMIS.



Despite some affinities between foreign feminist theses and the Brazilian production¹⁰, the subjects addressed in these works were in tune with the national context. The critique of the discriminatory character of legal and political institutes is developed from analyzes that emphasize social rights and the need for the democratization of Brazilian society. These works must be understood in the context of feminist action outside the academic space of law. The pioneering feminist legal scholars mobilized the struggle for democracy and faced more specific issues such as childcare requirements, cost of living and employment. They sought to trace the legal elements of those rights, while explained the discriminatory nature of Brazilian law. In the 1970s and 1980s, some of the facets of the phenomenon of violence against women began to be considered in these studies.

The intellectual production presented above was essential to promote institutional changes for democracy and discuss the discriminatory character of Brazilian law. However, its circulation in the academic legal environment was limited. In Brazil, legal professions, whether in the public or private sphere, are historically consolidated as a field of male and white hegemony, drawing on the small contingent of women holding positions in legal careers and the values and types of knowledge that underpin Law and its professional practice. Feminists who attempted to influence academic production in the field of law faced several obstacles while theoretically opposing "white males" (using Saffioti's expression). However, feminist legal scholars were paving the way to build a feminist legal thought.

2. The debate on gender and violence against women

In the late seventies and early eighties, the issue of domestic violence gains momentum within social movements as well as feminist academic circles. For example, the murder of Angela Diniz by her partner "Doca Street" in 1976, shocked the country. However, defense allegations such as "legitimate defense of honor" and "killing for love" were effective to soften the conviction, which was harshly criticized by feminists. Therefore,

¹⁰ Given the Marxist formation of Brazilian feminists, it is also necessary to highlight the influence of the Russian and German revolutionaries Rosa Luxemburg, Clara Zetkin and Alexandra Kollontai.



the *slogan* “who loves doesn’t kill” was launched as a strategy to bring public awareness to female homicides committed by intimate partners.

Besides the “legitimate defense of honor” thesis, the allegations of “*soft rape*” or “*rape by courtesy*”¹¹ are other recurrent examples of strategies to acquit the defendant and condemn the victim in cases of sexual violence and female murder in legal actions between the 1980s and 1990s. For this reason, confronting violence against women and promoting changes in legal practices became important points in the Brazilian feminist movement’s agenda.

The creation of specialized police stations for women (DEAMs) can be identified as the first experience of a criminal policy supported by feminism. The São Paulo Women Second Congress, held in Valinhos in 1980, and the creation of women’s groups, such as *SOS Corpo* and *Centro de Defesa da Mulher* were very important feminist actions to increase public debate on violence against women. This discussion found resistance even among progressive sectors that were allied with feminists on other agendas. According to Maria Amélia Teles (1993, p. 131):

Until then, Brazilian women had remained silent about domestic violence. They boldly denounced the tortures and murders committed by the police, but omitted violence committed by their husbands or partners. Feminists denounced domestic and sexual violence without however showing concrete cases, such as a woman murdered by her partner or visibly battered. This way, journalists and leftist leaders claimed that Brazilian feminists only reproduced the agenda of the European, since this kind of violence would not exist in Brazil.

Maria Amélia Teles’s conclusion openly shows that the issue of domestic violence only gets credit when specific concrete cases explicit the violence suffered by Brazilian women. It also shows the influence of European feminists on their Brazilian counterparts, who, according to the press, “copied” the claims made by foreign feminists.

The relationship between the academy and activism was important not only to develop a theoretical understanding of violence against women, but also to criticize discriminatory legal effects and to formulate public policies. So, it was only in the late 1980s, following a significant growth in feminist academic research in many fields of

¹¹Among these works, we highlight the studies carried out by Ana Lucia Schritzmeyer and Valéria Pandjarian at the end of 1990s called *Estupro: crime ou cortesia?*



knowledge, that studies on gender relations and domestic violence gained centrality in the agenda of feminist legal scholars.

According to Miriam Grossi, Luzinete Minella e Juliana Losso (2006)¹², in the 1980s, the issue of domestic violence was much more visible in the feminist movement agenda, which considerably influenced the development of feminist academic production on this subject. Some scholars of this period are still important references on studies about violence against women¹³. Besides elaborating concepts, many of them have also done empirical researches on the functioning of special criminal courts, police stations and criminal expert institutes. Such studies often presented diagnoses and proposals for public policies.

Mariza Corrêa, in her works *Os crimes da paixão* (1981) and *Morte em Família: representações jurídicas e papéis sexuais* (1983), was who first criticized the use of the legitimate defense of honor thesis in cases of murders of women committed by their husbands as a legal strategy to acquit the defendant. Jaqueline Hermann and Leila Linhares Barsted (1995) examined criminal legal proceedings that involved murders and bodily injury crimes against women practiced by their intimate partners. They sought to identify aspects of the answers given by judges to the issue of domestic violence against women and how those answers could transform differences between sexes into social inequalities. According to them, legal decisions, especially about “crimes of passion”, are based on judgments about feminine sexual morality. Legal proceedings about crimes between partners would be defined by judgments about the woman, whether victim or offender: if she was a good mother, a good wife and a good house-wife. Therefore, “family” as an institution is often considered a legal good of more importance, value and worthy of protection than women’s lives. When a woman’s behavior threatens the family organization, there is a strong tendency to social complacency about her murder or aggression in the hands of her partner.

Other similar socio-legal studies also sought to denounce situations of violence against women and addressed the use of biased stereotypes in trials involving women and women's perceptions of the legal system. They were frequently done by

¹² The authors carried out a balance sheet on the expansion of studies on violence and gender in Brazil, based on the analysis of the study of postgraduate studies (theses and dissertations) and the conclusion of courses on gender and violence published between 1975 and 2005 in different knowledge areas.

¹³ Some of the authors we can mention include: Mariza Corrêa, Maria Amélia Azevedo, Marilena Chauí, Heleieth Saffioti, Paula Montero, Bila Sorj, Danielle Ardaillon, Heloisa André Pontes, Guita Debert, Matilde Ribeiro, Luiza Barrios, Edna Roland, Sueli Carneiro and Wania Santanna.



multidisciplinary research groups of feminist legal scholars, who were also involved in advocacy for changes in a discriminatory legal framework. Some of these studies are: *Quando a vítima é mulher: análise do julgamento de crimes de estupro, espancamento e homicídio* (1987) by Danielle Ardaillon and Guita Grimm Debert; *A figura/personagem mulher em processos de família* (1993), by Silvia Pimentel, Beatriz Giorgi and Flavia Piovesan; *Percepções das mulheres em relação ao direito e à justiça* (1996) by Silvia Pimentel and Valéria Pandjarian.

The academic discussion on violence against women in the 1990s, compared to the 1970s and 1980s, presents a greater theoretical understanding. The aggressions and homicides committed against women by their partners started to be seen as a sort of violence and, therefore, should be legally known as a human right violation. Then, the research carried out in this area started to present types, meanings and concepts on violence against women along with changes in feminist politics and the rise of others analytical categories such as: gender, body, sexuality, race, ethnicity, social class and age.

While in the 1970s, for example, we only considered violence against women homicides committed by husbands, partners or lovers, from the 1980s on, with feminist NGOs and specialized police stations for women, we started to recognize other kinds of violence in domestic or marital relationships, and later, to discuss other subjects such as sexual harassment, child abuse and ethnical violence (GROSSI, 1994). The homicides committed by intimate partners against women were now called by the Brazilian feminists *feminicide*¹⁴, in contrast with the legal definition: “crimes of passion”.

Criminal law was repeatedly criticized by feminist legal scholars. Florisa Verucci wrote in the foreword of Maria Amélia Azevedo’s *Mulheres Espancadas*:

In criminal law there is no difference between sexes for bodily injury crimes but in effect, this crime is not punished when it committed by men against women. Domestic homicide can no longer be called “crime of passion” and it must be seen, which is in the most cases, as a qualified crime against a defenseless person. Rape must also be considered in the case of couples, as it is in Italy and Sweden, for example. This would allow women to report at specialized police stations [...]. In criminal law, we are still far away from equality and respect, much more than in other legal fields (VERUCCI, 1985, p. IX).

¹⁴ As an example, we can cite Suely Almeida (1998).



Floris Verucci's discourse highlights two important points in this debate: on the one hand, legal equality must be built also in the field of criminal law. On the other hand, the difficulties of achieving this type of "equality" in this field seem to be greater than in others. Although not explicitly mentioned, it can be said that Floris Verucci's analytical efforts aim to make explicit the sexist nature of criminal law¹⁵.

In the 1980s, the issue of violence against women started to be addressed through a gender-based approach without turning back on the "woman" and "women" categories, though.

From a gender perspective, two interpretations on violence against women arise: The first, which identified with Marxism and radical feminism, understood male violence as a reflection of patriarchal and male domination¹⁶. The second, of a more relativistic nature, considered violence as part of domination/submission in gender relations (GREGORI, 1993; GROSSI, 1991).

Whether in academic environments or in social movement, the discussion among those two perspectives divided feminists. The first one, closer to sociology, is more often used by feminist legal scholars. But further research carried out by anthropologists and sociologists, such as Lourdes Bandeira, Mireya Soares, Lia Zanotta Machado, Bárbara Musumeci Soares and Eliane Brandão, sought to break up the dualism. Although the issue of violent men began to be discussed, there were not many studies in this area¹⁷ and very few male researchers took violence against women as an object of study.

The articulation between race and gender had already been considered in Lelia González studies from the 1970s. In the 1990s, it was present in approaches adopted by scholars linked to black women's lib such as Sandra Azeredo (1994), Edna Roland (1995), Matilde Ribeiro (1995) and Luiza Barrios (1995). Later, Sueli Carneiro (2003) emphasized the need for blackening feminism:

(A) For years, black women have been trying to extend the concept of violence against women beyond aggression and sexual abuse. The concept of racial violence would be a way of approaching actions that produce physical, psychological, developmental damage or deprivation.(...) Stories that sound more like echoes of the colonial period remain present in the social

¹⁵ Carol Smart in *The Woman of Legal Discourse* (1992) presents three elements for reflecting on law as something gender-biased.

¹⁶ See also Heleith SAFFIOTI (1987, 1994, 2004) and Maria Amélia AZEVEDO (1985).

¹⁷ Maria Regina Lisboa mentions that the first "Symposium of Man" organized by men and for men was held in October 1985.



imaginary. Renewed, they have new functions in a supposedly democratic social order in which the roles established for gender relations according to color or race, since the slavery period, remain intact. This tradition continues to legitimize specific forms of violence currently experienced by black women such as sexual tourism and trafficking in women. All these subjects claim a racial axis as a fundamental framework.

Studies along this line are: *As Mulheres e a Legislação Contra o Racismo*, by Leila Linhares Barsted, Jacqueline Hermann and Maria Elvira Vieira de Mello (2001); *Razão, 'cor' e desejo: uma análise comparativa sobre relacionamentos afetivo-sexuais "inter-raciais" no Brasil e na África do Su*", by Laura Moutinho (2004) and *Violência contra a mulher e saúde: um olhar da mulher negra*, organized by Casa de Cultura da Mulher Negra (2004).

At the beginning of the 21st century, studies on domestic violence play an important role in the feminist agenda. The previous feminist position of denouncing impunity for violence and legal system disregard for violence against women raised concerns about proposals of change in law. This change occurred due to three important facts in this period: a) the creation of the first specialized police stations for women in 1985; b) the successful feminist intervention in the National Constituent Assembly, which resulted in a number of proposals approved in the new Constitution¹⁸ and c) the emergence of non-governmental women's rights organizations¹⁹.

At the end of 1980s, feminists started to do research to evaluate and monitor specialized women's police stations and other public policies designed to curb domestic violence. The idea was to encourage reports on domestic violence by means of a more welcoming environment, counting on qualified female professionals to conduct required criminal procedures. Also, this would mean an opportunity to give visibility to the issue and show State action through the criminal liability of the aggressors. The expectation was that women who suffered violence would have access to proper services and therefore denounce abusers, who would be exemplarily punished. Despite being a public police supported by the feminist movement, several further studies pointed out difficulties to accomplish the goals established²⁰.

¹⁸According to Cecília Santos (2010), the National Council of Women's Rights played a significant role in incorporating 80% of the feminist proposals in the 1988 Constitution Assembly.

¹⁹For more information about the changes in the women's movement and the creation of NGOs, see Miriam Grossi (1998).

²⁰See Bárbara SOARES, 1996; Jacqueline MUNIZ, 1996; Lia Zanotta MACHADO, 2001 and Wânia Pasinato Izumino (1998).



On the other hand, the transnational activism of the feminist movement in the 1990s around international human rights treaties made foreign feminists come closer to Brazilians. Alda Facio, Carol Smart, Rebecca Cook, Kimberlé Crenshaw, Virginia Vargas, Gladys Acosta, Lorena Fries are some of the most recurring foreign authors in works produced by Brazilian feminist legal scholars at that time.

In the mid-2000s, the set of studies on violence against women developed for almost thirty years gave basis for feminist advocacy works oriented to approve Maria da Penha Law, which proposed an important change in legal approach on violence against women. This process gave wing to the theoretical-critical approaches to law and institutions of the legal system through varied feminist perspectives (SEVERI, 2018, CAMPOS, 2017).

3. Violence, gender and recent feminist publications in the field of law

Feminist publications - even the production of the authors here presented are absent from most university libraries as well as references in professional and scholar works, whether by teachers, students and Brazilian courts of law. This production began to expand and become more visible in the legal field only in the last decade, with the creation of Maria da Penha Law, which became one of the most recurring topics in the studies on violence against women (SEVERI, 2018).

This is not a coincidence: Maria da Penha Law (Brazil's Federal Law 11340) is the result of a long trajectory of feminist movements and advocacy in the country; it reinforces the duty of the Brazilian State to guarantee women's human rights in accordance with international treaties Brazil was already bonded to; it brings several legal institutes and novel concepts into Brazilian legislation; it also introduces the concept of gender as a category for legal analysis.

Although in progress for at least thirty years, the efforts to comprehend the law, dispute its meanings and set a feminist standpoint in critical legal studies has become more prominent in Brazilian legal academy only in recent years, through the efforts of a wide field of female activists and authors from varied theoretical strands.

This recent production has been bringing visibility to previously little known, or even denied, bibliography on the history of feminism and feminist legal critiques as well



as to the vast production on gender and feminism in other fields of human and social sciences.

One of the main books that face a considerable part of these challenges is *Lei Maria da Penha comentada em uma perspectiva jurídico-feminista*, organized by Carmen Hein de Campos, as coordinated by CLADEM / Brazil - Latin American and Caribbean Committee for Women's Rights defense. Most of the texts in this book were produced by members²¹ of the feminist NGOs consortium that drafted the bill of Maria da Penha Law and by the legal minds who took part in the debates about the creation, interpretation and enforcement of this law in accordance with the purposes that led to its elaboration. The texts also analyzed Maria da Penha Law from a women's human rights framework and through the perspective of the social movements that fought for its approval.

The first section of the book presents data about the trajectory of the feminist struggle for the approval of the Maria da Penha Law in Brazil. It analyzes the legislative process that resulted in the passing of this law, the legal dispute over the definition of its final text and the main challenges for its legal interpretation and practical application. The second section is composed of articles that studied each of the legal device in Maria da Penha Law, considering the social and legal reasons for which they were established. In dialogue with feminist theories on Law produced all over the world, the book broke new ground for the construction of a feminist critique on the main criminological paradigms and juridical-penal hegemony in the Brazilian academy. It also provided an interpretation of Maria da Penha Law that was more attuned to women's human rights.

The analysis of Maria da Penha Law, or even laws on domestic violence in general, is an usual subject in feminist legal studies. Many of these approaches point to the strengthening of the dialogue between Brazilian, foreign feminists and other critical legal approaches. An important part of this production also calls attention to the link between the problem of violence against women and the racial issue.

This kind of approach can be seen in these works: *Discursos Negros: legislação penal, política criminal e racismo*, organized by Ana Flauzina, Felipe Freitas, Hector Vieira and Thula Pires (2015); *A situação dos Direitos Humanos das Mulheres Negras no Brasil:*

²¹ Some of the names include: Carmen Hein Campos, Leila Linhares Barsted; Myllena Calasans de Matos, Iáris Cortes, Rosane M. Reis Lavigne, Sílvia Pimentel, Wânia Pasinato, Fabiane Simioni, Rúbia Abs da Cruz and Ela Wiecko V. de Castilho.



violências e violações, organized by Jurema Werneck and Nilza Iraci (2016); *Tramas e dramas de gênero e de cor: A violência doméstica contra mulheres negras*, by Bruna Cristina Jaquetto Pereira (2016); and *Da expectativa à realidade: a aplicação das sanções na Lei Maria da Penha*, by Luanna Thomaz de Souza (2016).

This production, unlike the initial frameworks that emphasized exclusively criminal law or criminological issues, brings new readings of Maria da Penha Law that call attention to the racial dimension in domestic and family violence against women.

In this sense, Bruna Pereira (2016) makes a point of the silence about the racial issue in studies on violence against women in Brazil. She underlines that it is extremely necessary to include race/ color as an analytical category in studies of domestic and family violence, since Brazilian women are constituted by, and through, racialization processes. Feminist studies from the 1980s and 1990s succeeded in turning the domestic violence issue into a public debate, but it is already essential to discuss other aspects of this kind of violence that happens in domestic environment from frameworks that take into account the interlock between racial, gender and social class axes.

Ana Flauzina (2015), for example, in framing domestic violence through gender and race categories, highlights other effects of racism in the interpretation and application of Maria da Penha Law, which weaken its goals and deepen the vulnerability of black bodies before the criminal justice system. According to her,

Unfortunately, the discussions on Maria da Penha Law have not given attention to these features since, from a sexist and racist logic reinforced by the aggressors, they have silenced important aspects of psychological and physical abuses against black women. In this sense, the definition of what is violence against women in domestic and family settings does not consider the aggressions based on race as an important aspect that must be analyzed not only to frame the crime with accuracy but also other actions addressed to the aggressors, such as groups of reflection. As we can see, the demand for women's protection against domestic violence is based on whiteness, leaving aside those whose lives are shaped by racial terror in their lives (FLAUZINA, 2015, p. 138).

The embracing of the feminist perspective in different fields of Law became more frequent in later works. They also gave more attention to other dimensions of gender violence. This is the case of *Olhares Feministas sobre o Direito das Famílias Contemporâneo*, by Lígia Ziggotti de Oliveira (2016); *Práticas de justiça em direito de família: estudo de caso sobre a guarda compartilhada*, by Fabiane Simioni (2017); *Feminicídio - uma análise sociojurídica da violência contra a mulher no Brasil*, by Adriana Ramos de Mello (2016);



Criminologia feminista: teoria feminista e crítica às criminologias, by Carmen Hein de Campos (2017); *Criminologia feminista: novos paradigmas*, by Soraia da Rosa Mendes (2017); and *Lei Maria da Penha e o projeto jurídico feminista brasileiro*, by Fabiana Cristina Severi (2018).

By the end of the 1990s, most feminist legal minds were strongly bonded to feminist movements; only a few of them were in an academic environment. But these recent works reveal that feminist studies on Law are now professionalized as they have started to be done by scholars who, although relatively close to women's movements providing specialized service in courts that deal with violence against women, are researchers or teachers formally linked to law schools or research groups in this area.

This considerable change deserves special attention because both science and Law are places that are historically addressed to men. This is not to say that women had been formally excluded from those fields and that barriers do not exist anymore. But there is a need to analyze in greater depth the breaches that allowed those women to be in those places despite the resistance to their presence.

Recently, works concerned with legal education in a gender perspective have been growing. For example, the book of a feminist activist, Maria Amelia Teles, entitled *Os cursos de direito e a perspectivas de gênero*, was released by a legal commercial publisher (*Sergio Fabris*). It focuses on presenting the main concepts, theoretical frameworks and historical records to enable professionals to adopt a gender perspective while analyzing law, improving the implementation of women's human rights. There are also other works dealing with feminism and legal education (or popular education in law) such as: *A violência de gênero nos espaços do direito*, organized by Vanessa Dorneles Schinke (2017), *Manual para Promotoras Legais Populares – PLPs*, organized by Suelaine Carneiro and Tânia Portella (2013) *Introdução crítica ao direito das mulheres*, a book organized by José Geraldo de Sousa Júnior, Bistra Stefanova Apostolova and Lúvia Gimenes Dias da Fonseca, in 2011, with other books of the collection *O direito achado na rua*.



Conclusion

Our research so far shows that former feminist legal studies were not in the center of the whole scholar production in law. We also highlight that in this first moment these studies are strongly linked with the agenda of feminist movements, in particular, the demand for women's rights. In this sense, they were part of the feminist movement's strategies to create new legal, political and institutional tools to confront violence against women in Brazil.

Since the mid-2000s, feminist legal studies have been getting more visibility and expanding their research proposals, subjects and theoretical-methodological approaches, with greater dialogue with transnational feminism and other theoretical-epistemological frameworks.

If feminist critical thought appears today as something new in the academic field and impose itself as a an innovative theoretical trend with a strong critical potential, that is because a number of pioneer feminist legal scholars had already paved the way. This is not only due to the originality of their analysis, but mainly the intellectual model role they took on as both thinkers and feminist activists that fought for legal changes that were extremely important to enforce women's human rights and confront violence against women.

Maristella Svampa uses the image of an amphibian to explain this particular ability of being, at the same time a scholar, a researcher and a professional, since this kind of animal lives in different worlds, with different solidarities and bonds. Unlike, for example, the chameleon - which adapts to different situations, according to the type of interlocutor - "the so called amphibian scholar states her own knowledge and skills, developing a greater understanding and reflexivity on the different social realities and on herself". The main challenge to the amphibian feminist legal minds was thinking creatively "the crosses, the bridges and the linkages that are possible to establish between these very different universes", even if they are fleeting and precarious. The effects of this work, in our opinion, can already be felt.



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