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Global economic governance and gender inequality: an agenda for the Brazilian legal research

Governança econômica global e desigualdade de gênero: uma agenda para a pesquisa jurídica brasileira

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Abstract

This article explores a subject, which is still absent in Brazilian legal research: the intersection between law, global economic governance, and gender inequality. It critically examines how international organizations, mainly the World Bank and the International Monetary Fund (IMF), are gender mainstreaming their recommendations on economic rules and policies. The article also builds a theoretical framework that draws on two institutionalist approaches: feminist and legal institutionalism.

Keywords: Economic Law; Gender; Global economic governance; Institutionalism.

Resumo

Este artigo explora a intersecção entre direito, governança econômica global e desigualdade de gênero, tema ainda pouco tratado pela pesquisa jurídica brasileira. O texto investiga de forma crítica como organizações internacionais, especialmente o Banco Mundial e o Fundo Monetário Internacional (FMI), têm incorporado a estratégia de transversalização de gênero em suas recomendações de regras e políticas públicas econômicas a países membros. O artigo também constrói uma proposta de arcabouço teórico destinado à contribuição própria da pesquisa jurídica, que se vale da combinação de duas correntes do institucionalismo: o feminista e o jurídico.

Palavras-chave: Direito econômico; Gênero; Governança econômica global; Institucionalismo.



1. Introduction¹

In 2020, the COVID-19 pandemic exposed women's precarious economic security. Worldwide, 740 million women work in the informal economy and their income has decreased by 60% during the first month of the global crisis (UN Women, 2020, p. 5). “Feminized” economic sectors were the ones hit the hardest. UN Women estimated that 72% of domestic workers, 80% of whom are women, had lost their jobs as a result of COVID-19 (UN Women, 2020, p. 5). Female workers also faced bigger risks of infection: 70% of the health and social care workforce is female, with a significant presence in the first line of combat against the pandemic (UN Women, 2020, p. 5).

The COVID-19 crisis also tends to further increase female poverty and gender disparities. Globally, 247 million women, with the age of 15 and over, will live on less than US\$1.90 a day in 2021, in comparison to 236 million men. In 2030, they will still be most of the population living in extreme poverty (UN Women, 2020).

Women are, however, the backbone for the post-COVID-19 economic rebound. For decades, international organizations have argued that gender equality generates economic growth. This idea is supported by different agencies of the United Nations, the Organisation for Economic Co-operation and Development (OECD), the World Bank, and more recently, also the International Monetary Fund (IMF).

International organizations are extremely powerful actors. They influence legal regimes and national public policies, both for their ability to produce specialized technical knowledge in a specific area of cooperation (money and finance, investment, or trade), and for managing institutional mechanisms, which can enforce member states to adopt certain rules and practices, as part of its assumed international obligations. In a highly complex and

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globalized economy, national legislators alongside economic organizations shape what is, and should be, the *content* of economic law. The law shapes and is shaped by economic ideas.

The World Bank and the IMF, for instance, may influence in the adoption of certain gender-sensitive rules and practices through technical assistance, or by integrating the equality perspective as a conditionality to financial support. Both entities are almost universal in terms of membership. 190 countries are part of the IMF. The World Bank group, among its various organizations, has the same number of countries. The ability of these institutions to influence women's lives in different national economies is, therefore, significant. Nonetheless, a careful and critical analysis of the discourse and of ideas about gender, promoted by those entities, needs to integrate the research on the formation of a gender-sensitive economic law. Discourses and ideas are not neutral. The law shapes and, at the same time, is shaped by those ideas.

This article aims to contribute to an agenda still underexplored by Brazilian legal research: the nexus between global economic governance and gender equality. Following in the steps of Vitale and Nagamine (2018), I intend to provoke a reflection on the connection between gender, law, and international relations, mainly in the field of economic regulation. The purpose is to explore the treatment of gender equality by international organizations destined to promote global cooperation, particularly the World Bank and the IMF, and suggest ways to think about the contribution of Brazil's own research.

Gender equality becomes a pressing issue in the context of the COVID-19 crisis and its unproportional impacts, both social and economic, on women. Furthermore, the contextualized analysis of the inequality problem in Latin America and, particularly, in Brazil, is indispensable. The region is one of the most violent against women. Amongst the 25 countries with the highest rates of femicide, fourteen are in Latin America (United Nations Women, 2017). Even though countries in the region have seen higher gains in women's workforce participation over the past two decades (Novta and Wong, 2017), current economic conditions are not as favorable as they were in the 2000s.

In this context, legal research plays a fundamental role. Jurists are trained to observe and construct descriptive and causal inferences on the functioning of institutions and to analyze underlying power relations (political, economic, social). In Brazil, however, the debate on gender has advanced more sharply in research on human rights and criminal law, and more



narrowly in the field of economic law, both from a national and international point of views. The law, however, does not only *regulate* economic relations. It *constitutes* these relations, which may prove to be discriminatory towards women.

This article builds considerations on the significance of this agenda, based on an analysis of the literature in social sciences and the identification of a gap in legal research (Section 2); how the actions of international organizations shape economic law and impact gender (in)visibility in market relations in national economies (Section 3); and, finally, how the political economy literature on institutions can be critically appropriated by jurists who aim to explore gender inequality in the global economic order, especially from the feminist institutionalism point of view, which can be a starting point for empirical reflections (Section 4). One way to advance in the field of legal institutionalism is to incorporate the “lens” of feminist institutionalism to explore the functioning of global organizations, as well as their role and effective power in shaping the content of national economic law. The way in which these entities are *co-producing* rules, making (in)visible gender inequalities in national economies, matters.

2. Law, gender, and global economic governance: an analysis of the literature in social sciences

Global economic governance covers a set of institutions, rules, and procedures that aim to sustain international economic ties between States, individuals, public and private organizations (Duran, 2020). These are structures intended for cooperation and coordination of actions, which are responsible for managing cross-border relationships. In the economic sphere, multilateralism, which aims to legally structure global relations, is a paradigm that developed, above all, since the end of the Second World War. International organizations were established to monitor and manage a set of rules to frame the behavior of States in different areas. The 1944 Bretton Woods Agreement, which established the World Bank and the IMF, is a fundamental convention that multilaterally rules two pillars of the global economy: (1) investment and development; and (1) money and finance, respectively.



In addressing inequality between women and men, the way in which international organizations *structure* their ideas, policy recommendations, and legal rules matter. Ideas and narratives shape how the world economy should function, what can be recognized as a social problem, and what role national and global institutions play in providing legal and political solutions to those problems (Kennedy, 2018). Ideas and conceptions carry the critical effect of directing and, at the same time, restricting the political action of organizations, whether they are local or transnational. Ideas form the content of the law. “Stalled revolution” is the term used by the World Bank to describe the process of women's empowerment in Latin America. The reduction of gender discrimination in the access to education and employment has not been accompanied by a decrease in wage inequality and violence against women (World Bank, 2018). The female influx in the labor market also did not bring a more equitable division of care at the domestic space. There is a “double burden” for Latin American women: compared to men, they spend more than three hours a day on household chores and earn, on average, 10% less (World Bank, 2018).

In those economies, the economic integration of women is also highly influenced by social, cultural, and religious issues. Gender is a socially constructed conception and suggests expectations and cultural assumptions about the behavior, attitudes, personality traits, and physical and intellectual capabilities of men and women, based solely on their gender identity (Paragraph 14, Committee on Economic Rights, Nations, General Comment Nº. 16, 2005).

With the growing movement of religious conservatism in Latin America, international organizations that support the visibility and empowerment of women need to be the focus of analysis and scrutiny also by legal research, notably regarding their impacts on the local legal system and women's individual rights.

Particularly, the IMF is an organization repeatedly accused of implementing “fiscal austerity” policies, which aim the strict control of public expenditure. The World Bank and the IMF structural adjustment programs were designed with the purpose of reducing fiscal imbalances in the countries that receive their financial support. This type of program is conditional on receiving funds from those institutions. Generally, the IMF is responsible for implementing stabilization policies (notably, fiscal, monetary, and financial market regulation), and the World Bank is responsible for microeconomic adjustment measures, which aim to adapt the legal system and economies of developing countries to a free-market



orientation and greater global integration. Those programs may include measures to control public spending, privatization, and deregulation of local economic sectors, as well as the reduction of trade barriers with other member states.

In the 1980s, the United Nations Children's Fund (UNICEF) published one of the first analyzes emphasizing the impact on women and children in Latin America caused by structural adjustment programs promoted by the IMF and the World Bank (UNICEF, 1987; Cornia, Jolly and Stewart, 1987). Women were faced with the heavy burden of absorbing the effects of the sovereign debt crises in the region by providing unpaid care. As the State reduced its role in promoting social and economic rights, supported by fiscal policy, women increased their burden of activities in the domestic sphere, without adequate protection by law.

Over time, the literature in political economy seems to have advanced more in the empirical assessment of gender inequalities than works produced in the field of law. Different studies indicate that those international organizations did not take into account the impact on women's well-being and their rights in structural adjustment programs during the 1980s and 1990s, both in Latin America and Asia (Detraz and Peksen, 2016; Neaga, 2012; Yoo, 2011; Campbell, 2010; Lingam, 2005; Ali, 2003; Aslanbeigui and Summerfield, 2000; Sadasivam, 1997; Elson, 1992; Benería, 1992).

Research on law in Brazil has, in particular, progressed in embracing a gender perspective on issues related to human rights and criminal law (e.g., Machado, Bandeira and Matsuda, 2018; Gomes, 2018; Ávila, Seixas and Sposato, 2018; Vitale, Nagamine and Souza, 2018; De Jesus, 2016; Biroli, 2016). Nonetheless, the gender mainstreaming agenda in Brazilian research in economic law (national, regional, or international) is still underdeveloped (with certain exceptions, e.g., Bona, 2019; Silva, 2018; Cardia, 2016; de Mattos Pimenta, 2015), especially in the analysis of work developed by international organizations.

In the field of international political economy, research works are thriving and they are expanding their reach (Elias and Roberts, 2018; Waylen et al., 2013; Caglar, Prugl and Zwingel, 2013) and improving their methodologies (Ackerly, Stern and True, 2006). The groundbreaking work of Esther Boserup (1970 [2007]), discussing the role of women in agricultural and industrial development, was crucial to inaugurate reflections on the intersection of gender and political economy in the 1970s.



In the development of this disciplinary field, the concept of “social reproduction” was key to expand the possibilities of literature analysis (Rai, 2013, p. 268). This concept challenges the division between public and private spheres. It points out that women bear the burden of unpaid work in reproduction and maintenance of human resources in order to sustain the development of national economies. Despite that, this work is invisible to the calculation of the Gross Domestic Product (GDP) and to public accounting (Waring, 1988). Labor that does not generate profit is not considered production, i.e., *it has no economic value*.

Value is, therefore, a concept reduced to price. Underlying this approach of housework is a subjective theory, based on the idea of utility: it has value what it is priced by market institutions (Mazzucato, 2018, p. 93). Social reproduction, carried out mainly by women in the domestic sphere, is excluded from capitalist production. In the economic space, thus, women tend to benefit less from the legal protection granted to private relationships, such as labor rights, social security rights, contracts, among others, compared to their male peers.

In the context of international monetary and financial governance, critical reflections in the political economy literature have explored the effects of regulations and practices on gender equality. For example, relevant work has been developed on gender inequality produced by unconventional monetary policies (Young, 2018) and the role of women in the flow of international remittances (Kunz, 2011). There are studies on discourses and controversial development practices promoted by the World Bank on gender inequality (Calkin, 2018; Bedford, 2013; Caglar, 2013; Razavi, 2013). However, the processes of development and internationalization of gender-sensitive ideas at the IMF, as well as their practices, have not yet been systematically explored by literature, both in political economy (as far as I know, except for Coburn, 2019 and Berik, 2017) and in law. Particularly, analysis on the impact of these conceptions on the shaping of national legal regimes are practically non-existent.



3. Law and Global Economic Governance: How the World Bank and the IMF structure gender-sensitive rules and why does It matter to jurists?

There are different global narratives on gender. Those legal concepts tend to produce very concrete social effects, affecting the actions of women locally. For instance, the 1966 United Nations International Covenant on Economic, Social and Cultural Rights reproduces the gender division in public and private spheres. In its 7th article, the Covenant establishes the right to equal pay for equivalent work. Given that the majority of women in the world are responsible for unpaid work in the domestic sphere, they tend to enjoy limited benefits as subjects of rights guaranteed by this Covenant (Charlesworth and Chinkin, 2000, p. 238).

From a distinct angle, the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) emphasizes women as autonomous rights holders. They are not treated by that legal document as actors in their respective roles in family and in society, functions that are also rooted in the conceptual separation between the domestic space in regarding to the public one. However, CEDAW is better equipped to deal with gender hierarchies produced in the private sphere (Zwingel, 2013, p. 114), compared to those reproduced by global economic regimes.

In 1995, the Beijing Platform for Action, ratified by all United Nations member states, constituted an international legal milestone for women's empowerment. The gender mainstreaming strategy was established with the goal to achieve equality. The gender mainstreaming is the process of:

“assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. [...] The ultimate goal is to achieve gender equality.” (Economic and social council, 1997, A/52/3.18)

The “global diffusion” of this strategy (True and Parisi, 2013; True, 2003) was welcomed by UN agencies, the OECD, the World Bank, and the IMF. Based on the concept of mainstreaming, different rules and public policies were formulated by those organizations, which were then recommended to member states.

At the World Bank, the embrace of gender mainstreaming strategies began in the late 1990s. A convergence of social pressures contributed to this embrace: the change in the Bank's mission to provide loans with the aim to reduce poverty, the active presidency of



James Wolfensohn, and the role of feminist activists, internal and external to the institution (Calkin, 2018).²

Within the IMF, on the other hand, the visibility of women is a relatively recent phenomenon. The Fund only recognized gender equality as a focal point for macroeconomic rules and policies in 2013, under the leadership of Christine Lagarde.³

“When women do better, national economies do better” (Lagarde, 2013). Lagarde inaugurated a new statement for the institution: gender equality is relevant to macroeconomic stability. From then on, the Fund started to support “women’s empowerment: an economic game changer” (Lagarde, 2016). Since 2019, under the Kristalina Georgieva leadership, this agenda tends to continue to be the focus of attention for research and policies produced by the organization.

Both the World Bank and the IMF have contributed significantly to raise awareness on gender inequality at local levels. Both provide compelling data and analysis on the impact of inequality in developed, emerging, and developing economies (e.g., World Bank, 2018; Kolovich, 2018; Novta and Wong, 2017; Stotsky, 2016; Christiansen et al., 2016; Fragoso and Enriquez, 2016; Gonzales et al., 2015; FMI, 2013, p. 50-54). The “Women, Business and the Law” *ranking*, which aims to measure existing inequality in laws, is one of the most relevant instruments of the World Bank. It is a dataset, which identifies barriers to women's economic participation, and encourages legislative reform by member countries.

Intellectual authority is a powerful tool, and it is well handled by those institutions. On the one hand, the use of macroeconomic expertise tends to “resonate” locally, since the main dialogue channels between those organizations and national authorities are the ministries of finance and planning, central banks, and secretariats specialized in economic areas. Those entities share the same “grammar” as local authorities: the language of macroeconomics.

² The IMF feeds a special webpage dedicated to the dissemination of studies and data on gender equality: <https://www.imf.org/external/themes/gender/>

³ At the first annual meeting of the IMF and the World Bank, in which she participated as the new managing director of the Fund, K. Georgieva recorded an interview with Ravi Agrawal from Foreign Policy Magazine. The main topic of conversation was gender inequality and barriers to women's career growth. The podcast is available at: <https://www.imf.org/en/News/Podcasts/All-Podcasts/2019/11/02/md-gender-equality> [last visit on May 30th, 2020].



On the other hand, legal and policy narratives constructed by international institutions are not neutral. Those entities embrace certain conceptions and assumptions on the meaning of gender and certain social or economic roles assigned to women. Those ideas produce real effects. Stereotypes may be socially reinforced and produce undesirable results from public policy and rules. For example, the idea of equal pay places men's performance as a threshold for women's pay. If the community where economic relations develop is poor, or if male representation is reduced in sectors marked by feminization (such as domestic service), the effect of the rule may be dangerous or irrelevant. In the first one, the tendency is to reinforce local poverty. In the second one, the narrative does not contribute to protecting women's rights.

In 2006, the World Bank launched an action plan on gender, creating the slogan “gender equality as smart economics”. Institutionally, contrariwise, the Bank tends to construct the identity of women as “mothers”, who take care of their children *and work* (Caglar, 2013, p. 261). Women are thus economic actors, who are assumed to be altruistic and who invest in daughters and sons, thus contributing to the accumulation of human capital. However, policy interventions focused on “mothers” and “families” can make homosexual relationships invisible and, at the local level, reinforce ideas of “normative heterosexuality” (Bedford, 2013, p. 245) and religious conservatism. In Latin America, this should be a point of special attention.

Regarding the bankruptcy of a financial institution (Lehman Brothers), which served as one of the triggers for the 2008 global crisis, Christine Lagarde once stated that if the institution had been managed by the “Lehman Sisters”, instead of the Lehman Brothers, “the world might well look a lot different today” (Lagarde, 2018). The IMF former Managing Director assumes, therefore, that women are more conscientious and cautious investors compared to men.

Before 2013, IMF documents hardly referred to the word gender. The Fund focused primarily on identifying women's job market participation and issues related to income inequality (Bretton Woods Project, 2017). In 2014, the expression “macro-social” was added to the operational guidelines for designing political conditionalities for the Fund's financial aid (IMF, 2014). The following year, the IMF formally began to examine gender inequality as a “macro-critical” issue.



The macroeconomic concept of “gender” was also added to the guidelines destined to the institution's staff when producing periodic Article IV reports (IMF, 2015). Those reports periodically evaluate the macroeconomic policies and the institutional environment of member states. IMF staff undertake missions to review and analyze policies alongwith government representatives. As part of this mission to oversee the global financial system, the Fund provided strategic technical assistance to 42 countries on gender inequality (IMF, 2019).

However, the Fund and World Bank narratives on equality tend to reveal the flip side of gender visibility: the *invisibility* of intersectionality, that is, how different aspects of social, racial, and political discrimination intertwine with gender. It is, nonetheless, the invisibility of several significant aspects of women's lives.

There are factors that unite and divide women, and they must be considered by rules and public policies. The unequal distribution of power between women and men, in public and private spheres, is a common problem across different countries and regions, although there are differences in terms of degree. After all, there are factors that separate women and they are related to age (family responsibilities, access to or control over financial resources, different interests and life goals), social class and economic position (access to financial resources and credit, access to education, workers in urban or rural areas), race and ethnicity (white, indigenous and black women suffer different constraints), family structure (homosexual or heterosexual families, female-headed families, multigenerational families), nationality (migrant or native workers), culture and religion (religious values and conceptions of women's role in the family and society), and sexuality and gender identity (hetero, homo, and trans have different sets of opportunities). Intersectionality, however, seems not yet be an integral part of the global economic cooperation agenda. Consequently, it is not an integral part of the formation of a legal regime for the world economy.

Another criticism that can be made on the gender discourses adopted by global economic organizations is related to their methodological choices. The intellectual approach of the IMF and the World Bank seems to reveal a form of gender *instrumentalization*, in opposition to the idea of *gender mainstreaming*. The macroeconomic argument is thus used to *depoliticize* the feminist one: women are *means* to promote growth and economic stability. Their well-being and individual rights are not an end *per se*. Although these entities aim to



promote public welfare (i.e., macroeconomic stability), there are limits on how institutions can treat human beings: they cannot be conceived as merely instruments.

The IMF, for instance, tends to adopt a “compensatory approach” (Mariotti et al., 2017) rather than incorporating gender analysis into different macroeconomic policy frameworks. The focus is on rewarding fiscal and monetary policy losers (the most vulnerable social groups in general, and women in particular), instead of questioning the structural reforms (i.e., the idea of fiscal adjustment) and their inherent social effects. The IMF does not systematically evaluate the distributive impacts on women of its own immense catalog of macroeconomic policies.

Macroeconomic policies are not, however, gender neutral: they impact women and men differently, reproducing inequality. The most relevant inherent effect is the transfer of economic costs of fiscal adjustment programs to the private sphere. That way, women provide unpaid services, offsetting the corresponding reduction in the public investment in healthcare for the elderly and in education of children and young people.

Through the compensatory “lens”, considerations about the meaning of gender are also limited: women are not considered holders of individual rights, but they are perceived as mere protagonists of market economies. For that matter, the IMF policy recommendations that integrate a gender perspective into the budget (gender budgeting), that is, measures that place gender equality as central to the composition of government expenditures and revenues, tend to focus on social spending (e.g., the support for the elderly or children) as opposed to restructuring traditional fiscal adjustment programmes (e.g., attributing a value to the domestic work and recognizing it in the calculation of GDP).

After the Asian crisis in the 1990s, Elson and Cagatay (2000) argued that the IMF and the World Bank treated local social issues (such as poverty, work, and the environment) in terms of the “social impact” of economic policy, rather than integrating them as part of the “social content” of macroeconomic stabilization policies (Elson and Cagatay, 2000, p. 1352). The historical and dominant approach adopted by those organizations is to “add” social policies, instead of aggregating economic and *social* policies (Elson and Cagatay, 2000). This approach still prevails regarding recommendations related to gender equality.

Experts have also noted the discrepancy between the economic research on gender produced by the IMF economists and the policy recommendations for member states, which



affect inequality (Mariotti et al., 2017; Bretton Woods Project, 2017; Donald and Lusiani, 2017). A study, particularly interested in the Brazilian context (Donald and Lusiani, 2017), questions the Fund's support to embrace of what has been called "the mother of all austerity plans" (Sims, 2016): the constitutional amendment (CA) n. 95 of 2016. This amendment constitutionally limited the growth of Brazilian government expenditures for twenty years, reaching the three branches of the Republic (Legislative, Executive and Judiciary), in addition to the Public Prosecutor's Office and the Federal Public Defender's Office.⁴ After the enactment of the amendment, social spending destined to support women was reduced by 58% (David, 2018). The Fund provided technical assistance to the Brazilian authorities and formally supported the process of constitutional change, as reflected in the report produced by the institution (IMF, 2017).⁵

Falquet (2011) calls the instrumental approach to gender, by international organizations, as the process of "domestication of feminism". She uses this term to describe the role of those entities in the process of depoliticization of gender. Gender would have become a technical tool to depoliticize feminism, with the goal of avoiding the use of the adjective "feminist". The domestication process is divided into two stages: the establishment of a relationship between the concept of gender and macroeconomic policies (she refers to "neoliberal policies"), and the use of the word "gender" to neglect other forms of social and power relations. Calkin (2018) brings the same concern to the operations of the World Bank: the process of gender incorporation stripped the political content of feminism to ensure support for "neoliberal" political interventions. The concept is thus embraced rhetorically with the aim of legitimizing a specific economic, social, and political project.

The idea of "neoliberalising feminism" (Prügl, 2015) also captures this problem in an innovative way. The neoliberalisation of feminism, according to Prügl (2015), refers to the use of gender as an instrument of women's governance in global markets. She develops this

⁴ For a detailed analysis of the CA n. 95, see Duran and Ratton (2018).

⁵ The IMF, however, recognizes the challenges of applying the constitutional rule: "Indeed, expenditure rules are especially efficient in good times, because they constrain countries into countercyclical fiscal policy; though revenue may grow, expenditure will not. However, in times of slow or negative economic growth, expenditure rules can limit the capacity of the government to engage in fiscal stimulus to the economy through expenditure, even temporarily. This is a risk for Brazil as the new expenditure rule does not contain an economic "escape clause". An economic escape clause would define the strict conditions for temporarily suspending the rule due to extreme economic situations and the process for going back to the rule when the situation ends." (FMI, 2017, p. 16)



concept from the empirical analysis of projects aimed at female empowerment from the initiative of multinational companies (generally, in partnership with public, national, and international, developmental actors), which embrace the label of “corporate social responsibility”. Those projects select certain feminist ideas, integrating them into “neoliberal rationality of government” (Prugl, 2015). For her, the social challenge is to find ways in which the feminist meaning of empowerment can be recovered, where neoliberal technologies open spaces for social transformation from a local context (Prugl, 2015, p. 627).

Empirical analysis of the ideas and actions of international organizations in Brazil and in Latin America, in partnership with local actors, are essential to understand the impact and the extent of gender mainstreaming in public policies and the legal regime in the region. Ideas form and are shaped by economic law. They also tend to reveal the local constraints (social, cultural, economic, religious) for embracing legal measures of female empowerment.

But what is the role of the empirical analysis in legal research? How can it use literature in other social sciences disciplines to advance in its own field?

4. How to build gender-sensitive legal research in the field of economic law?

In order to explore the role of Brazilian legal research on the subject, I take on two angles of analysis: (3.1) “from political economy to law”, which seeks to identify, in the first field, approaches that can dialogue more closely with the interest and research tools of jurists, with an emphasis on “feminist institutionalism”; and (3.2) “from law to political economy”, which constructs reflections on how the approach of “legal institutionalism” can incorporate feminist lenses and critically reflect on the rules that shape global economic governance. The ultimate objective is to contribute to the construction of gender-sensitive Brazilian legal research in the field of economic regulation.

4.1. From political economy to law

The literature on international political economy can be a starting point for legal scholars. Adopting a critical and interdisciplinary lens, legal scholars can assess the role of law



in structuring global economic relations and the way in which gender is incorporated (or not) into rules and procedures that shape national economies in Latin America and, particularly, in Brazil.

Political economy literature on gender has been still little affected by the development of institutionalism (Waylen, 2018). In this context, legal scholars have much to contribute with political scientists and economists: reflection on institutions, rules, and power relations is the privileged field of legal research.

In political science, since the 1980s, the “new institutionalism” (NI) emphasizes *institutions* as an essential variable to explain social and political phenomena. Institutions “matter” (March and Olsen, 1983). They shape people's lives and political action. This field has three traditional schools of thought: rational choice institutionalism, historical institutionalism, and sociological institutionalism (Schmidt, 2010). In common, those three schools tend to be more appropriate to explain the *continuity* rather than the *change* and *transformation* of institutions, emphasizing the role of organizations as a *constraint* on political behavior (Schmidt, 2010).

A fourth, more recent approach of NI, discursive institutionalism, may be of support to legal analysis on the incorporation of ideas on gender by international and national organizations, emphasizing the transformations in the mainstreaming process driven by the Beijing Platform for Action. This approach encompasses wide-ranging work, which have seriously engaged with the substantive content conveyed through the interactive process of discourses and narratives (Shepherd, 2008; Schmidt, 2010, p. 3; Chappell e Waylen, 2014).

Law shapes and is shaped by economic ideas on gender. Dissecting those discourses is the legal scholars' duty. Furthermore, to explore the specific narratives about gender formulated by economic organizations, the feminist approach of NI can be a privileged channel of dialogue with the law.

Feminist institutionalism is a type of analysis that highlights aspects of gender that prevails in formal and informal rules, as well as in the practices of institutions (Mackay, Kenny and Chappell, 2010; Krook and Mackay, 2011; Mackay, Waylen, 2014; Waylen, 2018). Feminist institutionalism conceives institutions as products of struggles and power disputes involving gender (Waylen, 2018, p. 119).



There are specific areas where a feminist institutionalist approach can improve the comprehension of global economic governance (Krook and Mackay, 2011). First, the field of international political economy has been more suited to explaining *gender governance* than the *gender of governance*.

Second, feminist institutionalism also invites researchers to investigate the organization *from within*, in addition to considering them as simple mechanisms of resonance of external pressures for gender equality, coming from social movements. The identification of a specific institutional culture and its elements, the profile and training of internal actors (economists, lawyers, and technicians) and their actions, and the formal and informal rules that shape the relationships between members of the organization, provide relevant information to understand the conceptions of gender adopted and socially communicated by an institution (Waylen, 2018, p. 113). In 2013, Lagarde inserted the gender equality agenda at the IMF and, later, as president of the European Central Bank, she echoed this concern within the scope of central banks (ECB, 2020). Leadership and staff members of international organizations concerned with the issue of gender equality mobilize internal resources to advance the agenda. This discourse is then transformed into legal rules and binding decisions.

In dealing with the COVID-19 impacts, one of the most notable empirical observations was that women-led countries managed the consequences of the pandemic more effectively. This was the case of New Zealand, under the leadership of Jacinda Ardern, of Germany with Angela Merkel, of Taiwan with Tsai Ing-wen, and of countries such as Denmark, Finland, Iceland and Norway (Champoux-Paillé and Croteau, 2020). In Brazil, the state of Rio Grande do Sul also became a national reference, whose planning secretary at the time, Leany Lemos, designed a robust response to the pandemic (Bergamo, 2020).

But is the reason, in fact, “female” leadership? What if management effectiveness and crisis resilience are the result of more egalitarian societies and economies, where women are represented in different institutions and levels of power? The greater diversity (gender, social, racial), in the formation of staff and in the leadership of institutions, tends to open paths for the development of responses (i.e., rules and public policies) that are more wide-



ranging and efficient. This would contrast with those solutions conceived by more homogeneous groups - for example, formed exclusively, or mostly, by white men.⁶

Staff and leadership diversity not only reveals the potential for equality between women and men, but can also produce concrete results, with the creation of rules and policies, which, in turn, impact gender equality in national economies. Feminist institutionalism is an invitation to construct causal and descriptive inferences from this perspective.

4.2. From law to political economy

The promising literature on legal institutionalism (Deakin et al., 2018; Coutinho, 2017; Hodgson, 2015; Commons, 1924), more recently taken up by international legal scholars (such as Pistor, 2019), seeks to emphasize the constitutive role of the law in the development of economic relations. The law plays a crucial role in capitalist development. The legal system not only *regulates* markets, but it also *establishes* and *constitutes* them. The interaction between private actors mediated by law, the Judiciary System and the entire legislative apparatus shapes markets. The legal system shapes power in society and it is one of the main means by which it is exercised.

This literature, however, is still not aware of the gender perspective in the decision-making process and in the creation of rules, which integrate the economic order, at national, regional, or international levels. The regulations which structure capitalism impact women and men differently and are also legal constructions of gender. The exclusion of unpaid work from global public finance rules is an example.⁷

International organizations are entities with political and economic power, legally structured, that ensure the functioning of global capitalism. One of the institutional mechanisms for exercising this power is the “translation”, at the local level, of legal rules that

⁶ Based on an empirical study, Page (2007) argued, as early as 2007, that diversity, both in terms of perspectives and tools, allows public and private organizations to identify more and better answers to complex problems, contributing to increase economic productivity.

⁷ The rules and underlying ideas, which govern the calculation of the national economies GDP, are formulated internationally by the UN in collaboration with the IMF, the World Bank, the OECD, and the European Union. The set of standards for the compilation of economic measures is called System of National Accounts (SNA).



govern national economies. The law has an essential constitutive role in the process of legalizing global economic relations and in defining the agenda of local legal actors, who are part of the process of creation and interpretation of those rules, in the spheres of the Legislative, Executive and Judiciary branches. The intellectual and analytical framework adopted by those actors, national and international, directly impacts the way in which the “link” between global and local institutions will occur and which social problems will be treated as having legal nature (hence demanding a solution by law).

In this process, legal education is a factor of attention. Master programs in the field of international economic law are highly isolated: economic law and human rights are conceived as distinct legal regimes and also of separate training at more advanced stages of professionalization. Thus, jurists, who work in the economic field, do not comprehend human rights as constitutive of markets, in the same way that property and contracts are.

The segregation of regimes is a product of what was once called by scholars as the “fragmentation of international law” (Koskeniemi, 2007), or more recently, “the misery of international law” (Linarelli, Salomon and Sornarajah, 2018). Due to the fragmentation of regimes (and the legal training itself), the legal analysis on gender has developed more quickly in the field of human rights, criminal law and in studies on violence and peace, mainly by those works that take on Third World views. (Kapur, 2018; Tourme, Jouannet et al., 2016; Charlesworth, 2013; Charlesworth, Chaiton and Chinkin, 2000)

The economic law domain, nonetheless, is still little influenced by gender lens. There are some relevant works on gender and international trade law (e.g., Ruiz-Fabri, 2019; Silva, 2019; Stoneman, 2017; Mengesha, 2008). However, there are important gaps in gender-sensitive analysis regarding to the global financial and monetary regimes. In this field, the most renowned textbooks in the area are gender blind (e.g., Lastra, 2015; Proctor, 2012).

The feminist institutionalism approach combined with legal institutionalism has the potential to provide a critical view of the law making and the interpretation of rules, the constitutive role of law in capitalist development, and in the (in)visibility of gender produced by legal regulations. A gender-sensitive legal research agenda, notably in the field of economic law, can greatly benefit from this approach and the combination of both movements.



5. Conclusion

The year 2020 marks the twenty-fifth anniversary of the Beijing Platform for Action, one of the most relevant and innovative international symbols for gender equality. However, this particular moment, which would serve to construct a critical reflection on the advancement of the global agenda for equality, bears witness to the spread of the COVID-19 pandemic. The benefits that were obtained in the last decades, although limited, take the risk of being reversed in different parts of the world, especially in Latin America and Brazil. The pandemic tends to deepen existing inequalities and expose women's social, legal, and economic vulnerability, amplified by the impacts of the crisis.

In this context, Brazilian legal research, carefully conducted in the analysis and in the criticism of the functioning of economic institutions, has an urgent gender agenda to be developed. Institutions are products of gender struggles and disputes for power.

When it comes to defining the rules and global policies for economic relations, international organizations assume a prominent role over time, especially in times of crisis. The resulting responses may reproduce and reinforce gender inequality at the local level, or positively influence national institutions producing more equality. A gender-sensitive legal analysis can identify and highlight the institutional and social challenges and constraints of this process. Legal scholars receive training to analyze the functioning of rules and institutions, as well as to identify the implications of power relations between different actors. Gender is a constituent and fundamental part of this research agenda.

In this article, I pursued to construct an analysis of empirical studies and theoretical approaches in political economy, which may contribute to legal scholars in this task, notably regarding the local impact of economic governance structured by the World Bank and the IMF. The combination of feminist and legal institutionalism approaches can configure a robust theoretical framework for Brazilian research in upcoming years. From that angle, jurists can contribute to the analysis and structuring of legal responses and effective policies to the COVID-19 crisis and its uneven impact on women.



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