



Introduction

Marta Rodriguez de Assis Machado and Catarina Helena Cortada Barbieri
Working Paper Vol. 2
February 2016



**Oxford Human
Rights Hub**
A global perspective on human rights



Introduction

This edition of the **Revista Direito GV** is divided into two parts. The first part presents the special dossier *Gender, Race and Poverty: the approach of multiple identities by law* idealized and co-edited in partnership with professor Marta Rodriguez de Assis Machado from FGV Direito SP. The second part includes unpublished articles on various themes received via the journal's process of continuous submission.

Since the 1950's, the subject of social development has become central to the fields of politics and public administration, as well as in Latin American social thought. The processes of industrialization and urbanization, migration from the countryside to the cities and demographic explosion were analyzed, mainly, under the lens of social classes. Social class, poverty, paid work, countryside-city and center-suburb inequalities, as well as the regulating and the interventional role of the State in mobilizing the economy and in promoting focused social policies are examples of the themes that comprised the debate on development.

Issues related to the impact of such processes on the (re)production of inequalities have had little or almost no space on this agenda, processes which specifically affected certain dispossessed groups like black people, women and indigenous people such as the occupation of lands throughout Brazil and indigenous expulsion; subordinate incorporation of black people in the labor market, the racial segregation of urban spaces and the institutional violence against the black population; segmentation of the labor market to absorb female participation limited to certain positions - in particular the informal domestic work market - and wage discrimination.

The transition to democracy at the end of the 1970s made space for (and has engendered) the organization of social movements who have denounced the specific effects of inequality on racial/ethnic and gender relations and that have demanded the recognition of material equality and specific rights. In Brazil, the black, indigenous and feminist movements participated significantly during the Constituent Assembly, having realized important achievements in the field of rights.

Since then, these actors have propelled the incorporation of agendas of gender and race/ethnicity in the public and academic debate on development and equality. In the academic sphere, it is worth mentioning the initial contributions of Florestan Fernandes (1970) and Heleieth Saffioti (1969) in the 1970s to address the overlapping, respectively, of racial and gender relations in the debate on employment, inclusion and exclusion. Although the subject of race relations had already been projected into Brazilian social thought –subject to a very distinct focus and less concerned with distribution, as we can see in the work of Gilberto Freyre –, the theme of gender was still a novelty.

It is, therefore, relatively recent to approach the subject of inequalities and in particular the subordinate place of women considering the effects of the patriarchy. In a poignant manner, Saffioti proposes the idea that the position of women in the family and in society is the result of a broader system of domination. To understand the effects of capitalist development on the position of women, it was necessary to understand the role of the patriarchal structure in the reproduction of prejudices which justify a certain distribution of fixed positions between the genders – the exclusion of women from certain tasks and positions in the labor market, their

"natural" association to the domestic space and the occupancies socially recognized as "female" (teachers, nurses, secretaries, and domestic workers).

Little by little it became clear that questioning patriarchy also meant questioning the symbolic constructions related to the traditional family (heterosexual, monogamous and with reproductive mandate) and the lack of autonomy with regards to the body and sexuality. Along the way, other gender identities entered into dispute and new social players, such as the LGBT movements, also started to fight against this system of discrimination and exclusion of rights. Brazil has signed international commitments; the public sphere has opened up to more pluralistic debates about non-binary standards of sexuality, transgender persons, and multiple identities; and the symbolic and moral dispute with more conservative views was flared up.

As part of the counter-movement, beyond the Catholic Church, there is the growth of the role of evangelical churches. The conservative sectors, which defend the traditional family, the subordinate role of the woman and intolerance towards homosexuals, gained political space in parliament and in the public sphere. Today, Brazil is experiencing conflictive situations in this field: in the parliamentary environment, we see, for example, a project that provides a "gay cure" disputing space with a project that criminalizes homophobia. We have, on the one hand, the "statute of the unborn child" and the attempts for a setback in reproductive rights and, on the other hand, the Supreme Federal Court deciding to create another cause for legal abortion (for the anencephalic fetus). Meanwhile, women are organized in the streets, fighting for autonomy over decisions regarding their own bodies and asking for the cassation of the Conservative leader of the National Congress. Moreover, attempts to include official programs of education for freedom and equality of gender in schools also face conservative reactions against the "gender ideology". This shows, once again, the political 'high voltage' of the subject.

The problems are persistent and serious. The rates of domestic and sexual violence against women are very high. Crimes of intolerance related to gender, especially against homosexuals and transgender people, are frequent. Harassment marks the day to day of gender relations. Women still face wage inequality and shameful indexes of under-representation in politics. Informal domestic and poorly paid work is female and black. It is also the black women who are dying daily in illegal abortion clinics. The paternity leave of 5 days is laughable and domestic care of children is still the woman's responsibility in our symbolic imagination.

In other words, political and economic inequality has gender and color. Today, it is no longer possible to discuss social hierarchies without discussing racial and gender hierarchies. For example, we cannot speak about access to the labor market without questioning the institutionalization, within the capitalist society, of the separation of two supposedly distinct spheres of activities: production and reproduction. The productive labor is historically associated with man and is paid, while the activities of care are unpaid and devalued, and are exercised by women. Without questioning this structural division in our society, women (white) will only go to the labor market at the expense of the poorly paid domestic and often informal work of other women (black). Without discussing patriarchy, well-intentioned public policies (such as the Bolsa Família), for giving the woman the responsibility of taking care of the family's money, end up putting the obligation on the woman to administrate her home and take care of the children, increasing their level of accountability and reinforcing the woman's role as a carer.

The excessively high rates of gender violence are part of the agenda of public security. The female prison population grew by more than 500% in the last 15 years, while the male population had an increase of 119%.¹ Prisons have no structure for the exercise of motherhood. In CASA Foundations, professional training courses – offered to adolescent girls – are in cookery, manicures, hairdressing, receptionist training, makeup and beauty, sewing, painting on fabric and crafts. Transgender prisoners cannot stay in male prisons because, in these locations, they are risking their physical integrity and even their life. It is not possible to look at the health system without considering the rate of maternal mortality, obstetric violence, the sex-change surgery and the need for specialized care of women, homosexuals and transgender: all victims of violence. These few examples show us that not only have the issues of gender risen in importance on the political agenda of the Brazilian Society (even though conflictive and disputed), but also that it is not possible to consider public policies without bearing them in mind.

"Neutral" public policies reinforce the invisibilization and marginalization of the problems that affect these specific groups and maintain them as dispossessed minorities without rights. Discussing poverty, income distribution, development, access to rights and justice (as if all men and women suffer their effects equitably, and as if the solutions could benefit all men and women equally), is a mistaken premise in the design of public policies, which results in the maintenance of the violations of these groups human rights. The false dilemma of neutral egalitarianism is harmful when considering the development of a democratic society.

It is precisely from this perspective that we decided to take a closer look on issues of gender, inequalities and rights as part of the Law and Development agenda, the focus of the master's degree of FGV Direito SP. This special dossier – *Gender, Race and Poverty: the approach of multiple identities by Law* - is part of this effort.

In 2014, in partnership with the Oxford Human Rights Hub FGV Direito SP organized the International Seminar *Gender, Race and Poverty: the approach of multiple identities by Law*.² The objective was to gather researchers from the Southern Hemisphere to discuss common problems linked to the intersections of gender, race and poverty. In international debates, poverty is often addressed from a neutral perspective regarding gender. In the same way, racial discrimination is addressed from a neutral perspective concerning both gender and poverty. These approaches are not suitable for portraying the various and intricate violations of human rights experienced by poor women with multiple identities; thus, our objective was not only to trace the diagnoses on common problems, but also to think about the challenges of this perspective for public policy. Gathering together researchers from the Southern Hemisphere inevitably led us directly to the subject of development. To

¹ Source: *Levantamento nacional de informações penitenciárias – Infopen mulheres* (2014). Departamento Penitenciário Nacional do Ministério da Justiça (Depen). Retrieved from: <<http://www.justica.gov.br/seus-direitos/politica-penal/relatorio-infopen-mulheres.pdf>>. Nov. 24, 2015.

² The seminar was organized by Marta Machado, Sandra Fredman and Cathi Albertyn. In addition to the universities directly involved, the seminar received funds from Fapesp, Capes and CNPQ.

what extent are gender issues raised in the debate on development? Which asymmetries are reinforced by policies of economic development or distribution policies that do not take into account gender inequalities? How do our essentially patriarchal societies resist the discussion about gender?

Most of the texts that make up this dossier came from discussions that began in this Seminar.

Helena Alviar Garcia discusses the Colombian policies of distribution of income in recent decades and their role in the reproduction of the patriarchal logic in that women occupy essentially the role of reproduction in the framework of the family and face difficulties obtaining access to resources.

Two articles, of Carmen Hein de Campos and of Wânia Pasinato, address the disputes and institutional challenges in the implementation of the Statute Maria da Penha (Brazil's domestic violence statute), almost ten years after its promulgation. From an empirical research perspective on the effectiveness of the law in Porto Alegre, Recife, Salvador, Rio de Janeiro and São Paulo, Wânia detects the reproduction of gender stereotyping among actors and actresses of the justice system, which has a significant impact on access to rights by women. Carmen focuses her analysis on problems of implementation of a care network for women and discoveries in the Parliamentary Investigative Commission (CPI) on violence against women.

Still on the challenges of implementing public policies, Cathi Albertyn discusses the situation which has been established in South Africa after 20 years of approval of a progressive law on abortion. In the midst of difficulties of implementation and the risks of regression, she shows that the challenges of gender policies are not exhausted in the promulgation of the law, and that the activism of civil society is crucial in ensuring effective access to safe and legal abortion for women.

These texts show how the dispute and the monitoring of the implementation of public policies – which involves not only the judiciary branch, but also the organization of institutions and the training of all public servants involved in politics – is crucial for the guarantee of rights. It also challenges formalistic views that tend to think that the promulgation of the law is the final stage of the dispute. Evaluating the importance of the operation of institutions in defending minorities, Vanessa Vieira and Clio Radomysler write about the role of the Public Defender's Office in promoting the recognition of differences; the challenges and possibilities in the adoption, by this institution, of transversal approaches dealing with the needs of stigmatized groups.

It is not possible today, to deal with the inclusion of minorities in public policies without talking about intersectional approaches, i.e. talking about the point of intersection between multiple discriminations, which causes the discrimination suffered by a particular person to have a distinct nature and not just the sum of their conditions. Black women in prison have an experience of suffering and violation of rights distinct from white women, or from black women in freedom. Incorporating the intersectional approach is a challenge today placed not only on academic debate, but also on public policies and institutions. With respect to this debate, Meghan Campbell analyzes how the CEDAW Committee discusses intersectionality in its decisions and shows, in detail, how intersectionality may or may not be present in decisions, and the difference that this makes.

The essay of Debora Diniz, the articles of Ana Gabriela Mendes Braga and co-authors Luciana Simas, Miriam Ventura, Michelly Ribeiro Baptista and Bernard Larouzé deal with gender in prison. In a provocative manner, both in form and in the issues it addresses, Debora shows that the field of research on prison is male and faces the challenge of incorporating the gender. Ana Gabriela enters the debate from micro-narratives of mothers in prison and shows what we could only see through a closer look to the experience of women in prison. The third text in this series critically analyzes judicial decisions of the Supreme Federal Court, Supreme Judicial Court and of Courts of Justice of Rio Grande do Sul, Paraná, São Paulo and Mato Grosso, from 2002 to 2012, involving women in prison and their children born in prison. The results of the analysis suggest a certain invisibility of the subject of motherhood in prison and the limits imposed on the rights of children to breastfeeding, health and living with the mother in favor of a discourse of guarantee of public order and security.

Lastly, the challenge of dealing with personal experiences features once again in our set of texts in the form of the report by Maria Amélia Telles. In a register that is based on her experience as a militant against the dictatorship, Amelinha, who today is a feminist activist, deals with the institutional violence of gender during the dictatorship. The aspect of gender, often obscured in the debates on the human rights violations of that period, shows us a very particular reality of women who lived and campaigned during the "years of lead". They not only faced a type of violence compounded by their condition as women, but also faced gender discrimination between militants of the left.

Amelinha shows us, along with all the authors we have gathered in this assembly, that there is no political struggle, neither development nor democracy, if there is not the full exercise of freedom and equality between the genders. And in a Law School which cares about Justice, Equality and Development, this theme has to be treated as central.

In addition to the special dossier *Gender, Race and Poverty: the approach of multiple identities by Law*, we published three other articles in this edition of the magazine **Revista Direito GV**. The first, by Júlio Roberto de Souza Pinto, features an analysis of the behavior of members of parliament of the 53rd Legislature (2007-2011) on two topics of great repercussion during this legislature: attempts to reform the electoral and political party systems and limitation of the powers of the president's agenda. He presents an evaluation of the determinants of parliamentary behavior in the light of the structure of presidentialism of coalition and proportional representation with an open list, on one side, and the light of the combination of power of the agenda of the presidency of the Republic and centralization of the work of the Chamber of Deputies in the hands of the party leaders, on the other hand.

The second article, by Bruno Meneses Lorenzetto and Katya Kozicki, seeks to identify the paradoxes in constituent moments and how they can help to understand the problems in constitutional jurisdiction and in the production processes of the Constitution, as well as to analyze the continuity of tension between constitutionalism and democracy.

Finally, the article by Lincoln Frias and Nairo Lopes presents a new take on the subject of the principle of human dignity, critically debating some uses of the principle

already enshrined by policy. They argue that human dignity must be defined using a combination between personal autonomy and the conditions to develop and exercise this autonomy.

We wish you all an enjoyable read.