

Innovative Teaching Methods to Mainstream Gender Equality in Legal Education

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Abstract

In many countries, data show that women are slowly overtaking men in law schools. Nevertheless, accounts from American law schools often report that women find law school a hostile atmosphere. Moreover, women remain significantly underrepresented in positions of leadership and power in all areas of the profession.

Legal education has followed different paths in different countries to cope with this reality. Thus, while law schools in the United States have developed specific programmes to transform legal education by opening up spaces for feminist legal research and have created research centres specifically dedicated to women's and gender studies, this seems far from possible in Europe, where law schools maintain a very traditional curriculum.

This article aims to investigate the differences between legal education in the United States and Europe, shedding light on the various initiatives undertaken to incorporate gender awareness into legal education.

The ultimate goal will be to examine innovative methods of teaching law to achieve the integration of gender equality into legal education.

Keywords: Legal education, gender, comparative law.

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Introduction

The presence of women in the legal profession is increasing in the United States as well as in Europe.

According to the Profile of the Legal Profession 2021¹ published by the American Bar Association

the gender numbers have changed drastically over the past half-century. From 1950 to 1970, only 3% of all lawyers were women. The percentage has edged up gradually since then – 8% in 1980, 20% in 1991, 27% in 2000, 37% in 2021.²

Numbers will further grow in the coming years “as more women, and fewer men, are enrolling in law school every year”.³

Similarly, a recent study commissioned by the European Parliament states that

the increase in female law graduates and lawyers does not only change the composition of the professions numerically, but also the image and self-perception in the professions.⁴

A closer look also reveals some clear and noticeable differences in the gender presence in the legal professions. In many European countries such as Italy, France, Germany, Austria, Switzerland, there is a sharp increase in the presence of women especially in the judiciary, while among practicing lawyers the top positions in law firms are still largely held by men.⁵ In the United States, the

¹ American Bar Association, *Profile of the Legal Profession 2021*, https://www.americanbar.org/news/reporter_resources/profile-of-profession/

² *Profile of the Legal Profession 2021*, cit., p. 12.

³ Ibidem.

⁴ Yvonne Galligan, Renate Haupfleisch, Lisa Irvine, Katja Korolkova, Monika Natter, Ulrike Schultz, Sally Wheeler, *Mapping the Representation of Women and Men in Legal Professions Across the EU*, Directorate General for Internal Policies, Department for citizens' rights and constitutional affairs legal and parliamentary affairs, European Union, Brussels, 2017, <http://www.europarl.europa.eu/studies>, p. 22.

⁵ For France compare: C. Bessière C., S. Gollac, M. Mille, *Féminisation de la magistrature: quel est le problème?*, in *Travail, genre et sociétés*, 2016/2 n° 36, pp.175 - 180; For Italy compare: Consiglio Superiore della Magistratura, Ufficio Statistico, *Distribuzione per genere del personale di magistratura*, February 2020, <https://www.csm.it/documents/21768/137951/Donne+in+magistratura+%28aggiorn.+marzo+2020%29/26803fce-0c00-a949-d70d-0bdafc5f30e3>; for Germany compare: J. Wagner, *Ende der Wahrheitssuche, Justiz zwischen Macht und Ohnmacht*, Munich, C.H.Beck.

federal judiciary is overwhelmingly dominated by judges who are white and male⁶, although even here things are changing as in 1980, only 5% of all federal judges were women, while in 2021, that percentage was 27.8%.⁷

In Europe, women's preference for a career in the judiciary can be explained by the guarantees that they obtain by becoming magistrates: from maternity leave to more flexible working hours that are – at least, in general terms - more suited to the rhythms that best reconcile with the desire to have a family. This is particularly true in Civil Law Countries because the judiciary provides the advantages of the civil service, while in England and Wales this step was taken only in 1997.⁸ An additional appeal of the judiciary is that it offers a relatively elevated position even if no career steps are taken, and little competitive pressure.⁹

Despite the differences still existing in the legal professions between men and women, in Europe there is no widespread feeling that the lack of success of women derives from a discrimination that originates in the faculty of law. On the contrary, a review of the last forty years American literature seems to point out that law schools are at the origin of sex discrimination in the legal professions, blaming a certain type of higher education for the failure of women as lawyers.¹⁰ In the eyes of a European observer, this stance seems particularly

2017; Rolf Lamprecht, *Nicht nur Justitia ist weiblich*, in *Süddeutsche Zeitung*, 23. April 2017, <https://www.sueddeutsche.de/politik/gender-debatte-nicht-nur-justitia-ist-weiblich-1.3472410>; for Switzerland compare: Ludewig, Revital, and Kathleen Weislehner, *Einstieg, Aufstieg, Entfaltung: Drei Generationen von Richterinnen in der Schweiz*, Bern, Stämpfli, 2007; for Austria: Petra Tempfer, *Verweiblichung der Justiz: Das Recht ist weiblich*, in *Wiener Zeitung*, 3 November 2013, https://www.wienerzeitung.at/nachrichten/chronik/oesterreich/581571_Das-Recht-wird-weiblich.html?em_no_split=1

⁶ *Profile of the Legal Profession 2021*, cit., p. 68.

⁷ *Profile of the Legal Profession 2021*, cit., ibidem.

⁸ *Mapping the Representation of Women and Men in Legal Professions Across the EU*, op.cit., p. 25.

⁹ *Mapping the Representation of Women and Men in Legal Professions Across the EU*, ibidem.

¹⁰ R. Bader Ginsburg, *Women's Work: The Place of Women in Law Schools*, 32 J. Legal Educ. 272 (1982); D. Fossum, *Law and the Sexual Integration of Institutions: The Case of American Law Schools*, 7 ALSA F. 222 (1983); C. McGlynn, *Women, Representation and the Legal Academy*, Legal Studies, Volume 19, Issue 1, March 1999, pp. 68 – 92; C. Wells, *Working out women in law schools*, Legal Studies, Volume 21, Issue 1, March 2001, pp. 116 – 136; S. Bashir, M. Iskander, *Why legal education is failing women*, in *Yale JL & Feminism* 18 (2006), 389-449; C. Howell, *Combating Gender Inequities in Law School: Time for a New Feminist Rhetoric that Encourages Practical Change*, *The Modern American*, Fall 2008, 36-41; Purvis D., *Female Law Students, Gendered Self-*

striking given the fact that it is precisely in the United States where a movement of thought has developed aimed at emphasizing the contribution of feminism to legal studies.¹¹

The article aims at investigating the origins of women's access to law schools in Europe and in the United States, to understand whether there have been substantial differences between the United States and Europe in the admission of women to the study of law (Part 2). It then analyzes the current differences in the legal education system on both sides of the ocean to determine if these differences are at the origin of the perceived gender gap in legal education (Part 3). Finally, it considers the current debate on possible reforms that could be introduced to make the attendance of law courses more attractive, but also more effective, not only for women, but more generally for all students (Part 4).

The admission of women to legal education: a look into the past

The admission of women to legal education is part of the more general debate concerning the opening of higher education to women that developed at the end of the 19th century in Europe as well as in the United States.¹² The reasons to exclude women from access to legal education and to legal professions were formulated in various ways from one jurisdiction to the other, but at the same time represented common *traits* that overcome existing differences between Common Law and Civil Law Countries.

In Europe, the admission of women to higher education depended heavily on the national legal regime in force, but also on the autonomy recognized to universities.

Evaluation, and the Promise of Positive Psychology, 2012 *Mich. St. L. Rev.* 1693 (2012); R.A. French-Hodson, *The continuing gender gap in legal education*, The Federal Lawyer, July 2014, p. 81.

¹¹ C. Menkel-Meadow, *Feminist Legal Theory, Critical Legal Studies, and Legal Education or "The Fem-Crits Go to Law School"*, in *Journal of Legal Education*, March/June 1988, Vol. 38, No. 1/2, pp. 61-85.

¹² D. Kelly Weisberg, *Barred from the Bar: Women and Legal Education in the United States 1870-1890*, 28 *J. Legal Educ.* 485 (1977); Donna Fossum, *Law and the Sexual Integration of Institutions: The Case of American Law Schools*, 7 *ALSA F.* 222 (1983); Guido Alpa, *L'ingresso della donna nelle professioni legali*, in *Rassegna Forense*, 2010/2 pp. 223-244; Albisetti, James C. *Portia Ante Portas: Women and the Legal Profession in Europe, ca. 1870-1925*. *Journal of Social History*, vol. 33 no. 4, 2000, p. 825-857; Corcos C. A., *Portia Goes to Parliament: Women and Their Admission to Membership in the English Legal Profession*, *Denver University Law Review*, 1998, vol 75, 2, pp. 307-417.

From a comparative law perspective, it is interesting to underline that women's access to universities in Europe was not necessarily linked with the conquest of a role in the public space through the gaining of voting right.¹³

Just to give a few examples, French universities gradually opened their courses to women in the second half of the 19th century, but it is only in 1880,¹⁴ when the admission of girls to high schools and the possibility to get a *baccalauréat* was established by law,¹⁵ that women began to gradually flow to universities.¹⁶ Notwithstanding this first success that opened a new space towards autonomy and independence for French women, they had to wait until 1944 to gain voting rights.¹⁷

In Italy, the official recognition of the right for girls to enroll at universities was introduced few years after the Unification of the Italian Kingdom, as early as 1875 by the Bonghi Decree,¹⁸ whose article 8 provided that "[w]omen can be enrolled in the register of students and auditors, if they present the required documents". However, in addition to a "certificate of good conduct", the documents required for enrollment at the university also included the "original high school diploma", a requirement that was difficult for girls to obtain, since

¹³ See *The Struggle for Female Suffrage in Europe: Voting to Become Citizens*, Blanca Rodríguez-Ruiz and Ruth Rubio-Marín (Eds.), Leiden/Boston, Brill. 2012.

¹⁴ N. Tikhonov Sigrist, *Les femmes et l'université en France, 1860-1914*. Histoire de l'éducation, 2009, pp. 53; Carole Lécuyer, *Une nouvelle figure de la jeune fille sous la IIIe République: l'étudiante*. Clio. Histoire, femmes et sociétés, 4, 1996, p. 166-176; Jean-François Condette, *Les "cervelines" ou les femmes indésirables: l'étudiante dans la France des années 1880-1914*. Carrefours de l'éducation, 15, 2003, p. 39-61.

¹⁵ *Loi sur l'enseignement secondaire des jeunes filles* 21 décembre 1880, called "*Loi Camille Sée*" after the name of Minister who proposed it.

¹⁶ Carole Christen-Lécuyer, *Les premières étudiantes de l'Université de Paris*. Travail, genre et sociétés, 2000/2 N° 4, pp. 35-50, who points out that the *Loi Camille Sée* was aimed more to train cultured wives and mothers than future college students.

¹⁷ Art. 17 of the *Ordonnance du 21 avril 1944 – portant organisation des pouvoirs publics en France après la libération*, signed by Charles De Gaulle, Journal Officiel n° 34 du 22 avril 1944, p. 325-327.

¹⁸ Regio Decreto n° 2728 del 3 ottobre 1875, in *Gazzetta Ufficiale del Regno*, 22 October 1875 n. 247.

their access at high schools was regulated only in 1883.¹⁹ Women's suffrage in Italy was introduced only on the 1st of February 1945.²⁰

We find a different situation in Germany, where voting right to women was established already in 1918,²¹ at the end of World War I, much earlier than in the two other legal systems already taken into consideration, but where women struggled to be admitted to universities for a long while.²² This is most probably due also to the circumstance that during the 19th century, German higher education was strongly characterized by the idea that university years were the test of whether inside the young person there was a "man".²³ German universities were organized in fraternity-type student associations, the so-called *Studentenverbindungen* that carried out a model of masculinity, which had to test itself with the sense of honor, with fencing and duels, but often also with extraordinary drinks, which put a strain on the admission of women.²⁴

In this context, immoral excess and dissipation were to be considered part of the educational process and the price of academic freedom according to the theologian Friedrich Schleiermacher, an aspect that distanced the girls even more from the university environment.²⁵

In Germany, as in Italy and France, a further difficulty derived by the fact that to be admitted to university, a high school diploma was needed: in Italy, this was called *maturità*, in France *baccalauréat*, in Germany: *Abitur*. As girls'

¹⁹ G. Gaballo, *Donne a scuola. L'istituzione femminile nell'Italia post-unitaria*, in *Quaderno di storia contemporanea*, vol. 60 (2016), p. 115; S. Uliveri, *La donna agli studi universitari nell'Italia post-unitaria*, in *Cento anni di Università. L'Istruzione superiore in Italia dall'Unità ai nostri giorni*, Napoli, 1986, Ed. Scientifiche, p. 224; A. Lirosi, *Libere di sapere. Il diritto delle donne all'istruzione dal Cinquecento al mondo contemporaneo*, Roma, Edizioni di Storia e Letteratura, p. 58 ss.

²⁰ Decreto Legislativo Luogotenenziale 1 febbraio 1945, n. 23, *Estensione alle donne del diritto di voto*, in *Gazzetta Ufficiale*, Serie Generale n.22 del 20 febbraio 1945

²¹ *Verordnung über die Wahlen zur verfassungsgebenden deutschen Nationalversammlung* vom 30. November 1918.

²² Patricia M. Mazón, *Gender and the Modern Research University, The admission of women to German Higher Education, 1865-1914*. Stanford University Press, Stanford. 2003.

²³ Mazón, op. cit., p. 19, quoting the historian Friedrich Paulson.

²⁴ Elm, Ludwig, Dietrich Heither, and Gerhard Schäfer. *Füxe, Burschen, Alte Herren. Studentische Korporationen vom Wartburgfest bis heute*, Köln., PapyRossa, 1992; Alexandra Kurth. *Männer-Bünde-Rituale: Studentenverbindungen seit 1800*. Vol. 878. Frankfurt/New York, Campus Verlag, 2004.

²⁵ Mazón, op. cit., p. 35.

schools were generally not offering the *Abitur*, this was an additional obstacle to women's admission to universities.²⁶

Education was not and is not of federal competence in Germany, so that important differences were possible among the different *Länder*: Baden opened its universities to women in 1900, Bavaria in 1903, Württemberg in 1904, Saxony in 1906, Thuringia in 1907, Hesse and Prussia in 1908, Mecklenburg in 1909.²⁷

United Kingdom offers us again a significant different picture, partly deriving by the status of universities and colleges that render the British system of higher education unique in the European context. Just to quote the most famous two, Oxford granted women full membership to the University in 1920, but Cambridge University did not grant degrees to women until the late 1940s, the last British university to do so, more than twenty years after women had achieved the right to vote.²⁸

Even more puzzling appears to European eyes the situation of American women. The legal right of women to vote was established in the United States nationally in 1920, although even before, women were enfranchised in different states: in Wyoming Territory in 1869, in Utah in 1870, in Colorado in 1893 and Idaho in 1896.²⁹

Nonetheless, it was only in the late 1960s and early 1970s that two laws were enacted to prohibit sexually discriminatory admissions by the nation's law schools.³⁰ It was only in 1972 that the American Congress passed the Higher Education Act, which prohibited sex discrimination in the employment as well

²⁶ Barbara De Nicolò, Johanna Luggin J., "Revolution "in der Bildung: Frauen an die Universitäten (2. Hälfte 19. Jh. bis zum 1. Weltkrieg), *Historia.scribere*, 2009-03-01 (1), p. 344.

²⁷ De Nicolò, Luggin, *op. cit.*, p. 348.

²⁸ Krista Cowman, *Female Suffrage in Great Britain*, in *The Struggle for Female Suffrage in Europe*, *cit.*, p. 273.

²⁹ Sebastian Till Braun and Michael Kvasnicka. *Men, Women, and the Ballot - Woman Suffrage in the United States* (March 1, 2009). Ruhr Economic Paper No. 93, Available at SSRN: <https://ssrn.com/abstract=1358466> or <http://dx.doi.org/10.2139/ssrn.1358466>

³⁰ Fossum, *Law and the Sexual Integration of Institutions: The Case of American Law Schools*, *cit.*, p. 224.

as in the admissions policies and practices of all higher educational institutions receiving any federal aid.³¹

In this already complex situation, the study of law seemed to be the most unfeminine career, even more than other professions full of responsibilities, like the study of medicine.³² As it has been suggested by a French commentator, in continental Europe, the faculty of law remained for a long time “a territory reserved for men”.³³ In most European countries, women gained access to medical schools before they could study law, in some case several decades earlier.³⁴ In Austria, for example, women could not matriculate in the legal faculties of the universities until 1919, while the medical profession was opened to women already in 1895.³⁵ Most likely it was believed that women were – by their very nature – capable of caring for other human beings, especially if they were other women or children. The society of the time, on the other hand, was much less inclined to consider that women had that rationality and that capacity for abstract logic, required for the legal profession.

Once the university qualification was obtained, in fact, women encountered enormous difficulties to be admitted to practice law,³⁶ as even when women managed to have access to the faculties of law, the problem of access to the profession of lawyer and judge persisted.³⁷

In the United States, the analysis of the situation needs to bear in account that during the 19th century a law school degree was not necessary to enter the legal

³¹ Fossum, *Law and the Sexual Integration of Institutions*, cit., loc. cit.

³² Corcos, *Portia Goes to Parliament: Women and Their Admission to Membership in the English Legal Profession*, cit., p. 319 ss.

³³ Christen-Lécuyer, *Les premières étudiantes de l'Université de Paris*, op.cit., p. 35: “*Certaines facultés s'ouvrent plus facilement aux femmes que d'autres: le droit demeure longtemps un territoire réservé aux hommes*”.

³⁴ Albisetti, *Portia Ante Portas: Women and the Legal Profession in Europe, ca. 1870-1925*, cit., p. 825.

³⁵ Albisetti, op.cit., loc.cit.

³⁶ Albisetti, op. cit., p. 829 ff., with references to the Italian, Belgian, French, Swiss, British, Russian, German, Austrian and other European legal systems.

³⁷ L. Schwartz, S. Homer, *Admitted But Not Accepted, Outsiders Take an Inside Look at Law School*, 5 Berkeley Women's Law Journal 1 (1989).

profession.³⁸ Before the birth of modern law schools,³⁹ the admission to the legal profession was through a period of apprenticeship under the supervision of an experienced attorney and depended on the given context existing at State level. The first woman admitted to the bar was Belle Mansfield in 1869 in Iowa, but in other States like Illinois,⁴⁰ women were refused admittance to the bar in the same years solely on the ground of sex.⁴¹

As far as universities are concerned, it was not until 1972 that all ABA accredited schools removed bans on admitting women students.⁴² Before that day, each university followed its own admission policy. Washington University in St. Louis admitted women already in 1869, Boston University Law school admitted women from the day it opened in 1872, Stanford in 1893, Boalt Hall – Berkeley in 1894,⁴³ Yale Law School in 1919,⁴⁴ Columbia in 1927,⁴⁵ but Harvard Law School admitted women only in 1950, when Dean Erwin Griswold⁴⁶ reassured anxious alumni that this development was not very important or very significant:

³⁸ Paul D. Carrington, *One law: the Role of Legal Education in the opening of the legal profession since 1776*, in *Florida Law Review*, vol. 44, September 1992, n. 4, p. 501, p. 507 ff; Albert J. Harno, *Legal Education in the United States, A Report prepared for the Survey of the Legal Profession*, Clark, New Jersey, The Lawbook Exchange Ltd., 2004, p. 16 ff.

³⁹ Grant Gilmore, *The Ages of American Law*, Yale, Yale University Press, 1977, 2nd edition, 2014, p. 38 ff.

⁴⁰ Weisberg, *Barred from the Bar*, cit., p. 485.

⁴¹ Fossum, *Law and the Sexual Integration of Institutions*, cit., p. 224.

⁴² See Cynthia Fuchs Epstein. *Women in Law*. New York, Basic Books, 1981.

⁴³ Daniel R. Coquillette & Bruce A. Kimball, *On the Battlefield of Merit. Harvard Law School, the First Century*, Cambridge, Massachusetts, Harvard University Press, 2015, p. 608.

⁴⁴ In 1885, Yale Law School accidentally admitted its first female student, Alice Rufie Blake Jordan, who had applied using only her initials and was assumed to be a man. With the support of the Law School, but against the wishes of the Corporation, Jordan successfully completes her coursework and is awarded a degree a year later. After her graduation, the Corporation officially stipulated that courses were only open to men unless both sexes were specifically included. Women were then officially admitted into Yale Law School in 1919 (<https://celebratewomen.yale.edu/history/timeline-women-yale>).

⁴⁵ Barbara Aronstein Black. *Something to Remember, Something to Celebrate: Women at Columbia Law School*. *Columbia Law Review*, vol. 102, no. 6, 2002, p. 1451.

⁴⁶ In the famous movie *On the Basis of Sex*, directed by Mimi Leder in 2018 and based on the life of Supreme Court Justice Ruth Bader Ginsburg, there is an interesting, if not folkloristic, representation of Dean Griswold, who denied to RBG the permission to complete her Harvard law degree with classes at Columbia Law School in New York. RBG is then obliged to transfer to Columbia, where she graduates at the top of her class.

Most of us have seen women from time to time in our lives and have managed to survive the shock. I think we can take it, and I doubt that it will change the character of the School or even its atmosphere to any detectable extent.⁴⁷

Regardless of the moment in which women were admitted to the legal profession in the individual legal system, it is interesting to underline how the justifications adduced to explain their exclusion appear very similar in every context.

The first argument put forward to exclude women concerned the interpretation of the legal regime in force, which did not clearly specify that women could be admitted,⁴⁸ or that by indicating only the male gender as the referent for the norm, had to be interpreted to include female gender as well.⁴⁹

Another argument developed to bar women from the profession was their "natural inability" to "think like a lawyer",⁵⁰ as they were thought to be more emotional than rational and logical.⁵¹ Therefore, "judgement would no longer be impartial if women were present in the courtroom."⁵² Women were also "naturally less combative than men"⁵³ and didn't have the strength required by the profession.⁵⁴

Social consequences of admitting women to the legal profession were also taken in consideration to inhibit their path. The proper sphere for women was in the home: families and especially children would have suffered from being away from the mother.⁵⁵ Italian judges also referred to common sense, to the inconvenience that "gentle sex" took part in the "clamor of public judgments" in which arguments that could embarrass honest women are discussed.⁵⁶ A

⁴⁷ Erwin Griswold, *Developments at the Law School*, 1950 Harv. L. Sch. Y.B., 10, quoted in Deborah L. Rhode, *Missing Questions: Feminist Perspectives on Legal Education*, Stanford Law Review, Jul., 1993, Vol. 45, No. 6, p. 1547.

⁴⁸ I. Bagno, *Donne e professioni legali tra antico e nuovo regime*, in *Teoria e storia del diritto privato*, 2011/4, p. 1, in particular p. 30.

⁴⁹ Alpa, *L'ingresso della donna nelle professioni legali*, cit., p. 233; Weisberg, *Barred from the Bar*, cit., p. 487; Corcos, *Portia goes to Parliament*, cit., p. 312-313.

⁵⁰ Corcos, *Portia goes to Parliament*, cit., p. 329.

⁵¹ Weisberg, *Barred from the Bar*, cit., p. 489.

⁵² Weisberg, *Barred from the Bar*, cit., p. 492.

⁵³ Corcos, *Portia goes to Parliament*, cit., p. 346.

⁵⁴ Weisberg, *Barred from the Bar*, cit., p. 490.

⁵⁵ Weisberg, *Barred from the Bar*, cit., p. 492.

⁵⁶ Alpa, *L'ingresso della donna nelle professioni legali*, cit., p.235.

decree of the Court of Cassation of Turin, dated 1884 in order to exclude the application to the bar by Mrs. Linda Poët who had profitably concluded the law school and the period of apprenticeship, sentenced that “it would be unbecoming and villainous (brutto) to see women descending into the arena of the forum, taking part in the midst of the bustle of public procedure, exciting themselves in discussions which easily carry one beyond bounds, and in which one could not show toward them, all the respect which it is proper to observe toward the more delicate sex”.⁵⁷

Finally, it is necessary to remember that in all civil law countries that had introduced a civil code following the model of the French Code *Napoléon* of 1804,⁵⁸ like Italy and Belgium, married women needed to ask the husband’s permission (*autorité maritale*,⁵⁹ *autorità maritale*⁶⁰) to practice any kind of professional activity,⁶¹ which amounted to a legal incapacity for women who wanted to practice law.

These general rules on the legal capacity of women had long-term repercussions on the ability of women to access any profession, including the legal one.

In France, although a Law of 18th of February 1938 granted married women civil capacity, finally deleting art. 213 of the Code Civil, it was only a law of 1965 that gave women the right to manage their own property and engage in professional activity without the consent of their husbands.⁶²

In Germany, where the German Civil Code was promulgated only in 1900, §1354 dealt with the relationship between husband and wife in legal matters as follows: “The man is entitled to the decision in all matters relating to community life.” The so-called “obedience paragraph” (*Gehorsamsparagraph*) remained in force until 1957, when the Law on the Equality of Men and Women in the Field of Civil Law (*Gesetz über die Gleichberechtigung von*

⁵⁷ Court of Cassation of Turin, dated May 8, 1884, quoted in Louis Frank, *The Woman Lawyer*, 3 CHI. L. Times 120 (1889), p. 133.

⁵⁸ A. Desgagné. *Les règles du Code civil relatives aux "pouvoirs" dans le cadre de la famille*, Les Cahiers de droit (1961). 4(3), 50–68.

⁵⁹ Art. 213 introduced the “*puissance marital*” in the French civil code.

⁶⁰ Articles 134 to 137 of the Italian Civil Code of 1865 established the *autorità maritale*.

⁶¹ Corcos, *Portia goes to Parliament*, cit., p. 328; Alpa, *L'ingresso della donna nelle professioni legali*, cit., p. 229.

⁶² Loi n° 65-570 du 13 juillet 1965.

Mann und Frau auf dem Gebiet des bürgerlichen Rechts) came into force, but it was not until 1977 with the Reform of marriage and family law (Reform des Ehe- und Familienrechts) that the so-called housewives' marriage was replaced with the partnership principle. Until 1977, under the law in force in West Germany, a married woman's right to work was recognized only insofar it was compatible with her marriage and family duties.

In Italy, Parliament passed Law 1176 in 1919,⁶³ concerning the legal capacity of women which abrogated articles 134 to 137 of the Civil Code of 1865 related to the *autorità maritale*. The same law had a very important provision for the professional future of Italian women because it enabled them to exercise all the professions and to hold jobs in the public administration, except in the Judiciary. It was only in 1963, in fact, that women were admitted to the Judiciary in Italy.⁶⁴

A different perspective must be taken as far as the English Common Law is concerned, where the legal status of married women was governed by the "doctrine of coverture". According to the doctrine of spousal unity or of coverture as set out in Blackstone's "Commentaries on the Laws of England" (1765): "if husband and wife were «one body» before God, they were «one person» in the law, and that person was represented by the husband". This theory was usually given as a reason to deny women the vote and public office under the assumption that a married woman would be represented by her husband. Blackstone's doctrine also had an enormous impact on the evolution of common law rules in the private sphere. Since English law held that a married woman had no legal identity distinct from the one of her husband, this doctrine denied her independent legal existence. At the beginning of the 19th century, under the common law, married women could not access any professional activity without husband's consent. It was only with The Sex Disqualification (Removal) Act of 1919⁶⁵ that women were enabled to join the professions and professional bodies, to sit on juries and be awarded degrees and gained access to the legal profession as well.

⁶³ Legge n.1176 del 17 luglio 1919, *Norme circa la capacità giuridica della donna*, Gazzetta Ufficiale, 19 luglio 1919, n.172.

⁶⁴ Legge 9 febbraio 1963, n. 66, *Ammissione della donna ai pubblici uffici ed alle professioni*, Gazzetta Ufficiale, 19 febbraio 1963, n. 48.

⁶⁵ 9 & 10 Geo. 5 c. 71

In conclusion, it can be said that both in Europe and in the United States since the end of the First World War there has been a gradual removal of the impediments that prevented women from pursuing a legal career, even if in some branches, like the Judiciary, the admission of women was postponed until much more recent times. But it was only after the tumultuous '60s, with the birth of a Feminist movement, that universities began to change and became more welcoming to women, who entered law school in increasing numbers.⁶⁶

Women in legal education today

Although the admission of women to law schools and to legal professions was a path full of obstacles, today we have a very different situation, even if stereotypes in legal education die hard. Markedly sexist treatment of female law students seems to have survived for a long while. At some American law schools, professors refused to call on female students except for specific days designated as “Ladies Days” or only to discuss issues perceived as female such as “sexual assault”.⁶⁷ And “even the formal curriculum was misogynist: a property casebook issued in 1968 stated that “land, like woman, was meant to be possessed”.⁶⁸

This link between the female figure and the right to property appears to be recurrent as I still remember to have heard, as a young researcher back in the '90s, an enlightened Italian jurist stating: “property is like a beautiful woman: much cannot be asked of her”.

Women seem anyhow to have overcome an infinite series of difficulties, as nowadays statistics show that practically overall women have outnumbered

⁶⁶ Elizabeth F. Defeis, *Women in Legal Education Section*, 80 UMKC L. REV. 679 (2012); Loretta De Franceschi, *Documenti del Movimento studentesco per rivoluzionare l'università italiana*, in Andrés Payà Rico, José Luis Hernández Huerta, Antonella Cagnolati, Sara González Gómez, Sergio Valero Gómezset, *Globalizing the student rebellion in the long '68*, 2018, FahrenHouse, p. 153; Jenson Jane, *Le féminisme en France depuis mai 68*, in *Vingtième Siècle, revue d'histoire*, n°24, octobre-décembre 1989, pp. 55-68.

⁶⁷ Dara E. Purvis, *Female Law Students, Gendered Self-Evaluation, and the Promise of Positive Psychology*, 2012 *Mich. St. L. Rev.* 1693 (2012), in particular pp. 1694-5.

⁶⁸ Purvis, *Female Law Students*, cit., *ibidem*.

men in law schools. This is true in the United States,⁶⁹ as well as in Italy,⁷⁰ in France,⁷¹ and practically in all EU Member States.⁷²

However, as already mentioned, it is only in the United States that a vast literature has developed, analyzing the reasons why the law school experience seems to be particularly stressful for female students:

it is clear that for the last few decades, female law students have a markedly different and more negative experience in law school than do their male counterparts”.⁷³

On the other side, it has been underlined that it is the very ways law schools educate men and women that “actively perpetuate and exacerbate the challenges women face prior and subsequent to their induction into the legal profession as law students”.⁷⁴

⁶⁹ In the United States, according to the recent statistics published by ENJURIS (<https://www.enjuris.com/students/law-school-women-enrollment-2020.html>) in 2016, the number of women enrolled in Juris Doctorate programs moved past 50% for the first time. Female enrollees then proceeded to outnumber male enrollees in 2017, 2018, and 2019. In 2020, women once again outnumbered men in law school classrooms. Specifically, women made up 54.09% of all students in ABA-approved law schools, while men made up 45.70% of law school students. In 2016, the number of women enrolled in Juris Doctorate programs moved past 50% for the first time. Female enrollees then proceeded to outnumber male enrollees in 2017, 2018, and 2019. In 2020, women once again outnumbered men in law school classrooms. Specifically, women made up 54.09% of all students in ABA-approved law schools, while men made up 45.70% of law school students. For a review of the statistics before 2016, compare Richard K. Neumann Jr., *Women in Legal Education: What the Statistics Show*, 50 J. Legal Educ. 313 (2000)

⁷⁰ The Report published by AlmaLaurea in 2021 that refers to data collected in 2020 (<https://www.almalaurea.it/universita/profilo/profilo2020>) put forward that of the 32360 students who enrolled to a law school, only 39,7% are male, while 60, 3% are female.

⁷¹ Compare Christine Fontanini, Josette Costes, Virginie Houadec, *Filles et garçons dans l'enseignement supérieur : permanences et/ou changements ?* Éducation & formations, n. 77, novembre 2008, p. 64, who pointed out that already in 2007 women were the 65% of the enrolled students of the law schools in France.

⁷² *Mapping the Representation of Women and Men in Legal Professions Across the EU*, p. 69 ff.

⁷³ Dara E. Purvis, *Female Law Students, Gendered Self-Evaluation, and the Promise of Positive Psychology*, cit., p. 1696; see also Lani Guinier, Michelle Fine, Jane Balin, Ann Bartow and Deborah Lee Stachel, *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, University of Pennsylvania Law Review, Nov., 1994, Vol. 143, No. 1 (Nov., 1994), at 44, where the Authors point out that women were more likely than men to report disorders as a result of law school.

⁷⁴ Bashi, Iskander, *Why legal education is failing women*, cit., p. 391.

Finally, this situation seems to reverberate also within the faculty⁷⁵, which seems to be the natural consequence of that discrimination existing at law school level.

At a time when Europe often looks to the United States in search of inspiration to modernize the teaching models of law,⁷⁶ one wonders, however, what are the variables that have created this discrimination against women, if only to avoid reproducing them.

One of the peculiarities of legal education in American law schools, that amounts to a strong differentiation with respect to European legal education is the so-called Socratic method. The Socratic method was introduced at Harvard Law school by Christopher Columbus Langdell in 1870, as a radical innovation able to subvert the legal pedagogy in use until that time.⁷⁷

Grant Gilmore's ferocious description of Langdell has gone down in history, introducing him as “an essentially stupid man who, early in his life, hit on one great idea to which, thereafter, he clung with all the tenacity of genius”.⁷⁸

The novelty introduced by Langdell consisted in the fact that, contrary to what happened before - when law professors used class to lecture as in Europe – the Socratic method was based on assignments to students, who had to read and discuss the original sources, that is to say the cases that the professor was choosing to illustrate a particular legal subject.⁷⁹ Here is the way Langdell described the method, few years after starting using it:

The instructor begins by calling upon some member of the class to state the first case in the lesson, i.e., to state the facts, the questions which arose upon them, how they were decided

⁷⁵ Ann C. McGinley, *Reproducing Gender on Law School Faculties*, 2009 BYU L. Rev. 99 (2009).

⁷⁶ See for example: *Reinventing Legal Education, How Clinical Education Is Reforming the Teaching and Practice of Law in Europe*, Alberto Alemanno, Lamin Khadar (Eds.), Cambridge University Press, 2018; Clelia Bartoli, *Legal clinics in Europe: for a commitment of higher education in social justice*, *Diritto & Questioni Pubbliche*, Special issue – May 2016.

⁷⁷ On the development of legal education in the U.S and on the importance of law schools, see Robert Stevens, *Law School, Legal Education in America from 1850s to the 1980s*. Union, New Jersey, 2001.

⁷⁸ Grant Gilmore, *The Ages of American Law*, cit., p. 42.

⁷⁹ Bruce A. Kimball, *The Inception of Modern Professional Education: C.C. Langdell, 1826-1906*, Chapel Hill, University of North Carolina Press, 2009, p. 141.

by the court, and the reasons for the decision. Then the instructor proceeds to question him upon the case. If his answer to a question is not satisfactory (and sometimes when it is), the question is put round the class; and if the question is important or doubtful, or if a difference of opinion is manifested, as many views and opinions as possible are elicited.⁸⁰

The teaching revolution introduced by Langdell was aimed at rendering students active thinkers, not passively accepting the authoritative statements made by professors: the *lectio ex cathedra*, that we still find in many European law schools, was leaving space to maieutic, based on the dialectic between professor and students. Although the initial skepticism showed by his colleagues, by the early 1900s, the Socratic method would become the common teaching method in all law schools all over the country.⁸¹

In this context, it is necessary to point out the profound difference with the education that law students receive in Europe, at least in Civil Law Countries.

In continental Europe, where there is a long-established university experience dating back the Middle Ages,⁸² students enroll in law school directly after high school, where they receive a mostly theoretical preparation, the minimum contents of which are defined at ministerial level, considering the requests of the Bar associations. Of course, there are infinite differences between national legal systems, as evidenced by the still existing difficulty of obtaining double degrees between universities based in different countries. But the scheme remains the same: immediately after high school students enroll in law school, which generally provides a five-year curriculum, after which a (more or less long) period of legal practice is foreseen before having the right to be admitted at the Bar.

In the United States, students enter law school, which is generally a three-year course, only after having attended college. On average, therefore, people who enter law school in the US are more mature than the nineteen-year-old student

⁸⁰ Jeannie Suk Gersen, *The Socratic Method in the Age of Trauma*, Harvard Law Review, Vol. 130, No. 9, Bicentennial Issue (2017), p. 2322.

⁸¹ Gersen, *The Socratic Method in the Age of Trauma*, cit. p. 2324.

⁸² Charles M. Radding, *The Origins of Medieval Jurisprudence: Pavia and Bologna 850-1150*. New Haven, Yale University Press, 1988.

who enrolls in university in Europe, which makes the request to read and discuss case law more realistic.

Another difference that makes the Socratic method impracticable in European law schools is the number of students the professor must deal with, especially in the first years of university. Just to give a very superficial idea of the numbers we are dealing with and making reference to the data that are available on-line for this last year: Yale law school accepts 200 law students a year (with an acceptance rate of 6,9%); Columbia has enrolled 394 new law students (with an acceptance rate of 16,8%); Harvard has accepted 560 students, divided in seven sections of approximately 80 students (with an acceptance rate of 12.9%); NYU has accepted 425 new law students (with an acceptance rate of 23.6%).

In Europe, access to higher education is essentially free or, in any case, heavily financed by the state. In some countries, like Germany, the open access to all universities for anybody with secondary degree has been constitutionally guaranteed.⁸³ The result is that law schools like the one at the State University of Milan has every year some 1600 new students, while *Paris I Sorbonne* has 14.000 students in the field of law. Students at the *Facultad de Derecho* of the *Universidad Complutense de Madrid* are altogether 6768, at the *Fachbereich Rechtswissenschaft* in Frankfurt there are 4.702 students, while the *Juristische Fakultät* of the Humboldt-Universität in Berlin has “only” 3080 students.

In the European context, besides a very long tradition that foresee another kind of teaching method, one wonders if the Socratic method would be practicable at all with the number of students that professors have in class.

Anyway, more than a hundred years after its introduction, the Socratic method has been the subject of strong criticism⁸⁴ even in the United States, blaming its potential of reproducing the “hierarchical structure of life in the law”.⁸⁵ In

⁸³ I. Michael Heyman, *German and American Higher Education In Comparison: Is The American System Relevant For Germany?*, Research & Occasional Paper Series: CSHE.6.99 Center for Studies in Higher Education, University of California, Berkeley, March 5, 1999 (<https://cshe.berkeley.edu/sites/default/files/publications/pp.heyman.6.99.pdf>).

⁸⁴ Gersen, *The Socratic Method in the Age of Trauma*, cit. p. 2326 ff.; Duncan Kennedy, *How the Law School Fails: A Polemic*, 1 Yale Rev. L. & Soc. Action 71 (1971); Alan A. Stone, *Legal Education on the Couch*, 85 Harv. L. Rev. 392, 407- 08 (1971).

⁸⁵ Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. Legal Educ. 591 (1982)

particular, Duncan Kennedy shed light on the fact that the class of a law school had a particular gender, race, and class inclination:

[T]he line between adaptation to the intellectual and skills content of legal education and adaptation to the white, male, middle- class cultural style is a fine one, easily lost sight of

pointing out that the legal professional style to which students learn to assimilate is "overwhelmingly white, male, and middle class."⁸⁶

It should therefore not come as a surprise that American feminists have referred to the educational method to explain why female students general report higher levels of depression than male students at law schools.⁸⁷ This seems to derive from the "comparative reticence of female law students to speak in class",⁸⁸ which renders the Socratic method a unique "traumatic challenge only for girls".⁸⁹ Girls' classroom participation is relatively low⁹⁰ and the empirical observations divulged in literature emphasize that "male students dominate classroom discussions, particularly in large classes, in loud classes, and in classes taught by men".⁹¹ Female students participate in class less than men, while women's participation increases in classes taught by female professors, which, however, are few compared to the ones taught by male professors. Here it is clear that another problem also emerges, which derives from the lack of identification of female students with respect to a male model of professor.

So, while some Authors have pointed out that "many women are alienated by the way the Socratic method is used in large classroom instruction, which is the dominant pedagogy for almost all first-year instruction",⁹² others have stressed how the Socratic method has "devastating aggregate effects upon women law students" and "hinders the academic development of women by

⁸⁶ Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, p. 605.

⁸⁷ Dara E. Purvis, *Female Law Students, Gendered Self-Evaluation, and the Promise of Positive Psychology*, cit., p. 1701.

⁸⁸ Dara E. Purvis, *Female Law Students, Gendered Self-Evaluation, and the Promise of Positive Psychology*, cit., p. 1696.

⁸⁹ Gersen, *The Socratic Method in the Age of Trauma*, cit. p. 2327.

⁹⁰ French-Hodson, *The continuing gender gap in legal education*, cit., p. 83.

⁹¹ S. Bashi, M. Iskander, *Why legal education is failing women*, cit., p. 405.

⁹² Guinier, *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, cit., p. 3.

maintaining a denigrating psychological atmosphere of silence, and adversarial competition”.⁹³

Interestingly, the argument that legal education could be detrimental to women is not new, as it had already been formulated in the past, but with the aim of excluding women from the legal profession.⁹⁴ In the same years that Harvard was implementing Langdell's method, the Supreme Court of Illinois was considering one of the first cases dealing with admission to the bar of a woman. In *Bradwell v. Illinois*,⁹⁵ the judges held that it was not unconstitutional for a state to deny women admission to its bar.⁹⁶ Justice Bradley in his concurrence opinion underlined that “the natural and proper timidity and delicacy which belongs to the female sex evidently unfits occupations of civil life”,⁹⁷ namely law practice, for which was needed the “energies and responsibilities, and that decision are presumed to predominate in the sterner sex”.⁹⁸ Langdell himself, of which we must never forget the presentation made by Gilmore,⁹⁹ spoke out against the access of women to Harvard,¹⁰⁰ expressing the idea that the “study of the law would be not an improvement but an injury” to women.¹⁰¹

In addition, other studies try to understand why women speak less in class.¹⁰²

⁹³ Tanisha Makeba Bailey, *The Master's Tools: Deconstructing the Socratic Method and Its Disparate Impact on Women Through the Prism of the Equal Protection Doctrine*, 3 MARGINS 125 (2003), p. 127.

⁹⁴ Gersen, *The Socratic Method in the Age of Trauma*, cit. p. 2328.

⁹⁵ *Bradwell v. The State*, 83 U.S. 130 (1872).

⁹⁶ *Id.* at 139.

⁹⁷ *Id.* at 141 (Bradley, J., concurring).

⁹⁸ *Id.* at 142.

⁹⁹ See *supra*, footnote 78.

¹⁰⁰ See Daniel R. Coquillette & Bruce A. Kimball, *On the Battlefield of Merit Harvard Law School, the First Century*, cit., pp. 483-95.

¹⁰¹ *Id.*, p. 495.

¹⁰² Katharine T. Bartlett, *Feminist Perspectives on the Ideological Impact of Legal Education upon the Profession*, 72 N.C.L.Rev. 1259 (1994), p. 1268; Weiss Catherine and Louise Melling, *The Legal Education of Twenty Women*, Stanford Law Review, 1988, Vol. 40, No. 5, *Gender and the Law*, p. 1299; Howell, *Combating Gender Inequities in Law School: Time for a New Feminist Rhetoric that Encourages Practical Change*, cit., p. 36.

Women may be discouraged from participating because most of the first-year professors are males,¹⁰³ or because of the aggressiveness showed by classmates.¹⁰⁴

Another reason may derive from the fact that professors treat female students differently, because of "hesitation on the part of some faculty members to challenge women or to engage their ideas".¹⁰⁵

Finally, women's behavior may be the consequence that "faculty members run their classes in ways that give more attention to students who speak more quickly and unequivocally - behaviors that are more often displayed by men than by women".¹⁰⁶

Women's hesitation to participate actively to the class and to promote themselves in front of the faculty may also have other repercussions on the life of female students,¹⁰⁷ as classroom performance is considered as a springboard to relationships with faculty, which are very helpful when it comes to research and teaching assistance or in writing projects.¹⁰⁸ The studies conducted show that for male students is easier to develop mentoring relationships with faculty than for female students;¹⁰⁹ this discrepancy may induce further disadvantages for women in getting professional guidance, or simply encouragement, and friendship.¹¹⁰

¹⁰³ Schwartz and Homer (*Admitted But Not Accepted, Outsiders Take an Inside Look at Law School*, cit., p. 35) point out during their analysis developed at Boalt Hall that: "A majority (57%) of women in both ethnic categories said they were more comfortable with a woman professor's approach to legal thinking; slightly less than a majority (46%) said they were more likely to speak in a class taught by a woman professor than in one taught by a man".

¹⁰⁴ Weiss and Melling, *The Legal Education of Twenty Women*, cit., p. 1340.

¹⁰⁵ S. Bashi, M. Iskander, *Why legal education is failing women*, cit., p. 409.

¹⁰⁶ Id. at p. 409.

¹⁰⁷ Dara E. Purvis, *Female Law Students, Gendered Self-Evaluation, and the Promise of Positive Psychology*, cit., p. 1713.

¹⁰⁸ S. Bashi, M. Iskander, *Why legal education is failing women*, cit., p. 416.

¹⁰⁹ French-Hodson, *The continuing gender gap in legal education*, cit., p. 86, who points out that "Mentorship often provides for an informal transmission of information and advice about careers and law school, as well as how to integrate professional lives with social and family commitments".

¹¹⁰ S. Bashi, M. Iskander, *Why legal education is failing women*, cit., p. 419 present these results: "Empirical data gathered from both faculty interviews and student responses demonstrate that women find it more difficult than men to approach faculty members outside of class. Student perceptions on this issue vary by gender:

Another salient aspect that differentiates the lives of American law students from their European counterparts is the editing of law journals.¹¹¹ Since the birth of the law schools in the United States,¹¹² students have developed their legal research and writing skills by doing editing, citation formatting, and proposition-checking of articles that were going to be published, but also adding notes and comments. Law reviews give the opportunity to students to publish papers written under the supervision of faculty members,¹¹³ as they not only publish articles written by law professors, judges, and other legal professionals, but also shorter pieces written by law students called “notes” or “comments”.¹¹⁴

Again, the representation of women seems disproportionately low, a fact that needs to be evaluated in itself, but also for the consequences it may have, as the publication rate may influence the under-representation of women even as legal scholars.¹¹⁵

Finally, women graduated with lower GPAs,¹¹⁶ although men and women had equal academic indicators entering school.¹¹⁷

63% of women, but only 28% of men, observed differences in the way men and women interact with faculty outside the classroom. Several female students suggested that male students feel "entitled" to professors' time outside the classroom. A female 2L said that not only do men appear more comfortable talking to professors, but that, "more discouragingly, professors seem much more comfortable talking to male students." Differences in out-of-class interactions are expressed in (1) men's greater levels of comfort in approaching faculty members outside class and (2) men's and women's different ways of responding to pressures to "perform" in their interactions with faculty members.

¹¹¹ Nathan H. Saunders, *Student-Edited Law Reviews: Reflections and Responses of an Inmate*, Duke Law Journal, Vol. 49, No. 6 (Apr., 2000), p. 1663. John G. Rester, *Faculty Participation in the Student-Edited Law Review*, Journal of Legal Education, Vol. 36, No. 1 (March 1986), p. 14; Critical on the issue Richard A. Posner, *The Future of the Student-Edited Law Review*, Stanford Law Review, Summer, 1995, Vol. 47, Law Review Conference (Summer, 1995), p. 1131.

¹¹² Erwin N. Griswold, *The Harvard Law Review—Glimpses of Its History as Seen by an Aficionado*. Harvard Law Review: Centennial Album (1987): 23.

¹¹³ S. Bashi, M. Iskander, *Why legal education is failing women*, cit., p. 425.

¹¹⁴ See also Michelle Fabio, *What Is a Law Review and How Is It Important?* February 21, 2019, <https://www.thoughtco.com/what-is-law-review-2154872>.

¹¹⁵ S. Bashi, M. Iskander, *Why legal education is failing women*, cit., p. 426.

¹¹⁶ GPA: grade point average, which is calculated by using the number of grade points a student earns in a given period of time.

¹¹⁷ Ann C. McGinley, *Reproducing Gender on Law School Faculties*, cit.

Concluding this part of the article, it is worth mentioning that awareness of gender inequality within law schools has been slowly increasing, not least because this inequality also seemed to cast its long shadow on the legal professions:

“Gender disparity in law school continues both inside and out of the classroom. These effects spill over as women enter the legal workforce and are exacerbated by similar institutional problems across the profession. Additionally, the legal profession has played a role in perpetuating some of the education structures that alienate and disadvantage women through prioritizing certain markers of law school success”.¹¹⁸

This awareness led to a debate that developed several hypotheses to correct the current situation in order to close the gender gap that still exists within law schools.¹¹⁹

The current debate and the possible reforms in the law schools’ curriculum

Unlike in Europe, the United States has witnessed the development of a "Feminist Legal Theory",¹²⁰ a body of scholarship in search of a theoretical understanding of the relation of law to women’s subordination, focusing on issues pertaining to gender equality, that reflected also on women faculty and students’ struggles in law schools.¹²¹

Feminist legal theory movement has proliferated in the U.S. in a way that is incomparable to the situation in the European Union, introducing specific courses,¹²² organizing annual colloquia,¹²³ devoting specific research centers

¹¹⁸ See French-Hodson, *The continuing gender gap in legal education*, cit.

¹¹⁹ R.A. French-Hodson, *The continuing gender gap in legal education*,

¹²⁰ Robin West, *Women in the legal academy: A brief history of feminist legal theory*, Fordham law review, 2018, Vol.87 (3), p.977-1003

¹²¹ West, *Women in the legal academy: A brief history of feminist legal theory*, cit., p. 980.

¹²² Harvard law school has a course on Feminist Legal Theory held by Professor Janet Halley; Yale has introduced a Feminist Legal Theory Seminar held by Professor Vicky Schultz.

¹²³ University of Baltimore organizes the Feminist Legal Theory Conference and Colloquia sponsored by the Center on Applied Feminism (<http://law.ubalt.edu/centers/caf/conference/index.cfm>).

to the issue¹²⁴ and publishing handbooks, articles, and casebooks on the matter.¹²⁵

While in Europe the entry of women as students and teachers has been a silent revolution, unaccompanied by a critical approach to the issue, in the United States feminist scholars have launched an awareness-raising campaign in an attempt to identify the reasons why women experience law school negatively and promote new solutions.¹²⁶

A first proposal consists in inserting gender and feminist perspectives into the basic law school courses¹²⁷, that otherwise would continue

“to convey only an incomplete knowledge unless they are expanded to examine how law has affected women's opportunities, and how the law's attention to or failure to acknowledge women's experiences has shaped our views of women and women's views of themselves”.¹²⁸

According to this approach, the curriculum of law schools should be integrated by “law and feminism classes” to help female students feel more part of the

¹²⁴ At Columbia Law School there is a Center for Gender and Sexuality Law.

¹²⁵ Bowman, Cynthia, Laura Rosenbury, Deborah Tuerkheimer, Kimberly Yuracko, *Feminist Jurisprudence: Cases and Materials*, 5th Edition, American Casebook Series, West Academic Publishing, 2018; Bartlett, Katherine. *Feminist legal theory: Readings in law and gender*. Abingdon-on-Thames, Routledge, 2018; Nancy Levit, Robert R.M. Verchick, *Feminist Legal Theory. A Primer*, 2nd ed., New York, New York University Press, 2016; Martha Chamallas, *Introduction to feminist legal theory*, Third edition, New York, Wolters Kluwer Law & Business, 2013; *Feminist Legal History. Essays on Women and Law*. Tacy A. Thomas and Tracey Jean Boisseau (Eds.). New York, New York University Press, 2011; *Feminist Legal Theory: An Anti-Essentialist Reader*. Nancy E. Dowd and Michelle S. Jacobs (Eds.). New York, New York Univ Press. 2003; Bowman, Cynthia Grant, and Elizabeth M. Schneider. *Feminist legal theory, feminist lawmaking, and the legal profession*. Fordham L. Rev. 67 (1998), p. 249; Cain, Patricia A. "The future of feminist legal theory." *Wis. Women's LJ* 11 (1996), p. 367; *Applications of Feminist Legal Theory: Sex, Violence, Work and Reproduction* (Women in the Political Economy), D. Kelly Weisberg (Ed.). Philadelphia, Temple University Press. 1996; *Feminist Jurisprudence*. Patricia Smith (Ed.), New York – Oxford, Oxford University Press, 1993; Carrie Menkel-Meadow. *Mainstreaming Feminist Legal Theory*, 23 Pac. L. J. 1493 (1992).

¹²⁶ Howell, *Combating Gender Inequities in Law School: Time for a New Feminist Rhetoric that Encourages Practical Change*, cit. p. 36.

¹²⁷ Lucinda M. Finley, *A Break in the Silence: Including Women's Issues in a Torts Course*, 1 YALE J.L. & FEMINISM (1989), 41.

¹²⁸ Finley, *A Break in the Silence: Including Women's Issues in a Torts Course*, p. 42

teaching experience¹²⁹ and faculty staff should increase the number of female law professors.¹³⁰ The presence of female role models would increase the comfort level of women at the law school.¹³¹

The presence of female professors in class, in fact, would determine an identification process for women in the classroom and their self-esteem would increase looking how women were able to achieve success in the legal profession.¹³²

A second proposal aims at introducing more feminized teaching methods.¹³³ Some scholars have asserted that the law school curriculum should be more accessible to women,¹³⁴ while others have underlined that a “student-supportive” approach to legal education would decrease gender inequity.¹³⁵ It is therefore not surprising that precisely these scholars also propose the abolition of the Socratic method or its dilution.¹³⁶

A third proposal aims at humanizing law schools,¹³⁷ developing an ethic of care, claiming a different approach to the Socratic method, where law professors should explain that the aim of this method is more to create a dialogue rather than their opportunity to demonstrate that they can “think like

¹²⁹ Nancy E. 65Dowd, Kenneth B. Nunn & Jane E. Pendergast, *Diversity Matters: Race, Gender and Ethnicity in Legal Education*, 15 U. Fla. J.L. & Pub. Pol'y 12 (2003); Melissa Harrison, *A Time of "Passionate Learning: Using Feminism, Law, and Literature to Create A Learning Community*, 60 Tenn. L. Rev. 393,425 (1993).

¹³⁰ Dowd et alii, *Diversity Matters: Race, Gender and Ethnicity in Legal Education*, p. 44.

¹³¹ Heather A. Carlson, *Faculty Mentoring as A Way to End the Alienation of Women in Legal Academia*, 18 B.C. Third World L.J. 317, 333 (1998); see also Judith D. Fischer, *Portia Unbound: The Effects of a Supportive Law School Environment On Women and Minority Students*, 7 UCLA Women's L.J. 81, 111-12 (1996).

¹³² Howell, *Combating Gender Inequities in Law School: Time for a New Feminist Rhetoric that Encourages Practical Change*, cit. p. 36.

¹³³ Ibidem.

¹³⁴ Sarah E. Theimann, *Beyond Guinier: A Critique of Legal Pedagogy*, 24 N.Y.U. Rev. L. & Soc. Change 17, 22 (1998)

¹³⁵ Fischer, *Portia Unbound: The Effects of A Supportive Law School Environment On Women and Minority Students*, cit., p. 82.

¹³⁶ Morrison Torrey, Jennifer Ries & Elaine Spiliopoulos, *What Every First-Year Law Student Should Know*, 7 Colum. J. Gender & L. 267 (1998), p. 308 who pursue the elimination or a drastic reform of the Socratic method to make women “more comfortable in the classroom”.

¹³⁷ Howell, *Combating Gender Inequities in Law School: Time for a New Feminist Rhetoric that Encourages Practical Change*, cit. p. 37.

a lawyer”,¹³⁸ giving women the possibility to participate in the discussion without developing anxiety about it.

The idea of including a Feminist perspective into the law curriculum in Europe is far from being reality and the analysis on Feminist legal theory developed in Europe do not focus on gender issues at the law school.¹³⁹ Even here the reasons may be multiple. One possible explanation could be that American law schools, although strongly supervised by the American Bar Association, do not have to correspond to the strict standards set by centralized agencies or by the Ministry of Education like in most European countries and have therefore a certain freedom to introduce new courses in the curriculum. Another explication may be that the study of law in the United States has always been more open to interdisciplinary dialogue after the evolution of the Realists’ movement,¹⁴⁰ that professed that lawyers should use the tools of the social sciences to study and understand the real world in which law functioned,¹⁴¹ creating fertile ground for all “law and ...” movements, such as law and economics,¹⁴² law and sociology, law and literature and law and feminism.

These reasons may explain why the debate developed in the States seems quite different. Scholars have pointed out not only the contribution,¹⁴³ but also the

¹³⁸ Jennifer L. Rosato, *The Socratic Method and Women Law Students: Humanize, Don't Feminize*, 7 S. Cal. Rev. L. & Women's Stud. 37 (1997).

¹³⁹ Régine Dhoquois, *La recherche féministe à l'université dans le domaine du droit. Une absence en forme de desertion*. Les Cahiers du CEDREF (Centre d'Enseignement, de Documentation et de Recherches pour les Études Féministes), 10, 2001. <https://journals.openedition.org/cedref/278>; Anna Simone, Ilaria Boiano, Angela Condello, *Femminismo giuridico, Teorie e problemi*, Milano, Mondadori, 2019; Ute Sacksofsky, *Was Ist Feministische Rechtswissenschaft?*. Zeitschrift Für Rechtspolitik, vol. 34, no. 9, 2001, pp. 412–417.

¹⁴⁰ Lon L. Fuller. *American Legal Realism*, University of Pennsylvania Law Review and American Law Register, March 1934, Vol. 82, No. 5, pp. 429-462.

¹⁴¹ Stephen Wizner. *The law school clinic: Legal education in the interests of justice*. Fordham L. Rev. 70 (2001), 1929, 1932.

¹⁴² Ejan Mackaay. *History of Law & Economics*. *Encyclopedia of law and economics* (2000): 65-117.

¹⁴³ Menkel-Meadow, *Feminist Legal Theory, Critical Legal Studies, and Legal Education or "The Fem-Crits Go to Law School"*, cit.; Katharine T. Bartlett, *Feminist Perspectives on the Ideological Impact of Legal Education upon the Profession*, cit.; Lucinda M. Finley, *A Break in the Silence: Including Women's Issues in a Torts Course*, cit.; Deborah L. Rhode. *Missing Questions: Feminist Perspectives on Legal Education*, cit.; see also: Leslie Bender, *A Lawyer's Primer on Feminist Theory and Tort*, 38 J. Legal Educ. 3 (1988).

gaps and problems in feminist scholarship to cope with women and legal education.¹⁴⁴ If the inclusion of an approach to law that considers the point of view of women now seems an unequivocal fact even outside the university classrooms,¹⁴⁵ the idea of softening up the law school curriculum appears less convincing and - even - counterproductive precisely for women.¹⁴⁶ Nobody would like in fact to suggest that women will never succeed in law schools unless these require lower expectations.¹⁴⁷

Bashi and Iskander,¹⁴⁸ analyzing the results of a comprehensive study related to the way Yale Law School educates female and male students, argued that

“Law schools and the legal profession were built by men and for men; it would be remarkable, indeed, if they did not reflect preferences and tendencies associated with men”.¹⁴⁹

Such a rhetoric seems today fruitless as Higher Education, more than looking into the past, should wonder which are the tools needed today to prepare students to cope with the existing real world, opening the minds to the needs of the world of tomorrow.

For this reason, the arguments put forward by those scholars who identify the deficiencies of law schools with respect to the current needs of the legal profession seem much more convincing.¹⁵⁰ And these are very useful also for the European university, which on the one hand has shown to follow a different philosophy than the American one, but which on the other - like the American one - is always and naturally on the hunt for tools that enable students to face their career choices in the most appropriate way.

A Symposium devoted to Civic and Legal Education published on the Stanford Law Review in 1993,¹⁵¹ nearly 30 years ago, was already highlighting the

¹⁴⁴ Howell, *Combating Gender Inequities in Law School: Time for a New Feminist Rhetoric that Encourages Practical Change*, cit. p. 37 ff.

¹⁴⁵ McGinley, *Reproducing Gender on Law School Faculties*, cit., p. 106.

¹⁴⁶ Howell, *ibidem*.

¹⁴⁷ Howell, *ibidem*.

¹⁴⁸ S. Bashi, M. Iskander, *Why legal education is failing women*, cit., p. 389.

¹⁴⁹ *Ibidem*, p. 392.

¹⁵⁰ Howell, *Combating Gender Inequities in Law School: Time for a New Feminist Rhetoric that Encourages Practical Change*, cit. p. 38.

¹⁵¹ Stanford Law Review, Vol. 45, No. 6, July, 1993.

deficiencies of the legal education paradigm in the United States,¹⁵² pointing out that the abilities that legal education overlooks are those most important to the actual practice of law,¹⁵³ and that the Socratic method should not be any more considered the most effective tool to educate lawyers of the future.¹⁵⁴

The legal profession, at the end of the twentieth century, required different skills, which did not fit well with the old and traditional way of conceiving legal education.¹⁵⁵ The development of transactional lawyering,¹⁵⁶ that is to say of practicing lawyers who do not litigate for the most of their professional life, put in evidence the importance of other important skills, like collaboration, counseling, mediation, lawyer-client relationships,¹⁵⁷ problem solving and facilitating transactions.¹⁵⁸

Law schools should then choose to give all their students the cultural and technical background to face the legal profession, as it develops to cope with the different needs of a constantly evolving and constantly changing society. The Socratic method should be reframed not because it clashes with the natural

¹⁵² Besides the already quoted article by Deborah L. Rhode (*Missing Questions: Feminist Perspectives on Legal Education*), see also Judith Resnik, *Ambivalence: The Resiliency of Legal Culture in The United States*, Stanford Law Review, July, 1993, Vol. 45, No. 6., p. 1525; Ann Shalleck, *Constructions of the Client Within Legal Education*, Stanford Law Review, July, 1993, Vol. 45, No. 6., p. 1731.

¹⁵³ Deborah L. Rhode, *Missing Questions: Feminist Perspectives on Legal Education*, cit. 1559.

¹⁵⁴ Deborah L. Rhode, *Missing Questions: Feminist Perspectives on Legal Education*, cit., at 1554 points out "While the abusive interrogations traditionally associated with this format unquestionably have declined, this increase in civility may have deflected attention from more fundamental questions. Is this method an effective way of teaching skills that are most essential to effective legal practice?"

¹⁵⁵ See Guinier et alii, *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, at 13, pointing out that lawyering requires more diverse perspectives and skills than those currently being taught in law schools.

¹⁵⁶ Steven L. Schwarcz, *Explaining the value of transactional lawyering*. Stanford journal of law, business & finance, 2007-03-22, Vol.12 (2), p.486; Elisabeth de Fontenay, *Law Firm Selection and the Value of Transactional Lawyering*, The Journal of corporation law, 2015-12-01, Vol.41 (2), p.393; *Defining Key Competencies for Business Lawyers*, Report of the Task Force on Defining Key Competencies for Business Lawyers, Business Law Education Committee, ABA Business Law Section Source. The Business Lawyer, Vol. 72, No. 1 (Winter 2016-2017), pp. 101-156.

¹⁵⁷ Ann Shalleck, *Constructions of the Client Within Legal Education*, cit., who argues that clients are "mostly absent from classroom discussions.

¹⁵⁸ Howell, *Combating Gender Inequities in Law School: Time for a New Feminist Rhetoric that Encourages Practical Change*, cit. p. 38, quoting the Law School Admission Council/Law School Admission Services, *Law As A Career: A Practical Guide* 17 (1993), stating that many lawyers do not litigate at all.

reluctance of female students to participate in a competitive discussion, but because it no longer prepares for the current needs of the profession. It is therefore not by working on gender, but rather by looking at the actual skills required by the legal profession that mainstreaming gender equality in legal education can be achieved.

Conclusions

Universities in Europe and the United States have followed different paths, facing different problems. Any evaluation in relation to American law schools must then be inserted in their particular context, where university education still appears to be largely the monopoly of private universities, with selective access methods, that require a high-level quality standard but also an enormous economic effort to pay tuition fees. A recent post, published on Aug. 12, 2021, states that

[a]ccording to a U.S. News report, the average tuition and fees for a private law school during the 2018-2019 school year were \$48,869 per year, compared to \$40,725 for non-resident law students or \$27,591 for residents per year at a public law school.¹⁵⁹

Elite law schools, such as Columbia, Harvard, Yale, New York University, and others¹⁶⁰ charge more than \$60,000 per year. These figures don't even consider the cost of living and other expenses indirectly linked to attendance.

If we compare this situation with that existing in Europe, where access to higher education is essentially free, the differences are immediately evident. In terms of democracy and inclusion, the European choice guaranteed social mobility. On the other side, the idea of having a tuition free or almost free university education across the continent lead also to negative side effects, like the overcrowding and consequently underfunding of higher learning institutions.

Finally, although at European law schools, female students never pointed out the existence of an unfriendly environment, the teaching of American legal feminists should arrive also in our classes: not to cope with teaching methods

¹⁵⁹ See <https://crushthelSATexam.com/in-depth-breakdown-of-law-school-costs-in-the-united-states/>).

¹⁶⁰ See ranking by tuition fees: <https://www.ilrg.com/rankings/law/tuition>.

that would be improbable to transplant in mass universities, but to open the mind to new perspectives, in a society that evolves and becomes the more and more diverse.