

# Compensatory Women's Rights Legal Education in Eastern Europe: The Women's Human Rights Training Institute

*Isabel Marcus\**

## ABSTRACT

To compensate for the absence/minimization of women's rights in the law faculty curriculum in post-socialist states, in 2002 a coalition of women's rights NGOs, funded by OSI, developed a Women's Human Rights Training Institute (WHRTI) in Sofia, Bulgaria. Now embarking on its sixth cycle and having graduated more than 100 lawyers (mostly working in NGOs in post-socialist states), WHRTI has developed a women's rights legal education and training program triad consisting of feminist legal theory, women's rights legal practice, and feminist legal pedagogy. The goal of the program is to educate and train lawyers to understand and use various domestic, regional, and international fora to bring cases of sex/gender inequality. WHRTI's program has measurable and qualitative impacts and can be tailored to meet the need for compensatory education in other regions where a women's rights educational deficiency exists in law faculties' curricula.

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\* *Isabel Marcus* is a Professor of Law at the University at Buffalo Law School. She is a co-founder of the Institute for Research and Education on Women and Gender at UB. She served as chair of the Department of Women's Studies at the College of Arts and Sciences from 1997 to 2002. She received her J.D., M.A. (African Studies), and Ph.D. (Political Science) from the University of California, Berkeley. Her longstanding research interests have been in the area of family law, domestic violence, and international women's human rights. She has been selected as a Fulbright Scholar (Romania 1997, Macedonia 2003 to 2004), a Fellow of the Bunting Institute, a participant in the Fulbright Senior Scholar Roster, and an International Scholar for the Open Society Institute (Soros Foundation) Higher Education Support Program in Eastern Europe. She has taught extensively in universities in Eastern Europe (Poland, Russia, Lithuania, the Czech Republic, Serbia, Slovakia, and Georgia) and Asia (People's Republic of China, India, Pakistan, and Thailand).



## I. INTRODUCTION

For more than two decades, I have spent a significant amount of time teaching courses on women's rights as a volunteer or as a Fulbright visiting professor in law or other faculties and working with NGOs in the post-socialist states of Eastern Europe and the former Soviet Union (hereafter the region). Over time, I came to understand that these were one-off teaching experiences. Having a foreigner teach this important new subject was and still appears not to be a prelude or commitment to its full inclusion in the law faculty curriculum. Even now, it is most likely to be relegated a single lecture in an optional human rights course despite its foundational relevance to modern law and legal systems.

Based on my experiences, I wrote an article in which I asked and, then, suggested answers to a basic question spanning law, legal education, politics, economics, history, and culture—"why are women's rights usually not taught or deeply minimized in post-socialist law faculties?"<sup>1</sup> I argued for crucial curriculum reforms consistent with the proposition that women's rights are an integral part of the entire law curriculum. Despite political and economic changes in the region, the explanations and rationalizations proffered by law faculty colleagues in the region for this deficiency remain remarkably consistent: that the many issues raised in the expanding women's rights canon can be fully addressed in a basic human rights course; that the subject belongs in a human rights LLM program for future specialists or training programs for state officials; that the subject belongs to social science and humanities, but not law faculties, because women's rights issues are cultural ones whereas the study of law is a scientific undertaking transcending its political, economic, and cultural context;<sup>2</sup> or, more ominously, that the subject is a dangerous one—part of a malevolent feminist plot to destroy the prevailing natural sex/gender order.<sup>3</sup>

1. See Isabel Marcus, *The "Woman Question" in Post-Socialist Legal Education*, 36 *HUMAN RIGHTS*, Q. 507 (2014). I argue that post-socialist law faculties tend to ignore or to resist recognition of the gendered nature of law and the ways in which it reproduces and supports gendering practices and policies in a state. That education, notwithstanding the existence of a state's constitutional sex equality provision and, in many instances, a sex equality law, marginalizes women or makes them invisible as subjects of law and legal systems. See also Ivana Radačić, *Feminist Legal Education in Croatia: A Question of Fundamentalism or a Fundamental Question?*" (on file with the author). Radačić examines course syllabi and email responses from Croatian law faculties and comes to the preliminary conclusion that feminist (or even gender) issues are excluded or that insufficient attention is paid to them.
2. See, e.g., Editorial, *The Strange Case of Dr. Ivana Radačić*, 24 *EUR. J. INT'L L.* 8 (2013), for a discussion of the denial of an academic appointment to Dr. Radacic on the grounds that her work on feminism and human rights and European Court approaches to sex discrimination and to religious symbols in educational institutions met the grounds for appointment in the interdisciplinary field of gender studies but, do not meet the criteria for scientific appointment in the field of international law.
3. "The term sex refers to biological differences between men and women. The term gender refers to socially constructed identities, attributes and roles for women and men and



What do these explanations and rationalizations ignore? First, in all post-socialist state constitutions women and men are equal rights bearing citizens. Second, that recognition and implementation of women's rights in a wide range of laws and official practices (employment, reproduction, healthcare, sexuality, family, crime, education, immigration, social services and benefits, disability, environmental issues, and access to justice) is foundational and has a direct impact on at least half of a state's population as well as consequences for its other half. Third, that state failure to encourage and support the integration of women's rights in the legal education it funds at state universities and certifies at private ones strategically undermines its regional and international human rights obligations and, thus, is inconsistent with its claims to be a rule of law entity. Finally, that law and culture are not separate. Law operates in a cultural context and assists, reflects, and reproduces it.<sup>4</sup> Law also exists in a political context even as "there are strong *political* interests in maintaining law's apparent self-sufficiency and pre-eminence as a normative discourse or knowledge-field."<sup>5</sup>

As a teacher and an activist, I am acutely aware that the absence or minimization of women's rights in the law curriculum was and continues to be a significant and obvious educational deficiency.<sup>6</sup> It has important consequences for law school graduates as well as for their legal systems and states.

Legal education, like other education, "is a socially facilitated process of cultural transmission"<sup>7</sup> of values and norms as well as formal knowledge upheld by systemic authority. More specifically, it conveys societally accepted "appropriate" ways of identifying, framing, and evaluating issues as legal concerns. In doing so, legal education helps to mold students' conscious-

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society's social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favoring men and disadvantaging women." *General Recommendation No. 28 on the Core Obligation of Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women*, U.N. GOAR, Comm. on Elim of Discrim against Women, 47th Sess., ¶5, U.N. Doc. CEDAW/C/2010/47/GC2. Contemporary feminist theory identifies gender as a process naturalizing and normalizing purported sex-based differences into appropriate roles and behaviors for each sex. ZILLAH EISENSTEIN, *SEXUAL DECOYS: GENDER, RACE AND WAR IN IMPERIAL DEMOCRACY* 3 (2007).

4. See MARTHA CHAMALLAS, *INTRODUCTION TO FEMINIST LEGAL THEORY* (3d ed., 2013), for an overview of feminist analysis of the relationship between law and culture.
5. ROGER COTTRELL, *LAW, CULTURE AND SOCIETY: LEGAL IDEAS IN THE MIRROR OF SOCIAL THEORY* 4 (2006).
6. In 2008 (at the end of the second cycle), in 2009, 2010, and 2011 (at the beginning of the third, fourth and fifth cycles respectively), the author conducted a brief survey regarding WHRTI participants' experience in their legal education with regard to women's human rights in the curriculum and faculty attitudes toward women students. The results of the fifth cycle remain remarkably similar to those of the earlier cycles when participants were enrolled in law faculties ranging from the mid-nineties to the beginning of the second decade of the twenty-first century: women's rights was barely mentioned in a human rights course; there were no courses on women's rights; and there were incidents of faculty sexually harassing or patronizing female students.
7. PHILLIP W. JACKSON, *WHAT IS EDUCATION?* 9 (2012) (emphasis removed).



ness regarding the reach, the utility, and the politics of law. As institutions of high status and authority, their inclusion of a subject in the curriculum and the amount of attention they pay to it signals its established intellectual relevance and importance and adds to its legitimation within the prevailing legal system. The corollary is that a subject's marginalization or absence in the law curriculum signals its insignificance for the prevailing legal and political system.<sup>8</sup>

This article continues my discussion concerning women's rights in post-socialist legal education by focusing on the history and work of a proactive, innovative, educational, and training response to this deficiency—the Women's Human Rights Training Institute (hereafter WHRTI or the Institute). WHRTI, a region-based and focused women's rights legal education<sup>9</sup> and training<sup>10</sup> program, is located in Sofia, Bulgaria. It is organized and governed by an International Steering Committee (ISC)<sup>11</sup> consisting of a transnational coalition of women's rights NGOs.<sup>12</sup> On the occasion of its tenth anniversary, in 2014, WHRTI announced that approximately 100 young lawyers from the region have graduated from its program and that many of them currently work in women's or human rights NGOs.

From its inception, WHRTI's education and training program has been based on the principle that women and men are of equal worth, and, therefore, equally worthy of the dignity, respect, and full citizenship<sup>13</sup> that guarantee women equal recognition, enjoyment, and exercise of all human rights. It is committed to and focused on the promotion and implementation of sex/gender equality principles and practices in the region through women's rights legal activism including the fostering of women's rights lawyers' networks and transnational women's rights legal projects in the region.

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8. See Marcus, *supra* note 1, at 527–33. In each of the Institute's five cycles, participants have reported that in their legal education, at best, one lecture in an international human rights course may be devoted to the International Convention on the Elimination of Discrimination against Women. Rarely, if ever, are the women's rights decisions of the European Court of Human Rights or the findings of UN reporting and monitoring mechanisms incorporated into discussions of basic domestic law subjects such as family law, criminal law, health law, or labor law.
  9. The Oxford English Dictionary defines "educate" as "training a person so as to develop intellectual and moral powers generally."
  10. The Oxford English Dictionary defines "training" as subjecting "to discipline and instruction for the forming of character and developing the powers of or making proficient in some occupation by instruction and practice."
  11. The present International Steering Committee consists of Iustina Ionescu (Romania), Albena Koycheva (Bulgaria), Adriana Lamackova (Slovakia), Genoveva Tisheva (Bulgaria), and Isabel Marcus (United States).
  12. See VALENTINE M. MOGHADAM, *GLOBALIZATION AND SOCIAL MOVEMENTS: ISLAMISM, FEMINISM, AND THE GLOBAL JUSTICE MOVEMENT* (2009), for a discussion of women's rights NGOs.
  13. See Brooke A. Ackerly & Susan Moller Okin, *Feminist Social Criticism and the International Movement For Women's Rights as Human Rights*, in *DEMOCRACY'S EDGES* 134 (Ian Shapiro & Casiano Hacker-Cordón eds., 1999).



WHRTI's educational mission extends far beyond the formal mastery of legal texts or law on the books—the traditional, positivist approach to legal education and training in the region.<sup>14</sup> Rather, it utilizes contemporary feminist-inspired critical legal analyses of state laws and legal practices to assess whether women are denied either *de jure* or *de facto* equality<sup>15</sup> in domestic laws and practices and encourages the pursuit of legal challenges, usually initially within a state and, as warranted, in regional and international human rights venues. I characterize this education as *compensatory* to draw attention to the fact that this significant deficiency is institutionally generated—in this instance, law faculties' failures to address women's rights and sex/gender equality issues in the teaching of domestic law subjects—as distinguished from the term *remedial* which focuses on redressing a student's lack of understanding or proficiency regarding material already taught.

To more fully contextualize, understand, and appreciate the significance of the Institute's innovative education and training model, this article begins with a brief foray into the historical context in which WHRTI developed. Developing the Vision (Part II, A) traces WHRTI's origins to the first post-socialist decade when emerging new, neo-liberal political, legal, economic, and cultural orders were being consolidated in democratic states professing to abide by a liberal-inspired rule of law.<sup>16</sup> Early on, it became clear that, notwithstanding the carryover of sex equality principles from socialist-era state constitutions to post-socialist liberal democratic ones and the plethora of politically attractive promises of freedom and liberty, new laws and legal practices did not address the promotion of *de facto* sex/gender equality.<sup>17</sup> To challenge these developments, lawyers familiar with women's rights issues were needed both to argue cases in domestic legal systems whose socialist-era educated incumbents were virtually clueless regarding women's rights jurisprudence and legal practice and to turn to regional and international

14. See Marcus, *supra* note 1, at 546–48.

15. General Comment No. 16, *The Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights* (art. 3 of the International Convention on Economic Social and Cultural Rights), U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 34th Sess., U.N. Doc. E/C.12/2005/4 (2005).

Formal [de jure] equality assumes that equality is achieved if a law or policy treats men and women in a neutral manner. [De facto] Substantive equality is concerned, in addition, with the effects of laws, policies and practices and with ensuring that they do not maintain, but rather alleviate, the inherent disadvantage that particular groups experience.

*Id.* ¶ 7.

Substantive equality for men and women will not be achieved simply through the enactment of laws or the adoption of policies that are gender-neutral on their face . . . because they do not take account of existing economic, social and cultural inequalities, particularly those experienced by women.

*Id.* ¶ 8.

16. See Marcus, *supra* note 1, at 525–27.

17. *Id.*



human rights venues for redress when their legal challenges were denied in domestic ones.

Developing the Vision (Part II, B) focuses on one very modest feminist response in the mid-nineties to these significant developments—the creation of a Legal Fellows Program by a new transnational NGO—the Network of East-West Women (hereafter NEWW). Its program was the forerunner of WHRTI and contributed to the very limited pool of practicing women's rights lawyers in the region.

Expanding the Vision (Part III) moves on to the first decade of the twenty-first century and the founding and development of WHRTI—a feminist institution providing innovative compensatory legal education and training for lawyers committed to challenging sex/gender discriminatory laws and legal practices in their state and in the region. Part III, A continues the historical narrative with a discussion of the recognition of the need for and the founding of WHRTI as a dramatically different legal education and training program. Parts III, B and C are devoted to the WHRTI program. Part III, B focuses on WHRTI's development and use of a women's rights legal education triad consisting of feminist legal theory (III, B, 1), women's rights legal practice (III, B, 2), and feminist legal pedagogy (III, B, 3). Part III, C discusses the innovative structure and operation of the WHRTI program cycle.

Reflecting on the Institute's Contributions (Part IV) evaluates WHRTI's responses to the pervasive denial or minimization of the intellectual pedigree and relevance of women's rights in the legal academy and legal systems in the region. It identifies the contributions of WHRTI alumnae to law and legal practice reforms. It emphasizes the importance of WHRTI's creation of an alumnae network of women's rights lawyers as a legal resource for the region. It also suggests WHRTI's possible utility as a model for compensatory education and training in other regions where women's rights are bypassed or minimized in law faculties with longer term consequences for the legal professions and the legal systems in those regions.

## **II. DEVELOPING THE VISION: RECOGNIZING THE NEED FOR WOMEN'S RIGHTS LEGAL EDUCATION AND WOMEN'S RIGHTS LAWYERS**

### **A. The Emergence of Women's Rights NGOs and Women's Rights Agendas in Post-Socialist States**

In the fast-moving, overwhelmingly male populated political, economic, and legal arenas of the early 1990s in Eastern Europe and the states of the former Soviet Union, a rewriting of laws and rules and a redistribution of



spoils accompanying the transition from a socialist command/control to a neo-liberal economy<sup>18</sup> occurred. In each post-socialist state there were activist women, many of whom had been dissidents or critics of the politically and legally compromised immediate socialist past, who recognized that the new neo-liberal political, economic, and legal developments heralded the systemic and systematic undermining of socialist-era policies in such diverse areas as social insurance, education, healthcare, and employment that, notwithstanding the basic fraternal patriarchal underpinnings of the socialist state, had benefitted women.<sup>19</sup> As each former socialist state's legal system was replaced by a European civil law system, ostensibly committed to liberal democratic legal principles (including a rule of law and sex equality as provided in its constitution), there was virtually no evidence of the necessary political will and active commitment on the part of post-socialist states to avoid the looming decline in women's status<sup>20</sup> by undertaking systemic/structural changes or remedial/corrective measures to promote and ensure sex/gender equality in a new order.

Not surprisingly, then, many of these activist women in each post-socialist country channeled their energies—often as volunteers—into the newly established civil society sector populated by newly created nongovernmental entities (NGOs).<sup>21</sup> No longer constrained by Cold War censorship of Western publications or by socialist state rules restricting contact with foreign organizations, some NGOs began to develop political, social, cultural, and educational projects challenging the palpable decline in women's status and access to resources in the emerging new order.<sup>22</sup> Some proposed women-

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18. Contemporary neo-liberalism endows the most privileged and significant meaning and justifies social and legal rewards to a paradigmatic autonomous risk-taking person, whose attributes are implicitly gendered as masculine. Martha Albertson Fineman, *Equality: Still Elusive After All These Years*, in *GENDER EQUALITY: DIMENSIONS OF WOMEN'S EQUAL CITIZENSHIP* 251, 260 (Linda C. McClain & Joanna Grossman eds., 2009).
  19. Marcus, *supra* note 1, at 521–22. That said, socialist regimes were fraternal patriarchies in which horizontal and vertical control was exercised by male, top level party re-distributors and lower level, largely male loyal functionaries. See Kornelia Slavova, *Looking at Western Feminisms through the Double Lens of Eastern Europe and the Third World*, in *WOMEN AND CITIZENSHIP IN CENTRAL AND EASTERN EUROPE* 245 (Jasmine Lukić et al. eds., 2006); Dimitrina Petrova, *The Winding Road to Emancipation in Bulgaria*, in *GENDER POLITICS AND POST-COMMUNISM: REFLECTIONS FROM EASTERN EUROPE AND THE FORMER SOVIET UNION* 22 (Nanette Funk & Magda Mueller eds., 1993); see also Enikő Magyar-Vincze, *Romanian Gender Regimes and Women's Citizenship*, in *WOMEN AND CITIZENSHIP* *supra* at 21.
  20. Marcus, *supra* note 1, at 524–26.
  21. See Amanda Sloat, *The Rebirth of Civil Society: The Growth of Women's NGOs in Central and Eastern Europe*, 12 *EUR. J. WOMEN'S STUD.* 437 (2005).
  22. See Katja M. Guenther, *The Possibilities and Pitfalls of NGO Feminism: Insights from Postsocialist Eastern Europe*, 36 *SIGNS* 863 (2011), for a discussion of how feminist organizations or groups working to improve women's status developed in spite of ambivalence or outright hostility toward feminism identified with ills ranging from Western destructive individualism to the promotion of sexual promiscuity for women, volunteerism (associated with a socialist state strategy for extracting more labor power from citizens), and efforts women made at social change (especially individualism and the promotion of equality in the private sphere).



based and oriented service projects; others began to challenge sex/gender discriminatory laws and official practices. Dependent on external (non-state) funding, both types of activities were radical departures from socialist-era systems and institutions. In their work, these fledgling NGOs were aided by rapidly developing computer technologies that enabled them to establish transnational networking connections and relationships in the region as well as in North America.

The Network of East-West Women (NEWW) was one of these transnational networks. Founded in the wake of the collapse of socialism, it connected women in the region with feminists in the United States. As the need for funds to undertake women-focused projects in the region became clear, NEWW established a governing structure—an International Board of Directors composed of feminists from Eastern Europe<sup>23</sup> and the US who knew each other through their activism and, in some instances, their academic work and interests. With modest funding from US foundations, in 1993, a very small NEWW office was opened in Washington, D.C.

Among NEWW's earliest projects was a response to post-socialist feminist activists' identification of the basic need for open and timely transnational communication and circulation of information among women in the region. Not only was that information often ignored in their own mainstream domestic media, it did not appear in the international press.<sup>24</sup> Recognizing that computer-based networks, though prohibitively expensive for activists in a region relying on non-convertible currencies, were being developed by feminist activists in the region,<sup>25</sup> NEWW joined and supported these new links by raising funds for them from US philanthropies.

Another pressing need identified by feminist activists in the region was for books and journals on women's issues. Though post-socialist governments had eliminated socialist-era state censorship policies that were potent barriers to the flow of information, there still were other significant barriers to accessing materials from outside the region such as the prohibitive hard currency costs of books and journals published in Western Europe and the United States and the shortage of translations of scholarly and activist feminist materials from English into the region's national languages.

In response, prominent US feminist Professor Ann Snitow, one of NEWW's founders and a member of its International Board of Directors, organized

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23. Gosia Tarasiewicz and Urszula Nowakowska from Poland, Lepa Mladjenovic from Serbia, Genoveva Tisheva from Bulgaria, and Vesna Kesic from Croatia were NEWW Board members from the region.
  24. Julie Mertus, an American lawyer and women's rights activist, conducted some of the early outreach to NGOs in the region. Interview with Professor Ann Snitow, New York City (Mar. 2015).
  25. See, e.g., MARGARET E. KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* 165–98 (1998).





an innovative NEWW Book and Journal Project located in her New York apartment. The project provided free copies of feminist books and materials in English and funded the translation of some of the most important feminist works into national languages. It also encouraged the development in the region of women's and gender studies programs in university social science and humanities faculties now freed from repressive socialist-oriented mandatory course contents and Marxist pedagogical orthodoxy.

A third pressing need in the region was identified after NEWW Director Shana Penn and I attended a 1994 regional women activists' conference in Budapest devoted to issues of violence against women in war and peace. Inspired by the proceedings, we reported to the NEWW Board that it was important to encourage and support newly established women's rights NGOs in the region whose activities focused on violence against women. Their work ranged from crisis services for victims, to pressing for reforms in law and official practices regarding domestic violence, to challenging state failures to acknowledge and punish rape in the Balkans' war zones.

That said, we also were aware that there was a healthy skepticism among some activists regarding the desirability or utility of framing women's issues as legal ones. Though, in socialist times, dissidents had used natural law and other human rights legal arguments to challenge the façade of legality of repressive socialist state power,<sup>26</sup> some of our feminist colleagues considered law a coercive patriarchal mechanism lacking significant transformative potential for women's lives and well-being. They reminded us that incumbent judges and other domestic legal system officials—holdovers from the socialist-era—were unfamiliar with women's rights in theory or practice and that there was almost no information regarding women's rights in the region's national languages or in Russian (the carryover incumbents' likely foreign language fluency) to educate them.

Nevertheless, it was apparent that rights-based activism could not ignore challenges to laws and legal system practices and that trained women's rights lawyers were needed. Very few legal professionals in the region had any understanding of, or concern with, public interest law and, most certainly, with women's rights. Moreover, they lacked legal knowledge or litigation skills to pursue women's rights cases. And Western European and

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26. "Socialist legality" was understood "not only as a rhetorical veil of terror, but as a means of ritualization and petrification of public life, as well as [the] bureaucratization of language, too." Grażyna Skąpska, *Settling Accounts with the Past, the Conceptualization of Difference and the Dilemmas of the Law-governed State*, in CENTRAL AND EASTERN EUROPE AFTER TRANSITION: TOWARDS A NEW SOCIO-LEGAL SEMANTICS 147, 153 (Alberto Febbrajo & Wojciech Sadurski eds., 2010). See also Jiří PŘIBÁŇ, *DISSIDENTS OF LAW: ON THE 1989 VELVET REVOLUTIONS, LEGITIMATIONS, FICTIONS OF LEGALITY AND CONTEMPORARY VERSION OF THE SOCIAL CONTRACT* (2002).



US funders,<sup>27</sup> who were providing conventional human rights trainings in the region as part of the rebuilding of economies and political and legal institutions, paid no attention to women's rights as an essential component of a post-socialist liberal democratic state. Arguably, this gap reinforced or confirmed the perception among lawyers and legal system officials in the region that, at best, the women's rights canon was of marginal significance.<sup>28</sup>

In addition, the region's largely state-funded law faculties, preoccupied with such curriculum changes as the inclusion of business and commercial law subjects in order to educate future lawyers to work in the region's rapidly developing neo-liberal market-based economies, were unresponsive to women's rights. Women's rights issues such as polygamy, forced marriage, or female genital mutilation might be raised in an optional human rights course, as problems in far distant exotic, "other" (third) world countries. There were no discussions of domestic laws and practices that had a discriminatory impact on women's health and reproductive rights, their employment, or the extent to which they experienced gender-based violence.

### **B. Supporting the Early Work of Women's Rights Lawyers: The Network of East-West Women Legal Fellowship Program**

Fully aware of these developments, two outstanding, feminist activist NGO lawyers from the region who were serving on the NEWW Board of Directors—Genoveva Tisheva, founder of the Bulgarian Gender Research Foundation in Sofia, and Urszula Nowakowska, founder of the Women's Law Center in Warsaw—supported a proposal that NEWW develop on a modest scale a women's rights legal education and training project for the region's NGO lawyers. Other non-lawyer NEWW Board members agreed. They recognized that even though NEWW was not a professional education entity, it was part of an extensive feminist activist network in the region (including some recently graduated young lawyers) and had contacts with several important women's rights law-oriented NGOs in the US as well as the support of a few US law professors who were feminist activists.

In 1995, NEWW submitted a proposal to the Ford and the Soros Foundations for an innovative women's rights legal education and training project—a US based NEWW Legal Fellowship Program for young women's rights lawyers from NGOs in the region—and was awarded a multi-year

27. Post-socialist legal professional training often was funded and organized by external sources—the Organization for Security and Co-operation in Europe (OSCE), the US Agency for International Development (USAID), and the American Bar Association Central and East European Legal Initiative (ABA-CEELI).

28. Interview with Christina Zampas, Researcher, Center for Reproductive Rights, New York, (Mar. 2014).



grant. The program provided stipends to bring selected legal fellows to the US for a four month academic and legal practice education and training opportunity. These legal fellows were enrolled in a women's rights/feminist legal theory course or seminar at a US law school and had an internship<sup>29</sup> at a US women's rights NGO working on one of three issues—reproductive rights, violence against women, or women's economic development/employment discrimination.<sup>30</sup> Each legal fellow would be provided with a computer and full access to otherwise costly online legal materials, scholarly journals, and books. Upon completion of the NEWW fellowship, each legal fellow would be invited to prepare a ten thousand dollar seed grant proposal for a new women's rights project for their NGO or the expansion of an existing one. In addition, each fellow would continue to have access to the resources of the NEWW Book and Journal Project.

The NEWW Legal Fellowship Program awarded twenty-four fellowships<sup>31</sup> over a six year period to young female<sup>32</sup> NGO lawyers from Albania, Bulgaria, the Czech Republic, Kosovo, Lithuania, Poland, Romania, Serbia, and Slovakia. All but one of them focused on violence against women or reproductive rights. This disparity reflected the fact that despite the drastic pace of economic restructuring and the dismal statistics regarding women's economic displacement accompanying neo-liberal based shifts,<sup>33</sup> there were very few NGOs in the region dealing with employment discrimination or woman-focused economic development. Upon their return home, most fellows continued to work with their NGO for several years before moving on to other public interest legal work.

A full discussion of the three basic women's rights legal issues, selected as the foci of the NEWW Legal Fellowship Program, is beyond the scope of this article. However, a brief summary of their significance underscores the importance of concrete foci in a women's rights legal education and training program.

Though they often risked humiliation and harassment, a number of women's rights NGO activists in the region were involved in the burgeoning international and national campaigns against gender-based violence (domestic violence, sexual violence, sex trafficking, and violence against women in conflict zones). Their work included conducting consciousness

29. NEWW legal fellows had internships with Planned Parenthood in Washington, D.C., the Center for Reproductive Rights in New York City, the National Abortion Rights Action League in Washington, D.C., and Lawyers for Human Rights in Minneapolis.

30. These issues were identified by Eastern European feminist lawyer colleagues in collaboration with NEWW Directors Shana Penn and, her successor, Erin Barclay, and Professor Isabel Marcus.

31. All but one returned to their country after completing the fellowship.

32. Though recruitment *supra* for the program was sex gender neutral, no males applied.

33. See Marcus, *supra*, note 1.



raising campaigns against gender-based violence; recognizing the connections between the violence and prevailing gender stereotypes; exposing their state's failures to provide services for victim/survivors of gender-based violence and organizing hotlines, crisis centers, and shelters funded by Western European or North American donors to serve women victims/survivors of violence; identifying the ways in which abused women often were re-victimized if they attempted to use their legal system for redress; and organizing to demand the punishment of perpetrators of mass violence against women in the region's conflict zones. These activities were crucial to pioneering efforts to break the silences surrounding gender-based violence in law faculties, in providing professional trainings for practicing lawyers, and in trainings state officials.

Since socialist-era laws providing access to abortion (the main form of birth control) had been carried over into post-socialist health care systems, reproductive rights did not appear to be a very pressing initial issue for most of the region's women's rights activists.<sup>34</sup> Their complacency, however, was shattered first by the Catholic Church's challenges to Poland's liberal abortion law in the early nineties. In other post-socialist countries, by the end of the first post-socialist decade conservative and populist/nationalist forces were working to restrict women's access to abortion by changing laws<sup>35</sup> and health care practices. Here, too, the need for lawyers willing and knowledgeable to challenge state actions (including state failures to act) was clear. Like violence against women, reproductive rights were not discussed in the law curriculum.

So, too, was there a need for lawyers trained to recognize and challenge the sex/gender discriminatory impacts on women generated by the dramatic scale and pace of neo-liberal economic shifts in post-socialist states.<sup>36</sup> Those post-socialist states that were tapped for a place in the first or second EU accession queue rushed to harmonize their domestic laws with the avalanche of EU directives including those addressing sex equality. However, there was little domestic political will to implement directives concerning sex equality issues. And, despite EU rhetoric, there was no significant pressure from

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34. The exception was Romania that had punitive laws regarding abortion, which were set aside in 1990 by its first post-socialist parliament.

35. Proposed legislation varied among states in the region. The main issues included: re-defining the status of the fetus, limiting the reasons for legal abortion, allowing health practitioners to claim conscientious objection to abortion, contraception and reproductive technologies with providing for mandating referrals, establishing waiting periods and mandatory counseling for women seeking an abortion, and undermining minors' access to abortion and contraception.

36. Neo-liberalism preaches and practices the dissemination of market values to all institutions. See WENDY BROWN, *EDGEWORK: CRITICAL ESSAYS ON KNOWLEDGE AND POLITICS* 37, 39–40 (2005).



Brussels on EU candidate states to act on these issues.<sup>37</sup> For other states in the region, whose EU accession prospects were more dim and distant, there were no internal incentives to address sex discrimination in employment and social benefits.

### **III. EXPANDING AND IMPLEMENTING THE VISION: THE WOMEN'S HUMAN RIGHTS TRAINING INSTITUTE (WHRTI)**

#### **A. Responding to the Call for a New Model of Women's Rights Legal Education and Training**

In 2002, the sixth year of its Legal Fellows Program, the NEWW Board convened a meeting of alumnae fellows to provide advice and guidance for the program's future direction. Alumnae agreed that the combination of an academic experience in a US law school and an intensive legal practice experience in a US based NGO made the NEWW fellowship an invaluable learning experience. In a frank discussion, they emphasized that the fellowship had contributed to their general understanding of the women's rights canon as well as the ways in which the US legal system and US legal education addressed women's rights issues. They also attributed some of their heightened awareness of the extent to which sex/gender discriminatory laws and practices in their countries had profound impacts on women's lives and the quality of their citizenship to their NEWW supported fellowship in the US.

That said, the alumnae also recognized that a portion of their newly acquired knowledge was not transferable or immediately relevant to their own legal systems and culture. In addition, and of even greater importance, were new European legal developments that hopefully would have impacts on the status of women in their countries and the framing of legal challenges alleging their state's violations of its binding women's rights obligations. One development was the expansion of the women's rights jurisprudence canon generated by the European Court of Human Rights in Strasbourg to whose jurisdiction each European state submitted when, as a member of the Council of Europe, it ratified the European Convention on Fundamental Rights and Freedoms. Another was that new EU member states in the region faced the prospect of compliance with EU sex equality directives and of being challenged by litigation in the Court of Justice of the EU in Luxembourg.

NEWW Legal Fellows also were aware that neither these Europe-wide or EU-specific legal developments regarding women's rights appeared to generate much recognition in their university law faculties (state or private),

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37. See Marcus, *supra* note 1, at 539.



bar associations, or state legal apparatuses. Instead, these developments heightened and made even more visible the deep unmet needs in the region: an understanding and mastery of regional and international women's rights jurisprudence and its domestic application; the acquisition of professional skills for women's rights law practice; and familiarity with strategic planning in order to effectively challenge sex discriminatory domestic laws and state practices.

This alumnae consensus was dramatic and persuasive. "Their passion was clear and their dedication unquestionable. They were sending a clear message and asking for and building a community. They looked at what existed and knew that they were alone. They were early trailblazers."<sup>38</sup>

In response, NEWW's International Board of Directors committed itself to work with other NGOs to develop a successor to the NEWW fellowship program that would meet regional needs—a region-oriented and based women's rights legal education and training program designed to provide women's rights NGO lawyers with enhanced knowledge and skills in order to effectively mount women's rights challenges in domestic, regional, and international venues. In 2003, a transnational coalition of NGOs (the Bulgarian Gender Research Foundation,<sup>39</sup> NEWW,<sup>40</sup> and the Center for Reproductive Rights,<sup>41</sup>) submitted a proposal for a new free-standing education and training entity—a Women's Human Rights Training Institute (WHRTI)—to the Soros Foundation's Open Society Institute (OSI) and was awarded a multi-year grant. The proposed Institute, located in Sofia, would be governed by an International Steering Committee (hereafter the ISC)<sup>42</sup> whose members

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38. Interview with Erin Barclay, NEWW Director (1997–2000), Washington, D.C. (Mar. 2015).
39. The Bulgarian Gender Research Foundation (BGRF) is an independent nongovernmental organization that promotes social justice and women's human rights through research, education, and advocacy programs. The BGRF is actively involved in legislative and policy changes in the field of gender equality and women's rights, namely in drafting and lobbying for legislation against violence against women and drafting legislation on equal opportunities of women and men. *About the Organizations* (on file with the author).
40. The Network of East-West Women (NEWW) is an international membership and advocacy organization linking women in more than thirty countries in Central and Southeastern Europe, the New Independent States, and the Russian Federation. NEWW supports independent women's movements that foster women's participation in all aspects of public decision-making. NEWW's primary objective is to increase the capacity of women and women's NGOs to shape policies that affect women's lives. *About the Organizers* (on file with author).
41. The Center for Reproductive Rights is a nonprofit legal advocacy organization dedicated to promoting and defending women's reproductive rights worldwide. The Center for Reproductive Rights uses international and regional human rights law and mechanisms to advance reproductive freedom as a fundamental right that all governments are legally obligated to protect, respect, and fulfill. *Id.*
42. Initially, the ISC consisted of a representative from each of the three founding NGOs. Over time, three other members who participated in the early Institute cycles and were working in an NGO were added. In November 2014, the composition of the ISC was: two Bulgarians, one Slovak, one Romanian, and one American.



(Genoveva Tisheva, Christina Zampas, and myself) were deeply committed to women's rights activism, had years of professional women's rights legal work experience in often hostile environments, and recognized the importance of creatively expanding and deepening the scope of feminist jurisprudence in theory and its application in women's rights legal practice.

The rationale for the proposed WHRTI program was succinct and direct. Women's human rights is a "specialized area of litigation, that has emerged because it concerns issues that often are both legal and have a deep cultural significance, and tend to be excluded from traditional human rights litigation."<sup>43</sup> Its objectives are activist ones:

"to build the capacity of lawyers in CEE/NIS [Central and Eastern Europe and the Newly Independent States formerly part of the USSR] to litigate women's human rights cases at the country and regional levels; to articulate regional and country level litigation strategies for women's human rights in CEE/NIS . . . ; to support on-going women's rights litigation efforts in CEE/NIS and to seed new women's rights litigation; and to facilitate the development of strategic relationships among the women's human rights litigation community and mainstream human rights groups undertaking human rights litigation in CEE/NIS."<sup>44</sup>

In effect, the proposed education and training was designed to help generate a shared intellectual, professional, and political consciousness through the creation of professional and personal bonds and links among young women's rights lawyers.

Participants would be encouraged to engage in critical thinking regarding a range of women's rights issues, to develop their ability to recognize and apply feminist legal theories, to become proficient in recognizing discrimination's causes and barriers and in analyzing the impact of various discriminatory acts and practices, to explore expanding the scope of legal remedies in women's rights cases, and to recognize the need to monitor the state's implementation of its women's rights obligations by using international levels of advocacy for the consolidation and promotion of local gains. They also could plan transnational women's rights projects and programs in the region and work to include women's human rights in the regional agendas of major international human rights NGOs.<sup>45</sup>

NGO lawyers or legal advisers working in the region are identified as the main and preferred applicants for the Institute's program. Unlike other lawyers, who are state employees and have access to publicly funded training opportunities, NGO lawyers are dependent on funding from private

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43. Women's Human Rights Training Institute, grant proposal to Open Society Institute 7 (2003) (on file with author).

44. *Id.* at 2.

45. See OSI Grant Proposal for Second Round 3 (2007) (on file with author).



foundations or international or regional public funders and, thus, are less likely to have resources for the compensatory legal education and training that WHRTI is committed to provide.

Qualifications for successful applicants to the program include: being a practicing lawyer or legal counselor working with human rights or women's rights NGOs (preferably in the region); having a substantial and sustainable interest and a demonstrated commitment to women's human rights advocacy and to using the law creatively to secure redress for women's rights violations; having a professional relationship/affiliation for at least one year prior to their application with an institution/organization with the capacity to litigate women's rights cases or having experience with litigation preferably focusing on women's human rights; and having a demonstrated interest and basic knowledge of international and regional human rights law, legal standards, and instruments. Successful applicants must be available to actively participate in all sessions of the Institute's cycle and be fluent in written and spoken English and possess advanced English language comprehension.<sup>46</sup>

The call for applications for the first Institute cycle (2004 to 2006) produced a yield of eighteen qualified applicants; several were dedicated and highly motivated former NEWW Legal Fellows—ones whose experiences in the US had enhanced their awareness of the need for developing women's rights legal theory and practice in the region. As the Institute's reputation developed, by its third cycle, there were more than fifty applications for twenty slots and by the end of the Institute's first decade, it had participants from almost every state in the region.<sup>47</sup>

## B. Developing a Women's Rights Legal Education Triad

WHRTI's founding NGO partners proposed to develop an intensive education and training program which would be a significant departure from the

46. WHRTI Call for Applications (2013–2015) (on file with the author).

47. The first Institute cycle participants (2004–2006) included young lawyers from Albania, Bosnia/Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Lithuania, Macedonia, Poland, Romania, Slovakia, and Ukraine. In the second cycle (2007–2009), there were participants from Albania, Armenia, Bulgaria, Cyprus, Georgia, Latvia, Moldova, Poland, Romania, Slovakia, Turkey, and Russia. Third cycle participants (2010–2011) included young lawyers from Albania, Armenia, Azerbaijan, Bosnia/Herzegovina, Bulgaria, Czech Republic, Latvia, Macedonia, Moldova, Poland, Serbia, Slovakia, Tajikistan, and Ukraine. Fourth cycle participants (2012–2013) came from Albania, Armenia, Azerbaijan, Bosnia, Bulgaria, Croatia, Georgia, Hungary, Kyrgyzstan, Moldova, Poland, Romania, Russia, Slovakia, Spain, and Ukraine. The fifth (most recent) cycle included participants from Albania, Armenia, Bosnia, Bulgaria, Croatia, Georgia, Hungary, Latvia, Lithuania, Macedonia, Moldova, Poland, Romania, Russia, and Slovenia. There also have been participants from other parts of Europe: Cyprus (1), Ireland (1), Spain (2), Turkey (2), and the UK (1). In addition, for the fifth Institute cycle, OSI authorized funding for an active observer from another continent. This expansion generated a number of applications (primarily from Africa and Asia); a NGO lawyer from Zimbabwe was selected.





region's prevailing legal education and legal professional training models of memorizing texts and reading judicial opinions with an uncritical eye.<sup>48</sup> I have labeled it as a "women's rights legal education and training triad" consisting of feminist legal theory and women's rights legal practice, both of which rely on feminist legal pedagogical methods.

### 1. *The First Prong of the Women's Rights Legal Education Triad: Feminist Legal Theory*

In the first five day session of the two year Institute cycle,<sup>49</sup> expert presenters, using feminist legal pedagogy methods, focus on the first prong of the Institute's women's rights legal education triad—feminist legal theory—a significant contribution to modern rights-based jurisprudence at domestic, regional, and international levels. Since Institute participants bring differing degrees of familiarity and understanding of feminist legal theory,<sup>50</sup> a key learning outcome of the first session is the creation of a shared understanding of the centrality of feminist legal theory for women's rights legal practice<sup>51</sup> and its expansive possibilities. This first session also provides the intellectual foundation<sup>52</sup> for Institute participants' engagement in the interactive learning exercises including two moot courts in the next three sessions of the Institute's cycle devoted to women's rights legal practice—the second prong of the triad.

An extended discussion of the intellectual pedigree and accomplishments of feminist legal theory, developed over more than five decades of activism

48. See Marcus, *supra* note 1, for a fuller discussion of conventional legal education and training and its connections to the prevailing culture in the region. See also Section III, B, 3 below.

49. See Section III, C, for a discussion of the extended time frame of the WHRTI cycle.

50. There is agreement among the Institute's founders and presenters that participants in the first two Institute cycles (2004–2006 and 2007–2009) were less familiar with existing feminist legal theory, the structure of women's rights legal arguments, or the available options for legal challenges in different international and regional human rights venues than the three more recent Institute cohorts (2010–2011, 2012–2013, and 2014–2015). This encouraging development is not attributable to the law faculty curriculum or professional training. Even in the more recent cycles, women's rights was not a part of their legal education. Instead, participants attribute their greater familiarity with some women's rights concepts or issues to information they found in social media and the blogosphere. The major exception to this finding is those participants who undertook graduate legal studies in human rights (usually in Western European countries).

51. CHAMALLAS, *supra* note 4, at xxiii.

52. One participant in the first cycle recalled, "I had some experience with European Law. But when I was exposed to feminist jurisprudence, I needed a day or two to digest what I was hearing, to have it make sense, to recognize its importance and to make it applicable in our imperfect legal systems. It was a stressful experience in a positive way. You learn how little you know, that you don't know what is important or how to find it. And I was surprised by the range of topics that were so new to me. I had no basis for comparison." Interview with Albena Koycheva, lawyer and WHRTI International Steering Committee Member, Sofia, Bulgaria (Mar. 2014).



on every continent among an increasing number of (mostly female) lawyers, academics, and NGO activists, is beyond the scope of this article. In this section, I briefly discuss some of feminist legal theory's major principles to underscore its profoundly significant contributions to domestic as well as regional and international human rights/women's rights law.

Feminist legal theory is "a field of law attuned to perspective and the influence of experience on our understanding of events."<sup>53</sup> It proceeds from a fundamental understanding that sex and gender are important in our everyday encounters and that being a man or a woman is a central feature of most people's lives and has a profound impact on their daily life<sup>54</sup> as well as on legal outcomes.<sup>55</sup> Feminist legal theory recognizes the diversities among women (including, but not limited to, race, ethnicity, sexual orientation, religion, class, physical or mental challenges, and citizenship status)<sup>56</sup> that produce women's complex intersectional identities. In so doing, it seeks both to avoid a reductionist essentialism of "woman" in the singular or, alternatively, to over generalize from the situation and experience of only some groups of women.<sup>57</sup> This understanding alerts legal theorists and law practitioners alike to the limitations "of dichotomous, mutually exclusive categories" that lead "to the invisibility of some groups of women."<sup>58</sup>

Feminist legal theory, like other critical legal theories, recognizes that law is not simply authoritative or legitimated by allegedly neutral texts.<sup>59</sup> Rather, law is a mechanism of power,<sup>60</sup> a gendering practice,<sup>61</sup> and a discourse<sup>62</sup> embedded in political, social, cultural, and economic institutions. It shapes experience, knowledge, and perceptions by adaptation, amendment,

53. CHAMALLAS, *supra* note 4, at xxi.

54. *Id.* at xxi.

55. See Johanna E. Bond, *International Intersectionality: A Theoretical and Pragmatic Exploration of Women's International Human Rights Violations*, 52 EMORY L.J. 71 (2003). See also Special Rapporteur, *Intersections Between Culture and Violence Against Women*, Hum. Rts. Council, U.N. Doc. A/HRC/4/34 (2007) (by Yakin Ertürk), for a discussion of whether and how intersectional analysis and recognition of a hitherto marginalized group may make it more difficult for women within that group to secure their own equality.

56. CHAMALLAS, *supra* note 4, at 91.

57. *Id.* at 93.

58. *Id.* at 95.

59. For a discussion of the legal ideal of "objective functioning" as a smokescreen to conceal the actual content of law, see NGAIRE NAFFINE, *LAW AND THE SEXES, EXPLORATIONS IN FEMINIST JURISPRUDENCE* 24–47 (1990).

60. See Dianne Otto, *International Human Rights Law: Towards Rethinking Sex/Gender Dualism*, in THE ASHGATE RESEARCH COMPANION TO FEMINIST LEGAL THEORY 197, 205 (Margaret Davies & Vanessa E. Munro eds., 2013).

61. See Dorothy E. Chunn & Dany Lacombe, *Introduction*, in *LAW AS A GENDERING PRACTICE* 2 (Dorothy E. Chunn & Dany Lacombe eds., 2000).

62. Discourses are historically variable ways of specifying knowledge and truth reinforced by power and institutionalized as practices. See JOHANNA KANTOLA, *FEMINISTS THEORIZE THE STATE* 4–14 (2006).



cancellation, supplementation, or reinterpretation.<sup>63</sup> Its deep connection to prevailing overwhelmingly patriarchal power and privilege reinforced by culture assists in the production of systemic inequality.<sup>64</sup>

Based on this understanding, feminist legal theory raises epistemological challenges to law's appearances and claims of neutrality and autonomy.<sup>65</sup> It questions law's methods and scope of inquiry, its categories which structure how questions are formed, and the rules which legitimize sources of information and govern modes of interpretation<sup>66</sup> as well as determine the relevance of other knowledge and experience.<sup>67</sup> In other words, feminist legal theory encourages lawyers to think about how power is created, distributed, used, and lost and to connect those understandings to legal practice. It explores a host of issues (gender-based violence including domestic violence, stalking, genocidal rape, and sexual harassment; reproductive justice including access to contraception, pregnancy termination, sterilization, and reproductive technology; women's health; and economic justice including equal pay, hostile work environments, recognition of gendered caring and nurturing work, and gender in economic development programs). Each issue has important and profound implications for the rewriting of law and the reforming of legal practice.

Feminist legal theory identifies and engages the state<sup>68</sup> as a significant actor. It excavates beneath the formal (*de jure*) principle of sex equality in a state constitution or a basic law that proclaims women as rights-bearing subjects in order to examine<sup>69</sup> the *de facto* (disparate)<sup>70</sup> impact of state laws

63. See CAROL SMART, *LAW, CRIME AND SEXUALITY: ESSAYS IN FEMINISM* 1–3 (1995).

64. See Deniz Kandiyoti, *Bargaining with Patriarchy*, 2 *GENDER & SOC'Y* 274, 285–86 (1988), for a discussion of the “patriarchal bargains”—rules and scripts regulating gender relations to which both genders accommodate and acquiesce (influenced by caste, class, and ethnicity) yet that can be contested, redefined, and renegotiated. That said, women as a rule bargain from a weaker position which defines limits and inflects their market and domestic options.

65. NICOLA LACEY, *UNSPEAKABLE SUBJECTS: FEMINIST ESSAYS IN LEGAL AND SOCIAL THEORY* 169 (1998).

66. Heather Ruth Wishik, *To Question Everything: The Inquiries of Feminist Jurisprudence*, 1 *BERKELEY WOMEN'S L.J.* 64, 66 (1985).

67. See CAROL SMART, *FEMINISM AND THE POWER OF LAW* 11 (1989). See Åsa Gunnarsson, Eva-Maria Svensson, & Margaret Davies, *Reflecting the Epistemology of Law – Exploiting Boundaries*, in *EXPLOITING THE LIMITS OF LAW: SWEDISH FEMINISM AND THE CHALLENGE TO PESSIMISM* 1, 3 (Åsa Gunnarsson, Eva-Maria Svensson, & Margaret Davie eds., 2007), for a thoughtful discussion of rethinking the traditional emphasis on legally objective law in a time when the state is no longer the only authoritative source of law and when knowledge is now seen as social and contextual.

68. See KANTOLA, *supra* note 62, for a discussion of the contradictory themes in feminist analysis of the state, its transformation/decline articulated especially in the context of globalization, and its centrality in the restricting of social provisions.

69. Deconstruction makes visible gendered power dynamics that operate through social and legal norms that constitute the meanings and truths (discourses) of law and legal principles. See Rosemary Auchmuty & Karin Van Marle, *Special Issue: Carol Smart's Feminism and the Power of Law*, 20 *FEMINIST LEGAL STUD.* 65 (2012).

70. Disparate impact is distinguished from disparate treatment which requires a showing of discriminatory intent or motive. Systemic structural inequalities are a function of sets of



on women. In so doing, feminist legal theory is able to identify and reveal the state's reliance on "gender stereotyping, [the] devaluation of women and 'feminine' activities, [the] use of biased prototypes that distort injuries and experiences, and 'assimilation' demands that penalize individuals who do not conform to mainstream norms"<sup>71</sup> to discriminate against women.

Feminist legal theory also breaks culturally endorsed codes of silence by naming and exposing<sup>72</sup> highly controversial issues (such as domestic violence, incest, rape, sexual harassment, access to contraception, abortion, and sex education) that have major impacts on women's lives, but often are hidden, marginalized, or naturalized as women's private "troubles" or "fate." It recasts women as survivors/victims/resisters and, as such, authentic speakers regarding their lived realities and experiences.

Initially, feminist legal theorists addressed the prevailing, seemingly mutually exclusive binary or duality present in all cultures and legal orders—women's sameness with or difference from men. Over time, however, they came to recognize that either prong of this duality was and could be used to support sex/gender discrimination and women's continuing disempowerment.<sup>73</sup> A legal order committed to "sameness" can obscure social relations relying on the domination of women and girls as can a legal order relying on "difference" usually based on the distinct and disadvantaged nature of women's embodiment.<sup>74</sup>

Another significant binary explored by feminist legal theory is the public/private dichotomy. Feminist legal theorists have produced a rich literature exploring the ways in which sex discrimination or the subordination of

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rules and principles governing activities, forms of behavior, arrangements, and in different domains of social life that are mutually reinforcing. See Trina Grillo, *Anti-Essentialism and Intersectionality: Tools to Dismantle the Master's House*, 10 BERKELEY WOMEN'S L.J. 16 (1995).

71. CHAMALLAS, *supra* note 4, at xxii.

72. See Edwin Rekosh, *Constructing Public Interest Law: Transnational Collaboration and Exchange in Central and Eastern Europe*, 13 UCLA J. INT'L L. & FOREIGN AFF. 55 (2008), for a discussion of the methodology of "naming and shaming" in another context in the region—used by dissidents more generally during the socialist period and in the early nineties in Romania and Bulgaria to focus on human rights as a moral concept and organizing principle. I argue that the naming of shameful acts and the consequent confrontation with popular opinion, the challenge to cultural norms and the exposure of political and legal hypocrisy still has particular salience for certain major women's rights issues.

73. See Anne Phillips, *Recognition and the Struggle for Political Voice*, in RECOGNITION STRUGGLES AND SOCIAL MOVEMENTS: CONTESTED IDENTITIES, AGENCY AND POWER 263, 264–66 (Barbara Hobson ed., 2003), for a discussion of differential treatment explicitly based on sex (direct discrimination); facially gender-neutral laws and policies with a disproportionate impact on women's enjoyment of human rights (indirect discrimination); discrimination on the basis of stereotypes; and multiple or intersectional discrimination facing women by virtue of their sex combined with other characteristics.

74. ANN SCALES, *LEGAL FEMINISM: ACTIVISM, LAWYERING, AND LEGAL THEORY* 92 (2006).



women can either be upheld directly by state action (including inaction as a form of action) in the public sphere, or can be supported indirectly by state reliance on allegedly timeless, static, cultural presumptions,<sup>75</sup> claims, and practices that discriminate against women in the private sphere and for which the state does not provide redress or protection even when such practices arguably constitute violations of women's rights.<sup>76</sup> Feminist legal theory is clear that although the specific content of public/private binaries varies across cultures, the binaries share a common property of being gender inflected and can support practices as well as discourses upholding sex/gender discrimination, domination, and subordination.<sup>77</sup>

Feminist legal theory also pays attention to the need to develop effective legal remedies<sup>78</sup> for sex/gender discrimination. Compensation, when available, is often likely to be modest and inadequate<sup>79</sup> especially if there are systematic or gross violations of equality at issue. Consequently, for court ordered remedies to effectively promote sex/gender equality and deter potential violations, court ordered preventive approaches and systemic remedial changes accompanied by monitoring may be needed.<sup>80</sup>

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75. See Rebecca J. Cook, *Structures of Discrimination*, 28 *MACALESTER INT'L J.* 33 (2011), for a discussion of the forms of subordination via stereotyping of women that are deeply rooted in thinking, myths, and individual, institutional, and social ways of functioning.
76. Traditionally, accountability considerations arise when a state is identified as the direct perpetrator of a human rights violation. By uncovering the multiple, deeply embedded ways in which sex/gender-based discrimination and subordination operate, feminists have been instrumental in doctrinal developments with significant consequences for state accountability. For example, when an initial violation of a human right by a private individual or non-governmental entity, claiming to act consistently with prevailing cultural norms, is enforced by the state or when no means of redress is provided by the state to the target or victim of a non-state actor's violation of a human right.
77. See SEYLA BENHABIB, *SITUATING THE SELF: GENDER, COMMUNITY AND POSTMODERNISM IN CONTEMPORARY ETHICS* 12–14 (1992). Law produces meaning and creates social categories; legal language is a site of power struggles which sets social boundaries through representation and subjectivization of gender as a classificatory scheme.
78. See Alda Facio & Martha I. Morgan, *Equity or Equality for Women? Understanding CEDAW's Equality Principles*, 60 *ALABAMA L. REV.* 1133 (2009), for a discussion of the distinctions and controversies in remedy discussions regarding the distinction between equality and equity (the latter being subjective and not interchangeable with the former).
79. Unlike common law courts, which can use their equitable powers to remedy an injustice, civil law courts consider themselves limited to statutory provisions regarding the scope of relief afforded to an identified prevailing party. In most instances, that party is likely to be an individual litigant. Such constraints on a court's reach may permit violations to continue until additional political will in the parliament is mustered to remedy the problem for similarly situated non-parties by enacting a new provision in the relevant code. Some civil law jurisdictions, however, are beginning to recognize the utility of a class action procedure in cases involving justice to consumers or other tortious actions rather than looking to the legislature to compensate victims.
80. See generally DINAH SHELTON, *REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW* (2d ed. 2006), for an extensive discussion of non-monetary remedies and compensation as well as remedies for gross and systematic violations and reparations for historical injustices. See also *Thematic Study of the Office of the United Nations High Commissioner for Human Rights on Discrimination Directed Against Women, in Law and Practice, and how the Issue is Addressed Throughout the United Nations Human Rights System*, Hum. Rts. Council, U.N. Doc. A/HRC/15/40 (30 Aug. 2010).



## 2. *The Second Prong of the Women's Rights Legal Education Triad: Women's Rights Legal Practice*

Women's rights legal practice is the second prong of the Institute's women's rights legal education triad. It is informed by feminist legal theory's rights-based framework and connects clients' lived experiences to claims for legal redress including changes in public policy and practice.

Given the expansion of women's rights legal practice to cover an increased number of sex/gender inequality issues at domestic, regional, and international levels, one of the basic questions that arose at the time of the Institute's founding concerned the choice of legal practice issues on which the Institute's curriculum would focus. After careful discussion, the ISC determined that the three broad legal practice issue areas utilized in the NEWW Legal Fellowship Program—reproductive rights, violence against women, and sex/gender discrimination in employment—were appropriate, broad, and timely major women's rights law-based concerns in the region. Though participants usually have worked professionally in one of these issue areas, their exposure to legal practice in all three is intended to sharpen their recognition of often overlapping or connected issues in sex/gender discrimination cases. A full discussion of these three basic issues is beyond the scope of this article. However, a brief summary of their continuing significance is important for understanding the Institute's flexible mandate.

As state-provided social and health services deteriorated in the region and health care was increasingly privatized, it was predictable that many women and girls would lack access to affordable reproductive health care. In different states, there was and continues to be concerted legislative and medical professional campaigns to limit both women's legal right to abortion and to abortion-related services. Moreover, some states have failed to monitor medical practices such as conscientious objection to abortion.<sup>81</sup> In addition, a host of controversial reproductive technology legal issues continues to await the region's often reluctant national parliaments and courts.

By the first decade of the twenty-first century, violence against women in its many manifestations (domestic or family violence, sexual violence, human trafficking, sexual harassment, and gender-based violence in conflict zones) has been more widely recognized as a systemic concern in the region. States, however, still have not fully acknowledged or adequately responded<sup>82</sup> to the broad range of legal, social, and medical issues that the many forms of gender-based violence generate and require state action and involvement.<sup>83</sup>

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81. Narrative request to OSI 2007, at 4 (on file with author).

82. *Id.* at 5.

83. See Convention on Preventing and Combating Violence Against Women and Domestic Violence, *opened for signature* 11 May 2011, U.N.T.S. No. 210 (*entered into force* 1 Aug. 2014).



Finally, women are disproportionately affected in negative ways by neo-liberal oriented economic policies in the region. Among the most obvious and measurable discriminatory outcomes are: women's loss of employment opportunities, the degradation of women's labor conditions leading to increased exploitation, inequalities in the areas of pay and access to employment, the unavailability of flexible working time, discrimination in, and the reduction of, social insurance programs, failure to acknowledge men's parental responsibilities, and unwillingness to recognize and remedy sexual harassment in the workplace.<sup>84</sup>

Having settled on these three broad women's rights legal practice issues as the foci of the Institute's education and training, the founders were faced with the daunting task of developing adequate teaching materials. Whereas WHRTI's predecessor, the NEWW Legal Fellowship Program, could rely on US-oriented sex discrimination casebooks and, at times, international human rights casebooks that paid some attention to women's rights, there were no compilations of women's rights theory and practice materials in English—the shared language for instruction—in the selected three issue areas for states in the region. Consequently, ISC members sifted through voluminous amounts of potentially relevant material: English translations of important national court decisions, judgments in sex/gender equality cases from the Strasbourg or Luxembourg courts, regional and UN treaty body reports and resolutions, and appropriate law review and journal articles. As one ISC member recalled, “[i]n the beginning, we wanted to include every relevant case. We were so enthusiastic about imparting information.”<sup>85</sup> Another ISC member commented:

We knew we were doing the right thing, but was it the right way? We were saved by the fact that we were not afraid of changing as we saw gaps emerging. We were experimenting all the time. We could use free Skype conference calls to carry on discussions in the interval between each Institute session. Otherwise long critical discussions would have been too expensive.<sup>86</sup>

She continued:

Some of our work had a quality of coincidence—a mixture of our experiences that matched very well and a combination of people who could work together because they were ready to put others before themselves. Though we were ambitious, we recognized that we needed to be humble before such a big endeavor. It was a magical moment.<sup>87</sup>

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84. *Id.*

85. Interview with Christina Zampas, Researcher, Center for Reproductive Rights, New York (March 2014).

86. Interview with Genoveva Tisheva, lawyer and director, Bulgarian Gender Research Foundation, Sofia, Bulgaria (Mar. 2014).

87. *Id.*



Over time, the selection of reading materials for each Institute session has, paradoxically, become both easier and more complex. Easier, because now in major regional and international human rights entities (the European Court of Human Rights, the Court of Justice of the EU, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, and various UN committees), sex/gender equality is designated and more clearly understood as a fundamental right. More complex, because contemporary issues of sex/gender discrimination are recognized as inflected intersectionally by the categories of race, ethnicity, class, immigration and asylum status, religion, and physical and mental challenges. In addition, there is significantly greater legal activity regarding sex/gender discrimination at regional and international levels—new conventions, declarations, resolutions, general recommendations, and general comments from UN committees, reports from UN Special Rapporteurs, and court decisions.

In the second session of each Institute cycle, expert presenters, many of whom are practicing lawyers, use feminist legal pedagogy (see III, B, 3 below) to explore women's rights legal practice issues in the three issue areas. They encourage participants to connect legal theory to practice in each issue area, as well across issue areas—an approach that helps to broaden participants' perspectives.

That this intellectual sequence of moving from theory to practice and synthesizing the two is energizing and challenging is clear in participants' evaluations of the Institute's program. A participant in the first cycle, who had been a NEWW Legal Fellow, recalled,

I had no background in feminist legal theory and its connection to practice. The sessions provided me with new and different knowledge and very different ways of gaining it. There was no repetition and memorization. Rather, there was analysis and critical thinking, being innovative and crossing boundaries. I had been thinking inside the box and I acquired more confidence in going outside the box.<sup>88</sup>

In my conversations with Institute participants over the years, they have recognized the importance of the Institute's commitment to the connections between theory and practice and its incorporation of international legal instruments into domestic law practice.<sup>89</sup> Learning about the ECHR and the ECtHR procedures and the detailed review of case law on the three major legal issues was very useful.

88. Interview with Adriana Lamackova, Researcher Center for Reproductive Rights, New York (Mar. 2014).

89. *Id.*





### 3. *The Third Prong of the Women's Rights Legal Triad: Feminist Legal Pedagogy*

The third leg of the Institute's women's rights legal education and training triad is feminist legal pedagogy. Like feminist legal theory and women's rights legal practice, feminist legal pedagogy also challenges prevailing wisdom in the region regarding legal education and professional training.

To understand the importance of that challenge, a brief reminder of the characteristics of traditional legal pedagogy in the region may be useful.<sup>90</sup> Radačić<sup>91</sup> reminds us that law is considered a closed system of internally coherent written norms separate from politics. Consequently, the dominant approach to interpretation of law is textual formalism and the dominant view on the role of legal education is as a simple transition of technical knowledge via lectures in a non-critical manner. Students are not encouraged to challenge received wisdom; rather, they are required to memorize legal rules found in written texts. "Critical questioning of the rules is not encouraged and there is rarely any discussion of the policy considerations behind the legal norms or their application in practice. Case-law analysis still is rarely used. Available books summarize codes and avoid issues of interpretation and construction. Examinations are limited to the simple reproduction of knowledge. Not surprisingly, then, during the first session of each cycle when Institute participants are asked in a discussion of their experiences of legal education to spontaneously volunteer a word to describe their experiences, the same adjectives keep surfacing—dry, conservative, frustrating, boring, narrowing, hierarchical, corrupt, male-dominated, patriarchal, and harassing. Over the years, there has rarely been a positive comment from any participant.

In stark contrast to this traditional legal pedagogy, feminist legal pedagogy recognizes that no education is politically neutral.<sup>92</sup> Education is not only defined by its function to distribute young people to various places in the occupational structure. "It has a distinct cultural dimension that relate[s] to issues of socialization and citizenship . . . . Creating and negotiating meaning is one of the core activities of school, which, of course, is . . . a complex cultural and social institution."<sup>93</sup>

Feminist legal pedagogy relies on the foundational epistemological recognition that existing social arrangements are expressed, recapitulated, and reinforced by claims to knowledge, so that some groups and group

90. See Marcus, *supra* note 1, at 553–56.

91. See Radačić, *Feminist Legal Education in Croatia*, *supra* note 1.

92. See PAOLO FREIRE, *PEDAGOGY OF THE OPPRESSED* (Myra Bergman Ramos trans., 1996).

93. COLIN BROCK & NAJSKA ALEXIADO, *EDUCATION AROUND THE WORLD: A COMPARATIVE INTRODUCTION* 43 (2013).



members have the power to define, appropriate, and control the realities of others.<sup>94</sup> It challenges the prevailing construction and privileging of knowledge legitimated by patriarchal political and legal systems of power (state, community, and family) buttressed by coercive force and underpinned and legitimated by patriarchal culture. It seeks to develop critical consciousness regarding the ways such power and privilege are articulated in law, upheld by custom and social and economic power, and shape learning, expectations, and performance regarding sex and gender. Based on their lived experience, women may see the world differently.

Like critical pedagogy in other disciplines, feminist legal pedagogy is committed to students' intellectual and emotional empowerment and their engagement in creative problem-solving by involving them in their education and training as both active knowers and listeners.<sup>95</sup> It encourages students to engage in creative, innovative, and independent thinking regarding law and legal outcomes. It supports them in their questioning of stated, as well as hidden, assumptions in laws or in cases, in their identifying the logical lapses in court decisions, in their uncovering the values promoted and furthered by legal outcomes, and in their exploring the reasons why other values are dismissed.

For each session in a cycle the Institute relies on a variety of inspiring presenters. Many of them have practiced law in the region; some have worked in the Strasbourg Court; others have UN based extensive international experience; yet others are academics. Not surprising, one of the most powerful sources of inspiration for participants are presenters who are Institute alumnae and are now recognized experts.<sup>96</sup> Their achievements and openness to sharing their knowledge, experience, and perspectives make them ideal role models for Institute participants.

Presenters use interactive feminist legal pedagogical methods to pose legal problems and questions involving real life complexities, to openly and expansively discuss and evaluate them, to generate a range of possible strategies, options, and outcomes, and, then, to critically evaluate their work product. Participants may work in small groups that report back to the larger body for critical discussion or participate in role plays or simulations with follow-up self and group evaluations. Such approaches encourage inquiry into the meaning and scope of law, provide for the application, integration,

94. SCALES, *supra* note 74, at 108.

95. See Radačić, *Feminist Legal Education in Croatia*, *supra* note 1.

96. By the second Institute cycle (2007–2009), an impressive list of Institute alumnae (who had acquired experience litigating cases or working as a staff attorney in Strasbourg or preparing reports to UN bodies) were invited to participate as presenters. Yordanka Bekiurska, Janka Debreceniová, Natasha Dobrova, Justina Ionescu, Milena Kadieva, Imina Kotiuk, Albená Koycheva, Adriana Lamackova, and Ivana Radačić. By the fifth cycle, Institute alumnae constituted a substantial portion of presenters.



and assimilation of knowledge, and support critical thinking and communication skills. Moreover, interactive learning enhances the connections among Institute participants and creates an atmosphere in which they envision themselves as professionals with a mission.

Feminist legal pedagogy is anchored in women's lived experiences. To encourage and support participants' commitment to this principle, an open session in which participants share their, at times painful past experiences as female law students and women's rights lawyers is part of the first session of the cycle. Many Institute participants, who do not identify themselves as "feminists" (often still a term of opprobrium in the region), recall that they have been targets of openly misogynistic behavior in their education and professional work. They report oppressive stereotypes, silencing, humiliating, intimidating, or dismissing them, as well as physical or sexual harassment. Not surprisingly, they understand these experiences as conveying the message that they are not considered as serious, competent, or intelligent as their male counterparts, that they will not be included in the powerful professional networks that bolster and buttress professional power and success, and that their choice of developing expertise in women's rights legal issues is foolish because such issues are unworthy of respectful and serious legal consideration or action. Participants also acknowledge that when they witness such treatment meted out to other women, they understand it as a warning to themselves as well. These not uncommon, undermining experiences are personally demoralizing and can generate a lack of self-confidence.

Consistent with the principles of feminist legal pedagogy, the Institute aims to create a safe space for participants—a supportive, personal, and professional environment<sup>97</sup> in which participants are not undermined and humiliated and in which professional and political passions and ambitions can be shared without fear or stigmatization. In such an environment, honest and respectful personal, intellectual, and professional engagement and development can flourish by sharing ideas as well as practicing skills individually and collectively. Participants are encouraged and enabled to empower themselves and each other. They can identify new ways of developing a legal issue and they can discuss strategies for dealing with clients who, in many instances, have experienced anguish and pain and, in some instances, physical and/or mental injury. Secure in the recognition of shared values and commitments to equality for women and the full implementation

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97. "We observed that the participants were progressively improving their ability to work in team[s], to respect each other, to benefit from each other . . . balanced with increasing self-confidence." Report from 1st cycle, 2004–2006 (on file with author).



of women's rights, they can develop strong bonds that encourage continuing networking as Institute alumnae.<sup>98</sup>

During the course of each two year cycle, Institute participants come to recognize three levels of linkage and connection—a series of experiences that, arguably, distinguishes the Institute from many other human rights education and training programs. First, by encouraging the development of horizontal personal/professional bonds and shared consciousness, understanding, and solidarity among participants and graduates, the Institute conveys a clear message that women's rights legal professionals in the region are not alone; they are psychologically and professionally connected as peers. Second, by encouraging recognition that they also are linked vertically to earlier generations of women's rights pioneers in their country and in the region whose courageous contributions have been minimized or ignored in the patriarchal histories participants have been taught, the Institute underscores the value of women's history across generations. Again, the message is that they are not alone and that they are standing on the shoulders of courageous foremothers. Third, based on these horizontal and vertical links, participants also can envision that, in the future, the next generations of women's rights legal activists will be standing on their shoulders as campaigns for women's rights and sex/gender equality continue.

### C. Structuring the WHRTI Education and Training Cycle

Confronted with a variety of structural and temporal organizing options, ranging from a conventional "one off" weekend or week long education and training session to a more extended process of education and training at intervals, the founders selected the latter. International Steering Committee (ISC) members recognized that helping participants deepen their understanding of the women's rights canon and develop analytic and professional skills is a cumulative process. They settled on an education and training cycle consisting of four intensive five-day terms over a two-year period. This arrangement enabled participants to acquire substantive knowledge at a session, reflect upon and utilize that knowledge in their professional work during the interval between that session and the next one six months later, and then bring their observations and experiences to that subsequent session. In the interval between each session in a cycle, participants complete

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98. A participant in the first cycle recalled, "I loved that all of the women felt good. With each session I started to identify with a social group. This was very powerful." Interview with Iustina Ionescu, lawyer in Bucharest, Romania and Member of the Board of Directors, Sofia, Bulgaria (2012).



written homework assignments reviewed by an ISC mentor. These exercises enable them to reflect on and utilize the content of prior sessions as well as to develop insights and understanding of issues for the next session.<sup>99</sup> They also are encouraged to contact and work with experts and alumnae on their own pending domestic litigation and/or to seek out new cases or become involved in drafting legislation.

In the first decade of WHRTI's existence, the first five-day session of the two-year cycle has been devoted to an overview of feminist legal theory. The second five-day session of that cycle has been devoted to a concrete understanding of women's rights legal practice at domestic, regional, and international levels in the three selected issue areas of gender-based violence, reproductive rights, and employment discrimination. The program's capstone experiences occur in the third and fourth sessions of each cycle. They consist of moot court exercises connecting feminist theory to women's rights legal practice.<sup>100</sup>

In the third session moot, two hypothetical cases involving reproductive rights, gender-based violence, and employment discrimination are argued before a panel of expert lawyers and professors acting as judges in the European Court of Human Rights in Strasbourg.<sup>101</sup> In the fourth session moot, two hypothetical cases also involving reproductive rights, gender-based violence, and employment discrimination are argued before a panel of experts acting as CEDAW Committee members operating under the CEDAW Optional Protocol.<sup>102</sup> In both sessions participants learn to use both international women's rights as well as regional women's rights jurisprudence.

99. For example, in preparation for the first session of the past two cycles, each participant writes a piece on specific instances of gender stereotyping in their country by mapping the assumptions in the stereotype and identifying the legal arguments to challenge them as violations of women's rights. Other intercessional assignments have required a three to five page submission of legal argumentation relevant to the participant's country on one of the three issues on which the Institute focuses and an exercise writing a communication to the CEDAW Committee. Or, participants may be asked to write a preliminary legal analysis concerning one of the Institute's three basic issue areas by describing the ways/mechanisms in which women in their country are discriminated against in that issue area.

100. In the sixth cycle of the Institute by OSI and the Sigrid Raussing Trust (2016–2017), the program was consolidated into three sessions. The first session combines feminist legal theory and women's rights legal practice issues supplemented by a stronger online component of materials and preparation for the course. The second and third sessions will consist of the capstone Strasbourg and CEDAW moots described above. Communication from Genoveva Tisheva (2015) (on file with author).

101. The European Court of Human Rights has been the foremost regional mechanism in the world for enabling disputed questions of fundamental rights to be decided in a judicial forum. Anthony Bradley, *Introduction: The Need for Both International and National Protection of Human Rights—the European Challenge*, in *THE EUROPEAN COURT OF HUMAN RIGHTS AND ITS DISCONTENTS: TURNING CRITICISM INTO STRENGTH* 1, 2 (Spyridon Flogaitis et. al. eds., 2013).

102. The oral advocacy component is a WHRTI developed pedagogical modification of the official CEDAW Optional Protocol procedure, which allows only for the submission of written materials to the Committee.



Each moot court begins with a day and a half intensive introduction from experts on the operation of the European Court or the CEDAW Committee. Their presentations include a review of practical and procedural issues as well as the procedures in each venue, specific issue admissibility criteria, and strategies for elaborating arguments both as applicant/petitioner and respondent/defendant. Participants then are divided into two groups. Each group receives one of the two hypotheticals for the exercise and has one day to read it, undertake the relevant research, and draft their application to the Court or petition the Committee. Their application or petition is submitted to the other group whose members shift their identity to become lawyers for the respondent/defendant/state. Each group prepares their response and submits it to the Court (in the third moot session) or the CEDAW Committee (in the fourth moot court session). At this stage, the Court or Committee can send additional questions to the parties who have a very short response time to submit answers. The third step in each moot court session is an oral hearing in which each participant must speak at least once for either the applicant/petitioner or respondent/defendant state. The Court or Committee members can ask further questions, which must be answered immediately in oral argument. The fourth step consists of the Court or Committee deliberations and the delivery of a ruling or an opinion for each case.<sup>103</sup>

Both moot courts provide intellectually challenging opportunities for participants to engage in healthy competition and to enhance a wide range of their research, writing, and oral advocacy skills. In addition, participants must rely on skills associated with team work co-operation among lawyers, time management planning,<sup>104</sup> and the sharing of information among participants with different levels of professional experience. By switching roles during each moot, participants develop a deeper understanding of the case, the legal issues, the appropriate legal strategies, and the effective use of relevant international and regional documents and decisions in submissions to a treaty body (CEDAW) and a court (ECtHR).

At the end of the third session European Court of Human Rights moot court exercise, participants have the opportunity to develop media-oriented advocacy skills in a press release and press conference training conducted by a media professional. The inspiration for this exercise came from a presentation in one of the early cycles by an attorney who had successfully argued a major women's rights case before the Strasbourg Court. When asked what she considered to be the most difficult part of the experience, she replied

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103. Albená Koycheva, a lawyer and member of the International Steering Committee working in the Bulgarian Gender Research Foundation, provided this description (on file with author).

104. Teams have less than forty-eight hours to research, draft, and revise their briefs.



without hesitation that she was least prepared for handling the press, which needs short, clear answers, in layperson's language, to their questions. Most lawyers, she observed, have no training for this important task and do not utilize the opportunity to publicize the issues in the case.

#### IV. REFLECTING ON THE CONTRIBUTIONS OF THE WOMEN'S HUMAN RIGHTS TRAINING INSTITUTE

For more than a decade (2004 to 2015), WHRTI, an activist women's rights NGO, has provided innovative, compensatory women's rights legal education and training to support and encourage law-based activities challenging sex/gender inequality and discrimination in a major region of Europe. WHRTI is a positive and constructive response to resistance or avoidance on the part of post-socialist law faculties to the full inclusion and integration of sex/gender equality issues in their curriculum, on the part of bar associations' ignoring or minimizing these issues in professional training, and on the part of states that delay or are reluctant to properly train their future officials in the full range of state obligations. More than 100 young women and men lawyers have completed a WHRTI two-year program of independent, thought-provoking, high caliber compensatory women's rights education and training.

WHRTI encourages its lawyer graduates to contribute to the development, implementation, and expansion of the women's rights canon and of women's rights legal practice within their respective states as well as in regional and international venues. In doing so, it validates and encourages the choices made by activist lawyers to work on behalf of women's rights.

WHRTI's work is informed by the recognition that gender is not an addition to ongoing processes (political, legal, social, or economic) that are alleged to be gender neutral.<sup>105</sup> Its innovative education and training model combines theory and practice to help develop thoughtful, creative legal professionals who possess enhanced professional expertise in feminist legal theory and women's rights legal practice (especially in the issue areas of employment discrimination, reproductive health, and gender-based violence). Its graduates have polished their critical legal analytic and strategic skills including, but not limited to, identifying legal issues based on *de jure* and especially *de facto* analyses, framing appropriate arguments, and assessing relevant considerations regarding the choice of legal venue to bring a case. They are aware of and understand the state's obligation to exercise due diligence in developing and implementing sex/gender equality reforms through concrete remedial measures and systemic policy reforms and can advise or even assist in the monitoring of reforms for compliance

105. See KANTOLA, *supra* note 62.



with future non-discriminatory legal norms and practices. They also are a source of invaluable, hitherto often unrecognized or ignored, expertise and insights into the workings of both civil society and the state gained from their women's rights NGO work.

Assessing WHRTI's contributions as a provider of compensatory legal education and training in subject matter which, especially at the domestic law level, is controversial and challenges often deeply held beliefs regarding the prevailing sex/gender system, is a complex task. Some of WHRTI's contributions to legal practice and legal theory are more immediately identifiable and quantitatively or qualitatively measurable. Other contributions require a longer time span to measure and evaluate. Yet others may be more intangible and less formally measurable at any interval.

The most obvious, immediately identifiable and measurable contributions are individual ones—an impressive array of legal positions WHRTI alumnae continue to hold and the number and breadth of professional activities concerning women's rights in which they are engaged. Alumnae work in NGOs or as independent lawyers and consultants; some are involved in their state's bureaucracy—especially its legal system. Others are staff lawyers in regional or international human rights bodies in which women's rights are a subject of great importance and interest.

WHRTI alumnae self-reported women's rights activities include: consultations regarding the filing of applications to the European Court of Human Rights in Strasbourg; filing applications regarding such issues as access to prenatal examinations and legally entitled abortions, as well as failures to regulate the practice of conscientious objection or to provide subsidies for contraception; serving as staff attorneys in Strasbourg; developing strategic litigation plans in cases of violence against women, reproductive rights, or employment discrimination; improving access for free legal services for marginalized women's groups; lecturing on various women's rights topics to NGOs in the region; assisting foreign women and refugee victims of domestic violence and training police regarding domestic violence; meeting with the UN Special Rapporteur on Violence against Women and the Council of Europe Commissioner of Human Rights; compiling a brochure containing practical information regarding access to reproductive health services; drafting an amicus brief for a case in the Strasbourg Court; commenting on and drafting legislation; providing governments with consultations at the time legislation is being drafted; providing women's human rights training to judges; developing ideas for a Ph.D. thesis; teaching women's rights in various educational venues in the region including departments of criminology and in gender studies programs; and working with the media.<sup>106</sup> As women's rights litigation has developed, alumnae have conducted important

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106. OSI Narrative 15–22 (on file with the author).





successful litigation in Strasbourg on sexual violence, domestic violence, and reproductive rights, and have utilized the CEDAW Optional Protocol procedure to successfully bring cases involving violence against women, reproductive rights, and gender stereotypes to the CEDAW Committee and the Court of Justice of the EU.<sup>107</sup>

WHRTI's educationally innovative program also has a less formally measurable impact on individual participants. In their evaluation self-reflections, a substantial percentage identify their own changed, clarified, or expanded consciousness regarding women's human rights. They attribute this personal development to the substance of WHRTI's curriculum, the inspiring dedicated expert presenters whom participants consider as mentors and colleagues, and the Institute's provision of connections between feminist legal theory and legal practice in specific fields—reproductive rights, domestic violence, sexual violence, employment discrimination, and human trafficking. They applaud Institute-provided training in the procedures of the European Court of Human Rights, the writing of CEDAW shadow reports, and the drafting of domestic legislation.

This expanded consciousness is an essential component of WHRTI's goal of helping to develop full recognition and implementation of women's rights in legal practice and policy outcomes in the region. As WHRTI helps and encourages its graduates to nurture and expand their own consciousness, they, in turn, can support and encourage their colleagues to acknowledge the reach, depth, and consequences of sex/gender inequality in their communities and their state and to challenge specific situations.

Other WHRTI contributions are measurable in a longer time frame. By encouraging the creation of legal networks, WHRTI serves as both a catalyst and a conduit for women's rights law reform efforts in domestic, regional, and international law. Through seed grants, WHRTI encourages community building among WHRTI participants and connects them to alumnae for strategic litigation planning and other shared projects such as participation in policy reform-oriented activities seeking substantive and procedural changes within national legal systems.

Although it would be premature to assess the extended impact of these longer term projects, that they are important in the region's NGO sector is clear. Though each post-socialist state has committed itself to the implementation of a rule of law whose foundational principles include sex/gender equality, at best, there has been very modest political will to address women's rights issues even after litigation in Strasbourg.<sup>108</sup> In such a

107. Application of WHRTI to funders for Continuation of the Program (2015) (on file with author).

108. "[N]ational governments accord a medium to low political priority to the implementation of ECt.HR's judgments, which is often assigned to administrative-executive bodies lacking sufficient political clout." Dia Anagnostou, *Politics, Courts and Society in the National Implementation and Practice of European Court of Human Rights Case Law*, in *THE EUROPEAN COURT OF HUMAN RIGHTS: IMPLEMENTING STRASBOURG'S JUDGMENTS ON DOMESTIC POLICY* 211, 212 (Dia Anagnostou ed., 2013).



political and legal climate, law-oriented women's rights NGOs are likely to remain important players in future efforts to address sex/gender equality in the states of the region.

Though WHRTI funding proposals have not included proposals for reforms in the curriculum of the region's law faculties, still one might wonder whether WHRTI's innovative compensatory education program, despite its exceptionally modest size, has had any impact on encouraging the integration of women's rights issues into the core content of domestic law courses in any post-socialist state. At the time of this writing, there is no evidence to that effect.

Given the variety of historical and political contexts in which legal education is embedded in the region, state- and institution-specific explanations (especially self-protective ones) can be mustered by law faculty and administrators in legal academic communities.<sup>109</sup> That they are teaching and thereby perpetuating sex inequality and sex/gender discrimination in violation of their state's international and regional human rights treaty obligations by excluding or marginalizing women's rights in the law curriculum is a compelling argument this author will continue to explore.

So long as this prevailing legal academic posture in the region of denial or lack of recognition persists, one can safely assume there are likely to be many future lawyers and legal system officials in post-socialist states who will have very limited or no knowledge of women's rights issues. They may reproduce their professors' skepticism or even hostility toward acknowledging the substantive relevance of women's rights—thereby reinforcing the delegitimation of women's rights concerns in both legal education and in legal practice. Indeed, it is not a stretch to suggest that by ignoring this entire burgeoning field of contemporary jurisprudence and legal practice, in all likelihood legal education produces graduates who, as lawyers and legal professionals, would have to revisit their law school socialization and unlearn the sex/gender discriminatory attitudes and assumptions that their legal education promoted or, at a minimum, did not challenge. Surely, this is a most inefficient way of educating lawyers for the legal issues of the twenty-first century and, arguably, is itself a violation of women's rights.

There is one other contribution WHRTI can make. It can share its experience and the lessons learned with WHRTI-type entities in other regions that could be organized to expand their pool of lawyers with expertise on women's rights. Such compensatory women's rights legal education programs can be established on a national or regional level until university legal education is reformed to fully integrate women's rights into the curriculum.

WHRTI's experience provides a number of time tested strategies that may be helpful in these undertakings. Select countries in a region with a

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109. See Marcus, *supra* note 1, at 553–64, for an elaboration of this argument.



clear educational deficiency in women's rights education in law faculties; adapt the project to changing or evolving circumstances on a continuous basis by making it flexible and innovative; draw participants from a pool of lawyers (especially younger ones) who are already engaged and committed; encourage applicants from different localities in a region; construct a compensatory education model; specify and target women's rights problems and their manifestations in that region and prepare a curriculum in feminist legal theory and women's rights legal practice focusing on them; employ innovative learning strategies to teach materials in a manner that provides such shared goals as an understanding of the centrality of feminist legal theory for women's rights legal practice; develop oral and written legal skills through moot court and other interactive exercises; train lawyers to deal with the press; support participants' efforts to create strong bonds and lasting network connections; use previous participants as role models and presenters; create a program that strongly encourages alumnae involvement over an extended time period; develop and maintain an email/internet network for participants and alumnae support and ongoing connection.



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