

The Implementation of Equal Rights for Men and Women



1991

EXERCISING RIGHTS: OBSTACLES FOR WOMEN

by

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The historic trajectory of the emancipation of different social groups and the attainment of individual rights is well known. The illustrated tradition set the bases for development of currents of thought such as liberalism, socialism, and feminism. Starting from the principle of the democratic legitimacy of power, one has to admit that the former two forms of thought have successfully implanted that legitimacy at least in the occidental ambit.

The development of both permitted the Estado de Derecho, and later the Estado Social y Democrático, an unrenounceable formula that combines in a more or less balanced way, liberty and equality.

First liberties and rights were obtained that broke the bonds of absolutism and progressively obtained universal suffrage. Up until scarcely a few decades ago, the triumph of reason and liberty were presented as the attainment of pretended universality in the occidental ambit. It was permitted by Socialism to add victories of successive equalities. During the entire process, the protagonist subject had the features of the «virile archetype» (Moreno, 1987). The suffragist fights appear like an anecdotal brush-stroke, and the first fact to highlight is that rights, including suffrage, were recognized by women at a later date and after specific struggles.

To speak today of obstacles to the exercising of the rights of women, it is necessary to bear in mind another reading of history, more complete, and less slanted. None of the rights and liberties guaranteed by the liberal and democratic constitutions of the 19th century were granted to women. (Gallego, 1986). Neither the moment nor the conditions were the same for men and women, not even in the case of property rights, the crux of the liberal rights of the new citizenship.

Historically, the fundamental problem in relation to feminine citizenship was that the theory and the practice of democratic legitimacy was considered universal. Even today at the end of the 20th century, the

Categoric affirmation of such universality remains questionable. (Haavio-Manila, 1985) From this citizenship and its corresponding rights women were legally excluded. Precisely when shaping liberty and equality like attributes of a certain subject, (the «virile archetype», or said in a more conventional way, the unhandicapped adult male), the exclusion was made much more explicit giving the woman her «appropriate» destiny: nature against culture, the private as opposed to the public, reproduction as opposed to production ... a world of free and equal individuals which consecrated in its laws the biggest inequality. Women are always the half or more of the social class, of the race, of the marginal group ...

Certainly, the concrete laws that established exclusion or limitation have changed, but when, how, and even so, laws change more easily than mentalities. Above all, cultural traditions resist change if it isn't promoted by the political will of those dominating the instruments to achieve it.

When analyzing the different types of obstacles women meet in exercising their rights, perhaps it would still be necessary to remember the history of the obstacles. Without entering here into the details one can affirm in the first place that feminine rights were always obtained after masculine rights. The concept of women as «nature» subjected her to the role of mother and wife as the only assigned social role, and obligated the development of specific struggles in order to progressively slow submission and tutelage. (1)

Frequently, it has been forgotten or ignored that in the full expansion of liberalism, women saw themselves as obligated to fight for rights of property, inheritance, commerce, matrimony, etc. And especially for access to education, inseparable for the large feminine sectors from the right to work, without mentioning the right to vote. But it is more scandalous to remember that legal impediments against the exercising of basic rights have been maintained until very recent times. For example, the Spanish *Ley Civil*, until the reform of 1975, maintained strict limitations on the legal rights of married women, submissive to the

(1) There exists an ample bibliography concerning the struggles for the rights of women, especially useful is the book by R. Evans: *The Feminists*.

familiar». Until 1981, the liberty of women to the exercise of commercial rights was not fully established, suppressing the requirement of the expressed authorization and regulating more adequately the patrimonial effect.

This signals, therefore, that the history of rights is a history different for women. The established power -the different powers- always in the hands of men, negated and retarded judicial equality. But, above all, it imposed perfectly anchored practices as the only ones possible, that have marked the inequality until today. One can only speak of democracy when the sociological incorporation of the masses to politics has been produced. But democracy, liberty, and equality will be doubted and will not reach the supposed reality until the absent half of society is reached. The fruits of the illustrated tradition still have not matured.

We share the affirmation that the rights of each person are secured when they themselves are habitually disposed to exercise them. (Sartori, 1988) Many people, men and women, in every society lack such disposition. But men and women have a different cultural heritage and are subjected to different ways of life. The multitude of conditions of diverse character (status, education, work, etc.) maintain levels of domination and alienation that impede the human autorealization of conscious individuals, free and equal. Such conditions include an additional one for women, and addition of an impediment, in relation to the men of the same age, education, status, etc.

From the style of life of women, as a generalization from which we can only exclude a minority, it is adequate to affirm the following: «The average woman gets much less than men, in general women progress less than men and have inferior jobs, women have a double workday, they are raped, beaten, put up with physical violence from men and sexual harassment at work; political institutions, parties, and unions are dominated by men and finally girls and women are condemned by the men and themselves, their self esteem, in general, is lower». (Dahlerup, 1987)

The evidence cannot be denied that all those things are a large amount or obstacles for the exercising of established rights of the same form for men and women. Since a century and a half ago the legal recognition of the rights of women has been amplified, but the conditions for their exercise scarcely have improved and, in some aspects, it can be said they are worse.

The corroboration of the aforementioned has manifested throughout the last 15 years: it has been essential to resort to measured positive action, unequal judicial treatment toward the goal of less unequal results. And it is not chance that positive action has been introduced in tire bodies of law of long democratic traditions.

Cognitive obstacles

The Constitution of 1978 provides the setting for the judicial condition of the woman. Its formulation of principles, obtained after a long process of agreement between eminent lawyers and male politicians, tried not to be discriminatory. From the example set in the constitution there are allusions to the equality of rights of women in the media and the conversations of daily life. The message it wants to transmit is that rights exist as if they were of objects that can be used. This version, materialist and objectified is the first error in the perception of what is signified psychologically, in any kind of right. If we take the point of view of a user of the law, we can realize that the articles of the legal codes are not objects but resources or possibilities for the people and as such, do not exist if they aren't familiar. It is to say the objective presence is not enough; a psychological presence of the possibility is necessary. Therefore the first obstacle that impedes the exercise of any right is the lack of psychological representation.

For the majority of women, equality is no more than a concept of difused content when not vacant, that only takes form in extreme conditions and in these can serve to escape from a concrete and disagreeable situation. Such is the case with the rights of divorce and abortion; in other cases much more frequent, the idea of equality is the path toward a new objective, perceived as agreeable and, therefore, desired. This is the case of the incorporation of women in all the professional ambits and the exercise of political power.

Keeping in mind that the victories in this area are very recent, rights are understood better as the end of old prohibitions. It is suitable to keep in mind the difference between perceiving a situation as not prohibited or as something to which one has access in a natural and spontaneous form. The level of intemalization, of psychological presence, and of assumption of consequence varies a lot from one form of perception to the other and its effects on behavior as well. There are many fact that prove it. The mass

majority of women of our country know that they can hold political offices, but to many of them it seems completely natural that they are so few in the high levels of politics or that, when the time comes, they are not promoted with the same force as their male colleagues with equal qualifications. They know the possibility exists but still it seems natural not to execute it: they have not assumed the concrete implications of that which they defend.

If we look more closely at the contents of the legal codes we can appreciate that a species of polarization persists in their beginnings, so that some are too general and in this case, normally are formulated in the masculine (The Constitution always refers to «los españoles» ... , and others are too specific. An example could be the normative of 5/82 of July 18, that concedes with retroactive character the right of option to be Spanish to the sons of a female Spaniard that were not Spanish since their birth. The first ones signify a small thing and the second ones are difficult to know, above all in the moment in which they could be utilized with efficiency, and with frequency it happens that they are known when there are many difficulties to exercise them.

The legal precepts constitute a system of gears of different concretion and importance, but that function interrelatedly. Some are small links that connect with the great principles and although they seem hardly important by themselves, they can convert into grand possibilities to make the great principles a reality; in the same way, their real absence or ignorance can convert into a grave obstacle. Given her history of secular removal from the formulation of laws, the woman is particularly ignorant of these small links. She can know which facts constitute a grave crime but she will find it very difficult to appreciate the presence of extenuating or unfortunate circumstances, or the circumstances that she could bring forward in order to modify her responsibility.

On the other hand, in law one notes an absence of these links that are the channels toward the realization of rights; said absence becomes more evident in the period immediately posterior to the legal changes of general character that incorporate a new situation like the case of the situation of women. The constitutional principle of equality between the sexes is being introduced little by little in the concrete laws. The Ley de Ordenamiento General del Sistema de Educación (LOGSE) textually incorporates that education must attend to the aforementioned principle.

The paragraphs of this law that contain that normative will be basic in the future in order to exact concrete aspects of equality between the sexes in the ambit of education. Following this same reasoning, of more specificity of the law, that requires the attendance to the requirements each time be more concrete and detailed, will result in the obtainment of a higher level of equality.

Once the presence of new opportunities and rights has been assumed cognitively, it imposes a search for information concerning the steps to make them real. This search for information appears especially difficult for women, particularly for the following reasons:

a) The true law is formulated in a language very alien to her daily life.

It is a language of experts that must be interpreted by experts. In addition, as it is masculine language, it represents little the reality of the woman.

b) To have access to the interpretation of the experts implies the availability of economic resources and of education and general information, which many women lack.

c) The lack of confidence to reach new objectives, above all those which separate a lot from the the assigned ones for the feminine role, limits the same search for information. Only with a large dosage of motivation can one overcome the resistance against the objective difficulties in order «to have an idea» of how to act in order to achieve any new goal.

As a result of all the aforementioned, what is clear in the exercise of judicial practice is a great difficulty to codify the situations of daily life where the woman suffers a deprivation of opportunities, a difficulty to translate her concrete experiences to the categories formulated by the law. This difficulty even turns up in grave and strongly negative situations and experiences, like it would be in the case of sexual abuses and aggression committed against women. In 1989, one thousand three hundred women in our country presented denunciations of rape. Nevertheless, in some provinces there was not one single denunciation, which does not signify an absence of rapes, but the presence of some obstacle that impeded notification. Besides other factors that we will point out later, it is necessary to underline a first factor of cognitive order: the difficulty of the woman to grasp that what she has suffered has a translation in the Penal Code and a punishment for the aggressor. Her first question in the

face of an act of sexual aggression is «Is this a crime?» and «What crime would it be?» It is to say, the woman can even think that to be raped implies a fault of hers and not only of the rapist, as the administration of justice in these cases requires that the violated woman prove her innocence (2).

It is hoped that this type of situation of ambiguity in the codification of the facts that constitute a crime and who is responsible, is produced much more in situations less dramatic and traumatic. For example, the rejection of a woman for a job has many possibilities of being codified even by the candidate herself, including as an inferiority of hers for the post instead of as an act of sexist discrimination committed by the employer. These errors of codification are extremely important because they convert what is objectively unjust to something psychologically just. Its importance is more emphasized when acting in the initial moment in which she tries a new objective, as the action to obtain the said objective is paralyzed.

For this reason, the persistence of the information campaigns is fundamental, and that much more efficient when the concrete acts that can be interpreted as discrimination are presented and where it appears with clarity the concrete strategy that overcame discrimination.

Habits, values, and interpersonal bonds

In order that the opportunities institutionally granted to any group are made real, it is not sufficient that they are formulated, known, and desired. We should not forget that the movement toward the attainment of such opportunities begins in an interpersonal context of social relations previously structured, that can convert to grave elements of resistance. Society places certain persons as key elements of its structure, which can result in obstacles ignored or minimized in their importance and against which, for this reason, it is difficult to act. From the first interpersonal context, the family, or from the professional context, arise strong barriers that must be broken in order to advance afterward toward the institutional level.

(2) It is necessary to highlight that in Spain they have effected legal reforms recently concerning crimes against sexual liberty in a more adequate sense.

Given that the domestic ambit continues being recognized principally as the feminine role, it is there where the first barriers can appear. When not the veiled or explicit menaces of men in the familiar ambit, the bonds, very neglected in the laws of the Penal Code, are the first indicators that the social structure is the accomplice of the negation of the rights of women. For this reason, it remains fundamental the vigilance and control of that which occurs in this context, vigilance that has discovered in the last few years a far from undeniable number of acts of maltreatment, humiliations and other symptoms of domination by men toward their wives and daughters. All of the violence that the patriarchal structures continue exercising against women (Maquieira and Sanchez, 1990) has as one of its first effects the stoppage in the exercise of their rights.

On the other hand, women impose on themselves certain requisites of the feminine role: that they have to attend to the necessities of their children, their parents, and their husbands. Their presence and their responsibility with the illness, scholastic demands, cooking and cleaning. These impositions constitute a hidden curriculum whose importance continues to be devalued. On occasion, to obtain an alternative so that said requirements will be fulfilled satisfactorily is more costly than which can be covered with the obtainment of a professional position. It is the case of women with few qualifications that they are not able to incorporate extra-familiar work because their salary wouldn't cover the cost of paying for the supplementary attention the home needs; it is the case also of professional women that could rise up to positions of a higher level at the cost of a job requirement that turns the family dynamic upside down. For the women that dedicate themselves to politics and those who fill upper level professional positions these problems usually manifest very strongly. Many professional careers continue retarded or detained by this barrier that institutions continue insisting on ignoring.

Data that reinforces the appraisal is the relative frequency of single women in professions and upper level positions. In education we have confirmed (Femández Villanueva and others, 1990) the negative influence of the civil state of marriage for the promotion of female directors and other educative offices. This negative influence comes from double directions: the reticence of the co-workers and the educative institution in general, and the doubt of the woman themselves, that do not dare present their candidacy in face of a lack of support. The result is very

evident. In Enseñanza General Básica (EGB), where more than 80% of the teachers are female, no more than 40% of these women hold position of responsibility. As for the rest, there is still a long way to go until many professional women can even try to access positions, because for that it is needed previously to have arrived to a purely high professional level, in which her presence is very scarce.

In this ambit of the interpersonal it is convenient to signal a process that although not very clear, remains very influential. It is the process that consists in disguising a technical selection that in reality is a sexist selection. A similar process was studied by the sociologists Bordieu and Passeron and amply confirmed in Spain by sociologist Carlos Lerena (Lerena, 1976). In studying the failing student, these authors confirmed the highest incidence in children of social ambits of lower status. The language of these children, and their lesser familiarity with the requirements of school performance, situated them in the grade ranking lower than the children of the more favored social class: they remain in lower levels or fail. None the less, the system codifies this system as purely technical.

With women occurs something similar. In their access to the profession they are subtly banished with the argument that men «need the work more». Once their access has been negated and with it professional experience, the selectors of personnel now have clear justification to prefer men, since they «are better prepared» or «have more resources». In this moment they do not hesitate to utilize such arguments as «if you had prepared better ... » with which they charge the individual with a responsibility that is social; and facing those arguments, it is very difficult to oppose, because they are socially valid and the same woman has on occasions been their accomplice or does not have the minimal possibility of warding them off.

In spite of the fact that the feminine disproportion within her incorporation to educational work and her exercise of upper level positions in education is very evident, many women do not perceive sexist discrimination within the ambit of teaching. However, it is clear that the promotion here is aligned with other factors that include power. In university teaching, promotions are related to the development of research, whose control continues to be dominated mainly by men. It is very easy to select for the investigations, teams directed or composed of

men as they are better situated on the scale of power, have a preparation and an ideological symptom that connects with the evaluators of the projects and with whom they concede, who are also men. Before this sexist selection, disguised as technical selection, it is difficult to defend oneself, as one would have to demonstrate in a very ample interpersonal structure, a series of ideological principles, and science offers an enormous resistance to change these principles.

Therefore the paradox results which is that there is a great amount of investigation done by women that is not recognized nor financed by the public or private institutions, and once a majority of the work has been done at a greater cost, it is immediately devalued, negated and left out of bibliographic references or classified as «women's literature». Who devalues this feminine production are concrete persons and they justify themselves with the argument «they simply prefer masculine production».

In front of this reality women have elected the strategy of exercising a group pressure that reinforces the diffusion and the recognition of their work, that obliges the establishment high level positions in correspondence with their objective presence. An aim of the positive action should be to help this pressure to be affective.

A last obstacle to include in this section is the restraint that certain persons in charge of interpreting and making real the gotten rights can suppose. We can't forget judges and magistrates are a link between the formulation of the law and its application: they distribute to concrete people the victories achieved by the majority. They make concrete the abstract, and although trying to be just, they can commit the error of confusing the law with justice.

Judicial language expels the consideration of some realities that the woman lives, and misinterprets and stereotypes other experiences. In general, the emotional state of women that commit crimes is little represented. (Fernández Villanueva and others, 1988) However, the emotional state of men not only is introduced but in many cases overvalued. The contrast becomes evident when we verify that a woman parricide, lacking in economic resources, abandoned during her pregnancy by the father of her son, that hides said pregnancy from her family and that gives birth alone in a bathroom does not have the excuse of an accentuated emotional state. On the contrary, a man that has suspicions never proven

of the infidelity of his wife is relatively decriminalized when the judges consider that he acted under a state of fury.

Judges do a complicated process of attribution of motives and responsibilities for crimes, in which the woman is again harmed. It is attributed to her with frequency an intentional conduct, voluntary and therefore more responsible than the man.

Recently there was a trial in our country concerning abortion that finished with absolution of the accused. During the entire process both the defense and the representatives of the fiscal ministry were using clinical arguments. The psychological and social problems of the woman who had the abortion, which would have helped to perceive more objectively the reality of the facts, was absent from the court room.

There is no room for doubt that the laws in general are an historic formulation of general principles of justice in their double aspect (each one must have that which one needs and must be penalized as one deserves). They are also a desideratum of this justice to which they never arrive with plenitude. A legal principle will be that much more just when it is based on a knowledge of the people to whom they are applied and, thus, it is known better the determining factors of their conduct. When the law has been made for only one group (men), which represents only one version of reality, when it has not been able to recognize the determining factors of the situation of women, and when his same perception is plagued with errors, stereotypes, and ignorance it is not strange that his desideratum of justice fails and the system becomes the accomplice of those who unjustly apply it.

Obstacles in politics

Political participation is a right granted to female citizenship in article 23 of the Spanish Constitution, whose exercise will permit the establishment of an advanced democratic society, where liberty, justice, equality, and political pluralism are attained like the values of a model of a social and democratic state of right.

The first reflection about the possibilities of achieving this model is that they exist in two levels: a) it is essential and unrenounceable the judicial formalization of all the institutional mechanisms that permit the social control of power in a setting of liberty, justice, and equality. b) It

is equally essential the development of a political culture of the participant (Almond and Verba, 1963) as the «source of ideas and postulates (that) supply to the individual, guidelines for the political behaviour, and for the society as a whole, form a structure of values and norms that contribute to give coherence to the function of the institutions and organizations». (Dower and Hughes, 1977).

It can be affirmed that in the occidental countries and, concretely, in Spain despite the short history of its democratic Constitution, the first point is completely successful. The second, on the other hand, always will be in the process of development, in a state of need and dissatisfaction. All efforts of information, and formation of the citizen, oriented toward politics, will be an effort to obtain the highest numbers of democratic and pluralist participation. In this sense it seems to us very pertinent the criticism of the insufficiencies of the political culture in the actual society and of the modes in which the matters are hidden or displaced from public opinion.

In complex postindustrial societies of information, where there is enormous technological and scientific development, traditional mentalities with a large amount of apathy, submission and resistance to change, persist. The political debate over the problems of real life of the people is absent and is substituted by the new social myths (money, success, self satisfaction ...) that exact a critical response in order to remake the concept of politics and the concept of the channels for the conscious, not alienated, participation.

If this context can be analyzed in general terms of citizenship, we encounter the immediate evidence in which terms are more complex in relation to women: the load of the social assignment of sexual roles weighs much more than fragmentary and insufficient factors of the spread of a culture of equality. Certainly the feminist movement has been able to introduce in public opinion deterrent guidelines of the explicit affirmation of disequality in democratic societies, but the dominant social practices continue imposing differences for reasons of sex. And this is clearly observable in the terrain of political participation, even though the obstacles that women encounter, on occasion, are difficult to apprehend and formulate.

We alluded earlier to the style of life of women as a generalization in which they gather a pile of obstacles present in daily life. But it is also

necessary to allude to the dominant modes, languages and dominant praxis in which conventional politics are practiced, that mark the distance between this and women. (Renau i Manen, 1989).

Political participation in Spain is lower than in other European countries, maybe for historic reasons and political culture. The levels of party and union affiliation are very low and there is no associationist traditions. Of the men interviewed, 85% had not been nor were affiliated with any political party, and 92% of the women answered in the same sense (3).

Seeing this data, it has been affirmed in an overly simple and unilateral manner, that women do not have interest in politics and that their ideological position is more conservative than that of men, without questioning the reasons or the obstacles for the persistence of this situation.

Information concerning political participation in Spain from 1977 to 1989 permits us to make some considerations keeping in mind our hypothesis that the style of life and political culture are responsible for the obstacles against the exercising of this right on the part of women, so the more both factors change, the more will also change the position of women in politics. This way the differences in relation to men will diminish.

The group of women that confesses less interest for politics is that of housewives older than 55, and those which have more interest are young women, workers for someone else (or unemployed), ideologically situated to the left, city residents (4), with middle or superior levels of education. This is translated into a growth of the affiliation of women since 1986, and in a diminishing of the difference between men and women in abstention. (5)

(3) Survey of the CIS, December of 1984. In such large percentages, the 7 point difference has to be seen with a criterium of relativity, although, in conjunction the relation between men and women inasmuch as membership is 2 to 1.

(4) Joined with age and other relative variables there are also differences between Comunidades Autónomas with diverse cultural influences.

(5) In 1982 total abstentions were 20.1 % of the electoral census, corresponding to 15.5% of men and 24.6% of women. In 1986, abstentions reached 29.6%, being this time 27.3% of the men and 31.8% of the women. From one election to another, the distance shortened by 5 points.

In any case, the right to vote is the most basic aspect of political participation, and logically, in actuality there is no significant difference between men and women. In exchange, the representation by sex in the high levels, such as the Congress and the Senate, until 1989 exhibited a scandalous disproportion: 6% and 2,4% of women respectively.

As we mentioned in another part of this work, numerous factors intervene, among them the motivation to participate: 90% of the women interviewed «would participate in some group of work on a theme they knew, for which they had special interest,» 40% would «to do something concrete, useful,» and only 3% for the «possibility to achieve some public post.» (6)

The introduction of positive modes of action like the quota of 25% in the Partido Socialista Obrero Español (PSOE) in its XXXI congress of 1988, permitted the presence of women to increase in the General Elections of 1989 to 13.4% in Congress and 13% of the Senate. (7)

Without detaining us more in the electoral data nor in other data concerning political decision, we believe that one can show that there are instruments to remove or reduce the obstacles for the political participation of women, and that this is a problem that does not regard only women but that is a global problem of the conception of democratic participation. The reality in this terrain, the same as in others, changes when the possibilities of women's way of life changes and when there exists a collective will to do it.

(6) Sociological survey of the Instituto de la Mujer concerning attitudes of Spanish women about politics and feminism, 1987.

(7) The female socialist deputies rose from 13 to 31 and the female senators, from 6 to 20.

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