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## TO OVERCOME GENDER INEQUALITY IN LEGAL EDUCATION: ETHICAL AWARENESS

### Abstract

We claim that to combat stereotyping regarding gender inequalities in law, students should gain ethical awareness which includes awareness of prejudices and stereotypes. For this reason, we organized our clinical legal education in such a way as to combat students' bias and make a transformation. In our lectures we used transformative methodology that includes intersectional analysis. In this article we explain our educational experience and describe our courses with its main principles.

### KEYWORDS

clinical legal education, ethical awareness, transformative methodology

### SŁOWA KLUCZOWE

edukacja kliniki prawa, świadomość etyczna, metodologia transformacyjna

## 1. INTRODUCTION

We still live in a world dominated by patriarchy and we still have a system of legal education characterised by gender inequality. In the 21<sup>st</sup> century, we still have a legal system in which thinking as a lawyer excludes gender inequality based on an abstract principle of equality before the law. In this system, it is difficult to provide an education in which students would acquire awareness of gendered nature of law<sup>1</sup>. But, as we know from the CEDAW, education is very important to stop gender inequality. In this regard, fighting prejudices and biases which feed gender inequality is important in the legal education system, since law and its institutions reproduce prejudices. CEDAW Committee states in its Recommendation No. 33 on women's access to justice:

In practice, the Committee has observed a number of obstacles and restrictions that impede women from realizing their right to access to justice on a basis of equality, including a lack of effective jurisdictional protection offered by States parties in relation to all dimensions of access to justice. These obstacles occur in a structural context of discrimination and inequality owing to factors such as gender stereotyping, discriminatory laws, intersecting or compounded discrimination, procedural and evidentiary requirements and practices, and a failure to systematically ensure that judicial mechanisms are physically, economically, socially and culturally accessible to all women. All these obstacles constitute persistent violations of women's human rights<sup>2</sup>.

The Committee clearly identifies the role of stereotyping and gender bias as regards the access to justice:

Stereotyping and gender bias in the justice system have far-reaching consequences for women's full enjoyment of their human rights. They impede women's access to justice in all areas of law, and may have a particularly negative impact on women victims and survivors of violence. Stereotyping distorts perceptions and results in decisions based on preconceived beliefs and myths rather than relevant facts. Often, judges adopt rigid standards about what they consider to be appropriate behaviour for women and penalize those who do not conform to those stereotypes. Stereotyping also affects the credibility given to women's voices, arguments and testimony as parties and witnesses. Such stereotyping can cause judges to misinterpret or misapply laws. This has far-reaching consequences, for example, in criminal law, where it

<sup>1</sup> As a side note, even if female students know the gendered nature of law, they do not have any opportunity to raise their self-awareness. For this reason, an investigation about female law students shows that since a male student standard dominates in legal education, most of the female students cannot found their experiences and standards in this education system. See D. Purvis, *Female law students, gendered self-evaluation, and the promise of positive psychology*, "Michigan State Law Review" 2012, p. 1693.

<sup>2</sup> General Recommendation No. 33 on Women's access to justice (CEDAW/C/GC/33), p. 3, <https://undocs.org/CEDAW/C/GC/33> (accessed 03.01.2021).

results in perpetrators not being held legally accountable for violations of women's rights, thereby upholding a culture of impunity. In all areas of law, stereotyping compromises the impartiality and integrity of the justice system, which can, in turn, lead to miscarriages of justice, including the revictimization of complainants.

Judges, magistrates and adjudicators are not the only actors in the justice system who apply, reinforce and perpetuate stereotypes. Prosecutors, law enforcement officials and other actors often allow stereotypes to influence investigations and trials, especially in cases of gender-based violence, with stereotypes undermining the claims of the victim/survivor and simultaneously supporting the defence advanced by the alleged perpetrator. Stereotyping can, therefore, permeate both the investigation and trial phases and shape the final judgement<sup>3</sup>.

To eliminate stereotyping in judicial system, it is necessary to eliminate it from the legal education system. Based on the CEDAW, we can say that we must develop gender expertise in law schools. The Committee also puts this point clearly and says that states "take measures, including awareness-raising and capacity-building programmes for all justice system personnel and law students, to eliminate gender stereotyping and incorporate a gender perspective into all aspects of the justice system"<sup>4</sup>.

In this article we claim that to combat stereotyping regarding gender inequalities in law, we should organize the legal education in such a way as to ensure that students can gain ethical awareness which includes awareness of prejudices and stereotypes. We do not aim to eliminate all prejudices and stereotypes. We know, as human beings, we have them. For this reason, our aim is that students gain awareness of their prejudices. In fact, we do not have any problem with all of the prejudices. Our problem concerns negative prejudices and stereotypes that feed gender inequality. For this reason, we try to deliver lectures from which the students can gain awareness of their own prejudices and stereotypes. So, in this article we try to answer a question about how students can be aware of their prejudices in legal education.

To answer this question, firstly, we should recognize gendered nature of the legal education system. Namely, we need to know the structural injustice of it. For this, we should know what are the negative and positive things that we face regarding gender inequality in legal education in the 21<sup>st</sup> century. After stating them, we try to explain our suggestion in the context of transformative justice. Our purpose is to transform students' awareness about their stereotypes. We suggest that legal clinics are the most appropriate method enabling students to gain themselves awareness of their prejudices and biases.

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<sup>3</sup> CEDAW/C/GC/33, pp. 12–13.

<sup>4</sup> CEDAW/C/GC/33, p. 15.

## 2. GENDERED NATURE OF LEGAL EDUCATION SYSTEM: STRUCTURAL INJUSTICE OF THE LAW

Catherine MacKinnon wrote an article *Mainstreaming feminism in legal education*<sup>5</sup>, explaining the role of feminism in legal education, where she asked: “What can legal education do to prepare lawyers to intervene in this situation – women’s inequality to men – in order to change it?”<sup>6</sup>. She states that there are courses in law schools tackling this subject. She also rightly states that we need to mainstream gender in law curriculum<sup>7</sup>. At the end of her article, she provides a list of requirements detailing what make feminism real in legal education:

Feminism will be real in legal education when gender literacy is a requirement for everyone in their own subject, an essential part of doing what they do well. When women are no longer marked on law faculties. When women and women’s points of view and experiences and those of all excluded groups are represented and respected in texts and in class. When women students speak up with a comparable ease and presumption of place and entitlement to take up public space that men students do (and when there are no more vicious impossible-to-convict explicit rape hypotheticals on 100 percent exams). In addition, it will be real when students are taught that most everything they do is on one side or another of a real social divide that includes sex, with material and differential consequences. When listening to clients, and responsiveness and accountability to them, is taught in all courses and informs all legal analysis of the case law that is created from their lives. When women faculty, staff, and students are no longer sexually harassed in law schools, and when something serious is done about it when the few are. When there are as many men secretaries and librarians as women, and they are paid a living wage, and as many women faculty members and deans as men. When men, too, make tea and coffee for everyone, childcare is available on site, and everyone has and uses family leave. And when women’s intellectual and personal integrity is not something that has to be chosen at the price of a life as a legal scholar—in other words, when it no longer takes courage to be a feminist in the legal academy<sup>8</sup>.

MacKinnon wrote this article in 2003. After 17 years, we are still far from implementing postulates from the list. The main reason is that our law is still of a gendered nature. In fact, this law is an example of structural injustice. As Young explains, “structural injustice exists when social processes put large groups of persons under systematic threat of domination or deprivation of the means to develop and exercise their capacities, at the same time that these processes enable others to dominate or to have a wide range of opportunities for developing

<sup>5</sup> C.A. MacKinnon, *Mainstreaming feminism in legal education*, “Journal of Legal Education” 2003, Vol. 53, issue 2.

<sup>6</sup> Quoted after *Eadem, Butterfly politics*, Cambridge 2017, p. 509.

<sup>7</sup> *Ibidem*, p. 509.

<sup>8</sup> *Ibidem*, pp. 534–535.

and exercising capacities available to them”<sup>9</sup>. The law has also put some groups of persons (usually women, children, disabled people, etc.) under “threat of domination of the means to develop and exercise their capacities”. Patriarchy or biased legal education is the structural characteristics of the law and there are several aspects of this. These aspects are also significant where the developments toward equal and unbiased legal education start. These developments occur through three different channels, i.e. norms, students, and courses<sup>10</sup>.

## 2.1. STRUCTURAL DIFFICULTIES OF LEGAL EDUCATION

MacKinnon emphasized that the state is jurisprudentially male and it takes the “standpoint of male power on the relation between law and society”<sup>11</sup>. The law has always been patriarchal although it claims to be neutral and unbiased. Underlying this neutral liberal state approach is the standpoint of patriarchal mentality, as MacKinnon observed, with rape, abortion or obscenity law<sup>12</sup>. Some of the legal norms are actually biased not only against women, but also against many disadvantaged groups such as children, the elderly or disabled persons, etc. The change in the legal norms will engender the change in the structure of society.

In our century, at least most of the legal norms are harmonized with gender equality. But since the structure has not completely changed, it continues to produce gender inequality. At that point it is not a surprise to see gendered nature of judicial system. The problem is connected with the structure of the legal system that produces gender inequality.

The law’s structural injustice can be traced from the context of the legal courses or the visibility of disadvantaged groups of students at law faculties. As Rhode stated long time ago, there is very limited room for the issues of gender inequality in legal education, women representatives in academic bodies are very few, women students’ participation in class discussions is very low and sexual harassment is a serious obstacle in legal education<sup>13</sup>. The conservative structure of the law itself can be traced in legal education also, as most of the legal courses lack the gender perspective. Moreover, the inequality in society is reflected in classrooms. As Rhode highlighted, women students’ participation in class discussions is affected by gender clichés. They are hesitating to bring their female perspectives to class discussions as male standards dominate the atmosphere.

<sup>9</sup> I.M. Young, *Responsibility for justice*, New York 2011, p. 52.

<sup>10</sup> We explained these issues in more detail with the example of gender clinics in Turkey. See G. Uygur, N. Özdemir, *Hukuk Eğitiminde Toplumsal Cinsiyet Eşitliğine İlişkin Problemler ve Çözüm Önerileri*, (in:) *Hukuk ve Toplumsal Cinsiyet Çalışmaları*, Ankara 2019, pp. 57–90.

<sup>11</sup> C.A. MacKinnon, *Toward a feminist theory of the state*, Cambridge, MA 1991, p. 163.

<sup>12</sup> *Ibidem*, pp. 167–170.

<sup>13</sup> D.L. Rhode, *Missing questions: Feminist perspectives on legal education*, “Stanford Law Review” 1992, p. 1549.

Moreover, sexual harassment at faculty campuses are obstacles in education. Most of the time it is women students who are the victims of these harassments, however, they are not encouraged to launch formal lawsuits.

Another reflection of this unequal system can also be traced from the number of women representatives in legal seats. Women's visibility in the decision-making posts (such as a university chancellor or faculty deans) is very low. Likewise, some legal courses (such as criminal law, commercial law, etc.) are fully associated with males and it is not easy for female academics to work in these fields<sup>14</sup>. All these structural difficulties regarding legal education reproduce and reinforce inequalities.

## 2.2. DEVELOPMENTS WITHIN DIFFERENT CHANNELS

There are structural difficulties specific to legal education itself, however, there are also some developments regarding certain problems. These developments are steps to shake the unjust structure of the law.

One of the developments is the increasing number of women students enrolled in law schools and the number of women active in legal professions. The question of the impact of this increase on legal institutions has been asked before<sup>15</sup> and the answer is country specific. However, this development is an important step in the transformation process.

Another development are gender law courses or gender aspects addressed in several legal courses. These courses or aspects clearly exposed gender equality problems. As a result, a will to search for solutions and bring in changes has come up. For example, one of the biggest gender problems in legal education, namely sexual harassment, started to be talked about in universities (also at law faculties). Talking about it and drawing attention towards it changed the atmosphere. And this development has helped to make the discussion of women's emancipation and sexual immunity more focused, which eventually opened up a perspective on gender inequalities that were invisible before. Actually, we can expand these problems beyond the very gender inequality, to include other inequalities faced by the disadvantaged groups. And these discriminations can only be considered with the use of the concept of "intersectionality".

Crenshaw, who introduced the concept of intersectionality, criticizes the dominant view on the discrimination and insists that "the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in

<sup>14</sup> G. Uygur, N. Özdemir, *op. cit.*, p. 64.

<sup>15</sup> See C. Menkel-Meadow, *Portia in a different voice: Speculations on a women's lawyering process*, "Berkeley Women's Law Journal" 1985, Vol. 39.

which Black women are subordinated”<sup>16</sup>. To explain it, she continues: “consider an analogy to traffic in an intersection, coming and going in all four directions. Discrimination, like traffic through an intersection, may flow in one direction, and it may flow in another. If an accident happens in an intersection, it can be caused by cars traveling from any number of directions and, sometimes, from all of them. Similarly, if a Black woman is harmed because she is in the intersection, her injury could result from sex discrimination or race discrimination”<sup>17</sup>. In this connection, we need to take into consideration the antidiscrimination law, which dominates in legal education, and examine it from the perspective of intersectionality. We should interpret it according to the different experiences of women. In this regard, we should use intersectionality as an analytical tool in legal education. According to the European Institute for Gender Equality, intersectionality is an “analytical tool for studying, understanding and responding to the ways in which sex and gender intersect with other personal characteristics/identities, and how these intersections contribute to unique experiences of discrimination”<sup>18</sup>. This intersectional perspective should be adopted in legal education in order to increase our awareness and show us the injustices with its specificity. We tried to gain this perspective through legal clinics practices where students can face their bias about gender, religion, ethnicity or socio-economic differences.

### 3. TO INCREASE AWARENESS

#### 3.1. SEEING INEQUALITIES AND TRANSFORMATIVE JUSTICE

We claim that in order to overcome gender inequalities in legal education, firstly, we should be aware of them. A legal person who aims to do their job should know how they could view these inequalities. To be aware of them is essential for developing students’ ethical awareness, since it is not easy to see the inequalities. Together with the gendered nature of law, strong prejudices and biases which cause discrimination and harms prevent one from noticing inequalities<sup>19</sup>. These prejudices, which distort the others’ ethical imagination, block the relationships

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<sup>16</sup> K.W. Crenshaw, *Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics*, The University of Chicago Legal Forum 1989, p. 140.

<sup>17</sup> *Ibidem*, p. 149.

<sup>18</sup> European Institute for Gender Equality, “Intersectionality”, <https://eige.europa.eu/thesaurus/terms/1263> (accessed 6.01.2021).

<sup>19</sup> Uygun explained these points elsewhere. See G. Uygun, *Seeing injustice*, (in:) G. Fløistad (ed.), *Philosophy of justice*, Springer 2014; G. Uygun, *Students’ perception and legal education*, (in:) B. van Klink, U. de Vries (eds.), *Academic learning in law*, Edward Elgar Publishing 2016.



based on equality. Furthermore, one cannot be easily aware of them or overcome them. In this context, if we cannot see them, we cannot be aware of injustices: “seeing injustice means to see the obstacles and conditions which block seeing a human as an individual being”<sup>20</sup>.

According to Uygur, perceiving injustice is an ethical problem and it requires ethical knowledge and virtues. One of them is attention which yields ethical awareness. She says that “moving from Simone Weil and Murdoch, it is possible to determine the meaning of such attention. Weil states that, in its highest form, attention is like prayer. She regards it as a method for understanding things. She says that attention means to look at a particular case till the light suddenly dawns. (...) Then, attention is necessary to see things clearly. For this, according to Murdoch, it is necessary to pay attention properly. Namely, we should see the particularities of the situation. We should behave as participants, not like disinterested persons. (...) Following Murdoch, in the context of the concept of seeing, I claim that attention means to look at a particular case in the light of a human’s value and values. Namely, if we are to see the true person, we must pay attention in particular with regard to that person’s value and values”<sup>21</sup>.

In that context, we agree to see gender inequalities as an ethical problem. Consequently, legal education should enhance students’ ethical awareness, which starts from the awareness of their own prejudices and biases which prevent them from seeing injustice. To see injustice, following the Aristotelian ethics, our motto is “it is impossible to be a legal person (judge, prosecutor or lawyer) without having virtue”. Ethical awareness means not merely to have the knowledge about being ethically human, it also allows us to see the other as a human and to move actively as a human oneself, since in order to properly attend we need to be active. For this reason, we claim that the clinical education is very important for moving actively. Our aim in this education is to improve students’ ethical awareness, which allows them to see gender inequalities. This awareness is a subject of transformative justice.

In her article *Law’s power*, MacKinnon remarks that the law collaborates with the domination of some groups, such as women, and she identifies three “strategies for comfort” in the legal world which are obstacles to change, as “the avoidance of accountability, the aspiration to risklessness, and the assumption of immortality”. She thinks if you, as lawyers or law students, hold yourself accountable for those ideas which are usually treated as if they are just ideas, if you take the risk to be heard and if you act as if it is *now* the time to start the change, you will gradually have the power to transform it<sup>22</sup>. She highlights the law’s power to change the reality:

<sup>20</sup> G. Uygur, *Seeing injustice...*, p. 367.

<sup>21</sup> *Ibidem*, pp. 364–365.

<sup>22</sup> C.A. MacKinnon, *Butterfly politics*, pp. 30–33.



Law can change reality, in other words, not because of its place in a structure of force or even authority, or because it establishes precedents to be applied in future cases. Not because it is backed by the police power or fronted by legions of propagandists for the status quo. These features of law as much work to prevent reality from being changed. It can change reality because of the meaning with which people invest it, including those whom it has not represented. If people did not believe in it, did not believe it could be – against all odds, despite much experience – an instrument of remedy, of healing, of restoration of humanity, of empowerment – it would not work for change, or I suspect actually at all. Because and when they do, it can. This is why even a small percentage of women report their rapes to their legal system. It is why they feel vindicated when the law believes them and shattered when it doesn't. This is not naïveté or trust or the illusion that one lives in a just world. It is a determination to stand and fight with an inkling that law can be a weapon in their hands, even if it has not been before, and an insistence that law represent them and people like them for a change, as it says it does<sup>23</sup>.

### **3.2. TO APPLY TRANSFORMATIVE METHODOLOGY TO LEGAL EDUCATION: LEGAL CLINICS AT ANKARA UNIVERSITY LAW SCHOOL**

#### **3.2.1. TRANSFORMATIVE METHODOLOGY**

As we stated at the beginning, our aim is to develop students' ethical awareness connected with gender inequality. In this respect, our main challenge is to explain how we can give or organize clinic courses connected with gender inequalities. Our question is: how the law students can gain ethical awareness so as to be attentive to incidents of gender inequality?

The experiential nature of clinical education provides an exceptional environment for fostering moral development as well as for significantly influencing the future ethical conduct of students as lawyers, judges, or prosecutors. For this reason, we try to organize our legal clinic course in such a way as to consider gender inequalities. At that point, we also use the concept of a place conceived as the real or physical location. Our main aim is to move ourselves to the world of prejudices in the legal clinic and to try to see people who are invisible because of prejudices. Thus, our aim is to develop students' ethical attitudes through discovering their prejudices by themselves.

To that end, we try to use transformative methodology as part of our legal clinics program. In this methodology we give room to students' experiences related to their differences. Our aim is that students be aware of the gendered legal subject connected with themselves. We try to construct a legal subject connected with their identities and relationships in the context of gender, not only with

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<sup>23</sup> *Ibidem*, p. 326.

their abstract rights, since the language of abstract rights is also an obstacle to see injustice and to be aware of gender biases. Regarding this point, the use of intersectional analysis is important to recognize the relationship between the subject and legal structure. According to Krishnadas, “intersectional methodology enables us to analyse the mechanisms by which subject and social relationships are co-constitutive, and revise such mechanisms and the spaces in which they operate to transform the sphere of social relations”<sup>24</sup>. Therefore, in our methodology we try to create self awareness in order to recognize our being together with others. At this stage, it is important to recognize how our identity is constructed in a gendered way which also entails our differences. To recognize it, students should be aware of their prejudices and biases. In this recognition it is important to be aware of ignorance regarding our identity. In line with this point, Krenshaw says that “the problem with identity politics is not that it fails to transcend difference, as some critics charge, but rather the opposite – that it frequently conflates or ignores intra group differences. In the context of violence against women, this elision of difference is problematic, fundamentally because the violence that many women experience is often shaped by other dimensions of their identities, such as race and class”<sup>25</sup>. Similarly, a gendered legal subject also ignores the intragroup differences. In this manner, recognition requires the awareness of intragroup differences.

Connected with the intersectional analysis, recognition is important for ethical awareness. But ethical awareness requires more than that. After the recognition stage, students should take part in a reconstruction process which can transform the gendered legal system. In this article we only describe our methodology regarding awareness of prejudices and biases in the context of intersectionality. Namely, regarding biases, we try to show how our methodology has transformative impact on students. In this connection, we explain our experience in our clinic lectures.

### 3.2.2. OUR LEGAL CLINIC EXPERIENCE

Clinical Legal Education has been carried out for almost 15 years at Ankara University Faculty of Law. There are different clinics studying different subjects of law such as refugee law, labor law, gender law, legal ethics, law and art, etc. The common aspect of these clinics is to provide the law students with an ethical perspective which helps them to combat their biases and prejudices. In this subsection we aim to share our experiences of the transformative education of gender on students’ perspectives. We will especially focus on the intersectional method

<sup>24</sup> J. Krishnadas, *Rights as the intersections: Rebuilding cultural, material and spatial spheres: A transformative methodology*, (in:) R. Dasgupta (ed.), *Cultural practices, political possibilities*, Cambridge Scholars Publishing 2008, p. 47.

<sup>25</sup> K.W. Crenshaw, *Mapping the margins: Intersectionality, identity politics and violence against women of color*, “Stanford Law Review” 1996, p. 8.

we used in order to reveal prejudgments of the law students. This method was intended to challenge prejudices and break them down with an ethical awareness. As bias undermines impartiality of legal actors it also obstructs seeing injustices, which is a major problem in legal ethics and education.

Teaching at a university where the profile of the students is diverse in terms of gender, ethnicity or socio-cultural background is significant in many senses. It mirrors a miniature of Turkey's diversity that enriches the perspectives brought to the class discussions. Taking into consideration the fact, that most of the students aim to become a judge or a public prosecutor, Ankara University Faculty of Law reflects the future profile of the major legal actors. This fact highlights the importance of the gender and legal ethics education and the ethical awareness gained at a bachelor level. However, teaching gender equality and ethical principles may sometimes be too abstract and make students think it is irrelevant to their daily or professional lives. In order to make those values and principles more concrete and understandable we used methods such as small group work with peer education or discussion. We will especially focus on two kinds of these small group work, namely these specifically targeted at the values of gender equality and impartiality, which are shadowed by bias or prejudices.

We have carried out our group work on student bias in different classes (legal clinics, legal ethics, gender & law, and legal philosophy summer courses) and with students of different grades (second, third or last grade). Our group works are under development each year, as we evaluate the feedbacks and try to further develop our methods. We will discuss here two different kinds of the group works we used during the last two years and then consider these experiences from a transformative legal education perspective. For this, we use intersectional analysis as a way to articulate interaction of biases of patriarchy, ethnicity, and religion. In this way, we want to increase students' awareness of gender inequality in legal system, since the abstract principle of formal equality which dominates in legal education masks this kind of inequality and eliminates all the gender-based distinctions. By using this method, we move on to the different voice theory. According to Barlett, "unlike equality theory, which attempts to eliminate gender-based disadvantage in a world that presupposes existing values and norms, different voice theory questions existing values and norms and contends that women have priorities that are not only different from, but superior to the male values currently rewarded in society"<sup>26</sup>. In these questions, we try to give space to different voices and experiences of women in the intersectional perspective.

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<sup>26</sup> K.T. Barlett, *Feminist perspectives on the ideological impact of legal education upon the legal education*, "North Carolina Review" 1994, p. 1260.

### 3.2.2.1. FIRST GROUP WORK: LOOKING AT THE SAME PHOTO BUT SEEING DIFFERENT STORIES

In Spring of 2019 we conducted a group work for the 3<sup>rd</sup> grade law students about a bias that undermines the (gender) equality and impartiality values. This work was based on a field experiment concerning discrimination against women migrants<sup>27</sup>. The experiment was carried out by the Germany-based Institute for the Study of Labor (IZA) in order to point out that the Muslim women are facing higher level of discrimination when they apply for a job. In the experiment fake applicants submitted a job application with the same CV but under different names and with different photos. One applicant had a German name Sandra Bauer, the second applicant used the same photo of the woman, but with a Turkish name Meryem Öztürk, while the third applicant used the photo of the same woman headscarfed with the same Turkish name Meryem Öztürk. Almost 1500 fictional applications were sent to several offices around Germany in the space of one year. The results were interesting. Sandra Bauer received 18.8% returns, while Meryem Öztürk without headscarf had 13.5% and Meryem Öztürk with headscarf only 4.2% returns. Although religion was never mentioned in the applications, the Turkish identity and the headscarf made a great difference. This experiment was interesting as it reflected racism and Islamophobia in Germany. We wanted to challenge this experiment, using the same photos, in order to reveal the bias among the law students that are also a part of Turkish society.

*Method.* Although we performed this group work exercise with different groups of legal clinics students, and with the students in legal philosophy summer courses, we will report here especially our experiment performed in legal clinics as it involved the largest number of students.

In 2019, there were almost 200 students in the legal clinics class. First, we have divided them into 5 different sub-classes and then we formed smaller groups of maximum 5–6 persons in each class. The groups were selected randomly so as to ensure diversity of views and attributes. The groups were first separated according to the three different photos of women. However, after our first group work was completed we found also a bias towards the name “Meryem”. To challenge this bias as well, we added another name “Deniz Öztürk” and made four different small groups under four different women’s names. Although the names were different, the photos portrayed the same woman (one of them headscarfed), just as it was in the original experiment. Of course, the students were unaware of the fact that the photos were the same. We asked them to *look* at those photos and write a story about the women they *saw*. After 15–20 minutes of story writing, we recollected the photos and asked the participants to share their stories and

<sup>27</sup> *Study: Muslim women face discrimination in German job market*, 20.9.2016, <https://www.dw.com/en/study-muslim-women-face-discrimination-in-german-job-market/a-19564710> (accessed 27.01.2020).

explain the motives of what they saw. The results were remarkable. The students looked at the same pictures but saw completely different women and wrote different stories about each of them.

*Bias against being a (Turkish) woman.* Almost every story about Meryem Öztürk (headscarfed or not) explored the same topic: A mother who was a domestic violence victim. Both women were battered either by their husbands or their fathers. For example, in one of the stories Meryem Öztürk was working secretly, when her husband suddenly found it out:

(...) she was struck by the garden door which was hit violently. She saw her husband come with insults and shouting. The kids who were playing have escaped to their rooms. Meryem was shocked. Her husband had learnt that she was working secretly. He said: 'What the hell are you working where strange men are around! Women should just sit at home', shaking Meryem at the same time. (...) The husband was coming towards Meryem with a knife, when at the same moment Meryem has seen the hot pan which she threw to her husband's face.

Another pattern commonly used by the law students was Meryem in self-defense. For example, in one of the student's stories, Meryem learnt that her husband was cheating her and while they were in a dispute she tried to defense herself :

(...) while they were fighting, because her husband was committing violence against her, she plunged a knife in her husband's chest and killed him.

In still another story, Meryem was again pictured as someone who had battered woman syndrome and was quite overwhelmed with the burden of her life:

Meryem who waked up in screams, again faced the leading actor of her nightmares: Her ex-husband, her ex-father in law and her present boss.

In Meryems' stories not only their husbands, but also their fathers committed violence. It was sometimes those fathers who did not send Meryem to school or those who pressured her to become a traditional Turkish woman. For example, Meryem who was born in Mardin (south-east of Turkey):

(...) she was forced by her father to marry when she was a child. Her husband was much older than her and she faced violence from the very beginning of her marriage. She wanted to leave her husband and return home, but her father rejected her.

In one more, very similar story, students assumed that the photo was her "funeral photo". In this story, Meryem was a victim of her destiny, too:

Meryem was 17 when she got married. She was 18 when she had her first child. She had her first beat-up when she found out that her first child was a girl (rather than a boy).

Meryem, who faced physical and psychological violence every day, was on the verge of suicide. The only thing that kept her alive was her children.

In these stories, there is a recurring figure of almost the same woman with similar qualifications. That woman, named Meryem Öztürk, with her headscarf or not, is a mother coming from a very traditional Turkish family, most of the time battered by her father or husband, sometimes sexually harassed by her boss. She is usually the victim of her destiny, born in a patriarchal family, usually poor. These women achieved emancipation usually by either divorce or killing their husbands in self-defense.

We had the chance to compare a Turkish woman, here exemplified by Meryem Öztürk, to a foreign woman impersonated as Sandra Bauer. Students *saw* Sandra as an independent woman who usually pursues a career (along with having children), sometimes even as a successful single mother. When we asked them for their motives, they explained they *saw* “hope or strength in the eyes of Sandra”. Interestingly, these same eyes could also make the opposite impression. The students who *saw* Meryem as a victim explained they *saw* “sorrow and misery in her eyes”.

Contrary to the original experiment, headscarf was of very little relevance for the law students’ perception. The headscarf made a difference only for deciding which was Meryem’s town of origin. The Turkish towns known for their secularism (most of the time decided based on which political party won the elections) were never mentioned for the women with headscarf. However, the significance of religion was extremely visible in Sandra Bauer’s stories.

*Bias against religion.* Law students have seen Sandra Bauer as an independent woman whose story was quite different from the “victim of her fate”, Meryem Öztürk. Sandra was not forced to marry nor did she give birth at an earlier age. For example:

Sandra Bauer was an American writer at the age of 37. She had been married for 7 years and had a 5 years old son. She was a successful writer, compassionate mother and a good wife.

Sandra also did not have an easy life (due to being a woman), however, she somehow succeeded to survive despite all poor conditions.

Sandra Bauer was born in Köln, Germany, in 1978. She was the only child of a middle class family. She has always been a successful student. She lost her mother at the age of 13 because of breast cancer, and her father was distant but still she could keep on. (...) She herself suffered from cancer and her boyfriend left her after he had found out that she was ill. (...) At the hospital she met someone whose situation was worse than her, and this gave her hope. At the age of 27 she beat the cancer and became the head of an international foundation that fights against cancer.

One bias against Sandra was that she was sometimes portrayed as an alcoholic. She started to drink because of her problems. Meryem Öztürk (headscarfed or not) has never been depicted as a woman that drinks alcohol. This might be also another bias against Europeans.

Another bias was between the two women's private lives. Sandra could have a boyfriend, while extramarital relationship has never been mentioned for any Turkish Meryem. For example, in one of the stories, Sandra, who was a divorced woman with kids, had a male "boozing buddy":

She was an alcoholic who got caught up in a debt trap. In order to pay her bills, she robbed a bank with the security man with whom she used to drink every night.

*Bias against names.* In our first group work, we have realized that there were some preconceived opinions about the name "Meryem". Most of the students thought someone named Meryem was from the Eastern or south-eastern part of Turkey. We gave them the same photo with another Turkish name "Deniz" which is very common in Turkey and is preferred by the adherents of the left-ist political views. This made students think Deniz Öztürk was hailing from the western parts of Turkey.

In short, names, religious symbols or cities shaped the students' perception of persons they saw on the photos. What exactly makes them *look* at the photos of the same women but *see* so much different things? How will this affect their work when they start to practice law as judges, prosecutors or lawyers?

### 3.2.1.2. SECOND GROUP WORK: INTERVIEWING "THE OTHER"

After some time, almost all students at school knew about the first group work. We heard that they were trying these tasks on their classmates or friends at dormitories. As the "game" became already popular, we wanted to find another method to challenge students' bias. The idea came from the famous TV or youtube programmes where people were interviewing the so called "marginal persons" – in Turkey's context those were hermaphrodites, lesbians, drug users, extreme political viewers, etc. – and the interviewer dared to ask questions actually interesting for many people but hard to ask in a "politically correct" way.

Ankara University Law Faculty is one of the oldest and the biggest law faculties in Turkey where every year almost 1000 students are enrolled. There are people from all around Turkey and even members of some minorities or foreigners who come to Turkey to study law. Thus, our faculty's students originate from economically, socio-culturally and politically different backgrounds. They are diversified in many aspects and this diversity is quite visible at the classes. People chose to socialize with people who are like themselves, and they ignore those that are different from them. Each group (conceived in a political, religious or cultural sense) of students has limited contact with those whom they label as the "others". We wanted to challenge this social distance by suggesting them a homework in the form of an interview with those they think they might have some prejudgments about.

*Method.* As it is difficult to face one's bias and even talk about it, we decided to give this assignment only to the volunteers. We announced that we were looking



for students who wanted to work on bias and then have a presentation for their mates at a class. We haven't given the details of the task at first. We met these volunteer students in a separate class hour and explained them the complete task.

In our first meeting, which lasted almost 2–3 hours, students were initially intimidated. Although we said having bias or prejudgments were quite humanly and we all might have them naturally, they were unwilling to talk about theirs. But, unexpectedly, one of the students dared to tell she was belonging to different ethnical and religious backgrounds and her classmates could interview her if they wished to. She said she was Armenian, Kurdish and also had a different religious backgrounds and these intersecting minority characteristics made her feel an outsider sometimes. She knew that there were students in the class who held negative views towards these backgrounds, and she wanted to point out that she has faced these biases all through her life.

Then the other students began to talk about their biases. Some had a bias against women with burka, some had a bias towards football fanatics, others didn't like anti-feminists, etc. We started to talk about all these biases and their possible rational or irrational reasons. When everybody was freely talking about their views, they encouraged each other to be more open and sincere.

We asked them to find a representative of the group they had bias towards and address the questions that they were curious about. We made sure that the person who was to be interviewed would be anonymous (his or her identity would not be declared) and s/he would definitely know that s/he was being a subject for a class task that was going to be presented.

We let the students think about the task over a week, so that those who were not sure they would participate could think it over and decide better.

*Presentations.* After our first meeting, the volunteers started to think about their tasks. We made sure that it was them who were biased and it was their bias, so they should be careful not to offend anybody or any group.

Their interview experiences were quite interesting. We made a second separate meeting to talk about these experiences and saw that they were influenced by their interviews. Their struggles to find the "other", to convince him or her to be interviewed and, more importantly, to dare to face their biases and make questions out of them were a transforming experience for the students.

When they presented their interviews at the class, the discussions took place which were also challenging. There were representatives of the groups who wanted to join the discussion (for defending or explaining themselves), there were also other people who were holding the same bias and faced their own biases. For example, when a group of female students presented their interview with an "anti-feminist person", those who shared the same views but did not label themselves as "anti-feminists" joined the discussion and explained their points. In daily life, these two opposite groups would ignore each other by not being interested

in what really the others' points were. It was a transforming atmosphere where two opposite sides could listen to each other and try to "understand" the other's position.

#### 4. CONCLUSION

We still need a transformation in legal education for the gender equality, since from the CEDAW we still have a gendered educational system. This transformation is only possible if we know what we need. In our experience, we discovered that to see gender inequalities and to be aware of them is not easy. One reason for this are prejudices and biases which feed gender inequality, and which are systematically produced by the structural injustice. To combat them we should be aware of them. For this reason, we organized our clinic lecture to see and face them. And we used transformative methodology that includes intersectional analysis. At this point, it is important to be aware of the interacting biases regarding gender inequality, since their effects on gender inequality is greater than that of one bias which is oriented on one reason of discrimination.

We believe that the group work related to prejudices inspires personal transformation of the law students, institutional transformation of legal education or law faculty and, finally, general transformation of the society as a whole.

Firstly, with the help of this homework, the law students found the possibility to think about their biases sincerely and express them as openly as possible. This made them see where they coordinate themselves by looking at where they coordinate the "other".

Also, facing their biases helps the law students to transform their professional aims<sup>28</sup>. We have discussed how impartiality is an important ethical value, especially for judges, and also equality – for all legal professionals. The students had a self-reflection on their potential impartiality when/if they become a judge and face a member of the group they have bias towards. They could tell how much this bias would block their way to see injustices. Making students link their personality traits or views to their prospective professional lives was something that widened their perspectives.

Secondly, there is also the impact of the transformation on the legal education itself. Instead of teaching impartiality at legal ethics classes or gender equality at gender & law classes, which usually sounds too abstract for the students, a more efficient way for them to learn was to let them first see what would undermine impartiality and equality. This interactive and self-way of learning would also

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<sup>28</sup> L.E. White, *The transformative potential of clinical legal education*, "Osgoode Hall Law Journal" 1997, Vol. 35, No. 3–4, p. 606.

make a change in legal education. As White puts it, the “law schools curriculum” would transform in the future<sup>29</sup>. An old-school teaching method, lecturing from the desk, is giving way to class discussions that is focused and shaped by the students’ perspectives.

Thirdly, there is the potential to transform people, other than law students, involved in the education<sup>30</sup>. For example, people the students interviewed were influenced. Perhaps it was also the first time in their lives that someone being open about her bias asked them questions sincerely. This is also one of the characteristics of the feminist research that it aims to influence both the interviewee and interviewer interactively. This interaction has a transforming effect on both sides.

Finally, in broad terms, the transformative education, which has a gender sensitive approach, would shape the perception of law and change the society itself in the long run<sup>31</sup>.

Today’s law students are the prospective legal actors who will be able to shape the law in the future as judges, prosecutors, lawyers or legal academics. But we should not forget that this model is not enough to change the gendered nature of law. The problem is connected with the structure. If the structure reproduces gender inequality, the legal education alone cannot change the gendered nature of law. Similarly, it is not enough to organize only legal clinic courses according to the transformative methodology. We still have a gendered legal education system. The problem is not confined to gender biases or prejudices. In fact, the problem consists in changing the structure of legal education system which is part of structural injustice. Our model aims to show it to students and make them aware of this structure. If they are aware of it, as legal actors, they will contribute to transform this structure. As Allan puts it, “this invitation enables individuals (...) to see themselves as the main source of transformation, rather than waiting for a more substantial structural or material change”.

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<sup>29</sup> *Ibidem*.

<sup>30</sup> In White’s words “people that they touch and the institutions in which they are embedded”. *Ibidem*, pp. 606–607.

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