

UCLA

UCLA Women's Law Journal

Title

Continuity and Discontinuity in the Legal System: What It Means for Women: A Female Lawyer's Perspective on Women and the Law in Hungary

Permalink

<https://escholarship.org/uc/item/7339s0ck>

Journal

UCLA Women's Law Journal, 5(1)

Author

Morvai, Krisztina

Publication Date

1994

DOI

10.5070/L351017611

Copyright Information

Copyright 1994 by the author(s). All rights reserved unless otherwise indicated. Contact the author(s) for any necessary permissions. Learn more at <https://escholarship.org/terms>

Peer reviewed

CONTINUITY AND DISCONTINUITY IN THE LEGAL SYSTEM: WHAT IT MEANS FOR WOMEN: A FEMALE LAWYER'S PERSPECTIVE ON WOMEN AND THE LAW IN HUNGARY

Krisztina Morvai*

I. BACKGROUND: DEMOCRATIC TRANSITION FROM COMMUNISM TO "ITS OPPOSITE"

Communism as an ideology and political regime did not justify and legitimize itself by a democratic consensus but by the promise of a future ideal society based on equality. This society promised to put an end to exploitation and the alienation of people from each other and from their work. Ironically, while communism justified itself from and by the future, the democratic transition legitimized itself by the past, through the denial of the doctrines and practices of the previous regime. While all dissident groups in Hungary who participated in the "roundtable negotiations" and later in the first democratic elections were clear about their views regarding the previous regime and strongly refused the doctrines and practices of "existing socialism," they did not clearly articulate how they imagined the new society would be built. Hungarian society was united in the euphoria of freedom, but the unity was not based on a forward-looking consensus about fundamental elements, principles, and values of the new regime. Most Hungarians knew what they did not want but were uncertain about what they did want.

The future society was seen as basically "the opposite" of state socialism. Since the previous regime was a monolithic, one-

* Assistant Professor of Law, ELTE University, Law School, Budapest. The author is grateful to Professors Frances Olsen and Hermina De Soto for organizing the conference "Women in Central and Eastern Europe: Nationalism, Feminism and Possibilities for the Future," which was held at the University of California Law School, April 9-10, 1994, in Los Angeles.

party system, the post-communist political structure had to be a pluralistic, multi-party one. Likewise, because the economy was based on state ownership and central planning, a market economy based on private property was the natural result of the transition. This "as opposed to" attitude of the democratic transition is likely rooted in the views of the "silent majority" of communism at a time when the Western models of "capitalism" and "democracy" were seen as the only alternatives to state socialism. There were no attempts to challenge or deconstruct notions such as "democracy," the meanings of which were taken for granted.

Further examination of the dynamics of the democratic transition and the politics of the post-communist years exceed the scope of this article. However, the "as opposed to" phenomenon must first be understood before analyzing the prospects of women and the law in Eastern and Central Europe.

II. THE SITUATION OF WOMEN DURING COMMUNISM: THE RHETORIC AND THE REALITY

In the eyes of many people, the experience of "existing socialism" in Eastern Europe corrupted the principles of Marxist theory.¹ While several elements of Marxist theory are currently on the agenda of progressive politics in the West,² post-communist societies often view these values as trademarks of communism. Women's equality as part of the Marxist agenda (and therefore of state socialist rhetoric) belongs to this category. The refusal to embrace feminist principles follows from the "as opposed to" attitude of the transition.

Equality was a fundamental element of Marxist theory. Freedom from exploitation and subjugation was seen as a precondition to achieving equality in society in general. The issues of class equality (and ultimately the disappearance of classes) and gender equality were carefully analyzed in the works of the founders of the theory.³ The founders advocated the liberation

1. Whether or not this was a necessity may remain unknown. The first experiment of applying Marxist theory to society has definitely failed.

2. Examples of elements of Marxist theory on the agenda of progressive politics include: challenging the status quo of the power structure, concern for the vulnerable, the importance of the community, and affirmative action.

3. See, e.g., FREDERICK ENGELS, *THE ORIGIN OF THE FAMILY, PRIVATE PROPERTY, AND THE STATE* (Int'l Publishers Co., Inc. 1972) (1884); KARL MARX & FREDERICK ENGELS, *MANIFESTO OF THE COMMUNIST PARTY* (Frederick Engels ed., Int'l Publishers Co., Inc. 1932) (1848).

of women from domestic slavery and the active participation of women in the work force and in the public sphere.

The experience of "existing socialism" was very different from the rhetoric of it.⁴ Though women joined the work force and participated in public life,⁵ their role in the domestic sphere did not change accordingly. The "weaker sex" had to be strong enough to carry the double or triple burdens. Full-time work outside the home, full responsibility for domestic work, and a disproportionate share of parent-related duties as well as active "quasi-political" participation weighed women down. "Hungary became the country of beautiful girls and exhausted women."⁶ Many Hungarian women could describe their lives as follows: We got up early, made breakfast, tried to keep our eyes open on crowded buses, took the kids to child care or school, began to work in the factory, the office or the courtroom, sat on committees, listened to remarks about our hairdos as opposed to our points, took the bus, took the kids, lined up in crowded supermarkets, cooked dinner, served dinner, invented methods for keeping the next day's file in one hand and the iron in the other, told bedtime stories to the kids and then to our husbands — about the reasons why we did not feel like making love. Women were blamed if their husbands had had enough and took off with an eighteen-year-old. Likewise, they were blamed for growing alcoholism, juvenile crime, men's strokes and heart diseases, and other social evils.

The official figures were impressive and supported the rhetoric. About thirty percent of members of parliament and the majority of judges were women.⁷ It was difficult for "outsiders" to realize that legislators or judges in fact did not have much power

4. I should note that in my experience, our Western sisters, along with many leftists in general, had no idea about the major gap between Marxist theory and the reality of state socialism.

5. In the absence of genuine democratic institutions we cannot speak about "public life" in state socialism in the Western sense of the word. Nevertheless, the wide participation of women in the "democratic game" was important for maintaining the illusion of equality.

6. Eva Fodor, *The Political Woman?: Women in Politics in Hungary*, in *WOMEN IN THE POLITICS OF POSTCOMMUNIST EASTERN EUROPE* 171, 175 (Marilyn Rueschemeyer ed., 1994).

7. BARBARA EINHORN, *CINDERELLA GOES TO MARKET: CITIZENSHIP, GENDER, AND WOMEN'S MOVEMENTS IN EAST CENTRAL EUROPE* app. at 274 (1993). According to these statistics, the percentage of female representatives in the Hungarian Parliament was 28.7% in 1975, in comparison with 1.6% in France and 4.3% in the United Kingdom in the same year. This source also indicates that women's participation in the Hungarian Parliament dropped to 7.2% in 1990 immediately

or prestige; therefore, "even women were good enough" for these positions. The representation of women in the public sphere did not accurately reflect the value society placed on women. Although women were well represented in several "elite" professions, they often failed to perform in accordance with their talent and professional abilities. The domestic duties of professional women such as judges did not differ from those of homemakers or manual workers. The quality of their work often reflected their exhaustion and was thus severely criticized. If the justice system did not function properly, the explanation was obvious: women could not cope. They are late for their own trials, run into the courtroom with their grocery bags, do not keep deadlines, fail to show up if their children get sick. Women judges along with female workers from most other professions accepted and internalized the blame. Society challenged women's abilities rather than existing power relations and gender roles. Women were socialized to blame themselves and learned to hate themselves. Self-hatred became an obvious means of survival in a male-dominated society; it emerged as the major obstacle to sisterhood and joint political action.

Women blamed communism or, more accurately, the rhetoric of communism as well as themselves for their misfortune. The rhetoric of "equality" resulted in the onerous experience of double or triple burdens as opposed to liberation. Opposing the (purported) values of Marxist gender politics was part of opposing communism. Refusing "equality" equaled political protest. Women's apologies for their forced public participation, guilt for working outside the home, and willful subordination to their husbands were identified almost as "political action." Being a citizen was a woman's shameful collaboration with the regime and being a subordinated housewife with traditional family values was considered an "underground political operation." Since Marxist principles were easily identifiable with the (Western) feminist manifesto, being anti-Marxist equaled being anti-feminist and that almost equaled being an active political dissident. Instead of challenging the power structure of the domestic sphere and of gender relations, women blamed their role in the public sphere for their misfortune as well as the misfortune of their families and society in general. Traditional gender roles and power

after the first democratic elections when Parliament became a genuine democratic institution.

relations were accepted as “given” and “natural,” whereas women’s equality was identified as “forced” and “unnatural.” Masses of women must have agreed with the slogan of Kati, a middle-aged, middle-class mother, who said: “the first feminist should have been immediately executed and we would have a much better life today.”

III. LAWS AFFECTING WOMEN DURING COMMUNISM

Communism identified “human rights” within the meaning of political rights and freedoms as a retrograde, bourgeois concept, but social, economic, and cultural rights were included in Eastern European constitutions. Reproductive rights (with the exception of Romania) and family laws related to women’s equality were also important. The whole body of family law was very progressive.⁸ Labor laws allowed women to stay at home with their children for the first three years and then in case of their child’s sickness without the risk of losing their jobs. Abortion was easily attainable.⁹

On the other hand, laws relating to domestic violence, sexual harassment, and “non-stranger rape” were basically not enforced. Selective enforcement of the law accurately reflected society’s image of women. The “working mother” was effectively protected while a woman’s control over her bodily integrity in marriage, dating relationships, and the workplace was viewed as unimportant and unrelated to the “politically correct” female image. Effective law enforcement in these fields might have challenged the “official” stereotypes about life and people in communism. What life was like and what it should have been like were often confused intentionally in the interest of maintaining an illusion.

Although there were laws against acquaintance rape,¹⁰ domestic violence,¹¹ and sexual harassment,¹² there seemed to be a general societal “justification/excuse” for failure to enforce these

8. For example, laws related to marital property and divorce were very progressive compared with many Western societies.

9. This was true apart from the few years in the fifties, referred to as the “Ratko period,” when a female minister of health affairs, Anna Ratko, introduced new and harsh practices that restricted access to abortion.

10. However, there were no laws against marital rape.

11. Unlike rape, assault/bodily harm was criminalized regardless of the relationship of the perpetrator and the victim.

12. Whether sexual harassment laws applied against verbal or physical assault was a question of interpretation.

laws: the victim was a woman. This can probably be explained by the conflict between the official rhetoric and traditional societal attitudes towards women. On the one hand, the official political attitude characterized women not as victims but as powerful equal citizens. On the other hand, society viewed women as "made to be raped, harassed, or battered." For example, the following old Hungarian saying is still frequently cited: "Money is good when counted, the woman is good when beaten." The attitude of the police and the courts definitely helped to maintain this attitude.¹³

During communism, the law (in action) saw women as the official doctrine and rhetoric wanted them to be seen (as powerful equal citizens) while in reality, they could be treated according to the prevailing attitude of society.¹⁴ Since "there was no domestic violence problem," there were no shelters or hotlines; since rape was not too different from other crimes and was "infrequent," there were no policies, practices, or institutions to protect or support rape victims; since "erotica" in the workplace was "part of our culture," sexual harassment cases were non-existent.

The transition did not bring any fundamental change in regards to the attitude towards women. In fact, certain changes have taken place but these could hardly be seen as improvements. An end to censorship meant that pornography became easily available, "human rights" meant that women could legally prostitute themselves, respect for privacy meant that the police have become more reluctant to intervene in "family affairs" (such as domestic violence), and a market economy meant that the labor market as well as social services (such as child care) must be "efficient" with obvious consequences for women.¹⁵

Laws regarding women as well as their enforcement more or less accurately reflect society's images and views of women.

13. My experience as a lawyer as well as a citizen shows that domestic violence is still seen as a "private matter" by the authorities and by the general public.

14. This attitude included such views of women as: "The woman is good when beaten," "women enjoy being touched and told sexy jokes by their colleagues," and "women secretly long to be raped."

15. It is widely accepted by society that women with children are not "efficient" employees, given that most parental duties fall on them. It follows, that in the course of restructuring the work force, women can be easily fired, basically without any explanation. Moreover, child care is now often seen as an "inefficient" option compared to removing women from the work force and "keeping" them at home as child care providers for their own families.

Thus, if women want to change those laws or practices, they must be clear about their goals and about what kind of female image those new laws or practices should focus on.

IV. SHOULD THE LAW "FOLLOW" SOCIETY OR DIRECT IT?

How is and should the law be related to society's value system? Should the law "follow" society and wait until "the people" voluntarily accept certain values and rules? Should it accurately and precisely "mirror" society's values or should it forge ahead, and thereby "point out the right direction" for society?

I am convinced that the symbolic message of the rules of law can shape people's views and values. The law can and should be somewhat more "progressive" than the majority of the people. Yet, the gap should not be too wide, otherwise the law will lose its legitimacy in the eyes of the people.

Laws and their enforcement regarding women at this stage in Hungary should be definitely more "progressive" than the views of the majority. For example, even if the majority is convinced that "the woman is good when beaten," the law and law enforcement should view domestic violence as a crime.

Nevertheless, raising society's consciousness about women's rights should parallel legislative drafting or efforts to influence law enforcement practices.

V. THE NEED FOR FEMINIST LEGAL THEORY IN EASTERN EUROPE

Although we have to be aware of the different history and situation of Eastern European women, the assistance of Western feminist scholars, politicians, and activists is needed in the process of creating our agenda for progressive, "women-friendly" law in post-communist societies. Instead of aiming at changing bits and pieces of the existing law, we should have a coherent, theoretical approach to implementing change. We must identify the potential as well as the limits of the law in changing the patriarchy. The relationship between theory and activism should be clarified in the interest of practical effectiveness, and ultimately, in the interest of women. We should keep in mind the relevance of the symbolic message of the law. Major questions to be considered are how we want women to be seen and what kind of "female image" we want the law to reflect upon or advocate.

Perhaps the most fundamental questions in feminist law-making are how women want to live and how can the law provide the best framework for our choices.

In my opinion, there should be an emphasis on choice, as opposed to "legal maternalism." By the latter, I mean the advocacy of a certain set of values or priorities for a certain group of women at the expense of others.¹⁶ In order to provide a meaningful choice for women, the "ideal theory" must reflect and integrate the diverse interests of women in different situations and with different priorities.

One of the obstacles to creating feminist law in Eastern Europe is the fact that the legal community views a politically neutral, value-free "rule of law" as its ideal. In such an atmosphere, it is difficult to argue for a theory which is openly political and openly represents the interests of women. Needless to say, the "politically neutral" law is the one which supports the status quo with its inherent male bias.

Another obstacle is the general lack of education in political and legal theory and, in particular, a complete lack of knowledge of feminist theory. Filling in this gap should be high on the agenda of the cooperative efforts of Eastern European and Western women.

16. The newly established feminist movements of Eastern Europe should keep in mind the existence of different interest groups among women. Ideally, the rights of working women should not compete with those of homemakers but should coexist with them. Women with children should be thought of as carefully as women who decide not to have children. An attitude of competition as opposed to cooperation between these and similar groups would severely weaken the women's movement. To me the "ideal female image," referred to earlier in this article, for the purposes of lawmaking policies should be the woman with genuine choices regarding her life. The main role of the law should be to provide a framework for these choices.