

Decolonizing Feminist Legal Methods: A Study of the Criminalization of Women and Imprisonment for Drug Offenses*

Decolonizando los métodos jurídicos feministas en una investigación acerca del fenómeno de la narcocriminalización de las mujeres

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Abstract: Feminists take a variety of different approaches to discussions of the law, and many researchers have focused on studying the possibility of employing feminist legal methods of “doing” and “knowing” in law. Feminist authors discuss the possibility of applying feminist methods to question truth claims in law and challenge the power relations the law creates and recreates based on markers such as gender, race, and class. We have organized our work around three components of a method developed by Katharine Bartlett—the *woman question*, *feminist practical reasoning* and *consciousness-raising*—to analyze the knowledge produced regarding the imprisonment of women for drug offenses in Brazil in the 21st century. We consider how feminist methods may be applied in this and other contexts which involve a great deal of marginalization. Drawing on Ochy Curiel’s interpretation of the concept of the colonality of knowledge, we ask: How can we decolonize feminist methods in order to adapt them to the needs and realities of the Global South? We focus on the idea of translation, advocated for by a number of Latin American and North American authors whose work touches on themes of centrality (North) and marginality (South), as a method of producing “connected epistemologies” which encourage alliances and challenge reductionist interpretations of feminist theories. Our aim is to contribute to a horizontal dialogue between the Global North and South in feminist studies without disregarding the uniqueness of the realities of our research subjects.

Keywords: Feminist methodologies, decolonial feminism, translation, criminal woman, Brazil

Resumen: Entre las diversas dimensiones que pueden tomar los feminismos en su interacción con el derecho, muchas investigadoras se han centrado en estudiar la posibilidad de emplear métodos legales feministas para «hacer» y

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«saber» en derecho. Autoras feministas discuten las posibilidades de aplicar métodos feministas para cuestionar las pretensiones de verdad que produce el derecho y las relaciones de poder que crea y recrea a partir de marcadores sociales como el género, la raza y la clase. En nuestra investigación, trabajamos con tres ejes de un método desarrollado por Katharine Bartlett —*la pregunta por la mujer, el razonamiento práctico feminista y el incremento de conciencia*— para analizar el conocimiento producido acerca de la criminalización de las mujeres por tráfico de drogas en Brasil en el siglo XXI. Reflexionamos sobre cómo aplicar métodos feministas en este y otros contextos de marginación. Trabajando con la interpretación del concepto de colonialidad del saber de Ochy Curiel, nos preguntamos: ¿cómo podemos decolonizar los métodos feministas para adaptarlos a las necesidades y la realidad del Sur global? Utilizamos la idea de *traducción* desarrollada por algunas autoras latinoamericanas y norteamericanas que transitan por espacios de centralidad (Norte) y marginalidad (Sur) en sus obras como una forma de producción de «epistemologías conectadas» que estimulan alianzas y confrontan interpretaciones reduccionistas de las teorías feministas. Con este trabajo, buscamos contribuir al diálogo horizontal en los estudios feministas entre el Norte y el Sur globales sin descuidar la singularidad de las realidades de los sujetos estudiados.

Palabras clave: Metodologías feministas, feminismo decolonial, traducción, mujer criminal, Brasil

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I. INTRODUCTION

In Brazil and other countries in Latin America, feminists first turned their attention to the law as women began to form social movements and organize political mobilizations to fight for equal rights (Lerussi & Costa, 2017; Severi & Lauris, 2022). Before the 2000s, “regional feminism remained distant or marginal in relation to university curricula, legal dogmatics or academic legal research” (Severi & Lauris, 2022, p. 57). Early debate on gender and law in the region¹ primarily consisted of dialogue between Southern feminists and authors whose works

¹ Marisol Fernández (2006) points out that, despite the growth of interest in gender studies among Latin-American academics, the field is largely absent from the mandatory curricula of university law programs.

were already widely respected in the Global North. The approach of academics in the region was to “embrace and resignify” the theories of the North (mostly developed by scholars from the United States and Europe) to the peripheral reality of women in South America (Lerussi & Costa, 2017, p. 5).

As such, theories on gender and law advanced by Latin American authors often included a certain amount of criticism of the received wisdom, meaning new issues for debate arose, and continue to arise. Costa (2014) points out that one of the peculiarities of Latin American legal feminisms is their tendency to dialogue with the concepts and methods of legal feminist theories advanced by authors from the United States, particularly in order to adapt and apply them according to the needs of this region, such as by taking account of the differences between the legal systems of different regions (p. 27). Moreover, Latin American authors continue these dialogues within the region, which enables locally specific concepts and theories to be developed (Lerussi & Costa, 2017, pp. 6-7).

This background of theoretical, linguistic, and contextual exchanges, considering that the movement in Latin American and Brazilian academia is still in its infancy relatively speaking, demonstrates the potential for equitable dialogues between North and South concerning feminist legal theory.

In this paper we seek to apply feminist methods, such as those put forward by North American scholar Katharine Bartlett in 1990, in the context of women’s marginalization in Brazil, particularly women imprisoned for drug offenses in the 21st century. We begin from the assumption that the application of feminist methods and theories should be tailored to the location of the research subjects, and that it is necessary to incorporate considerations of context in order to avoid reproducing ideas which may not represent lived realities.

The question which guided our analysis is the following: How can we decolonize feminist methods related to this specific issue in order to adapt them to the needs and realities of the Global South? In pursuit of answers we employed a decolonial theoretical framework, focusing on the idea of *translation* developed by feminist authors as a means of enhancing the process of dialogue and exchange between North and South while avoiding the perpetuation of implicit hierarchies in the literature, and the subordination of Latin American authors to their North American and European counterparts.

This paper is part of a broader research project aimed at analyzing the representations of the *criminal woman* developed by scholars of criminal law in Brazil, and focuses on women who have been charged with

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drug offenses in recent years. As part of our methodology, we employ the feminist legal method proposed by Bartlett, which is composed of the following components: *asking the woman question*, *feminist practical reasoning* and *consciousness-raising*. The objective of the paper is to examine the use of these methods in the abovementioned context, in dialogue with the works of decolonial authors.

The paper is divided into three sections, in addition to the introduction and conclusion. In the first section, we discuss feminist legal methods as guides on how to act and produce knowledge in the field of law. Our principal references in this section are the works of Bartlett, Alda Facio, and Fabiana Severi and Élide Lauris. In the second section, we give a brief introduction to the context of the study, the criminalization of women in Brazil. In the third section, we examine the concept of *translation* as a means of facilitating dialogue between North and South around the production of feminist knowledge, and outline the considerations and adaptations we believe are necessary in order to decolonize Bartlett's feminist methods.

In the final section we discuss: a) the need to view the law as more than just a set of abstract norms, and to look for answers “between the lines” of texts, b) the importance of analyzing this issue in this context from an intersectional perspective which questions social representations of the *normative woman* and *criminals*, among other stereotypes in law, and c) the development and use of feminist methods as a process of persistent consciousness-raising, of ongoing questioning and reconstruction.

II. DOING AND KNOWING IN LAW: THE POTENTIAL OF FEMINISMS TO GUIDE LEGAL METHODS

Historically, there has been little opportunity in the field of law for fundamental questioning about the process of defining the issues, selecting relevant principles, and delimiting what should be excluded from its scope (Mossman, 1986, p. 32). More simply put, discussion about the legal methods employed in legal practice and research has been granted limited space in the literature.

Recognizing that the legal method is an important source of the power of law, a number of feminist authors “took risks” by questioning how legal knowledge is produced, exposing the myth of neutrality, and seeking a “new way of seeing” (Mossman, 1986, p. 48). The legal method itself then became an object of criticism by feminist epistemologists, moving beyond discussion about the need to “[add] women’s experience” to law school curricula (p. 46).

During the 1990s, authors such as Katharine Bartlett in the United States and Alda Facio in Latin America dedicated themselves to

formulating and defending the use of feminist legal methods, both for those who “do law”—who work as professionals in the legal sphere, defending, accusing, and judging—and for those who “know” in law, that is, those who produce academic knowledge through legal research.

According to Bartlett, “feminist legal methods, which have emerged from the critique that existing rules overrepresent existing power structures, value rule-flexibility and the ability to identify missing points of view” (Bartlett, 1990, p. 832). The author argues that feminists cannot ignore method as it is impossible to challenge existing structures of power with the same methods that have defined those structures. Acting without consideration of method could result in feminist studies legitimizing the structures they seek to undermine (p. 831).

In arguing for the possibility and necessity of applying feminist legal methods, Bartlett (1990) claims that method organizes the apprehension of truth, determining what counts as evidence and what counts as verification (p. 830). Moreover, predicting the question about whether the tools she proposes in her text would even be a method, but rather “substantive, partisan rules”, she defends the substantive elements as necessary in order to prevent feminist methods from being reduced to insubstantive descriptions. She views the substantive nature of feminist methods as an essential part of their formation, as they are born from feminist political struggles and their connection with concrete aspects of the law (p. 832).

In a similar vein, Alda Facio (1992) talks about the need for a “consciousness-raising effort”, aimed at systematizing a methodology which avoids androcentric conceptions, commits to standpoints, and excludes false neutrality from its vocabulary. More recently, Fabiana Severi and Élide Lauris (2002) have also weighed in on this issue. For them, feminist research involves a more complex process of employing methods and techniques based on feminist methodologies and epistemology which enables questions to be formulated, information gathered, and conclusions reached based on non-androcentric, anti-discriminatory theoretical frameworks and approaches (p. 55).

So what does it mean, in concrete terms, to employ feminist methods when “doing” law or legal research? What specific steps are involved?

Severi and Lauris argue that, in legal research, feminist concern with method must permeate every stage of the process, from the choice of topic to the sharing of results. It is essential to look for and call out sexist, racist, and classist biases at every stage, and to recognize the social markers of difference which are at play in the study. Careful consideration of language is also paramount, taking care to avoid exclusionary terms and seek out strategies to subvert neutralizing conventions.

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Alda Facio (1992) proposes six steps she deems necessary for research to be truly feminist. Her work discusses and expands on the issues mentioned above, addressing the need for researchers to develop an understanding of how sexism manifests itself in the area they are studying, to ensure they adequately identify the subjects involved with appropriate markers, and to avoid stereotypes in their characterization of these subjects. Finally, she discusses the need for analysis of the law to be wide-ranging.

Bartlett proposes a set of feminist methods which can be employed to help reveal features of laws, academic research, and the legal system (court decisions, the building blocks of prosecution and defense, the drafting of laws etc.) that more traditional methods tend to overlook. These techniques are *asking the woman question*, *feminist practical reasoning* and *consciousness-raising*. They seek to expose the myth of neutrality that permeates traditional legal practice, to highlight the exclusionary nature of the law, and to propose alternatives which incorporate hitherto marginalized realities, standpoints, and theories.

During our research we sought to use Bartlett's method to develop an understanding of how the law in Brazil constructs representations of women charged with drug offenses in the country. However, in order to conduct our analysis, it was necessary to rethink the feminist method proposed by this author, in dialogue with other discussions which focus on the Global South and considerations of this particular context.

III. CONTEXT: THE CRIMINALIZATION OF WOMEN AND IMPRISONMENT FOR DRUG OFFENSES IN BRAZIL IN THE 21ST CENTURY

When embarking on our research, we decided to focus on the *criminal woman* in the world of the illicit drug trade, with one of our objectives being to undertake an analysis of the particular place occupied by women in this world. We based this analysis on data related to the imprisonment of women in the country, aiming to identify patterns in the characteristics of the women charged with drug offenses.

We also considered the increased visibility of the issue of the imprisonment of women; the steady increase in the numbers of women being imprisoned over the past two decades has been accompanied by a growth of interest in the subject, which had previously been largely neglected in the criminological and feminist literature (Barcinsk, 2009; Helpes, 2014). This increased interest is evident both in academia, where research on the topic is more common and official data on the subject increasingly easy to come by, as well as in journalism, where

a growing number of reports and documentaries concerned with the incarceration of women are being produced (Braga, 2020, p. 233).

According to a report released in 2019 and based on data from June 2017, there were 37,828 women in Brazilian prisons at that moment in time, including both those already convicted and those in pretrial detention (Infopen, 2019, p. 7). This figure represents an increase of almost 600% on the number of women imprisoned in the country during the 2000s, which was consistently lower than 6,000 (p. 9). According to data released by *Infopen Mulheres* in 2018, Brazil now has the fourth largest female prison population in the world (p. 13).

The majority of women in prison are under pretrial detention, meaning they have not yet been convicted of a crime. They are generally young (between the ages of 18 and 24) and lacking in formal education (almost half did not finish elementary school), and more than 50% identify as Black. The majority of non-Brazilian women in prisons here come from other countries in the Americas (Infopen, 2019).

Another data point which stands out in both official figures and academic research (Angotti & Braga, 2015; Braga, 2015; Braga & Franklin, 2016; Ministério da Justiça, 2015; Diuana *et al.*, 2017) is the large proportion of mothers among the prison population. According to the most recent figures released by the government, 28.9% of incarcerated women have one child, 28.7% have two children, and 21.7% have three children (Infopen, 2019, p. 43). As for the types of crimes involved, according to the data 59.9% of women were arrested for drug offenses, and 20.7% for property crimes (p. 46).

These statistics, especially that relating to the types of crime committed, suggest a shift in analyses of representations of the *criminal woman*. In the past, female criminals were associated with typically female crimes, such as abortion, infanticide, and prostitution, offenses connected to the body and reproduction (despite the persistent criticism of this fact by female scholars of criminology). Since the beginning of this century, researchers have begun to use terms such as *the criminalization and feminization of poverty* in discussions around the issue, highlighting the fact that these women are often heads of family and come from the poorest sectors of the population.

Based on our awareness of this new reality, as well as the distance that separates the women being researched and the researchers in this case (due to our positionality, as white, highly-educated, middle class women who have never been charged with crimes) and the need to align our study methods with the context we are studying (the reality of women who challenge the stereotype of the female criminal in Brazil or who break with the patterns of victimization in the criminal sciences), we

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felt compelled to look for means of *translating* the feminist methodology we would employ.

IV. TRANSCENDING THE COLONIALITY OF KNOWLEDGE: HOW CAN FEMINIST LEGAL METHODS BE DECOLONIZED?

When we considered applying the feminist legal method proposed by Bartlett in an analysis of the available data and literature on the imprisonment of women for drug offenses in Brazil—the central focus of our research—we first asked ourselves how we could employ this feminist methodology in practice. Our concern was that uncritically implementing the ideas of a North American author—who developed her method based on a lifetime of study of the ideas of other authors from the Global North—while neglecting the writings of Latin American scholars of the field, risked perpetuating *the coloniality of knowledge* (Curiel, 2020).

The coloniality of knowledge is a concept developed by Edgardo Lander (2000), which feminist authors writing about decolonization have employed to challenge the notion of a single scientific rationality being the only valid means of producing knowledge. Ochy Curiel (2020) uses the concept to denounce the narrative which paints European and North American knowledge production as “the geographical center and culmination of the historical development of knowledge, within which the knowledge of subaltern populations is underestimated, ignored, excluded, silenced and made invisible” (p. 128).

To adapt Bartlett’s ideas to the context of Brazil, then, required a process of *translation* of the theories and methods proposed by the author. The concept of *translation* in this sense encompasses the literal meaning of the term² and ³, but goes far beyond this; it involves overcoming geographical and cultural boundaries as well as taking into account differences in legal systems and structures. The idea was developed by a number of Latin American and North American authors who discuss ideas of centrality and marginality in their works.⁴ For these authors, building a translation policy involves “trafficking” feminist theories and practices across geographical and disciplinary boundaries, bringing insights from Latin American feminisms to the North and adapting

2 During the first months of our research, we had access only to the original English version of Bartlett’s text and a Spanish translation; as native Portuguese speakers this forced us to work with our own linguistic interpretations of her ideas. However, in late 2020 a Portuguese translation by Alessandra Ramos, Adriana Moellmann and Isabela Marques was published in the book *Tecendo fios das Críticas Feministas ao Direito no Brasil II: direitos humanos das mulheres e violências*. We subsequently incorporated language from this version into our work.

3 (*Translator’s note*: The authors of this paper are Brazilian. For this English translation of their work, I referred to the original text of Bartlett’s article to verify terminology and guide my translation).

4 Sonia Alvarez (2009) discusses the concept in the collective project *Translocalities/Translocalidades: Feminist Politics of Translation in the Latin/a Américas*, which she edited together with Cláudia de Lima Costa, Verónica Feliu, Rebecca Hester, Norm Klahn and Millie Thayer.

North American theories to local needs in the south (Alvarez, 2009, pp. 743-744).⁵

This interchange of theories and concepts has an integral role to play in this era of constant migration, and the areas of intersection between local and global concerns can reveal the asymmetries between regions (Costa, 2020, p. 323). In this regard, *translation* enables subaltern social groups to engage with and challenge colonial and hegemonic discourse (p. 324). Moreover, as Sonia Alvarez (2009) has noted, implementing policies of translation in feminist studies is essential in order to facilitate the creation of “connected epistemologies”, which can foster alliances and help avoid “misinterpretations” of feminist theories (Costa, 2020, p. 332).

However, it is important to keep in mind that any translation will necessarily involve, to a certain extent, a kind of “betrayal” of the original text, since the process “deconfigures” the original ideas; it involves the reader/researcher reading a text or analyzing a theory through the lens of her prior experiences and knowledge, and based on her interpretation of the subject and goals of the research. However, this is not necessarily a disadvantage, since “by understanding the moment in time and the context in which particular texts were written, theories can be relativized and studied from a local perspective” (Campos, 2020, p. 10).

The *translation* we propose is thus an attempt to adapt Bartlett’s theory to the context of Brazil, and as such this “betrayal” is an important means of relativizing hegemonic knowledge, perceptions, and experiences (Costa, 2020, p. 332). In our research, we sought to *translate* Bartlett’s method and to adapt her theories to include consideration of: a) the particular features of criminal law and criminal science in this country, which focus on the literality of the law and, as a consequence, often neglect corporality and substance; b) decolonial and intersectional views of feminist theory, which seek to expand the boundaries of analysis beyond the term *woman* or *women*, and to speak of gender in conjunction with other markers; c) the specific research topic, that is, the criminal woman and the relationship between her subjective reality and that of the researchers; d) the methodological needs of research concerned with knowledge production in criminal science.

5 We consider that the expression *translation*, as used by the authors of the above work, is more suited to this paper and to our goals than the expression *application*; rather than merely *applying* Bartlett’s theory and method, just as she describes them, we have sought to *interpret* and *understand* them, both in conjunction with other theories, particularly those of decolonial feminists, in the specific field of criminal science.

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IV.1. Searching for gender between the lines

In order to apply Bartlett's feminist legal method, it was necessary, first of all, to situate her ideas in the historical and geographical context in which they were produced, in order to identify common and divergent elements in the reality which is the focus of our research. This process of transposition also involved considering the differences in history and culture which are reflected in the author's discussion of her theory, and the need to be examine her ideas through the lens of the Brazilian experience.

Bartlett wrote *Feminist Legal Methods* in 1990, when she was a professor of law at a North American university, taking into account the configurations of common law tradition. When a body of law is developed with an emphasis on judicial precedents, as is the case in the United States, the ideological conceptions of judges are more easily discernable, which facilitates analysis of their influence on the decision-making process. In addition, teasing out gender representations is a simpler undertaking, since the relevant actors involved in cases which have shaped the course of law are well-defined and neatly characterized.

The Brazilian system, on the other hand, is based on the civil law tradition, which differs from common law in several ways. Under this system, the letter of the law carries more weight; the law is conceived as a set of general and abstract norms which, in criminal law, involves creating broad criminal statutes which are formulated based on universal categories. This way of organizing the law influences the discourse of all actors in the legal system to a greater or lesser extent, including those who write about related topics, such as drug crime.

Under the Brazilian Anti-Drug Act (Law No. 6343, 2006), the following acts are outlawed:

importing, exporting, sending, preparing, producing, manufacturing, acquiring, selling, making available, offering, storing, transporting, carrying, holding, prescribing, providing, delivering, or supplying drugs, even free of charge, without authorization or in breach of legal or regulatory norms.

In definitions of offenses, terms such as "any individual" are used, as well as lists of verbs without associated subjects. Authors who analyze these offenses often characterize them as "common" crimes, meaning anyone can be charged with them. However, other provisions of the same Act, intended to aid interpretation of the legislation, use descriptors, which makes this characterization less straightforward.

The verbs listed above are used to define the majority of related offenses, and at first glance there seems to be no indication that offenders must

be of a certain gender. However, as Elena Larrauri (1994) has pointed out, purported linguistic neutrality does not rule out “gendered” interpretations of laws (p. 24). This reality affects how Bartlett’s questions might be asked in this particular context in practice, since the use of universal legal categories makes it difficult to identify specific, concrete elements to incorporate into research.

This means that an answer to “the woman question” is not always readily apparent in texts. However, echoes are often present, and the difficulty of deciphering the criminalized body does not necessarily mean the question cannot be answered. Behind the apparent universality certain telling conceptions of the world of drug crime can be discerned, and these deserve analysis. Similarly, the absence of explicit representations in itself says something about how knowledge is produced in the field of criminal law in Brazil. In brief, we believe it is necessary to listen for the unsaid, to seek answers between the lines, with due consideration of the legal and social context in which analyses are carried out.

IV.2. *The woman question* and gender as an analytical category

The first component of Bartlett’s feminist method consists of “asking the woman question”. However, an examination of the feminist literature on the decolonial and intersectional dimensions of research reveals several issues regarding the use of *woman* as a category. Given the focus of our study, the criminal woman in Brazil, these issues seem particularly relevant, as the topic requires the incorporation of several markers and the avoidance of essentialist conceptions of womankind.

Moreover, it was important to bear in mind a number of particular issues which are evident in the literature on imprisonment in the field of criminal science. As Débora Diniz (2015) has pointed out, much of the literature on crime and prisons is characterized by gender, which influences our understanding of women’s place in these settings. Criminal science studies are not neutral, but permeated by ideas of violence and organization, usually linked to masculinity: “the way of writing about crime, gangsters and jails is masculine and immersed in patriarchy, which perpetuates the hegemonic language of gender [...] the hegemony of men imposes a particular way of talking about prisons: the language of blood, accusations, and scandal” (p. 584).

The hegemonic models of masculinity which permeate the discourse on crime influence the choices and paths of female criminals, during the process of differentiating themselves from women who do not engage in criminal activity—through the pursuit of power and the use of violence, for example—as well as in the formation of their identities

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and sexualities, especially in their relationships with other women in the prison. Mariana Barcinski (2020) argues that:

an understanding of how power relations are constructed and reproduced in prisons can be developed by examining the efforts of some women to insert themselves into a “man’s world”, by claiming for themselves privileges generally understood as being reserved exclusively for men. [...] “being a man”—and being recognized as such by other inmates, as well as by prison staff—in a wo’en’s prison means escaping the invisibility inherent to mass incarceration (p. 41).

Problematization of the term *woman* has long been a subject of interest for feminist authors. Even those who do use it as a category of analysis acknowledge the associated problems. Linda Nicholson (2000) criticizes the use of the category *women* to group all women together, to focus on what they have in common, while using other markers as a means of differentiation. She considers it essential that the *woman* category—and gender—be viewed as a set of variables rather than as a given, static condition, thus ensuring that the body and the culturally diverse ways of understanding it are incorporated into any analysis (p. 14). Linda Alcoff (1988), in turn, argues for use of the *woman* category as positionality, incorporating considerations of relationality and how different markers contribute to the construction of “what it means to be a woman” (p. 433).

Criticism of the use of *women* or gender as a category is intended to challenge traditional ideas regarding the construction of knowledge. Decolonial feminists such as Yuderkys Espinosa Miñoso (2020) question feminist theories which, even unconsciously, view *woman* as a universal category, thereby equating the circumstances of all women, reinforcing the view of *woman* as being in a constant state of subjugation to *man*, and disregarding all distinctions, including those related to geography and the historical moment in time (pp. 110 and 113).

The use of fixed, homogeneous categories—not only woman or gender, but also in discussions of race or sexuality—contributes to the exclusion of people who do not fit the “dominant image” of the group in question. As María Lugones (2020) points out, the category of *women* is generally taken to refer to “white, heterosexual, middle-class females” (p. 60). A similar example is the term “Black”, which, when used in isolation, is taken to mean “Black, heterosexual males”. Viewed as such, the intersections highlight the gaps inherent to these categories. In criminology, the issue is also evident in discourse around “mothers”; the term invokes cis, heterosexual women, sidelining transgender, lesbian and bisexual women in discussions of maternal rights.

Angela Harris (2020) argues that avoiding the *woman* category and “gender essentialism” in feminist law theory is essential for feminists not to silence the same voices which are excluded or ignored by the “voice of law” (p. 46). In Harris’s view, using this category can merely be a “different form of abstraction” which does not contribute to subversive critiques.

The author goes on to argue that feminist theorization about *women* should focus on relationships, not essences (Harris, 2020, p. 66). She does not deny the need to use categories in analytical processes, recognizing that ultimately, abandoning them would make it impossible to formulate theories. Her position is that such categories should always be relational and unstable, in contrast to the abstractions and “frozen” categories which are the norm in law (p. 47).

Bartlett (1990) herself recognizes these problems, and reflects about the uses of the woman question, understanding that it “asks about exclusion”. However, she goes on to acknowledge that, as feminist theories advanced, feminists began to observe that any analysis using the general category of *women* is itself exclusionary. The use of the term suggests a search for a universal being, which disregards other markers of marginalization, hiding them behind a nondescript ideal of femininity (p. 847).

However, she argues that any category, any identity marker, no matter how specific, necessarily excludes many others; as such, using the woman question as a model for deeper inquiry raises further questions, such as: “What assumptions are made by law about those whom it affects? Whose point of view do these assumptions reflect? Whose interests are invisible or peripheral? How might excluded viewpoints be identified and taken into account?” (Bartlett, 1990, p. 848).

Moreover, as an analytical category, gender has been viewed by feminist authors as a constitutive element of social relations and a way of signifying relations of power (Scott, 1995, p. 86). Joan Scott, for example, positions her “definition of gender” as a way to “conceive a social reality in terms of gender” (p. 83). The core of her definition rests on the connection between two propositions. The first views gender as a constitutive element of social relationships based on perceived differences between the sexes, encompassing culturally available symbols that evoke representations of gender, the normative concepts that attempt to limit and contain alternative interpretations, the political conceptions behind these restrictive interpretations, and subjective identity. The second proposition holds that gender is a primary way of signifying relationships of power, which thus enables the “theorizing of gender”.

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Drawing on Scott's ideas, Fabiana Severi (2016) argues that discussing *gender* in research has the potential to enhance our understanding of the masculine and the feminine, by transforming *men* and *women* into problems, instead of using them as fixed categories (p. 83). The use of gender as a category facilitates more open dialogue which includes other relevant markers and an intersectional perspective. This view holds that, like "women", "gender" is not a static or self-contained category, but one which "intersects with racial, class, ethnic, sexual and regional modalities of discursively constituted identities" (Butler, 2003, p. 20). However, if we wish to study these categories—*gender* or *women*—from an intersectional perspective, it is important to point out how ideas of intersectionality are shaped by research.

According to Collins (2019, p. 2) the concept of intersectionality is not fixed, but rather an umbrella term which encompasses a "social theory in the making", based on categories that represent resistant knowledge traditions (p. 10). In this author's view, a mistake often made by feminists who want to approach their research from an intersectional perspective is to take a static view, conceptualizing intersectionality as a "pre-packaged bundle" of racial, ethnic, and national differences to be subsumed into the gender category (p. 107).

Contrary to this view, intersectionality can take different forms⁶; and can be thought of as a social theory—that is, as a body of theories which seek to explain a given phenomenon—and as a method of theorization, meaning the processes and methodologies employed by researchers to develop explanations of social phenomena. In the case of this paper, the second conception is more appropriate, as we are seeking to use the ideas of intersectionality as part of a process of decolonization of Bartlett's feminist legal methods, to guide us as we formulate our questions and decide on the analytical categories we will employ.

Collins (2019) mentions that Linda Tuhiwai Smith's call for decolonizing methodology "requires thinking through the existing relationships between epistemic power, intersectional theorizing and methodology" which reflect the epistemological rules that govern academic research (p. 143). According to Collins, there are no

⁶ Collins discusses three ways to think about intersectionality as a means of analyzing and creating knowledge. The first is to think of intersectionality as a metaphor; this idea was first proposed by Crenshaw to describe the convergence among different systems of power that created blind spots in anti-racist and feminist activism (Collins, 2019, p. 25). The second is to view intersectionality as a heuristic device, that is, as a scientific method and a new tool for problem solving. As such, it can be a guide to social action (p. 34). Finally, intersectionality can be looked on as a form of paradigm shift, that is, a set of changes in the practices of a field of study (p. 42). According to Collins, the three ways of thinking about intersectionality are equally relevant and complement each other: "the metaphor provides a concept, an idea that marks the visibility of the field. Heuristics provide orienting strategies for getting things done, premises or working hypotheses [...]. Paradigms provide frameworks for analyzing and often explaining both the knowledge that is being produced as well as the processes that are used to produce it" (p. 52).

inherently intersectional methodologies, but rather *core constructs*⁷ of intersectionality which can influence methodological choices.

One of these core constructs is *relationality*:

Race, gender, class, and other systems of power are constituted and maintained through relational processes, gaining meaning through the nature of these relationships. The analytic importance of relationality in intersectional scholarship demonstrates how various social positions (occupied by actors, systems and politic/economic structural arrangements) necessarily acquire meaning and power (or lack thereof) in relation to other social positions (Collins, 2019, p. 46).

Among the different modes of understanding and visualizing relational thinking,⁸ we are most interested in the Collins's (2019) ideas about *conjunctures* (p. 234). The construct of conjunctures provides an analytical framework for exploring how systems of power (and, consequently, analytical categories) intersect; conjunctures are sites where relations of power are in evidence. It is, however, essential to bear in mind that these relations are not fixed; they change in accordance with the systems that give rise to them (p. 235). Research into conjunctures is essential, according to Collins, as these sites enable us to visualize how different categories and power systems relate to and influence each other.

We understand that the idea of exclusion thought by in the woman question and our discussion of *criminal women* and female criminalization involves conjunctures such as those discussed by Collins. The categories of *women* and *gender* are present in these conjunctures, and helped us define the scope of this paper.

Collins also warns of two traps which researchers who include these and other broad categories in their work often fall into, and which can distort the ideas of intersectionality. The first is to think of gender, race and class as fixed categories which are linked to subordinate identity groups (*gender* meaning women; *race* meaning black people; and *class* meaning poor people). She notes, however, that it is quite possible to study "privilege" within these categories (Collins, 2019, p. 39).

7 The core constructs defined by Collins (2019, pp. 46-47) are relationality, power, social inequality, social context, complexity, social justice.

8 Collins discusses three interconnected modes of relational thinking. The first is addition, which involves ensuring categories whose absence may detract from the value of a study are included. It "disrupts the logic of segregation that underlies Western thought" (Collins, 2019, p. 237). The second is articulation, which seeks to illuminate the diverse range of connections among categories, within specific contexts, which contribute to systems of power which are not fixed. Articulation can also refer to how language "brings new ideas by combining existing ideas" (p. 233). The final mode of relational thinking is co-formation, a theoretical idea that "seemingly dissolves the categories themselves, aiming for a universal argument or theory of intersectional power relations (p. 241). Co-formation concerns incompleteness, the ongoing formation of provisional theories. It is a space of changing borders, similar to that discussed by Gloria Anzaldúa in *Borderlands* (p. 245).

The second is to forget that the use of these categories is not mandatory for all studies, and that they are not relevant in all circumstances. The mere presence of one or more of these categories in a critical analysis is not sufficient for it to be characterized as intersectional. For Collins (2019), what is most important is to view all the categories employed in a study as relational, and to seek connections between them while acknowledging inherent differences. It is important to ask what the relationships between categories reveal about the systems of power they fit into, as well as how they shape one other (p. 218).

It is also important to remember that researchers who ask about women and gender may come up with different answers, which are nonetheless equally useful with regard to developing an understanding of the topic being studied. This is because, even though the terms have played key roles in the production of feminist knowledge, they have their own history and often take on different meanings in feminist studies. For this reason, we seek to separate the concept of gender from that of *woman*, to avoid treating them as synonyms, thereby facilitating discourse around masculinity and sexuality as key categories in the development of a criminal identity, especially due to the importance of incorporating considerations of the performativity of certain traditionally masculine characteristics which women may rely on when seeking to insert themselves into the criminal world.

We take as a starting point, then, the notion that discussing “gender” in feminist research allows us to highlight the issues which pervade our particular area of study, while avoiding the problematic aspects of traditional research methods; that is, falling back on one-dimensional, essentialist and exclusionary views. This does not mean completely abandoning the woman question as a method, since we do ask for the *criminal woman*; as Bartlett encourages, we aim to focus on a specific group of women as we “ask about exclusion”.

IV.3. The dialogue between researcher and subject

Discussing the criminalization of women from a feminist perspective is challenging. This is because researchers, as predominantly white academics, generally occupy a position of privilege in relation to the subjects they study, a position which permits them to *know* (within the limits of scientific investigation) and talk about the Other, while she cannot *know* them or occupy the same spaces.⁹ Although feminist

⁹ Grada Kilomba, drawing on the ideas of bell hooks (1989), differentiates between the concepts of the *subject*, meaning the one who speaks, who has the right to define and name, and the *object*, “whose reality is defined by others” (Kilomba, 2019, p. 28). These terms, widely used in science to differentiate between the researcher and the researched (regardless of whether the research relates to objects or to other subjects), illustrate how academia is not only an arena for the production of knowledge, but also an arena of violence, in that it affirms the impartiality and universality of the knowledge it produces while silencing the subaltern subjects it studies (p. 51). This silencing is not the result of the

discourse does highlight and criticize the *otherness* of women in spaces of knowledge production, any effort to study criminalized women requires acknowledging a marginalization which we do not share, and that these women are now in a position of extreme differentiated exclusion; they are, in effect, “the Other of the Other” (Miñoso, 2020, p. 99). We must recognize the danger of “romanticizing and/or appropriating the vision of the less powerful while claiming to see from their positions. To see from below is neither easily learned nor unproblematic, even if ‘we’ ‘naturally’ inhabit the great underground terrain of subjugated knowledges” (Haraway, 1995, pp. 22-23).

In this regard, a decolonial perspective can keep us alert to the risk of implementing an exclusionary and oppressive rationality, and help us bear in mind the importance of employing categories and theories which have their roots in subaltern experiences and are based on “lived realities” (Lugones, 2020), by maintaining an “epistemological disengagement”. This involves “laying bare the forms, modes, strategies, and discourses by means of which certain social groups are defined as ‘others’ by those in places of power and domination” (Curiel, 2020, p. 135). In criminal science, then, building knowledge using feminist methods and epistemologies is only possible if we can disconnect ourselves from the perspective of whiteness by populating the field of study (either directly or indirectly) with bodies which have been subjected to impoverishment and denied the capacity to develop knowledge (Miñoso, 2020, p. 109).

In order to break with privileged representations of Otherness, Camila Prando (2019) proposes a shift towards a “marginal” criminology, including feminist ideas, which we seek to apply here. She maintains that race should be analyzed not only with regard to criminalized (black) bodies, but also with regard to the (white) bodies which produce knowledge in the field. She argues that producing knowledge which challenges traditional conceptions and which is linked to feminist epistemologies requires a number of practices to be implemented and discourses to be opened up, such as: a) efforts to overcome the conception of the “colonial Other” by ensuring a plurality of researchers and representations are given a voice; b) the use of new methods and expressions in research while ensuring, through constant questioning, that these do not engender epistemic violence; and c) the use of feminist and decolonial theories as investigative resources in order to challenge the agendas and biases inherent to the field (Prando, 2019, p. 42).

inability of subjects to speak for themselves, but rather of the “deafness” of the privileged to the voices of the subaltern (p. 48).

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IV.4. Feminist practical reasoning as a method of building knowledge in law: the *criminal woman* as a plural subject

Feminist practical reasoning is committed “to the notion that there is not one, but many communities to which one might look for ‘reason’” (Bartlett, 2020, p. 268). As a means of reframing rationality, it takes into account contextual factors, acknowledges greater diversity in human experiences, and aims to move away from homogeneous interests and unilateral points of view (p. 270).

Initially, while reading and interpreting Bartlett’s writings we sought to *translate* her ideas by asking the following questions: When gender perspectives can be discerned in a text, how did this happen? Does this gender perspective generalize? Our decision to ask these questions was guided by the writings of feminist authors who reject the notion of a “normative woman” (Costa, 2014), and the idea of a universal female experience.

However, we soon realized that we needed to anchor our analysis in other theoretical and methodological tools, so that it could be viewed not only as a method of “doing law”, but also as a method of building knowledge about the law (knowing in law), in the context of the Brazilian legal system and with the criminal woman as the subject-object of analysis.

For this reason, in addition to Bartlett’s 1990 article, we decided to incorporate ideas from Alda Facio’s 1992 book in which she outlines a number of steps for feminist authors to follow in order to examine the law from a non-androcentric perspective, and Gina Heathcote’s 2018 article in which she discusses legal subjectivity from a feminist and intersectional perspective, proposing three feminist methodologies and arguing for the need to challenge other feminist methods in order to further consider the voices, and knowledge practices, of “peripheral subjects” which remain silenced.

Following Facio’s methodological steps helped us align our study with the reality of the law in Brazil and Latin America, which focuses on the literality of legislation and views discourse concerning legal texts as an important means of knowledge production. One of Facio’s six steps concerns the need to expand our understanding of sexism and how it manifests itself by “identifying and questioning the aspects of legal doctrines and principles and the foundations of the law—as well as the research which justifies these principles and doctrines—that exclude or subordinate women or otherwise make them invisible” (Facio, 1992, p. 77).

One way to go about this is to look for specific instances of sexism in particular texts, such as the use of “double parameters” (where human

behavior is evaluated based on different parameters depending on gender), reference to “the duties of the sexes” (designating what is normal and abnormal for each one), or “sexual dichotomism” (the attribution of diametrically opposed characteristics to men and women) (Facio, 1992, pp. 89 and 91-92). In order to effectively identify these manifestations, Facio highlights the need to analyze linguistic choices and pay close attention to how the text is constructed.

Two further steps involve developing an understanding of which groups of women are viewed as “the Other” in a text, and what conception of “woman” underlies it (Facio, 1992, pp. 95-96). These steps make it possible to identify aspects of intersectionality in a text and develop a deeper understanding of the *woman* depicted therein.

These last two steps are reflected in Heathcote’s 2018 article, *On Feminist Legal Methodologies: Split, Plural and Speaking Subjects*. In this essay, the author argues for the need to “actively incorporate contemporary understandings of sex and gender as intersectional and thus requiring engagement with (at the very least) race, sexuality, ablebodiedness and class within feminist legal methodologies” (p. 2). To this end, she develops the concept of “plural subjects” as a means to uncover “what sits behind” supposedly universal legal knowledge (p. 11).

Heathcote (2018) advocates for Ratna Kapur’s idea of using a “peripheral subject” as a starting point for the production of feminist knowledge, since this ensures non-dominant legal systems are recognized as relevant and the perspectives, agency and voices of subjects other than western men are incorporated:

the peripheral subject emerges as a mechanism for engaging political consciousness in the foundations of law through attention to inequalities and their gendered intersections. That is, the peripheral subject asks difficult (and different) questions with regard to whose interests are represented in gender law reform and, given her location outside of dominant power structures and knowledge producing spaces, is a reminder to articulate gender as embedded in racialised, heteronormative and colonial histories (p. 12).

The idea of plural subjects, meanwhile, constructed from peripheral, nomadic and diasporic voices, challenges the male/female binary as the central or single organizing force in critical feminist accounts and in law. Heathcote believes that feminist projects must work actively to break with this conception of knowledge, in favor of the development of “plural understandings of subjectivity as a mechanism to intervene and disrupt precisely what we think law *should* be” (Heathcote, 2018, p. 14).

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In order to employ feminist practical reasoning from a decolonial perspective, the idea of “plural subjects” and “peripheral subjects” can be useful, as it reminds us to view the criminal woman as a subject capable of breaking with the universalizing constructions of gender which are created and reproduced by the law. At the same time, researchers’ capacity to “know” the subject-object of study often depends on available representations in the field. In the specific context of disrupting the systems of power and knowledge production, it is important to remember that highlighting these representations can spur legal and political change and reform, thereby influencing outcomes for women who come into contact with the criminal justice system.

V. CONCLUSION

In this paper we discussed two key aspects of what it means to carry out feminist research. The first concerns the importance of examining feminist research methodologies critically and considering how best to employ them in research and law in practice. Drawing on the writings of Katharine Bartlett from the United States, Alda Facio from Costa Rica and Élide Lauris and Fabiana Severi from Brazil, we discussed how feminist methods seek to deconstruct the traditional (androcentric) foundations of knowledge production by considering issues of context and paying attention to points of view which have often been overlooked in traditional academia.

Employing a feminist methodology in research does not necessarily require the creation of new methodological devices; rather it involves implementing those already in existence critically and in dialogue with other feminist theories, while considering different viewpoints, asking different questions, and focusing on marginal perspectives. In this way, the feminist methodology will permeate all stages of the process, from deciding on the research topic to the linguistic choices in the final paper.

Secondly, we discussed the importance of taking the particular context of the research into consideration, and the need to adapt our (feminist) methodological choices accordingly. Conducting research into the criminalization of women in Brazil and imprisonment for drug offenses involves talking about “the Other of the Other”, to use Miñoso’s (2020) term. This element of marginality is generally not considered in traditional methodologies, even those which label themselves as feminist, such as Bartlett’s “feminist legal methods”.

The specific context of our research also encouraged us to look for opportunities to further the dialogue between North and South, between hegemony and coloniality. We discussed the concept of *translation* (Alvarez, 2009) and ideas related to the *coloniality of feminist*

knowledge (Curiel, 2020) in an attempt to understand precisely what it would be necessary to do and to take into consideration in order to decolonize Bartlett's feminist methods and apply them to research into the *criminal woman*.

We then expanded further on four points we consider particularly relevant. The first is that the Brazilian legal system is based on the civil law tradition, in which the letter of the law carries more weight than precedents, in contrast to the common law tradition of the U.S., where Bartlett developed her feminist methods. In the case of drug offenses, although anyone can be charged with such crimes in Brazil, the relevant statutes and how they are applied by the courts combine to create a profile of a *female drug offender* which is reflected in incarceration statistics and in typical representations of the *criminal woman*.

The second point is that it is crucial to analyze this issue, in this context, from an intersectional perspective which questions social representations of the *normative woman* and the *criminal woman*, as well as other stereotypes perpetuated by the law. We believe it is important to question the usefulness of the categories *gender* and *woman*, and to consider the relationality between these categories and others which pervade the justice system, such as race, class, sexuality, masculinity, and criminal selectivity.

Thirdly, we believe it is essential to take the locations of both the researchers and the women being researched into account, because knowledge is constructed from these viewpoints. The practices recommended by Camila Prando (2019), which we discussed in section 4, emphasize the need to question constantly, to look beyond the particular research topic. Considering location also represents a symbolic "step back", as recommended by feminists who examine methodologies from a decolonial perspective.

The fourth point is that applying feminist practical reasoning in Latin America, particularly in the context of criminalized women in a country marked by mass incarceration of poor people, requires viewing these *criminal women* as "plural subjects" and "peripheral subjects". In doing so we are reminded to address the characteristics which make them targets of the criminal justice system, such as poverty and social and gender-based vulnerability, and that these women are capable of building a range of identities, of breaking with "typical" patterns of masculinity and femininity and with static ideas about what it means to "be a woman" and to "be a criminal".

Writing this paper has in itself been a means of applying Bartlett's "consciousness-raising" proposition. The feminist method we have discussed is rooted in the experiences of North American and European

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feminists, which are essential to the feminist discourse that is underway in Latin America; nevertheless, we must be careful not to disregard the borderlands that separate us.

Feminist methodologies are constructed collectively from reports of lived experiences, which enables us to question established knowledge and modify it for application in new contexts. Feminist science does not ignore the progress made by other women, nor does it seek merely to move beyond theories and methods which are perceived as antiquated; on the contrary, these are the building blocks we use to reconstruct and broaden our knowledge, to align it with current realities and issues, and with the interests of today's researchers.

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LETÍCIA CARDOSO FERREIRA / ANA GABRIELA MENDES BRAGA