

THE EMERGENCE OF LESBIAN THEORY OF LAW – WHY AND HOW THE LESBIAN THEORY OF LAW HAS BEEN DEVELOPED / Dominik Šoltys

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Abstract: *In the late eighties of the 20th century, the methodological reflection of lesbian identity arose within the framework of feminist jurisprudence. Although the original intention was to include lesbian identity in a woman's identity, in a relatively short period there was a sudden break. Lesbian identity became a distinct identity considered to be the central position of lesbian jurisprudence. This study presents the peculiar features of lesbian legal theory. It tries to point out the historical and ideological determinants that led lesbianism to enter (legal) feminism. Lesbian separatism also took part in this development. It turned out to be the main reason for the separation of lesbian legal scholars from the feminist jurisprudence. The study presents the core ideological assumptions that constitute the theoretical nature of the lesbian theory of law, which is based on lesbian (legal) experiences.*

Key words: *Lesbianism; Lesbian Jurisprudence; Heterosexism; Lesbian Theory of Law*

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1. INTRODUCTION

We, as lawyers, have been trained to understand and use all those abstract, objective, universal concepts that are logically connected to create one single system. An analytical way of thinking is still the tool for examining the law to find the solutions to legal problems. The epistemological boundaries of such thoughts have been eroded by critical legal studies (see, e.g., Solum, 1997, p. 45). Since then, jurisprudence and legal theory have faced their inside defragmentation. The radical theories of law, which formed the outsider jurisprudence together, have brought their attention to the role of diverse identities in law and *vice versa* (Šoltys, 2022). The lesbian theory of law is part of this movement. It examines in different ways how law has treated lesbians as a non-existing legal subject.

This study aims to clarify the causes of the emergence and ideological assumptions of lesbian jurisprudence. This cannot be fulfilled without considering the ideological background and ongoing discourse since the early seventies of the 20th century. Since then, the idea of forming a specific branch of legal theory for lesbians has arisen. For this reason, the first part of the study is devoted to the explanations of the

early role that lesbianism played in feminism. The connection between lesbianism and feminism resulted in the creation of lesbian feminism as a very peculiar form of feminism.

The second part of the study is already devoted to historical and ideological sources at the end of the eighties of the 20th century, which enabled lesbianism to enter jurisprudence in the framework of feminist jurisprudence. Following this, it focusses on the failed integration of lesbian identity into a gynocentric position of feminist jurisprudence. In addition, the study also deals with the strategic departure of lesbian theory of law from feminist jurisprudence.

The third part of this study presents the theoretical features of the lesbian legal theory. It describes seven theoretical features. These features create a basis for the future formation of the proper methodological position suitable for the lesbian theory of law. The lesbian theory of law, in this sense, is a jurisprudence whose main goal is to theoretically express the lesbian identity in jurisprudence and law.

The intention of the fourth part, in turn, is to present the concept of lesbian identity as the central position of lesbian jurisprudence. The lesbian identity creates a space for critical and normative thoughts in lesbian jurisprudence. The lesbian identity shows its complexity, which cannot be reduced to sexuality alone. Further, it emphasises that lesbianism is a different vision of relationships, society, politics, culture, law, and indeed everything that makes up the outside world. In this sense, it shows how anti-essentialism was decisive in capturing the diversity of lesbians and the lives they lead. Lesbian identity thus becomes a portal for jurisprudence through which a new epistemological reality opens.

In particular, the study focusses on the historical and ideological assumptions that contributed to the emergence of lesbian jurisprudence as a distinctive and peculiar theory of law. In this context, another objective of this study is to define the nature of the lesbian theory of law as a representation of identity politics in jurisprudence. The lesbian legal theory represents the legal reflection of the lesbian identity and therefore constitutes its own theoretical and methodological position. Such a position puts lesbians - their lives, experiences, desires, needs, problems, etc. - in the centre of all inquiries into law.

2. LESBIANISM – ITS ENTRY INTO FEMINISM AND ITS DEPARTURE FROM FEMINISM

Lesbianism can automatically, but often incorrectly, be associated with feminism. Within feminism, lesbian feminism came to the fore during the seventies of the 20th century. Lesbian feminism, as one of many forms of feminism, did not suddenly arise. It is the result of intricate discussions and activities between feminism and lesbianism. They have not taken place without several controversies (see Echols, 2019, pp. 210-215).¹ The initial milestone in the emergence of lesbian feminism was the publication of the *Woman-Identified Woman* manifesto, written in 1970 by the members of the New York radical lesbian organisation *Radicalesbians*. However, it should also be

¹ The dispute between lesbianism and heterosexual feminism within feminism itself culminated in the sixties and seventies of the 20th century. Mainly, it was a dispute between Betty Friedan - former president of the most important feminist organisation in the United States the National Organisation for Women also known as "NOW" - and lesbians within feminism. Friedan worried that the topic of homosexuality and lesbianism might ultimately discredit the entire feminist movement. She accused the lesbian movement of collaborating with the CIA and pejoratively referred to them as the "lavender menace." Officially, the topic of women's sexual orientation came within the scope of the feminist organisation's goals only in 1971, i.e., after Friedan left the post of president of NOW.

added that lesbian political activism began to take shape earlier, i.e., in the USA during the sixties.

The lesbian form of feminism was based on the theoretical premise and hypothesis that women's subjugation is derived from patriarchal oppression and the imposition of heterosexuality on women. Patriarchy then classifies other sexual orientations (i.e., different from heterosexuality) as deviant, abnormal, and unnatural. This thesis is very close to the view expressed by writer and lesbian feminist Adrienne Rich under the term "compulsory heterosexuality" (Rich, 1980, 2003). Quite simply, patriarchal heterosexuality becomes a universally socially valid norm, in the sense that the only, desirable, healthy, or natural expression of emotional and sexual desires takes place in a binary male-female relationship.

Lesbian feminists referred to the normative and coercive nature of heterosexuality by the term "heterosexism." Heterosexism is a specific form of oppression that grows out of society's preferred sexual relations between a man and a woman as a fulcrum of the existence, functioning, and future preservation of society. For these purposes, homosexual relationships, either between men or between women, are seen as obsolete because they are not, by their very nature, socially reproductive (see Finnis, 2011, pp. 124, 447 et seq.; George, 2004, pp. 147-151). In this context, however, criticism of heterosexism must not be a criticism of - and consequently a rejection of - personal sexual preference and erotic sensitivity towards persons of the opposite sex. Proponents of lesbianism and lesbian feminism express criticism of heterosexuality as a social construct and a normative social system with a coercive institutional background that leads to the enforcement of heterosexuality.

Lesbian feminism has turned attention to the politicisation of sexual orientation and thus the fact that heterosexuality is nothing more than an ideology. The process of politicisation of sexual orientation transforms heterosexism into a political ideology that is against lesbian and male gay people. By elevating heterosexuality to the political level, it has built mechanisms designed to ensure women's sexual availability to men. However, this mechanism would not be fully effective if there were no dominant male positions of power in society *vis-à-vis* submissive women.

It is the concept of "woman-identified woman", which was originally introduced by the lesbian-feminist movement Radicalesbians (Radicalesbians, 1970).² It appeared later in the works of the lesbian feminist theorist Charlotte Bunch. Bunch presents it in a theoretically more sophisticated form with an appeal to the purity of femininity unspoiled by heterosexuality (Bunch, 1975, p. 30).³ She writes about lesbians as the ideal of an authentic woman untouched by men and heterosexual patriarchal oppression. Bunch's concept of a woman-identified woman has called for authentic self-identification and self-determination of women, which only women can do on their own. As a woman-

² The original manifesto captures the socially established and derogatory meaning of the term "lesbian". This meaning referred to troubled women. "Lesbian" describes a woman who challenged the dominance of men: "Lesbian is a label invented by the Man to throw at any woman who dares to be his equal, who dares to challenge his prerogatives (including that of all women as part of the exchange medium among men), who dares to assert the primacy of her own needs. To have the label applied to people active in women's liberation is just the most recent instance of a long history; [...] For a lesbian is not considered a 'real woman'" (Radicalesbians, 1970, p. 2).

³ Bunch highlights the importance of reciprocating love between women. That is, a woman's love for a woman accomplishes a liberating potential, while a woman's expressions of affection and love for a man significantly weaken this potential. Bunch writes about it in the following words: "If women do not make a commitment to each other, which includes sexual love we deny ourselves the love and value traditionally given to men. We accept our second-class status. When women do give primary energies to other women, then it is possible to concentrate fully on building a movement for our liberation" (Bunch, 1975, p. 30).

identified woman, a lesbian is a role model for other women. It is a woman whose consciousness, actions, and life are not a demonstration of heterosexual male colonisation of the female body and mind. In other words, a lesbian is a woman who has formed herself independently and authentically and is therefore pure proof that women's existence is possible without an otherwise artificial need or desire for men.

More importantly, the concept of a woman-identified woman also has political potential. In its meaning, it has very quickly tended to lesbian messianism within the feminist movement. This is very evident in Bunch's ideas and her concept of woman-identified lesbianism. Lesbians become the political quintessence of feminism (Carter and Noble, 1996, p. 25). Bunch points out that only lesbianism "puts women first while the society declares the male supreme. Lesbianism threatens male supremacy at its core" (Bunch, 1975, p. 29).

Another radical and lesbian feminist, Ti-Grace Atkinson, affirms the strategic importance of lesbians and lesbianism in the struggle for women's equality with the phrase "Feminism is the theory, lesbianism is the practice." The authorship of this phrase often goes to Ti-Grace Atkinson. However, other sources dispute Atkinson's original authorship of it (King, 1994, pp. 125 et seq.).

Although the meaning and actual relevance of this phrase are questioned in contemporary feminism and lesbianism, it does not change the fact that, according to Atkinson, lesbianism was originally considered a politically effective practice for feminism. Therefore, according to her, all feminist women need to become political lesbians. Nevertheless, not become lesbians in an erotic-sexual sense, but rather women who reject their bodies and minds to men, relationships with men, as well as they reject any other institutional expressions of masculinity. Women's conviction to become lesbians was not about a mere change in personal erotic desire and sexual orientation - Atkinson herself preferred celibacy over actively engaging in lesbian sexual practices - but, above all, it was intended to be a political act aimed at the political goal of women's equality (Hesford, 2013; McBean, 2021).⁴ Atkinson confirms this in the following words: "There are other women who have never had sexual relations with other women but who have made, and live, a total commitment to this movement. These women are 'lesbians' in the political sense" (Atkinson, 1974a, p. 132). Lesbianism, she says, is more a conscious political act than a sexual movement of women. Its task is to bring women together and unite them in the struggle against patriarchy. Therefore, lesbianism is a good opportunity to develop effective feminist strategies and tactics (Atkinson, 1974b).

Lesbianism does not need to have a purely political source and a political nature. Radical and lesbian feminist and writer Adrienne Rich writes about "lesbian existence" and the "lesbian continuum". Rich, unlike Atkinson, presents lesbianism as an inherent essence present in all women. Lesbianism is therefore the natural moral imperative of women (Radner, 2008, p. 96). Lesbian existence is a "source of energy, a potential springhead of female power 'aimed' to change the social relations of the sexes, to liberate ourselves and each other" (Rich, 2003, p. 34). Lesbianism, according to Rich, leads women to a specific bond and union between them. It helps them to defy the pervasive and imposing heterosexuality. This invisible, moral, and spiritual companionship among women - referred to as the lesbian continuum - helps them overcome historical

⁴ For example, Victoria Hesford also points out that the political form of lesbianism in Atkinson does not say anything about the women's ontological reality: "Women who choose to become lesbians within the context of the women's movement are now women who most clearly and visibly choose to define themselves politically as a body of people separate from men. The practice of lesbianism becomes a revolutionary act and identifying as a lesbian becomes a way of organizing and enacting class solidarity" (Hesford, 2013, p. 142).

disadvantages against women. Although its source is not political, it can also have political implications. It aims to historically free women from the burden of patriarchal heterosexuality.⁵

However, those forms of political lesbianism and lesbian separatism, although in the original sense intended to strengthen the achievement of feminist goals, eventually led the later lesbian authors to draw attention to the differences between sexism and heterosexism. They recognised the duality and separability of sexism and heterosexism as two distinct forms of oppression. Later lesbian authors have increasingly begun to realise that the fall of patriarchy does not necessarily lead to the elimination of heterosexism. Following this, Cheshire Calhoun points out that in the case of the elimination of patriarchal oppression, "[h]eterosexual society may simply adapt to new social conditions. Thus, it is a mistake for feminists to assume that work to end gender subordination will have as much payoff for lesbians as it would for heterosexual women" (Calhoun, 1994, p. 562). Thus, the duality and separability of heterosexual and patriarchal structures resonated increasingly within the feminist and lesbian theories. In this way, later lesbian theorists corrected the thesis of early lesbian feminists such as Charlotte Bunch, Adrienne Rich, Gayle Rubin, and Monique Wittig. The early lesbian feminists argued that heterosexism is as much an oppressive system for women as it is for lesbians. They stressed out that the main function of patriarchal heterosexism is to make women dependent on men and to encourage women's sexual availability to men (Calhoun, 2002, p. 29).

The duality and separability of heterosexism and sexism state that heterosexist oppression against lesbians and gays differs from sexism, racism, classism, ableism, and ageism, as well as other forms of oppression. Above all, heterosexism as a distinct form of oppression places lesbians and gays outside the framework of society, both in the public and private spheres. In the public sphere, this oppression manifests itself mainly in the fact that at least a semblance of a heterosexual identity is imposed on the individual, which he must choose for himself. It denies the full identification and realisation of lesbian or gay identity. In the private sphere, heterosexism excludes lesbians and gays by denying them full access to marriage and family life, of which child rearing is an essential part (Calhoun, 2002, p. 76).

3. FROM LESBIAN LEGAL FEMINISM TO LESBIAN THEORY OF LAW

The emergence of lesbian jurisprudence or lesbian theory of law is associated with the entry of lesbianism into feminist legal philosophy. This entry was as controversial and problematic as lesbianism's entry into feminism. It tested, in the same way, the possibilities of feminist legal theory. However, the entry of lesbians into feminist jurisprudence occurred relatively late - namely, it falls either in the late eighties, or at the turn of the eighties and nineties of the 20th century.

Patricia A. Cain raised the issue of lesbianism and feminist jurisprudence in 1989 at the twentieth National Conference on Women and the Law. It all started with a critical question: "Why is the lesbian so invisible in feminist legal theory? Why is 'my reality' so

⁵ According to Rich, heterosexuality forces itself on women both in violent and less violent ways. She writes about it as follows: "Heterosexuality has been both forcibly and subliminally imposed on women. Yet everywhere women have resisted it, often at the cost of physical torture, imprisonment, psychosurgery, social ostracism, and extreme poverty" (Rich, 2003, p. 30). Another example can be the non-violent imposition of heterosexuality, which romanticises it with beauty, tenderness, and other idealizations of heterosexual relationships.

different from 'their reality'? And what reality is true? For the postmodernist, the last question is meaningless. But the first two are not" (Cain, 1989-1990, p. 214). Cain pointed out that feminist jurisprudence of the time had not sufficiently developed an authentic lesbian experience within itself. At that time, to avoid an "assimilation/essentialist trap", she pointed out that it is by no means possible to reduce the experiences of lesbian women to those of heterosexual women (Cain, 1989-1990, p. 207). Although Cain challenged the methodological layout of the lesbian perspective of feminist jurisprudence, she later came to believe that 'lesbian' and 'woman,' that 'lesbian' and 'feminist,' are not overlapping categories. We do not, as lesbians and nonlesbians, have the same experiences or perspectives" (Cain, 1994, p. 70).

As can be seen, Cain's original intention was to create an anti-essentialist form of lesbian legal feminism within feminist jurisprudence. Cain argued that essentialism carries the threat of the universalisation of women and the uncompromising validity of biological determinism for women. According to her, all feminist claims express some sort of universalism because they "often reify the concept of woman in a way that ignores the varying experiences of different women" (Cain, 1994, p. 47). She made similar claims about the dangers of biological determinism: "Female biology determined that women would become mothers and caregivers and, that women, as the weaker sex, would be dependent on man. Patriarchal theories about the roles of the two sexes used arguments from biology to keep women in their subordinate roles" (Cain, 1994, p. 48).

Thus, an appropriate theoretical prerequisite for the inclusion of lesbians in the framework of feminist jurisprudence is anti-essentialism. Anti-essentialism brings an assumption about the socio-structural nature of the concept of "women". Cain justified it this way: "We must also bear in mind that the meaning of 'woman' is constantly changing, and that feminist theorizing should continuously work to destabilize the category woman so that it never becomes too fixed, while at the same time allowing individual women to "assume" a meaningful female identity" (Cain, 1994, p. 52). However, she later realised that feminist jurisprudence, with its political focus and topics based on the experience of heterosexual women, was incompatible with the incorporation of lesbian experience and perspective into feminist legal thoughts. Thus, feminist jurisprudence could not become a politically and thematically productive theoretical basis for the development of lesbianism.

This leads to the conclusion that the methodological set-up, goals, and strategies of lesbians may differ from those of legal (heterosexual) feminists. In other words, critique and possible rejection of marriage and family life as a form of patriarchal oppression against heterosexual women may be a strategic goal for feminists and feminist legal theorists, but for lesbians, marriage, and family life, on the contrary, represent an extension of their rights and freedoms (Robson, 1994). To put it simply, Cain points out differences between feminist and lesbian assessments of social institutions, which can result in different methodologies, goal settings, legal strategies, and tactics. Above all, Cain finally argues that feminist jurisprudence is an unsuitable theoretical approach for integrating lesbian existence and lesbian perspective. The subsequent theoretical elaboration of the lesbian identity in the framework of feminist legal theory, is impossible.

The idea behind Patricia A. Cain is that although she initially had high hopes for feminist jurisprudence and believed that lesbian experience would be clarified as another form of female experience, she later decided to turn to the possibilities of creating a separate - i.e., developed outside of feminist jurisprudence - lesbian jurisprudence. Her reason for moving away from feminist jurisprudence was the persistent essentialism and biological determinism in feminist jurisprudence.

In the early nineties of the 20th century, Ruthann Robson was already thinking about the emergence of independent lesbian jurisprudence trying to delineate the first features of its conceptual form. Lesbian theory of law is, in her eyes, a question of lesbian representation in the law and legal theory. Robson stressed out that the current concept of the rule of law did not provide a guarantee of lesbian equality (Robson, 1992, p. 19). The main purpose of lesbian jurisprudence is to create legal concepts, categories, and meanings that relate to lesbian experiences, lives, and perspectives.

The emergence of lesbian jurisprudence and lesbian theory of law has prompted the recognition that other approaches to law, i.e., traditional jurisprudence, feminist jurisprudence, queer theory of law, as well as other gay studies of law, cannot sufficiently perceive lesbians' increased vulnerability to law (Arriola, 1994, p. 106). Cain agrees with this when she orientates lesbian jurisprudence towards a specifically existing lesbian experience and perspective. Its purpose, according to Cain, is to realise "those [lesbian] ideals in the real world we live in" (Cain, 1994, p. 73). Similarly, Robson accused the feminist jurisprudence of its heterosexual character. Moreover, lesbian jurisprudence confirms heterosexuality by the fact that it did not include lesbians in the scope of its examinations (Robson, 1990, p. 448). In doing so, she emphasises the different methodologies and purposes of lesbian jurisprudence (Robson, 1990, pp. 451 et seq.). In summary, Robson formulates the character of lesbian jurisprudence as "jurisprudence which takes as its subject lesbians, lesbian issues, and problems that affect lesbians, and lesbian jurisprudence is set within an organic context, coexisting with other jurisprudences" (Robson, 1990, p. 453). The purpose of the lesbian theory of law itself is not to prove and then challenge the patriarchy of law, as feminist jurisprudence does, but to make lesbians visible. Lesbian jurisprudence aims to prevent ignorance or even assimilation of lesbians by law, or, as Robson puts it, to ensure the very "survival" of lesbians in the current rule of law. Therefore, Robson claims: "Lesbian theory of law is grounded in the lesbian existence" (Robson, 1992, p. 21). It examines the law and individual laws and, in particular, how the law negatively affects lesbian lives, either through an individual lesbian position or a collective lesbian position (Eaton, 1994, p. 194).

In summary, therefore, the lesbian legal theory arose from the thesis that eliminating sexism does not necessarily lead to the elimination of heterosexism. Feminist jurisprudence, as a direction of legal reasoning, is not aware of this fact and is unable to provide a framework of legal theory for solving lesbian problems. The feminist emphasis on comparing women with men, according to lesbian legal theorists, is a manifestation of heterosexist prejudices that lesbian theory of law can overcome by relativising the theoretical meaning of the categories of sex and gender (Zimmerman, 2000, pp. 451-452).

4. RUTHANN ROBSON ON LESBIAN LEGAL NON-EXISTENCE

Robson explores the relationship between the historical and contemporary forms of the legal regulations of lesbianism. She claims that the law has always pushed lesbianism, including lesbian sexual practices, outside its scope. Using examples from history, she showcases implicit punishment and other sanctioning of lesbians through the law. Robson thus demolishes the misconception that the law overwhelmingly criminalised only male homosexuality or otherwise aimed to combat it (Elliott and Robson, 1993, p. 10). Further, she points out that the law was actively or passively used to suppress lesbians and lesbian romantic/sexual relationships, although it did not do so explicitly and directly, i.e., using specific prohibitive rules as in the case of male gay sexuality.

In addition to cases where the law indirectly restrained lesbian practices with punishments ranging from exile to torture or death, Robson also notes efforts to censor lesbian expressions in judicial decision-making. The censorship of lesbian and lesbian sexual practices manifested itself in law, for example, by the fact that court decisions did not identify them directly, but rather tried to obscure them with other concepts. Judges used obscure words such as "moral insanity" or "vagrancy" in their convictions against lesbians. A typical example of such judicial practice of past centuries is the court decision of 1568, which sentenced to death a woman caught having lesbian sex with another woman. It is apparent from the content of that decision that a woman was sentenced to death for committing a "heinous and unnatural crime which is so ugly that, out of horror, there is no name for it" (cited in Robson, 1992, p. 37). Other examples of censorship in judicial practice illustrate the use of terms such as "crime against chastity" and "lewd and lascivious behaviour" which, although they do not directly refer to lesbian practices, despite the fact that the description of the reality in judgments has repeatedly shown this. Robson further argues that prostitutes were usually convicted of these crimes for engaging in heterosexual intercourse for money. A similar practice of condemning and punishing lesbians, this time for treason, was also present in the Third Reich. Moreover, in Nazi Germany, lesbians were not publicly referred to by the pink triangle as gay men. Lesbians shared the black triangle label with prostitutes and others "asocials" (Robson, 1992, pp. 41-42).

Such facts from history only confirm that lesbians, like prostitutes, were put on the very margins of society (Robson, 1992, pp. 30 et seq.). Robson therefore argues that throughout history, several lesbians may have been convicted, punished, or even executed in various states for engaging in lesbian sexual acts, but their crimes are not directly or otherwise appropriately named in court decisions (Robson, 1992, p. 37). Robson also analyses other cases where lesbian behaviour of women has only been shown to be a concomitant phenomenon to other crimes, e.g., in the form of *femina cum femininus* within witchcraft.

Quite simply, the law seems to disregard the presence of lesbians and the real existence of sexual expressions and love between women. Compared to male homosexuality and the performance of male homosexual acts, which were punished by law under the term "sodomy", lesbianism has not gained such - albeit negative but at the same time explicitly direct - recognition in the law. Robson notes: "As we make legal history today, we continue to perpetuate the mythology of lesbianism as irrelevant in legal discourse" (Robson, 1992, p. 42).

According to Robson, this leads to the general conclusion that the theoretical and practical development of law is constructed without considering lesbians. Active or passive oppression against lesbianism has never been and is not direct. Rather, it tended to cover up, neglect, or marginalise lesbians in such a way as to make it impossible to recognise the existence of lesbianism as a distinctive phenomenon in society or the lives of individuals. According to Robson, this is also the current approach of the law to lesbianism. The law refuses to acknowledge the importance of the ethical and metaphysical aspects of lesbianism through the active and passive suppression of lesbians (Franklin and Chinn, 1999, p. 314). The law continues to present lesbian sexual practices as "deviant," "perverse," and "unnatural." The previous statement may sound strange to someone. This is especially true if one considers the legislation in some Western liberal democracies. Some of those states legally allow same-sex marriage or same-sex adoption. Moreover, the legal systems of most Western liberal democracies no longer criminalise sexual orientation or homosexual acts. What is then Robson talking about when she refers to the propaganda of violence in law as "propaganda of non-

lesbianism"? Are her ideas still relevant, and thus could lesbian legal theory still be a relevant scientific enterprise? Before I try to answer that question, I will briefly explain the concept of "propaganda of non-lesbianism."

Robson's concept of "propaganda of non-lesbianism" has a much broader meaning than overtly discriminatory laws that prohibit lesbian sexual practices. The propagation of anti-lesbian sentiments in the law enables and even encourages violence and discrimination against lesbians. Robson thus speaks of laws that "negatively affect our daily survival as support for legal determinations that tolerate discrimination against us [as lesbians], that remove our children from us, as threats that regulate our choices about being open with our sexuality" (Robson, 1992, p. 57). This aspect of the law leads to the repression of the lesbian individual's will to live an authentic life. Instead, that law forces lesbians to live according to socially conforming conditions and expectations. Thus, the law does not consider the possibility of an authentic lesbian existence, and it does not create a social space for the development of lesbian perspectives. This propaganda affects the lesbian consciousness and seeks to achieve their "domestication." By the domestication of lesbians, Robson refers to any attempt to assert the dominant culture by internalising it by lesbians themselves, in such a way that the views of the dominant culture appear to lesbians as universally valid and common sense (Robson, 1992, p. 18). The purpose of laws designed to domesticate lesbians is to make lesbians realise that "our [lesbian] sexuality is not worthy of inclusion within any legal text; our sexuality is worthy only of being criminalized" (Robson, 1992, p. 56). Therefore, the main aim for proponents of lesbian jurisprudence is to build lesbian legal theory constructed on postdomesticated lesbian consciousness (Robson, 1992, p. 18). This is very similar to the approach present in feminist jurisprudence under the label "women were absent" (see, e.g., West, 1988, p. 60; Finley, 1989, pp. 892-895). Lesbian theory of law adapts this idea for its purposes and modifies it in a way that "lesbians were absent." Thus, if we accept that the construction of jurisprudence may have been – concerning lesbians as well as women – made in a way "about them, but without them" so far, then it is hard to resist the idea that gender-biased and sexual-biased distortion of jurisprudence does not remain to present days. The absence of women and lesbians will still be manifested in jurisprudence until women and lesbians become an authentic part of legal scholarship. That is why Robson also says: "When we appeal to the law as lesbians, we appeal to a legal text that has historically criminalized us and continues to do so" (Robson, 1992, p. 57). Therefore, the lesbian theory of law is largely intended to highlight the question "[w]hen can we use the law [as lesbians] and when are we being used by it [as lesbians]?" in lesbian consciousness (Robson, 1992, p. 68).

Enumerating the range of topics in which lesbian consciousness should be engaged through a lesbian theory of law is neither possible nor expedient. In the works of lesbian legal scholars, one can find topics related to lesbian sexuality, marriage, family life, child-rearing, violence against lesbians and violence in lesbian relationships, military service, the increased rate of rape in the case of lesbians and bisexual women, etc. In any case, this is very important. But at the same time, lesbian jurisprudence should provide knowledge about lesbians in the broadest sense. Therefore, the emergence of lesbian legal theory was not limited by the construction of another form of critical legal scholarship. Its main aim was to develop a normative legal theory that would bring knowledge of the law to fit the lesbian perspective and the daily experiences of the lesbian. In this sense, the lesbian legal theory should be topically unrestricted. Every issue of daily lesbian lives can become a matter of the critical or normative construction of lesbian legal theory.

5. MAIN ASSERTIONS OF THE LESBIAN THEORY OF LAW

Regarding the emergence and further development of the lesbian theory of law, attention can be especially drawn to its main assertions. All these assertions interact and overlap each other. They are mainly justified by the specific developmental tendencies of the lesbian theory of law as jurisprudence, as well as by the historical circumstances that accompanied lesbianism's entry into jurisprudence. Finally, these assertions are theoretical expressions of lesbian identity in jurisprudence. Therefore, it can be argued that the lesbian theory of law is characterised by the following features:

- Lesbian jurisprudence is the result of lesbian separatism,
- declared inclination towards the anti-essentialist understanding of lesbian identity,
- lesbian intersectionality and diversity among lesbians,
- relativisation of sex and gender in favour of sexual orientation,
- partial jurisprudence derived from the lesbian experience,
- the primary meaning of lesbians and the secondary meaning of the law,
- Lesbian jurisprudence is not a ready-made, closed, or holistic theory of law.

In the following text of this study, I will try to explain the theoretical features of the lesbian theory of law. I would like to focus on the ideas of the most important proponents who participated in shaping the foundations since its emergence.

5.1 *Lesbian Jurisprudence Is the Result of Lesbian Separatism*

Lesbian jurisprudence is the result of lesbian separatism because lesbianism's entry into feminism, like lesbianism's entry into feminist jurisprudence, ended with the realisation that lesbianism is not a subbranch of feminism (Robson, 1990, p. 448). In general, lesbian separatism was lesbian feminist frustration with the leadership and influence of heterosexual women in the feminist movement (Davis, 1991, pp. 259-271). Lesbian legal theorists have come to a similar conclusion when it comes to feminist jurisprudence. In both cases, it was a recognition based on the idea that categories such as "women" and "lesbians" do not have to be or are not overlapping. Due to lesbian sexual orientation and erotic attraction to other women, lesbians have a different perception of the world around them than heterosexual women. For example, Cheshire Calhoun says that the category of "lesbian" is outside the general understanding of the term "women". Lesbians generally have different life experiences than women represented by feminism. Lesbian sexual orientation becomes a decisive element, placing lesbians in non-heterosexual environments. Lesbians, in this concept, are "ungendered, unsexed, neither woman nor man" (Calhoun, 1994, p. 566). The experience of being a lesbian, according to Calhoun and Monique Wittig, is an experience of "not-woman" (Calhoun, 1994, pp. 563 et seq.; Wittig, 1992, p. 32). To put it simply, lesbian identity is not a subdivision of a woman's identity. Lesbian experiences shape lesbian identity according to different perceptions of social and individual relationships.

5.2 *Declared Inclination towards the Anti-Essentialist Understanding of Lesbian Identity*

The declared inclination towards the anti-essentialist understanding of lesbian identity is because most representatives of the lesbian theory of law reject the monolithic understanding of the category "lesbian". Cain highlights the diversity of experiences in the lesbian community when she claims: "Just as women are different from one another (and significantly so based on such life-differentiating experiences as race, class, and sexual

orientation), so are lesbians different from one another" (Cain, 1994, p. 54). She recalls that the main cause of the lesbian departure from the feminist theory of law was "the essentialist trap" (Cain, 1994, p. 43).

Robson appeals for the openness of the term "lesbian", which cannot be defined (Franklin and Chinn, 1999, p. 301). Calhoun says that in general, different lesbian identities as "not-women" are the main subject of lesbianism (Calhoun, 1994, p. 567).⁶ Earlier, Cain had refused to define the category of "lesbian," but then she talked about the basic experience of all lesbians that naturally unites them. Such an experience is the moment of self-identification as a lesbian, i.e., awareness and knowledge of one's erotic attraction to other women (Cain, 1994, p. 65).

In general, the lesbian position and the resulting lesbian experiences turn out to be mutually diverse, and the category of "lesbian" is not as monolithic as it might seem. In other words, the lesbian theory of law denies the possibility of an "essential lesbian" as a basic starting position for its methodological elaboration. Thus, the category "lesbian" should not have a clearly defined semantic core with certain features. Otherwise, it could be a false universalisation of lesbians (Cain, 1994, pp. 46-47).

In general, it can be concluded that the lesbian theory of law understands all concepts as socially constructed with fluid meaning. The category of "lesbian" is not an exception in this case. However, there are also opposing views about the declared anti-essentialist nature of lesbian theory of law and criticism of the anti-essentialist understanding of lesbianism. Elvia R. Arriola draws attention to this dangerous trend in lesbian jurisprudence and its pursuit of particularity and ultimately the exclusivity of intersectionality within lesbianism. She sees it as particularly harmful to the development of progressive movements in legal thought. Such a setting of lesbian legal theory excludes the topic of transgenderism from the range of applied intersectionality and manifests itself in an exclusive form of "real lesbian legal theory" about "real lesbians" (Arriola, 2005, pp. 530 et seq.).

5.3 Lesbian Intersectionality and Diversity across Lesbians

Lesbian intersectionality and diversity across lesbians consider those who may actually come from different backgrounds and thus live different lives from each other. Lesbian jurisprudence tries to be inclusive in this regard. It also refers to its anti-essentialist setting, which was formulated in the early days by Patricia A. Cain as one of the basic prerequisites for the lesbian theory of law.

The intersectionality of lesbian theories and the diversity of lesbian experience is articulated indirectly, but in a very broad sense, by the black lesbian poet and essayist Cheryl Clarke when she says that a lesbian is a woman who claims this about herself and struggles with the social risks associated with it (Clarke, 1983, pp. 130 or 134). Theresa Raffaele Jefferson draws attention to the fact that there is no monolithic lesbian identity or lesbian community. She accentuates the invisibility of black lesbians and claims that there is no unified black lesbian existence. According to her, the lesbian theory of law has the potential to reveal what was previously invisible. It is a timely theoretical opportunity to elaborate on the intersection between sex, gender, race, and sexual orientation by exposing the oppression obscuring the presence of black lesbian women (Jefferson, 1998, p. 266).

⁶ Calhoun claims that "[t]o be a not-woman is to be incapable of being a woman within heterosexual society" (Calhoun, 1994, p. 566).

In addition to the black version of lesbian legal theory, an attempt has emerged to constitute a Latina lesbian legal theory. Its initiator, Elvia R. Arriola, characterises the purpose of this theory regarding the contradictory cultural and socially dominant attitudes enshrined in the legal order of Anglo-American society. Latina lesbian legal theory points out those elements of Anglo-American culture and law that are opposed to Latina lesbian identity or Latina lesbianism (Arriola, 2005, pp. 530 et seq.).

This development is very similar to a claim that has also appeared in feminist jurisprudence, critical race theory, or LatCrit theory. In any case, it is significant. But if we are going to talk about differences between lesbians, we cannot entirely rely on just the "non-lesbian" parts of identity that relate to e.g., race, ethnicity, class, and disabilities across lesbians. These are not even lesbian characteristics in the strict sense of the word. It would be much more interesting to examine the impact of different expressions of lesbian identities on the law. As far as expressions of lesbian identity are concerned, it can be found that it is not so much monolithic. Lesbians are not the same – they even do not manifest themselves in the same way. The latter classification within lesbian identity started with the butch-femme dynamics (see, e.g., Crawley, 2001, p. 177). Today a wider range of lesbian identities is emerging, e.g., Dyke, AG, Stud, Stem, Lipstick, Boi, Bull Dyke, etc. Important is the current recognition that there is a sharpened form of discrimination against some lesbian identities based on gender performance. For example, femme or lipstick lesbians present themselves as stereotypically feminine. Therefore, they are often able to pass as heterosexuals. On the contrary, a butch or boi lesbian openly presents some stereotypically lesbian attributes (preferring short haircuts, wearing men's/boy's clothing, performing masculine/boyish verbal and non-verbal presentation, etc.). Studies show that these lesbian identities may face different manifestations of discrimination based on their sexuality. For example, femme or lipstick lesbians may face the same manifestations of sexual harassment from heterosexual men as women. However, if their lesbian sexual orientation is known, sexual harassment by heterosexual men (presented as a joke or even meant seriously) can escalate and take the form of "Just give me one night and I can change your mind" or "Let me introduce you to the 'joys' of heterosexuality" (Giuffre, Dellinger and Williams, 2008, pp. 264-265). For butch or boi lesbians, this form of sexual harassment in the workplace is relatively rare. Heterosexual men approach them in a "one of the guys" manner (Denissen and Saguy, 2013, pp. 389-390). This is not to say that their male colleagues do not display other acts of homophobia or taunts that butch lesbians are unfeminine.

Of course, in the previous context, I was not concerned with coming to a certain conclusion on how this issue could be incorporated into law. I just want to point out that the experiences of individual lesbians can indeed be very different depending on the place they currently occupy in the spectrum of lesbian identities. If lesbian legal theory is about to develop its critical and normative potential by considering different lesbian identities, then it is necessary to say that lesbian critiques of law and lesbian normative thoughts on law may be very different or unrelated to each other. The lesbian experience of heterosexism in law might not be as monolithic as it might seem. This could be affected not only by race, ethnicity, class, etc., but also by the different lesbian identities (e.g., gender performance).

5.4 Relativisation of Sex and Gender in Favour of Sexual Orientation

Monique Wittig aptly characterised the relativisation of the meaning of sex and gender in lesbian theory by the assertion that "[l]esbians are not women" (Wittig, 1992, p. 32). However, lesbians are also not men. Rather, lesbians stand outside the framework

of the socially constructed genders of a heterosexual society or the binary understanding of genders that heterosexuality presupposes. Calhoun, for his part, points out that lesbianism is by no means a specific field of feminism (Calhoun, 2002, pp. 28-29). Robson puts it down the same way when she writes: "Lesbianism is not a 'branch' of feminism; likewise, lesbian jurisprudence cannot be subsumed into feminist jurisprudence" (Robson, 1990, p. 448). She also points out that feminist legal theory is oriented towards relationships between sexes or genders. This does not apply to lesbian jurisprudence, which focusses solely on lesbian relationships - comparing oneself to men and criticising masculine rules is somewhat irrelevant to it (Robson, 1990, p. 449).

However, at this point, it should be remembered that the definition of "lesbian" is by no means limited to sexual orientation. Proponents of lesbian theory of law disagree with such a reduction in lesbian theory as too simplistic. Lesbian romantic and sexual attraction to the same gender or sex might seem important, but lesbian consciousness is more versatile and complex (Robson, 1990, p. 445). In this regard, it covers the entire lives of lesbians and does not only concern one aspect of an individual's life, i.e. sexuality. Although this approach may raise many questions, it also becomes understandable. It aims to combat the potential threat of essentialism, but also to prevent the redacted meaning of "lesbian." The reduced meaning of "lesbian" may contribute to misjudging lesbians as exclusively sexual beings. Alternatively, in the context of social, i.e., political, and legal reforms, it may make the impression that lesbianism is only concerned with a well-specified calculation of topics such as sexual practices, marriage, child-rearing, etc. Those topics need to be identified and then reformed in some way. The non-definition of the term "lesbian" was not only meant to convey the diversity of the currently existing spectrum of lesbian identities but also to develop the different ways lesbians talk about the law and the variety of ideas they wish to express about the law.

5.5 Partial Jurisprudence Derived from the Lesbian Experience

The lesbian theory of law presents a partial, critical, and normative survey derived from the position of the lesbian experience. It confirms lesbian, i.e., minority experience of law. The traditional methods of modern jurisprudence ignored those kinds of legal experience. Lesbian understanding of legal concepts does not have to correspond to the judicial understanding of concepts such as equality, justice, discrimination, etc. (Arriola, 1994, p. 132). First, lesbian jurisprudence constructs the meaning of those legal concepts by putting lesbians at the centre. The lesbian meaning of legal concepts is determined by the lesbian experience by law, i.e., the consequences of lesbian legal non-existence and the harms that the law causes to them. For example, Robson and Valentine point out that emotional relationships between lesbians remain outside the law, while heterosexual relationships are officially institutionalised in and through the law (Robson and Valentine, 1990, p. 512).

Those ideas should incorporate all the peculiarities of the lesbian identity. But they are also reflecting the emphasis on an anti-assimilationist approach. Regarding this, Robson both questions and warns against arguing that "I as a lesbian am just like everyone else", which on the one hand declares lesbian identity and in turn denies the possibilities of its peculiarities (Elliott and Robson, 1993, p. 13).

Moreover, the lesbian legal theory tries to reflect the existence of various lesbians. In this context, Elsewhere, Robson points out that while feminist jurisprudence is based on a gynocentric position, lesbian jurisprudence puts "all lesbians at its centre, a lesbian legal theory seeks to apply to all lesbians" (Robson, 1992, p. 23). At the same time, the concept of "lesbian" - although highly dependent on the self-determination and social,

ethnic, racial, etc. background of the lesbians is a sufficient starting point for the development of a theoretical approach to lesbian jurisprudence. Lesbian jurisprudence seems to catch diverse lesbian experiences within its framework. Different lesbians live different lives and therefore have different experiences with the law. However, the lesbian theory of law tries to be as inclusive of all lesbian legal experiences as possible.

5.6 Primary Meaning of Lesbians and Secondary Meaning of Law

Ruthann Robson explains that the lesbian theory of law does not attempt to explain law as a whole. It is a partial view of the law with a primary focus on lesbians and a secondary focus on the law. Lesbian jurisprudence presents only a partial analysis of the law. The lesbian position constructs it. Robson confirms this when she says that lesbian theory of law is a theory that is inclusive and lesbian in particular (Robson, 1992, pp. 19 et seq.). The lesbian theory of law, as envisioned by Robson, is not even supposed to unmask the law as a generally oppressive system. Such generalisations should be avoided. The lesbian critique of law forms only one section of critical jurisprudence. Above all, the lesbian theory of law should focus on lesbians themselves. Robson claims that lesbian jurisprudence "puts lesbians rather than law at its centre" (Robson, 1992, p. 23).

This attitude reflects an emphasis on the minority's experience of the law. It is also a reminder that previous mainstream analyses of the law have not paid sufficient attention to the lesbian experience of the law (Arriola, 1994, p. 132). In this respect, lesbian legal theory questions the existing knowledge of the law – and related categories such as the wellbeing, freedom, justice, and morality – by pointing out that it reflects an exclusively 'masculine' and 'heterosexual' point of view. This creates space for lesbian critique of masculine and heterosexist law. However, at the same time, it should be pointed out that the lesbian legal theory was by no means intended to be exclusively developed as a critique of the law in the form of a rigorous analysis of the "grand narrative" of masculine and heterosexist law. Lesbian legal theory was not meant to be exclusively a critical reflection on feminist jurisprudence. Instead, the construction of a lesbian theory of law focusses on "the way [how] the law denies that we [as lesbians] are separate from the rule of men. We must avoid a tendency to think in the dominant legal terms so that our lesbianism becomes colonised, watered-down, and domesticated by legal thinking" (Robson, 1992, p. 12). This is to provide lesbian legal theory with some distance from the existing, i.e., masculine and heterosexual construction of legal scholarship and legislation, which has been contaminated by masculinity and heterosexism. This, however, represents a certain challenge for lesbians, because they are not bound by traditional legal methodology, previously established legal concepts, or traditional structures of arguments. The call to "put lesbians at the centre" is a call for the creation of a new theoretical construct, which is nothing other than a theorised lesbian perspective on law (Elliott and Robson, 1993, p. 12). This approach not only rethinks the current form of legal language, interpretation, and argumentation but creates a new (lesbian) form of them. In this respect, the lesbian theory of law assumes that lesbian legal thoughts will result in distinctly different conclusions about law, which may evolve into a new (lesbian) form of law. One of the specific features of constructing a lesbian theory of law is the application of contextual legal thinking (Robson, 1990, p. 464). The application of narratives in this regard is also of unquestionable importance in illuminating the experiences of oppressed, discriminated, and marginalised (sexual) minorities with the law in general (Eskridge, Jr., 1994, p. 608).

In summary, however, it can be argued that lesbian separatism and particularism give room for a postmodern construction of law. The lesbian theory of law, together with the thesis on the peculiarities of lesbian identity and perspectives on law, tends to deny law as a means of providing universal criteria for all. In this regard, Robson speaks not only of the decentralisation of law concerning lesbians but of "de-centred law" in general (Robson, 1990, pp. 461-462). The law thus becomes merely a connective matter for mutually disparate areas of social life regulation. The law is more an aggregate of divergent ideas about the regulation of the lives of individuals and groups. Part of it includes lesbian ideas of law and the law applicable to lesbians.

5.7 Lesbian Jurisprudence Is Not a Ready-Made, Closed, or Holistic Theory of Law

The first reason for the unfinished, open, and dynamic nature of lesbian jurisprudence can be justified by the time since its emergence. The second reason - and perhaps more important - follows from the nature of lesbian theory of law as jurisprudence about indeterminate lesbian identity. Robson emphasises that it is a theory of law that is a process of its continuous formation from its nature (Robson, 1998, p. 64). Of course, this problematises lesbian theory of law, but only to the extent that lesbian identity itself is problematic. Lesbian identity is diverse and therefore a subject of infinite examination. That means that lesbian identity is neither stable nor definite ready to be discovered and then defined in the list of definite theoretical assumptions. The theory of lesbian law is dependent on the indeterminate nature of lesbian identity. Therefore, it is more like an open, continuous, and never-ending enterprise to construct critical and normative legal thoughts - it is a process of building lesbian legal consciousness.

An appropriate means to understand lesbian identity, that is, its expression and ultimately the lesbian legal experience, is using narratives. Narratives can thus help individuals reflect on the meaning of past experiences and then decide if and how they want to integrate these meanings into their current self-perceptions (Hinojosa and Medina, 2016, p. 24). Narrative enhances the knowledge of how individuals create a sense of self - in this case, the lesbian self (see, e.g., Sala and De la Mata Benítez, 2016). Narratives can either be used for critical lesbian analysis of the law using past cases or they can also illuminate present social and legal issues in lesbian lives (Jefferson, 1998, pp. 273 et seq.). Regarding this, it is possible to recognise a critical perspective on the historical and current form of lesbian social and legal experience and the social and psychological burdens that result from it. Narratives emphasise forms of biases and identify their impact. However, the full effect of narratives depends on the narrative empathy, i.e., sharing of feelings and perspective-taking induced by reading, viewing, hearing, or imagining narratives of another's situation and condition (see, e.g., Taylor, Hodges, Kohányi, 2002).

However, the narrative method is not the only method by which knowledge of law can be developed in lesbian legal theory. Robson discusses the importance of ideas about a law that go far beyond knowledge gained through narrative methods. So, the important thing is not to provide knowledge of what the law is, what the law ought to be, but what the law might be. Imagining is in this sense a lesbian transcendence of the limits of the law. It is a theoretical effort to struggle for progressive change in the law, in favour of social justice, with an appeal to the discriminated, oppressed, and marginalised lesbian community (Robson, 2000). At the same time, lesbian imaginative thoughts on law are part of the scholarly framework. Imagination presents potential for the knowledge and development of law in the form of how lesbians see it without any historical limits and restrictions. Such a vision of law is the law of lesbians, for lesbians, and by lesbians. Thus,

the realisation of the lesbian imagination in legal scholarship is meant to be in a way that aspires to the normative possibilities of law according to the lesbian legal theory.

5.8 Lesbian Identity as the Indeterminate Identity and the Basis of Lesbian Theory of Law

At first glance, the lesbian theory of law may seem very close to the queer theory of law. However, this is only an appearance, because the category "lesbian" seems to strictly frame the construction of lesbian jurisprudence. Since the emergence of lesbian legal theory, the basic concepts such as "lesbian perspective", "lesbian existence" or "lesbian experience" have been used to construct a methodological layout of lesbian jurisprudence. At least, this was its methodological position according to Patricia A. Cain and Ruthann Robson (Cain, 1994; Robson, 1990, 1992, 1993). This can also be explained by the separatist tendencies that lesbianism has always displayed. Lesbian separatism puts the lesbian identity aside from feminism or even queer theory.

Although the category "lesbian" does not have a firm core of meaning, since it is not a monolithic category, at the same time it seems to have certain meaning contours. This means that lesbian identity, which lesbian theory of law prioritises because it is derived from it - is distinct from other identities, especially other sexualities. Thinking within the limits of identity usually leads the (critically and normatively) knowing subject to the question "Who am I?" Ideally even before he or she begins to draw critical or normative conclusions about the law. In the case of lesbian legal theory, this response seems certain and oriented towards the category of "lesbian". It is a commitment to a stable conviction about one's own sexual identity. Therefore, the lesbian theory of law is different from the queer theory of law, which - due to the fluidity and diversity of gender and sexual identities - operates more as an anti-identity position (see Gauntlett, 2008, p. 147).

The lesbian theory of law seeks the answer to the question in the spectrum of lesbian identities. This is a strange situation because the lesbian theory of law seems to affirm a lesbian identity, but it immediately refuses to define and specify it. In this context, Robson speaks of "claiming and disclaiming of lesbian identity" as a conflict between the theoretical application of the meaning of identity and identity politics in proportion to the consistent application of postmodern reasoning, which relativises the validity of subjectivity (Robson, 1993 pp. 448 et seq., 1998, pp. 8-11;). There is no doubt that lesbian identity exists, but at the same time, it is fluidly volatile, especially when Robson claims: "Lesbian identity is something I have known, have felt, have recognized across a room and years. It is the river lesbian theorist and poet Gloria Anzaldúa utilizes to describe identities: changing yet perceptible, flowing [...] along with the meaning of lesbian bodies, bodies in relationships, desires, and sex" (Robson, 1998, p. 13). In this sense, the lesbian identity is an indeterminate identity that does not have a given elementary structure (Schulman, 1993, p. 3).⁷

However, the emphasis on the peculiarity of lesbian identity has led the lesbian theory of law to the position of lesbian separatism and particularism. This is self-evident because each identity brings its identity politics in a more or less defined form. In other words, the lesbian theory of law presents the critique and clear demarcation against queer theories of law, where lesbian sexuality risks losing its specificity. The claim "Make lesbians visible in the jurisprudence and the law" was the original purpose of the lesbian legal theory emergence. This is another reason why the lesbian theory of law sought to

⁷ This setting of lesbian identity closely resembles the version of lesbian identity promoted by the Lesbian Avengers - an activist movement that originated in 1992 in New York City. This movement referred to the inclusion of diverse lesbian women, but at the same time "fights for lesbian survival and visibility."

separate itself from feminist jurisprudence and the queer theory of law. It is concerned about the potential threat to lesbian position in coalitional legal theories. Lesbians may be perceived not as partners, but as "shadows." (Robson, 1992, p. 22). So to speak, it is also self-evident because of the risk that lesbian identity will lose its peculiarity. It could melt away among other sexualities – e.g., male gay sexuality, bisexuality, etc. This would risk giving lesbians the opportunity to combat heterosexism in and through law in an authentic way. It could also lose its authenticity when it was regarded as only a partial manifestation of a woman's identity. As has been said, lesbian legal theorists realised that it is not in the best interests of lesbians to defy the patriarchy in law.

Ruthann Robson seems to think the same way when she singled out lesbian jurisprudence outside the scope of feminist jurisprudence and queer theory of law. While acknowledging that these are critical and therefore related approaches to law, she also stressed that they are fully separable (Robson, 1992, p. 21).⁸ The emergence of the lesbian theory of law can therefore also be understood as a trend in a certain period and in a certain field of jurisprudence, which followed the growing importance of lesbian movements in the struggle for legal rights, and also as a trend that was accompanied by the inclusion of lesbian activists and legal theorists in the academic environment. But at the same time, it can also be seen as an ongoing effort to construct lesbian legal thoughts that demonstrate the ongoing creation of a "sovereign" theoretical framework for lesbian legal scholarship. Robson was pursuing this longer-term goal of permanently developing a lesbian theory of law, replacing terms such as "separatism" and "particularity" with the inherent notion of sovereignty. The sovereignty of the "Lesbian Nation" is meant to be constructive and defensive against possible assimilation (Robson, 1990, pp. 464-465). Regarding the problem of the "survival of lesbians", any assimilation of lesbians has particularly sensitive overtones.

6. CONCLUSION

Lesbian jurisprudence (or lesbian theory of law) is a methodological way to examine the ways the law has impacted the lesbian identity (the critical element) and how the lesbian identity could be fulfilled by law (the normative element). The significance of the lesbian theory of law lies mainly in the fact that it presents a scientific legal way to redefine categories such as sexuality, gender, marriage, family, etc. However, the redefinition is not meant to be an extension of existing social institutions such as marriage or family to lesbians. Rather, it is a broad redefinition that reshapes the content of hitherto traditionally heterosexual social institutes according to the lesbian model of relationships. Within this idea, it is important to realise that lesbian theory of law does not seek to confirm current heterosexist and heteronormative discourse. The lesbian theory of law, with its epistemological setting, seeks to defy the power structure of discourse that ignores or discriminates against lesbians.

In this context, the lesbian theory of law shows how lesbian concepts of individually and socially significant relationships have long been regarded problematic. The lesbian concept of relationship has been excluded from the law. The lesbian theory

⁸ Feminist legal theorist Ann C. Scales and queer legal theorist Francisco Valdes approached the relationship between lesbian jurisprudence, feminist jurisprudence, and queer theory of law quite differently. Scales understood all poststructuralist approaches in law as converging towards each other. She wrote: "I believe the short answer is that poststructuralist work and feminist jurisprudence are converging. We are allies in the relentless pushing of each other" (Scales, 2009, p. 395) Similarly, Valdes sees a correlation and interconnectedness between queer theories of law and lesbian jurisprudence (Valdes, 2000).

of law thus provides an opportunity to think about those things differently. It brings authentic knowledge through the lens of lesbian identity. Thus, the (legal) visibility and (legal) existence of lesbians become central to the lesbian theory of law. The justification for such an aim is accompanied by the previous (legal) invisibility and (legal) non-existence of lesbians (Jefferson, 1998, p. 269).

Although the lesbian theory of law is a very fascinating approach, it is also worth recalling that its current viability is questionable. This is by no means to say that lesbian analyses of law are no longer beneficial or not necessary. I believe the opposite is true. I would rather emphasise the fact that the lesbian theory of law has seen its greatest development since the early nineties of the 20th century. However, with the arrival of the new millennium, interest in its development began to decline. A very limited number of authors participating in its development may also be a factor - mainly in a few Anglo-American law faculties. The development of lesbian jurisprudence was mainly centred around its most important representative, which was and still is Ruthann Robson. The second factor may be that the next generation of legal scholars interested in the topic of law and sexual orientation have been interested in the queer theory of law. A certain proximity between lesbian theory of law and queer theory of law is beyond doubt. However, its subsumption within the framework of queer theory of law may be problematic given the separatist positions of the original lesbian authors.

However, above all, the application of lesbian discourse in jurisprudence cannot be considered exhausted. This is evidenced not only by the continuing trend of lesbian studies appearing outside the jurisprudence, but also by the society and legal system in the Slovak Republic. A 2017 national LGBTQIA+ survey found that 81.1% of LGBTQIA+ members perceived biases as the biggest problem (Celoslovenský LGBT Prieskum, 2017). According to it, 39.7% of lesbians had experienced some form of discrimination in their lives. 46.9% of lesbians had to face some form of unpleasant experience (harassment, violence, and verbal attacks). Such a percentage is by no means negligible. Of course, these findings do not indicate how the law can counter individual discriminatory practices and unwanted expressions; we also cannot say whether there have been violations of the law. At the same time, however, these percentages tell us that the law does not act preventively against possible biases. Lesbian jurisprudence is here to capture the experiences of the full spectrum of lesbian identities. Topics such as the legality of lesbian marriage, lesbian family life, or the raising of children by lesbian couples are, in any case, important. They are important because these are human rights issues. At the same time, as it turns out also by the national survey, these are not the only issues that will solve the oppression, discrimination, and marginalisation of lesbians. It seems that they are expressions of widespread biases. Thus, an examination of the everyday experience of the lives of different lesbians may reveal unwanted manifestations of biases that the law tacitly tolerates, or the legal practice is toothless to the face-off. I believe that further development of lesbian jurisprudence can describe those biases and accent lesbian perspectives on law with further radical legal change or legal reform. The critical element of the lesbian theory of law could serve this purpose very well. However, the elaboration of the normative element of lesbian legal theory would be more interesting because it informs us about the theoretical features of lesbian law more specifically.

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