INTRODUCTION

At the moment, the different forms of violence against the women seem to have been generalized in Europe (the feminine genital mutilations, the women's traffic, the prostitution...), and it is believed that they are foreigners to the Occident History: fundamentally, they are attributed to the presence of individuals coming from other cultures, to the illegal immigration, to the economic globalization, to the poverty...

However, the violence against the woman is result of the subordinate conception about the woman in connection with the man. This conception is inscribed in the own history of Europe and in short, in the Europeans legal systems inspired by the Civil Law, whose roots are in the Roman Law. We revise this conception in the first part of this work.

The European countries, in turn, are exported this subordinate conception from the woman to the legal systems of the countries that they are subjected to their political and economic power. Hence the necessity to extract the evidences of this conception in these last ones and their repercussions in the juridical treatment of the women. The European inheritance explains the forms of violence against the woman that the Latin Americans legal systems contain, which are adopted the Civil Law from the discovery of America. We dedicate the second part of this work to illustrate the European influence (and in short, the Spanish influence) in specific form in the juridical treatment of women problems in the Peruvian legal system. Regarding the same one, it is analyzed in the fields of the Family Law and of the Criminal Law.

In the third part of this work, the situation of the women in the Latin American countries is connected with theirs exodus toward the European countries and the treatment that they receive in Europe.

We take as referent of our analysis the feminist critical theory, especially its putting in question of the neutrality and the objectivity of the Law. These critic not only is due to that these notes respond to the dogmatic approach way to the Law – the way that has prevailed in the countries inspired by the Civil Law -, but, mainly to that the Law contains in itself a masculine point of view and it project certain normative patterns of women and men. As CAROL SMART has maintained regarding to the treatment that the Law has given to the women, "the Law is sexist", "the Law is masculine", and "the Law has gender" (SMART, 1994).

The sentence "the Law is sexist" mentions the obvious discriminations that the Law contains in the woman's damage, while the second sentence "the Law is masculine" refers specifically to the attention from the Law to the masculine interests. Finally, the third sentence "the Law has gender"
symbolizes the juridical work of construction of normative models. This last sentence symbolizes a third analysis stadium that, according to SMART, it supposes to go beyond the discovery of obvious discriminations against he women, and to try to visualize the gender representations that the juridical speech produces.

Even if it can be questionable the application to legal systems inspired by the Civil Law of the analysis of SMART, coming from the Anglo-Saxon thinking, we apply the same one for its clarity and its output that its application to these legal systems can to produce. If we apply the proposed by SMART analysis outline, we can to observe that it has going from the obvious discriminations phase to the subtle discriminations phase in most of the legal systems. In general, the Law of all the times has contained numerous inequalities and discriminations against the women, ant these inequalities and these discriminations constitute a form of violence against the same ones. The Law produces violence against the women when it consecrates obvious discriminations in its own norms, when it centers on the masculine interests, and when it imposes through its norms a certain ways of behavior to men and to women.

It is important to specify that, although we admit with most of the doctrine that the main problem that the legal systems inspired by the Civil Law is the not application of its rules, it also constitutes a serious problem the interpretation and application of these rules from sexist parameters. Our analysis, therefore, take to the legal system as a whole, integrated as much for the laws as for the doctrinal and jurisprudencial interpretation of the same ones. This analysis is not carried out with quantitative desire but qualitative, and it tries to extract the discriminations against the women that the Law contains in these three levels.

THE VIOLENCE OF THE LAW AGAINST THE WOMEN IN THE OCCIDENT HISTORY: THE PAST THAT WE MUST TO HAVE PRESENT.

The inequality and discrimination against the woman from the own Law are not a new phenomenon. They has taken place along the Occident History, although that the most important efforts for the visualization of the same ones have had place at the end of 20th century. The main piece of information that the study of history of the Law in Occident is the presence of the woman's subordinate conception. This conception has been projected in an express way from the Antiquity until the Modern Age, and it has been projected in surreptitious way from the modern Age until our days.

During the Antiquity, the primitive peoples didn't have the organized and centralized States to the way of the modern State, but they had the bodies of laws in those they summarized a great number of obvious inequalities against the woman, who they force to submit to the authority of the pater. The reining perception about the secondary and inferior place that the woman takes up in relation to the male, is reflected in the Jewish conception, in the Greek philosophy and in the Roman Law.

During the Middle Ages, like in the Antiquity, the woman had a subordinate juridical condition. The canonists, influenced by the Jewish conception, and the jurists by the Roman Law, cause that neither the canon law nor the civil law went favorable to the woman. The lawyers defended the doctrine of the fragilitas, the imprudentia, the imbecilitas sexu. In general, to the woman a smaller juridical capacity was recognized regarding the man. The subordination was due to their own nature.

With the coming of the modern State, erected on the freedom and on the equality, it seemed to be changed the historical tonic of subordination, for the women, but it was not this way: the speech toward the women became subtler, more hypocritical when disguising the discrimination of equality. The woman inferiority is not proclaimed in relation to the man but rather a division of the work is proclaimed among the sexes. The men should be identified with their paper of suppliers of the material possessions, and the women should carried out the tasks of the domesticity.
But the division of the work according to sex supposed the division of the spheres in that each one of the sexes developed its life. For the women, their exclusion of the public sphere and the reclusion in the private sphere meant also the exclusion of the citizenship rights.

At the present, practically all the countries have dropped a tendency to the elimination of the obvious discriminations against the women, mainly due to the influence of the international order on the domestic legal systems, which it has compelled to consecrate the formal equality. But the States where we live, they continue based on the woman's servitude. Fundamentally, the contemporary State accepts the entrance of the woman in the work and the public sphere - although in last one, with restrictions -, but it doesn't allow to change the essential nucleus of domestic sphere: the mother and partner function of the women. The woman's submission is guaranteed, mainly, through the showing of certain normative models.

THE VIOLENCE AGAINST THE WOMAN IN THE LATIN AMERICAN LEGAL SYSTEMS. TO EXEMPLIFYING WITH THE PERUVIAN LEGAL SYSTEM.

The normative patterns are contained in the legal systems of the developed countries, but mainly in the developing countries in those the violence of the Law is bigger. The adoption of the Civil Law in theirs legal systems has represented a worsen the condition of the woman, not only due to the characteristics of the Civil Law but to the conditions of the societies in those that it impacted - after the conquest - and to the continued evolution subsequently to this impact in this societies.

In the Latin American countries, the colonization produced the destructuring in theirs ways of life. The colonial system imposed by the Spanish accentuated the social hierarchies and, in consequence, also the inequalities among the diverse social groups. And in this framework the gender relationships must understand. The division of spaces corresponding to men and women that it existed in the Andean society (OSSIO, 1980, p. 284; BAIGORRIA CASTILLO, 2001, p. 5) were reinforced by the impact of the patriarchal structure established after the conquest. And the Spanish dominance involved the establishment in the Indies of the Spanish medieval Law, especially, the Law of Castile. This Law, represented basically by Alfonso X the Sage's Seven Partidas, and the Laws of Bull, was openly discriminatory against the woman.

Spain influenced in the Indies after their independence. In the juridical field, the Spanish code will influence in the Latin Americans codification undertaken process, like it was the case of the Peruvian codification, although in the 19 th century, it will be added, late, to the ideological influence of France, Switzerland, Italy and other European countries.

Especially, the Spanish criminal codes reinforced the woman subordination to the man that the civil codes, influenced by the laws of the Middle Ages consecrated in express form. The Spanish civil Code of 1889 kept in mind the Project of 1851, which had been inspired by the spanish historical law, mainly by The Partidas and in the Laws of Bull, and by the Napoleonic civil Code of 1804. This last one, like exhibition of the patriarchal power, in direct or indirect way, it exerted enormous influence on Europe and America.

The submission in the past has determined the economic, social, political, religious and juridical conditions in the present of these countries. And these structural conditions has determined that the juridical treatment of the problems of the women has not followed the same evolution that in Europe. As we will see in the following epigraphs, while in Europe they are more frequent the subtle discriminations against the women, in the Latin American countries the obvious discriminations remain still - or its eradication has been very recent -, besides the subtle discriminations. It is verified it in the analysis of treatment toward the woman in the Peruvian legal system, that we refer next fundamentally in two fields: the Family Law and the Criminal Law.

THE VIOLENCE AGAINST THE WOMAN IN THE PERUVIAN FAMILY LAW
In the Family Law, the violence against the woman comes from the way of solution or not solution the problems within a relationship family, but it comes also from the regulation in general of the family, and to be precise, from the discriminations, the masculine biases and the models of woman presents in this regulation. We refer at this moment to this regulation and, in later epigraph, we will examine the family problems.

The violence against the woman in the general regulation of the family

The adoption of Civil Law involved the transposition and the survival in the Peruvian regulation of the family, of a great number of the rules and the institutions coming from the Roman Law. This influence, together with the influence the canon law, mainly in the rules that govern the civil marriage - the only one with obligatory form in Peru -, it explains the current configuration of the Peruvian Family Law.

Specifically, it is observed how the effort to consecrate the equality between the man and the woman in the juridical rules is prolonged in the time more than in the developed countries. In Peru the efforts for the equality in the eyes of the law persist practically until the year 2000. One example is the differential treatment of age to get married between men and women, the treatment that persist until 1999. The Law no 27201, November of 1999, modified the articles 46, 241, paragraph 1, 389 and 393 of the Peruvian Civil Code (hereinafter, PCC) where this treatment was established.

It is also characteristic of the Peruvian legal system, in spite of the efforts for the equality, the persistence the inequalities and discriminations. An example of sexist discrimination is also the regulation of the custody of extramarital children. The article 421 PCC authorizes to the Judge to decide - in the event of rupture of union - the attribution of custody, according to the sex of the children. This rule is inspired in the contained rule in the article 340, paragraph 2º PCC, which establishes in the cases of breakup of the marriage that the judge solves the custody attribution according to the children`s sex and age when they both spouses are guilty.

But the remission to the sex and to the age is reprehensible. The use like criterion of the age (the custody on the children smaller than seven years is conferred the mother) which has been also in other legal systems, it is based on the sexist prejudice that the mother is the one in charge - by nature - of providing the love, the food, the education, etc. to the small children. This prejudice, anyway, it is a constant feature: it is usual to the conferring of the small children on their mother, even when this one is guilty of the marital separation. The criterion of sex is inspired by prejudices about the paternal sexuality, mainly by the fear toward the violation and the abuse of the smallest daughters. This fear can be founded, if we keep in mind the high number of cases of incest in Peru, but it must value a series of conditions, not only sexual, but also structural like the economic penury, the educational shortfall, the over-crowding ...that they cause the inceste.

Besides the obvious discriminations, the regulation of the family in Peru projects certain normative models of woman. These models, some of these unnoticed, all they are as sides of a prism. We refer to some of these models.

The woman should be above all mother. In the Peruvian legal systems, it is more visible than in the European legal systems the institucionalization of the sexual reproduction as the function of the women, in accordance with reactionary speeches as the Catholic Church speech. As for the forms used for the projection of the function of sexual reproduction that concerns to complete the woman, they are diverse. In principle, the model is projected when being attributed capacity to the woman in order to secure the procreation. This way of to proceed is revealed when it allows to the impubescents to get married in the cases of pregnancy (they are a dispensation of civil age, and a confirmatory validation of the marriage of the impubescent in the article 277, 1º PCC). The Peruvian legislator, still after the reform by the Law 27 201 to the age to get married, it has not questioned a extended practice of the marriage celebration among adolescents to regularize pregnancies, the practice that has meant the smaller requirements of capacity in the Family Law that in the rest of the
Civil Law, that in turn constitutes a test of the typical division of spheres of life (the public sphere, the domestic sphere), being the domestic sphere more permissive.

Another of the normative models that projects the Peruvian legal system is that the woman like unable, like weak being, like smaller of age viii, one of the normative models of woman that to get unnoticed maybe it is due to the frequent feeling of victims that the women have.

The woman is considers unable if she remains single. Although the Andean society considered unable to the men and the women that didn't get married, the influence of the western believes it has determined that the current peruvian society has conserved this same conception, but only regarding the women: the art. 424 PCC establishes the subsistence of the alimentary obligation - in cases of separation and divorce - regarding the single daughters (feminine sex) that are not in aptitude of assisting to his subsistence.

The woman is also an unable when it prevents to the married woman the recognition of the extramatrimonial son on the part of their true progenitor while the husband not refute his paternity. The woman's testimony in this matter is lacking in value opposite the force of the “pater is...” (art. 361 PCC). The force of this presumption has the correspondence with its purpose of making of the woman the guardian of the masculine honor. The presumption pater is puts a dense veil about the infidelity of the woman for to avoid the discredit of the husband's authority. The honor of the pater, and in consequence their authority, they are prefixed to the rights of the women and of the children, and also of the third party. The normative model of woman as the guardian of the honor presupposes that the honor is a very basic of the man and of the State, which the reste of interests are sacrificed. This model which reveals the inheritance of West, it centers on the sexual honor.

The violence against the woman in the matrimonial crisis

The violence against the woman is also verified in the rules that regulate the matrimonial crises (the separation and the divorce). These rules, inspired by the patriarchal pattern of the marriage, of the western origin, it produce the violence against the woman mainly because it cause the invisibility of these violence, and it project certain normative models of woman.

In the Peruvian legal system, the invisibility of violence is mainly due to the doctrinal and jurisprudencial treatment to the separation or divorce causes that consistent in abuse and attack against the spouse (article 333 PCC, nº 2 and nº 3 PCC). This treatment adopts as referent the positivist paradigm prevailing in the penal order, with which is punishable fundamentally the physical violence, the violence that is noticeable, which can be demonstrable. Also, these paradigm consider the concrete acts of the violence, but not the context, what it leaves outside of control and prosecution the violence perpetrated against the womanix.

Besides, we find the sexist justifications of the violence against the wife if it happens as reaction before certain facts (for example in the case that the woman doesn't serve hot the food to the husband, etc.). The demand that the victim of the abuse not motivate or provoke the aggression, it demonstrates the masculine bias in the configuration of the separation and divorce cause. These demand also constitutes an important difference regarding the Spanish legislation. In the Peruvian legal system, the resistance of the stereotypes is stronger, mainly those contents in the jurisprudence, absorbed in a more conservative society that the European, and with the permanent presence of the Catholique Church.

The invisibility of the violence against the woman is also caused by the generic cause of the separation and the divorce consisting of "the impossibility of making life in common, properly proven in judicial process". This cause has been created by the Law on the separation in fact and subsequent divorce (2001) and the same one is proclaimed as the panacea to solve the matrimonial crisis, but it is caused a concealment of the violence and in consequence, the non adoption or the inadequate adoption, of the need measures for the transitory resolution of the matrimonial crisis,
mainly if we keep in mind the tendency at the moment of the peruvian jurisprudence to transform the demand of divorce by reason of violence into a conventional separation. Regulated already the cause about the impossibility of the life in common, it will no longer be neccesary to carry out to the spouses such an invocation.

The invisibility of the violence against the women is also manifested in aspects of procedural order. It is necessary to highlight above all, the not adoption of the procedural measures for the protection of the life or physical integrity in the cases of separation or divorce that have cause in the violence. Regarding the Law of Protection against the Family Violence, of 1993, law of preventive nature, in spite of the forecast of a wide and important cast of measures for the cases of violence, these measures are not usually decreed, or in the event of being decreed, it isn't usually to fix an execution term neither some mechanism of monitoring of the same ones, all that which contradicts the own essence of these Law.

The norms that regulate the matrimonial crisis repeat again the existents normative models in the Family Law, in general. The invisibility of the violence against the woman into the family reaffirms the nineteenth –century division of vital spheres of the men and the women and it produces the woman's image like object in the man's hands. The norms that regulate the matrimonial crises also project the image of woman like mother above all as it demonstrates the assignment of children smaller to the mother. In the article 340, parapraph 2º PCC, the concurrent blame of both spouses determines the exclusive assignment to the mother the minor than seven years, with independence of their sex, and also of the minor daughters, without indication of years in this case. It means that the woman is doubly sanctioned in the event of blame.

And the norms about the matrimonial crises also projects, the image of woman like guardian of the masculine honor. This image is deduced from the regulation of the adultery like cause of the separation and the divorce. Besides the strong connotations moralists that the Peruvian Civil Code preserve in this matter, it is necessary to highlight the tendency of a sector of the jurisprudence to not admitting the existence of adultery although, as a result of the same one, the woman has had a son that doesn't belong to her husband. The divorce action is conditioned to the success of the action of objection of the paternity of the born son, and it is declared that it is unfounded the divorce demand for the adultery of the woman, because legally, the father of this son is her husband.

THE VIOLENCE AGAINST THE WOMAN IN THE PERUVIAN CRIMINAL LAW.

The criminal order confirms through their own rules the discriminations, the masculine biases and the normative models coming from the civil order.

At the moment, it is frequent the resource to the Criminal Law as panacea to solve all the problems. This inflationary criminal movement is bigger in countries in development as Peru. The presence of a Criminal Law with these characteristics has been linked to the non - existence of a society democratic (MONTOYA VIVANCO, 2000, p. 22), but it is also attributable to the great distance that exists between the rule and the reality of life and to the use of the Criminal Law to make coincide both rule and reality.

In Peru, the women claim more Criminal Law and more sentences. However, this option doesn't sympathize with the demands of a democratic State neither it protects the interests of the women. A bigger criminalization doesn't suppose a bigger protection for the women, neither the free of masculine stereotypes application of the criminal rules.

It can be to say that in the Peruvian legal system, the same as other legal systems of other countries, it was on the elimination trend in the Criminal Law of the obvious discriminations toward the women and on the configuration trend of its criminal rules in a neuter way, but it is perceptible its imbrication with the masculine interests and the presence of certain normative models of woman. This imbrication is noticeable, the same as in the civil order, in the invisibility of the violence against
the woman. This invisibility takes place for the interpretation according to the positivist paradigm coming from the Modern Age of the rules that it have to solve the violence against the woman (especially, the domestic violence and the sexual violence).

It is observed how in the cases of family violence and of sexual violence - on other hand, whose indexes are very high -, the positivist paradigm is more deeply rooted. In the framework of the crimes against the sexual freedom, the survival of the positivist paradigm is perceptible in the doctrinal and mainly, jurisprudencial configuration of the notes of “violence” and “serious threat”, the objective elements of the crime against the sexual freedom par excellence: the rape (art. 170 Peruvian Criminal Code, 1991, hereinafter, PPC).

The peruvian jurisprudence has considered these elements from the quantitative point of view, what has taken to demand the high grades of resistance of the victim. This created requirements constitutes a difference also regarding other legal systems in those the demand of resistance has been make more flexible.

On the other hand, when the requirements of resistance are not completed, it produces a non appreciation of a crime of sexual violation but of the other crimes whose sentence is smaller like the seduction crimes or the crimes against the modesty (HURTADO POZO, 2000, p. 52; MONTOYA VIVANCO, 2000, p. 67). This change in crime with the consequent decrease of the penal answer, seems to be a characteristic of the Peruvian criminal legal system.

The adoption of the positivist paradigm also explains the obsessive references to the woman's defloration, and to the previous virginity in the Peruvian jurisprudence and of those it depend the consummation of the violation. These references have their predecessors in the Peruvian nineteenth-century codes, which captured the moralizing ideas that were applicable in the colonial period. But these references are conserved at the present time: the aggressors are exempts from sentence when estimating that the women are the indulgents hymens.

The positivist paradigm, that it means to forget the graveness of the facts against the women, it is also perceived in the jurisprudence when this one apply the discounts of the sentence below the established legal minimum for the crime on the basis of the supposed sincere confession, and the wish of marrying of the accused, although the possibility of discharge of sentence for marriage was finally eliminated in 1999 by the Law 27115, May of 1999. It is necessary to say that this figure (the alleged pardon) was present in all the Peruvian codes - and it was and it is still in a good number of Latin American countries -, and that their elimination has been later than in other legal systems.

The perception of the sexual crimes from the side exclusively of the masculine interests is reflected also in their erroneous conception like crimes of exclusively sexual nature, that is to say, as crimes that they are due to an instinct or lubricious spirit, which is even configured as subjective element of the criminal unjust that, in the event of not converging, it eliminates the crime. However, the sexual crimes are the attacks whose central element is the element of power and the sexuality is the instrument to consecrate a status of power on the victim.

The attention toward the lubricious spirit it means to perceive the masculine sexuality as an impulsive sexuality, and therefore, the aggressor as victim of their instincts. In the Peruvian criminal jurisprudence, it is the drunkenness the more cited and applied ground for the acquittal or the mitigation of the sentence: it is considered that the drunkenness has the effects multipliers of the impulses, with the consequent effects in the determination of the sentence.

However, this anthropological conception about the man (the man moved by their instincts) is contrary to the defense of the sexual freedom (HERRERA MORENO, 1999). This perception supposes a contradiction of the established in the Modern Age rational pattern of man. Mainly, it surprises that, being the man the referent of the rationality, it is frequent the resource to the masculine irrationality to explain the crimes to the women.
In the framework of the family crimes, the positivist paradigm is adopted when, in the articles of Peruvian Criminal Code regarding the family violence\textsuperscript{xiii}, it is preponderant the attention toward the physical abuse and not toward the psychological abuse, which is not perceived neither crime.

In the Peruvian Law of Protection against the Family Violence, 1993, the psychological violence has been regulated, but the judicial operators tend to only value the physical violence and they don't consider that the same means the psychological violence. Neither they apply to the victims the special psychological exams.

On the other hand, the penal legislator has not neither kept in mind “the usuality” that is a characteristic note from the aggression to the woman in the family. Although it is true that this element has presented the interpretive problems in the legal systems that have received it - like it has been in Spain -, the absence of this element in the Peruvian legal system shows its unconsciousness toward the reality that the women live. Also, like it has pointed out MONTOYA VIVANCO, the concurrence of other crimes in connection with of the lesions it is ignored (MONTOYA VIVANCO, 2000, p. 92).

The perception of the crimes of family violence from the masculine point of view comes off of the existence of a erroneous conception that ignores its violent nature. This conception is present in the tendency to exempt from sentence to the man that batters, applying the sentences below the legal minimum on the basis of the intoxication state of the aggressor, and this ground is also presents in the stipulation of psychological or psychiatric treatment.

Even so, the great problem is the internalization for the own women of the masculine interests, like it emerges from the results of several investigations carried out in Peru. The women perceive the sexual relationship with their couple as an obligation, and therefore, as a right of the man. And the women usually attribute the cause from the violence to some immediate circumstance that triggers the episode of violence, but they don't identify the unequal relationships of power to the interior of the family like the real cause of the violence and they even justify the violence themselves.

Returning to the strictly juridical field, it can be said that with the invisibility of the violence against the women and the erroneous perceptions about the same one, the criminal order confirms the division of spheres of life. The women continue supporting the biggest violence in the domestic sphere. Especially, the marriage covers the physical and sexual violence deployed by the men against the women with a dense veil, so the importance given to the marriage in the penal order has full correspondence with the attributed to the same one in the civil order.

The criminal order confirms, with its own instruments, the normative models of woman of the civil order as the pattern of woman like object and the pattern of woman like above all mother, this last one when it is deny to the married woman the right to the sexual self-determination, but also the right the reproductive self- determination because the maternity is imposed in express form in the case of wife violation (the criminal legislator has excluded expressly the abortion in this case and in the case of artificial insemination not agreed\textsuperscript{xiv}, what constitutes a discrimination against the married woman).

In the Peruvian legal system, the maternity is imposed from the prohibition in almost absolute form of the abortion. The same as in other Latin American legal systems, in Peru the therapeutic exemption is only contemplated. The PPC continue criminalizing the abortion, under a special type that punished, although with attenuated penalty, the eugenic abortion, the abortion in the event of violation and the abortion in the case of the artificial insemination not agreed\textsuperscript{xv}.

The prohibition of the abortion in this almost absolute form that the Peruvian legislator carries out, it contrasts with a high index of the secret abortions and with a high index of mortality of the women in Peru. These indexes - that are shared with other Latin American countries -, are bigger than the
registered in the countries developed due to the poverty, the malnutrition and the deficit in health area, the typicals conditions of the developing countries.

Although it is necessary to keep in mind that the reproductive autonomy of the women is denied with the imposition of the sterilization. This practice has taken place in the framework of the political of the family planning. It is necessary to remember how, in Peru, during the government of Fujimori, the National Plan of Family Planning used as politics of combat of the poverty, the massive sterilizations – the tubal ligation - of to poor women of the Andean area women. However, these practices that seemed characteristic of dictatorial governments, also repeat in seemingly democratic governments\textsuperscript{v}. In definitive, the States has at one’s disposal the body of the women to control the reproduction.

The criminal order also transmits the pattern of woman like weak, unable being. This model behind an apparent protectionism hides.

From the reclamations - even for a sector of the feminist doctrine -, of the imposition of more sentences for the attacks against the women, a symbolic effect of the Criminal Law is caused, which supposes the violation of the principle of \textit{ultima ratio} that should encourage this Criminal Law, and in turn, a bigger protectionism toward the women and therefore, the perpetuation of theirs condition of the weaks, the unable beings.

Equally, these pattern of woman behind the reclamations of special treatment toward the woman hides. We think that the pattern is projected through the Latin American laws that, with preventive character, regulate the family violence. The especificity of these rules supposes to configure the woman like a different and needful of special protection being (the especificity constitutes a new essentialism). Also, it produces the violation of the general rules, the guarantors principles of the Criminal Law and even the constitutional principles (for example, in Peru the legislation about the family violence contravenes the detention term that the Constitution specifies), but it is not satisfied the foreseen purposes because the regulation of this violence in a separate way with regard to the general criminal system, it caused the invisibility the violence against the woman (in fact, the guarantees don't really put into practice, or the sense of these guarantees is distorted).

We find in the Peruvian legal system another normative model: the woman like guardian of the masculine honor. The nineteen-century moral conceptions persist for example in the criminal regulation of the sexual crimes. Thus, in spite of the change in the nomenclature of these crimes in the PPC (1991) – this change has taken place practically in all the western legal systems -, the Peruvian Criminal Code and the Peruvian jurisprudence still contain the allusions to the chastity, to the honor... the characteristic terms all in that conception. Fundamentally, the moralist conceptions reign in the jurisprudence. In the rape crime, the requirement of the resistance, created and recreated in the jurisprudence - which also constitutes a sample of the adoption of the positivist paradigm in criminal order – it projects the woman's image like guarantor for a superior good: the collective moral.

In definitive, the aspects that we have described: the discriminations, the attention only to the masculine interests, and the showing of normative models of woman, summarizes – althought we have not presented the whole cases - the violence of the Peruvian legal system against the women.

**WHAT RETURNS TO EUROPE: THE PAST ALWAYS PRESENT**

Discriminated of point of view social, economic, political ... and also legally, in theirs origin countries, the Latin American women have opted for the emigration toward the First World. This migratory movement is part of the movements of population that, in inverse sense to the traditional – the emigration of the Europeans toward America -, in the main it mobilizes the people coming from the Third World, the pushed people by the poverty or the political violence of theirs origin countries (JULIANO, 1998).
However, it is not only the poverty that determines the migration of these women but fundamentally the dimension of the inequality and the discrimination against them, which also explain that the Latin American women, plus that the Latin American men, they emigrate toward Europe. Inside these group of women, the Peruvians are one of the most numerous communities, together with the Dominicans and the Colombians women.

The inequality and the discrimination toward the women make that even the structural conditions as the poverty, the unemployment, they affect more to the women than to the men. And the globalization has worsened these conditions in all Latin America; it has increased the inequality in all the levels: among regions; among social groups; between privileged social actors and groups or the particularly vulnerable segments of the population, and also between men and women (BIFANI, 1997, p. 101; COMISIÓN EUROPEA, 2000, p. 8).

In the different speeches (political, juridical, ethical...) it is usual to present the following sequence: the globalization, the economic inequality, the emigration, the violence against the woman. However that the globalization globalizes (if you’ll excuse the repetition), is the patriarchal system, an asymmetric system of relationships between the men and the women that reigns from the Antiquity, although it is certain that the asymmetry, the inequality, took pleasure in the processes of the globalization: these processes reaffirm the stereotyped lists of men and women that exist in the social imaginary and whose reproduction the Law also collaborates, like we have described above in connection with the Peruvian legal system. The men act with success in the public sphere. The women, in the event of working, are devoted to subordinate tasks that it are naturalized as feminine, and, when they are dismissed, they has no option but to carry out theirs traditional lists of housewifes and mothers again.

In the case of the Peruvian migration, it is the asymmetry of the relationships between the men and the women the main explosive of the emigration. It cannot be said. that a persecution in terms from theirs ownership to a specific culture exists toward the Peruvian women, like it happens in the African and Muslims countries where the women are subjected to archaic customs that violate theirs fundamental rights. But it is necessary to show how the women more than the men are affected by a widespread poverty, by the social media that they are degrading to women... and by a riddled with prejudices about the women legal system.

The inequality and the discrimination in general toward the women, accented along the history for the influence of the European countries on Latin America (from the times of the Conquest until the current era of the globalization) it takes to these women to emigrate toward Europe and to even fall in traffickers' hands without scruples whose involve them in big nets of white – slave trade and prostitution.

The white – slave trade and the prostitution have become the most visible forms of violence against the women in Europe in these last decades. Nevertheless, these forms of violence are not new. The modernity, with the increase of the communications, the technology, etc. has only produced the quantitative and qualitative variations in some forms of the violence against the women that it already existed in the Antiquity in Occident. The old merchants trafficked with slaves and women.

But, if these forms of violence were allowed it was because both communities showed an inferior position in the society. As the doctrine has manifested, Europe along their history it has always considered the women as foreigners (JULIANO, 1998). However, the migrant women suffer the biggest number of discriminations, which to theirs woman condition - and, therefore, of citizen of second class -, they add the foreign in strict sense condition. As long as foreigners, especially the restrictions that the European countries have put to the immigration and the asylum and refuge concession affect them. Practically, the majority opinion in the feminist doctrine is that these restrictions are those that cause the fall of the women in nets of traffickers.
Conceived the immigrants like a threat to the work positions of the European - and the Spanish -, like a threat to the western (seemingly monolithic, uniform) culture ... and like a threat to the security, the different European countries have gone putting the obstacles to the immigration from the years 70, although such threats are not true (the immigrants occupy the positions that the Europeans don't cover; they are not the disintegrating elements of the western culture, because the Western States historically have been pluralist; the immigrants, they not all are deliquent). And the perception of the immigration and of the immigrants as threat for Europe is the result of the philosophy of the abstract universalism of the disdain and the fear to "the Other", and mainly, of the ignorance of "the Other" (the ignorance that promotes the unidirectional globalized current society).

The obstacles to the immigrants, theirs inequality and discriminatory treatment still stay when the abysmal differences don't exist between the culture of countries which are recipients of this immigrants and the culture of the immigrants as it is the case of the Latin American immigration. Dolores JULIANO supports that the Latin Americans "they don't present a big racial differences neither in terms of linguistic codes with the society which is recipient. Neither they are among the two groups the religious differences, neither the insuperable distances in terms of social classes, therefore there is not the some elements from those which "it is naturalized" the exclusion idea" (JULIANO, 1994, p. 29).

The culture not constitute then an element of social stratification, but the discrimination is built by other roads or symbolic relating (JULIANO, 1994, p. 31). In the social field, the neologism "sudaca" is used to point out the condition of foreing of these sector, and in the juridical field, although certain advantages like a smaller residence period to obtain the nationality - one or two years of legal residence - and a bigger possibilities of recognition of studies exist, the legal exclusion persists in the rules about the entrance and legal permanency in Europe.

In relation to Spain, the Peruvian immigration, that it is fifth in importance (DELGADO GODOY, 2002), it uses mainly the work and the family reunification as entrance and legal permanency roads. The refuge was used by the Peruvians at the times of terrorism, in the despicable eighthies (FORO PARA LA INTEGRACIÓN SOCIAL DE LOS INMIGRANTES, 1997).

Regarding the work in Spain, it is necessary to say that an important number of workers of the feminine sex coming from Latin America in general, meets with obstacles to the entrance and legal stay, because the some ones depends, in the first place, of the obtaining of a work Visa, that which is not anything easy; and in second place, of the obtaining of a residence permission, the one which, in turn, it presupposes the obtaining off of the work and this in turn, the obtaining off of the residence, taking place a vicious circle practically without exit.

Another mechanism of legal entrance is the family regrouping, the mechanism considered at the moment as more significant category of immigration (DELGADO GODOY, 2002, p. 2) -. Nevertheless, it exist the limitations to the exercise of this right, the limitations that are due to the quality of the spouse's who make the reagrouping. The national of the European Union, of the European Economic Space and Spaniards can to use in the regrouping the purely formal bond of matrimony (the celebrated marriage one year before to the regrouping application, is long enough although the married couple no longer cohabit in fact), while who don't have such nationality they must live together in fact and of law (MOYA ESDUDERO, 2000, p. 195).

The rules about the family regrouping adopt to the marriage like referent. That it means a way of discrimination against the women that live insert in concubinage when they want to obtain the family regrouping. These discrimination contravenes the international order, in which the exaltation of the marriage doesn't exclude the protection of the families no based on the marriage, and in the case of Spain, it also contravenes the constitutional order.

On the other hand, according to Mercedes MOYA ESCUDERO, "It is obviated, therefore, the important paper that the family, and in particular the woman can to play in the integration of
immigrant people, transforming the individual, truly vulnerable realities, into family units that it will prevent the problems of adaptation and marginalization, and that it will contribute to the social integration of the immigrants” (MOYA ESDUDEDO, 2000, p. 195).

Regarding the rules about the acquisition of nationality, it is necessary to say how, although the nationality is being conceived in Europe like an important step in the social integration of the immigrants\textsuperscript{xxii}, this rules continue based in the European countries in the criterion of the \textit{ius sanguinis}, ignoring the voices that claim the application of the principle of the \textit{ius soli} like more appropriate principle to the plural reality of the European countries. In Spain, the Law 36 / 2002, of October about the reform Civil Code in the nacionality matter, have not affected this historical approach in our Law.

In the treatment of the acquisition of the nationality for residence, the mentioned Law allows to acquire the Spanish nationality through a year of residence in Spain for those that have been born outside of Spain whose father or mother, grandfather or grandmother originally had been Spanish - that is the case of many Latin Americans -, but it doesn't allow the acquisition of the Spanish nationality in the cases in that the father, the mother, the grandfather or the grandmother were not of Spanish origin. According to the doctrine, this Law establish a differentiation and a discrimination between two groups of Spaniards, the born in Spain, the Spanish by birth, and those that had acquired the nationality in some of the foreseen legally suppositions (LARA AGUADO, 2003, p. 9).

For the Latin Americans that don't have the Spanish father, mother, grandfather, grandmother, the contemplated way expressly for the acquisition of the nationality is the legal residence in Spain during two years, which constitutes an exception to the treatment established with general character (ten years), to be foreigners specially linked with Spain. But the road of the residence it presents the limitations that we have referred above in relation to the legal permanency in Spain or in any other European country.

Besides the restrictions to the immigration that the European countries have established, it affects the women the selective politics with which the same ones are applied. Europe establishes the distinctions among groups of foreigners creating the different categories those it assigns the different rights and, with id, Europe repeats a practice coming from the Antiquity, in short, the treatment that Rome gave to the foreigners: Rome created the categories and it assigned the rights those included in the same ones in function of the interests of the State (PETIT, 1969, pp. 82- 84).

At the moment, it is possible to observe the differentiations among the foreigners, pej. when awarding the nationality as it has or it doesn't have a Spanish or a European ancestor; as it is married or in concubinage; when exercising the right to the family regrouping, according to the spouse's reagrupante quality, be already Spanish or European spouse, or another foreigner. And it is possible also to see the differentiations according to the social class of the foreigners. In this sense, it is necessary to mention the politics of selection of the immigrants in Germany where the Law of citizenship of 1999 allowed the entrance without problems to foreigners with good professional formation (mainly the computer coming from the East European or the India) (DELGADO GODOY, 2002, p. 8).

And the sexe is is also a criterion of differentiation. Inside the group of the foreign immigrants, the women constitute the group with less rights. In Europe, "the new traced frontiers are at the same time the reinforced frontiers against the poor immigrants and of gender frontiers. Suspects of being devoted to illegal works and of procreating in the heart of the rich world the smals that show in theirs dark skins that the third world exists, the women have bigger quantity of barriers to the immigration that the men and it is developed on them the stereotypes that devaluate them more although they provoke the smaller aggressiveness" (JULIANO, 1998).

The migratory processes, also, recreate the gender relationships as the unequal relationships between the men and the women. The women that emigrate still carrying out the traditional lists.
Fundamentally, they carry out the works of domestic or they are devoted to the prostitution. Also the dark side of the emigration, the white slavery and the coercive prostitution is demonstration of the masculine dominance. These phenomena, favored by the restrictive legislations around the immigration and to the asylum, have its seeds in the survival of the devaluated image of the woman that the States contemporaries direct and mainly indirectly, are going cherish.

In short, the traffic of women would be the reproduction of the ancestral exchange of women. And before the reproduction and reduplication of these phenomena, Europe repeats a historical tendency, in short, the treatment of Rome regarding the slaves, those it didn't recognize some personality in the civil law (they were considered as a thing (res mancipi), but, on the contrary, it included to them in the natural law (ius naturale), when considering that the slave didn't differ of the another men (PETIT, 1969, pp. 21, 22). This dualism served, all in all, to the maintenance of the slavery.

At the moment, in spite of the commitment of the different European countries with an international legislation that condemns the slave trade and all the forms of exploitation, the restrictive laws on the immigration stay and therefore, the women appeal to mafias for to come in the European countries. Our countries not recognize either the rights and duties to the immigrants as persons. Instead of the awarding of the rights that it would concern to the civil order or the administrative order (the licence for permanency, the access to the health, the sure repatriation), the punitive mechanisms are applied: the women that have been victims of white slavery, they are considered the illegal immigrants because they are not the identity car - practically they are died in the civil order - and, therefore, they are returned to theirs countries, with which, on the other hand, it remain untouched the net of traffic, which continues operating in the most complete impunity.

The nationals legal systems don't become aware of the interests of the women, and less still of the interests of the migrant women. The official speech plays with the social condemnation - also juridical and even criminal of these phenomena - and the tolerance toward its practice. The official speech even demonstrates the apparent worry for certain forms of violence, while it ignores the other. For example, it is usually to links the white slavery to the prostitution, around which the social and juridical attitudes have been always ambivalent, and other equally important forms of the subjection of the woman like the work exploitation or simply, the exploitation that the deregulation of the salaried work cause in the current economic systems, are ignored.

We believe that all demonstrates the persistence today in Europe of the subtle discriminations against the woman, although the obvious discriminations have been large extent overcome. The different forms of violence against the woman in Europe are the consequence of the not authentic recognition of the status of the women and theirs rights. It is due to the conception devaluated about the woman that has existed along the history of Occident, the some one that has impregnated all the fields: social, political and also juridical. Europe exported this conception in previous centuries with the pernicious consequences - that we have described above - in the developing countries, and it maintains even nowadays these conception in way surreptitious after the formally speeches about the equity.

We don't like to conclude but to insist in the responsibility of Europe in the past and in the present in the gestation and the reproduction of the violence against the women.

NOTES

1 We pick up along this paper some of the results of a wide research about the Peruvian legal system, the research still in execution phase.
2 We center on these two fields but it doesn't mean that we accept a strict division between the Public Law and Private Law. This division practically reproduces in the juridical order the traditional division among the public sphere/ the private sphere. We present separately these two fields by didactic reasons, but we put on emphasis
in the necessity of returning the eyes to the private field, and especially to the Family Law and its impact on the
women.

iii The real distinction is the existent between the public sphere and the domestic sphere. The division of
spheres has in the Modernity a different meaning to which had in the Antiquity. As MURILLO sustains, the
domestic sphere is not the sphere of the equality, which it is not the real existence for the women. See:
MURILLO, Soledad (1996): _El mito de la vida privada, [The private life myth]_ Siglo XXI Editores, S. A.
However, the masculine speech doesn't distinguish, or rather, it camouflages the domestic sphere, and it
proclaims the private field as the Kingdom of the freedom.

iv The influence of the Catholic Church has been enormous along the history of Peru, not only lower the
Spanish dominance but stil after the Independence. This power is very present in the current Peru. See:
MARIÁTEGUI, José Carlos (1965): _Siete Ensayos de Interpretación de la Realidad Peruana_[Seven Essais of

v On this matter, the PCC of 1984, in the same terms that its equivalent of 1936, consecrated a differential
 treatment between the men and the women: the fourteen years for the women, the sixteen years for the men.

vi Textually, the art. 340 PCC provides that: "If both spouses are guilty, the male children bigger than seven
years are in charge of the father and the minor daughters as well as the children younger than seven years under
the care of the mother, unless the judge determines another thing".

vii In Spain it existed a disposition with the mentioned tenor that it carried out the same attribution of the
custody from the children to the mother in the cases of the matrimonial crisis, but this disposition was reformed
by the Law of 11 / 1990, of October, the Law about the application of the non discrimination for sex reason
principle in the Civil Code.

viii We use this term in the pejorative sense, in accordance with the dominant conception about the childhood
that has reigned in the Occident, which, in theory, has been revolutionized from the promulgation of the
Convention of the Rights of the Children. The child is considered today a person, and it is preached their
autonomy like person.

ix For to sanction the physical and psychological violence (art. 333, inc. 2º PCC), an excessive and permanent
cruelty has been demanded, the requirements that the PCC doesn't contemplate and the same one violate the
fundamental rights, which are harmed with a single act of violence.

x These measures would be applicable in the framework of the matrimonial crises and among those that is the
suspension of the right of visits regarding the children, measure that we don't find in other legal systems.

xi In Spain before, according to the requirement of the resistance, created by the jurisprudence, a serious and
constant, tenacious and firm resistance was demanded, what implied the use of an invincible force. At the
moment, most of the doctrine and the jurisprudence demands a resistance of certain entity to configure the
categorized violence. See: HERRERA MORENO, Myriam (1999): _Mujer e igualdad: aspectos penales,
procesales y penitenciarios_, t. II de Mujer e igualdad, la norma y su aplicación [Woman and equality: penal,
procedural and penitentiary aspects, t. II of Woman and equality, the norm and its application], Instituto
Andaluz de la Mujer, Sevilla, España, pp. 229 a 242.

xii In Spain it was eliminated in 1989.

xiii The articles 121 A and 122 A, incorporate to the PPC by the Law nº 26788 of 1997, constitute the
aggravating forms of the crime of serious lesions and of the crime of slight lesions respectively; the art. 441º,
in second paragraph contemplates an aggravating circumstance for reason of the family ties that converts the
offense into a crime of lesions (art. 122), the art. 442º sanctions the abuse without lesion, and it contains an
aggravating circumstance when the aggressor is a spouse or concubine.

xiv In the eighties, the different projects wanted to modify the PPC of 1924 for to introduce the decriminalized
cases, well the three classic exemptions (the indications), or alone the exemption in the case of violation, or the
social abortion exemption. Only the feminist organization CLADEM - PERU was in favor of to decriminalize
the abortion, and in favor of guaranteeing the woman right to free, conscious and voluntary maternity, but it
adopted this proposal with others in favor of the system of indications (See: BERMÚDEZ BERMÚDEZ
castigadas [Watched and punished], Cladem Regional Lima; BERMÚDEZ VALDIVIA, Violeta (ed.) (1998):
Silencios Públicos. Muertes Privadas. La regulación jurídica del aborto en América Latina y el Caribe [Public
silences. Private deaths. The juridical regulation of the abortion in Latin America and the Caribbean],
Cladem, Lima, Perú, p. 90). At the moment, the peruvian doctrine - and also the peruvian feminist doctrine - is
in favor of the insert of the complete system of indications (the therapeutic, ethics and eugenic indications) and
it claim the insertion of these indications not only in the PPC but also expressly in the Constitution. This last
desire for the obtain the favor of the constitutional order constitutes a characteristic feature of the Peruvian
legal system.
According to the Wide Movement of Women, the Alejandro Toledo’s Administration wants to justify with the violations of rights that took place during the Fujimori’s Administration the annulment of the programs of family planning or the decrease of the budget for the birth-control sure methods.

The Peruvian emigration toward Europe doesn't come from the Andean area that is the one that manifests an ethnic and cultural specificity. In these area, the phenomena of cultural persecution have existed toward the women, like the terrorism of “Luminous Path” (in the eighties), which had as main victim to the Peruvian peasantry, this phenomenon determined the migratory movements at internal level. The politics of family planning carried out by the Peruvian Administrations have also constituted a form of cultural persecution toward the women when having as their main object to the poor women of the Andean area. But but there are not data about the women of these areas that have arrived in Europe for these reasons.

The migrants that want to work, they should present a copy of the work offer in Spain or an European country. However, some question arise like how to obtain this work offer, if the worker will be able to complete the established conditions for the entrance (the enough economic means, the round – trip ticket), if the manager will expect the time that the processing of the Visa...

In Spain, once carried out the legal entrance, the foreigner should obtain a residence permission and a work permission. However, the labor authority won't solve the work permission until not obtaining the favorable report of the corresponding governmental authority in connection with the possible concession of the residence permission.

Most of the international texts distinguish among the right to married and the necessary protection of the family like basic cell of the society: the art. 16, 1 and 3 of the UDHR, art. 16 of the European Social Charte of 1961, art. 23, 2 of the IPCPR, art. 17 of the IPSECR, both of 1966, art. 8 of the European Convention of human rights of 1950, besides the jurisprudence of the ECHR, which doesn't distinguish between the legitimate family and the natural family in connection with the protection of the family.

In this matter, it is necessary to mention the European Conferences about the nationality (Strasburgo, 1999 y 2001).

The sensibility at international level on the topic is remarkable, thus it is necessary to already remember the existent norms - although with its defects, gap and inefficiencies -, among other the following: the Convention of UN for the repression of the white slavery and the exploitation of the prostitution of another person, 1949 (art. 1º), the CEDAW, 1979 (art. 6); the Platform of Action of Beijing and the Declaration of Beijing, paragraph 130 b); the Convention of UN on Organized Transnational Crime, and the Protocol of UN on the prevention, repression and punishment of the white slavery trade, especially, of women and children; the Resolutions of European Parliament about the white slavery of 1993 and 1996...

In spite of its historical condemnation, which has fallen on the women and don't on the costumers, the prostitution has stayed as the other side of the ruled sexuality, represented by the marriage.

It is necessary to mention the case of United Kingdom in that exists a project of attendance to the traffic victims (March 10, 2003) in that is only contemplated the victims that are working in the prostitution, but not to the victims of labor exploitation neither the domestic slaves, trafficked from the West of Africa, and, still being centered in the prostitutes, they are a certain restrictions (for exemple, they have been detect inside UK, not in ports or traffic points ...). See: Women’s ASYLUM NEWS, Refugee Women’s Resource Project – Asylum Aid – Issue 31 April 2003.

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