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WOMEN'S NEW SERVITUDES IN THE AGE OF FREEDOM OF CHOICE

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DOI: 1017450/170209

Reception date 2nd August 2017; acceptance date 22th August 2017. This article is the result of research activities held at Dipartimento di Diritto - Università di Ferrara.

Abstract

The neoliberal order is imposing epochal transformations on the conceptions of subjectivity and legal and political institutions. Moreover, it is severely undermining the relevance of several principles that are fundamental for law in general and for women's rights in particular. Indeed, the neoliberal ideology seems to redefine the principle of freedom, reducing it to mere freedom of choice, and to dismantle the principle of equality in favour of a return to the regime of inequality (legal, political and economic). In this essay, I propose reopening the discussion on women's freedom and its genealogy in order to understand the thread of continuity that still keeps women mostly in a condition of servitude, which is seemingly being reinforced in the context of neoliberalism.

Keywords

Women's freedom, emancipation, rights, servitude, neoliberalism, freedom of choice.

Resumen

El orden neoliberal está imponiendo grandes transformaciones en las concepciones de subjetividad y en las instituciones legales y políticas. Sobre todo, está socavando la importancia de varios principios que son fundamentales para el derecho en general y

para los derechos de las mujeres en particular. En efecto, la ideología neoliberal parece redefinir el principio de libertad, reduciéndolo a una simple libertad de elección y desmantelando el principio de igualdad a favor de un regreso a un régimen de desigualdad (legal, política y económica). En este ensayo, propongo reabrir la discusión sobre la libertad de las mujeres y su genealogía para comprender el hilo de continuidad que aún mantiene a las mujeres en una condición de servidumbre, lo que aparentemente se refuerza en el contexto del neoliberalismo.

Palabras clave

Libertad de las mujeres, emancipación, derechos, servidumbre, neoliberalismo, libertad de elección.

1. The origins of women's legal and political freedom¹

The affirmation of rights in the Declarations of 1776 and 1789 brought to the fore two major issues, which fuelled and animated public and legal debate in the subsequent years and in turn soon gave rise to two very important demands ones that were fundamental for the construction of the political communities and societies to come: the abolition of slavery² and the end of women's servitude.³ In both cases, the central focus obviously lay on the attribution (to slaves and women) of fundamental rights, starting from rights to freedom.

There are numerous records attesting to the fact that such moral, political, ideological, and theoretical battles were often conducted simultaneously by people who were engaged on both fronts: those who declared to be in favour of one often supported the other and vice versa. Among the pioneers of women's rights, we need only think of Olympe de Gouges⁴, the Grimké sisters⁵, the feminists of Seneca Falls⁶, Emmeline Pankhurst⁷, and so on.

The interplay between the two debates and the two battles necessarily originated from the notions expressed, precisely, in the Declarations of Rights, whereby the principle of *equality* among human beings was affirmed for the first time in history, drawing

1. A previous (and partial) version of this essay was published in: O. Giolo, "Sulla libertà delle donne", in *La società degli individui*, 58, 2017, pp. 11-21. The quoted passages from Italian texts have been translated into English by the author.

2. On the slavery and the birth of the abolitionist movement, see: M. Sinha, *The Slave's Cause: A History of Abolition*, Yale University Press, New Haven, 2016; S. Drescher, *Abolition: A History of Slavery and Antislavery*, Cambridge University Press, Cambridge, 2009; T. McNeese, *The Abolitionist Movement: Ending Slavery*, Chelsea House Pub, New York, 2007. See also the recent publication: Th. Casadei, *Il rovescio dei diritti umani. Razza, discriminazione, schiavitù*, Derive Approdi, Roma, 2016, p. 73.

3. On the emergence of the debate on women's rights, see generally: E. Flexner, E. Fitzpatrick, *Century of Struggle: The Woman's Rights Movement in the United States*, Belknap Press, Cambridge, 1996; K. Kish Sklar, *Women's Rights Emerges within the Anti-Slavery Movement, 1830-1870: A Brief History with Documents*, Bedford/St. Martin's, 2000; L. J. Rupp, *Worlds of Women: The Making of an International Women's Movement*, Princeton University Press, Princeton, 1997. See also: A. Facchi, *Breve storia dei diritti umani. Dai diritti dell'uomo ai diritti delle donne*, Il Mulino, Bologna, 2013, p. 62.

4. Author of the play *Zamore and Mirza*. See also: O. De Gouges, *L'esclavage des Noirs ou l'heureux naufrage (1792)*, L'Harmattan, Paris, 2014.

5. Regarding their contribution see in particular: S. Grimké, A. Grimké, *On Slavery and Abolitionism: Essays and Letters*, Penguin Classics, New York, 2015.

6. See, for example, the biography of Lucretia Mott, who, like the other women who promoted the Seneca Falls Convention, was very active in the abolitionist movement. In this regard, see the well-known book: S. G. McMillen, *Seneca Falls and the Origins of the Women's Rights Movements*, Oxford University Press, New York, 2008.

7. What Emmeline Pankhurst wrote about her childhood and the abolitionist activism of her parents, who also supported the recognition of women's rights, is highly interesting: "Young as I was—I could not have been older than five years—I knew perfectly well the meaning of the words slavery and emancipation. From infancy I had been accustomed to hear pro and con discussions of slavery and the American Civil War. [...] Most of those who formed the circle of our family friends were opposed to slavery, and my father, Robert Goulden, was always a most ardent abolitionist" (E. Pankhurst, *My Own History*, Eveleigh Nash, London, 1914, p. 9).

attention to the conspicuous fact that there were, at that time, two large categories of people denied rights: slaves and women⁸.

Vis-à-vis both of these “classes” of subjects, therefore, the demands put forward regarded first of all the recognition of *freedom*⁹, the latter being understood as a condition, a *status*¹⁰ to be attributed to all persons, not only some of them, precisely by virtue of the principle of equality.

In the following centuries as well, the recognition of *rights to freedom* was an essential step toward achieving *emancipation* both for slaves and for women.

In this regard, it is worth highlighting the fact that the term *emancipation* was used in abolitionist and feminist literature in reference to an initial condition “shared” by slaves and women: a condition of subjection (individual) and oppression (collective) under male proprietary domination¹¹. However, as categories of subjection/oppression, slavery regarded men and women indistinctly, whereas that of women obviously regarded exclusively persons of the female sex. This difference would prove to be fundamental and lead to very different outcomes for the two “original” demands for freedom: conceived together, but quickly “separated at birth” because of “gender issues”.

2. Freedom and emancipation: two destinies for two genders

The developments that took place in relation to the demands for the abolition of slavery are well-known.¹² In a short time, numerous states adopted *ad hoc* laws, which

8. On the affirmation of the principles of freedom and equality in the Declarations of the late eighteenth century, see generally: N. Bobbio, *Letà dei diritti*, Einaudi, Torino, 1990, p. 89. Obviously, it was not only these two “classes” of people (slaves and women) who were actually excluded from rights: in the following centuries, thanks to the reflections promoted by critical legal and political theories, it became evident that the law operated in a discriminatory manner against any people who did not fit the “model” of a political and legal actor (Christian, heterosexual, able-bodied, wealthy, white, settled) implicitly assumed in the declarations of rights. On this point, I refer the reader to: M. G. Bernardini, O. Giolo, “Il parametro mobile. Note sul rapporto tra eguaglianza e differenza”, in *Filosofia politica*, 3, Il Mulino, Bologna, 2014, pp. 505-522.

9. There is obviously an infinity of literature on the subject of “freedom”. In this essay the word “freedom” is used in its “original” sense, or, as noted by Mauro Barberis: “the original and archetypal meaning of freedom –the one to which, through causal links [...] all the others are connected– it is thus freedom as a status” (M. Barberis, *Libertà*, Il Mulino, Bologna, 1999, p. 22). See also: E. Diciotti, “Limiti ragionevoli delle libertà: un quadro concettuale”, in *Ragion Pratica*, 20, June 2003, pp. 111-148. It is useful to note what Barberis highlights in regard to the fact that “the opposition between freedom and slavery, which originated in a domestic realm, was subsequently transferred into the political one” (ibid., p. 41): a similar dynamic also characterises the history of discrimination against women, so much so that the feminist critique is well-known to recognise the domestic space as the original place of oppression.

10. M. Barberis, *Libertà*, p. 22.

11. D. Losurdo, *La lotta di classe. Una storia politica e filosofica*, Laterza, Rome-Bari, 2013, p. 19. See also what Carole Pateman argues in her *The Sexual Contract*, Stanford University Press, Stanford, 1998.

12. In this case as well there is a large abundance of Italian and international literature. By way of example, for an overview of this subject, see: G. Heuman, T. Burnand (eds.), *The Routledge History of Slavery*, Routledge, London-New York, 2012; M.

banned the slavery and, alongside the legal recognition of this prohibition, a highly important cultural change imposed itself, which transformed the very issue of slavery into a legal, ethical and political taboo.

In fact, although many segregationist practices endured for a long time –and continued to be authorised and legitimised, not only vis-à-vis blacks but also Jews, Roma, disabled persons, homosexuals and so forth–, slavery was increasingly viewed as the ultimate limit on individual (legal) freedom. Moreover, as is well-known, the absolute prohibition of slavery also implied the denial of the possibility of self-enslavement: so much so that, with respect to the possibility of choosing to become slaves, although the radical liberal anti-paternalistic current has cyclically resurrected the issue¹³, in no country has the ban against slavery ever been called into question. On the contrary, in recent decades attention has rightly been focused on “new slavery”¹⁴, resulting from mostly economic transformations that have impacted vast areas of the world.

As a consequence, once an end was brought to slavery, the subjective legal scope of “power”,¹⁵ understood as “domination”,¹⁶ was generally also greatly reduced: today it can be exercised up to that unbreachable limit beyond which one person would have another at his full *disposal*¹⁷. Similarly, the individual condition of “liability”¹⁸ today

Fioravanti, “Il lato oscuro del moderno. Diritti dell’uomo, schiavitù ed emancipazione tra storia e storiografia”, in *Quaderni fiorentini per la storia del pensiero giuridico moderno*, 42, 2013, pp. 9-41; see also T. Casadei, S. Mattarelli (eds.), *Il senso della Repubblica. Schiavitù*, Franco Angeli, Milano, 2009.

13. For an overview of paternalism and anti-paternalism in the Italian debate, I refer the reader to E. Diciotti, “Preferenze, autonomia e paternalismo”, in *Ragion Pratica*, 24, June 2005, pp. 99-118; and G. Maniaci, “Proibizionismo e antipaternalismo giuridico”, in *Ragion pratica*, 1, 2014, pp. 205-232.

14. Concerning the so-called “new slavery”, I refer the reader to the fundamental text by K. Bales, *Disposable People: New Slavery in the Global Economy*, University of California, CA, 2012. As regards the Italian debate in particular: E. Santoro, “La regolamentazione dell’immigrazione come questione sociale: dalla cittadinanza inclusiva al neoschiavismo”, in E. Santoro, *Diritto come questione sociale*, Giappichelli, Torino, 2010; B. Casalini, “Migrazioni femminili, controllo dei confini e nuove schiavitù”, in *Ragion pratica*, 35, December 2010, pp. 455-468; Th. Casadei, “La schiavitù dei contemporanei”, in *Ragion pratica*, 2, 2010, pp. 333-344.

15. Drawing on the “legal conceptions” of Wesley Hohfeld, we could, in fact qualify, the legal position of a subject who made slaves of others as “power”. Indeed, Hohfeld himself argued that “power” should be understood as the capacity to interfere in the legal sphere of others, that is, to dispose of others: this is exactly what happened in the master-slave relationship, as the latter was at the full legal disposal of the former. See W. N. Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning* (1917), Ashgate, Dartmouth, 2001, p. 12.

16. Legal language and legal theory do not yet seem to have grasped what was suggested in the realm of political philosophy, in different periods, by Max Weber and Hannah Arendt on the distinction between *power* and *domination*, with reference in particular to subjective conditions. See: M. Weber, *Gesamtausgabe*, Mohr Siebeck, Heidelberg, 1989 and H. Arendt, *On Violence*, Harcourt, New York, 1970, p. 39.

17. It may be useful to consider, by way of example, the international legal definition of slavery adopted in 1926 by the League of Nations, according to which slavery is “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”; on this point see: Th. Casadei, “Bioetica, diritto, politica: corpo e forme della schiavitù”, in Th. Casadei, S. Mattarelli (eds.) *Il senso della Repubblica. Schiavitù*, pp. 67-89, on p. 74.

18. The qualification of the condition of a person reduced to slavery refers to the situation corresponding to power, or “liability”, which seems to express the actual condition of a slave better than other “negative” subjective positions (“no-right”

encounters the same limit, beyond which it would be tantamount, precisely, to mere slavery.

The demands for women's rights, by contrast, as well as the emancipation of women from the condition of servitude –this, too, is a well-known story– led to developments that were completely different from those leading to the abolition of slavery.

Firstly, it is interesting to note the widespread use in the literature –from the very beginning– of the term “servitude” with reference to women's condition¹⁹. The adoption of this term made it possible to indicate the subjection of all women, without any distinction between those who were formally in a condition of “slavery” or of “freedom”, thus underscoring the fact that, irrespective of whether they were in situation or the other, women were in any case in a state of “servitude”. For women who were formally free, therefore, the term “freedom” took on a profoundly different meaning compared to when the same word was used in reference to a male individual. In actual fact, “free women” did not exist at the end of the 18th century: they were all in a condition of “servitude”. For this reason, in the past, for all women, there had actually been an overlap between the condition of slavery and that of servitude, which, if one analysed the facts and the legal aspects, could be differentiated only on the basis of some “nuances” (varying over time and in manner and place) mainly related to the methods used to keep women who were not slaves in a condition of servitude²⁰. Significant in this regard is the argument of John Stuart Mill, according to whom the main difference between the rule of men over women and the rule over slaves (and thus women slaves) was that it was accepted “voluntarily”²¹. According to Mill, in fact, male dominance was not founded exclusively on force, but rather on consent: “Men do not want solely the obedience of

and “duty”). On “liability”, again see: W. N. Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, pp. 12-19. The concepts of “servitude” and “slavery” are moreover “semantically contiguous”: “the translatability of the terms servitude and slavery is widely attested, both from a legal standpoint, where the boundaries between the two concepts have often been blurred, and in the tradition of political thought [...] The semantic contiguity between servitude and slavery is more relevant when the terms are used for analytical and descriptive purposes. In this case, as soon as we go beyond the narrow sense in which it designates the feudal system of serfdom, servitude generally means a particular condition of dependency: particular in that it is absolute, and absolute since it is such as to infringe on the autonomy of a person or a community at a profound level. It is at this level that servitude (*servitude*) and slavery (*esclavage*) can be taken as synonyms” (G. Paoletti, “Servi volontari o schiavi contenti? Il problema della servitù volontaria da la Boétie a Berlin”, in *Ragion pratica*, 35, December 2010, pp. 393-408, on pp. 395-398).

20. If, indeed, “self-ownership” can be considered a useful criterion for distinguishing between servitude and slavery (in that it generally exists in the former and is always absent in the latter), in actual fact this distinguishing criterion does not seem to work when we are referring, precisely, to the condition of women: after slavery was abolished, and thus (all) women became owners of themselves, they nonetheless remained “at the disposal” of those who continued to “possess” them (a term also used with a sexual connotation, with the aim of affirming the possession of the female body) by virtue of being a male individual (father, brother, husband, son, and so on).

21. J. S. Mill, “The Subjection of Women (1869)”, vol. XXI, in J. S. Mill, *Collected Works of John Stuart Mills*, Routledge and Kegan Paul, London, 1963-1991, III ed., pp. 256-340.

women, they want their sentiments. All men, except the most brutish, desire to have, in the woman most nearly connected with them, not a forced slave but a willing one, not a slave merely, but a favourite²².

Secondly, the calls for women's rights obtained no results for over a century: indeed, it was not until long after the abolition of slavery that women were granted recognition of a fundamental right, the right to vote, between the end of the nineteenth century and the early years of the twentieth century²³. And with respect to women's access to rights, real progress was only achieved in the middle of the twentieth century, thanks to all the legal reforms promoted and then adopted in different countries at different times²⁴.

The result of this different "timing" in the fulfillment of demands was that although all men and women were freed from slavery, in reality all women long remained in a condition of "servitude/slavery", being "originally" deprived of fundamental rights and freedoms.

We could thus go so far as to argue that the abolition of slavery did not regard all people at all, but only human beings of the male sex²⁵, while women were long kept in a legal condition that was not openly qualified as slavery, but in actual fact fell within the definition of slavery: not only because of the total absence of freedom and thus of rights, but also and above all in light of the "subjection" that had long characterised their legal condition, with the consequent typical subjection of the female body as an *object* at the *disposal* of male individuals²⁶.

22. J. S. Mill, "The Subjection of Women (1869)", pp. 89-90. Mill continues by affirming that: "The masters of all other slaves rely, for maintaining obedience, on fear; either fear of themselves, or religious fears. The masters of women wanted more than simple obedience, and they turned the whole force of education to effect their purpose. All women are brought up from the very earliest years in the belief that their ideal of character is the very opposite to that of men; not self will, and government by self-control, but submission, and yielding to the control of other" (Mill, *ibid.*, p. 271). Compare what Antonella Besussi has written in regard to the particular nature of "patriarchal domination", which consists in "sentimentalising the obedience of women, effectively confusing the coercive aspect and the consensual aspect of their subordination, in order to arrive at what we might call *voluntary slavery*" (A. Besussi, "La libertà di andarsene. Autonomia delle donne e patriarcato", in *Ragion pratica*, 23, December 2004, p. 436).

23. As we all know, women were granted the right to vote in different periods: in some countries women were first able to exercise voting rights between the end of the 19th century and the beginning of the 20th century (respectively in New Zealand, in England and Denmark) while in others women's suffrage was introduced after World War II (for example in Italy) or even as late as the 1970s (like in Switzerland); in some countries, still today women either cannot vote or only vote at the local level (we need only consider the case of Saudi Arabia).

24. In fact, in many countries it was not until the second half of the 20th century that legal systems underwent major reform in order to implement the principle of equality between the sexes: on this point, I refer the reader once again to A. Facchi, *Breve storia dei diritti umani. Dai diritti dell'uomo ai diritti delle donne*, p. 133.

25. As Carla Lonzi has written: "We asked for equality in the 18th century and Olympe de Gouges was guillotined for her *Declaration of the Rights of Women*. Women's demand for equality with men in respect of rights historically coincides with the affirmation of the equality among men" (C. Lonzi, *Sputiamo su Hegel*, et al., Milano, 2010, p.13).

26. See, for example, what was highlighted by Maria Virgilio in her essay dedicated to analysing the female figure in the Rocco Code, the Italian Criminal Code: a woman was/is represented as an "object" at her husband's disposal and a person subject to the authority of others (see: M. Virgilio, "La donna nel Codice Rocco", in T. Pitch, *Diritto e rovescio. Studi sulle donne e il controllo sociale*, ESI, Napoli, 1987, pp. 39-75, p. 45).

An immediate objection to this brief reconstruction could be that in actual fact it was not only women who remained in a condition of legal and political subjection after the abolition of slavery: Afro-Americans, Jews, homosexuals, and the disabled are only some of the classes of individuals who continue to experience a limitation of rights. However, it can be easily noted that, unlike these other categories of people, or rather, cutting across these categories, for a long time after slavery was abolished women remained in a condition not of limitation, but rather one marked by a total absence of fundamental rights and freedoms. Therefore, notwithstanding the persistence of some major, dramatic segregationist and discriminatory practices, the abolition of slavery seems to have originally benefited *all* men, without including women.

And still today, this original defect of the abolition of slavery seems to represent a sort of “original sin” in the present ethical, political and legal frameworks, since they have been shown incapable of fully recognising women’s freedom, and thus of attributing full legal and political subjectivity to women, as well as eliminating every discrimination that reiterates, now like then, the “subjection” of women and their bodies to the power of others (men).

3. The (very slow) emancipation: (sexist) slavery-like practices and (neo-) liberal rhetoric

Women’s liberation from the condition of slavery was thus slow and progressive, not only in factual terms but also on a purely political-philosophical and legal-theoretical level, because the legal and political subjectivity of women took shape and gained substance slowly and progressively.

For this reason, numerous questions can inevitably still be raised today: so when were women actually *freed* from slavery? Or rather: have women really been emancipated from the condition of servitude? That is, are women *free*?

The question posed by Catharine Mackinnon (“are women human?”²⁷) finds echoes in other similar questions and the assonance hardly seems unreasonable, given that slavery itself received ethical and political legitimisation precisely in the affirmed existence of different hierarchies of human beings²⁸. In the present context, therefore, the most

27. C. MacKinnon, *Are Women Human? And Other International Dialogues*, Harvard University Press, Boston, 2006. See also the collection of essays by C. A. MacKinnon edited by A. Besussi and A. Facchi: *Le donne sono umane?*, Laterza, Roma-Bari, 2012.

28. “It is possible to affirm, therefore, that slavery can be identified in every case in which there is an attempt to convert the

relevant question seems to regard the analysis of the current essence of women's freedom in view of their acquisition of fundamental rights, the aim being to understand the reasons for the persistence, whether latent or manifest, of practices and realms (above all political and legal) which maintain or reaffirm men's power of disposal of women and their bodies.

Are there in fact practices and institutions still in place today which reflect that original power of disposal? Do rules, legal arrangements and practices deriving from the former condition of servitude still exist?

Such questions appear even more significant if we consider that the abolition of slavery resulted in the illegitimacy of slavery-like practices and a constant attention to the re-emergence of forms and methods of para-slavery or neo-slavery. Emblematic in this regard are the issues related to human trafficking, which in the literature and from a legal (legislative and jurisprudential) standpoint are easily linked to the problem of slavery and its continuous and possible new manifestations²⁹.

However, the same has not happened in the case of women. The slavery-like practices typically conceived for women –practices of sexist origin, hence sexist practices– endured for a long time after the abolition of slavery: from brothels to forced marriages, to honour killings, to control over sexuality and so forth. Only in much more recent times, starting from the second half of the twentieth century in particular, and certainly not until after the acquisition of fundamental rights, such gendered practices have been progressively eliminated, thanks, inevitably, to the cultural change that the presence of women on the public scene has brought with it.

The abolition of many sexist norms and the banning of some sexist practices were thus obtained very slowly: indeed, an international convention condemning violence against women, which corresponds to the original and total (male) power of disposal of the body –life, integrity, and death– of women, was not adopted until 2011.³⁰

This undeniable graduality and the abrupt reversals that women's rights continue to experience and confront can thus be viewed not as accidents, or temporary setbacks, but rather as clear signals of the precarious and partial nature of women's freedom still

domino theory into an 'ontology of dependency'; human beings are hierarchised by means of a rigidly binary scheme: there are the strong and the weak, the free or servants, the pure or impure, by *nature* or as a result of *naturalisation* processes" (Th. Casadei, *Il rovescio dei diritti umani*, p. 80). See also: P. G. Solinas, *La dipendenza. Antropologia delle relazioni di dominio*, Argo, Lecce, 2005.

29. There is ample literature on this subject, see: J. Allain, *Slavery in International law: of Human Exploitation and Trafficking*, Nijhoff, Leiden-Boston, 2013; S. Forlati, *La lotta alla tratta di esseri umani fra dimensione internazionale e ordinamento interno*, Jovene, Napoli, 2013; S. Scarpa, *Trafficking in Human Beings: Modern Slavery*, Oxford University Press, Oxford, 2007. 30. P. Parolari, "La violenza contro le donne come questione (trans)culturale. Osservazioni sulla Convenzione di Istanbul", in *Diritto e Questioni pubbliche*, 14, 2014, pp. 859-890.

today. In short, the delays and difficulties seem to represent the outcome or inevitable residual manifestations of the original status of servitude, today poorly identified or unrecognised.

Now, by placing the subject of women's freedom –as a *status* (and not *only* a list of rights)– back at the centre of legal and political reflection, we might more clearly perceive that the process of women's *emancipation* (from servitude, subjection, oppression) has not yet concluded. From this different perspective we could reflect in a new way about the many gendered slavery-like practices that continue to survive and maintain women in a latent, unrecognised, precisely, but constant condition of servitude/slavery.

We might also recognise the dual deception that presently underlies the persistence of such practices.

The first deception regards the fact that not all women today find themselves in a condition of servitude, but only those who live in a condition of subjection due to the sexist practices, sometimes legally sanctioned or tolerated, they are still victims of. In fact, thanks to the process (albeit partial) of emancipation that has taken place up to now, thanks to legal reforms and the recognition of rights, and women's entry into the political and job worlds, oppression is experienced by women in a highly differentiated manner. The diversification of existential experiences, which are presently much less “serial” than they used to be³¹, is obviously the result of complex dynamics involving the cultural, religious, economic, and ideological variables –just to name a few– which characterise different social contexts. This distinction among the conditions experienced by women proves highly effective on a rhetorical and political level³², because it prevents many of them from recognising that they are not fully emancipated individuals and conveys the impression that, in actual fact, women are by now *all* free and emancipated.

The second deception concerns the usability of the typically liberal argument of “choice”, which, as already highlighted, has become totally pointless in respect of slavery –given that today no one can choose to reduce himself or herself to such a condition– but is still very powerful when it comes to sexist practices, above all within the framework of the new neoliberal order, as I shall explain shortly³³, so much so that it has given rise to a new approach toward women's rights, so-called *choice feminism*³⁴. As is well-known,

31. On the heterodesignated seriality of women's lives, see, among others, D. Morondo Taramundi, “Emancipazione e libertà femminile nel tempo del post-femminismo”, in O. Giolo, L. Re (eds.), *La soggettività politica delle donne. Proposte per un lessico critico*, Aracne, Roma, 2014.

32. On this point I refer the reader to: O. Giolo, “Il giusfemminismo e il dilemma del confronto tra le culture”, in Th. Casadei, *Donne, diritto, diritti. Prospettive del giusfemminismo*, Giappichelli, Torino, 2015.

33. See below.

34. For an overview of the debate on this subject, see in particular B. Casalini, “Rappresentazioni della femminilità, post

according to this latter current every woman should be granted *freedom of choice* in deciding what is or is not legitimate for herself and her body, without any paternalistic interference on the part of the law and politicians³⁵. From this perspective, therefore, the more we can choose freely, the freer we will be; and we can choose anything, even to subject ourselves to or engage in practices (originally) associated with slavery.

In my view, however, this reliance on the “choice” argument clearly attests to the existence of that “separation” which originally occurred between slaves’ and women’s demands for freedom. If indeed in the case of slavery it has become wholly useless and cannot justify voluntary self-enslavement, in the case of women it continues to allow sexist, slavery-like practices to be cyclically re-legitimised, thereby frustrating the demands for emancipation.

So it is that, on the one hand, slavery-like practices that were once systematically imposed on *all* women to keep them in servitude (such as, for example, control over sexuality and reproduction, domestic servitude and so on) end up not being perceived any longer as enslaving solely because now they affect only *some* women (but still many in actual fact³⁶). On the other hand, the free choice rhetoric seems paradoxically to highlight the legal unsustainability of such practices precisely in light of the principles of freedom and equality: therefore, they end up being regarded as legitimate only when they are relegated to the “private” sphere of individual choices, tied to conceptions of well-being and pleasure, rather than justice³⁷.

This also explains the daily qualification of many sexist practices as “moral issues”³⁸, instead of what they really are: issues of freedom, equality and power, and thus tied not to a conception of what is good or ethical, but rather to *original distributions of the power to dispose of another’s body*, resulting from an “original” condition of subjection imposed on women. Never thoroughly understood and still not entirely transcended.

femminismo e sessismo”, in *Iride*, 62, Il Mulino, Bologna, 2011, pp. 43-60.

35. For a critical interpretation of so-called, see the essays contained in *Perspectives on Politics*, issue 8, 1, 2010: J. Kirkpatrick, “Introduction: Selling out? Solidarity and Choice in the American Feminist Movement, Symposium: Women’s Choices and the Future of Feminism”, pp. 241-245; L. J. Marso, “Feminism’s Quest for Common Desires”, pp. 263-269; M. Ferguson, “Choice Feminism and the Fear of Politics”, pp. 247-253, C. Snyder-Hall, “Third-Wave Feminism and the Defense of Choice”, pp. 255-261; N. Hirshmann, “Choosing Betrayal”, pp. 271-278.

36. For a general insight into women’s condition on a global level it is interesting to consult the annual report published by UN-Women, in: <http://www2.unwomen.org/-/media/annual%20report/attachments/sections/library/un-women-annual-report-2015-2016-en.pdf?v=1&d=20160629T203016>; see also the *Global gender gap report*, drawn up on a yearly basis by the World Economic Forum, in <http://reports.weforum.org/global-gender-gap-report-2016/the-global-gender-gap-report-2016/>.

37. L. Gianformaggio, “Soggettività politica delle donne: strategie contro”, in L. Gianformaggio, *Filosofia e critica del diritto*, Giappichelli, Torino, 1995, p. 171.

38. C. MacKinnon, “Not a Moral Issue” (1983), in EAD., *Feminism Unmodified. Discourses on Life and Law*, Harvard University Press, Cambridge, 1987, pp. 146-162.

4. Women's freedom in the era of neoliberalism: an unresolved issue

The present-day approach to the issue of women's freedom thus appears highly problematic in a context in which freedom, in general, has undergone a major resignification as a result of neoliberal ideology. As Wendy Brown and Nancy Fraser have highlighted in their work³⁹, neoliberalism, far from being circumscribed to the economic sphere, has been strongly impacting the legal and political frameworks of constitutional democracies and has ended up acting directly on contemporary lifestyles/ways of life, as well as sharply twisting the notion of legal and political subjectivity⁴⁰. These transformations have prompted extensive upheavals in both the public and private realms⁴¹: we need only think of the progressive "depoliticisation" of the subject in favour of an increasing, all-encompassing marketization which has invaded all spheres of life and of the personality. A contemporary individual appears as someone who is competitive and precarious, who tends to monetise his or her existence and to evaluate every aspect of his or her life in economic terms⁴². The result, as Brown points out, is a profound undermining of the principles of *freedom* and *equality*, which are transformed into demands for freedom in making (market) choices and the acceptance of inequalities (which are inevitable and a natural consequence of market dynamics).

In actual fact, *freedom* and *equality* are two principles underpinning feminist thought: as observed at the beginning of this essay, the origins of feminist legal theory lie precisely in the affirmation of these two fundamental principles of law and politics⁴³.

39. At the beginning of his book *Undoing the Demos*, Brown writes: "Neoliberalism, a peculiar form of reason that configures all aspects of existence in economic terms, is quietly undoing basic elements of democracy. These elements include vocabularies, principles of justice, political cultures, habits of citizenship, practices of rule, and above all, democratic imaginaries" (W. Brown, *Undoing the Demos. Neoliberalism's Stealth Revolution*, Zone Books, New York, 2015, p. 17). Cf. N. Fraser, *Fortunes of Feminism: From State-Managed Capitalism to Neoliberal Crisis*, Verso Books, New York, 2013; and EAD, "Oltre l'ambivalenza: la nuova sfida del femminismo", in *Scienza & Politica per una storia delle dottrine*, 54, 2016, pp. 87-102.

40. A great deal of literature in both the fields of political philosophy and legal philosophy addresses the issue of the major present-day redefinition of legal and political power, as the very birth of the journal *Soft Power* demonstrates. By way of example, as regards the complexification of contemporary law, with the associated multiplication and simultaneous breaking down of the centres of power, see B. Pastore, *Interpreti e fonti*, Cedam, Padova, 2015 and ID, "Soft Law y la teoría de las fuentes del derecho", in *Soft Power. Revista euro-americana de teoría y historia de la política y del derecho*, 1, 2014, pp. 75-89. For insights into the transformation of power, see L. Bazzicalupo, *Politica, identità, potere. Il lessico politico alla prova della globalizzazione*, Giappichelli, Torino, 2004.

41. See the assessment of S. Petrucciani, "Forme del potere nella globalizzazione", in *La Cultura*, 1, April 2016, pp. 163-170. Cfr. W. Brown, *Undoing the Demos*, p. 28.

42. Luciano Gallino writes that, in recent times, the main objective has become to "maximise and accumulate, in the form of capital together with power, the value that can be extracted from the largest number of human beings": the new form of "extraction of value" indeed "tends to embrace every moment and every aspect of existence" (L. Gallino, *Finanzcapitalismo. La civiltà del denaro in crisi*, Einaudi, Torino, 2011, p. 5).

43. In this regard see C. Arruzza, L. Cirillo, *Storia delle storie del femminismo*, Alegre, Roma, 2017. On the same point, I also

An ideological perspective that is clearly in contradiction with freedom and equality –as in the case, precisely, of neoliberalism– will thus be in stark contrast with feminist thought, which draws lifeblood from these ideals.

In this regard, the arguments advanced by Nancy Fraser, which have triggered so much debate concerning a dangerous complicity between feminism and neoliberalism, seem to be particularly significant⁴⁴, above all in light of what was stated earlier in relation to the (still) precarious women's freedom.

Fraser maintains that contemporary feminism converges dangerously on several positions of neoliberalism. A part of feminist critique and feminist legal theory seems in fact not to have understood that the free choice argument is today brutally exploited by neoliberal ideology, which in the name of a false idea of freedom re-proposes a “masculinist romance of the free, unencumbered, self-fashioning individual”⁴⁵ with the consequent superseding of principles and constraints whose relevance and aims were very clear up to a short while ago⁴⁶.

Freedom and equality, after all, were principles espoused precisely, on the one hand, as limits to arbitrary power and against slavery, exploitation, servitude, and oppression; and on the other hand, against the possibility of disposing of oneself and one's rights in the name of need⁴⁷. The rights ensuing from these two fundamental principles are non-disposable for this reason: because neither those who dominate nor those who are dominated can decide to dispose of them in the name of a maximum gain or survival⁴⁸.

refer the reader to O. Giolo, “Oltre la critica. Appunti per una contemporanea teoria femminista del diritto”, in *Diritto & Questioni pubbliche*, 15, 2, 2015, pp. 63-82.

44. Cf. N. Fraser, *Fortunes of Feminism: From State-Managed Capitalism to Neoliberal Crisis*, and Ead., “Oltre l'ambivalenza: la nuova sfida del femminismo”, H. Eisenstein also expressed herself along the same lines in “A Dangerous Liaison? Feminism and Corporative Globalization”, in *Science and Society*, 69, 3, 2005, pp. 487-518. For a reconstruction of the debate, see B. Casalini, “Neoliberalismo e femminismo”, in *Jura Gentium. Rivista di filosofia del diritto internazionale e della politica globale*, vol. XII, 2015, pp. 31-65.

45. N. Fraser, “Oltre l'ambivalenza: la nuova sfida del femminismo”, p. 98.

46. Michel Foucault's considerations concerning the new forms of power which is exerted only on “free individuals” are well-known; see M. Foucault, *Dits et écrits II*, 1976-1988, Gallimard, Paris, 2001. Regarding the new subjectification/ subjection mechanisms, see also L. Bazzicalupo, *Dispositivi e soggettivazioni*, Milano, Mimesis, 2013; E. Stimilli “La fiducia nel mercato. Una interpretazione ‘religiosa’ del neoliberalismo a partire da Weber, Benjamin e Foucault”, in *Filosofia politica*, 1, January 2016, pp. 123-140; S. Chignola, S. Mezzadra, “Fuori dalla pura politica. Laboratori globali della soggettività”, in *Filosofia politica*, 1, April 2012, pp. 65-81.

47. It is worth mentioning what Weber wrote regarding the features of modern capitalism: among the presuppositions of his affirmation the author included *free labour*, i.e. persons must be present who are not only legally in the position, but economically compelled to sell their labour in the market. M. Weber, *General economic history*, Dover Publications, New York, 2013. (Trad. it., last chapter: M. Weber, *Le origini del capitalismo moderno*, Roma, Donzelli, 2009, p. 17).

48. In this regard see L. Ferrajoli, *I diritti fondamentali. Un dibattito teorico*, Laterza, Roma-Bari, 2001, p. 15, and Id., *Principia Juris. Teoria del diritto*, 1, Laterza, Roma-Bari, 2007, p. 762. These are obviously arguments that meet with the dissent of anti-paternalists. For an overview see E. Diciotti, “Preferenze, autonomia e paternalismo”, in *Ragion Pratica*, 24, June 2005, pp. 99-118.

At present, such arguments are completely overturned by the dominant rhetoric in the name of individual self-determination and self-designation, thus resulting in a total absence of reflection on the actual meaning of decision-making autonomy (which precisely feminist thought, together with other critical legal theories, including disability studies, contributed to redefining from the perspective of “relational autonomy”⁴⁹), which is never the fruit of exclusively individual processes.

Neoliberalism has thus changed the meaning of the term “freedom”, reducing it to “free choice without limits”: from this perspective, every option becomes practicable and usable, and legally enforceable to boot. In this sense, neoliberalism seems to represent the profound expression of a radical anti-paternalism, the same, as it were, which seems to inspire some aspects of so-called *choice feminism*⁵⁰. In fact, the latter appears to reinforce the neoliberal approach and indeed provides further arguments to support it insofar as it contributes to “renaming” and “resignifying” slavery-like practices traditionally associated with patriarchal control of women’s bodies⁵¹. *Choice feminism* legitimises the commodification of sexuality and reproduction exclusively on grounds of autonomy in individual choices⁵², evading any in-depth examination of the complicated relationship between law, rights, body, sexuality, power and market, and refraining from raising any questions about the still problematic and precarious women’s freedom⁵³.

In truth, what feminism inclined towards neoliberalism seems above all to underestimate is the fact that such autonomy in making choices has to be exercised, precisely,

49. Concerning this valuable elaboration of feminist legal theory in collaboration with the *disability studies* current, see M. G. Bernardini, *Disabilità, giustizia, diritto. Itinerari tra filosofia del diritto e Disability Studies*, Torino, Giappichelli, 2016.

50. Fraser maintains that one affinity between contemporary feminism and neoliberal ideology regards the critique of authority: male and paternalistic in the feminist view, and an obstacle to capitalist expansion in the neoliberal view. According to Fraser, by reinforcing each other, they have both greatly undermined the social consciousness which prioritises social solidarity (N. Fraser, “Oltre l’ambivalenza: la nuova sfida del femminismo”, p. 100).

51. We need only consider prostitution, which has been renamed “sex work”, and surrogate motherhood, which has become “gestational carriage”.

52. M. Cooper, C. Waldby, *Clinical Labour: Tissue Donors and Research Subjects in the Global Bioeconomy*, Duke University Press Books, Durham, 2014. With reference to current processes of marketisation, use is generally made of the term *commodification*, which indicates the dislocation of the human person from the sphere of indisposability to that of free individual disposability. Cf. M. J. Radin and M. Sunder, “The Subject and Object of Commodification”, in M. M. Ertman, J. C. Williams (eds.), *Rethinking Commodification: Cases and Readings in Law and Culture*, New York University Press, New York-London, 2005, pp. 8-29.

53. The reference is obviously above all to the issues of prostitution and surrogate motherhood. In this regard, some feminists talk about a veritable “expropriation” of female sexuality by neoliberalism, an expropriation that become industrialised and globalised (see: A. Ferrand, “La ‘liberation sexuelle’ est un guerre économique d’occupation”, in *Genre, Sexualité & Société*, 3, printemps, 2010).

olpwithin the space of the market, thus obeying two neoliberal dogmas: generalised marketisation of every sphere of human life, on the one hand, and self-regulation of the market, as the foremost realm of free exchange and free determination, on the other.

Feminist legal theory, by contrast, presently has a fundamental task: to challenge precisely these two assumptions and emphasise the possibility of *removing* personal and public life as much as possible *from the market*, continuing to unveil the profoundly class-based, racist and sexist nature of the market itself, always obedient to (and wholly compatible with) segregationist and discriminatory logics, as well as practices based on domination, exploitation and oppression.

Otherwise, as Fraser writes, we will do nothing but replace patriarchal domination with neoliberal domination⁵⁴.

Moreover, the thread of continuity between these two forms of domination lies precisely in the continuity of sexist practices and servitude, which, now as in the past, rely on the same mechanisms (and the same methods) of subjection and exploitation of the female body. Consequently, feminist legal theory must necessarily also address the issue of women's bodies and the present legal-political-economic rules in light of neoliberal ideology, in order to be able to understand to what degree the neoliberal liturgy of the "free individual" is undermining several epochal conquests of women in respect not only of equality and rights but above all in respect of freedom.

If women were once again to be considered a *commodity*⁵⁵, no longer as an *object* at the *disposal of the traditional patriarchy*, but as a *product* at the *disposal of the market and the neoliberal patriarchy*, the result would not change much: neither as far as the condition of freedom and prospects for emancipation are concerned, nor in relation to an enhancement of legal protections.

The most likely outcome would rather be a significant setback in the legal and political conquests of the last two centuries, precisely in respect of *equality* and *freedom*.

54. N. Fraser, "Oltre l'ambivalenza: la nuova sfida del femminismo", p. 100.

55. Regarding the current processes of transformation of labour into a commodity, I will mention what Umberto Romagnoli writes: "In fact, the present-day re-commodification of labour is undoubtedly a more serious transgression than the one that started the whole process, because it undermines the foundation of constitutional democracies where the principle that 'labour is not a commodity', inscribed in the genetic code of the Geneva-based organisation which is the guardian of international labour law, results in a whole variety of rules that demand a scope of application" (U. Romagnoli, "Momenti di storia della cultura giuridica del lavoro", in *Lavoro e diritto*, 1, 2016, pp. 3-15, p. 10). On the "dismantlement of labour law as the agenda of neoliberal ideology", see also L. Ferrajoli, *La democrazia attraverso i diritti*, Roma-Bari, Laterza, 2013, p. 157.