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EDITORIAL

GENDER INSTITUTIONS LAW

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The struggle for rights and the challenges of gender

The discontinuous and steep routes featured in the gender rights narration highlight the fragility of the individuals' guarantee instruments, as well as the gap - never fully avoidable - between *normativity* and *effectiveness*, the domain of the form and that of the social practice.

Indeed, the discourse on human rights generally tends, to reveal that within the request for recognition as coupled with the demands for differentiation and specification of the needs of certain groups, there lies its emancipatory capacity, its transposition onto the legal plane of a normative ideal. As a normative ideal, it is brought to completion through a process of stabilization that even when progressive it never overlooks the projective dimension from which it stemmed.

Undoubtedly, the additional appearance of the constitutional state entitles the positivization of a catalogue of human rights, mainly delineated by the eighteenth-century rationalistic natural law. This catalogue lies at the foundation of the processes that have democratized our normative systems. That is because it questions the adequacy of the traditional categories of legal science in the light of a problematization of the relations between law and morality and the re-evaluation of a rationality, as immanent in the Constitution, and whose contours are being redrawn on a case-by-case basis.

As Bobbio (1990) pointed out, this is a radical reversal in perspective, which has asserted itself as the outcome of the representation of the political power. As proper to the modern state, this power has been increasingly looked at from the point of view of the

human rights of citizens who are now no longer subjects; meanwhile, on the domain of theory, it is a power able to attest the historical dimension, in which these human rights are necessarily bond with determined circumstances, in turn marked by struggles to defend the new freedoms against the old powers. Struggles which aim at the construction of new rights, always arising in gradual terms, whenever social conditions change, and new societal needs appear. These struggles certainly involve an enlargement of the original catalogue, far beyond the perimeter imagined by the constituents; as well as their reproduction along the stages that mark the passage from “*abstract man*” to “*concrete man*”, through a process of both specification and differentiation of emerging interests. As a point of fact, on one hand, in the past the construction of an abstract subject aimed at freeing the individual from the class servitude as designed within the medieval organization - thus expressing the universalistic foundation contained in it - on the other hand, the disaggregation of the abstract subject that stemmed from the processes of constitutionalization of the person, is progressively realized within a framework which has been delimited by the principle of equality. This principle in turn, inevitably shows a value of ambivalence in the existence of the formal egalitarian dimension and the consequent risks given by quagmire of homologation.

Rodotà perfectly expressed the personalization of the subject in wake of a shattered and mobile reality.

It is true that in the passage from the abstract unitary figure of the subject to its concrete articulation in the legal system itself, one immediately grasped a gap, a contradiction. Reality forced the formal crust, and distinct subjective figures emerged that undermined the unity and comprehensiveness of the category. For a long historical phase, the beneficiary of the fullness of subjectivity was only the bourgeois male, of age, literate, and proprietary. The subjectivity of women was cancelled, with the exclusion from the public sphere, with the reduced patrimonial capacity of the married woman, with the mortification of sexuality. (Rodotà, 2012, p. 146)¹

More hereof, Rosi Bradotti denounced the crisis of the Cartesian subject by way of applying the metaphor of nomadism (Bradotti, 1995), whose objective was the dismantlement of the representation of the male-gendered symbolization in which the notion

1. My traslation.

of subject is placed as a self-regulated agency of the male, and in so doing, highlighting how the essence of femininity lies in a historical construct. Similarly, Adriana Cavarero revealed how the term *Man* designates a universal and timeless concept within which the individuals find themselves both included and nullified (Cavarero & Restaino, p. 95, Cavarero, 1987); steering from this, Cavarero explained how the equal substantialization of gender difference falls into the abstract hypostatization of the subject, reproducing the undifferentiation of individuals. Yet, it is equally true that this undifferentiation can be overcome by constructing a general signifier Woman, to be intended as a category of collective identification that includes women “in the metaphysical embrace of a horizontal sisterhood and therefore, of an improbable equality of all women” (Cavarero & Restaino, p. 97)².

The overcoming of the Cartesian model - to be achieved with the employment of a general signifier - holds the significance of a subversive strategy, which questions the androcentric rationale that has steered the structure of the traditional philosophical representation and, as more furthered later, of the same Enlightenment armamentarium, as judged within the theoretical horizon drawn by the feminism of difference, intimately conservative and therefore reproductive of the patriarchal brand.

As a point of fact, it is important to notice that the Enlightenment thought of Olympe de Gouges and Mary Wollstonecraft has already highlighted the tyrannical nature of the patriarchal power, by way of placing at the center of feminist reflection in the time of the French Revolution - the importance of the recognition of civil and political women's rights, which as we know, will require a long and troubled journey.

Undoubtedly, the appeal to the universalism given by these feminist perspectives is situated within the framework of the claim to rights that has characterized the formation of the bourgeois state, in which liberal equality becomes a guarantee of both the equal treatment and the absence of discrimination, and in so doing, it is used as the emblem of in which to found the constitutional democracies.

Certain as it is, the revolutionary scope of equality lies in the universal quantifier, that is, in the acknowledgement of the ownership of rights, which evokes the abolition of the privileges proper to the *Ancien Régime* yet, followed by the establishment of the ownership of rights a redefinition of the subjects was indispensable, as it would mean to oppose contrast the permanence of exclusionary dynamics, that found legitimacy in the claim of objectivity of the anthropological differences of humanity.

2. My translation.

It was necessary to reconstruct from the subjective point of view, the abstract universalism of the naturalistic foundation which, by referring to *moral rights*, made possible the exclusion of some subjects not belonging by gender and race to a certain class of historically relevant individuals (Costa, 2001, Costa, 2014); in this way, it generated the circularity between universalism and particularism of rights, particularly debated in that it constitutes the complexity of the lexicon of rights as related to its actual declinations.

It is not by chance that the question of the subject would become crucial in the feminism of difference, in which the versatility of the standpoints was played out from the questioning of patriarchal-based symbolic codes and, more generally, of the very concept of power, as culturally constructed. Compared to this, the long route traced by feminist theories would highlight new theoretical paths in the construction of social practices that by coming out of the sexual language of male ancestry would sink into the political claims of freedom and sexual difference that would usher the theme of the body to the center of theoretical consideration. By the same token, it is due to remind that the bodily motif has always been a place of identity and conflict at the same time.

If, in fact, on one hand, we cannot overlook the emancipatory quality which is proper to the discourse on sexual difference in all areas that concern sexuality and reproduction, on the other hand it is equally true that it is thanks to the developments of Gender Studies that a deconstruction of the link between corporeality and practices of normative subjugation has been taking place. This reconceptualization frees the term woman from a stable and problematic signifier - influenced by the political and cultural intersections in which it is produced - therefore, overcoming at the same time the opposition masculinity/femininity. As a relational opposition, it appears now decontextualized from those axes of power as originating from racial modalities: of class, ethnicity and sex, that constitute identity formation; this happens in order to arrive at a conception of gender which must be understood in terms of a performatively constituted identity, even outside of the restrictive frames of male dominance and compulsory heterosexuality (Butler, 1999).

In this sense, one way to rethink gender, is necessarily to denaturalize it: showing how the link between normal and pathological - on which the sexual binarism is based - has been structured through the narration that set at the center the regulation of bodies produced by the techniques of subjugation/subjectivation. The regulatory process re-signifies the problematic relationship between norm/normality/normalization (these are categories already problematized in one essay by Ferraro regarding the queer biology).

As a “cultural” construction of gender, it becomes capable of overturning the abstract nominalism by addressing the pervasiveness of social and institutional actions, fitting the purpose to expose the vulnerability of bodies that are increasingly encased in the male/female dualism, as well as to reveal the precariousness of our lives, as poised in the recognition of a released subjectivity from the social and normative sphere.

In this perspective, the critique of the abstract subjectivity of liberal theory and of the construction of a unitary and representative identity is based on the exclusion of political representation. By way of “naturalizing” the production of subjects accomplished by legal structuring, this political representation masks the practices of legitimation and exclusion, as well as it dims the axes of plural powers which provides the basis for class, ethnicity and race categories, which in turn will prove themselves pivotal in the problematization of intersectional feminism (Arruzza, Bhattacharya, Fraser 2019).

In this way, the theory of *gender studies* frees feminist theories from the obsession of the univocal foundation, as they present the construction of subjects to be an effect of power itself, thus having in itself an explicitly performative function. With this theoretical outcome, it stands in clear and open refusal of the feminism of “difference” that contains in itself some considerable imprints of identity reflection, toward which it turns the accusations of metaphysicality and essentialism; in so doing, it announces the eclipse of a differential identity, through the affirmation of multiple and fragmented subjectivities, incessantly projected and redesigned by the dynamism of linguistic practices and symbolic codes.

Today, *gender mainstreaming* is an unavoidable challenge for a radical reduction of the gender gap and it has been placed at the top of the European political strategy since the critical conferences on women in Nairobi and Beijing, that established how gender-based violations ultimately are human rights violations. It is a paradigm that sets on the political scene the countless forms of gender discrimination as occurring on a global scale, promoting a *gender equality* whose purpose is wider inclusiveness of women in the public sphere and the prospect to overcome the economic gap, which is still strongly marked today (as emerges from the Global Gender Gap 2021). Undoubtedly, this is a strategy of public *empowerment* that strengthens policies of equal opportunity; it does so through the production of European and national anti-discriminatory legislation, while still fixing a sharp focus on the legislative policies produced by financial capitalism, all in all within a framework that sees the crumbling of the Welfare State and the progressive erosion of social rights.

By no coincidence, the critique of *gender mainstreaming* has been conducted from the thesis/contention that claims a progressive domestication of feminism in light of the production of neoliberal subjectivities (Fraser, 2013), accused of providing rationality to a new mode of capital accumulation dependent on women's waged labour: an aspect that has warned against the risk of an ambivalent drift within the struggle for emancipation, and against the equal risk of pursuing an autonomy that as a matter of fact, appears without a real distributive policy overtaken by the forces of marketisation.

Global chains of care and the symbolic market. Between gender, race, class

This issue of *Soft Power* devoted to gender and its relationship with institutions and law, arises from the need to examine some crucial profiles concerning the regulatory structures of contemporary democracies: in which certain dynamics which have been conventionally the expression of patriarchy, now are being apt to a reconfiguration thus redefined within the framework incessantly delineated by neoliberal rationality.

The spatial reconfiguration of the Fordist family has undoubtedly contributed to making these dynamics more insidious. This has led to a radical rearrangement of the market around services that were previously circumscribed to the private sphere, by no other means this has determined a growing work outsourcing, with the consequent transfer of risks from the company to the worker, thus radicalizing processes of social stratification along the lines of gender and race. A process that in turn has redesigned the spheres of social reproduction through the construction of "global chains of care" (Ehrenreich & Hochschild, 2004), as entrusted to racial minorities and female migrants. Within this frame, one more aspect must be accounted as closely connected, which is the traditional distribution of family commitments according to rigidly established gender hierarchies and the progressive feminization of migratory flows (Lorettoni's essay plainly dwelled on these aspects), linked to a combination of factors, including political-economic, socio-democratic and those more subtly tied-up with the reorganization of the labor market. On the private domain, there has occurred, in fact, a global distribution of the tasks conventionally assumed by women within circuits that differentiated though they are, remain all characterized by the production of income at the expense of female workers. Furthermore, more often than it seems, these women workers are affected by the intersection between the traditionally "excluding" categories, such as sex,

race, ethnicity etc., which gives rise to forms of multiple discrimination, deriving from the combination of several factors of social inequality.

These issues naturally intersect with the thorny problems of citizenship and its differential exclusions, as well as with the complex and worrying problems of democratic politics, increasingly characterised by a break with society and a reduction in the forms of citizen participation in political institutions, which are increasingly depoliticised and de-symbolised.

Undoubtedly, a key interpretation that boosts a serious acknowledgement of the complex cycle of social reproduction is the one that emphasizes the political dimension of care (Tronto & Fisher, 1990; Tronto, 2013), releasing it from the specific female propensity with which it is typically declined (in the sense undertaken by Gilligan 1982), relaunching the central role of institutions in the assumption of responsibilities, which nowadays are on the contrary entirely delivered to the by far the most vulnerable subjects, often situated at the margins of social organization.

Placing the concept of care at the center of the theoretical reflection (as in the case established with the perspective of J. Tronto, whose interview edited by Re and Casalini is included in this volume) means, therefore, a total rethinking of human needs, in ways that enable to reposition them the political agenda, and as a result, radically transforming both the moral boundaries (Tronto, 1993) and the power structures of society. This has to start with the adoption of a practice that is capable of mending the conflictual relationship between ethics and politics and that is prone to a redefinition within a common horizon of the aspects especially linked to the alterity and human vulnerability. As a point of fact, it is precisely the latter factor that is registering today a dilation on a global scale and whose implications might as well drive us to probe into the democratic deficit, and thus forcing us to rethink new power devices, new forms of political action to overturn exploitation and social marginalization.

The introspection on democratic care unmasks, the asymmetrical power relations existing in society, redesigning also the spheres of political-legal subjectivity, through an ethical-political project that is designed to neutralize the dichotomy between public and private spheres, whose articulation has been critically shaped by a large part of the feminist criticism, along with the account to the removal of the sexual contract, as an institutive pact of patriarchy, which the political obligation is thought to derive (Pateman, 1988).

According to this perspective, in fact, the story of the origins of contractualism “removed” the other face of the social contract - the *sexual* one - indispensable to the insti-

tution of civil freedom, as it was functional to the establishment of the modern order: a patriarchal social order that should have been rooted in the domination of women, to whom the discourse of modernity would have left out the private sphere, and inevitably giving rise to a right with a male sexual matrix.

A sexual-social contract would therefore be at the origin of modern rationality, and historical treatises and theoretical perspectives would have maintained a profound silence on it, making no reference to the sexual source of the political-legal foundation, hence shrouding in mystery the birth of the private sphere and the antinomic character between private and public, which is the expression of the transformation of sexual difference into a political difference.

The passage from the state of nature to civil society might actually explain the incorporation of women within a sphere simultaneously inside and outside civil society, since it would reflect the political construction of the sex difference, giving meaning to the exertion of civil liberties on the part of men, liberties which ultimately are set as the privileged place of the public sphere.

From a theoretical point of view, we might well say that this approach is particularly stimulating because it gives voice to a different story about modernity: a story that reveals the ideological character of the public/private dichotomy as starting from the patriarchal division between “natural” and “civil” and that rewrites the social contract as the result of an agreement based on the androcentric character of political justification.

Certain as it is, today the public-private dichotomy seems to be under contradictory pressure because of the neoliberal ideology, which can be described as the new world reason, since it posits economic competition as the universal reason, and enterprise as the criterion of subjectification (Dardot & Laval, 2013).

It becomes, therefore, a globalized model of functioning that invests life as a whole (Cooper & Waldby, 2014) and breaks the very boundary between production and reproduction.

Today we are witnessing, in effect, the affirmation in a pervasive way of practices of self-management of the body, which are giving rise to a multiplication on a global scale of rights that pertain to the sphere of the living: rights located at a crossroads of an economic offer in massive growth, revealing the progressive transformation of the private sphere, from a traditional space of women subjection to a place of expansion of the individual freedom.

Undoubtedly, the trajectories traced in the last century by the welfare state are being redrawn in the logic of a transnational market that has been structured around

the generative potential of bodies, in a progressively tighter chain that invests the production-consumption, the production-circulation, and the production-commercialization, in which, however, the woman's body becomes the place of control, claims, and conflicts.

As a point of fact, if on one hand, the control over women's bodies can be easily considered one of the hallmarks of patriarchal culture - simply recalling the long battles led by the feminism of difference on the decriminalization of abortion and the legalisation of life - on the other hand, today, this need is translated into a progressive "making available" of female bodies, as a resource to be used and disposed of in short term; all in all with the risk of hiding behind the reassuring image of self-government; the insidiousness of a radicalization, as well as of social vulnerability and social, economic and gender discrimination (Giordano, 2018).

With reference to these practices, the normative formulas and the nominalistic labels constitute dynamic formants to be resemantized. Practices of management of the body emerge as being generative of a plurality of ethical and political conflicts, along with showing within the multilevel system of judicial governance (as emerging from Novalez's essay) fluid intersections between negative liberties that find themselves requiring States' reconfiguration, subjective rights' recognition and, the security of those interests of international public order.

Spaces of political renegotiation and interrupted legal routes

Undoubtedly, the re-signification of the public/private dichotomy requires us broaden our gaze over our democratic societies in the face of the challenges that have gnawed their traditional structures over the years, first with the dismantling of Welfare and consequently with the contraction of social rights, then with the advent of neoliberal ideology and populist rhetoric. This clearly requires the adoption of a critical - as such equally demanding - realist perspective (Loretoni) that bears the capacity to analyzes how gender difference is sexualized as being level inequality from the role of symbolic force, tending toward the ratify the domain on which it is based: a domain built with the aid of a form of power exercised directly on bodies, in the absence of any physical constraint. Certainly, the division of between the sexes might well be fitting within the order of things, is this meant as whatever is normal, natural, to the point of turning inevitable, for it is embodied into the habitus of the agents, where it functions as a system

of patterns, perception, thought and action; this can easily be explained since the social order functions as an immense symbolic mechanism that is set to validate the power from which it has originated (Bourdieu, 2001).

Therefore, as long as, symbolic power is set to overwhelm the coercion/consent dichotomy and as such to include those patterns of perception, evaluation and action that have set as natural differences the very distinctive traits they help to bring into existence precisely by way of 'naturalising' them (Bourdieu, 2001), through the magic triggered by the symbolic power, then, any discourse on gender cannot possibly disregard an analysis based on its social construction, which must take on serious account the modification of social perceptions and the concrete possibility of normative action within continuous practices of knowledge and recognition.

From the recognition perspective, in fact, gender has appeared to be as a difference of status, rooted in the societal order and infused with the androcentric cultural models, which in turn have privileged those traits more clearly associated with masculinity, prompting a devaluation of all that is coded as feminine, and as such, appearing to structure a large swathe of social interaction (Fraser, 2013).

These institutionalized models which happen to be codified within many areas of politics and law giving rise to multiple forms of subjection, and the reason for that is to be found in the persistence of those cultural representations that reproduce gender stereotypes, aggression and domestic violence. As a point of fact, especially domestic violence has shown in recent years, an alarming recrudescence, undeterred by both the progressive criminal regulation and the introduction of the case of femicide. This is a recrudescence ruled by the rising phenomenon that impels the forced sharing of private spaces, gradually required by the health emergency, which has led UN WOMEN to talk about a shadow epidemic (this thorny issue is addressed by Ivone-Negri).

With this in mind, how, can we imagine a symbolic reconstruction able to structure the representations of society, in ways that suggest a transformation in an emancipatory sense of institutions, revealing the authentically reflexive nature of the social instances? How can we elaborate adequate categories that accomplish the feat of interpreting the problem of gender and its relations with law and institutions - starting from the representation of gender as a cultural construction - as a possible counterreading of the one traditionally revolving around the biological distinction between male and female, which has long been "naturalized" even in the division of roles in society, politics and work?

Undoubtedly, the crisis of the symbolic order produced by the neo-liberal turn deeply has set us in a position to question the changes produced by social normativity, which

tends to assemble new figures of work and new territorial hierarchies, shaping composing sexual difference in the form of economic debt (Righi).

If the costs of social reproduction have been structured along axes that intersect gender, race, and ethnicity, then the production of a *feminist* critique capable of understanding the dynamics of power cannot, overlook a serious inquiry on the symbolic structure able to tell the truth about the state of subordinate women through an exploration of the ways in which sexism, racism, and colonialism have longly been intertwined “from the interconnections between various systems of domination in the layered plurality of times and voices that resist the dominant narrative of neoliberal governmentality” (according to Esposito’s attentive insight). An aspect that black feminism has highlighted the theorization of the *margins* as places of simultaneously repression and resistance (bell hooks, 2015), of radical possibilities for what concerns individual and collective transformation, that can finally sustain one’s subjectivity, creating spaces for radical action.

Spaces of political negotiation which become allies in the feat of overthrowing the masculine symbolic, behind which it is increasingly raging today rage the widespread and alarming practices of *hate speeches*, which reinforce the processes of social marginalization, fueling racism and gender stereotypes. Adding to these stereotypes, there comes the populist rhetoric, which often convey them, in ways that engulf even *social networks* and that require increasing attention especially when considering that they are set as powerful devices of dehumanization.

As a point of fact, just a few weeks have passed since the proposal to extend the legislation on *hate speeches* (which only regulates crimes of incitement for racial, ethnic, religious or national reasons) to all forms of gender discrimination was rejected within the Senate’s assembly. Within this magazine’s issue, devoting a spotlight to the Zan Ddl (with written contributions by Bernini, Consorti, Casadei, Monceri) does therefore mean to retrace the “interrupted paths of the legal system”.

Nowadays, the articulation of spaces of political renegotiation have become more urgent than ever, as witnessed by the ferment on a global scale of feminist mobilizations which from Latin America to Europe lay bare the need for a reconceptualization of the forms of neoliberal power and the impossibility of circumventing the discourse on rights in regard of which the universalism originally assumed in the contemporary constitutions is revealing itself by far more evidently to be a broken promise.

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