

Legal and Economic Considerations of Gender Equality

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Edited by

Pierpaolo Canero, Gianmarco Canero
and Ludovica Menchetti

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INTRODUCTION

THE NEED FOR EQUALITY

LUDOVICA MENCHETTI¹

"How is it possible - Socrates asked himself - to think that a god created slaves some and free others?²".

As we can see from the statement by the father of Greek philosophical thought, the basis of all subsequent Western philosophies, the 'Principle of Equality' was already formulated as an ethical principle in Greek civilization. Socrates in his dialogues with his pupils devoted particular attention to the equality of men and women, understood as a supreme good of the gods.

The statement, scandalous for 5th century BC Greece where women were illiterate, was an absolute novelty, that needed time, struggles and appropriate instruments to fully establish itself in society.

The expression "gender equality" was first solemnly affirmed only on 10th December 1948 in the UN Universal Declaration of Human Rights; today it is also UN Human Rights Goal 5, supported by the 2030 Agenda: Gender equality is achieved when men and women have the same rights, responsibilities and opportunities in all areas of society and when the different interests, needs and priorities of men and women are equally valued.

Gender equality is an issue that needs a cross-sectional and not only sociological analysis. There are many and varied tools that are useful and necessary to pursue a path that has been started since the last century in almost every country in the world.

¹ [Law student at LUISS Guido Carli University, Rome Italy.]

² Trabattoni, *Storia della filosofia antica*, vol. I (Rome: Carocci, 2017).

Indeed, this text will analyse the main fields considered necessary for achieving and maintaining substantive and cross-cutting equality.

The law, to be applied in the economic and financial spheres, but also the comparison between the different gender policies implemented by the various states, the origin of the constructs that influence the management of the issue are just some of the topics covered. There will also be an analysis from a psychological perspective, to understand the relationship of gender typicality with academic achievement, career choice and work; and gender (in)equality.

But also, on the relationship between taxation and gender equality, with a focus on gender biases in the tax system and female employment incentives.

Undoubtedly progress has been made, however, where do we stand with gender equality in 2024?

Looking at the Italian experience, Susan Faludi, American writer and journalist, winner of the Pulitzer Prize for Expository Journalism in 1991, speaks of an “undeclared war on women”³: the struggle of women in the 21st century to move forward, worn down by cultural resistance and regulatory uncertainties that still exist, especially with regard of work-life balance policies.

Policies that are not capable of making the laws passed so far effective, to achieve a truly equal democracy; in fact, there is still a deficit in the relationship between women and politics, women and the economy, women and work, which makes our society an “unfinished democracy”⁴. Jurists and politicians speak in this regard of “disputed rights”⁵.

Beyond the normative evolution, is it possible to say that society has tried to get its citizens used to substantive equality? The concept of substantive equality affirms a perspective of equality where laws, in

³ Faludi, *Backlash: The Undeclared War Against American Women* (New York: Crown, 1997)

Of this author see also “*Stiffed: The Betrayal of the American Man* (New York: William Morrow, 1999).

⁴ Nadia Maria Filippini and Anna Scattigno, *Una democrazia incompiuta: Donne e politica in Italia dall'Ottocento ai giorni nostri* (Milan: FrancoAngeli, 2009).

⁵ Marilisa D'Amico, *I diritti contesi: Problematiche attuali del costituzionalismo*, 2nd ed. (Milan: FrancoAngeli, 2016).

addition to being the same for all, must provide for special laws in favor of the weaker groups. It was born in the second half of the 1900s in Europe with the affirmation of the constitutional state and social rights, much later than formal equality dating back to the birth of the liberal state, at the end of the 17th century in the UK and with the American revolution.

Today, women's rights are no longer affirmed as a point of balance and stabilization of the system, they are mainly discussed. In this regard, there is a tension between different and conflicting, apparently irreconcilable visions, which highlight a part of society that still retains and preserves the characteristics of a world in which the levers of political and economic power were the exclusive prerogative, until a few decades ago, of men.

For women, even more than for men, the unfolding of accomplished democracy did not take place in a linear and harmonious form: to measure the extent of emancipation, a survey instrument that has yielded good heuristic results is the concept of “citizenship rights”, coined by the English sociologist Thomas Marshall (1950)⁶. It refers to the set of civil, political and social rights that individuals are entitled to as citizens of a certain country.

These rights and equality are achieved through laws and laws are made by politicians.

Only a little over a century ago, with divergences in time, women were granted the right to vote and the right to be elected and thus to hold positions that allow them to contribute in the making of laws and national and international politics.

The first European state to recognize universal suffrage was the Grand Duchy of Finland, with the first women elected to parliament in 1907. Norway recognized political rights for women in 1913, followed by Denmark in 1915, Great Britain and Austria in 1918, Germany and the Netherlands the following year and, years later, Portugal and Spain in 1931.

The possibility of entering political life, and thus becoming an active part of society, was the first step towards being able to gain a space in the

⁶ Marshall, *Cittadinanza e classe sociale* (originally published as *Citizenship and Social Class*, Cambridge: At the University Press, 1950; Rome: Laterza, 2002).

working professions as well and to move from formal to substantive equality and to oppose male domination in politics.

However, the study of women's role in politics is contradictory; since the mid-20th century, various women have begun to assert themselves in international political dynamics, all of them characterized by their 'masculine' behavior.

Is this characteristic just a misperception of women in power or is it perhaps a strategy that consciously or unconsciously was adopted as the only means to “break through the glass ceiling” (a term deduced from interviews with Marilyn Loden, in 1978, and Gay Bryant, in 1984⁷)?

Here are some examples of prominent female politicians who have always been characterized by their ‘masculine’ side:

Margaret Thatcher, Prime Minister of the United Kingdom from 1979 to 1990, the first woman to hold this office; she was also the longest-serving Prime Minister of the United Kingdom in the 20th century. Known as the Iron Lady.

Indira Priyadarshini Nehru married Gandhi. The first woman (and the only one, to date) to hold the office of Prime Minister of India. She was a central figure in the Indian National Congress. She worked in politics from 1966 to 1977 and then again from 1980 until her assassination in 1984; she was the second longest-serving minister.

Golda Meir, a Ukrainian politician naturalized as an Israeli, the fourth Prime Minister of Israel (1969) and the first woman to lead her country's government, as well as the third to hold this position internationally.

All women characterized by having broken the glass ceiling and by being considered “iron ladies”, an epithet used by the Italian African psychologist Claudia Ripepi; the term describes a woman with great willpower and coldness of behavior, which have associated them with the hard fist always used, in the general imagination, by the male figure.

Is it therefore necessary to be an iron lady to reach the top of politics, as opposed to men, who do not necessarily have to be “iron”?

⁷ This metaphor was introduced by the French feminist writer G. Sand, male pseudonym of Amantine Aurore Lucile Dupin, who used the expression “une voûte de cristal impénétrable” in the novel 'Gabriel' (1839) to describe the heroine's dream of soaring with wings, interpreted as the ambition of a kind of “woman-acarus”, attempting to rise above her accepted role.

The central role of law

The founding element of the fight against gender inequality is the law: the law can and must intervene to regulate needs that especially from the 2000s onwards began to assert themselves as necessary, because they had not yet been conquered; at that time feminism was considered a political and social perspective to be abandoned, for having obtained formal equality. Outside the law, freedom remains precarious and legislation itself is often unimplemented or insufficient.

The absence of family and domestic burden-sharing, as well as adequate and affordable welfare services, therefore, weighs on women's dreams and aspirations.

It is certainly no coincidence that countries with a high gender equality index enjoy paternity leave equal to maternal leave.

In addition, a reassessment of “unproductive” occupations such as domestic work would be necessary.

Equal employment opportunities are one of the foundations for talking about gender equality. In Europe during the medieval period, the first companies were established to facilitate national and international entrepreneurial activity. Besides politics, the corporate and financial world, worldwide, also suffers from gender inequality.

Indeed, even though women account for almost half of the world's global population and a higher percentage of women have tertiary education compared with men, they are underrepresented in senior leadership positions.

Europe, the region with the most implemented inclusion policies, has the highest percentage of companies that have reached at least 30% women directors, and France, Italy and Austria had the highest proportion of companies reaching this threshold.

Among these, the Italian case with a brief analysis of the Italian system in this respect is worth mentioning.

Italy enjoys one of the highest percentages of women on boards in Europe: more than 40%, according to a study conducted in 2023 by the French Institute of Directors in collaboration with Ethics&Boards.

At the corporate level, Italy was one of the first countries to introduce gender quotas in the boards of directors of listed S.p.A. in 2011, and the figure indicates that, sterile polemics aside, so-called positive discrimination is necessary to allow women to occupy spaces that would otherwise be precluded to them, fostering greater diversity in leadership positions.

For these reasons, the recent adoption of the certification for gender equality (law number 162 /2021) is seen as a great opportunity to promote equal conditions in companies, favoring women's access to the labor market, but also guaranteeing fairness in treatment and pay, based on objective metrics disaggregated by gender, such as, for example: number of male and female workers, contractual classification, pay differences by gender, data on selection processes and criteria adopted for career advancement, as well as measures implemented to ensure an inclusive working environment.

In 2011, Claudia Alfì, Head of Finance & Administration at “Webidoo”, a company specializing in the digital transformation of small and medium-sized enterprises, was interviewed by the economics editorial team of “Corriere della Sera” online. The manager, on this occasion, states the following: “Legislation to protect women has been necessary, but I hope that it will be overtaken by facts, because women have amply demonstrated that they are valid professionals and leaders in all sectors, from international politics to the leadership of large multinationals. We are not a category to be protected, but an important resource for our country”.

However, there are still many criticalities to overcome, and so she adds: “I believe that in Italy there is still a need to go beyond the limit of working hours as a parameter for evaluating performance ... accomplice to the pandemic situation, the control of working hours is now very bland if not non-existent ... A fair work-life balance is a goal we are all struggling to find, men and women alike”.

The difficulties arise not so much from the laws as from the culture: “The new generations have less ingrained the concept of a man's or a woman's character or work, a rather old-fashioned view. There is still a way to go, but the data on girls choosing STEM studies is encouraging and I am rooting for them. I have a son whom I try to teach that there are no boy

things and girl things and my husband is the cook at home, good role models are what is needed in the education of boys”⁸.

Interview from which we see how legislation, which always comes from a need for social protection, is still not sufficient and sometimes not fully implemented.

To achieve full gender equality, however, a real cultural change is desirable, always remembering that investing in women pays off, first and foremost from an economic point of view.

According to the Diversity Brand Index, the most inclusive brands perform as much as 23% better than their competitors, and the Bank of Italy estimates that if female employment reached 60%, GDP would grow by 7 percentage points.

Work is the main factor of emancipation, freedom and empowerment for women. Spreading a culture of equal opportunities in workplaces and communities, through bargaining and the fight against violence and discrimination, is strategic.

There is, however, one extremely positive fact: in response to a labor market that does not fully value them, Italian women are exercising a powerful act of resistance in creating businesses that reflect their values and vision. At the entrepreneurial level, Italy ranks first in Europe for the number of women entrepreneurs (22% of the total), to whom 75% of the entrepreneurial growth in the country is attributable. Moreover, Italian women's businesses are growing steadily (2.9% against 0.3% for men), especially in the central and southern regions, and are proving to be more resilient and responsive.

The need for independence, across every field

In an indissoluble connection with work, the combination of gender equality and money needs attention. "A woman must have money and a

⁸ Redazione Economia, “Quote rosa, inclusione e conciliazione: cosa ne pensano 11 donne al vertice,” Corriere della Sera, March 11, 2020, https://www.corriere.it/economia/lavoro/cards/quote-rosa-inclusione-conciliazione-cosa-ne-pensano-11-donne-vertice/parola-cape_principale.shtml.

room of her own if she wants to write novels," argued Virginia Woolf⁹ in 1929, having well understood a fundamental concept: women must cultivate their economic independence.

It is extremely important to remember that economic independence is fundamental for true emancipation and to free oneself from the risk of being a victim of abuse and violence.

In Italy, 1/3 of women do not have a bank account, so they have no economic power; therefore, they do not have the freedom to decide on their future independently.

It sounds absurd, but even women with degrees in economics and banking consider themselves less informed and experienced than men with the same background. This is because gender stereotypes are so ingrained that they also condition women's behavior.

Prejudice is formed very early, already during childhood: Italy is the only country with a gender gap in financial literacy among teenagers (data from the OECD-PISA report).

One of the causes would seem to be linked to mathematics and its teaching: those who are better at mathematics also have, on average, greater financial skills, and since in Italy girls perform worse than their mates on average, this is reflected in financial literacy. There are tools to intervene to bridge this gap, as some experiments in teaching mathematics in primary school, in a more interactive and engaging mode, have achieved encouraging results, succeeding in reducing the differences.

Even though many fields are improving beyond compare with the last century, there seems to be a stalemate where, given what has already been achieved, nothing more is needed.

For true gender equality, laws, though fundamental, are not enough, there is obvious resistance to recognizing a greater role for women: this is attributable to a cultural fact, but also to an underlying political short-sightedness, which tends to make women bear the burden of inadequate public welfare investments or disinvestments, in favor of a private conception of the family, or a deficit in those policies for reconciling motherhood and work.

⁹ Virginia Woolf, *Una stanza tutta per sé* (originally published as *A Room of One's Own*, London: Hogarth Press, 1949; Milan: Feltrinelli, 2013).

However, the analyses discussed in the text will identify the necessary changes that need to be made in each of the subjects covered and the tools already used to ensure that substantial equality is achieved.

From a global perspective, the analysis becomes more complex. International agencies, especially branches of the UN, that deal with the status of women in the world, must face a diverse landscape with backward social and cultural conditions in terms of rights, taking into account countries where there is political instability or war. The UN document Goal 5. Achieve gender equality and empower all women and girls states that inequality persists and achieving equality is only possible with a legal and cultural difference framework, which is necessary to "eliminate deep-rooted gender discrimination that often stems from patriarchal attitudes and related social norms".

Other laws are needed, capable of withstanding the challenges of modernity that await women and to achieve a truly equal democracy, an accomplished democracy: reconciliation policies must therefore be introduced along with, however, a change of pace in the culture of gender difference.

Only with education for substantive equality will there be increasing recognition of the need for gender equality policies and further legislative action.

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Biography

Ludovica Menchetti is a law student at LUISS Guido Carli University. She is deeply engaged in research on gender equality and its intersection with economic and legal systems. Ludovica actively participates in academic and extracurricular projects that explore the implications of gender policies, aiming to contribute to a more equitable society. Her dedication to understanding and addressing gender disparities makes her a valuable voice in contemporary legal studies.

CHAPTER I

GENDER EQUALITY AFTER GENDER MAINSTREAMING: THE FEMINIST DEBATE

ALESSIA FARANO¹

A quarter of a century after its first formulation, *gender mainstreaming* still suffers from a lack of implementation, as well as an uneasy identification of its essential features². It is a “contested” concept³, as contested is the notion of gender equality of which it is both an embodiment and an instrument.

In the aftermath of the Beijing Conference some feminist legal scholars enthusiastically welcomed the principle, asserting that it would finally be heard “the voice of an extraordinary event, of those that mark human history” “little indeed indebted to the supposed universalism of rights (...), and much instead to the primacy practically given to the relationship between women”⁴. Nonetheless, *gender mainstreaming* appears today an “uncomplete revolution”⁵ in some respects.

¹ [Assistant Professor at Luiss University.]

² As Beveridge stated, “The conditions necessary for effective law- and policy-making, and thus for implementing mainstreaming, are not clearly specified or understood”, Fiona Beveridge et al., “Mainstreaming and the Engendering of Policy Making. A Means to an End?”, *Journal of European Public Policy* 7, no. 3 (2000): 385-405.

³ Sylvia Walby, “Gender Mainstreaming: Productive Tensions in Theory and in Practice,” *Social Politics: International Studies in Gender, State & Society* 12, no. 3 (Fall 2005): 321-343.

⁴ Libreria delle donne di Milano, “È accaduto non per caso,” *Sottosopra*, January 1996, <https://www.libreriadelledonne.it/publicazioni/e-accaduto-non-per-caso-sottosopra-gennaio-1996>.

⁵ The reference is to Gøsta Esping-Andersen, *The Incomplete Revolution: Adapting to Women's New Roles* (Cambridge: Polity Press, 2009).

This paper will outline some possible reasons for the lack of implementation of the principle, reasons that can be traced back to its difficult conceptualization, as well as its non-linear relationship with the heterogeneous legacies of legal feminism.

Gender mainstreaming: birth and implementation of a controversial syntagma

Since the late 1990s, “gender mainstreaming” has officially entered international and Euro-Union normative documents, requiring states to make a conceptually and operationally transition in policies to promote gender equality.

In fact, the Fourth United Nations World Conference on Women held in Beijing in 1995 flanked the formal, yet belated, recognition of women’s rights *as* human rights with a definition of *gender mainstreaming*, understood as a commitment to “promote an active and visible policy aimed at incorporating the gender perspective into all policies and programs so that, before any decision is made, an analysis is made of the effects of that decision on both women and men.”⁶

Definition expanded by the United Nations Economic and Social Council (Ecosoc) (1997, 27):

Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.

The Treaty of Amsterdam (1997) then formalized this commitment within the confines of the European legal space, by introducing, in addition

⁶ Beijing Platform for Action, § 202, “Governments and other actors should promote an active and visible policy of mainstreaming a gender perspective in all policies and programs so that, before decisions are taken, an analysis is made of the effects on women and men, respectively.”

to the principle of equal pay, Article 3, which extends to all Treaty activities the objective of “eliminating inequalities, as well as promoting equality, between men and women.”

The commendable proliferation, in those years, of supranational definitions and strategies in favor of *gender mainstreaming* has, however, found belated concretization within national legal systems, except for a few—not surprisingly repeatedly cited—exceptions⁷.

In Italy, it was the “gender budget,” initially provided for in Art. 38 of L. 196/2009, then reinforced by Legislative Decree 116/2018⁸, that explicitly referred to *gender mainstreaming*.

More recently, the PNRR⁹ can certainly be considered a case of legislation inspired by this “principle,” as it listed “women’s *empowerment* and combating gender discrimination” among the “three main priorities,” the pursuit of which is necessary in all specific policies and investments related to the plan¹⁰.

The six PNRR missions, in fact, are articulated “in a broad program aimed both at fostering women’s participation in the labor market, directly or indirectly, and at correcting asymmetries that hinder equal opportunities from school age.”¹¹ Concrete examples include: new recruitment mechanisms in the PA and the concomitant promotion of agile work; investments in broadband and tourism, with potential positive repercussions on women’s

⁷ Council of Europe, *Gender Mainstreaming: Conceptual Framework, Methodology and Presentation of Good Practices*, Final Report of the Activities of the Group of Specialists on Mainstreaming (EG-S-MS (98) 2) (Strasbourg, 1998).

⁸ On the functioning of gender budgeting in Italy see Maria Cecilia Guerra and Eleonora Romano, “Una riflessione sul bilancio di genere in Italia (A Critical Appraisal of the Italian Gender Budget Report),” *Politica Economica* 2 (2020): 183-228.

⁹ The National Recovery and Resilience Plan, deliberated, in its second version, by the Council of Ministers on April 29, 2021, and transmitted to the European Union Commission on April 30 (Governo.it), under the Draghi government, is expected to provide access to funds allocated by the European Union in July 2020 to deal with the crisis generated by the Covid-19 pandemic (*Recovery Fund*, later renamed *Next Generation EU*).

¹⁰ We find an in-depth analysis of PNRR measures from a *gender mainstreaming* perspective in Chiara Tripodina, “I gradini di pietra della parità di genere,” *Constitutionalismo.it* 2 (2021): 88-135, 126.

¹¹ National Recovery and Resilience Plan. Next Generation Italy. Italy Tomorrow, April 29, 2021 (on Governo.it), 39.

entrepreneurship; the kindergarten plan and the strengthening of educational services; and the introduction of a “national certification system for gender equality.”

Thus, GM might be intended at a first glance as the adoption of the gender perspective as a general regulatory framework.

Criticism of the Plan, however, has not been lacking. This is not only because of intervening legislative amendments that hinder its implementation, but also because of the difficult conceptualization of *gender mainstreaming*, to be intended both as a policy strategy and the complex of tools to implement gender equality¹².

Before examining the critiques of *gender mainstreaming*, it is appropriate to outline the theoretical framework within which these arguments are articulated. First, it will be necessary to account for feminist contribution to public policies for gender equality, which, prior to the consolidation of the *gender mainstreaming* paradigm, reproduced the phases (so-called waves) of the feminist movement, introducing legislative instruments with such philosophical premises consistent.

Feminism between equality and difference

One of the most relevant theoretical concerns is undoubtedly the nexus between equality and difference (known as the sameness/difference debate), which has translated into radically different legislative approaches to gender equality.

The awareness of the difficult balancing between the need for equal treatment before the law and the recognition of the specificity of the female condition is enshrined in the foundations of the feminist movement. Indeed, as it has been observed, “when feminism bursts into Western history, it brings with it the dialectic between equality and difference”¹³, a dialectic meant to mark the feminist movement and its translation into public policies.

¹² Christine Boot and Cinnamon Bennett, “Gender Mainstreaming in the European Union: Towards a New Conception and Practice of Equal Opportunities?,” *The European Journal of Women’s Studies* 9, no. 4 (2002): 430-446, 442

¹³ Anna Cavaliere, *La comparsa delle donne: Uguaglianza, differenze, diritti* (Rome: Fattore umano edizioni, 2016), 53.

The starting point of the feminist struggle is undoubtedly the modern theoretical elaboration of equality, particularly the “Declaration of the Rights of Man and of the Citizen,” which had tried to juridify the political slogan “*liberté, égalité, fraternité*.”

The solemn affirmation of equality before the law, in a radically new meaning compared to the *isonomy* of the classical tradition, represents the point of attack of proto-feminists Olympe de Gouges and Mary Wollstonecraft, as Adriana Cavarero points out: “designed to eliminate differences between men, rather than explicitly exclude women, the principle of equality does not even consider them, does not contemplate them in its political imagination”¹⁴.

The modern conceptualization of equality, in fact, has triggered for the claim of gender equality (*rectius* women’s equality), soliciting the different theoretical/institutional strategies to achieve it.

The diversity of “strategies” is indeed polarized, right from the dawn of proto-feminism, around the problematic relationship between equality and difference.

While Mary Wollstonecraft in 1792¹⁵ claimed the inclusion of women in those “equals” theorized by the political Enlightenment, therefore fighting for the elimination of all barriers that prevented women from accessing education, professions, and more generally the exercise of civil and political rights¹⁶, Olympe de Gouges recognized female difference as a given, starting from which it would have been possible to rewrite the entire catalog of rights, conceived by men for men, and therefore not adaptable to women¹⁷.

Despite this original tension, the so-called first wave feminism, which would lead to the Seneca Falls Declaration in 1848 with the birth of the suffragist movement, would have a strongly egalitarian and emancipationist vocation. The goal of feminist claims in the second half of the nineteenth

¹⁴ Adriana Cavarero, in Adriana Cavarero and Franco Restaino, *Le filosofie femministe: Due secoli di battaglie teoriche e pratiche* (Milan: Bruno Mondadori, 2002), 87.

¹⁵ Mary Wollstonecraft, *A Vindication of the Rights of Woman* (London: J. Johnson, 1792).

¹⁶ Cavaliere, *La comparsa delle donne*, ivi, 45.

¹⁷ Maria Luisa Boccia, *La differenza politica* (Milan: il Saggiatore, 2002), 136.

century would be to remove obstacles to women's access first and foremost to political participation, and, more generally, to the public sphere.

The struggle *through* law was a struggle for equality, aiming at achieving equal treatment under the law. In these vindications, we find the matrix of liberal feminism, which, in those years, opposed socialist feminism.

It is precisely to this second tradition, the socialist one, that a part of so-called second-wave feminism will entrust the hope of radical transformation of law, through a re-signification of the concept of inequality, by taking into account a set of variables -- class, first of all, and then race -- considered unduly concealed by liberal feminism¹⁸.

To this extend, the publication of Simone de Beauvoir's "*Le deuxième sexe*" in 1949 is emblematic¹⁹, as well as anticipatory of some issues that second wave feminism, beginning in the late 1960s²⁰, would highlight.

While "difference" according to nineteenth-century liberal feminists was only an "empirical fact," useful "basically to delimit the field of

¹⁸ The relationship between difference feminism and socialism is problematic, however, if one considers the constant claim for autonomy advanced by Carla Lonzi and the Italian feminist groups of those years. Carla Lonzi's famous book, "Let's Spit on Hegel," is emblematic of the search for autonomy, and the irreconcilability, felt by Italian feminists between feminism and socialism. Carla Lonzi, "Let's Spit on Hegel," translated in Paola Bono and Sandra Kemp, *Italian Feminist Thought: A Reader* (Oxford: Basil Blackwell, 1991). On Italian Difference Feminism, see Anna Simone, Ilaria Boiano, and Angela Condello, eds., *Legal Feminism: Italian Theories and Perspectives* (New York: Routledge, 2022).

¹⁹ In an interview at the end of the 1970s, de Beauvoir recalled the confidence she had in the role that socialism would play in the emancipation of women in the years following the publication of *Le deuxième sexe*: "I believed too quickly, when I wrote 'The Second Sex', in a coming victory for women [...] because I thought that the victory of women would be linked to the advent of socialism. Now socialism is a dream, it doesn't exist anywhere. The countries they call socialist are not socialist at all. And, on the other hand, in these so-called socialist countries, the situation of women is no better than in capitalist countries." Interview is given to "Le Monde" on Jan. 10-11, 1978, pp. 1-2 and now edited in Simone De Beauvoir, *Les écrits de Simone de Beauvoir. La vie. L'écriture*, edited by C. Francis, F. Gontier (Paris: Gallimard, 1979).

²⁰ Adriana Cavarero and Franco Restaino, *Le filosofie femministe*, ivi, 31. In fact, the so-called second wave of feminism is alternatively traced to the publication of Friedan's "The Feminine Mystic" in 1963 or to "*Le deuxième sexe*".

equality,²¹ for the second wave, albeit its plurality, it would become an analytical category as well as a political claim.

Whilst achieved some of the goals of first-wave feminism²² - access to public space, first and foremost through rights of political participation, the persistent underrepresentation of women in public and professional spaces led to refocusing the analysis toward the private space inhabited by women. The analysis of private space thus began to generate several contributions - beginning with the groundbreaking work on the “feminine mystique”²³ -- on the relationship between biological difference (sex) and culturally constructed difference (gender²⁴). The distinction between these two aspects, allegedly belonging to biology and culture, will be the common feature of feminist reflections of the second wave, manifesting a variety of conflicting perspectives (first and foremost on the balance between equality and difference)²⁵.

One of the initiating moments of this new phase of feminism can be traced to the beginning of the student protests of the late 1960s, with criticism directed at the “male” management of power within the student movements.

Despite the alleged horizontal structure, feminists still targeted the hierarchical government of student movements, by opposing the confessional praxis of self-consciousness groups, devoid of charismatic leaders²⁶. Moreover, the critique of the hierarchical structure of the organization of political power, allows for a further step, addressing the product of the exercise of that power while describing and knowing the world.

As Foucault would teach in those years, the political and epistemic profiles emerge in very close connection. For feminism this has meant

²¹ Dolores Morondo Taramundi, “A Coffee at Starbucks: Intersectionality and Disruption of the Subject in the Challenge to Anti-Discrimination Law,” *Ragion Pratica* 2 (2011): 365-383, 368.

²² As noted by some feminist scholars, difference feminism is a “luxury” that could only be afforded once the goals set by egalitarianism were conquered.

²³ Betty Friedan, *The Feminine Mystic* (New York: Dell, 1964).

²⁴ On the development of this dichotomy see Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York; London: Routledge, 1990).

²⁵ See Annalisa Verza, “The Legal and Political Contributions Challenging Discrimination against Women,” *Rechtstheorie* 48, no. 1 (2017): 1-42.

²⁶ On this important point see Cavaliere, *La comparsa delle donne*, ivi: 69.

recognizing the epistemic value of personal experience, meant as capable of producing knowledge. “The personal is political” would become, not surprisingly, the slogan of the movement in the 1970s, and the attack against male epistemology would spare neither philosophy -- as a search for the universal²⁷ -- nor law. Thus, the very institution of language, unable to signify female difference²⁸. It is useful to quote Adriana Cavarero on the topic: “Woman does not have a language of her own, but rather uses the language of the other. She does not self-represent herself in language, but welcomes with it the representations of her produced by man.”²⁹.

Questioning the very logical forms of generalization³⁰ would eventually involve the concept of equality, which that generality expresses, leading to the fine-tuning of *difference* thinking. In Carla Lonzi’s words, “That between woman and man is the basic difference of humanity. The world of equality is the world of legalized overpowering, of the one-dimensional; the world of difference is the world where terrorism throws down its arms and overpowering yields to respect for the variety and multiplicity of life. Gender equality is the guise in which the inferiority of women is masked today.”³¹.

With second-wave feminism, then, difference shifts from being an empirical fact to be concealed - law was asked to be *sex-blinded* - to a symbolic element and analytical tool useful for unmasking the supposed neutrality not only of law as such, but of its very logical structure. The generality and abstractness through which modern law has constructed its

²⁷ Emblematic in this sense is the manifesto *Non credere di avere diritti*, drafted by the Women’s Cooperative Circle “Sibilla Aleramo”, on June 25, 1975: “for us to say the theory remains in part a telling of the practice, since theoretical reasoning usually refers to things that already have a name while here we are dealing, in part, with things that did not have a name” (our translation), Libreria delle donne di Milano, *Non credere di avere diritti* (Torino: Rosenberg & Sellier, 1987).

²⁸ Luce Irigaray, *Speculum: de l’autre femme* (Paris: Editions de Minuit, 1974).

²⁹ Adriana Cavarero, “Per una teoria della differenza sessuale”, in Diotima, *Il Pensiero della differenza sessuale* (Milano: La Tartaruga, 1987), 52.

³⁰ Cavarero again: “The discourse on the universal, with its love of the abstract and its definitional logic, has always been a men-only affair,” (translated from Italian): *Tu che mi guardi, tu che mi racconti: Filosofia della narrazione* (Milano: Feltrinelli, 1997), 72.

³¹ *Ivi*, 20.

normative devices is criticized as incapable of representing the “unforeseen subject”³² that women are.

This irreconcilability of the all-male way of knowing and governing the world with the female way is well exemplified by one of the most radical thinkers of difference feminism, Carol Gilligan. Emphasis on female difference will lead Carol Gilligan to extend feminist critique to the ethics of justice itself³³, which, as Aristotle teaches³⁴, has a two-way relationship with equality. To this, Gilligan opposes the ethics of responsibility, of care, capable -- beginning with the admittedly non-problematic valorization³⁵ of feminist moral agency -- of recognizing the diversity of the needs of men and women building on the concept of distributive justice³⁶.

Feminism and reformism

The publication of Gilligan's book was a watershed moment not only for feminist thought, but also for feminist lawyers, who were looking for an alternative to sex-blind measures, being no longer responsive to women's needs and unable to translate rights into effective protections.

In this respect, we might look at the initial approach to the issue of equality adopted by the European Union: the Treaty of Rome foresaw only the principle of equal pay at Article 119, mere “law in books” until the

³² Carla Lonzi, *Let's Split on Hegel*, ivi.

³³ Carol Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Cambridge, MA: Harvard University Press, 1982).

³⁴ The relationship between equality and justice in Aristotle is addressed, *ex multis*, by Wolfgang van Leyden, *Aristotle on Equality and Justice: His Political Argument* (London: Palgrave Macmillan, 1986).

³⁵ It is worth pointing out the criticisms of essentializing female morality that have been raised against Gilligan's theory by several parties, leading Gilligan herself to adjust her theory, by putting emphasis on the feminist qualification of care ethic rather than feminine. For the discussion of the critiques raised see Carol Gilligan, “Hearing the Difference: Theorizing Connection,” *Hypatia* 10, no. 2 (1995): 120-127.

³⁶ Ethic of justice stems from the concept of equality and fairness of judgment, while ethic of care is grounded on the concept of distributive justice and the recognition of diversity of needs. Where the rights-based ethics gives expression to the recognition of equal respect due to each person and aims to strike a balance between the other's claims and its own, the responsibility ethics rests on an understanding that gives rise to compassion and care. (Gilligan 1985).

1970s, when it began to be embedded into domestic legal systems³⁷ thanks to the recognition of direct effect³⁸ on one hand, and the three subsequent directives (the 117 of 1975; the 207 of 1976; the 7 of 1979) on the other. More precisely, the 1975 directive had tried to bridge the opposing theoretical perspectives on equality by introducing the possibility of so-called affirmative action.

Born in the United States as measures in favor of Afro-descendant people, “affirmative actions” will later be formally recognized in the Treaty of Amsterdam³⁹, thus responding to the claims advanced by difference feminism.

The promotion of affirmative action (such as measures to protect motherhood, or the “quotas”) triggered a highly polarized debate at the time, with the re-emergence of liberal feminist thought pointing out the stigmatizing effect of “*sex-responsive*” policies. Sharing this line of critique with radical legal feminism, they accused affirmative actions of perpetuating gender stereotypes and even naturalizing the biological differences that are the premise of such policies: among them, motherhood. Jurist Wendy Williams’ famous slogan alluded to the concerns of liberal feminists: “we can’t have it both ways, we need to think carefully about which way we want to have it.”⁴⁰

This so-called “symmetrical” approach animated the sameness/difference debate in the 1980s⁴¹.

³⁷ This process is well illustrated in Maria Grazia Rossilli, “The European Community Policy on the Equality of Women: From the Treaty of Rome to the Present,” *The European Journal of Women’s Studies* 4 (1997): 63-82.

³⁸ Daniele Gallo, “Rethinking Direct Effect and Its Evolution: A Proposal,” *European Law Open* 1, no. 3 (2022): 576-605.

³⁹ Elisabeth F. Defeis, “The Treaty of Amsterdam: The Next Step toward Gender Equality,” *Boston College International and Comparative Law Review* 23, no. 1 (1999): 1-34.

⁴⁰ Wendy Williams, “The Equality Crisis: Some Reflections on Culture, Courts, and Feminism,” *Women’s Rights Law Reporter* 14, no. 2-3 (1982): 151-174, 170.

⁴¹ On this crucial point of legal feminism, see the accurate depiction in Annalisa Verza, “The Legal and Political Contributions Challenging Discrimination against Women,” *Rechtstheorie* 48, no. 1 (2017): 1-44.

Nonetheless, difference feminism began to enter systematically into theoretical legal thinking⁴².

As a matter of fact, the ethics of care had an interesting unfolding in Joan Tronto's⁴³ works, emphasizing the need to recognize public value of care by redistributing the costs of such activities to all components of society. Tronto's thought undoubtedly had the merit of preventing difference feminism from the anti-juridism rooted in the early ethics of care. Such an anti-juridism, moreover, can also be traced back to a part of Italian legal feminism, such as Lia Cigarini's claim for "legislative void," expressing skepticism towards the possibility that law might guarantee women's liberation⁴⁴.

As Alessandra Facchi put it, "While historical feminism had established itself precisely through its battles for legal reforms, entrusting law with an indispensable role in social transformation, much of the feminist theory of the 1980s moved away from law and turned inward, elaborating analyses of women's identity, attempting to reconcile the various souls of feminism and undertaking the construction, through gender studies, of a women's culture."⁴⁵

Against gender mainstreaming

It is precisely from this point that it is possible to read some of the criticism directed against gender mainstreaming, which has nonetheless been recognized as one of the most significant political achievements of feminism in recent decades.

⁴² "Feminist jurists came late to the question of difference [...] Gilligan's book was published at the very time when they were looking for an alternative to the gender-neutral jurisprudence of the 1970s," Christina Brooks Whitman, "Review Essay: Feminist Jurisprudence," *Feminist Studies* 17 (1991): 499.

⁴³ Joan Tronto, *Moral Boundaries: A Political Argument for an Ethic of Care* (New York: Routledge, 1993).

⁴⁴ On this aspect see Angela Condello and Ilaria Boiano, "Lia Cigarini and the Freedom of the Legislative Void," in *Legal Feminism: Italian Theories and Perspectives*, edited by Anna Simone, Ilaria Boiano, and Angela Condello (New York: Routledge, 2022), 147-162.

⁴⁵ Alessandra Facchi, "A partire dall'eguaglianza. Un percorso nel pensiero femminista sul diritto," *About Gender* 1 (2012): 118-150, 128.

In the influential 2011 work “The Future of Feminism,”⁴⁶ Sylvia Walby argued that feminism had achieved its goal, and this was precisely because of the so pervasive diffusion of the gender perspective as a program of public policy. While the first decade of the new millennium may have seen a diminished presence of feminism in the public debate, leading to the alleged “end of feminism,” the reason for this is to be found in its institutionalization, as feminism can be traced to “a very wide range of activities aimed at reducing gender inequality,”⁴⁷ activities that can be understood as gender mainstreaming.

Against this enthusiasm even shared by some difference feminists, several criticisms have been fielded.

The first line of criticisms is internal to difference feminism itself, as previously mentioned, pointing out that the reformist perspective *through* law is constitutively foreign to the feminist program⁴⁸. According to this perspective, feminism has unveiled the androcentric nature of law and its logical structures (among all: equality⁴⁹), making it impossible to resort to “male” law in advancing the feminist battle, which by definition eschews the possibility of generalization.

Against the radical feminist critique of entitlement, one can respond with Hillary Charlesworth’s words that “buying rights is certainly not the only solution to male domination of women unfolding around the world. However, it is an important tactic in the international arena.”⁵⁰ As it has

⁴⁶ Sylvia Walby, *The Future of Feminism* (Cambridge: Polity Press, 2011).

⁴⁷ She continues as following: “Feminism is, however, less visible than before. This is partly because projects to reduce gender inequality less often label themselves as ‘feminist’, and partly because the form that feminism takes has been changing beyond recognition. Projects for gender equality are less likely to call themselves feminist when they exist in alliance or coalition with other social forces; they adopt instead a more generic terminology concerning equality, justice and rights. There is also pressure not to use a term that has been criticised, even stigmatised” Sylvia Walby, *The Future of Feminism*, 13-14.

⁴⁸ Lia Cigarini, *La politica del desiderio* (Parma: Nuove Pratiche, 1995).

⁴⁹ On this significant point of legal feminism, see Valeria Marzocco, “Un diritto sessuato? Processi di soggettivazione di genere e traiettorie del femminismo contemporaneo,” in *Pluralità identitarie tra bioetica e biodiritto*, edited by Luigi Ferraro (Milan: Mimesis, 2016), 67-77.

⁵⁰ Hilary Charlesworth, “What are ‘Women’s International Human Rights’?” in *Human Rights of Women*, edited by Rebecca Cook (Philadelphia: University of Pennsylvania Press, 1994), 58-84, 61.

been aptly noted, outside of law there is not freedom, but other more coercive forms of normativity, which leave women defenseless⁵¹.

On a different but equally critical level, *gender mainstreaming* feminism has been considered a top-down program, expression of the bureaucrats' elite and gender policy experts⁵² working in supranational institutions, and representatives of the *lean-in* feminism stigmatized in the famous "Feminism for the 99%" manifesto⁵³.

This critique, notably raised by Nancy Fraser, targets the controversial relationship between feminism and neoliberal capitalism, guilty of having neutralized the revolutionary vindications of first- and second-wave feminists (both the claims for formal equality and positive discrimination), settling for the successes achieved by the 1% of women, celebrated as feminist heroines. Difference feminism itself is notably accused by Fraser of indulging in a deadly alliance with neoliberalism, as it has turn struggles for redistribution into struggles for identity⁵⁴.

Diversity policies would thus be nothing more than a red herring, yet another tool neoliberalism uses to disguise the real power relations that make those rights accessible only by women from privileged classes⁵⁵.

⁵¹ Tamar Pitch, "La libertà femminile può passare per i diritti," in *Il pensiero dell'esperienza*, edited by A. Buttarelli and F. Giardini (Milan: Baldini Castoldi Dalai, 2008). On Tamar Pitch's legal feminism, see Ilaria Boiano, "Difference, Differences, and Fundamental Rights," in *Legal Feminism: Italian Theories and Perspectives*, edited by Anna Simone, Ilaria Boiano, and Angela Condello (New York: Routledge, 2022), 90-102.

⁵² Hester Eisenstein, *Feminism Seduced: How Global Elites Use Women's Labor and Ideas to Exploit the World* (London: Paradigm Publisher, 2009).

⁵³ Cinzia Arruzza, Tithi Bhattacharya, and Nancy Fraser, *Feminism for the 99%: A Manifesto* (New York-London: Routledge, 2023).

⁵⁴ Nancy Fraser, *Fortunes of Feminism: From State-Managed Capitalism to Neoliberal Crisis* (London-New York: Verso, 2013).

⁵⁵ In a 14th October interview given at "The Guardian", Fraser says: "In a cruel twist of fate, I fear that the movement for women's liberation has become entangled in a dangerous liaison with neoliberal efforts to build a free-market society. That would explain how it came to pass that feminist ideas that once formed part of a radical worldview are increasingly expressed in individualist terms. Where feminists once criticised a society that promoted careerism, they now advise women to "lean in". A movement that once prioritised social solidarity now celebrates female entrepreneurs. A perspective that once valorised "care" and interdependence now encourages individual advancement and meritocracy". Nancy Fraser, interview in *The Guardian*, October 14, 2013,

Against such a critique, it is useful to quote Walby's argument: *gender mainstreaming* is by its very nature incompatible with neoliberalism for the very simple reason that neoliberalism is not a leveling force, as it produces strong inequalities, including gender inequalities⁵⁶. The ongoing assault on women's acquired rights (especially reproductive rights), in open defiance of the gender mainstreaming narrative, can certainly not be blamed on feminism and its identity claims, but rather on the neoliberal and post-patriarchal agenda enthusiastically embraced by new supposedly feminist movements with their celebration of sexual autonomy⁵⁷.

From gender equality to “gender democracy”

As is clear from what has been said so far, the different ways of looking at gender mainstreaming are partly due to different readings of the “contested” concept, which, like equality tout court, is gender equality.

Who is the term of the equality judgment implicit in *gender mainstreaming* policies? In fact, it is not just a matter of deciding whether “gender blind” or “gender responsive” measures are more effective, both of which are present in the mainstreaming strategy for reducing inequality, but of identifying those factors that affect, on the one hand, the somewhat normative roles and patterns and, on the other hand, the material conditions of women's lives.

The lesson of radical feminism *à la* MacKinnon, which has had a consonant voice in Italy in Letizia Gianformaggio, may be useful in this regard.

MacKinnon's “*dominance theory*,” in fact, has refocused the equality debate, leading to actions or institutions that produce or perpetuate subordination being read as gender discrimination.

<https://www.theguardian.com/commentisfree/2013/oct/14/feminism-capitalist-handmaiden-neoliberal>.

⁵⁶ Sylvia Walby, *The Future of Feminism*, 257.

⁵⁷ This evidently entails a disassociation from the newly minted feminisms which, by claiming a hyper-sexualized imaginary, with the albeit appreciable intent of re-signifying such practices, would actually be re-proposing an image of a submissive and sexually commodified woman. In this sense, it is not feminism that has succumbed to the sirens of neoliberalism, but rather it is neoliberalism that has taken on feminist language, actually fighting a rearguard battle.