The Prism of Equality. From Legal Feminist Critiques to the Digital Era

(Article begins on next page)

02 May 2024

The Prism of Equality.

From Legal Feminist Critiques to the Digital Era

SUMMARY: 1. «This is the oppressor's language yet I need it to talk to you»; 2. The prism of equality; 2.1 The difference critique; 2.2. The oppression critique; 2.3 The diversity critique; 2.4 The dependency critique; 3. The Digital Era and new forms of inequality; 4. Conclusive remarks.

ABSTRACT: The first part of this paper focuses on four feminist legal critiques, aimed at criticizing the equality principle as defined by western legal orders (the difference critique, the oppression critique, the diversity critique, the dependency critique). The second part examines some implications of the Digital Era affecting sex equality: from the "digital gender divide" to the sexist hate and the new forms of online violence. In this scenario, a "critical" conception of equality should still be claimed as a guiding light for politics, law and shared actions.

KEYWORDS: Equality, Feminist Legal Studies, Digital Gender Divide, Sexist Hate.

1. «This is the oppressor's language yet I need it to talk to you»[1]

The contemporary scenario is strongly characterized by the impact of technologies on the legal notions and processes, as well as on the phenomena of a "digital" reality that the laws crystalize, rule and interpret.

In such a framework, new problems risk to afflict the still partial, recent and often "critical" acquisitions accomplished by the Feminist Legal Studies[2]. The same concepts of "individual",

---

[1] The title of the paragraph is drawn from a verse of the experimental poem written by Adrienne Rich, *The Burning of Paper Instead of Children* (1968-1970).

[2] See, *inter alia*, S. Benhabib, D. Cornwell (eds.), *Feminism as a Critique. On the Politics of Gender*, University of Minnesota Press, Minneapolis, 1987; D. Morondo Taramundi, *Il dilemma della differenza nella teoria femminista del diritto*, ES, Pesaro, 2004; A. Verza, *Il dominio pornografico. Femminismo giuridico radicale e nuovi paradigmi*, Gedit, Bologna, 2004; L.H. Schwartzman, *Challenging Liberalism. Feminism as Political Critique*, Pennsylvania University Press, University Park, 2006; M.A. Fineman (ed.), *Trascending the Boundaries of Law. Generations of Feminism and Legal Theory*, Routledge, London-New York, 2010; Th. Casadei (a cura di), *Donne, diritto, diritti. Prospettive del giusfemminismo*, Giappichelli, Torino, 2015; Th. Casadei, *Diritto e*

"subject of rights" and "person", main targets of the feminist legal attacks, are suffering from unprecedented intrinsic tensions[3].

Within the «infosphere»[4], in fact, the so-called «*data-subjet*»[5] appears to be an «heterogeneous multiplicity in time and space»[6], an entity which is fragmented into a plurality of profiles, likes, cookies, tastes, preferences, market investigations, dissolving among the different traces of his/her web presence. Identity is not a pre-existent element anymore but an «ongoing» process, open to the pervasive interferences of the different digital interactions[7].

As Jo Freeman and Amanda Hess revealed, however, the «structurelessness» of the web is only pretended[8]. *Pace* P.J. Barlow and the good universal purposes of the Declaration of Independence of the Cyberspace[9], the architecture of the web is responsible for the marginalization of some users for the benefit of the same hierarchies that structure the "old" social reality.

To this extent, the first part of this paper will present some legal feminist critiques which understand equality not only as a legal principle or value, but also as a prism, refracting light differently depending on the side or on the characteristics of the material. In the second part, a reflection on new the risks in terms of gender equality in the Digital Era will be offered, from

---

(dis)parità. Dalla discriminazione di genere alla democrazia paritaria, Aracne, Roma, 2017; A. Simone, I. Boiano (a cura di), *Femminismo ed esperienza giuridica. Pratiche, argomentazione, interpretazione*, Roma, Efesto, 2018; A. Simone, I. Boiano, A. Condello (a cura di), *Femminismo giuridico. Teorie e problemi*, Milano, Mondadori, 2019.

[3] See S. Vantin, *Construcción y deconstrucción de la subjetividad jurídica. Una reflexión sobre Derecho y tecnologías desde Shulamith Firestone hasta Donna Haraway*, forthcoming in "Revista Derecho del Estado".

[4] L. Floridi, *The Fourth Revolution: How the Infosphere is Reshaping Human Reality*, Oxford University Press, Oxford, 2014.

[5] Opinion 4/2015 "Towards a New Digital Ethics. Data, Dignity and Technology" (11 September 2015) released by the European Data Protection Supervisor (EDPS).

[6] C. Sini, C.A. Redi, *Lo specchio di Dioniso. Quando un corpo può dirsi umano?*, Jaca Books, Milano, 2018, pp. 13, 20.

[7] G. Resta, *Identità personale e identità digitale*, in "Diritto dell'informazione e dell'informatica", 3, 2007, pp. 511-531, in part. p. 511.

[8] J. Freeman, *The Tyranny of Structurelessness*, 1971, <https://www.jofreeman.com/joreen/tyranny.htm>, A. Hess, *Why Does Hate Thrive Online? The Roots of Internet Culture Provide a Few Clues*, in "Slate", 16 October 2015, <https://slate.com/technology/2015/10/hate-speech-harassment-and-trolling-online-some-history.html>. See also E. Canetti, *Massa e potere* (1960), Adelphi, Milano, 1981.

[9] P.J. Barlow, *A Declaration of the Independence of Cyberspace*, 8 February 1996, <https://www.eff.org/cyberspace-independence>.

the "digital gender divide" to the sexist hate and the new forms of online violence. Finally, some conclusive remarks will be proposed.

2. The prism of equality

The multifaceted legal feminist universe led to the articulation of (at least) four important critiques against the principle of equality[10], intended, in the wake of the Aristotelian enunciation[11], as the symmetrical equation prescribing to "treat likes alike and unlikes unalike": the difference critique; the oppression critique; the diversity critique; and the dependency critique.

2.1 The difference critique

When sex equality started to find recognition in the western legal orders, some feminist scholars highlighted the peculiarities of the female experience, considering the equality criterion, based on male standards, inadequate to grasp women's «different equipment»[12] with respect to female bodies, values, socialization practices, as well as responsibilities and moral expectations.

As Carol Gilligan wrote in her most celebrated work, *In a Different Voice. Psychological Theory and Women's Development* (1982),

Women's deference is rooted not only in their social subordination but also in the substance of their moral concern. Sensitivity to the needs of others and the assumption of responsibility for taking care lead women to attend to voices other than their own and to include in their judgment other points of view. Women's moral weakness, manifest in an apparent diffusion and confusion of judgment, is thus

---

[10] See E.F. Kittay, *Love's Labour. Essays on Women, Equality and Dependency*, Routledge, London-New York, 1999, pp. 8-17.
[11] See Aristotle, *The Nicomachean Ethics*, Oxford University Press, Oxford, 2009, 1131b, 23.
[12] Ivi, p. 10.

inseparable from women's moral strength, an overriding concern with relationships and responsibilities[13].

Among others, this reflection led to the *difference critique*[14], according to which the surreptitiously neutral and abstract nature of the equality logic conceals an assimilationist obligation, prescribing women to adapt to male standards, as crystallized by a legal system produced by men – whereas

men and women may speak different languages that they assume are the same, using similar words to encode disparate experiences of self and social relationships. Because these languages share an overlapping moral vocabulary, they contain a propensity for systematic mistranslation, creating misunderstandings which impede communication and limit the potential for cooperation and care in relationships[15].

In the wake of this view, therefore, enhancing sex equality means to promote specific treatments able to foster an active female presence, for example in professional or institutional contexts, representing women's own claims. This approach encourages, therefore, "sexed laws" and "sexed rights", created by women with respect to specific female concerns, such as, typically, reproductive choices, abortion, maternity and life-work balance, etc.

2.2. The oppression critique

---

[13] C. Gilligan, *In a Different Voice. Psychological Theory and Women's Development*, Harvard University Press, Cambridge, MA, 1982, pp. 16-17.

[14] See, *inter alia*, the following works assuming different perspectives: Aa. Vv. *Sottosopra. Esperienze dei gruppi femministi in Italia*, Milano, 1973; L. Irigaray, *Speculum. De l'autre femme*, Editions de Minuit, Paris, 1974; C. Lonzi, *Sputiamo su Hegel. La donna clitoridea e la donna vaginale e altri scritti*, Scritti di Rivolta femminile, Milano, 1978; C. Gilligan, *In a Different Voice. Psychological Theory and Women's Development*, cit.

[15] C. Gilligan, *In a Different Voice. Psychological Theory and Women's Development*, cit., p. 173.

The *oppression critique*[16] has been formulated by radical legal feminist scholars, lying on the premise that the original distinction between men and women depends on the different access to power. Gender is, therefore, a hierarchy, not a mere difference. In these terms, sex equality in legal order appears a sort of paradox. As Catharine A. MacKinnon stated:

Equality is a sameness and gender is a difference. To define equality in terms of sameness and women as "not the same" thus raises the question whether women will be equal under this approach only when they are no longer women. To consider this question is not to affirm women's sameness to men or women's differences from men, but to face a conflict at the point of intersection between the ruling equality paradigm and the social definition of women as such. Sex equality, so understood, appears to be a contradiction in terms[17].

The whole legal order is thus conceived as consistent with the dominion logic, since the dominators created legal systems to legitimize and preserve their power. In this view, claiming sex equality means to legally confront social inequalities in order to end them, by producing legal arguments, policies, collective actions able to grant the access to power for the oppressed. In other words, by means of a "reclaiming" collective process, the women's fight will reach the goal to renegotiate power, thus enhancing a substantive and effective equality, able to demolish the pervasive logics of dominion in all their forms and representations.

Dominance and subordination is about power, its definition and distribution. Inequality is a question of hierarchy: who is on top and who is on the bottom. Only derivatively, within an already existing social hierarchy, does that become socially coded as sameness or difference. The sameness/difference

---

[16] See, in part., S. Brownmiller, *Against Our Will. Men, Women and Rape*, Penguin, Harmondsworth, 1975; C.A. MacKinnon, *Feminism Unmodified. Discourses on life and law*, Cambridge, MA, Harvard University Press, 1987; C.A. MacKinnon, *Towards a Feminist Theory of the State*, Cambridge, MA, Harvard University Press, 1989; C.A. MacKinnon, *Only Words*, Cambridge, MA, Harvard University Press, 1993.
[17] C.A. MacKinnon, *Sex Equality*, New York, Foundation Press, 2001, 20. See also C.A. MacKinnon, *Towards a Feminist Theory of the State*, cit., 242.

approach derives from, and reproduces, the fact that some people have power and some people do not, or have a great deal less of it while the dominance/subordination approach challenges that fact in order to change it. Where the mainstream approach to equality is bafflingly abstract, the alternative approach is concrete. Its goal isn't to make up legal categories that will reflect the status quo in law. The goal is to legally confront real social inequalities and conditions in order to end them. Its agenda is change[18].

To this extent, the oppression critique understands the differences among men and women as the *product* of power relations, and not as peculiarities to safeguard. The emphasis on power outlines a strict list of priorities, implying a dichotomous and conflictual worldview.

2.3 The diversity critique

The oppression critique has been criticized for having represented the point of view of a group of women. These are considered as privileged (often white, middle-class, heterosexual, intellectual women) and overshadowing the peculiarities of those people "at the margins" of the (feminist) discourse, such as the intersections between sex, race and class, or the associations between minority sexual orientation and abjection, or the specific problems derived from the gap between sexual and gender identity.

As maintained by Kimberlé Crenshaw, it is therefore necessary to «demarginalize the intersections» among different discrimination factors, since the «focus on the most privileged group members marginalizes those who are multiply-burdened and obscures claims that cannot be understood as resulting from discrete sources of discrimination»[19]. The example of the Black women is emblematic in that they

---

[18] C.A. MacKinnon, *Butterfly Politics*, Harvard University Press, Cambridge, MA, 2017, p. 119.
[19] K. Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, in "University of Chicago Legal Forum", 1, 8, 1989, pp. 139-167, in part. p. 140.

are sometimes excluded from feminist theory and antiracist policy discourse because both are predicated on a discrete set of experiences that often does not accurately reflect the interaction of race and gender. These problems of exclusion cannot be solved simply by including Black women within an already established analytical structure. Because the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated. Thus, for feminist theory and antiracist policy discourse to embrace the experiences and concerns of Black women, the entire framework that has been used as a basis for translating "women's experience" or "the Black experience" into concrete policy demands must be rethought and recast[20].

In broader terms, a whole galaxy of new reflections could be associated with the famous words pronounced by bell hooks: «Since men are not equals in white supremacist, capitalist, patriarchal class structure, which men do women want to be equal to?»[21].

To this extent, in the wake of the *diversity critique*[22], the same equality logic is under attack, being conceived as a rhetoric and incomplete instrument. The black, intersectional, multicultural, but also queer, transfeminist approaches therefore introduce a bulky element of complexity, by denying or contrasting the homologating power of the gender apparatus. Gender itself is thus «constructed through relations of power and, specifically, normative constraints that not only produce but also regulate various bodily beings»[23].

2.4 The dependency critique

---

[20] Ibidem.

[21] b. hooks, *Feminist Theory. From Margin to Center*, South End Press, Boston, 1984, p. 18.

[22] See, *inter alia*, A. Davis, *Women, Race, Class*, The Women's Press, London, 1982; b. hooks, *Feminist Theory. From Margin to Center*, cit.; K. Crenshaw, *Demarginalizing the Intersection of Race and Sex. A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, cit.; J. Butler, *Gender Trouble. Feminism and the Subversion of Identity*, Routledge, London-New York, 1990; S. Jefferys, *The Lesbian Heresy*, Pinifex, Melbourne, 1993; P.B. Preciado, *Testo Junkie: Sex, Drugs, and Biopolitics in the Pharmacopornographic Era*, Feminist Press, New York 2013; A. Long Chu, *Females*, Verso, London, 2018.

[23] J. Butler, *Bodies That Matter. On the Discoursive Limits of "Sex"*, Routledge, London, 1993, p. X.

Finally, the *dependency critique*[24] denies the «myth» of the subject's autonomy and aims at recognizing a «*transparent self*», i.e. «a self through whom the needs of another are discerned, a self that, when it looks to gauge its own needs, sees first the needs of another»[25].

This approach brings to light the importance of care, a fundamental labor historically imposed on women and rejected individuals, as well as removed from the "high" spheres of law, politics and public debate.

Giving relevance and centrality to the practice of caring (particularly, with respect to the most vulnerable, such as disabled, elderly people and babies) means to redefine the logic of equality, and its link with justice. In more practical terms, this approach leads to propose and support structural and institutional shared solutions to distribute the burdens of care according to non-discriminatory principles.

The well-known statement «we are all some mother's child»[26] entails the recognition of the universality of dependency. For this reason, Eva F. Kittay suggests a "care correction" in one of the most famous theory of justice of the twentieth-century, the one formulated by John Rawls, proposing the following third principle of justice:

To each according to his or her need for care, from each according to his or her capacity for care, and such support from social institutions as to make available resources and opportunities to those providing care, so that all will be adequately attended in relations that are sustaining[27].

---

[24] See, *inter alia*, J. Tronto, *Moral Boundaries. A Political Argument for an Ethic of Care*, Routledge, London-New York, 1993; E.F. Kittay, *Love's Labour. Essays on Women, Equality and Dependency*, cit.; M.A. Fineman, *The Authonomy Myth. A Theory of Dependency*, The New Press, New York, 2005; N. Noddings, *Caring. A Relational Approach to Ethics and Moral Education*, University of California Press, Berkeley, 2013.

[25] E.F. Kittay, *Love's Labour. Essays on Women, Equality and Dependency*, cit., p. 51.

[26] E.F. Kittay, *Love's Labour. Essays on Women, Equality and Dependency*, cit., p. 19. This expression recalls A. Rich, *Of Woman Born. Motherhood as Experience and Institution* (1977), New York-London, Norton & Co., 1995, p. 11.

[27] E.F. Kittay, *Love's Labour. Essays on Women, Equality and Dependency*, cit., 113.

Kittay's effort demonstrates it is really possible to conciliate care and justice, in a moral, legal and political perspective where "fairness" is defined not only by an abstract reason but also by "transparency" to the needs of others.

This view does not emphasize some presumed feminine or masculine peculiarities. On the contrary, it focuses on a universality in care needs and capacities. Nevertheless, if applied in the current societies, this approach would amend deep gender inequalities relative to the present distribution of the burdens of care, affecting women in disproportionate ways.

This reflection grasps also another crucial aspect, namely the *role of institutions* with respect to the enhancement of the following primary needs: the understanding that we will be cared for if we become dependent, the support we require if we have to take on the work of caring for someone who is dependent, and the assurance that, if we become dependent, someone will take on the job of caring for those who are dependent upon us[28].

3. The Digital Era and new forms of inequality

Intended as a whole, these critiques challenge the western legal orders in the focal point that characterize them: the ambition to grant equality to *all* its members.

In such a context, the "digital revolution" complicated matters further. On the one hand, it seems able to offer new opportunities in terms of sex equality (for example, creating new chances to build empowering communities)[29]. But, on the other hand, it also increases the forms

---

[28] Ivi, 102. To this extent, see the nexus between vulnerability and disability in the works of M. del Carmen Barranco Avilés, in part. *La disabilità intellettiva e la disabilità psicosociale come situazioni di vulnerabilità*, in "Rivista di Filosofia del diritto", 2, 2018, pp. 301-320.

[29] About the "liberating" potentialities of the web, and about the Feminist Technology Studies, see, *inter alia*, D. Haraway, *A Cyborg Manifesto*, in "Socialist Review", 1985, pp. 65-108; J. Wajcman, *Feminism Confronts Technology*, Pennsylvania State University Press, University Drive, PA, 1991; C. Cockburn, *The Circuit of Technology: Gender, Identity and Power*, in R. Silverstone, E. Hirsch (eds.), *Consuming Technology: Media and Information in Domestic Spaces*, Routledge, London-New York, 1992, pp. 32-47; A. Balsamo, *Technologies of the Gendered Body: Reading Cyborg Women*, Duke University Press, Durham, 1998; W. Faulkner, *The Technology Question in Feminism: A View from Feminist Technology Studies*, in "Women's Studies International Forum", 1, 2001, pp. 79-95; J. Wajcman, *Technofeminism*, Polity Press, Cambridge, 2004; F. Bray, *Gender and Technology*, in "Annual Review of Anthropology", 2007, pp. 37-52; S. Puente, *From Cyberfeminism to Technofeminism: from an Essentialist Perspective to Social Cyberfeminism in Certain Feminist Practices in Spain*, in "Women's Studies International forum", 31, 2008, pp. 434-440; C. Åsberg, N. Lykke, *Feminist Technoscience*

of dominion and violence against women[30], since the web is a breeding ground for inequalities, as well as for verbal violence, sexist rhetoric and "punitive" misogynous attitudes[31].

Firstly, the existence of a "digital gender divide" is widely documented and mainly explained as a consequence of consolidated socio-economical differences between the sexes (in particular in occupation and income), that make ICT more accessible to already advantaged subjects[32].

To this extent, the data reported by the World Economic Forum through the Global Gender Gap Reports are alarming[33]: the digital inequalities should be understood within this broader framework of inequalities.

Roberta Bracciale describes this scenario as follows:

The subjects that are "richer" in personal resources have access to the benefits of the «Saint Matthew effect», a cumulative multiplication of the advantages that follows the logic «whoever has will be given more», while the "poorest" subjects, on the contrary, suffer from a cumulative multiplication of the

Studies, in "European Journal of Women's Studies", 4, 2010, pp. 299-305; M. Conceição Da Costa, R. Buzzo Feltrin, *Challenges of Intersectionality in Gender, Science and Technology*, in "Cadernos Pagu", 47, 2016, <http://www.scielo.br/scielo.php?pid=S0104-83332016000200701&script=sci_arttext&tlng=en>; C. Cossutta, V. Greco, A. Mainardi, *Smagliature digitali. Corpi, generi e tecnologie*, Agenzia X, Milano, 2018; W.K. Bauchspies, M. Pig de la Bellacasa, *Feminist Science and Technology Studies: A Patchwork of Moving Subjectivities. An Interview with Geoffrey Bowker, Sandra Harding, Anne Marie Mol, Susan Leigh Star and Banu Subramaniam*, in "Subjectivity", 28, 2019, pp. 334-344.

[30] See, to this extent, A. Pitino (a cura di), *Interventi di contrasto alla discriminazione e alla violenza sulle donne nella vita pubblica e privata. Un'analisi multidisciplinare*, Giappichelli, Torino, 2015; F. Rescigno (a cura di), *Percorsi di eguaglianza*, Giappichelli, Torino, 2016; S. De Vido, *Donne, violenza e diritto internazionale. La Convenzione di Istanbul del Consiglio d'Europa del 2011*, Mimesis, Milano-Udine, 2016; S. Feci, L. Schettini, *La violenza contro le donne nella storia. Contesti, linguaggi, politiche del diritto (secoli XV-XXI)*, Viella, Roma, 2017; C. Pecorella (a cura di), *Donne e violenza. Materiali di studio*, Giappichelli, Torino, 2020. See also the Reports edited by Di.Re – "Donne in Rete contro la violenza" (www.direcontrolaviolenza.it), <https://www.direcontrolaviolenza.it/pubblicazioni/>.

[31] See G. Ziccardi, *L'odio online. Violenza verbale e ossessioni in rete*, Raffaello Cortina, Milano, 2016; G. Magistro, *Cyberbullismo*, Villaggio Maori, Catania, 2018; F. Di Tano, *Hate speech e molestie in rete. Profili giuridici e prospettive de iure condendo*, Aracne, Roma, 2019; A. Sorgato, *Revenge porn. Aspetti giuridici, informativi, psicologici*, Giuffrè, Milano, 2019; A. Di Rosa, *Hate speech e discriminazione. Un'analisi performativa tra diritti umani e teorie della libertà*, Mucchi, Modena, 2020.

[32] See M. Hilbert, *Digital Gender Divide or Technologically Empowered Women in Developing Countries? A Typical Case of Lies, Damned Lies, and Statistics*, in "Women's Studies International Forum", 34, 6, 2011, pp. 479-489.

[33] <https://www.weforum.org/reports/gender-gap-2020-report-100-years-pay-equality>.

disadvantages, the «Matilda effect», supporting the argument «whoever does not have, even what they have will be taken from them»[34].

In addition to these consolidated inequalities, the gap is supported even by "new" cultural factors and gender stereotypes[35], influencing the attitudes of the "technologic subjects" by addressing the males towards technology and females away from it[36].

More broadly, the prejudices distancing women from technology are deep, and imply risks of unfavorable or burdensome treatments (and potential discrimination) in a field that even jurisprudence defines «fundamental in every aspect of human life»[37].

Secondly, it is well-known that the web swarms with hate "bubbles" made by groups, chats, forums, websites inciting towards violence, rape, subjugation of women, collective digital aggression, cyberstalking, revenge porn[38] (the so-called *manosphere*)[39].

The "traditional" – physical, psychological, verbal – forms of violence found thus a fertile ground in the web. The Gender Equality Strategy of the Council of Europe maintains as follows:

---

[34] R. Bracciale, *Donne nella rete. Disuguaglianze digitali di genere*, Franco Angeli, Milano, 2010, p. 13 (my translation).

[35] To this extent, see S. Pozzolo, R. Bencivenga, F. Bosco (a cura di), *Genere e tecnologia: nuove capacitazioni o antichi pregiudizi mascherati?*, in "About Gender – Rivista internazionale di studi di genere", 5, 9, 2016, pp. 1-14.

[36] See M. Hilbert, *Digital Gender Divide or Technologically Empowered Women in Developing Countries? A Typical Case of Lies, Damned Lies, and Statistics*, cit., p. 482. See also M. Papastergiou, *Are Computer Science and Information Technology Still Masculine Fields? High School Students' Perceptions and Career Choices*, in "Computer & Education", 51, 2008, pp. 594-608.

[37] *Giudice di Pace di Trieste* (Italy), 30 July 2012, no. 587.

[38] A. Sorgato, *Revenge porn. Aspetti giuridici, informatici, psicologici*, cit. See also the campaign "EndRevengePorn" promoted by the Cyber Civil Rights Initiative: <https://www.cybercivrights.org/our-services/>.

[39] See F. Pilla, R. Dolce, *Il web che odia le donne*, Ledizioni, Milano, 2019. See also: Council of Europe, *Bookmarks - A manual for combating hate speech online through human rights education*, 2016, <https://rm.coe.int/168065dac7>; FRA, *Violence against Women. A EU wide survey. Main Results*, 2014, <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2014-vaw-survey-main-results-apr14_en.pdf>; FRA, *Ensuring Justice for hate crime victims: professional perspectives*, 2016, <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-justice-hate_crime-victims_en.pdf>; FRA, *Incitement in media content and political discourse in EU Member States*, 2016, <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-media-and-incitement-0_en.pdf>.

Sexist hate speech is rampant in Europe and women are disproportionally targeted. Sexist hate speech takes place online and offline and in all forms of social interaction: at school, in the family, in social circles, in the public space, at work, via emails, websites and (social) media. Although it has taken a new dimension through the Internet, the root causes of sexist hate speech preceded the technology and are fundamentally linked to the persistent unequal power relations between women and men. Sexist hate speech is a form of violence against women and girls that perpetuates and exacerbates gender inequality[40].

The repression and prevention of these new and old hate crimes against women lie in the international legal framework characterized in particular by principles and dispositions set forth in the "Convention on the Elimination of All Forms of Discrimination against Women", (CEDAW, 1979) and subsequently in the "Declaration on the Elimination of Violence against Women" (1993), then reaffirmed by the "Council of Europe Convention on preventing and combating violence against women and domestic violence" (best known as Istanbul Convention, 2011). These legal sources emphasized the nexus between the discrimination against women and the forms of violence suffered by them, providing actions to contrast, repress and prevent. To this extent, art. 3 of the Istanbul Convention qualifies violence against women as «all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life»[41]: a disposition able to include the new forms of violence within digital spaces.

---

[40] Council of Europe Gender Equality Strategy, *Combating Sexist Hate Speech*, <https://rm.coe.int/1680651592>.
[41] See also S. Vantin, *Le violenze domestiche nelle riflessioni di Catharine MacKinnon. Un tentativo di applicazione entro il contesto legislativo e giurisprudenziale europeo*, in "Diritto & Questioni pubbliche", 2015, 236-241.

In these cases, based on pervasive and deeply rooted crimes, law assumes a peculiar "symbolic function"[42] since the criminal punishment of the single conducts becomes a piece of a broader repressive strategy that should be enhanced with firmness *at different levels*[43].

Particularly with respect to online forms of violence and hate against women, a multiplicity of instruments should thus be activated, in order to prevent and protect the victims, raising awareness within the new generations of "digital natives", and offering psychological and technical assistance to guarantee cybersecurity, as well as generating counter-narratives able to restore the victims' dignity[44].

4. Conclusive remarks

Through different and sometimes oppositional nuances, the legal feminist critiques emphasized the tragic gap between the formal principle of equality and its substantive effectiveness.

The Digital Era has increased some sexual inequalities and sexist forms of violence, embittering the discrepancy between reality and declarations of principle. In this framework, new critical efforts are required, being aware that «no legal mechanism alone will be sufficient

---

[42] See S. Vantin, *La funzione simbolica del diritto nelle riflessioni di MacKinnon a partire da "Le donne sono umane?". Il caso della pornografia*, in "Jura gentium. Rivista di filosofia del diritto internazionale e della politica globale", 2014, pp. 85-94. To this extent, see also Catharine MacKinnon's writings, in part.: *Sexual Harassment of Working Women: A Case of Sex Discrimination*, New Haven, Yale University Press, 1979; *Feminism Unmodified. Discourses on life and law*, cit.; *Towards a Feminist Theory of the State*, cit.; *Only Words*, cit.; *Sex Equality*, cit.; *Women's Lives, Men's Laws*, Cambridge, MA, Harvard University Press, 2005; *Are Women Human? And Other International Dialogues*, Cambridge, MA, Harvard University Press, 2006; *Sex Equality* (2nd edition), New York, Foundation Press, 2007; *Traite, Prostitution, Inégalité*, Mount Royal, Que, Editions M., 2014; *Sex Equality Controversies. The Formosa Lectures*, Taipei, National Taiwan University Press, 2015; *Sex Equality* (3rd edition), St. Paul, MN, Foundation Press, 2016; *Butterfly Politics*, cit.; *Gender in Constitutional Law. Theoretical, Historical, and Empirical Analysis*, Cheltenham, Edward Elgar Publishing, 2018.
[43] C. Pecorella, *Violenza di genere e sistema penale*, in "Diritto penale e processo", 9, 2019, pp. 1181-1187, in part. p. 1186.
[44] See <https://www.istat.it/it/violenza-sulle-donne>, and the Reports edited by Amnesty International: <https://www.amnesty.it/twitter-non-rispetta-diritti-delle-donne-aumentano-le-molestie-online/>. For a theoretical framework, see J. Waldron, *The Harm in Hate Speech*, Harvard University Press, Harvard, 2014; I. Gagliardone, G. Danit, T. Alves, G. Martinez, *Combattre les discours de haine sur internet*, Organisation des Nations Unites pour l'éducation, la science et la culture, 2015.

to grant substantive sex equality»[45]. Political will, education, visibility, collective strength and individual perseverance will be necessary as well.

Under these circumstances, a critical reflection on the principle of equality is still fundamental, conceived as complementary and not antithetical with respect to the differences[46], and able to prioritize the claims of different groups of women. The plea for such an equality should rouse institutional, multi-level and "mainstream"[47] interventions as well as shared actions, in which everybody (women and men) should feel involved. The creation of a fairer society is here at stake.

References

Aa. Vv. *Sottosopra. Esperienze dei gruppi femministi in Italia*, Milano, 1973.

Aristotle, *The Nicomachean Ethics*, Oxford University Press, Oxford, 2009.

Åsberg C., Lykke N., *Feminist Technoscience Studies*, in "European Journal of Women's Studies", 4, 2010, pp. 299-305.

Balsamo A., *Technologies of the Gendered Body: Reading Cyborg Women*, Duke University Press, Durham, 1998.

Barlow P.J., *A Declaration of the Independence of Cyberspace*, 8 February 1996, <https://www.eff.org/cyberspace-independence>.

Barranco Avilés M. del Carmen, *La disabilità intellettiva e la disabilità psicosociale come situazioni di vulnerabilità*, in "Rivista di Filosofia del diritto", 2, 2018, pp. 301-320.

---

[45] L. Ferrajoli, *La differenza sessuale e le garanzie dell'eguaglianza*, in "Democrazia e diritto", 33, 2, 1993, pp. 49-73, in part. p. 73 (my translation).
[46] See L. Gianformaggio, *Eguaglianza, donne, diritto*, a cura di A. Facchi, C. Faralli, T. Pitch, Il Mulino, Bologna, 2005.
[47] For a definition of gender mainstreaming, see ECOSOC, *Agreed conclusions* 1997/2, UN doc. A/52/3, Chapter IV, par. 4: «to design, implement and monitor, with the full participation of women, effective, efficient and mutually reinforcing gender-sensitive policies and programmes, including development policies and programmes at all levels, to foster the empowerment and advancement of women».

Bauchspies W.K., Pig de la Bellacasa M., *Feminist Science and Technology Studies: A Patchwork of Moving Subjectivities. An Interview with Geoffrey Bowker, Sandra Harding, Anne Marie Mol, Susan Leigh Star and Banu Subramaniam*, in "Subjectivity", 28, 2019, pp. 334-344.

Benhabib S., Cornwell D. (eds.), *Feminism as a Critique. On the Politics of Gender*, University of Minnesota Press, Minneapolis, 1987.

Bracciale R., *Donne nella rete. Disuguaglianze digitali di genere*, Franco Angeli, Milano, 2010.

Bray F., *Gender and Technology*, in "Annual Review of Anthropology", 2007, pp. 37-52.

Brownmiller S., *Against Our Will. Men, Women and Rape*, Penguin, Harmondsworth, 1975.

Butler J., *Bodies That Matter. On the Discoursive Limits of "Sex"*, Routledge, London, 1993.

Butler J., *Gender Trouble. Feminism and the Subversion of Identity*, Routledge, London-New York, 1990.

Canetti E., *Massa e potere* (1960), Adelphi, Milano, 1981.

Casadei Th. (a cura di), *Donne, diritto, diritti. Prospettive del giusfemminismo*, Giappichelli, Torino, 2015.

Casadei Th., *Diritto e (dis)parità. Dalla discriminazione di genere alla democrazia paritaria*, Aracne, Roma, 2017.

Cockburn C., *The Circuit of Technology: Gender, Identity and Power*, in R. Silverstone, E. Hirsch (eds.), *Consuming Technology: Media and Information in Domestic Spaces*, Routledge, London-New York, 1992, pp. 32-47.

Conceição Da Costa M., Buzzo Feltrin R., *Challenges of Intersectionality in Gender, Science and Technology*, in "Cadernos Pagu", 47, 2016, <http://www.scielo.br/scielo.php?pid=S0104-83332016000200701&script=sci_arttext&tlng=en>.

Cossutta C., Greco V., Mainardi A., *Smagliature digitali. Corpi, generi e tecnologie*, Agenzia X, Milano, 2018.

Council of Europe - Gender Equality Strategy, *Combating Sexist Hate Speech*, 2016, <https://rm.coe.int/1680651592>.

Council of Europe, *Bookmarks - A manual for combating hate speech online through human rights education*, 2016, <https://rm.coe.int/168065dac7>.

Crenshaw K., *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, in "University of Chicago Legal Forum", 1, 8, 1989, pp. 139-167.

Davis A., *Women, Race, Class*, The Women's Press, London, 1982.

De Vido S., *Donne, violenza e diritto internazionale. La Convenzione di Istanbul del Consiglio d'Europa del 2011*, Mimesis, Milano-Udine, 2016.

Di Rosa A., *Hate speech e discriminazione. Un'analisi performativa tra diritti umani e teorie della libertà*, Mucchi, Modena, 2020.

Di Tano F., *Hate speech e molestie in rete. Profili giuridici e prospettive de iure condendo*, Aracne, Roma, 2019.

Faulkner W., *The Technology Question in Feminism: A View from Feminist Technology Studies*, in "Women's Studies International Forum", 1, 2001, pp. 79-95.

Feci S., Schettini L., *La violenza contro le donne nella storia. Contesti, linguaggi, politiche del diritto (secoli XV-XXI)*, Viella, Roma, 2017.

Ferrajoli L., *La differenza sessuale e le garanzie dell'eguaglianza*, in "Democrazia e diritto", 33, 2, 1993, pp. 49-73.

Fineman M.A. (ed.), *Trascending the Boundaries of Law. Generations of Feminism and Legal Theory*, Routledge, London-New York, 2010.

Fineman M.A., *The Authonomy Myth. A Theory of Dependency*, The New Press, New York, 2005.

Floridi L., *The Fourth Revolution: How the Infosphere is Reshaping Human Reality*, Oxford University Press, Oxford, 2014.

FRA, *Ensuring Justice for hate crime victims: professional perspectives*, 2016, <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-justice-hate_crime-victims_en.pdf>.

FRA, *Incitement in media content and political discourse in EU Member States*, 2016, <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-media-and-incitement-0_en.pdf>.

FRA, *Violence against Women. A EU wide survey. Main Results*, 2014, <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2014-vaw-survey-main-results-apr14_en.pdf>.

Freeman J., *The Tyranny of Structurelessness*, 1971, <https://www.jofreeman.com/joreen/tyranny.htm>.

Gagliardone I., Danit G., Alves T., Martinez G., *Combattre les discours de haine sur internet*, Organisation des Nations Unites pour l'éducation, la science et la culture, 2015.

Gianformaggio L., *Eguaglianza, donne, diritto*, a cura di A. Facchi, C. Faralli, T. Pitch, Il Mulino, Bologna, 2005.

Gilligan C., *In a Different Voice. Psychological Theory and Women's Development*, Harvard University Press, Cambridge, MA, 1982.

Haraway D., *A Cyborg Manifesto*, in "Socialist Review", 1985, pp. 65-108.

Hess A., *Why Does Hate Thrive Online? The Roots of Internet Culture Provide a Few Clues*, in "Slate", 16 October 2015, <https://slate.com/technology/2015/10/hate-speech-harassment-and-trolling-online-some-history.html>.

Hilbert M., *Digital Gender Divide or Technologically Empowered Women in Developing Countries? A Typical Case of Lies, Damned Lies, and Statistics*, in "Women's Studies International Forum", 34, 6, 2011, pp. 479-489.

hooks b., *Feminist Theory. From Margin to Center*, South End Press, Boston, 1984.

Irigaray L., *Speculum. De l'autre femme*, Editions de Minuit, Paris, 1974.

Jefferys S., *The Lesbian Heresy*, Pinifex, Melbourne, 1993.

Kittay E.F., *Love's Labour. Essays on Women, Equality and Dependency*, Routledge, London-New York, 1999.

Long Chu A., *Females*, Verso, London, 2018.

Lonzi C., *Sputiamo su Hegel. La donna clitoridea e la donna vaginale e altri scritti*, Scritti di Rivolta femminile, Milano, 1978.

MacKinnon C.A., *Are Women Human? And Other International Dialogues*, Cambridge, MA, Harvard University Press, 2006.

MacKinnon C.A., *Butterfly Politics*, Harvard University Press, Cambridge, MA, 2017.

MacKinnon C.A., *Feminism Unmodified. Discourses on life and law*, Cambridge, MA, Harvard University Press, 1987.

MacKinnon C.A., *Gender in Constitutional Law. Theoretical, Historical, and Empirical Analysis*, Cheltenham, Edward Elgar Publishing, 2018.

MacKinnon C.A., *Only Words*, Cambridge, MA, Harvard University Press, 1993.

MacKinnon C.A., *Sex Equality* (2nd edition), New York, Foundation Press, 2007.

MacKinnon C.A., *Sex Equality* (3rd edition), St. Paul, MN, Foundation Press, 2016.

MacKinnon C.A., *Sex Equality Controversies. The Formosa Lectures*, Taipei, National Taiwan University Press, 2015.

MacKinnon C.A., *Sex Equality*, New York, Foundation Press, 2001.

MacKinnon C.A., *Sexual Harassment of Working Women: A Case of Sex Discrimination*, New Haven, Yale University Press, 1979.

MacKinnon C.A., *Towards a Feminist Theory of the State*, Cambridge, MA, Harvard University Press, 1989.

MacKinnon C.A., *Traite, Prostitution, Inégalité*, Mount Royal, Que, Editions M., 2014.

MacKinnon C.A., *Women's Lives, Men's Laws*, Cambridge, MA, Harvard University Press, 2005.

Magistro G., *Cyberbullismo*, Villaggio Maori, Catania, 2018.

Morondo Taramundi D., *Il dilemma della differenza nella teoria femminista del diritto*, ES: Pesaro, 2004.

Noddings N., *Caring. A Relational Approach to Ethics and Moral Education*, University of California Press, Berkeley, 2013.

Papastergiou M., *Are Computer Science and Information Technology Still Masculine Fields? High School Students' Perceptions and Career Choices*, in "Computer & Education", 51, 2008, pp. 594-608.

Pecorella C. (a cura di), *Donne e violenza. Materiali di studio*, Giappichelli, Torino, 2020.

Pecorella C., *Violenza di genere e sistema penale*, in "Diritto penale e processo", 9, 2019, pp. 1181-1187.

Pilla F., Dolce R., *Il web che odia le donne*, Ledizioni, Milano, 2019.

Pitino A. (a cura di), *Interventi di contrasto alla discriminazione e alla violenza sulle donne nella vita pubblica e privata. Un'analisi multidisciplinare*, Giappichelli, Torino, 2015.

Pozzolo S., Bencivenga R., Bosco F. (a cura di), *Genere e tecnologia: nuove capacitazioni o antichi pregiudizi mascherati?*, in "About Gender – Rivista internazionale di studi di genere", 5, 9, 2016, pp. 1-14.

Preciado P.B., *Testo Junkie: Sex, Drugs, and Biopolitics in the Pharmacopornographic Era*, Feminist Press, New York 2013.

Puente S., *From Cyberfeminism to Technofeminism: from an Essentialist Perspective to Social Cyberfeminism in Certain Feminist Practices in Spain*, in "Women's Studies International forum", 31, 2008, pp. 434-440.

Rescigno F. (a cura di), *Percorsi di eguaglianza*, Giappichelli, Torino, 2016.

Resta G., *Identità personale e identità digitale*, in "Diritto dell'informazione e dell'informatica", 3, 2007, pp. 511-531.

Rich A., *Of Woman Born. Motherhood as Experience and Institution* (1977), New York-London, Norton & Co., 1995.

Rich A., *The Burning of Paper Instead of Children* (1968-1970), <http://www.angelfire.com/poetry/philosophyofkate/recommendpoets/adriennerich/burning.html>.

Schwartzman L.H., *Challenging Liberalism. Feminism as Political Critique*, Pennsylvania University Press, University Park, 2006.

Simone A., Boiano I. (a cura di), *Femminismo ed esperienza giuridica. Pratiche, argomentazione, interpretazione*, Roma, Efesto, 2018.

Simone A., Boiano I., Condello A. (a cura di), *Femminismo giuridico. Teorie e problemi*, Milano, Mondadori, 2019.

Sini C., Redi C.A., *Lo specchio di Dioniso. Quando un corpo può dirsi umano?*, Jaca Books, Milano, 2018.

Sorgato A., *Revenge porn. Aspetti giuridici, informativi, psicologici*, Giuffrè, Milano, 2019.

Tronto J., *Moral Boundaries. A Political Argument for an Ethic of Care*, Routledge, London-New York, 1993.

Vantin S., *Construcción y deconstrucción de la subjetividad jurídica. Una reflexión sobre Derecho y tecnologías desde Shulamith Firestone hasta Donna Haraway*, forthcoming in "Revista Derecho del Estado".

Vantin S., *La funzione simbolica del diritto nelle riflessioni di MacKinnon a partire da "Le donne sono umane?". Il caso della pornografia*, in "Jura gentium. Rivista di filosofia del diritto internazionale e della politica globale", 2014, pp. 85-94.

Vantin S., *Le violenze domestiche nelle riflessioni di Catharine MacKinnon. Un tentativo di applicazione entro il contesto legislativo e giurisprudenziale europeo*, in "Diritto & Questioni pubbliche", 2015, 236-241.

Verza A., *Il dominio pornografico. Femminismo giuridico radicale e nuovi paradigmi*, Gedit, Bologna, 2004.

Wajcman J., *Feminism Confronts Technology*, Pennsylvania State University Press, University Drive, PA, 1991.

Wajcman J., *Technofeminism*, Polity Press, Cambridge, 2004.

Waldron J., *The Harm in Hate Speech*, Harvard University Press, Harvard, 2014.

Ziccardi G., *L'odio online. Violenza verbale e ossessioni in rete*, Raffaello Cortina, Milano, 2016.