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Feminism, Law and the Power of Transformative Narratives

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Table of Contents

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Feminism, Law and the Power of Transformative Narratives

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1. Narratives and Counter-narratives

As Y.N. Harari wrote, the power of narratives lies in their ability to simplify social complexity, and to make human cooperation fluid: 'Any large-scale human cooperation – whether a modern state, a medieval church, an ancient city or an archaic tribe – is rooted in common myths that exist only in people's collective imagination' (Harari, 2015, 25). Precisely because of their function, such narratives, once disseminated, give rise to social constructs and norms that, as long as people believes in them, and precisely by virtue of that belief, exist and live in the social dimension.

The three essays collected for this focus of *Athena* are linked together not only by a common interest for the feminist thinking in relation to various aspects of law, but also and above all by the fact that they all modulate, under different aspects and with different nuances, the theme of the essential relationship that exists between the strength and resistance of the dominant moral, political and legal structuring, in relation to the feminine, and the logically preceding establishment in society (at a latent even more than declared level) of correlative 'narratives'.

ISSN 2724-6299 (Online)
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Some are among the oldest and most foundational ones, such as the essentialist and bipolar narrative that would affirm the idea of a separation between a rational and self-interested perspective, attributed to the masculine, and a bodily, emotional and caring perspective, attributed to the feminine (see, e.g. Graziosi, 2016; 2002). A second narrative, closely related to the previous one, and very old too,[1] postulates a clear separation between the public sphere (the place of legally relevant rational evaluations, of politics, of socially recognised work) and the private one (in which the 'natural' and emotional activities of care and reproduction, commonly attributed to the feminine, are located).

The point, as is well known, lies in the fact that the questionable dividing line that separates these differences is not merely dividing them, in a 'horizontal' manner, in the sign of equal complementarity, but also acts on a 'vertical' level, constructing them as hierarchically constructed.[2]

These narratives, sedimented and endowed with an enormous force of inertia, operate in an extremely powerful way. Not only they constitute the *cardo* and *decumanus* of the structuring of our legal universe, but they also set the limit that, vertically, separate the acropolis of a male identity traditionally understood as the sole measure of itself (self-authorised to assert its own vision of the world), from the lower quarters of a female identity traditionally excluded from subjectivity and political bargaining among peers, and destined for the reserved zones of the private sphere.

From such primary structure, many other narratives have then logically descended, which over time have constituted the stages of the historical course of our culture, bringing with them the indication of the relative models of behaviour that, over time, have cooperated in sustaining the pattern of feminine subordination. Even this macro-narrative itself, i.e. the way in which

[1] The origins of this distinction go back to Roman law, but it was in the 16th and 17th centuries that it was revived: think of the way in which the distinction is emphasized by the natural law theorist John Locke in works such as his *A Letter concerning Toleration* (1983).
[2] In Italy, Letizia Gianformaggio (e.g. 1995; 2005) has often emphasised the importance of this hierarchisation.

ISSN 2724-6299 (Online)
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the entire ‘official’ history (and historiography) of law has traditionally been recounted, through reconstructions that are never neutral and are ‘dispersed’ in the historical arc of the evolution of our legal culture, has always referred back, albeit in its diachronic variety, to the unifying element given by the perspective from which the gaze with which these varieties have been understood and reconnected has always been launched: the male perspective point, product of the earlier and never contrasted essentialist division mentioned above (see Scott, 2018).

There are other distant derivatives of the same: variations resulting from its continuous work of progressive readjustment to the changing world. Among the most recent ones, there is the late mutation of capitalist liberalism into the current neoliberal worldview (see Cooper, 2008; Brown, 2015; Casalini, 2018; Verza and Vida, 2020). According to this, the individual is conceived essentially as the manager of himself and of his assets (with the correlative responsibility of the ‘business risk’ of his life) in a social context assumed to be necessarily competitive.

Whatever is “other” with respect to this subjectivity (again: what pertains to care, reproduction, but also nature itself and its elements (see Mies and Shiva, 2014)) falls instead into the category of what is “resource” – and therefore, by definition and as a founding part of the narrative, extractable, appropriable and exploitable.

These generalised narratives, of course, also have a concrete impact on more specific issues: considering, for example, the topic of abortion, among the problems historically linked to the more ‘classic’ feminist claims, we would still find those same initial narratives translated back into practice.

This is the case either when, in tackling the problem, interpretative frames are judicially imposed that take for granted a necessary vulnerability of the woman who asks to be able to practise it, producing (see Triviño Caballero, 2019) paternalistic solutions (in a full re-proposition of the most classic essentialism that underpins the idea of her non-subjectivity), or when the liberal model of the personal choice made by the free and autonomous

ISSN 2724-6299 (Online)
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individual (a re-proposition of the classic 'proprietary' narrative of autonomy proper to liberalism) is applied to the woman, in a manner, however, blind to the peculiarities of her actual particular situation,[3] producing, on the part of the institutions, disengaged choices, and decisions scarcely capable of affecting the reality of the problems faced.

Even if the socially rooted narratives, mentioned above, can count on the very powerful force of habit – a normative force of the traditional kind, as Max Weber (1922) emphasised, i.e., not played on the rational level, which is easily overridden –, nevertheless, it is possible, operating with the rational counter-tool of conscious and careful critical analysis and argumentation, to try and rebuild different counter-narratives (Verza, 2022). Indeed, since "large scale cooperation is based on myths, the way people cooperate can be altered by changing the myths - by telling different stories" (Harari, 2015, 32). It is for this reason that it seems necessary to reinforce and relaunch these narratives, with the task of dismantling the disciplining force of stereotypes that still today keep women, in fact, in a position of subordination, regardless of the equality they enjoy on paper. This is important, if we want to try to actually counter the force of the essentialist model, in favour of a real non-discrimination, operating "*in action*", and not only "*in books*".

In the chessboard on which they confront each other, however, narratives and counter-narratives not only possess different sources of force, but also pose different challenges. Indeed, it is mainly the latter that bear the burden of rationally proving the constructed and non-neutral nature of the former (which are, instead, ordinarily not called to provide this argumentative obligation,[4] thanks to the power of habit that underpins them), and that are especially faced with the task of disproving the oldest myth concerning the

[3] On the importance of context for the actual exercise of freedom of choice, see Philip Pettit (2001).
[4] Even when arguments have been provided in this regard, they have usually been arguments that appealed to the 'natural' evidence of things, as in the case of the Aristotelian thesis of the natural complementarity of the functions of the sexes, later revived also by Jean-Jacques Rousseau in Book V of the *Emile* (1994).

ISSN 2724-6299 (Online)
https://doi.org//10.6092/issn.2724-6299/20962

dualism of reason/body-emotion, from which all the others in different ways originate.

Precisely in relation to this, a great reinforcement comes today from the current advances in neurosciences, which are increasingly and clearly demonstrating the inconsistency of the assumption of such a separation, in the face of evidence that shows instead that human intelligence is not only embodied (see Varela, Thompson and Rosch, 1991; Varela, 1996; Shapiro, 2010; Gallese, 2006; Aydede and Robbins, 2009), and thus at one with body and emotions, but also necessarily connected (Clark and Chalmers, 1997; Paul, 2022) to the environmental context in which it grows and lives, and with which it carries out continuous exchanges in a relationship of mutual dependence.

Thus, science itself today confirms the correctness of the foundations of the counter-narrative, called to replace the bipolar and hierarchical one that sees the separation between reason on the one hand, with a self-interested self at the centre, and on the other hand care as a residual, and obscure, mode of expression of one's humanity.

On the contrary, this new narrative cannot but express an awareness of the existence of a necessary, continuous and profound connection both between the self and the "other" (the individuals we care for and which care for us, with whom we interact, but also nature and its resources), and between the parts of the self itself. This, in fact, no longer lends itself to being seen as divisible, *à la* Descartes, into the two sectors of reason *vs.* body/emotion, since the life of the organism and psychic life constitute, as we now know, a single flux (and in this by the way, on closer inspection, the most powerful role is precisely played by emotion, as opposed to rationality (Kahneman, 2013; Haidt, 2012; Greene, 2015)).

But the contrasting of the first essentialist narrative, through a different one, could bring along, with a domino effect, the weakening of the other narratives depending on that. The hope is that by dismantling dichotomies that are too rigid and penalising (such as the one dividing public and private

ISSN 2724-6299 (Online)
https://doi.org//10.6092/issn.2724-6299/20962

spheres, or the one proposing a neo-liberal framing of social life), and historical reconstructions that are too closely tied to a single point of view, we might finally contribute to transforming women's paper rights into living rights.

And, in fact, this is precisely the perspective, as we shall see, that prompts the articles gathered in this section.

2. Counter-narratives in Feminist Legal Studies

The critique of dominant narratives in the legal field, along with the consequent unveiling of their male-centric foundation, characterizes the entire body of feminist legal studies and represents its foundational inspiration (De Gouges, 1791; Smart, 1989; Mackinnon, 1991). Feminist legal theory, in fact, is distinguished not only by its intrinsic connection to the advocacy for women's rights but also, and more importantly, by its establishment as an alternative approach to law and its understanding, analysis, production, interpretation and application.

The strong normative dimension of feminist theory stems from the systematic deconstruction of the supposed neutrality of legal culture, both in its historical development and its transcultural manifestations. Given that women have long been excluded – everywhere - from the official and institutional spaces of legal production (being barred from university education, legal professions, and political participation), it is undeniable that legal thought has, for centuries, been produced exclusively by men, predominantly for men.

This reality necessitates a significant effort of (re)conceptualization in the contemporary era.

Initially, this effort focused on the (legal) relationship between equality and difference, aiming to include women within the framework of legal rights. However, it has become evident that the contemporary challenge lies, on one hand, in redefining the key concepts and principles of modern legal

ISSN 2724-6299 (Online)
https://doi.org//10.6092/issn.2724-6299/20962

experience with respect to women's legal and political subjectivity, and, on the other, in designing alternative and innovative notions capable of translating women's demands – and those raised by women – into the legal domain.[5] The prevailing approach to date, which has centred on the gradual inclusion of women into roles and spheres previously denied to them without prompting radical transformations in the law itself, is increasingly recognized as inadequate. What is required instead is a comprehensive rethinking of legal structures and concepts, ensuring that they not only accommodate women but also reflect and incorporate their diverse experiences and perspectives, thereby fostering genuine systemic change.

The essays collected in this volume align closely with this perspective, exploring concepts and theories of classical legal thought from a feminist point of view and critically examining the narrative dimension of legal experience. The aim of the proposed analyses is to reconceptualize dominant legal narratives, with the goal of re-establishing law and its representations on egalitarian grounds.

The resulting call is for an *original legal reflection* (Alvarez Medina, 2021), not merely to adapt legal terminology and jurisprudential theories to the subjectivity of women, but rather to radically and alternatively rethink the law itself and its foundational concepts.

In these essays, the approach unfolds both de-constructively and constructively, encompassing the analysis of key concepts and a critique of jurisprudential approaches that underpin contemporary legal culture. Particular attention is paid to the relationships between legal concepts and the theoretical-legal articulation of women's rights, illustrating the need for a transformative engagement with the principles and narratives that shape the legal domain.

[5] An example in this regard is provided by the contemporary legal discussion on intersectionality (Krenshaw, 1991; bel hooks, 1987; Bello, 2020).

ISSN 2724-6299 (Online)
https://doi.org//10.6092/issn.2724-6299/20962

Specifically, the first two articles focus on a critique of neo-constitutional theory, while the third addresses neoliberal ideology. Constitutionalism and neoliberalism represent two distinct contemporary approaches to law (Dardot and Laval, 2017; Garapon, 2010; Giolo, 2020), which diverge so markedly as to orient contemporary legal experience and jurisprudential debates in opposite directions.

These two discordant narratives offer fundamentally irreconcilable visions of rights, subjectivity, normativity, violence, and power, constructing competing and contradictory legal frameworks (Beck, 2006). Each approach not only interprets the legal domain differently but also sets the stage for profoundly divergent normative and philosophical horizons.

Both approaches are currently at the centre of global debate, particularly in light of the pressures that neoliberal globalization exerts on the constitutional frameworks of nation-States. Neoliberalism thus emerges as a competing framework to the constitutional model.

The resulting tension between these two opposing narratives unfolds on an international scale, taking on specific characteristics depending on the diverse geographical, cultural, and legal contexts through which it is embedded. It is no coincidence, therefore, that the three essays in this collection examine these two approaches, interrogating them through the lens of feminist legal studies.

An additional value of this focus lies in the authors' and contributors' close engagement with the rich Latin American literature, which today arguably represents the most cutting-edge body of work in feminist legal studies. This is particularly evident in the context of feminist constitutionalism and feminist critiques of neoliberal global policies. The result is a rich overview of the issues central to the international debate on the intersections of feminism, law, rights and narratives.

In the first two essays, Silvina Alvarez Medina and Lucia Pilar Giudice both focus on feminist critiques of constitutionalism, offering a reconstruction of the feminist jurisprudential debate on the shortcomings and

ISSN 2724-6299 (Online)
https://doi.org//10.6092/issn.2724-6299/20962

gaps that constitutional philosophy exhibits when viewed through a gendered lens. This line of inquiry is particularly compelling because constitutionalism, in contemporary legal culture, is often regarded as the main model for law, the state, and democracy (see, recently, Ferrajoli, 2024). Due to its primacy, constitutionalism has long remained above criticism. Feminist legal thought itself has, for a significant period, considered the post-war constitutional paradigm grounded in fundamental rights – as the privileged context within which women's claims could finally gain recognition and space. And, to some extent, this has indeed been the case. However, it has now become evident that constitutionalism, when analysed from a gender perspective, reveals critical flaws. These critiques underscore the importance of scrutinizing even foundational legal paradigms to ensure they do not perpetuate systemic exclusions or inequalities.

The essays by Alvarez Medina and Giudice delve particularly into issues surrounding the continued prominence of the notion of autonomy in contemporary constitutions, especially in light of the deconstruction this concept has undergone within feminist legal theory:[6] feminist scholars have highlighted the limitations of autonomy as traditionally conceived, advocating instead for alternative notions such as interdependence, relational autonomy, and vulnerability.

Another focal point of critique is the public/private dichotomy, which remains a foundational framework in constitutional law. Feminist analyses seek to deconstruct this dichotomy, emphasizing its role in perpetuating the original liberal inspiration underlying constitutionalism. As Alvarez Medina observes, “feminist deficits of constitutionalism come from the seamless attachment to that axiological framework of original liberal constitutionalism”. This critique underscores the need to move beyond traditional liberal paradigms, which have often failed to address the systemic

[6] Consider, for example, the feminist debate on autonomy, vulnerability, care, freedom, and so forth (cfr., ex multis, Fineman, 2013, Kittay, 2003; Facchi and Giolo, 2020).

ISSN 2724-6299 (Online)
https://doi.org//10.6092/issn.2724-6299/20962

exclusions embedded within constitutional frameworks, and toward models that better reflect the interconnected and relational dimensions of human and legal subjectivity.

In this context, Alvarez Medina proposes a rearticulation of constitutionalism by revisiting the *agenda, strategies, and implementation* of feminist constitutionalism. Drawing on contributions from the rich body of Latin American feminist literature, she adopts ecofeminism as a privileged perspective, noting that it "has opened the political and legal agenda to integrated perspectives on issues of vulnerability, dependence, and interdependence concerning women from an ecological approach". Particularly noteworthy is Alvarez Medina's emphasis on the transformative nature of feminist constitutionalism. She argues that it cannot be reduced to mere adjustments within existing frameworks, which have already proven inadequate in fully recognizing women's subjectivity. Instead, such approaches tend to confine women within "different spheres", failing to achieve substantive equality or a meaningful reconfiguration of legal and political paradigms.

Giudice's essay similarly focuses on the feminist critique of the artificial public/private dichotomy and constitutionalism, enriching the discussion by engaging with the concept of "legal culture". In her analysis, the pervasive nature of historically dominant legal narratives is fully acknowledged and directly addressed. Reimagining constitutionalism from a feminist perspective means critically revisiting what legal culture has historically represented and simultaneously propagated. This process aims to give rise to alternative narratives that are more consistent with the demands and aspirations of women. The public/private dichotomy emerges as a particularly significant case study in understanding the power of dominant narratives. In contrast, the feminist constitutionalism proposal takes on the character of a radical alternative, even a form of subversion:

> [t]hus, the feminist critique not only interrogates what happens in legislatures and courts but also extends to law schools; it does so

ISSN 2724-6299 (Online)
https://doi.org//10.6092/issn.2724-6299/20962

> when it refers to the basic assumptions behind what we understand as law: its supposed neutrality, systematicity, coherence, rationality, and autonomy—legacies of a positivist and liberal outlook that predominates in our academies and originates from an androcentric and exclusionary point of view.

This critique challenges not only specific legal doctrines but also the foundational assumptions of the legal system itself, revealing how deeply entrenched biases have shaped the principles and frameworks considered foundational to law. By questioning these assumptions, feminist constitutionalism opens pathways to fundamentally rethinking the law and its role in fostering equitable and inclusive societies.

This underscores the necessity of a historiographical approach capable of deconstructing dominant narratives to more accurately reconstruct the evolution of legal culture. Such an approach must not overlook the inherently male-centric origins of legal thought and must critically address the centuries-long exclusion of women from the processes of legal development.

Equally radical is the work of Matteo Codelupi, who adopts also feminist critiques particularly from Latin American literature on care work, reproductive labour, and exploitation. In his essay, the focus shifts from constitutional frameworks to the neoliberal order, which is profoundly reshaping how law, rights, subjectivities, and power are understood and represented. The narrative of globalization, rooted in a neoliberal perspective, appears to revive premodern legal models that enable regressive practices, such as exploitation. In this context, particular attention is given to the notion of extractivism, a concept widely discussed in Latin American debate. Extractivism effectively captures and synthesizes neoliberal policies aimed at the privatization and appropriation of resources: “from the alliance between extractivism and neoliberalism emerges a comprehensive reorganization of access to land that transforms the very act of living and reproducing (accessing water, means of subsistence, etc.) into modes of exploitation”.

ISSN 2724-6299 (Online)
https://doi.org//10.6092/issn.2724-6299/20962

A key reference in Codelupi's analysis is Silvia Federici, whose groundbreaking work on women's reproductive labour has significantly influenced international feminist debates. Codelupi particularly focuses on the neoliberal processes of *over-exploitation* and the *housewifization* of reproductive labour, emphasizing how these dynamics reinforce traditional practices of devaluation and misrecognition of women's work.

Through this lens, he explores how neoliberalism not only exploits women's labour but also transforms it into a resource to be extracted, perpetuating systemic inequalities and erasing the essential contributions of reproductive and care work to social and economic life. This critical analysis situates the neoliberal framework as a key driver of gendered exploitation and calls for a reimagining of value systems that fully recognize and integrate reproductive labour.

From the essays collected here, the power of feminist counter-narratives emerges strongly, highlighting their ability to unveil the hidden mechanisms that have underpinned the construction of male-centric legal frameworks.

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