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Law and Women. Considerations on Legal Feminism from Catharine MacKinnon

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Abstract: This paper focuses on the feminist legal thought of Catharine MacKinnon aimed at "refounding" law from the women's point of view. Her perspective offers a variety of considerations on the legal phenomenon, its relationship with power, the "sex" of legal subjectivity, the goal of legal orders, and the claim for the redistribution of power roles.

Keywords: Law, Women, Power, Feminist Legal Studies, Catharine MacKinnon.

1. MEN'S LAW

In the second half of the eighteenth-century women made their «appearance» (FACCHI 2013; CAVALIERE 2016) on the political scene but they did not enter the legal sphere as active subjects, being still excluded from the full entitlement of universal rights (VANTIN 2021b). The premises or «roots of a problem» (GROPPI 1993) that would have characterized the following feminist legal studies were already laid.

On the one hand, the modern concepts of the political and the juridical were defined from the ouster of the female elements (GROPPI 1993); on the other hand, women started to claim to be included within those very perimeters by promoting a more inclusive interpretation of universalism itself (TRUJILLO 2013). In these terms, however, the female experience, while aspiring to equality, was articulated as a diffe-

rence, dealing not only with standards conceived as male (MINOW 1990)[1], but also with the need to overcome the social representation of womanliness as an inferiority, a minority, a pathology or a weakness (OFFEN 1988).

As maintained by Carol Smart in a fittingly celebrated essay (SMART 1992), modern law was born sexist, since every western legal order of the eighteenth and nineteenth centuries contained norms differentiated on the basis of sex and excluded women from the enjoyment of certain rights, such as political rights. The goals of the first feminist claims were, therefore, focused on the achievement of formal equality, «*before* the law» and moreover «*within* the law» (KELSEN 1960a: 60).

In a second stage, Smart noted (SMART 1992), legal feminism understood that law is male. Even after having achieved formal equality[2], the enforcement and interpretation of law were still vitiated by a patriarchal culture and "male" values[3]. On the one hand, the feminist legal analysis had to expand its investigations beyond the strictly legal field; and, on the other hand, it was obliged to refine its research tools in order to identify the «microphysics of power» (FOUCAULT 1975), as well as the dominion logics and its articulations (CASADEI 2015). It sometimes brought out further, often overlapping, oppression and discrimination grounds, such as race and class (DAVIS 1981, GONZALEZ 1988, CRENSHAW 1989, WILLIAMS 1991, FACIO 1992).

In a third phase, still following Smart (SMART 1992), law was conceived as gendered, or as a sort of «gendering strategy» (PITCH 1998: 214; PITCH 2010), a nor-

1 As is known, according to Martha Minow there are five implicit assumptions that reproduce the «difference dilemma»: 1. that difference is something intrinsic to a subject, rather than something defined by a relationship between subjects; 2. that the reference parameter adopted to define the difference is neutral, objective and universal, as well as implicit and therefore invisible; 3. that whoever judges lacks a subjective and situated perspective; 4. that the perspective of who is judged is irrelevant; 5. that everything exists is natural, neutral and inevitable. See MINOW 1990; MINOW 1991; for a comment PITCH 1998: 222.

2 With reference to the Italian context, see *inter alia* art. 3 of the 1948 Republican Constitution, and a series of important subsequent reforms: from the full access to work in 1963 to the reform of family law in 1975, from the abortion law in 1978 to the abolition of honor killing and shotgun marriage in 1981, up to a series of interventions in the field of criminal law, such as the classification of rape as a personal offence in 1996.

3 Among the many possible examples, see the infamous Italian Corte Cass ruling. n. 1636/1999 concerning the case of a girl who accused her driving instructor of rape. The Court acquitted the man of the charge presenting a series of reasons aimed at blaming the young woman and qualifying the carnal relationship as consenting. *Inter alia*, it was stated «that it is a fact of common experience that it is almost impossible to take off a person's jeans, even in part, without her active collaboration». On the other side, an example of a historical-evolutionary interpretation is represented by the '60s sentences of the Italian Constitutional Court regarding adultery. While in 1961 (sentence no. 64/1961), the Court admitted that a man and a woman who committed adultery should be treated and punished differently, in 1968 (sentences no. 126 and 127/1968) the disparity of treatment was considered as illegitimate.

mative source able to produce gendered subjectivities, categorized and categorizable on the basis of a precise binary logic which was instrumental to the preservation of the consolidated power structures. Articulated in postmodern terms, part of the feminist legal debate therefore promoted a fragmentation of subjectivities in an explosion of potentialities, always open to new constructions and reconstructions (BUTLER 1990). Along these lines, a more recent «postfeminist sensibility» abandoned the collective dimension and the political aims of the twentieth-century movements in order to embrace the rhetoric of choice advocated by neoliberalism (GIOLO 2020). This twist appears to be determined by a «double deception» (GIOLO 2017), based on the illusion that women's issues could be carried out at an individual and not at group level and on the chimera of the reduction of freedom to contract freedom, with the following clearance of originally oppressive acts, now regarded as «free choices» in subjective terms (FACCHI, GIOLO 2020; for a different radical view, engaged in social and redistributive issues at a global level: FRASER 2013).

As examined elsewhere (VANTIN 2020; VANTIN 2021a), in the last decades the feminist legal strategies have been represented as constitutively plural and different, attributable to a neither uniform nor unanimous periodization (MINDA 1995; KITTAY 1999: 1-19; FACCHI 2009; FARALLI 2012), and basically framed by a critical attitude (MINDA 1995; RE 2017) – although laudable efforts aimed at presenting legal feminism as a «theory of law» have been formulated (GIOLO 2015a; GIOLO 2015b).

Notwithstanding the plurality of interpretations, law has hence been gradually understood as an «epiphenomenon of patriarchy» (SMART 1992: 30). In these terms, it has been questioned on several occasions whether it should be rejected or not (CIGARINI 1992). Developed during a timeframe of forty years, Catharine MacKinnon's answer is a firm no.

2. MACKINNON'S FEMINIST LEGAL CRITIQUE

In opposition to the postmodern disruption of the feminist subject (MACKINNON 2012: 150-174; MORONDO TARAMUNDI 2011: 373), according to MacKinnon, subjectivity is necessarily sexed: the sexual distinction depends on power relations, notably hierarchical, that bring men in a condition of dominion and women in a state of subjection. More specifically, the American jurist believes that power depends on sexual dominance, and it is through the sexual sphere that it is mainly preserved. Women are determined by sex (as a fact), and by sex (as an act) they are expropriated of themselves.

Using a rhetorical device dear to contractualism, it could be said that in MacKinnon's state of nature or original position there is a permanent war *contra omnes*: dif-

ferently from Thomas Hobbes' *Leviathan*[4], however, this war is explicitly fought (for and) through sexual assault. The strongest are those who are physically able to rape, the weakest are those who find themselves biologically exposed to violence and its consequences (possible pregnancy and care of offspring). The (cultural relevance of) sexual difference depends on the original distinction between strong and weak, dominant and dominated.

Thus, "men" and "women" are categories produced by patriarchy in order to dominate and maintain dominance. Since «law as it is, is expression of the power of the strongest» (BOBBIO 1993: 197) and, indeed, «law cannot exist without force» (KELSEN 1960b: 243), the legal orders, created by the powerful whereas «every power tries to rise and cultivate a faith in its legitimacy» (WEBER 1922: 208), result as «technical» constructions expertly erected in order to defend and preserve the hierarchy that emerged in the sovereignty of force (VANTIN 2019). Sexual violence, «a total social fact» (PITCH 1998: 149), is still «the core of patriarchal power» but it is masked by justification strategies, inextricably bound to those interstices «into which the law's ordinary protections against violence will not be allowed to penetrate» (WEST 1989: 65; RE 2013; RE 2015)[5].

In this way, following Susan Brownmiller (BROWNMILLER 1975), MacKinnon poses a biological origin in the roots of the sexual difference (the female biological exposure to sexual assault). Although the concept of "woman" is a cultural and historical production (RUDAN 2020), related to the «widely documented» «second-class status of women», therefore to the «collective social history of group-based devaluation, disempowerment, exploitation, and subordination that extends to the present» (MACKINNON 2001: 2)[6], in the jurist's reflection there is an essentialist shadow, dangerously linked to the very foundation of female subjection[7].

Nevertheless, MacKinnon's interest is focused on existing social reality, and on the possibility to renegotiate, on the basis of the numbers' force, the relations of power

4 Hobbes wrote «there is not always that difference of strength or prudence between the man and the woman as that the right can be determined without war» (HOBBES 1651: 123).

5 In this regard, as is well known, MacKinnon articulates her criticism against the liberal opposition between the public and private spheres: on the three meanings of the oppositional couple (private as «privacy», as «secret» and as «deprivation»; public as a «legitimate sphere of collective intervention», as a «sphere of intersubjective interaction and communication», and as a «sphere of the political»), see PITCH 1998: 232-240.

6 According to Rosy Braidotti, «the female feminist question then becomes how to affirm sexual difference not as "the other", the other pole of a binary opposition conveniently arranged so as to uphold a power-system, but rather as the active process of empowering the difference that women make to culture and to society. Woman is no longer different *from* but different *so as* to bring about new values» (BRAIDOTTI 1991: 161, emphasis added).

7 Notwithstanding MACKINNON 2004: 25-26, 84-90.

(MACKINNON 2017). A «real» change (MACKINNON 1979; MACKINNON 1987; MACKINNON 1989) can and has to go through law. The joined actions of women, individually oppressed and as fragile as «butterflies» (MACKINNON 2017; VANTIN 2019) but invincible if considered in terms of "species"[8], will lead to "refounding" law, up to the development of a feminist jurisprudence and the reinterpretation of norms by means of their new enforcement with «a woman's face» (MACKINNON 2012: 5; MACKINNON 2006; PITCH 2012). It is therefore not necessary to invoke a complete subversion of the legal systems or to question the entire legal method, eventually resorting the «hedonic» perspective of the consciousness raising (MINDA 1995: 131), but rather to use argumentative logic and interpretative acumen in order to subject the entire legal sphere to a critical scrutiny, giving new life, where appropriate, to consolidated categories.

In these terms, the principle of equality remains the focal point of the jurist's reflection, but its «concept» (FERRAJOLI 1993: 49) is revisited. From the traditional «Aristotelian formula» (MACKINNON 2001: 4-5) prescribing to treat «likes alike and unlikes unalike» cannot descend a sufficiently radical and structural "feminist" change, since, firstly, the «power to define» "who" is equal to "who" lays «in the powerful hands» (MACKINNON 2001: 6-7) and, secondly, the reference standard is still, more or less explicitly, the male's (MACKINNON 2001: 7).

On the contrary, MacKinnon tries not only to safeguard but also to effectively achieve equality as a «value» (FERRAJOLI 1993: 56-57). The normative meaning of the equality principle (equality as a norm) should hence be preserved. As Luigi Ferrajoli wrote: «"Equality" is a normative term: it means that […], since it is a norm, its mere enunciation it is not enough. It must be observed and sanctioned. "Difference" is a descriptive term. [...] And if a "difference", like the sexual one, is in fact ignored or discriminated against, it does not mean that equality is "contradicted", but simply that it is *violated*» (FERRAJOLI 1993: 58).

Ferrajoli however distinguishes «equality as normativity» from «equality as effectiveness» (FERRAJOLI 1993: 62) noting that, «like all norms», the equality that prescribes and does not describe «is destined to a more or less high degree of ineffectiveness» (FERRAJOLI 1993: 65). He also adds that «no legal mechanism alone will succeed in guaranteeing *de facto* the equality between the sexes» (FERRAJOLI 1993: 73). It is this bitter conclusion that MacKinnon rejects.

8 MacKinnon's critique against «individualistic» liberalism, conceived as the «death of feminism», can be found in MACKINNON 2004: 259-268.

3. WOMEN'S CLAIMS

To this extent, MacKinnon's works develop at least two considerations. At first, as partially already stated above, a good deal of trust is placed in the «symbolic function of law» (VANTIN 2014), therefore in the possibility to modify the current reality through the laws and their enforcement.

Although the existing law is «patriarchal» intended as a whole, it can be used to «name offenses against women» and to promote «an autonomous creation of meaning». In this sense, the «use» that MacKinnon makes of law is, at the same time, an «immanent critique» (PITCH 1998: 215; FACCHI 2015). In the author's words:

> as women have moved to end women's inequality to men, we have found law to be a wall as well as a tool for taking down walls. Sometimes we have made law a door. […] Law is […] a powerful medium and a medium for power. A form of force, law is also an avenue for demand, a vector of access, an arena for contention other than the physical, a forum for voice, a mechanism for accountability, a vehicle of authority, and an expression of norms. Although law has operated in ways socially male, women seeking change for women have found that its consequences and possibilities cannot be left to those elite men who have traditionally dominated in and through law, shaping its structures and animating attitudes to guarantee the supremacy of men as a group over women in social life. […] While legal change may not always make social change, sometimes it helps, and law *un*-changed can make social change impossible (MACKINNON 2004: 101).

Secondly, a need for a redistribution of power is stated (MACKINNON 2012: 41). The concentration of power in the hands of a social group produces, as a matter of fact, observable consequences on subordinate groups which, as Iris Marion Young noted, produce the «five faces of oppression»: not only systemic violence, but also exploitation, marginalization, absence of power, cultural imperialism (YOUNG 1990). The fact that women are still the target of each of these forms of domination demonstrates the persistence of a hierarchical relationship between the sexes. An authentic equitable balance should instead be able to affect these dynamics, acting not on an «equivalence and distinction» level but, precisely, redistributing «advantages and disadvantages», thus «[r]evealing that the opposite of equality is hierarchy, not difference, [and] understanding social inequality as vertical rather than horizontal in nature» (MACKINNON 2001: 25, MACKINNON 2004).

As Dolores Morondo Taramundi recalls, Letizia Gianformaggio also reached a similar outcome in hoping «that oppression *and not* mere discrimination, or even oppression *rather than* discrimination, is finally considered as the core meaning of

the violation of the legal principle of equality» (MORONDO TARAMUNDI 2011: 378; GIANFORMAGGIO 1995: 143).

Moreover, it is precisely by reading and commenting MacKinnon (GIANFORMAGGIO 1993) that Gianformaggio understands that equality does not mean the neutralization of differences: it does not imply «identity», nor treating individuals «*as if*» they were equals (GIANFORMAGGIO 2005). On the contrary, adopting an analytical, formalist and normativist perspective, the Italian legal philosopher conceives equality as a malleable «instrument of legal experience» (CONDELLO 2019: 113), a sort of «morality intrinsic to law»[9] (GIANFORMAGGIO 2005: 75) aimed at establishing, prescribing and pursuing equality, while also acting as a tool for the correct application of the rules, the production of reasonable and non-arbitrary norms, the entitlement to each one of the same fundamental rights, the elimination of concrete obstacles that generate inequalities (GIANFORMAGGIO 2005: p. 65). In these terms, the distinction between formal equality and substantial equality seems an empty simplification (PASTORE, GIOLO 2016), as well as the separation of the «axiological» element of law from the «sociological» one (GIANFORMAGGIO 2005: 129). In other words, returning to MacKinnon's lexicon, the theoretical and practical levels cannot be distinguished. Law is never paper only.

4. CONCLUSIVE REFLECTIONS

Although such a «realist» perspective could appear as «not neutral», according to MacKinnon «existing laws, and existing social reality, are already not neutral. The question is, on what side is nonneutrality going to fall: to maintain inequality or to promote equality? […] In a hierarchical situation, neutrality really is not available» (MACKINNON 2017: 124).

The insidious argument of Thrasymachus (PLATONE: 1, 338c) is therefore not evaded: looking at the past and the present, justice *is* serving the interest of the strongest. Yet, this very observation is the trigger that can produce a transformative reaction. Law can be amended, justice *will be* the liberation of women from the state of subordination, through the substantive achievement of equality (MACKINNON 2011).

In these terms, MacKinnon's writings reveal a kind of program for feminist political struggle. Three main points could be distilled from her reflection: (i) the sexed subjectivity as a premise for the creation, enforcement and interpretation of legal systems; (ii) the normative equality as both an obligation and a goal for the legal systems; (iii) the adoption of targeted strategies for the redistribution of power roles.

The first aspect calls to mind the attempt formulated by Olympe de Gouges in the 1791 revolutionary France, when, in drafting the *Déclaration des droits de la femme et*

9 Even if MacKinnon «stands against moralism»: her reaction against Ronald Dworkin's «moral reading» of the US Constitution can be found in MACKINNON 2004: 65-71.

de la citoyenne, the Occitan playwright denounced, in a famous Preamble, the male «oppression» on women and claimed for «rights to equality» (DE GOUGES 1791, in LOCHE 2021: 143), appointing «mothers, daughters and sisters» as the «representatives of the nation». With a lexicon that followed the constituent one of the Revolution in progress, de Gouges sensed that the sexual difference is placed not «after» but «before» the definition of the subject (COSTA 2000: 72). With due distinctions, also for MacKinnon, as mentioned above, the subjectivity is intrinsically sexed and, unlike other personal characteristics, sex receives a sort of emblematic priority in the construction of social reality and its hierarchies. As Morondo Taramundi writes, «the centrality of the discriminatory axis of sex-gender» derives «not only [from] numerical reasons (women are half of any other oppressed group), but also» from the fact that «in patriarchal societies the masculine is presented and self-represented as the universal, both in terms of full subjectivity (capable of acting, citizen, man = human), and in terms of oppressed subjectivity. Therefore also the subject who is oppressed for his race, or his class or sexual orientation is typically the black male, the male worker or the male homosexual» (MORONDO TARAMUNDI 2011: 382)[10].

The second aspect recalls the literature on normative equality, or «equality as a goal» (ZANETTI 2015: 38). On the one hand, taking the considerations of the American jurist seriously, this view of equality should guide the interpretation of those binding obligations which States have towards the «removal of obstacles» that limit «in fact the freedom and equality of citizens» (as set forth, e.g., by art. 3, paragraph 2 of the Italian Constitution). On the other hand, normative equality represents the *ratio* of the same legal systems, that should therefore provide further specific appropriate measures and adequate guarantees[11].

The third aspect reaffirms that equality, according to MacKinnon, calls into question power and requires a fair division of roles and functions. In this perspective, massive, transversal, lasting (albeit transitory), capillary redistributive policies are needed (CASADEI 2017), and it is perhaps good to lastly remember that the responsibility of women who exercise power does not concern them only as individuals but transcends them as components and representatives of a group[12], since «law is not only

10 This awareness, in the wake of MacKinnon, could perhaps usefully lead to a specification in constitutional terms aimed at clearly enunciating the ambivalence of the juridical phenomenon in the face of sex. For an extensive analysis, see MACKINNON 2018.

11 A virtuous example in this sense, in fact praised by MacKinnon (MACKINNON 2017: 313), is the jurisprudence of the Supreme Court of Canada. See in part. *Andrews vs. Law Society of British Columbia* (1989) and *R. vs. Kapp* (2008).

12 It is worth remembering what MacKinnon states in MACKINNON 2012: 13-14, i.e. that the word «male» should be conceived as an adjective, since even a woman can take the male perspective or exercise male power, although she always remains a woman.

combat; it is also cooperation» (MACKINNON 2004: 107). Finally, the redistribution of power will hence make «rights nonindividualistic, nonatomistic, contextual, substantive entitlements, challenging the abstract status quo preserving state-power-based concept of rights» (MACKINNON 2004: 84). It is to say that «putting power in the hands of the powerless can change power as well as the situation of the powerless» (MACKINNON 2004: 43), urging the institutionalization of social equality rather than social inequality, through legal equality initiatives that could be further expanded to address «all [other] inequalities» (MACKINNON 2004: 56-57).

REFERENCES

BOBBIO, Norberto, 1993. *Teoria generale del diritto*. Torino: Giappichelli.

BRAIDOTTI, Rosy, 1991. *The Subject in Feminism*, in "Hypatia", 2, pp. 155-172.

BROWNMILLER, Susan, 1975. *Against Our Will. Men, Women and Rape*. New York: Simon & Schuster.

BUTLER, Judith, 1990. *Gender Trouble: Feminism and the Subversion of Identity*. London--New York: Routledge.

CASADEI, Thomas (a cura di), 2015. *Donne, diritto, diritti. Prospettive del giusfemminismo*. Torino: Giappichelli.

CASADEI, Thomas, 2017. *Diritto e (dis)parità. Dalla discriminazione di genere alla democrazia paritaria*. Roma: Aracne.

CAVALIERE, Anna, 2016. *La comparsa delle donne. Uguaglianza, differenza, diritti*. Roma: Fattore Umano.

CIGARINI, Lia, 1992. *Sopra la legge*. In: "Via Dogana", 7.

CRENSHAW, Kimberlé, 1989. *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, pp. 139-167.

CONDELLO, Angela, 2019. *Letizia Gianformaggio e l'eguaglianza giuridica*, in Anna SIMONE, Ilaria BOIANO, Angela CONDELLO, *Femminismo giuridico. Teorie e problemi*, pp. 103-114. Milano: Mondadori.

COSTA, Pietro, 2000. Civitas. *Storia della cittadinanza in Europa*, v. 2: *L'età delle rivoluzioni*. Roma-Bari: Laterza.

DAVIS, Angela, 1981. *Women, Race & Class*. New York: Random House.

DE GOUGES, Olympe, 1791. *Déclaration des droits de la femme et de la citoyenne*, It. trans. 2021. *Dichiarazione dei diritti della donna e della cittadina*, in Annamaria LOCHE, La liberté ou la mort. *Il progetto politico e giuridico di Olympe de Gouges*, pp. 141-153. Modena: Mucchi.

FACCHI, Alessandra, 2009. *Il pensiero femminista sul diritto: un percorso da Carol Gilligan a Tove Stang Dahl*, in Gianfrancesco ZANETTI (a cura di), *Filosofi del diritto contemporanei*, pp. 129-153. Milano: Cortina.

FACCHI, Alessandra, 2013. *Breve storia dei diritti umani. Dai diritti dell'uomo ai diritti delle donne*. Bologna: Il Mulino.

FACCHI, Alessandra, 2015. *Stereotipi, discriminazioni, diritti. A proposito delle tesi di Catharine A. MacKinnon*, in Thomas CASADEI (a cura di), *Donne, diritto, diritti. Prospettive del giusfemminismo*, pp. 63-75. Torino: Giappichelli.

FACCHI, Alessandra, GIOLO, Orsetta, 2020. *Libera scelta e libera condizione. Un punto di vista femminista su libertà e diritto*. Bologna: Il Mulino.

FACIO MONTEJO, Alda, 1992. *Cuando el genero suena cambios trae: (una metodologia para el analisis de genero del fenomeno legal)*. San José: Ilanud.

FARALLI, Carla, 2012. *Women's Studies e filosofia del diritto*, in "Rivista di Filosofia del diritto", 2, pp. 297-312.

FERRAJOLI, Luigi, 1993. *La differenza sessuale e le garanzie dell'uguaglianza*, in "Democrazia e diritto", 2, pp. 49-73.

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

FOUCAULT, Michel, 1975. *Surveiller et punir. Naissance de la prison*. Paris: Gallimard.

GIANFORMAGGIO, Letizia, 1993. *Eguaglianza e differenza: sono veramente incompatibili?*, in Gabriella BONACCHI, Angela GROPPI (a cura di), *Il dilemma della cittadinanza. Diritti e doveri delle donne*, pp. 214-240. Roma-Bari: Laterza.

GIANFORMAGGIO, Letizia, 1995. *Filosofia e critica del diritto*. Torino: Giappichelli.

GIANFORMAGGIO, Letizia, 2005. *Eguaglianza, donne, diritto*, a cura di Alessandra FACCHI, Carla FARALLI, Tamar PITCH. Bologna: Il Mulino.

GIOLO, Orsetta, 2015a. *Il giusfemminismo e il dilemma del confronto tra le culture*, in Thomas CASADEI (a cura di), *Donne, diritto, diritti. Prospettive del giusfemminismo*, pp. 41-60. Torino: Giappichelli.

GIOLO, Orsetta, 2015b. *Oltre la critica. Appunti per una contemporanea teoria femminista del diritto*, in "Diritto & Questioni pubbliche", pp. 63-81.

GIOLO, Orsetta, 2017. *Sulla libertà delle donne*, in "La società degli individui", 1, pp. 11-21.

GIOLO, Orsetta, 2020. *Il diritto neoliberale*. Napoli: Jovene.

GROPPI, Angela, 1993. *Le radici di un problema*, in Gabriella BONACCHI, Angela GROPPI (a cura di), *Il dilemma della cittadinanza. Diritti e doveri delle donne*, pp. 3-15. Roma-Bari: Laterza.

GONZALEZ, Lélia, 1988. *For an Afro-Latin Feminism*. In: *Confronting the Crisis in Latin America: Women Organizing for Change*, pp. 95-101. Santiago: Isis International & Development Alternatives with Women for a New Era.

HOBBES, Thomas, 1651. *Leviathan*. London: Crooke. Available at: <https://socialsciences.mcmaster.ca/~econ/ugcm/3ll3/hobbes/Leviathan.pdf>.

KELSEN, Hans, 1960. *Reine Rechtslehre: Einleitung in die rechtswissenschaftliche Problematik. Mit einem Anhang: Das Problem der Gerechtigkeit*. Wien: Franz Deuticke, It. trans. [1960a]

1998. *Il problema della giustizia*, a cura di Mario LOSANO. Torino: Einaudi; [1960b] 1967. *La dottrina pura del diritto*, a cura di Renato TREVES. Torino: Einaudi.

KITTAY, Eva, 1999. *Love's Labor. Essays on Women, Equality and Dependency*. London-New York: Routledge.

MACKINNON, Catharine Alice, 1979. *Sexual Harassment on Working Women. A Case of Sex Discrimination*. New Haven-London: Yale University Press.

MACKINNON, Catharine Alice, 1987. *Feminism Unmodified. Discourses on Life and Law*. Cambridge, MA: Harvard University Press.

MACKINNON, Catharine Alice, 1989. *Toward a Feminist Theory of the State*. Cambridge, MA: Harvard University Press.

MACKINNON, Catharine Alice, 1993. *Only Words*. Cambridge, MA: Harvard University Press.

MACKINNON, Catharine Alice, 2001. *Sex Equality*. New York: Foundation Press.

MACKINNON, Catharine Alice, 2004. *Women's Lives, Men's Laws*. Cambridge, MA: Harvard University Press.

MACKINNON, Catharine Alice, 2006. *Are Women Human? And Other International Dialogues*. Cambridge, MA: Harvard University Press.

MACKINNON, Catharine Alice, 2011. *Substantive Equality. A Perspective*, in "Minnesota Law Review", 96, pp. 1-27.

MACKINNON, Catharine Alice, 2012. *Le donne sono umane?*, a cura di Antonella BESUSSI, Alessandra FACCHI. Roma-Bari: Laterza.

MACKINNON, Catharine Alice, 2017. *Butterfly Politics*. Cambridge, MA: Harvard University Press.

MACKINNON, Catharine Alice (ed.), 2018. *Gender in Constitutional Law*. Cheltenham: Edward Elgar Publishing.

MINDA, Gary, 1995. *Postmodern Legal Movements. Law and Jurisprudence at Century's End*. New York: New York University Press.

MINOW, Martha, 1990. *Making All the Difference. Inclusion, Exclusion and American Law*. Ithaca: Cornell University Press.

MINOW, Martha, 1991. *Equalities*, in "The Journal of Philosophy", pp. 633-644.

MORONDO TARAMUNDI, Dolores, 2011. *Un caffè da Starbucks. Intersezionalità e disgregazione del soggetto nella sfida al diritto antidiscriminatorio*, in "Ragion pratica", pp. 365-383.

OFFEN, Karen, 1988. *Defining Feminism. A Comparative Historical Approach*, in "Signs. Journal of Women Culture and Society", v. 14, pp. 119-157.

PASTORE, Baldassare, GIOLO, Orsetta (a cura di), 2016. *Diritto potere ragione nel pensiero di Letizia Gianformaggio*. Napoli: Jovene.

PITCH, Tamar, 2010. *Sesso e genere nel e del diritto. Il femminismo giuridico*, in Emilio SANTORO (a cura di), *Il diritto come questione sociale*, pp. 91-127. Torino: Giappichelli.

PITCH, Tamar, 2012. *A proposito di "Le donne sono umane?" di Catharine MacKinnon*, in "Sociologia del diritto", 3, pp. 161-162.

PLATONE, *Repubblica*, 2001, introduzione di Mario VEGETTI. Roma-Bari: Laterza.

RE, Lucia, 2013. *La violenza e il diritto. Riflessioni a partire da Le donne sono umane? di Catharine A. MacKinnon*, in "Jura gentium. Rivista di filosofia del diritto internazionale e della politica globale", <https://www.juragentium.org/topics/women/>.

RE, Lucia, 2015. *Lo stereotipo della "differenza sessuale". Analisi di un fraintendimento in Catharine A. MacKinnon*, in Thomas CASADEI (a cura di), *Donne, diritto, diritti. Prospettive del giusfemminismo*, pp. 77-94. Torino: Giappichelli.

RE, Lucia, 2017. *Femminismi e diritto: un rapporto controverso*, in Orsetta GIOLO, Maria Giulia BERNARDINI (a cura di), *Le teorie critiche del diritto*, pp. 179-206. Pisa: Pacini.

RUDAN, Paola, 2020. *Donna. Storia e critica di un concetto polemico*. Bologna: Il Mulino.

SMART, Carol, 1992. *The Woman of Legal Discourse*, in "Social & Legal Studies", 1, pp. 29-44.

TRUJILLO, Isabel, 2013. *Universalità, realismo e diritto. Su alcuni contributi del femminismo alla filosofia del diritto*, in "Rivista di Filosofia del diritto", 2, pp. 367-378.

VANTIN, Serena, 2014. *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", pp. 85-94.

VANTIN, Serena, 2019. *Law as a Weapon. Substantive Equality in the Legal and Philosophical Thought of Catharine Mackinnon*, in "Materiales de Filosofía del Derecho", pp. 1-19.

VANTIN, Serena, 2020. *Feminist Legal Perspectives. Equality, Care, Vulnerability*, in Elettra STRADELLA (ed.), *Gender Based Approaches to the Law and* Juris Dictio *in Europe*, pp. 15-44. Pisa: Pisa University Press.

VANTIN, Serena, 2021a. *The Prism of Equality. From Legal Feminist Critiques to the Digital Era*, in "Women's Studies International Forum", 86, pp. 1-6.

VANTIN, Serena, 2021b. *La Rivoluzione e il diritto. Olympe de Gouges e Mary Wollstonecraft*, in Thomas CASADEI, Lorenzo MILAZZO (a cura di), *Un dialogo su Olympe de Gouges*, pp. 145-165. Pisa: ETS.

WEBER, Max, 1922. *Wirtschaft und Gesellschaft*, It. trans. 1980. *Economia e società*, a cura di Pietro ROSSI. Milano: Edizioni Comunità.

WEST, Robin, 1989. *Feminism, Critical Social Theory and Law*, in "University of Chicago Legal Forum", pp. 59-97.

WILLIAMS, Patricia J., 1991. *The Alchemy of Race and Rights*. Cambridge, MA: Harvard University Press.

YOUNG, Iris Marion, 1990. *Justice and the Politics of Difference*. Princeton: Princeton University Press.

ZANETTI, Gianfrancesco, 2015. *Eguaglianza come prassi. Teoria dell'argomentazione normativa*. Bologna: Il Mulino.