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Orsetta Giolo\*

## Freedom and responsibility of women, between patriarchy and neoliberalism

### Summary

1. The pandemic and care mainstreaming. - 2. Freedom (still) misunderstood. The time of feminism and the time of rights. - 2.1. Freedom between responsibility and care. - 3. Female responsibility in the patriarchal vision. - 3.1. The specific forms of women's responsibility. - 4. Female responsibility: responsibility without freedom. - 5. Two responsibilities for two genders: (male) law and its implicit assumptions. - 6. Responsibility in the neoliberal perspective: hyper-responsibilisation or feminisation? - 7. Equality as the key: rethinking freedom and responsibility.

### Abstract

Il saggio propone un'analisi della relazione attualmente esistente tra le concezioni genderizzate della responsabilità e della libertà delle donne, l'iper-responsabilizzazione neoliberale e la retorica del care mainstreaming. Indagando nella prospettiva femminista le conseguenze della soggettività neoliberale, particolare attenzione è dedicata all'impatto che le trasformazioni in corso della responsabilità e della libertà producono sulla vita delle donne, nonché sulla loro condizione giuridica e politica.

*The objective of this analysis is to try to understand what relationship presently exists between gendered conceptions of responsibility and women's freedom, neoliberal hyper-responsibilisation and the rhetoric of care mainstreaming. In the following pages I shall try to reflect on the consequences of the neoliberal subjectivity in a feminist perspective, focusing above all on the impact that the transformations of responsibility and freedom produce on the life of women, as well as on their legal and political condition.*

### 1. The pandemic and care mainstreaming

During the Covid-19 pandemic, which broke out at the beginning of 2020, the issue of care has acquired a visibility probably never reached before: the health emergency, the need for public intervention in the area of welfare and the difficulty of coping with family and work demands in the various lockdowns have caused care to become one of keywords at a global level in the current times<sup>1</sup>.

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1 For an in-depth assessment, see for example B. Thomas, I. Macias-Alonso, *COVID-19 and the raising the value of care*, in *Feminist Frontiers*, April 2020, p. 705; B. Casalini, *Prefazione. Femminismo e politiche della cura dal neoliberalismo al covid-19*, in A. Verza, S. Vida (eds.), *Postfemminismo e neoliberalismo*, Rome, Aracne, 2020, p. 17 ff; K. Bahn, J. Cohen, Y. Van Der Meulen Rodgers, *A feminist perspective on COVID-19 and the value of care work globality*, in *Gender, Work & Organization*, 2020, 27, pp. 695-699. On this point see also O. Giolo, *Il virus, il genere, la cura*, in *BioLaw Journal*, 2020, 3, pp. 54-66.

This overexposure has obviously brought with it numerous distortions and many compromises. The care that is prevalently being talked about these days in fact has little to do with what has been extensively addressed by feminist theory over the past decades: the “care mainstreaming” that has now come to dominate places an extreme emphasis on individual responsibility in respect of public health, work and family life, in contrast with the politicisation of care advocated by feminism, which views care as a collective need founded on relationships and mutual dependency. It seems, therefore, that the conception of care being put across in the course of the pandemic crisis has more to do with the neoliberal rhetoric of self-care, rather than with care of others as a political alternative.<sup>2</sup> Indeed, though the representation of self-care also concerns social wellbeing, it reflects an opposite approach: i.e. society will be better off (and healthier) not when we take care of one another, but rather when everyone takes care of themselves — a radical inversion of the perspective from which *feminist care* arose.

This twisting of the notion of care has origins that predate the pandemic and it has recently seen a further acceleration, heavily influencing the ongoing redefinition of the notions of freedom and responsibility, which are connected — often implicitly — to the issue of care.

With regard to freedom, it is by now clear that neoliberalism has had a strong impact on the way it is understood, as it asserts a reductionist conception of freedom that boils down to mere free choice<sup>3</sup>.

As for responsibility, it is very well known that neoliberal ideology has remoulded contemporary subjectivity in terms of the entrepreneurial self, burdening individuals with obligations and duties to be fulfilled to enable their integration (which must be fully deserved) into society<sup>4</sup>.

In the light of what has been reconstructed in the literature in this regard<sup>5</sup>, in the following pages I shall try to reflect on the consequences of this new neoliberal anthropology in a feminist perspective, focusing above all on the impact that such transformations of responsibility and freedom produce on the life of women, as well as on their legal and political condition. As I shall seek to demonstrate, women represent a sort of paradigmatic case. By analysing their condition, it is possible, on the one hand, to understand the changes underway with greater clarity; on the other hand, we will realise that some original “distortions” in respect of women’s freedom and responsibility today appear to be useful for the purposes of the neoliberal design and consequently tend to be universalised.

I shall first address the difficulty that usually arises in the debate regarding the substance of the principle of freedom with reference to women’s subjectivity, starting off by considering the temporal dimension, which can explain at least some of the ambiguities still surrounding the rights of freedom in this regard. Women, put simply, gained rights of freedom much more recently than men and, paradoxically, after being declared “equal”. This different temporal succession in respect of rights and, above all, the evolution of practices tied to the proclamation of the latter, is not irrelevant: it probably lies at the basis of many of the difficulties that women still encounter in defining their free condition — in this sense I mean freedom itself<sup>6</sup> — and in identifying the practices of freedom to lay claim to. This brief consider-

2 A distinction must be made between the neoliberal notion of self-care and Foucault’s reconstruction regarding the hermeneutics of the subject (cf. M. Foucault, *The Hermeneutics of the Subject: Lectures at the Collège De France 1981-82*, New York, Palgrave Macmillan; 2005).

3 On the different meanings of neoliberalism - such as rationality, ideology, order, institution - and on the effects of this new paradigm see, ex multis, A. Ong, *Neoliberalism as exception*, Duke University Press, 2006; D. Harvey, *A Brief History of Neoliberalism*, Oxford University Press, 2007; G. Leghissa, *Neoliberalismo. Un’introduzione critica*, Milano, Mimesis, 2012; S. Vida, *Identità precarie. Il soggetto neoliberale tra incertezza, governamentalità e violenza*, in *Materiali per una storia della cultura giuridica*, 2, 2016, pp. 479-506; M. De Carolis, *Il rovescio della libertà. Tramonto del neoliberalismo e disagio della civiltà*, Macerata, Quodlibet, 2017; P. Dardot e C. Laval, P. Dardot, C. Laval, *The New Way of the World: On Neo-Liberal Society*, New York, Verso Book, 2017; M. Barberis, *Liberalismo costituzionale. Fra neoliberalismo globale e liberalismo italiano*, in *Materiali per una storia della cultura giuridica*, 2, 2018, pp. 567-578. On neoliberal transformations of conceptions of freedom see also A. Facchi, O. Giolo, *Libera scelta e libera condizione. Un punto di vista femminista su libertà e diritto*, Bologna, il Mulino, 2020.

4 Regarding individual hyper-responsibilisation and the construction of the subject promoted by neoliberalism, whereby individuals become the entrepreneur of themselves, there is truly a vast literature. For an analysis of the various implications of such conceptions of subjectivity, cf. in particular what has been carefully underscored by Brunella Casalini in B. Casalini, *Il femminismo e le sfide del neoliberalismo. Postfemminismo, sessismo, politiche della cura*, Rome, IF PRESS, 2018, pp. 12 ff. See also S. Trnka, C. Trundle, *Competing Responsibilities: Moving Beyond Neoliberal Responsibilisation*, in *Antropological Forum. A Journal of Social Anthropology and Comparative Sociology*, vol. 24, 2014, pp. 136-153; P. Dardot, C. Laval, *The New Way of the World: On Neo-Liberal Society*, cit.; S. Vida, *Identità precarie. Il soggetto neoliberale tra incertezza, governamentalità e violenza*, in *Materiali per una storia della cultura giuridica*, n. 2016, 2, pp. 479-506; Ead., *Postcapitalismo e neoliberalismo: il presente e il futuro della crisi*, in *Ragion pratica*, 2, pp. 299-325.

5 Cf., ex multis, B. Casalini, *Il femminismo e le sfide del neoliberalismo. Postfemminismo, sessismo, politiche della cura*, cit., pp. 59 ff. Cf. N. Fraser, *Fortunes of Feminism: From State-Managed Capitalism to Neoliberal Crisis*, Verso Books, New York, 2013.

6 For a definition of “free condition”, see again A. Facchi- O. Giolo, *Libera scelta e libera condizione*, cit., p. 58 ff.

ation will be useful for analysing the problematic relationship between freedom and care, as well as for dispelling the confusions that still linger regarding the relationship between freedom and responsibility.

With reference to the latter, I will attempt to briefly examine the idea of responsibility that traditionally weighs upon women and their representation in the public and private realms. I will look at the relationship between the “classic” vision of female responsibility and the contemporary conception of neoliberal responsibility. In this regard, I will use the term responsibility in its broadest sense, that is, in its two possible meanings — aretaic and ascriptive<sup>7</sup> — and as a notion that today governs every “complex network of interpersonal relations”<sup>8</sup>. I thus intend to take into consideration not only legally regulated relationships (such as contractual ones or ones deriving from legal obligations, for example in the case of parenthood) but also those that lie outside a legal framework and regard the most personal and intimate spheres, which depend on socially determined norms, i.e. morally, religiously and conventionally sanctioned obligations. I believe, in fact, as I will try to underscore, that only this broad and non-formalistic interpretation of responsibility can account for everything that continues to weigh upon the (free) condition of women, profoundly influencing their life choices, the organisation of their time and work and the order of the priorities they pursue. The principle of responsibility, considered from a feminist viewpoint, appears to be theorised *ab origine* in a differentiated manner depending on the gender of those who bear responsibility (and those on the receiving end): the meaning and implications of individual responsibility change in relation to the sexual identity of the individual concerned because “the attribution of responsibility is a *judgment*”<sup>9</sup>, to be understood here as a sexual one.

The objective of this analysis is therefore to try to understand what relationship presently exists between gendered conceptions of responsibility and women’s freedom, neoliberal hyper-responsibilisation and the rhetoric of care mainstreaming.

## 2. Freedom (still) misunderstood. The time of feminism and the time of rights

The path towards the affirmation of rights has not followed the same trajectories or the same timing for everyone: individuals became holders of rights at different times and in different ways, so much so that the so-called generations of rights are definable as such only in relation to the paradigmatic individual — white, male, heterosexual, and so on — but not in a generalised manner<sup>10</sup>. In the specific case of women, it should be pointed out that the first right won was the right to vote: women thus gained access first of all to political rights, then to the other classes of rights.

This necessarily entails two consequences.

The first is tied to the fact that the formulation of the principle of freedom, and the connected rights of freedom, was born male, is related to male subjectivity and all the forms, interpretations and translations that have derived therefrom up to now necessarily reflect this original foundation.

The second consequence is closely connected to the first and concerns the lack of consideration of women’s freedom outside the male paradigm, also for a temporal reason: the original exclusion of women from the enjoyment of freedom not only favoured a male formulation of the latter, but also implied a delay in the beginning of any similar reflection from the perspective of women’s subjectivity.

Compared to the centuries — at least four, from John Locke onwards — that men have had at their disposal to discuss about freedom and its implications, women have had only a few decades: thanks to the affirmation of the principle of equality, they succeeded in gaining recognition of rights of freedom in a full sense starting from the second half of the twentieth century, by degrees and in a highly differentiated manner in relation to the geographic and cultural areas.

Therefore, women’s reflection on freedom — with very rare exceptions — is incredibly recent.

7 As Carla Bagnoli explains, one speaks of “aretaic responsibility” in reference to responsibility as a quality of the character and “ascriptive responsibility” when it is understood as ability to act. Both of these meanings identify different but related concerns. Cf. C. Bagnoli, *Teoria della responsabilità*, Bologna, Il Mulino, 2019, p. 10.

8 Ivi, p. 9.

9 C. Bagnoli, *Teoria della responsabilità*, cit., p. 10.

10 Regarding the critical aspects of the generations of rights, see Steven L. B. Jensen, *Putting to Rest the Three Generations Theory of Human Rights*, in <https://www.openglobalrights.org/putting-to-rest-the-three-generations-theory-of-human-rights/>, 15 November, 2017.

This probably explains the still considerable difficulties in translating the principle of freedom in relation to female subjectivity: we need only consider the many debates on the legitimisation of cultural practices (from the veil to mutilations) or the limits in the control over one's body.

So much so that we can recognise two dynamics underlying the relationship between freedom and women. The first concerns the mere transposition of "male rules" onto female subjectivity: an example in this regard is offered by so-called sexual liberation, which in many cases has simply given rise not so much to a rethinking of sexuality, but rather to a simple transfer of the male model to women<sup>11</sup>. The second, by contrast, concerns the *female exception*, based on which well-defined prohibitions or obligations imposed on men are mitigated or removed: in this case an example may be given by the "availability" that still today characterises women's bodies (exposed, commodified, trafficked and so on), as opposed to the unavailability of the male body.

The two dynamics reveal the existence of incoherencies that revolve around an implicit conception of female freedom understood not as a form of emancipation but, on the contrary, as an instrument for legitimising subjection. Still today, women who claim their freedom in order to escape the clutches of patriarchal society are often ostracised, or even subjected to corporal punishment. A similar reaction does not appear to affect women who rely on the argument of freedom to legitimise practices of enslavement. Not coincidentally, the rhetoric of free choice weighs heavily on the very definition of women's freedom: it seems to have replaced and simultaneously removed the need to discuss the original meaning that freedom is capable of expressing in relation to female subjectivity. Consequently, the legal translation of women's freedom similarly fails to take on clear meanings, maintains ample margins of ambiguity, and leaves the door open to exploitation and enslavement, giving rise to a veritable "dilemma of freedom".

### 2.1. Freedom between responsibility and care

The dilemma of women's freedom has multiple implications, of course, and one of them concerns precisely the link between freedom and responsibility, that is, the articulation that has developed historically between these two concepts in relation to women. Feminist theory on the subject of care has undoubtedly contributed to the deconstruction of some assumptions of male liberal thought by attempting to propose an alternative and original interpretation.

The various feminist theories of law<sup>12</sup>, in particular, pointing to the notion of autonomy as the main illusion that has sustained up to now a conception of subjectivity built on male identity, have criticised the idea of freedom as a condition that implies the absence of responsibility in relations with others and disputed the consequent opposition — as I shall also discuss below — between freedom and responsibility. The opposition between the two terms, it is argued, belongs to the distorted and hierarchising representation of relationships and subjectivity which is founded on autonomy. There is necessarily a contradiction, within the liberal theoretical framework, between those who are free (the dominant individuals, being autonomous) and those who instead take care of others (the enslaved individual, dependent because in a relationship): the former are focused on themselves, the latter renounce themselves to take on the burden of others.

However, this representation of the antinomy between care and freedom is not attributable exclusively to the theoretical framework of liberal thought. In fact, taking on the task of care work, taking responsibility for it, inevitably means narrowing one's margin of freedom. With satisfaction, joy, affection, love and dedication, but also with an enormous expenditure of energy, time and effort, which are necessarily diverted from other things. For example, engaging in care work means organising one's day according to the needs of several people, and not only on the basis of one's own needs. Not coincidentally, for women the private sphere was long exclusively a sphere of "deprivation", of freedom first of all, and rights and justice in general.

Unlike liberal thought, the feminist ethic of care<sup>13</sup>, which diverges considerably from the female ethic of care — "disinterested and altruistic" like women of "good will", the reason why "taking care be-

11 Emblematic in this regard is what is highlighted by Carla Lonzi in C. Lonzi, *Sputiamo su Hegel*, Milan, et al. edizioni, 2010, p. 54 ff.

12 As is well known, there are several currents within legal feminism. For an examination see for example V. Munro, *Law and Politics at the Perimeter: Re-evaluating Key Debates in Feminist Theory*, Hart Publishing, Oxford, 2007; V. Munro, M. Daviers (eds.), *The Ashgate Research Companion to Feminist Legal Theory*, Routledge, 2018; J. Conaghan, *Reassessing the Feminist Theoretical Project in Law*, in *Journal of Law & Society*, Vo. 27, issue 3, 2000, pp. 351-385.

13 For a survey of the main issues related to the ethics of care, obviously see first C. Gilligan, *In a Different Voice: Psychological Theory and Women's Development*, Harvard, Harvard University Press, 2016 and R. West, *Caring for Justice*, NYU Press, 1999. See also, below, par 4.



comes an activity of angels and saints"<sup>14</sup> — underscores the fallacious character of the liberal representation of the individual insofar as it opposes freedom and responsibility. It does not deny that in reality the two principles are in mutual tension, but rather affirms that this tension arises and is exacerbated when the connection between responsibility and freedom is removed. Given the universality of being in relation, acting on behalf of others implies acting on behalf of oneself and vice-versa, since the two aspects of agency are only rhetorically, not effectively, divisible. Personal spaces are necessarily also the spaces of others, and vice-versa. Denying this fact implies a twisting of reality, often violent: an imposition of all responsibilities on some, consequently depriving them of (areas of) freedom.

Indeed, the subject of care seems to be more closely tied to the issue of freedom, rather than equality. If we think about care work, in particular, its unequal distribution depends both on the conviction that there exists an original inequality between the sexes (and thus a different role for them in the world), and the awareness of the narrowing of the margin of freedom this implies. Seriously rethinking the organisation of care in a non-gendered egalitarian perspective would mean calling into question the private and public arrangements relating to the areas of individual freedom, which still privilege men.

The enduring tension between freedom and care thus derives its original justification from patriarchal tradition, which for centuries conceived only male subjectivity to be free and autonomous, deeming it impossible to recognise female subjectivity in the same terms. In the contemporary world, though all human beings are understood to be equal and free, that original condition of deprivation of freedom persists, as women are still tasked with the provision of care: thus, the formally recognised freedom has not yet been effectively realised, whereas the male subject, formerly dominant, still harbours a conception of freedom that implies delegating his responsibilities to others.

Changing this state of affairs necessarily entails rethinking the connection between freedom and responsibility in radical terms. However, the impression is that we need to go beyond care mainstreaming if we are to effectively solve the dilemma of women's freedom.

### 3. Female responsibility in the patriarchal vision

While the issue of women's freedom no doubt requires further theorisations in order to transcend the male representation of female subjectivity, some questions remain to be clarified in respect of responsibility as well<sup>15</sup>.

In fact, in the patriarchal narrative, women were represented in a very ambivalent manner in relation to personal responsibility.

Having not been considered, for centuries, as autonomous individuals but rather as "inferior" beings, they were long judged to be incapable of assuming, expressing and managing their responsibility. In the family, economic and public spheres, women were thus considered *non-responsible* by definition. In the private sphere they required male protection, also as regarded the management of their property<sup>16</sup>; in the public sphere, on the other hand, they were deemed to be insufficiently rational and thus incapable of holding public office or occupying important roles<sup>17</sup>, or consciously manifesting their political orientation (hence expressing a vote)<sup>18</sup>. Even in the criminal realm, women were long considered to

14 C. Gilligan, *La resistenza all'ingiustizia: un'etica femminista della cura*, in *Iride*, a. XXIV, n. 63, maggio-agosto, 2011, pp. 315-329.

15 An earlier and partial version of the following paragraphs was published in O. Giolo, *La responsabilità delle donne tra patriarcato e neoliberalismo*, A. Verza, S. Vida (eds.), *Postfemminismo e neoliberalismo*, cit.

16 Cf. for example, G. Duby, M. Perrot, *A History of Women in the West*, Harvard, Harvard University Press, 1992; and M. Davide, *La condizione giuridica delle donne nel Medioevo. Convegno di studio*, CERM, 2012.

17 Regarding the hostility towards the political power of women, C. Mackinnon, *Toward a Feminist Theory of the State*, cit.; Ead. *Are Women Human?: And Other International Dialogues*, Harvard University Press, 2007; see also F. Marnissi, *Beyond the Veil: Male-Female Dynamics in a Muslim Society*, Sadi Books, 2011; L. Muraro, *Al mercato della felicità. La forza irrinunciabile del desiderio*, Milano, Mondadori, 2009, pp. 84 ff. Significant in this respect is the reconstruction contained in C. Casanova, *Regine per caso. Donne al governo in età moderna*, Rome-Bari, Laterza, 2014, with particular reference to the "virulent and misogynistic" denigration and delegitimization of female power disseminated through treatises in the 14<sup>th</sup>-15<sup>th</sup> centuries onward (ivi, pp. 57 ff.), through the re-evocation of the image of the "disorderly woman" (ivi, p. 58).

18 On the first challenges against women's exclusion from the vote and from political life, see E. Pankhurst, *My Own Story*, London, Penguin, 2015 for a reconstruction of the battles for the right to vote, see C. Chapman Catt, N. Rogers Shuler, *Women Suffrage and Politics. The Inner Story of Suffrage Movement*, DoverPublications, 2020; S. Vantin, *I "segreti di Blackstone" rivelati*.

be incapable of autonomously committing crimes or violent actions, and were rather involved in illegal or improper actions under the direction or orders of men<sup>19</sup>.

The association of women with lack of responsibility became firmly established over time, as reflected in legal assumptions, special rules of evidence, and *ad hoc* legislation; hence in an explicit manner through a public recognition of that handicapped condition, which obviously depended on a conception of female subjectivity in terms of reduced, if not inexistent, autonomy. For women, therefore, the classic nexus between freedom, autonomy and responsibility — theorised legally and politically with reference to the paradigmatic male individual<sup>20</sup> — was always understood either in a watered-down version (for example in the private sphere) or as impossible (above all in the public sphere).

However, this reconstruction would not be accurate if we did not add a further element, which explains the ambivalence mentioned above and characterised the condition of women in the patriarchal system, but in the opposite sense, i.e. through the attribution of specific forms of responsibility, based upon some assumed peculiarities of female subjectivity. In actual fact, such forms of responsibility were conceived as befitting of the female condition and the role *naturally* occupied by women in society, above all in the domestic sphere, and understood as dissociated — this seems to me to be the most relevant aspect — from the *status libertatis* and the exercise of individual autonomy.

Whereas, indeed, for individuals of the male sex, the triptych of freedom-autonomy-responsibility has been the foundation of the very conception of legal and political subjectivity up to the present day<sup>21</sup>, for women it was long without meaning, as the latter were assigned forms of responsibility dissociated from freedom and autonomy.

Therefore, it is worth taking a brief look at the specific forms of responsibility that characterised the female condition in the patriarchal context.

### 3.1. The specific forms of women's responsibility

In truth, it is a matter of bringing to light well-known issues related to the roles traditionally occupied by women in patriarchal societies. The specific forms of responsibility depend constitutively on these roles and represent their main expression.

As is well known, women's roles as defined in patriarchies are based on the functions attributed to the female body: reproduction, the provision of care, sexual pleasure<sup>22</sup>. In the patriarchal system, these three functions, long confused with the specificities of female subjectivity, corresponded to three forms of responsibility typically (if not exclusively) borne by women.

The reproductive function resulted in women being given responsibility for procreation and the care of children<sup>23</sup>. The responsibility in respect of procreation was always connected, moreover, to the disciplining of female sexuality, i.e. to the strict self-control over their bodies, publicly sanctioned

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*Abolizionismo, riforma dell'educazione e suffragio femminile in Sarah Moore Grimké (1792-1873)*, in *Percorsi Storici – Rivista di storia contemporanea*, 2016, 4, pp. 1-17, in [http://www.percorsistorici.it/images/pdf/pdfn4/ps\\_4\\_2016\\_vantin.pdf](http://www.percorsistorici.it/images/pdf/pdfn4/ps_4_2016_vantin.pdf).

19 See especially M. Graziosi, *Infirmis sexus. La donna nell'immaginario penalistico*, in *Democrazia e diritto*, 1993, 2, pp. 99-143. Cf. C. Smart, *Women, Crime and Criminology. A Feminist Critique*, Routledge, London, 2012 (first published in 1977); C. M. Renzetti, *Feminist Criminology*, Routledge, 2013; G. Cazzetta, *Praesunitur seducta. Onestà e consenso femminile nella cultura moderna*, Milano, Giuffrè, 1999; O. Ingrasci, *Donne d'onore*, Mondadori, Milano, 2007.

20 In this regard, see Alessandra Facchi's discussion about the link between autonomy, responsibility, freedom, self-ownership and dominion in A. Facchi, *Sulle radici della proprietà di sé*, in *Materiali per una storia della cultura giuridica*, 2018, 2, pp. 427-442. As regards responsibility, autonomy is even more closely connected to freedom, cf. C. Bagnoli, *Teoria della responsabilità*, cit., p. 227.

21 This classic construction, which has for centuries underpinned the conception of subjectivity, has been strongly criticised by feminist theory. Reference should obviously be made, first and foremost, to the critique of autonomy and independence contained in J. Tronto, *Moral Boundaries: A Political Argument for an Ethic of Care*, New York, Routledge, 1994; E. Kittay, *La cura dell'amore. Donne, uguaglianza, dipendenza* (1999), Milan, Vita e Pensiero, 2010; A. Cavarero, *Inclinazioni. Critica della rettitudine*, Milano, Raffaello Cortina Editore, 2013.

22 L. Melandri, *Amore e violenza. Il fattore molesto della civiltà*, Torino, Bollati Boringhieri, 2011, pp. 70 ff.

23 Women's bodies are "il punto di applicazione di tecniche che, sospendendo la sessualità e il desiderio a questa legato, utilizzano il sesso femminile nell'ordine della generazione, quale fornitore di materia sia dal punto di vista biologico che da quello politico" (A. Putino, *I corpi di mezzo. Biopolitica, differenza tra i sessi e governo della specie*, Verona, Ombre corte, 2011, p. 82). Cf. S. Forti, O. Guaraldo, *Rinforzare la specie. Il corpo femminile tra biopolitica e religione materna*, in *Filosofia politica*, 2006, 1, pp. 57-78.

through the repression of adultery<sup>24</sup> and the cult of virginity<sup>25</sup>. This whole surveillance apparatus was obviously geared towards controlling descendancy and the inheritance of property<sup>26</sup>. It also explains the strong connection established between reproduction and marriage, to prevent the dispersal of wealth and disputes over the legitimacy of heirs, again in a situation of ambivalence: that is, with the attribution of female responsibility as far as reproduction was concerned and a total lack of responsibility — on the grounds of the dependency sanctioned by law — as far as the marriage was concerned. Therefore, over the centuries, the alleged sexual incontinence of women — which rhetorically justified such limitations — led women to be made largely responsible for managing their fertile bodies; so much so that, in much more recent times, the control over reproductive capacity continued to be mostly a “woman’s affair”, achieved through the adoption of medical instruments that placed the burden of birth control on the female body; this stands in contrast with the nearly total (now like then) non-responsibility and uncontrollability of the male body. In this regard it is worth underscoring that the lack of responsibility of men, in the patriarchal conception, mainly regarded the consequences of their actions, as is clearly demonstrated by the male approach to sexuality, and therefore did not concern their ability to assume responsibility. I will come back to this point shortly.

The reproductive specificity and maternal capacity to provide for the nourishment of babies in the early months of life through breastfeeding led to women being made responsible for the care of children. The task of providing care continued to weigh exclusively on women even after the period of nursing had ended, while procuring means to support the family remained strictly the responsibility of men.<sup>27</sup> In this regard, it should be noted that the notion of “care” covered a vast array of tasks: from household cleaning chores to everything concerning the care of persons, in a physical, material and emotional sense. The whole set of tasks was always of enormous dimensions, with an often overwhelming burden of responsibilities<sup>28</sup>, including everything from doing laundry to managing meals, from taking care of physical health to dealing with matters relating to education or work, recreational or sports activities, as well as taking care of and managing relationships outside the family. All this multiplied by every member of the nuclear family, and not limited to the necessary minimum but rather with the duty of assuring that everything is done in the best possible manner, in a pleasant environment with the most careful regard. This array of functions and tasks gave rise to the so-called “feminine mystique”<sup>29</sup>, as a stereotypical narrative of a tangle of responsibilities around which female subjectivity has been constructed.

A last function needs to be mentioned, namely that of providing pleasure, which, in apparent contradiction with the feminine mystique, assigned a further role to women in the patriarchal system, as bodies at the disposal of men to fulfil their sexual needs<sup>30</sup>. The reference to “needs” is not coincidental, since patriarchal male sexuality was interpreted in these terms, not as uncontrolled and coarse, but as naturally predatory and exemplifying the very essence of virility. The resulting responsibility for women again regarded, on the one hand, control over their reproductive capacity — in contrast, I shall repeat, with the total lack of responsibility of men — while on the other hand women were made to bear responsibility for men’s happiness, there being no reciprocity in this case either<sup>31</sup>.

For centuries, this overall complex representation sanctioned, as is well known, both male power over the female body and the availability of women’s bodies, according to an anything but contradictory “division of labour” among women themselves: the patriarchy distinguished women into categories

24 Adultery, writes Teresa Forcades, functions as a sort exception to the rule of female incapacity /irresponsibility, as it paradoxically affirms the subjectivity of women, deemed “guiltier — i.e. freer, more responsible — than males” (T. Forcades, *La teologia femminista en la historia*, Barcellona, Fragmenta Editorial, 2012).

25 Cf S. De Beauvoir, *Le deuxième sexe*, Paris, Gallimard, 1949.

26 Cf. C. Delphy, *L’ennemi principal. Economie politique du patriarcat*, Paris, Syllepse, 2009.

27 Regarding the figure of male breadwinner, reference should obviously be made to N. Fraser, *After the Family Wage: Gender Equity and the Welfare State*, in *Political Theory*, 1994, 22, 4, pp. 591-618. Still today, as I will explain further below, the task of feeding and raising children is widely considered to be the responsibility of women. Despite the fact that it is no longer only men who go out to work, these responsibilities are still mostly, if not exclusively, borne by women, deemed more capable, because of their specific qualities (precisely), of better fulfilling such tasks. Cf. P. Setti, *Non è un paese per mamme. Appunti per una rivoluzione possibile*, Rome, All Around, 2019. Regarding the persisting gender imbalances in the distribution of care work cf. the recent OXFAM report, *Time to care – Unpaid and underpaid care work and the global inequality crisis*, 2020, in <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620928/bp-time-to-care-inequality-200120-en.pdf>.

28 S. de Beauvoir, *Quando tutte le donne del mondo...* [1979], Torino, Einaudi, 2006.

29 B. Friedan, *The Feminine Mystique*, New York, Norton, 1963.

30 Cf. A. Verza, *Il dominio pornografico*, Napoli, Liguori, 2006.

31 E. Gianini Belotti, *Dalla parte delle bambine* (1973), Milano, Feltrinelli, 2014, pp. 158 ff.

(based on social class and race, mainly), attributing to them either a reproductive function — for the purpose of producing descendants and assuring the transfer of property to heirs — or the task of providing care or satisfying sexual needs<sup>32</sup>. Severe penalties were provided for in the event of these roles being mixed or inverted (for example, if a prostitute or a maid expected an illegitimate child or a wife committed adultery).

Therefore, the female body has always been the subject of a contradiction: it is made unavailable on the one hand, being the property of or under the protection of a man, yet the woman bears responsibility for her behaviour and its consequences.

This confusion — between functions, specificities and responsibilities — still often survives today, albeit in different degrees depending on economic, cultural and religious variables, and lies at the basis of the dilemma of freedom.

#### 4. Female responsibility: responsibility without freedom

What appears evident, therefore, is a particular conception of female responsibility. Whereas, as noted earlier, for men responsibility has always been connected to the possession of the status of a free and capable individual, and thus of the quality of autonomy, in the case of women the opposite has been true. In patriarchal societies, women were not considered as free individuals, much less autonomous ones; however, they were recognised as bearing the specific forms of responsibility just described, without this resulting in any type of emancipation. On the contrary, such responsibilities gave rise to various forms of subjugation, confinement, segregation, control and punishment. In this regard, the only condition comparable to that of women, in terms of the connection between responsibility and status, was that of slaves<sup>33</sup>: deprived of freedom and autonomy, the latter were nonetheless deemed responsible for their actions at work and in the domestic sphere and were often answerable even with their lives.

For women, as in the case of slaves, the relationship between responsibility and freedom paradoxically came to the fore at the moment when they rebelled against the pre-established roles and functions, acting *freely*, by challenging the patriarchal order: in this case women were considered explicitly responsible for attitudes, choices and behaviours that were qualified — also legally — as deviant. In this context, the meaning of responsibility changed completely, as the term took on a different connotation: it was no longer understood as a manifestation of the capability to think and act for oneself, and hence to make decisions, hold office and so on, but was rather tied to a dimension of guilt, the attachment of a stigma.<sup>34</sup> Women's desire to express their freedom in this sense was seen as a negative manifestation of their being, as a contestation against the naturally, morally and socially given order.

Whereas in the case of men responsibility thus served as a legitimising and emancipating criterion, in the case of women it was a key instrument of their oppression.

However, there is a further aspect to be highlighted in relation to the limits of female responsibility.

Male responsibility, besides being founded on freedom and autonomy, was traditionally understood as "limited responsibility", as it was restricted to individual actions and individual behaviours and above all without regard for the consequences that might be produced for others. Indeed, we can probably recognise, in the evolution towards a liberal society, a tendency in the direction of a progressive, ever greater circumscription of the forms of male responsibility, in order to define certain boundaries as to what was due to or expected from each individual in the complexity of interpersonal relations and relations with the public authority. The liberal principle<sup>35</sup> of damage is paradigmatic in this sense, as it is founded upon the isolation of the relations involved in the damaging event from the broader

32 A paradigmatic example of the gendered "female division of labour" is illustrated by Margaret Atwood in her dystopian novel, *The Handmaid's Tale*, Random UK, 2000.

33 Regarding the similarity between the condition of women and that of slaves, see C. Pateman, *The Sexual Contract*, Stanford, Stanford University Press, 1988.

34 The reference is obviously to E. Goffman, *Stigma: Notes on the Management of Spoiled Identity*, London, Penguin, 1990.

35 Concerning the centrality of the principle of damage in liberal theory, see, by way of example, G. Maniaci, *Come interpretare il principio del danno*, in *Ragion pratica*, 2017, 1, pp. 141-168.

context in which it takes place, and because it enables the scope of responsibility itself to be limited to the damage caused<sup>36</sup>.

These forms of containment and limitation of responsibility, typical of the free, autonomous man held fully answerable only for the acts committed rationally and knowingly<sup>37</sup>, have never applied to women. The latter, paradoxically, are considered responsible not because they are free and autonomous but only because they are subservient: as a result of this, they are usually burdened with general and generalised forms of responsibility. Indeed, a sort of mechanism of generalisation of responsibility operates for women (the reverse of the male one): not coincidentally, a single improper behaviour (whether serious or not) has traditionally been considered an indicator of a general tendency towards irresponsibility in the performance of one's tasks. In a patriarchal perspective, this gave rise to the most evident consequence in terms of the construction of female subjectivity: on the one hand, an obsession with perfection and omnipotence (knowing how to do everything well is a must in order to be considered a complete woman)<sup>38</sup> as well as a prevailing sense of guilt<sup>39</sup>. Efforts are made to avoid even the most trivial mistake, which would be immediately pointed out and would lead to the generalisation mentioned above<sup>40</sup>; on the other hand, the giving up of the idea of "doing everything" or "having everything"<sup>41</sup>, as a result of the specific forms of responsibility, which, in order to be properly fulfilled, requires total abnegation and the abandonment of other aspirations.

Moreover, female responsibility is constructed around not (only) the principle of damage, but (also) the *female* ethic of care:<sup>42</sup> women are considered responsible not only for the damage caused to others, but also, and above all, for the degree of happiness and wellbeing they are able to produce — in the private sphere, first and foremost, but also in the public sphere. This means that whatever a man does for the good of others is usually considered an individual merit (in a work context, but also in the political, social, intellectual realms, etc.), whereas in the case of a woman it represents a further execution of her function of taking care of the world. So much so that female merit is regularly underestimated due to the difficulty of distinguishing it from the ordinary tasks within the scope of female responsibility. Childbirth is a paradigmatic example in this respect:<sup>43</sup> risking one's life to give birth to others is considered a routine affair for women, as a natural event, in no way qualifiable as heroic, as it is included among the female functions-specificities-responsibilities<sup>44</sup>. In contrast, any action of men that implies a risk for their safety is considered worthy of acclaim and social recognition.

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- 36 So much so that (male) responsibility understood with reference to the public sphere and the exercise of power in the public sphere (political responsibility) still poses considerable problems as regards its translation in a legal framework and the definition of its limits and its consequences.
- 37 Responsibility being notoriously understood in a weaker sense in the case of objective responsibility or guilt.
- 38 Cf. R. Simmons, *The Curse of Good Girl. Raising Authentic: Girls with Courage and Confidence*, Penguin Press, 2009.
- 39 "C'est simple, vous culpabilisez tout. Ce que vous faites, et ce que vous ne faites pas. Ce que vous pourriez faire, ce que vous auriez dû faire, ce qu'il fallait faire". N. Daam, E. Defaud, J. Sabroux, *Mouvaïses mères*, Paris, Editions Jacob-Duvernet, 2009, p. 96.
- 40 "I called it 'the problem that had no name'", wrote Betty Friedan, "because women were blamed for a lot of problems — not getting the kitchen sink white enough, not pressing the husband's shirt smooth enough ..." (B. Friedan, *The Feminine Mystique*, cit., p. 6).
- 41 We need only consider the debate triggered by the statements of Anne-Marie Slaughter, the former Director of Policy Planning for the United States Department of State, regarding the impossibility for women to combine a private life and a working career, in any case echoing the stereotype of the woman who is omnipotent and/or has to meet standards of utmost efficiency in every realm of her existence. A. M. Slaughter, *Why Women Still Can't Have It All*, in *The Atlantic*, July/August, 2012, available at <https://www.theatlantic.com/magazine/archive/2012/07/why-women-still-cant-have-it-all/309020/>.
- 42 Cf. C. Gilligan, *In a Different Voice: Psychological Theory and Women's Development*, cit. As is well known, some of Gilligan's views have not met with a unanimous consensus among feminists. For example, MacKinnon disagrees with the idea that women express moral reasoning "in a different voice". She argues that it is rather a morality expressed in a higher, female vocal range. Women value care because men have valued them in relation to the care they give them and women could probably profit from it. Women think in relational terms because their existence is defined in relation to men. (C. Mackinnon, *Le donne sono umane*, a cura di A. Facchi, A. Besussi, Roma-Bari, Laterza, 2012, p. 35). For a more recent interpretation of care by Gilligan see C. Gilligan. *La resistenza all'ingiustizia: un'etica femminista della cura*, in *Iride*, 2011, 2, pp. 315-330.
- 43 In this regard see also O. Giolo, *Conclusioni. Il patriarcato adattivo e la soggettività politica delle donne*, in *La soggettività politica delle donne. Proposte per un lessico critico*, O. Giolo, L. Re (eds.), Roma, Aracne, 2014.
- 44 For considerations regarding maternity and childbirth, especially in the Italian debate, cf. the essays collected in S. Nicolai, E. Olivito, *Maternità, filiazione, genitorialità*, Jovene, Naples, 2017; C. Angiolini, V. Calderai, S. Cavagnoli, F. Coppola, D. Dana, M. Feresin, O. Guaraldo, C. Luzzi, S. Nicolai, E. Olivito, S. Pozzolo, P. Romito, L. Santos Fernandez, L. Sugamele, *Mater*

Furthermore, male responsibility is typically founded on agency: an individual who acts is responsible for himself, rarely for others (except according to specific restrictive legislation provisions), and is responsible for what he causes to others, but within the limits just mentioned. Female responsibility, by contrast, has more to do with looking after others rather than a definition of the limits of individual freedom; therefore, it appears to be founded not on agency, but on the needs of those on the receiving end of the woman's actions.

Ultimately, male responsibility is built upon a general principle of freedom and autonomy, where responsibility arises only when damage caused to others is proven. Female responsibility, by contrast, revolves around a general principle of responsibility founded on the condition of subjugation, which implies a substantial devaluation of female agency and corroborates an ambiguous interpretation of women's freedom: they were long considered responsible not as free and autonomous individuals but as subservient ones, yet by the same token they are to be considered free, subjects who exercise freedom, also (and perhaps *above* all) when they choose subservience.

## 5. Two responsibilities for two genders: (male) law and its implicit assumptions

The law has translated this complex moral, social and political construction into customs, rules and practices, sometimes explicitly, but above all implicitly. In fact, in relation to issues that are highly important and pervasive as regards both the private and public spheres, the law has notoriously relied on gender stereotypes that are well rooted in the common system of beliefs, as is emerging with increasing clarity<sup>45</sup>.

So it is that male responsibility has tended to be defined through explicit regulations, determined by the formal attribution of various public and private tasks and forms of damage compensation.

As regards the responsibility of women, by contrast, the law has adopted — implicitly for the most part — the patriarchal distribution of gender roles, contributing to the basic ambiguity underlying it<sup>46</sup>: in fact, women were long legally qualified as incapable, hence precluded from taking on responsibilities similar to those of men, but at the same time they were treated as bearers of specific responsibilities, as previously noted, in close connection with their “traditional functions”. Again, for the most part, these specific forms of responsibility were not established explicitly: if they had been explicitly defined, there should have been an attribution of some sort of power, even only in the private sphere. But the responsibilities attributed to women typically did not involve any granting of power, which undoubtedly contributed to the persisting precariousness of the female condition. This was evident for a long time in the family realm as well: the responsibility for taking care of children was not accompanied by any “power” over them; on the contrary, this power was entrusted to men, for example through the principle of *jus corrigendi*.

However, the implicit attribution of responsibility to women was also indirectly reinforced through the establishment of several explicit rules. We need only consider the crime of adultery, intended to reinforce (implicitly, precisely) female responsibility in relation to the legitimacy of descendants; or even the competences of the Inquisition in relation to witchcraft, aimed at reaffirming (again implicitly) female responsibility with respect to maintaining the family, sexual and social order and the condition of subservience (that is, the absence of freedom and autonomy); or else honour killings and the (old) crime of rape, which reinforced — especially in the way the law was applied — the rhetoric of the presumed

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*iuris: la differenza sessuale come principio di libertà. Presentazione*, in *Ragion pratica*, 2019, 2, pp. 353-356; O. Guaraldo, *Sul materno: ripensarne il senso tra biopolitica e femminismo*, in *Critiche di genere. Percorsi su norme, corpi e identità nel pensiero femminista*, M.G. Bernardini, O. Giolo (eds.), Roma, Aracne, 2015, pp. 157-179; cf. R. Campisi, *Partorirai con dolore*, Milano, Bur, 2015.

45 Cf. R. Cook, S. Cusack, *Gender Stereotyping: Transnational Legal Perspectives*, Philadelphia, University of Pennsylvania Press, 2010; for a discussion see also Th. Casadei, *Giusfemminismo: profili teorici e provvedimenti legislativi*, in *Notizie di Politeia*, XXXII, 124, 2016, pp. 32-45; P. Parolari, *Stereotipi di genere, discriminazioni contro le donne e vulnerabilità come disempowerment. Riflessioni sul ruolo del diritto*, in *About Gender-International Journal of Gender Studies*, 2019, 8, 15, pp. 90-117; B. Pezzini, *Implicito ed esplicito nel rapporto circolare tra genere e diritto*, in *Questioni di genere nel diritto: impliciti e crittotipi*, L. Morra, B. Pasa (eds.), Torino, Giappichelli, 2015.

46 Regarding the ambivalence of the legal culture towards the role of women, as a result of which it was possible to invoke their incapacity and consequent need for protection in order to deny them any recognition of autonomy and responsibility, see M. Graziosi, *Infirmas sexus. La donna nell'immaginario penalistico*, cit.

complicity of the victim, with the aim of stigmatising attitudes deemed improper and provocative, if not offensive to the moral sensibilities and dignity of others<sup>47</sup>. This also gave rise to the confusion, which has typically surrounded the female condition, between responsibility and responsabilisation, on the one hand, and between responsibility and happiness, on the other. Over the centuries, in fact, in addition to the implicit and indirect attributions of responsibility, the patriarchal society adopted rhetoric emphasising women's responsibility in relation to their roles and functions: pervasive and performative rhetoric, of a religious or moral nature, aimed at the social stigmatisation of deviant behaviours and at educating women on the "feminine mystique", as the only symbolic image of reference<sup>48</sup>. This confusion between responsibility and responsabilisation<sup>49</sup> is probably at the basis of the long survival of the patriarchal system, because it resulted in the involvement of women themselves in handing down the value system of the patriarchy, as contented slaves — as John Stuart Mill suggested<sup>50</sup> — or as vestals of the male order. Contented slaves, precisely: for women, assuming responsibility always rhetorically signified their true realisation. In the patriarchal order, only by taking charge of others could women be happy and complete, because only in this manner would they realise their nature, by performing their natural functions<sup>51</sup>.

It goes without saying that it is necessary to distinguish, in this regard, between the free assumption of responsibility towards others as the manifestation of a willingness, an awareness, an ethic, and thus as a manifestation of one's individuality, and the assumption of responsibility that is instead imposed, as the sole destiny, the negation of one's subjectivity.<sup>52</sup> Whereas the former situation was typical of men (who deserved praise, and were even seen as incarnating the virtue of heroism), the latter was typical of women, who thus tended to reduce their existence to the fulfilment of obligations<sup>53</sup>.

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- 47 For a reflection on the procedural practices based on sexist stereotypes and prejudices in connection with violence against women cf. P. Di Nicola, *La mia parola contro la sua*, Milano, Harper Collins, 2018 and Ead., *La giudice. Una donna in magistratura*, Monterotondo, 881 Agency, 2013. T. Manente, *La pratica femminista del processo penale come strategia di difesa dei diritti delle donne vittime di violenza maschile*, in A. Simone, I. Boiano (eds.), *Femminismo ed esperienza giuridica. Pratiche, Argomentazione, Interpretazione*, Roma, Edizioni Efestò, 2018, pp. 75-89. See more generally J. Du Mont, K.L. Miller, T.L. Myhr, *The Role of "Real Rape" and "Real Victim" Stereotypes in the Police Reporting Practices of Sexually Assaulted Women*, in *Violence Against Women*, 9, 2003, pp. 466-486; D. L. Richards, J. Haglund, *Violence Against Women and the Law*, Routledge, 2015; and the recent publication by L. Re, E. Rigo, M. Virgilio (eds.), *Le violenze maschili contro le donne*, monographic issue of *Studi sulla Questione criminale*, 2019, 1-2.
- 48 The feminist literature on this point is very abundant. Solely by way of example, I shall mention the analysis of female education in S. De Beauvoir, *Le deuxième sexe*, cit.; E. Gianini Belotti, *Dalla parte delle bambine* (1973), cit.; S. Piccone Stella, C. Saraceno (eds.), *Genere. La costruzione sociale del femminile e del maschile*, Bologna, Il Mulino, 1996. Between the late 18<sup>th</sup> century and early 19<sup>th</sup> century, Mary Wollstonecraft and Jane Austen had already harshly criticised the differences characterising female and male education, the former in *Thoughts on the Education of Daughters: With Reflections on Female Conduct, in the More Important Duties of Life* (1787) and *A Vindication of the Rights of Woman* (1792), and the latter in *Pride and Prejudice* (1813) and *Sense and Sensibility* (1811) in particular, but in actual fact in her other novels as well. For a more recent viewpoint, see also L. Lipperini, *Di mamma ce n'è più d'una*, Milan, Feltrinelli, 2013.
- 49 «[L']analisi filosofica ha finora trascurato la tesi metanormativa, e ciò ha compromesso seriamente la comprensione delle pratiche di responsabilità e dei processi di responsabilizzazione (C. Bagnoli, *Teoria della responsabilità*, cit., p. 93).
- 50 According to John Stuart Mill, the main peculiarity of the domination over women, as opposed to that over slaves (and hence over female slaves), concerned the "voluntary" nature of the enslavement: male domination was founded not only on force, but also on voluntary acceptance: "men do not want solely the obedience of women; they want their sentiments. All men, except the most brutish, desire to have, in the woman most nearly connected with them, not a forced slave but a willing one, not a slave merely, but a favourite." (J.S. Mill, *On Liberty and the Subjection of Women* [1869], London, Penguin, 2006, at p. 87).
- 51 Catharine Mackinnon, as is well known, believes that this configuration of women's "natural" responsibilities is to be understood as a "false consciousness", see C. Mackinnon, *Toward a Feminist Theory of the State*, Harvard University Press, 1991, pp. 115-16. For a reconstruction of the debate on the subject see also S. Wells, *Feminism, false consciousness, & consent: A third way*, in *Georgetown Journal of Gender and the Law*, vol. 18, no. 1, spring 2017, p. 251.
- 52 Adriana Cavarero writes: "[s]econdo uno schema che vige già da Aristotele, egli [il maschio, n.d.s.] è infatti per sé e per la comunità politica, mentre, confinata alla sfera laboriosa del domestico, la donna è per l'altro. Ossia, in ultima e documentabile analisi, per lui" (A. Cavarero, *Inclinazioni. Critica della rettitudine*, cit., p. 140). According to Friedan, "togetherness" is the state in which a woman has no independent personality (B. Friedan, *The Feminine Mystique*, cit., p. 49). The feminine mystique "permits, even encourages, women to ignore the question of their identity." (ivi, p. 68). On this subject John Stuart Mill wrote that, when something was denied to a woman, it was believed appropriate to affirm, and necessary to believe, that by wanting it they were deviating from the true road to happiness. (J. Stuart Mill, *On Liberty and the Subjection of Women* [1869], cit.). According to Catharine MacKinnon, women have a history, but it is a history both of what they were allowed to be and what they were not. (C. Mackinnon, *Le donne sono umane?*, cit, p. 35).
- 53 V. Woolf, *A Room of One's Own* [1929], London, Penguin, 2004.

Consequently, male responsibility and freedom were rhetorically understood as corollaries of autonomy; in the case of women, by contrast, they appeared as expressions of the network of dependencies in which they were enmeshed<sup>54</sup>.

## 6. Responsibility in the neoliberal perspective: hyper-responsibilisation or feminisation?

At this point we should begin to reflect on the transformations of responsibility that neoliberalism has promoted.

Neoliberal ideology has notoriously given rise to a process of individual hyper-responsibilisation. Individuals are considered responsible for their own condition to a much larger degree than in the recent past, while the public sphere no longer systematically takes responsibility for solving their problems. In the context of European and Western democracies, the progressive dismantling of the welfare system has largely contributed to reinforcing a conception of individuals as entrepreneurs of themselves, and thus responsible for their success as well as their failures<sup>55</sup>.

The neoliberal and liberal conceptions of responsibility thus seems to tend in the opposite direction: whereas the latter aimed to limit the responsibility of the individual (man), the former appears to aim at its progressive expansion. Moreover, whereas in the liberal conception individual responsibility considerably involved with the public sphere, the neoliberal one implies its removal therefrom.

So if we think about it, the processes of individual hyper-responsibilisation seem to correspond to dynamics of feminisation of responsibility itself.

In particular, the confusion between responsibility and responsabilisation, typical of the female condition, seems to have found a new translation in the neoliberal context.<sup>56</sup> The development of normative systems founded not on coercion but on “nudges”<sup>57</sup>, and the laying of emphasis not so much on obligations, but rather on the “spontaneous” adherence to the social and political orders are typical characteristics of neoliberal law<sup>58</sup>, but they bring to mind what was long inflicted on women: a combination of constriction and stigmatising rhetoric, which had nothing to do either with autonomy or freedom, or with power (much less self-determination).

Not coincidentally, a parallel process of redefinition of legal subjectivity is underway, starting from a new configuration of the principle of freedom, which allows for a reductionist interpretation of freedom itself and, above all, the presence of forms of freedom and of subservience attributable simultaneously to the same individual<sup>59</sup>. In the context of societies dominated by the neoliberal paradigm, therefore, the patriarchal model of female subjectivity — whereby women were in part free and in part enslaved — seems to have spread to such an extent as to become the paradigmatic model of neoliberal subjectivity<sup>60</sup>.

Moreover, the same process seems also to have impacted the conception of responsibility: the model of female responsabilisation — generalising and at the same time detached from the *status libertatis* — seems to have become the new paradigmatic model of individual responsibility, for everyone.

As regards both freedom and responsibility, the neoliberal transcending of the gendered vision has thus resulted not in the emancipation of the exploited gender, but rather the enslavement also of the gender that was formerly privileged, in favour of a new human hierarchy tailored mainly to market

54 Hence the critical reflection promoted by feminism on the notion of dependency. For a reconstruction of philosophical thought in this regard and for a critique on the conception of the individual separate from relations, see A. Cavarero, *Inclinazioni. Critica della rettitudine*, cit., in particular pp. 45 ff.

55 S. Vida, *Identità precarie. Il soggetto neoliberale tra incertezza, governamentalità e violenza*, cit., especially pp. 491 ff.

56 P. Dardot, C. Laval, *The New Way of the World: On Neo-Liberal Society*, cit.

57 For a reconstruction, R.H. Thaler, C. Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness*, Penguin, 2009; cf. G. Tuzet, *Nudge, paternalismi e principio del danno. Nota su un libro di Cass Sunstein*, in *Ragion pratica*, 2019, 2, pp. 637-660.

58 On this point see also O. Giolo, *Il diritto neoliberale*, Napoli, Jovene, 2020.

59 In this regard, see O. Giolo, *Sulla libertà delle donne*, in *La società degli individui*, 2017, 58, pp. 11-21.

60 In this regard, I again refer the reader to O. Giolo, *Brevi riflessioni sulla libertà nella prospettiva delle teorie critiche del diritto, al tempo del neoliberalismo*, in *Materiali per una storia della cultura giuridica*, 2019, 2, pp. 433-448.



needs, within which class, sex and race act as mechanisms of social differentiation according to a variable geometry.

In this respect, however, a contradiction seems to emerge, though it is actually only apparent. Given the rapid proliferation of forms of individual hyper-responsibilisation, the law seems to focus increasing attention on the recognition and promotion of responsibility within the private realm, based on compensation for damage and systems of retributive justice, in accordance with the mercantilist logic and contractual paradigm that represent the core of neoliberal ideology.<sup>61</sup>

Therefore, as things stand, neoliberalism seems on the one hand to radicalise the private dimension of justice and responsibility and, on the other hand, to inundate the individual condition with attributions of responsibility — more or less implicit — which range from caring for oneself to caring for the world. This has the effect of promoting a huge transfer of responsibility from the public sphere to the private sphere and at the same time responsibility itself, once explicitly provided for, has become implicit in nature, thanks also to the confusion — typical of contemporary legal systems — between the moral, political and legal dimensions.

## 7. Equality as the key: rethinking freedom and responsibility

With respect to freedom and responsibility, in view of the affirmed principle of equality, the legal framework has undergone major processes of reform, by virtue of which many of the most odious and conspicuous sexist discriminations have been abolished. At the same time, the levels of responsibility of men in the private domain — specifically as regards the family — and of female responsibility in the public domain — through access to the job market, political life and so on, have increased. The area of women's freedom has increased accordingly.

However, we should stress the fact that forms of implicit attribution of responsibility and of restriction of freedom have not disappeared altogether and, likewise, the confusion between responsibility and responsabilisation remains infrequently addressed in relation to gender.

There has been a much discussion about responsibility in recent decades; feminist theory has attempted on more than one occasion to focus the attention of the theoretical and political debate on the question of its distribution in egalitarian terms, in particular starting from a shared reflection on the relevance of care, the rhetorical nature of autonomy and, most recently, the notion of vulnerability<sup>62</sup>. The demands in respect of the distribution of family responsibility, the care of children and of relatives, housework, parental leaves, as well as the distribution of government offices, positions in boards of directors and in public institutions are simply demands to redefine responsibilities with a view to equality, rather than discrimination.

And yet, in contemporary public discourse the distribution of responsibilities — in both the public and private spheres — is still usually addressed and managed at the level of public policy as a question of “goodwill”, to be da incentivised,<sup>63</sup> tied to the evolution of customs, habits, jobs, living spaces and emotional relationships. Without counting the fact that, very often, alongside such approaches, we see the cyclical emergence of regressive attitudes, which aim to reconfirm and reinforce the natural character of general female responsabilisation, encouraging in this case maternity leave, breastfeeding *sine die*,

61 M. De Carolis, *Il rovescio della libertà. Tramonto del neoliberalismo e disagio della civiltà*, Macerata, Quodlibet, 2017, pp. 87 ff. See also O. Giolo, *La vulnerabilità neoliberale. Agency, vittime e tipi di giustizia*, in O. Giolo, B. Pastore (eds.), *Vulnerabilità. Analisi multidisciplinare di un concetto*, Roma, Carocci, 2018, pp. 253-273.

62 The reference is obviously to M.A. Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, in *Yale Journal of Law & Feminism*, 20, 2008-2009, pp. 1-23; for a further discussion, see M.G. Bernardini, *Disabilità, giustizia, diritto. Itinerari tra filosofia del diritto e Disability Studies*, Torino, Giappichelli, 2016 and O. Giolo, B. Pastore (eds.), *Vulnerabilità. Analisi multidisciplinare di un concetto*, Roma, Carocci, 2018.

63 If we think about it, as an instrument incentives fall within the logic of orientation and promotion — and not imposition — of obligations and behaviours, again in line with neoliberal rhetoric, which does not, however, disdain authoritarian practices, due to its “dichotomous” character. The two different techniques of government — one “gentle” and the other violent — are aimed at different subjects, positioned in different areas of the social hierarchy (privileged, in the former case, marginalised, in the latter). Cf. also J. Butler, *Notes Toward a Performative Theory of Assembly*, Harvard, Harvard University Press, 2015. For further considerations, see also F. Denozza, *La frammentazione del soggetto nel pensiero giuridico tardo-liberale*, in *Rivista del diritto commerciale*, n. 1, 2014, pp. 13-47; Id., *Regole e mercato nel diritto neoliberale*, in *Regole e mercato*, M. Rispoli Farina, A. Sciarrone Alibrandi, E. Tonelli (ed.), Torino, Giappichelli, 2017, pp. XI-XLV.

part-time work, and so forth<sup>64</sup>. That is to say, old and new images of women intersect; in any event, they do not resolve the large burden of responsibilities — implicit and explicit — women have to bear still today and which compromises their free condition, reducing it to fragments of freedom combined with enduring practices of subjugation<sup>65</sup>.

Such dynamics are closely connected to the progressive undermining of the principle of equality in contemporary societies<sup>66</sup>, from both a legal and political standpoint. By virtue of the principle of equality women were able to begin to dismantle the norms and practices that consolidated their enslavement; however, as a result of its weakening, they seem to be trapped once again under old and new schemes which have burdened them with a partially new set of responsibilities: which on the one hand involve men as well, thanks to the rhetoric of the entrepreneurial self; and which, on the other hand, propagate an idea of freedom that increasingly resembles a further stage in the process of hyper-responsibilisation, thanks to the criterion of free choice, rather than the emancipation from conditions of subjection.

Starting off once again from the principle of equality could thus offer the correct perspective for rethinking the connection between freedom and responsibility, while superseding the old patriarchal paradigm and the new neoliberal paradigm at the same time, by promoting a liberation that does not imply a renunciation of equality itself<sup>67</sup>, or the enslavement of others in the name of attributing responsibility<sup>68</sup>, nor is limited to a choice between limited or hetero-imposed options<sup>69</sup>.

64 Cf. E. Badinter, *Le conflit entre la femme et la mère*, Paris, Flammarion, 2010.

65 For a reflection on this topic, see C. Cossutta, “*Il personale è politico*”. *La ristrutturazione neoliberista della casa*, in *Il genere tra neoliberalismo e neofondamentalismo*, F. Zappino (a cura di), Verona, Ombre corte, 2016, pp. 126-136.

66 Regarding this point, see generally L. Ferrajoli, *Manifesto per l'eguaglianza*, Roma-Bari, Laterza, 2019.

67 The theory of difference, as is well known, conceives female freedom as a transcending of equality. On the issues raised by this approach, cf. D. Morondo Taramundi, *Il dilemma della differenza*, Aras edizioni, 2004.

68 As Letizia Gianformaggio writes, the “new subject” must transcend the model of political action typical of the male subject, which consists in “erecting one’s own freedom on the slavery of others”: the new subject must learn to be free without dominating, as a rational subject, but without suffocating or concealing feelings and passions, in L. Gianformaggio, *Soggettività politica delle donne: strategie contro*, in Ead., *Filosofia e critica del diritto*, Torino, Giappichelli, 1995, pp. 164-165.

69 Regarding this point, see again A. Facchi, O. Giolo, *Libera scelta e libera condizione. Un punto di vista femminista su libertà e diritto*, cit., p. 55 ff.

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