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WOMEN, AGENCY AND RELIGION: SOCIAL AND LEGAL ISSUES IN THE MEDITERRANEAN PUBLIC SPACE

Edited by
Ilaria Valenzi

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ROUTLEDGE

Agency and religion play a very specific role in regulating the role and rights of women in the Mediterranean region public sphere. The possibility of women's agency to determine their own life choices finds opposing dynamics between the two shores of *Mare Nostrum*. In both secular and religious contexts, new feminist thinking and a new conception of women are emerging to redefine normative and social roles. While constitutional and private law reforms describe an arduous but successful affirmation of gender equality, a new understanding of women's agency is changing religions from within. Women's theological reflection emancipates and provides an important framework for interpreting internal dynamics, positions and roles. In external contexts, this process is also transforming religious women's participation. The Arab Springs has highlighte a new role for Muslim women as agents of political and social change. In Southern Europe, religious women have developed a new form of active participation in the social context. On both sides of the Mediterranean, gender intersects with religious identity. In this way, religion becomes an instrument of women's autonomy.

However, in their struggle to re-appropriate public discourse, women's agency faces resistance from religions. As a result, even in countries where constitutional reforms proclaim the principle of non-discrimination and equality, violence and restrictions on women's presence in the public sphere are on the rise. These two dynamics call for a discussion of the role of the law in defining the status of women in society, as well as the role of religion in achieving gender equality throughout the Mediterranean region. The legal affirmation of gender rights on both sides of the Mediterranean requires an effectiveness that depends on its ability to penetrate socio-cultural realities and traditions.

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Women, Agency and Religion: Social and Legal Issues in the Mediterranean Public Space

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The Mediterranean was the cradle of many religious and political models, which transformed themselves into universal paradigms. Much has been written about this geopolitical space and its peoples, within the context of their religious and political institutions and their commercial and cultural exchanges. However it seems that this unitary vision, predominant in the past, has recently been replaced by a fragmented and partial approach; that one focuses on the individual regional actors only, neglecting the overall picture and the connections between the different parts.

This *Book Series* aims to promote an interdisciplinary analysis of the connection between the religious, social, economic, and legal aspects of the Mediterranean world. It emphasizes the role of religious beliefs and institutions as a "discursive heritage", pragmatically used in the construction of political and economic systems. Religious phenomenology will be analysed from a diachronic and dynamic perspective to highlight the interdependence between the diversified cultural forms of the Mediterranean area. The core idea is that contemporary globalization, by re-proposing old questions in new scenarios, deepens and reveals forms of osmosis between different social systems. Globalization, and the pluralism it entails, challenges the post Second World War constitutional and democratic model, which was based on the universality of human rights, with the difficulty of realizing its promises; such a challenge reactivates tensions between contemporary universalistic claims and modern nationalistic reactions. Religion, economy, state politics, international and religious rights, and soft rules are all part of this transformation, which combines in a new way modern and contemporary paradigms.
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Edited by
Ilaria Valenzi

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Chapter 3

THE ROLE OF EUROPEAN PRIVATE LAW IN RENDERING WOMEN'S PARTICIPATION TO PUBLIC SPACE EFFECTIVE

Barbara Pozzo

ABSTRACT: *During the last centuries, women's political rights in Europe have been at the core of a wide debate and found their recognition in constitutional texts that were introduced, with different times and methods, in all European countries.*

Nonetheless, women's participation in the public space does not depend solely on the formal recognition of political rights in constitutional texts, but also from the role of private law in shaping women's status in society.

There has always been a biunivocal relationship between private law rules concerning the status of women and the reforms that introduced female suffrage and the equality principle at constitutional level.

On the one side, private law was able to uphold "gendered rules of conduct" – even after the introduction of political rights in the constitution – that were challenged, and eventually changed, by the legislative branch, by the courts, and by legal doctrines that adapted the law to new social demands.

On the other side, private law has a potential to render the fight against women's discrimination mainstreaming, like in the questions concerning matters related to the patrimonial consequences of divorce, the right to maintain the maiden name, or – finally – in the case concerning mothers' rights in establishing relationships by descent and the legal consequences thereof, including the passing on of the mother's surname to her children.

SUMMARY: 1. Introduction. – 2. From the Old Regime to the Revolution. – 3. Equality… but not for all. – 4. The evolution along the 19th century. – 5. The first reforms. – 6. The status of women according to the English Common Law in the 19th century. – 7. The first vindications of women's rights. – 8. The doctrine of separate spheres. – 9. The Angel "*out*" of the house. – 10. The emancipation movement and the first reforms during the 19th century. – 11. The principle of equality and the reforms in the 20th century. – 12. Working women and the first legislation aimed at protecting them in the public sphere. – 13. The introduction of the gender equality principle into the International Agenda. – 14. Conclusions.

1. Introduction

In the *public space* of the 19th century and of the first half of the 20th century, men and women were situated at the two extremities of the scale of values. They opposed each other like day and night [1]. The *public man*, invested with an official function, played an important and highly regarded role in society: he is responsible for political decisions, he fights in war for the honour and values of the fatherland, he holds the reins of the family and decides on the fate of the children.

Women found their place at home: fate has reserved them a role as mothers and wives, guardians of the domestic space. The house is their temple. A *public woman* was the most despicable thing there can be. If the language is the mirror of the culture and values of a society at a given historical moment [2], we might observe that the meaning of a "public woman", in English, but also in French ("*une femme publique*"), in Italian ("*una donna pubblica*"), in Spanish ("*una mujer public*") always corresponds to the concept of a *prostitute*: depraved, debauched, lustful, venal [3].

The place of women in the public space has always been problematic in the Western world since ancient Greece, having thought and constructed politics as the heart of decision-making and power [4]. Not to underestimate is the crucial role that religious aspects have played in this regard. We have in fact to remember that in the most ancient stage of development of religious rules, the interpretation of sources considered of divine origin was certainly influenced by the social, cultural, and legal context of those societies that were predominantly patriarchal.

But the division of roles and of spaces has even more ancient roots, to which anthropologists have paid more attention in recent times, shedding light on various aspects that contribute to explain the ancestral origin of a

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[1] I take this metaphor from Perrot M., *La place des femmes. Une difficile conquête de l'espace public*, Paris, Les Éditions Textuel, 2020, 5.

[2] White J.B., *When Words Lose Their Meaning: Constitutions and Reconstitutions of Language, Character, and Community*, Chicago, The University of Chicago Press, 1984.

[3] Landes J.B., *Women and the Public Sphere in the Age of the French Revolution,* Ithaca-London, Cornell University Press, 1988, 3.

[4] Elshtain J.B., *Public Man, Private Woman: Women in Social and Political Thought.* 2nd ed., Oxford, Princeton University Press, 1981, where the Author traces the evolution of the binomial public man/private woman in the history of political philosophy from Plato to Marx, highlighting the forms and ways in which a separation between the public/male and private/female spheres has been established, which opens an abyss between the world of domestic, family, daily relationships and the world governed by political, abstract and institutionalized relationships.

different specialization of the sexes[5]. This literature, which has at times abandoned the academic character to become popular[6], has induced a new awareness on historical data that most of us had studied in elementary school and then forgotten forever. All of us have been taught that at some point in evolution, humans have taken a bipedal stance. We have been told that to walk upright on two legs had a lot of advantages: we can see farther, and we can carry objects with us, as well as weapons that help us hunt and defend our neighbours. But it had also a lot of disadvantages and women paid an extra price for that, as it had a lot of consequences on their role in society. An upright gait required narrower hips, constricting the birth canal at the same moment when babies' heads were getting bigger, as they had to contain our human brain which became more and more voluminous. Consequently, death in childbirth became a major hazard for human females and women who gave birth earlier, when the baby's head was still relatively small, had more chances to survive the delivery. Natural selection played here an important role, favouring earlier births. The result is that, in comparison with other mammals, humans – being born prematurely – need much more care and for a longer time, which implied specific choices on the side of the whole group to survive. Lone mothers could hardly forage enough food for their offspring and themselves having to treat children at the same time. This favoured social ties, but also a specialization of roles: someone, the nursing mother, had to remain "home" to look after the newborns, while someone else, the one that seemed best suited to fighting wild animals, had "to go out" in search for food[7]. It is incredible that this specialization of roles still maintains its importance in times where the only peril that we must face to get our food is to go to the supermarket.

"Private" and "public", as the separate realms for women and for men[8], have been described and offered different explanations and grounds in history, none of which appear completely satisfactory[9], also since the history of women is increasingly recognized as a chapter yet to be written[10]. It is

[5] Héritier F., *Masculin/Féminin. La pensée de la différence*, Paris, Éditions Odile Jacob, 1996.

[6] Compare Harari Y.N., *Sapiens: a brief history of humankind,* London, Harvill Secker, Random House, 2014, which has been translated in numerous languages and has reached the top of the charts around the world.

[7] The example is taken from Harari Y.N., *Sapiens: a brief history of humankind,* cit., 20.

[8] Sartori D., "Donne e uomini tra pubblico e private", *Annali di studi religiosi*, 5, 2004, 367.

[9] de Beauvoir S., *Le deuxième sexe,* t. I, Paris, Éditions Gallimard, 1949, 79 ff.

[10] For a general overview see Lerner G., *The Creation of Feminist Consciousness, From Middle Ages to Eighteen-seventy,* Oxford, Oxford University Press, 1993, 247 ff.

only in recent years that we became aware that women's contribution to human history has often been overlooked [11], and that research aimed at highlighting the role of women in society has multiplied. Various studies have focused on women's position in Western society over the centuries [12], or have investigated a more limited historical period [13] or their contribution to a historically important movement [14], or in various disciplines [15]. Others have focused on their access to education [16] or to a professional life [17].

It is not then by chance that Carole Pateman has argued that: "*The dichotomy between the private and the public is central to almost two centuries*

[11] Patou-Mathis M., *L'homme préhistorique est aussi une femme. Une histoire de l'invisibilité des femmes,* Paris, Allary Editions, 2020; Criado Perez C., *Invisible Women: Exposing Data Bias in a World Designed for Men*, London, Chatto & Windus, 2019; Perrot M., *Les Femmes ou les silences de l'Histoire,* Paris, Flammarion, 1998; Fraisse G., *Les Femmes et leur histoire,* Paris, Gallimard, Collection Folio Histoire, 1998; Thalmann R., "L'oubli des femmes dans l'historiographie de la Résistance", *Clio. Femmes, Genre, Histoire,* 1, 1995.

[12] Perrot M. and Duby G. (eds.), *Histoire des femmes en Occident*, 5 voll., Paris, Pion, 1990-1991; Allen A.T., *Women in twentieth-century Europe*, London, Macmillan International Higher Education, 2007.

[13] Wiesner-Hanks M., *Women and Gender in Early Modern Europe, New Approaches to European History*, Cambridge, Cambridge University Press, 2019; Hunt M., *Women in eighteenth century Europe*, London, Routledge, 2014; Zancarini-Fournel M., *Histoire des femmes en France: XIX^e^-XX^e^ siècle*, Rennes, Presses Universitaires de Rennes, 2005; Leyser H., *Medieval Women: Social History Of Women In England 450-1500*, London, Hachette UK, 2013.

[14] Bartolo B., *Donne del Risorgimento – Le eroine invisibili dell'unità d'Italia,* Torino, Ananke, 2011; Capeda Fuentes M., *Sorelle d'Italia, Le donne che hanno fatto il Risorgimento*, Peveragno, Blu Edizioni, 2011.

[15] For anthropology, see the essays collected by Reiter R.R., *Toward an Anthropology of Women*, New York-London, Monthly Review Press, 1975; for art, see Butler R., *Hidden in the Shadow of the Master*, *The Model-Wifes of Cézanne, Monet & Rodin,* New Haven-London, Yale University Press, 2008; Colonelli L., *Le muse nascoste – Protagoniste dimenticate di grandi opera d'arte*, Firenze, Giunti, 2020; for Music see Pendle K. (ed.), *Women and Music: A History*, 2nd ed., Bloomington, Indiana University Press, 2001.

[16] Jacobi J., *Mädchen- und Frauenbildung in Europa. Von 1500 bis zur Gegenwart,* Frankfurt-New York, Campus Verlag, 2013; Lirosi A., *Libere di sapere. Il diritto delle donne all'istruzione dal Cinquecento al mondo contemporaneo*, Roma, Edizioni di Storia e Letteratura, 2015; Soldani S. (ed.), *L'educazione delle donne: scuole e modelli di vita femminile nell'Italia dell'Ottocento,* Milano, Franco Angeli, 1989.

[17] Schweitzer S., *Femmes de pouvoir. Une histoire de l'égalité professionnelle en Europe (XIX^e^-XXI^e^ siècle),* Paris, Payot, 2010; Zolesio E., "Des femmes dans un métier d'hommes: l'apprentissage de la chirurgie", *Travail, genre et sociétés*, 2, 2009, 117-133; Cordes O., *Frauen als Wegbereiter des Rechts. Die ersten deutschen Juristinnen und ihre Reformforderungen in der Weimarer Republik*, Hamburg, Diplomica® Verlag GmbH, 2012; Krontiris T., *Oppositional Voices: Women as writers and translators of literature in the English Renaissance*, London, Routledge, 1997.

of feminist writing and political struggle; it is, ultimately, what the feminist movement is about" [18].

The pivotal role of the access to the public sphere has remained central in the Feminist debate for decades, as pointed out by another eminent representative of this movement, Catharine MacKinnon: "*For women the measure of the intimacy has been the measure of oppression. This is why feminism has had to explode the private. This is why feminism has seen the personal as the political. The private is public for those for whom the personal is political. In this sense, for women there is no private, either normatively or empirically*" [19].

As lawyers, it seems important to analyze how legal rules have crystallized these social roles, how law has played an important part in maintaining them and how – at the same time – law has become, over the last two centuries, the tool to dismantle them.

2. From the Old Regime to the Revolution

To trace the history of women in the public space in contemporary history, it seems an obligatory step to begin our reconstruction with that period of profound renewal which was the passage from the *Ancien Régime* to the Revolution.

The French Revolution took place at the resounding call to recognize women's rights that Olympe de Gouges' "*Déclaration des droits de la femme et de la citoyenne*" launched in 1791 [20].

The historical context in which this claim took place is characterized by liberal ideas of individualism and equality, that found their cradle in the seventeenth century. These ideas required the overcoming of traditional societal structures embedded in "natural" hierarchies and inequalities but neglected to give a rational response to women's claims to equal rights.

The historical passage from French absolutism to bourgeois society is crucial to the understanding of women's role in XIXth century society [21].

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[18] Pateman C., "Feminist Critiques of the Public/Private Dichotomy", in Benn S.I. and Gaus G.F. (eds.), *Public and Private in Social Life*, New York, St. Martin's Press, 1983, 281.

[19] Mackinnon C.A., *Toward A Feminist Theory of The State*, Cambridge, MA, Harvard University Press, 1989, 191.

[20] Mousset S., *Women's Rights and the French Revolution: A Biography of Olympe de Gouges,* London, Routledge, 2007, 63-79; Riva J., "The Radical Novelty of Olympe De Gouges", *Nottingham French Studies*, 53.3, 2014, 345-358.

[21] See Landes J.B., *Women and the Public Sphere in the Age of the French Revolution,* cit., 2.

We must recall that under the *Ancien Régime*, women had a subjugated role in society and were generally excluded from the exercise of power [22]. On the other side, this was not considered particularly exceptional as they shared this situation with most men of that period: the hierarchical structure of society deprived many subjects, men and women, of fundamental rights and to the possibility to participate in public debate.

Nonetheless, and despite the patriarchal structure of the society of that time, it is also true that women belonging to upper classes and to the aristocracy took part in and influenced political events and public language [23], while women of urban artisanal classes participated to a series of public activities, sharing work settings with men [24].

To understand the role that women could play in the *public* sphere under the Old Regime it is important to recall the tradition of *Salons*, as *private* spaces opened to intellectuals and artists to debate or converse on topics related to cultural or political current events [25].

From the 16th century onwards, the *Salon* took the organizational form of the modern era and, during the Enlightenment, their role was decisive in spreading culture outside the circles of power (secular or ecclesiastical) and the figure of the organizer or host, who was often a woman, was established.

The Parisian literary *Salons* excelled in fame in this era in which, beyond the figure of the patron, the meetings were often characterized by the presence of a prominent personality through whom they filtered discussions and forged new ideas, arriving then also at dealing with philosophical, religious, and political problems. The fortune of this type of aggregation is explained by the traditional immobility and the refractoriness of the official institutions towards the new demands of culture and with the increased

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[22] Edmond and Jules De Goncourt, who devoted their attention to women's situation in the XVIII century (*La femme au XVIII^e siècle,* last ed., Paris, Editions Flammarion, 2021) give a quite sad portrait of the birth of a girl in this period: "*Quand au dix-huitième siècle la femme naît, elle n'est pas reçue dans la vie par la joie d'une famille. Le foyer n'est pas en fête à sa venue; sa naissance ne donne point au cœur des parents l'ivresse d'un triomphe: elle est une bénédiction qu'ils acceptent comme une déception. Ce n'est point l'enfant desire par l'orgueil, appelé par les espérances des pères et des mères dans cette société gouvernée par des lois saliques; ce n'est point l'héritier prédestiné à toutes les continuations et à toutes les survivances du nom, des charges, de la fortune d'une maison; le nouveau-né n'est rien qu'une fille et, devant ce berceau où il n'y a que l'avenir d'une femme, le père reste froid, la mère souffre comme une Reine qui attendait un Dauphin*".

[23] Landes J.B., *op. cit*., 17.

[24] Landes J.B., *op. cit*., 21.

[25] von der Heyden-Rynsch V., *Europäische Salons, Höhepunkte einer versunkenen weiblichen Kultur,* München, Artemis & Winkler, 1992.

demand for comparison between different positions of thought and experience [26].

Despite the presence of various configurations of *Salons*, in every form of meeting some constant characteristics were nevertheless found: the meetings were free, spontaneous and informal; the participants had a socio-cultural contiguity; the meetings had an intellectual interest, which prevailed over other purposes; in the debate an equal intellectual capacity of the participants was implicitly recognized, even in the presence of a prominent personality.

The *Salonnières* [27] were the protagonists of these unique institution of the early modern period, where women could rise to a certain social prominence, so to gain the attention of a vast public [28].

In these "private" settings, women could participate in conversations on an equal basis with guests. Very often favoured by their rank or their social position, the *Salonnières* became a point of reference for the intellectuals who frequented them [29].

The *Salon* hinged on the central figure of a woman, the landlady: married, sometimes widowed, or separated, never single; elegant, intelligent and cultured (even if as a woman she had not received a thorough education), she spoke in an easy and witty way, had refined manners and knew European languages.

The *Salonnières* indifferently welcomed male and female representatives, nobles, or bourgeois as long as they were educated; they opened up a space for conversation, favouring relationships between guests; they promoted young talents and could make them known to the public.

Between the seventeenth and eighteenth centuries the *Salon* thus became an important space for female emancipation, where – in contrast to her own submissive and silent family role – an educated woman could

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[26] Kale S., *French salons: high society and political sociability from the Old Regime to the Revolution of 1848*, Baltimore, John Hopkins University Press, 2004; Lilti A., *Le Monde des salons. Sociabilité et mondanité à Paris au XVIIIe siècle,* Paris, Fayard, 2005.

[27] Duggan A.E., *Salonnières, furies, and fairies: the politics of gender and cultural change in absolutist France*, 2nd ed., Newark, University of Delaware Press, 2005, 2021; Pekacz J.T., "The salonnières and the philosophes in Old Regime France: The authority of aesthetic judgment", *Journal of the History of Ideas*, 1999, 277-297; Brown H. and Dow G., *Readers, writers, salonnières: female networks in Europe, 1700-1900*, New York, Peter Lang, 2011.

[28] Craveri B., *La civiltà della conversazione,* Milano, Adelphi, 2001 (English translation: *The age of conversation*, New York, New York Review Books, 2005). References to this book are to the Italian version.

[29] One of the most famous Salons, and most probably the first to open in Paris, was the one of Madame de Rambouillet. Compare Craveri B., *op. cit*., 55 ff.

make music, discuss philosophy, literature, or science by asking questions and manifesting openly their own opinions. Landes outlines in this respect that "*women functioned as adjuncts, then, of a system of advancement for merit. Circles at court and salons in the city became centers of female power brokers*" [30]. In other words, *noblesse de sang* and *noblesse de l'âme* were considered on an equal footing.

The phenomenon, and in particular its excesses, was not without criticism and attracted the mockery of Molière, who in the *Femmes savantes* exercised all his satire on academic pretension and female education. In his other work "*Les Précieuses ridicules*" the French playwright attacks the new fashion of using hyperbolic paraphrases and elaborate metaphors, as the ones employed by Madeleine de Scudéry, *femme de lettres,* whose works mark the apogee of this movement [31].

According to a certain historical reconstruction, salon sociability is then presented as an important tool for women to gain importance in the public sphere during the 18th century [32].

Following Jürgen Habermas's conception of the "public sphere" [33], this situation faded away with the emergence of the new *bourgeois* society of the nineteenth century. Just as the public sphere eroded in the nineteenth century, according to Habermas, the salon culture, with women at its centre, disappeared in the 1780s because it was incompatible with the new, masculine, political culture that developed during and after the Revolution [34].

That this reconstruction is correct, is now subjected to scrutiny by historians who emphasize how S*alons* not only survived but flourished after the Revolution, proliferating in nineteenth-century France [35]. Independently from this historical *querelle,* it is important to analyze which is the status of women that descends from the legislation that was adopted after the Revolution and that frames the new patriarchal bourgeois family.

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[30] Landes J.B., *op. cit*., 24.

[31] Denis D. and Spica A.-E. (eds.), *Madeleine de Scudéry: une femme de lettres au XVIIe siècle*, Arras, Artois Presses Université, 2019.

[32] Landes J.B., *op. cit*., 39 ff.

[33] Habermas J., *Strukturwandel der Öffentlichkeit. Untersuchungen zu einer Kategorie der bürgerlichen Gesellschaft,* Frankfurt am Main, Suhrkamp, 1962; an English translation appeared under the title, *The Structural Transformation of the Public Sphere: An Inquiry Into a Category of Bourgeois Society,* Cambridge, Polity Press, 1992.

[34] Pekacz J.T., "Les Amies des philosophes: The making of Enlightenment salons in nineteenth-century France", *French History and Civilization*, 5, 2014, 53-61.

[35] Pekacz J.T., *op. cit.*

3. Equality… but not for all

With the *Déclaration des Droits de l'Homme* adopted in August 1789 the fundamental principle of equality was pronounced: "*Men are born and remain free and equal in rights. Social distinctions can only be based on common utility*" [36]. By 1791, new articles extended civil and political rights to Protestants, Jews, and other categories of people that previously had none, but the situation of women did not improve much [37].

During those times of freedom for all, *Sans-culottes* and *Jacobins* both affirm that women must stay at home, next to their lord, their husband. But many women do not admit this proposal and claim a fighting position alongside men and are present on the streets on July 14th [38].

In the *Treatise on the authority of the husband* by Pothier, the influential lawyer, whose work was incorporated almost textually in the French *Code Civil*, we read: "*Le mariage, en formant une société entre le mari et la femme, dont le mari est le chef, donne au mari, en la qualité qu'il a de chef de cette société, un droit de puissance sur la personne de la femme, qui s'étend aussi sur ses biens*" [39].

Notwithstanding this subjugated position, women benefited from some changes during the Revolution, such as equal inheritance between children, although they still had very few opportunities for education or training, followed by the near impossibility for them to work and earn a decent income [40].

In this context, some women stand out for their claims of rights that put

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[36] The original version of Art. 2 of the Declaration stated: "*Les hommes naissent et demeurent libres et égaux en droits. Les distinctions sociales ne peuvent être fondées que sur l'utilité commune*".

[37] Pédron A., "'Nous aussi nous sommes citoyennes': Female Activism during the French Revolution", *Women in French Studies Special Conference Issue*, 2019, 71.

[38] Bertaud J.P., *La vie quotidienne en France au temps de la Révolution (1789-1795),* Paris, Hachette, 1983, It. trans.: *La vita in Francia ai tempi della Rivoluzione,* Milano, Mondadori, 2022, 217. References to this book are to the Italian edition.

[39] Pothier R.J., *Traité de la puissance du mari sur la personne et les biens de la femme*, in *Oeuvres de Pothier, contenant les Traités du droit français, Nouvelle édition mise en meilleur ordre et publiée par les soins de M. Dupin, Avocat a la Cour royale de Paris*, t. VI, Paris, Chasseriau, 1825, 1. The text goes on stating: "*La puissance du mari sur la personne de la femme, consiste, par le droit naturel, dans le droit, qu'a le mari, d'exiger d'elle tous les devoirs de soumission qui sont dus à un supérieur. Un de ses principaux effets, est un droit, qu'a le mari, d'obliger sa femme à le suivre partout où il juge à propos d'aller demeurer ou résider, pourvu néanmoins que ce ne soit pas hors du royaume et en pays étranger: car si le mari, en abjurant sa patrie, voulait s'y établir, la femme, qui doit encore plus à sa patrie q'à son mari, ne serait pas obligée de l'y suivre, et d'imiter l'abjuration que son mari fait de sa patrie*".

[40] Pédron A., *op. cit.*, 72.

them on an equal footing with men: Théroigne de Méricourt[41] who played an active role in the Revolution, Marie Madeleine Jodin[42] who published *Vues législatives pour les femmes* in 1790, and the most famous Olympe de Gouges[43] with her *Déclaration des Droits de la Femme.*

Although the important role played by women during the Revolution, the legislation that was passed defining the status of women for the next century was far from being listening to their claims.

The French Civil Code of 1804, often presented as a "revolutionary" code, introducing the principle of equality of all citizens before the law, codified the subjugated role of women inside and outside the family.

Even from a first view of the main rules of the Code civil, it is understood that the role of the woman had no autonomy and therefore no possibility of determining her destiny alone.

The wife owed obedience to the husband (Art. 213 Code civil), was obliged to live with him and to follow him wherever he considered fit to reside (Art. 214 Code civil). The husband alone administered the assets belonging to the family. He could sell and mortgage them without the wife's consent (Art. 1421 Code civil). The husband also had the administration of the wife's personal property. He could exercise alone all the movable and possessory actions belonging to the woman (Art. 1428 Code civil). Once the woman was married, even the dowry was administered by the husband alone (Art. 1531 Code civil). Although marriage was conceived as a contract, based on mutual consent (Art. 144 ff. Code civil), a wife's adultery was sufficient to allow the husband to obtain divorce (Art. 229 Code civil), while she was able to get divorce on account of the husband's adultery only if he kept his concubine in the common house (Art. 230 Code civil). Women could not be witnesses in all procedures concerning civil status documents (Art. 37 Code civil), nor before a notary public for last will dispositions (Art. 980 Code civil). Special rules applied to unmarried women of age, namely the only ones who could sue in court without the permission of a male member of the family.

The image we get is that of a woman who depends on her husband in all respects, confined to the home, since in the absence of a specific marital authorization she could neither move nor work, and therefore was unable to become independent.

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[41] Roudinesco E., *Théroigne de Méricourt: Une femme mélancolique sous la Révolution,* Paris, Albin Michel, 2013.

[42] Gordon F. and Furbank P.N., *Marie Madeleine Jodin 1741-1790 – Actress, Philosophe and Feminist,* London, Routledge, 2001.

[43] Faucheux M., *Olympe de Gouges*, Paris, Gallimard, 2018; Ravera C., *Olympe de Gouges*, Roma, Elemento 115, 2019; Mousset S., *Women's Rights and the French Revolution: A Biography of Olympe de Gouges,* London, Routledge, 2007.

The myth of the "mistress of the house" was not only framed by the *Code civil*. Under the insistence of political and religious authorities, the responsibility for domestic tasks became the "natural" role of women: "*every true woman knows that her place is in the house [...], since that is what nature has ordered*" [44].

Not that the private spaces of the house were in the complete domain of the wife. Far from it! The father/husband dominated the house as well. He has his own places: the smoking room and the billiard room, where the men retire to chat after social dinners; the library, because books remain men's affairs; the office, where the children enter only trembling [45].

This is rendered particularly evident in the writing of a famous French literate woman of that period: George Sand, *nom de plume* of Aurore Dupin [46]. Aurore Dupin married when she was only 19 Casimir Dudevant, the illegitimate son of Baron Jean-François Dudevant, a French military officer, and soon had two children. Bored by her family life in the provinces, she moved to Paris and in order to gain access to public spaces, she began to dress in men's clothes. She soon became famous as writer with the success of her novel *Indiana*. It is interesting to underline how in her autobiography, Sand describes how she felt dispossessed of her home after her marriage, although she inherited the house and property of Nohant from her grandmother. It was in fact her husband, who increasingly managed and dominated the household [47].

While living in a house of her own, to escape from her husband's dominance, she hides herself in the smallest room, which becomes her refuge and where she can write and at the same time stay close to her children:

> "*My room at that time was my grandmother's old dressing room because it had only one door and passage for one person only under any circumstances. My two children occupied the adjoining room. I heard their breathing, and I could watch over them without disturbing their sleep. This dressing room was so small that with my books, my herbaria, my butterflies, and my rocks ... there was no space for a bed. I made do with a*

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[44] Després C., "De la maison bourgeoise à la maison moderne. Univers domestique, esthétique et sensibilité féminine", *Recherches féministes*, 1989, *2*(1), 3-18; Bauhain C., "Masculin et féminin, les habitations bourgeoises au XIX^{e} siècle", *Les Annales de la recherche urbaine, Familles et patrimoines*, 41, 1989, 15-26.

[45] Perrot M., *La vie de famille au XIX^{e} siècle*, cit., 47 ff.

[46] Walton W., "Literary Production and the Rearticulation of Home Space in the works of George Sand, Marie d'Agoult and Hortense Allart", *Women's History Review*, 6:1, 1997, 115-132.

[47] Walton W., *op. cit*., 120.

hammock. I made my desk out of an armoire that opened into a secretary" [48].

This image does not correspond to the "mistress of the house" that is usually portrayed in popular literature. In a story that immediately brings to mind Virginia Woolf's *A Room of One's Own*, that will only be published many years later, Sand describes herself as seeking privacy within a space – the home – that was only supposedly constructed to be private and 'feminine': "*Sand presents herself as an interloper in her own home because the marriage laws accorded husbands authority over their wives, children, and joint property*" [49].

If this is a picture of bourgeois women, other contexts provide differentiated situations. In the rural society of France, recent historiography has highlighted how husband and wife had complementary tasks, in a work environment that established a continuity between private and public spaces. The impression one gets from this is that all in all, there was a harmonious balance between the two sexes, in which the wife held the purse strings most of the time [50].

4. The evolution along the 19th century

The appropriation of public spaces by women took place gradually, through those openings that society allowed them. Charity, the ancient duty of Christian women, had long led women out of their homes on permitted itineraries: to visit the poor, the prisoners, the sick. The importance of social problems during the 19th century transformed this custom into a need. And it is precisely in philanthropy, and therefore in the private management of the social sector, that women are recognized as having a first important role outside of domestic spaces. It was an unpaid job, as it was the one at home, but philanthropy has meant an important experience for women that changed their perception of the external world and contributed to their insertion into the public sphere [51].

Associationism soon developed from this philanthropic work, first with male leadership and then also with exclusively female leadership. Methods and objectives developed over time and while initially these associations'

[48] I take this quotation from Walton W., *op. cit.,* 120.

[49] Walton W., *op. cit.,* 120.

[50] Perrot M., *La vie de famille au XIXe siècle,* Paris, Éditions du Seuil, 2015, 62.

[51] Duby G. and Perrot M., *Histoire des femmes en Occident,* IV, *Le XIXe siècle*, dir. by Fraisse G. and Perrot M., Paris, Librairie Académique Perrin, 2002, 540 ff.

aim was simply "charity", later expanded to include moralization and hygiene.

In this regard, one, among the many examples that are worth remembering, concerns the activity at the Saint Lazare prison for women. Founded as an institution for lepers in the Middle Age, it was transformed in 1794 into a prison for women. It became soon the abode of all sorts of women convicts: criminals, thieves, spies, prostitutes, etc. Among them there were so many infected with venereal disease that a special infirmary became indispensable[52]. Here the women's association called "*Oeuvre des libérées de Saint Lazare*" was active with the view of "*preserving women in danger to get lost and providing to the released, without distinction of religion or nationality, the means of rehabilitation*" [53].

Philanthropy slowly turned into social work, into experiences of social education that take place especially in the most proletarian neighbourhoods. In France there are emblematic examples in Charonne developed by Marie Gahéry with the "*Union Familiale*" [54].

Through their activity, women are over the course of time recognized a competence that legitimizes their desire for managerial autonomy in these associations devoted to social affairs.

On the other side, with the development of industrialization, women left their homes in search of a salary that could provide a better income for the family[55]. But we also must remember that the valorization, abusive but significant, of productive work in the 19th century erected as the only workers the salaried employees, while relegating in the shadow of marital support shopkeepers and peasants, later called "family helpers".

The growing separation between the workplace and the private home, had different consequences: on one side, the "*salariées*" gained a place outside the house and were paid, even if they received by law a wage lower than that of man; on the other side, housewives suffered of the fact that, following the regression of domestic work and industrial concentration, household work was economically devalued because it could not be quanti-

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[52] Blum P., "The Hôpital Saint-Lazare in Paris: Its Past and Present History", *British Journal of Venereal Diseases*, 24(4), 1948 Dec., 151-152.

[53] Valette A., *Oeuvre des libérées de Saint-Lazare, fondée en 1870, reconnue d'utilité publique par décret du 26 janvier 1885,* Alençon, Imprimerie de F. Guy, 1889, 10.

[54] Fayet-Scribe S., *Associations féminines et catholicisme. De la charité à l'action sociale,* Paris, Editions Ouvrières, 1990; Eloy J., "Les Maisons sociales et les Résidences sociales ou le développement collectif par les reconnaissances mutuelles", *Vie sociale*, 2, 2, 2012, 53-66.

[55] Perrot M., *De la nourrice à l'employée. Travaux de femmes dans la France du XIXe siècle*, *Le mouvement social*, 1978, 3-10.

fied. This far too simple a dichotomous vision which led to concealing the problem of the reproduction and maintenance of the labour force and to denying the immense unpaid work of housewives [56].

As far as the admission to schools was concerned, education in the 19th century was characterized by social and gender inequality. The current idea then was that education should be as adapted as possible to the future of everyone. Thus, a girl of the people had to be satisfied at best with the first notions of elementary education. Brought up for the house, the hearth, women had to learn about domestic work. The woman was made for the family, hence the scandal caused after 1848 by the first professional schools for women.

The education of young girls of a higher social category did not bring them closer to their brothers. The role played by religion was essential. Since the Catholic Reformation, the Church, which has the supervision of education, marks a particular solicitude for that of girls. The woman is felt as a factor of rechristianization through the influence she was able to play in the family. For reasons of morality, the education of girls had to remain separated from that of the boys and, in fact, during the 19th century girls' schools was subject to separate regulations. The "Loi Falloux" of 1850 [57] imposed to municipalities with more than 800 inhabitants to open a primary school for girls. It further established financial restrictions for female education: lightly loaded of instruction, but rich in domestic apprenticeships, the education of girls had to be much cheaper than that of boys [58].

Girls' education was not foreseeing Latin or philosophy, as they should not compete with boys, even if the century develops the theme of the "*mère éducatrice*" [59]. Having come to power in 1877, the Republicans, developed higher primary education for girls which opened to them the inferior employments of commerce and the public service. The law of 1880 [60], which created secondary education for young girls, still shows several gaps: classical humanities and philosophy, gateway to *baccalauréat* and higher educa-

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[56] Duby G. and Perrot M., *Histoire des femmes en Occident,* cit., 547.

[57] *Loi du 15 mars 1850 relative à l'enseignement*, called "*Loi Falloux*" after the name of Minister who proposed it.

[58] Mayeur F., "Garçons et filles du XIXe au XXe siècle: une éducation différente", *Enfance*, 33, 4-5, 1980, numéro thématique: *Congrès international de psychologie de l'enfant,* 153.

[59] Mayeur F., "Garçons et filles du XIXe au XXe siècle: une éducation différente", cit., 154.

[60] *Loi sur l'enseignement secondaire des jeunes filles* 21 décembre 1880, called "*Loi Camille Sée*" after the name of Minister who proposed it.

tion, are still absent. The high school system of young girls is still inspired by the ideal woman, who will be a wife and mother, guardian of family and social order [61].

French universities gradually opened their courses to women in the second half of the XIXth century, but it is only in 1880 [62], when the admission of girls to high schools and the possibility to get a *baccalauréat* was established by law [63], that women began to gradually flow to universities [64].

So, while there were only 965 women enrolled at French universities in the academic year 1899-1900 (that is to say 3.2% of total student numbers), by the eve of the First World War, their number had increased considerably, becoming about the 10% of the total.

Although formally admitted to universities, their presence, especially in some faculties, met with much resistance. Female students were finally accepted even in the most traditional universities, but they had to cope with a sexist school system which did not prepare them adequately to university. In most cases, women's success depended, therefore, on a considerable amount of personal work to achieve the required level. Further, from a social point of view, female students were often considered under a negative light: they were named *«cervelines»*, women capable to go against nature and social order, rejecting their primary mission of wives and mothers [65].

It is interesting to note that some faculties, like the law school, were considered utmost unfeminine, even more than other professions full of responsibilities, like the study of medicine [66]. As it has been suggested by a French commentator, in continental Europe, the faculty of law remained for a long

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[61] Lécuyer C., "Une nouvelle figure de la jeune fille sous la III^{e} République: l'étudiante", *Clio. Histoire, femmes et sociétés,* online since January 1, 2005, accessed April 19, 2019, available at: http://journals.openedition.org/clio/437; doi: 10.4000/clio.437; Tikhonov Sigrist N., "Les femmes et l'université en France, 1860-1914", *Histoire de l'éducation*, online since January 1, 2014, accessed May 20, 2021, available at: http://journals.openedition.org/histoire-education/1940; doi: https://doi.org/10.4000/histoire-education.

[62] Tikhonov Sigrist N., *op. cit*., 53; Lécuyer C., *op. cit*., 166; Condette J.-F., "Les "cervelines" ou les femmes indésirables: l'étudiante dans la France des années 1880-1914", *Carrefours de l'éducation*, 15, 2003, 39-61.

[63] *Loi sur l'enseignement secondaire des jeunes filles*, 21 December 1880.

[64] Christen-Lécuyer C., "Les premières étudiantes de l'Université de Paris", *Travail, genre et sociétés,* 2000/2, 4, 35-50, who points out that the *Loi Camille Sée* was aimed more to train cultured wives and mothers than future college students.

[65] Condette J.-F., "Les Cervelines» ou les femmes indésirables", cit.

[66] Corcos C.A., "Portia Goes to Parliament: Women and Their Admission to Membership in the English Legal Profession", *Denver University Law Review*, 75, 2, 1998, 307, 319.

time "*a territory reserved for men*" [67]. In most European countries, women gained access to medical schools before they could study law, in some case several decades earlier [68]. Most likely it was believed that women were – by their very nature – capable of *caring* for other human beings, especially if they were other women or children. The society of the time, on the other hand, was much less inclined to consider that women had that rationality and that capacity for abstract logic, required for the legal profession.

5. The first reforms

Hand in hand with access to higher education, some reforms granted women new forms of independence also in the professional field. A law passed in 1895 [69], established that married women, regardless of their matrimonial regime, could open a savings bank book and freely withdraw sums without the assistance of their husband, unless expressly opposed by him.

In 1897 [70] a reform of the Civil Code of 1804 granted women the right to be witnesses in acts of civil status and instrumental acts in general.

In quick succession, other provisions come into force, allowing women to register on the electoral lists of commercial judges, though they still cannot be eligible for the function of judge [71], or to create mutual benefit societies, establishing that even married women can exercise this right without the assistance of their husbands [72].

With the new century, women with a law degree were finally allowed to take the oath of lawyer and to exercise this profession [73].

Further laws established that women could be eligible for Chambers of Commerce and Chambers of Arts and Manufactures [74].

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[67] Christen-Lécuyer C., *Les premières étudiantes de l'Université de Paris*, cit., 35: "*Certaines facultés s'ouvrent plus facilement aux femmes que d'autres: le droit demeure longtemps un territoire réservé aux hommes*".

[68] Albisetti, J.C. "Portia Ante Portas: Women and the Legal Profession in Europe, ca. 1870-1925", *Journal of Social History*, 33(4), 2000, p. 825.

[69] *Loi sur les caisses d'épargne* n. 29946, 20 July 1895.

[70] *Loi accordant aux femmes le droit d'être témoins dans les actes de l'état civil et les actes instrumentaires en general* n. 33663, 7 December 1897.

[71] *Loi ayant pour objet de conférer l'Electorat aux femmes pour l'élection au Tribunaux des commerces,* n. 34007, 23 January 1898.

[72] *Loi relative aux Sociétés de secours mutuels*, n. 34303, 1 April 1898.

[73] *Loi du 1 décembre 1900 ayant pour objet de permettre aux femmes munies des diplômes de licencié en droit de prêter le serment d'avocat et d'exercer cette profession.*

[74] Décret portant réorganisation du Conseil supérieur du travail, 14 March 1903.

Another important reform passed in 1907, concerning the salary of married women. With this new law, married women, whatever their matrimonial regime, could freely collect and administer their salary. The law further specified that married women had the same rights of administration on the salary than the wife separated, on the condition that she exercises a profession distinct from that of her husband. This included the right to sue, without marital authorization, for all disputes relating to her right of administration [75].

In addition, as far as access to the professions concerns, new laws began to introduce specific guarantees that would have made the working mother more confident that she would be able to keep her job even after childbirth [76], and maternity leave [77].

6. The status of women according to the English Common Law in the 19th century

This portrait of the "*femme bourgoise*" and her place in French society of the 19th century, enshrined in the Code civil of 1804, is not very far from the one that we find in a different context with a different set of rules.

According to the English Common Law, the legal status of married women was governed by the *doctrine of coverture*, or doctrine of *spousal unity*, as set out in Blackstone's "*Commentaries on the Laws of England*" (1765) [78]: "*if husband and wife were «one body» before God, they were «one person» in the law, and that person was represented by the husband*" [79].

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[75] *Loi relative au libre salaire de la femme mariée et à la contribution des époux aux charges du ménage,* n. 49537, du 13 July1907.

[76] *Loi garantissant leur travail ou leur emploi aux femmes en couches,* n. 972, 27 September 1909.

[77] *Loi sur le repos des femmes en couches,* n.5699, 17 June1913.

[78] William Blackstone was appointed as the first Vinerian Professor of English Law at Oxford in 1758. His most prestigious work, *The Commentaries on the Laws of England,* in four volumes, was published after resigning from the Chair in 1765, but taking advantage of the lectures that he had collected during those years of teaching. The first volume was published in the same year. The second was published in 1766 and the third in 1768. The fourth volume, dealing with Criminal Law, was finally published in 1770. Blackstone's treatise had an enormous success non only in England, where it was often republished until the 1870s, but also in the American Colonies. The first American edition was produced in 1772.

[79] Rodriguez-Ruiz B. and Rubio-Marin R., "Transition to Modernity, the Achievement of Female Suffrage and Women's Citizenship", in Rodriguez-Ruiz B. and Rubio-

More in detail, this doctrine suspended the rights of married women: "*By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband; under whose wing, protection, and cover, she performs everything; and is therefore called in our law-french a «femme-coverte» under the protection and influence of her husband, her baron, or lord; and her condition during her marriage is called her coverture...*" [80].

Femme coverte o *feme covert*, was then the legal status of a married woman whose legal rights and obligations were subsumed by those of her husband, while an unmarried woman, or *feme sole*, had the right to own property and make contracts in her own name.

This theory was usually given as a reason to deny women any public role, under the assumption that a married woman would be represented in society and at political level already by her husband. This doctrine also had an enormous impact on the evolution of common law rules in the private sphere [81]. In fact, it held that a married woman had no legal identity distinct from the identity of her husband, this doctrine denied her independent legal existence.

Not unlike what happened in France, at the beginning of the 19th century, under the common law, married women could not have private property. According to Blackstone "*the sole and absolute property rests in the husband, to be disposed at his pleasure, if he chooses to take possession of them*" [82]. As far as clothing, money, household goods and furniture were concerned, "*the husband hath therein an immediate and absolute property devolved to him by the marriage…which can never revert to the wife*" [83].

The only exception to these rules concerned the wife's "paraphernalia", the apparel, and ornaments of the wife suitable to her rank and degree [84].

Finally, married women could not sue alone, on their own behalf.

From another point of view, married women could not oppose sexual intercourse requested by the husband, nor report him for violence. Lord

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Marin R. (eds.), *The Struggle for Female Suffrage in Europe, Voting to Become Citizens*, Leiden-Boston, Brill, 2012, 6.

[80] Blackstone W., *Commentaries on the Laws of England*, vol. II, pt. 2, cit., 433.

[81] Zaher C., "When a Woman's Marital Status Determined Her Legal Status: A Research Guide on the Common Law Doctrine of Coverture", 94 *Law Libr. J.* 459, 2002.

[82] Blackstone W., *Commentaries on the Laws of England*, vol. II, pt. 2, cit., 435.

[83] Blackstone, *op. loc. cit.*

[84] MacFarlane A., *Marriage and Love in England, 1300-1840*, Oxford, Blackwell, 1986, 272.

Hale's doctrine on marital rape that granted an immunity to the perpetrator [85] displayed an influence well into to the twentieth century [86].

In 1753, the Parliament passed the '*Act for the better preventing of clandestine Marriages*', also known as the 'Hardwicke's Marriage Act', after the name of Lord Hardwicke, who defended the bill in the Houses of Parliament.

The Act, that was introduced to try to bring control into the many irregular marriages that were taking place all over Britain, often involving seduction, bigamy, and fraud, was considered one of the most controversial and divisive measures that passed into law during the eighteenth century [87].

Although some Historians [88] point out that the eighteenth century should be interpreted as a period when affective individualism and 'the companionate family' were triumphing over patriarchy and parental control, the 'Hardwicke's Marriage Act' seems to have represented the authoritarian assertion of the economic and political interests of parents over children [89]. It had become increasingly difficult for the upper class to "marry down", thus decreeing the immobility of the social classes.

Since its very inception, the Act was further denounced of being "*the most dangerous consequence to the female sex*" [90], as increased formalities would mean less protection for women [91]. The novelty of the Act was in fact to render compliance with certain formalities essential to the validity of a marriage, while before, according to canon law, the exchange of promises to marry was considered sufficient to constitute a marriage [92]. Further, if the couple promises were expressed in words of the future tense, the mar-

[85] Sir Matthew Hale, *Historia placitorum coronæ. The history of the pleas of the crown,* published from the original manuscripts by Sollom Emlyn. With additional notes and references to modern cases concerning the pleas of the crown, printed by Ez. Rider, London 1800, 629.

[86] As shown in the case R v. Miller [1952] 2 All E.R. 529. Compare Adamo S.A., "The Injustice of the Marital Rape Exemption: A Survey of Common Law Countries", *American University International Law Review*, 4, 3, 1989, 555-589.

[87] Lemmings D., "Marriage and the Law in the Eighteenth Century: Hardwicke's Marriage Act of 1753", *The Historical Journal*, 39, 2, Jun., 1996, 339-360.

[88] Stone L., *The family, Sex and Marriage in England 1500-1800*, London, Penguin, 1990; Trumbach R., *The rise of the egalitarian family: aristocratic kinship and domestic relations in eighteenth-century England*, New York, Academic Press, 1978.

[89] Lemmings D., "Marriage and the Law in the Eighteenth Century", cit., 341.

[90] Hansard's Parliamentary History, vol. XV, col. 69.

[91] Probert R., "The Impact of the Marriage Act of 1753: Was It Really "A Most Cruel Law for the Fair Sex"?", *Eighteenth-Century Studies*, 38, 2, Winter, 2005, 247-262.

[92] Probert R., "The Impact of the Marriage Act of 1753", cit., p. 247.

riage became binding as soon as sexual intercourse occurred[93]. It was therefore believed that with the new law, many women who had been seduced because of a marriage promise, would no longer be able to claim any rights against the father of the child.

As far as adultery was concerned, it is important to recall that under English law, all children born of a marriage, were automatically the legitimate offspring of the couple, regardless of who the real father was. Men was recognized a wider sexual freedom, before and after the marriage, while women were taught the value of virginity before getting married and the pursuit of chastity after marriage. It should not come as a surprise if – in this context – adultery was taken into consideration under a "*double standard*" test, whereby adultery by a woman was regarded as worse than adultery by a man[94].

Nonetheless, as it has been noted: "*if society was to allow men comparative sexual freedom and at the same time keep single women virgin and married women chaste then a solution had to be found which would gratify the former without sacrificing the latter. The answer lay in prostitution and the widespread view that a class of fallen women was needed to keep the rest of the world pure*"[95].

This double standard was playing its role also in law of divorce[96]. Until 1857, only an Act of Parliament could legally end a marriage. After the Reformation, the Roman Catholic Church could no longer regulate English marriages, while Parliament had not transferred jurisdiction in matrimonial cases to secular courts. The courts of the Church of England were still applying the medieval canonical principles, according to which marriage was indissoluble and would not grant divorce. In conclusion, ecclesiastical courts would not dissolve marriage, while secular courts had no jurisdiction[97].

However, the upper classes, who could afford to enlist lawyers, began to petition the Parliament for a Private Act to end a marriage. Historical research has pointed out that this practice became increasingly common in the 18th and early 19th centuries[98], and that while most of husband's re-

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[93] Tavor Bannet E., "The Marriage Act of 1753: 'A Most Cruel Law for the Fair Sex'", *Eighteenth-Century Studies,* 30, 3, Spring, 1997, 233-254.

[94] MacFarlane A., *Marriage and Love in England, 1300-1840*, cit., 242.

[95] Thomas K., "The Double Standard", *Journal of the History of Ideas*, 20, 2, Apr., 1959, 195-216, in particular 197.

[96] Holmes A.S., "The Double Standard in the English Divorce Laws, 1857-1923", *Law & Social Inquiry*, 20, 2, Spring, 1995, 601-620.

[97] Holmes A.S., "The Double Standard in the English Divorce Laws, 1857-1923", cit., 604.

[98] Holmes A.S., *op. loc. cit.*: "*before 1714, Parliament granted only 10 such divorces; during the remainder of the 18t century 123 Private Acts were passed. The number of*

quests were based of wife's adultery, "*no woman obtained such a divorce before 1801, and in 150 years only four acts were passed at the behest of the wife. None of the wives based her petition on the commission of adultery alone. The four divorces granted to women by Parliament included two cases of incestuous adultery and two cases involving bigamy, in one of which the adultery had been aggravated by cruelty*" [99].

Finally, in the event of divorce, the offspring were generally entrusted to the husband, not to the wife.

7. The first vindications of women's rights

In Britain, as well as in France, there was no lack of voices that since the 19th century rose in favor of the emancipation of women, first of all Mary Wollstonecraft [100], who published *A Vindication of the Rights of Woman: with Strictures on Political and Moral Subjects* in 1792 [101]. Wollstonecraft's political thought is strongly linked with her critique of female education models and the proposal to rethink education to allow women to be independent and rational [102]. As she herself reports in her work's *Dedication to M. Talleyrand-Périgord*:

> "*Contending for the rights of woman, my main argument is built on this simple principle, that if she be not prepared by education to become the companion of man, she will stop the progress of knowledge and virtue; for truth must be common to all, or it will be inefficacious with respect to its influence on general practice. And how can woman be expected to co–operate unless she knows why she ought to be virtuous? Unless freedom strengthen her reason till she comprehend her duty, and see in what manner it is connected with her real good? If children are to be educated to understand the true principle of patriotism, their mother must be a patriot; and the love of man-*

these divorces increased during the first half of the 19th century; between 1800 and 18 Parliament passed 184 Private Acts".

[99] Holmes A.S., *op. loc. cit.*

[100] On the life of Mary Wollstonecraft, see William Godwin's biography of his late wife Mary Wollstonecraft: *Memoirs of the Author of «A Vindication of the Rights of Woman»,* published in London, J. Johnson, n° 71, St. Paul's Church Yard, 1798. The book has been recently published in Italian: *Mary Wollstonecraft* (translated into Italian by S. Bellavista), Roma, Castelvecchi, 2014.

[101] Wollstonecraft M., *A Vindication of the Rights of Woman,* London, printed for J. Johnson, n° 71, St. Paul's Church Yard, 1792, available now in Classic Reprint, London, Forgotten Books, Paperback, March 29, 2018.

[102] Cossutta C., "Educare come gesto politico. La riflessione di Mary Wollstonecraft", *Storia del pensiero politico*, 2, May-August, 2017.

kind, from which an orderly train of virtues spring, can only be produced by considering the moral and civil interest of mankind; but the education and situation of woman, at present, shuts her out from such investigations".

In Wollstonecraft's view, education would free women from ignorance and would have the immense advantage of estranging them from the art of *coquetry* [103], superstition and sensual egoism [104]. But at that time formal schooling for girls was very poor. The private schools that existed, were more inclined to provide middle-class girls with girlish manners for a competitive marriage market, than promoting intellectual achievement. Notwithstanding the wide spreading ideals of the Enlightenment, that stigmatized the prejudices concerning the female mind, no institutions of higher education admitted women at that time [105].

8. The doctrine of separate spheres

The Victorian age has been strongly characterized by an ideological divide between the public sphere and the private sphere: the first viewed as a masculine domain concerned with paid work and political life, the second interpreted as a female domain related to domesticity and family [106]. Even here, as in France, the transitional period of the late eighteenth and early nineteenth centuries is very important to define the role of men and women in the public sphere.

According to Catherine Hall, it was in this period that "*gender divisions were reworked*" and "*men placed firmly in the newly defined public world of business, commerce, and politics: women were placed in the private world of home and family*" [107].

This perspective was strongly emphasized, although sometimes in a critical way, also by novels and poems published already since beginning of the century, which pointed out the codified rules of behaviour of men and women. Reading Jane Austen or the Bronte sisters, the role of absolute subjugation of women in the society of the time and the difficulties in receiving the

[103] Taylor B., *Mary Wollstonecraft and the Feminist Imagination*, Cambridge, Cambridge University Press, 2003, 13.

[104] Taylor B., *Mary Wollstonecraft and the Feminist Imagination,* cit., 15.

[105] Taylor B., *Mary Wollstonecraft and the Feminist Imagination,* cit., 44.

[106] Digby A., "Victorian values and women in public and private", *Proceedings of the British Academy*, 78, 1992.

[107] Hall C., "Private Persons versus Public Someones: Class, Gender and Politics in England, 1780-1850", in Lovell T. (ed.), *British Feminist Thought. A Reader*, Oxford, UK-Cambridge, Mass., USA, Wiley-Blackwell, 1990, 52.

adequate education that Wollstonecraft was revindicating, appears evident.

In a well-known dialogue of *Pride and Prejudice,* that takes place between Elizabeth Bennet and Mr. Darcy, with the complicity of Miss Bingley*,* this is the portrait of an "*accomplished woman*" that is presented [108]:

> *"Then"*, observed Elizabeth, *"you must comprehend a great deal in your idea of an accomplished woman"*.
>
> *"Yes; I do comprehend a great deal in it"*.
>
> *"Oh! Certainly",* cried his faithful assistant (Miss Bingley) *"no one can be really esteemed accomplished, who does not greatly surpass what is usually met with. A woman must have a thorough knowledge of music, singing, drawing, dancing, and the modern languages, to deserve the word; and besides all this, she must possess a certain something in her air and manner of walking, the tone of her voice, her address and expressions, or the word will be but half-deserved"*.
>
> *"All this she must possess"* added Darcy, *"and to all this she must yet add something more substantial, in the improvement of her mind by extensive reading"*.
>
> *"I am no longer surprized at your knowing* only *six accomplished women. I rather wonder now at your knowing* any*"*.

Among the poems, an important place was played by the "*Angel in the House*", published by Coventry Patmore in 1854, which marked the classic stereotype of the ideal woman during the Victorian era: chaste, pure, devoted to her husband and to the education of children, with no desires of her own.

> "*Man must be pleased; but him to please*
> *Is woman's pleasure; down the gulf*
> *Of his condoled necessities*
> *She casts her best, she flings herself.*
> *How often flings for nought! and yokes*
> *Her heart to an icicle or whim,*
> *Whose each impatient word provokes*
> *Another, not from her, but him;*
> *While she, too gentle even to force*
> *His penitence by kind replies,*
> *Waits by, expecting his remorse,*
> *With pardon in her pitying eyes*" [109].

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[108] The citation is taken from Jane Austen, *Pride and Prejudice* (first published in 1813), London, Harper Press, 2010, 36 f.

[109] The quotation is taken from Patmore C., *The Angel in the House*, Part I, Book I, Canto IX: I.1-I.12, London-Cambridge, Macmillian & Co., 1863, 109.

The poem was not particularly reputed for its literary value, but it serves from an historical point of view to get a look at the common life of middle-class lifestyles in Victorian England. Useless to say that this stereotype was at the center of harsh critiques at the end of the century [110] and that Virginia Woolf referred to it as a phantom to get rid of: "*Killing the Angel in the House was part of the occupation of a woman writer*" [111].

The doctrine of separate spheres was also at the core of John Ruskin's essay '*Of Queen's Gardens*', that was originally given as a public lecture before being published in his two-essay collection *Sesame and Lilies* [112]. Ruskin presents the question of superiority of one sex to the other as something foolish "*as if they could be compared in similar things. Each has what the other has not: each completes the other and is completed by the other: they are in nothing alike, and the happiness and perfection of both depends on each asking and receiving from the other what the other only can give*" [113]. At the same time, he presents the virtues and characteristics of both sexes, thus codifying the rationale for the separation of spheres:

> "*Now their separate characters are briefly these. The man's power is active, progressive, defensive. He is eminently the doer, the creator, the discoverer, the defender. His intellect is for speculation and invention; his energy for adventure, for war, and for conquest, wherever war is just, wherever conquest necessary. But the woman's power is for rule, not for battle, and her intellect is not for invention or creation, but for sweet ordering, arrangement, and decision. She sees the qualities of things, their claims, and their places. Her great function is Praise; she enters into no contest, but infallibly adjudges the crown of contest. By her office, and place, she is protected from all danger and temptation*" [114].

In his essay, Ruskin addresses question about "*the woman's true place*

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[110] Moore N., "The Realism of "The Angel in the House": Coventry Patmore's poem reconsidered", *Victorian Literature and Culture*, 43, 1, 2015, 41; Showalter E., "Killing the Angel in the House: The Autonomy of Women Writers", *The Antioch Review*, 50, 1/2, 50th Anniversary Issue, Winter-Spring, 1992, 207.

[111] Virginia Woolf, *Professions for Women*, an abbreviated version of the speech Virginia Woolf delivered before a branch of the National Society for Women's Service on January 21, 1931, was published posthumously in *The Death of the Moth and Other Essays,* London, Hogarth Press, 1945.

[112] Ruskin J., *Sesame and Lilies, Two Lectures delivered in Manchester in 1864, 1. Of King's Treasuries; 2. Of Queen's Gardens,* London, Smith, Elder & Co., 1865.

[113] Ruskin J., *Of Queen's Gardens*, cit. All the citations are taken from [Etext #1293], The Project Gutenberg Etext of Sesame and Lilies, by John Ruskin.

[114] Ruskin J., *Of Queen's Gardens*, cit.

and power" in society, recognizing that women have many positive qualities, but are still flawed through human nature [115]. The kind of education for her, should therefore recognize her limits and take into consideration her office:

> "*The first of our duties to her – no thoughtful persons now doubt this, – is to secure for her such physical training and exercise as may confirm her health, and perfect her beauty; the highest refinement of that beauty being unattainable without splendour of activity and of delicate strength. To perfect her beauty, I say, and increase its power; it cannot be too powerful, nor shed its sacred light too far: only remember that all physical freedom is vain to produce beauty without a corresponding freedom of heart*" [116].

After having molded her physical frame, it will be necessary "*to fill and temper her mind with all knowledge and thoughts which tend to confirm its natural instincts of justice, and refine its natural tact of love*". But in Ruskin's perspective, "*all such knowledge should be given her as may enable her to understand, and even to aid, the work of men*", and not for women's own advancement in society, what will set him against the opposite view disclosed by John Stuart Mill [117].

9. The Angel "*out*" of the house

Notwithstanding the vast echo that the Victorian ideal of woman enclosed within the domestic walls spread out along the 19th century, women's presence in some sectors of social life demonstrated their ability in gaining a role in the public space [118].

One of the first fields where women were active outside their homes – was in France – was philanthropy, developed out of parochial charity that was initially considered part of the private sphere, as it was where women relied mostly on personal ties [119]. Charity implied the possibility for women to

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[115] Austin L.M., "Ruskin and the Ideal Woman", *South Central Review*, 4, 4, Winter, 1987, 28-39.

[116] Ruskin J., *Of Queen's Gardens.*

[117] See further in this chapter. Millett K., "The Debate over Women: Ruskin versus Mill", *Victorian Studies*, 14, 1, *The Victorian Woman*, Sep., 1970, 63-82.

[118] Williams Elliott D., *The Angel out of the House, Philanthropy and Gender in Nineteenth-Century England,* Chapel Hill, University of Virginia Press, 2002. See further *Histoire des femmes en Occident,* IV, *Le XIXe siècle*, cit., 542 ff.

[119] Prochaska F.K., *Women and philanthropy in nineteenth-century England,* Oxford, Oxford University Press, 1980.

expand a working activity in the community, outside the house, as fund-raising for these initiatives often implied the organization of public bazaars where women were very active: "*The charitable bazaar thus bridged the public and the private, but in what we might call a socially acceptable borderland*" [120].

Among the prominent figures in this ambit, we must recall Octavia Hill [121] and her role in promoting social housing [122], who elaborated a conception of philanthropy as a science intended to promote individual responsibility; her book *Our Common Land* [123] imbued with liberal ideology, expressed an optimistic faith in private initiative which she preferred to state intervention [124].

So, while philanthropy became the more and more "womanized" [125], women's presence in this area was used also to gain a new role in the political arena. This is mostly evidenced by the events that characterized the anti-slavery movement [126], where the involvement of women implied the overcoming of a gender-based boundary, that separated the private circles of homes and families from the one of the public and political, but that was "accepted" as this was conceived as a borderland between philanthropy (private sphere) and politics (public sphere) [127].

Another area where women succeeded in gaining ground in the public sphere was local government [128], regarded as an extension of housekeeping:

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[120] Digby A., "Victorian values and women in public and private", cit., 201; see further *Histoire des femmes en Occident,* IV, *Le XIXe siècle*, cit., 542.

[121] Whelan R. (ed.), *Octavia Hill and the Social Housing Debate, Essays and Letters by Octavia Hill*, London, Civitas, 1998.

[122] Wohl A.S., "Octavia Hill and the Homes of the London Poor", *Journal of British Studies*, 10, 2 (May, 1971), 105-131; Bremner R.H., "'An Iron Scepter Twined with Roses': The Octavia Hill System of Housing Management", *Social Service Review,* 39, 2, Jun., 1965, 222-231.

[123] Hill O., *Our Common Land (and other Short Essays),* London, Macmillan and Co., 1877 available at: https://en.wikisource.org/wiki/Our_Common_Land_(and_other_short_essays.

[124] *Histoire des femmes en Occident,* IV, *Le XIXe siècle*, cit., 541.

[125] Prochaska F.K., *Women and philanthropy in nineteenth-century England,* cit., 223.

[126] This was true for England as well as for the United States. As far as the role of women in the antislavery movement in the United States is concerned, see Taylor C., *Women of the anti-slavery movement: the Weston sisters*, London, Macmillian, 1994. For England, see Midgley C., *Women against slavery: the British campaigns, 1780-1870*, London, Routledge, 2004.

[127] Midgley C., "Anti-Slavery and Feminism in Nineteenth-Century Britain", *Gender & History*, 5.3, 1993, 343; Digby A., "Victorian values and women in public and private", cit., 202.

[128] Hollis P., *Ladies Elect: Women in English Local Government, 1865-1914*, Oxford, Oxford University Press, Clarendon Press, 1987.

"*The government of the village is but the government of the home, only at a larger scale*" [129].

Finally, with the development of industrialization, women gained a new dimension in the public sphere [130], although this new situation was full of lights and shadows. On the one side, working women constituted a challenge to the traditional pattern as they were earning money, which allowed them to rise to a new rank in the public sphere and to a new consideration at political level, as suffrage during the Victorian age was based in property [131]. Nonetheless, women's paid work remained subsidiary to female work in the home, being characterized by lower wages in comparison to men and an important component of seasonal and part-time work [132].

Historical research developed in the last twenty years of the past century [133], points out that for the lower working class, the role of women might have been different, referring to a hidden matriarchy that existed behind "*a facade of male dominance, separation of the sexes and female inferiority*" [134]. Unlike what happened in the bourgeoisie, in the less well-off classes women were considered not only "*arbiters of their own and their families' lives*" and "*dominant influences within their own communities*" [135].

On the other side, Historians [136] have also pointed out a different perspective, that working-class women's status within the family declined in the 19th century as a result of industrialization and urbanization [137].

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[129] Fordham E.O., "Why women are Needed as Parish Councillors", *Parish Councils Journal*, 1 March 1896, cited in Digby A., "Victorian values and women in public and private", cit., 203.

[130] Scott J.W. and Tilly L.A., "Women's work and the family in nineteenth-century Europe", *Comparative Studies in Society and History*, 17.1, 1975, 36-64.

[131] Digby A., "Victorian values and women in public and private", cit., 204.

[132] See Walby S., *Patriarchy at work: patriarchal and capitalist relations in employment, 1880-1984,* Hoboken (New Jersey), Wiley, 1986.

[133] Digby A., "Victorian values and women in public and private", cit., 207, refers in particular to Chinn C., *They worked all their lives, women of the Urban Poor, 1880-1939*, Manchester, Manchester University Press, New York, distributed by St. Martin's University Press, 1988.

[134] Chinn C., *They worked all their lives, women of the Urban Poor,* cit. 13.

[135] Chinn C., *They worked all their lives, women of the Urban Poor,* cit., 16-17.

[136] Scott J.W. and Tilly L.A., "Women's work and the family in nineteenth-century Europe", cit.; Oren L., "The Welfare of Women in Laboring Families", in Hartman M. and Banner L. (eds.), *Clio's Consciousness Raised,* New York, Joanna Cotler Books, 1974, 226-244; Stearns P., "Working-Class Women in Britain, 1890-1914", in Vicinus M. (ed.), *Suffer and Be Still*, Bloomington-Indiana-London, Indiana University Press, 1972, 100-120.

10. The emancipation movement and the first reforms during the 19th century

Along with the first forerunners of English Feminism, who contributed to an awareness raising of the women's legal conditions, arrived the first reforms. The works of Harriet Taylor [138] and his husband John Stuart Mill [139], certainly contributed to this aim. In her *The Enfranchisement of Women* [140] Taylor Mill points out that "*women have as good a claim as men have, in point of personal right, to the suffrage*", and that they have been excluded from the public sphere not on the ground of women's intellectual gaps, but much more because of the relations of force that had come to establish between the two sexes in the course of the history. According to Taylor Mill: "*That those who were physically weaker should have been made legally inferior, is quite conformable to the mode in which the world has been governed. Until very lately, the rule of physical strength was the general law of human affairs*" [141].

Harriet Taylor Mill deplored the lack of formal education for women that along with the restrictions on women's social experience, constituted a dire restriction on their cultural education [142]. In her perspective, education of women became even more critical because of their special role as teachers of children, and therefore of the whole community. That is why women should study subjects like mathematics for the same reason that men do: to improve their overall intelligence, not merely to solve mathematical problems [143].

This line of argument is also to find in John Stuart Mill's *The Subjection of Women* [144], where the Author underlines that the condition of the wom-

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[137] A complete and careful analysis is conducted by Tomes N., "A "Torrent of Abuse": Crimes of Violence between Working-Class Men and Women in London, 1840-1875", Journal of Social History, 11, 3, Spring, 1978, 328-345.

[138] Jacobs J.O. (ed.), *The Complete Works of Harriet Taylor Mill,* Bloomington, Indiana University Press, 1998. See further: Seiz J.A. and Pujol M.A., "Harriet Taylor Mill", *The American Economic Review,* 90, 2, *Papers and Proceedings of the One Hundred Twelfth Annual Meeting of the American Economic Association*, May, 2000, 476.

[139] Collected Works of Mill J.S., *XXI Essays on Equality, Law, and Education,* Robson J.M. (ed.), London, Routledge, 2014.

[140] *The Enfranchisement of Women* was published in the Westminster Review (July 1851): 295-96, under the name of John Stuart Mill. An on-line version is available at https://www.laits.utexas.edu/poltheory/jsmill/diss-disc/eow.html.

[141] *The Enfranchisement of Women,* available at https://www.laits.utexas.edu/poltheory/jsmill/diss-disc/eow.html.

[142] Jacobs J.O. (ed.), *The Complete Works of Harriet Taylor Mill,* cit., 4 ff.

[143] Jacobs J.O. (ed.), *The Complete Works of Harriet Taylor Mill,* cit., 5.

[144] Mill J.S., *The Subjection of Women,* London, Longmans, Green, Reader, And Dyer, 1869, EBook #27083, Project Gutenberg, https://library.um.edu.mo/ebooks/

an, her subordination, and her emancipation, depend on the marriage relationship. In his view, women were educated according to a particular goal: the transition from the family of origin to that of the husband [145]. He campaigned for women's suffrage, in particular during the debate on the *Second Reform Act*, that took place in the British Parliament in 1867. The aim of the Act was to include working men in the towns and cities among eligible voters, while agricultural workers were not taken into consideration as far as voting rights were concerned. On June 5, 1867, John Stuart Mill delivered a speech defending a special amendment to the *Second Reform Act,* aimed at recognizing women the right to vote [146]. The Second Reform Act passed, but Mill was defeated, and his amendment did not pass.

The first legislative reforms that came into being during the 19th century, sheds light on the fact that private law slowly began to adapt to a new role for women in society, along with a new perception of her attitudes.

The *Custody of Infants Act*, that came into force in 1839 after a long debate promoted by Caroline Norton, who published several pamphlets arguing for the natural right of mothers to have custody of their children [147], changed the law related to the custody of the children after divorce. Before 1839, the child custody was generally awarded to the father, but the new Act allowed mothers to petition the courts for custody of her children up to the age of seven, and for access in respect of older children [148].

The *Act for the Better Prevention and Punishment of Aggravated Assaults upon Women and Children*, which was passed in 1853, was enhancing the protection of women from violent assaults which were happening in the marriage [149]. The law was aimed at limiting the legal implications of Cover-

b32202945.pdf. The essay is also included in Robson J.M. (ed.), *Essays on Equality, Law, and Education,* cit., 259.

[145] Smith E.S., "John Stuart Mill's "The Subjection of Women": A Re-Examination", *Polity*, 34, 2 (Winter, 2001), 181-203; Lyndon Shanley M., "Marital Slavery and Friendship: John Stuart Mill's The Subjection of Women", 9 *Pol. Theory* 229, 1981.

[146] Pugh E.L., "John Stuart Mill and the Women's Question in Parliament, 1865-1868", *The Historian,* 42, 3, May, 1980, 399-418.

[147] Norton C., *The Separation of Mother and Child by the Law of "Custody of Infants" Considered,* London, Roake and Varty, 31, Strand, 1838; see further McGough L.S., "Protecting Children in Divorce: Lessons from Caroline Norton", Edward S. Godfrey Scholar-in-Residence Lecture, 57 *Main Law Review*, 13, 2005.

[148] The Act was further replaced by the *Custody of Infants Act of 1873,* whose Section 1 allowed the Court of Chancery to order that a mother would have access to, or custody of, any infants under sixteen years of age; or to order that any such infants in her custody were to remain so subject to any regulations for the access of the father or guardian.

[149] Tomes N., "A "Torrent of Abuse": Crimes of Violence between Working-Class Men and Women in London, 1840-1875", cit.

ture, that implied women had no weapon against their husbands as they were considered property with no legal protection from beating, assault, or rape [150]. The initiative must be considered the result of campaigning by feminists and activists, who denounced marital violence as an *evil* that was *rapidly growing* [151]. Arguing that cruelty to animals was more severely penalised than cruelty to wives, underlying "*the startling principle of English law that women are of less value than Poodle dogs and Skye terriers*", activists were able to convince Mr. Fitzroy, Member of the Parliament for Lewes, to pick up women's cause and lead the initiative for new legislation [152]. The *Act for the Better Prevention and Punishment of Aggravated Assaults* did not ban a man's violence against his family; it only instituted a legal limit on the amount of force that could be inflicted before it was labelled as brutality and was therefore considered a progress.

In 1857, the English Parliament voted the *Matrimonial Causes Act* [153]. The law made the competence of the ecclesiastical courts, which were still applying canon law, and the principle of indissolubility of marriage disappear. The new law recognized only adultery as grounds for divorce. However, a husband merely had to prove simple adultery, while a wife had to prove adultery compounded by some other marital offense such as incest, bigamy, cruelty, or desertion [154]. The statute of 1857 further recognized the divorced woman as a *femme sole,* a legal status which gave her complete control over her own property.

But the Act which gave married women the right to own and control property was the *Married Women's Property Act* of 1870, further reformed in 1882 [155]. Considered the most important of all the legal reforms won by

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[150] Surridge L., "Dogs' Bodies, Women's Bodies: Wives as Pets in Mid-Nineteenth-Century Narratives of Domestic Violence", *Victorian Review*, 20.1, 1994), 1-34.

[151] Foyster E., *Marital Violence: An English Family History, 1660–1857,* Cambridge, Cambridge University Press, 2005, 239 f.

[152] Foyster E., *Marital Violence: An English Family History, 1660-1857,* cit., 239.

[153] On the historical context in which the Law was introduced, see Maddox P., "The Background of, and Contemporary Reaction to, the Matrimonial Causes Act, 1857", 18 *Cambrian L. Rev.,* 62, 1987.

[154] Savage G.L., "The Operation of the 1857 Divorce Act, 1860-1910 a Research Note", *Journal of Social History*, 164, Summer, 1983, 103-110.

[155] Barrett-Lennard T., *The Position in Law of Women: A Concise and Comprehensive Treatise on the Position of Women at Common Law as Modified by the Doctrines of Equity and by Recent Legislation: Together with the Married Women's Property Acts, 1870, 1874, 1882, the Rules of the Supreme Court, 1883, Relating to Taking Acknowledgements, and the Postal Regulations, 1883, Affecting Married Women,* London, Waterlow and Sons, 1883. See further Beth Combs M., "A measure of legal independence: The 1870 Married Women's Property Act and the portfolio allocations of British wives", *The Journal of Economic History*, 65.4, 2005, 1028-1057.

feminists in the nineteenth century [156], the 1870 and 1882 *Married Women's Property Acts'* passage constituted a significant change in married women's legal status in Britain. The *Property Acts* granted married women independent property rights, finally overturning much of the English common law of *coverture* that had characterized all the 19th century [157].

11. The principle of equality and the reforms in the 20th century

Women's rights evolution in the French legal system and the English common law during the 19th century show a development of private law that was able to be transplanted in many other parts of Europe and of the entire world, defining a model for all those countries that were put either under the French or British political or colonial influence [158].

It was through private law reforms connected with their personal status that women slowly gained a voice to speak in the public space during the 19th century, while it was only with the turning of the century that debate around female suffrage and women's emancipation became part of the debate that led to the formulation of constitutional principles affirming equality between the two sexes.

In English common law, in the absence of a written Constitution, a series of judicial decisions dating back to *Kruse v Johnson* ([1898] 2 QB 91) established the existence of a '*common law principle of equality*' as a part of

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[156] Griffin B., "Class, Gender, and Liberalism in Parliament, 1868-1882: The Case of the Married Women's Property Acts", *The Historical Journal,* 46.1, 2003, 59-87, points out that "*The most striking feature of the debates on the Married Women's Property Bills is how little time was spent discussing the principle of sexual equality, and how much time was spent discussing the idea that giving married women property rights would cause discord in the home*" (p. 62).

[157] Griffith J.R., *The Married Women's Property Act, 1870: And the Married Women's Property Act, 1870, Amendment Act, 1874. Its Relations to the Doctrine of Separate Use. With Appendix of Cases, Statutes and Forms*, London, Stevens & Haynes, 1875.

[158] The notion of legal transplant is crucial in comparative law research. See Sacco R., "Legal Formants: A Dynamic Approach to Comparative Law" (Installment II of II), *The American Journal of Comparative Law*, 39, 2, Spring, 1991, 343-401. To mark the topical relevance of the issue, at its Washington Conference in 2010, the International Academy of Comparative Law dedicated an entire session to the issue of "*Legal Cultures and Legal Transplants*", published in *Isaidat Law Review*, 1 – Special Issue 1, 2011. More recently, on the notion of legal transplant, compare Graziadei M., "Comparative Law as the Study of Transplants and Receptions", in Reimann M. and Zimmermann R. (eds.), *The Oxford Handbook of Comparative Law*, Oxford, Oxford University Press, 2007, 441; Id., "Legal Transplants and the Frontiers of Legal Knowledge", *Theoretical Inquiries in Law*, 10, 2, 2009, 723.

the wider public law doctrine of rationality and prohibited unequal treatment based on 'distinctions which were not properly justified'.

As we have seen, during the last two decades of the 19th century, Parliament reformed the property rights of married women, allowing them to own and control property in their own right. It was anyway only with a series of reforms that took place throughout the 20th century that the principle of equality became effective.

The Sex Disqualification (Removal) Act of 1919 enabled women to join the professions and professional bodies, to sit on juries and be awarded degrees. In 1920, *The Sex Discrimination Removal Act* allowed women access to the legal profession and accountancy. The Law of Property Act of 1922 allowed both husband and wife to inherit property equally.

As far as divorce is concerned, the Matrimonial Causes Act of 1937 allowed women to petition for divorce on the same terms of men for the first time, although, it retained the requirement for adultery, cruelty or desertion to be demonstrated[159]. The 1937 Act did not include financial provision, while Courts decided claims for periodical payments on "*a one-third approach*", meaning one-third of the joint incomes of the parties, although this was often dependent upon who was at fault for the breakdown of the marriage. With the Matrimonial Causes Act 1973, reasons for divorce were expanded to include "*behaviour which makes it unreasonable to expect the petitioner to live with the respondent*", allowing people to divorce without having to prove an objective failing. Finally, the law was recently reformed with the *Divorce, Dissolution and Separation Act 2020* that allows no-fault divorce in England and Wales. Eventually, the Human Rights Act 1998 partially incorporated the European Convention on Human Rights (ECHR) into domestic law, and by so doing the probation of sex discrimination obtained quasi-constitutional force.

In France, the evolution took another path. It was only with a Law of 18th of February 1938 that married women were granted civil capacity, finally deleting Art. 213 of the Code Civil, and it was only a law of 1965 that

[159] The *Matrimonial Causes Act* of 1857 remained the basis for divorce in England until 1937. A Royal Commission appointed in 1909 to investigate the operation of the 1857 Act did recommend various changes and reforms, but Parliament did not act upon those immediately. The Matrimonial Causes Act of 1923 made wives and husbands equal before the law regarding the grounds for divorce, and changes in administrative procedure in 1914, 1920 and 1926 made divorce more available to the poor by decentralizing the court and by providing for financial aid.3 Yet the grounds for divorce remained the same until the Divorce Act of 1937 broadened them to include desertion and insanity. Cf. Savage G.L., *The Operation of the 1857 Divorce Act, 1860-1910 a Research Note,* cit., 103.

gave women the right to manage their own property and engage in professional activity without the consent of their husbands [160].

As far as women's suffrage is concerned, French women obtained the right to vote in 1944, while the equality principle was introduced in the *Préambule* of the 1946 Constitution [161].

Beyond what happened in France and in the English Common law, during the first half of the 20th century, Western countries recognized women the right to vote, while the principle of equality was enshrined in most national Constitutions [162]. Equal universal suffrage was reached in Finland in 1906, in Germany, Austria and Poland in 1918, in Sweden in 1919, in Ireland in 1922, in in Spain in 1931, and in Italy only in 1946.

The equality principle was introduced at the constitutional level in different moments across these jurisdictions. However, this principle did not alter the applicable rules until the introduction of reforms shaped by the tools of private law. Although with different degrees, when constitutional norms came into force providing for equality between men and women, they were often in contradiction with private law regimes. Constitutional principles formed a second and higher-order level of legislation that set the goal to be pursued through private law rules. This started a process of profound reforms of private law rules to put the principle of equality into effect that have characterized the whole 20th century.

Already in 1919, the Constitution of Weimar introduced the equality principle between men and women in all contexts (Art. 109 of the Weimarer Verfassung: "*Männer und Frauen haben grundsätzlich dieselben staatsbürgerlichen Rechte und Pflichten*"). Legal equality between men and women was at least basically given, and marriage was based on "equality between the two genders". Nonetheless, the Civil Code of 1900 (Bürgerliches Gesetzbuch) at Paragraph 1354 dealt with the relationship between husband and wife in legal matters as follows: "*The man is entitled to the decision in all matters relating to community life*". The so-called "Obedience paragraph" (Gehorsamsparagraph) remained in force until 1957, when the *Law on the Equality of Men and Women in the Field of Civil Law* (Gesetz über die Gleichberechtigung von Mann und Frau auf dem Gebiet des bürgerlichen Rechts) came into force, but it was not until 1977 with the *Reform of*

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[160] Loi n. 65-570 du 13 juillet 1965.

[161] Chaperon S., "The difficult struggle for Women's Political Rights in France", in Rodriguez-Ruiz B. and Rubio-Marin R. (eds.), *The Struggle for Female Suffrage in Europe, Voting to Become Citizens*, cit., 305.

[162] With an important exception given by the American Constitution. See Sullivan K.M., "Constitutionalizing Women's Equality", 90 *Calif. L. Rev.*, 735, 2002.

marriage and family law (Reform des Ehe- und Familienrechts) that the so-called housewives' marriage was replaced with the partnership principle. Until 1977, under the law in force in West Germany, a married woman's right to work was recognized only insofar it was compatible with her marriage and family duties.

In Poland, the Constitution of 1921 stated in its Art. 96 that "*All citizens are equal before the law. Public offices are equally accessible to all, according to the provision of the law*". Some Reforms, based on the equality principle, were undertaken in the private law sphere immediately after the enactment of the Constitution. A Polish Statute of 1921 granted married women the right to live separately from their husbands, to manage their own funds, and to bring action before the courts. Nevertheless, the formulation of the equality principle in the Constitution, which subjected it to "*the provisions of the law*", resulted in broad legal discretion that allowed Prussian, Austrian and Russian law counter to equality to remain in force. After the Second World War, the change in the political system brought with it a new Constitution in 1952. Its article 66 stipulated that "*Women in the Polish People's Republic have equal rights with men in all spheres of public, political, economic, social and cultural life*". The Private Law Reform entered into force in 1946, introduced the same principles in all private law domains, although in recent times the International press highlights the limitations that women's rights suffer in Poland as a consequence of the revival of the traditional dimension of the family[163].

In Italy, the evolution was even slower[164]. The principle of gender equality was introduced at the constitutional level in 1948. Before the Constitution of 1948, while the country was still a kingdom, Parliament passed Law 17 July 1919, n. 1176, concerning the legal capacity of women in 1919. This Act abrogated articles 134 to 137 of the Civil Code of 1865 related to the *autorità maritale*. The same law had a very important provision for the professional future of Italian women because it enabled them to exercise all the professions and to hold jobs in the public administration. Although this reform could have had an impact on the emancipation of women in Italy, with the rise of Fascism the role of men remained predominant in all professional sectors and in public life. The movements supporting women's right to vote failed until the end of World War II. With the introduction of

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[163] Fuszara M., "Between Feminism and the Catholic Church: The Women's Movement in Poland", *Sociologický časopis / Czech Sociological Review*, 41(6), 2005, 1057-1075, available at https://nbn-resolving.org/urn:nbn:de:0168-ssoar-54867; Id., Polish Women's Fight for Suffrage, in Rodriguez-Ruiz B. and Rubio-Marin R. (eds.), *The Struggle for Female Suffrage in Europe, Voting to Become Citizens*, cit., 143-157.

[164] Pozzo B., "Masculinity Italian Style", *Nev. LJ,* 13, 2012, 585-618.

women's suffrage in 1946 and of the principle of equality in the 1948 Constitution a new path towards the recognition of women's rights was opened. Yet, very little happened in the following decades as far as private law was concerned. Only between the end of the '60s and the first half of the '90s reforms were passed to render the equality principle more broadly effective in this sphere too.

12. Working women and the first legislation aimed at protecting them in the public sphere

Parallel to the development of a movement that granted the vote to women along with the principle of equality, with the development of industrialization and the gradual entry of women into the public sphere, legislation was developed to manage the presence of women in the workplace.

In Victorian Britain, where industrialization developed his presence and impact first, the Government introduced a protective legislation, aimed to secure either a reduced presence or a total absence of women from specific areas of work [165]. For example, the Mines Regulation Act of 1842 excluded all women and girls and all boys under the age of 10 from underground coal mine employment [166]. On the other side, the Factory Acts Victorian Age, which were passed in 1847, 1850, 1867, 1874 and 1878, raised a lively debate encountering the opposition of those female associations who were fighting for the enfranchisement of women. In particular, those who resisted legal regulation of women's labor usually declared that their objection is to special legislation applying only to women. The way these laws operated was regarded as unfair, because they hampered women's power to compete in the labor market, introducing restrictions, apparently aimed at the protection of women, that finally resulted in the lowering of women's wages, and in diminishing the aggregate demand for women's work [167]. Further, the critique against this kind of "protective legislation" was focusing on the fact that it generally put on the same ground women and children, highlighting the different legal situation of men and women. At the end, these legislative interventions made clear how labour policies and political citizenship were intimately connected, as they were working on the assump-

[165] Levine P., "Consistent Contradictions: Prostitution and Protective Labour Legislation in Nineteenth-Century England", *Social History*, 19, 1, Jan., 1994, 17-35.

[166] Humphries J., "Protective Legislation, the Capitalist State, and Working Class Men: The Case of the 1842 Mines Regulation Act", *Feminist Review,* 7, Spring, 1981, 1-33.

[167] Webb S., *Women and the Factory Acts,* London, Fabian Society, 1896, 3.

tion that women needed protection particularly in the interests of their potential motherhood [168].

This resistance against law reforms that introduced special norms for working women was widespread in Western countries [169]. In France, in 1892, a law was passed [170] that introduced a limitation of the working day, the prohibition of night work and dangerous work, a compulsory weekly rest. This law is always presented as an important turning point for women workers, who seem, at least on paper, to be favoured over men, in the name of the necessary protection of the weaker sex [171]. In reality, the law is not well applied and leads to perverse effects, excluding women from certain jobs, not necessarily the most arduous [172].

In Italy, an organic intervention only came in 1902 with the *Carcano Law*, entitled: *Disposizioni circa il lavoro delle donne e dei fanciulli* (Provisions concerning the work of women and children) [173], and soon renamed the '*protective law*' for women.

With this law, the Italian legislator placed itself – albeit somewhat belatedly – in the wake of European initiatives, which had imposed restrictions on the working hours of children and women since the early 19th century [174]. The 1902 law, strongly supported by the socialists and in particular by Anna Kuliscioff, nevertheless followed a paternalistic approach: like children, women were considered in a condition of minority and fragility, to be used as a residual workforce compared to the male workforce, also in order to preserve the traditional structure of the family, actually limiting their entrance in the public space.

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[168] Levine P., "Consistent Contradictions", cit., 18.

[169] Jenson J., "Paradigms and Political Discourse: Protective Legislation in France and the United States before 1914", *Canadian Journal of Political Science / Revue canadienne de science politique,* 22, 2, Jun., 1989, 235-258.

[170] Loi du 2 novembre 1892 sur le travail des enfants, des filles et de femmes dans les établissements industriels.

[171] Dubesset M., Zancarini-Fournel M. and Chapitre V., "Lois et légitimité du travail féminin, débats et réalités", in *Parcours de femmes: Réalités et représentations*, 1880-1950, Lyon, Presses universitaires de Lyon, 1993, 80.

[172] Dubesset M., Zancarini-Fournel M. and Chapitre V., *op. cit*., 81.

[173] Legge 19 giugno 1902, n. 242, *Disposizioni circa il lavoro delle donne e dei fanciulli,* in GU n. 157 of 7 July 1902.

[174] Passaniti P., "La legislazione sul lavoro delle donne e dei minori. L'Italia e l'Europa", in Minesso M. (ed.), *Welfare e giovani in Italia e in Europa nei secoli XIX-XX,* Milano, Franco Angeli, 2015, 78 ff.; Sileo G., "La legislazione europea sul lavoro femminile e minorile di inizio secolo: un quadro comparator", in *Lavoro e cittadinanza femminile, Anna Kuliscioff e la prima legge sul lavoro delle donne*, Milano, Franco Angeli, 2016, 60 ff.

According to the new legislation, women of any age and children up to the age of 15 were granted a full day's rest each week, as well as an intermediate rest during the working day. Night work was also forbidden for males under the age of 15 and for underage women, with a number of exceptions.

The Italian Law of 1902 is also of considerable importance for having introduced 'maternity leave' of one month after childbirth, exceptionally reducible to three weeks. During the post-natal rest period, however, the woman was not guaranteed any pay, let alone the preservation of her job. It was also guaranteed that in factories in which at least 50 female workers worked, it was obligatory to set up a breast-feeding room, and in any case breast-feeding had to be permitted both in the room attached to the factory and by allowing the nursing mothers to leave the factory in the manner and at the times established by the internal regulations.

But even in Italy, like in other countries, this kind of legislation that in theory should have accompanied women in their entrance into the public sphere, was criticized. The Carcano Law saw the light at a time when the movements for the emancipation of women in Italy were consolidating [175] and where the debate on the law saw the positions of Anna Maria Mozzoni, deeply critical of the protective policies adopted by the law, which – in her perspective – would have constituted a real obstacle to women's independence, contrast with those of Kuliscioff herself, a debate that also led to the pages of *L'Avanti!* [176].

To conclude, the rationale behind the first national measures regulating female work in factories, adopted between the last quarter of the nineteenth century and the beginning of the twentieth, was that women together with children belonged to a specific category of factory workers needing special protection because they were physically weaker than men and more susceptible to exploitation. At the same time, this protective legislation pursued in maintaining the symbolic functioning of the separate spheres for it crystallised traditional conceptions of gender roles.

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[175] Weber M., "La partecipazione politica femminile in Italia: evoluzione, determinanti, caratteristiche", *Italian Political Science Review/Rivista Italiana Di Scienza Politica,* 11, 1981, 281.

[176] Ballestrero M.V., "La legge Carcano sul lavoro delle donne e dei Fanciulli", in Passaniti P. (ed.), Lav*oro e cittadinanza femminile, Anna Kuliscioff e la prima legge sul lavoro delle donne*, Milano, FrancoAngeli, 44, in particular 50 ff.

13. The introduction of the gender equality principle into the International Agenda

In line with these national interventions, the first steps were taken to establish interstate agreements on conditions of work, through the creation of the International Association for Labour Legislation (IALL) in 1900. In 1905, the IALL successfully convened an international meeting of experts, which laid down the basis of two international Conventions, adopted at a conference in Berne in 1906. One of these prohibited nights work for women in industry, and the second prohibited the use of white phosphorus in the manufacture of matches. As many as 41 states or colonies adhered to the international Convention prohibiting the use of white phosphorous, and 25 to that prohibiting night work for women [177].

Over the twentieth century, the International Labour Organsation elaborated further Conventions concerning the prohibition of night work for women in industry [178]: although at the beginning they were conceived as memorable achievements for the protection of female workers, they were finally considered to being an embarrassment to the Organization's commitment to promote gender equality and nondiscrimination at work [179].

The idea to protect women in the public space, as vulnerable subjects, has been at the center of a long debate that developed relentlessly, especially since the end of World War II, when the question of gender equality entered the International Agenda. It is in fact in 1946 that the United Nations Commission on the Status of Women (UNCSW) was established as a mechanism to promote, report on, and monitor issues relating to the political, economic, civil, social and educational rights of women. As declared during its first session, the Commission proclaimed as one of its guiding principles: "*to raise the status of women, irrespective of nationality, race, language or religion, to equality with men in all fields of human enterprise, and to eliminate all discrimination against women in the provisions of statutory law, in legal maxims or rules, or in interpretation of customary law*".

Since then, many international legal instruments have been introduced

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[177] Rodgers G., Lee E., Swepston L. and Van Daele J., *The International Labour Organization and the quest for social justice, 1919-2009,* Geneva, ILR Press an imprint of Cornell University Press, Ithaca and International Labour Office, 2009.

[178] These are: the Night Work (Women) Convention, 1919 (No. 4), the Night Work (Women) Convention (Revised), 1934 (No. 41), the Night Work (Women) Convention (Revised), 1948 (No. 89) and the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948.

[179] Politakis G.P., "Night Work of Women in Industry: Standards and Sensibility", 140 *Int'l Lab. Rev.*, 403, 2001.

or modified to deal specifically with women's rights [180]. Among these, international law doctrine has identified different paths to deal with gender issues, that characterize the approach concerning the entrance of women into the public sphere.

A first path is the one followed by so-called *protective conventions* [181], that deal with specific economic issues that women had to face moving beyond the domestic sphere, but – at the same time – implicitly accept the traditional social definition of a woman as wife and mother. Among these conventions we find the already mentioned conventions concerning the prohibition of night work for women in industry [182] and the ILO for the *Convention Concerning the Employment of Women on Underground Work in Mines of All Kinds* [183]. This first approach did not treat women as equal to men since women are generally treated as subordinates when they act outside their traditional domestic sphere. International laws aiming at protecting women could therefore authorize permanent inferiority and facilitate the maintenance of this situation [184].

A second path, following a *corrective approach*, assumes that women are not treated equally in certain areas and that therefore the law must intervene to introduce corrective mechanisms. Among the conventions that followed this approach were the ones that attempted to regulate prostitution at an international level through prohibitions on the transporting of women and children for immoral purposes [185]. A second example worth mention-

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[180] Kaufman Hevener N., "International Law and the Status of Women: An Analysis of International Legal Instruments Related to the Treatment of Women", 1 *Harv. Women's L.J.,* 131, 1978.

[181] Kaufman Hevener N., "International Law and the Status of Women", cit., 134.

[182] See *supra.*

[183] Adopted by the General Conference of the International Labour Organization June 21, 1935, as modified by the Final Articles Revisions Conventions, 1946, 40 U.N.T.S. 63.

[184] As Kaufman Hevener N. ("International Law and the Status of Women", cit., 135) pointed out: "*Under the protective approach, the identity of the woman who moves beyond the domestic sphere does not alter, and she continues to be treated by the law with regard to this primary role. The focus of legislative attention is not on her actual activity but rather remains on her domestic role, and it is the perceived characteristics of this role that the law allegedly seeks to protect*".

[185] Kaufman Hevener N., "International Law and the Status of Women", cit., 138: conventions on this matter were established already in 1910, 1921, 1933, while in 1949, the United Nations adopted the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* (Approved by General Assembly resolution 317 (IV) of 2 December 1949), which entered into force on the 25 July 1951.

ing is the *Convention concerning the nationality of married women* [186] that intervened to correct a situation where no legislation existed to protect married women's right to retain or renounce national citizenship in the way that men could.

Finally, a third path is the one that is adopting a *nondiscriminatory approach,* which is based on the principle that whatever difference may exist between the sexes should not become the ground for differential treatment. Among the Conventions that adopt this approach there are the general conventions like the *United Nations Charter*, the founding document of the United Nations, that was signed on 26 June 1945. The principle of non-discrimination receives various formulations in the Charter, as in the Preamble it is stated that the United Nations are determined, among others, "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women…". Further Art. 1, among the Purposes of the UN includes the promotion of respect for human rights and fundamental freedoms "*for all without distinction as to race, sex, language, or religion*" [187].

Another important acknowledgment of the principle of non-discrimination is to find in the *Universal Declaration of Human Rights*, adopted by the General Assembly in 1948, which in Art. 2 establishes that: "*Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*". The Universal Declaration of Human Rights further dictates principles that impact directly also on the private law dimension, introducing the equality principle in the marriage and family law dimension. In particular, Art. 16 establishes:

> *1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.*
>
> *2. Marriage shall be entered into only with the free and full consent of the intending spouses.*

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[186] The *Convention on the Nationality of Married Women* was adopted on 20 February 1957 and entered into force in 1958.

[187] Other references to the non-discriminatory theme appear in Articles 13(1)(b), 55(c), 56, 62(2) and 76(c) of the Charter, in which members of the Organization pledge to take separate and cooperative action to promote universal respect for human rights and fundamental freedoms of all without regard to sex or other distinctions. See Kaufman Hevener N., "International Law and the Status of Women", cit., 141.

To further boost the application of the Universal Declaration of Human Rights, two covenants on human rights were drafted and opened for ratification in 1966, both reinforcing the principle of equal rights [188].

Other international conventions of a nondiscriminatory nature, which focus specifically on gender issue were further adopted [189].

Finally, in 1979 the United Nations adopted the *Convention on the Elimination of all Forms of Discrimination Against Women* (CEDAW), which is generally referred to as the International Bill of Rights for women [190]. The Convention aims to reach three aims: to ensure full equality of women before the law and protection against discrimination in the public as well as the private sphere; to improve the de facto position of women; and to address prevailing gender relations and the persistence of gender-based stereotypes. In particular, CEDAW recognizes the full equality of women and men under the law and proscribes discrimination against women in education, employment, political participation, healthcare, and economic life. It further affirms the right of women to vote and to stand for elected office; to receive equal pay for equal work; to own and dispose of property; to obtain loans, mortgages, and other forms of credit independently of husbands or male relatives; to enter into or dissolve marriage

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[188] The International Covenant on Civil and Political Rights foresees in Art. 2, 1, that "*Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*". Art. 3 further stipulates that "*The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant*". In an analogous way, The International Covenant on Economic, Social and Cultural Rights establishes at Art. 2 the following principle: "*The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant*".

[189] These are: The ILO Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value adopted in 1951; the UN Convention on the Political Rights of Women adopted in 1953; The UN Convention Against Discrimination in Education adopted in 1960; the UN Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriages adopted in 1962.

[190] Facio A. and Morgan M.I., "Equity or Equality for Women - Understanding CEDAW's Equality Principles", 60 *Ala. L. Rev.*, 1133, 2009; Holtmaat H.M.T., "CEDAW: A holistic approach to women's equality and freedom", in Sinding-Assen H. and Hellum A. (eds.), *Women's Human Rights: CEDAW in International, Regional and National Law*, Leiden, Leiden University Scholarly Publications, 2013, 95-124; Cole W.M., "Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)", in Naples N.A. (ed.), *The Wiley Blackwell Encyclopedia of Gender and Sexuality Studies*, 1st ed., Hoboken, New Jersey, John Wiley & Sons, 2016, 1.

freely and with full consent; and to exercise equal parental rights. State parties are obligated, among other things, to provide equal educational opportunities, paid maternity leave, and access to family planning services, and to suppress prostitution and the trafficking of women.

An important step taken to achieve substantive equality in all spheres is that CEDAW requires two types of actions by the State: (1) actions to achieve equality of opportunity between men and women, and (2) actions to correct the inequalities of power between men and women. This means measures that eliminate the inequalities of power between the sexes. CEDAW addresses the issue of special measures, indicating that States Parties may adopt temporary special measures aimed at accelerating *de facto* equality between men and women that shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

Abandoning a *law in the books* approach to adopt a *law in action* approach, CEDAW foresees that the basis for evaluating whether a state is providing women equal opportunities to those of men is equality of results. This means that according to CEDAW, the indicators of equality are not in policies, law, or institutions that have been created to give opportunities to women, but in what all these laws and policies have achieved.

Art. 17 of the CEDAW established a *Committee on the Elimination of Discrimination Against Women,* that was formed on 3 September 1981 after the CEDAW received the 20 ratifications required for it to enter into force. According to article 18, States must report to the Committee on the progress they have made in implementing the CEDAW and the Committee issue general recommendations that elaborate on its views of the obligations imposed by CEDAW.

With this Convention, that has been adopted by 189 Parties [191], it would seem that women's right to be a vital part of the public sphere should now be fully recognized.

Nonetheless, the Committee often referred to barriers that still exist in order to give full accomplishment to this goal. In particular, in a Recommendation of 1997 concerning the availability of special measures [192], the Committee referred that "*In order, however, to overcome centuries of male domination of the public sphere, women also require the encouragement and support of all sectors of society to achieve full and effective participation, en-*

[191] United States and Palau have signed, but not ratified the treaty. The Holy See, Iran, Somalia, Sudan, and Tonga are not signatories to CEDAW.

[192] Comm. on the Elimination of Discrimination Against Women, *Report of the Committee on the Elimination of Discrimination against Women,* 15, UN Doc. A/52/38 (July 7-25, 1997).

couragement which must be led by States parties to the Convention, as well as by political parties and public officials".

In the 1990s, the Council of Europe has undertaken a series of initiatives in line with those of the United Nations and with the aim of eliminating violence and in particular domestic violence against women. The first steps were taken in 2002 with the adoption of a specific Recommendation [193], while in following years the Council launched a "*Campaign to Combat Violence against Women, including domestic violence (2006-2008)*".

The awareness that harmonized legal standards for the victims were needed, in order to offer the same level of protection everywhere in Europe, led the Ministers of Justice of Council of Europe member states to take steps in order to achieve a general framework. In 2008, the Committee of Ministers set up an expert group mandated to prepare a draft convention in this field [194], that was finally produced in December 2010.

The Council of Europe *Convention on preventing and combating violence against women and domestic violence*, so-called *Istanbul Convention*, is the first instrument in Europe to set legally binding standards specifically to prevent gender-based violence, protect victims of violence and punish perpetrators.

The EU signed the Convention in June 2017, and the implementation of the Istanbul Convention has now become one of the priorities in the EU 2020-2025 gender equality strategy. Unfortunately, this Convention, that had Türkiye as the first signatory also saw this country become the first to withdraw its accession. A sign, perhaps, that the condition of women raises new challenges today and consequently still remains a very open question in the Mediterranean scenario.

14. Conclusions

Recent research has emphasized that notwithstanding the important role that the law has played to allow women to embrace the public sphere, the association of women with private spaces and men with public ones continues today in western industrialized society.

In particular, some writers have emphasized the still existing physical

[193] Recommendation Rec (2002)5 of the Committee of Ministers to member states on the protection of women against violence". Council of Europe Committee of Ministers. Archived from the original on 28 July 2020. Retrieved 18 December 2012.

[194] The *Ad Hoc Committee for preventing and combating violence against women and domestic violence*, CAHVIO.

and psychological vulnerability of women when they enter public spaces unaccompanied by men [195], while others [196] have questioned the validity and the usefulness of this emphasis, suggesting that it is inconsistent with women's frequent use of urban public spaces and their enjoyment of urban public life. Nonetheless, it still appears to be a common opinion that women do not enjoy the same *freedom of the streets* that men do [197].

It is not by chance, that the United Nations have focus their most recent initiatives on the various kinds of violence that women and girls experience in public spaces, from unwelcome sexual remarks and touching to rape and femicide. This situation reduces women's and girls' freedom of movement and their ability to participate in school, work and public life. This violence further limits their access to important services and their enjoyment of cultural and recreational activities, and finally negatively impacts their health and well-being. For these reasons, the United Nations launched in 2011 the "Safe Cities Free of Violence against Women and Girls" Global Programme, while in 2013, the Global Flagship Initiative "Safe Cities and Safe Public Spaces for Women and Girls" was created, to support local and national governments to address multiple sustainable development goal targets across multiple goals.

In 2019, the United Nations published an *International Compendium* that addresses local authorities, policy makers, women's rights organizations, researchers and other practitioners committed to creating safe and sustainable cities and public spaces for women and girls across the world [198]. The compendium illustrates in a practical way some practices, strategies, and tools from women's safety partnerships in cities.

This is a sign that beyond the principles, which are fundamental and indispensable, private law may still play an important role in shaping, through the instrument of the voluntary agreement, forms of cooperation

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[195] Boys J., "Women and public space", in Matrix Book Group, *Making space,* 37-54, London, Pluto Press, 1984; Enjeu C. and Save E., "The City: Off limits to women", *Liberation*, July/August, 1974, 9-13; Wekerle G., "Women and the urban environment", in Stimpson C.R., Dixler E., Nelson M.J. and Yatrakis K.B. (eds.), *Women and the American city,* Chicago, University of Chicago Press, 1981, 185-211.

[196] Lofland L., "Women and urban public space", *Women and Environments,* 6, (1984) 12-14.

[197] Franck K. A. and Paxson L., "Women and urban public space", in *Public places and spaces*, Boston, MA, Springer, 1989, 121-146.

[198] UN WOMEN, *Safe Cities and Safe Public Spaces for Women and Girls – Global Flagship Initiative: International Compendium of Practices,* New York, UN WOMEN, 2019. Prepared by the Ending Violence against Women Section in UN Women Coordination and Production: Lizzette Soria, Technical Specialist, in collaboration with Laura Capobianco, Advisor, Safe Public Spaces.

that can render effective the possibility for women to participate and enjoy the public sphere.

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