

# Radicalism, Resistance, and the Structures of Family Law

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These few notes are about feminism and the law, better: about the approach of certain feminisms to certain areas of family law. In particular these notes are about the ideas of *law as resistance* and *law as oppression* as conceptualised by two different feminist wings in the 1970s: Italian radical feminism and English socialist feminism. The difference between these schools in approaching the law can be effectively seen in the way these two feminisms tackled the family in reference to two major issues: reproduction (abortion, particularly) and housework. So I will mainly refer to these topics in comparing and discussing the sets of arguments respectively produced by Italian radical feminism and English socialist feminism in rejecting or supporting specific legal policies concerning the family and—more generally—the theme of legal change as a key tool to promote social transformation.

The reasons I focus here on feminism in the 1970s are strictly related, on the one hand, to the dramatic changes that occurred in those years in the legal regulation of the family in Europe, and on the other hand, to the seminal character of the critical analysis feminists produced at that time with regard to women and sex, the family and the law.

To begin with, between 1973 and 1975 several European legislatures almost simultaneously intervened in the problem of abortion and partially decriminalized voluntary terminations of pregnancy.<sup>1</sup> In the UK this subject had already been regulated since 1967 by the Abortion Act, while in Italy the Constitutional Court in 1975, two years after *Roe v. Wade*, preceded the national legislation and legitimized abortion under specific circumstances, on the premise that the mother's health should prevail over the fetal life's protection.

In addition, in 1970 no-fault divorce was introduced into the Italian legal system. Equality of the spouses became a principle of French family law in 1970, while in Britain the law awarded the same rights and authority to mothers and fathers in 1973. In the same year Sweden adopted a drastic reform of marriage and divorce. Italian family law was radically transformed by a legal reform in 1975 which finally endorsed the constitutional principles (1948) of equality of the spouses and equal treatment of children born inside and out of wedlock.

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<sup>1</sup> New regulations concerning abortion were introduced in Denmark (1973), Austria (1974), Germany (1974), Sweden (1974), France (1975) and Norway (1975); later also in Greece (1978) and Italy (1978). In France, Simone Veil in her capacity as Minister of Health created the new law, which was approved by Parliament. Subsequently (1975), the Conseil Constitutionnel upheld the law, stating that it did not violate the principle of respect for human life. Almost simultaneously, the German Constitutional Court and the Austrian Constitutional Court restricted the reach of the domestic regulations by adding the risk for woman's health as a legitimating requirement.

However, these developments are factually, politically and theoretically external to—although not totally independent from—the advancement of feminist movements in Europe. From the beginning, the so-called “second wave” of European feminism (1968-1980)<sup>2</sup> proved to be cautious, and sometimes even diffident toward rights discourse. Within the European political scene in the 1970s, there was a clear distinction to be made between the feminist politics of women’s liberation and the egalitarian policies endorsed by social-democrats, although they could have occasionally overlapped in women’s emancipation movements, which supported legal reforms and equal rights claims. This makes the reconstruction of the relations among feminism, the law and the family an extremely complex task.

In fact, although (almost) all feminisms (that is, forms of feminism) identify the family as the major site of women’s oppression, this consciousness does not result in the mere approval of legal reforms that aim to transform the patriarchal family into a more egalitarian institution. The reason relies on the controversial relation of feminism to the law.

Many feminisms understand the law as inherently patriarchal. But not all feminist theorists reject the law as such:

- i) Some feminisms reject the law because law is male.
- ii) Some feminisms rely on the law as a tactical tool.
- iii) Some feminisms interpret the law as a strategy of women’s liberation.

Therefore, some feminists don’t care about legal change and family law reforms according to an egalitarian paradigm (i), but some feminists do (ii and iii). Italian radical feminism embraced the first approach: it interpreted the refusal of law as a mode of resistance to patriarchy. In so doing it embraced an identity-based strategy.<sup>3</sup> English socialist feminism adopted the second approach, according to which legal change can be deployed under certain circumstances to resist patriarchy. In so doing it chose a redistribution strategy.<sup>4</sup>

I proceed to analyze each of these two feminist approaches, the English socialist and the Italian radical. Far from being peculiarly English or peculiarly Italian, both forms of feminism grew up within a close network of political connections and cultural

<sup>2</sup> See ADRIANA CAVARERO & FRANCO RESTAINO, *LE FILOSOFIE FEMMINISTE* (1999).

<sup>3</sup> A survey of Italian feminist thought firstly named *radical* and later self-defined *femminismo della differenza sessuale* can be principally found in PATRICIA CICOGNA & TERESA DE LAURETIS, *LIBRERIA DELLE DONNE DI MILANO, NON CREDERE DI AVERE DEI DIRITTI* (1987). See also ADRIANA CAVARERO ET AL., *DIOTIMA: IL PENSIERO DELLA DIFFERENZA SESSUALE* (1987); MANUELA FRAIRE, *LESSICO POLITICO DELLE DONNE: TEORIE DEL FEMINISMO* (2002); *IL FEMMINISMO DEGLI ANNI SETTANTA* (Teresa Bertilotti & Anna Scattino eds., 2005).

<sup>4</sup> I refer here mainly to Juliet Mitchell’s major works like *Women: the Longest Revolution*, 40 *NEW LEFT REV.* 11-37 (1966) and *WOMAN’S ESTATE* (1971). They were promptly translated into Italian (See, e.g., JULIET MITCHELL E ALTRE, *LA RIVOLUZIONE PIÙ LUNGA: SAGGI SULLA CONDIZIONE DELLA DONNA NELLE SOCIETÀ A CAPITALISMO AVANZATO* (Mariella Gramaglia ed., 1975); JULIET MITCHELL, *LA CONDIZIONE DELLA DONNA* (1972)) and influenced the Italian feminist debate in the 1970s.

interactions and are, therefore, the outcomes of the intense internationalization that feminist movements and schools experienced in the 1970s. Thus I present a sharp delineation of these “national” types purely for heuristic purposes.

My goal here is not to appraise which approach succeeded and which one lost in the struggle against patriarchy. I am rather interested in mapping the ways in which the legal regulation of some aspects of family relations is interwoven with women’s oppression, women’s consciousness about this oppression, and women’s resistance to the power of patriarchy.

### *English Socialist Feminism*

In the early 1970s, Anglo-American socialist feminism criticized former socialist theories because in their analysis based on social class struggle they conceded that women were subordinated to men but still interpreted this given as a mere failure of capitalism and overlooked the specificity of women’s condition. According to Juliet Mitchell, one of its most influential theorists and activists, Marxism does not consider women’s subjugation in relation to the structure of the family; rather it sees the woman as an abstract anthropological entity and criticizes the family as a bourgeois institution, failing to see the many ways in which that institution affects her life.<sup>5</sup> However Mitchell maintains that Marxism can still be useful to feminists and presents her own theory as feminist *and* socialist, as she identifies the major source of women’s oppression in the economic structure of capitalist societies, although she does not disregard the historical and cultural background of patriarchy and sexual chauvinism.

According to socialist feminism, women’s subordination is in fact the outcome of a specific economic organization based on the creation of two separate realms: the sphere of production and the sphere of reproduction. This economic structure is strictly related to the construction of gender. Patriarchy construed the family (reproduction) as separate from the productive sphere (the market), in order to confine women to subordinate gender roles. The market is men’s realm. It is formally egalitarian. The family is women’s ghetto. It is hierarchical. Women’s resistance is here sought, on the one hand, in the deconstruction of the production/reproduction divide, on the other hand in rejecting female roles (by breaking the link between sexuality and reproduction) and/or playing male roles (by entering, for instance the labor market).

In particular, Mitchell identifies four structures, which constitute the chain of women’s subjugation within patriarchal/capitalist societies: production, reproduction, sexuality and children’s socialization. All of them need to be changed in the pursuit of women’s liberation. In fact, at the productive level, women are still insufficiently integrated into the labor market, are paid less than men, and have worse career opportunities. Reproduction is still understood as women’s biological destiny and is conceived as necessarily connected to sex, which demeans women’s sexuality. Women’s non-procreative sexuality is either considered taboo and confined to marriage, or represented as freed (given the increasing acceptance of pre-marital sexual

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<sup>5</sup> See Mitchell, *Women*, *supra* note 4.

intercourse) and then in reality repressed as a threat to the institution of marriage through a tangle of double standards and virgin/whore mixed messages. Ultimately, women's sexual liberation is exploited by the market as commodity, for the woman's body and beauty are continuously exposed in commercial advertising to make cars, washing machines, insurance policies or the like more and more appealing to consumers.<sup>6</sup>

As to the issue of children's socialization, this is represented by patriarchy as women's *cultural* vocation, whereas reproduction is conceived as their *biological* vocation. Capitalist societies assign to mothers the crucial role of educating children to social relations, therefore women are overwhelmingly burdened by care and housework tasks, which could be drastically reduced if childrearing were not considered a necessary part of the household, but rather an undertaking that could be accomplished at a broader social (communal) level.<sup>7</sup>

In formulating these critiques of women's current status, socialist feminists were not in principle against the family, nor did they aim to abolish it. Kate Millett, for instance, explains that the revolutionary family law policies adopted in Russia in the 1920s in order to engender women's sexual liberation (divorce on demand, free abortion and abolition of illegitimacy), produced a collapse in birthrates and social bonds such that the reforms were quickly abandoned.<sup>8</sup> Others argue that the abolition of the family would be profitable and even feasible for middle and upper class women, but certainly not for working class women with four to five children, who are totally dependent on their husbands' salaries.<sup>9</sup> On the other hand, socialist feminism identifies in the economic structure, and particularly in women's economic dependence on men's incomes, the very source of female psychological weakness, emotional dependence and passivity, as well as of women's "natural" propensity toward conservatism, timidity and support of the status quo.<sup>10</sup> Thus there cannot be women's liberation without women's self-consciousness of their oppression, and the route toward consciousness-raising is to be understood as the outcome of a hard process of economic, psychological and cultural change.

In this framework law is not rejected as such. Legal change is certainly not the end of socialist feminists' activism. But, to the extent that legal rules can support or just ease this strategy of transformation, they are welcome. Law reforms that—for instance—would enhance women's equality of opportunity in the labor market, would enlarge the availability of public nursery schools or would grant free access to contraception are not fetishized *per se*, but are accepted as moves toward women's liberation.

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<sup>6</sup> MITCHELL, WOMAN'S ESTATE, *supra* note 4.

<sup>7</sup> See Margaret Benston, *The Political Economy of Women's Liberation*, 21 MONTHLY REV. (1969).

<sup>8</sup> KATE MILLET, SEXUAL POLITICS (1970).

<sup>9</sup> Kathy McAfee & Myrna Wood, *Bread and Roses*, LEVIATHAN (1969).

<sup>10</sup> Benston, *supra* note 7.

### *Italian Radical Feminism*

Unlike socialist feminism, Italian radical feminism rejected Marx's theory of society, as well as any other product of the western philosophical tradition, as inherently patriarchal.<sup>11</sup> Radical feminists denounced the ideological and mystifying foundations of official power/knowledge in all fields of high culture: politics, philosophy, art, morals, religion, etc. They were deeply influenced by the psychoanalytical approach and particularly by the critiques of Freud's and Lacan's theories formulated by the French feminist and psychoanalyst Luce Irigaray, whose book *Speculum de l'autre femme*, published in 1974 was seminal in the elaboration of an Italian theory of sexual difference.<sup>12</sup>

Yet this feminism reveals the influence of Marxism in its attitude, which overlooks the performative power of the law (*law is a superstructure*), although, on the other hand, it shows a realistic approach in distrusting the transformative virtue of progressive law reforms. Against the law, against any project of legal change and against the equality principle, Italian radical feminism affirms women's sexual difference as a reality that is a stranger to the law and exists (only) out of the legal realm. As Carla Lonzi puts it

[w]omen's sexual liberation treats the patriarchal order. In order to thwart a potential attack from women, they concede us today the social integration in the name of equality. Equality is a principle of the law . . . Difference is a principle of human existence, which concerns the variety of human beings, the characteristics of individual experiences. Sexual difference between men and women is the basic difference in humankind . . . Equality is what is offered to colonized people in terms of legal rights . . . Sexual equality is the mask that veils today women's inferiority.<sup>13</sup>

Thus the only possibility of change relies upon the claim of women's sexual difference, which the law is not able/willing to grasp and articulate. The core of women's diversity is sexuality, namely the clitoris and clitoral orgasm. Nothing but women's eroticism focused on clitoral climax identifies the female self as such. Patriarchy has construed women's subordination on the rejection of the clitoris and the invention of vaginal orgasm as the *true* and "superior" female satisfaction: "Clitoral climax is discredited because it is not functional to the male genital model . . . Vaginal orgasm [is] not the woman's deepest and most complete pleasure; it is rather the official pleasure of patriarchy's sexual culture."<sup>14</sup> In so doing patriarchy has shaped women's

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<sup>11</sup> It's not by chance that the most influential text from those years is Carla Lonzi's *Sputiamo su Hegel*, first published in 1970, whose title means in fact "Let's spit on Hegel." See CARLA LONZI, SPUTIAMO SU HEGEL: LA DONNA CLITORIDEA E LA DONNA VAGINALE E ALTRI SCRITTI (1974).

<sup>12</sup> Irigaray's book was immediately translated into Italian by Luisa Muraro, one of the most influential representatives of the Italian philosophical movement *Il Pensiero della Differenza*, and published in 1975 as *SPECULUM: L'ALTRA DONNA*. However Italian radical feminism was active even earlier and capable of an original elaboration, which I'll try to illustrate in these few notes, particularly through Carla Lonzi's thoughts.

<sup>13</sup> LONZI, SPUTIAMO SU HEGEL, *supra* note 11, at 20.

<sup>14</sup> *Id.* at 107.

eroticism, i.e. women's identity, as dependent on men and necessarily tied to reproduction and family roles: according to the patriarchal narrative, women are gratified only through coitus, that is through men's gratification; therefore they are *naturally* subordinate and inclined to assume altruistic and caring attitudes within the family, as mothers and wives.<sup>15</sup>

Unlike socialist feminism, radical feminism identifies the ultimate root of women's emotional and material dependence in the patriarchal stereotype of women's sexuality, rather than in economic factors. For Carla Lonzi, the narrative of the vaginal woman is overwhelming; it rules society and legal institutions. Therefore there is nothing but political struggle that can free women from patriarchal subjugation. In this framework resistance is identified with the refusal of egalitarian policies, on the one hand, and with the creation of a pervasive network of personal/political bonds among women on the other hand. Since the late 1960s radical feminists have seen their main political target as disrupting women's emancipation through legal reforms that aim to integrate women into a society that remains structured according to the patriarchal order.<sup>16</sup> As I have tried to show above, equality itself is considered a trap, a subtle form of mystification. Hence radical feminists did not pay much attention to the Italian parliament's 1970s discussion of family law reform, nor to the introduction of no-fault divorce that occurred in 1970. As Carla Lonzi pointed out, divorce is just a further weapon of patriarchy to preserve and reinforce marriage as an institution of women's subordination. The family is built on the patriarchal model of coital sexuality. This given won't be transformed by any egalitarian reform. On the contrary, the equal treatment of husbands and wives by law will induce women to accept more willingly the institutional denial of their own eroticism and therefore their structural condition of inferiority. In sum, there's nothing that the law can or shall do to free women from subjugation: "The law is a realm which is stranger to woman . . . is a historical and institutional given that the feminist movement can certainly not recast today."<sup>17</sup>

At the core of radical feminism in the 1970s, as well as at the core of the so-called "sexual difference feminism" today, is the idea that social and cultural changes will occur only by way of the interstitial and pervasive political activism performed through feminist practices. In particular, the establishment of personal relationships among women, the focus on each woman's personal experience and a collective psychoanalytical work aimed at developing individual and group self-consciousness are the weapons of feminist struggle for a radical political transformation. As Italian activists still affirm today, women's relations are the only—extremely contingent—foundation of their feminist political practice.

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<sup>15</sup> *Id.*

<sup>16</sup> *Manifesto programmatico del gruppo Demau*, in *I MOVIMENTI FEMMINISTI IN ITALIA* (Rosalba Spagnoletti ed., 1971).

<sup>17</sup> *LESSICO POLITICO DELLE DONNE, I, DONNE E DIRITTO* (1978) [hereinafter *DONNE E DIRITTO*].

### *Abortion*

As women's non-procreative sexuality became a political issue, access to contraception and sexual education in schools turned into subjects with which public administrators and legislatures had to deal. In particular, the tragedy of illegal abortions could no longer be hidden or ignored in the political arena. Thus the legal regulation of abortion became suddenly and simultaneously in most Western European and North American countries the favorite subject of political struggles between the Right and the Left. Feminist movements (apart from mainstream American liberal feminists) seldom joined this struggle as such. Instead they mostly took a more articulated and critical stance that showed the complexity and ambivalence of the relations different feminisms had—and still have—with sex and the law. In this framework English socialist feminism and Italian radical feminism approached the problems of procreation and abortion according to their own theoretical premises and their own idea of women's liberation politics.

As noted above, socialist feminism assumes that patriarchy has construed reproduction as women's biological destiny in order to keep women subjugated inside the dimension of domesticity. Hence the claim for free access to contraception is crucial to socialist feminism. The production/reproduction analysis hinges on the idea that women's liberty is strictly related to their participation in the production sphere; therefore the disconnection of female sexuality from reproduction and motherhood is a necessary step toward women's liberation from segregation in the domestic realm. The decriminalization of abortion is inevitably part of this strategy, however, decriminalization had already been achieved in the UK when Juliet Mitchell produced her seminal work.<sup>18</sup>

On the contrary, at that moment Italian socialist feminists—fairly influenced by Mitchell's thought—perceived the abortion issue as urgent for women's liberation politics and stood squarely for decriminalization.<sup>19</sup> In fact, those Italian feminists who, in accordance with Mitchell's analysis of the production/reproduction dichotomy, understood women's subordination as the product of a combination of economic structures and cultural factors, interpreted the plea for a new legal regulation of procreative issues, like their English counterparts, as a tactic for achieving women's liberty. As a matter of fact, abortion was one of the crucial themes on the Italian political stage in the 1970s. Many groups—feminist or just (male) radical organizations—stood up for decriminalization of voluntary abortion, pleading for a new law or just for the abolition of the criminal code provisions that were in place. To be sure, there was something more at stake than women's sexual freedom. The abortion issue was perceived by leftist parties, like the communist party, and other traditional male political organizations as the occasion to take the women's political movement under control.

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<sup>18</sup> See Mitchell's works as listed in note 4.

<sup>19</sup> This was, for instance, the position of the feminist organization called *Collettivo Femminista Comunista Romano*. See FRAIRE, LESSICO POLITICO DELLE DONNE, *supra* note 3.

Italian radical feminism, on the other hand, took a step back from this fierce political struggle. To begin with, it did not stand for abortion liberalization. Rather, its position reflected the ambivalence of women's desire, the aspiration to motherhood, and the ambition for sexual liberty; it offered a much more complex and sophisticated picture than the simplistic slogans of the ongoing political debate were able to suggest. Its motto, "no law upon our bodies," epitomized the two focal points of the radical feminists' campaign on the abortion issue: firstly, the idea that the decriminalization of abortion should not be intended as a women's *victory* and secondly, the assumption that no parliament or political body is legitimated to rule women's bodies and sexuality.

Thus, according to Italian radical feminists, the legitimation of abortion cannot be a feminist claim. In fact, abortion reinforces the patriarchal myth of vaginal orgasm that construes sex as necessarily related to reproduction. This narrative denies the reality of women's eroticism and must be rejected by highlighting that decriminalizing abortion is just good for men. "The woman wonders 'Whose pleasure am I pregnant for? Whose pleasure I'm aborting for?'"<sup>20</sup> So abortion has nothing to do with women's liberty. "On abortion we are doing different political work" reads the political document of a Milanese feminist collective in 1975.<sup>21</sup> The work the document talks about aims to challenge women's false consciousness about their sexuality by affirming the reality of the female body, which is sexuality distinct from procreation.<sup>22</sup>

Later developments of this theory stressed women's ambivalence toward pregnancy and motherhood by problematizing the relationship between women's liberty and maternal responsibility, between sovereignty over one's own body and acceptance of a new life.<sup>23</sup> Evidently enough, the notion of maternal responsibility, which underpins the feminist radical discourse, can be barely translated in legal terms and doctrines such as self-determination, privacy, or the like. To this extent radical feminism not only rejects the law but also demonstrates the impossibility of the law to regulate such an issue. Thus, Italian radical feminists claim that no law can legitimately govern women's bodies. On the one hand, Italian radical feminists assumed that there was no need for a parliamentary intervention in order to decriminalize abortion as they believed that the criminal provisions in place were *de facto* nullified by virtue of the millions of clandestine abortions that took place in Italy every year.<sup>24</sup> On the other hand, they emphasized the incompetence of the law to grasp women's experience.<sup>25</sup> It is precisely at this point that Italian radical feminism shows that the politics of women's relations can affect reality much more than the law ever can.

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<sup>20</sup> LONZI, SPUTIAMO SU HEGEL, *supra* note 11.

<sup>21</sup> Collettivo di via Cherubini 8, *Noi sull'aborto facciamo un lavoro politico diverso*, SOTTOSOPRA (1975) (also available in IL MANIFESTO, March 8, 2008).

<sup>22</sup> *Id.*

<sup>23</sup> CICOGNA & DE LAURETIS, *supra* note 3.

<sup>24</sup> In Rivolta Femminile, *Sessualità femminile e aborto*, in LONZI, SPUTIAMO SU HEGEL, *supra* note 11.

<sup>25</sup> DONNE E DIRITTO, *supra* note 17.



### *Family Law and Housework*

The family is paramount in feminist discourse. In the household feminism identifies the place where power relations between genders are structured according to a hierarchical paradigm. In other words, the family is the site of patriarchy in feminist discourse. As a jurist, I understand the factual ground this judgement describes as the source and, at the same time, the effect of family law exceptionalism, given that family law is commonly portrayed as different, peripheral, marginal and exceptional to the core of the law (i.e. the law of the market). Therefore the family can be allowed to be hierarchical, whereas the law of the market is (formally) egalitarian; the family can be allowed to be traditional whereas the law of the market is modern; the family can be allowed to be communitarian whereas the law of the market is individualistic.<sup>26</sup>

As the issue of women's non-procreative sexuality, discussed above, represents, the analysis carried out by the two feminist groups I have selected here as emblematic of a critical inquiry of society, law and power illustrates the many ways in which family structures affect women's (and men's) sexuality and socialization—in short, women's (and men's) lives. And although neither English socialist feminism nor Italian radical feminism address the family from a *legal* point of view, the analyses they produced highlight the many facets of women's (and men's) lives which are constructed by the exceptionalism of family law.

In my view, the feminist approach to the family offers, broadly, the opportunity to investigate the exceptionalism of family law through the lens of the law as oppression/law as resistance dilemma. For instance, in 1975 the Italian legal system abandoned the pure hierarchical model of the family and embraced a new family regime, based on the equality of the spouses. This made Italian family law a little less exceptional and a little closer to the law of the market. Many leftist legal scholars and women's liberation activists had struggled to fulfill this goal. Not so radical feminism: equality is just a trap construed by patriarchy in order to preserve women's subordination. No legal rule can subvert the system of power erected on the coitus. Once again resistance to patriarchy equals the rejection of legal change.

On the other hand, socialist feminism claims that the reproduction/production divide is artificial and deceptive. The reproduction sphere is co-essential to the production realm and is productive as well. Home and the family are the places where the labor force is created and boosted. Therefore housework performed within the family is connected to the productive circuit: it *is* productive work and should be paid as well as the work performed in the marketplace. Hence housewives are entitled to a salary for the work performed on behalf of the production/reproduction system and the law needs to endorse housewives' right to salary. In this framework the salary claim aims to fulfill two goals: balancing the two spheres (production and reproduction) by reducing the gap between them (and so between men and women)

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<sup>26</sup> See Frances Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 Harv. L. Rev., 1497 (1983). I have discussed the problem of family law exceptionalism in respect to the process of private law harmonization in Europe in Maria Rosella Marella, *The Non-Subversive Function of European Private Law: The Case of Harmonisation of Family Law*, 12 Euro. L. J. 78 (2006).

and granting a certain financial self-sufficiency to those women—the vast majority at that time—who are confined in the domestic realm.

Obviously, Italian radical feminists deemed the housework-as-paid-work advocates to be extremely naïve. The salary claim would inescapably reinforce gender roles and strengthen women's linkage to the sphere of domesticity. Moreover, the recognition of housewives as paid workers would falsely make women's social position closer to men's without subverting patriarchy's foundation, which is the denial of women's eroticism as detached from coitus and reproduction. In conclusion, the legal treatment of housework as paid work would epitomize the image of the law as site of women's oppression. Once again, the solution to women's inferiority would be sought instead in the feminist political practice of women's interrelations. Women's condition also has psychological implications, like female "natural" emotional dependence and passivity. The analysis of both English socialist feminism and Italian radical feminism converge at this point, but unlike socialist feminists, radical activists think that legal change cannot produce any useful effect in this respect, and that a radical transformation of society and cultural models can be induced only by a new women's politics.

### *Analysis*

Italian radical feminism failed to recognize in the "salary for housewives" campaign a serious effort to subvert the patriarchal system. The idea of the female self as something to be affirmed only outside of the legal realm made the socialist feminism's claim incomprehensible to radical feminists. On the contrary, I believe that the housework-as-paid-work claim was a tremendous attempt to resist patriarchy; to resist patriarchy *through the law*. First, the legal regulation of housework as unpaid work is the product of family law exceptionalism, that is, the product of the construction of family law as separate, different and opposed to the core of private law. Family law exceptionalism is widely grounded on the belief that family relations are ruled by a solidarity paradigm and solidarity, within this framework, justifies any epitome of hierarchical ordering of the family. Therefore, the legal reform of housework-as-paid-work corresponded to subverting the family structure from within by discarding the solidarity paradigm from the core of the family organization. This simple rule was—and is, actually—likely to produce a domino effect, with gender roles becoming meaningless and the family/market divide disappearing till the collapse of the patriarchal system itself.

Further, turning housework into paid work would have a significant redistributive effect between genders. Housework would be a resource and not a mere burden for people performing it—usually women. In the 1970s, a law reform granting a salary to housewives would have had the effect of making women (more) independent from husbands. In other words, women's legal entitlement to a salary would have empowered women, granting to them a new bargaining power; in so doing, it would have represented a background rule likely to allow men and women to negotiate new equilibria in the relationship between genders. This idea of negotiating a different distribution of power with men was actually no stranger to Italian radical feminism.

On the contrary it was—and is—one of the goals of its political action. But unlike English socialist feminists, Italian radical feminists think there is no possibility of justice within law, as justice is strictly related to the recognition of women's *difference* and the legal taxonomy just ignores, rejects, or hides it.

This law-as-oppression position adopted by Italian radical feminism had its merits and its failures. In rejecting the law as a tactical tool, Italian radical feminists also rejected the redistributive opportunities that legal rules can offer, as I have illustrated above with regard to housework. The same kind of analysis can be made in reference to the legal regulation of abortion. The decriminalization of abortion, as long as the law reserved to woman the decisional power, could have been seen as an occasion of redistribution of (social and symbolic) power between genders, as well as the acknowledgment of maternal responsibility both to the single woman and to all women as a gender.

In my view, the disregard of law's distributive and performative power is the effect of a kind of lack of familiarity or knowledge that Italian radical feminism—even in its most recent developments—exhibits about the legal system as a whole. In fact, to this day Italian radical feminism identifies the law mainly or exclusively with the statutes approved by the parliament; that is, with the product of those political institutions established by the traditional male politics that feminists contest. In so doing, Italian radical feminism fails to grasp the complexity of the legal realm. So, for instance, it fails to consider the disciplinary role of omission, how empowerment or disempowerment is produced by the deficiency of legal regulation of a given social phenomenon, a fair example of which is precisely the apparent lack of legal regulation of housework within the regime of the family. More generally, this feminism overlooks the performative role of family law exceptionalism, which importantly contributes to molding and reinforcing gender roles and stereotypes. In so doing, it fails to consider the legal implications of the vaginal model and the further social, economic, and cultural consequences of those implications.

At the same time, this defective picture of the law is the outcome of a central and important intuition of Italian radical feminism, namely a recognition of the role of law as a crucial means of biopolitics. In rejecting the law, Italian radical feminists attacked the disciplinary effects of legal structures over sexuality and intimate relations. By distrusting the ongoing legal change, they revealed how inextricably family law was interwoven with patterns of biopower, i.e. with the “cultural organization” of eroticism. Finally, the Italian radical feminists' refusal of the law in its political practice of resistance denounces the limits of the law, the inherent failure of the law to reflect the whole human experience. In my view, this is a fundamental legacy that lasts even beyond the accusation of essentialism that might be raised against Italian radical feminists, or against any movement engaged in identity politics.

As a jurist, I am fascinated by the socialist feminists' mode of analysis, because they have articulated the production/reproduction scheme in relation to various socio-economic and historical contexts, offering a road map which is extremely helpful in detecting the background rules that discipline gender roles, domestic relations and, broadly, women's and men's legal status. For the same reason, I am conscious that my standpoint in approaching Italian radical feminism might be ques-

tionable, insofar as it presents itself as the standpoint of an objective jurist. Certainly it is affected by the limits that commonly affect legal analysis as such—the same limits that Italian radical feminism ascribed to legal discourse and rejected by rejecting the Law as such, in the ways this paper has described.