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Letizia COPPO, PhD*

Gabriele Carapezza Figlia, Ljubinka Kovačević, Eleonor Kristoffersson (eds). 2023. *Gender Perspectives in Private Law*. Cham: Springer.

> "Studies of the world [...] that fail to take into account women's experience of that world are incomplete, and prevent us from having a greater repertoire of societal as well as individual choices."
>
> (Menkel-Meadow 1985, 42)

While, as we have been told since childhood, we should never judge a book by its cover, the front cover, along with the table of contents, can at first glance reveal how promising the book is and its inherent strengths. This is certainly the case for Springer's new *Gender Perspectives in Private Law*, edited by a professor of private law at LUMSA in Italy, a professor of labor law at the University of Belgrade in Serbia, and a professor of private and taxation law at Örebro University in Sweden.

The first strength of the book lies in the very fact that the editors – like the vast majority of the contributors – come from Europe and from different legal traditions. As it is well established, the feminist and gender

* Associate Professor of Private and Commercial Law, Lyon Catholic University Faculty of Law, France, *lcoppo@univ-catholyon.fr*.

theories applied to law were born in US law schools, where they have taken the proportions of true streams of legal thought – under the eloquent heading of "law &" movements (Monateri 2021, 273) – stemming from legal realism[1] and deconstructive legal theory.[2] This has resulted into a certain predominance of North American scholars – and consequently of the North American perspective – in the development of gender-sensitive legal theories.[3] European contributors soon started exploring the field, but rather unsystematically in comparison with their American predecessors, and without giving rise to a dedicated branch of legal theory.

This book marks a turning point in the trend, as it offers a mainly European – in the sense that will be explained later – but still plural perspective on private law and gender intersections, without forgetting the great debt to American contributions. Here, private law is conceived in a broad meaning that goes beyond the traditional categories of tort, property, contract, and family – beyond substantive law and beyond national law. One of the originality factors of the book is that it provides a gender-sensitive reading of subjects in which the connection between law and gender is rather unexplored: thus, in addition to contributions devoted to family law, tort law, property law and labor law, there is one contribution aimed at unearthing the gender issues hidden behind conflict private international law rules and there are two contributions devoted to the impact of gender on procedural rules and process pluralism.[4]

In the chapter Gender Issues in Private International Law, Mirela Župan and Martina Drventić suggest an interesting reflection on how the "blind" application of the conflict of law rules may lead to gender inequality, whenever the linking criteria refers to a country in which gender equality is not granted either at the formal or at the substantive level (e.g., in countries where women and men are not awarded the same inheritance rights), and

[1] Gray (1909), Holmes (1881), and Holmes (1897) can be considered to be the manifestos of the movement at issue. See Llewellyn (1931) for one of the most vivid accounts of the legal realist thought. For further discussions, see Radin (1931), Fuller (1934), and Burrus (1962). For a link between the movement in question and gender theories, see Quinn (2012).

[2] Derrida (1985), Balkin (1987). For a link between the deconstructive approach and gender studies, see Elam (2001).

[3] See, for example, Menkel-Meadow (1996; 2012). On more specific issues, see Bryan (1992), Girdner (1989), Grillo (1991), Lefcourt (1984), Regehr (1994), Woods (1985), Fineman (1988), Hart (1990), Lerman (1984), discussing criticisms of mediation as a remedy for domestic abuse, Willrich (1989).

[4] To get an idea of the variety of processes involved, see Menkel-Meadow (2020).

whenever it is a matter of enforcing a foreign decision acknowledging some institutions or practices that from a European perspective may be considered a threat to gender equality (e.g., surrogacy).

In connection with that, the contribution raises the issue of the relativeness of the concepts of public order or mandatory provisions as limits to the application of a foreign law or the enforcement of a foreign judgment. The complexity of this issue has increased following certain decisions of national courts, such as the one of the Italian Supreme Court on punitive damages awards,[5] which distinguishes between "national public order", as the limit for national courts regarding the application of national law, and "international public order", as the limit for national courts regarding the application of foreign laws and the enforcement of foreign decisions. In these respects, the contribution does not indulge in merely theoretical or methodological speculations but provides several concrete applications in gender-sensitive domains such as the celebration of marriage, the consequences of divorce, the issues of the bride's surname, transnational surrogacy, and child abduction.

In the chapter Gender Discrimination: Procedural Issues Between Procedural Autonomy, EU Provisions and Effectiveness of Judicial Protection, Cettina di Salvo re-reads the core general rules of civil procedure from a CJEU perspective, in the light of gender equality protection, applying the leverage of the rights to an effective remedy and effective judicial protection, enshrined in Article 47 of the EU Charter of Fundamental Rights and in Articles 6 and 13 of the European Convention on Human Rights. Namely, the authoress casts light on how victims of gender discrimination are more likely to have special difficulties in accessing justice, especially when such discrimination is also based on other risks factors (so-called multiple discrimination), and how an extension of the legal standing to competent associations and legal entities would facilitate gender litigation and discourage discrimination upstream.

Furthermore, the authoress investigates the difficulties that the victims of discrimination encounter in proving their claims (especially when based on the so-called indirect discrimination) due to a number of factors that hinder access to certain types of evidence, such as paychecks of male colleagues and structural informative asymmetry. Finally, the authoress discusses the topic of sanctions, and, above all, the never-ending issue of ensuring effective enforcement of court decisions ascertaining the existence of discriminatory conduct in cases where the appropriate remedy for the victim would be

[5] The full text of the decision, translated into English, is available in Coppo (2017).

the performance of a certain action by the wrongdoer, rather than mere compensation. Here, the procedural topic of *astreintes* is intertwined with the substantive question of whether, in cases of contractual discrimination, courts are empowered to compel the discriminating party to conclude with the victim the very contract that the discriminating party had refused on a gender basis, i.e., whether courts are entitled to issue an order that stands for the refused contract.[6]

In the chapter Gender Perspectives in Mediation, Jelena Arsić and Nevena Petrušić discuss the impact of gender on various stages of the mediation process, from the selection of mediators, the disclosure phase and the behind-the-table and across-the-table negotiations, to the style of mediation and its efficiency. The adopted perspective is double: on one side it is a study of the gender differences in the way in which the parties involved in the dispute select a mediator, interact with this latter, interact with their lawyers and with each other; and on the other side it is a study of how gender affects the way in which the mediator conducts the process. As far as the latter perspective is concerned, we should firmly retain the authoresses' warning: it is of utmost importance that the mediator analyzes the gender dynamics involved in the conflict when preparing the process and conducts this latter it in a way that allows the minimization of the risk of gender-related power imbalances.

Mediators can truly be impartial only if they become gender-responsive rather than opting out of gender. To that end, a gender-sensitive perspective would be a fundamental component in the education of mediators (but also negotiators, neutral evaluators, arbitrators, judges, etc.).[7] There is no doubt that mediation is only one of the possible "alternative" – or, better, "appropriate"[8] – processes that can be hosted by the iconic "multi-door courthouse",[9] but it is the most widespread in Europe. While awaiting the improvement and further diversification of the process pluralism in the European space, the readers can (and should) complete the picture with all the contributions by North American scholars that investigate the gender-

6 See Carapezza Figlia (2018), and for a specific focus on gender, Carapezza Figlia, Letizia (2023).

7 For a broader reflection on law and education, see Menkel-Meadow (2013).

8 Menkel-Meadow (2014).

9 See Sander (1976).

related emotional components that influence the parties' approach to litigation and the negotiation of conflicts, some of which have inspired the chapter under review.[10]

Not only does the book offer a picture of a rather unprecedented European perspective on law and gender, as above-illustrated, but it also offers it with an approach that aims to be exhaustive, i.e., to cover all the sensitive issues, at least from the standpoint of private law. If such an ambition of exhaustiveness is missed by the reader at first glance, it will be clearer as soon as the reader considers the entire context in which this book is placed. In fact, the book is not isolated, but is part of a book series (Gender Perspectives in Law) and of a broader project that envisages the building of a strategic partnership between universities, aimed at implementing gender-sensitive legal education for all present and future actors in the legal environment, whatever their profession may be.[11]

One of the several outcomes of the project has been the publication of a textbook, *Gender-Competent Legal Education*, by Dragica Vujadinovic, Mareike Fröhlich, Thomas Giegerich (eds.), which should be read together with *Gender Perspectives in Private Law*, as one supplements the others. While the textbook focuses on the issues raised by the impact of gender on all the traditional categories of private law and other branches of the law, the book under review recollects multiple perspectives of some more specific and hot topics related to the issue of gender in private law. While the textbook is the basis, this book is the complement, for it offers a more in-depth look into the issues that are perceived as important and sensitive by a multi-disciplinary and multi-country pool of jurists. It is for the purpose of making such issues (and the "plurality of feminist understandings of gender equality issues"[12]) emerge spontaneously, without any prior construction, that the book has been preceded by a call for papers open to professionals in the legal, political, sociological, and historical domains.

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10 The list is not exhaustive, but you may include Fisher, Shapiro (2005), Ryan (2005), and Menkel-Meadow (2006), which discusses the importance of what is called "transformative empathy".

11 The book series of which this volume is part, represents an added value to the project Erasmus+ Strategic Partnership in Higher Education, called New Quality in Education for Gender Equality - Strategic Partnership for the Development of Master's study Program "Law and Gender" (LAWGEM), co-funded by the EU's Erasmus+ program.

12 Vujadinović, Dragica, and Krstić, Ivana, Preface, V.

The result has been an enriching melting pot of methods, scientific approaches, cultural backgrounds, and legal traditions, capable of reflecting, without banalizations, the complexity of the context and the idea of "unity in diversity", which is one of the pillars of the European community.[13] A taste of it is offered, for instance, in the comparison between the four contributions devoted to labor law: Gender Perspective of Development of Labour Law, by Ljubinka Kovačević; Leading or Breeding; Looking Ahead: Gender Segregation in the Labour Market and the Equal Distribution of Family Responsibilities, by Mario Vinković; Legal Approaches to Protection Against Gender-Based Violence and Harassment at Work with a Particular Focus on the Situation in the Republic of North Macedonia, by Todor Kalamatiev and Aleksandar Ristovski; and Digital Work and Gender Equality, by Helga Špadina.

In Kovačević's contribution, the method is the one of an accurate and vivid diachronic analysis of the relationship between labor law and gender, ending with the adoption of a *de jure condendo* perspective that informs the reader of the issues still to be resolved by contemporary legal systems and the current trends in the development of labor law. The authoress skillfully combines those two methods with a "global law" approach, to the extent that she investigates the contribution that has been offered historically by international standards, and with a "philosophy of law" or "law & economics" approach, diving the gendered reading of labor law into the dimension of financial crisis and neoliberal policies.

The picture changes with Vinković's contribution, which deals with more specific issues – gender segregation in the labor market, regarding the equal distribution of family responsibilities – and essentially from the viewpoint of existing legislation and policies, above all with reference to Croatia. He also does not neglect to reflect upon future developments, with a look at Europe. Similarly, Kalamatiev and Ristovski's contribution offers an insightful account of the status of legislation against harassment in the workplace in North Macedonia (where we can also find a remedial approach) and combines it with a synchronic analysis of the situation in other countries and their respective attitudes towards the problem. It is interesting to note that the United States is among those other countries. A significant part is also devoted to the European Union.

Finally, Špadina's contribution adopts a learning-from-experience and problem-solving approach to look at the future; in fact, she analyzes the gender-related issues raised by the digitalization of work experienced during the COVID-19 pandemic to identify the pros and cons and suggest

[13] For an actualization, see Bieber, 2021.

workable solutions for a gender-friendly adjustment to the new context. The authoress is rather a pioneer in the field, from the perspective of law and gender, and one of the several interesting elements of her contribution is the reflection on the impact of gender on the new rights stemming from labor digitalization (e.g., the right to disconnect and not be "omni-available") and the European policies on work-life balance. Such an intersection between gender imbalances and digital vulnerability is unquestionably an added value of the contribution. Furthermore, the author does not neglect the International and European dimensions, since global problems (e.g., gender inequality and digital vulnerabilities) require global responses.

From a different angle, methodological issues are also crucial in the chapter by Rosemary Hunter (The Reproduction of Gender Difference and Heteronormativity in Family Law), where the authoress addresses the fundamental question of how family law participates "in the construction of gendered and sexual subjectivity" by engaging in a constant dialogue between the normative layer of family law and the heteronormative layer behind the scenes.

In other words, the authoress investigates how the wide range of "social and cultural norms attaching to relationships and the presumption that families should be formed through a male-female couple" influence the concrete application of the rules that family law provides regarding the establishment of legally recognized relationships, the attribution of legal parenthood, the post-divorce distribution of marital property, and the post-separation agreements on child custody and the allocation of parental functions. One of the merits of the contribution is the disenchanted and critical outlook of the authoress, who shows that the progress towards gender equality at the normative level may backfire due to the tendency of the heteronormative elements to replicate the same gender-imbalanced dynamics, adapted to the new context.[14] Again, the message to be retained is that gender equality does not mean gender neutrality, otherwise it would just remain a formal declaration of principle.

Relevant practical examples of how the "law in action" attempts to mitigate such discrepancy between formal gender equality and substantive gender equality, and how it could improve in doing that, can be found in Amalia Blandino Garrido's contribution (Compensation for Damages Suffered by

[14] The authoress' words are eloquent: "The march of gender neutrality in law (as in post-separation property division and parenting) can create disadvantages where background social inequalities continue to operate. And the march of inclusion in law (as in the extension of marriage and legal parenthood to same-sex couples) can entrench other exclusions or create new ones."

Women Performing Unpaid Domestic Works), and in Fuensanta Rabadán Sánchez-Lafuente's contribution (The Best Interests of the Child and Gender Perspective).

The first contribution offers a very accurate analysis of the evolution of European legal systems – also undertaken from a comparative perspective – on a rather delicate tort-law issue: whether , and under what conditions, the spouse/cohabitant who has wrongfully (completely or partially) lost his/her housework capacity should be entitled to compensation for such loss, how should the damages be calculated, and whether the other spouse/cohabitant should also be entitled to such compensation for the lost chance of contribution. In line with the premises, the authoress calls for a legislative intervention aimed at establishing policies capable of acting on the heteronormative level by promoting a gender-equal sharing of domestic tasks.

The second contribution also focuses on extremely delicate gender-related questions, namely, whether shared child custody would promote an effectively joint parental responsibility or be just a screen to hide pre-existing inequalities, and whether such a solution would be acceptable even in cases of endo-familial gender-based violence. The perspective is again one of comparative law and European law, and one of the merits of the contribution is a rich overview of case-law, primarily that of the European Court of Human Rights. Such an overview leads to the paramount conclusion that the attribution and allocation of parental responsibility should neither be related to gender nor to the persistence of a relationship between the parents, but to the mere biological or legal relationship with the child.

As apparent from the mentioned contributions, Europe is the focus of the book, but in a broad sense and not the exclusive one: in a broad sense, since the contributions include European countries, such as the United Kingdom, Serbia and the Republic of North Macedonia, which are not currently EU member States, and not the exclusive one, since the contributions include experiences that are extra-communitarian also from a geographical viewpoint, namely the Indian experience (Banerjee-Dube 2023). Such a diversion might appear eccentric and exotic, compared to the focus of the book, but ultimately it does perfectly fit with it, as India, with its consolidated experience of inherent pluralism, can teach Europe an important lesson when it comes to the necessity of conjugating the multiplicity of coexisting ethnical, religious, cultural, and legal identities, which demands a personalistic approach, with a shared axiological framework.

The reader's expectations of a promising book are, therefore, far from mislead by the contents. After a comprehensive and thorough reading, what they can feel is a reassuring sense of globality and "panism": even the contributions that primarily focused on national experiences, do not fail to extend their horizons to other dimensions through a comparative method that, without losing sight of distinctive elements, reaches the essence and reveals globally common problems and shared values. To that, one should add a certain feeling of inclusion: gender is portrayed as a dynamic concept that should raise awareness rather than indifference, promotion rather than tolerance, and should overcome a merely binary logic to welcome all those nuances that are an expression of personal identity.

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