

The 1977 Equality law and the disarticulation of the link between maternal function and ‘feminine specificity’

La legge di Parità del 1977 e la disarticolazione del nesso tra funzione materna e “specificità femminile”

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OPEN ACCESS



DOUBLE BLIND PEER REVIEW

ABSTRACT

The aim of the paper is to highlight the sometimes problematic but extremely fruitful intertwining which occurred between the feminist movement of the seventies and the season of legislative reforms that took place throughout the decade and helped to lay the foundations, in our country, of a modern welfare state inclusive of women's rights.

In particular, the research would like to explore the coming into force of the Law of 1977 named Equal treatment of men and women in matters of work, promulgated by Tina Anselmi, the first female Minister of Labour in republican history, thanks also to the contribution of the political forces of the left (Pci and Psi) in which, at least on the legislative level, some ambiguities that were still present in the Constitution are overcome.

In fact, while article 37 of the Constitution combined women's right to work with the recognition of their “essential” family function, in the equality law employment placement is unrelated from a domestic definition of femininity.

For the first time, the recognition of the female right to full integration into the workforce is considered essential, together with the need to reduce the gap that separates the powers of the two sexes in the family, as indeed the 1975 family law reform already was in charge of doing. In that law, in fact, it had been unhinged, from a legal point of view, that patriarchal structure of the welfare state mentioned by Carole Pateman, centred on a division of labour on a sexual basis and on a vision of the contribution of women in a subsidiary and complementary function to the income of the male breadwinner.

KEYWORDS

Parity, patriarchy, sexualization, feminism, work.
Parità, patriarcato, sessualizzazione, femminismo, lavoro.

Obiettivo del lavoro è quello di mettere in luce l'intreccio, a volte problematico, ma estremamente fruttuoso, verificatosi tra il movimento femminista degli anni Settanta e la stagione delle riforme legislative che si producono per tutto il decennio che contribuiscono a gettare le basi, nel nostro Paese, di un welfare state moderno e inclusivo dei diritti delle donne.

In particolare la ricerca intende approfondire la vicenda relativa all' approvazione della Legge di Parità di trattamento tra uomini e donne in materia di lavoro, promulgata nel 1977 dal primo ministro del lavoro donna della storia repubblicana, Tina Anselmi, ma anche grazie, come si metterà in luce, alla mediazione delle forze politiche della sinistra (Pci e Psi) in cui, almeno sul piano legislativo, vengono superate alcune ambiguità ancora presenti nella Carta costituzionale. Infatti, mentre l'articolo 37 abbinava il diritto al lavoro delle donne al riconoscimento della loro “essenziale” funzione familiare, nella legge di parità l'inserimento occupazionale è svincolato dalla definizione domestica della femminilità.

Per la prima volta viene considerato decisivo il riconoscimento del diritto femminile alla piena integrazione nella forza lavoro insieme alla necessità di ridurre il divario che separa i poteri dei due sessi nella famiglia, come del resto già la riforma del diritto di famiglia del 1975 si era incaricata di fare, andando a scardinare, almeno dal punto di vista giuridico, quella struttura patriarcale dello stato sociale di cui parla Carole Pateman, incentrata su una divisione del lavoro su base sessuale e su una visione del contributo delle donne in “funzione sussidiaria” e complementare al reddito del maschio capofamiglia.

Citation: Meta C. (2023). The 1977 Equality law and the disarticulation of the link between maternal function and ‘feminine specificity’. *Women & Education*, 1(2), 10-15.

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Conflicts of interest: The Author(s) declare(s) no conflicts of interest.

DOI: https://doi.org/10.7346/-we-1-02-23_03

Pensa MultiMedia: ISSN 2975-0105 (online)

1. An introduction at the questions

In this paper we will explore the complex intertwining that developed between the feminist movement of the 1970s and the season of legislative reforms of that decade that contributed to laying the foundations, in our country, of a modern welfare state inclusive of women's rights.

In fact, as is well known, neo-feminism¹ represented a decisive break with the attempt to 'deconstruct' the patriarchal family model as it had stood and been codified until then (Pateman, 1989, pp. 185-209).

Above all, what emerges strongly from the analysis of feminist thinking is the social reason for that 'cultural organisation', i.e. the fact that the economic structure of western capitalist society, from the end of the Second World War onwards, had aimed at a model of welfare capitalism, characterised on the one hand by the expansion of public spending and economic growth policy, and on the other by a social division of the labour market defined as male/breadwinner, and thus based on the stable employment of adult males and the dedication of women to care tasks (Crompton, 1999).

Moreover, as it is known, from a historical point of view, after the constitution of democracy in Western Europe, between the 18th and 19th century, we could assist at a rigid symbolic separation of male and female spheres: women were dedicated to care tasks in the private sphere while men managed the public dimension.

It is in this way, furthermore, that the modern concept of citizenship has also been constructed through the delimitation, the exclusion of the female element (Scott, 1987).

It is no coincidence that when the vote was won, after both World War I and World War II, the prevailing political motivation in the various countries was still not the rights of individual women, but their services as a group.

The reference to the values of motherhood rather than those of female individuality, for example, became very strong after the age of wars and totalitarianism. Woman as mother in essence (Bonacchi, Groppi, 1993; Rossi-Doria, 2007).

Let us think, for example, at the birth of republican Italy, when women were 'formally' admitted to the political scene for the first time: despite the experience of the Liberation, in which they had been active protagonists in the partisan struggle, the main terrain in which attempts were made to bring out women's humanity was once again that of assistance, traditionally considered to be a woman's domain (Rossi-Doria, 1994, pp. 779-846; Ead., 2007, pp. 127-208).

Thus, into the discussion of Constitutional work, in relation of women rights, while the unitary view supported equal position of women in the labour market, in the discussions about the relationship of sexes in the private sphere, inside the family, we witnessed the victory of a traditional position coming from Catholicism and the Christian Democratic Party.

The effects of this difference in women's alignments are perfectly reflected in the constitutional text: in fact, as is well known, while Articles 3, 37, 48 and 51 provide, with the exception of the judiciary, the rights of full equality between the sexes, in "Articles 29, 30 and 31 on the family, the female inferiority that had passed from the Napoleonic code into the civil legislation of the Kingdom of Italy remains almost intact" (Rossi-Doria, 2007, p. 130).

2. Neo-feminism: between liberation and anti-determinism

Going back to our initial reasoning, how did neo-feminism challenge the division of labour on a gender basis and above all under what economic-political conditions did it operate?

First of all, we can say that the new feminism asserted itself during the 1970s both in opposition to the reformist emancipation movement, which had produced some significant effects in the country thanks to an organic complex of claims, linked by a design of planned expansion of forms of participatory democracy and mass mobilisation, and (indeed almost in opposition to this path) as a rejection of delegated politics, of its party and state forms of organisation.

Although, it is precisely the non-linear aspect of the neo-feminist path that must be emphasised, that is, its oscillation between moments of self-exclusion and moments in which the process of political mediation is also painfully recognised as an almost obligatory passage.

In general, we have to say that women's movements during the 1970s unfolded through the difficult relationship between the practice of self-reflection and political action².

1 The new feminism, also called neo-feminism, was born in Italy at the beginning of the 1970s. Its historical background is the so-called classical feminism, in which the claimant themes of democratic and radical feminism and the socialist emancipationist strand of the 19th century are present. See: Lussana (1997, pp. 473-475); Pieroni Bortolotti (1974); Rossi-Doria (1996).

2 Anna Rita Calabrò and Laura Grasso underlined in their important work on research and documentation of feminism history in the Lombardia area, that we have to clarify some concepts before articulating a discourse on the phases of the movement (which take on

Inside each group we could observe a complex set of social and cultural variables and geographical conditions that elude rigid theoretical classifications.

In particular, 1970 is a foundational date: between that summer and autumn other two groups were founded, Rivolta Femminile and Anabasi which immediately placed at the centre of their activities the search for a way of doing politics among women based on the analysis of the personal and everyday life.

Furthermore, women's experience in men's political organisations both in the historical left and in the new left during the 1968 student movement, gave them the consciousness that the 'female question' could not be resolved with emancipation objectives, goals based on the achievement of an alleged equality between men and women, nor on goals of revolution and class struggle that place the man-woman contraposition as secondary to the Capital-worker contradiction.

If Rivolta Femminile speaks of a woman's 'authenticity' as the starting point of a process of self-knowledge, Anabasi uses the word self-awareness to indicate a practice, a way of being and communicating between women³.

Going back to a general discourse that will permit to focus on the intertwining between legislation and feminist movement, we have to emphasise once again how neo-feminism started with criticising the emancipationist model that was consolidated after the Second World War, especially by the women's organisations linked to the main political parties, but also opposed the legal protection of women. They questioned the often troubled achievements of the welfare state and the spread of a new network of social services.

In addition, the two souls of the movement, essentially that of self-analysis and that of social practice, found common ground for mediation around issues that affected the practical lives of women.

Around self-help groups, self-managed counselling centres, abortion groups, women's medicine groups, gathered, in those years, a very rich research and elaboration⁴.

Thus, reconstructing this path helps us to focus on the strong political nature of feminist practice in its threefold and non-conflicting dimensions of separatism, social action and confrontation with institutions.

Moreover, as Jasmin Ergas has written, Italian feminism differs from the numerous coeval feminisms thanks, among other things, to the particular connotations of its relationship with politics.

Consider, for example, the experience of one of the most radically anti-establishment groups of the period, as Rivolta Femminile⁵. The thesis elaborated by the group, in particular the rejection of the 'sexual division of roles' and the de-biologization of the maternal function, are also useful to focus on another order of considerations that bring us closer to the next point to be analysed⁶.

As observed by the Constitutionalist Elisabetta Palici di Suini (2007), a enormous ideological preparation was necessary in order to reach the 'equal' legislation (beyond formal equality) that is at the basis of the legislation path dedicated to women during 1970s.

Moreover, the permanence of a family code that, until the 1975 reform of family law, was inspired by a patriarchal structure, and the attention that social legislation paid to maternity, the protection of which took the form of discriminatory protectionism, should be read as effects of the same situation (Ballestrero, 1979).

In addition when the feminist movement took place in the early 1960s, Italy had already experienced its industrial take-off, when, however, as historiography has long pointed out, the possibility of building a social model based on an 'integrated socialisation of growth' faded away. In other words, a spontaneous view of the growth pro-

the same trend on a national level). «The word Feminism refers to that theoretical baggage developed by women first in the United States and then in Europe starting from the mid-1970s, which, centred on the themes of separatism, criticism of patriarchy and sex roles, became the heritage of those women who, aggregating in small groups and collectives of small groups gave life in those same years to the Feminist Movement» (Calabrò, Grasso, 1985, p. 37). Women's movement, instead, refers to a larger movement of opinion and political action that in the mid-1970s, under the impetus of the radical demands of the Feminist Movement - permeated a whole series of social sectors that had hitherto been exempt from feminist issues (trade unions, parties, the world of work), indicating new mobilisation objectives, explicating contradictions in political practice, and denouncing discrimination between the sexes. Finally, the term *Femminismo diffuso* refers to the reality that from the mid-1980s onwards seemed to be characterised by the presence, in the most diverse social formations, of women expressing a female identity marked by feminist consciousness.

3 The expansion, between 1975 and 1976, of women's initiatives, the increase in self-consciousness groups and collectives engaged in social work, created the need for broader meetings between women in which to share and compare practices and theoretical elaborations. In Milan, after Rivolta and Anabasi, the collective of feminist groups in Via Cherubini had already been formed in 1972, which operated at the beginning as a large container of the different expressions of the movement, and which would later take on an autonomous physionomie, giving space above all to issues of sexuality (Lussana, 1997, pp. 480-482).

4 Memoria, 1987.

5 In the Spring of 1970 three women, Carla Accardi, Elvira Canotti, Carla Lonzi, wrote a collective text (whose material author is Carla Lonzi) that would become the *Manifesto di Rivolta femminile*. (See: Lonzi, 1974). The concept of human liberation as it had been elaborated not only by the tradition of the workers' movement and theoretical Marxism, but that also later merged into emancipationist thought, is under indictment. In fact, for Lonzi in particular, by being totally 'part of the modern project', the concept of emancipation would leave the private relations between genders untouched.

6 In relation to the educational aspects of this discourse, which has determined, in the history of educational models, a codification of the maternal function as a device aimed at women, on all to see: Ulivieri (2007); Covato (2014); Borruso, Gallelli, Seveso (2022).

cess (tendency towards external market expansion, little public reinvestment, wage compression) combined with a consumption model on private acquisitive strategies.

All this despite the fact that the advent of centre-left governments since 1961 had shifted the country's democratic balance forward (Giovagnoli, 2016, pp. 78-82).

The above had major repercussions on women's lives. With the new emphasis on home life and consumption, more of them, especially from the middle class, found themselves full-time housewives (Ginsborg, 1989, pp. 330-301).

In short, since the mid-1960s, Italian society has been marked by modernising thrusts that exacerbated conflicts, also because of a governmental reformism that had struggled to take off. It is also true that this situation represented a first timid attempt promoted by ruling classes to mediate the collective social protest, even if they failed to channel it into the mechanisms of the capital-labour dialectic.

If we did not make this reflection, we would hardly understand how, despite this initial deficit, the 1970s were a season of fertile reformism. Thanks also to the impetus of the collective actions triggered by the 'hot autumn', at the end of the 1960s, Italy put in play those measures necessary for the construction of a modern welfare state that would only become apparent with the legislative measures of the 1970s⁷.

On a strictly political level, from the mid-1970s, between 1975 (with the affirmation of the left in the local elections, followed by the success in the following year's political elections) and 1976, feminist groups decided to support the left: feminists, together with the Udi, voted 'left', showing hostility towards the old organisations in which they had hitherto militated, from *Avanguardia operaia* to *Lotta continua*⁸. The PCI and the women in the party seem to have discovered feminism at this point.

On the other hand, it is also true that the seventh legislature, which began in 1976⁹, saw an upsurge in the presence of women in parliament, probably under the impetus of both the international context – 1975 being the International Women's Year¹⁰ – and the shockwave that the feminist movement was sending through society.

3. The 1977 Equality law and its articulation

It is exactly in this contest that the legislative process leading to the Equality Act also matures. At the opening of the new legislature, no less than thirteen bills were tabled in Parliament to delete discriminatory rules on labour relations, residual in various sectors, some of which were now clearly illegitimate because they conflicted with the new family law that had come into force in the meantime¹¹.

We have to observe that, while the bill promoted by initiative of the Government, in particular by Tina Anselmi, is discussed in the Labor Commission of the Parliament, the attention of civil society is very high, in particular coming from female organisations.

For example in the May issue of the magazine "Noi Donne" an Udi's document is published in which the attention is stressed on the necessity to introduce in the text of the future law "the division of the role inside and outside the family"¹².

In particular, the two rapporteurs of the bills, Seroni of PCI and Magnani Noya of PSI, put the attention on the necessity to introduce taxation of maternity contributions as a prerequisite for promoting parenting based on reciprocity. This concern will be received in the final text of the law.

The strong perceived danger concerned the admission of the principle of exemptions. The issue is complicated because, as "Noi Donne" also pointed out, the admission of these risked undermining the principle of parity enshrined in the first article of the law. The review, also underling the important points approved by the Parliament, such as the revolutionary way to consider maternity no longer as a burden on women and a cost for companies,

7 In particular, the season of the 'hot autumn' (1968-69) accentuated a greater collective sensitivity towards shared participation in the planning and intelligent participation of the workforce in the organisation of work. (See: Turone, 1976).

8 It should be recalled in this regard that in general, the number of women in the Chamber of Deputies reached an all-time high at the end of the 1970s, but this also meant a modest 6/8 percent of the total number of deputies. (See: Wilson, 2001, 248-249).

9 The crisis and isolation of the DC, following the 1975 regional elections and the 1976 political elections that redrew the country's political map, strengthened the Moravian strategy of attention to the PCI, which would have a logical development in the subsequent governments of national solidarity (Lussana, 1997, pp. 510-512).

10 The Council of the European Community repeatedly intervened with a directive (No. 75/117/EEC of 10 February 1975) calling on the member states to precisely implement Article 119 of the Treaty of Rome on equal pay.

11 The legal family has been in open conflict with the evolution of society for some thirty years now. In the mid-1960s, on Pietro Nenni's initiative, the reform law had begun its parliamentary course, then stalled in the Senate committee. It was only the mobilisation of civil society – on 13 November 1974 a large national demonstration was held in Rome, promoted by Udi but attended by many feminists to urge a rapid definition of the law under discussion – that accelerated the process: the new family law became law in the spring of 1975 (Law 151 of 19 May 1975).

12 "Noi Donne", 22 maggio 1977, p. 18.

considered the amendment to Article 1, which concerns the prohibition of all sex discrimination in access to employment, to be pejorative¹³.

When the text returned back to the Chamber of Deputies¹⁴, thanks the action promoted by the Commission of Labour and Justice, which raised questions of constitutionality with respect to the admission of exceptions but also, as we think, in response to pressure from women's organisations¹⁵, the reference to the 'discretion' of collective bargaining is eliminated. All the other 15 articles are reconfirmed and the text, approved in the Senate, becomes law in December¹⁶.

The general climate of enthusiasm around the law at this point was diluted. On Jan. 1, 1978, "Noi Donne" devoted a special issue to the law that had now gone into effect¹⁷, fully centering the matter on which in the following months and years jurists and economists would take stock: in order to fully implement the constitutional dictate and achieve gender equality, "we still have to get busy. Removing the economic and social obstacles, which effectively limit liberty and equality of citizens, preventing the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the country"¹⁸.

Overall, it is said that the law operationalizes the 1975 family law reform. Undoubtedly, it is stressed, there is still a long way to go especially with regard to public investment policies in services, which will have to make the labour market more accessible to women.

Certainly there are incentivising and revolutionary norms in the law, such as the rule on the fiscalisation of the two hours daily rest of the maternity period, previously borne by the individual labourer (Art. 8), which in fact realised a lower cost of women's labour for the enterprise and made an implementation of the social value of motherhood possible (Galoppini, 1980, pp. 314-317). But most probably, as has also been mentioned, the equal treatment could be implemented more gradually while preserving protective situations.

If an equalitarian law does not want to result in new forms of discrimination, it must first have real sanctioning capabilities (Treu, 1977, pp. 55-58). Even more generally, it must be emphasised that the problem of women's work cannot be adequately addressed if the other specific structural causes of the marginalisation of women in employment are not tackled.

Here we are embarking on a discussion that goes beyond the limits imposed on this contribution: first of all, it is necessary to remember that even though during the 1970s the social foundations of welfare were effectively broadened, the real unhinging of the historical prejudice that sees certain areas of welfare as of exclusive competence of women did not take place. So much so that, on the threshold of the 1980s, when the rising parabola of feminism came to an end – it progressively lost public visibility and was concentrated in the spheres of cultural elaboration – we witnessed an attempt to erode previous achievements.

Even today – in a labour market increasingly characterised by the flexibilisation of working and living times – women are still struggling with a very precarious balance, namely that between a domestic specificity (to be protected) and an occupational integration to be equalised. Even today, the family, i.e. the primary sphere of material and social reproduction of the life of individuals, often continues to be the place of reproduction of unequal rights: it is in fact its private dimension that constitutes a problematic knot (not yet resolved) for theories of citizenship (Borruso, Gallelli, Seveso, 2022).

13 Cfr. "Noi Donne", 30 ottobre 1977, pp. 18-19.

14 The text returned to the Chamber of Deputies, in the Labour's Commission, on October 14. On October 18, the Commission for Constitutional Affairs (1) and Justice (4) would give a positive opinion, provided that the last paragraph would be amended in the Senate. The debate in the Chamber of Deputies on November 17 is centred precisely on this, on the question of the acceptability or otherwise of the exceptions, it is said in fact: «The Constitutional Affairs Commission expresses a positive opinion on condition that the last paragraph of Article 1 of the text sent to the Senate will be deleted, since by entrusting to collective agreements any exceptions to the equal treatment laid down by law, it encroaches on the reservation of competence attributed to the latter and appears to be in general conflict with the principle laid down in Article 3 of the Constitution» (Parliamentary Acts, 1976-1979, XIII, Labour and Social Security Committee, p. 148).

15 In the same issue of 'Noi Donne' of 30 October 1977 which, as we have seen, reports large passages of the text of the law under discussion, Udi published a very hard document in which it emphasised that the admission of exemptions risked nullifying the entire equality approach of the law.

16 The text returned to the Senate again after the House had amended it, with the number 805b, the Commission debated it on 24 November, deliberated on 29 November and the Chamber approved it on 1 December: the text became law on 9 December 1977 under No. 903 (L.U. December 1977 No. 343).

17 Cfr. «Noi Donne», gennaio, 1, 1978, pp. 25-30.

18 Ivi, p. 26.

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