

GENDER-BASED VIOLENCE AS A CHALLENGE TO CONSTITUTIONAL DEMOCRACY¹

La violencia de género como desafío a la democracia constitucional

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Abstract

The article deals with gender-based violence, considering that its increase, during the COVID-19 pandemic, does not represent a novelty. Notwithstanding the flows of legislation in the last decades, both at domestic and international level, this dramatic human rights violation has not been eradicated within the constitutional democracies. The article points out that gender-based violence represents a triple challenge to the founding values of constitutional democracy: a) as violence; b) as an expression of a hierarchical conception of the society; c) and, finally, as an extreme form of silencing and marginalizing the most peaceful component of society, the women. It considers that the difficulties in eradicating gender-based violence are related to the difficulties that constitutional democracies are experiencing in the

¹ This paper was firstly presented as Introductory Remarks in the Conference on “Gender-based Violence Between National and Supranational Approaches. The Way Forward”, organized by the University of Milan on December 6th, 2019. I would like to thank Marilisa D’Amico and Costanza Nardocci for their kindness and their support.

XX century. Therefore, it concludes that the struggle for women's rights and against gender-based violence is nowadays more crucial than ever.

Keywords

COVID-19; gender-based violence; gender equality; liberal democracy; constitutional democracy.

Resumen

El artículo trata sobre la violencia de género, considerando que el aumento, durante la pandemia COVID-19, no representa una novedad. A pesar de los flujos de legislación en las últimas décadas, tanto a nivel nacional como internacional, esta dramática violación de los derechos humanos no ha sido erradicada dentro de las democracias constitucionales. El artículo señala que la violencia de género representa un triple desafío a los valores fundacionales de la democracia constitucional: a) como violencia; b) como expresión de una concepción jerárquica y patriarcal de la sociedad, y finalmente c) como forma extrema de silenciar y marginar al componente más pacífico de la sociedad, las mujeres. Considera que las dificultades para erradicar la violencia de género están relacionadas con las dificultades que atraviesan las democracias constitucionales en el siglo xx. Por tanto, concluye que la lucha por los derechos de la mujer y contra la violencia de género es más crucial que nunca en este momento.

Palabras clave

Pandemia COVID-19; violencia de género; paridad de género; Estado constitucional democrático de derecho; Estado democrático pluralista.

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I. "A DISEASE OF THE SOCIETY"

In 2020, one of the most evident consequences of COVID-19 pandemic and consequent lockdown of half of the world population was an increase in gender violence, especially of domestic violence².

Nothing new under the sun. In the XXI Century, gender-based violence, especially in its more common meaning of violence against girls and women perpetrated for gender reasons³, can be considered as one of the most

² For some data at global level, *see* <https://bit.ly/34Yet8x>. See also the Observatory on COVID and Gender established by the International Association of Constitutional Law: <https://bit.ly/3mS7RhS>. Specifically, on the situation in Italy see Bassu (2020: 595 ff.); D'Amico (2020: 16 ff.) (in Italian).

³ The shift from the expression "violence against women" to "gender-based violence", in the 1990s, was aimed at incorporating social and historical legacy: see Cocchiara (2014: 3 ff.) (in Italian). An example of this tendency is Recommendation no.19 of the United Nations Committee of the CEDAW (Convention on the elimination of all forms of violence against women), 1992, whose opening words are: "Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men". Within the Council of Europe, the turning point is the Convention on preventing and combating violence against women and domestic violence opened to signature on 11/05/2011 (Istanbul Convention), whose Article 3, lett. d) states: "gender-based violence against women' shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately". Within the European Union, the definition of gender-based violence was first established by Directive 2012/29/UE of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime: "Violence that is directed against a person because of that person's gender, gender identity or gender expression or that affects persons of a particular gender disproportionately, is understood as gender-based violence" (no. 17).

widespread, persistent and devastating human rights violations⁴, which affects (at different levels) developed and underdeveloped countries, in Western world and Global South, in liberal democracies and authoritarian regimes, in wartime and in time of peace⁵.

“A disease of the society”, it has been defined⁶. Every day, newspapers and other media—as well as our personal experiences, I am afraid—confirm this impression. However, as usually when we deal with social facts, to capture the phenomenon we need indicators and measurement. Qualitative analysis and some forms of storytelling are also needed and welcomed, even more when data is not available, as it happens very often in exploring the historical perspective.

All those sources converge in indicating that violence against women is one of the main forms of violence still in existence. Data from the World Health Organization, according to which, “globally, at least one in three women will be beaten, coerced into sex or otherwise abused by an intimate partner over the course of her lifetime”⁷ are striking.

Scholars have pointed out a correlation between discrimination and gender inequality, on one hand, and violence against women, on the other. Clear evidence has been provided indicating that the countries with a better track on gender equality score more favourably also in terms of domestic

⁴ This is the opening statement of the United Nations webpage dedicated to the International Day for the Elimination of Violence against Women, although no data are quoted to support the statement: <https://bit.ly/32bYuSa>

⁵ Women’s rights are considered as human rights since the CEDAW Convention adopted in 1979 by the General Assembly of the UN. An important step forward in clarifying this approach was represented by the World Conference on Human Rights held in Vienna, Austria, in 1993: see para. 18 of the Vienna Declaration and Programme of Action, <https://bit.ly/3oZxsYm>. See Calloni (2007: 1372 ff.) (in Italian).

⁶ Roy (2016: 124).

⁷ <https://bit.ly/32emYKH> See also the UN Secretary-General Ban-Ki moon’s Campaign “UNiTE TO END VIOLENCE AGAINST WOMEN,” ‘Framework for Action: Programme of United Nations Activities and Expected Outcomes 2008-2015’ (2008) 2 (UNSG Campaign Unite to End Violence Against Women), quoted by Stedman (2013: 4 ff.). “Proportion of ever-partnered women and girls aged 15 years and older subjected to physical, sexual or psychological violence by a current or former intimate partner in the previous 12 months, by form of violence and by age” is an indicator of target 5.2 of Sustainable Development Goals of the United Nations (Goal 5 is “Achieve gender equality and empower all women and girls”): <https://sdgs.un.org/goals/goal5>.

violence against women⁸. Conversely, data on the violence in the public sphere is more inconsistent. Non-domestic violence seems higher in more developed and equal countries, possibly in response to female emancipation (as a new index developed by scholars at the University of Siena points out)⁹.

The link between the prevalence of patriarchal norms and values in society and violence against women, identified since the 1970s (I would like to mention the seminal study of Susan Brownmiller on rape, *Against Our Will*¹⁰), emerges clearly from all the measures and indicators available and it has been pointed out by all social sciences, by international organizations and by courts¹¹.

As for legal studies, the main question remains the contribution that law, at international and domestic level, can provide to prevent, stop, or reduce, violence against woman. The legal framework on women's rights dramatically improved since the 1970s, representing one of the most successful human rights stories¹². A significant effort on fighting gender-based violence has been put in place in the last decades, new international conventions have been signed and ratified and new domestic laws have been approved¹³, contributing to

⁸ To quote the Preamble of the Istanbul Convention: "Recognising that the realisation of *de jure* and *de facto* equality between women and men is a key element in the prevention of violence against women". It has also been pointed out that «[g]ender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men": UN Committee on the Elimination of Discrimination against Women (CEDAW) (General Recommendation No. 19, para. 1).

⁹ Bettio and Betti (2019).

¹⁰ Brownmiller (1975).

¹¹ Only a couple of examples. European Court of Human Rights, *Talpis v. Italy*, para. 145 "The Court considers that the applicant provided prima facie evidence, backed up by undisputed statistical data, that domestic violence primarily affects women and that, despite the reforms implemented, a large number of women are murdered by their partners or former partners (femicide) and, secondly, that the socio-cultural attitudes of tolerance of domestic violence persist". The UN Secretary General: Antonio Gutierrez, Message on the International Day for the Elimination of Violence against Women, 25 November 2019, according to which "Sexual violence against women and girls is rooted in centuries of male domination. Let us not forget that the gender inequalities that fuel rape culture are essentially a question of power imbalances": <https://bit.ly/3mSAkEl>

¹² On the human rights trends, including women's rights, see Sikkink (2017: 151 ff.).

¹³ In Europe, it is worth mentioning the Istanbul Convention, ratified by 35 out of 47 countries (<https://bit.ly/3jTVEY9> last accessed August 7th, 2020). See especially Scotti (2017). A special mention deserves the complicated history of the inclusion of

a significant legal evolution, especially reshaping the conducts included in the gender-based crimes¹⁴; important case-law has also been developed by domestic and international courts¹⁵. Nevertheless, the problem does not seem either eradicated or even mitigated. Therefore, once law is in force, how can we, as lawyers, contribute?

II. PEACE AS THE CORE VALUE OF CONSTITUTIONAL DEMOCRACY

The answer to this question (how can we, as lawyers, contribute?) is especially related to the effectiveness of legal norms (as it happens more often with international and constitutional provisions)¹⁶ and to the enforcement of legislation, positive obligations included¹⁷. It also touches the “cultural” role

rape in the crimes against humanity: it is worthy mentioning that rape was not considered in the Nuremberg and Tokyo trials after the Second World War, becoming object of a long omission, lasted till the end of the XX Century. The situation changed only in the 1990s with the International Criminal Tribunals for Rwanda and for the former Yugoslavia, culminating in the Rome Statute establishing the International Criminal Court, article 7, including in those crimes “Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity”: see Ellis (2007). It is worthy mentioning also the resolution of the Security Council of the UN 1820 of the 19 June 2008, according to which “rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide”. At domestic level, at least 144 countries have passed laws on domestic violence, and 154 have laws on sexual harassment. World Bank Group (2018). *Women, Business and the Law 2018*, database. For a glance on Italian recent legislation, Pezzini and Lorenzetti (2020), (in Italian).

¹⁴ A good example can be the introduction of the crime of “femicide”, on which see the seminal study of Radford and Russell, 1992. The historical perspective is presented by Feci and Schettini (2017) (in Italian).

¹⁵ I would like to quote here at least the leading cases of the ECHR and of the ICHR, which contributed to the reframing of gender-based violence, respectively *Opuz v. Turkey* (ECHR judgment of 9 June 2009) and *González and others (“Campo Algodonero”) v. Mexico* (ICHR judgement of 16 November 2009).

¹⁶ As it has been pointed out, “The gap between equality guarantee in constitutions and the unequal relative status of the sexes is striking in virtually all settings”: Mackinnon (2012: 406).

¹⁷ The major gaps in the enforcement of positive obligations include a lack of adequate enforcement by police and the judiciary of civil remedies and criminal sanctions for violence against women, and an absence or inadequate provision of services such as shelters which mean that women often have no choice but to continue living with

of law and its contribution as factor of social change and it would lead us to delve ourselves into the “law and society” perspective.

However, I would like to focus on “the other side of the moon”: that is, the contribution that social studies on gender-based violence can give to constitutional law: actually, I believe the struggle against gender-based violence is at the same time a struggle for individual rights of especially subalterne people and a struggle to strengthen, and even to protect, constitutional (or liberal) democracy.

We cannot forget that in liberal democracies –this aspect has been especially emphasized after the Second World War, in the so-called Post-war paradigm, *id est* the “constitutional democracy”¹⁸– one of the main goals of law (at international and domestic level) has been the reduction of violence. I would like to say: it is not any more a matter of *monopoly of violence* by the State, as it used to be since the establishment of the Modern State, in the Hobbesian perspective. It has become a matter of *eradication of violence*. It has not always been the case in the history of mankind, and it has definitely not always been the case until the Second World War. Let us think of death penalty, torture and cruel punishment¹⁹. In our perspective, it is irrelevant if this goal, codified in domestic constitutions and in international documents, has not yet been accomplished and war, violent conflicts, injustice, still afflict millions and millions of human beings. Aspirational values do not lose their prescriptive nature, only because they aren’t immediately and fully effective: they remain as directional principles, and guide policymakers while also shaping our understanding of what is proper and acceptable (common sense).

If we think about language and words, we can see this more clearly. What is the opposite of “violence”? There is no specific word. We refer to “non-violence”. I would suggest the opposite of violence is actually “peace”.

Peace is the core value of the Post-war paradigm, at national and international level, in the public and in the private sphere²⁰.

Therefore, the fight against any form of violence is part of this set of values we call “peace”.

their abusers: see Integration of the Human Rights of Women and the Gender Perspective: Violence against Women. The Due Diligence Standard as a Tool for the Elimination of Violence against Women, UN Doc. E/CN.4/2006/61, 20 January 2006, para. 49.

¹⁸ On the Post-war Paradigm see Weinrib (2006: 89); Groppi (2020: 33) (in Italian).

¹⁹ The development of the new international law during and soon after the Second World War was vividly described by Sands (2016).

²⁰ Peace as international dimension of the constitutional State has been pointed out by Ginsburg (2018).

III. WOMEN'S RIGHTS AND PEACE VALUES

Within this framework, I would like to add that the struggle for women's rights and against gender-based violence is even more crucial.

First of all, we should reflect on the patriarchal society. Gender-based violence is a gender perpetrated violence, which is an aspect of male domination. It is part of an unequal relationships, which is, in turn, part of a vision according to which the strong shall rule over the weak, and the weak are contemptible as they are weak²¹. Even more, if we consider that gender difference is the constitutive experience of the human relationship, the asymmetries and hierarchies between the sexes represent the paradigm on which all asymmetries and hierarchies of society are forged²².

We should not forget that this approach is incompatible with constitutional democracy and, what's more, it is at the origin of the more violent and brutal totalitarian regimes²³.

I would like to quote a lesser-known 1989 book by a Norwegian legal philosopher, Harald Ofstad, *Our Contempt for Weakness. Nazi Norms and*

²¹ See the Preamble of the Declaration on the elimination of violence against women adopted by the General Assembly of the United Nations (Resolution 48/104 of 20 December 1993): "Recognizing that violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men". Similar wording in the Preamble of the Istanbul Convention of the Council of Europe: "Recognising that violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women; Recognising the structural nature of violence against women as gender-based violence, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men".

²² On gender equality in the perspective of the "anti-subordination principle" see in the Italian scholarship multiple interventions of Barbara Pezzini. Among those, Pezzini (2009: 1141 ff., spec. 1147) (in Italian).

²³ I would like to quote the explanatory report of the Minister of Justice Dino Grandi in the fascist government, in presenting the new Civil Code, on March 16, 1942: "Our law, as we feel it and understand it, is the law of the Roman state, hierarchical and authoritarian, the law of human good sense and therefore universal, enlightened and recognized by the fundamental principles of our [Fascist] Revolution" —quoted by Novarese (2014: 233 ff., spec. 259) (in Italian).

Values-and Our Own: “If we examine ourselves in the mirror of Nazism, we see our own traits.... Nazism did not originate in Germany of the 1930s and did not disappear in 1945. It expresses deeply rooted tendencies which are constantly alive in and around us... We consider ourselves rid of Nazism because we abhor the gas chambers. We forget that they were the ultimate product of a philosophy which despised the weak and admired the strong... We are not living in their situation, but we practise many of the same norms and evaluations”²⁴.

In addition, gender-based violence not only does open our discourse to the hierarchical conception of the social relationships which still permeates our approach. It also represents an attack to the founding values of the constitutional State also as for the main target of it, i.e. the female part of the society.

As it has been pointed out (here, I would like to mention the masterly contribution of Virginia Woolf in *Three Guineas*²⁵ written on the eve of World War II) women represent pacifist values, values which may be expected to reduce violence²⁶. It does not matter if we rely on the controversial explanation based on the psychological legacy of the basic biological difference between the sexes or if we privilege the social and cultural perspective, summarized by the gender-based approach. Both perspectives converge in that a more feminized world would be a more peaceful world²⁷. Although this perspective implies a risk of gender essentialism²⁸, many indicators support this conclusion (at the point that it is impossible to quote them here²⁹). Just a suggestion, for

²⁴ Ofstad (1989: 5-7).

²⁵ Woolf (1938).

²⁶ The use of the word “represent” opens the doors to the debate about the “descriptive” or “substantive” representation of women, which was introduced since Pitkin’s seminal work on representation (Pitkin, 1973).

²⁷ The close link between women’s empowerment and peace has been pointed out by several international conferences and documents, beginning from the 1970s: see Salvatici (2007: 327 ff.). A landmark text is the United Nations Security Council Resolution on Women and Peace and Security approved on 31 October 2000 (S/RES/1325). The resolution reaffirms the important role of women in the prevention and resolution of conflicts, peace negotiations, peace-building, peacekeeping, humanitarian response and in post-conflict reconstruction and stresses the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security. Clear evidence is provided by Hudson *et al.* (2014).

²⁸ This risk has been pointed out by many scholars. See Grosz (1995).

²⁹ To quote only one data, globally, more than 90% of perpetrators of intentional homicide are male: United Nations Office on Drugs and Crime (UNODC) (2019) *Global*

what it is worth: please have a look at the winners of the Nobel Peace Prize, since its establishment, in 1901³⁰.

“The only people who should be allowed to govern countries with nuclear weapons are mothers, those who are still breast-feeding their babies”: this is the Japanese survivor of two nuclear bombs Tsutomu Yamaguchi quoted by Steve Pinker in his inspiring book on the decline of violence³¹. Pope Franciscus, celebrating Women’s day in 2019, stated: “Peace, then, is born of women, it arises and is rekindled by the tenderness of mothers. Thus, the dream of peace becomes a reality when we look towards women... If we take to heart the importance of the future, if we dream of a future peace, we need to give space to women”³².

I fully share this approach, which is deeply rooted in history and culture. In Western tradition, the power is masculine, and the justice, as mediation, as composition of conflicts, is feminine as very often the iconography and arts remind us³³. Let us think, among many others, to the famous series of frescos by Ambrogio Lorenzetti in the Palazzo Pubblico of Siena or by Giotto in the Cappella Scrovegni in Padua³⁴.

Therefore, gender-based violence represents a triple challenge to the founding values of constitutional democracy: 1) as violence; 2) as an expression of a hierarchical conception of the society; 3) and, finally, as an extreme form of silencing and marginalizing the most peaceful component of society.

IV. GENDER-BASED VIOLENCE AND DEMOCRATIC DEGRADATION

In recent years, at global level, it has been pointed out that the overall progress in reducing gender inequality has been slowing³⁵. In some countries, we even witness a backsliding of women’s rights³⁶. This situation has an impact

Study on Homicide, Executive Summary, 23: <https://bit.ly/3enFXyh> On the issue of the measurement of violence, see Walby *et al.* (2017).

³⁰ <https://bit.ly/3k3G9NC>.

³¹ Pinker (2011: 684).

³² Address of His Holiness Pope Francis to Members of the American Jewish Committee, Consistory Hall, Friday, 8 March 2019, <https://bit.ly/3eqO8mH>.

³³ Zagrebelsky (2018: 373 ff.) (in Italian).

³⁴ See Frugoni (2019) (in Italian).

³⁵ See UNDP, *Human Development Report*, 2019, 150, showing the evolution of the Gender Inequality Index. <https://bit.ly/38cqlFY>.

³⁶ First Vice-President of the European Commission, Frans Timmermans, introducing, in 2017, the annual colloquium on Fundamental Rights, dedicated to “Women’s

on the difficulties in eradicating gender-based violence, notwithstanding the legislative measures taken in the last decades, as it contributes to foster sexism and discrimination, which, as previously indicated, represent the breeding ground for gender violence.

It is no wonder, therefore, that this situation goes hand in hand with the deterioration of democratic systems and the attack to the Post-war paradigm that has been reported by many sources³⁷; a development that has been defined by scholars as “constitutional retrogression”, “democratic decay”, “democratic recession” or “democratic degradation”³⁸. Irrespective of the definitional issue, these expressions refer to the tendency, which has taken place in the past decade worldwide, of constitutional liberal democratic systems to experience an incremental degradation both structurally and substantively. This process has led to new authoritarian regimes (sometimes called electoral authoritarianism, competitive authoritarianism, illiberal democracy, semi-democracy, hybrid regimes): regimes that are neither a pure democracy nor an unfettered autocracy, but that include elements of both.

As for women’s rights, regime type matters³⁹. All the indicators show that women’s rights are especially at stake in non-democratic regimes, whereas they are likely to be protected in democracies. This is intuitive, since, in order to flourish, democracies need, on one hand, societies that value autonomy, self-expression and individual freedom, and on the other, an active civil society. Within the EU, we could refer to the experience of the two countries that experienced a democratic degradation in the last decade, namely Hungary and Poland. In both countries, the *acquis* in terms of gender rights was under attack by the populist government and both

Rights in Turbulent Times”, pointed out with concern that “over the last five or ten years –probably also linked to the conflagration of crises we’ve had– things are moving backwards in many parts of the world»: <https://bit.ly/35YDqQm> The “backlash against gender equality” was pointed out also by the European Union Agency for Fundamental Rights, Challenges to women’s human rights in the EU, 2017: 21 ff.: <https://bit.ly/2TUbd04>.

³⁷ See the indicators measuring the health of constitutional liberal democracies worldwide (in terms of rights and freedoms and rule of law), developed, among others, by Freedom House (“Freedom in the World”), Bertelsmann Stiftung (“Bertelsmann Transformation Index”), the World Bank (“Worldwide Governance Indicators”), the World Justice Project (“Rule of Law Index”), and V-Democracy (V-Index).

³⁸ Ginsburg and Huq (2018).

³⁹ Tripp (2013: 515 ss.). The relationship between populism and gender is more complicated, depending on the varieties of populism: see the studies published in Spierings and Zaslove (2015), and especially Mudde and Rovirà Kaltwasser (2015:16 ff.).

are backsliding in gender equality and women's rights⁴⁰. As for Hungary, the regressive policies in this field were considered by the EU Parliament in initiating the sanctioning procedure provided by Article 7 of the Treaty of European Union aimed at ensuring that all EU countries respect the common values of the EU⁴¹. To make this conclusion even more explicit, in 2020 the Hungarian Parliament refused ratifying the Convention⁴², whereas the Polish government announced its intention to withdraw from the Istanbul Convention⁴³.

For these reasons, the struggle for women's rights and against gender-based violence is now more crucial than ever: at a time when liberal democracy is questioned and challenged by new authoritarian regimes and it is losing its appeal for an increasing number of voters even in stabilised democracies, this struggle would fuel the values upon which liberal democracy is based.

Therefore, it can benefit not only the dignity and the rights of the direct victims of gender violence, but, more generally, the victims of any oppression and, ultimately, our common goal: peace.

⁴⁰ As for Poland, the Gender Equality Index decreased from 2015: see European Institute for Gender Equality (EIGE) 2019 Report on Poland, <https://bit.ly/3oVllv4>. Similar situation for Hungary, where during her visit from 4 to 8 February 2019, the Commissioner of Human Rights of the Council of Europe found that Hungary is backsliding in gender equality and women's rights. In fact, with 50.8 points out of 100, the country holds the second to last place in the 2017 Gender Equality Index of the European Institute for Gender Equality and has even gone down two positions since 2005": CommDH(2019)13 especially 31 ff.

⁴¹ As for Hungary, see European Parliament, Resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to art. 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2017/2131(INL)) P8_TA(2018)0340 <https://bit.ly/3erIn8k>.

⁴² Hungary has not ratified the convention, as critically pointed out by the Commissioner of Human Rights: CommDH(2019)13, 31 ff. In May 2020 the Hungarian Parliament rejected the proposal of ratification: <https://bit.ly/3oTjy9T>.

⁴³ <https://bit.ly/38bsDow>. Poland ratified the Convention on April 27, 2015, contextually approving a Declaration according to which "The Republic of Poland declares that it will apply the Convention in accordance with the principles and the provisions of the Constitution of the Republic of Poland". The Declaration was contested by several States: Austria, Finland, the Netherlands, Norway, Sweden, Switzerland, according to which it amounts to an inadmissible general reservation. A debate on the withdrawal is also open in Turkey: Doğan (2020).

Bibliography

- Bassu, C. (2020). Parità di genere ai tempi del Coronavirus: l'impatto diretto e indiretto della crisi sanitaria sui diritti delle donne. *Percorsi costituzionali*, 595.
- Bettio, F., Ticci, E. and Betti G. (2019). A Fuzzy Index and Severity Scale to Measure Violence Against Women. *Social Indicators Research*, 148 (1), 225-249. Available at: <https://doi.org/10.1007/s11205-019-02197-7>.
- Brownmiller, S. (1975). *Against Our Will. Men, Women and Rape*. New York: Simon and Schuster.
- Calloni, M. (2007). Violenza di genere. In M. Flores (ed). *Cultura dei diritti e dignità della persona nell'epoca della globalizzazione* (pp. 1372-1376). Torino: UTET.
- Cocchiara, M. A. (ed) (2014). *Violenza di genere, politica e istituzioni*. Milano: Giuffrè.
- D'Amico, M. (2020). Emergenza, diritti, discriminazioni. *Rivista del Gruppo di Pisa*, 2, 16-42.
- Doğan, S. (2020). *Istanbul Convention: Violence, Women and Turkey*. Disponibile en: <https://bit.ly/32d8s5Z>.
- Ellis, M. (2007). Breaking the Silence: Rape as an International Crime. *Case Western Reserve Journal of International Law* 38, 225. Available at: <https://bit.ly/34V-QtCQ>.
- Feci, S. and Schettini, L. (eds.) (2017). *La violenza contro le donne nella storia*. Roma: Viella.
- Frugoni, C. (2019). *Paradiso vista inferno. Buon Governo e tirannide nel Medioevo di Ambrogio Lorenzetti*. Bologna: Il Mulino.
- Ginsburg, T. and Huq, A. Z. (2018). *How to Save a Constitutional Democracy*. Chicago: University of Chicago Press. Available at: <https://doi.org/10.7208/chicago/9780226564418.001.0001>.
- Ginsburg, T. (2018). War and Constitutional Design (version 2.0). *Paper presented in the X World Conference of the International Association of Constitutional Law, Seoul, June 2018*.
- Groppi, T. (2020). *Menopoggio. Lo Stato costituzionale nel XXI secolo*. Bologna: Il Mulino.
- Grosz, E. (1995). *Space, Time, and Perversion: Essays on the Politics of Bodies*. New York: Routledge.
- Hudson, V. M., Ballif-Spanvill, B., Caprioli, M. and Emmett, Ch. F. (2014). *Sex and World Peace*. New York: Columbia University Press.
- Mackinnon, C. A. (2012). Gender in Constitutions. In M. Rosenfeld, A. Sajò (eds). *The Oxford Handbook of Comparative Constitutional Law* (pp. 406 y ss.). Oxford: Oxford University Press. Available at: <https://doi.org/10.1093/oxford-hb/9780199578610.013.0021>.
- Mudde, C. and Rovirà Kaltwasser, C. (2015). Vox Populi or Vox Masculini? Populism and Gender in Northern Europe and South America. *Patterns of Prejudice*, 49 (1-2), 16-36. Available at: <https://doi.org/10.1080/0031322X.2015.1014197>.

- Novarese, D. (2014). Sul corpo delle donne. Stupro e debitum coniugale in Italia fra otto e novecento. In M. A. Cocchiara (ed.). *Violenza di genere, politica e istituzioni* (p. 233). Milano: Giuffrè.
- Ofstad, H. (1989). *Our Contempt for Weakness. Nazi Norms and Values*. Stockholm: Almqvist and Wiksell International.
- Pezzini, B. (2009). L'uguaglianza uomo-donna come principio anti-discriminatorio e come principio anti-subordinazione. In G. Brunelli, A. Pugiottio, P. Veronesi (eds.). *Scritti in onore di Lorenza Carlassare*, III (p. 1141). Napoli: Jovene.
- Pezzini, B. and Lorenzetti, A. (2020). *La violenza di genere dal Codice Rocco al Codice rosso. Un itinerario di riflessione plurale attraverso la complessità del fenomeno*. Torino: Giappichelli.
- Pinker, S. (2011). *The Better Angels of Our Nature. Why Violence Has Declined*. New York: Viking Books.
- Pitkin, H. F. (1973). *The Concept of Representation*. Berkeley: University of California Press.
- Radford, J. and Russell, D. E. H. (1992). *Femicide: The Politics of Woman Killing*. New York: Twayne.
- Roy, G. (2016). Gender-Based Violence Against Women in India: A Step Forward or A Step Backward? An Explonatory Study. In S. Pozzolo and G. Viggiani (eds). *Investigating Gender Based Violence* (pp. 124 y ss.). London: WS and H Publishing.
- Salvatici, S. (2007). Diritti delle donne, diritti umani. In M. Flores (ed). *Diritti Umani. Cultura dei diritti e dignità della persona nell'epoca della globalizzazione* (pp. 314-357). Torino: UTET.
- Sands, P. (2016). *East West Street. On the Origins of "Genocide" and "Crimes Against Humanity"*. London: Weidenfeld and Nicholson.
- Scotti, V. (2017). Protecting women from rape. A comparative analysis in the light of the Istanbul Convention. In G. Piccinelli, I. Kherkheulidze and A. Borroni (eds.). *Reconsidering Gender Based Violence and Other Forms of Violence Against Women. Comparative Research/Analysis in the Light of the Istanbul Convention* (pp. 124 y ss.). Tricase: Libellula Edizioni.
- Sikkink, K. (2017). *Evidence for Hope. Making Human Rights Work in the 21st Century*. Princeton: Princeton University Press. Available at: <https://doi.org/10.2307/j.ctvc77hg2>.
- Spierings, N. and Zaslove, A. (2015). Gender and Populist Radical Right Politics. *Patterns of Prejudice*, 49 (1-2), 3-15. Available at: <https://doi.org/10.1080/0031322X.2015.1023642>.
- Stedman, B. (2013). The Leap from Theory to Practice: Snapshot of Women's Rights Through a Legal Lens. *Merkourios*, 29 (77) 4-28. Available at: <https://doi.org/10.5334/ujiel.bt>.
- Tripp, A. M. (2013). Political Systems and Gender. In G. Waylen, K. Celis, J. Kantola, and S. L. Weldon (eds.). *The Oxford Handbook of Gender and Politics* (pp. 515). Oxford: Oxford University Press. Available at: <https://doi.org/10.1093/oxfordhb/9780199751457.013.0020>.

- Walby, S., Towers, J., Balderston, S., Corradi, C., Francis, B., Heiskanen, M., Helweg-Larsen, K., Mergaert, L., Olive, Ph., Palmer, E., Stöckl, H. and Strid, S. (2017). *The concept and measurement of violence*. Bristol: Policy Press. Available at: https://doi.org/10.26530/OAPEN_623150.
- Weinrib, L. E. (2006). The Post-War Paradigm and American Exceptionalism. In S. Choudhry (ed.). *The Migration of Constitutional Ideas* (pp. 84-112). Cambridge: Cambridge University Press. Available at: <https://doi.org/10.1017/CBO9780511493683.004>.
- Woolf, V. (1938). *Three Guineas*. London: Hogarth Press.
- Zagrebelsky, G. (2018). *Diritto allo specchio*. Torino: Einaudi.