RESPONSIBLE RELATIONS.
A THEORETICAL READING OF THE EVOLUTION OF POLITICS OF EQUAL OPPORTUNITIES

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“We want … to found not responsibility in freedom, but freedom in responsibility.
We say: man is not responsible because he is free, but he is free because he is responsible”
(Simmel [1949], 1968)

Introduction

My paper is focused on feminist epistemological critique of law to the legal terminology of protection or tutelage, which is typical of the history of labour laws. It arose from a research project that had the objective of verifying the impact of the application of the Italian legislation on equal opportunities.

My hypothesis it is likely an attempt of using the category of responsibility for interpreting the present development of equal opportunities policies. In the last years these politics were applied on participation and social promotion of women.

I believe that not even the laws relating to equal opportunity have succeeded until now in modifying this “tutelary” language. I would like to begin by introducing the two key points that I have considered worth investigating, and then focus on a brief reconstruction of the ongoing changes that I think are central to the theme.

During the last hundred years, the law has increasingly normalised relationships previously left to the market or to tradition. In studying this process, which has undergone moments of sudden acceleration, we should not forget that the law is, in itself, a way of engendering social relations (whether it disciplines work or regulates family relations). In Italy, since the end of the 19th century, it has been possible to observe a hypertrophied development in labour law, a process that was more and more accelerated during the years of industrialisation. The juridical process and its results reflected the homogeneity of the great mass of workers in a labour market that presented itself as easily ‘codifiable’, but the homogeneity has been disturbed and distorted in recent years, making a reversal of this process necessary. According to recent estimate, the so-called ‘individual work’ (i.e. it is not governed by collective contracts) has already reached 53% of labour force (Bronzini 2002). These changes push to select a core of common norms ruled from the labour law and collective contracts. These norms ought to be distinguished from others that can be referred to individual or collective autonomy. The relationship between collective rules and individual rights sets up the new frontier of bargaining (Treu 2001).

Protected Women

The world of production, and the law regarding it, is based on an (apparently) neutral subject, free from the relations present in the real world, except for those that ‘reduce’ it to a trade union category (categories based more upon similarity than on social networks). But when the world of production regulates the difference or
the action of weak subjects (in primis women), the main actors always adopt a language of tutelage. This has happened even in the passage from protection to ‘equal opportunity’. On one hand, the legislation of equal opportunity overcomes the individualistic concept of law by considering women as a homogeneous category – for belonging to a group is understood as the opposite of individuality, rather than as a constituent part of it. But on the other hand, this is precisely one of the reasons for the critique put forward by many women: equal opportunity in its diverse forms hides differences and contradictions, and sees men and women as two undifferentiated units. Recognising the differences between them does not therefore necessarily guarantee equal opportunity.

The legal sphere has not been able to metabolise the idea of difference – and we need to ask how this idea can act within a juridical system founded on the principle of equality, in which a law based on the concept of the person deprives women of their specific nature. At the same time, the domestic private sphere – particularly the sphere of family - is still based on a rigid sexual division of roles that recognises feminine difference, only to sanction inequality. In both cases the law refers to a universal subject that hides the sexual character of the law. The Italian case, that presents several contradictions, is particularly interesting if we try to distinguish the effects of juridical culture from those of ‘traditional’ culture. The common juridical culture has always attributed a value to the law in itself, often regardless of its content. This ‘blind’ faith is also reflected in the enormous number of laws that our Parliament produces every year.

Law based on the individual makes contract into the culmination of the relationship between subjects. Many experts have revealed the aspect of dominance, and the consequent inequality in power, that contract conceals. But the idea of group rights can also be read as a privilege that in reality marks the weakness of the group itself. This is why the rights of minority groups have to be protected by special laws or – in the case of labour laws in which I am most interested, the rights of women as a group.

From tutelage to guarantee

I believe it is likely that codified law places more obstacles in the way of equitable labour legislation – even though these obstacles are sometimes presented as guarantees. For an extremely clear example, after fifty years, the Italian Constitution, in the same article that refers to equality of the sexes at work, continues to sanction the essential family function of women, despite the presence of a women’s liberation movement! In this case, the very law that intends to promote change by enshrining it in the constitution places a barrier against it (a barrier which, incidentally, is strengthened also by a powerful trade union tradition difficult to dislodge despite some loss of power). In this case there is a stress between rule and principle: rules should be responded and then it is basic fixing instructions precisely for acting; principles should be subscribed and then it is important looking to significance that bases both law-making and social relations (Zagrebelsky 1992).

Reconstructing the development of the law and analysing particular cases in the Regions that have produced the most in terms of juridical reflection and concrete actions, I try to reconstruct the development of affirmative action in Italy. The focal point is the effect (‘before’ and ‘after’) of the 1991 law that instituted affirmative action to attain equality between men and women. In analysing the application of the 1991 law I want to show how the prevalence of the technical-juridical aspect contributes in Italy to de-politicise the theme of the differences between men and women.

In Italy the emphasis has been mainly upon professional training and promoting women’s skills (the greater part of affirmative action has been directed to organising training courses to help women entering and re-entering the labour market). Indeed, the idea that it is indispensable to take women’s daily lives into account in order to observe their relationship with the law is one of the theoretical conquests of feminist legal thought. Furthermore, it is not possible to ignore to what extent the patriarchal tradition and traditional differences between men and women are still vigorous in Italian society. It is sufficient to look at all the work indicators on the presence of women in high positions in the economic or political world, despite the existence of a system of social protection that includes new opportunities (for example, flexible maternity leave).
At this point, my research has been orientated towards a theoretical reading of the evolution of the politics of equal opportunities making possible the use of the category of responsibility as an element of interpretation of the current direction of such politics. What is responsibility? What does it mean a culture of responsibility? And which are the social terms of responsibility?

**Exploring Responsibility**

My project started from a field research focused on implementation of the Italian equal opportunity policies. I used qualitative techniques: semistructured interviews with privileged informants (starting with the National Equal Opportunity Counsellor) and analysis of projects financed by the National Commission on Equal Opportunity.

The point of view is proper of sociology of law in a perspective of crossed fertilisation of different knowledge fields.

The results show that the anti-discriminatory aim of the legislation has not created a jurisprudence with regard to cases of discrimination, while the promotional objective has made possible the realisation of projects that have spread the culture of equal opportunities. This tension towards the social promotion takes into consideration the transformations of the job market and of the legislation and can be interpreted through the concept of responsibility. This concept includes and builds on previous concepts present in the feminist literature and it is useful at the operative level because it employs the ideas of care, autonomy, relationships, promotions and choice.

If properly operationalised from a sociological perspective, could the concept of responsibility lead to a core of guarantees without a relapse into a liberal idea (and individualistic) both of law and market? Which can be instruments that promote a responsible act? Obviously, it is necessary to be aware that institutions and social structure do not act, but erect bonds and resources for acting (Baer 1999). In brief, is it possible to catch evidences of responsible acting?

From my research, it is evident that the antidiscriminatory aim of equal opportunities legislation have had a limited impact (a jurisprudence regarding discrimination cases of both disparate treatment and disparate impact have not stabilised). The antidiscriminatory norms did not turn up to chancing women’s life in world of work.

Instead, the promotional aim of equal opportunities policies, particularly the realisation of projects of training and changing of private and public organisation, have had a promoting impact.

The lack of litigation is not the sing of a ‘malfunction’ of equal opportunities policies. It is the consequence of a different idea between men and women both of law and conflicts. The antidiscriminatory aim is linked to the idea of tutelage and it is oriented to compensation. The promotional aim thinks of changing of labour market and it is oriented to guarantees.

Notwithstanding the overstatement of labour law cases, we can observe the failure of guarantees for equality between men and women ruled by both 933/77 (Equality Act) and 125/91 (Equal Opportunity Act). In Italy we did not have a sensational case - like AT&T in the United States – that called the attention of public opinion to equal opportunities policies.

In these last years, the change of equal opportunities policies holds to the values and symbols that give meanings to acting.

Responsibility becomes social both as effect on other’s acting and as answer to the institutional and social context (May 1996). Responsibility is conceived as personal. So, subjectivity means setting choices taking into account both the context and the others people (men and women) that live in the same context. A responsible subject is neither focused on his/herself nor unchangeable (Loretoni 1995).
For these reasons, it is necessary looking to the conceptual frame which could be considered ad theoretical frame of social relationship. Could the contract be this frame? Or the frame of gift? I assume that we should look at responsibility starting from the idea that equal opportunities policies are affecting cultural, relational, normative, of values resources of women’s life.

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This is a legislative process, but mainly it is linked to feminine social practices and addresses to the inclusion of women especially in the public sphere.

The semantic field of responsibility is base on the following keywords: choice, autonomy, subjectivity, contingency, reciprocity, answering, reflexivity, relation, intersubjectivity.

The unsolved problem is using this concept in the sociological research choosing the ‘right variables’ for interpreting changes of responsible acting: when people are more responsible? When less? Let us look to promotion, choice, autonomy, participation, relations and care.

The concept of promotion signifies the provision of the means to participate in the job market in opposition to the idea of sanctioning discriminatory acts; promotion also signifies knowledge of the context and the acquisition of new skills.

Autonomy is intended in a relational sense, as the capacity to overcome the traditional differentiation of roles, and is a necessary presupposition for choice.

Choice is correlated also to the social structure and institution, whereas relations are the script used by women. Choice depends from a subject like to construct relations and how he/she want them to work starting from an idea of autonomy that consider others’ experiences: “In addition to criticizing this individualistic conception of autonomy ... care ethics also criticizes the status the Western tradition has granted to autonomy. Autonomy has been thought of as the pinnacle of human achievement, the source of human dignity, the mark of moral maturity. Yet the capacity to form and maintain relationships, which has received little attention in the Western philosophical tradition, is arguably just as much of an achievement as autonomy, and just as important for moral maturity. Autonomy is one human good, and the ability to make and sustain connections with others is another; both are necessary for a full and rich human life” (Keller 1997).

Diana Meyers stresses how a specialisation is necessary for practising autonomy and how autonomy is grasped by other subjects: consequently, she emphasises that for becoming autonomous, a subject should get an appropriate social education through caring (Keller 1997). Autonomy and choice depend on how a subject would make social relation work.

The concept of participation is a fundamental variable for promoting full women citizenship through the involvement of women in the decision making process, starting from their difference/specificity.
The idea of care in not alternative to the idea of justice: care construes non-hierarchical relationships and it is one of most important part of acting, so that many feminist scholars hope a space for care in the public sphere.

The spread of care in the public sphere could be realised through a promotional legislation, as the possibility of leave for fathers. At the same time, it is important to make people choice to care someone else.

Responsibility is strictly linked to the idea of care, but greatly underlines the issue of the choice to take care of, its promotion and the possibility of an autonomous action, far from the traditional engendering socialisation. One can thus connect the individual and autonomous action with the relational idea that the law has difficulty in recognising: “Relation rights and responsibility should draw attention to the claims that arise out of relationships of human interdependence. Those claims should entitle people to explore a range of relationships and in so doing to draw sustenance from the larger community” (Minow - Shanley 1998, p. 511).

“We have not relationships” - Victoria Davion claims – “we are relations” (Davion 1993, p. 174).

Referring to this conceptual frame, it is possible to analyse from which we can stress that autonomy and ethic of care are not in opposition. The ethic of care needs autonomy, because practising capacities that are linked to autonomy allows the ‘caring subject’ to follow up critically the kind of care that he/she takes.

From this point of view, autonomy is deeply linked to the relationships among subjects and to opportunity to choose those relationships.

**Responsibility and Women’s Practices**

The idea of responsibility I intend to develop looks at decisions starting paying attention to the relations of caring present in the women experiences.

The idea of responsibility as a sociological concept takes in account the aspect of discretion. Discretion is the opposite of language of obligation and duty.

Responsibility means the capacity of answering. Responsibility comes from Latin re-spondere, that means to answer and does not match with the idea of an abstract and out of relations subject. Responsibility makes reference to the ideas of choice and risk and is connected with bounding the field of action (Melucci 2000). Responsibility makes room the personal initiative and match neither with the process of hypertrophied development of law or with the universality of values. In a world of duty (for example duties which derives from contract) there is no space for reciprocal relations, relations that are chosen, historical and engendered. Women know well how law have contributed to the control of their life and body.

Responsibility construct mutuality and relations. But how is it possible constructing responsible relations?

In an individualised society how the concept of responsibility can be developed? And which significance does it take on? And how can it be constructed and make itself useful from a sociological point of view?

The terminology of protection is still very subscribed. According to many feminist scholars we have ‘too much law’ instead of a crucial process of re-politicisation that retains a process of re-privatisation that has made many themes gone to the public sphere in the last years be back to the private sphere of the domestic or offices’ walls.

The strongest claims concerning the idea of justice are expressed as individual rights: these give strength to requests, but they can produce a collision among rights and people that claim them because the legislative frame defines claims and right-holders, can not simplify the complexity of relations.

Responsibility and law are not opposite, but complementary, even if they often come into conflict (May 1996). Rights are defended because are unsure, whereas responsibilities can be not mentioned because they are basic (Baer 1999).
The responsible act implies a project that hold all different parts of life as remedy to the hypertrophied development of law. This is not a way to a deregulation, but rules are not constructed in the sphere of law. Virgina Held (2000) said that the reign of law in a society of caring tends to decline.

Promotions and responsibility are necessary in order that a right does not became a simple and egoistic claim that forgets its social impact, even though legally valid. At this point participation is fundamental: subjects should be involved in the decision making process.

Thereby I can introduce the concept of social promotion, as it emerges from the European guidelines about Equal Opportunity. Promotion requires more that a simple legal recognition, even if recognition establishes an inalienable precondition: for enabling subjects to claim their rights, first of they should be informed about the nature of their rights, the institutional context and the procedures that permit reclaim and respect of their rights. These are inalienable instruments that promote a responsible act.

Responsibility has a procedural nature and refers to selection among choices. It is involved, with reciprocity, in the construction of subjectivity: it is not a final result, but it informs an act that changes according to subject and their multibelongings. This kind of subjectivity is constructed relationally because responsibility is a type of social relation: this intersubjective dimension embraces autonomy, choice, care and promotion. Joan Tronto emphasises how responsibility is rooted in cultural unspoken practices, rather than in formal rules or promises (Tronto 1993).

Claudia Card argues that “duty theorists study responsibility as a triadic relation of the form, ‘A is responsible to B for x’, or ‘B can hold A responsible for x’, where ‘A’ and ‘B’ range over persons and ‘x’ ranges over actions or events. The interest of duty theorists has been in assignments of such thing as credit and blame, punishment and reward, generally, in holding people to certain conduct. Responsibility, in this sense, is a correlative of rights. If A is responsible to B for x, then B has a corresponding rights against A regarding x. So understood, responsibility is about controlling people, more specifically, about the distribution of such control. Responsibility can be taken for things, beings, and states of affairs, as well as for actions or events. Where the object of responsibility is not an action or event but is something that has a welfare, or requires upkeep or maintenance, the responsibility relationship may be simply dyadic, of the form, ‘A is responsible for ‘. Now the focus is on maintenance or caretaking” (Card 1991).

Equal Opportunities policies should be constructed starting from relations among subjects, private and public. The construction of rules could be ‘relational’ because it looks to the wellbeing of relations that depend from subjects that are involved. Responsibility can not be defined abstractly, out of the concrete relations within a concrete context of social connections.

The interaction lead by responsibility lays the basis for the recognition of the other’s subjectivity and permit to express, through the answer of the other, his/her own subjectivity. A responsible person should give attention to the impact of his/her act on other’s people involved in these relations: this impact should have a role in the decision that the responsible subject takes. It is a reflexive process.

By using this conceptual framework, linked to women experiences, we can speak of responsible acts.

Conclusion

I would like to conclude going back to labour law and to changes that I showed in the first part of my paper. My statements can be fruitful looking to relations of the world of labour.

Labour law is oriented to promoting rather than protecting; that means enlarging opportunities for men and women and improving workers life conditions. Indeed, the enlargement of these tasks requires to search for a new balance among public norms, collective regulation and personal responsibility. This collaboration can stop both a drift to an uncontrolled deregulation, hidden by the civil law of contract, and nostalgic and encouraging idea of tutelage (Treu 2001).

We should think of the morphological change of labour: this change is already in progress and takes into account interruptions from productive activity for family, education and professional training. These
interruption can not be anymore considered periods of inactivity and be used for discriminate persons denying promotion. These periods should be looked as occasions for professional and personal enrichment.

Supiot’s Report (Supiot 2003) puts forward some proposals, as the idea of special drawing rights. These rights recognise to workers different kinds of leaves so they can commit themselves into the social and reproductive activities to produce a better society - though, it needs time and energy. Caring, training, education, social commitment, voluntary service would be recognised, legitimated and promoted from law as public good.

Thereby, it is possible to replace the paradigm of labour with the paradigm of working conditions of people. This condition is not defined through the practices of a profession, but includes the different forms of working (for market or not) that each person can carries out along his/her life, acting responsibly.

More opportunities to enter the work place are offered to women just now, when market’s pressures are opposite to the regulation in favour of a deregulation of relations between employers and employees. But people that should be protected, can not be responsible. How can we say to people that can (or must) take care of other people (especially mothers), that they ought to be protected and can not take decisions?

Conversely, who takes responsibility to fix rules, should be at least potentially responsible for being called to answer their decisions.

For example, policymakers play a role that assumes a certain grade of responsibility. If the contractualist idea remains fundamental, the law that is produced is that we already know, a law that simplifies, neutralised and erases relations. It is the law that made women subject to protect, ruling their need of tutelage and homogenising the heterogeneity of women’s choices.

For all these reasons, the projects that are aimed to equal opportunities should be seen as investments rather than as costs. We can not think that this aim should be reached only through the legislation. Investing in ‘equal opportunities’ means to refer, in the decision making process, to the aspects that women have developed starting from their practices.

How can we make women choice? First of all, they should be involved in the decisions that regards themselves. But, also, they should be endowed of skills necessary for facing the labour market without being subjected to it. This means that women should choose which relations they want to take care of.

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