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“EGUAGLIANZA, DONNE E DIRITTI”

“EQUALITY, WOMEN AND THE LAW”

Equality, Women and the Law, edited by Alessandra Facchi, Carla Faralli and Tamar Pitch, was published in 2005 (by *Il Mulino Editore*) after the premature death of the author, Letizia Gianformaggio. Never translated into English, the book constitutes a milestone for Feminist Legal Theory. The main objective of this text is the valorisation of the legal principle of equality, in contrast with the critiques raised by the Theory of Difference and by the postmodernist debates in law.

The analysis of the author is conducted with a meticulous analytical approach, and focuses on the interaction between equality and difference: these terms are useful for the debates both on the feminist legal studies and on the theories of equality.

Letizia Gianformaggio’s argumentation aims at dissolving the dichotomy between equality and difference by demonstrating their compatibility. According to the author, the confusion generated by the overlap between equal treatment and the treatment of a group of individuals “as if they were equal” has to be overcome. This analysis involves a critical approach to the concept of equality in its “evaluative” meaning, which affirms that differences have to be considered in relation to a single comparative entity. Nonetheless, even acknowledging the bonds of the classic formulation of the principle of equality in these terms, Letizia Gianformaggio demonstrates how it is possible to build other meanings inside the boundaries of the legal system itself. Indeed, the author identifies the necessity of equality as a tool of valorisation of singularities, pursued through

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the politics of difference, as a consequence of the universality of fundamental rights. This specific legal equality is considered compatible with the Theory of Difference since the reclamation of diversity basically addresses the protection of the personal dignity considered in its specificity.

In Letizia Gianformaggio's work, the theoretical survey, conducted with analytical precision, was always linked to an inquiry of the legal institutions of the social life that surrounded her.

The critique of the consideration of equality as "sameness" concretely addressed gender difference by considering a series of questions, such as the controversial issue of surrogate motherhood. On this matter, both the author's refusal of the assimilationist approach, and her consideration of the specific nature of female gestation within the rules of its negotiation are significant.

Starting from the biological diversity of female and male procreation, which determines a natural and different bond between the expectant mother and the baby, the author considers as appropriate the decision of the English Court to allow women to give up their baby only after birth, and not at any previous moment, even when the agreement is already defined. This differential treatment is not considered as discriminatory, because it is rooted into a criterion, the material one of the maternal experience, which, if not properly valorised, would lead to the denial of its specificity.

This recurring bond between equality and difference in their assessment, according to which the former is functional to the valorisation of the latter, is to be seen in the author's wider vision of the legal phenomenon as characterized by two inseparable elements: facts and values. In accordance with this vision, equality cannot be defined only in descriptive terms, but it has to be set as an orientating value within the legal system.

The remarkable work of analysis made by the author represents a rare example of passion and courage, when facing the daily practice of law as a service for civil society. Quoting her words: "Our first engagement as female jurists is for women's equality and rights" (Chapter XIV).

LETIZIA GIANFORMAGGIO was born in Spello, Perugia, in 1944. She graduated in Law at the University of Perugia with a thesis in Philosophy of Law supervised by Professor Uberto Scarpelli. She obtained an annual contract at the *Consiglio Nazionale delle Ricerche* (National Italian Council of Research) and she taught Moral Philosophy at the University of Pavia. In 1975 she started teaching Philosophy of Law at the Faculty of Law of the University of Siena and, then, at the University of Ferrara. She expired in Florence in 2004. She was one of the founders of “GIUDIT – *Giuriste d’Italia*” in 2001, an association whose members are Italian women jurists, sensible to gender difference, debating and researching law and politics. She worked on a wide range of themes such as juridical argumentation, equality as well as classical authors *i.e.*, Helvetius and Hans Kelsen. During her academic activity, she did several studies about women and the law. She can be considered one of the most prominent Italian feminist legal theorists of our times.

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