

/PRIKAZI

Zara SAEIDZADEH, PhD*

Vujadinović, Dragica, Antonio Álvarez del Cuvillo, Susanne Strand. 2022. *Feminist Approaches to Law: Theoretical and Historical Insights*. Springer International Publishing AG, 150.

“Education is dangerous, because schools and colleges do not just reproduce culture, they shape the new society that is coming into existence all around us.”

Raewyn Connell (2012a)

This book is the first in the Gender Perspective in Law series, part of the project titled: New Quality in Education for Gender Equality – Strategic Partnership for the Development of Master’s Study Program on Law and Gender.¹ The aim of the book is to lay the theoretical foundation for advancing legal education through a gender equality approach. What is convenient about this book is that it is written in a way that is not only suitable for students, but also is beneficial for practitioners, researchers, and activists within a variety of multidisciplinary fields of humanities and social sciences.

* Postdoctoral Researcher in gender studies, Örebro University, Sweden, zara.saeidzadeh@oru.se.

¹ LAWGEM. For more about the project visit <http://lawgem.ius.bg.ac.rs/>.

The editors of the book are well-situated scholars of political and legal sciences, with special expertise in the area of political and legal philosophy, gender equality, and feminist methodologies. The editor's choice of collaborators clearly indicates their intention to raise awareness about gender inequalities in law. It also emphasizes their contribution to the development of legal and structural gender equality as the editors themselves claim (p. v) this book is an investment for the future goals of "gender justice, more social justice and human rights." Hence, the authors of each chapter address different forms of gender inequalities within various laws and legal systems, providing strategies to overcome institutionalization of gender inequalities in different contemporary societies.

The book achieves its aims by offering the reader, in each chapter, thorough reflections on different theories, perspectives, and practices of feminists' trajectories in their struggles against various forms of gender-based inequalities within law and legal system. However, this structure is not fully reflected in the title of the book *Feminist Approaches to Law: Theoretical and Historical Insights*. The content of the book evolves around the question of how feminist struggles for legal transformation have taken shape historically to achieve gender equality in law. Without *gender* and *gender equality*, the title does do justice to the overall aim of the book, which is to highlight the gender equality approach. Moreover, it implies that all feminist approaches to law are based on gender equality, which is not entirely correct as we have witnessed the rise of gender critical feminists, especially in the past several decades in Europe.

Problematizing traditional legal scholarship, its limits, and the dominance of white male objectives in knowledge production, feminist have taken variety of theoretical approaches to criticize and reform laws and legal systems that are being created based on unequal power relations. The main feminist approaches to laws have been informed by liberal, radical, postmodern, and intersectional feminist theories, at least in the West. In this book, being heavily devoted to Critical Legal Studies, the authors introduce some of the most important feminist epistemological and methodological approaches to legal studies, including Critical Race Feminism, Queer Legal Theory, and Feminist Intersectionality. Each chapter carefully addresses several important and globally identified gendered legal policies and practices around the concept of gender, structural racism, queer lives, the institution of family, and women's sexuality.

The authors splendidly discuss and problematize two crosscutting themes in their studies of laws and legal systems across different contexts. The first element is the dominance of patriarchies, which they show not only is present in the legal sciences but also is built into the legal systems,

and the second element is the perpetuate status subordination of people on the basis of their gender, sexuality, class, race and ethnicity within law. It is evident in almost every chapter of the book that the epistemological and methodological suggestions for the legal reforms are developed by postmodern approaches to gender and gender relations, which emphasize the social construction of gender in law and invite lawmakers to 1) break through the heteronormative male and female binary in defining gender, 2) include multiple factors (e.g., gender, sexuality, class) in prohibiting racism, 3) recognize diverse sexual orientations and gender expressions in regulating marriage, and 4) acknowledge the autonomy and sexual rights of women.

It could not have been timelier to see the publication of this book in the current climate of anti-gender campaigns across the world, especially in Europe. The anti-gender campaigns (now referred to as anti-gender movements, under the influence of right-wing populism) work to resist gender equality and sexual rights policies focusing on fundamental issues, such as marriage, reproductive rights, gender mainstreaming and the very notion of gender, by using the formulation of “gender theory” and/or “gender ideology” (Kuhar, Zobec 2017; Paternotte, Kuhar 2018). The anti-gender movements, namely in Europe and Americas have actively and systemically targeted the process of knowledge production for the past decade. To them the education system is the place where feminist ideologies of gender are used to sexualize and brainwash students. As a result, gender studies are constantly criticized for being ideological and non-scientific which has led to gender studies departments being closed down in some countries, as well as the banning of textbooks that have gender perspectives or draw on gender equality in schools (Kuhar, Zobec 2017; Paternotte, Kuhar 2018; Sosa 2021). As I am writing this review, the state of Florida in the USA is approving the ban of instruction about sexual orientation and gender identity in all grades, at the request of Governor Ron DeSantis (Izaguirre 2023). Moreover, anti-gender campaigns are moving towards demolishing postmodern and poststructuralist research in social sciences and humanities, because postmodern researchers do not produce knowledge based on essentialist understanding of male and female nor do they build on natural theory of masculinity and femininity. Instead, they problematize unequal power relations and see reality as socially and discursively constructed. I consider this book to be a well-structured scientific response to all the abovementioned strategies and mobilizations of anti-gender movements against women’s rights, LGBTQI+ rights, as well as the rights of non-Western and non-white people. Thus, I dare to say that this book is an example of

a good fight against the anti-gender movements' fundamentalism, racism, nationalism, and the attack on the legitimacy of gender knowledge, research and education.

The book starts with a critical analysis of two prominent political thinkers Aristotle and Rawls by Dragica Vujadinović, who discusses mainstream political theories that have for long developed from the privileged perspectives of males. Men who were and continue to be oblivious to their patriarchal values and constantly fail to address gender equality. Their theories exclude the views and experiences of women and other genders, something that she calls a "gender incompetent history of political philosophy" (p. 1). Thus, she argues that modern and contemporary theories, developed by scholars like Rousseau, Schopenhauer and Nietzsche, can promote patriarchal values, misogyny and unequal power relations such as those embedded in far-right populist and neoconservative and sometimes neoliberal values, which do not recognize women as autonomous political and legal subjects but rather as subjects of traditional gendered roles. Therefore, she proposes that political theories should be reconstructed with the perspectives of postmodern feminist scholars and activists, which include gender equality and an intersectional approach, through this chapter, Vujadinović prepares the reader for what the book embarks to offer in the next five chapters.

In the second chapter, Amalia Verdu Sanmartin provides a critical stance towards the use of the concept of gender in law, addressing the law's heteronormative binary understanding of gender while showing different feminist epistemological and methodological approaches to gender, all of which are stimulating. However, the author does not draw on the fact that the Anglophone understanding of the concept of "gender" is problematically universalized by Western scholars and scholarships. Moreover, the author's historical account of the use of gender in legal feminism is bound to Anglophone Euro-North American feminism – which is usually referred to as the waves of Western feminist movements, dismissing the understanding of gender in different languages, cultures and social settings. The author takes the reader thorough the process of the conceptualization of gender in the Anglo-American world but does not refer to the concept of sexuality in the Western scholarship. It is true that sexuality and gender are different, but I believe that they are not separable and as such cannot be studied separately, especially in defining gender. Gender is a matter of social relations. Gender is not just about identity, power or sexuality, it is about all of these at once (Connell, Pearse, 2009). Sanmartin concludes that there is a need for retaining gender categories, in order to allow for recognition of political subjects, while she argues for a genderless and sexless law that would prevents people from being limited to legal categories and thus could

provide them with more opportunities (p. 47). Unlike Sanmartin, scholars like Raewyn Connell (2012b) argue that de-gendering people would make it impossible to problematize structural inequalities and patriarchies that are based on gender. What I find quite rudimentary is that Sanmartin describes “genderqueer people” as an example of being genderless, as opposed to “transgender people” whom she explains (p. 47) are those “who transition only once and end up fitting into one of the established categories.” Trans studies scholars and activists would disagree with such a definition, since the dominant theoretical perception in the West is that trans disrupts notions of gender and sexuality and allows for deconstruction and reconstruction of sex and gender, i.e., the problematization of binary, fixed and universal understanding of gender.

After reading Sanmartin’s interesting reflection on the complexity of the concept of gender, I am perplexed by the author’s own understanding of sex and gender which she explains that “[b]oth sex and gender imply a binary related to the reproductive functions and genitals of the body.” Thus, she continues to propose the use of alternative language, which not only blurs the categories but also avoids new exclusions: “we should [...] probably consider concepts such as the human and the person” (p. 50). However, these terms, such as “mankind”, have been long questioned by feminists pointing out to the danger of its universal application and exclusion of women (Vujadinović, p. 5 in this book).

In the third chapter Adrien K. Wing and Caroline Pappalardo explain the emergence and importance of Critical Race Feminism among the US scholars of law, emphasizing its intersectional approach and its expansion to Global Critical Race Feminism. The authors discuss how the exclusion of the experiences and struggles of women of color by the US feminists amounted to the emergence of a legal theory that could problematize the power structure affecting the lives of women of color specifically rather than just men of color. Their eloquent description illustrates the struggle of people of color who have criticized Critical Legal Studies for its lack of attention to the role of race and ethnicity in their critical stance towards law. But then later, it was women of color in the US who criticized Critical Race Theory for not including the experiences women of color in law, which led to the formulation of Critical Race Feminism. This theory adds the underlying factor of gender into legal analyses and sees gender and race-based inequalities as a structural problem of white male supremacy. They emphasize that the nature of Critical Race Feminism is anti-essentialist, intersectional and experience-based.

Despite decades of struggles against racial discrimination in the USA, the authors rightly point out the fact that many states in the USA have banned Critical Race Theory in public schools, aiming to force schools to teach only white patriarchy (p. 68). I would also add that several states in the US have already prohibited teachers from instructing students about gender and sexuality, because it is considered “developmentally inappropriate” (USA Facts 2022). It is apparent that right-wing populist campaigns around the world fuel anti-gender movements (Paternotte, Kuhar 2018) and one of the strategies they use is to lobby policy makers (Sosa 2021).

In the next chapter, Damir Banović works on providing a definition of Queer Legal Theory, which he perceives as a notion, concept and a method. He addresses Queer Legal Theory not only as a theory or methodology but as a movement by tracing back its roots to feminism and Critical Legal Studies. Again, Banović focuses on the Anglo-American understanding of queer and queer theory and provides a precise historical overview of the development of the term sexuality and gay movement, specifically in the US, but does not really touch on the historical emergence of the term “queer” itself.

The term “queer” is an American creation, thus it means and is used differently in different parts of the world who don’t speak English. For example, “queer” in Romance language does not have the same signification as in English, therefore activists have instead used “transfeminismo” (Saeidzadeh 2016). The term “queer” was historically used to insult lesbian, gay men, bisexual and transgender people in homophobic societies, but then the non-heterosexual working class in North America gave it a positive meaning in 1950s (Namaste 1999). In the 1990s, the term was used in a form of reaction by the marginalized, against dominant heterosexuality, in the context of the US, in New York in the ACTUP movement against the AIDS crisis (Namaste 1999). So, historically, queer was developed by gay and lesbians within the Anglo-American political discourses of the time.

Queer theory has a deconstructionist approach that disrupts and denaturalizes the sexual and gender binary categories. It also brings out fluidity of gender and its plurality (Richardson 2006). Although queer theory has been important for the development of anti-essentialization and anti-identarian views, it has largely invested in conflating sex, gender, and sexuality altogether rather than distinguishing them. As Vivianne Namaste (2009) argues, Anglophone feminist queer theory have missed out on including the constitution of gender. Queer theory does not really engage with the material experiences of people who identify as trans because it does not take into account the importance of gender embodiment (Prosser 1998; Monro 2005; Richardson 2006; Connell 2012b).

I like the sentence where Banović sites Romero (2009) and writes: “it seems that the concept of queer legal theory is a paradox, having in mind the tension between the ‘queer’ and the ‘legal’” (p. 85), as I think it says everything about Queer Legal Theory. I also appreciate that Banović explains that queer theory is approached in variety of ways, depending on which epistemologies and methodologies are applied. It seems that he sides with the postmodern framework of understanding and applying Queer Legal Theory. As he draws our attention to the complexities of queer theory, Banović elaborates that Queer Legal Theory’s focus is on sexual orientation at the intersection with class, race, ethnicity, gender, or immigration status (p. 84).

Queer and feminist theories have contradicted each other since the mid-1990s. As Banović briefly mentions, some feminists reject queer theory, but he does not explain the contestations. Here again, I would like to point out the anti-gender ideas that have also poisoned the views of some feminists, who identify as gender critical feminists. “Anti-gender movements and gender critical feminists feed into right-wing, white male supremacy and vice versa” (Thurlow 2022, 13). Rejecting trans people, gender critical feminists argue that trans is a product of postmodern anti-intellectualism, which is “post-truth of the left” (Thurlow 2022, 10). Moreover, gender critical feminists reject the post-structural and queer approach and even oppose intersectionality (Thurlow 2022, 10). For example, Sheila Jeffreys (2014) denounces queer theory, arguing that it weakens feminist theory.

Banović further claims that Queer Legal Theory has emerged from feminist critical legal studies but does not specifically explain how feminist is Queer Legal Theory other than drawing on its anti-essentialist and intersectional perspectives, so it is unclear whether the author thinks Feminist Queer Legal Theory is possible.

Chapter five is a socio-historical account of family law development in various legal systems in Europe, where Marion Röwenkamp illustrates comprehensively how women were excluded from being legal and political subjects due to the domination of male patriarchies and inferiority of the women’s social legal status. Moreover, Röwenkamp reviews women’s struggles for equality in family in Europe since the beginning of 19th century (1848) and the subsequent legal reforms in various European contexts. It is fascinating to see, as the author shows, how similar the patterns of control have been and how alike women’s resistance in various European countries has been.

The author illustrates how the institution of family has been a crucial terrain of struggle for women as it has also been an important sphere of control for the state. Hence, the patriarchal family has been the seed of the patriarchal state. Röwenkamp justifiably writes: “The family was constructed to form the smallest cell of the state, the idea that only a stable family with the men as head of the household and the family’s sole legal person and citizen could form a stable nucleus of society. The women and children in turn being his legal inferior, mirrored the idea of the head of the nation and its citizens in the family” (p. 98). This did not change until women started to stand up for their rights within family law, demanding equality of rights to marriage, divorce and child custody.

As Röwenkamp discusses, family law reforms were the start of women’s movement in Europe, with legal clinics being set up as a way of helping women to fight discriminatory laws as well as raising awareness of the unequal laws. The institution of family is still one of the main areas where conservatives and anti-gender movements focus their oppressive ideas of confining women to the home. The author’s historical account of legal changes reminds us that women in Europe, including Britain, France, Germany, Austria, Greece, the Nordic countries, as well as Russia, have a long history of fighting for equality and justice – something that was not achieved overnight.

In the final chapter of the book, Nina Kršljanin takes the reader through different historical periods examining the process of legal and social changes around the notion of adultery, from being a crime against men to not being a crime at all. Kršljanin’s analysis of legal history shows how unequal power relations, subjugation of women as the property of men, and the lack of sexual rights in various legal systems have played a role in meting out heavy punishments to women and affording impunity to men in cases of adultery.

It is fascinating to learn from this chapter that in some contexts, during Antiquity, men (the husband) were given the right to kill the adulterous wife and/or the adulterer. Later, by the turn of the 21st century, many countries underwent legal reforms. However, there are still countries, such as Iran, where the contemporary legal system is still patriarchal and gives the husband the right to kill both his wife and her lover if he catches them *in flagrante* (Iran’s Islamic Penal Code, Art. 630). If the husband does not kill them, the state will. According to the law, the punishment for married perpetrators of adultery is stoning to death if proven by eyewitnesses, otherwise it is 100 lashes for each party (Iran’s Islamic Penal Code, Art. 225).

It is also interesting how the author shows that the majority of the countries that criminalize adultery are Muslim states. What I feel is missing in Kršljanin's historical analysis is the account for women's struggles against criminalization of adultery and consensual sex in these Islamic countries, as she gives a historical overview of Muslim legal criminalization of adultery, or *Zina* in Arabic, but she does not draw on women's resistance. I appreciate that the author focuses on the Western (or as she puts it "Eurocentric") societies' mobilization against criminalization of adultery and thus continues to mention all the reasons why contemporary Western societies do not accept criminalization of adultery, including the individual rights to privacy, growing forms and varieties of open relationships – which do not threaten the institution of marriage. Therefore, adultery is seen as a private issue in such societies, to be dealt with without the involvement of the state. Very interestingly, the issue of gender is not addressed in these reasonings, by which I mean that none of the reasons outlined by the author against criminalization of adultery reflect the ways women have been subject to aggravated forms of structural violence. On the other hand, Islamic feminist scholars emphasize the issue of gender and violence and argue that criminalization of adultery by Islamic states legitimizes violence against women through the regulation of women's sexuality (Mirhosseini 2011). Nonetheless, Kršljanin writes about "the double standard in the application of adultery laws" (p. 145) by which she means "discrimination and subjugation of women" (p. 145), instead of emphasizing the issue of gender inequality and gender-based violence with regards to adultery laws.

With its capacity to enhance legal education, this book is a great contribution to the process of knowledge production, criticizing the malestream objective "truth", and adding to the gender knowledge of activists, scholars, practitioners, and professionals at the structural, institutional, and individual levels, on their path to achieving social justice. Finally, this book is an excellent example of a good fight against the ongoing attacks on gender, race, and sexuality around the world – attacks that we are witnessing every day because of the global backlash against gender equality, sexual rights, and the lives of people of color.

REFERENCES

- [1] Connell, Raewyn. 2012a. Just education. *Journal of Education Policy* 27(5): 681–683.
- [2] Connell, Raewyn. 2012b. Transsexual Women and Feminist Thought: Toward New Understanding and New Politics. *Signs: Journal of Women in Culture and Society* 37(4): 857–881.
- [3] Izaguirre, Anthony. 2023. “Don’t Say Gay” expansion requested by DeSantis approved. *Airdrie City News*. April 23. <https://www.airdrietoday.com/beyond-local/dont-say-gay-expansion-requested-by-desantis-approved-6879670>, last visited 18 May 2023.
- [4] Jeffreys, Sheila. 2014. *Gender Hurts: A Feminist Analysis of the Politics of Transgenderism*. New York: Routledge.
- [5] Kuhar, Roman, Aleš Zobec. 2017. The Anti-Gender Movement in Europe and the Educational Process in Public Schools. *CEPS Journal* 7(2): 29–46.
- [6] Mir-Hosseini, Ziba. 2011. Criminalizing Sexuality: Zina Laws as Violence Against Women in Muslim Contexts. *SUR-Int’l J. on Hum Rts.* 8: 7.
- [7] Monro, Surya. 2005. *Gender Politics: Citizenship, Activism and Sexual Diversity*. London: Pluto Press.
- [8] Namaste, Viviane. 1999. The Use and Abuse of Queer Tropes: Metaphor and Catachresls in Queer Theory and Politics. *Social Semiotics* 9(2): 213–234.
- [9] Namaste, Viviane. 2009. Undoing Theory: The “Transgender Question” and the Epistemic Violence of Anglo-American Feminist Theory. *Hypatia* 24(3): 11–32.
- [10] Paternotte, David, Roman Kuhar. 2018. Disentangling and Locating the “Global Right”: Anti-Gender Campaigns in Europe. *Politics and Governance*, 6(3): 6–19.
- [11] Prosser, Jay. 1998. *Second Skins: The Body Narratives of Transsexuality*. New York: Columbia University Press.
- [12] Richardson, Dianne. (2006). Bordering the theory. 19–37 in *Intersection Between Feminist and Queer Theory*, edited by Diane Richardson and Janice Mclaughlin. Basingstoke: Palgrave Macmillan.

- [13] Saeidzadeh, Zara. 2016. Möte med Susan Stryker: Om trans, trans* och Framtidens Forskning [Meeting with Susan Stryker: About trans, trans* and future research] (translated by Henrik Gundenäs), *Tidskrift För Genusvetenskap*, 37(4): 92–99.
- [14] Sosa, Lorena. 2021. Beyond gender equality? Anti-gender campaigns and the erosion of human rights and democracy. *Netherlands Quarterly of Human Rights*, 39(1): 3–10.
- [15] Thurlow, Claire. 2022. From TERF to gender critical: A telling genealogy? *Sexualities* 0(0):1–17. <https://doi.org/10.1177/13634607221107827>
- [16] USA Facts. 2022. Which states passed laws restricting school curriculum? December 7. <https://usafacts.org/articles/which-states-passed-laws-restricting-school-curriculum/>, last visited 18 May 2023.