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Gender medicine from a philosophical and legal perspective: a "critical theory" of medical knowledge?

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Abstract. Gender medicine is a very interesting field of research, on account of its critical, deconstructive and innovative function with regard to medical knowledge. Its attention to gender is also likely to favour dialogue with other theoretical and research perspectives, first and foremost with sociology and philosophy of law. In these disciplines, in particular, over the past few decades we have witnessed a special attention to "gender"-based discrimination, considered as a mechanism by which the various societies have historically attributed individuals roles and statuses, imposing what we know as "gender identity". Over time, this consideration has led to the gradual emersion of women's political and legal standing, thereby favouring the recognition of their full entitlement to rights. The latter undoubtedly also include the right to health, which gender medicine favours in its effectivity. By adopting a legal standpoint, the Authors discuss the origins and recent history of "gender criticism" to highlight its similarities with gender-specific medicine, which would appear to act as a critical theory of medicine. Indeed, they share the presuppositions, strategies and purposes: the equal promotion of differences and the effectivity of rights.

Key words. Gender medicine, gender criticism, critical theories, equal promotion of differences.

Gender medicine is a very interesting field of research for sociology and philosophy of law, especially on account of its critical, deconstructive and innovative function with regard to medical thought.

In addition, this new approach to medicine, would also appear to be particularly well-suited to an interaction between the various areas of knowledge and disciplines as, by adopting a gender-based approach, it opens its consideration up to contamination by other theoretical and research perspectives.

Thoughts on gender: the theoretical background

From a sociological and legal point of view, "gender" has "many of the characteristics of a social institution: it classifies, regulates, disciplines, involves cognitive models and, lastly, by classifying it makes a distinction between who is in and who is out"[1]. In this way, gender attributes individuals (socially constructed) roles, which within the different societies have caused the imposition of what we call "gender identities" (the "man" subject and the "woman" subject), offering a serialised and stereotypical vision of status.

In the process of a gradual affirmation of these roles and statuses, law has intervened sometimes helping to reinforce them, sometimes imposing them through the adoption of specific legal standards and sometimes by deconstructing them.

To be honest, sociological and legal acquisitions concerning gender have a relatively recent origin, which owes a great deal to the theoretical consideration of women: thanks to the fight for rights and freedoms since the late 1700s, we have gradually come to discover how the subject of law, which is in theory "abstract", on a practical level has a male identity. Here paramount importance is taken on by the work of Olympe de Gouges, who in 1791 declined into the feminine the famous Declaration of the Rights of Man and of the Citizen drawn up during the French Revolution. It was this "duplication" – on the basis of which it becomes possible to talk about both the rights of man and of the citizen and those of woman and of the citizen – which for the first time showed that the subject of law (and rights) is neither unitary nor unique, rather it presents a number of identities and expresses a number of statuses[2]. Therefore, since the end of the 1700s, women – although not only women, as we learn from the late 19th century considerations of John Stuart Mill[3] – have continued to discuss the emersion of this 'new' subject (women), and to fight to make it visible in the public space[4].

Over time, this reflection has led to the progressive (and slow) emersion of women's political and legal status, obtained thanks to the discovery of those dynamics that, within theoretical consideration, are qualified as sexist, gendered and masculist[5], and also by claiming entitlement to rights, accompanied by the need to see their effectivity guaranteed.

At the current state of affairs, we certainly cannot consider this procedure concluded: despite the successful conquest of rights and despite the fact that diffuse rhetoric considers equality between men and women

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fully achieved, it is blatantly obvious that certain rights are only recognised to everyone only on paper, whereas in practice the eligible subject is still the presumed "abstract" subject, i.e. the male subject

Gender medicine: equality and differences

In the legal world, the fundamental right to health can be considered paradigmatic in this sense, because in theory it is granted to all men and women, however, in practice it works (is effective) only for men. It is a known fact that for a long time women remained on the margins of medical knowledge, in the same way that they were for a long time invisible in political, legal and social life. In a similar way to sociological and legal achievements, gender medicine, with its critical approach, offers prospects for innovative analysis and throws new light on the subjects (rather than subject) of medicine. Subjects who are no longer represented as mere "objects" of medical sciences, primarily "abstract" or "neutral", but also as people with specific qualities.

This is not to say that the female body has never been a subject of interest within medical science: the presence of studies on the so-called "bikini area" is a significant expression of the main interest that medicine has shown women's bodies. If we take a closer look, it would seem that this specific attention has in fact been dedicated to women not so much as subjects but a body-objects. In truth, this operation is not so different from that achieved a long time ago in other areas, in which the presumed neutrality of standards, institutions, practices and language coincided (and often still coincides) with the very subject that has been historically dominant (i.e. man). Consequently, in sociological and legal literature, the so-called neutral is taken as "neutral-male".

Since its advent, "gender criticism" has attempted to draw attention to specifically this mechanism, by revealing the hidden (male) identity of the subject's representation in the field of law (as well as politics and culture), in order to obtain a reform of this representation and, consequently, the inclusion of the plurality of subjects in all sectors and areas of people's lives.

"Gender criticism" has therefore led to the construction of a critical theory of law and politics that aims precisely to discover these subject-concealing mechanisms in order to rethink regulations, institutions and practices so that they are more inclusive of the differences, specificity and plurality of the statuses. There is not a single critical theory; rather, there are multiple critical theories of law and politics and they include other schools of thought such as critical race theory, disability studies and queer studies[6]. All these outlooks aim to make visible those identities (determined by colour, ability, sexual orientation, etc.) that the – presumably "neutral" – "abstract" subject is unable to represent.

In truth, the merit of the critical theories does not lie solely in the fact that they allow the emersion of the non-dominant identities that have, until now, been hidden: they have placed the emphasis on "intersectionality"[7], which takes on significant importance in the fields of sociology and law.

Intersectionality can be defined as the simultaneous presence of different identities within separate individuals that contribute to forging the identity of each one. If someone is identified through just one of the factors that affect identity – such as sexual orientation, social class or ability, for example – an approximate vision of his or her identity will inevitably be obtained. Rather, the latter should be considered as the product of the continuous interaction between the (partial) various identities that make up the subject and that lead, for example, to characterising an individual as a crossroads of multiple identities, determined by religious and cultural formation, political ideas, sexual orientation, and so on.

This acquisition is non-negligible as from a practical point of view it makes it possible to detect the existence of the "multiple discriminations" – to be understood as multiple discriminations that affect an individual at a given time, due precisely to the different identities that characterise the subject – and to give them visibility. Indeed, "Discriminating means granting treatment that is differentiated on the basis of a differentiated evaluation of subjects" in order to determine "the explicit exclusion of some individuals in the distribution of benefits"[8]. Discrimination is therefore to be intended as the application of a differentiated, in the pejorative sense, treatment, on the basis of an identity/specific ability.

The critical theories take into consideration specifically these differences-specificities to stake their claim to equal dignity, by opposing those practices that, in a more or less occult manner, make them the object of discrimination. The critical theories therefore all take their place within what, in sociological and legal literature, is known as the "dilemma of difference"[9], an expression used to refer to the ambivalent relationship between the equality of each person and the recognition of each specificity. Apparently, indeed, one term would appear to exclude another: if we recognise equality, then no difference should be legitimated; conversely, the promotion of diversity would appear to exclude the possibility of obtaining equality at the origin.

However, the "dilemma of differences" would appear to represent a false alternative as the real terms of the issue are significantly different. The principle of equality, indeed, requires equality in the formal

sense: it affirms neither that we are substantially equal, nor that we should become so, rather that we are all equally worthy, and for this reason that we are equally the holders of the same rights, so that no identity-based discrimination can be legitimated. In short, the principle of equality does not mean that women must become men in order to receive the same protection, rather it establishes that, due to the fact that women have the same dignity as men, they have an equal right to the full entitlement to and effectivity of their rights.

It therefore appears immediately obvious that the principle of equality on the one hand makes it possible to confirm the existence of any systematic violation of a right (a violation to which a solution must be found) and, on the other, by establishing that we are equally worthy (and therefore "deserve" the same protection and guarantees), it does not require in any way that individuals must conform to a single model. In other words, the principle of equality – in a *substantial* sense, does not act by removing differences, by reducing plurality to the deceptive and standardising parameter of neutrality. On the contrary, it makes differences visible, by recognising them as equally worthy and, therefore, worthy of protection. In short, the principle of equality now lies primarily in the equal legal promotion of differences[10].

Gender medicine as a "critical theory" of medical knowledge

Gender medicine would appear to fall perfectly within the theoretical framework outlined above, in that it draws its strong legitimation from the principle of equality, on the basis of which the right to have their health fully safeguarded lies with all people without any kind of discrimination. Furthermore, the equality that gender medicine promotes is both formal (in that it recognises all subjects as being equally worthy of protection) and substantial (as it moves in the direction of a promotion of differences and specificities): In other words, it favours the recognition of the subjects' differences and specificities that in the past has not been taken into consideration. For this reason, gender medicine appears a critical theory of medicine. Indeed, if the right to health is apparently guaranteed to everyone but in practice only men are treated, this means that we are in the presence of a macroscopic violation of a fundamental right (that to health) with regard to a group (women) which, given its specificity, is subject to discrimination.

However, this does not mean that gender medicine is female medicine; once again, the reference to the more general debate opened by the critical theories allows us to avoid the risk of misunderstandings concerning the real "statute" of gender medicine.

Undoubtedly, the gender consideration was started by women: this is an historical fact, but in actual fact also a need, as men did not need to obtain any new or greater visibility. The male subject already existed, it was already visible (on a cultural, legal level, etc.) and, moreover, was socially dominant (given the patriarchal nature of societies). However, this does not mean that the emersion of gender criticism – or, in other words, the visibility of other status alongside the male one – is an important question for women alone: on the contrary, the visibility of all subjects is an objective (and a conquest) for everyone. This is why Simone de Beauvoir claimed that feminism is good for everyone, not just for women[11].

"Seeing" gender, for sociology and law, means analysing how it affects people's lives, by predetermining (heterodesigning) their identities and existential choices, rather than harnessing lives in pre-set roles. Gender visibility therefore becomes synonymous with the possibility of "releasing" statuses from stereotypes, preordered destinies, from the serialisation of existences (no single woman or single man exists, merely men and women in the plural), overturning traditional roles where necessary. Therefore, although it is true that for a long time gender was considered by women, it is equally true that gender criticism can also be of benefit to men, who are equally "confined" to culturally predetermined and imposed roles.

Gender medicine obviously works in a similar way: it proposes an innovative solution that takes into consideration all subjects and, consequently, makes it possible to obtain a great effectivity of the right to health of everyone, not just women.

By finally seeing subjects in the plural sense, gender medicine therefore asks questions about medical knowledge from within, thereby overcoming the gap in knowledge concerning the ways in which diseases decline within the female body, in order to identify the most effective treatment (and therefore also prevention and therapies). In this way, gender medicine makes a contribution to identifying and deconstructing the stereotypes that, in addition to having characterised law, politics and society for a great many years, have also influenced medicine.

Gender medicine as a transverse outlook on medical knowledge

As a critical outlook, like gender criticism, gender medicine will also become obsolete once medicine in general has adopted the gender-specific outlook, i.e. when the visibility of all subjects becomes a common rule of medical knowledge.

However, the road to this result would still appear to be long as a great many stereotypes continue to weigh on identities and subjectivities, in medicine as in law and society as a whole.

It is also necessary to point out that gender medicine, in order to become a transverse outlook exactly like gender criticism, must also aim not to strengthen the gender itself, rather to dislodge it completely: seeing the gender that stereotypes existences means reflecting on the reasons for this stereotyping and acting to remove the mechanisms that cause it. Seeing gender therefore does not mean affirming the gender but dislodging it, in order to release the statuses it imprisons. Statuses are plural, unclassifiable, unpredictable: seeing multiple subjects means recognising specificities without tying them down again to other representations and other generalisations. Otherwise, the risk is that of essentialism: reverting back to the serial and stereotyped definition of who we are.

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