

# Prescriptive Descriptions: Reason-Emotion Binary through Feminist Critique

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## ABSTRACT

While binary oppositions like reason-emotion are often presented as neutral descriptions, they are hierarchical and constitutive of reality. The reason-emotion binary contributed to the marginalization of certain groups of people identified with emotion rather than with reason. The chapter traces the genealogy of the reason-emotion binary and its implications in Western thought and legal systems through a rough overview of feminist critique on the subject. Reason-emotion binary has severe implications for law and legal reasoning as well as for other aspects of social organizing. Law is regularly perceived as an empire of reason and objectivity that must be protected from the unruly influence of emotions. While binary oppositions like reason-emotion are often considered neutral descriptive devices, dualisms are hierarchical and constitutive of the reality they purport to describe. The chapter traces how the reason-emotion binary contributed to the marginalization of certain groups (women, people of color, the colonized, the poor, and others) through the lens of feminist critique. Marginalized groups identified with emotion – the depreciated pole of the binary – were long excluded from full legal subjectivity and political participation. The chapter fleshes out and contextualizes the implications of the reason-emotion binary in legal theory and practice by tracing its genealogy in Western thought through a rough overview of feminist engagements with the implications of this dualism. Feminist critique is a crucial predecessor and inspiration of law and emotion scholarship, as well as an important reminder against uncritical reproductions of bias in (interdisciplinary) legal research.

## KEYWORDS

reason, emotions, binary, feminism, critique

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## 1. *Introduction: Reason-emotion binary and social inequalities*

Critical thought in general and feminist critique in particular have long mistrusted the narrative that dualisms are but simple descriptions of objective reality. Pure description, like pure rationality, is an elusive and deceiving ideal, as the dualisms employed to describe the world take part in creating and organizing it. In so doing, the dualisms inscribe difference and hierarchically arrange the opposite poles in terms of the favored and the devaluated one. Reason-emotion, male-female, strong-weak, active-passive, culture-nature, (hu)man-animal, white-black, West-the rest, good-evil, and many others reflect the social structures and the imbalances of power within our society. The reason-emotion binary has long served as a tool to exclude women, people of color, the colonized, uneducated/poor, and others from the “reasonable man” mold. Subordinate groups were (and still are) commonly presented as the Other: emotional, animalistic, closer to nature, and consequently denied education, opportunities, and full membership in the political community.

The exclusion of subordinated groups from the political community is reflected in the very concept of (hu)man in law and philosophy. Some men, i.e., those endowed with high social status, material prosperity, and white skin, have long felt warm and comfortable in the law’s empire that grants them rights and protects their interests. They are the original (hu)man invoked by Article 1 of the *Universal Declaration of Human Rights*: «All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood». The Other, excluded from the brotherhood of reasonable men, often experience the law as Kafka’s trial. Article 2 of the *Declaration* neatly expresses some of the markers of oppression that have severe consequences for perceived humanity, daily lives, and interactions with the law on the part of the Other: «Everyone is entitled to all the rights and freedoms set forth in this *Declaration*, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status».

Articles 1 and 2 of the *Declaration* offer a neat illustration of the reason-emotion binary’s legacy in Western (legal) tradition. The reason is perceived as the defining faculty of the human being, the bearer of rights and property owner, capable of meaningful judgment. Everyone and everything else is defined precisely through their lack of reason. Those determined by their difference vis-à-vis the reasonable man were long perceived as both mysterious and defective. Only the proper legal subject, the reasonable free autonomous individual, can speak and judge, while the Other’s concerns are easily dismissed as emotional prattle. Rather than being seen as proper subjects of law, women, people of color, and other excluded groups were long perceived as objects of law and occasionally even reduced to property of those in the position of power (MONTROYA 2016).

Unsurprisingly, women, the poor, and people of color gained the right to vote much later than rich white men. Access to higher legal education and public office was basically impossible

for women before the 20<sup>th</sup> century, while the role of the judge remained reserved for men even longer (SCHULTZ & SHAW 2013). The struggle of indigenous populations of colonized territories and various minorities across the Western world is also far from complete, as the office of state judge long remained reserved for white men of a specific background (SCHULTZ & SHAW 2013). Arguments against allowing women to serve on the bench stressed that women are too emotional, irrational, disorderly, and in need of protection from the harsh realities of the courtroom (SOMMERLAD 2013). It is worth examining how this subordination is established and maintained through a genealogy of the reason-emotion binary.

In this vein, this chapter briefly frames the complicated relationship between law and emotion. It then proceeds with a rough overview of the reason-emotion binary in the history of Western thought. This overview adopts the point of view of the feminist critique of the reason-emotion binary to illuminate the impact of theoretical concepts on lived realities and the legal rights of individuals. It also highlights that feminist theory has long been interested in the role of emotions in law and politics. Paying attention to feminist critique illustrates that the recent ‘discovery’ of emotions by the law and emotion scholarship builds upon a preexisting critique. Instead of focusing on legal scholarship alone, this overview draws on broader cultural and political feminist critique to demonstrate the law’s embeddedness in different regimes of knowledge.

## 2. *Law, reason, and emotions*

In the Western tradition, the law is often portrayed as the domain of reason. The reason is perceived as central to legal theory and practice, as the guarantor of objectivity, neutrality, and the rule of law. Nevertheless, the law is a very emotional business: legislative, administrative, and judicial procedures encompass and provoke intense feelings of spectators and those directly involved. Regardless, the ideal image of a dispassionate judge presiding over the emotional drama, rationally applying legal norms to the factual mess, remains persistent (MARONEY 2011). Emotions are viewed with suspicion as potential contaminants threatening impartiality and objectivity of judgment (BANDES 1999a; UMPHREY et al. 2003; GROSSI 2019). In recent decades, a diverse body of law and emotions scholarship seeks to challenge this view and introduce nuance to this binary representation (e.g., MINOW & SPELMAN 1988; MILLER 1998; BANDES 1999b; ABRAMS & KEREN 2010; NUSSBAUM 2006; MARONEY & GROSS 2014; FRIEDLAND 2019; COTTERRELL 2018; ROACH ANLEU & MACK 2021).

Since emotions are present in animals and infants, they were conceptually separated from reason and perceived as intuitive involuntary forces (POSNER 1999). Nevertheless, emotions develop and mature with age, can be trained, and are integral to moral, aesthetic, and reasoning in general (WALLACE 1993). Current trends in law and emotion scholarship focus on understanding and theorizing how emotions inform legal reasoning, identifying the benefits and pitfalls of emotional responses of the decision-makers, distinguishing between emotions that supposedly enhance or distort legal reasoning, and various other thought-provoking issues. The findings of cognitive sciences demonstrate that pure reason is neither realistic nor desirable, as emotions play a crucial part in what we understand as the process of reasoning.<sup>1</sup> These insights notwithstanding, the idea that emotions are an irrational force that comes over

<sup>1</sup> Damasio demonstrated that patients who suffer a brain injury hindering their ability to emote experience extreme difficulty in reasoning and decision-making. It seems that emotions are a crucial part of the reasoning. See generally DAMASIO 2005. Though this is not always the case, several studies suggest a beneficial impact of emotion on logical reasoning and a correlation between intense emotional response to a situation and the capacity to logically evaluate it. See: BLANCHETTE & CAPAROS 2013; For importance of emotional granularity for legal decision-making, see GENDRON & FELDMAN BARRETT 2019.

us and must be controlled and tamed by reason seems to persist and conserve the hierarchical structure of the reason-emotions divide.

Despite academic interest in law and emotion, the legal domain, in general, still approaches emotions based on the beliefs of folk psychology, even if these often conflict with contemporary scientific narratives that consider the oppositional perception of reason and emotions as outdated (FELDMAN BARRETT 2017, 219-251; NUSSBAUM 1995, 53-78). Nowadays, emotions are understood as a complex interaction of human embodiment residing in the body/brain and the sociocultural context that affects how emotions are perceived, expressed, and experienced (SCARANTINO 2016). It is important to stress that we still do not know much about emotions, reasoning, mind, and brain. Various cognitive processes, including emotions' exact nature and role, remain open to diverse interpretations.<sup>2</sup> Emotions have long incited the interest of biology, psychology, sociology, philosophy, cognitive and neurosciences, yet their definition remains open-ended (see, e.g., FELDMAN BARRETT et al. 2016; AHMED 2014, 1-19). In line with this diversity, this chapter does not intend to offer an all-encompassing definition of emotions. Instead, the chapter zooms in on how perceptions of emotions developed through time and contributed to social inequalities, marginalization, and exclusion of certain groups of people. A rather rudimentary overview of the history of the reason-emotion binary and its consequences does not pretend to be exhaustive; it instead provides a bricolage of diverse examples illustrating how this binary influenced Western thought, society, and political and legal systems.

### 3. *Feminist critiques of the reason-emotion divide*

The reason-emotion dualism and its consequences for the lived experience of people has long excited feminist critique. This section provides a brief overview of feminist engagement with emotions and reason through time and across different strands of feminisms. While sharing the core idea that women are not naturally inferior to men and the desire for a happier and more just society, feminisms cover a vast range of theoretical ideas and activisms with diverse epistemological and ideological points of view. The examples provided below are not exhaustive but intended to illustrate some of the strands of feminisms and feminist scholars who recognized the political thrust of binary conceptualization of reason and emotions. This section departs from the feminist critique of the classical thinkers that shaped Western political philosophy from antiquity to modernity. Illustration of the reason-emotion dualism's development and solidification is followed by a rough exploration of diverse feminist debates on emotions and reasoning in the 20<sup>th</sup> and 21<sup>st</sup> centuries.

#### 3.1. *Antiquity*

Ancient Greece and its philosophy are widely perceived as the cradle of Western civilization. This founding myth fetishizes ancient Greek democracy, which was actually a rule of a small group of wealthy male citizens. This commonly unaddressed bias at the heart of the idealized origin is reflected in ancient Greek philosophy representing Western thought's base. For example, Plato's famous allegory of the charioteer qua reason in control of wild horses qua emotions hints at distrust towards unruly emotions. And yet, the allegory stresses interdependence between

<sup>2</sup> Various issues ranging from small and unrepresentative sample sizes, different theoretical ideas about whether emotions are contextual, biological, or both, and a wide variety of interpretative methods for brain scans contribute to widely different conclusions about what emotions are and how they function. When it comes to emotion and gender, for instance, it seems that researchers find what they anticipated to find, namely differences in specific mental processes of different genders or the absence of such differences. See: BRODY et al. 2016; FINE 2013.

reason and emotion that is absent in the modern version of the dualism. As for women, Plato described them as reincarnations of wicked irrational men, inferior to men in both reason and virtue, even though he proposed a (near) abolition of the sexual difference in his ideal republic (OKIN 1979, 15-50). Despite his sexist rhetoric, Plato's idea of philosopher queens was revolutionary in the context of ancient Greek society.

Aristotle, on the other hand, was a defender of the status quo. He saw women as deformities and defined them according to their function (for men) in the reproduction of *mankind*. In his view, what distinguishes a human from an animal is his reason. Still, not all humans are equal in reason: menial workers, women, and slaves (excluded from humanity altogether) are denied full rationality and thus excluded from Aristoteles's best state, prompting Genevieve Lloyd to interpret his philosophy as one of the cornerstones of male reason and its dominance (LLOYD 1993, 1-30). Nevertheless, Aristotle's view of emotions was more nuanced than Plato's. The Aristotelian reason offers itself to re-appropriations by feminist thinkers who produced more inclusive interpretations, opening avenues for the cooperation of reason and emotion, contributing to happy lives and relationships of a broad(er) specter of human beings (HOMIAK 2018).

The dichotomies between reason and emotion, mind and body, masculine and feminine, can be traced to ancient Greek philosophy and its medieval interpretations (LYONS 1999). Nevertheless, these pairs' sharp polarizations were not established until the 17<sup>th</sup> century (KELLER 1985, 44). Even the idea that male and female bodies are radically different was not present in science until the 18<sup>th</sup> century.<sup>3</sup> Instead, antique and medieval thinkers perceived the human body according to the "one-sex model," treating the female embodiment as an imperfect version of the male (LAQUEUR 1992). The idea that emotions belong to the feminine sphere, while man is marked by reason, is intimately connected with the age of Enlightenment.

### 3.2. Enlightenment

The age of Enlightenment is commonly perceived as the era that reinforced the mind-body divide and thus contributed to the creation of different spheres for women and men.<sup>4</sup> This is reflected in the early capitalist public-private dualism that confined women in their roles as wives and mothers and men as wage earners and political actors (LITTLE 1995; FISCHER 2016). Descartes' "think therefore I am" elevated reason as superior to the body and paved the way for interpreting emotions as the unwelcome Other (DAMASIO 2005). Women and people of color were aligned with nature and body, while the white male body conspicuously disappeared as the house of decentered, objective and universal reason (AHMED 1995).

Nevertheless, the 17<sup>th</sup> century Europe saw an unprecedented number of women expressing their ideas in print. Thinkers like Mary Astell and Damaris Lady Masham embraced Descartes' formulation of reason and did not perceive it as exclusively male (ATHERTON 2018). The notion of rational equality of men and women was, if not widely accepted, put forward and echoed across Europe (PERRY 2005; PERUGA 2005; STUURMAN 2005). François Poullain de la Barre famously argued that the mind has no sex and women, depending on their class and geographical location, were always actively participating in science (SCHIEBINGER 1991). It would thus be erroneous to flatten down the Enlightenment narratives as homogenous and the

<sup>3</sup> The idea that biological traits demark male and female bodies is largely accepted but not scientifically plausible. Consequently, Western societies resorted to the "normalization" of intersex people who exhibit sexual characteristics of "both" sexes to uphold the male-female dualism. This normalization involves surgeries at an early age and long-term hormonal treatments, exemplifying the normative import of "descriptive" dualisms: "nature" has to be modified to be made consistent with the "rational" order. See, e.g., DEVOR 1989; FAUSTO-STERLING 2000; GEERTZ 1975.

<sup>4</sup> I refer to Enlightenment as a historical epoch, a current of thought developed in Europe and spread around the globe in the 17th and 18th centuries, and a philosophical concept.

transition to modernity as a simple linear progression of ever-stricter separation of genders and gender roles (ROBERTSON 2005; CAREY & FESTA 2009; TRICOIRE 2017; ISRAEL 2002). Regardless, ideas that women might be capable of reason were largely marginalized. Arguments asserting women's biological incapability of reasoning dominated, and women's achievements were often appropriated by men, forgotten, or simply ignored. Idealizations of Enlightenment as the epoch of reason, the overcoming of superstition, and the dawn of democracy and human rights are mostly blind to this movement's internal contradictions and complexities.

The uncomfortable fact that the glorious epoch of reason also produced an array of sexist and racist myths is difficult to ignore from the perspective of critical scholarship (see, e.g., SPIVAK 1999). Mind-body and other hierarchical pairings allowed thinkers like Rousseau to preach absolute equality and freedom on the one hand and argue for subordination and exclusion of women as naturally inferior and in need of male dominance on the other (OKIN 1979, 99-198). Views of women as deficient in reason, destined to serve men, and naturally belonging to the private sphere are not foreign to Locke, Kant, Comte, Hegel, and other giants in philosophy (KRISTEVA 1996 [1979]; LE DOEUFF 1991 [1977]; HERMAN 2018; KLEINGELD 2019). These powerful narratives were never simple descriptions of reality; they played a part in (re)constructing social hierarchies, (re)structuring the place of different individuals, and informed popular beliefs about the different natures of men and women, which partially persist to this day.

It is worth stressing that it was not only women who were perceived as inferior and less reasonable; such labels were also attached to the men belonging to lower social classes and those enslaved during the European colonialization of the globe. Men might have been the sovereigns of their households (the private sphere), yet their political participation (the public sphere of politics) was often severely limited. French and American revolutions represent celebrated steps toward greater equality of men, yet most of the population remained excluded from the category of free and equal citizen. While largely barred from entering into public discussions, women and colonized subjects have nevertheless responded to the Enlightenment's narratives of progress and universal reason.

### 3.3. *Enlightened revolutions and the Other*

Mary Wollstonecraft, one of the most famous early modern advocates of women's rights, was critical not only of the position of women but of social hierarchies in general, challenging the hereditary privilege governing the English society and the monarchy itself. As the events of the French Revolution shook the old social order, Wollstonecraft was contemplating its promise of equality and its internal contradictions (WOLLSTONECRAFT 1995 [1790 AND 1792]). She internalized the Enlightenment's emphasis on reason and education. Still, she did not accept that women are inferior in reason and should be educated differently, as many, including Rousseau, suggested (ROUSSEAU 1979 [1762]). On the contrary, Wollstonecraft correlated the unequal position of women with their socialization and education into false excessive sensibility and submission.

Olympe de Gouges, an advocate of women's rights and the abolition of slavery, pointed out the lack of concern for women's equality in the *Declaration of the Rights of Man and the Citizen* with her 1791 *Declaration of the Rights of Woman and the Female Citizen* (DE GOUGES 1979 [1791]). The alternative text of the *Declaration* urges a reconsideration of the status of women in French society. It also stresses that women participated in the revolutionary struggle, which their male companions quickly forgot once their goal was achieved. In her critique, she appeals to reason: «Woman, wake up; the tocsin of reason is being heard throughout the whole universe; discover your rights» (DE GOUGES 1979 [1791]). These ideas eventually led to de Gouges' decapitation.

The revolutionary demand for equal rights excluded not only women but also the populations of the colonized territories. Purposely ignoring that the *Declaration of the Rights of Man and the Citizen* explicitly allowed social distinctions based on "public utility," the Haitian

Revolution of 1791 represents a uniquely successful slave uprising that led to Haitian independence in 1804 (MARTEL 2017, 62-74). The first modern “black state” abolished slavery, if not forced labor, and was curiously erased from historiography for over two centuries. Such an erasure of a successful slave revolution is rooted in its disruption of the dominant narrative that the Other are incapable of agency and institution-building, reinforced by many enlightened philosophers, including Kant (TROUILLOT 2015).

American Revolution and its republicanism similarly overlooked large portions of the population. American *Declaration of Independence* was thus challenged by the *Declaration of Sentiments* written by Elizabeth Cady Stanton in 1848 (WEISS 2009, 100-123). Signed by both women and men, it strategically utilized the identification of women with emotion in its title. *Declaration of Sentiments* amended the phrase “all men are created equal” by adding “and women,” decried illegitimacy of patriarchal organization of society, exposed grievances of oppression of women in private and public spheres, and urged for not only a genuinely democratic state but a truly democratic and equal society. Like Haitian Revolution and de Gouges’ *Declaration*, the *Declaration of Sentiments* and its critique remains mainly overlooked in both historiography and legal and political theory. What is remembered and celebrated and what is erased and forgotten reflects the power imbalances underpinning descriptions of past events.

The line dividing public and private spheres, reasonable and emotional beings, was firmly entrenched by the end of the 18<sup>th</sup> century; in the 19<sup>th</sup> century, it seemed natural and immutable. The idea that women are led by emotions and naturally incapable of reasoning was widely supported by influential liberal intellectuals. Among modern liberals, John Stuart Mill represents a notable exception. He loudly questioned the narrative that women are emotional and irrational creatures (MILL 2017 [1869]). He pointed out that femininity is differently defined across different societies and could hardly be considered a natural given. Instead of explaining women’s supposed lack of intellectual abilities with recourse to nature, he attributed the perceived feminine qualities to the content and lack of education available to women and girls. Indeed, women’s education was one of the key concerns at the time, as the prophets of emotion-reason distinction often warned that education and intellectual development would hinder women’s emotional capacity and even cause the atrophy of their reproductive organs (ROSENBERG 1982, XII-25). In contrast, Mill proposed that greater happiness of women achieved through their access to education and personal freedom would translate into greater happiness of men and thus benefit society as a whole.

### 3.4. *Towards abolition and universal suffrage*

Happiness was a central concept of women’s attempts to theorize society in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. Aware of their subject position, early feminists did not accept the dominant idea of social sciences as objective and generalizing. Critically assessing the politics of gender and knowledge, they assumed a more grounded and activist standpoint (LENGERMANN & NIEBRUGGE-BRANTLEY 1997). The perspective of classical feminist social theory, engaging with material and emotional dimensions of pain, was often dismissed by male counterparts as too emotional, activist, and lacking objectivity. The reason-emotion epistemic binary continues to serve as an avenue to discredit critical and feminist thought (JAMES 1997). Classical feminist theorists like Harriet Martineau, Jane Adams, Anna Julia Cooper, Marianne Weber, and others are largely marginalized in mainstream social sciences and their records. For our purposes, it is interesting that instead of shutting emotions out, these authors called attention to the lived experience. Not trying to mask their emotional responses, these authors achieved vigilant observations on how markers of gender, class, ethnicity, and race limit the opportunities of individuals. Their approach was explicitly political, aiming to change society, the economic system, the state, and the legal order understood as the guardian of the status quo.

In the 19<sup>th</sup> century, the status quo was problematized on several fronts. The abolitionist movement was growing, questioning the institution of slavery as grossly immoral. Women were essential actors in this emancipatory movement closely related to the emergence of the feminist suffrage movement. While the two movements intersected, cooperated, and involved white and women of color as prominent members, their relationship is somewhat complicated. Not all abolitionists supported equal suffrage for women, nor did all white feminists advocate universal suffrage for people of color, fearing that black men would get the right to vote before women, as it actually happened (MCDANELD 2013). Black women, on the other hand, were mistrustful of middle-class feminists and their tendency to describe the status of white women as slaves, thus erasing the legal status and reality of black enslaved women and their plight.<sup>5</sup> Racism was a feature of the early feminist movement in the USA, and many of its colored proponents were marginalized in its scholarly reconstructions. The actual subject positions and ascribed features of white and women of color were widely different (as they still are). White women are commonly conceived as fragile, meek, and in need of protection – a stark contrast to the cultural interpretation of black women as strong, resilient, hypersexual, and unruly. Formerly enslaved abolitionist and feminist activist Sojourner Truth is one of the most iconic voices of black women who pointed out that the experience of white women is not universal (TRUTH 2020 [1863]).

In general, women did share an expectation of remaining silent in public spaces. Public spaces and political discourse were perceived as a male domain unfit for women belonging to the private sphere, destined to serve their spouses and children. Those who decided to speak out were portrayed as unfeminine monsters and ridiculed in numerous ways, including cartoons depicting women activists as grotesque abominations (RODRÍGUEZ DURÁN 2015; KRUEGER 1992, 3-10) and sexist, classist and racist depictions of “new women” in anti-suffrage plays (DASSORI 2005). Some women abolitionist activists resorted to emotional speeches based on personal experience, as their employment of rational argumentation was often met with hostility (LAMB-BOOKS 2016, 123-155). Emotional portrayals of the suffering of slaves, particularly the pitiful exploitation of female slaves that male speakers tended to omit, resonated more favorably among their audience, as emotional speeches corresponded to the stereotypical image of a woman as empathic and caring. The arguments against women’s right to participate in political processes or to speak in public or to do so in a manly, that is, abstract and rational manner, exhibit the still-existing double bind in which women tend to find themselves. On the one hand, women are (to be) excluded from decision-making because they are too emotional; on the other hand, those who do not conform to their role as highly emotional are judged for not being feminine and discredited on this basis (CROZIER-DE ROSA 2014; BRODY et al. 2016).

The struggle for the right to vote was one of the most visible early feminist endeavors. Not only women and people of color but also the colonized men were excluded from voting based on being too childlike, irrational, erratic, and emotional to be recognized as true men and thus entitled to (full) political rights (ROSA 2021). Suffrage activists sometimes worked hard to avoid emotional public addresses to avoid the stereotype of hysterical women and chose instead to overcome sentiment with reason and republican arguments (LINKUGEL 1963). Yet, the struggle for suffrage was an extremely emotional process for those involved, as their experience of anger, injustice, joy, and comradeship motivated the movement (FLORIN 2009). The different subject position of women, especially married women under the sovereignty of their husbands who could not hold property or enter into contracts, was established and perpetuated by the law. Women’s right to vote exemplified the complete legal subjectivity only available to white men.

<sup>5</sup> For more on African American women that engaged in political speech on the issues of slavery, civil rights and women’s rights, see, e.g., LOGAN, 1999.



As such, the demand for women's suffrage is inseparable from the demand for equality in economic rights and equal access to education and jobs.

This stage of feminist effort is often referred to as the “first-wave feminism,” “liberal feminism,” or “equality stage of feminism.” However, such classification entails oversimplifications, threatens to gloss over the differences within the movement, and contributes to the erasure of some strands of feminism, especially socialist feminisms. Socialist feminists focused on the injustices of the capitalist organization of society and the plight of (working-class) women (DISCH & HAWKESWORTH 2016). Feminism was never a movement; it was a multiplicity of movements from the start. Classification is nevertheless somewhat helpful in understanding how feminist thought and demands developed and dealt with the emotion-reason divide in different historical contexts. The first-wave of feminist engagement was focused mainly on asserting the artificiality of the supposedly natural differences between women and men, building upon the idea of equality of human beings. The argument of a primordial difference between emotional women and rational men was refuted as a product of education and socialization. Formal equality before the law was mostly achieved by the 1960s and 70s, which allowed for a new round of appraisal of different standards, lived experiences, and legal treatments of men and women, as well as the differences among women themselves.

### 3.5. *Personal is political*

The equality stage consumed itself and was succeeded by the so-called “diversity stage of feminism” or “second-wave” feminisms. Reevaluating the outcomes of the struggle for formal equality, this stage of feminist thought focused on the differences between women and men and the differences among women, veiled over by the legal proclamation of equality. This era of feminist ideas is most famously expressed in the slogan “personal is political,” denoting that formal equality before the law did not result in actual equality. Second-wave feminist movements were intertwined with the progressive social movements of the 1960s and 70s, like May 68 confronting the injustice of the capitalist system in Europe and the Civil Rights Movement that challenged racial inequalities in the US, demanding the end of racial segregation, greater economic and social justice, access to education, employment, housing, and other basic provisions.

As we have seen, the reason-emotion divide casts a long shadow over anyone who is incompatible with the ideal model of a reasonable white, educated, heterosexual, wealthy man. The basic premise of first-wave feminist activists was to minimize and refute the difference between genders as an artificial product of upbringing, tradition, and morality. Achieving this formal equality revealed that differences between genders exist and that glossing over them often disadvantages women. How to approach the differences, whether to refute or vindicate them, is an evergreen topic inscribing diversity into feminisms. Simone de BEAUVOIR's (2010 [1949]) *Second Sex* and Betty FRIEDAN's (2013 [1963]) *The Feminine Mystique* were influential works sparking the flame of the second-wave feminisms, as they highlighted the different experiences and limitations that defined the lives of women and inspired a new surge of feminist organizing. Feminist legal theory was also emergent within the Critical Legal Studies (CLS) movement in the USA but was marginalized as a niche topic, which led “Fem-Crits” to distance from the original CLS (WEISBERG 1993).

Topics like reproductive rights, gendered violence, legal (mis)treatment of sexual harassment and rape, discrimination, economic disparities between men and women, unpaid reproductive work women perform at home, and many other issues were highlighted on both sides of the Atlantic. While second-wave feminisms were whitewashed in media and scholarship and are still often presented as a movement of white bourgeois women, women of color and women belonging to lower social classes engaged in feminist organizing as well (ROTH 2003). Various movements shared the core issues and sometimes cooperated – though racial and class dominance patterns

often hindered collaboration. Simultaneously challenging several factors of oppression was never easy: for example, black women often felt forced to choose between the struggles for racial and gender equality, while white leftist women were often ridiculed and exploited by their male counterparts and felt the need to organize an alternative, feminist, leftist agenda.

Sex, traditionally understood as a private and emotional matter, stood out as another territory of inequality whatever its setting, from sexual dynamics in marriage to the false promise of liberation after the sexual revolution, from sexual harassment on the street and at work to reproductive rights. Radical feminism explicitly exposed sex and sexual relations as power relations for the first time in Western history. Furthermore, they pointed out that crimes like rape are not grounded in uncontrollable male sexual desire but are instead an expression of power and domination and, thus a tool of patriarchal oppression (BROWNMILLER 2013). Women were often excluded from the debates about contraception and abortion in favor of male (objective) experts, and homosexuality was taboo. This prompted many women to speak out and demand concrete societal and legal transformations (SHULMAN 1980). The victim-blaming culture, for example, was called out. While aggressive male sexuality has long been normalized and a man's sexual history did not necessarily reflect on his reputation, women were (are) judged by different standards. Women construed as hysterical or hypersexual in psychiatric discourse were designated as liars in legal procedures through most of the 20<sup>th</sup> century (LUNBECK 2003). This intersection of legal and medical discourses in rape trials produced interest in the victim's sexual history, personal reputation, and "unfeminine habits" to protect innocent men from malicious accusations. Framing victims of sexual assaults as inciting and provoking was (is) ingrained in the legal system, police procedures, as well as judicial procedures. Focusing on the victim of gendered violence was (is) often accompanied by disturbing emotional identification of (male) judges with the perpetrators and a tendency to invent explanations and rationalizations for their actions (NEDELSKY 2002 [1997]; LEES 1996; HOWE & ALAATTINOĞLU 2018).

Regarding inequality as perpetuated and created by the law, legal scholar Catharine MacKinnon, one of the most recognizable voices of radical feminism, argued that law is constructed and operates from a male point of view and represents the institutionalized domination of men over women (MACKINNON 1987). She criticized the notion of equality as *equality with men* and rejected such equality as an avenue of enshrining the male perspective and norms as the yardstick for everyone. Others joined her in recognizing law as the symbol of patriarchy and observed how capitalist legal systems contributed to the exclusion of women from public life (RIFKIN 1993). While the law's role in maintaining male dominance made many radical feminists suspicious of its liberatory potential, some legal transformations did occur in the wake of their critique. Sexual harassment and discrimination, for example, found their way into the body of law as actual concepts, while legal treatment of rape underwent a reform.

In this period, the feminist legal theory was developing as a discipline with multiple approaches and threads. It attacked not only the law but also legal method and reasoning. Feminist analysis of judicial decisions revealed that neutrality of legal reasoning, supposedly limited to the relevant facts and the law, often serves as a convenient mask for what judges are actually doing – solidifying commonly accepted stereotypes about women and their place in society, family, and politics (MOSSMAN 1987). Strategic use of commonly known "facts," religious inspirations, and precedents was routinely implemented to protect the status quo from a position of objective authority. Behind the veil of rationality, however, decision-makers' personal experiences, convictions, and emotions often stood out as the deciding factor. This issue continues to be problematized and addressed by feminist legal scholars today. The *Feminist Judgment Project*, for example, aims to point out that judicial decisions are not mathematical equations with one correct solution. The *Feminist Judgment Project* is a collaborative initiative in which legal scholars and practitioners rewrite significant legal decisions from a feminist

perspective. The project deals with cases that were decided against women's interests by writing alternative judgments employing the same legal method, facts, and laws to produce different, feminist decisions (e.g., HUNTER et al. 2010). The *Feminist Judgment Project* was started by the legal scholar Rosemary Hunter in the 2000s, but it is an ongoing project involving many scholars and experts from around the globe. The re-written judgments are published and used as a teaching and research tool and are also intended to influence the development of the law. A common lament of *Feminist Judgment Project* participants nevertheless echoes concerns put forward in the 1980s: that the method and style of argumentation developed for centuries exclusively by and for men are restrictive for women who desire an alternative way of legal reasoning.

The question of difference stands out again. Women identified with the body and their reproductive function were not only perceived as less rational but also more unstable and less moral than men (SMART 1989, 80-113). Male researchers investigating the development of moral reasoning have been using all-male samples to construct a scale of moral development. When they evaluated women utilizing this scale, they concluded that women's moral development is hindered and inferior. Carol Gilligan proposed a different explanation: the all-male samples only investigate the moral reasoning of men without wondering if women's moral reasoning might be different without being inferior (GILLIGAN 1982). While male moral development is identified with autonomy, individual rights, and application of general rules to specific situations, women tend to focus on relationships and the possibility of compromise. Women's supposed lack of detachment and depersonalization was habitually interpreted as a lack of individual agency. Gilligan termed the standardized (male) moral reasoning as the "justice perspective" and traced a strong connection between the justice perspective and the presuppositions of contractualism centered on the autonomous individual with his rights. She termed the alternative style of reasoning the "care perspective" or "ethics of care." She conducted studies using mixed samples – the outcome demonstrated that both men and women use the care perspective in their moral reasoning but, when pressed, tend to replace it with the justice perspective. Most men resort to the justice perspective when prompted, while some women retain the care perspective. She concluded that all-male samples thus erase the care perspective and contribute to its demonization, calling attention to the fact that women's psychology was always considered a mysterious defective version of the male.

The question of whether women reason differently than men was translated into other empirical studies. Previous investigations measured the representation of women in state institutions in numbers; new studies began to ask whether such representation also makes a substantial difference (e.g., MENKEL-MEADOW 2002 [1985]; THOMAS 1995). Affirming the difference between men and women is risky, as it might provide grist for the mill of opponents of women's equality. The difference between "male" and "female" ethics and moral reasoning also finds diverse interpretations within feminisms. The idea that the ethics of care might represent a valid and welcome alternative to the egocentric approach of liberal tradition significantly influenced cultural feminisms.

Cultural feminists celebrated the difference between men and women by asserting that supposed feminine trades like being nurturing, caring, and empathetic are positive, significant, and ought to be celebrated and encouraged rather than disparaged as irrational (KITTAJ & MEYERS 1991). Weaker versions of cultural feminisms like Gilligan's allow for the possibility that men might adopt and adjust to some of the women's virtues and thus contribute to a better society. Strong cultural feminisms, in contrast, elevate the difference to the point of demanding women's segregation from men and the creation of their own cultural world. Such ideas find expression in, for example, Adrienne Rich's "lesbian continuum" and her critique of the institution of "compulsory heterosexuality" (RICH 1980). On her account, women could only reclaim their identities and be freed from patriarchal control if they embraced lesbianism as not only sexual orientation but a true bond of love and friendship.

For some, the ideas of strong cultural feminisms that connect different moral reasoning with biological sex or human anatomy come uncomfortably close to the 19<sup>th</sup> century conceptions of women and femininity (WILLIAMS 1989; FRUG 1993). The idea that care perspective is somehow innate to women and marks them as different from men was criticized as failing to recognize that the difference in moral reasoning is a product of subordination and not merely gender (TRONTO 1993). Gilligan's sampling was charged for mainly including white middle-class subjects. Subsequent studies with more diverse samples revealed that men of color and lower social classes also tend to rely more on the care perspective than privileged white men (TRONTO 1987; HARDING 1991). It is worth noting that Gilligan's studies refuted biological determinism and pointed out that the moral reasoning of most people operates along the lines of both care and justice perspectives. Her work largely departed from developmental psychologist Nancy Chodorow who traced the differences between boys' and girls' development through their different inclusion in child-care rather than through biological differences between the sexes (CHODOROW 1974).

Again, education and upbringing seem to play an important role, as personal development is a part of the intersubjective process through which human beings learn their place and the (ir)relevance of their voices, minds, and ideas in relation to others. The messages women get from early childhood and throughout their lives thus profoundly influence their sense of self and contribute to the "different voice" in which they might speak and reason (BELENKY et al. 1986). French historian Elisabeth Badinter, for example, challenged the idea that women-mothers are by definition nourishing and selfless (BADINTER 1982). Through her exploration of the history of maternal indifference, she illustrated many mothers in the past centuries saw their children as a nuisance and did not seem to care greatly about their faith. Motherly love and portrayal of women as naturally loving and caring thus appears to be a theoretical construct without a universal history.

An alternative account of difference can be found in the works of European feminists, with French feminism standing out as one of its more notable instances. Sexual difference was also at the forefront of their discussions, yet French feminists attempted a deconstruction of the subject as such, even the celebrated female subject. While second-wave feminist activism was very influential in continental Europe and the USA, French feminisms or poststructuralist feminisms are considered more theoretical compared to the 1980s USA feminist scholarship. Primarily growing out of a critique of Freudian and Lacanian psychoanalysis and French poststructuralist philosophy, French feminisms rejected the essentialization of the Women as the Other, either erased from historiography or theorized as an eternal victim.

The proponents of French feminisms adopted diverse theoretical approaches but can be linked through their emphasis on the role of language and its binaries in constructing subjectivities. Rather than advocating separatism or searching for the mythical femininity, theorists like H  l  ne CIXOUS (1976), Luce IRIGARAY (1991 [1984]), and Julia KRISTEVA (2019) searched for a (re)construction of ethics that would allow men and women to live together beyond the artificial dualisms. Such binaries are, after all, forever haunted by the residue that does not fit into either pole. The reason-emotion pair in the history of Western thought is complicated, as reason is often used to legitimize the dismissal of women, savages, and other marginalized groups. Ironically, such logic is usually based on the emotional inclinations of great male thinkers, established as the privileged subjects of knowledge, from Plato to Freud (IRIGARAY 1985). The idea of alternative ethics demands a move away from celebrating either of the poles of a given binary and points towards the possibility of love and a different reality.

### 3.6. *Emotions, experiences, epistemologies, knowledges*

As hinted above, gender is only one of the markers of oppression that profoundly marks an individual's place in society. Despite the presence of women of color in emancipatory movements of the 20<sup>th</sup> century, they were often marginalized: feminism was busy constructing

its essentialist category of the Woman on the template of white, middle-class, heterosexual women, while racial equality movements focused on the grievances of men of color, sidelining the feminist concerns. While the fact that race, class, sexual orientation, and other circumstances profoundly impact a woman's experience was consistently recognized by some feminist thinkers, coherent scholarship on the topic was lacking. A powerful critique of second-wave feminisms was beginning to flourish in the works of intersectional, decolonialist, and postmodernist feminists.

Kimberlé Crenshaw famously elaborated on the legal implications of intersectional discrimination in the late 1980s (CRENSHAW 1989). She problematized how the law treats gender and race as separate eventualities. The interplay of these factors, which is far more complicated than a simple sum of two types of discrimination, is thus overlooked, leaving women of color without legal protection in cases where bias is rooted precisely in their overlapping identities. Women of color were unable to prove that they were discriminated against *as women of color* since the legal system only recognized either racial or gender discrimination. Sensitivity to the complexity of the “matrix of domination” (HILL COLLINS 1998 [1990]) as a web of interlocking hierarchies posed a severe challenge to white liberal feminism. Intersectionality as a methodological framework quickly grew and became widely applied in critical and feminist legal studies and practice (MACDONALD et al. 2005). The struggle of intersectional feminisms in the legal domain is far from complete, as marginalized groups of women continue to fight to be heard instead of spoken for by the more powerful social actors (e.g., SHAUKAT 2020).

Beyond the law, the complexity of identity in terms of gender, race, class, age, sexual orientation, nationality, postcoloniality, ability, etc. challenged the monolith representation of women in liberal feminist tradition (SGRABHAM et al. 2008). Instead of the reformative stance of liberal feminists, intersectional feminists like Bell HOOKS (2014 [1981]), Patricia HILL COLLINS (1998 [1990]), Audre LORDE (2020 [1984]), Gloria ANZALDÚA (2012 [1987]), Angela DAVIS (1983), and many others adopted a more revolutionary stance. Their important works confronting the complexity of personal experience are often grounded in emotions, the experience, and defiance of women facing marginalization on several fronts. Intersectional feminism announced the collapse of the category of Woman as the core of feminist engagement. It exposed the fluidity and individuality of personal identities, baring the diversity silenced in dualistic thinking, which reconstructs the abundance in two opposing poles.

Shamelessly admitting that one's emotions and experience shape one's perspective and inform one's knowledge is blasphemous in modern positivist science. Yet, as we have seen, feminist thinkers have long been suspicious of the objective reason narrative. Elisabeth Spelman, for example, refuted the positivist “view from nowhere” (referring to NAGEL 1989) and the related distrust of emotion as the “Dumb View” that ought to be replaced by different epistemology (SPELMAN 1990 [1988]). Such transformation should not only involve a displacement of male exclusion of women but should also involve the concerns of race and class excluded by white middle-class feminisms and seriously consider the pain women are inflicting on each other. According to Spelman, emotions are integral to politics, as she demonstrated through a survey of appropriations of suffering (of others) in philosophy, art, and feminist activism and theory (SPELMAN 1998). She proposed that suffering is not just a negative emotion but an open-ended potentiality that could trigger political transformations.

When an individual's emotions do not correspond to their assigned social role, the order of things is threatened. Alison Jaggar concentrated on the epistemic value of such “outlaw emotions” (JAGGAR 1989). Pointing out that positivist accounts tend to identify and conflate emotion with feeling – an involuntary physical sensation – she proposed that emotion and reason are hopelessly entangled. Rather than banishing emotions, Western science tends to suppress them and remains blind to their contribution to its allegedly objective concepts.

Embracing race, gender, and class distinctions as important aspects of emoting-reasoning, Jaggar focused on outlaw emotions, exemplified by, for example, the fear of a woman experiences when a man exposes her to sexual harassment intended as a compliment. The expected emotion in the patriarchal cultural script would be happiness and gratitude expressed by the woman's smile, while fear and anger are seen as the wrong responses. Such outlaw emotions of women, people of color, and other marginalized groups are constitutive of both critical theory and practice. In this context, it is worth mentioning how women and/or people of color often feel crazy because their emotional reactions seem so out of line with the regime of expected normalcy (e.g., SHULMAN 1980; HOOKS 1995).

Marxist feminist theory is another important thread in intersectional and standpoint feminisms. While Marx and Engels assumed women's reproductive work in the household as a given, their analysis of class consciousness is attractive to many feminists who set to inform Marxism's gender-blind spot. Christine Delphy, for example, theorized sexual division of labor and framed women as a class (DELPHY 1993; see also BARRETT & MCINTOSH 1979). Analyzing the structural differences between men's and women's lives – with close attention to the fact that neither group is homogenous in terms of race, class, and other markers of oppression – Nancy Hartsock elucidated women's "double day" (HARTSOCK 2004 [1983]). Women's days are composed of a job outside the home, emotional labor consisting of managing and negotiating the feelings of others and performing certain emotions (like empathy, nurturing, loving, etc.), and domestic work. Much like the proletariat, women are not simply passive victims but active participants and creators of their oppression in patriarchal capitalism.

Intersectional and standpoint feminisms envelop a radical epistemological claim that the oppressed groups know differently and that what they know is not meaningless and devoid of reason but silenced knowledge. The idea that knowledge is a product of social location or standpoint points towards the need for epistemological pluralism that makes Western science uneasy. According to reason-emotion, mind-body, and subject-object divides, scientific knowledge is produced by the subject (the knower) investigating the object of cognition (the known). The knower must disassociate from their personal experience, feelings, and emotions to build objective knowledge representing but a neutral description of the known. Thus, knowers are presupposed to function as generic fungible subjects adopting a universal perspective and speaking in the name of the universal Truth. As we have seen, judicial decision-making is ideally imagined to work similarly. As elaborated so far, the original subject-knower implies a (white, affluent, etc.) man, the claim to his universality notwithstanding. While many women work(ed) hard to comply with this model to prove they are capable of rational thought, others reject such epistemic domination.

Challenging the seemingly neutral epistemology of modern science is thus one of the most important endowers of feminist critique. Through this critique, ideological implications of positivist objectivity are revealed. The professed neutral description emerges as highly normative, creating the world and social roles we play in it. Unsurprisingly, feminists have long been suspicious of liberal ideology such as Rawls' "veil of ignorance," a mental experiment in which a person must choose a society to live in without knowledge of the identities with which they will have to navigate it. Rawls' speculation is based on a presupposition of egoistic self-interest as a given. His consequent affirmation of Western capitalist liberal society as the best possible world indeed implies that the person hiding behind the veil might be Rawls himself, as proposed by Mari MATSUDA (1986). The disembodied universal subject thus emerges, time and again, as ideological construction in service of perpetuating the preeminence of a specific point of view.

Standpoint theorizing departs from a reminder that the positivist objective knower always-already had an agenda and a standpoint of his own. The presuppositions supporting the supposedly objective knowledge were never thoroughly examined as they maintain the dominance of privileged groups. Rethinking these presuppositions is everyone's task. Ironically,

the objectivity of science might be strengthened if the standpoint of the knower was seriously considered (HARTSOCK 2004 [1983]). Donna Haraway developed one possible expression of such objectivity through a refusal of the universal subject with an infinite vision (HARAWAY 1988). Instead of the customary model of objectivity, she proposed feminist objectivity, which does not pretend to be universal and all-knowing. Instead of promising transcendence, feminist objectivity is a bricolage of partial, localized, and diverse knowledges, less prone to exclusions and oppositional thought, and grounded in embodied objectivities. The break with mind-body ideology promises to close the gap between the knower and the known – the subject and the object – as two distinct entities where the former is active and the latter passive. Situated knowledges are thus marked by a passionate detachment and a hope for transformation.

Standpoint theorizing significantly contributed to the reevaluation of epistemology as a value-neutral practice of a disembodied individual knower. Nevertheless, it is only one mode of feminist theorizing. Helen Longino criticized the lure of standpoint theorizing's excessive relativism and its inability to determine which of the incompatible standpoints ought to prevail, suggesting the need for democratic consensus on what knowledge should be considered valid (LONGINO 1992). Nonwestern postcolonial feminists might be reluctant to give up entirely on positivism and the related concept of individual rights, forced as they are to navigate both the colonialist attitudes of the Westerns and the oppression of women within their communities. Chandra Mohanty traced racist discourses of some Western feminists that other Nonwestern "third world women" according to the binary logic of Western as progressive and Nonwestern as uncivilized (MOHANTY 1988). Uma Narayan warned against romanticizing the "epistemic privilege" of the oppressed, as such narratives risk overlooking the complexities and darker sides of inhibiting marginalized perspectives (NARAYAN 2004 [1989]). While most feminists agree that transnational feminism is necessary, universalization of the Western patriarchal structures is widely criticized as counterproductive.

### 3.7. *Gender trouble*

The influences of French feminisms, poststructuralist philosophy, and intersectional feminisms are all at work in Judith Butler's theory of gender performativity (BUTLER 2008 [1990]; BUTLER 2011 [1993]). Departing from de Beauvoir's famous proclamation that one is not born but instead becomes a woman, Butler took issue with the sex-gender distinction in feminist thought. Attempting to both represent women and escape the narrative that women qua women are defined by their biology, the concept of gender as a cultural interpretation of sexed bodies became prominent in feminist theory. Yet, the sex-gender binary is no less problematic than other hierarchical oppositions, as it presupposes biological sex as an immutable passive given on which gender is inscribed. Butler revolutionized feminist and queer theory by arguing that sex, too, is a discursive phenomenon and that material sexed bodies are created through numerous repetitions of sex/gender norms. Eliminating the idea that there is an identity behind an individual's expression of gender, she focused on gender as performance. Gender performativity does not imply that gender is not real or is a free choice, but rather that gender is power materializing. According to Butler, gender is a set of highly regulated practices that create intelligible bodies conforming to the heterosexual matrix of men/masculine and women/feminine. All bodies resist this process – hence the need for the repetitive reassertion of "the law of sex" – yet some fail completely by not corresponding to the demanded coherence between sex, gender, desire, and sexual practice. Rather than spinning in the vicious circle of binary sex-gender imaginary, Butler proposed relinquishing the essential woman as the totalizing subject of feminisms and engaging with diverse "marginal genders" that might offer a line of escape, a subversive confusion of the fixed categories.

As we have seen, feminist thought developed as a resistance to hierarchical oppositions like male-female, mind-body, reason-emotion, and public-private. It is hardly surprising that resistance

to oppressive dualisms remained entrenched in oppositional thinking and took categories like men-women, equality-difference, and sex-gender as stable references. Dualisms were constantly questioned, yet their logic was oft repeated. Diverse strands of critique of second-wave feminist theorizing like intersectional, decolonial, and poststructuralist feminisms exposed the limitations of this approach: oppression does not function on a single axis nor is it composed of several parallel axes. Instead, markers of oppression interact and intertwine. The Other, excluded from the concept of full humanity, cannot be articulated as a homogenous entity. Butler's thesis that the body is not a given object inscribed by cultural interpretations of race, gender, disability, etc. exposes the presuppositions of feminist thought that limit feminist theory and politics.

Abandoning the search for the quintessential woman allows feminist thought to respond to a broader range of oppressions more inclusively. In postmodernity, the world and gender relations have undergone various transformations and feminisms had to respond to multiple issues from (de)colonialization to neoliberal capitalism, ecology to queer liberation, and new technologies to increased cultural diversity (GILLIS et al. 2007; BUDGEON 2011; DAVIES 2018). Feminism and gender equality became a part of political and legal jargon in international and national legal systems. Feminist jurisprudence has developed into a discipline encompassing many strains. Liberal feminist jurisprudence focused on individual rights is still the most visible and influential, yet in constant dialog and friction with radical, cultural, intersectional, queer, decolonial, and postmodern feminist critique of the law's complicity in (re)creating inequalities and injustices.

Nevertheless, emotions and emotional responses are still racialized and gendered in legal proceedings. While men of color have long been understood as emotional, (white) men were (are) socialized to repress and hide their emotions (FREVERT 2013, 87-147; DE BOISE & HEARN 2017; LEE 2003). Some of the few emotions that white men could freely express are anger and jealousy, which are often rationalized in legal proceedings. Murder can be rearticulated as voluntary manslaughter if the man argues that he was enraged by, for example, his wife's infidelity (FELDMAN BARRETT 2017, 225-228). Outwardly expressed anger of a (black) woman or men of color, on the other hand, is treated as deviant and problematic (FELDMAN BARRETT 2017). If women are expected to be emotional and caring – whether this is used to present them as inferior or to build them up as ethically superior – (white) men are expected to be cold, rational beings. It is important to note that despite the landmark transformations of legal systems, women, people of color, queer and transgender people, disabled, elderly, Nonwestern, indigenous, poor, and many others still struggle to feel genuinely protected and heard in legal procedures. At the same time, climate change, rampant wars, and technological developments demand adequate political and legal responses. Feminist jurisprudence thus remains a strand of critical legal theory and retains its explicitly normative outlook.

Some designate the shifts in feminist theorizing since the 1990s as “third-wave feminisms.” Marked by fragmentations and diversity, this wave, like all attempts at classifying feminisms, is a contested concept. Indeed, feminist critique is always multiple and diverse, and the periodization in waves does violence to its varieties and (dis)continuities. Liberal feminists are still around and did not disappear with the first-wave feminism. Women of color have long understood that their experience differs from that of white women and did not suddenly realize this only as a response to the second-wave. Queer feminists had sought the lines of flight within the system of gender relations in heteronormative societies long before homosexuality and transgenderism were (largely) decriminalized, demedicalized, and allowed to appear in public. Most feminist thinkers are not enthusiastic about adopting labels of different genres or waves of feminism ascribed to them. The impossibility of clearly defining the borders and scopes of different waves of feminism is illustrative of the impossibility of delimitations and closure so often exposed by feminist thinkers. When it comes to the feminist theorizing of the past decades, new materialist approaches and the affectual turn are the most interesting when considering the reason-emotion divide.



### 3.8. *Affectual turn*

Postmodernism, poststructuralism, and deconstruction dominated critical and feminist thought in the late 20<sup>th</sup> century. These critical readings of subjectivity, representation, knowledge, discourse, epistemology, and culture are sometimes labeled as the “linguistic” or “textual turn” in social sciences and humanities. Linguistic turn has been superseded in recent decades by the “affectual turn” (GRECO & STENNER 2013; CLOUGH & HALLEY 2007). Affectual turn is responding to the wider “emotionalization of society” with a renewed interest in affects, feelings, and emotions (PEDWELL & WHITEHEAD 2012). Affectual turn problematizes the treatment of emotions and affects as discursive phenomena and is intimately connected with the rise of new materialist scholarship. New materialisms focus on non-human agency and the affect, aim to challenge dualisms like nature-culture, human-nonhuman, mind-matter, and some such, and are grounded in critical engagement with empirical natural sciences (see, e.g., BARAD 2007; BENNETT 2010; COOLE & FROST 2010; BRAIDOTTI 2006). Renewed interest in affect and emotions is thus accompanied by a strong emphasis on the material, the bodily, and becoming, as well as by a shift in methodological and onto-epistemological orientation in critical scholarship. In social sciences and humanities, affective turn is often presented as a revolutionary shift of focus, as the discovery of emotions by law and emotion scholarship exemplifies.

While affectual turn announces a novel approach to affect and emotion, interest in the bodily and the emotive as political forces itself is far from new. Scholars like Elizabeth GROSZ (2004) and Eve Sedgwick (SEDGWICK & FRANK 2003) stressed the exciting new horizon beyond dualistic thought opened up by new materialisms and suggested that previous (feminist) scholarship neglected biology, body, and nature. Many others, like Clare HEMMINGS (2005) and Sara AHMED (2008), warned against such a flattening down of inherited feminist narratives to present the study of affect as new and groundbreaking. Whether or not feminist thinkers associated with the affectual turn construct their theories with or against their predecessors, their work is, in a way, a continuation of the destabilization of the separation of reason and emotion traced in this chapter. In feminist scholarship, emotions and affects are perceived as crucial for critical revaluation and reconstruction of politics and ethics in the gap between the public and private.

Affect, the key concept of the affectual turn, has no fixed definition and is mainly perceived as distinctive from emotion. Some authors clearly distinguish between pre-subjective bodily affect and culturally mediated emotions, while others perceive affect precisely as an entanglement of biology and culture (LILJESRÖM 2016). Thus, affect can be understood as an assemblage of pre-individual physical and life forces not limited to human beings, a relational quality of affecting and being affected, an excess that escapes the rational over-coding and thus as a free and potentially transformative force. While potentially transformative, affect also plays a part in the (re)production of social hierarchies and oppressions, as our emotional attachments to social norms ensure their durability (BUTLER 1997). Specific emotions and feelings are often the points of departure for a feminist philosophical critique.

Queer and feminist scholar Ann Cvetkovich investigated the political effects of affective expression and sensational representations on the example of Victorian sensation novels to challenge the idea that the expression of feelings is a path to liberation (CVETKOVICH 1992). She disputed the medical and clinical discourses on trauma as based on a strict separation of the public and private, erasing the experiences of women and queer people (CVETKOVICH 2003). She continues this line of argument in her work on depression as a cultural, social, and political phenomenon rooted in capitalist exploitation and systemic racism and sexism rather than an individual biochemical imbalance (CVETKOVICH 2012; CVETKOVICH & MICHALSKI 2021). Sianne Ngai investigated the interlocking between (lack of) agency and emotions on the examples of “ugly feelings” like irritation, paranoia, envy, and disgust to flesh out the racialized and gendered implications of cultural artifacts (NGAI 2005). Ranjana Khanna focused on melancholia and

psychoanalysis, and proposed the notion of affect as an interface in cultural production (KHANNA 2012). Sara Ahmed also approaches emotions as cultural and political practices rather than individual states of being (AHMED 2004). In her work on happiness, she reconstructed the intellectual history of this presumably positive emotion to demonstrate its multifacetedness (AHMED 2010). The imperative to be happy or to make others happy influences people's choices and lives. Happiness can be used to justify oppression, and the revolt against oppression might cause unhappiness. Adding to explorations of complexities of supposedly positive emotions and affects, Lauren Berlant's engagement with cruel optimism theorizes how people cope and survive amid the crisis of the neoliberalist economy and shuddering personal relationships (BERLANT 2011). She theorized cruel optimism as the attachments that sustain the fantasy of the "good life" and simultaneously cause pain and injury. The desire for a good life itself is thus an obstacle to personal flourishing: hard work no longer guarantees financial stability, for example. The complexity of affects, feelings, emotions, sentiments, and their role in society thus continues to be scrutinized with renewed ardor and diverse and innovative methodological approaches.

#### 4. *Conclusions*

This chapter outlined the long and diverse engagement with the reason-emotion binary in feminist theory. This epistemic binary was consolidated in the age of the Enlightenment, an era of paradoxes. While Enlightenment is celebrated for advances in science and political liberalism with values of equality, democracy, and the rights of men, Enlightenment was also an era of European colonialization, racialized slavery, and exclusion of women from the public sphere. While emancipatory movements achieved formal legal equality for all people – regardless of gender, race, and other attributes, the legacy of oppositional thinking remains entrenched in our collective imaginations. In feminist critiques of the reason-emotion binary, the hierarchical relationship between the two poles is usually highlighted. Reason is traditionally perceived as superior to uncontrollable emotions and reason is identified with maleness and whiteness. Such hierarchical definitions are not neutral descriptive tools and cause effects far beyond theoretical discussions. While theories of emotions are becoming more complex and reject the emotion-reason dualism, it is essential to remember that this dualism is not just a naïve epistemological relic of the past but a political tool that played an instrumental role in constructing our lived realities. Moreover, this dualism, especially if not scrutinized, continues to haunt scientific discussions and affect countless lives.

In the legal and political domain, the reason-emotion binary was employed to justify slavery, colonialism, and other social hierarchies, severely limiting the legal rights of women, people of color, and other marginalized groups. Access to education and public office was thus long precluded for devaluated groups. This chapter traced resistance to the reason-emotion binary in feminist thought to highlight the effects of this dualism and the struggle for its destabilization in the spheres of political critique, ethics, law, society, epistemology, and science. The multiplicity of feminisms, their internal controversies and contradictions also emerged through the chapter, illustrating the complexity of human organization of society and knowledge, as well as the interrelations of the two. While feminisms are diverse in their approaches and scopes, they share an ideal of equality (however imagined) and a suspicion toward epistemic binaries. Feminist critique is a reminder that professed neutrality and objectivity often gloss over problematic presuppositions, and that declared scientific or juridical disengagement and objectivity repeatedly import underlying stereotypes. These lessons are fundamental to (interdisciplinary) legal research, stressing the importance of carefully examining scientific and theoretical narratives. Understanding the extent and implications of the reason-emotion binary thus contributes toward critical scrutiny of received knowledge and seemingly self-evident facts in legal theory and practice.

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