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## From Wollstonecraft's dilemma to Nancy Fraser's theory of gender justice: a proposal for the analysis of gender equality policies

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*ABSTRACT: Social policies are an essential instrument for fighting against women's discrimination and overcoming gender inequality. However, an agreement about what gender equality consists of has not been achieved yet and, consequently, neither has a consensus been reached about what the suitable meanings (speaking in terms of public policies) to reach that egalitarian paradigm. The main confrontation in this regard has been featured by the alternative positions held by the equality feminism and by the difference feminism. Based on the theoretical contributions developed by Nancy Fraser to try to overcome this dilemma, this paper aims to present some criteria that we consider key to the analysis of a given system of gender equality public policies when it comes to assessing its transformative-gender capacity, that is, the potential of these measures to subvert the unequal gendered power relations that lie on the basis of women's subordination.*

*KEYWORDS: gender equality – Welfare State – public policies – feminism – Nancy Fraser.*

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## 1. Women and Welfare State

Welfare States emerged and developed in the Western World after the Second World War with the aim of reversing – or, at least, of lessening – the asymmetries and inequalities characteristic of capitalism. Thus, the main objective of state social provision systems that characterise Welfare States is to ensure the basic needs of all citizens regardless of their participation in the labour market, particularly when it was not possible to satisfy those needs through it, which resulted into a rupture or weakening of the link between individuals and society, that is to say, of the citizenship. This way, against the undermining of citizenship, Welfare States are founded on the idea of public responsibility for social provision of basic goods and services that ensure the population a minimum level of vital independence outside of the market contingencies.

However, originally, Welfare States did not face any other kind of subjections beyond class inequalities. Therefore, the unequal balance of power between men and women remained excluded from the public issues. It was not until the later seventies that this situation began to change. In this context, the progressive development of the national governments towards increasingly interventionist regimes and the broadening of the notion of social justice beyond the boundaries of redistributive justice are some factors that lead to the widespread acceptance of the new role of public powers as responsible for other structural inequalities beyond class, including gender inequality. Thus, from the 1970's onwards, inequalities based on sex began to be addressed as a public issue that entails a proactive role from the governments to be solved through the articulation of specific public policies. Accordingly, the role of the State as guarantor of the rights and autonomy of individuals has been a decisive factor for women empowerment since their autonomy is much more likely to be compromised than men's given that female's life course is still marked by subordination and dependence on males as a result of cultural stereotypes built around sexual dimorphism.

Once noted, the existence of a hierarchical relationship between sexes assumed the idea that the structural nature of the female subordination represents a matter of social justice, and recognized the fact that public powers have assumed and promoted this unequal gendered regime of social relationships.<sup>1</sup> It is inexcusable to demand the primary responsibility of the States for the implementation of the necessary measures be to eliminate this inequality of power between men and women in the same way as, originally, Welfare States enforced their public policies to deal with economic inequalities derived from the capitalist system.

The influence of the Welfare State on women's social position directly affects its material situation in as much its role is crucial for shaping gender relationships toward gender equality, for structuring political conflict and for contributing to the formation and mobilisation of specific identities and interests.<sup>2</sup> Women are prominent recipients of the benefits of the Welfare State<sup>3</sup> since social benefits compensate their deficient participation in the labour market either through monetary allowances or through a varied spectrum of public services that ease the burden of domestic unpaid work that women are usually responsible for.

<sup>1</sup> Sara Martín Bardera, "Una mirada, distintas propuestas: género y políticas públicas", *Investigaciones Feministas*, No. 7 (2016): 290.

<sup>2</sup> Ann Shola Orloff, "Gender and Social Right of Citizenship: The Comparative Analysis of Gender Relations and Welfare States", *American Sociological Review*, No. 58, vol. 3 (1993): 303-328.

<sup>3</sup> Carole Pateman, "El Estado del bienestar patriarcal", *Contextos*, No. 2 (2000): 1-29.

However, it cannot be ignored that Welfare States are founded on the liberal democracies that had been constituted through the founding myth of the social contract, in which women did not have access to civil citizenship or had access to it only partially, and that these regimes maintain this patriarchal structure of the system to access civil and social rights through an exclusionary model of citizenship that does not consider deserving subjects of social and economic rights to people who do not contribute to the system with a share of the earnings they made in the labour market. This way, Welfare States assume and promote the unequal balance of power between genders that is the ultimate reason of the female subordination in all the arenas. Following this idea, many feminist scholars have argued that great part of the public policies implemented by Welfare State are indeed functionalist to the patriarchal system, since their implementation have sustained and nurtured the sexual division of labour.<sup>4</sup> From this perspective, the emergence of modern social provision systems would imply nothing but the social reproduction of the gender hierarchy<sup>5</sup> through the transition from “private” to “public” patriarchy.<sup>6</sup>

Other scholars, such as Helga Hernes, may disagree with this perspective. The Norwegian political scientist coined the term “*woman friendly policies*” referring to those state programmes that contribute to the women’s empowerment and autonomy, redirecting the debate about whether or not overall Welfare States were functional to patriarchy but rather to the discussion about to what extent some specific public measures presented a real potential for the complete emancipation of women as citizens and what public policies sustained and promoted male domination.<sup>7</sup> Similarly, O’Connor<sup>8</sup> pointed out that “(...) *the assumption that aspects of the welfare state as a whole are replicated in individual subsystems has the effect of obscuring the historical specificity of particular arrangements and precludes the comparison of any particular programme as more or less oppressive*”.

Following these thoughts, in this paper we will try to provide some criteria that can be used to analyse the potential of the different public policies articulated by the States.

## 2. Gender equality policies

When it comes to articulating gender equality public policies, an essential issue is the definition of the problem and the setting of the objectives to be achieved, as well as the design of strategies to achieve them.

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<sup>4</sup> It has also been pointed out from feminism that this strengthening of the traditional system of sexual division of labour is no accidental. The Welfare State is possible precisely because women undertake the care burden for free and the system maintains a confidence that this will continue being that way.

<sup>5</sup> According the scholars that, along with Pateman, point to the patriarchal structure of the Welfare State, the mechanism that the State performs to reproduce pre-existing gender hierarchy would be as follows: (1) The promotion of the sexual division of labour: care continues to be assigned – both, symbolically and in practice – to women while the traditionally male sectors of the labour market are promoted. (2) The family wage system, which nurture female dependence on men. (3) The promotion from the morality of the traditional marriage and traditional family.

<sup>6</sup> Ann Shola Orloff, “Gender in the Welfare State”, *Annual Review of Sociology* No. 22, vol. 1 (1996): 51-78.

<sup>7</sup> Helga Maria Hernes, *Welfare State and Woman Power: Essays in State Feminism* (Oslo: Norwegian University Press, 1987).

<sup>8</sup> Julia S. O’Connor, “From Women in the Welfare State to Gendering Welfare State Regimes”, *Current Sociology*, No. 44, vol. 2 (1996): 7.

Public policies are institutionalised products of a given political regime<sup>9</sup> that tend to be identified with the activity of the executive power, decided and coordinated by the government and implemented by the different branches of the public administration. Public policies' main purpose is to respond to a demand that has been previously identified as a public issue in a specific social and political context determined by a particular system of values.<sup>10</sup> In general, public policies tend to be presented as unbiased measures, as beneficial for all the citizens without distinction of any kind. Nevertheless, gender policies are a specific kind of public policies that are implemented once it is widely assumed that, if structural gender hierarchy that underpin patriarchal society is not taken into account, the outcome of the implementation of these apparently neutral political policies tends to produce a diverse impact on men and women, reproducing gender hierarchy.<sup>11</sup> This way, on the basis of the conviction that puts the Nation State as primarily responsible for developing mechanism for the amelioration of gender inequality and for the promotion of the women's empowerment, in the past few decades, a whole battery of regulations have been developed by the Nation States as well as by the International institutions at a Supranational level. These institutional instruments are articulated with the aim of fighting against women's discrimination, recognizing women's rights and, eventually, overcoming the unequal situation for the sake of a new model of parity and inclusive citizenship. However, the content of the notion of equality – and therefore the content of the policies that seek to achieve it – is not static but has changed or mutated over time. In this regard, as Helga Hernes has noted,<sup>12</sup> a significant part of the fight for equality would be nothing but precisely the fight for the redefinition of the notion and the content of gender equality.

Actually, beyond the quite widely accepted agreement about the public responsibility for the fight against sex inequalities, what has not been pacifically assumed is a consensus about what the content of that inequality is. Therefore, neither exists an unified model of equity to be reached by these public policies, which means that there is no consensus about what the objective to be pursued by the measures adopted by the public powers is, what aspects of the social life they affect, and what are the more appropriate strategies to be implemented for this duty. Beyond its obvious practical implications, this is an issue with a strong symbolic significance since it is intimately linked to the debate about the definition of female identity. Among feminists, the discussion about female identity is usually addressed from two positions presented as first, as opposed, and incompatible: equal feminism and difference feminism. Bringing this dichotomy to public policies arena, Carole Pateman<sup>13</sup> named the debate after the intellectual pioneer Mary Wollstonecraft, author of *A Vindication of the Rights of Women*, as the Wollstonecraft's Dilemma.

<sup>9</sup> Sara Martín Bardera, *Concepto de género: de las teorías feministas a las políticas públicas. La universidad pública española como estudio de caso* (Doctoral Thesis, Universidad de Salamanca, 2016), 102.

<sup>10</sup> Judith Astelarra, *Veinte años de políticas de igualdad* (Madrid: Cátedra Feminismos, 2005), 62.

<sup>11</sup> María Pazos Morán, "Impacto de género de las políticas públicas", *Documentos Instituto de Estudios Fiscales*, No. 23 (2008).

<sup>12</sup> Helga Maria Hernes, *El poder de las mujeres y el Estado del bienestar* (Madrid: Vindicación feminista, 2003), 28.

<sup>13</sup> Carole Pateman, "The Patriarchal Welfare State: Women and Democracy", in *Democracy and the Welfare State*, ed. Amy Gutman (Princeton: University Press, 1987).

### 3. The Wollstonecraft's dilemma

The feminism of equality has its roots in women's claims for rights beginning with the Enlightenment, and embraces as its main theoretical premise that there are no biological differences between sexes that justify the existence of prescriptive difference social roles for men and women. For the advocates of this approach, gender roles are just a cultural construction which comprises a gather of behaviors and values compulsorily linked to each sex by society. From the theoretical framework of the equal feminism, the only valid way to face sex inequality from the public institutions must be by conferring the same rights to men and women, ensuring equal treatment and opportunities and fighting against sex discrimination. This approach has generally led to a public managing of sex inequality limited to enable the incorporation of women into the public sphere without changing the rules, patterns and standards that performed this space at its origins as male arena. However, it emerged around the 1980's that this approach to the subordination of women presented serious limitations to accomplish a real full citizenship for women. In fact, although the developing of policies for the recognition of rights constitutes a necessary step in order to reach gender equality, this approach was soon revealed to be insufficient as the only strategy to assure women access to a full citizenship in as much it does not confront the structural unbalance of power between sexes that allows the subordination of women in society. The most successful scenario that could be reached by the implementation of public policies based solely on this theoretical approach is a society where women are considered *as* men, which involves that, in order to accomplish full citizenship, they will be obligated to meet all the social requirements and standards designed based on the male role model.

Once the deficits presented by this perspective were noted, during the so-called second wave of feminism, a new current of thought within feminism emerged, the feminism of difference, that claims the worth of all the attributes, behaviours and values that traditionally have been underrated as typically female features. From this approach, different biological characteristics by sexes do exist and, most important, they are significant enough in order to justify a society divided into binary gendered categories where women and men must be treated differently. However, this justification from difference feminism of the existence of biological differences between sexes does not imply a defense of the patriarchal regime where attributes considered as female are hierarchically inferior to those presented as male, but claims for the value of reproductive work, traditionally considered as a female task. According to Carol Gilligan,<sup>14</sup> pioneer scholar in shedding light on the underrated worth of the female care work, there are diverse ways to be in the world and the way ascribed to women is culturally undervalued in as much as it has always been compared to the male standards, as if they were the neutral, causing a distorting situation. Thus, from difference feminism has been exalted the worth of the female caregiving work, asking for public support and encouragement of the reproductive work, defending a sort of maternalism as opposed to policies that seek to achieve equality with men through measures that enable women access to paid employment. However, public strategies formulated under the difference approach run the risk of also becoming measures of what is good or bad for women, leading into an essentialist perspective that must be avoided. Indeed, promoting the essentialisation

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<sup>14</sup> Carol Gilligan, *La ética del cuidado* (Barcelona: Fundació Víctor Gúfols i Lucas, 2013).

of caregiving work as female and, therefore, stimulating the allocation of women to the domestic sphere, would end up enhancing women economic dependence on men.<sup>15</sup>

As Castro García has pointed out, an example of this is what happened in France in the early 1990s when the crisis drove many women out of the labour market and into their homes. In this context, a maternity allowance was approved for those mothers who stayed at home exclusively to care for their children during their first three years. The background of the naturalist offensive was diluted by questions such as: is not raising and caring for children just another job? Is this not a way of recognizing and socially valuing motherhood? However, from a non-essentialist position, it is possible to answer with other questions: how is it that only women seem to be qualified for care at home? Is it that the fact that men cannot beget makes them incapable of caring for their children?<sup>16</sup>

In short, while public policies underpinned by a conception of equality entails treating women exactly like men, as equality feminism advocates, they have proved insufficient to guarantee the access of women into full citizenship. The essentialist notions of femininity argued from feminism of difference run the risk of justifying the implementation of identity public policies that confine women within existing gender divisions perpetuating patriarchal gender stereotypes. As Albert Noguera<sup>17</sup> stated, there is only one delusion as great as trying to end with gender hierarchy only through equality feminism, and that is trying to end with it through difference feminism.

Taking as a starting point these apparently opposite ways to address gender equality, Carole Pateman<sup>18</sup> theorized the Wollstonecraft's dilemma in reference to the incompatibility of these alternative approaches that have generally been used simultaneously by the governments to design gender public policies. On the one hand, in line with the theoretical postulates of feminism of equality, women have demanded incorporation into the male citizenship, claiming for the recognition of the same rights and access to traditionally male-dominated spaces; on the other hand, women have also argued the existence of specific characteristics, needs, concerns and skills that are different from those of men and, consequently, a different model of citizenship from that designed in the image and likeness of men has been claimed. In this sense, whether from the perspective of feminism of equality there is a demand to provide women with equal opportunities so that they are no longer confined to the domestic sphere and can access public space on equal terms with men, from the feminism of difference what is being claimed is the specificity and value of typically female domestic and care tasks and their equalization in terms of value to the productive work traditionally performed by men. According to Pateman, this is a dilemma because the two paths are incompatible since they are based on antagonistic theoretical assumptions, but also because neither of the two paths proposed leads to the effective acquisition of full citizenship by women. According to the author: “[the patriarchal understanding of citizenship means that the two demands are incompatible because it

<sup>15</sup> Jane Lewis, “Gender and Welfare Regimes: Further Thoughts”, *Social Politics: International Studies in Gender, State & Society*, No. 4, vol. 2 (1997): 170.

<sup>16</sup> Carmen Castro García, *Modelos de bienestar, igualdad de género y permisos por nacimiento en un contexto de crisis del modelo social europeo* (Doctoral Thesis, Universidad Pablo de Olavide, 2015), 64.

<sup>17</sup> Albert Noguera, “Superar la división espacio-género en sentido constituyente”, in *Feminismos y Procesos Constituyentes*, ed. Adoración Guamán, (Valencia: Tirant lo Blanch, 2016),

<sup>18</sup> Carole Pateman, “The Patriarchal Welfare State: Women and Democracy”.

*allows two alternatives only: either women become (like) men, and so full citizens; or they continue at women's work which is of no value for citizenship. Moreover, within a patriarchal welfare state neither demand can be met. To demand that citizenship, as it presently exists, be extended to women, accepts the patriarchal meaning of «citizen», which is constructed from men's attributes, capacities and activities. Women cannot be full citizens in the present meaning of the term; at best, citizenship can be extended to women only as lesser men. At the same time, within the patriarchal welfare state, to demand proper social recognition and support for women's responsibilities is to condemn women to less than full citizenship, and continued incorporation into public life as «women», i.e., members of another sphere who cannot, therefore, earn the respect of fellow (i.e., male) citizens».<sup>19</sup>*

Furthermore, the author considers that the simultaneous articulation of measures responding to each of the contradictory paradigms is the factor that could explain the constant advances and setbacks in equality. Thus, it would be the approach to gender public policies based on apparently contradictory interpretative frameworks that result in the articulation of measures that are inconsistent with each other.

In the midst of the debate between equality and difference, Nancy Fraser<sup>20</sup> points out that there are two models towards which public policies on gender equality could seek to advance, depending on whether they are based on the interpretative framework of feminism of equality or feminism of difference: “*the universal breadwinner model*” and “*the caregiver parity model*”. The first of these models, which is based on the postulates of the inclusion of women in the male citizenship model, seeks to achieve gender equality through the incorporation of women into the public sphere. This objective is pursued by the public authorities through the promotion of women's employment and the provision of public services that alleviate the care burdens that women bear and enable them to participate in the market on an equal footing with men. On the other hand, what Fraser calls “*caregiver parity model*”, based on the postulates of difference feminism, seeks the promotion of equality through the public promotion of informal care work performed by women. The predominant systems of public policy for gender equality in Europe have been an uneven combination of the two models described by Fraser, in a sort of “*equality within difference*”<sup>21</sup> that have included mutually contradictory policies that sought to promote the incorporation of women into the labour market while keeping domestic and care responsibilities under their responsibility.

On the other hand, the implementation of public policies in accordance with the guidelines set by either the two approaches in conflict within the Wollstonecraft dilemma offers only two alternatives: (1) either be like men and act like them or (2) continue to be women and keep on performing the tasks traditionally assigned to them.<sup>22</sup> In this regard, according to Fraser, when designing public policies of gender equality, the dichotomy between equality feminism and difference feminism posed by the Wollstonecraft dilemma must be broken: “*This means breaking with the assumption that gender equity can be identified with any single value or norm, whether it be equality, difference, or something else. Instead we should treat it as a complex notion comprising a plurality of distinct*

<sup>19</sup> Carole Pateman, “The Patriarchal Welfare State: Women and Democracy”, 30.

<sup>20</sup> Nancy Fraser, “After the Family Wage: Gender Equity and the Welfare State”, *Political Theory*, vol. 22, No. 4 (1994): 591-618.

<sup>21</sup> Castro García, *Modelos de bienestar, igualdad de género*, 407.

<sup>22</sup> Octavio Salazar Benítez, “Educación diferenciada por razón de sexo y derecho a la educación. Sobre la inconstitucionalidad de la reforma del art.º 84.3 de la Ley Orgánica de Educación”, *Revista Española de Derecho Constitucional*, No. 106 (2016): 451-478.

*normative principles. The plurality will include some notions associated with the equality side of the debate, as well as some associated with the difference side*".<sup>23</sup>

#### 4. Nancy Fraser's gender justice theory

Fraser<sup>24</sup> also makes a contribution, trying to break with the false Wollstonecraft dilemma by proposing a complex theory of gender justice integrated by several complementary faces that aim to reconcile the social equality of all women with the cultural recognition of the differences existing *between* women.

In her diagnosis, the philosopher proposes various dimensions that equality policies must address in order to be truly emancipatory. According to Fraser, it is important to first make a proper diagnosis of the causes of the situation of subordination experienced by women, which include two dimensions: differences in access to resources – which would entail a problem of (re)distribution of material goods – and the hierarchisation of cultural values – which would be a matter of recognition. Any approach to gender equity by public powers that focuses only in one of these dimensions of women's subordination, without articulating complementary measures that influence over the aspects of the reality that are affected by the other, would be insufficient to eliminate the discrimination suffered by women and to achieve what Fraser calls "*gender justice*".

However, according to Fraser, the most common approach to the issue of social injustice is made only from one of the paradigms, dissociating the two types of claims for justice to the point that, in many occasions, they come to be defined as opposite options. Thus, redistribution policies would be identified with socio-economic transformations that identify unequal access to resources for women and men as a real problem. They would be centered on overcoming the sexual division of labour and would seek to reformulate the relational logics of public and private spheres, breaking the (no longer so) strict gendered division of spaces. This would include a heterogeneous group of measures, aimed at families and the labour market, ranging from the provision of public care services to direct money transfers, including parental leave, incentives for women's employment and other reconciliation measures.<sup>25</sup>

In turn, from the perspective of recognition, the cultural aspects of gender subordination which are expressed through the assignment to women of a differentiated and hierarchically inferior status that privileges all the values, features and attitudes culturally associated with the males, while devaluing everything that constitutes the female role are addressed. This value hierarchy has a strong influence in the institutionalised configuration of all spheres of society. Thus, those measures that seek to deconstruct gender based on the re-signification of cultural values and symbolic concepts that define public space as masculine and give tasks and characteristics associated with the feminine a secondary and denigrated role, would be identified as public policies of recognition. The cultural norms with which these policies engage in critical dialogue are those that determine the patriarchal social models of representation, interpretation and communication and which are manifested behaviors such as sexual harassment and abuse, gender violence, the objectification of women through different cultural narratives, the undervaluing of women's opinion, the exclusion of women from spheres of power, etc.

<sup>23</sup> Fraser, "After the Family Wage: Gender Equity and the Welfare State", 595.

<sup>24</sup> Nancy Fraser, "Redistribución y reconocimiento: Hacia una visión integrada de justicia del género", *Revista Internacional de Filosofía Política*, No. 8 (1996): 18-40.

<sup>25</sup> Castro García, *Modelos de bienestar, igualdad de género*.



Based on this diagnosis of the situation of women, Fraser argues that, in order to ensure gender justice, public powers must articulate redistribution policies and recognition policies integrated in a bivalent strategy, since gender inequality also has a bivalent content.

Indeed, gender constitutes a “*basic structuring principle of the political economy*” since it structures both the sexual division between paid productive work and free reproductive work and, within the labour market, the division between prototypical male and female occupations. From this point of view, the elimination of women’s subordination requires a restructuring of distributive justice that eliminates the sexual division of labour. At the same time, gender also constitutes a differentiation in terms of status that society articulates around androcentrism or “*authoritarian construction of norms that privilege features associated with male*” and devalues everything associated with the feminine. In this regard, Fraser argues that this is a devaluation that is institutionalised and that is manifested by means of injustices of recognition relatively independent of political economy, which, therefore, require remedies of recognition that are additional and independent from redistribution.

As Fraser stated: “[i]t is increasingly common that policies of redistribution and recognition are presented mutually exclusive alternatives”. Defenders of the former insist that identity politics is a counterproductive deviation from economic issues of real interest, balkanizing groups and rejecting the universalist norms that are the basis of social equality. Indeed, the claim that it is ‘*the economy, you idiot*’. Conversely, advocates of the policy of recognition insist that a policy of redistribution that is blind to differences can reinforce injustice, as it falsely universalizes the norms of dominant groups by requiring subordinate groups to assimilate them and failing to recognize their distinctiveness. It may be understood that what is claimed from this point of view is ‘*culture, you idiot*’. These attacks and counterattacks seem to present a choice between two mutually exclusive alternatives. Which of these two policies should we choose?”<sup>26</sup>

Redistribution policies would affect the political-economic structure and require measures aimed at reorganizing the division of labour and redistributing income, among other things, in such a way as to ensure women’s independence and access to resources. Recognition policies would be those that seek to revalue socially denigrated identities through changes in institutionalised valuation patterns. In this sense, the bivalent concept of justice, which integrates the dimensions of redistribution and recognition referred to by Fraser, is embodied in the concept of *participatory parity*. According to this notion, justice requires addressing changes in society in such a way that all the members of society are allowed to interact with each other as equals. In Fraser’s view, for this participatory parity to be possible, it is necessary, but not sufficient, to establish basic rules of formal legal equality. Furthermore, two additional requirements must be met: the objective precondition of participatory parity, which would be identified with the distribution of material resources in such a way as to ensure the independence and “*voice*” of all participants; and what she calls an intersubjective precondition for participatory parity, which she identifies with the establishment of cultural models of interpretation and appreciation that express mutual respect and ensure equal opportunities to achieve social esteem. For Fraser, “*both the objective precondition and the intersubjective precondition are necessary conditions for participatory parity; neither is sufficient in itself*”.<sup>27</sup>

<sup>26</sup> Fraser, “Redistribución y reconocimiento: Hacia una visión integrada de justicia del género”, 23.

<sup>27</sup> Fraser, “Redistribución y reconocimiento: Hacia una visión integrada de justicia del género”, 33.

At a later stage, following the formulation of her theory of bivalent justice, Fraser<sup>28</sup> incorporates a third dimension which, although already mentioned in previous essays, had not yet been fully integrated into the whole of her theory: it is the political representation, condition to which from this moment on, she gives equivalent importance to the dimensions of redistribution and recognition, going on from a “perspectivist dualism” to a “triad of key concepts”.<sup>29</sup> Fraser considers that if there is no equal participation in the three dimensions (economic, symbolic and political) there cannot be true gender justice. When addressing this third dimension of the theory of parity justice, Fraser begins by criticizing Habermas’s conceptualisation of the public sphere, pointing out that the model of public space idealised by the philosopher is based on a liberal conception that relies on certain significant exclusions, whose fundamental axis is gender exclusion. In this sense, Fraser asserts that it is necessary to demand the participation of women in the masculinised sphere from which they have traditionally been excluded, but in a complementary manner to the demand for public policies that fight injustice from the perspectives of redistribution and recognition, because not only the *what* and the *how* of public policies are relevant, but also the *who*, in reference to the political arena as the field where the content of redistribution and recognition measures are decided. Thus, Fraser considers that it is necessary to incorporate public policies aimed at removing the obstacles that prevent women’s equal participation in politics as a way of addressing the injustices that occur both in the economy and in the symbolic spheres. In this way, Nancy Fraser’s theory of parity is made up of three complementary pillars: redistribution in economic sphere, recognition in the area of identity and representation in the political sphere.

## 5. Gender-transformative potential of public policies

The relevant question related to public policies at this point would be: to what extent do the action of public powers influence reality to modify gender inequality and alter the behavioral patterns that underlie subordination? According to Helga Hernes,<sup>30</sup> it cannot be said that the major changes in the situation of women in recent decades have been the result of public policy. For the Norwegian political scientist, Nation States regulate the changes that are *already* happening in society. Similarly, Astelarra<sup>31</sup> argues that a change in gender structures requires people to radically modify their ideas, modes of action and values with respect to gender and that such a “*revolution*” is not possible only through the implementation of public policies. However, both scholars agree that public policies, if properly targeted, are key to setting the direction and speed of social change in this regard. Thus, in the same way that for years they have contributed to the reproduction of a certain unequal gender roles, public policies can constitute an adequate tool to promote the transformation of those roles, but their effectiveness will depend on the way in which gender inequality is addressed. Following the scheme already analysed that was proposed by Nancy Fraser, public policies should be aimed at eradicating the sexual

<sup>28</sup> Nancy Fraser, “Repensando la esfera pública: una contribución a la crítica de la democracia actualmente existente”, *Ecuador Debate* (1999): 139-174.

<sup>29</sup> Clara Iglesias, “Justicia como redistribución, reconocimiento y representación: Las reconciliaciones de Nancy Fraser”, *Investigaciones Feministas*, No. 3 (2012): 256.

<sup>30</sup> Hernes, *El poder de las mujeres y el Estado del bienestar*, 31.

<sup>31</sup> Astelarra, *Veinte años de políticas de igualdad*, 93.

division of labour in the material order and androcentrism in the cultural order. In this sense, several scholars propose different classifications of public policies according to various criteria based on this perspective.

As early as 1985, within a research about the role of women in the Sandinista Revolution in Nicaragua, Marine Molyneux distinguished between *practical* gender interest and *strategic* gender interest.<sup>32</sup> According to Molyneux, the former contributed to the improvement of women's situation, but is not ultimately oriented towards the destabilisation of gender hierarchy, i.e., of socially imposed behavioural models for women and men. In contrast, the defense of strategic gender interests would integrate those actions that do aspire to the deconstruction of some aspects of the unequal distribution of power that is at the base of women's subordination.

Blanca Rodríguez<sup>33</sup> takes as main criterion the model of citizenship promoted by the measures contained in the Equality Acts in order to classify them according to whether they expand women's rights without questioning the classic model of exclusionary citizenship, or whether, on the contrary, the engage in a critical dialogue with the classic model of citizenship, promoting relational paradigms orchestrated around truly equal and inclusive parameters that overcome the ones built on the hidden sexual contract that subordinates women.

Similarly, Encarna Bodelón<sup>34</sup> classifies the different kind of solutions to the unequal situation experience by women among those that propose "*the incorporation of women into the traditional model of citizenship*", versus those that call for "*the reconceptualization of women's citizenship, so as to build a universal and diverse model of citizenship*".

In the same vein, Judith Squires<sup>35</sup> has distinguished three categories in the ways of female participation in the State: the addition of women to the public sphere without altering the male norms that govern this space; the incorporation of women into public space by extending its boundaries, i.e., also accommodating specifically female interests and needs through the creation of gender institutions; and, finally, the reconceptualisation of public sphere itself, seeking to eliminate the androcentrism from the social structure by making the underlying gender structures visible.

More specifically, Carmen Castro<sup>36</sup> has classified public policies according to their gender-transformative potential on three levels: (1) measures that reinforce gender stereotypes, extolling sexual differentiation as well as promoting the role of women as mothers and caregivers, which would have a negative gender-transformative potential; (2) measures that apparently seem neutral but that contribute to the perpetuation of gender inequalities by not questioning gender hierarchy, which would have a neutral gender-transformative-potential; and, finally, those measures that "*actively promote a change in gender patterns*" to which Castro associates a positive gender-transformative potential.

On the basis of all the above, we consider that a decisive criterion for the classification of a given system of gender equality public policies would be the degree of transformative gender potential of the measures it contains, depending

<sup>32</sup> Maxine Molyneux, "Mobilization without Emancipation? Women's Interests, the State, and Revolution in Nicaragua", *Feminist Studies*, No. 2, vol. 11 (1985): 227-254.

<sup>33</sup> Blanca Rodríguez Ruiz, "Hacia un estado post-patriarcal. Feminismo y ciudadanía", *Revista de Estudios Políticos*, No. 149 (2010): 87-122.

<sup>34</sup> Encarna Bodelón, "Las leyes de igualdad de género en España y Europa: ¿Hacia una nueva ciudadanía?", *Anuario de Filosofía del Derecho*, No. 26 (2010): 85-106.

<sup>35</sup> Judith Squires, *The New Politics of Gender Equality* (New York: Palgrave Macmillan, 2007).

<sup>36</sup> Castro García, *Modelos de bienestar, igualdad de género*.

on whether they are (1) public policies that expand women's rights, improving their living conditions but without questioning the power relations that are at the base of subordination, that is, without questioning either the sexual division of labour or androcentrism, or (2) public policies that ultimately aim to dismantle the unequal regime of gender relations and to break the space-gender division by attacking the unequal behavioral patterns that are at the base of subordination.

## 6. Strategy of intervention

As for the effective articulation of strategies to approach gender equality, these have been adopting different forms over the time. Thus, if in the origin of human communities, inequality was at the base of the political organization of societies, with the Enlightenment and the development of the modern State, the equality of rights between men will become the structuring principle of all societies, an equality which, on other side of the coin was given by the inferiority, attributed both symbolically and formally, to women. In this way, the legal systems were articulated as consubstantial to this unequal relationship, enshrining *de iure* male superiority. This regime is going to be discarded because of the women's struggle for access to civil and political rights, which will bring about formal recognition of women's equality. Initially, gender equality is identified with formal equality and the strategies for incorporating women into citizenship are limited to the mere recognition of formal rights on equal terms with men, seeking to outlaw discrimination based on sex and to ensure equal opportunities. However, once the insufficiency of this formalist approach was noted, public powers move on to address gender equality from a material perspective that implies a qualitative leap in the way equality is understood, from the prohibition of discrimination to effective equality, which implies not only the preterition of unfavorable treatments based on sex, but also "*guaranteeing conditions so that treatment and opportunities are equal for both sexes*".<sup>37</sup> Thus, the recognition of effective equality between women and men necessarily implies the recognition of a series of obligations to or addressed to the State – obligations that have been made concrete through different strategies, namely, positive action and gender mainstreaming.

Public policies for equal opportunities are based on the liberal conception of equality supported by the theoretical postulates of equality feminism. According to this conception, public policies must be oriented towards ensuring that all citizens have equal opportunities of access to the different spaces and rights. Once the State has ensured this equality of opportunities, any difference that may arise between individuals can only be an issue of merit and ability, individually considered. In the case of women, equality opportunity has been oriented eminently towards facilitating their access to the public sphere –mainly to the labour market– under equal conditions with men. Thus, the strategies for achieving this objective have focused on the elimination of "*legal, economic, social, cultural and power barriers*"<sup>38</sup> that prevented or hindered such access. In this sense, one of the central elements of the policies of equality of opportunities has been the education measures, that tend to guarantee similar formative levels for women and men.

Nevertheless, despite the generalisation of equal opportunity policies, reality has shown that it has not been possible to achieve the objective of incorporating

<sup>37</sup> Asunción Ventura Franch and Santiago García Campá, *El Derecho a la Igualdad Efectiva de Mujeres y Hombres. Una evaluación del primer decenio de la Ley Orgánica 3/2007* (Pamplona: Aranzadi, 2018), 57.

<sup>38</sup> Astelarra, *Veinte años de políticas de igualdad*, 75.

women into the public sphere on equal terms with men only through this kind of public strategy, since there are other aspects of social life that are not susceptible to be modified through this type of legislative changes, which do not address the structural causes that lie at the root of women's subordination. Thus, for example, cultural prejudices still exist in the labour market against hiring women despite the fact that education policies have resulted in women catching up with men's level of education. At the same time, equal opportunities do not address the fact that women continue assuming main responsibility for domestic and care work in the private sphere.

In light of the limitations of public policies for equal opportunities in obtaining the effective result of parity participation in the public sphere, it has been proposed that public policies be designed to correct the structural inequalities that exist between women and men at the starting point. In this context, affirmative action measures began to be articulated. These public policies consider the existence of original situations of subordination that prevent or hinder the participation in society under equal conditions of certain collectives. Thus, affirmative action policies address the issue of the deficient participation of women in the public sphere from a re-balancing perspective that takes into account the initial disadvantage experienced by women as a result of the patriarchal system and seeks to correct it in order to guarantee greater quotas of power for women in public sphere.

Nonetheless, despite the progress made in improving the conditions for women's participation in the public sphere thanks to the implementation of affirmative action measures, the truth is that these have not been enough either to eliminate the multiple situations of discrimination suffered by women. The main limitation of affirmative action measures in the way they have been implemented derives from the fact that, although they seek to remove the structural obstacles that are at the root of women's deficient participation in the public sphere, they do not get to transform the cultural rules that attribute to women the responsibilities of the domestic sphere.

In contrast to that, the concept *gender mainstreaming* would refer to a form of approach to gender equality by the governments that involves the full incorporation of the gender perspective into *all* public policies, at all institutional levels and at all stages of the public policy cycle. This approach to gender equality seeks to have an impact through public policies in all spheres of people's lives. However, the fact is that the most widespread definition of the notion of gender mainstreaming has generally given priority to procedural aspects, referring to the bureaucratic-institutional mechanism used to incorporate the gender perspective into public policies. Despite that, there has also been a call for an extensive conception of gender mainstreaming which includes not only a mode of policy making, but also substantive aspects relating to a new way of understanding equality and of articulating the objectives of the political agenda in the interest of women's participation in society.<sup>39</sup>

In this regard, as Astelarra points out, "*these new forms of intervention may have two different, albeit complementary, strategies. They can be addressed and applied in the logic of equal opportunities and positive action or they can begin to propose a new strategy that refers to the need for structural reforms of the gender system*".<sup>40</sup> In this sense, gender mainstreaming would also imply that all public decisions must be assessed from the point of view of

<sup>39</sup> *Vid.* Emanuela Lombardo, "Integrating or setting the agenda? Gender mainstreaming in the European constitution-making process", *Social Politics*, No. 12, vol. 3 (2005): 412–432.

<sup>40</sup> Astelarra, *Veinte años de políticas de igualdad*.

their consequences for women, taking into account not only the initial disadvantaged position in which they find themselves but also the structural causes that cause this inequality. These causes are deeply rooted in all areas of society and, if they are not considered and analysed carefully, will even be reproduced by the same institutions and organizations used in the fight for gender equality. Indeed, it is common for public policies—including public policies of gender equality—to be designed not considering these structural causes and including cultural gender assumption about the figure of women as mothers and caregivers, which leads to perpetuate the identification of women with this subordinate role. In this regard, when diagnosing the problem and designing public policies, public powers must make an approach to gender inequality that comprises not only the multiple manifestations of discrimination experienced by women—such as gender violence, the wage gap or the feminisation of poverty—but also, and fundamentally, they have to take into consideration the ultimate causes of the inequality that exists in our society. In so doing, it is necessary that public policies diagnose and confront the historically unequal power relations existing between women and men and connect them to the situations of discrimination, since the latter are just the outcome of the formers. As Espinosa Fajardo points out, “*in this framework, systematic attention to the structural causes that explain the specific models of gender relations in each given context is a very important element in promoting equality*”.<sup>41</sup>

## 7. Legal enforceability

Finally, although it may seem an ancillary issue, it is of paramount importance to take into consideration the degree of enforceability presented by gender equality policies in order to determine their effectiveness in achieving their objective. Indeed, it is common that many of the equality measures and public policies that are legally articulated, afterwards are not implemented or are implemented in a deficient manner. Moreover, if we put in relation the criteria developed above with the degree of enforceability of the equality measures, it is revealed as a common trend that the more gender transformative power they have, the lower the degree of enforceability they present and, thus, the more chance of non-compliance. This lack of observance or relaxation of compliance with the rules that seek to influence social reality in order to eradicate gender inequality has its origins in various reasons that are closely related to the legislative techniques used to articulate the measures designed in order to achieve effective equality.

Taking as an illustrative example the Gender Equality Act passed in Spain in 2007<sup>42</sup> we could point out up to four factors that erode the binding nature of the precepts contained in this Act, namely (1) the heterogeneity of its precepts, coexisting hard law mandatory rules with soft law ones; (2) the lack of normative concreteness in the drafting of many of the precepts; (3) the deficient enforcement measures against the non-compliance of the hard law precepts, as well as the absence of

<sup>41</sup> Rosa Espinosa Fajardo, *Guía de género para políticas públicas más transformadoras* (Oxfam Intermón, 2018), 16.

<sup>42</sup> In Spain, equality public policies have been articulated at the state level since the creation of the first institutional body for this purpose, the Women’s Institute, in 1983, recently restored to democracy after the Franco dictatorship that lasted almost forty years. Since then, several measures have been developed in pursuit of gender equality, but undoubtedly the most relevant, as it is a true code of equality, has been the Organic Law for Effective Equality between Women and Men, approved in 2007 and which contains a heterogeneous group of measures affecting all public authorities and society in general with the aim of achieving a more egalitarian society.

mechanism that allow reacting to the omissions of the subjects to whom the measures are addressed; (4) the absence of a specific penalty system against possible violations.

The Spanish Equality Act, conceived as an “Equality Code”, incorporates a catalogue of very diverse measures that affect the complex regulation of very different areas, presenting “*a technical and structural complexity derived from its ambitious aim*”<sup>43</sup>. This is a factor that directly affects the social perception of these measures as mere norms defining reality, which incorporate provisions of a non-binding nature and, therefore, of more voluntary than mandatory adhesion.

In fact, a good part of the 78 articles of the Spanish Equality Act includes general principles, conceptual definitions, recommendations and noncompulsory mandates to public institutions and private agents which do not take away its value as an instrument of symbolic redefinition of reality or as a criterion for the interpretation of other norms, but that makes, in practice, the concrete obligations of duty become diluted between general declarations and principles that lack compulsiveness and effectiveness. In this sense, Rubio Castro points out how the Spanish Equality Act is a norm of imperative law or hard law in which provisions of hard law coexist with provisions of soft law, this is, with norms “[...] *whose purpose is to propose, not to impose certain behaviors or practices; this is, a rule that tries to seek, given the nature of its purpose, the voluntary adhesion of the different normative subjects to whom it is addressed*”.<sup>44</sup> In fact, the approach to gender equality from a norm, covering all spheres of life, can be very difficult –when not impossible– through establishing only mandatory behaviours. In this sense, the lack of precision and the generality of norms and principles can be perceived as legislative techniques that seek to modify behavioural patterns where compulsory regulation is not viable. Therefore, at first, the mere fact of including in the legislation of equality precepts that gather norms that intend to promote a certain behaviour not from the imperative, but from the voluntary adhesion of the actors involved, should not imply itself a problem in as much as the circumstances that give rise to the use of this legislative technique, as well as the objectives that are intended to be reached with it, differ from the context in which the traditional legislative techniques would be applied. Thus, for example, while in the interdiction of discrimination based on sex in the labour market is required a formal approach that makes it possible to articulate clear mechanisms for prohibiting and sanctioning non-compliance, with regard to the promotion of effective equality between private actors, the different nature of this kind of relationship justify the legislator’s commitment to a different strategy, more focused on obtaining the voluntary support of the agents involved on the basis of their own spontaneous commitment or, in any case, using persuasion rather than explicit compulsory mechanisms. In this sense, for example, Articles 50 and 74 of the Spanish Equality Act urge private companies to undertake actions of social responsibility aimed at promoting conditions of equality between women and men, presenting as an incentive to do so the possibility of publicizing them in order to gain a better public social image. The aim of this type of precept is to encourage companies to take action to promote equality, not by means of direct coercion, but by offering them benefits derived from developing such action, such as projecting a more favourable social image, but always leaving the effective implementation of such measures to the decision of the companies.

<sup>43</sup> Ana Rubio Castro, “Los efectos jurídicos del *soft law* en materia de igualdad efectiva. La experiencia española”, *AFD* (XXX), (2014): 54.

<sup>44</sup> Rubio Castro, “Los efectos jurídicos del *soft law* en materia de igualdad efectiva”, 50.

However, although agreeing with Rubio Castro on the suitability of this type of soft law measures for certain cases in which classic regulations would not be effective in achieving the objectives set out, the truth is that the generalisation of the legislative technique of soft law draws a panorama in which compliance with a large part –if not the majority– of the normative precepts contained in equality laws ends up being left to the will of the different social agents involved in implementing many of the measures that seem only suggested, thus losing the great transformative potential that could have been achieved by setting a clear obligation.

In this sense, the problem emerges when we see how soft law technique has been chosen not only when the nature of the mandate or the sector to which it is addressed so requires, but also in cases where circumstances would have allowed a more restrictive regulatory structure to be chosen without problem, including clearly mandatory rules. Thus, for example, it is not understood that a large part of the mandates addressed to the various bodies of the public administration are stated in terms such as “may”, “shall”, etc., in such a way that it ends up leaving the effective implementation of measures that could have been categorically articulated in a classic normative sense to the discretion of the political will, in cases where the imperative wouldn’t have necessarily reduced the effectiveness of the provisions, but rather the opposite. This legislative technique can be found in numerous precepts addressed to public authorities throughout the Equality Act, such as its Article 33, which establishes that Public Administrations may establish special conditions in the execution of their contracts in order to promote equality between men and women. In this regard, the indiscriminate use of terms that convey a diffuse obligation, such as “may” or “shall”, makes it difficult to verify effective compliance with the provisions of the rule when the precepts do not require either a specific result or specific behaviour on the part of those to whom the rule is addressed. Finally, this wide presence of soft law precepts has “contaminated” the norms of hard law contained in the Equality Law to the point that it has been generalised the perception that its norms are just of voluntary adhesion for the social actors to whom it is directed.

With respect to those precepts that do contemplate a concrete obligation to make addressed to public powers, the normative meaning of the terms in which the precept is expressed and the lack of legal provision of mechanisms to be activated against the non-compliance of the prescribed obligations are factors that also contribute to transmitting the perception that the Act does not bind its recipients beyond what those, in each concrete moment, are willing to assume. In effect, the Spanish Equality Act does not contain a regime of infractions and sanctions to oppose against the breach of most of its provisions and, beyond the reference for certain provisions to what is established in the sanctioning regimes of other disciplines, it remains in the field of normative stasis. In this sense, for example, Article 26 states that the public administration bodies responsible for cultural management shall adopt measures to encourage the specific promotion of women in culture with regard to artistic production. However, it does not establish how often or what type of measures, nor does it provide for any legal consequences in case that these bodies, which are also not listed, do not comply with this provision.<sup>45</sup> In this type of precept,

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<sup>45</sup> In order to propose solutions to alleviate this situation, in the year 2000, the OECD prepared a report on regulatory management in relation to compliance with legislative provisions in our country, in which it proposed the creation of a specialized unit to clearly establish the principles of responsibility and the frameworks for their implementation. The recommendations made by that authority would be addressed



a mandate is established in which the obligation to do is not such, insofar as it is specified through diffuse verbal forms which are difficult to identify with specific obligations to make, such as *they will encourage, procure, ensure*, etc.

Similarly, many precepts include a specific mandate to do or not to do something, in terms of duty, to the public authorities, but no legal consequences are established against the omission of the obligations legally established. There is no mechanism in the legal system to react to the normative inactivity of the public authorities, beyond the possible questioning of the validity of the act in application of the procedural rules applicable to each case, nor does it ensure that the judges intervene by obliging the other public authorities to amend the omission committed. For example, Article 19 of the Equality Act provides that all draft general provisions approved by the Government must be accompanied by a mandatory gender impact assessment report. This is undoubtedly a crucial gender mainstreaming measure based on the premise that public policies, even if apparently neutral, implemented in a society marked by the unequal distribution of power between women and men have a differentiated gender impact. This is a genuine gender mainstreaming tool that aims at reconfiguring all policy making at the highest level, forcing reflection on the unequal gender impact of all public policies; a measure, therefore, with a high gender transformative potential. Nevertheless, the effective elaboration of the gender impact report has presented certain deficiencies in its implementation, mainly derived from the fact that the normative disposition does not specify extremes such as what should be the minimum content of the reports and from the lack of available data to analyze the gender impact, which results in a low quality of them.<sup>46</sup> On the other hand, with regard to the jurisdictional control of compliance with the provisions of the equality laws, it has also proved ineffective in ensuring that the subjects to whom the obligations contained in the regulatory precepts are addressed are effectively bound, even when they are hard law rules. In this sense, as Gil Ruiz<sup>47</sup> has shown, the judges do not consider as a nullity defect the noncompliance or defective compliance with the obligation to prepare gender impact reports.

All of the above results into the transfer to the public authorities, as main recipients of the mandates, of the perception that the effective implementation of the precepts contained in the Equality Act depends on their own initiative, which can easily be replaced by the need to attend to other political issues that may arise.

It is also usual that it is precisely those measures that present a greater transformative potential that suffer from a greater lack of enforceability, to the point of being legally articulated through precepts that suggest a voluntary behaviour without incorporating any element of coercion or persuasion. For example: Article 22 of the Spanish Equality Act provides that local governments may establish municipal plans for organizing the city's time. The rationale of this precept is that the lack of coordination between the city's timetables and the needs of the citizens affects mainly women, since they are the

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to the Council of Ministers and it would be empowered to coordinate the entire administration in relation to regulatory policies, as well as to review the protocols for evaluating existing public policies. This project, however, has not been implemented in the terms proposed in the aforementioned report, although the recommendations made have not lost their validity at present and the shortcomings detected in the Spanish system of public policy implementation continue to be a problem.

<sup>46</sup> Eva Alfama y Alba Alonso, "Las políticas de género en la administración pública. Una introducción", *Revista Vasca de Gestión de Personas y Organizaciones Públicas*, No. 8 (2015): 30.

<sup>47</sup> Juana M. Gil Ruiz, *Las nuevas técnicas legislativas en España. Informes de Evaluación de Impacto de Género* (Valencia: Tirant lo Blanch, 2012).

ones who assume the task of combining the responsibilities of the public and private spheres in a more intense way. It is not surprising, therefore, as Lousada Arochena points out “*that initiatives to rationalize city time come hand in hand with laws on equality between women and men in the context of policies to reconcile personal, family and working life*”.<sup>48</sup> According to the Nancy Fraser classification, we would be facing a public policy of redistribution since its objective is to rebalance access to resources. As for the approach strategy, we would be facing a gender mainstreaming measure, and from the perspective of its gender-transformative potential, it would be a measure that questions the prevailing model of citizenship and aims to subvert the relational logics of public and private spaces. In this sense, the possibility of reorganizing the times and logics of public and private spaces goes beyond mere individual reconciliation policies and assumes, in a global manner, that there are difficulties in making the public and domestic spheres compatible, derived from the chronological and chronometric demands of each of them. Thus, ultimately, this measure contributes to subverting the space-gender divide that underlies the patriarchal and discriminatory model of society.

However, the language used in the aforementioned Article 22 is characterised by the vague, imprecise terms and, above all, non-compulsory, which it uses, dispensing with any element of coercion that obliges the Local government to implement such plans. In short, the terms used in the final wording of Article 22 mean that it is considered more of a programmatic precept, whose effective implementation is not required but rather conditioned by political opportunity criteria<sup>49</sup> without there being any measures on the part of the Nation State to encourage its adoption. Thus, with a few isolated exceptions, the provisions of Article 22 has not had a generalised application in Spain and the plans for the use of time, despite the enormous potential for modifying the differentiated and incompatible relational logics of the public-private spaces they present, have for the moment remained in the field of the anecdotal in favour of other types of public policies to which greater political priority has been given.

## 8. Criteria for the analysis of a gender policies public regime

In short, the relationship between women and the Nation State is controversial. Traditionally, the Nation State has played a significant role in maintaining the patriarchal social order that sustains the situation of gender inequality, but at the same time, the potential presented by the State to correct the situation of gender inequality through its public policies is undeniable. This depends, in any case, on what is understood by equality, a decisive notion when it comes to determining the objectives to be pursued by public policies, the mechanisms to be articulated in so doing and the areas of reality on which these should have an impact. For decades, it has been common to identify the notion of equality with a single concept or value, labeling others as opposed and incompatible, which has sometimes led to a dead end in the search for equality through public policies. In this regard, Nancy Fraser proposes a polyvalent theory of gender justice, which identifies the notion of equality with action on at least three areas of reality that must be covered by public

<sup>48</sup> José Fernando Lousada Arochena, *El principio de igualdad de mujeres y hombres: en especial, en el derecho del trabajo y de la seguridad social* (Doctoral Thesis, Universidad de Coruña, 2013), 331.

<sup>49</sup> Gemma Fabregar Monfort, “Planes y distintivos de igualdad en las empresas», in *El Derecho a la Igualdad Efectiva de Mujeres y Hombres. Una Evaluación del Primer Decenio de la Ley Orgánica 3/2007*, ed. Ventura Franch, Asunción y García Campá, Santiago (Pamplona: Aranzadi, 2018), 731.

policy: (a) redistribution in the economic sphere; (b) recognition in the symbolic sphere; and (c) representation in the political sphere.

Once the areas of action on which public equality policies must simultaneously have an impact in order to be effective have been determined, a fundamental question when it comes to determining whether or not a given set of public policies is favourable to the emancipation of women is their potential to subvert the model of exclusionary citizenship that is at the root of subordination. In this sense, it must be taken into account whether they question the behavioural roles and unequal relational logics that underpin the entire patriarchal social order, or whether, on the contrary, they assume them as natural, maintaining the division of society into public and domestic sphere.

To conclude, it is also decisive, when judging the effectiveness of a certain system of public policies, to analyse the legislative techniques used to articulate the different measures, paying special attention to the degree of enforceability that they present. In this sense it is usually the case that those measures with the greatest transformative potential are precisely those that suffer from a greater lack of compulsion and that, therefore, are not effectively implemented.

According to all the above, we propose the use of at least the following five criteria when analysing the gender-transformative potential of gender equality public policies in a given territory: (a) That they cover the four facets proposed by Fraser, i.e., redistribution, recognition and representation; (b) Strategy of intervention; (c) Degree of legal enforceability; (d) Questioning of the model of citizenship; and (e) Redefinition of the relational logics of public and private spaces.