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**To Break the Silence of Women.
Gender-Based Violence:
an ongoing battle.**

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ABSTRACT

La Violenza Contro delle Donne (VCD) e la Violenza Domestica (VD) sono state recentemente riconosciute dal Consiglio d'Europa come violenza di genere di natura strutturale radicata in seno alla società contemporanea.¹

Le origini di questa disparità, a detta della stessa Convenzione di Istanbul (CI), sono da ricercarsi in una cultura patriarcale che, per secoli, ha tollerato e giustificato la violenza di genere e si è rifiutata di riconoscerla come un problema globale. La violenza maschile sulle donne si sviluppa su una dimensione trasversale: oltrepassa confini, etnie, religioni, istituzioni, età, professioni.² Esistono diverse tipologie di violenza: la violenza che lascia i propri segni sul corpo procurando lesioni fisiche con l'obiettivo di incutere paura e procurare dolore (violenza fisica); la violenza che insulta, denigra, umilia, ricatta e colpevolizza che si insinua nelle menti delle donne (violenza psicologica); la violenza che devasta l'anima e il corpo della donna perché contro la propria volontà (violenza sessuale); e la violenza che impedisce alla donna di essere indipendente e autonoma (violenza economica).³

La CI, adottata l'11 maggio 2011 ed entrata in vigore il 1 agosto 2014, conta oggi 32 ratifiche⁴ e rappresenta il trattato regionale di più ampia portata che affronta la VCD e la VD come gravi violazioni dei diritti umani. La prevenzione della violenza, la protezione delle sue vittime e la punizione per i suoi perpetuatori sono i tre elementi cardine su cui si basa l'intera Convenzione.

Che cos'è la violenza e in particolare che cos'è quella di genere contro le donne? Quando possiamo parlare di violenza domestica? Da dove prende le sue origini e perché? I movimenti femministi e la letteratura che ne è scaturita hanno davvero anticipato la dottrina giuridica nell'affrontare questo problema? Alla luce di ciò, quali sono oggi gli strumenti giuridici in vigore sul piano internazionale, nazionale e regionale per

1 *Convenzione del Consiglio d'Europa sulla Prevenzione e la Lotta contro la Violenza nei confronti delle donne e la Violenza Domestica* (anche conosciuta con il nome di Convenzione di Istanbul), firmata l'11 maggio 2011 a Istanbul, Turchia. Entrata in vigore il 1 agosto 2014.

2 Iudicelli C. K., 'Violenza di genere: Definizioni, dinamiche e conseguenze', pp.224-238, p.226 in Ardizzone M.R., Chinnici G., Francesconi M.F., *Violenza sulle donne*, Studium edizioni, Roman, 2018.

3 *Ibid.*, pp.227-228.

4 Albania, Andorra, Austria, Belgio, Bosnia Erzegovina, Cipro, Croazia, Danimarca, Estonia, Finlandia, Francia, Georgia, Germania, Grecia, Italia, Islanda, Malta, Monaco, Montenegro, Olanda, Norvegia, Polonia, Portogallo, Romania, San Marino, Serbia, Slovenia, Spagna, Svezia, Svizzera, Ex Jugoslavia Repubblica di Macedonia, Turchia. (Lista aggiornata al 18 giugno 2018)

contrastare la violenza contro le donne e in particolare la violenza domestica? Queste sono alcune delle domande a cui tenterò di trovare risposta con questo mio elaborato finale. La scelta dell'argomento trattato nel presente lavoro nasce dall'osservazione del fenomeno della VCD nella realtà contemporanea, partendo da una riflessione generale sugli strumenti promossi a livello internazionale per contrastarla e completandosi con un'analisi più regionale e a respiro europeo. Secondo gli ultimi studi condotti dall'Organizzazione Mondiale della Sanità (OMS), infatti, ancora nel 2016 la violenza contro le donne veniva definita 'un problema di salute di proporzioni enormi' che colpisce un terzo delle donne nel mondo.⁵ Ad essere presa in esame dall'OMS, è stata in particolare la violenza definita 'degli affetti' o *Intimate Partner Violence* subita per mano dei propri mariti o partner. Dall'analisi è risultato che circa il 30% delle donne in tutto il mondo ne è vittima.

Alla luce della citata Convenzione, dei dati statistici mostrati, e del periodo in cui ci troviamo a vivere oggi, caratterizzato dall'emergere di numerosi movimenti e gruppi che lottano per la liberazione della donna dal giogo della violenza e per la conquista di pari diritti e opportunità, ho ritenuto necessario indagare il fenomeno della VCD e in particolare la sua matrice domestica, essendo questa la forma più privata, nascosta e meno denunciata, ma che ancora affligge milioni di donne nel mondo. La violenza domestica è una violenza che vede l'aguzzino nel marito o in figure con cui la donna ha un rapporto di intimità familiare. In questo elaborato, verrà considerata come una sorta di contenitore capace di inglobare violenza fisica, sessuale, psicologica ed economica. Per quanto la VD possa riguardare sia coppie eterosessuali che omosessuali, in questo mio lavoro saranno presi in considerazione soltanto forme di VD contro le donne per mano di uomini. La tesi è stata scritta alla luce di due discipline apparentemente diverse, ma che insieme sono in grado di fornire dell'argomento trattato un quadro molto più ampio e completo: parlo della letteratura e del diritto e in particolare di come la prima abbia saputo anticipare la giurisprudenza sulla VCD e la VD, introducendo molti temi e sensibilizzando le coscienze della società occidentale preparandole a sviluppare anche la dottrina giuridica. Grazie agli *input* forniti dalla letteratura, il XX secolo ha sviluppato a seguire numerosi atti di *soft law* e convenzioni *ad hoc* sul piano del diritto internazionale, nazionale e regionale che affrontano la VCD per la prima volta come un problema di

⁵ *Global and regional estimates of violence against women. Prevalence and health effects on intimate partner violence and non-partner sexual violence.*, WHO, Department of Reproductive Health and Research, London School of Hygiene and Tropical Medicine, South African Medical Research Council.

portata globale in quanto violenza di genere che trasgredisce i diritti umani fondamentali, quei diritti inviolabili sanciti nel 1948 dalla *Dichiarazione Universale dei Diritti dell'Uomo*. Infatti, come ci ricorda già nel Preambolo la CI, l'origine della violenza di genere è da ricercarsi in cause strutturali di natura culturale, radicate nella società, che hanno creato, incoraggiato la violenza contro il genere femminile, in tutte le sue forme. Ed è proprio da quella cultura patriarcale e nemica delle donne che bisogna partire per cambiare le cose. Non potendo svolgere un'analisi esaustiva e completa del termine violenza che meriterebbe una tesi esclusivamente dedicata, mi soffermerò sullo studio che la filosofa, storica e scrittrice tedesca Hannah Arendt e il sociologo tedesco Johan Galtung hanno svolto, definendo 'violenza' quell'aspetto di natura strutturale che permea la società e ne tesse le trame sia a livello internazionale (nelle relazioni tra stati, *inter-statal dimension*) sia a livello privato (nelle relazioni interpersonali, *inter-personal dimension*). Il significato della parola violenza e le forme in cui essa si traduce, insieme alle conseguenze che vedono tra le donne le vittime per eccellenza della stessa, sembrano mutare nel tempo e nello spazio 'socio-culturale'.⁶ La VCD nello specifico risale quindi alle origini del patriarcato, un regime di controllo e dominio incentrato sulla figura del 'padre', o più in generale dell'uomo, come centro focale della società sul quale tutto è costruito e tutto si misura. A causa di questa *forma mentis* decisamente maschilista, la VCD è da intendersi come una violenza di genere che si è riversata contro la donna in quanto tale. Le donne, quindi, sono state etichettate come il genere secondario e inferiore all'uomo, uomo che invece ha attribuito a sé stesso l'autorità e il controllo della società, delle sue strutture e soprattutto della donna. La VCD e in particolare la VD, in un mondo 'uomo-centrico' non è mai stata percepita come un problema di portata generale, ma anzi è sempre stato trattato come una questione privata, appartenente alla sfera familiare nella quale lo stato non è mai intervenuto.

Dopo un primo paragrafo interamente dedicato all'analisi del patriarcato e delle sue origini, sposterò l'attenzione sull'acceso dibattito tra sesso e genere. A lungo, infatti, la dottrina si è interrogata se fosse giusto definire la VCD come una violenza di genere, ma spesso si sono sviluppati pareri contrastanti in merito alla stessa definizione di genere. Oggi sappiamo che, per violenza di genere, non si intende esclusivamente una violenza contro le donne, ma quest'ultima rappresenta una delle tante forme che la violenza di

⁶ Iudicelli C. K., 'Violenza di genere: Definizioni, dinamiche e conseguenze', p.225.

genere può assumere. La distinzione tra sesso e genere è stata molto controversa e i contributi raccolti nel paragrafo ad essa dedicata si rifanno al pensiero di tre femministe che, a mio parere, rispecchiano l'essenza e i percorsi principali di snodo dello stesso dibattito. Simone de Beauvoir è stata una delle prime a scrivere sul tema, portando avanti l'idea che l'essere donna non sia una questione di nascita, ma derivi invece da una serie di scelte ed esperienze di vita. 'Donna si diventa, non si nasce' diceva Beauvoir, e la stessa cosa quindi vale per il genere. Un genere non è, ma si 'fa' e la stessa violenza di genere è una violenza culturale e insita dei processi sociali creata da stereotipi, omertà e banalizzazioni che hanno nutrito le idee della società per secoli.

Judit Butler, filosofa americana, invece, pone la sua attenzione sulle cosiddette 'norme di genere', imposte dalle convenzioni sociali che in un secondo momento il soggetto interiorizza, fa proprie e che contribuiscono alla sua definizione.

Infine, Luce Irigaray sostiene che le donne debbano essere definite nella loro singolarità e non per differenza rispetto al genere maschile, perché proprio questo modo di definirle per quello che non sono rispetto all'altro sesso ha condotto la società sulla strada della violenza come soluzione 'normale' nel trattare con il genere altro e inferiore.

Fino alla fine del XX secolo, l'approccio della comunità internazionale è sempre stato *gender-neutral*. A partire dal 1995 con la Conferenza di Pechino in occasione della *Quarta Conferenza mondiale sulle donne*, il termine 'genere' venne introdotto per la prima volta e le disparità di genere iniziarono ad essere prese realmente in considerazione. Soltanto con la CI, però, abbiamo cominciato a vedere sempre più politiche specificatamente ideate per proteggere il genere femminile.

Nell'ultimo paragrafo del primo capitolo, infine, presenterò una delle due facce della tradizione popolare che ha contribuito alla diffusione di stereotipi duri a morire relativi all'inferiorità del genere femminile, stereotipi che, a loro volta, hanno giustificato la violenza verso le donne. In particolare, mi soffermerò su come questa tradizione popolare in passato abbia motivato e prolungato nel tempo la violenza nei confronti delle donne, giustificandola e deridendola per mezzo di proverbi, spettacoli, commedie teatrali e fiabe. Santa o strega, sottomessa o bisbetica, la donna è sempre stata situata agli estremi opposti come se le fosse impossibile ricoprire una posizione intermedia, come quella concessa all'uomo.⁷ Soltanto negli ultimi due secoli – e nel mio secondo capitolo - le donne

⁷ Vitale L., 'Plurale, Femminile, Singolare: Dalla parte delle Donne', pp. 174-203, p. 177, in Ardizzone M.R., Chinnici G., Francesconi M.F., *Violenza sulle donne*, Studium edizioni, Roman, 2018.

hanno iniziato a fare sentire la propria voce, denunciando modelli di subordinazione, e rivendicando ideali di emancipazione. Intorno alla fine del XIX secolo, infatti, assistiamo alla nascita di una letteratura femminista, che smaschera la violenza strutturale al cuore della società del patriarcato, stabilendo differenze biologiche e usandole poi per distribuire ruoli e poteri nella società, arrivando a individuare una gerarchia di sottomissione per il genere femminile.⁸ Grazie alla nascita del movimento femminista, fra la fine del XIX e l'inizio del XX secolo, si sono riconosciute sempre di più le persistenti e profonde disuguaglianze a livello sociale, economico e istituzionale che da sempre hanno ostacolato il genere femminile nella sua realizzazione e piena libertà di espressione. La dottrina giuridica, come dimostrerò, è arrivata al riconoscimento della violenza contro le donne soltanto negli ultimi anni del XX secolo e questo è stato possibile anche grazie al lavoro precedentemente svolto da intellettuali e femministe di tutto il mondo.

Nel secondo capitolo, la questione della VD verrà affrontata nell'ambito della letteratura. Inizierò con una breve introduzione su cosa si intenda per movimento femminista e presenterò alcune delle figure femminili e maschili più rilevanti che, a mio parere, hanno radicalmente cambiato e positivamente influenzato la lotta femminista contro l'uguaglianza di genere e la VCD. Tra queste figure di spicco, mi soffermerò su Mary Wollstonecraft, femminista e attivista per i diritti delle donne da molti considerata la madre del femminismo liberale. Vissuta tra il XVIII e il XIX secolo in Inghilterra, per tutta la vita si è battuta duramente contro le ideologie del tempo per dimostrare che le donne non sono inferiori all'uomo per natura, ma che è stata invece la società a renderle tali. Era fermamente convinta che la società, nel suo complesso, avrebbe avuto ampio margine di miglioramento se alle donne fossero stati garantiti quei diritti naturali e universali che allora erano riconosciuti soltanto al genere maschile. Nello stesso periodo in Francia, durante la Rivoluzione francese, Olympe de Gouges divenne una delle più radicali e combattive attiviste per l'uguaglianza tra uomini e donne. La stessa Rivoluzione francese venne da lei giudicata una rivoluzione per maschi alla quale le donne non furono ammesse e ignorate anche nella *Carta dei diritti dell'uomo e del cittadino*. Non destinate a diritti civili e politici le donne furono rivendicate da Olympe de Gouges in quella che redatta da lei prese il nome di *Déclaration des Droits de la Femme e de la Citoyenne*.

⁸ Vitale L., 'Plurale, Femminile, Singolare: Dalla parte delle Donne,' p. 178.

Quasi un secolo più tardi in Inghilterra, Harriet Taylor e John Stuart Mill militarono insieme per i diritti delle donne nella stesura di articoli e saggi. Fu proprio tra la fine del XIX e l'inizio del XX secolo che tra l'opinione pubblica cominciò ad emergere, sempre di più evidente, il problema della VCD e della VD. Taylor e Mill collaborarono nella stesura di articoli e saggi che denunciavano il matrimonio visto come un contratto nel quale le donne entravano ignare di ciò che le aspettava e gli uomini, invece, potevano disporre liberamente delle proprie mogli anche secondo la legge. Tra queste libertà, vi era la violenza come mezzo per confinare ancora di più la donna nel ruolo e nella posizione che la società le aveva imposto, quello domestico di 'angelo del focolare'.

Negli stessi anni, ma sulla sponda opposta dell'Atlantico, Jane Addams, premio Nobel per la pace nel 1931, fondò la *Social Settlement Hull-House* in Chicago. Comunità filantropica sorta tra i sobborghi più poveri della città, faceva in realtà parte di un movimento molto più ampio che aveva investito diversi stati Europei e non, nella costruzione di *Social Settlement Houses* per l'accoglienza di persone bisognose e povere, tra cui molte donne senza fissa dimora o fuggite da una vita di soprusi o violenze. Scrittrice, femminista e riformista Addams si servì di questa esperienza per narrare storie di donne che aveva avuto l'onore di incontrare, vicende che divennero importanti testimonianze di vita, un insegnamento per la società del tempo e per quella futura.

La seconda parte del capitolo, invece, verterà sull'analisi della VD per mezzo di tre autrici donne, che con le loro opere hanno anticipato tematiche importanti per lo sviluppo della dottrina giuridica internazionale ed europea negli ultimi anni in merito alla lotta appunto contro la VCD e la VD. Nell'antologia di racconti di Angela Carter pubblicata per la prima volta nel 1979, l'autrice si rifà a leggende, romanzi medievali e fiabe del folklore popolare per dissacrare vecchi stereotipi sulla figura femminile e impostazioni patriarcali. Nelle prime pagine, si trova la riscrittura della fiaba settecentesca di *Barbablù*. La versione della Carter si inserisce in un contesto di rinnovata critica femminista della seconda metà del XX secolo che si impegna a denunciare molteplici valori patriarcali ancora presenti nella cultura contemporanea. L'utilizzo rivisitato del genere fiabesco dimostra come la tradizione popolare, la stessa analizzata nel primo capitolo come depositaria e celebrativa della violenza nei confronti delle donne, sia stata nel tempo usata anche come strumento di lotta contro la stessa. La versione della Carter della fiaba intitolata *La camera di sangue* racconta una storia diversa, quella di una donna che ha saputo infrangere le barriere di genere e vincere la violenza del marito, trovando il suo posto nel

mondo e non quello che la società le aveva imposto in quanto donna. La figura femminile nel racconto diventa la protagonista e parla di sé stessa attraverso un percorso di autocoscienza prima come subalterna al marito per convenzione sociale e infine come donna libera e indipendente. Attraverso il racconto, l'obiettivo della Carter era quello di stravolgere i canoni comportamentali dettati dalla società. Per farlo è ricorsa ad uno stratagemma letterario nel quale la parodia, sotto la cui lente i fatti sono narrati, permette di mantenere inalterato il passato, quindi la storia originale, ma allo stesso tempo di ricontestualizzarla e rinnovarla in un nuovo e completamente diverso sistema culturale. Il secondo testo preso in considerazione è il romanzo distopico di Margaret Atwood *Il racconto dell'ancella* pubblicato nel 1985. Con questo libro, l'autrice pone il lettore davanti all'evidenza dei fatti. La protagonista narra in prima persona della sua vita da donna in un mondo distopico in cui il suo genere è ridotto ad una condizione di schiavitù estrema. La società è infatti divisa tra uomini che comandano e donne che invece vengono comandate in tutti gli aspetti della loro vita. Queste ultime sono infatti suddivise in diverse categorie a seconda dei ruoli che la società impone loro e ognuna è chiamata a rispettare il proprio compito che, nel caso di Offred, la protagonista, è quello di contribuire alla prosperità della nazione.

Infine, tratterò della scrittrice americana Susan Glaspell che nel 1916 pubblicò, prima come spettacolo teatrale poi come storia breve, *Una Giuria di sole Donne*. Poliziesco al femminile, racconta di due donne che si trasformano in investigatrici e giudici durante le indagini attivate in seguito alla vicenda di una donna loro conoscente accusata dell'omicidio del marito. Tramite l'analisi di particolari nella vita domestica dell'accusata, queste improvvisate detective riescono a risolvere il caso, ma di comune accordo decidono di non rivelare agli uomini ciò che hanno scoperto e cioè che la donna ha volontariamente ucciso il marito dopo avere sopportato una vita di violenze e soprusi. Ed è proprio in quel momento che le donne si assumono la responsabilità di giudici e svolgono un processo alternativo per la donna accusata del crimine, considerandola alla fine da giustificare nonostante l'orrendo crimine. Con questo racconto, l'autrice muove una pesante critica al sistema giudiziario, normalmente insensibile e ingiusto nei confronti delle donne. Glaspell pone la società di fronte all'evidenza, denunciando con il suo lavoro le ingiustizie che le donne hanno sempre dovuto affrontare nella vita privata e davanti alla legge.

Lo scopo di questo secondo capitolo sarà proprio quello di dimostrare come voci di donne quali Mary Wollstonecraft, Olympe de Gouges, Jane Addams prima e Angela Carter, Margaret Atwood e Susan Glaspell poi siano state fondamentali anche nel percorso di presa di coscienza da parte del diritto internazionale e regionale contemporaneo al fine di proteggere le donne dalla società patriarcale e dalle violenze degli uomini, attraverso l'elaborazione di una legislazione atta a prevenire e difendere.

Nel 2018, non possiamo ancora dirci completamente liberi da stereotipi e luoghi comuni che continuano a popolare l'immaginario collettivo, alimentando la violenza maschile contro le donne. Molto, se non addirittura tutto quello che le donne sino ad oggi sono riuscite ad ottenere per il contrasto alla violenza di genere, è da attribuire al grande lavoro svolto negli anni dal movimento femminista: milioni di voci di donne e uomini che insieme si sono unite in un coro per lottare contro la discriminazione e ottenere finalmente una parità di ruoli tra uomini e donne. Oggi viviamo in un periodo di forte transizione e presa di coscienza, in cui la consapevolezza dell'esistenza della VCD, da una prospettiva tipicamente e limitatamente femminista, si sta spostando sempre di più verso la promozione di azioni globali a livello giuridico sia in ambito internazionale sia in ambito nazionale e regionale.⁹ La VCD, nella società attuale, continua ad essere un problema di proporzioni enormi. Negli ultimi anni, la risposta degli Stati e delle organizzazioni internazionali è andata sempre più crescendo e atti vincolanti, e non, sono stati adottati. Tra questi, uno in particolare sarà quello maggiormente preso in considerazione nel terzo e ultimo capitolo di questa tesi. Si tratta della Convenzione di Istanbul concepita nel quadro d'azione del Consiglio d'Europa¹⁰ in materia di violenza contro le donne e violenza domestica. Aperta alla firma di stati non membri che godono dello *status* di osservatori presso il Consiglio d'Europa e/o che hanno preso parte alla sua redazione, essa rappresenta lo strumento regionale, ad oggi redatto, di più ampia portata e di fondamentale importanza grazie alla sua struttura innovativa, alla definizione di specifici obblighi in capo agli Stati parte, suddivisi in quattro 'pilastri' (prevenzione, protezione, repressione e politiche) e all'implementazione di misure di controllo, quali il

9 Lanzoni S., 'Il percorso dei diritti umani e delle istituzioni', pp. 69-91, p. 92, in Ardigzone M.R., Chinnici G., Francesconi M.F., *Violenza sulle donne*, Studium edizioni, Roman, 2018.

10 Organizzazione Internazionale fondata il 5 maggio 1949 con la firma del Trattato di Londra. Il suo scopo è quello di promuovere la democrazia, i diritti umani, l'identità culturale europea e ricercare soluzioni per problemi sociali. Ad oggi è formata da 47 Stati membri, da non confondere però con i 28, presto 27, Stati membri dell'Unione Europea.

GREVIO¹¹ e uno standard di dovuta diligenza per garantire che gli Stati rispettino effettivamente ciò che hanno promesso.¹²

Partendo da una analisi generale prima di respiro internazionale e poi regionale, prenderò in considerazione alcune Convenzioni o Raccomandazioni Generali che in passato hanno contribuito a spianare la strada alla CI. La *Convenzione sull'Eliminazione di tutte le forme di Discriminazione contro le donne* (CEDAW), per esempio, rimane il principale documento elaborato tra il 1979 e il 1981 dalle Nazioni Unite, CEDAW che nonostante i limiti e la concezione ancora privata della violenza ha permesso alla società, alla fine del XX secolo, di aprire gli occhi per la prima volta, iniziando un lungo processo di presa di coscienza e rinnovamento culturale e istituzionale culminato a livello regionale proprio con la CI. Quest'ultima, infatti, è stata il frutto di una graduale maturazione nel tempo e di numerose ricerche e studi da parte delle istituzioni europee, attente alle varie politiche, pratiche e leggi che già esistevano sia a livello regionale nei vari paesi del Consiglio d'Europa, sia a livello internazionale, promosse in particolare dalla Nazioni Unite all'indomani della Seconda Guerra Mondiale.

Nella direzione indicata dalla CI, del resto, si erano già mossi in precedenza altri due sistemi regionali. Il Protocollo alla *Carta Africana sui diritti dell'uomo e dei popoli sui diritti delle donne* in Africa, conosciuto anche come il Protocollo di Maputo, i cui lavori furono iniziati durante un incontro dei capi di Stato dei paesi membri dell'Unione Africana nel 1995 e adottato solamente anni dopo a Maputo, in Mozambico, l'11 luglio 2003. La *Convenzione interamericana sulla Prevenzione, la Repressione e l'Eliminazione della violenza contro le donne*, invece, che venne adottata dall'Assemblea Generale dell'Organizzazione degli Stati Americani a Belém, in Brasile, nel giugno 1994.

Dal 2005 in poi, anno in cui gli studi del CHAVIO¹³ furono aperti per culminare poi nel 2008 con una prima *draft* della CI, è emersa l'esistenza di una sempre maggiore disomogeneità nella società e nelle modalità di operare. C'era quindi bisogno di armonizzare le politiche di sostegno già esistenti e crearne altre innovative per combattere la VCD. L'ottica così detta 'di genere' è il tratto caratterizzante della Convenzione del Consiglio d'Europa, il miglior modo trovato per ri-bilanciare la storia

11 Gruppo di Esperti per la lotta contro la violenza nei confronti delle donne e la violenza domestica, formato da esperti indipendenti eletti a partire dall'adozione della Risoluzione CM/Res (2014)43: *Rules of the election procedure of the members of the Group of Experts on Action against Violence against Women and Domestic Violence* (GREVIO). Il gruppo si occupa di garantire l'implementazione della Convenzione di Istanbul.

12 De Vido S., *Donne, violenza e diritto internazionale. La Convenzione di Istanbul del Consiglio d'Europa del 2011*, Mimesis/Esperienze filosofiche, Milano, 2016, p.16.

delle donne, che da sempre sono state viste un passo indietro rispetto agli uomini. Si è cercato, o meglio si cercherà da adesso in poi anche in virtù della stessa Convenzione, di rendere possibile l'uguaglianza nella diversità: da sempre, per natura, esistono due sessi che nel tempo sono stati influenzati dalla cultura e resi due generi diversi e incompatibili. La tesi che presento si basa sulla convinzione che la violenza contro la donna, termine da considerare contenitore di altre e più diverse forme, non sia altro che un retaggio culturale originato da secoli di cultura patriarcale che ha permeato le radici della società, veicolandone una visione piramidale che vede l'uomo al vertice e la donna in posizione subordinata. Oggi, grazie alle sempre più numerose ratifiche da parte degli stati della CI e nell'ottica di una futura, possibile, ratifica anche da parte dell'Unione Europea nel suo insieme, le donne hanno cominciato finalmente a sentirsi protette anche sul piano del diritto, che solo recentemente si è fatto promotore di cambiamenti sociali e culturali.

Un esempio recentissimo della capacità della CI di passare dalle parole ai fatti è rappresentato dal caso *Talpis c. Italia*¹⁴ che verrà preso in esame nella seconda parte del terzo capitolo. La *Corte Europea dei Diritti Umani* (la Corte), in seguito al ricorso presentato da Elisaveta Talpis contro le autorità italiane accusate di aver mancato alla tutela della ricorrente e del figlio contro atti di violenza domestica da parte del marito, ha infatti condannato lo Stato Italiano per non aver adottato gli obblighi positivi scaturiti dagli art. 2, 3 e 14 della *Convenzione Europea per la salvaguardia dei diritti dell'uomo e delle libertà fondamentali* (CEDU).¹⁵ Per redigere la sentenza finale, infatti, i giudici della Corte hanno utilizzato il Preambolo e alcuni principi propri della CI come 'chiavi interpretative' nella codificazione del diritto presente nella CEDAU rendendo la CI 'regola pertinente di diritto internazionale' secondo l' Articolo 31, para. 3(c) della *Convenzione sul Diritto dei Trattati* (CVDT).¹⁶

Per secoli, l'unico strumento a disposizione del genere femminile è stata la sua caparbia con la quale ha dato voce al movimento finalizzato alla sua emancipazione e influenzato la letteratura. Ciò che davvero rende unica e innovativa la CI, è proprio la consapevolezza di chi l'ha adottata che la VCD e la VD sono violenze strutturali radicate nelle menti e nella

14 Corte Europea dei Diritti Umani, *Talpis c. Italia*, 41237/14, 2 marzo 2017. Disponibile in italiano sul sito [https://www.giustizia.it/giustizia/it/mg_1_20_1.page;jsessionid=M02rZ6HKdlW3IEtUkwOkZAS4?facetNode_1=1_2\(2017\)&facetNode_2=1_2\(201703\)&contentId=SDU1321256&previousPage=mg_1_20](https://www.giustizia.it/giustizia/it/mg_1_20_1.page;jsessionid=M02rZ6HKdlW3IEtUkwOkZAS4?facetNode_1=1_2(2017)&facetNode_2=1_2(201703)&contentId=SDU1321256&previousPage=mg_1_20). (Ultimo accesso 11 giugno 2018)

15 *Convenzione Europea per la salvaguardia dei diritti dell'uomo e delle libertà fondamentali* (CEDU) adottata dal Consiglio d'Europa con la firma dei Trattati di Roma nel 1950. L'Italia fa parte dei primi 12 stati membri del CoE. In particolare, la CEDAU in Italia è entrata in vigore il 10 ottobre 1955.

16 *Convenzione sul Diritto dei Trattati*, Vienna, 23 maggio 1969.

cultura della società, e che fino a quando la stessa non sarà pronta a cambiare sotto questo punto di vista, allora il diritto da solo non potrà niente.

La cultura è l'unica droga che crea indipendenza.

-Anonimo-

ABBREVIATIONS

CEDAW	Convention on the Elimination of Racial Discrimination Against Women
CAHVIO	<i>Ad hoc</i> Committee for preventing and combating Violence against Women and Domestic Violence
CHR	Commission on Human Rights
CIL	customary international law
CIM	Inter-American Commission on Women
CoE	Council of Europe
CSW	Commission on the Status of Women (UN)
DEVAW	Declaration on the Elimination of Violence against Women
DV	domestic violence
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECOSOC	Economic and Social Council
EU	European Union
GBV	gender-based violence
GBVAW	gender-based violence against women
GREVIO	Group of Experts on Action against Violence against Women and Domestic Violence
IC	Istanbul Convention
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Tribunal for Former Yugoslavia
IO	international organization
IPV	intimate partner violence
CJEU	Court of Justice of the European Union
MASECVI	Mechanism to Follow Up on Violence against Women
NGO	non-governmental organization
OAS	Organization of American States
PACE	Parliamentary Assembly (CoE)
SDGs	Sustainable Development Goals
UDHR	Universal Declaration of Human Rights
UN	United Nations
VAW	Violence Against Women
VCLT	Vienna Convention Law Treaties
WHO	World Health Organization

INTRODUCTION

Violence Against Women (VAW) is a worldwide social problem, a violation of human rights, dignity and of the fundamental right to life. It is an umbrella term which encompasses different crimes and conducts: from physical and sexual abuses to psychological one. Any acts of VAW represent the extreme expression of the historical inequalities on the ground of sex, with a foundation in gender motives that have characterized women's history since the origin of the patriarchal society. In time, this problem has long been addressed by international organizations (IOs), public institutions, intellectuals, social movements, and media. However, the feminist movement (made up of both men and women) must be credited to have acted as bridges between women sufferings and justice, long before international, regional, and national legal systems.

Focusing first on the term 'violence' in general terms, I will then deep my analysis on VAW and, particularly, on one specific form i. e. domestic violence (DV) as the very product of the patriarchal society, a phenomenon with its origins in the functioning and maintenance of the so-called 'natural relationship' between men and women: men in the public sphere while women relegated to the domestic one. The latter dichotomy has arisen from predetermined gendered paths on which men and women have been placed by stubborn traditions and beliefs of male superiority and strength; and of female subjugation and weakness.¹⁷

DV is conceptually equated, in the public discourse, as one among many other places in which gender-based violence against women (GBVAW) can happen. This thesis is an attempt to explain and questioned the framework in which GBV, and its domestic trend, have originated but also how it has been tackled by the law, a law that in the past have long failed in protecting women from male violence.

¹⁷ I am perfectly aware of the fact that the phenomenon of VAW, as other multidimensional phenomena, cannot be exhaustive explained only referring to patriarchal or sexist cultures. There exists other valuable explanation, but a further study should be pursued in the future to add different perspectives from which to look at the phenomenon of VAW. See for example Richard Felson, 2002 theory: VAW should be understood as violence fist rather than sexism or Consuelo Corradi, 2009 theory, who believes that VAW should be studied as a particular form of gendered violence, but at the same time she argues that gender and power are not sufficient categories to make sense of the horrifying inhumanity of violence. She also offers an alternative to the patriarchal explanation of VAW: she suggests looking at today's forms of violence through the triple lens of power, identity, and modernity. Authors found in Bandelli D., *Femicide, Gender and Violence. Discourses and Counter-Discourses in Italy*, Palgrave MacMillan, 2017

Even though feminists in the 19th century (when the movement originated) were confronted with national backgrounds, at the beginning of the 20th century those country-based theories had evolved and spread across borders unveiling VAW and exposing a 'male-constructed' world and mindset. Feminists activists (both men and women) and intellectuals have produced an extensive literature on how culture and not nature have always shaped societies in the weaving of diverse cultural plots for men and women lives. Thanks to their arduous work, the world law to has developed specific legal strategies to prevent and combat VAW and DV.

Despite the existence of specific patterns inherent in popular traditions which have for a long time characterized societies and condone the use of VAW in order to keep women from change the role society has thought for her, during the last decays of the 20th century, DV became quite a prominent themes in women's literature and in the following pages I will try to demonstrate how books, articles, and essays written by timeless women and men militating for women rights, justice and protection have anticipated both the legislation and the jurisprudence in the field of the last century. Women's literature, born in the ranks of the feminist movement, has generated a specific narrative, magnifying it across borders and reflecting itself on the normative world. It has brought into public view women experiences and past otherwise invisible and neglected.

To prevent, combat and punish acts of VAW and DV, international, regional, and national legal systems, on the wake of feminists' movement, have developed studies and researches to investigate the specific causes and roots of GBVAW. It was not until the second half of the 20th century that GBVAW started to be recognized as a violation of international law and a crime against human rights. Always more people became aware of the extent and seriousness of the problem, today of public concerned, and international, regional, and national instruments, both of *soft* and *hard law*, have gradually been implemented. The *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*, also known as the *Istanbul Convention*, represents the outcome of this very long process on the ground of women equality, rights, liberties, and justice. Even though it is a regional binding treaty, it is the most comprehensive and multilateral Convention fostered by the Council of Europe (CoE) which creates positive legal obligations on States' parties to prevent, combat and punish any act of VAW and DV. The discourse will be further expanded in the third chapter of this thesis.

Thanks to the IC, today, even though we cannot say to be completely immune or to have totally overcome stereotypes, legends or erroneous conventions which have feed our culture and imagination about women, we are witnessing a turning point in the legal system and a burgeoning of norms on international and regional scales to tackle VAW and DV which are finally founding their solidification in acts of Customary International Law or as 'international rules of interpretation'.

I. VIOLENCE AGAINST WOMEN: NATURE AND ORIGINS

*Until we understand the deep roots of violence,
no means to eradicate it will be efficient.*

-Ron Thorne Finch-

*The reconstruction of the past in turns serves present needs,
as it clarifies or justifies the contours of present realities.*

-Elizabeth Fee-

Violence against women (VAW) is a violation of human dignity and of the fundamental rights of life. It has always existed and encompassed different forms at a local and international level: from physical and sexual abuse to psychological abuse. Violence represents an extreme expression of inequality on the grounds of sex and, in most cases, it has been recognized as having its basis in gender motives.¹⁸

Only recently has gender-based violence (GBV) been acknowledged by the international community and most European Member States as an issue of legal concern, expression of male dominance to be addressed since it challenges the structures of law and society. The modern international law has its origins traced back to 1648 with the *Peace of Westphalia*.¹⁹ This historical moment is usually considered to mark the creation of the international society and of independent sovereign nation states. The focus of the international law, as a discipline, has always been on the relations among nation-states, relations which exist without a supreme authority. For this reason, its efficiency has depended upon the translation of rules and principles in states national legal systems.²⁰ In the period prior to the foundation of the United Nations (UN), the issue of women's condition and status was regarded as a 'private' matter, excluded from state interference.

18 European Union Agency for Fundamental Rights, *Violence Against women: an EU-Wide Survey*, p. 7, 2014. Available online at <http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report>, (Last accessed 16 December 2017).

19 Cassese A., *International Law in a Divided World*, Clarendon Press, Oxford, 1986, p. 34. The Peace of Westphalia was signed in 1648 in Münster (Germany) and it brought the end of the *Thirty Years' War* (1618-1648).

20 Charlesworth H., Chinkin C., *The boundaries of International Law. A feminist analysis*, Manchester University Press, Manchester, 2000, p. 25.

It was thus faced with a general and inexact approach and the actions undertaken were not appropriate to the specific problem but only to a problem of more general scope.²¹

In this first chapter I will lay the groundwork for the analysis of the phenomenon VAW, reflecting on the complex notion of 'violence' in general terms, as a core element in national States relations, and consequently deepening my focus on the specific problem VAW. Combining both international law and gender-based perspectives, I will investigate the root causes of unequal relations in societies which have separated men and women according to gender classes. Culture and not nature has to be blamed for spreading this erroneous creed which has triggered men violence toward women to maintain a traditional distribution of powers and roles. Therefore, violence is nothing but a structural element in society first characterizer of States' relationships and later human relations. Extensive studies on VAW and the patriarchal forces have already been conducted and in my dissertation, I will attempt to focus particularly on one specific form of GBV against women i.e. domestic violence (DV). More will be said about it in the following chapters.

VAW is an umbrella term in its socio-juridical definition that includes a plurality of conducts and crimes: acts of domestic violence and violence towards intimate partners, sexual violence (including rape), sexual harassment, and emotional, psychological violence sexual exploitation, sex trafficking, and harmful practices, such as female genital mutilation/cutting (FGM/C), forced and child marriage.²² Unfortunately, despite the scale and importance of the phenomenon VAW, today it remains largely unreported and what we have in statistics or evidence from case law address only a partial picture of the 'true' extent of it.²³

21 Mura L., "I Diritti delle donne e la tutela della diversità nel diritto internazionale", in *Rivista Internazionale dei Diritti dell'Uomo*, 2000, p. 50.

22 "Forms of Violence against Women", available online on the UN Women website at <http://www.endvawnow.org/en/articles/296-forms-of-violence-against-women.html>. (Last accessed 23 December 2017).

23 European Union Agency for Fundamental Rights, *Violence Against women: an EU-Wide Survey*, p.7.

1. THE STRUCTURAL NATURE OF VIOLENCE

To start my analysis on the terrible plight that still affects millions of women today, it seems worthwhile to dedicate a few lines to the significance of the term 'violence' itself, it being the thread running through the entire work. There are many disciplines in which the notion of violence can be studied. My focus will be on history, sociology, literature, and international law because no one in the field of international relations can remain unaware of the significant role that violence, in its broad sense, has always played in human affairs.²⁴

It is difficult to find a single definition of the term violence due to the many perspectives from which one can look at it. Over the years, a large literature has been created. Some scholars have given narrow definitions of it as 'any form of behavior by an individual that intentionally threatens to or does cause physical, sexual or psychological harm to others or themselves'.²⁵ Others have tried to consider it in a broader sense evaluating all the different social and political contexts that can provoke changes in the very definition of the term.²⁶ If we look at violence as all actions that inflict, threaten or cause injury whether corporal, written or verbal, psychological, material or social, the latter definition resembles Johan Galtung's 'structural' concept of violence.²⁷ According to the Norwegian sociologist, violence reproduces itself across all dimensions of society: personal violence (with a subject), structural violence (without a subject) and cultural violence (that serves as a legitimizer for the first and the second types). Of importance for this analysis is the concept of 'second level of violence,' the personal violence inherent in the very structure of society because of historically determined unequal distributions of resources and power i.e., physical, and psychological harm resulting from unjust social, economic, and political system.²⁸

Hannah Arendt (1906-1975) in 1969 tried to explain the notion of violence, putting into question the nature of its use. She believed that the crucial political issue of society was, and always had been, 'Who rules Whom?'.²⁹ Violence and power are nothing but two

²⁴ Arendt H., *On Violence*, Harcourt Brace Jovanovich, Publishers, Orlando, Florida, 1979, p.8.

²⁵ Stanko E., "The day to count: reflections on a methodology to raise awareness about the impact of domestic violence in the UK", *Criminology, Criminal Justice*, Vol. 1, Issue 2, pp.215-226, 2001.

²⁶ Ray, *What is violence?* by Sage Publications, December 2010.

²⁷ Jackman R. M., "Violence in Social Life," *Annual Review of Sociology*, Vol.28, pp. 387- 415, August 2002.

²⁸ Galtung J., "Violence, Peace and peace research," *Journal of peace research*, 1969, pp.167-191.

²⁹ Arendt H., *On Violence*, pp.43-44.

words indicating how men rule other men. Power is the ability to act as a united front, an act that can be an end in itself, while violence is an instrumental means, not a natural phenomenon, but rather belongs to the political sphere of life: 'Violence is nothing more than the most flagrant manifestation of power,' she wrote.³⁰ Thus, violence in her words has an instrumental nature; it is a mean mobilized by players in many and different circumstances in order to achieve purposes and it should not be separated from the wider context in which it takes place or from its cultural background. Violence is not natural or innate in human beings. It is a power relation in societies which has perpetuated itself throughout centuries and cultures. Violence has thus socially constructed origins and the relationship between power, violence, and authority characterizes all the dimensions of human existence.³¹ For this dissertation, especially the relations that exist between men and women will be taken in such considerations.

The notion of violence is also extremely challenging if looked at from an international law perspective. It characterizes societies both at a national and international level, meaning that it manifests itself in 'inter-States' relations but also among individuals. The original dimension of violence, which has characterized the structure of international law since the beginning, was the 'inter-Statal' dimension.³² According to the German sociologist Max Weber (1864-1920), states are 'human [communities] that claim the monopoly of the legitimate use of physical force within a given territory'.³³ Modern states emerged because they were able to expropriate the means of political organization and domination, including violence, and they succeeded in establishing the legitimacy of their use. This monopoly was the direct outcome of the long historical process that saw violence becoming increasingly concentrated in states' hands.³⁴ International law was created to regulate the relations between states themselves, or states and international organizations. However, over the years, with the evolution of international regulations and the origin of international humanitarian law, a new 'individual' dimension was introduced.³⁵ This additional approach to the 'interpersonal form of violence' (including VAW), often analyzed as violent crime, has made violence visible and has introduced a

30 Arendt H., *On Violence*, p.35.

31 See also Marx K., Engels F., *The Communist Manifesto*, Penguin, London, 1967: the concept of violence as a tool of power. By contrast with Marx, see Gramsci A., *Selections from the Prison Notebooks of Antonio Gramsci*, Lawrence and Wishart, London, 1971: a reasoning on the use of consent and coercion to challenge hegemony.

32 De Vido S., *Donne, Violenza e Diritto Internazionale. La Convenzione di Istanbul del Consiglio d'Europa del 2011*, Mimesis, Milano, 2016, p.27.

33 Weber M., *Politics as a Vocation*, Oxford University Press, New York, 1946, p. 2. Angle brackets add in the quotation.

34 Walby S., "Violence and Society: Introduction to an emerging field of sociology." in *Current Sociology*, Vol. 61, Issue 2, pp.95-111, First Published 25 September 2012, p.3.

35 De Vido S., *Donne, Violenza e Diritto Internazionale*. p.27.

new path for further studies. It has challenged the very concept of violence, inaugurating an original approach through the so-called 'lens of gender-crime'.³⁶ The international humanitarian law was fundamental in the shaping of the individual dimension of international law in which an initial recognition of the problem presented by GBV can be found.

The international humanitarian law consists of a set of rules aimed at reducing the consequences of armed conflict on individuals. The universal codification of international humanitarian law began in the 19th century. Most of its discipline is contained today in four Geneva Conventions dating back to 1949. The Conventions have been supplemented over the years by two further Protocols dating back to 1977. Of particular interest is Article 27 of the Fourth Geneva Convention, which reads as follows: 'Protected persons are entitled, in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs [and] women shall be especially protected.'³⁷ Only in the 20th century on were women recognized among special categories of human beings in need of a special protection. and special defense mechanisms have started to be implemented.

VAW can assume different shapes that are not standard but that can change in means and intensity across societies and times. There are shreds of evidence of violence being correlated with complex changes in social organization being violence usually embedded in languages, practices, and social institutions.³⁸ It is not static! It reproduces and changes over time and eras, but its main characteristic is the fact that it is inscribed inside gender relation imbalances of power between men and women thus, as already mentioned, structural in society.³⁹

36 Walby S., "Violence and Society: Introduction to an emerging field of sociology," p.3 and p.10.

37 *Convention (IV) relative to the Protection of Civilian Persons in Time of War*, Geneva, 12 August 1949.

38 Ray, 'What is violence,' p.21.

39 Confortini C., "Galtung, and Gender: The Case for a Peace Studies/Feminism Alliance," *Peace & Change*, Vol. 31, No. 3, July 2006, p.358. See also Walby S., "Violence and society: Introduction to an emerging field of sociology," p.4.

1.1 VIOLENCE AGAINST WOMEN AS A GENDER SPECIFIC ISSUE OF LEGAL CONCERNE

When speaking about VAW, women victims of male violence should be intended as a general category without distinctions of race, ethnicity, religion, class, wealth, familial status, education, sexuality, age, or geographic location. Because of the limited amount of words and length that this final dissertation requires, I will focus attention on a geographic area which includes states parties in the European Union (EU) i.e. England, France, Italy, and the United States.

In 2014 the European Union Agency for Fundamental rights published the *Violence against women: an EU-wide survey*. It represents the first survey of its kind containing interviews with 42,000 women across all the 28 Member States of the European Union, soon 27.⁴⁰ According to the survey one out of three women, almost 33%, had experienced physical or sexual violence since the age of 15 while approximately 8% have experienced it in the 12 months before the interview.⁴¹ It is not easy to document historically the existence of VAW or the extent of it because of lack of information. Women not always confess to the authorities denouncing their abusers, but what is known, for sure, is that VAW is 'as old as patriarchy itself' and it is a structural problem of the world society which looks at women as designated victims because they are women.⁴² It has always affected women differently in various times and social contexts but with a common ground for every dimension: culture and traditions have shaped it according to the perpetuation of a particular social order of male domination and female subordination.⁴³ The 16th and 17th centuries, for example, were characterized by the so-called 'witch-craze', an attempt to maintain and restore male supremacy in a period of profound changes and restructuring of societies (continental Europe and England).⁴⁴

40 On 23 June 2016, the citizens of the United Kingdom (UK) voted to leave the European Union. On 29 March 2017, the vote was formally notified to the European Council triggering Article 50 of the Lisbon Treaty. More info at https://europa.eu/european-union/about-eu/countries_en. (Last accessed 10 June 2018)

41 See note 1.

42 Radford J., Russell D., (edited by), *Femicide. The Politics of Women Killing*, Twayne Publishers, New York, 1992, p.25. For more details about "patriarchy" see part 2.1, Chapter 1.

43 Ibid., p.25.

44 The 'witch-craze' or 'witchcraft' is one out of many examples of age-old problems of social control by a male-oriented society. Not only women were triable in those times, but they were the main victims estimated dangerous for the entire society and then expendable for a greater good. Hester M., "The Witch-craze in Sixteenth-and Seventeenth-Century England as Social Control of Women," in *Femicide. The Politics of Women Killing*, p.27.

What we call VAW has thus been defined by a 'male-oriented society' for centuries and gradually transcribed in national legislation from the same male perspective. Catherine MacKinnon thirty years ago wrote: 'We do see what we are allowed to experience, even in our own suffering, even in what we are allowed to complain about, overwhelmingly constructed from the male point of view'.⁴⁵ In the 21st century, it is time for societies to look at things without prejudices or bias positions to live in peace and acceptance. If societies recognize the original fault for which women fell into the label of the subordinate category, it will be easier to remedy at it.

Since the beginning of the social order, women were unequal before the law.⁴⁶ 'International Law and Human Rights Law have not always served women well' wrote Hilary Charlesworth and Christine Chinkin.⁴⁷ Their subordinate positions varied through cultures, societies and times but VAW has always been one of its prevalent manifestations.⁴⁸ In 2006, an in-depth study on violence against women, mandated by the General Assembly resolution 58/185, analyzing the broad context and causes of VAW, recognized that 'VAW is universal in that there is no region of the world, no country, and culture in which women's freedom from violence has been secured.'⁴⁹ International law contains a wide range of individual regulations, but despite its wide scope, it is remained narrow in perspective and gender bias up until the beginning of the 20th century. According to professor Vivian Fox, the western law is one of the three great bodies of thought that have influenced western societies' views about women.⁵⁰ Law, as a discipline, has fundamental effects on social outlooks, but for centuries it was enforced and shaped exclusively by men's ideas, adding legal basis to the natural inferiority of women. This gave artificial strength to mankind while women were denied even the attribute of citizenship.⁵¹ For a long time they have tried to turn to the law to have their interests protected but as Carol Miller quoted back in 1929 from the British Journal article, *Women's Leader*: 'the world is still suffering from being "man-made"'.⁵²

45 MacKinnon C., *Feminism Unmodified. Discourse on Life and Law*, Harvard University Press, 1987, pp.90-92.

46 Brownmiller S., *Against our will. Men, Women and Rape*, Fawcett Book, New York, 1993, p.16.

47 Charlesworth H., Chinkin C., *The boundaries of International Law.*, p. ix.

48 Charlesworth H., Chinkin C., *The boundaries of International Law.* p. 12.

49 The *In-depth study on all forms of violence against women*, Report of the Secretary-General, prepared by the Division for the Advancement of Women of the Department of Economic and Social Affairs of the United Nations Secretariat, A/61/122/Add. 1, para. 69. Available online at <http://www.un.org/womenwatch/daw/vaw/violenceagainstwomestudydoc.pdf>.

50 Fox V., 'Historical perspectives on violence against women', *Journal of International Women's Studies*, 4:1, 2002, p. 15.

51 Ibid., p.15.

52 Ibid.

VAW first appears as an issue of legal concern for the public opinion in relation to violence perpetrated against women during armed conflicts or foreign occupancy when states were expected to interfere according to the law at the eyes of the international community. It was not a legal 'right' to protection but a legal 'protection' of '[men's] family honor and rights' further polarized by gender roles. Women were bearers of a cultural identity and their bodies 'territory' to be invaded or conquered.⁵³ In the beginning, human rights law was made by men for men and we can find two main reasons at the roots of this 'gender blindness'.⁵⁴ In the first place, the very nature of the international legal system. It was created primarily to regulate states' behavior, acts or omissions of public agents acting in their official capacity. Secondly, traditions and culture around gender in society have always been used to justify 'maleness' as the norm. Oppression and subordination of women even before the existence of a gender-specific legislation and jurisprudence were widely unreported. Many women were even conducted on a path of self-blame, accepting violence as part of their life and duty.⁵⁵ Everywhere a male elite had monopolized national and international institutional forms of power and men's interests had been defined and accepted as the norms. ⁵⁶It was only in the early 1990s that VAW globally moved States and International Organizations (IOs) to sign binding and non-binding acts which directly address VAW. Rape and other forms of violence during armed conflicts were no longer handled as an 'infringement or family honor' but as a human violation.⁵⁷

In 1993 with the *Declaration on the Elimination of Violence against Women* (DEVAW) the UN General Assembly reached a turning point in the history of international human rights law filling the gap left by the *Convention on the Elimination of All Forms of Violence against Women* (CEDAW) about a possible definition for VAW.⁵⁸ In the Declaration it is stated that

53 World Health Organization, *Violence Against Women in situations of armed Conflicts and Displacement*, 1997. Available online at <http://www.who.int/gender/violence/v7.pdf>. (Last accessed 4 January 2018)

54 Chinkin C., "Violence Against Women: The international Legal response," in *Gender and Development*, Vol. 3, No. 2, 1995, p.23.

55 Ibid, p.24. See also Charlesworth H., Chinkin C., *The boundaries of International Law.*, p.14. Women's perception of violence against them as natural or inevitable has been documented in many contexts. In 1998, UNICEF published *The State of the World's Children*, Oxford University Press, noting that women all over the world 'respond to violence by looking first to their failings, blaming themselves, justifying their attackers, and hiding the marks of their shame, the tears and the bruises for the outside world'. Available online at <https://www.unicef.org/sowc/archive/ENGLISH/The%20State%20of%20the%20World%27s%20Children%201998.pdf>

56 Charlesworth H., Chinkin C., *The boundaries of International Law.*, p.4.

57 Otto D., "International Human Rights Law: Towards Rethinking Sex/Gender Dualism and Asymmetry," forthcoming in Davis M., Munro V., (eds) *A Research Companion to Feminist Legal Theory*, Ashgate, 2013. p.203.

58 A/RES/34/180, *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979. A/RES/48/104, UN General Assembly, *Declaration on the Elimination of Violence against Women*, Preamble and Article 1, 20 December 1993.

'violence against women is an obstacle to the achievement of equality, development and peace [it being] a manifestation of historically unequal power relations between men and women, which has led to domination over and discrimination against women by men'. Furthermore, Article 1 recognizes VAW as 'any act of gender-based violence' specifically addressed to women because 'women'. With the DEVAW, GBVAW is eventually codified in an international declaration that, even though without legal binding authority, it has a universal coverage and represents a strong statement of principles for the international community. GBV, for the first time, is underscored as consequence of a male/female innate hierarchy in western societies. This reasoning introduced in 1993 is a fundamental achievement as far as the legal system approach to VAW is concerned which will be further analyzed in chapter three.

2. WHY DO WE TALK ABOUT GENDER-BASED VIOLENCE

Gender inequality manifests itself when women and men are attributed with separate roles in society, an attribution constructed by a male-dominant point of view, which also creates perfect conditions for the archetypal 'battle of the sexes'. There is no equivalence of violence for male and female to be captured in a general framing. The same concept of gender tends to organize social life in hierarchical and mutually exclusive categories that most of the time result in subordinate gender relations (female gender subordinate to the male one).⁵⁹

It is difficult to provide words with the fix definition they are meant to have. Words have history and meanings 'free of the play of human imagination'.⁶⁰ Recently, the word gender has started to be used by feminists to refer to 'the social organization of relationships between sexes'.⁶¹ Refusing any fundamental in biological determinism, gender has been stressed as the narrative definition of femininity.⁶² Even though I do recognize the simplicity of the discourse, I will not be able to delve into the complex ocean of 'gender' significances. Gender as the direct synonym of 'female gender,' when speaking about GBV, comes with the only purpose of introducing GBV with women as the principal survivors.⁶³ In a more general discourse, out from the scope of this work, women are the main victims but not the only one. Men too can be victims or survivors, but the causes and the consequences change. History has demonstrated that for women has always been more difficult to look for protection or defense measures.

Today VAW in a socio-juridical perspective constitutes a broader notion, an umbrella term for many offences.⁶⁴ Common to all the expressions of violence is discrimination on the grounds of sex and gender.⁶⁵ My thesis looks at 'womanhood' as the historical cause of women's vulnerability. Men have attributed themselves a neutral, superior, and general connotation legitimizing the use of violence as mean to control and as a power to maintain women in their specific social group. Women, on the other hand, have been victims of a 'man-made system' which have portrayed them as powerless and weak

59 Confortini C., "Galtung, and Gender: The Case for a Peace Studies/Feminism Alliance," p.335.

60 Scott W. J., 'Useful Category of Historical Analysis,' *American History Review*, Vol.91, No. 5, pp.1053-1075, 1986, p. 1053.

61 Ibid.

62 Ibid., p.1054.

63 Ibid., p.1055.

64 De Vido Sara, *Donne, Violenza e Diritto Internazionale*. p.25. See note 5 above.

65 Charlesworth H., Chinkin C., *The boundaries of international law*, p.12.

inferior and unequal by nature. With the origins of modern states, the androcentric vision has prevailed in fundamental principles of society defining the status of each citizen.⁶⁶ VAW is a structural problem of society.⁶⁷ It is the expression of an ever-existing imbalance of power between women and men with no natural causes. The nature of the 'object' VAW is cultural; that is to say that it does not come from natural characteristics possessed by the object i.e. VAW, but it depends on the use that we made of the same object.⁶⁸ In General Recommendation no. 19 (GR 19), 'violence is directed against a woman because she is a woman'.⁶⁹ This groundbreaking recommendation recognizes GBV as an instance of discrimination in the context of Article 1 of the 1993 DEVAW.⁷⁰ Since 1992 UN states parties have followed and endorsed this interpretation to combat the scourge of GBV. More recently, in July 2017 the CEDAW Committee in General Recommendation no. 35 (GR 35) updates and complements GR 19 drawing upon a vast amount of materials, trying to encapsulate 25 years of legislative progress to further the understanding of the problem and the determination of further measures to prevent, protect and punish this crime.⁷¹ It finally recognizes the evolution into a principle of Customary International Law (CIL) the prohibition of GBV where it is defined in more precise terms 'as one of the fundamental social, political and economic means by which the subordinate position of women with respect to men and their stereotyped roles are perpetuated' and as something that 'may amount to torture or cruel, inhuman or degrading treatment in certain circumstances, including cases of rape, domestic violence or harmful practices, among others. Some forms of GBVAW may also constitute international crimes.'⁷² But what does 'gender' mean?

Very recently, the promoters of the *Explanatory Report to the Council of Europe Convention* considered it necessary, for the purpose of the latter Convention, to find a common and accepted definition of the term 'gender', it being fundamental in the classification of GBVAW.⁷³ In paragraph 43 we read as follow: 'the term gender, based on

66 Bourdieu P., *Masculine Dominance*, Stanford University Press, translated by Nice R., California, 2001, p. 87.

67 Charlesworth H., Chinkin C., *The boundaries of international law*, p.12.

68 Candiottio L., "Il dualismo strutturale e la natura-cultura della violenza contro le donne. Una lettura filosofica del preambolo alla convenzione di Istanbul", in *Home-Made Violence*, De Vido S., Candiottio L., (a cura di), Mimesis, Milano, 2016, pp. 89-103, p.90.

69 A/47/38, General Recommendation no.19 (1992), CEDAW Committee, para. 6.

70 See notes 41 and 42 above.

71 Chinkin C., "CEDAW General Recommendation 35 on violence against women is a significant step forward", in *LSE blog*, Centre for Women Peace Security, 6 September 2017.

72 CEDAW/C/GC/35, General Recommendation no.35 (2017), Scope para. 16.

73 Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, Istanbul, May 2011. Entered into force on the 1st of August 2014. See chapter three.

the two sexes, male and female, explains that there are socially constructed roles, behaviors, activities, and attributes that a given society considers appropriate for women and men. Research has shown that certain roles or stereotypes have reproduced unwanted and harmful practices contributing in making VAW acceptable.⁷⁴ Different authors have tried, in several ways, to demonstrate how important the gender/sex category was, and still is, in the study of the origins of GBVAW. That same conceptual paradigm of male/female dualism, taken for granted as the natural structure of the societal order, is the engine that moves GBV.⁷⁵ Before the creation of international humanitarian law, women were 'objects' international law not repository of rights, incapable by nature of a full autonomy and agency.⁷⁶ The key in women's subordination is that 'hierarchical scheme of dualism between the category of private/public and sex/gender which took women's inferiority to men as a given, and legitimated their being treated protectively rather than as bearers of rights.'⁷⁷ According to the French sociologist, anthropologist and philosopher Pierre Bourdieu, structures of sexual division were 'eternalized' by historical mechanisms.⁷⁸ What we perceive as eternal and natural in history 'is merely the product of a labor of externalization performed by interconnected institutions such as the family, the church, the state, the educational system.' It is striking to see how this established order of dominance relations, privileges, injustices, and violence - among which male domination - has been perceived and accepted as 'natural'.⁷⁹

⁷⁴ *Explanatory report to the Council of Europe Convention on preventing and combating violence against women and domestic violence*, para. 43.

⁷⁵ Candioto L., "Il dualismo strutturale e la natura-cultura della violenza contro le donne.", p.92. According to the already cited above GR no.19: 'Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include: (a) The right to life; (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment; (c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict; (d) The right to liberty and security of person; (e) The right to equal protection under the law; (f) The right to equality in the family; (g) The right to the highest standard attainable of physical and mental health; (h) The right to just and favorable conditions of work.'

⁷⁶ Otto D., "International Human Rights Law: Towards Rethinking Sex/Gender Dualism and Asymmetry," p.4.

⁷⁷ *Ibid.*

⁷⁸ Bourdieu P., *Masculine Dominance*, p. viii. He calls it the 'paradox of doxa.'

⁷⁹ *Ibid.*, p.1 and 3. He believed that social constructions like gender or the division of the sexes had their origins in 'deceptive familiarities that have bound us to our own tradition'.

2.1 THE PATRIARCHY

Among the catalog of historical factors which contributed to the construction of a gender-divided society and of a hierarchy of genders, there is the concept of 'patriarchy', an ultra-conservative social system in which men have primary power and predominant roles. It is a set of ideas that rests on an ideology which is reflected particularly in the private sphere. Patriarchy is thus a 'moral order' based on the absolute pre-eminence of men over women and it appears complete and perfect since it has 'the rule of force to rely upon, both in emergencies and as an ever-present instrument of intimidation.'⁸⁰

According to sociologists, it is a social product rather than the outcome of innate differences.⁸¹

The word itself has its origins in the Greek language: *pater* means 'father' while *arché* means 'origin.' In its previous significance, it literally meant 'father origin' as saying that 'the father is the origin, the beginning'. Only later did the word *arché* acquire the significance of 'dominance' obtaining the meaning of patriarchy as we intend it today, a process that extends its borders and always delves deeper under the surface of societies.

⁸² It is a historical phenomenon, a theoretical concept that allows the global understanding of origin, development, and future of our present order of society.⁸³

All the authors that will be considered in this analysis come from the Western hemisphere, but the significance of their thoughts and ideas is by no means to be confined to the western culture.

In a famous article published in *The American Historical Review*, professor Ann Taylor Allen argues that it is the very concept of patriarchy as a historical phenomenon, contingent in time and place, that has provided the basis for the emergence of a feminist critique of male supremacy.⁸⁴ From 1890 to 1914 western societies were characterized by one of the most important intellectual controversies concerning the origins of the

⁸⁰ Bourdieu P., *Masculine Dominance*, p.87. The quotation is taken from Kate Millet, *Sexual Politics*, New York: Doubleday, 1970, pp.44-45 in Caputi J., *The Age of Sex*, The Women's Press, London, 2012, p.3.

⁸¹ Werlhof C., *Nell'età del boomerang. Contributi alla Teoria del patriarcato*, Edizioni Unicopli, Bianchi B., Bongiovanni B., Procacci G. (a cura di), Milano, 2014.

⁸² Werlhof C., "Der Verlust des Fortschrittsglaubens. Das kapitalistische Patriarchat als „Alchemistisches System“, in: dies u.a.(eds): *Subsistenz und Widerstand, Alternativen zur Globalisierung*, Wien (Promedia) 2003, p. 43.

⁸³ Ibid, pp 44.

⁸⁴ Taylor A., "Feminism, Social Science, and the Meanings of Modernity: The Debate on the Origin of the Family in Europe and the United States, 1860-1914." *The American Historical Review*, vol. 104, no. 4, 1999, pp. 1085-1113. *JSTOR*, p.1087. Karen Offen defines a "'feminist' as a person, male or female, who recognizes the validity of women's own interpretation of their lived experiences and needs, protests against the institutionalized injustice perpetrated by men as a group against women, and advocates the elimination of the injustice by challenging the various structures of authority or power that legitimate male prerogatives in a given society "Defining Feminism: a comparative historical approach", in *Signs* 14, 1988, p.152.

patriarchy and the beginning of the condition of subordination for women. The debate arose in a general mood of pessimism and cultural despair.⁸⁵ It was the time of the 'Victorian pessimism' in Britain and the 'Crisis of Confidence' in the United States where the authority of culture was challenged by the natural sciences.⁸⁶

In Sara Brownmiller's words, women have always borne 'the historic burden of protection' meaning that the incapacity to protect themselves in the eyes of society had as a natural consequence the need to be protected by someone, be it the father, the brother, or the husband.⁸⁷ Women's status was reduced to that of an object of men's property. A crime committed towards her or her body would have become a crime against the male estate and authority.⁸⁸ With the passing of time, the 'male protectorate' changed its shape and became a sort of 'ownership'. With the strengthening of male power, the patriarchy was born. At the beginning, the evolutionary theories were all positive regarding the affirmation of a patriarchal family on the model of the western society as the culmination of human development.⁸⁹ Later, philosophers like the British John Locke (1632-1704) and Thomas Hobbes (1558-1679), even though, in Locke words the patriarchal family had a 'Foundation in Nature', mother and son bond was recognized as more natural and in a sense more primary and important.⁹⁰ Patriarchy was considered as a 'congenital structure in society that had existed throughout all human history'.⁹¹

John Stuart Mill (1806-1873), one of the most influential English-speaking philosophers, strongly believed that women's subjection was to be traced back to 'the twilight of human society', but the improvement of women's condition was the necessary outcome of a general pattern of progress for Western society.⁹²

In the 19th century, the Swiss anthropologist and professor Johann Jakob Bachofen (1815-1887) conducted a deep study on the origins of the human society. Resorting to mythology as a valid historical source, and corroborating Locke thesis, he postulated that the earliest form of social organization was based on a *Mutterrecht* or 'matriarchate', in

85 Taylor A., "Feminism, Social Science, and the Meanings of Modernity: The Debate on the Origin of the Family in Europe and the United States, 1860-1914.", p. 1086.

86 Ibid.

87 Brownmiller S., *Against our will*. p.17.

88 Ibid.

89 See for example Wallerstein I., *The World-System Analysis. An Introduction*, a John Hope Franklin Center Book, Durham, 2004.

90 Locke J., *An Essay Concerning the True Original Extent and End of Civil Government*, 1960 in *The English Philosophers from Bacon to Mill*, Edwin A Burt, ed. New York, 1939, pp.434-435.

91 Taylor A., "Feminism, Social Science, and the Meanings of Modernity: The Debate on the Origin of the Family in Europe and the United States, 1860-1914.", p. 1088

92 Ibid., p. 1089.

English.⁹³ At the dawn of time, the mother and child bond was a unique social tie soon conquered, though, by the forces of male supremacy which established its order in society, culture, and civilization.⁹⁴ Maternity was a natural relationship while paternity was a legal one. Bachofen passed to the next generations of intellectuals one of the most radical ideas: the dominance of men over women was not inevitable but contingent on times, places, and cultures becoming the pioneer in anthropology of the theory about the transition from matriarchy to patriarchy as an essential and universal stage in the development of cultures.⁹⁵

Karl Marx (1818-1883) and Friedrich Engels (1820-1895) were two very interested readers of anthropological literature. In the late 1880s in the treatise *The Origin of the Family, Private Property, and the State*, Engels stated that the age of matriarchy was marked by gender equality and communal ownership of property, but then with the establishment of private property and of male ownership - men become proprietor of women - what he identifies as the world-historical defeat for the female sex.⁹⁶

By the end of the 1900s, the discussion about the origins of patriarchy gained so much interest among intellectuals that it provided the basis for different studies in many disciplines. For my dissertation, of importance is the development of the feminist thought. Pioneers in America were Elizabeth Cady Stanton (1815-1902) and Matilda Joslyn Gage (1826-1898) who laid the foundations for the 'new' feminist movement. In the first 50 years of the 20th century, Bachofen and Engel's theories experienced a revival in feminist literature. In Stanton and Gage's writings, first published during the 1891 National Council of Women, the 'matriarchate' was portrayed as a period of 'mature development' and as 'a model of female humanitarianism, justice and equality'.⁹⁷ In time, other feminists were inspired by new conventional ideas about 'biological determinism'. Simone de Beauvoir, for example, had pioneered the concept of women as 'the second sex', the 'other' vis-à-vis men.⁹⁸ According to her, the imperialism of human

93 Bachofen J. J., *Mother Right: an investigation of the religious and juridical character of matriarchy in the Ancient World*, 1861.

94 Taylor A., "Feminism, Social Science, and the Meanings of Modernity: The Debate on the Origin of the Family in Europe and the United States, 1860-1914.", p. 1091.

95 Ibid., pp.1092- 1093. However, many were the anthropologist who did not believe in the matriarchal period as Bachofen had portrayed it: Lewis Henry Morgan or Sir John Lubbock.

96 Ibid., p. 1094. The quotation is taken from the English translation of *The Origin of the Family Private Property, and the State in the Light of the Researches of Lewis Henry Morgan*, New York, 1942, p.50.

97 Ibid., p. 1096.)

98 De Beauvoir S., *Le Deuxième Sexe*, Librairie Gallimard, France, 1949. First published in Britain with the English title *The Second Sex* by Jonathan Cape Thirty Bedford Square, London, 1953.

consciousness was to be found in women's oppression. Society taught women both the category of 'the Other' and the claim of domination over 'the Other,' subjecting them to the latter category.⁹⁹

2.2 EXPLORING THE SEX AND GENDER DICHOTOMY

In the very first paragraph of this dissertation, while explaining the term violence in its general meaning, I tried to give a very brief account of the thought of the Norwegian sociologist Johan Galtung.¹⁰⁰ He believed in what he calls 'culture of violence,' as the main characteristic of our contemporary society, and of all societies that have preceded. It derives from a worldview made of schemes of binary oppositions which have led to practices of distinctions always reducible to male or female oppositions.¹⁰¹ For the purpose of this thesis, I will refer to dualism as an unreal struggle between two concepts that inevitably ends with the victory of one (male gender/culture) over the other (female gender/nature). In my analysis this struggle already has a winner pre-determined historically by the same imposition of patriarchal hierarchies in which the dualism is placed, that is, the male gender.¹⁰²

The dualistic way of thinking about the concept of violence is what connects Galtung's thought with contemporary feminists. He perceives violence as a system or structures in society with gender as a line of separation between two categories: men and women. According to feminists violence is to be intended as a process too, in which gender is marginally related to biological sex.¹⁰³ Gender is seen by feminists as a set of categories that organizes the way in which people think and behave in the world and it is strictly related with the concept of power explained by Michel Foucault as a 'pervasive regulatory system of society' or by Antonio Gramsci that label it with 'hegemony' as 'dominance

99 De Beauvoir S., *Le Deuxième Sexe*, p. 23. Beauvoir took the concept from E. Levinas. In his essay, *Le temps et l'autre* (*Time and the Other*, in English) expressed the concept as: "What is the alterity that does not purely and simply enter the opposition of two species of the same genus? I think that the contrary, whose contrariety is in no way affected by the relationship that can be established between it and its correlative, the contrariety that permits its terms to remain other, is the feminine. ... [A]lterity is accomplished in the feminine.

100 See p. 22 note. 27 in this same chapter.

101 Bourdieu P., *Masculine Dominance*, p. 30.

102 Candiotta L., "Il dualismo strutturale e la natura-cultura della violenza contro le donne. Una lettura filosofica del preambolo alla convenzione di Istanbul", p.93.

103 Confortini C., "Galtung, and Gender: The Case for a Peace Studies/Feminism Alliance," p.341.

through moral persuasion and consent by who rules over society'.¹⁰⁴ Power for feminists is the essential feature which perpetuates people domination and subordination in society. According to Hilary Charlesworth and Christine Chinkin, 'international law, operates in a public, male world' leaving private matters to be dealt with by culture and religion in the flow of history.¹⁰⁵ From the origins of European Nation States the division of labor was based on the relegation of women to the private sphere of the house (women as 'The Angel of the House')¹⁰⁶, while men belonged to the public sphere. Here lies the origin of a dualistic configuration of society and the patriarchal structure of the family which carries with it a series of gendered consequences. It is important, though, not to generalize in the reasoning. Not all private places where women operate are negative and the same is true for those aspects of women's lives that take place in public realms. The following analysis does not intend to be rigid in the discourse on public/private dichotomy or on any other dualistic concept taken into consideration. We must bear in mind that there exist different contexts where this analysis cannot be applied because of diverse cultures, beliefs and structural organizations of societies and it cannot be helpful to define everything with the eyes and experiences of Western societies.¹⁰⁷ What I have tried to elaborate in this part of the chapter, is the intertwined relationship that has always characterized gender and violence. The very notion of gender captures, in its essence, the distinction between women and men, a distinction considered the root cause of GBVAW. I do not claim to unveil entirely and explain a very complex discourse like the gender/sex dichotomy. I do nonetheless think it necessary to write a small introduction on the theme. I will do so by providing a short presentation of three of the most influential feminist philosophers and gender theorists of the 20th century who count as the main representatives in their fields: Simone de Beauvoir, Luce Irigaray and Judith Butler. Ushering in the debate between what we call *sex* (or *nature*) and what we identify as *gender* (or *culture*) was Simone de Beauvoir (1908-1986), a French feminist very active in her studies after World War II. In her 1949 book titled *Le Deuxième Sexe* she wrote: 'If her functioning as a female is not enough to define women [sex], if we decline also to explain her through "the eternal feminine" [gender], and if nevertheless we admit,

104 First quotation from Foucault M., *The History of Sexuality*, Vol. I: *An Introduction*, New York: Vintage, 1980, pp. 97-98; second quotation from Gramsci A., *Prison Notebooks*, Columbia University Press, New York, 1992. See also Confortini C., "Galtung, and Gender: The Case for a Peace Studies/Feminism Alliance," *Peace & Change*, Vol. 31, No. 3, July 2006, p.342.

105 Charlesworth H., Chinkin C., *The boundaries of international law.*, p.57.

106 Coventry Patmore's poem "The Angel in the House."

107 Charlesworth H., Chinkin C., *The boundaries of international law.*, p.58.

provisionally, that women do exist, then we must face the question: What is a woman?'.¹⁰⁸ *Sex* is an invariant and distinct aspect, a set of natural, corporeal characteristics which typically refer to biological differences between women and men. *Gender*, instead, indicates the cultural meaning that the same body acquires throughout life which lack of the fixity recognized, instead, to be fundamental for the *sex* category. *Anatomy* is destiny, *gender* is something that gradually 'becomes'!¹⁰⁹ Women are not born but gradually 'become'. Being a woman, according to de Beauvoir, is not something given because one is born female. She refused to reduce women to their sexual function (the reproductive role) and from a more existential point of view, she believed that human beings were not born with a predetermined purpose. The significance of human beings' lives was not immediately given but individuals have made their lives meaningful with choices and actions in the world. What it meant to be a woman, therefore, was to receive social norms traditionally and culturally and decide how to embrace them.

Luce Irigaray, a contemporary French feminist, represents one of the most famous interdisciplinary thinkers who has challenges Simone de Beauvoir's ideas. She believes Beauvoir to be too much of a liberal feminist who believed in changes that could render women equal to men. According to Irigaray, women have always been defined by the male Western Culture according to their role in society as 'other' to men.¹¹⁰ But women cannot be reduced to the level of men! To exit from the logic of violence that has always made women victims of men's power they should begin to reconfigure their identity, not as one that exists at the expense of the other. Affirming that 'women are "other" than men', means defining women as the negation of what a man is. By doing so we do not raise women's status. Women should find their own language to discover how to describe and define themselves.¹¹¹

Judith Butler's famous article about Simone de Beauvoir's theory of sex and gender is considered to be one of the best appraisals of the French philosopher. Butler wrote that 'if the pure body cannot be found if what can be found is the situated body, [then] Simone de Beauvoir's theory seems implicit to ask whether sex was not gender all along.'¹¹² Butler affirms that if we take Beauvoir's analysis of sex/gender to its most radical

108 De Beauvoir S., *Le Deuxième Sexe*, p.12.

109 Charlesworth H., Chinkin C., *The boundaries of international law.*, p. 3.

110 Irigaray L., *Speculum of the Other Women*, trans. by Gillian C. Gill, Columbia University Press, New York, 1993.

111 Irigaray L., *An Ethics of Sexual Difference*, trans. by Carolyn Burke and Gillian C. Gill, Cornell University Press, Ithaca, 1993.

112 Butler J., "Sex and Gender in Simone de Beauvoir's Second Sex," p.46.

conclusion, we end up discovering that there is no natural body, no given sex. Anatomic bodies have history and the concept of sex has a history embodied in a cultural framework. For this reason, no body's female/male or nature can exist outside a determined culture.¹¹³ We acknowledge, then, that gender is a cultural norm to which we agree as we agree on the natural law of the force of gravity. Yet, we cannot apply to sex the same logic of the force of a rock falling due to gravity. Sex is simply a matter of interpretation, conceptions of gender that have been made 'natural'. On the one hand Beauvoir, makes a distinction, on the other Butler deconstructs the same distinction: there is no such a thing as the natural sex or natural body. What exists are gender norms qualified scientifically that function as a mechanism of social power and two kinds of bodies that are produced: male and female. These gender norms translate into 'gender acts.' Thus, the distinction between culture and nature is *per se* a cultural operation by which gender norms become codified scientifically and start functioning as if they were natural fact. It is the very act of performing gender that makes us who we are: 'If gender is performative, then it follows that the reality of gender is itself produced as an effect of the performance.'¹¹⁴

Gender is a constructed concept and not innate in society. However, because of a cultural mechanism of 'stubborn survival of traditions' society has always granted superiority to the sex that kills and not to the one that gives birth.¹¹⁵ This hierarchy of power, masculinity over femininity, has thus constituted the gender order since the beginning and violence is nothing but the expression of that masculinity constructed by centuries of gendered divisions that has ended up being considered natural in human relations. Being a woman has a history and this history does change over time! In making a clear distinction between *gender* and *sex* feminists are allowed to create a more equal society and to change the gender norms based on cultural practices that often result in objectification, oppression, and VAW. GBV against women has thus its bedrock in male/female dualism, dichotomy culturally created and perceived as natural.¹¹⁶

113 Butler J., "Sex and Gender in Simone de Beauvoir's *Second Sex*," p.46.

114 Butler J., *Undoing Gender*, New York, London: Routledge, 2004, p.218.

115 De Beauvoir S., *Le Deuxième Sexe*, p.85.

116 Candiotta L., "Il dualismo strutturale e la natura-cultura della violenza contro le donne. Una lettura filosofica del preambolo alla convenzione di Istanbul", p.93.

3. DOMESTIC VIOLENCE IN POPULAR TRADITION

Power relations responsible for episodes of GBVAW have been constructed within the patriarchal society, and the concept of gender had a fundamental position in the definition of men and women. Defined roles have conditioned the pattern of actions and behaviors of societies and they have reshaped cultures and traditions.¹¹⁷ Culture is the main repository of bias messages that influence people ideas. Myths, legends, and old popular tales are all part of a popular cultural pack and they mirror people's perceptions offering useful explanations for the understanding of important structure in society.¹¹⁸ The study of western culture has shown that men have held power and they have used violence to keep women in a state of dependence performing roles that society had attributed to them. Women have gradually become 'the Other' to men.¹¹⁹

Women's history has changed a lot throughout centuries. Once they were idols and Goddess for men, but then, with the end of the matriarchy ¹²⁰ and the advent of the patriarchy, society was lead towards asymmetrical relationships between men and women.¹²¹ Women have been left out as individuals by mythology and culture.¹²² Culture stereotyped women to perfectly fit into her myth of 'feminine beauty' without intelligence nor power.¹²³

GBV against women, particularly DV perpetrated by the hands of husbands or intimate partners behind domestic walls, is the result of this transformations and it has been represented and trivialized by popular tradition since the 16th and 17th centuries. DV had been rendered invisible, hushed-up and condone. Only in the past 30 years has DV been recognized as a violation of fundamental human rights but it hasn't always been like this.¹²⁴ One of the most progressive definitions of DV was given in 1998 in the *South African Domestic Violence Act (The Act)*.¹²⁵ More recently, the IC has defined it and has

117 Yarberry W., "Narratives of patriarchy: fairy tale heroine role models in two animated films", *master's Theses*, San Jose State University, 1996, no. 1411, p.1.

118 Beauvoir S., *The Second Sex*, p.159.

119 Ibid., p.160.

120 See pp.32-34 in this same chapter for a brief introduction on Patriarchy.

121 Ibid.

122 Wolf N., *The Beauty Myth. How Images of Beauty Are Used Against Women.*, Chatto & Windus Ltd, Vintage edition, 1991, p.59.

123 Ibid.

124 See United Nations Special Rapporteur on Violence Against Women, Radhika Coomaraswamy, *A Background-As a Violation of Women's Human Right,1994-2009. A Critical Review.*

125 See Domestic Violence Act no. 116 of 1998, 1998 SA CRIMINAL LAW 116 (BSRSA, LEXIS through June 2003 update). In section one domestic violence is defined as: (a) physical abuse; (b) sexual abuse; (c) emotional, verbal and psychological abuse; (d) economic abuse; (e) intimidation; (f) harassment; (g) stalking; (h) damage

tried to address the problem with a binding instrument which poses obligations on States parties.¹²⁶

Historically, only two specific manifestations of violence were criminalized as GBV namely mass rape as war crime or crime against humanity and female genital mutilation as a human rights violation.¹²⁷ As Bonita Meyerfeld proposes in her article, there exists a third category of VAW to be addressed that is DV.¹²⁸ For decades women have silently suffered private violence believing that it was a natural characteristic of the marital institution.¹²⁹ In almost all countries they were not served well by the legal system and they have always encounter impediments to their call for protection because of patriarchal assumptions about boundaries of role based on gender categories on which societies structure were based.¹³⁰

Keeping in mind what DV represents, i.e. 'a gender-specific violence against women, occurring within the family and within interpersonal relationships,'¹³¹ in the following lines, I will concentrate the analysis on the historical wrong committed by popular tradition against women. The use of VAW and DV images and concept in tradition can be detached as a direct cause of the previous failure and then delay in the response of the international legal system.

In the 19th century, feminists started to analyze and expose different genres of popular traditions which used to represent the objectification of women and justify their subjugation in the patriarchal system of families and societies. In the following paragraph, I will display the relation between popular tradition and reality. Popular tradition must be read throughout the use that society has made of it. Indeed, it is through eyes influenced by it that people set the rules, laws, and costumes of their communities.

to property; (i) entry into the complainant's residence without consent, where the parties do not share the same residence; or (j) any other controlling or abusive behavior towards a complainant, where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant.

126 To be found in Article 3 letter b of the Istanbul Convention. DV is defined as 'all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.' More on this topic in Chapter 3.

127 Ibid., p.372.

128 Ibid., p.387. DV includes acts of 'battery, biting, burning, hacking, electrocuting, starvation, sleep deprivation, forced sexual encounters, non-consensual sexual touching, rape, forced sexual activities with third parties, poisoning, exposure, property destruction, murder, the withholding of medical care, threats of harm, threats of harm to third parties, threats of removing children, psychological abuse, financial deprivation, stalking, shouting, accusations of infidelity, isolation, and threats of suicide.'

129 Ibid., p.384.

130 Ibid., p.381.

131 See, e.g., SR-VAW, Ms. Radhika Coomaraswamy, *A Framework for Model Legislation on Domestic Violence*, UN Doc. E/CN.4/1996/53/Add.2, 2 February 1996, I. Declaration of purpose letter. b.

By way of myths, proverbs, plays, tales, and songs¹³² popular tradition penetrated in all the aspects of the existence of society and from that moment on, everyone, men have been able to draw on it as a justification for their actions.¹³³ DV against women was but still is today, rooted in women subordinate status and in the belief that women exist only for men's delight.¹³⁴

Frances Power Cobbe (1822-1904) was an Irish journalist and feminist activist, one of the best-known feminist writers of the Victorian Age. She lived as a 'New Woman'¹³⁵ a generation before the term made its official appearances.¹³⁶ She was a prominent spokeswoman for the struggle against DV and she had a unique role in the anticipation of DV legislation to a large mainstream. She influenced the audience with themes only later recovered by the international legal system on which the latter has drawn its legislature and jurisprudence. In Cobbe famous essay *Wife Torture in England*, with a slow buildup of violent detail and criminal cases, she arrived at the conclusion that the relation between the sexes (men and women) was far from being better than the relationships which have always linked a master with slave.¹³⁷ The master/slave trope was frequently used in the writings of the Victorian period. The fact that even in the 19th century journal, essays... we're speaking about VAW in this terms, underlines once more how the problem was eradicated and structural in society. Wife-beating, a core aspect of marital life,¹³⁸ was highly widespread in Victorian England and Cobbe compared it in its form and purposes to a condition of physical and psychological torture: 'wife-beating in process of time, and in numberless cases, advances to wife torture' she wrote.¹³⁹ The aim of both torture and DV ('wife-beating') was that of destroying women autonomy and freedom to lessen them to a status of reliance on men through the practice of terror. In writing this essay she drew

132 See chapter 5 in Clark A., *The Struggle for the Breeches. Gender and the Making of the British Working Class*, University California Press, London, 1995.

133 Crone R., "Mr. and Mrs. Punch in nineteenth-century England," *The Historical Journal*, 49, 4, Cambridge University Press, 2006, p.1059.

134 Bianchi B., "La Violenza Domestica nella riflessione femminista (1833-1917)", in Candiotti L., De Vido S. (a cura di), *Home-Made Violence*, Mimesis, 2016, pp. 17-34, p.24.

135 The term "New Women" describes the growth and changes that feminists underwent during the 19th century in their education, independent career both in Europe and United States. It was first used by the writer Sarah Grand in her article "The New Aspect of Women Question" published in the *North American Review* in 1894.

136 Hamilton. S., "Making History with Frances Power Cobbe: Victorian Feminism, Domestic Violence, and the Language of Imperialism." *Victorian Studies*, vol. 43, no. 3, 2001, pp.437-460. *JSTOR*, JSTOR, p.441, www.jstor.org/stable/3829700. For more about the subject of violence against women, nature and animals see "ecofeminism".

137 Cobbe F., "Wife Torture in England", in *Femicide. The Politics of Women Killing*, Radford J., Russell D., (edited by), Twayne Publishers, New York, 1992, p. 61: 'I have always abjured the use of this familiar comparison in speaking generally of English husbands and wives, because as regard the upper orders of society it is ridiculously overstrained and untrue. But in the "kicking districts," among the lowest classes, himself find a dozen and the condition laboring degree might prototypes, of the women be most accurately matched by that of the negroes on a Southern plantation before the war struck off their fetters.'

138 The 1870s are regarded as the starting point of the Victorian feminists' political focus on married women's control over their body.

139 Cobbe P. F., "Wife-torture in England," in *The Contemporary Review*, 32, April 1878, p.49.

upon decades of feminist literature and critique about the representation of marriage as a form of slavery.¹⁴⁰ In the same article, while reasoning on criminal statistics regarding domestic violence episodes, she used a popular culture narrative perspective ironically interrogating the English society on the reason why *Punch* had been the English 'national street drama for more than two centuries'.¹⁴¹ Consisting of a theatrical representation of a man always and incessantly beating and abusing his wife for no concrete reason, except for the fact that she is a woman, *Punch* was, at the time, trivialized by humor and satire and absorbed by popular opinion as the right way to deal with women be her a sister, wife or daughter.¹⁴² The inevitable clash between the sexes was solved through the use of violence to resolve all the problems in the domestic sphere.¹⁴³

The first appearance of the street theatre show, with the character that later evolved into Punch, was in 17th century England thanks to an Italian performer.¹⁴⁴ The show was created to be an entertainment for street and seaside audiences and much of it was, and still is today, of black-humor. With the passing of time, though, that humor acquired a symbolic status as a dramatic representation of life itself and it evolved enormously keeping up with the changes that society underwent.¹⁴⁵ Here follows an example of one among many scenes of the *Tragical Comedy, or Comical Tragedy, of Punch and Judy*. In this episode punch kills his son throwing him outside the window because unable to stop him from wailing and screaming. Judy, devastated from the discovery of her son's death initiates the violence assaulting Punch with his stick. In few seconds Punch snatches the stick from Judy and hit her to death:

PUNCH [Again knocking it down and following up his blows until she is lifeless.] Now if you're satisfied, I am. [Perceiving that she does not move.] There, get up Judy, my dear; I won't hit you anymore. None of your sham-Abram. This is only your fun. You got the head-ache? Why, you only asleep. Get up, I say. – Well, then, get down. [Tosses the body down with the end of his stick.] He, he, he! [Laughing.] To lose a wife is to get fortune. [Sings.]¹⁴⁶

140 Hamilton, S., "Making History with Frances Power Cobbe: Victorian Feminism, Domestic Violence, and the Language of Imperialism," p.442.

141 Cobbe P. F., "Wife-torture in England," p.57.

142 Ibid.

143 Crone R., "Mr. and Mrs. Punch in nineteenth-century England," p. 1066.

144 Speaight G., "The Origin of Punch and Judy: A New Clue?" in *Theatre Research International*, Vol.20 No. 3, pp.220-206, downloaded from the Cambridge. Giovanni Puccini's Punch and Judy show was first published in 1828. See also Crone R., 'Mr. and Mrs. Punch in nineteenth-century England,' *The Historical Journal*, 49, 4, Cambridge University Press, 2006, pp. 1060-1061.

145 Crone R., "Mr. and Mrs. Punch in nineteenth-century England," p. 1067.

See also 'Punch and Judy History' at <http://www.prestonspunch.folkaustralia.com/history.html>.

146 Collier, J. P., "The Tragical Comedy, or Comical Tragedy, of Punch and Judy." *New England Review (1990-)*, vol. 21, no. 4, 2000, pp. 191-215. *JSTOR*.

Punch's song: *Who'd be plagued with a wife, that could set himself free, with a rope or a knife, or a good stick, like me*. The song that Punch uses to celebrate his wife death while her body is tossed away from the stage.

With this brutal action, Punch establishes his mastery in the household. He appears as the hero, as the husband who has stopped the madness of his wife, a madness which was dictated by the sorrow of the loss of a son by the hand of the very husband. Nonetheless, Judy, to the eyes of the audience, remains the ugly and painful wife who deserved what has just happened to her.¹⁴⁷

Showmen crossing England to perform their various genre of amusement and theatrical performances have existed since the Middle Ages.¹⁴⁸ Rosalind Crone in her book *Violent Victorians* explores various genres of popular entertainment originated between the end of the 18th and the beginning of the 19th century England. Victorians were extremely violent and their popular entertainments were highly characterized by a high degree of interpersonal violence performed as a sort of 'safety valve', an alternative way to express dissents and protests.¹⁴⁹ Punch and Judy's show was part of that popular entertainment circle which developed during a turbulent climate of social and political changes.¹⁵⁰ In the 18th century Punch was a comic buffoon, a change version of the Italian *Pulchinello* who radically transformed itself in the 19th century murderous and wife-beater Punch. By the end of the century, the show became part of middle and upper-class amusement with some changes in the relationship between the characters as a mean of moral education for children. Despite changes and the juxtaposition of violence and morality, the amount of violence and oppression maintained at expense of the female characters expose for us today a crucial pattern of masculinity versus femininity attitudes that highly characterized those time of Victorian England.¹⁵¹ Morality in those years was not better preached than any other disciplines regarding women. Authorities, as reported by Anne Clark in her book *The Struggle for the Breeches*, made clear to society which were the rules to follow also when it came to gender roles in society. Husbands should have ruled, and any form of dissent or unruly drives was to be sustained by a vigilant suppression.¹⁵² It was of used for preachers to declare that women were not allowed to rule, not even to aspire for it, but they should have submitted themselves to their husband wills. It was not even possible to envision women independence in gaining wages for their work as this

147 Crone R., 'Mr. and Mrs. Punch in nineteenth-century England,' p. 1063.

148 Crone R., *Violent Victorians: Popular Entertainment in Nineteenth-Century London*, Manchester University Press, 2012, Chapter 2.

149 Ibid.

150 Ibid.

151 Crone R., 'Mr and Mrs Punch in nineteenth-century England,' *Abstract*.

152 Clark A., *The Struggle for the Breeches. Gender and the Making of the British Working Class*, University of California Press, 1995, p.63. See also Joy Wiltenburg, *Disorderly Women and Female Power in the Street Literature of Early Modern England and Germany* (Charlottesville: University Press of Virginia, 1992).

would have drastically clashed with husband's desire for domination over their wife. This clashed was satirized and condoned in popular and comic literature as the 'struggle for the breeches' - the struggle for power, resources, and freedom - but more tragically in court records of wife-beating episodes which presented patriarchal authority as 'the natural state of things'.¹⁵³

Between the 17th and the 18th century, even before the advent of the Punch and Judy glove-puppets show, street plays, and ballads had presented images of mad and disorderly women or shrew and weak women.¹⁵⁴ Within popular culture torture perpetrated on wives, both physical and psychological, was rendered caricatural and funny because justified by women shrewishness.¹⁵⁵ This is the case of Shakespeare famous comedy *The Taming of the shrew* which made its appearance in the theater of England. This comedy was first published manuscript in England in 1623 and exemplify today one of the most popular among Shakespeare's comedies. It tells the story of two sisters, Kate, and Bianca, in search for suitable husbands. Some problem occurs with Kate because she is a woman who holds the reputation of a 'shrew' due to her hungry and rebellious behavior.¹⁵⁶ Kate's younger sister, Bianca, instead, has several suitors but the father refuses Bianca marriage until her sister has found a husband too. The play copes with the theme of patriarchy as the social order, that is the authority of fathers over their families, husbands over wives and men over women in general. Right away from the *Induction* of the play we are introduced into a world in which the characters identify themselves by their role in a social and familial hierarchy and who watches or reads, it is caught with a question: how much is that social order a human construction or more a natural law?¹⁵⁷ In the first part of the play the shrew, Kate, is portrayed in terms of her resistance to men. Petruchio, her suitor, 'tames' her with psychological tortures like keeping her from eating and drinking until submit to his power becoming a compliant and obedient wife.¹⁵⁸ This comedy does not explore emotional desire and love like other

153 Clark A., *The Struggle for the Breeches. Gender and the Making of the British Working Class*, p.64 and p.71. As reported by Clark, the image of the struggle of the breeches concealed the reality. In 78 to 95 percent of the case, domestic violence cases were about VAW but once in courts, the real nature of them was concealed. For example, in Francis Buller, *Judge Thumb*, the fact that men could beat their wife with a stick no bigger than a thumb entered the folklore without being a legal precedent. Sometimes women did not submit themselves to the state of thing and some of them succeeded in bringing their violent spouses into court.

154 Cobbe F. P., "Wife-torture in England," p.57.

155 Clark A., *The Struggle for the Breeches. Gender and the Making of the British Working Class*, p.70 See also *The Cobblers Cure for a Scolding Wife*, The Political and Humorous works of Thomas Rowlandson, pp.1774-1825.

156 *The Oxford English Dictionary* defines the shrew as follows (OED, sb.23): A person, especially (now only) a woman given to railing or scolding or other perverse or malignant behavior; frequently a scolding or turbulent wife.

157 Novy L. M., "Patriarchy and Play in *The Taming of the Shrew*," in *English Literature Renaissance*, p.265.

158 Coppélia K., "'The Taming of the Shrew': Shakespeare's Mirror of Marriage." in *Modern Language Studies*, vol. 5, no. 1, 1975, pp. 88-102. *JSTOR*, p.88.

Shakespearean comedies. It is focused on social perspectives and it addressed the institution of marriage.

The street show of Mr. and Mrs. Punch together with various comedies among which Shakespeare's, has contributed in a centuries-long comical representation of DV made of old perceptions and gender-bias ideas.¹⁵⁹ Cultural imagination and popular expectations were complicated and ambiguous in the 19th century. It was a time of important social and economic upheavals (the Industrial Revolution, the European Imperialism, the Victorian Era, and the Belle époque, among others) and the persistence of old paradigms and stereotypes on conjugal life and women/men power relations did not help in overcoming the stubborn tradition of the patriarchal structure of society.¹⁶⁰ The culture had a negative effect on legal systems too.

It was difficult for women to be helped and served by law in situations of DV. Law has improved in the last century but 'marital tyranny' was always beyond the reaching of it. Most of the time DV was looked at as a private matter, neglected by States' authority. Women have been depreciated as a male property or as the 'fatal root of incalculable evil and misery' becoming primary targets for male violence.¹⁶¹ Definitions of what was masculine and what, on the contrary, was feminine has portrayed western cultures and upbringing.¹⁶²

Speaking about children breeding, it represents the cradle for future men and women culture. The roots of each personality do not belong to yourself because others have nurtured you when you were too young to understand and choose for yourself.¹⁶³ Culture one belongs to, uses every means possible to impose the appropriate behaviors according to gender, class, ethnicity, and religion.¹⁶⁴ Thus the journey to promote gender equality and avoid gender essentialism must start in our home.

As a fundamental genre of home-based popular tradition, fairy tales originated thousands of years ago from beliefs, rites, values, and experiences of people, are still the repositories for children's first knowledge of the world. I am not in the position to deny the existence of fairy tales which have taught values shield or present strong and intelligent women as

159 Crone R., "Mr. and Mrs. Punch in nineteenth-century England," p. 1059.

160 Ibid., p. 1057.

161 Cobbe P. F., "Wife-torture in England", p.57.

162 Crone R., "Mr. and Mrs. Punch in nineteenth-century England," p. 1060.

163 Belotti G. E., *Dalla parte delle Donne*, Universale Economia Feltrinelli, Milano, 1990 (nona edizione), p.6.

164 Ibid.

main characters.¹⁶⁵ Unfortunately, society particularly today is confronted not with folks' tales which are sparse in number, but with fairy tales widespread thanks to the Grimm Brother and more recently by Walt Disney adapted on ever existed patriarchal structure of society.

Fairy tales are important pieces of children's literature and every reader, young or adult, is enchanted by their magic. Throughout the centuries they have adapted to the needs and ideologies.¹⁶⁶ They have been made proofs of different cultural environments, societies and traditions, and product of predetermined mindsets, behavioral patterns and subtle cultural imperatives which helped in spreading particular role models and predict outcomes and faiths according to gendered dichotomies.¹⁶⁷ Feminists, women, and men, together have started to look critically at fairy tales in the 19th century considering them as the primary site for asserting and subverting ideologies of gender. In *The Second Sex*, Simone de Beauvoir analyzing one of the basic myth of society - 'the myth of the eternal feminine' - expressed her opinion about myths as the perpetrators of images and values of a patriarchal society imposed in laws and manners on individuals.¹⁶⁸ They are the perfect genre that quietly influences people in a picturesque and sensitive way.¹⁶⁹ Fairy tales 'serve a meaningful social function: not just for compensation but for revelation' said Jack Zipes. American academic and emeritus professor who has published a lot on the subject. In the introduction of one of his book he asserts: 'There are certain fairy-tale patterns, motifs, and models which constantly arise in our lives and in literature and that appears to have been preserved because they reinforce male hegemony in the civilization process.'¹⁷⁰ One of this pattern is GBVAW and DV; not only in its physical connotation but also in the psychological one that is violence intended as oppression, subordination, and relegation of women in their domestic sphere or in their 'castles' waiting for the prince to save them. Fairy tales were made 'processes of acculturation' to teach women the traditional social roles, to prepare them for a backward and male chauvinist society.¹⁷¹ In 1972 Marcia R. Lieberman, an English Assistant Professor at the University of Connecticut, wrote 'fairy tales have been made the repositories of the dreams, hopes, and

165 Yarberry W., "Narratives of patriarchy: fairy tale heroine role models in two animated films", p.18.

166 Tosi L., *La Fiaba Letteraria Inglese. Metamorfosi di un genere.*, Marsilio Editori, Venezia, 2007, p.13.

167 Lieberman, M. R. "Some Day My Prince Will Come": Female Acculturation through the Fairy Tale." *College English*, vol. 34, no. 3, 1972, pp. 383-395. *JSTOR*, p.384. See also Rowe K., "Feminism and fairy-tales," in *Women's studies*, 6, 1979, pp. 237-257.

168 Tosi L., *La Fiaba Letteraria Inglese. Metamorfosi di un genere.*, p.49.

169 De Beauvoir S., *The Second Sex*, pp. 292-294.

170 Zipes J., *Don't Bet on the Prince. Contemporary Feminist Fairy Tales in North America and England*, New York Routledge, 1987, p.9.

171 Lieberman, M. R. "Some Day My Prince Will Come": Female Acculturation through the Fairy Tale," p.384.

fantasies of generations of girls' and 'millions of women must surely have formed their psycho-sexual self-concept, and their ideas of what they could or could not accomplish in part from their favorite fairy tales'.¹⁷²

Fairy tales analysis carried on by feminists was characterized by the use of the genre as evidence to demonstrate the sociocultural myths and mechanisms of women's oppression.¹⁷³ As said before, fairy tales shapes society's cultural values and understanding of gender roles depicting women as wicked, beautiful, passive while men as good, active and heroes since children first years of life.¹⁷⁴ 'Passivity,' wrote Beauvoir 'essentially characterizes the "feminine" women, a trait that develops in her from the earliest years. She is treated like a living doll.'¹⁷⁵ What if not fairy tales, can teach children in their early years what to dream of and how to accomplish them? This genre has always been children favorite and principal means of learning. Thanks to recent studies, it has been shown that fairy tales use to portrait unfavorable image of women victims or survivors of an invisible but always present violence.¹⁷⁶ Most of the time we read about the beautiful but passive princess who cannot but rely upon men to live their 'happy ever after'.¹⁷⁷ Instead, the jealous witches or evil stepmothers are killed for their unnatural roles given their female nature.¹⁷⁸ To provide the reader with some examples I will limit my analysis to some fairy-tales that have become popular thanks to the Walt Disney production. *Cinderella* and *Snow White*, for example, are two prototypes for domestic virtues in women where the most important assets are beauty and fairness. Both the protagonists are submitted to a patriarchal society. In *Cinderella*, after the loss of the crystal slipper at the ball she can do nothing but wait for the prince to find her in her vain stepmother house. Confronted with the choice between Cinderella's beauty without power but with a final reward thanks to the prince, and the evil stepmother portrayed as wicked but with power who at the end will be defeated, children will always choose to be

172Lieberman, M. R. "Some Day My Prince Will Come": Female Acculturation through the Fairy Tale.", p.385.

173 Haase D., "Feminist Fairy-Tale Scholarship: A Critical Survey and Bibliography." *Marvels & Tales*, vol. 14, no. 1, 2000, pp. 15–63. *JSTOR*, p.17.

174 Ibid.

175 Beauvoir S., *The Second Sex*, pp.628-630.

176 Yarberry W., "Narratives of patriarchy: fairy tale heroine role models in two animated films", p.2.

177 Patriarchy had an enormous influence also on women image. The 'properly embodied femininity' have been disciplined by power relations. As a result, Naomi Wolf in 1990 speaks about 'the beauty myth', a political weapon used against women advancements, which takes over the long existing 'feminine mystique of domesticity'. She highly contends women idea to be forced in respect an imposed on 'ideal cultural standard'. See Wolf N., *The Beauty Myth*, Chatto & Windus Ltd, Vintage edition, 1991 and Bartky S., "Foucault, femininity, and the modernization of patriarchal power.", in Diamond I., Quimby L., (ed), *Feminism & Foucault: Reflections on Resistance*, Northeastern University Press, Boston, 1988, pp.61-86.

178 Yarberry W., "Narratives of patriarchy: fairy tale heroine role models in two animated films", p.19.

the princess in the story.¹⁷⁹ In *The Sleeping Beauty* prince Philip fight against the wood of blackberry bush spelled by the wicked witch, jealous for Aurora beauty and love, to save the princess. Princesses stay passive until their faith is accomplished with the arrival of the prince. With these 'happy ending', women seem to content within their predetermined roles as wife, mother or daughter.¹⁸⁰ Indeed, powerful female characters are used to be portrayed as ugly and animal-like creatures from an upside-down world. Think for example at the wicked witch in *The Sleeping beauty* that at the end gain the shape of a dragon before being killed by the prince or Ursula in *The Little Mermaid*, part octopus and part human, killed by Prince Eric.¹⁸¹

For centuries women's representation in popular tradition from a male bias point of view has justified women inferiority and has perpetuated that patriarchal system used to deceive women. Fairy tales, as many scholar pieces of research demonstrate, have been manipulated and used to serve the process of socialization and the construction of the concept of 'gender'.¹⁸² Myths, plays, comedies, and fairy-tales have perpetuated along history values, social relationships and perceptions of realities which have previously generated them.¹⁸³ The depiction of dichotomic relationships boys and girls or between men and women has served to the dominant culture.¹⁸⁴ Western culture is permeated by the values that gender norms and stereotypes have imposed on societies. However, as we will see in the next chapter, popular tradition can be considered accountable for the perpetuation of wrongful images and stereotypes of women in history and for a very long delay on the side of law and institutions to confront the problem. Nonetheless, it has also played a fundamental role in the civilizing process as 'subversive alternatives' when taught for what it is and from al the possible perspectives.¹⁸⁵

179 Yarberry W., "Narratives of patriarchy: fairy tale heroine role models in two animated films," p.20.

180 Ibid., p.19.

181 Ibid.

182 Haase D., "Feminist Fairy-Tale Scholarship: A Critical Survey and Bibliography.", p.36. To have a deeper perspective on the argument I suggest other readings about the analysis regarding fairy tales interpretation of women and responsibility in gender role development. See for example Stone K., "The Romantic Heroine in Anglo- American Folk and Popular Literature", 1975 and Lurie A., "Fairy Tale Liberation", 1970.

183 Oliver R., "Whatever became of Goldilocks?", in *Frontiers*, 3(3), 1977, pp.85-93.

184 Yarberry W., "Narratives of patriarchy: fairy tale heroine role models in two animated films", p.23.

185 Zipes J., *Fairy Tales, and the Art of Subversion. The Classical Genre for Children and the Process of Civilization*, (sec. ed.), New York Routledge, 2006.

4. A LOOK INTO MODERN POPULAR TRADITION

In recent time, modern urban culture has further contributed to women's sense of vulnerability in society.¹⁸⁶ The legend of Jack the Ripper is among those traditions that in the years have served as the model for 'real life heroes of crimes'.¹⁸⁷ At the time when the crimes had been committed the story was interpreted as a 'moral message' to warn those women who attempted to cross gender barriers. Women, according to the patriarchal state of mind, were supposed to stay home and act as they were expected to. Those who did not respect the norms and tried to step into a more public domain (women who conducted deviant lives like prostitutes) were not safe. It was between August and November 1888 when five women, all but one prostitute, were tortured, killed, and mutilated in the Whitechapel district in London's East End. During those months the national press in local newspapers covered those episodes as tragic deaths of 'economically desperate women who violated their "womanhood" for the price of a night lodging, and for whom the wages of the sin were death.'¹⁸⁸

Who was Jack the Ripper has remained an enigma during the centuries, but his actions are well known. Considered by some scholar as the 'father' of the 'Age of Sex Crimes', by the end of the 19th century he had entered the mass media culture consciousness.¹⁸⁹ In its brutality and violence what Jack the Ripper did to his victims does not distinguish from contemporaries stories of male brutal violence against women, stories which are synonyms of male dominance on women also in the 21st century around the world. The term 'serial killer', that today we attribute to the Ripper, is a discursive construct codify by the FBI around fifty years ago.¹⁹⁰ It identifies certain acts making them meaningful to us. Feminists' studies have placed serial killers like Jack the Ripper line up in a continuum of sexual violence and the problem is that these manifestations of violence are still normalized by the structure of our culture, a culture that is constructed around gender inequality and discrimination between men and women. 'Serial killers are extraordinary and grotesque, but they are grotesque in the image of the cultures that produce them:

186 Walkowitz J. R., "Jack the Ripper and the Myth of Male Violence." *Feminist Studies*, vol. 8, no. 3, 1982, pp. 543-574, JSTOR, p. 544.

187 Ibid. See also Caputi J., *The Age of Sex*, p.11. Here follows a list of other names of people acting on the wake of Jack the Ripper: The Boston Strangler, the Coed Killer, the Son of Sam, the Hillside Strangler, the York Shire Ripper, Ted Murderer, and the Green River killer. The compelling mythic formula of JTR was used even when it was not true by police and press.

188 Ibid., p.552.

189 Caputi J., *The Age of Sex*, p.14.

190 Cameron D., "Still Going... The Quest for Jack the Ripper." *Social Text*, no. 40, 1994, pp. 147-154, JSTOR, p.151.

they are a pathological symptom of a certain kind of masculinity that in its less malignant forms is a requirement of patriarchal structure.¹⁹¹

In Deborah Cameron's article 'That's Entertainment? Jack the Ripper and the Selling of Sexual Violence' the reader is confronted with 20th and 21st centuries contemporary reality.¹⁹² The lore of the legend which saw women victims of a men disgust and deadly violence has made Jack the Ripper a sort of 'national heritage', a symbol of a past Victorian London that keeps fascinating the curiosity of people today. Murders are reduced to a 'cozy kitsch nostalgia spectacle' throughout computer games, gadgets, museums, and unsettling tourist attractions around the Whitechapel neighborhood became places of attraction for worldwide tourists in London.¹⁹³ But looking beyond the surface of what can be considered an innocent business of the 'Ripper Industry', it actually represents a huge step backward in the struggle against VAW. Jack the Ripper did to his victims what women worldwide have always struggled against, and still do today.¹⁹⁴ How can be possible that the story of the five women brutally killed by that monster is less interesting than the monster itself? How can be that voices and lives of those women that were killed are utterly silenced, turned into an object to make the killer the subject?¹⁹⁵ What the story of Jack the Ripper still convey in the mind of many as just a horrible period in Victorian England, today is still a reality for women and by popularizing it with the help of the media is a further demonstration of the fact that today society ignore. Glamorizing facts and stories like Jack the Ripper's legend means to 'trivialize past woman slaughter, to rejoice in the continuing violence against [women] [...] [to] insult the memories of those women who have died at the hands of men in the past [...] [and] for [the women] who survive, it is painful reminder of how little society values [women's] lives.'¹⁹⁶

191 Cameron D., "Still Going... The Quest for Jack the Ripper.," p.151.

192 Cameron D., "That's Entertainment?: Jack the Ripper and the Selling of Sexual Violence", in *Femicide. The Politics of Women Killing*, Radford J., Russell D., (edited by), Twayne Publishers, New York, 1992, pp. 184-188.

193 Cameron D., "St-i-i-i-Ll Going... The Quest for Jack the Ripper.," p.153.

194 Cameron D., "That's Entertainment?: Jack the Ripper and the Selling of Sexual Violence.", p. 186.

195 Cameron D., "St-i-i-i-Ll Going... The Quest for Jack the Ripper.," p.153.

196 Cameron D., "That's Entertainment?: Jack the Ripper and the Selling of Sexual Violence.", p. 187.

As a mythmaker Jack the Ripper has shown himself to be without rival among criminals, from the standpoint of both the number and potency of the myths he has evoked.¹⁹⁷

-Tom A. Cullen-

¹⁹⁷ Cullen A. T., *When London Walked in Terror.*, Boston: Houghton Mifflin, 1965, p.285.

II. DOMESTIC VIOLENCE IN WOMEN'S LITERATURE

*...for this is the fate of women
Long to be patient and silent like a ghost that is speechless
Till some questioning voice dissolves the spell of its silence.*

-Henry Wadsworth Longfellow-

In the past two centuries, thousands of feminists have fought against women discrimination and inequality with men deconstructing what up until the 19th century was perceived as the 'natural structure of society'. The archetype for an ideal woman was to be a mother, homemaker, and a wife.¹⁹⁸ International, regional, and national legal instruments have followed this path assimilating hundreds of years of struggles and achievements from the feminist movement and only recently have they created a legislation attentive to women. Even though feminists in the 19th century were confronted with a more national and limited background, at the beginning of the 20th century same theories and voices of timeless women spread across borders unveiling VAW as direct consequence of the old patriarchal historical, cultural, and social context.¹⁹⁹

According to John Hoffman, 'feminism' is concerned with the emancipation and empowerment of women in society.²⁰⁰ There exist many different forms of it but the two central assumptions which equate them all are first, that men dominate and shaped society, and second, that women are subordinated to men by society.²⁰¹ After the presentation made in the first chapter about violence, in general terms, as a social constructed aspect that characterizes social relations in human affairs, both public and private, and about VAW as GBVAW, in this second chapter I will switch perspective relying on feminists contributions and women's literature to centered my attention on fundamental landmarks that between the 18th and the 20th century reshaped public

198 De Vido S., *Donne, Violenza e Diritto Internazionale*, p. 83. To know more about what was perceived as the 'normal structure of society' see paragraph on 'The patriarchy,' pp.31-34 Chapter 1.

199 *Ibid.*, p.84.

200 Minda G., "Feminist Legal Theory." *Postmodern Legal Movements: Law and Jurisprudence at Century's End*, NYU Press, New York; London, 1995, pp. 128. See also Hoffman J., *Gender and Sovereignty. Feminism, the State and International Relations*, Palgrave Macmillan, New York, 2001, p.31.

201 Minda G., "Feminist Legal Theory." p.128.

opinion contributing in the understanding and counteracting of DV against women i.e. one of many places where GBVAW manifest itself.

Feminists, activists, and intellectuals, both men and women, in time, have given birth to a very extensive literature on how culture, and not nature, have always shaped societies in weaving different cultural plots for men and women.²⁰² The so-called 'feminine nature' has always been described with peculiar aspects deriving from logics which were the product of social and cultural contexts. However, those logics were imposed on society but they were not impossible to change, and what must be credited to feminists and their literature is the fact that they succeed in their understanding and, as a result, they have exposed them.²⁰³ Millions of people have militated opening the eyes of society and later on for the juridical systems to break gendered barriers which have kept women silenced in a male-oriented world and segregate in a subordinate position of oppression.²⁰⁴ Thanks to the voices of feminists, activists, and intellectuals, arisen in a unanimous chorus, from all around the world, law too gradually developed precise legal strategies to prevent VAW from happening and protect women.

During the 1960s and 1970s, GBVAW and DV became increasingly prominent themes in the literary field. In the second part of the chapter, women's literature contribution will be analyzed as responsible for the unveiling of women condition and sufferings, considering three main influential pieces of literature. The aim is that of demonstrating how women's literature in contrast with the popular tradition, with which I have dealt with in the previous chapter, did succeed in exposing the patriarchal structure of society, the product of centuries of male-constructed world. I will deal with the topic of DV as a direct consequence of women subordination and relegation on the private sphere of society. Three authoresses will be taken into consideration and for each one of them I will underline what in my opinion was their outstanding contribution to 'The Woman Question'.²⁰⁵

The first author that I will present is Angela Carter, author of *The Bloody Chamber*, a revisited edition of an old 17th century fairytale *La Barbe Bleue*. Referring to fairy tales part of that folklorist popular tradition cited in chapter one, I will demonstrate how in the

202 Belotti Giannini E., *Dalla Parte delle Bambine*, Universale Economica Feltrinelli, 9° edizione, Milano, 1990.

203 Ibid., p.7

204 Minda G., "Feminist Legal Theory:" p.128.

205 What it is intended as 'The Woman Question'? A historical phase during the Victorian Age when traditional women's roles as mothers, wives, and daughters began to be discussed and challenged by women themselves reaching a gradual change in culture by the end of the century.

past century feminist succeed in rewriting popular culture to give justice to women. Carter presented to the readers an updated version of the story which exposes and condemn women subordination and VAW. Margaret Atwood dystopian novel *The Handmaid Tale* will be my second reference. Speaking about a completely different genre of literature, the author has used it to depict women's contemporary history and condition in an authoritarian regime. Atwood with her novel wants to cast a warning on societies not to perseverate in the path constructed centuries ago. The third and final pieces of literature will be Susan Glaspell's short story *A Jury of Her Peers*. Even though she wrote it at the beginning of the 20th century, hundred years from the first two authoresses, she did play a fundamental role in exposing and denouncing the gap existing in the legal system for a right justice towards women. The common *fil rouge* of all three authoresses is their way of facing and exposing female discrimination, subordination to men and their suffering from DV. What Carter, Atwood, and Glaspell have narrated and the reasoning they have introduced in the feminist discourse are easy to be recognized in the contemporary setting of the legislative international and regional systems with regard to the creation of numerous acts of *soft* and *hard law* in order to protect the female gender.²⁰⁶

Dealing both with the law in the first and third chapters and literature allows me to create different narratives about social orders existing in the 19th and 20th century which are strictly combined coherent themes and imageries. The aim of this second chapter will be of demonstrating how feminists' voices, particularly women as far as my analysis is concerned, must be credited for having brought private suffering of the female gender, victim of male violence, in the public discourse influencing other disciplines among which the development of a specific legislation and jurisprudence.

206 These three authoresses are only an example of a very wide literature which exists today in the feminist panorama and that has fundamentally contributed in the development of feminists thought and international, regional and national legislation. See for examples: Estés Pincola C., *Women who run with the Wolves: Myths and Stories of the Wild Woman Archetype*. Kristof N.D., *Half the Sky: Turning Oppression into Opportunity for Women*. Alderman N., *The Power*. Walker A., *The Color Purple*. Atwood M., *The Edible Woman*. Woolf V., *A Room for one's own*.

1. THE FEMINIST MOVEMENT: AN INTRODUCTION

A feminist is a person who 'believes in feminism', but what does 'feminism' mean? According to the Cambridge Dictionary, feminism is a 'theory and/or movement concerned with advancing the position of women through such means as achievement of political, legal, or economic rights equal to those granted to men'.²⁰⁷ These achievements have been embedded historically in what in the 19th century has come to be known as 'The Woman Question'.²⁰⁸

The term barely existed before the 20th century. The first documented use of *féminisme* (in French) has been attributed to the suffrage advocate Hubertine Auclert (1848-1914). She used it in her periodical *The Citoyenne* to describe herself and her associates.²⁰⁹ By the end of the 19th century, the terms had spread in other countries and it became of popular use.²¹⁰ As an ideology, feminism possesses a broad spectrum of ideas and an international scope that has originated from historical tensions with the male-centered political and intellectual discourse. However, it is of fundamental importance to locate the origins of it within a variety of cultural traditions that have rendered it full of different nuances.²¹¹

Karen Offen defines it as a concept that can encompass both an ideology and a movement for sociopolitical changes based on a critical analysis of male privileges and women's subordination within any given societies.²¹² It opposes women's subordination to men in society and family and it represents a direct challenge to the patriarchal traditional social organization. However, because feminism is pro-women it does not mean that it is anti-men. Indeed today, as in the past, a lot of important advocates for the women's cause have been men.²¹³ A feminist, in fact, is considered to be a person who 'recognizes the validity of women's own interpretations of lived experiences and needs', who 'exhibit discomfort or even anger over institutionalized injustices toward women' and who 'advocates the

207 From Cambridge Dictionary in Offen K., "Defining Feminism: A Comparative Historical Approach." *Signs*, vol. 14, no. 1, 1988, pp. 119-157. *JSTOR*, p.123. She is a historian and independent scholar at the Michelle R. Clayman Institute for Gender Research at Stanford University in California.

208 See note 205.

209 Offen K., "Defining Feminism: A Comparative Historical Approach.," p.126. About Hubertine Auclert see *La Citoyenne* no. 64, September-October 1882.

210 Offen K., "Defining Feminism: A Comparative Historical Approach.," p.127.

211 *Ibid.*, pp. 150-151.

212 *Ibid.*, p.151.

213 *Ibid.*

elimination of that injustice by challenging the coercive power, force, or authority that upholds male prerogatives in that particular culture'.²¹⁴

Christine de Pizan (1364-1430), according to Simone de Beauvoir, was the first woman who, despite all the adversities she had to endure in her entire life, decided 'to earn her living by her pen' defending her sex.²¹⁵ Recently, feminist scholars have retrospectively and conventionally divided the movement in three so-called 'waves': the first which refers to the end of the 19th century and the beginning of the 20th century, the second which is associated with the beginning of the 1960s and the third, and last wave which has started at the beginning of the 1990s.²¹⁶

From the 19th century on, writers, philosophers, and thinkers have profoundly debated on women's rights and equality with men challenging traditional beliefs about gender stereotypes and dichotomies between what should be perceived 'female' and 'male': two categories separated and that cannot intersect. For the first to have the full control over the other, physical, and non-physical violence was the first and ultimate resource to preserve the patriarchal order.

In the last fifty years, feminist studies have started to emerge from decays of neglected women experiences. They have introduced in the public debate a new gender dimension looking at reality with 'gender lenses' refusing the mainstream gender essentialism.²¹⁷ A considerable number of feminists have worked to develop strategies to protect women and reinforce their positions. In the following lines, I will cite some of the relevant contributions from exceptional feminist with the only purpose of presenting the reader with an introduction. Between the end of the 18th century and the second half of the 19th century, scholars have conventionally set the initial period of the contemporary feminist discipline.²¹⁸ Feminists like Mary Wollstonecraft (*A Vindication of the Rights of Women*,

214 Offen K., "Defining Feminism: A Comparative Historical Approach," p.152.

215 De Beauvoir S., *Le Deuxième Sexe*, Librairie Gallimard, France, 1949. pp.124-125. Christine de Pizan, *Epître au dieu d'amours (Epistle to the God of Love*, in English), 1399. Italian and French medieval author she received the impetus for her writing in the need to earn a living after her husband died. In 1399 she wrote *Epistle to the God of Love*, the first literary quarrel set up by a woman to defend her gender. Another example of women ahead her time was Sor Juan Inés de la Cruz, famous writer, and nun, who lived in 1691 Mexico where she acted as a defendant of women's rights. She once proclaimed a woman 'can perfectly philosophize while cooking supper.' From From the UN Women's timeline, Women's Footprint in History, Webby Award Recipient in the Activist Category in 2017. Available at: <http://interactive.unwomen.org/multimedia/timeline/womensfootprintinhistory/en/index.html#front1>, (Last accessed 07 June 2018).

216 For an extensive analysis and characterization of the distinct categories see Minda G., "Feminist Legal Theory." *Postmodern Legal Movements: Law and Jurisprudence at Century's End*, NYU Press, New York; London, 1995; Charlesworth H., Chinkin C., *The boundaries of international law. A Feminist analysis.*, Manchester University Press, Manchester, 2000; Tong R., *Feminist Thought. A more comprehensive introduction.*, third ed., Westview Press, Colorado, 2009.

217 Steans J., "Engaging from the margins: feminist encounters with the 'mainstream' of International Relations," *The British Journal of Politics and International Relations*, Vol 5, Issue 3, pp. 428 – 454, First Published August 1, 2003, p. 429. 'Essentialism' is a term usually employed to denote a belief that certain characteristics possessed by a person or by a certain group of people are fixed. It is the reflection of determinist modes of thinking at the world as it reflected natural differences. When essentialism is associated with gender it means that attributes and traits of people are thought to be rooted in biological differences.

218 Tong R., *Feminist Thought. A more comprehensive introduction.*, Introduction, pp.1-10.

1792)²¹⁹ or John Stuart Mill (*The Subjection of Women*, 1863)²²⁰ have been among the first rang of scholars who started walking on the path to reach women equality and fight against VAW. Their thrusts are still perceived in the work of other contemporary feminists and international and national organization and movements.²²¹

Mary Wollstonecraft (1759- 1797) was an English philosopher and feminist writer who militated in a time when the industrial capitalism was making its appearance on the working scene where women were not allowed to enter.²²² In 1792 she published *A Vindication of the Rights of Women*, a groundbreaking book, a sort of response to the 1789 Declaration of the Rights of Man and of the Citizen.²²³ At her time women hadn't the right to vote, to work or to receive any education. The latter was for Wollstonecraft the first step toward the recognition of equality between the sexes, being education the only way for a person to be fully aware of its potential. Women were like birds confined in cages. They were considered more of a possession than a partner in life. Women had no freedom in taking decisions and thus no liberty nor power in reason. Wollstonecraft wrote in the profound conviction that the female gender had been rendered weak and wretched by a false system of education, gathered from structures in society made by men, who have been 'more anxious to make women alluring mistresses than rational wives'.²²⁴ She imagined a society where men and women together would have fight for the equality of the sexes. The goal was not for women to be better than men but only equal partners.²²⁵ Wollstonecraft contribution in the debate has served as the foundation for the contemporary liberal human rights claims.²²⁶ In her writings we do not find concepts like 'socially constructed gender roles' but despite the limitations in language an knowledge for that time, in the 18th century, she manage to portrait a revolutionary image of what according to her was meant to be women.²²⁷ Olympe de Gouges (1748-1793) in the 18th century France worked as Wollstonecraft for women's rights during

219 Wollstonecraft M., *A Vindication of the Rights of Women*, ed. Carol H. Hoston, W. W. Norton, New York 1975.

220 Stuart Mill J., "The Subjection of Women," in John Stuart Mill and Harriet Taylor Mill, *Essays on Sex Equality*, ed. Alice S. Rossi, University of Chicago Press, 1970, pp. 184–185.

221 Tong R., *Feminist Thought. A more comprehensive introduction.*, Introduction, p.2. and also, Charlesworth H., Chinkin C., *The boundaries of International Law. A feminist analysis*, p.44.

222 Tong R., *Feminist Thought. A more comprehensive introduction.*, p.13.

223 *The Declaration of the Rights of Man and of the Citizen* (in French *Declaration des Droits de l'Homme et du Citoyen*) was adopted in August 1789 by France's National Assembly. It was composed of 17 articles which inspired the French Revolution. It was an important human rights document but that intentionally left out half of the population i.e. women.

224 Wollstonecraft M., *A Vindication of Rights of Women*.

225 'False Gender Difference.'

226 Steans J., "Engaging from the margins: feminist encounters with the 'mainstream' of International Relations," p.429.

227 Tong R., *Feminist Thought. A more comprehensive introduction.*, p.16.

the French revolution publishing in 1791 *The Declaration of the Rights of the Female Citizen*: '[A] woman is born free and lives equal to men in her rights. The law must be the expression of the general will [and] it must be the same for all.'

Writing hundred years later, Harriet Taylor and John Stuart Mill in England joined Wollstonecraft and de Gouges with their liberal celebration of rationality. They both believed that for women to reach equality with men together with education, they should have had both the right to vote and to economic opportunities.²²⁸ Women could have been able to express themselves only in a different system, with changed social and political structures.²²⁹ In 1831 Harriet Taylor Mill (1807-1858) wrote 'At this present time, in this state of civilization, what evil would be caused by first placing women on the most entire equality with men, as to all rights and privileges, civil and political?'.²³⁰ She was a fine controversial feminist philosopher and writer. She married John Stuart Mill in a second wedding after the death of her first husband John Taylor.²³¹ They continue to work together even after their marriage publishing a lot of articles and essays related to marriage, divorce, sexual equality and domestic violence.²³² In Taylor 1851 article 'Enfranchisement of women', she argued that women should have become more 'partners' with their husband.²³³ She believed that men had failed in understanding that without educating women they were diminishing 'the first teachers of their children' and thus of the whole community. Marriage was for Taylor and Mill 'a contract' to which girls agreed perfectly ignorant of the conditions.²³⁴ In a marriage one party of the contract - the husband- owned the other - the wife- and wives were completely dependent on the husband. Husbands were, thus, legally allowed to treat women as they wanted to.²³⁵ Changing the structure a marriage was one fundamental step to change women condition. Women should have been equal to men in education, careers, inherit questions and thus in the contract of marriages: 'I have no doubt that when the whole community is really

228 Tong R., *Feminist Thought. A more comprehensive introduction.*, p.17.

229 Ibid., p.21.

230 John Stuart Mill, *The Collected Works of John Stuart Mill, Volume XXI - Essays on Equality, Law, and Education*, ed. John M. Robson, Introduction by Collini S., Toronto: University of Toronto Press, London: Routledge and Kegan Paul, 1984). Last accessed 5 February 2018, <http://oll.libertyfund.org/titles/255>, Appendix A: *On Marriage* by Harriet Taylor, pp. 375-377, p.376. See also Appendix C: *Enfranchisement of Women*, 1851 by Harriet Taylor where she advocated for women admission in law, equality in all rights political, civil, and social with men, pp.393-415.

231 See Chapter 1 pp. 32-34 for more about John Stuart Mill.

232 Tong R., *Feminist Thought. A more comprehensive introduction.*, p.17.

233 Ibid., p.18.

234 Appendix A: *On Marriage* by Harriet Taylor, pp. 375-377, p.376.

235 Jacobs J. E., *The Voice of Harriet Taylor Mill*, Indiana University Press, Bloomington, 2002, p.16. See also John Stuart Mill, *The Collected Works of John Stuart Mill, Volume XXI - Essays on Equality, Law, and Education*,

educated the present laws of marriage were to continue they would be perfectly disregarded because no one would marry.'²³⁶

Mill and Taylor were feminists experiment in being. In the latest years of their lives together, they collaborated to refine ideas concerning DV. They were angry at society for having perpetrated and condoned domestic violence. Taylor reproached the fact that society in its entirety had acknowledged the existence of DV, but nothing had been done to stop it. It was among the poorest class of society where it was better acknowledged because of genres of popular tradition like street ballads, plays, song, tales, or proverbs used to portray it as part of a normal daily life routine.²³⁷ No more tolerance to the patriarchal system of dependence was to condone. Domestic brutality went behind a psychological degradation. It was more like a roadblock to the progress of the entire society. To reach a further development not only should women's equality with men be reached but also men should have shown more respect from their partners.²³⁸ In the essay titled *The Subjection of women*, published in 1869, Mill asserted that woman's subjection to whims of a husband or a father was relict of a past culture that had to be changed. Going against the creed of the common view in society, he defended women opening the path for more feminists to come.

All the arguments brought by the authors considered above share a limit: they all speak about and to 'privileged' (white and upper class) women. Women part of immigrant's communities or women from the middle and the working class were even more invisible. Jane Addams (1860-1935) was a Feminist and peace activist who founded in Chicago the Social Settlement in Hull-House. In the 19th century, the Social Settlement houses' movement had started in England and spread throughout Europe and finally in America.²³⁹ They were reform institutions primarily built in immigrant neighborhoods where immigrant and persons in need of help (among which many women) were provided with social services and cultural opportunities. The Hull-House in Chicago was founded in 1889 by Addams and her friend Ellen Gates Starr. During the 70 years of its existence, Addams had the chance to meet women who came to the Hull-House to seek

236 Appendix A: *On Marriage* by Harriet Taylor, pp. 375-377, p.376.

237 Jacobs J. E., *The Voice of Harriet Taylor Mill*, pp. 230-231. See also chapter 1 on Popular Tradition.

238 Jacobs J. E., *The Voice of Harriet Taylor Mill*, p.16. See also John Stuart Mill, *The Collected Works of John Stuart Mill, Volume XXI - Essays on Equality, Law, and Education*, p.231 and p.235. In 1846 both J S Mill and H Taylor endorsed a public campaign calling for legislative reform to alleviate wife abuse. From *the Morning Chronicles*, 28 October 1846. They also pointed at the disparity between property crime and wife assault sentences. From *the Daily News*, 14 July 1849.

239 Some example of Social Settlements: Cannon Samuel A. Barnett, vicar of St. Jude's Parrish, Toybee Hall in East London (1884); Stanton A. Coin, Neighborhood Guild, Lower East Side New York (1886) then known as the University Settlement.

for help and support and while listening to their stories she had grasped the tragic side of each one. She gave women justice in her work *The Devil Baby at Hull-House*,²⁴⁰ fundamental in reconstructing women resistance at men's violence in a time when justice and law were not just for them.²⁴¹ *The Devil Baby* is a story of a poor mother whose child had been claimed by the devil as consequence for her husband's blasphemy. The myth originated around 1913, It has been a constant demonstration 'of the power of an old wives' tale among thousands of women' living in iron chains and relegated in a silent realities.²⁴² The story had stirred women's minds, loosened their tongues revealing their inner secret of lives and thoughts that had never seen the sunlight.²⁴³ Stories like that of the Devil Baby were lifelines for women who 'had been forced to face tragic human experiences and the powers of the brutality of men's violence every day of their lives.²⁴⁴ Addams wrote: 'The vivid interest of so many old women in the story of the Devil Baby may have been an unconscious, although powerful testimony that tragic experiences gradually become dressed in such trappings in order that their spent agony may prove of some use to a world which learns at the hardest; and that the strivings and sufferings of men and women long since dead, their emotion no longer connected with flesh and blood, are thus transmuted into legendary wisdom'.²⁴⁵ The story was a mean of comfort for women part of that vast horde of the denied and proscribed gender who had long found themselves confronted by violence apparently nobody's fault, but 'inherent in the very nature of things'.²⁴⁶

240 Addams J., "The Devil-Baby at Hull-House," in *The Atlantic*, October 1916.

241 Bianchi B., "La violenza domestica nella riflessione femminista (1833-1917)", *Home-Made Violence*, Candiotta L., De Vido S., Mimesis, Milano, 2016, pp.17-34, p.27.

242 Ibid.

243 Addams J., "A Modern Devil-Baby." *American Journal of Sociology*, vol. 20, no. 1, 1914, pp. 117-118. *JSTOR*.

244 Ibid., p.117.

245 Ibid.

246 Ibid.

2. WOMEN'S STORYTELLING

Since the beginning of the 19th century society has realized that what was once perceived as a 'private matter', it has become more of a structural and broad system of domination affecting women all over the world. Political demands of millions have only recently been recognized as powerful as to speak more than the pleas of a few isolated voices and although those voices (women's voices) were kept far more than other isolated, over the past two centuries, feminists of all countries have tried to speak them exposing inequalities and suffering from the hands of men in all its multiple layers and in its routinized aspects.²⁴⁷

The 19th century has been recognized by scholars as 'the Age of female novelists', a time in which women with different eyes, consciousness, and a renovated courage have started owning their narratives writing books, essays, and articles to speak about injustices their gender has always suffered from.²⁴⁸ Women have never been fully aware of the scale and importance of their literature made of experiences which in time has assumed a broader significance as a collective form of art and a way to disclose their common histories.²⁴⁹ They have challenged the male society and the monopoly of a masculine culture. 'Women have had a literature of their own all along,' writes Elaine Showalter. Women writers have developed their literature becoming independent from male norms and values, but being women in the world different in nature, race, culture, it is impossible to write in general terms. My discourse will be focused on the work of three women belonging to the western society. All three women authoresses have dealt with DV and each one of them as exposed one side of the same story of subordination and oppression for the entire female gender. It is the most severe and shared form of VAW, inscribed into the DNA of society from its origins. It is a form of violence which occurs in a continuum between partners, mainly between men and women where women are the most common victims while men are the perpetrators. It is a subtle violence which takes place behind domestic walls where women should instead be safer. I have chosen to deal with the topic of DV because I am convinced that it has always represented the most

247 Crenshaw K., "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color." *Stanford Law Review*, vol. 43, no. 6, 1991, pp. 1241-1299. *JSTOR*, p.1242.

248 Showalter E., *A Literature of Their Own. British Women novelists from Bronte to Lessing*, Princeton University Press, New Jersey, 1977, p.3.

249 *Ibid.*, p.4.

urgent and elusive violation of women rights receiving an adequate recognition only in the last 50 years. This newly discovered awareness developed by international, regional, and national legislations were possible thanks to the feminist movement and women's literature which for centuries have exposed and denounced it as creating bridges and influencing other disciplines. Simone de Beauvoir, writer, and philosopher who manage to reach an international audience, in *The Second Sex*, asserted that women voices were, for many years, the only possible means to be used to defend themselves from an unfair society built upon men's rules and prerogatives. A lot of scholars do agree that even though the legal protection was delay in time, literature, as a genre, did anticipate and lay the foundation for its development. Along the centuries women's freedom and independence continued to grow up until the 20th century, when women's role in literature became that of giving justice to their precursors works for women individuality, freeing themselves finally from the alienation provoked by a culture which had always looked at them as 'the other' to men. Each generation of women novelists rediscovered the past to forge a new consciousness for their sex.²⁵⁰

Francis Power Cobbe in her article 'Wife Torture in England', published in 1878 on the *Contemporary Review*, recognized the intimate link between women subordination and DV, the same link that today is inscribed in international and regional *ad hoc* Conventions.²⁵¹ Through the study and analysis of real juridical documents she revealed to the public the condition suffered from all women during the Victorian period: men had created an ideology which has justified the use of violence.²⁵² In France, it was Flora Tristan, a very committed feminist that in the same period slowly burst a new ethical moral awareness. She had militated her entire life to expose women condition and inequalities suffering from DV. Tristan was an outspoken advocate in the feminist protest and militancy for divorce, who condemned women oppression and lack of civil right in the marital institution. She was herself a victim of a violent husband and her personal experience inevitably accompanied her claim that inescapability from marriage gave rise to situations of DV.²⁵³ Women involved in marriage or relationships were not just hit but

250 Showalter E., *A Literature of Their Own. British Women novelists from Bronte to Lessing.*, pp.11-12.

251 More about Francis Power Cobbe in Chapter 1, pp. 41-45.

252 Bianchi B., "La violenza domestica nella riflessione femminista (1833-1917)", pp. 18-19.

253 Grogan S. *Flora Tristan. Life Stories*, Taylor and Fransis e-Library, London, 2003, p.32 and p.35. She compared married women to 'runaway slaves' who live in fear of being capture and subjected to an unfair and men made law: 'a society which suffers under the weight of the chains it has forged for itself' does not pardon those members who sick for their freedom' from *Preregrination d'une paria*. See also Bianchi B., "La violenza domestica nella riflessione femminista (1833-1917)", p.22.

also tortured, kicked, mutilated, and psychologically abused by their cruel spouses or partners.²⁵⁴ DV was widespread at all levels of society and trivialized, condoned by popular tradition which made indifference circulate around the subject. Women were generally thought to deserve the treatment they received.²⁵⁵ Only through a radical change in society and in people mind-set women's condition would have really changed.

The 19th century signed a transition. The three books and the three authoresses that I am going to present clearly represent a shift in society.²⁵⁶ They will not be presented in a chronological order, but it has been chosen to try to mirror the progression of popular tradition and literature from a genre which has validated VAW to a genre which has instead shaped international, national and regional legal systems to face and solve it. Using their narratives, I will try to demonstrate how literature through this pieces of writings has unveiled DV as a common condition suffered from female gender in times and places. They have contributed in the awakening of societies consciousness laying the foundation for the development of international, national, and regional legal systems attentive to the problem and built to solve it with which I will deal in the third and last chapter.

2.1 ANGELA CARTER, *The Bloody Chamber*, (1979)

The popular tradition in the past had a crucial role in shaping societies. At the end of the first chapter, I have revealed a culture made of comedies, street play, proverbs and fairy tales which has perpetrated and condoned the inferiority of the female gender and as consequence VAW and DV. However, history has seen numerous rehash of these genres and some of them were made specifically by feminists to give women justice.

Side genre of literature, fairy tales in history have moved in two different directions: They have criticized past tradition which has perpetrated and, to a certain extent, helped in developing patriarchal oppression against women; and they have revisited or created

254 Bianchi B., (a cura di), "Percosse o Torture? Frances Power Cobbe sulla violenza domestica (1878)", in *DEP* no.16, 2011 pp.98-110. DEP: *Deportate, esuli, profughe, rivista telematica di studi sulla memoria femminile*. She started her campaign against VAW in the 1860s and she is particularly remembered also in the field of the fight against vivisection. She, as other feminists, thought that nature, animal, and women had something in common that was male cruelty and violence.

255 Cobbe F. P., "Wife Torture in England," in the *Contemporary Review*, April 1878, p.102

256 Surridge L., *Bleak Houses. Marital Violence in Victorian Fiction.*, Ohio University Press/Swallow Press, 2005, p. 9. For a full-length study on Victorian literature on domestic violence see Tromp M., *The Private Rod: Mari-tal Violence, Sensation, and the Law in Victorian Britain* (2000) and Lawson K., Shakinovsky L., *The Marked Body: Domestic Violence in Mid-Nineteenth-Century Literature* (2002). Both are texts which dedicate much attention on violence and on the tensions surrounding its representation.

new versions of those fairy tales aside the feminist struggle as a concealed criticism fostered through the stories the empowerment of women.²⁵⁷ As a genre they are very suitable to be rewritten and revisited since they have the ability to recall the original version of the story and, at once, creating new perspectives and outcomes.²⁵⁸ Postmodern versions of fairy tales do not only reveal plots, and characters but they also explore motifs and latent significances to suggest new actions and operate new ideologies and in the end they will have introduces a new moral and social order.²⁵⁹ 'Created out of dissatisfaction with the dominant male discourse and with those social values and institutions, feminist fairy tales conceive a different view of the world and speaks in a voice that has been customarily silenced' says Zipes.²⁶⁰ Transformed and parodic versions of some of them belonging to the European traditions have been created and populated by active and brave female characters, who have started personifying new roles part of a new free female culture released from gender roles chains.²⁶¹

A very famous English authoress who in the 20th century was well known for rewriting of traditional fairy tales was Angela Carter (1940-1992).²⁶² Reshaping motifs from mythology, legends, and fairy tales in her books, she became one of the most important English writers.²⁶³ Of particular interest for our analysis is her 1979 collection of some of the most well-known popular fairy tales of all times titled *The Bloody Chamber and Other Stories*.²⁶⁴ She used latent contents inherent in fairy tales ('Bluebeard', 'Beauty and the Beast', 'Puss in Boots' and 'Little Red Riding Hood') to foster the empowerment of female,

257 Tosi L., *La fiaba letteraria inglese. Metamorfosi di un genere.*, Marsilio Editori, Venezia, 2007, pp. 65-66, p.69.

258 Ibid., pp.55-57. In the book we read *fiaba letteraria* meaning a piece of writing which belongs to an author. The English term 'fairy tale' retrace the French *Conte de fée*.

259 Tosi L., *La fiaba letteraria inglese. Metamorfosi di un genere.*, p.58. To produce 'disenchantments' is to create disillusion, to break the spell of the canon and dismantle the narrative schemes and cultural dynamics: *Disenchantments. An Anthology of Modern Fairy Tale Poetry*, (edit by) Mieder W., The University Press of New England, Hanover-London, 1985. Postmodernist fairy tales must be interpreted as an umbrella term. Inside the general category, feminist fairy tales were written both by men and women. On this occasion, I will focus my discourse on some written by women. See for example Zipes J., *Don't Bet on the Prince. Contemporary Feminist Fairy-Tales in North America and England*, Routledge, New York, 1987.

260 Zipes J., *Don't Bet on the Prince. Contemporary Feminist Fairy-Tales in North America and England*, Preface, p. xi.

261 Tosi L., *La fiaba letteraria inglese. Metamorfosi di un genere.*, p.44-45. Tosi calls the new female culture *la cultura femminile "liberata"* in Italian. They are called *Proto-feminists* fairy tales. To give the reader some examples see Edith Nesbit (*The Last of the Dragons*, 1899), Evelyn Sharp (*The Little Witch of the Plain*, 1897 or *The Spell of the Magician's Daughter*, 1902) and Mary de Morgan (*Dumb Othmar*, 1900) which designed female characters who escape from a prison made of stereotypes and remodeled schemes about gender roles. 'Why must I be rescued by a prince?' asked the Princess to her father, King of Cornwall. 'It's always done, my dear,' said the King. 'Father, darling, couldn't we tie up one of the silly little princes for the dragon to look at- and then I could go and kill the dragon and rescue the prince?' from *The Last Dragon*, to be found in MacDonald G., De Morgan M., Grahame K., Nesbit E., Sharp E., *Draghi e Principesse. Fiabe impertinenti dell'800 inglese*. Tosi L. (a cura di), Marsilio Editori, Venezia, 2003, p.206.

262 Tosi L., *La fiaba letteraria inglese. Metamorfosi di un genere.*, p.70. If interested in Carter's biography I would suggest you read Gordon, E., *The invention of Angela Carter: A Biography*.

263 Ibid., p.67. Ranked by *The Times*, 'The 50 greatest British writers since 1945', 2008. See, for example, *The Virago Book of Fairy Tales*, (edit by) Carter A., Virago, London, 1990 or *The Second Virago Book*, 1992.

264 Carter A., *The Bloody Chamber and Other Stories*, Penguin Books (USA), 1993.

attacking cultural stereotypes and dealing with women who were in the process of becoming always more conscious of their own sexuality and were fighting back against male dominance.²⁶⁵ Her feminist rewriting *The Bloody Chamber* foregrounds DV and abuses providing an exuberant narration from the female protagonist herself, that actively engages in a feminist deconstruction anyone who reads the story.²⁶⁶ Carter took the basic facts for the narration from her 1977 translation of Perrault's 17th century tale *La Barbe Bleue*.²⁶⁷ In her version of the story, as many other from latter collection, she used violence as a textual feminist strategy.²⁶⁸ 'Carter's tales do not simply "rewrite" the old tales by fixing roles of active sexuality for their female protagonists, she "rewrite" them by playing with and upon the earliest misogynistic version.' said Merja Makinen.²⁶⁹ The 17th century *conte* tells the story of a young and beautiful girl who is dazzled by the extravagant wealth of her suitor and, despite being terrified by his sight, decides to marry him.²⁷⁰ Shortly after the marriage Bluebeard, the husband, has to depart and he purposely entrusts the keys of the castle to his wife. He gives her all the keys to all the rooms warning her against entering only one. Incapable of resisting at the desire of discovering what was kept in the forbidden room, the wife ventures in it and inside discovers all the corps of her husband's former wives murdered and covered in blood. Horrified she drops the key on the blood-clotted floor. The next days she desperately tries to remove the blood from the key but in vain and once back, Bluebeard discovers his wife betrayal condemning her to death. At the end of the story, she is saved by the arrival of her brothers who heroically kill Bluebeard.

There exist many folklorists' oral versions of this same tale.²⁷¹ However, in Carter edition, significant changes were made. Although she kept the same storyline about Bluebeard and his fourth wife, married and living in a 19th century castle in Brittany, a castle absorbed by a 'faery solitude' as a 'lovely prison of which I (the narrator/the wife) was both the inmate and the mistress', the authoress decides to narrate the story from the

265 Makinen M., "Angela Carter's 'The Bloody Chamber' and the Decolonization of Feminine Sexuality," *Feminist Review*, no. 42, 1992, pp. 2–15., JSTOR, p.3. For a deeper and complete critic about Angela Carter's feminist approach to fairy tales see Patricia Duncker.

266 *Ibid.*, p.3.

267 Makinen M., "Angela Carter's 'The Bloody Chamber' and the Decolonization of Feminine Sexuality," p.4.

268 *Ibid.*

269 *Ibid.*, p.5. Misogynistic: reflecting or exhibiting hatred, dislike, mistrust, or mistreatment of women.

270 Charles Perrault in 1697 wrote *La Barbe Bleue*, first published by Barbin in Paris inside the collection *Histoires ou contes du temps passé*. It has been identified under the category of 'cautionary tale.'

271 Sheets R., "Pornography, Fairy Tales, and Feminism: Angela Carter's 'The Bloody Chamber,'" *Journal of the History of Sexuality*, vol. 1, no. 4, 1991, pp. 633–657, JSTOR, pp. 643-644. See as an example of other versions of the fairy tale: Thackeray Ritchie A., *Bluebeard's Keys and other stories*, Smith, Elder & Co., London, 1890.

very point of view of the protagonist. The fourth wife is permitted to narrate her story and in doing it she managed to discover her own life and to embrace her values instead of accepting those imposed by society on women.²⁷² The suitor future husband is renamed 'the Marquis' presented as a patron of the arts and collector of pornography.²⁷³ The taste for Symbolist artists expressed by the Marquise (Rops, Moreau, Ensor, Gauguin, Fragonard, and Watteau among others) and for their monolithic and allegorical canvas, allowed the story to gain access to cultural pieces of art which perfectly underlying Western culture misogyny.²⁷⁴ Carter wanted to demonstrate a cultural foundation in society mindset for the Marquise sadism suggesting a fine relationship between the arts he used to collect and the aggressive behavior demonstrated against the wives.²⁷⁵

The narrator is capable of engaging the reader in a faithful reconstruction of the relation who dovetailed a young version of herself with the husband.²⁷⁶ She speaks about her deep derive inside her sadist husband psyche and inside herself, which will conclude with the opening of her husband 'private "den", the forbidden room a museum of his perversity: 'The opera singer lay, almost naked; she was cool, he had embalmed her. On her throat, I could see the blue imprint of his strangler's fingers.'²⁷⁷

The narrator draws the reader's attention on her journey towards a new self-awareness: 'My first thought when I saw the ring for which I had sold myself to this fate was how to escape it.' Once in the 'bloody room', she identifies herself with all the dead women, who had preceded her. She duplicates her identity and realizes how women's history is bound to repeat itself.²⁷⁸

Bluebeard represents the most patriarchal subject, the personification of the Western man whose attitudes toward sexuality are feudal and whose love possessed a 'striking resemblance [with the] ministrations of a torturer.'²⁷⁹ The man in the story mirrors the general male society, a society which has been created by a cultural model eradicated in

272 Carter A., *The Bloody Chamber and Other Stories*, p. 5. See also Moore R., "The Reproof of Curiosity: Carter's revision of Bluebeard," Department of English, University of Adelaide, 2009. Quotation from Carter A., *The Bloody Chamber and Other Stories*, Penguin Books p.12.

273 Sheets R., "Pornography, Fairy Tales, and Feminism: Angela Carter's 'The Bloody Chamber.'", pp.644-645. In the new depiction of Bluebeard as 'the marquis' devotee of opera and admirer of Baudelaire, many have seen a direct comparison with a popular French Tradition which would associate Bluebeard with Gilles de Rais (1404-1440) fitted in a new category: sex-killing crimes.

274 Moore R., "The Reproof of Curiosity: Carter's revision of Bluebeard," Department of English University of Adelaide, April 2009. Article available online at <http://www.cabinetdesfees.com/2009/the-reproof-of-curiosity-carters-revision-of-bluebeard/>. (Last accessed 10 March 2018)

275 Sheets R., "Pornography, Fairy Tales, and Feminism: Angela Carter's 'The Bloody Chamber.'", p.644.

276 Tosi L., *La fiaba letteraria inglese. Metamorfosi di un genere*, p.89.

277 Ibid. See also Carter A., *The Bloody Chamber and Other Stories*, p.32.

278 Carter A., *The Bloody Chamber and Other Stories*, p. 33. See also Sheets R., "Pornography, Fairy Tales, and Feminism: Angela Carter's 'The Bloody Chamber.'", p.652.

279 Carter A., *The Bloody Chamber and Other Stories*, p.14.

mindsets. This culture has led for years men to think to possess what they love. This is a story which underlines the dark side of an education, of a cultural model in-depth in our society.

The Bloody Chamber focuses on the feminist discourse. It challenges and deconstructs cultural gender constructions.²⁸⁰ 'Carter's strength is precisely in exploding the stereotypes of women as passive, demure ciphers.'²⁸¹ Femininity here is active. The fourth wife, saved by her husband's rage not by the brothers but by her mother, is allowed to reflect on her life and experiences: without a moment's hesitation, [my mother] raised my father's gun, took aim and put a single, irreproachable bullet through my husband's head.²⁸² Instead of portraying her as the fourth victim of her violent husband, Carter uses the institution of marriage to make her see through the ideology of romance and materialism, behind the idealization of femininity to learn that she has to live with the consequences of her actions: 'I knew I had behaved exactly according to his desires; had he not bought me so that I should do so? I had played a game in which every move was governed by destiny as oppressive and omnipotent as himself since that destiny was himself; and I had lost. Lost at that charade of innocence and vice in which he had engaged me. Lost, as the victim loses to the executioner.'²⁸³ By the end of the story, she finds her place in the world as a responsible woman, free from the burden of the inherited sexual mythology and with a new consciousness of herself. All fairy tales are narrative units which provide thresholds on other tales. *The Bloody Chamber* has provided society and readers with the image of a woman who manages to free herself from gender barriers, from stubborn vivid prejudices of gender inferiority.

280 Makinen M., "Angela Carter's 'The Bloody Chamber' and the Decolonization of Feminine Sexuality," p.6.

281 Ibid., p.9.

282 Carter A., *The Bloody Chamber and Other Stories*, p. 48.

283 Sheets R., "Pornography, Fairy Tales, and Feminism: Angela Carter's 'The Bloody Chamber'." p.650. Quotation from Carter A., *The Bloody Chamber and Other Stories*, p. 40.

2.2 MARGARET ATWOOD, *The Handmaid's Tale*, (1985)

In the 1970s, about 25 years after the end of the Second World War, society was confronted with the atrocities committed by the Nazis and the international community developed a political, social and cultural scenario that particularly in the United States and in Europe raise interest in a renewed 'women's question' and in the search for dynamics at the root of gender discrimination and women subordination in the field of crimes against human rights. International policies on the matter were eventually rinsing. Women's literature to develop a new genre to speak stories out. Outcome of a dynamic combination between feminism and fiction, dystopian literature started to be used in the last two decades of the 20th century as the alternative means in literature to explore social and political structures throughout the portrayal of a setting which completely disagrees with the author's worldview, a means used to warn society not to set itself on a path toward destruction.²⁸⁴ Best known genre thanks to George Orwell's novel *Nineteen Eighty-Four*, feminists writers embodied a new stream of dystopian literature. One of the most significant authoresses of feminist dystopian literature is the Canadian awarded authoress Margaret Atwood. Her novel *The Handmaid's Tale* was published in 1985, a period where many groups and movements started attacking the gains of the second wave of feminism²⁸⁵ and it envisions a world constructed on the victory of these countermovement's which not only would demolish the signs of progress women had made, but also reduce their gender to be completely subservient. Atwood confronts readers with an unfortunate reality encompassing centuries and pushing over boundaries.

The story is set in a Christian fundamentalist regime called The Republic of Gilead lead by few men. The regime has been funded to restrict the lives of everyone in society but, in particular, those of women. The book is defined by Atwood as 'speculative fiction', which theorizes a possible future where the actions of a small group destroy society as it's known.²⁸⁶ As a master storyteller, she slowly made Gilead details coming into focus through the eyes of its characters. From the perspective of the main protagonist Offred, part of the first class of women created to endure human reproductive purposes known

²⁸⁴ See for example Tom Moylan's definition of *The Handmaid's Tale* as a dystopia rather than an anti-utopian literature. To be found in Tolan 146

²⁸⁵ For a complete discourse on the three waves of feminism see note 216.

²⁸⁶ TED-Ed Talk, Lesson by Naomi R. Mercer "Why should you read 'The Handmaid's Tale,'" 8 April 2018.

as 'handmaids.'²⁸⁷ Before Gilead, she had a husband, a child, and a real job. She was living a normal middle-class American life. Once the regime comes into power with a military coup she is separated from everything and everyone that was part of the pre-Gilead time, denied even of her own identity.²⁸⁸

Women in the story are subjugated to misogyny in an extremely patriarchal society where they are kept captive and enslaved. The new nation has been created as consequence of a crisis caused by a rapid decrease in birth rates. With the new regime, the main objective is to have the control of reproduction: fertile and non-fertile women fall under complete control. Gilead divides women in social classes based upon their function as status symbol for men and identified by the color-code of their clothing: blue for the Commander's Wives, green for the Marthas, brown for the Aunts and red for the Handmaids: 'Everything except the wings is red: the color of blood, which defines us'.²⁸⁹ The plot starts during Offred's third assignment as a handmaid. Handmaids in Gilead are reduced to their fertility identified as the carriers for the next generation. In Offred's words 'two-legged wombs, that's all: sacred vessels, ambulatory chalices.'²⁹⁰ Women's bodies are an actual site for the construction of a national project: empty vessels exposed to the public and private exploitation and violence of all kinds.²⁹¹ Very often women's body has been considered an object without value. Today this image is very common in the media and particularly in the advertisement. The image broadcast by these two very common channels for public opinion is just a consequence of an inherent human conscience and outcome of traditional public opinion discourses. Historically, the same process which gave birth to modern states has attributed the power to men in the family.²⁹² Domination of men over women from the familial private context where it started, has been transferred in laws, norms and in social structures.²⁹³ DV rooted in a

287 Her name derived from the man's first name 'Fred' + a prefix which denote 'belonging to.'

288 Tolan F., "Feminist utopias and questions of liberty: Margaret Atwood's *The Handmaid's Tale* as a critique of second-wave feminism," *Women: A Cultural Review*, 16:1, 18-32, published online 20 August 2006.

289 TED-Ed Talk, Lesson by Naomi R. Mercer "Why should you read 'The Handmaid's Tale,'" 8 April 2018. Quotation from Atwood M., *The Handmaid's Tale*, Vintage Books, London, 2010, p.18.

290 Atwood M., *The Handmaid's Tale*, p.146.

291 Sparling N., "Deauthorizing Anthropologies and 'Authenticating' Landscapes in Margaret Atwood's *The Handmaid's Tale* and Diamela Eltit's *El cuarto mundo*," *Canadian Review of Comparative Literature*, pp.356-380, September 2011, p. 358.

292 Del Re A., "Un Corpo Oggetto da usare: La Violenza Ordinaria", *Home-Made Violence*, Candiottio L., De Vido S., Mimesis, Milano, 2016, pp. 127-140. p.127.

293 Ibid., p.127. In Italy up until 1975 according to Article 144 of the Civil Code, there existed the 'potestà maritale' which means that men were in control of their family and of the woman they had married.

cultural background has thus been accepted and considered a staple in all relations between sexes.²⁹⁴

Even though *The Handmaid's Tale* is set in a dystopian future, one of Atwood's self-imposed rules while writing the novel was not to use any events or practices that had not already happen in history: 'I put nothing in the Handmaid's tale that had not already been done.' says Atwood.²⁹⁵

Geographically set in Cambridge, Massachusetts, a city that during the American colonial period was ruled by theocratic puritans, Gilead republic mirrors in many ways the restrict rules present in puritans society: rigid moral codes, modest clothing, the banishment of dissenters and regulation of every aspect of people lives and relations.²⁹⁶ Soon after its creation, the Gilead regime starts spreading its control over language creating a new vocabulary that denies everything that has existed before and which creates new and distinct social classes (men are defined by their military ranks while women are defined by gender roles), behaviors and thoughts of any individuals. All this has been created to maintain the control over women's bodies by possessing their names, identity, thoughts, and future. Gender categories are exaggerated by placing everyone inside a group status.²⁹⁷ The new regime has overtaken all the preexistent religious and political groups by creating a new social order based on religious fanaticism creating new and strict social classes.

In writing this novel, Atwood was inspired by themes and topics of her contemporary political, cultural, and social environment.²⁹⁸ The 1980s were considered, in fact, the turning point for a new generation of feminists. Atwood with her works demonstrates to be always culturally aware of the challenges and ideas which have permeated and characterized her culture and society.²⁹⁹ Even though she has repeatedly refused to consider herself and her novels as pure feminist, but rather work of 'social realism', she once reply to the question whether *The Handmaid's Tale* was or not a feminist novel on the *The New York Times* saying: 'If you mean an ideological tract in which all women are angels and/or so victimized they are incapable of moral choice, no. If you mean a novel in

294 Del Re A., "Un Corpo Oggetto da usare: La Violenza Ordinaria," p.129.

295 She is referring particularly to a decree that was issued by Nicolae Ceausescu, Romanian dictator, who had mandated that women should have had at least four children, forcing monthly pregnancy test and restricted access to contraception and abortion.

296 TED-Ed Talk, Lesson by Naomi R. Mercer "Why should you read 'The Handmaid's Tale,'" 8 April 2018.

297 Tolan F., "Feminist utopias and questions of liberty: Margaret Atwood's *The Handmaid's Tale* as critique of second wave feminism," p.150.

298 Tolan F., "Feminist utopias and questions of liberty: Margaret Atwood's *The Handmaid's Tale* as critique of second wave feminism," p.148.

299 Ibid., p.1.

which women are human beings — with all the variety of character and behavior that implies — and are also interesting and important, and what happens to them is crucial to the theme, structure, and plot of the book, then yes.’³⁰⁰

As I have already remarked at the beginning of this chapter, being feminist and thus feminism itself, is not a monolithic theory but rather a set of theories.³⁰¹ A text usually comes from a multitude of thoughts, influences, and ideas about the same subject, and especially in the case of a complex theory as feminism, it inevitably has to confront itself with numerous alternative discourses which will influence the author itself being the author the product of its culture, society and tradition.³⁰² Literature is, therefore, a unique product of the time in which it has been written but also a shifting product of the time in which it is read.³⁰³ The story told by Offred represent a metahistorical narration of a dystopian reality which came in terms, on a radical level, with some feminist critics and warnings toward contemporary political regimes: biology that determines destiny, women subordination and physical or/and psychological violence against women both in public and private domains. GBVAW and DV even though depicted in an unreal and non-existing world are factual issues faced by women. Atwood creates a parallel world where the threat of the use of violence or the actual use of it are the principal means of subjugation against women. At some point during the narration, Offred says ‘I wait. I compose myself. My self is a thing I must compose as one composes a speech.’³⁰⁴ Language is linked to the creation of identities in the entire book. Her words acknowledge the possibility of resistance, and it is that resistance made of actions of people who dare to break the political, intellectual and sexual rules and silence that drives the plot of *the Handmaid’s Tale*.³⁰⁵ Here to say that as women in the novel drives the story and opposes themselves to the male-made regime of violence and submission in Gilead both in the domestic sphere and in the public one, the same is happening in our world; women who oppose the patriarchal society, the ‘natural’ string of assumptions too long believed true as prerogative of a male society. ‘Once in a while would happen to books that they escape from their covers and take on a life of their own. Characters who have escaped from their

300 Atwood M., “Margaret Atwood on what ‘The Handmaid’s Tale’ means in the Age of Trump,” *The New York Times*, March 2017.

301 Tolan F., “Feminist utopias and questions of liberty: Margaret Atwood’s *The Handmaid’s Tale* as critique of second wave feminism,” p.2.

302 Ibid., p.3.

303 Ibid., p.4.

304 Atwood M., *The Handmaid’s Tale*, p. 76.

305 TED-Ed Talk, Lesson by Naomi R. Mercer “Why should you read ‘The Handmaid’s Tale,’ 8 April 2018.

books and get put in another sort of narratives.’³⁰⁶ This is what Margaret Atwood replies to the question ‘Could *The Handmaid’s Tale* become our reality?’ during the latest Women in the World Conference held in New York in April 2018. *The Handmaid’s Tale* has escaped from its cover with the readers. When she first wrote the book, she was doing it about a reality that might have happened in the future. However, today protesters around the world have donned the handmaids red smock and white hoods ‘as an act of silent dissent’.³⁰⁷ Starting from Texas, now the movement has spread and women everywhere have dressed as handmaids to protest those governments that are trying to withhold their rights (ex. Poland, England, and Croatia). ‘There is no one ‘the future’, there are a number of possible futures, and the one we get will depend partly on what we do now’.³⁰⁸

2.3 SUSAN GLASPELL, *A Jury of Her Peers*, (1916)

In her short story *A Jury of Her Peers* the American writer and feminist Susan Glaspell (1876-1948), writing almost a century before Carter and Atwood, explored a common reality, a stronghold and nuclear topic in the feminist militancy i.e. female justice.³⁰⁹ She used her short story to move a strong critic toward the American legal system and more in general to the inability of the law and social institutions created by it to provide women with equality and thus protect them from VAW.

Glaspell story wanted to strike a chord in law asking for women equality to men before the law and women rights to benefit from protection against DV. Very different genre from the first two here analyzed, she did succeed in foster a real leap on the legal system. She also succeeded in strengthening women solidarity which would have burst among the ranks of the feminist movement.

306 Cutruzzola K, “Women ‘have this thing called a brain’: Margaret Atwood’s literary protest”, Women in the world Website, April 2018. The article was written during the New York Summit, April 2018, <https://womenintheworld.com/2018/04/13/women-have-this-thing-called-a-brain-margaret-atwoods-literary-protest/>

307 Ibid.

308 Ibid.

309 It is the literary version of her 1916 play *Trifles* inspired by a true story. Glaspell S., “A Jury of Her Peers”, in *Every Week*, The Crowell Publishing Company, 1917, p.257.

From 28 to 29 May 2018 the inaugural meeting of the High-level Group on justice for women took place in The Hague. The aim of the group is that of advocating for the prioritization of women justice in the lead-up to the review of the 2030 Sustainable Development Goal no. 16 for *Peace, justice, and strong institutions*, in preparation of the High Level Political Forum in 2019. Article available online on the UN Women’s website: <http://www.unwomen.org/en/news/stories/2018/5/news-high-level-group-on-justice-for-women-meets-in-the-hague>. (Last accessed 10 June 2018)

The story relates of Minnie Wright, an abused wife, arrested because suspected of her husband murder, John Wright.³¹⁰ It is a detective short story and it possesses all the ingredients for the recipe: the crime, the investigation, and the solution. However, what really characterizes and renders the story unique in its genre is the 'gender dimension' on which Glaspell weaves the web of the story. The suspect is a woman and besides the institutional authorities that conduct the investigation, namely the sheriff, the county attorney and the only witness, there are two women. Mrs. Hale and Mrs. Peters, respectively the sheriff and attorney's wives are supposed to accompany the men to collect personal belongings for the convicted who has been imprisoned. However, by the end of the story, they will become two brilliant detectives conducting their 'alternative trial'. The female investigation represents the core theme of the entire story. It is based on specific details neglected by the men because considered irrelevant for the investigation since related to the domestic life like a set of soiled towels, a broken jar of jam or a quilt with flawed seams.

Before being written as a short story, *A Jury of Her Peers* was a play presented by Glaspell to the public in 1916. The original title was *Trifles* and it was inspired by these important clues for the undoing of their narration and the symbolic meaning.³¹¹ Accurately observing Mrs. Wright's kitchen, the two detectives put together all the pieces of her miserable life: secluded in her home by the dominating brutality of the men she had married, and which triggered her ultimate act of despair.³¹² In some very short monologues made of interrupted and reluctant discourses, they discover the reality of the facts. The ultimate proof is provided by the discovery of a dead bird inside a little box hidden in the sewing basket. The cage was broken while the bird had its neck twisted: 'Seems kind of funny to find a bird here' says Mrs. Peters, 'No, Wright wouldn't like the bird, a thing that sang. She used to sing. He killed that too.'³¹³ What has happened to the bird is used by Glaspell to depict the common metaphor, used especially in literature, to link the faith of domestic animals and women to that of men's violence. Violence perpetrated against women has been often compared to acts of violence perpetrated by

310 Bianchi B., "La violenza domestica nella riflessione femminista (1833-1917).", p.30.

311 *Inezie* in Italian.

312 Kamir O., "To Kill a Songbird: A Community of Women, Feminist Jurisprudence, Conscientious Objection and Revolution in *A Jury of Her Peers* and Contemporary Film.", p.358.

313 It is common to find in literature references to animals possessed by violated women. The pet represented the only thing which could belong to a woman. It is thought common to read about animals killing and women's killing in domestic violence cases. See Bianchi B., "La violenza domestica nella riflessione femminista (1833-1917).", p.31, note 17. Glaspell S., "A Jury of Her Peers," p.278.

human beings against nature and animals.³¹⁴ It was the French feminist Françoise d'Eaubonne (1920-2005) in her 1974 book *Le féminisme ou la mort*³¹⁵, who coined the term *eco-féminisme* (*ecofeminism* in English)³¹⁶ to express the similarities that existed between the oppression of women and the oppression of nature.³¹⁷ She wrote in the same period as Simone de Beauvoir who believed in the 'otherness' both of women and nature in the eyes of men according to the logic of patriarchy. Women have always been included in the natural sphere juxtaposed to the sphere of reason attributed to men, and this inclusion has been used as major justification for female oppression.³¹⁸ Ecofeminism was a newly discovered variant of the environmental ethic of the 1970s.³¹⁹ Women subordination and violence perpetuated by men is associated with human beings' domination of the nonhuman natural world (animals, plants, and inherent).³²⁰ The patriarchal framework of dualistic realities at the core of the western societies has shaped values, beliefs and attitudes to find the right justification for violence committed against the female and the natural world. This new strand of the feminist thought is very accurate in the analysis of the twist of power relations and it is possible to find many references in women's literature of those times.³²¹

As mentioned at the beginning of the paragraph, this short story was a mean for the author to directly address a very important aspect of the feminist fight i.e. the concept of justice. The two women collect proofs from Minnie's life and through this data they arrive at the final solution. What comes out unexpectedly by their alternative investigation is the empathy they feel with Minnie's life. Both realize how similar Minnie's chores are to those they tackle in their home every day: 'We all go through the same things -- it's all just a different kind of the same thing! If it weren't -- why do you and I understand? Why do we know -- what we know this minute?'.³²² Being forced to confront with the reality of their own lives and Minnie's and having to admit it voicing the reflection of their own existences, they decide to assume the responsibility expressing women solidarity trying

314 See Mary Wollstonecraft and her comparison between women and bird in cages. Chapter 2.

315 Eaubonne F., *Le féminisme ou la mort*, P. Oray Editor, Paris, 1974.

316 For an accurate analysis on Ecofeminism see Bianchi B., "Introduzione. Ecofemminismo: il pensiero, i dibattiti, le prospettive.", in *DEP: Rivista telematica di studi sulla memoria femminile*, n.20, 2012.

317 Tong R., *Feminist Thought. A more comprehensive introduction*, p.242.

318 Plumwood V., *Feminism, and the Mastery of Nature*, Taylor & Francis e-Library, 2003, p.19.

319 Tong R., *Feminist Thought. A more comprehensive introduction*, p.242.

320 Ibid., p.237.

321

322 Glaspell S., "A Jury of Her Peers," p.280.

to remedy by not revealing anything to the men. And this is the unexpected final surprise in the story. The detectives found out proofs which prove that Mrs. Wright is guilty of her husband murder, but they refrain from showing it to the men reaching their own alternative verdict to which the reader is the only witnesses.³²³ Different from men idea of crime as a neat violation of the law order, the two women go far below the surface of what has happened. They tell a story with much more compassion focusing on emotions and discovering a more brutal reality; Minnie life sentence with a violent and tyrannical spouse was already a crime against her morality and life.³²⁴ Two women with two different hesitant voices who act as members of a jury and at the same time as judges who narrate a story of patriarchal oppression invisible at men's eyes, while men who act as the prosecution, are left ignorant/unaware of the real solution to the case.³²⁵ Mrs. Hale and Mrs. Peters subvert the male bias legal system where they don't have a place, and where women are, in general, left aside. They take the law into their hands becoming at the same time the police, the prosecutor, the judge, the jury, and they release their alternative sentence of absolution.

It is almost ironic how women in Glaspell's story can find their voices in a patriarchal context, but once the voice it is found it becomes strong, empowering and very resistance to male oppression.³²⁶ With this short, story the author anticipated much of the struggle lead by feminists and intellectuals in the last decays against a legal system which has prevented women to become part of it. Women, in fact, were excluded from the very status of human beings in front of the law. 'You know,' says Mrs. Hale 'it seems kind of sneaking. Locking her up in town and then coming out here and trying to get her own house to turn against her!' 'But Mrs. Hale, the law is the law.' replies Mrs. Peters.³²⁷ At the beginning of the story, Mrs. Peter is devoted to the law, but at the end, we see a change in her words, and her resentment against a law made and controlled exclusively by men. Discrimination against women is what perpetuates gender inequality as far as the access to justice is concerned. Today, an estimated 4 billion people are excluded from the rules

323 Kamir O., "To Kill a Songbird," p.360.

324 Ibid. See also Gilligan C., *In a Different Voice: Psychological Theory and Women's Development*, Harvard University Press, Cambridge, Ma, 1982 were the author deals with the theme of morality and how it varies between men and women.

325 Kamir O., "To Kill a Songbird," p.361. See also Wright J. S., "LAW, JUSTICE, AND FEMALE REVENGE IN 'KERFOL,' BY EDITH WHARTON, AND 'TRIFLES' AND 'A JURY OF HER PEERS,' BY SUSAN GLASPELL," p.226.

326 Ibid., p.361.

327 Glaspell S., "A Jury of Her Peers," p.275

of law and in more than 150 countries still, exist laws which discriminate women.³²⁸ Women voices must be integrated at all stages of justice since equality and equal protection 'lie at the heart of the rule of law.'³²⁹ Law should not be gender-blind and institutions too should not be sources of gender inequality.³³⁰ It does not only have to protect, but it must go at the root causes of the problem addressing inequalities, systemic failure, and institutional bias perspectives.³³¹

Always on the shadow of Glaspell novel as far as justice against women is concerned, Margaret Atwood' *Alias Grace* depicts the real imbalance of powers between men and women that is not of physical strength but rather of credibility.³³² The novel of historiographical metafiction published in 1996, it is based on some real events which were turned by Atwood into the story of Grace Marks, an Irish immigrant servant in Canada convicted for the brutal murder of her employer and his lover.³³³ The book is structured on Grace's storytelling of her life, and on letters send to and received from doctor J., a psychiatrist in charge of her cure from alleged symptoms of hysteria. He is in charge or interviewing Grace every afternoon in the sewing room of her governor's mansion. The story created is a patchwork of experiences which reflects her domestic life, the story of a woman confronted with the thuggery of governments institutions and justice, blamed for a murder that she has committed for lack of alternatives, however, forced to deal with a man-made system were justice does not exist for her gender.

2.4 JUSTICE FOR WOMEN CONFRONTED WITH DOMESTIC VIOLENCE

DV is one of the worst and unfortunately most common forms of physical and psychological violence perpetrated against women mainly by intimate partners, husbands or male family 'members. Not only victims of this terrible crime suffer from terrible abuses, but they are also, most of the time, ignore by justices. Society in its

328 From the article titled "High-level Group on Justice for Women meets in The Hague," UN Women's website, June 2018. Available online at <http://www.unwomen.org/en/news/stories/2018/5/news-high-level-group-on-justice-for-women-meets-in-the-hague>.

329 Ibid.

330 Ibid.

331 Ibid.

332 Atwood M., *Alias Grace*, McClelland & Stewart, September 1996.

333 The story is an account of a real case of murder happen in 1843 and that had already been narrated in a book by Susanna Moodie, *Life in the Clearing* (1853) which Atwood said to have read.

entirety and its juridical systems have been created and shaped since its origins mainly by men and as researches and statistics have demonstrated, in the past, and to some degree still today, women did not have access to the same justice as men, especially in cases of DV where states and authorities were not interested in investigate or if so complete bias and not objective in analyzing the events.³³⁴ Men allegedly found guilty of a crime of domestic violence were interrogated but at the end released and left unpunished. Dacia Maraini a very famous Italian writer, in 1985 published *Isolina*, a novel structure on an investigation of an unsolved case of murder in turn of the century Verona. She has meticulously researched the miscarriage of justice assembling the pieces of the story which parallels the historical reconstruction of past events.³³⁵ Two stories create the novel: one made of the author's investigation into Isolina murder and the story of the crime which has never found someone at fault. The author is able to draw on every available document including police reports, indiscretions on local newspapers and historical archives to recreate the story. Maraini in the novel not only grant Isolina a posthumous justice but she also clearly reminds the reader that past continues to invade the present and unavenged murder and failure of justice in the 20th century still relate to our present time.³³⁶ Maraini novel is about justice's failure in recovering the real perpetrator for the gruesome murder of Isolina.

334 For a complete analysis see chapter I.

335 Maraini D., *Isolina. La donna tagliata a Pezzi*, Rizzoli, 1992. The story opens with the reconstruction of the gruesome murder a 19 years old girl which was found cut in pieces in a plastic sack on the banks of the Adige on 16 January 1900: 'Sei pezzi di carne umana per il peso di Kg 13,400'. The head of the body was never found but the victim was determined to be three months pregnant at the time of the murder. Through the missing person's report files, Isolina Canuti was presented as the victim. Suspicion for the murder immediately fell on lieutenant in the alpine, Carlo Trivulzio from a noble and well-respected family in Udine.

336 Cannon J. A., *The Novel as Investigation: Leonardo Sciascia, Dacia Maraini and Antonio Tabucchi*, University of Toronto Press, August 2006, p.45.

3. CONCLUSION

Angela Carter, Margaret Atwood, and Susan Glaspell's novels are all about history which repeats itself, about women's stories and how they are constructed, influenced, and surrounded by circumstances which have never changed. They unload episodes of oppression by individual men, institutions, conventions, norms, culture and biology and men's impunity for crimes. They all introduce untold stories looked at by female prospective unveiling juridical systems incapability of dealing with VAW that is what has always been the missing piece of every puzzle. Carter story *The Bloody Chamber* gave a radical twist to the original version of *Blue Beard* fairytale, providing a feminist perspective in stories usually populated by helpless, demure, passive or witch-like female characters. She has deliberately drawn out of shape: they have lost their place from the familiar version and cross forbidden gendered-boundaries lines.³³⁷ It has functioned as a territory of freedom to express the authoress rebellion to cultural stereotypes and as an awakening of consciousness for the readers. Women are reminded that they face a common destiny, a destiny which society has bound them to. However, at the end of the story, the protagonist can reshape her faith against the old stubborn popular traditions mirrored by the Marquise character. He is the direct product of an old culture eradicated in society that has rendered violence a structural aspect of the latter. DV is faced and won by the protagonist to be called than the victorious survivor. Atwood dystopian novel, instead, is contemporary monito to society to abstain from actions which would eventually lead to the creation of a regime like that of Gilead. As the authoress has said more than once, all the events used to describe the actions perpetrated by the regime have already happened somewhere in the world. This must function as a strong reminder and as a compass to direct society and especially institutions and legal systems on the right path, at last, to prevent, protect and punish any act of VAW. Women are more than their mere gender even though, most of the time, they suffer from violence because of it. Finally, Glaspell story struck the chords of law asking for women equality to men before the law and thus protection against DV. She strengthens women solidarity denouncing authorities and institutions as sources of gender discrimination and gender bias approach towards women.

337 Lorna Sage quoted by Marina Warner, *From the Beast to the Blonde: On Fairy Tales and Their Tellers*, Chatto and Windus, London, 1994, p.309.

Women's literature, born in the ranks of the feminist movement, in the past, has generated a specific narrative which has created and reflected on the normative world and has brought into public view women experiences and sufferings otherwise invisible or worst neglected by a male-bias world.³³⁸ Law, on the contrary, have more than once silenced women, making them partially subjects of the discussion but not direct speakers.³³⁹ However, in the previous chapter, we have seen that women have succeeded in stepping out from their conventional gender roles making their way towards the creation of their own stories, stories created with their own experiences, even before they could be heard.³⁴⁰ The 19th century marked the beginning of a different era for women, both in literature and eventually in the legal legislation that only later than literature has joined women's fight against violence.³⁴¹ Women gradual inclusion in legal discourses has allowed an always more gender-neutral approach to law.

Feminists activists like Mary Wollstonecraft, Harriet Taylor Mill, John Stuart Mill Elizabeth Cady Stanton, and Jane Addams, together with feminist writers like Susan Glaspell, Angela Carter and Margaret Atwood have fought with words against women inequalities and violence.³⁴² Even though in the contemporary era (20th 21st century) women remain, in many cultures and at different degrees, objects of male violence, even though they continue to be forced to justify themselves in front of a world which look at them as responsible for their status, and even though society oblige them to conform to standard stereotypes, they have never stopped in pursuing their freedom with whatever means they could.³⁴³

Literature as the predominant genre of self-expression has highly contributed in casting a light upon women conditions. It has evoked the various conditions in which patriarchy assaulted women rights and perpetrated violence on them both physical and psychological.³⁴⁴ Robert Coles, emeritus professor at the Harvard University and American author, used to teach literature to its students believing that: 'You don't do that (teaching) with theories. You do not do that with system of ideas. You do it with a story

338 Resnik J., Heilbrun C., "Convergences: Law, Literature, and Feminism.," *Faculty Scholarship Series*, Paper 909, 1990, pp.1913-1956, p.1914. Available online at http://digitalcommons.law.yale.edu/fss_papers/909.

339 Ibid.

340 Ibid., p.1916.

341 Ibid., p.1917.

342 Ibid., p.1918.

343 Ibid., p.1919.

344 Ibid., p.1927.

because in a story the words become flesh.³⁴⁵ Even if he was not interested in dealing with women's issues, we borrow from him his approach on stories to be intended, in our case, as literature, a genre that has helped to develop the morality and understanding of the reality that surrounds us. Feminists have been teaching indirectly and raising awareness in society since the dawn of times.³⁴⁶ Even though they were always kept at the margins of society, presence and voices absent from the mainstream international law and human rights discourse, they have found a side path to go through and gradually change society.

The aim of this second chapter was of showing the importance of feminists' voices in the past, voices that must be credited for having brought women suffering and injustices in front of the international community institutionalizing meanings under new disciplines. Taking lead by the feminist movement international, national, and regional jurisprudence have glean rules that recently have enter some binding and non-binding act of international, regional, and national law. Although having rules in the system without being aware of their importance or scope it is of no use for a community, I believe that reading texts written by all times women, listening to their long unheard voices, discovering their hidden stories about a common and shared past of male violence and domination is the best way possible to change people minds and ideas and maybe stop treating women and nonequal to men. If this will come to be one day, VAW and DV will find an end too.

The three pieces of literature that I have dealt with are the carrier of some important themes like women roles and condition in society, women rights in all sphere of society (politics, economy, society) included education creating pieces of evidence of social realities. I strongly believe that law has positively benefited from the works of those who have re-read literature casting new light on themes, discussion important for the feminist struggle which have contributed in developing a new gender-neutral vocabulary with women not only as survivors or victims of men's violence but also as agents of changes.³⁴⁷ 'Central to feminist literary theory has been the discovery, not only of the history of women's oppression but of the necessity of women's developing their own language and their own narratives: until now, they have been dependent upon those provided by the

345 Ibid. Quotation from Coles R., *The Call of Stories: Teaching and the Moral Imagination*, 1989, p.ix.

346 Ibid., p.1931.

347. Resnik J. and Heilbrun C., "Convergences: Law, Literature, and Feminism," p.1933.

patriarchy' says Judith Renik.³⁴⁸ Starting from the study of women's images in feminist theories and literature (how they were represented disempowered, forced into stereotypical models) today, looking back and taking inspiration by feminists, we can use their literature to understand achievements reached into the broader context of national and international legislation.³⁴⁹ In the world of law, some of the things we have learned have already started a path towards implementation.³⁵⁰ In the following chapter, I will deal particularly with the European regional legal system and with the Istanbul Convention, the most recent legally binding act for States parties. The IC represents a great step forward for women since it recognizes the existence of a disproportionate degree of violence mainly against women and girls as a manifestation of historically unequal power relations and with structural nature in society and culture which has rendered it GBV, and it aims at preventing, protecting and combating VAW and DV.

348 Resnik J. and Heilbrun C., "Convergences: Law, Literature, and Feminism," p.1934.

349 Ibid., p.1935.

350 Ibid.

*La verità della donna non può essere colta in una forma definitiva ma solo raccontata,
di modo che siano le donne stesse a comunicare ciò che è la donna.*

-Gian Maria Annovi-

III. TO BREAK THE SILENCE OF WOMEN: THE ISTANBUL CONVENTION

Ho giurato di non stare mai in silenzio, in qualunque luogo o in qualunque situazione in cui degli esseri umani siano costretti a subire sofferenze e umiliazioni. Dobbiamo sempre schierarci. La neutralità favorisce l'oppressore, mai la vittima. Il silenzio aiuta il carnefice, mai il torturato.

-Elie Wiesel-

In 2018 we cannot say to have completely overcome stereotypes, legends or erroneous convictions which have fed our culture and imagination about women discrimination and inequalities, yet. We live in a time in which men still grant themselves the right to dictate their power and control over women in accordance with the architecture and values of the patriarchal ideology. According to the last statistics published by the *World Health Organization* in November 2017, 1 in 3 women worldwide (about 35%) have experienced either physical or/and sexual intimate partner violence or non-partner sexual violence in their lifetime.³⁵¹ Most of the violence experienced by women is Intimate Partner Violence (IPV) and about 30% of women who have been in a relationship have endured some form of physical or sexual violence perpetrated by their intimate partner.³⁵² Unfortunately, the data we have today are partially reliable being VAW, especially DV, generally unreported. Women victims of male violence are deprived of their clarity of thought and fortitude, grassroots of a complaint.³⁵³ But statistics cannot build the entire story.

What we are living now is also a transition period in which discourses about GBV against women and discrimination as violations of fundamental human rights are shifting from being only part of a feminist limited discourse to a wider and collective consciousness which involves societies and institutions.³⁵⁴ *The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence*, also known as the Istanbul Convention (IC), is the most comprehensive and multilateral regional

351 WHO, *Violence against Women, Intimate Partner and sexual violence against women*, Fact Sheet no.239, updated November 2017. To be found at <http://www.who.int/mediacentre/factsheets/fs239/en/>.

352 Ibid.

353 De Vido S., "The Council of Europe Istanbul Convention on preventing and combating violence against women and domestic violence an appraisal," in *Home-Made Violence* (a cura di) De Vido S., Candiotti L., Mimesis/Esperienze Filosofiche, N.2, Milano, 2016, pp.75-87, p.75.

354 Lanzoni S., "Il Percorso dei Diritti Umani e delle Istituzioni per il contrasto alla violenza sulle donne a livello internazionale e regionale", pp.90-106, p.91, in Adizione M.R., Chinnici G., Francesconi M.F., (edd.) *Violenza sulle Donne*, Studium Edizioni, Roman, 2018.

binding treaty which has been fostered by the Council of Europe (CoE) to tackle VAW and DV.³⁵⁵

In the past fifty years, what has come quite clearly out from studies and researches in the field is that VAW is a social issue determined by factors which are specific to women. To prevent and combat this problem it is thus necessary on the international, regional, and national levels to investigate the specific causes and find specific remedies. Factors which cause women to suffer from acts of violence are very different from those that can cause men to suffer from that same violence. For example, DV against women responds to inner patterns that are completely different from those occurring in case of DV against men. They are rooted and inherited in the culture of societies, a culture that vary among countries of origin and social classes. The feminist movement and women's literature that we have seen in the second chapter were the forces behind the uncovering and exposure of the ongoing reality of DV against women. What brought the IC to come into being is the conviction that VAW has always existed and has always been perpetrated against the female gender as a structural aspect of society. As I have tried to demonstrate in the previous chapters, there are notions and patterns, inherent in popular traditions, which have always characterized societies and that have condoned the use of 'patriarchal violence'³⁵⁶ to keep women placed where they were expected to be. Individual are shaped and influenced by culture and perceptions forged by centuries of traditions which have expected women to assume predetermined roles and positions in the patriarchal order of hierarchies, places, and roles that were usually of subordination. These assumptions have brought men to resort to violence to stop women from changing the predetermined order.

A lot of analysis on cultural roots and beliefs regarding VAW already exist but for this last chapter I will deal only partially with the international legal system, focusing my attention on the European legal system and the IC, product of the latter system even though highly inspired by other initiatives started by other regional legal systems: The *Convention du Belem do Pará* and the *Maputo Protocol*. The discourse on these two very innovative actions will be further extended in the second part of this chapter.

355 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, (Istanbul Convention), 2011. Chart of signatures and ratifications of Treaty 210, status as of 18 June 2018: 32 States as so far ratified the treaty. Chart available online at: <https://www.coe.int/it/web>. (Last accessed 18 June 2018)

356 According to Bell Hooks the term 'patriarchal violence' is useful because 'it continually reminds the listener that violence in the home is connected to sexism and sexist thinking to male domination.' Quotation from Hooks B., *Feminism is for Everybody: Passionate Politics*, South End Press Cambridge, MA, 2000, pp.61-62.

DV has to be considered part of a broader complex of violence committed against women colored by a backdrop of gender discrimination (women suffer from domestic violence much more than men, but the reader should not forget that men too can be victims. The same for children, elderly and disabled persons).³⁵⁷ For the purpose of this dissertation, DV has been intended as all acts of physical, sexual, psychological, or economic violence that occur in the domestic realm perpetrated by the hands of current or former partners or spouses who live with its victim or not.

It was not until the second half of the 20th century that GBV against women started to be considered a violation of international law and a crime against human rights in the eyes of the International Community.³⁵⁸ More and more people have become aware of it, more literature has been published and several international, regional, and national instruments, both of *soft* and *hard law*, have been adopted. We have to acknowledge that a lot of what women have achieved today, and all the steps forward undertaken to tackle and stop the perpetuation of VAW must be credited to the hard work accomplished by transnational feminist movements and intellectuals, men and women, that in history have raised societies' awareness confronting communities with the problem itself. They have deconstructed men's single thought and perspective giving justice to women with equal rights, liberties, and dignity as men anticipating the legal legislation in the field.³⁵⁹ Feminist thinking has taught society how to love and demand justice and freedom to foster and affirm fundamental rights.³⁶⁰ The IC itself represents the outcome of a very long process on the ground of women equality. In the following paragraphs, I will illustrate some of the fundamental juridical steps undertaken by the international community led by the UN, which has hastened regional systems, in particular, the European one.³⁶¹ Indeed, the CoE was the principal sponsor for the adoption of the IC in 2014,

357 Meyersfeld B., "A Theory of Domestic Violence in International Law," *Yale Law School Dissertations* 3, 2016, p.34.

358 Gender-based Violence against Women is an umbrella term that includes many different forms of violence from which women can suffer from: physical violence, sexual violence, psychological violence, social and political violence, and domestic violence. See De Vido S., 'Violenza contro le donne: analisi giuridica di un fenomeno sociale.', p.25.

359 See chapter 2 for some examples on how women's writing has fostered international, regional, and national legislations in dealing with VAW and DV. For more information I suggest the reader to look at Lanzoni S., "Il Percorso dei Diritti Umani e delle Istituzioni per il contrasto alla violenza sulle donne a livello internazionale e regionale", p.92.

360 Hooks B., *Feminism is for Everybody: Passionate Politics*, South End Press Cambridge, MA, 2000.

361 For a deeper discussion in the context of international instruments adopted by the UN to foster women protection from GBV see Meyersfeld B., "State Responsibility and Systemic Intimate Violence," in *Home-Made Violence* (a cura di), De Vido S., Candiottio L., Mimesis/Esperienze Filosofiche, N.2, Milano, 2016; Charlesworth H., Chinkin C., *The boundaries of international law. A Feminist analysis*, Manchester University Press, Manchester, 2000; De Vido S., "The Council of Europe Istanbul Convention on preventing and combating violence against women and domestic violence an appraisal.", pp.75-87, in *Home-Made Violence* (a cura di), De Vido S., Candiottio L., Mimesis, N.2, Milano, 2016; De Vido S., *Donne, Violenza e Diritto Internazionale. La Convenzione di Istanbul del Consiglio d'Europa del 2011.*, Mimesis, N.1, Milano, 2016.

Convention that today represents the principal source of law for the prevention, protection, and repression of VAW and DV in the European Continent but also as the key instrument of interpretation as far as the international doctrine is concerned.³⁶²

I will analyze the main structures and characteristics of this regional legal instrument, the monitoring mechanism established to assess States compliance to the Convention, and some real advancements with regard to the definition of VAW, DV, and gender.³⁶³ To validate my thesis I will also rely on a quite recent judgment handed down by the *European Court of Human Rights* (ECtHR) in March 2017 regarding a national case on DV (*Elisaveta Talpis v. Italy*). It will demonstrate how the principles set by the Istanbul Convention are gradually becoming 'rules of international law' in the interpretation and expansion of the scope of the *European Convention on Human Rights* (European Convention).

The last decades have seen a surge of awareness and programs to prevent and combat DV. Never did the international law apply so specifically to the problem of DV. Since the beginning of the feminist movement who created cultural awareness on DV, it took centuries for the international community to recognize that it was high time to face and exposed the pressing question regarding acts of GBVAW. Since then there have been shreds of evidence of burgeoning norms in regional legislations GBV and DV that are finally finding their solidification into CIL.³⁶⁴

³⁶² De Vido S., "The Council of Europe Istanbul Convention on preventing and combating violence against women and domestic violence an appraisal," p.76.

³⁶³ Ibid.

³⁶⁴ General Recommendation no. 35 on gender-based violence against women, updating general recommendation no. 19. CEDAW/C/GC/35, July 2017.

1 GENDER-BASED VIOLENCE AGAINST WOMEN IN INTERNATIONAL AND REGIONAL LEGISLATIONS

Historically, only two specific manifestations of VAW were criminalized as GBV: mass rape as war crime or crime against humanity and female genital mutilation as a human rights violation.³⁶⁵ However, it has always existed a third manifestation that for centuries has remained hidden behind curtains of mores and norms dictated by the old patriarchal structure. DV is a subtle form of violence against women which finds its victim behind domestic walls and its perpetrator in men that should instead protect and care for their wife, daughter or, in general, for their everyday life partners.³⁶⁶ It is a 'severe form of physical and non-physical harm which includes emotional violence and threats of harm. It usually occurs in a continuum between intimates, predominantly against women and it culminates in a form of harm from which women are unable to procure themselves traditional state assistance.'³⁶⁷ Despite the gravity of the problem, both the international community and national states have long failed in addressing it as a problem of public concern. They have also bust in its conceptualization and this was one biggest mistake.³⁶⁸

Recognizing that DV represents a violation of fundamental human rights under international law has required decays of contributions from activists and feminists all around the world, which have gradually 'unveiled' what was perceived as 'the norm', exposing the ever existed inequalities between men and women.³⁶⁹ It was precise because of these culturally imposed inequalities that men have always granted themselves the right to look at women as inferior to them, as 'the other' group not worthy to be entitled with the same rights. Women have been discriminated against, violated, abused and oppressed because of erroneous beliefs eradicated in a culture which today have been recognized as structural, and culturally created.³⁷⁰ Societies have always

365 Meyersfeld B., "Reconceptualizing domestic violence in International law," Albany Law Review, vol. 67, 2004, p.372.

366 Ibid., p.387, DV is defined as violence including acts of 'battery, biting, burning, hacking, electrocuting, starvation, sleep deprivation, forced sexual encounters, non-consensual sexual touching, rape, forced sexual activities with third parties, poisoning, exposure, property destruction, murder, the withholding of medical care, threats of harm, threats of harm to third parties, threats of removing children, psychological abuse, financial deprivation, stalking, shouting, accusations of infidelity, isolation, and threats of suicide. Committed against member of a family or intimate partner by other member of the family or intimate unit.'

367 Meyersfeld B., "State Responsibility and Systemic Intimate Violence", in *Home-Made Violence* (a cura di), De Vido S., Candiotta L., Mimesis/Esperienze Filosofiche, N.2, Milano, 2016, p.38. See also Meyersfeld B., "A Theory of Domestic Violence in International Law," *Yale Law School Dissertations* 3, 2016, p.332.

368 Ibid., p.374.

369 De Vido S., *Donne, Violenza e Diritto Internazionale*, p.88.

370 For more details on the topic see Chapter 1 of this thesis.

expected women to play roles traditionally and conventionally decided and any attempt to change the structure was solved with violence, physical or psychological.

Thanks to the many contributions, among which those that I have tried to depict in the previous chapter on women's literature,³⁷¹ today international legal instruments and policy statements have made clear that States have a duty under international law to prevent VAW and DV and to protect women from their offenders. One of the first and greatest contributions, which raise itself as a singular voice among longed silenced women voices in a chorus, was Francis Power Cobbe as frontwoman of a new feminist culture and ethics among women in the Victorian Era.³⁷² In the midst of the 19th century, Victorian feminism gave an outstanding boost in exposing the intimate link between women subordination and DV. Cobbe's essay 'Wife Torture in England' (1878) represents the essence of her career. In it, she dealt with the intimate link between DV and torture. 'I have called this paper "English Wife-Torture" because I wish to impress my readers with the fact that the familiar term "wife-beating" conveys as remote a notion of the extremity of the cruelty indicated as when candid and ingenuous vivisectioners talk of "scratching a newt's tail"³⁷³ when they refer to burning alive, or dissecting out the nerves of living dogs, or torturing ninety cats in the series of experiments'.³⁷⁴ It had a significant impact on public opinion contributing also at the passing of the 1878 *Matrimonial Causes Act*, which enabled abused wives, victims of male violence, to be protected and ask for a judicial separation from their husband.³⁷⁵ Domestic abuses on women by their male partners are today, as in the Victorian Era, the most common form of violence and one of the worst crime of GBV.³⁷⁶ Cobbe outlined a very narrow link between men's abuses of women or threat of abuse with the purposes and means inherent in torture exposing it in front of the entire English society.³⁷⁷

371 From p. 78 to p.81 see a summary of the works analyzed in the chapter.

372 See in Chapter 2, Flora Tristan the frontwoman in France.

373 See note 293 in Chapter 2 and Ecofeminism.

374 Cobbe P. F., "Wife-torture in England," in *The Contemporary Review*, p.32, April 1878. For her essay, she drawn from the *Reports to the Secretary of State for the Home Department on the State of Law Relating to Brutal Assault*, report presented in 1875 by the English Parliament. UN Convention against Torture and other Cruel, Inhuman or Depredating Treatment or Punishment, 1984: 'For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.'

375 The Act was originally presented by Colonel Edgerton Leigh at the House of Commons in 1874, <https://www.parliament.uk/about/living-heritage/transformingsociety/private-lives/relationships/overview/custodyrights/>.

376 Copelon R., "Intimate Terror: Understanding Domestic Violence as Torture," in *Human Rights of Women: National and International Perspectives*, ed. Cook J. R., University of Pennsylvania Press, Philadelphia. pp.116-152, p.116.

377 Bianchi B., "La violenza domestica nella riflessione femminista (1833-1917)", p.24.

More recently in time, Rhonda Copelon (1944-2010), an American lawyer and former professor of law at the City University of New York (CUNY), widely enriched feminist, legal and human rights theories about DV, fighting against gendered hierarchies of domination in society and in law. She found a very close link between law, gender, and human rights and she conceptualized it in practices.³⁷⁸ Copelon was able to turn international and national attention on legal implications of DV against women as torture and thus a human rights violation.³⁷⁹ Exposing the connection between different forms of violence, the protection of human rights and gender justice, she militated to create institutional structures, which would have recognized women claims.³⁸⁰ DV, according to Copelon, needed to be redefined and legally recognized as an act of torture and therefore as a violation of human rights.³⁸¹

Because of an international mobilization of women, also the attention of the international community turned to DV as a human rights concerned.³⁸² For decades, women have silently suffered DV accepting it as a natural characteristic of the marital institution and of their place in society.³⁸³ As extensively analyzed in the first chapter, most ancient societies gave men the right to beat or kill their wives and some of them tolerate it even in present time. States and religious institutions, particularly in medieval time, have prosecuted women (for example through witchcraft)³⁸⁴ who tried to subvert their position in society or in the family. The assumption, on which society structures were based, did not change until the late 20th century and for some countries have not changed yet.³⁸⁵ Invisible conjectures about boundaries of role based on gender categories (women

378 Zarkov D., Handmaker J., Hintjens H., "Legacies: Rhonda Copelon: Activist, Lawyer, Feminist," *Development and Change* 42(1): pp.387-398., Published on behalf of the Institute of Social Studies, The Hague, p.387.

379 Ibid., p.390.

380 As far as the 1900s Former Yugoslavia and Rwanda crimes against women, Rhonda Copelon in her essay titled 'Surfacing Gender: Reconceptualizing Crimes against Women in Time of War', in Alexandra Sigmayer (ed.), *Mass Rape. The War against Women in Bosnia-Herzegovina*, pp.197-218. Lincoln, NE and London: University of Nebraska Press, p. 205 and p. 207 stated that it was not enough to consider rape as a war crime a method of 'ethnic cleansing' because it would have been ignored the fact that 'women were rape "not simply because they belong to the enemy but precisely because they are the enemy; because of their power as well as vulnerability as women"'. Ibid., p. 392.

381 This according to the *UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted in December 1984 and entered into force in June 1987. According to Article 1: 'the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. Ibid., p.395.

382 Copelon R., "Intimate Terror: Understanding Domestic Violence as Torture," p.116.

383 Meyersfield B., "Reconceptualizing domestic violence in International law," p.384.

384 See note 44 in Chapter 1.

385 Ibid., p.381.

for the private and men for the public life among many) were and for some countries are still hard to dismantle.

States have long failed in protecting women from GBV and they have failed regarding women protection against the domestic stream, conceptualizing it as 'private affair that does not warrant state interference'.³⁸⁶ Many years of researches have demonstrated how particular and specific the causes behind DV against women are. With a proper definition of the problem and a different consciousness inspired by centuries of feminist battles and efforts, today it is easier to identify it and built the right actions even though there is still a long way to go before we could easily say that the problem has been stopped. Feminist visions in the past two centuries have allowed creating spaces and opportunities where to improve women's access to justice. Today we are witnessing a growing attention and interest from both international, regional, and national communities that have started to elaborate instruments of law to contrast violence and promote human rights, advancements that 50 years ago were far inconceivable.

To grasp the innovative set of principles introduced by the IC, we must contextualize it inside a broader panorama of actions fostered by international and regional legal system. Here follows a brief introduction of the most relevant initiatives, which have characterized the path toward the recognition of DV as a form of GBV against women as a crime of public concerned and a violation of international human rights.³⁸⁷

³⁸⁶ Meyersfield B., "Reconceptualizing domestic violence in International law," p.383.

³⁸⁷ De Vido S., *Donne, Violenza e Diritto Internazionale*, p.88.

1.1 INTERNATIONAL LEGAL SYSTEM

In the past, International law has repeatedly failed in combating GBVAW.³⁸⁸ It was only after the Second World War that VAW entered into political, economic and health discourses.³⁸⁹ In Italy, for example, it was not until 1976 that the Court of Cassation condemned a husband for committing sexual violence against his wife and not until 1981 that the 'crime of honor' was abrogated as a crime with a mitigate sentence from the Italian Penal Code.³⁹⁰

In the first decades of the 20th century, the international society has started to enact human rights laws posing a challenge to the very notion of states' sovereignty. Asserting international attention on how citizens are treated, particularly for women, they have offered a starting point in the recognition of women disadvantage position and boost the creation of a common gender-neutral vocabulary to frame political and social wrongs.³⁹¹ This new discourse, which includes gendered disparities of power, has had a fundamental 'empowering function' for women, leading to the creation of communities appealing to those words to search for justice.³⁹²

The UN was in the lead of the international law process to address discrimination against women. The 1945 *Charter of the United Nation*, signed in San Francisco, is the first international juridical document which asserts the respect for human rights and fundamental freedoms without distinction on the basis of sex.³⁹³ At the time, 49 States

388 Meyersfeld B., "State Responsibility and Systemic Intimate Violence", in *Home-Made Violence* (a cura di), De Vido S., Candiotti L., Mimesis/Esperienze Filosofiche, N.2, Milano, 2016, p.38. See also Meyersfeld B., "A Theory of Domestic Violence in International Law," *Yale Law School Dissertations* 3, 2016, p.332.

389 Meyersfeld B., "A Theory of Domestic Violence in International Law", p.34.

390 Cassazione Penale, sentenza 16 Febbraio 1976, no. 12855, Macario and L. 5 August 1981, no. 442, GU n.218, 18 August 1981, *Abrogazione della rilevanza penale della causa d'onore*, ex Article 587: 'He who causes the death of a spouse, daughter, or sister upon discovering her in illegitimate carnal relations and in the heat of passion caused by the offence to his honor or that of his family will be sentenced to three to seven years. The same sentence shall apply to whom, in the above circumstances, causes the death of the person involved in illegitimate carnal relations with his spouse, daughter, or sister.' See also note 444 on the abrogation of Article 544 of the Italian Penal Code about 'rehabilitating marriages'.

For more details see De Vido S., *Donne, Violenza e Diritto Internazionale*, p.87.

391 Charlesworth H., Chinkin C., *The boundaries of International Law. A feminist analysis.*, p.202 and pp.210-216. The Charter of the UN (Articles 1, 55 and 56,) recognizes the importance of the protection of human rights by states giving birth to a series of international instruments to draw on the Charter commitments. Among those instruments there are the Universal Declaration of Human Rights (UDHR) the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil, Political Rights (ICCPR). See also the General Comment no. 8, UN Doc. CCPR/C/21/Rev.1/Add.1, 21 November 1989 which provides a definition of 'discrimination' advancing the already existing definition in Article 26 of the ICCPR. It refers to both the Convention on the Elimination of All Forms of Racial Discrimination ('The Race Convention') and the Convention on the Elimination of All Forms of Discrimination Against Women ('The Women Convention').

392 Charlesworth H., Chinkin C., *The boundaries of International Law. A feminist analysis.*, p.211. Quotation from Minow M., 'Interpreting Rights: an essay for Robert Cover,' *96 Yale Law Journal*, 1987, pp. 1860 at 1910.

393 Charlesworth H., Chinkin C., *The boundaries of International Law. A feminist analysis.*, p.213.

signed it, while today it counts 193 members having been admitted in accordance with Article 4.³⁹⁴ From that moment on the UN have dealt with women discrimination under the human rights discourse-opening dialogs between States and trying to set common objectives and joint commitments in favor of the struggle against GBVAW.³⁹⁵ *The Universal Declaration of Human Rights* (UDHR) proclaimed by the UN General Assembly in 1948, represents a major step for the international community.³⁹⁶ Despite being a milestone document in the history of human rights that set out the existence of 'fundamental human rights' to be protected and guaranteed for everyone (to promote social progress, better standards of life and a larger freedom of actions), it is a non-binding instrument and no mechanisms of control were provided for parties to be controlled in the implementation of its provision inside the national boundaries. For this reason, the UN had to enact several acts to set the standards for States to implement the UDHR provisions.³⁹⁷ Many theorists have also argued that there is something missing in the UDHR as far as the protection of women as a particularly discriminated group.³⁹⁸ Even though the provisions applied to GBV and discrimination articulates State's duty to protect fundamental human rights (including also those commonly violated in DV cases), it is not enough for women to be protected from a specific form of violence against their gender, a violence which has always been intersected with aspects such as race, religion, ethnicity or culture.³⁹⁹

Despite all criticism, human rights law has represented the most, if not the only, accessible area in international law for women for many years. It was the only field that explicitly acknowledged women's lives recognizing their concerns and assessing a potential for the advancements of their interests.⁴⁰⁰ Already in 1946, the *UN Commission*

The Charter of the United Nations, 26 June 1945, San Francisco. It entered into force on 24 October 1945. From the Preamble it is reaffirmed the 'faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women [...].' Article 1 para. 3 on Purposes and Principles reads: 'To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.' And again Article 55 states that the UN promote the 'universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.'

394 Article 4 para. 1 reads as follow: 'Membership in the United Nations is open to all the other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.' Available online at: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=1-1&chapter=1&clang=en. (Last accessed 26 May 2018)

395 Francesconi M. F., "La Violenza di Genere nella normativa internazionale e nazionale", (a cura di) in Ardizzone M. R., Chinnici G., Francesconi M. F., *Violenza sulle Donne. Antichi pregiudizi e moderni mutamenti di identità, ruoli e asimmetrie di potere.*, pp. 68-90, Studium edizioni, Roma, 2018, p. 68.

396 A/RES/3/217 A, *The Universal Declaration of Human Rights*, 10 December 1948, Paris. Two complementing covenants entered into force in 1976 namely the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

397 Francesconi M. F., "La Violenza di Genere nella normativa internazionale e nazionale," p.69.

398 Meyersfeld B., "A Theory of Domestic Violence in International Law," p.49.

399 Ibid. See note 129 in the article for further reading about the subject.

400 Charlesworth H., Chinkin C., *The boundaries of International Law. A feminist analysis.*, p.201.

on the Status of Women (CSW) was created as the first international body to deal with women's rights, promotion of gender equality and women empowerment.⁴⁰¹ Advocated by the *Economic and Social Council* (ECOSOC), it has been established by Council Resolution 11(II) in June 1946 stating that: "The functions of the Commission shall be to prepare recommendations and reports to the [ECOSOC] on promoting women's rights in political, economic, social and educational fields."⁴⁰² The purpose of the Commission is that of documenting women reality all around the globe to shape and promote the implementation of principles like gender equality and women empowerment.⁴⁰³ However, it has not exploited the entire potential of its innovation for it has been established by the ECOSOC and thus it fell into the ICESCR (International Covenant on Economic, Social and Cultural Rights).⁴⁰⁴ The latter has to be financed by state resources, which has rendered easier for parties not to comply for lack of resources to devote to the cause.⁴⁰⁵ In addition, being the ICESCR about cultural, social and economic rights, no specific steps have been undertaken for the enforcement of civil and political rights.⁴⁰⁶ In the 1970s, the UN had enhanced a series of World Conferences on Women organized to honor the *United Nation Decade of Women* launched from 1975 to 1985 by the UN General Assembly.⁴⁰⁷ It was a great opportunity for the promotion of equal rights and women's rights, and it functioned as an international platform to make women more visible on the global scene.⁴⁰⁸ The first and most wide-ranging international treaty

401 Meyersfeld B., "A Theory of Domestic Violence in International Law.", p.58.

In March 2018 the CSW set the largest gathering on gender equality and women's rights. During the 62nd session of the Commission with focus on 'Challenges and Opportunities in achieving gender equality and the empowerment of rural women', more than 4.300 civil society representative from 130 countries in the world participated.

402 E/RES/2/11, ECOSOC, Council Resolution for the establishing of the Commission on the Status of Women, 21 June 1946.

403 Meyersfeld B., "A Theory of Domestic Violence in International Law.", p.50. See note 132 in the article.

404 International Covenant on Economic, Social and Cultural Rights adopted and opened for signature by the General Assembly Resolution 2200A (XXI) of 16 December 1966.

405 Meyersfeld B., "A Theory of Domestic Violence in International Law.", p.59.

406 *Ibid.*

407 See Meyersfeld B., "A Theory of Domestic Violence in International Law.". See Meyersfeld B., "A Theory of Domestic Violence in International Law.", pp.52-53. A/RES/3520, World Conference of the International Women's Year, 15 December 1975. In 1980 in the *Report of the World Conference of the United Nations Decade for Women: Equality, Development and Peace*, DV was explicitly mentioned in an official document of the UN for the first time. Under the Legislative Measures section, it is stated that: 'Legislation should also be enacted and implemented in order to prevent domestic and sexual violence against women.'

408 Three of the World Conferences on Women were held between 1975 and 1985: the first one in Mexico (1975), the second in Copenhagen (1980) and the third one in Nairobi (1985). The First World Conference on Women did not explicitly refer to violence. Held in Mexico City, it designed 1975-1985 as the UN Decade of Women launching the program five months later. At the time, VAW was not on the radar of international law. The second conference held in Copenhagen did reference on family violence and a resolution on 'battered women and violence in family' was adopted. Lastly, the third World Conference held in Nairobi had violence against women as a far more prominent theme to be addressed. A forward-looking agenda of actions was embraced to eradicate VAW in both public and private spheres. The final report called on governments to 'undertake effective measures, including mobilizing community resources to identify, prevent and eliminate all violence, including family violence, against women.' *Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace*, held in Nairobi, July 1985 (UN. Doc. A/CONF.116/28Rev.1 (85.IV.10)). Even before this last Conference, DV was targeted in a UN General Assembly Resolution 40/36 (A/RES/40/36, *Domestic Violence*, 29 November 1985) in which States were invited 'to take specific actions urgently to prevent domestic violence and to render the appropriate assistance to the victims thereof'.

devoted to women which followed the four World Conferences is the 1979 *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW).⁴⁰⁹ Adopted unanimously by the UN General Assembly, it has entered into force in 1981 and today it counts 189 parties who have already ratified it.⁴¹⁰ The CEDAW represents the most important international instrument in the field of women's rights and it sets three main goals: a) to make substantive provisions against trafficking and prostitution b) to make recommendations towards states in order to start 'by all appropriate means and without delay a policy of eliminating discrimination against women.' (Article 2), c) to establish a monitoring Committee to guarantee the implementation of the CEDAW principles by all member States, States which are required to submit regular reports about the measures undertaken to comply (Article 18). Although the CEDAW has succeeded in boosting a considerable number of States to sign a treaty that envisions the eradication of discrimination against women, broadening the definition of discrimination itself, it omits any reference on VAW and any general prohibition against it.⁴¹¹ At the time of the drafting, in many countries, women were still under the parental authority. Even developed countries rested on cultural stereotypes about women empowerment through the contraction of marriages.⁴¹² Therefore, women protection and realization in the last decades of the 20th century was still confined inside the institution of marriage and whatever happened behind domestic walls between intimate partners was considered as a private matter with no interest in states to intervene. In time, though, the *Committee on the Elimination of Discrimination against Women* (CEDAW Committee) has succeeded in performing pathways toward more developed and attentive principles and provisions drafting General Recommendations.⁴¹³ It has first remedied to CEDAW lack of references on violence incorporating VAW in its jurisprudence with General Recommendation no. 19 (GR.19).⁴¹⁴ It is a non-binding official statement that embeds VAW expressly defining

409 A/RES/34/180, *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979.

410 CEDAW Convention to be found on the website United Nation Treaty Collection at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en. (Last accessed 15 March 2018).

411 The CEDAW contains a broader definition that covers both equality of opportunity - formal equality - and equality of outcome - *de facto* equality - in Charlesworth H., Chinkin C., *The boundaries of International Law. A feminist analysis*, p.217. Discrimination is defined as 'any distinction, exclusion or restriction made based on sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.' Meyersfeld B., "A Theory of Domestic Violence in International Law.", p.65. For a complete analysis on the Evolution of the International Law on Domestic Violence see Meyersfeld B., "A Theory of Domestic Violence in International Law," from p. 58 to p. 62. See Article 29 of the CEDAW Convention.

412 Francesconi M. F., "La Violenza di Genere nella normativa internazionale e nazionale", p.70.

413 Lanzoni S., "Il Percorso dei Diritti Umani e delle Istituzioni per il contrasto alla violenza sulle donne a livello internazionale e regionale", p.94.

414 A/47/38 (1992), *Report on the Committee on the Elimination of Discrimination Against Women: General Recommendation no. 19*, 11th Sess., U.N. Doc. See Meyersfeld B., "A Theory of Domestic Violence in International Law," p.68.

it as a violation of international human rights such as torture and discrimination (Article 7).⁴¹⁵ Reclaiming the principle notion of the CEDAW on women discrimination, it has set a precise definition as 'discrimination includes gender-based violence directed against a woman because she is a woman or that affects women disproportionately' (Article 6). GBV definition includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty referring also to violence in the family as 'one of the most insidious forms of violence against women prevalent in all societies [and suffered by] women of all ages.'⁴¹⁶ Laying the foundations for a new approach to the topic it broadens the definition of violence against women, introducing DV and comprising the notion of the so-called 'due diligence' standard. GR 19 is a real turning point in international law which has contributed 'to the plethora of evidence indicating the existence of an international norm against DV in CIL making a bold statement with regard to culture and tradition not to be considered a valid justification for the perpetuation of VAW.'⁴¹⁷ Moreover, it brought violence out from the private sphere of states' actions and inside the human rights field recognizing VAW as a GBV as affecting women worldwide.⁴¹⁸

The Vienna World Conference on Human Rights in 1993 has been one of the strongest global call, which has officially recognized VAW as an international human right violation and DV as a violence inherent in 'cultural practice'. It has stressed, in particular, 'the importance of working towards the elimination of violence against women in the public and private life' reaffirming women's rights as an integral part to the universal human rights.⁴¹⁹ Human rights of women have been incorporated in the *Vienna Declaration and Program of Action* which has been followed by the *UN Declaration on the Elimination of Violence Against Women (DEVAW)*.⁴²⁰ Echoing both the CEDAW Convention and GR 19 it

415 Meyersfeld B., "A Theory of Domestic Violence in International Law.", p.68.

416 A/47/38 (1992), *Report on the Committee on the Elimination of Discrimination against Women: General Recommendation no. 19*, para. 23: Violence against Women include 'battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes.'

417 Meyersfeld B., "A Theory of Domestic Violence in International Law", p.51 and p.70. The Vienna World Conference shortly anticipated what General Recommendation no.19 set as international standard. Held in 1993, the Conference witnessed a great global call for the recognition of violence against women as an international human right violation. In that occasion it was underlined the significant importance of the elimination of all form of violence against women both in public and private spheres of life.

418 Lanzoni S., "Il Percorso dei Diritti Umani e delle Istituzioni per il contrasto alla violenza sulle donne a livello internazionale e regionale," p.95.

419 *World Conference on Human Rights, Vienna Declaration and Program of Action*, 25 June 1993, UN Doc. A/CONF.157/23. See also Meyersfeld B., "State Responsibility and Systemic Intimate Violence," p. 55.

420 A/RES/848/104, *Declaration on the Elimination of Violence Against Women*, 20 December 1993. Article 1 of the DEVAW states that: 'The term violence against women means any act of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts ... whether occurring in public or private life.' Through this document the UN General Assembly asserted that states parties had a duty to exercise due-diligence to prevent acts of VAW perpetrated by states or non-states actors.

has represented 'the most explicit instruments regarding domestic violence'.⁴²¹ Stating that it was high time for 'a clear and comprehensive definition of violence against women, a clear statement of the rights to be applied to ensure the elimination of violence against women in all its forms, a commitment by States in respect of their responsibilities, and a commitment by the international community at large to the elimination of violence against women', it categorizes VAW in three major forms: violence in the family, public violence and violence that is condoned by the state.⁴²² DEVAW is a great achievement for women in history since for the first time it has answered to women demands about states being involved in their protection.⁴²³ Possessing the label of a declaration, it has a questionable authority. However, as many other steps undertaken by the international community, whether binding or not, they are 'never intended to be the end of [the] process, but rather a first solid foundation on the basis of which States [are] supposed to take actions at all level designed to eliminate violence against women'.⁴²⁴ All acts, even not legally enforceable, are 'signposts of the direction in which international human rights law is developing and should influence states that have accepted a commitment of progressive development toward enhancing respect for human rights in their international conduct and domestic law'.⁴²⁵

To further 'integrate the rights of women into the human rights mechanisms of the UN and the elimination of violence against women', *the Commission on Human rights* (CHR) adopted in 1994 a Resolution to create a special figure accountable to 'seek information on violence against women, its causes and consequences and to recommend measures, ways and means at the national, regional and international level to eliminate VAW':⁴²⁶ *the Special Rapporteur on Violence against Women*.⁴²⁷ The first person that was appointed for the role was Radhika Coomaraswamy (from 1994 to 2003). Required to carry out the mandate, within the framework of the UNHR and all other international human rights

421 Meyersfeld B., "A Theory of Domestic Violence in International Law." p.75.

422 Ibid. A/RES/848/104, *Declaration on the Elimination of Violence Against Women*, Preamble.

423 Meyersfeld B., "A Theory of Domestic Violence in International Law," p.76.

424 Meyersfeld B., "A Theory of Domestic Violence in International Law," p.76 from Surya P. Subedi, *Protection of Women against Domestic Violence: The Response of International Law*, 6 E.H.R.L.R. 587, 602 (1997). A/RES/848/104, *Declaration on the Elimination of Violence Against Women*, Preamble: 'violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men.'

425 Cook R.J., *The Elimination of Sexual Apartheid: Prospects for the Fourth World Conference on Women*, 1995, p.29.

426 Adopted by the United Nations Commission on Human Rights with resolution 1994/45, 4 March 1994.

427 "15 year of the United Nations Special Rapporteur on Violence against women, its causes and consequences", carried out by Yakin Erturk (August 2003 - July 2009).

instruments, including the CEDAW and the DEVAW, the Special Rapporteur has played a key role representing a hard-won victory for women's movements.⁴²⁸

In 1995, VAW and DV were major focuses at the *Fourth World Conference of Women* held in Beijing.⁴²⁹ In the light of the *Vienna World Conference on Human Rights*,⁴³⁰ it has restated that women's rights are fundamental human rights and that they must be a primary objective to achieve for the international community together with the full involvement of women in civil, political, economic, social and cultural life, and the elimination of every discrimination with regard to their gender.⁴³¹ VAW was recognized as one of 'the twelve areas of women's lives requiring urgent action' to be recognized no more as a private and quasi-legal phenomenon.⁴³² On this occasion, the *Beijing Declaration and Platform for Action* were adopted and the CSW was responsible for the implementation.⁴³³ It represents a turning point in the international agenda on gender equality, DV as GBVAW was recognized as being 'an obstacle to the achievement of the objectives of equality, development, and peace [that], violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms.'⁴³⁴ 'In all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of incomes, class, and culture.'⁴³⁵ Of particular importance is to notice how the Declaration derived VAW from 'historically unequal power relations between men and women' the same oppressive regime that was exposed centuries before by feminists all around the world.⁴³⁶ VAW and DV against women were included as 'health issues of growing concern' for women and girl in every country and the final document outlined many and specific actions that governments, nongovernmental groups, and institutions should have taken to confront and combat VAW

428 Former Special Rapporteurs: Ms. Radhika Coomaraswamy (Sri Lanka), 1994- July 2003; Dr. Yakin Ertürk (Turkey), August 2003- July 2009; Ms. Rashida Manjoo (South Africa), August 2009- July 2015; Dr. Rashida Šimonović (Croatia), Since August 2015. From the United Nations Human Rights, Office of the High Commissioner Website, <https://www.ohchr.org/EN/issues/Women/SRWomen/Pages/SRWomenindex.aspx>. (Last accessed 14 June 2018)

429 A/CONF.177/20/Rev.1, *Fourth World Conference on Women*, Beijing, 4-15 September 1995. For more details see Meyersfeld B., "A Theory of Domestic Violence in International Law," p.74.

430 See note 382.

431 Francesconi M. F., "La Violenza di Genere nella normativa internazionale e nazionale", p.70. The Beijing Conference also provided States with the so called '5Ps' obligations: the promotion of a culture which does not discriminate women; the prevention and adoption of measures necessary to prevent VAW; the protection for women that want to escape violence; and to provide victims with a fair compensation.

432 Ibid.

433 Meyersfeld B., "A Theory of Domestic Violence in International Law," p.59.

434 A/CONF.177/20/Rev.1, *Report of the Fourth World Conference on women*, para. 113.

435 Ibid. para. 112.

436 Ibid. para. 118.

and DV, including strengthening the legal systems.⁴³⁷ The Fourth World Conference had a positive impact on the implementation of the CEDAW too.⁴³⁸ It has been in the occasion of the Beijing World Conference that a coming-of-age moment occurred: women from all countries of the world decided that it was high-time for a 'gender mainstreaming' approach in all societies' institutions and agenda particularly for the elimination of VAW.⁴³⁹

International Criminal Law has reclaimed the UN approach on GDV as a violation of fundamental human rights also. In 2002 the *Statute of the International Court of Justice* (ICJ) was signed and it too portrayed a historical advancement for gender justice as it asserted the existence of the so-called 'gender crimes' in accordance with the Recommendation of the Special Rapporteur on VAW.⁴⁴⁰ Both the International Criminal Tribunal for the former Yugoslavia and Ruanda have subsequently placed the crime of rape among the crimes against humanity.

On the wake of the four follow-ups organized by the Fourth World Conference on Women in September 2015, UN Women and the People's Republic of China co-hosted a 'Global Leaders' Meeting on Gender and Women's Empowerment: A Commitment for Action'.⁴⁴¹ In that occasion, States were invited to make concrete commitments for the implementation of the *Beijing Platform for Action* in order to achieve gender equality and women empowerment no later than 2030.⁴⁴² *The 2030 Agenda for Sustainable Development*, with its 17 Sustainable Development Goals (SDGs), embodied one further step toward progress for women equality and empowerment. Its fifth goal is about 'the achievement of gender equality and empower for all women and girls'.⁴⁴³ This objective has as target the elimination of all forms of VAW and girls in the public and private sphere.

437 A/CONF.177/20/Rev.1, *Fourth World Conference on Women*, Beijing, 4-15 September 1995, para.100. See also UN General Assembly Resolution no.58/147, 2003: One of the most relevant element introduced by the Resolution was the recognition that DV overcome the 'private dimension' of people domestic lives. It must, thus, be considered a problem of public concerned which required States' intervention. See also De Vido S., *Donne, Violenza e Diritto Internazionale*, p.92.

438 Meyersfeld B., "A Theory of Domestic Violence in International Law," p.74.

Five years after the 1995 Beijing World Conference on Women, at the *United Nations' conference Beijing +5: A Special session on Women 2000: Gender Equality, Development and Peace for the XXI Century*, June 2000, a final document was drafted and published including detailed obstacles, including domestic violence, women were still enduring. Available online at: <http://www.un.org/womenwatch/daw/followup/session/presskit/gasp.htm>. (Last accessed 25 May 2018)

439 Lanzoni S., "Il Percorso dei Diritti Umani e delle Istituzioni per il contrasto alla violenza sulle donne a livello internazionale e regionale", p.95.

In 2000 the UN Security Council adopted a Landmark resolution on Women, Peace and Security, (S/RES/1325). Available online at <http://www.un.org/womenwatch/osagi/wps/>. (Last accessed 25 May 2018).

440 Lanzoni S., "Il Percorso dei Diritti Umani e delle Istituzioni per il contrasto alla violenza sulle donne a livello internazionale e regionale", p.96.

441 'Global Leaders' Meeting on Gender Equality and Women's Empowerment: A Commitment,' 27 September 2015, New York, United Nations. Information available online at <http://beijing20.unwomen.org/en>. (Last accessed 12 April 2018)

442 Ibid.

443 UN Women website, 'SDG 5: Achieve gender equality and empowerment of women and girls'. Article available online at <http://www.unwomen.org/en/news/in-focus/women-and-the-sdgs/sdg-5-gender-equality>. (Last accessed 25 May 2018)

Eliminating GBVAW is the main priority, be it one of the most pervasive violations of fundamental human rights in the world still today.⁴⁴⁴

To prevent and combating VAW and DV society need to work nonstop. Women historically considered 'weak' are the first group to be affected by social upheavals and cultural revolutions. The UN in a joint effort with the European Union is embarking on a global and multi-year initiative called *Spotlight initiative*, focused on the elimination of all violence against women and girls.⁴⁴⁵

Finally, in July 2017 after a 25 years process of productive evolution and development of human rights disciplines, General Recommendation no. 35 on gender-based violence against women (GR 35) has been adopted by the CEDAW Committee.⁴⁴⁶ The latter updates GR 19 on VAW proving the predominance in the normative framework in recent years of an always growing attention and interest to the scourge that GBVAW still represents for both women and girls today.⁴⁴⁷ Drafted on the existing work of the CEDAW Committee, international human rights mechanism and other principles articulated in different human rights contexts, it is rich in scope and substance.⁴⁴⁸ It defines different levels of states and non-states actors liability, setting out responsibilities for acts or the omission of each, and it calls for a repeal for those laws and policies that directly or indirectly excuse, condone and sometimes facilitate VAW.⁴⁴⁹ Giving voice to the structural nature of GBVAW, that is 'ideology of men's entitlement and privilege over women' (para 19) setting an urgent need to change social norms and stereotypes which support violence in the context of resurgent old narrative (para 7).⁴⁵⁰ Article 3 of the CEDAW by

444 According to the 'Women Business and The Law' research conducted by the World Bank Group in 2016, two third of the world countries have outlawed DV but still 37 countries exempt rape perpetrators from prosecution if married or subsequently marry with the victim. In Italy, for example, article 544 of the Penal Code whereby a rapist could have extinguished his crime by contracting marriage with his victim- the so-called 'rehabilitating marriage' (*matrimonio riparatore*, in Italian) - was abolished in 1981. Furthermore, only in 1996 sexual violence stopped being considered an offence against moral but against the person.

In 1965 the national attention was shocked by the case of Franca Viola, a 17-years-old Italian girl who had been kidnapped and raped by a local criminal. Once back with her family she refused to marry her abductor setting a precedent of clash with traditional social convention and laws in Southern Italy.

See also note 390 non the abrogation of article 587 on 'crimes of honor'.

Available online at <http://interactive.unwomen.org/multimedia/infographic/violenceagainstwomen/en/index.html#intimate-4>. (Last accessed 15 June 2018)

445 "The Spotlight Initiative; to eliminate violence against women and girls from the UN website." Available online at <http://www.un.org/en/spotlight-initiative/>. (Last accessed 25 May 2018)

446 UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW *General Recommendation No. 35: Gender Based Violence against Women*, updating General Recommendation no.1-, 2017, available online at http://tbinetnet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf. (Last accessed 25 May 2018).

447 Chinkin C., 'CEDAW General Recommendation 35 on violence against women is a significant step forward', on LSE Women Website, September 2017. Available online at <http://blogs.lse.ac.uk/wps/2017/09/06/cedaw-general-recommendation-35-on-violence-against-women-is-a-significant-step-forward/>.

448 Ibid.

449 Ibid.

450 See note 446 to access the pdf. of the GR 35.

recognizing that WAV occurs in all spaces and sphere of human interaction (para 20).⁴⁵¹ Deepening the gendered nature of violence, it recognizes that the prohibition of GBV has become a norm of ICL (practice and *opinion juris* have settled 'the prohibition of gender-based violence against women' as a principle of customary international law).

451 Ibid. Article 3 of the CEDAW reads: 'States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.'

The Convention is available online at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article3>.

1.2 REGIONAL LEGAL SYSTEMS

Women have often been in great danger in the place where they should have been safer.⁴⁵² Human rights, freedom, and lives have been stolen from them by ever-present threats of violence.⁴⁵³ In the last 20 years, DV has gathered great international understanding as a problem of public concern and an international consensus has developed on the need to deal with it.⁴⁵⁴ All the above-cited actions promoted by the international community on the lead of the UN, reflect this consensus. Even though effective strategies to address VAW and DV are still in the process to be defined and accepted by societies worldwide, some regional legal systems have already adopted *ad hoc* Conventions, which endorsed all the step forward made by the international community making these actions, for the first time, binding for the parties involved.

From the last decades of the 20th century, many efforts have been made on the regional level to combat and prevent GBV against women. As mentioned before, the purpose of the following paragraphs will be that of analyzing regional legislation, which have led to the drafting of the IC with specific attention regarding what it has represented in the struggle against DV against women. Considered as a gold standard by the UN, the IC has provided essential tools uphold women rights and protect them from many forms of violence. Although being a regional act, which binds States who have ratified it among the 47-member of the CoE (in addition to some non-member, observer states), it is the living proof of how years of international and regional legislation have developed unite in a powerful Convention aim at addressing in one text all the problems once faced separately. It has originated from centuries of struggles pursuit first by the feminist movement, then by international law with the implementation of actions both mandatory and not mandatory, which have served as an awakening for human consciousness.

On a regional level, pioneering in the fight against VAW and DV are two groundbreaking documents that have developed and crystallized some norms that were taken as inspiration for the drafting of the IC.

⁴⁵² *Domestic Violence against women and girls*, Editorial, Innocenti Digest No. 6, June 2000, UNICEF Office of Research-Innocenti. Available online at: <https://www.unicef-irc.org/publications/pdf/digest6e.pdf>.

⁴⁵³ Ibid.

⁴⁵⁴ Ibid.

1.2.1 *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 1995*

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (also known as the *Maputo Protocol*) was drafted in March 1995 to guarantee some general fundamental rights for women. It includes the right to life, integrity, and security of the person, the elimination of harmful practices such as the female genital mutilation, the access to justice and equal protection before the law and economic and social welfare rights.⁴⁵⁵ It was adopted by the African Union in 2003 and it entered into force in 2005 with the following statement: 'Firmly convinced that any practice that hinders or endangers the normal growth and affects the physical and psychological development of women and girls should be condemned and eliminated; [we are] determined to ensure that the rights of women are promoted, realized and protected in order to enable them to enjoy fully all their human rights'.⁴⁵⁶

The protocol remains a progressive legal instrument in history which has placed women effectively as equal partners with men posing a moral obligation on Member States to promote this equality and providing a set of standard human rights for African women covering a very large spectrum of civil, political, economic, social, and cultural rights. As regard to VAW in the introductory notes of the protocol, it has called on States' actions to eliminate all forms of discrimination and GBVAW in accordance with the *Beijing Declaration* (1995) and UN member 'solemn commitment to human rights of women. Article 1 provides with a general definition of VAW while Article 3 para. 4 and Article 4 invite States to protect women and prohibit 'all forms of VAW, whether the violence takes place in a private or public.' Tradition and cultural beliefs are identified as repositories of social practices and stereotypes 'which legitimize and exacerbate the persistence and tolerance of VAW'. (Article 4 para. d) States are called to promote a 'peace education' to eradicate these elements from society/ popular tradition/beliefs. However, today the African Continent is not immune from harmful practices that violate women, women that are forced to suffer from violence and abuses because of old cultural legacies that survive in some areas of the continent.

⁴⁵⁵ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, 11 July 2003. Today 36 States have signed and ratified, 15 have only ratified and 3 have not yet signed nor ratified.

⁴⁵⁶ Maputo Protocol, Preamble.

1.2.2 The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, 1994

Driving force in the field of binding regional instruments which have led the path toward the IC is the *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women* (also known as the *Convention of Belém do Pará*). It is the world first binding international treaty which deals with the issue of VAW as a violation of human rights and fundamental freedoms, which impairs or nullified the observance, enjoyment, and exercise of such rights and freedoms.⁴⁵⁷ It was promoted by the Organization of American States (OAS) and the Inter- American Commission of Women (CIM) in 1994 recognizing the very nature of VAW in the ‘historically unequal power relations between women and men’.⁴⁵⁸ It defines VAW as ‘any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere’ and it calls upon States to establish mechanisms for the prevention and protection of women’s rights from VAW.⁴⁵⁹ Since its adoption, the *Mechanism to Follow Up on the Implementation of the Convention on the Prevention, Punishment, and Eradication of Violence against Women* (MESECVI) has been established.⁴⁶⁰ For the first time, women in Inter-American states had their right to life and freedoms recognized by a binding treaty that served as the basis for law and policies endorsement in each states party. However, the convention does not establish specific instruments for the compliance of States to the norms contained in the convention for the protection and repression of VAW nor any guarantees for victims.⁴⁶¹

457 Preamble of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), adopted on 9 July 1994 at the 24th regular session of the General Assembly of the OAS in Belém, Brazil. It entered into force in March 1995 and today the States parties are 32.

458 Preamble.

459 Convention of Belém do Pará, Article 1.

460 *Follow-up Mechanism to the Belém do Pará Convention* (MESECVI) established by the in 2004.

461 Francesconi M. F., “La Violenza di Genere nella normativa internazionale e nazionale,” p. 74.

1.3 EUROPEAN LEGAL SYSTEM

As for Europe, women have worked for years in the backstage to reach a European and national recognition of VAW as a structural problem. Since the 1990s, the EU and the CoE have both undertaken initiatives to promote legislative, political, and financial frameworks toward counter actions against VAW.⁴⁶²

In history, States parties of the EU have gradually become more interested in dealing with profound themes such as justice and the protection of fundamental human rights for their citizens.⁴⁶³ At the beginning of its existence, the EU was more interested in economic subjects. Only later were human rights and acts for the prevention of GBV embodied in the legislation. Women protection against any forms of violence has evolved since then playing an always more fundamental role in the European Agenda.⁴⁶⁴ This renovated interest was fostered by the arduous work of the *Court of Justice of the European Union* (CJEU) that throughout its interpretation of the European legislation has played a fundamental role in the development of the legislation itself.⁴⁶⁵

As part of the regional system of treaties implemented in Europe in the field of human rights, we must start from the *European Convention on Human Rights* (ECHR) also known formally as the *Convention for the Protection of Human Rights and Fundamental Freedoms*.⁴⁶⁶ Drafted in 1950 by the newborn CoE, it has entered into force in 1953. Article 14 of the ECHR stated that 'The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinions, national or social origin, association with a national minority, property, birth or other status.'

Later, the CoE has been very active in actions to protect women from violence issuing a series of Recommendation and Resolutions on the subject. In 2002, the Committee of Ministers adopted Recommendation no.5 anticipating, under numerous aspects, the

462 Lanzoni S., "Il Percorso dei Diritti Umani e delle Istituzioni per il contrasto alla violenza sulle donne a livello internazionale e regionale," p.100.

The EU and the CoE are two different and separated things but which share fundamental values and standards cooperating on issues such as human rights, human trafficking, sexual exploitation and VAW. The CoE is an international organization which aim at upholding human rights, democracy, rule of law in Europe. It was founded in 1947 and today it counts 47-member states. The organization is distinct from the 28 - soon 27-nation members of the European Union.

463 Marcuccio D., "La violenza di genere in Europa", (a cura di) in Ardizzone M. R., Chinnici G., Francesconi M. F., *Violenza sulle Donne. Antichi pregiudizi e moderni mutamenti di identità, ruoli e asimmetrie di potere.*, pp.203-223, Studium edizioni, Roma, 2018, p. 203.

464 Francesconi M. F., "La Violenza di Genere nella normativa internazionale e nazionale," p. 72.

465 Marcuccio D., "La violenza di genere in Europa", p. 203.

466 *Convention for the Protection of Human Rights and Fundamental Freedom*, November 1950, Rome. Available in pdf. online at <https://www.echr.coe.int/Pages/home.aspx?p=basictexts&c>.

future IC.⁴⁶⁷ The former recommendation, today superseded by the IC, distinguished among three 'dimensions' of violence -within the family, the community and the State- and it recognized the structural nature of the phenomenon.⁴⁶⁸ Moreover, between 2006 and 2008 a Europe-Wide Campaign was started and States were called to adopt actions (adopted by the *Parliamentary Assembly* (PACE) of the CoE) to stop VAW and DV. However, they were all non-binding actions limited to be of an advisory role.⁴⁶⁹ To fill the gap, in 2008 an *ad hoc* Committee (CAHVIO) was formed with the special objective of generating a draft for an international convention to prevent and combating VAW and DV. It was created by the Committee of Ministers, which was presented with the final text of the convention in December 2010.⁴⁷⁰ The Convention was titled *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence* and it has become the primary regulatory source in the field, the first far-reaching and legally binding instrument in Europe to address VAW and DV. The CoE adopted the IC in 2011 and it entered into force after the 10th ratification from Andorra in August 2014. The CoE Convention is the outcome of a long process of raising awareness about VAW, a process that has started first on a limited regional area than it has spread also on the international sphere.⁴⁷¹ The IC recognizes VAW as a violation of human rights and as an act of discrimination as regards to women based on gender.⁴⁷² One of the most significant and difficult obstacles that had to be overcome in the effort to define DV as a human rights violation, was the traditional view of international law as applicable only to government and their representative excluding private actors as in cases of intimate private violence. Furthermore, what is asked by the IC is to be implemented both in time of peace and during conflicts.

467 Rec (2002)5, *The Protection of Women against Violence*, adopted at the 749th meeting of the Ministers' Deputies, 30 April 2002.

468 De Vido S., "The Council of Europe Istanbul Convention on preventing and combating violence against women and domestic violence an appraisal," p.78.

469 De Vido, *Donne, Violenza e Diritto Internazionale*. p.100.

470 Ibid.

471 De Vido S., "The Council of Europe Istanbul Convention on preventing and combating violence against women and domestic violence an appraisal," p.76.

472 Lanzoni S., "Il Percorso dei Diritti Umani e delle Istituzioni per il contrasto alla violenza sulle donne a livello internazionale e regionale," p.102.

2. THE ISTANBUL CONVENTION: STRUCTURE AND DEFINITIONS

Composed of 81 articles, the Convention⁴⁷³ is divided into 12 chapters that are named respectively: Purposes, definitions, equality and non-discrimination, general obligations; Integrated policies and data collection; Prevention; Protection and support; Substantive Law; Investigation, prosecution, procedural law, and protective measures; Migration and asylum; International co-operation; Monitoring mechanism; Relationship with other international instruments; Amendments to the Convention. The text is further completed by the *Explanatory Report to the Council of Europe Convention* where is expressly mentioned the growing body of case law which is setting standards in the ECtHR.⁴⁷⁴

From the *Preamble*, the CoE Convention recalls the rising amount of actions already implemented by the International Community and the Council of Europe itself. It condemns all forms of VAW and DV considered responsible for the historical failure in reaching equality between men and women. It recognizes that VAW 'is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women'.⁴⁷⁵ The IC acknowledges the structural nature of violence against women as GBV, which means that it is rooted in society and linked to the definition that has been given of 'gender'.⁴⁷⁶ The key concept of the Convention is precisely the notion of the gendered nature of the phenomena (VAW and DV).

The CoE Convention is the first regional binding instrument that contains and codifies what gender means (Article 3).⁴⁷⁷ GBV is a violence made of different connotations that can be explained in instruments that aim at maintaining women's positions of subordination and predetermined gender roles in society. Moreover, the notion of gender has also brought to a controversy much exploited by the political debate. What must be clear to the reader, however, is that the IC proposes itself to navigate the root causes of

473 I will refer to the *Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence* as the 'Istanbul Convention' or the 'CoE Convention' or the 'IC.'

474 Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, *Council of Europe Treaty Series no.210*, Istanbul, 11 May 2011.

475 Istanbul Convention, Preamble.

476 De Vido S., "The Council of Europe Istanbul Convention on preventing and combating violence against women and domestic violence an appraisal," p.78.

477 Article 3 letter c: "gender" shall mean the socially constructed roles, behaviors, activities and attributes that a given society considers appropriate for women and men;".

VAW recognizing it as specific for one gender but without denying the existence of other victims like men, elderly people, or children.

A lot has been said by the discipline regarding the rightness to assume GBV as the labeled term for violence committed against women. The term 'gender' is not a synonym of 'woman' and thus neither gender-based violence is to be assumed as violence against women. However, for this thesis as I have already mentioned, the Istanbul Convention defines 'violence against women' as 'gender-based violence' mainly against women and 'domestic violence' as one of the many forms and places in which VAW can happen, recognizing it, once and for all, as a problem worthy of the public attention and of global concern.⁴⁷⁸

In the first chapter of this thesis I addressed the widely discussed topic of gender and sex distinction and I came to the conclusion that, as all UN definitions and philosophers emphasize, 'gender' is a social construct, a learn category that is assumed by people in given societies.⁴⁷⁹ Also according to Article 3(c) of the IC, 'gender shall mean the socially constructed roles, behaviors, activities, and attributes that a given society considers appropriate for women and men'. This is the first complete definition that the international community has ever given regarding the term gender and one cannot leave aside the great contribution that many different disciplines have given to the cause. A pioneering definition of the term was given in 1998 by the Rome Statute which led to the codification of acts of persecution on the ground of gender as crimes against humanity.⁴⁸⁰ The IC is an open convention for States parties to the CoE and for other states nonmember of the organization. Article 73 recognizes that national law or other instruments that a state party in the convention have adopted, does not have to be prejudiced by the same convention. State are allowed to adopt more favorable actions to safeguard the principles of the IC.⁴⁸¹ In order to guarantee its implementation, States parties are required to separate culture, customs, religion, tradition or the so-called 'honor' as justifications of such actions prohibited by the same Convention (Article 42).

478 De Vido S., *Donne, Violenza e Diritto Internazionale. La Convenzione di Istanbul del Consiglio d'Europa del 2011.*, Mimesis/Esperienze Filosofiche, N.1, Milano, 2016, p.36. In the CoE Convention on preventing and combating violence against women and domestic violence, adopted 11 May 2011: Article 4 para. 3 reads: "The implementation of the provisions of this convention by the parties, measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex and gender [...]."

479 De Vido S., "The Council of Europe Istanbul Convention on preventing and combating violence against women and domestic violence an appraisal," p.78.

480 A/CONF.183/9, *Rome Statute of the International Criminal Court* of 17 July 1998. It entered into force on 1 July 2002. Article 7 para. 3. See also De Vido S., *Donne, Violenza e Diritto Internazionale.*, p.35.

481 De Vido, *Donne, Violenza e Diritto Internazionale.* p.104.

VAW and DV in the IC are differentiated. VAW in Article 3 (a) is understood as 'a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life'. DV, instead, is defined in the following paragraph as 'all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim' (Article 3(b)). A very important aspect of the CoE Convention concerns the recognition of DV as one of the places in which VAW can be perpetrated. The latter, in all its aspects, is determined by factors specific to the female gender and DV particularly responds to patterns which are reflected by cultures, countries, and social classes. The IC has been fostered by the knowledge of VAW as a problem existing because of women gender, the subordinate and weak gender which has justified men's employment of violence to maintain unchanged society's beliefs about women roles and positions.⁴⁸²

The CoE Convention is the most far-reaching international treaty that tackles VAW and DV requesting states parties to criminalize a considerable number of violent acts. To support States' implementation the Convention established four cores pillars (also called the '4Ps'), which include prevention, protection against further violence, prosecution of perpetrators and integrated policies.⁴⁸³ As many studies and researches have demonstrated, DV has a serious impact on women health and well-being, yet no other problem of public health has ever been so ignored and little understood up until today.⁴⁸⁴ DV consists of the establishment of control over fear in a relationship. Different forms and patterns of violence, both physical and psychological, are used or threaten to be used in

482 See in Mayerfield B., 'State Responsibility and Systemic Intimate Violence,' p.52. A very important aspect of the IC is the understanding that DV does require a 'gendered understanding of violence against women and domestic violence.' Article 18(3).

483 De Vido, *Donne, Violenza e Diritto Internazionale*. p.82 and p.151. See also Hester M., & Lilley S-J. "Preventing Violence Against Women: Article 12 of the Istanbul Convention: A collection of papers on the Council of Europe Convention on preventing and combating violence against women and domestic violence. Strasbourg: Council of Europe.", University of Bristol, 2014.

484 Ibid., p.1. See also the *Multi country study on Women's health and domestic violence against women*, published by the World Health Organization, Geneva, 2007. Last accessed 11 April 2018: <http://www.who.int/reproductivehealth/publications/violence/24159358X/en/>.

For a more European centered study see also the report on *Domestic Violence against Women* requested by the former Directorate-General for Justice, Freedom and Security conducted between February and March 2010 and published in September 2010 on the Standard Eurobarometer website: instruments established in 1974 which consist of approximately 1000 face-to-face interviews per country.

order for the perpetrator to maintain control.⁴⁸⁵ It has been made clear, in the last few decades, that to genuinely prevent VAW operational measures are no longer enough and what is needed are deeper measures to change attitudes upholding violence.⁴⁸⁶ Acts of VAW by men are the most common and dangerous form of gender-based violence for all societies worldwide. It is neither a random misfortune nor an isolated crime.⁴⁸⁷ These acts are part of a social mechanism that has allowed and tolerated discrimination for centuries. Up until today, many standards have been set, many data have been produced to document the magnitude of the problem, but it has been extremely difficult to have policies and monitor implementations accepted. However, the IC, in addition to the definition of DV as an act of GBVAW, invites parties to address the problem with binding obligations which require a multidisciplinary and intersectional approach.⁴⁸⁸

Thanks to the CoE Convention, DV has been recognized as a serious violation of fundamental human rights to which international law applies.⁴⁸⁹ The Convention fills the gap left in the past by the failure of the law to deal with the problem and introduction of States liability for the crime and non-state actor responsibility.⁴⁹⁰ In particular, the definition in gender-specific terms of DV, where gender is defined not by biological differences but conceived under predetermined social categories, constitutes a groundbreaking innovation and with its formulation, it has contributed in the codification of *soft-law* instruments at the international level.⁴⁹¹

485 In Meyersfeld B., "Reconceptualizing domestic violence in International law", p.387, DV is defined as violence including acts of 'battery, biting, burning, hacking, electrocuting, starvation, sleep deprivation, forced sexual encounters, non-consensual sexual touching, rape, forced sexual activities with third parties, poisoning, exposure, property destruction, murder, the withholding of medical care, threats of harm, threats of harm to third parties, threats of removing children, psychological abuse, financial deprivation, stalking, shouting, accusations of infidelity, isolation, and threats of suicide.'

486 Grans L., "The Istanbul Convention and the Positive Obligation to Prevent Violence," *Human Rights Law Review*, no.18, pp.133-155, 2018; p.154.

487 Meyersfeld B., "Reconceptualizing domestic violence in International law," p.371. See also Copelon R., "Intimate Terror: Understanding Domestic Violence as Torture," in *HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES* 116, 117–20 (Rebecca J. Cook ed., 1994). GBV encompasses many and different forms of violence which exploit and perpetuate the dichotomy between women and men. It assures the subordination and inferiority of women and everything that is associated with the feminine.

488 Istanbul Convention, Article 3 letter. b DV instead, is defined in the following paragraph as 'all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.' See in addition Article 18 para. 2, Article 18 para. 3 and Article 20 para. 1.

489 Meyersfeld B., "State Responsibility and Systemic Intimate Violence," p.35.

490 Ibid. p. 36. In the *Explanatory Report to the Council of Europe Convention*, Chapter 1, para. 57 reads: 'Under international law a state is responsible for the commission of an internationally wrongful act which is attributable to it, through the conduct of their agents such as the police, immigration officials and prison officers. This principle is set out in the *International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts* (2001), which are widely accepted as customary international law. Under international human rights law, the state has both negative duties and positive duties: state officials must both respect the law and refrain from the commission of internationally wrongful acts and must protect individuals from their commission by other non-state actors. Article 5, para. 1, addresses the 'state obligation to ensure that their authorities, officials, agents, institutions and other actors acting on behalf of the state refrain from acts of violence against women', whereas para.2 sets out 'Parties' obligation to exercise due diligence in relation to acts covered by the scope of this Convention perpetrated by non-state actors. In both cases, failure to do so will incur state responsibility.'

491 According to Article 3 letter. c: "gender" shall mean the socially constructed roles, behaviors, activities, and attributes that given society considers appropriate for women and men.

2.1 'DUE DILIGENCE' OBLIGATIONS

According to Article 5 para. 1 all States parties (State authorities, officials, agents, institutions and other actors acting on behalf of the State included) have legal obligations in 'refrain from engaging in any act of violence against women. Parties shall take the necessary legislative and other measures to exercise due diligence' in order 'to prevent, investigate, punish and provide reparation for acts of violence' (Article 5 para. 2). The Oxford Public International Law Dictionary defines 'due diligence' as an obligation of conduct on the part of a subject of law.⁴⁹² It imposes on states a 'best efforts obligation' meaning that they have to prevent, investigate, punish and redress the harm caused by acts of violation of fundamental human rights.⁴⁹³ GR 19, adopted by the CEDAW Committee in 1992, a due diligence obligation had already been recognized on states regarding acts of discrimination on women. According to Article 2 of the CEDAW: 'discrimination under the Convention is not restricted to action by or on behalf of Governments [...] States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.'⁴⁹⁴

Preventing measures are central elements interested in a long-term commitment to end VAW by changing attitudes and mindset in societies. VAW and DV have been recognized already in the *Preamble* as structural problems in society, the direct consequence of an ever-existed unbalance of power relations between men and women that led to the creation of stereotypes and preconceptions on one gender superiority over the other.⁴⁹⁵ Changing behaviors of men and women, boys and girls eradicating the bad influences, which have created those prejudices, gender stereotypes of gender-biased customs and

⁴⁹² Oxford Public International Law Dictionary, available online at <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1034>.

In Chapter 1 para. 58 of the *Explanatory Report to the Council of Europe Convention* we read that 'a requirement of due diligence standard has been adopted in a number of international human rights instruments, interpretation, and judgments with respect to violence against women' and these include: CEDAW Committee General Recommendation No. 19 on violence against women (1992), Article 4 of the United Nations General Assembly Declaration on the Elimination of Violence against Women (1993), the Convention on the Prevention of Violence against Women (Convention of Belém do Pará, 1994) adopted by the Organisation of American States as well as the Council of Europe Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence (2002). Furthermore, the content of Article 5 reflects the case-law of the European Court of Human Rights. In its recent case law on domestic violence, the Court has adopted the obligation of due diligence (see the judgment of *Opuz v. Turkey*, 2009). It has established that the positive obligation to protect the right to life (Article 2 ECHR) requires state authorities to display due diligence, for example by taking preventive operational measures, in protecting an individual whose life is at risk.

⁴⁹³ General Comment no.31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 29 March 2004, CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 8.

⁴⁹⁴ GR 19, Article 2.

⁴⁹⁵ Hester M., & Lilley S-J., "Preventing Violence Against Women," p.5

traditions, is the best way to stop violence perpetuation and approval.⁴⁹⁶ The UN Convention on the elimination of discrimination against women had already tried the elimination of gender stereotypes in 1979.⁴⁹⁷ Different levels of intervention are necessary to prevent VAW and DV. On a macro societal level, the objective is that of changing and restructuring the overall organization in the social order.⁴⁹⁸ The law must serve its purpose too in dealing with perpetrators and promoting women empowerment in society.⁴⁹⁹ Governmental institutions need to collaborate with each other to eradicate gender-based discrimination on the public domain (workplace) and improving the access to resources, education, and support.⁵⁰⁰ To conclude, on a micro societal level, that is the personal and family level, specific policies have to be implemented to overcome wrongful and stubborn perceptions of genders developing and increasing family and personal programs of support.⁵⁰¹

Protective measures enter into force when the sphere of preventive measures have failed from detaining incidents of violence from happening. In front of episodes of VAW or DV it is necessary to provide victims the right support and protection both from police intervention but also from specialized groups of support or other means such as shelters in a sufficient numbers and well distributed geographically (Article 22 and 23) and telephone hotlines available 24/7 with on the other side specialized person who can offer

496 De Vido, *Donne, Violenza e Diritto Internazionale*. p.151. See also Hester M., & Lilley S-J., "Preventing Violence Against Women," p. 7. See Article 12 para. 4 of the Istanbul Convention. From Article 13 to Article 17 the Istanbul Convention groups a detailed list of measures specifically though with regard of every different area of human existence where VAW could hide itself. Besides, Article 15 call for the collaboration between the information and communication technology sector and media. They both are double-edged weapon: they can portrait violence, objectification, and dominance on women, but they can also help in spreading campaigns and slogans to stop and fight them. Here follows a recent example of how social media have done their part in the spreading of awareness and in the unification of a common female front to stop abuses, violence, and discrimination on women particularly in the workplace.

Recent events have uncovered the scale of gender discrimination and exploitation of women in the media advertising industries. The #metoo movement is a very profound movement that has weaseled is way in every category of profession. The movement and its relative hashtag, has been promoted by a Hollywood actress with the aim of driving other women who like her have been suffer from men's violence to speak up and expose their perpetrator. Other examples are the #Timesup campaign always in America or #NiUnaMenos campaign in Argentina. For more information see also the report submitted by the *International Society for Research on Aggression*, published in 2012, work that support the thesis of Article 17 CoE Convention. Look at De Vido, *Donne, Violenza e Diritto Internazionale*. p. 156, note 219. Council of Europe: Recommendation CM/Rec (2013)1 of the Committee of Ministers to member States on gender equality and media, adopted on 10 July 2013 at the 1176th meeting of the Ministers' Deputies.

Online access https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c7c7e. (Last accessed 26 March 2018)

497 De Vido, *Donne, Violenza e Diritto Internazionale. La Convenzione di Istanbul del Consiglio d'Europa del 2011.*, p.151. In Article 3 para. 5 the CoE Convention states clearly that there are not exceptions of justification but that states shall monitor 'culture, customs, traditions, religion of "honor", traits/elements that cannot be used as justification for a crime punished by the same Convention. See Article 5 letter. a of the above-mentioned Convention that reads: 'To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.'

498 Hester M., & Lilley S-J., "Preventing Violence Against Women," p.10.

499 Ibid.

500 Ibid.

501 Ibid.

immediate advice and directing victims toward safety (Article 24).⁵⁰² One of the greatest achievements of the CoE Convention is to be a binding treaty that imposes hard law measures on parties. Once signed, and then ratified, parties must give effect to the convention criminalizing various forms of VAW and DV. Measures for the persecution of crimes committed that fell under the Convention are presented starting from chapter V: Substantive Law and in chapter VI: Investigation, prosecution, procedural law, and protective measures.

To effectively implement the IC, parties must introduce 'the necessary legislative measures to provide the victims with civil remedies, in accordance with the general principle of international law' against both perpetrators and State authorities (Article 29 para 1 and 2) where those measures do not exist. Offences may include: forced marriages (Article 32 and 37), psychological violence (Article 33), stalking (Article 34), physical violence (Article 35), sexual violence, including rape (Article 36), female genital mutilation (Article 38), forced abortion and forced sterilization (Article 39) and sexual harassment (Article 40).⁵⁰³ Once those offenses have found a place in the national legal systems, States must define according to Article 45 'effective, proportionate and dissuasive sanctions' which keep into account the seriousness of the crime committed and therefore the aggravating circumstances recognized by Article 46. Those aggravating circumstances, as written in the convention, 'may be taken into consideration' by the judges who are not obliged to apply them when sentencing the perpetrators.⁵⁰⁴

Among those aggravating circumstances fall DV; a crime committed against a spouse or former partner by a member of the family or a person cohabiting with her (Article 46 letter a).⁵⁰⁵ This crime also bears a particularly devastating effect on the victim if

502 The Istanbul Convention in brief, from CoE official website [https://www.coe.int/en/web/istanbul-convention/the-convention-in-brief#/" data-bbox="444 693 868 706">\[11\]. Starting from Article 18, the Convention presents general obligations for the parties invited to 'take the necessary legislative or other measures to protect all victims from any further acts of violence \[...\] in accordance with internal law, to ensure that there are appropriate mechanisms to provide for effective co-operation between all relevant state agencies \[...\] but also 'in accordance with the obligations under international law'. \(Article 18 para. 1 e 5\) Those measures have to fit specific criteria: they have to be based on a gendered understanding of the phenomenon that is punished by the Convention and be addressed specifically to the needs of the vulnerable person; the relationships between the victims, the perpetrators and the people around the parties i.e. children, social environment,... must be taken into consideration during the creation of the specific approach to use; secondary victimization must be avoided while woman empowerment have always to be taken into serious account as final objective for women victims of violence. \(Article 18 para. 3\) Easy access to an adequate information about support services and legal measures at the disposal of the victims so they can know where to get the help they need \(Article 19\). The last two article of Chapter IV, finally, set a reporting measures encouraging 'any person witness to the commission of acts of violence covered by the scope of this Convention or who has reasonable grounds to believe that such an act may be committed, or that further acts of violence are to be expected' to report the facts to competent organizations or authorities, act that will not constitute a break of the confidentiality rules imposed by internal law on some professions under appropriate conditions \(Article 27 and 28\).](https://www.coe.int/en/web/istanbul-convention/the-convention-in-brief#/)

503 Victims of one of the above crimes have the right to ask for a compensation from the perpetrator according to Article 30.

504 Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, para. 235.

505 Ibid, para. 236.

repeatedly subjected to it (Article 46 letter b).⁵⁰⁶ Emergency barring orders and restraining, or protection order are set for victims and perpetrators (Article 52 and 53). The most effective way of dealing with domestic violence victims is by achieving a physical distance between the victim and the perpetrator.⁵⁰⁷

The entire CoE Convention and its policies lay their foundations on the premise that cooperation must be used to deal with VAW and DV. The IC asks States to implement a coordinated cooperation that involves government agencies, NGOs as well as national, regional, and local parliaments and authorities.⁵⁰⁸ All relevant agencies and institutions at all levels of government must cooperate to prevent, combat, and punish the crimes of VAW and DV. The IC possess a completely innovative approach to the problem as in addition to addressing governments and non-governmental institutions and agencies, it also speaks to the society. Men and women, boys and girls, must learn that any forms of violence is either a possible or effective answer to solve problems or difficulties and that it is no longer tolerated.

2.2 THE GROUP OF EXPERTS ON ACTION AGAINST VAW AND DV (GREVIO)

Institutions do not make people, but people made the institutions and give them purposes and directions to where address their conducts.⁵⁰⁹ However, it is not an easy task to make people feel accountable for the actions fulfill by these institutions. To encourage a change in people mind sent and culture we still need to raise awareness on different fronts and to safeguard the implementation of policies always more imbrued on the guarantee of women and men equality.

The provisions that ensure the effective implementation of the IC are explained in chapter IX. According to Article 66, *The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)* 'shall monitor the implementation of the Convention by

⁵⁰⁶ Ibid., para. 237.

⁵⁰⁷ Ibid., para. 264.

⁵⁰⁸ Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Chapter II, Integrated policies, and data collection; Chapter VIII, International Cooperation.

⁵⁰⁹ Lanzoni S., "Il Percorso dei Diritti Umani e delle Istituzioni per il contrasto alla violenza sulle donne a livello internazionale e regionale", p.105.

the Parties'.⁵¹⁰ As an Independent Human Rights Monitoring Body,⁵¹¹ in accordance with the Committee of the Parties,⁵¹² it shall conduct country-by-country evaluations (evaluation procedure), initiate inquiries within parties to the IC (inquiry procedure) and publishes evaluation reports where GR on themes and concept of the CoE Convention are suggested.⁵¹³ It is composed of 10 members, independent and impartial experts appointed based on their recognized expertise in the fields of human rights, gender equality, and violence against women.⁵¹⁴ The first group was elected in May 2015 after the adoption of the Resolution CM/Res (2014)43 in November 2014.⁵¹⁵ The experts held their first meeting on September 2015 in Strasburg when *Rules of Procedure* were adopted and the election of the President and Vice President took place.⁵¹⁶ In March 2016, during the 5th meeting of the group, GREVIO adopted *The Questionnaire on legislative and other measures* giving effect to the Convention, used by the parties to prepare their report, as requested by Article 68 para. 1, on the legislative and other measures adopted to implement the IC.⁵¹⁷ Since GREVIO country-monitoring work has started in September 2015, 10 States have undergone the baseline evaluation procedure that has covered the IC in its entirety assessing states' level of compliance i.e. Albania, Austria, Denmark, Finland, France, Monaco, Montenegro, Portugal, Sweden, and Turkey.⁵¹⁸ During these evaluation, states are asked to deliver data relating to what that state is doing as regards to the measure provided by the IC to cover all form of VAW as written in Article 2 para. 1 of the same Convention. Those data are carefully analyzed by the GREVIO and on the

510 At the time of writing 32 (of the overall 47 of the CoE) have ratified the convention. See also note 4. Chart of ratification available online at https://www.coe.int/it/web/conventions/full-list/-/conventions/treaty/210/signatures?p_auth=Xmnh60jc. (Last accessed 18 June 2018)

511 According to Article 66 it is composed of qualified experts in the fields of human rights, gender equality VAW and domestic violence, criminal law and in assistance and protection of victims.

512 According to Article 67 it is a political body composed of the representatives of the Parties to the Convention.

513 De Vido, Donne, *Violenza e Diritto Internazionale*, p.84. Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, para. 337.

514 On the 24 May 2018 5 additional members have been added to the already existing group according to Resolution CM/Res(2014)43 on rules on the Election procedure of the members of the GREVIO. Their mandate will start on 1 September 2018. Article available online at: <https://www.coe.int/en/web/istanbul-convention/-/five-additional-members-joining-grevio>. (Last accessed 25 May 2018)

515 Resolution CM/Res (2014)43 on rules of the election procedure of the members of the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) in November 2014.

516 Rules of Procedure adopted by GREVIO at its 1st meeting in Strasburg, 21-23 September 2015 and amended by GREVIO at its 9th meeting in Strasburg, 14-17 February 2017.

517 Ibid.

518 The 14th meeting of the GREVIO will take place in Brussels between June 25 and June 27, 2018. During the meeting the group will adopt the final versions of the reports on Montenegro and Turkey and it will approve the preliminary report by Portugal and Sweden on measures giving effect to the provisions of the Council of Europe Convention. In addition, State reports of Italy, the Netherlands and Serbia are expected on June 2018 (Italy), July 2018 (the Netherlands) and 2 July 2018 (Serbia). Country Monitoring Work available online at <https://www.coe.int/en/web/istanbul-convention/country-monitoring-work>. (Last accessed 14 June 2018)

absence of data; the group will draw considerations as lack of interest of that State towards certain issues.

Although as monitoring body GREVIO cannot produce binding acts for the parties but only General Recommendation (Article 69), it has been far recognized that since its foundation it has highly helped on a country-by-country basis to the evaluation, awareness raising and gathering of information proving to be an effective mechanism to guarantee the respect under the treaty obligations.⁵¹⁹

2.3 CASE STUDY: *Elisaveta Talpis versus Italy* (2017)

As mentioned in the previous paragraph, under the IC, States parties have positive obligations to prevent, punish and prosecute any acts of VAW and DV. Here follows an example of a very recent judgment handed in March 2017 by ECtHR against Italy. Italian authorities were accused of having failed in the protection of the applicant, Mrs. Elisaveta Talpis, and her children since they did not take prompt actions on the applicant complaint concerning acts of DV perpetrated by the husband, Mr. A. T. This case study represents a momentous in the history of women's rights protection for Europe. It cast a light on the pioneering legislation introduced in recent years to eradicate DV using a very specific approach. Particularly important for my thesis is the fact that to conduct the investigations, the ECtHR used the IC as a key instrument of interpretation of the violated Articles of the ECHR.⁵²⁰ The Court was aware of the profound impact of the IC. In its *Preamble*, it is stated that any act of DV must be considered and concrete measures to counter VAW and DV must be adopted. Moreover, according to Article 49 and 50, the parties shall implement the necessary legislation to conduct proceedings of investigation for all forms of violence without delay and they shall offer an adequate protection to the victims.⁵²¹ Italy was thus found in violation of three specific articles declared in the

519 De Vido, *Donne, Violenza e Diritto Internazionale*, p.85.

520 Italy has signed the Istanbul Convention in September 2013 and it entered into force in August 2014. Therefore, Italy is due to comply with the obligations set by the latter ('due diligence standard') as with the binding articles set forward by the European Convention of Human Rights which Italy signed in November 1950 and entered into force in October 1955.

521 De Vido S., "States' Positive Obligations to Eradicate Domestic Violence: The Politics of Relevance in the Interpretation of the European Convention on Human Rights," 6:6 ESIL Reflection (2017), p.7.

ECHR⁵²² The latter, also known as the *Convention for the Protection of Human Rights and Fundamental Freedoms*, was signed in Rome on 4 November 1950 and it entered into force in 1953. It was the first binding instrument of international law that gave effect to certain rights stated in the UDHR two years before.

The sentence concerned a national case of GBAW. It involved several episodes of DV against a Romanian woman residing in Italy and her two children committed by a violent and alcoholic husband.⁵²³ After the first two episodes of violent behaviors occurred in June and August 2012, Mrs. Talpis reported the events to Italian authorities and lodged a complaint about bodily harm, ill-treatments, and threats of violence. Only seven months later, in April 2013, did the Italian police question the applicant for the first time. At the time of the interrogation, though, Mrs. Talpis, who was back living with her husband, mitigate her previous allegations. When the third and final episode of violence in November 2013 resulted in the death of the applicant's son and in the attempt of murdering the applicant herself, Elisaveta Talpis, finally, filed a complaint to the ECtHR in which she accused the Italian police of having failed in her protection and in the protection of her deceased son. For the accusations against the Italian police, Mrs. Talpis relied on the violation of Article 2 on the right to life, Article 3 on the prohibition of inhuman or degradation treatment and Article 8 on the right to respect the private and family life, articles which are part of the ECHR. She also relied on Article 14, read in conjunction with Article 2 and 3, on the prohibition of discrimination. She complained that her being a woman caused inactions on the side of the Italian authorities.⁵²⁴

According to the final sentence, Italy was guilty of repeatedly failing in estimate the seriousness of the violence in question and, as consequence, for having failed in the protection of the victims. It was found at fault, by a majority of six votes to one, for the violation of three articles of the ECHR. In particular, Italy infringed Article 2 on the right to life for failing to protect the lives of the applicant and that of her son;⁵²⁵ Article 3 on

522 De Vido S., "States' Positive Obligations to Eradicate Domestic Violence: The Politics of Relevance in the Interpretation of the European Convention on Human Rights," p. 5.

523 "Italian authorities failed to protect a mother and son because they did not take prompt action on complaint concerning conjugal violence," Press Release issued by the Registrar of the ECHR, ECHR 075(2017), 02 March 2017. Document available in pdf. (English and French) at <http://hudoc.echr.coe.int/eng-press?i=003-5644174-7145931>.

524 From the official document ECHR 075 (2017) 'Italian Authorities Failed to protect a mother and son because they did not take prompt action on a complaint concerning conjugal violence', published by the ECtHR Press Released Office to be found on <https://www.echr.coe.int/Pages/home.aspx?p=home>. (Last accessed 31 May 2018)

525 To this article, the Court applied the 'Osman Test': 'The positive obligation to protect the right to life requires that the authorities "knew or ought to have known at the time of the existence of a real and immediate risk to life"'. For a complete discourse on the Osman Test see *Osman v. United Kingdom*, para. 116. In addition

the prohibition of inhuman and degradation treatments for failing to protect the applicant against episodes of DV perpetrated by her husband; and, finally, Article 14 on the prohibition of non-discrimination in conjunction with Article 2 and 3 of the Convention for failing to protect Mrs. Talpis from DV breaching her right to an equal protection.⁵²⁶ The ECtHR also sentenced the convicted to life imprisonment for murdering his son, attempting to murder his wife, for carrying a prohibited weapon and for ill-treating Mrs. Talpis and her daughter for years.

The judgment demonstrates how the ECtHR has interpreted the application of some principles of the ECHR, using the IC as 'relevant rules of international law'. According to Article 31 (under Section 3 on 'General Rule of interpretation') of the *Vienna Convention on the Law of the Treaties* (VCLT): 'The Context for the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: Any relevant rules of international law applicable in the relations between the parties.' The CoE Convention has since then acquired importance as 'key instrument' of interpretation for positive legal obligations on States that derive from articles of the European Convention referring to the Preamble and some relevant article of the IC to underline the need of imposing stricter rules of 'due-diligence' on States to eradicate VAW and DV.⁵²⁷

With the Talpis judgment, it has been demonstrated that States can be held responsible for the violation of the articles in the ECHR if they do not adopt measures or they do not intervene promptly to prevent or solve episodes of DV. The case is the living proof of how European Law regarding GBVAW, particularly DV for the analyzed case, has evolved in recent times. The judgment made by the ECtHR has confirmed the existence of 'due-diligence' obligations for States and it has identified DV as an existing social problem for which States parties bear a legal obligation in preventing and combating it.

see the revised 'Osman Test' introduced by Judge De Albuquerque in *Valiulienė v. Lithuania*. See De Vido S., "States' Positive Obligations to Eradicate Domestic Violence," p.4.

⁵²⁶ *Ibid.*, p.3. From the *Talpis v. Italy* sentence; §145 'Selon la Cour, la combinaison des éléments susmentionnés, montre que, en sous-estimant, par leur inertie, la gravité des violences litigieuses, les autorités italiennes les ont en substance cautionnées. La requérante a par conséquent été victime, en tant que femme, d'une discrimination contraire à l'Article 14 de la Convention'.

⁵²⁷ De Vido S., "States' Positive Obligations to Eradicate Domestic Violence," p.10.

3. CONCLUSION

The IC represents a great step forward in the long-lasting struggle against VAW and DV on both the international and regional legal systems. Since its introduction, DV has been provided with a first specific definition as a manifestation of VAW, that is GBV particularly affecting women.⁵²⁸ Thanks to the IC many states have become conscious of the severe problem that VAW and DV represent for our contemporary society. It has brought many changes both in the regional and international legal systems and particularly in societies' culture. It has raised awareness among people to prevent and fight against VAW with 'gender-specific' measures thought to ponder those specific arrays at the core of VAW and DV. Furthermore, it has formally recognized the existing link between women's inequalities and suffering from men's violence. This recognition has served as a precious reminder of what society has failed to change in the past, but it is also a symbol of the renovated will to call into question traditional mores and actions that lay their basis on a stereotyped and patriarchal vision of gendered roles in society. Protection of women's rights and safety it is a constant work in progress being women the gender that has always been considered 'weak' and the first to bear the consequences of historical changes.

⁵²⁸ Article 2 para. 1 of the Istanbul Convention reads: 'This Convention should apply to all forms of violence against women, including domestic violence, which affects women disproportionately.'. One of the most progressive definition of 'domestic violence' was given in 1998 by the South African Domestic Violence Act (The Act). See Domestic Violence Act no. 116 of 1998, 1998 SA CRIMINAL LAW 116 (BSRSA, LEXIS through June 2003 update). In section one domestic violence is defined as: (a) physical abuse; (b) sexual abuse; (c) emotional, verbal and psychological abuse; (d) economic abuse; (e) intimidation; (f) harassment; (g) stalking; (h) damage to property; (i) entry into the complainant's residence without consent, where the parties do not share the same residence; or (j) any other controlling or abusive behavior towards a complainant, where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant.

*Scream so that one day 100 years from now another sister will not have to dry tears
wondering where in history she lost her voice.*

-Jasmine Kaur-

GENERAL CONCLUSIONS

When I first started to write the present dissertation, I was aware, to a small extent, of what VAW in its many aspects and forms has represented for women and for society in its entirety. Throughout my researches and thanks to the many inspirational voices heard throughout books, articles, and essays, I have realized how important is for us women today to pursuing in what our predecessors have done in the past and unite our voices to the chorus to foster and affirm women lives, rights, equality, and freedom from violence. In this thesis I have argued that violence, in its general connotation, has always existed and has constantly characterized 'inter-Statal' relations and, only in a later stage, interpersonal relations. As structural concept used by societies to revendicate power and mobilize players in many different circumstances, I have further analyzed it in the framework of the individual dimension introduced alongside the international humanitarian law system. The latter discipline has highly contributed to the introduction of an innovative approach to address VAW, starting to look at crimes with the so-called 'lens of gender-crime.'⁵²⁹ GBVAW is a pervasive human rights violation that has a disparate impact on women and girls worldwide.⁵³⁰ In the past, GBV was considered an inevitable product of war rather than a crime to be prosecuted. Today, it is considered a severe violation of international law and of human rights.⁵³¹

Only after the 20th century and the end of the Second World War, which permanently signed mind-sets in society, were women recognized as a special category in need of clear protection (women to be intended as general category without distinctions of race, ethnicity, religion, class, wealth, familial status, education, sexuality, age, or geographic location). Indeed, since the origin of the patriarchal structure of society, they have been suffering from acts of GBV, especially by the hand of current or former partners or spouses that have caused physical, sexual, or psychological harm.⁵³²

⁵²⁹ See in Chapter 1, note 19.

⁵³⁰ From the UN Women's animated web feature, *Justice now: Ending impunity for sexual and gender-based violence as international crimes*, nominated for the Webby Award under the Law category for Websites. In collaboration with the Justice Rapid Response. Article available at <http://interactive.unwomen.org/multimedia/infostory/justicenow/en/index.html>. (Last accessed 07 June 2018).

⁵³¹ Ibid.

⁵³² From the UN Women's animated web infographic, *Violence against women: Facts everyone should know*, named as honoree under the 'Activism category for website.' Available at <http://interactive.unwomen.org/multimedia/infographic/violenceagainstwomen/en/index.html#intimate-3>. (Last accessed 07 June 2018).

IPV is the most ordinary form of violence experienced by women and girls.⁵³³ Giving a brief account on the controversial debate on gender and sex dichotomies, borrowing some discourses from Simone de Beauvoir, Judith Butler and Luce Irigaray, I concluded that gender is a constructed concept that has allowed cultural practices often resulting in women objectification, discrimination, and oppression. These acts of violence respond to a pattern specific to the female gender, the gender that has long struggled to be recognized equal to the male one and worthy of the same rights. In many countries, for centuries, men have monopolized national and international institutions questioning the universality and objectivity of international, national, and regional legal systems.⁵³⁴ Women were only visible in very limited contexts on the public sphere because relegated in what was considered their place for nature, the domestic sphere as the 'Angels of the House.'

From the last decades of the 1990s, though, we have witnessed a rapid development and significant changes in international and regional legal systems.⁵³⁵ Women started to own their own narratives and on the wake of the feminist movement, they have exposed that society responsible for their sufferings. Starting from a limited discourse in the context of the feminist movement, women have deconstructed what had been perceived for centuries as the 'natural structure of society' influencing also juridical discourses. Throughout history, women have given society extraordinary contributions. Some are well known, some less but all have been trailblazers.⁵³⁶ I strongly believe that feminists, activists, and intellectuals with their works and theories have given birth to a very extensive literature on how culture, and not nature, have always shaped societies waving different culture plots from men's perspectives. They have broken gender barriers which have kept women silenced in a male-oriented world. Mary Wollstonecraft, John S. Mill, Harriet Taylor, and Jane Addams are some among millions of men and women that must be credited for having moved the law toward the recognition of women's rights and GBV as crimes against fundamental human rights. Angela Carter, Margaret Atwood and Susan Glaspell in their storytelling about domestic abuses as acts of violence with roots in a general sexist and male-bias culture, a structural aspect of contemporary societies; about

533 Ibid. Worldwide 1 in 3 women have experienced physical or sexual violence- mostly by intimate partner and 1 in 2 women were killed by partners or family in 2012. See the 'Global and Regional estimates of Violence Against Women', WHO, 2013, Global Study on Homicide, UNODOC, 2013.

534 Charlesworth H., Chinkin C., *The boundaries of International Law. A feminist analysis.*, p.308.

535 Ibid.

536 From the UN Women's timeline, Women's Footprint in History, Webby Award Recipient in the Activist Category in 2017. Available at <http://interactive.unwomen.org/multimedia/timeline/womensfootprintinhistory/en/index.html#front1>. (Last accessed 07 June 2018).

female subordination, the female gender that has always been judged inferior and weak; and about a justice system that has never looked at women as equal with men, have unveiled the curtains of mores and beliefs which has rendered men's VAW a constant pattern in every society to assert their control over 'the other' sex. This search into the origins of VAW, started by the feminist movement and carried on by men and women active in the field, has brought knowledge about dynamics which have characterized acts of violence and an insight on men's strategies detecting a constant pattern of domination, control, and denial for women's freedom and autonomy. This knowledge has, as consequence, increased women, and public opinion rebellion against it mobilizing also public institutions and authorities.

Historically, only two specific manifestations of VAW have been criminalized: mass rape as war crime or crime against humanity and female genital mutilation has a human right violation. Still, a third and most canceled form has always existed but for centuries has remained hidden behind a curtain of norms dictated by the patriarchy i.e. DV. Women and men's international mobilization has resulted in a pathway that recently has evolved into groundbreaking Conventions and General Recommendations on the international and regional levels. It was only in 1993 that with the *Vienna Conference on Human Rights* VAW was finally recognized as a violation of fundamental women's rights and DV was regarded as a violence inherent in cultural practices. However, of importance for the scope of my work has been the IC, the most recent, comprehensive, and multilateral regional binding treaty to prevent and combat VAW and DV. Outcome of a protracted process of raising awareness and initiatives undertaken since the 1990s on the lead of the UN first and by regional systems after, the IC embraces years of contribution on the side of feminists and intellectuals that have tried with their voices to modify the patriarchal cultural set responsible since the beginning for the existence of the great plights that VAW and DV represent. To grasp the innovative set of principles that the IC has introduced I have contextualized it inside a broader panorama of actions introducing those that I valued as the more relevant.

What makes the IC the primary regulatory source in the field of legally binding instruments to address VAW and DV are the specific definitions introduced about VAW, DV, gender (Article 3) and the due-diligence obligations on States parties (Article 5) to prevent, investigate, punish, and provide reparation for the acts covered by the

Convention. The monitoring mechanism further contributes to the implementation of the treaty.⁵³⁷

Recalling the basic principles of international humanitarian law, recognizing that equality between men and women is a key element in the prevention of violence and that this same violence is nothing but a manifestation of historically unequal power relations between male and female gender, the IC has created positive obligations on States parties to directly address violence as a structural problem inherent in society. Thus, VAW and DV are mechanisms recognized as GBV enforced to relegate women to a subordinate position in society compared with men.⁵³⁸

What has been acknowledged by the IC has functioned as a precious reminder of what society has long failed to do about culture and traditions but also as the epitome for adjustments that are gradually investing our contemporary legislation and jurisprudence.

Despite the huge extent that still today sees VAW and DV affecting millions of women all around the world, States and IOs have started to be more attentive to the problem, at last, considered of public concern. Defining separately VAW and DV, the IC constitutes the validation of a great process of development carried on by the international legal system. We are living in an unprecedented and consciousness awakening momentum where women's rights, equality and freedom from violence have been placed at the center of the global and regional attention. With the adoption in 2015 of the SDGs, the appearance of the #MeToo international movement against sexual harassment and assault with its related campaigns on ending any form of VAW and girls, the outcomes have never been so within the reach.⁵³⁹ Only in the first six months of 2018 four more States have ratified the IC proving that our society is always more dedicated in engaging men and women to promote gender equality and end of VAW or DV.⁵⁴⁰ Due to its 'tender age', we are not able to perceive the real extent of the new convention yet. However, the courage of millions of women and men united in commitments have been catalysts for an ongoing

537 GREVIO, Articles in Chapter IX of the IC.

538 From the Preamble of the IC.

539 Between April 25 and April 26, 2018 in Ottawa, Canada, the Gender Equality Advisory Council for Canada's G7 Presidency met to discuss how to promote the G7 agenda and how to support leaders in the G7 countries (Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States) to ensure gender equality and gender-based analysis to be integrated across all themes, activities, and outcomes. More information available at <https://g7.gc.ca/en/g7-presidency/gender-equality-advisory-council/>. (Last accessed 18 June 2018)

540 The Former Yugoslav Republic of Macedonia 23/03/2018; Iceland 26/04/2018; Croatia 12/06/2018 and Greece 18/06/2018). Available online at <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures?desktop=true>. (Last accessed 18 June 2018)

deconstruction of patriarchy and gender inequality. As history teaches us, a mere piece of legislation is useless unless beliefs inherent in culture and traditions are concretely overcome in people's minds.

There is no gate, no lock, no bolt that you can set upon the freedom of my mind.

-Virginia Woolf-

BIBLIOGRAPHY CHAPTER I

BOOKS AND ARTICLES

Arendt H., *On Violence*, Harcourt Brace Jovanovich, Publishers, Orlando, Florida, 1979.

Bachofen J. J., *Mother Right: an investigation of the religious and juridical character of matriarchy in the Ancient World*, 1861.

Beauvoir S., *Le Deuxième Sexe*, Librairie Gallimard, France, 1949.

Belotti G. E., *Dalla parte delle Donne.*, Universale Economia Feltrinelli, Milano, 1990 (nona edizione).

Bourdieu P., *Masculine Dominance*, Stanford University Press, translated by Nice R., California, 2001.

Butler J., *Undoing Gender*, New York, and London: Routledge, 2004.

Butler J., "Sex and Gender in Simone De Beauvoir's Second Sex." *Yale French Studies*, no. 72, 1986, pp. 35-49. *JSTOR*, www.jstor.org/stable/2930225.

Brownmiller S., *Against our will. Men, Women and Rape*, Fawcett Book, New York 1993.

Candiotta L., "Il dualismo strutturale e la natura-cultura della violenza contro le donne. Una lettura filosofica del preambolo alla convenzione di Istanbul", in *Home-Made Violence*, De Vido S., Candiotta L., (a cura di), Mimesis, Milano, 2016, pp. 89-103.

Cameron D., "St-i-i-i-Ll Going... The Quest for Jack the Ripper." *Social Text*, no. 40, 1994, pp. 147-154, *JSTOR*, www.jstor.org/stable/466799.

Cameron D., "That's Entertainment?: Jack the Ripper and the Selling of Sexual Violence", in *Femicide. The Politics of Women Killing*, Radford J., Russell D., (edited by), Twayne Publishers, New York, 1992, pp. 184-188.

Cassese A., *International Law in a Divided World*, Clarendon Press, Oxford, 1986.

Charlesworth H., Chinkin C., *The boundaries of International Law. A feminist analysis*, Manchester University Press, Manchester, 2000.

Chinkin C., "Violence against Women: The international Legal response," in *Gender and Development*, Vol. 3, No. 2, 1995.

Clark A., *The Struggle for the Breeches. Gender and the Making of the British Working Class.*, University California Press, London, 1995.

Cobbe F., "Wife Torture in England," in *Femicide. The Politics of Women Killing*, Radford J., Russell D., (edited by), Twayne Publishers, New York, 1992.

Cobbe P. F., "Wife-torture in England," in *The Contemporary Review*, 32, April 1878.

Collier, J. P., "The Tragical Comedy, or Comical Tragedy, of Punch and Judy.," *New England Review* (1990), vol. 21, no. 4, 2000, pp. 191–215, JSTOR, www.jstor.org/stable/40243936.

Confortini C., "Galtung, and Gender: The Case for a Peace Studies/Feminism Alliance," *Peace & Change*, Vol. 31, No. 3, 2006.

Copelon R., "Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law," paper from a panel on "War Crimes, Crimes against Humanity, Genocide" at the international conference *Hate, Genocide and Human Rights Fifty Years Later: What Have We Learned?* McGill Law Journal, 2000.

Copelon R., "Intimate Terror: Understanding Domestic Violence as Torture," in *HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES* 116, 117–20 (Rebecca J. Cook ed., 1994).

Coppélia K., "'The Taming of the Shrew': Shakespeare's Mirror of Marriage." in *Modern Language Studies*, vol. 5, no. 1, 1975, pp. 88–102., JSTOR, www.jstor.org/stable/3194204.

Crone R., "Mr and Mrs Punch in nineteenth-century England," *The Historical Journal*, N. 49, Cambridge University Press, 2006.

Crone R., *Violent Victorians: Popular Entertainment in Nineteenth-Century London*, Manchester University Press, 2012.

Cutazzo M., "I Diritti Umani delle donne", in *Studi sui Diritti Umani*, de Bellis S. (a cura di), Cacucci Editore, Bari, 2010.

De Vido S., *Donne, Violenza e Diritto Internazionale. La Convenzione di Istanbul del Consiglio d'Europa del 2011*, Mimesis, Milano, 2016.

Ehrenreich B., "Feminism and International Law: An Opportunity for Transformation", *Yale Journal of Law & Feminism*: Vol. 14: Iss. 2, Article 14, 2002. Available online at <http://digitalcommons.law.yale.edu/yjlf/vol14/iss2/14>.

Fox V., "Historical perspectives on violence against women," *Journal of International Women's Studies* 4:1, 2002

Galtung J., "Violence, Peace and peace research," *Journal of peace research*, 1969.

Hamilton. S., "Making History with Frances Power Cobbe: Victorian Feminism, Domestic Violence, and the Language of Imperialism," *Victorian Studies*, vol. 43, no. 3, 2001, pp. 437–460. JSTOR, www.jstor.org/stable/3829700.

Haase D., "Feminist Fairy-Tale Scholarship: A Critical Survey and Bibliography," *Marvels & Tales*, vol. 14, no. 1, 2000, pp. 15–63. *JSTOR*, www.jstor.org/stable/41380741.

Hester M., "The Witch-craze in Sixteenth-and Seventeenth-Century England as Social Control of Women," in *Femicide. The Politics of Women Killing*, Radford J., Russell D., (edited by), Twayne Publishers, New York, 1992.

Irigaray L., *An Ethics of Sexual Difference*, trans. by Carolyn Burke and Gillian C. Gill, Cornell University Press, Ithaca, 1993.

Irigaray L., *Speculum of the Other Women*, trans. by Gillian C. Gill, Columbia University Press, New York, 1993.

Lieberman, M. R. "‘Some Day My Prince Will Come’: Female Acculturation through the Fairy Tale," *College English*, vol. 34, no. 3, 1972, pp. 383–395, *JSTOR*, www.jstor.org/stable/375142.

MacKinnon C., *Feminism Unmodified. Discourse on Life and Law*, Harvard University Press, 1987.

Meyersfield B., "Reconceptualizing domestic violence in International law," *Albany Law Review*, Vol.67, pp. 371-426, 2004.

Millet K., *Sexual Politics*, New York: Doubleday, 1970, pp.44-45.

Mura L., "I Diritti delle donne e la tutela della diversità nel diritto internazionale", in *Rivista Internazionale dei Diritti dell’Uomo*, 2000.

Taylor A., "Feminism, Social Science, and the Meanings of Modernity: The Debate on the Origin of the Family in Europe and the United States, 1860-1914," *The American Historical Review*, vol. 104, no. 4, 1999, pp. 1085–1113. *JSTOR*, www.jstor.org/stable/2649562.

Otto D., "International Human Rights Law: Towards Rethinking Sex/Gender Dualism and Asymmetry," forthcoming in Davies M., Munro V., (eds) *A Research Companion to Feminist Legal Theory*, Ashgate, 2013.

Jackman R. M., "Violence in Social Life," *Annual Review of Sociology*, Vol.28, pp. 387- 415, August 2002.

Radford J., Russell D., (edited by), *Femicide. The Politics of Women Killing*, Twayne Publishers, New York, 1992.

Ray, "What is violence," in *SAGE Publications Ltd*, 2010.

Scott W. J., "Useful Category of Historical Analysis," *American History Review*, Vol.91, No. 5, pp.1053-1075, 1986.

Speaight G., "The Origin of Punch and Judy: A New Clue?" in *Theatre Research International*, Vol.20 No. 3, pp.220-206, downloaded from the Cambridge Journals. Available online at <http://journals.cambridge.org/TRI>.

Stanko E., "The day to count: reflections on a methodology to raise awareness about the impact of domestic violence in the UK," *Criminology, Criminal Justice*, Vol. 1, Issue 2, pp.215-226, 2001.

Taylor A., "Feminism, Social Science, and the Meanings of Modernity: The Debate on the Origin of the Family in Europe and the United States, 1860-1914." *The American Historical Review*, vol. 104, no. 4, 1999, pp. 1085–1113. *JSTOR*, www.jstor.org/stable/2649562.

Tosi L., *La Fiaba Letteraria Inglese. Metamorfosi di un genere*, Marsilio Editori, Venezia, 2007.

Walby S., "Violence and society: Introduction to an emerging field of sociology," in *Current Sociology*, Vol. 61, Issue 2, pp.95-111, First Published 25 September 2012. Available online at <https://doi.org/10.1177/0011392112456478>.

Walkowitz J. R., "Jack the Ripper and the Myth of Male Violence." *Feminist Studies*, vol. 8, no. 3, 1982, pp. 543–574, *JSTOR*, www.jstor.org/stable/3177712.

Wallerstein I., *The World-System Analysis. An Introduction*, a John Hope Franklin Center Book, Durham, 2004.

Weber M., *Politics as a Vocation*, Oxford University Press, New York, 1946.

Werlhof C., *Nell'età del boomerang. Contributi alla Teoria del patriarcato*, Edizioni Unicopli, Bianchi B., Bongiovanni B., Procacci G. (a cura di), Milano, 2014.

Wolf N., *The Beauty Myth. How Images of Beauty Are Used Against Women*, Chatto & Windus Ltd, Vintage edition, 1991.

Yarberry W., "Narratives of patriarchy: fairy tale heroine role models in two animated films", *master's Thesis*, San Jose State University, 1996, no. 1411. Available online at http://scholarworks.sjsu.edu/etd_theses/1411.

Zipes J., *Don't Bet on the Prince. Contemporary Feminist Fairy Tales in North America and England*, New York Routledge, 1987.

Zipes J., *Fairytales, and the Art of Subversion. The Classical Genre for Children and the Process of Civilization*, (sec. ed.), New York Routledge, 2006.

INTERNATIONAL LAW TREATIES AND JURISPRUDENCE (*chronological order*)

Convention (IV) for the Protection of Civilian Persons in Time of War, 1949.

International Covenant on Civil and Political Rights, (ICCPR), 1966.

International Covenant on Economic, Social and Cultural Rights, (ICESCR), 1966.

Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), 1979.
Committee on Economic, Social and Cultural Rights, General Comment no. 11, 1999.

UNITED NATIONS

A/RES/48/104, Declaration on the Elimination of Violence against Women, 20 December 1993.
EDAW Committee, General Recommendation no.19, (GR19), A/47/38, 1992.
EDAW Committee, General Recommendation no.35, (GR35), CEDAW/C/CG/35, 2017.

COUNCIL OF EUROPE

Council of Europe Convention on preventing and combating violence against women and domestic violence, (Istanbul Convention), 2011.

Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Council of Europe Treaty Series no.210, Istanbul, 2011.

WEBSITES

Forms of violence against women, Article on the UN Women website available at <http://www.endvawnow.org/en/articles/296-forms-of-violence-against-women-html>.

Chinkin C., “CEDAW General Recommendation 35 on violence against women is a significant step forward”, in LSE blog, Centre for Women Peace Security, 6 September 2017. Available online at <http://blogs.lse.ac.uk/wps/2017/09/06/cedaw-general-recommendation-35-on-violence-against-women-is-a-significant-step-forward/>.

European Union Agency for Fundamental Rights, *Violence Against women: an EU-Wide Survey*, 2014. Available online at <http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report>.

In-depth study on all forms of violence against women, Report of the Secretary-General, prepared by the Division for the Advancement of Women of the Department of Economic and Social Affairs of the United Nations Secretariat, A/61/122/Add. 1, para. 69. Available online at <http://www.un.org/womenwatch/daw/vaw/violenceagainstwomenstudydoc.pdf>.

World Health Organization, *Violence Against Women in situations of armed conflicts and displacement*, 1997. Available online at <http://www.who.int/gender/violence/v7.pdf>.

UNICEF published *The State of the World's Children*, Oxford University Press. Available online at <https://www.unicef.org/sowc/archive/ENGLISH/The%20State%20of%20the%20World%27s%20Children%201998.pdf>.

BIBLIOGRAPHY CHAPTER II

BOOKS AND ARTICLES

Addams J., "The Devil-Baby at Hull-House", in *The Atlantic*, October 1916. Available online at <https://www.theatlantic.com/magazine/archive/1916/10/the-devil-baby-at-hull-house/305428/>. (Last accessed 5 February 2018)

Atwood M., *The Handmaid's Tale*, Vintage Books, London, 2010.

Atwood M., "Margaret Atwood on what 'The Handmaid's Tale' means in the Age of Trump," *The New York Times*, March 2017.

Ben-Zvi L., "'Murder, She Wrote': The Genesis of Susan Glaspell's *Trifles*," in *Susan Glaspell: Essays on Her Theater and Fiction*, Linda Ben-Zvi, ed., Ann Arbor, MI: University of Michigan Press, pp.19-47, 1992.

Bianchi B., "La violenza domestica nella riflessione femminista (1833-1917)", *Home-Made Violence*, Candiottio L., De Vido S., Mimesis, Milano, 2016, pp.17-34, 2016.

Bianchi B., (a cura di), "Percosse o Torture? Frances Power Cobbe sulla violenza domestica (1878)", in *DEP* no.16, 2011 pp.98-110.

Carter A., *The Bloody Chamber and Other Stories*, Penguin Books (USA), 1993.

Charlesworth H., Chinkin C., *The boundaries of international law. A Feminist analysis*, Manchester University Press, Manchester, 2000.

Clark A., *The Struggle for the Breeches. Gender and the Making of the British Working Class.*, University California Press, London, 1995.

Cobbe F. P., "Wife Torture in England," in the *Contemporary Review*, April 1878.

Crenshaw K., "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics," *University of Chicago Legal Forum*: Vol. 1989, Article 8, <https://chicagounbound.uchicago.edu/uclf/vol1989/iss1/8>.

Crenshaw K., "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color." *Stanford Law Review*, vol. 43, no. 6, 1991, pp. 1241-1299. *JSTOR*, www.jstor.org/stable/1229039.

De Vido S., *Donne, Violenza e Diritto Internazionale. La Convenzione di Istanbul del Consiglio d'Europa del 2011.*, Mimesis, N.1, Milano, 2016.

Eaubonne F., *Le féminisme ou la mort.*, P. Oray Editor, Paris, 1974.

Friedan B., *The Feminine Mystique*, W. W. Norton and Co, New York, 1963.

Gilligan C., *In a Different Voice: Psychological Theory and Women's Development*, Harvard University Press, Cambridge, Ma, 1982.

Glaspell S., "A Jury of Her Peers," in *Every Week*, The Crowell Publishing Company, 1917.

Hirschman L., *Bronte, Bloom, and Bork: An Essay on the Moral Education of Judges*, 137 U. Pa. L. Rev. 177, 1988. Available online at <http://scholarship.law.upenn.edu/penn-law-review/vol137/iss1/4>.

Hoffman J., *Gender and Sovereignty. Feminism, the State and International Relations*, Palgrave Macmillan, New York, 2001.

Kamir O., "To Kill a Songbird: A Community of Women, Feminist Jurisprudence, Conscientious Objection and Revolution in A Jury of Her Peers and Contemporary Film," *Law and Literature*, Vol. 19, no. 3, 2007.

MacDonald G., De Morgan M., Grahame K., Nesbit E., Sharp E., *Draghi e Principesse. Fiabe impertinenti dell'800 inglese*. Tosi L. (a cura di), Marsilio Editori, Venezia, 2003.

Makinen M., "Angela Carter's 'The Bloody Chamber' and the Decolonization of Feminine Sexuality," *Feminist Review*, no. 42, 1992, pp. 2-15., www.jstor.org/stable/1395125.

Marina Warner, *From the Beast to the Blonde: On Fairy Tales and Their Tellers*, Chatto and Windus, London, 1994.

Minda G., "Feminist Legal Theory." *Postmodern Legal Movements: Law and Jurisprudence At Century's End*, NYU Press, New York; London, 1995.

Moore R., "The Reproof of Curiosity: Carter's revision of Bluebeard," Department of English, University of Adelaide, 2009. Available online at <http://www.cabinetdesfees.com/2009/the-reproof-of-curiosity-carters-revision-of-bluebeard/>.

Offen K., "Defining Feminism: A Comparative Historical Approach." *Signs*, vol. 14, no. 1, 1988, pp. 119-157. *JSTOR*, www.jstor.org/stable/3174664.

Offen K., Pierson R. R., Rendall J., *Writing Women's History. International Perspective.*, The MacMillan Press LTD, London, 1992.

Plumwood V., *Feminism and the Mastery of Nature*, Taylor & Francis e-Library, 2003.

Resnik J., Heilbrun C., "Convergences: Law, Literature, and Feminism.," *Faculty Scholarship Series*, Paper 909, pp.1913-1956, 1990. Available online at http://digitalcommons.law.yale.edu/fss_papers/909.

Sheets R., "Pornography, Fairy Tales, and Feminism: Angela Carter's 'The Bloody Chamber.'", *Journal of the History of Sexuality*, vol. 1, no. 4, 1991, pp. 633-657, *JSTOR*, www.jstor.org/stable/3704419.

Showalter E., *A Literature of Their Own. British Women novelists from Bronte to Lessing.*, Princeton University Press, New Jersey, 1977.

Sparling N., "Deauthorizing Anthropologies and 'Authenticating' Landscapes in Margaret Atwood's *The Handmaid's Tale* and Diamela Eltit's *El cuarto mundo*", *Canadian Review of Comparative Literature*, pp.356-380, September 2011.

Stanton E. C., Anthony B. S., Gage J. M., *History of Woman Suffrage*, vol. 1, (1848–1861), Fowler and Wells, New York, 1881.

Steans J., "Engaging from the margins: feminist encounters with the 'mainstream' of International Relations," *British Journal of Politics and International Relations*, Vol. 5, No. 3, 2003, pp.428-454.

Steans J., "Telling Stories about Women and Gender in the War on Terror", *Global Society*, Vol.22, no.1, 2008.

Stuart Mill J., "The Subjection of Women," in John Stuart Mill and Harriet Taylor Mill, *Essays on Sex Equality*, ed. Alice S. Rossi, University of Chicago Press, 1970.

Stuart Mill J., *The Collected Works of John Stuart Mill, Volume XXI - Essays on Equality, Law, and Education*, ed. John M. Robson, Introduction by Collini S., Toronto: University of Toronto Press, London: Routledge and Kegan Paul, 1984.

Surridge L., *Bleak Houses. Marital Violence in Victorian Fiction*, Ohio University Press/Swallow Press, 2005.

Tolan F., "Feminist utopias and questions of liberty: Margaret Atwood's *The Handmaid's Tale* as critique of second wave feminism", *Women: A Cultural Review*, 16:1, 18-32, published online 20 August 2006.

Tong R., *Feminist Thought. A more comprehensive introduction*, third ed., Westview Press, Colorado, 2009.

Tosi L., *La fiaba letteraria inglese. Metamorfosi di un genere*, Marsilio Editori, Venezia, 2007.

Wollstonecraft M., *A Vindication of the Rights of Women*, ed. Carol H. Hoston, W. W. Norton, New York 1975.

Wright J. S., "LAW, JUSTICE, AND FEMALE REVENGE IN 'KERFOL', BY EDITH WHARTON, AND 'TRIFLES' AND 'A JURY OF HER PEERS', BY SUSAN GLASPELL.", *Atlantis*, vol. 24, no. 1, 2002, pp. 225–243, JSTOR, www.jstor.org/stable/41055055.

Jacobs J. E., *The Voice of Harriet Taylor Mill*, Indiana University Press, Bloomington, 2002.

Zipes J., *Don't Bet on the Prince. Contemporary Feminist Fairy-Tales in North America and England*, Routledge, New York, 1987.

BIBLIOGRAPHY CHAPTER III

BOOKS AND ARTICLES

Ardizzone M.R., Chinnici G., Francesconi M.F., (edd.) *Violenza sulle Donne*, Studium Edizioni, Roman, 2018.

Bianchi B., "La violenza domestica nella riflessione femminista (1833-1917)", *Home-Made Violence*, Candiotta L., De Vido S., Mimesis, Milano, 2016, pp.17-34.

Charlesworth H., Chinkin C., *The boundaries of international law. A Feminist analysis.*, Manchester University Press, Manchester, 2000.

Chinkin C., "CEDAW General Recommendation 35 on violence against women is a significant step forward", on LSE Women Website, September 2017. Available online at <http://blogs.lse.ac.uk/wps/2017/09/06/cedaw-general-recommendation-35-on-violence-against-women-is-a-significant-step-forward/>.

Copelon R., "Intimate Terror: Understanding Domestic Violence as Torture," in *HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES* 116, 117–20, Rebecca J. Cook (ed.) 1994.

Cobbe P. F., "Wife-torture in England," in *The Contemporary Review*, 1878.

Cook R.J., *The Elimination of Sexual Apartheid: Prospects for the Fourth World Conference on Women*, 1995.

Copelon R., "Intimate Terror: Understanding Domestic Violence as Torture.," in *Human Rights of Women: National and International Perspectives*, ed. Cook J. R., University of Pennsylvania Press, Philadelphia, 2011.

De Vido S., *Donne, Violenza e Diritto Internazionale. La Convenzione di Istanbul del Consiglio d'Europa del 2011*, Mimesis, N.1, Milano, 2016.

De Vido S., "States' Positive Obligations to Eradicate Domestic Violence: The Politics of Relevance in the Interpretation of the European Convention on Human Rights," 6:6 *ESIL Reflection*, 2017.

De Vido S., "The Council of Europe Istanbul Convention on preventing and combating violence against women and domestic violence an appraisal," pp.75-87, in *Home-Made Violence* (a cura di), De Vido S., Candiotta L., Mimesis, N.2, Milano, 2016.

Meyersfeld B., "A Theory of Domestic Violence in International Law," *Yale Law School Dissertations* 3, 2016.

Meyersfeld B., "State Responsibility and Systemic Intimate Violence," in *Home-Made Violence* (a cura di), De Vido S., Candiotta L., Mimesis, N.2, Milano, 2016.

Meyersfield B., "Reconceptualizing domestic violence in International law," Albany Law Review, vol. 67, 2004.

Minow M., 'Interpreting Rights: an essay for Robert Cover,' 96 Yale Law Journal, 1987.

Grans L., "The Istanbul Convention and the Positive Obligation to Prevent Violence," Human Rights Law Review, no.18, 2018.

Hester M., & Lilley S-J., "Preventing Violence Against Women: Article 12 of the Istanbul Convention: A collection of papers on the Council of Europe Convention on preventing and combating violence against women and domestic violence. Strasbourg: Council of Europe,' University of Bristol, 2014.

Hooks B., *Feminism is for Everybody: Passionate Politics*, South End Press Cambridge, MA, 2000.

Zarkov D., Handmaker J., Hintjens H., "Legacies: Rhonda Copelon: Activist, Lawyer, Feminist.", Development and Change 42(1): pp.387-398., Published on behalf of the Institute of Social Studies, The Hague, 2011.

INTERNATIONAL LAW TREATIES AND JURISPRUDENCE (*chronological order*)

Charter of the United Nations, 1945.

Convention (IV) for the Protection of Civilian Persons in Time of War, 1949.

International Covenant on Civil and Political Rights, (ICCPR), 1966.

International Covenant on Economic, Social and Cultural Rights, (ICESCR), 1966.

Convention on the Elimination of all Forms of Discrimination Against Women, (CEDAW), 1979.

Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), 1994.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, (Maputo Protocol), 1995.

Committee on Economic, Social and Cultural Rights, General Comment no. 11, (CESCR), 1999.

UNITED NATIONS

E/RES/2/11, Council Resolution for the establishing of the Commission on the Status of Women, (ECOSOC), 1946.

A/RES/3/217 A, Universal Declaration of Human Rights, 1948.

A/RES/3520, World Conference of the International Women's Year, 1975.

A/RES/34/180, Convention on the Elimination of All Forms of Discrimination against Women, 1979.

A/RES/40/36, Domestic Violence, 1985.

EDAW Committee, General Recommendation no.19, (GR 19), A/47/38, 1992.
A/CONF.157/23, Vienna World Conference on Human Rights, 1993.
A/RES/48/104, Declaration on the Elimination of Violence against Women, (DEVAW), 1993.
A/CONF.177/20/Rev.1, Fourth World Conference on Women, (Beijing Conference), 1995.
A/CONF.183/9, Rome Statute of the International Criminal Court ,1998.
UN General Assembly Resolution no.58/147, 2003.
CCPR/C/21/Rev.1/Add.13, General Comment no.31, (GR 31), 2004.
CEDAW/C/CG/35, EDAW Committee, General Recommendation no.35, (GR 35), 2017.

COUNCIL OF EUROPE

Council of Europe Convention on preventing and combating violence against women and domestic violence, (Istanbul Convention), 2011.

Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Council of Europe Treaty Series no.210, Istanbul, 2011.

Resolution CM/Res (2014)43 on rules of the election procedure of the members of the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), 2014.

WEBSITES

European Union Agency for Fundamental Rights, *Violence Against women: an EU-Wide Survey*, 2014. Available online at <http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report>.

'Forms of Violence Against Women', Article on the UN Women website. Available online at <http://www.endvawnow.org/en/articles/296-forms-of-violence-against-women-html>.

World Health Organization, *Violence against Women, Intimate Partner and sexual violence against women*, Fact Sheet no.239, updated November 2017. Available online at <http://www.who.int/mediacentre/factsheets/fs239/en/>.

ECHR 075 (2017) 'Italian Authorities Failed to protect a mother and son because they did not take prompt action on a complaint concerning conjugal violence', published by the ECtHR Press Released Office. Available online at <https://www.echr.coe.int/Pages/home.aspx?p=home>.

Domestic Violence against women and girls, Editorial, Innocenti Digest No. 6, June 2000, UNICEF Office of Research-Innocenti. Available online at <https://www.unicef-irc.org/publications/pdf/digest6e.pdf>.

Multi country study on Women's health and domestic violence against women, published by the World Health Organization, Geneva, 2007. Available online at <http://www.who.int/reproductivehealth/publications/violence/24159358X/en/>.

UN Women's animated web feature *Justice now: Ending impunity for sexual and gender-based violence as international crimes*, nominated for the Webby Award under the Law category for Websites. Article available online at

<http://interactive.unwomen.org/multimedia/infostory/justicenow/en/index.html>.

From the UN Women's animated web infographic *Violence against women: Facts everyone should know*, named as honoree under the 'Activism category for website.' Available online at

<http://interactive.unwomen.org/multimedia/infographic/violenceagainstwomen/en/index.html#intimate-2>.

From the UN Women's timeline, *Women's Footprint in History*, Webby Award Recipient in the Activist Category in 2017. Available online at

<http://interactive.unwomen.org/multimedia/timeline/womensfootprintinhistory/en/index.html#front1>.