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AT THE ORIGINS OF FEMINISM: IDEAS OF OLYMPE DE GOUGES IN THE CONTEXT OF RADICAL EGALITARIAN DOCTRINES OF THE FRENCH REVOLUTION (1789–1794)

Summary

The article aims to present and analyze political and legal thought of Olympe de Gouges, a French revolutionary activist, who is considered one of the most important precursors of modern feminism. Her writings should be situated in the context of radical egalitarian doctrines, influential during the Enlightenment and the French Revolution. The paper also shows an impact of this pre-feminist thought on the private and public law of the Revolution. Last part is devoted to a comparison of de Gouges' ideas with some contemporary feminist discourses.

KEYWORDS

Olympe de Gouges, Declaration of the Rights of Woman and Female Citizen, French revolution, feminism, equality, egalitarianism, radicalism, human rights

SŁOWA KLUCZOWE

Olimpia de Gouges, Deklaracja Praw Kobiety i Obywatelki, rewolucja francuska, feminizm, równość, egalitaryzm, radykalizm, prawa człowieka

1. INTRODUCTION

Dominant ideologies of the French Enlightenment and Revolution of 1789 manifest a fierce contestation of social and political order of *ancien régime*, founded on feudal hierarchies, inequalities and particularisms conjointly. Alexis de Tocqueville (1805–1859), undoubtedly one of the most talented analysts of the revolutionary events, wrote in *The old regime and the French Revolution*, that “a violent, unquenchable hatred of inequality” was the deepest and most solidly rooted passion of the Enlightenment political philosophy, which sought to “destroy utterly all the remains of the medieval institutions” and prompted “the erection on their ruins of a society in which all men should be alike, and as equal in rank as humanity dictates”¹. This radicalism resulted in numerous reforms after the fall of the *Bastille*, irrevocably decomposing the western political and legal order.

However, the pursuit of equality during the French Enlightenment and Revolution did not end with a simple destruction of the feudal system. The “hatred of inequality” affected not only the formal privileges, but also other foundations of society, including religion and private property. Revolutionary debates on equality also included a stance on women and family, aiming at a reconstruction of the traditional social position and perception of women and femininity itself. What is more, those ideas had important consequences in a normative sphere, inspiring many reforms of private and public law. One of the most forgotten participants of the revolutionary debates was Olympe de Gouges (1748–1793), a French playwright and political activist, who is considered to be a precursor of modern feminism². This paper aims to analyze her political and legal views in the context of radical egalitarianism of that time, with an impact of those currents on private and public law institutions. The article is also going to identify traces of the author of the Declaration of the Rights of Woman et Female Citizen (*la Déclaration des droits de la femme et de la citoyenne*)³ in some contemporary currents of feminist thought. Firstly, there is a general analysis of ideological and legal perception of women during the *ancien régime* era, including the main circles of its contestation. Subsequent fragments are devoted to positioning de Gouges in revolutionary political philosophy and legislation concerning egalitarian reforms. The last part of the text aims to show a meaning of this French author for contemporary feminist doctrines.

¹ A. de Tocqueville, *The old regime and the Revolution*, S. Gilbert (transl.), New York 1983, p. 274.

² See e.g. M. Riot-Sarcey, *Histoire du féminisme*, Paris 2002, p. 11.

³ Originally in O. de Gouges, *Les droits de la femme*, Paris 1791, pp. 6–16, <https://gallica.bnf.fr/ark:/12148/bpt6k426138/f5.image> (accessed 27.03.2022). See also e.g. M. Foerster, *La différence des sexes à l'épreuve de la République*, Paris 2003, p. 23; O. de Gouges, *The Declaration of the Rights of Woman* (in:) L. Hunt (transl. and ed.), *The French Revolution and human rights. A brief documentary history*, Bedford 1996, pp. 124–129.

2. LEGAL STATUS OF WOMEN UNDER THE *ANCIEN RÉGIME*

Reflections on the views of Olympe de Gouges should include a general outline of women's legal status and its ideological foundations in the *ancien régime* society. Generally, women, along with children or persons mentally ill, were perceived as naturally weaker and subordinate to a man, head of the household, who alone could exert his active and independent will⁴. While on a political level, as numerous historical examples have already shown, women – obviously those from the tops of social hierarchy – managed to break this conviction, it remained unbreakable in private law, at least in France, until the Revolution of 1789. Such perception implied numerous restrictions concerning female legal capacity, especially property rights. Women from upper classes enjoyed privileges only in courts⁵.

Nevertheless, people of the 18th century associated women with family and the household rather than business activity. As a wife or a daughter, a woman usually lived under an almost absolute authority of her father or husband. Moreover, family was considered as a strictly political institution. Of course, the feudal system, where mutual influence of private and public law was natural, gave a special social significance to family ties. However, it was absolute monarchy and its statist practices that made family a quasi-public entity, where royal power found its “extension” in paternal authority⁶. This construction was strengthened by traditional teaching of the Church about the indissolubility of marriage and the virtue of obedience. With time, after absorption of local communities and professional corporations, absolutism began to perceive even the authority over family members as a potential threat. As a result, royal government increasingly sought to take control over marriages by separating them from the sacramental dimension⁷. A deep public interference in the sphere of family privacy was often justified by religious matters. For instance, children of French Protestants were taken to be raised as Catholics, not to mention the famous *dragonads*⁸.

According to a customary law, every husband had the right to physically “discipline” his wife (*droit de correction*), especially in case of discovering her adul-

⁴ W.H. Sewell, *Le citoyen/la citoyenne: Activity, passivity and the revolutionary concept of citizenship*, (in:) C. Lucas (ed.), *The French Revolution and the creation of modern political culture*, Vol. 2: *The political culture of the French Revolution*, Oxford 1987, p. 107.

⁵ M. Garaud, R. Szramkiewicz, *La Révolution française et la famille*, Paris 1978, pp. 48–49.

⁶ A. Burguière, *La Révolution française et la famille*, “Annales. Histoire, Sciences Sociales” 1991, Vol. 1, p. 152.

⁷ B. Lesiński, W. Rozwadowski, *Historia prawa*, Warszawa, Poznań 1980, pp. 257–258; H. Izdebski, *Doktryny polityczno-prawne. Fundamenty współczesnych państw*, Warszawa 2017, p. 46.

⁸ X. Martin, *Kwestia prawa rewolucyjnego*, (in:) R. Escande (ed.), *Czarna księga rewolucji francuskiej*, K. Kubaszczyk et al. (transl.), Kraków 2015, p. 270.

tery, when she could be punished in almost any way, including by being locked-up in a monastery for life. Only a murder was officially forbidden, from which, however, a husband could be easily cleared in practice. Male adultery was not usually penalized, unless combined with the public mistreatment of his wife, which, causing a scandal, could barely lead to a separation.

Such a model of family relations, including women's situation, was contested in the radical Enlightenment thought as an important element of the *ancien régime* system. *Les Philosophes* found changes in this area necessary to destroy the "oppressive" social order, based on the dominance of the privileged – in this case fathers and husbands – exploiting the weaker groups. In Jean Meslier's (1664–1729) well-known utopia, a global revolution of "the poor people" against "the greats of this world" was to bring, in addition to the fall of feudalism and the abolition of private property, a radical change in social life. Local communities would be basic structures of a political organization of society. Within this kind of a modern *polis* all people would live as "brothers and sisters", totally equal in terms of food, clothes, housing, without familial affiliation and obligation to work⁹. According to the author, the 18th-century model of social relations, presented on the pages of the *Testament*, appeared to be contrary to nature and common sense. The French priest-atheist particularly opposed the "abuse involving the indissolubility of marriages", which, in his opinion, was nothing but a source of suffering and restrictions for personal aspirations¹⁰. In another utopian project of Léger Marie Deschamps (1716–1774), probably the most radical in the French Enlightenment, there was a vision of an almost total elimination of inequalities between people, also within relations between the sexes. He had a concept of the "state of morality" – "unity without disconnection" (*union sans désunion*), in which all humanity would become a part of nature, a metaphysical "universal totality" (*le tout universel*)¹¹. The future society would be based on ideal uniformity and equality understood as identity, which, he claimed, was "nature itself". Deschamps wrote: "The same manners (...) would make (...) all men and women the same man and the same woman; (...) sometimes there will be much more similarity between them than between the most similar animals of the same species. One woman would be very similar to the other in the eyes of a man, and one man to the other man in the eyes of a woman"¹². The French monk wanted to remove a division into "mine and yours". Not only did it mean an abolition of private property, but also the end of traditional marriage, or even the end of permanent male-female relationships, as well as familial bonds. "People in a state of morals will not be divided into different families, as it is with us, and

⁹ J. Meslier, *Testament*, Z. Bieńkowski (transl.), Warszawa 1955, pp. 338, 341–342.

¹⁰ *Ibidem*, p. 344.

¹¹ D. Deschamps, *Prawdziwy system, czyli rozwiązanie zagadki metafizyki i moralności*, B. Baczek (transl.), Warszawa 1967, pp. 265–267, 299.

¹² *Ibidem*, pp. 321, 342, 359.

the children will not belong to a single man or woman. Women (...) will be there for men, like men for women, the common good, without the slightest distress, the slightest discord; because the opposite state of matters, that is, the division between mine and yours (...) causes all kinds of torment"¹³. All shame and prudery were going to disappear, along with sexual perversion and prostitution. For Deschamps all restrictions in sexual relations were unnatural, and satisfying sex drive should be as easy as eating or sleeping¹⁴. It is not difficult to notice the similarity of such ideas to a famous "glass-of-water" theory of sexual matters attributed to a Soviet feminist Alexandra Kollontai (1872–1952), who claimed that in a communist society the satisfaction of one's sexual desire should be as straightforward as drinking a glass of water¹⁵. In this context, Deschamps' collectivist projects are described by some researchers as the dissolution of an individual in "brotherly and sisterly love based on pan-sexualism"¹⁶. This "emancipation" from ties of sexual convention presented by the French utopist, after a deeper reflection, should be rather called an objectification of women who, as he wrote, "are primarily created to provide us with the easiest pleasure"¹⁷. As a result, while anticipating some radical feminist slogans, he in fact instrumentalized the very idea of women's "emancipation".

Argumentation of the utopists as regards the family model was mostly shared by other radical groups of Enlightenment intellectuals – the Encyclopedists and the Libertines. In these matters, they played a strictly negating role and inspired changes in common attitudes towards a gradual rejection of norms and values recognized officially, especially in the sphere of male-female relations. Researchers define libertinism as a current striving to emancipate the human mind from the bonds of tradition, authorities and prejudices, postulating a rational and skeptical analysis of reality, especially critically referring to Catholic tradition, seen as oppressive¹⁸. The libertines strongly emphasized individualism and moral relativism. Marquis Donatien Alphonse François de Sade (1740–1814), the most famous libertine, more a practitioner than a theoretician, believed that Christian morality binds freedom of man, forcing him to act against himself. One must therefore fight to free the mind from all restrictions¹⁹. Quite the same ideas appeared in among the authors of the Encyclopedia. Voltaire, Holbach and Helvetius pictured

¹³ *Ibidem*, p. 360.

¹⁴ *Ibidem*, p. 361.

¹⁵ O. Figes, *A people's tragedy: The Russian Revolution 1891–1924*, New York 1998, p. 741.

¹⁶ M. Jastrzębiec-Mosakowski, J. Ślęzak, *Dom Deschamps (1716–1774) i jego prawdziwy system, czyli jak wyjść ze stanu prawnego, aby dojść do kresu ludzkich dziejów, stanu obyczajowości*, (in:) J. Dugul, M. Kulesza, A. Sobczyk (eds.), *Przejścia i przemiany w dawnych literaturach romańskich. Tom poświęcony pamięci Profesor Krystyny Kasprzyk*, Warszawa 2016, p. 134.

¹⁷ D. Deschamps, *op. cit.*, p. 362.

¹⁸ J. Łojek, *Wiek markiza de Sade*, Warszawa 1996, p. 9.

¹⁹ *Ibidem*, pp. 318–319. See also W. Bernacki, *Libertynizm*, (in:) M. Jaskólski (ed.), *Słownik historii doktryn politycznych*, Vol. 3, Warszawa 2007, p. 600.

marriage as an institution distorted by “religious and patriarchal despotism”²⁰. *Les Philosophes* – similarly to Meslier – strongly criticized the principle of the indissolubility of marriage as “incompatible with nature and common sense”, demanding that spouses should be allowed to freely finish their relationship²¹. In this way *Encyclopedia* defined ‘marriage’ as a “marital union of a man and a woman, contracted by free persons for the bearing of children”²².

Finally, it is necessary to mention the “social contract” by Jean Jacques Rousseau, which also influenced revolutionary opinion on family. Due to his republicanism, which even turned into a “hard” statism, the famous philosopher inspired the revolutionary legislation to subordinate all social life to the public sphere. As it is known, he opposed all “intermediary bodies” between the state and individuals, such as political parties, corporations, but also the traditionally understood family, which, in his opinion, could distort the “universal will” of the sovereign people²³. The citizen is an inseparable part of the whole: the state understood as a homeland. Therefore, Rousseau recognizes the primacy of the citizenship bond over all other forms of human coexistence²⁴. Creation of a new political community implies a “birth” of a new man, a citizen-patriot, who identifies his personality only with the homeland, and not, for example, with a family, a corporation or any other social role. Every person should, for the author of *The social contract*, appear as a “pure citizen”, isolated from all other social terms – property, family or belief. As a result, laws passed by the political community must be “blind” towards indicated differences, which determines their radically egalitarian character²⁵. Being a citizen is the highest role one can aspire to, because a person can be truly free and truly contribute to the common good only by creating laws to which that person is subject²⁶. As in classical absolutism, there was no place in such a republic for any “states in the state”, internal particularisms, whether ideological, economic or private. Jan Baszkiewicz called the sovereign people of Rousseau as abstract and classless due to this philosopher’s belief that one could focus unanimity around the “universal interest”, bypassing all interests of particular social groups²⁷. As a consequence, the famous philosopher from Geneva is considered as the first who dissolved corporate state society and transformed it

²⁰ M. Garaud, R. Szramkiewicz, *op. cit.*, p. 4.

²¹ *Ibidem*, p. 5.

²² *Marriage*, (in:) *The Encyclopedia of Diderot & d’Alembert Collaborative Translation Project*, Lisa Richmond (transl.), Ann Arbor 2009, <http://hdl.handle.net/2027/spo.did2222.0000.977> (accessed 27.03.2022), transl. of *Mariage*, (in :) *Encyclopédie ou Dictionnaire raisonné des sciences, des arts et des métiers*, Vol. 10, Paris 1765.

²³ J. J. Rousseau, *The social contract*, S. Dunn (transl.), Yale 2002, p. 171.

²⁴ B. Baczko, *Rousseau: Samotność i wspólnota*, Gdańsk 2009, pp. 305–307.

²⁵ *Ibidem*, p. 308.

²⁶ D. Pietrzyk-Reeves, *Spółeczeństwo obywatelskie. Współczesna debata i jej źródła*, Wrocław 2004, p. 46.

²⁷ J. Baszkiewicz, *Historia Francji*, Wrocław 2008, p. 378.

into a society of equal individuals bound with a common legal status of citizen²⁸. The social contract is essentially a concept of a homogeneous community, where the individual is connected by a bond of loyalty only to the state, which is a radical rupture with a feudalism, founded on inequality, hierarchy and particular interests. Ideal political community was to be as homogeneous internally as possible, without a developed civil society, as – for instance in John Locke's thought – a society organized not only in the state, but in all other voluntary institutional forms²⁹.

Rousseau's thought was developed by Emmanuel Sieyès (1748–1836), author of the well-known pamphlet *What is the third estate?* (*Qu'est-ce qu'est le tiers état?*), who is considered as the main ideologist of the revolution³⁰. He described a political community – a nation – as “a body of associates living under a common law”³¹. All social groups that were “outside common law” and enjoyed an extraordinary legal status, whether due to their state or territorial affiliation, shall be excluded from this definition of a “nation”. Like in Rousseau's thought, every individual was to face authority in a vertical relation, formally equal to others, without intermediate structures or other formal differentiations. This „civic equality” (*droits civils*), would be the only relevant feature of citizens within a state, ignoring physiognomic, property, gender or racial differences³². “I like to conceive of the law – wrote Sieyès – as if it is at the center of an immense globe. Every citizen, without exception, is at an equal distance from it on the circumference of the globe, and each individual occupies an equal place. Everyone depends equally upon the law; everyone offers it his liberty and property to protect. This is what I mean by the common rights of citizens, insofar as it is this that makes them all resemble one another. These private individuals all have dealings with one another. They make their arrangements and engagements with each other, always under the common safeguard of the law”³³. In addition to such equality of legal status, the institution of citizenship would involve participation in the exercise of power. He argued that “it is not, therefore, because one is privileged but because one is a citizen that one has a right to elect deputies and to be eligible for election. (...) it is a matter of principle that everything that falls outside the common attributes of citizenship cannot give rise to an entitlement to exercise

²⁸ K.M. Baker, *Representation*, (in:) *Idem* (ed.), *The French Revolution and the creation of modern political culture*, Vol. 1: *The political culture of the old regime*, Oxford 1987, p. 478.

²⁹ H. Izdebski, *op. cit.*, p. 217.

³⁰ B. Baczkowski, *Le contrat social des Français*, (in:) K.M. Baker (ed.), *The French Revolution and the creation of modern political culture*, Vol. 1: *The political culture of the old regime*, Oxford 1987, p. 497.

³¹ E. Sieyès, *Political writings*, M. Sonenscher (trans. and ed.), Indianapolis 2003, p. 97.

³² *Ibidem*, p. 155. See also J.D. Bredin, *Sieyès. La clé de la Révolution française*, Paris 1988, p. 117; F. Terré, *Réflexion sur la notion de nationalité*, “Revue critique de droit international privé” 1975, p. 205.

³³ E. Sieyès, *op. cit.*, p. 156.

political rights. (...) But if privileged individuals enjoy an estate that makes them the enemy of the common order, not the beneficiaries of simple distinctions that are almost indifferent to the law, then they should be positively excluded. They can be neither electors nor eligible for election for as long as their odious privileges exist"³⁴. This combination of equality before the law and universal political participation presented by Sieyès, was a decisive step in shaping the contemporary concept of citizenship³⁵.

3. WOMEN AND PRIVATE LAW UNDER THE REVOLUTION

On this ideological background revolutionaries wanted to create a "new man", known from the pages of Rousseau's works. As Pierre Gaxotte wrote, they aimed to "destroy and eradicate forever all natural social institutions that until 1789 have connected individual citizens and gave them support, and which should henceforth be considered oppressive and immoral. Property, family, relationships, city, province, homeland, church – these are the obstacles that must be destroyed"³⁶. Therefore, many radically egalitarian reforms were adopted. The first decrees of the National Assembly of 1789 abolished feudal privileges and corporate-state hierarchies. The Declaration of Human and Citizen Rights, solemnly declaring the equal rights of all people, began a process of extending the political community to groups that traditionally used to remain outside its boundaries. A revolutionary "desire" for equality gradually went further than a simple abolition of medieval privileges and introduction of personal and political liberties. The Assembly granted citizenship to Protestants and Jews³⁷, to foreigners who have sworn an oath of loyalty to the revolution³⁸, and finally to so called "people of color" and slaves³⁹. The Declaration of Human and Citizen

³⁴ *Ibidem*, pp. 157–158.

³⁵ R. Brubaker, *Citizenship and nationhood in France and Germany*, Cambridge 1994, p. 43; K.M. Baker, *Representation...*, p. 487.

³⁶ P. Gaxotte, *Rewolucja francuska*, J. Furuhielm (transl.), Gdańsk 2001, p. 73.

³⁷ J. Israel, *Enlightenment contested: Philosophy, modernity, and the emancipation of man*, Oxford 2006, p. 182; M. Bar Zvi, *Żydzi i rewolucja francuska*, (in:) R. Escande (ed.), *Czarna księga rewolucji francuskiej*, K. Kubaszczyk et al. (transl.), Kraków 2015, p. 483; G. Kates, *Jews into Frenchmen: Nationality and representation in revolutionary France*, (in:) F. Fehér, *The French Revolution and the birth of modernity*, Berkeley, Los Angeles, London 1990, p. 113.

³⁸ P. Weil, *How to be French: Nationality in the making since 1789*, Duke 2008, p. 13; P. Berté, *Genèse du code de la nationalité française*, Bordeaux 2011, p. 37; J. Massot, *Français par le sang, Français par la loi, Français par le choix*, "Revue européenne des migrations internationales" 1985, Vol. 2, pp. 11–13.

³⁹ J. Boudon, *L'esclavage de la Révolution à L'Empire*, "Droits. Revue française de théorie, de philosophie et de cultures juridiques" 2011, Vol. 11, p. 6; M.K. Gano, *L'impensé d'un humanisme*,

Rights voted in August 1789 became the culmination and symbol of these egalitarian aspirations.

Similar motives resulted in the revolutionaries' distrust towards family bonds, weakening citizens' availability to their homeland, the "one and indivisible" republic. Emancipation of individuals from the influence of family only seemingly aimed at the liberal "release", because such "blurring" of traditional bonds and promoting social atomization, favored an even greater submission of the individual to the state authority⁴⁰. Jacobins, the main followers of Rousseau, often claimed that "when the homeland is involved, there are no brothers, no sisters, no father, no mother" and "all society would be strengthened by breaking all personal ties"⁴¹.

Olympe de Gouges was one of the most active opponents of the traditional model of family and marriage. Her project of the Form for a social contract between Man and Woman (*la Forme du contrat social de l'homme et de la femme*⁴²) undoubtedly expressed a deep aversion to the institution of marriage, described as "the tomb of confidence and love"⁴³. The word "marriage" was replaced by "contract", therefore equated with any other civil law contract, which was obviously inspired by liberal and radical currents. De Gouges emphasized meaning of the parties' will and "mutual inclination" as conditions for a conclusion of this social contract. Similar arrangements existed, as is known, in classical Roman law, where it was a completely private, informal and secular institution, relying only on so called *affectio maritalis*⁴⁴. The contract between a man and a woman would not have any special protection of the state as in case of traditional marriage, recognized, also nowadays, as fundamental to the social order. Quite the opposite – just like in politics – she perceived marriage as a space of despotic and patronizing rule of men. According to Olympe de Gouges, this was another, after feudalism, form of institutionalized inequality, creating conditions favorable to the social and political disability of women⁴⁵. She was also known for a suggestion to resolve the issue of illegitimate children with their equal, mandatory adoption throughout society⁴⁶.

l'autre paradoxe de Condorcet. Considérations autour des Réflexions sur l'esclavage des Nègres, "Topique" 2016, Vol. 4, pp. 24–25; L. Dubois, "Citoyens et amis!". *Esclavage, citoyenneté et République dans les Antilles françaises à l'époque révolutionnaire*, "Annales. Histoire et Sciences Sociales" 2003, Vol. 2, p. 285.

⁴⁰ X. Martin, *Kwestia prawa rewolucyjnego...*, p. 371.

⁴¹ *Ibidem*, pp. 368–369.

⁴² O. de Gouges, *Les droits...*, p. 17.

⁴³ O. de Gouges, *The Declaration of the Rights of Woman. Postscript...*, p. 128.

⁴⁴ See e.g. W. Dajczak, T. Giaro, F. Longchamps de Brier, *Prawo rzymskie. U podstaw prawa prywatnego*, Warszawa 2018, pp. 231–233.

⁴⁵ K. Lewandowska, R. Michalski, *Olympe de Gouges: Szkic biograficzny*, (in:) O. de Gouges, *Deklaracja Praw Kobiety i Obywatelki*, R. Michalski (transl.), Gdańsk 2018, p. 10.

⁴⁶ O. de Gouges, *Écrits politiques 1788–1791*, Vol. I, Paris 1993, p. 212.

The indicated concepts have been largely used by revolutionary legislation in the field of family law in a broad sense. The liberal definition of marriage was written into the first French Constitution of 3 September 1791: „The law considers marriage only as a civil contract. The legislative power shall establish for all inhabitants, without distinction, the method by which births, deaths, and marriages are to be declared, and it shall designate the public officials who are to receive and preserve the records therefor” (Vol. 2, p. 7)⁴⁷. Pursuant to the constitutional provisions, the Assembly issued the Law of 20 September 1792. Its main idea was to ensure an equal position of spouses during their marriage, as well as equal rights to dissolve it. The most vivid, previously mentioned manifestations of husband’s authority over his wife were removed, and, what was most revolutionary, the Law allowed a divorce because, according to the legislator, natural freedom of the individual would be at odds with any irrevocable obligation. It is pointed out that the conditions for dissolution of a marriage (including mutual consent, incompatibility of characters or prolonged absence of a spouse) have been very liberally and widely defined, going even further than the demands of the public opinion⁴⁸. The Law of 20 September 1792 also established the status of cohabitation, giving children from such unions the right to inherit. Interestingly, during legislative debates, admission of divorces was often presented as an act of justice for women. It turns out that these were not slogans completely detached from reality, because – as researchers found out – especially in large cities of France, about sixty percent of divorces ruled at the request of one of the parties were initiated by women⁴⁹. While analyzing the revolutionary reforms of family law, one should also mention the abolition of paternal authority by the Decree of 28 August 1792 and the reduction of the age of majority to 21 years. In this context, one of the French contemporary lawyers writes that “between adolescence and revolutionary excitement, there was statistically quite a natural relationship”⁵⁰.

Except family status, the key subject of revolutionary reforms in private law was, obviously, the issue of property, commonly associated with this “emancipatory” and libertarian face of the revolution⁵¹. Pursuant to Art. 17 of the Declaration of the Rights of Man and of the Citizen, “Property being an inviolable and sacred right, no one can be deprived of private usage, if it is not when the public necessity, legally noted, evidently requires it, and under the condition of a just

⁴⁷ The Constitution of 1791, <http://wp.stu.ca/worldhistory/wp-content/uploads/sites/4/2015/07/French-Constitution-of-1791.pdf> (accessed 27.03.2022).

⁴⁸ K. Sójka-Zielińska, *Wielkie kodyfikacje cywilne. Historia i współczesność*, Warszawa 2009, p. 181; M. Garaud, R. Szramkiewicz, *op. cit.*, p. 71.

⁴⁹ A. Burguière, *op. cit.*, p. 160.

⁵⁰ X. Martin, *Kwestia prawa rewolucyjnego...*, p. 372.

⁵¹ J. Baszkiewicz, *New man, new nation, new world: The French revolution in myth and reality*, A. Shannon (transl.), Frankfurt 2012, pp. 46 *et seqq*; P. Nemo, *Histoire des idées politiques aux temps modernes et contemporains*, Paris 2013, p. 484; E. Hobsbawm, *The age of Revolution: 1789–1848*, New York 1996, p. 59.

and prior indemnity”. De Gouges strongly emphasized in Art. 17 of the Declaration of the Rights of Woman and Female Citizen that “property belongs to both sexes whether united or separate; for each it is an inviolable and sacred right no one can be deprived of it, since it is the true patrimony of nature (...)”. Olympe de Gouges placed the issues of equal property rights in her project of the social contract where she discussed in detail a property regime of such union – opting for the community of the property of women and men living together – and the issue of inheritance. The revolutionary civil law reforms of 1790–1791, based on the liberal absolutization of private property, did indeed go in that direction, allowing women to possess property as much as men. In addition, the seniority and priority rights of male heirs were abolished, and the equal property rights of martial and extra-marital children were established⁵².

4. WOMEN AND PUBLIC LAW UNDER THE REVOLUTION

Reforms possible in civil law turned out to be unconceivable for the majority of public opinion in politics. The pursuit of full democratization, the implementation of absolute equality and the ideal of brotherhood met with a firm resistance especially in the area of women’s political equality. Among reasons for such an approach were vivid memories of the malign influence of royal mistresses, presumptuous salon hostesses, not to mention an empty-headed queen, under the old regime. All of this demonstrated that women in public life were dangerous, whether at the top or, as experience after 1789 proved, in the streets⁵³. Authors of the Declaration of 1789 still also shared a prerevolutionary image of women as unable to exercise a rational choice⁵⁴. Sieyès, firmly arguing for equality of natural rights – life, property and liberty – also believed strongly in a natural inequality of means – force or intellect that people are born with – which give rise to inequalities in labor, product, consumption and, last but not least, in property. In this way he came to a conclusion that political rights should be exercised only by the educated, prosperous and propertied male elite⁵⁵. These concepts influenced a division into passive and active citizens adopted in the French constitution of 3 September 1791, which symbolized a rupture from the egalitarian enthusiasm of the beginning of the revolution. Declaration of the Rights of Woman and Female Citizen was issued by Olympe de Gouges a few days later and ought to be interpreted as a direct response to that document. She challenged

⁵² K. Sójka-Zielińska, *Wielkie kodyfikacje...*, pp. 182–183, 204.

⁵³ W. Doyle, *The Oxford history of the French Revolution*, Oxford 2002, p. 420.

⁵⁴ A. Clapham, *Human rights. A very short introduction*, Oxford 2007, p. 10.

⁵⁵ W.H. Sewell, *op. cit.*, pp. 108–109.

the Revolution's continuing definition of women as passive citizens, expanding a debate that focused almost entirely on men's rights, to include those of women⁵⁶. The tyranny of absolute monarchy was replaced by de Gouges in the Declaration with "men's tyranny", which, in her opinion, limited women's exercise of natural rights. The first article indicated that "Woman is born free and remains equal to man in rights. Social distinctions may be based only on common utility". All "citizenesses and citizens" were to be equal "in the eye of law", "equally admitted to all honors, positions, and public employment according to their capacity and without other distinctions besides those of their virtues and talents", and, last but not least, treated equally as far as citizen duties, freedom of speech and criminal provisions were concerned.

The French thinker firmly expressed a paradox situation created by the parallel discrimination of women active at the political scene and condemning them to the guillotine for political reasons⁵⁷. Some scholars call her Declaration "a revolution within the Revolution", founded on inclusion, pluralization of citizenship, and not on tactics of opposition between male and female. De Gouges is not asking for "fair play" within the given circumstances but puts forth a truly transformative vision based on equality of natural rights⁵⁸. Other researchers reckon that the Declaration of the Rights of Woman and Female Citizen was arguably the most comprehensive call for women's rights in this period, taking the revolution's universalism at its word, and that it exposes the incompleteness of that universalism in its own paradoxical attempts to represent women as abstract individuals by calling attention to the differences they embody⁵⁹. She pointed out an idea obvious today, but not in the 18th century, that women fully met the requirements for citizenship and that sex should be in this case irrelevant⁶⁰.

Declaration of Olympe de Gouges is also a kind of a "manifesto" of intellectual circles she participated in. It was the so called Social club (*Cercle social*) renamed then into the Society of the Friends of Truth (*Confédération universelle des amis de la vérité*), which later constituted the ideological base of the broadly understood Girondist faction, considered to represent the interests of the rich middle class from French provinces⁶¹. They were liberal, sometimes libertine,

⁵⁶ J.W. Scott, *Only paradoxes to offer: French feminists and the rights of man*, Cambridge 1997, p. 34.

⁵⁷ A. Jollet, *Femme de conventionnel: Un enjeu politique dans la république?*, "Annales Historiques de la Révolution française" 2015, Vol. 381, p. 119.

⁵⁸ M. Maclean, *Revolution and opposition: Olympe de Gouges and the Déclaration des droits de la femme*, (in:) D. Beyen (ed.), *Literature and revolution*, Amsterdam 1989, p. 172; J.W. Scott, *A woman who has only paradoxes to offer: Olympe de Gouges claims rights for women*, (in:) S.E. Melzer, L.W. Rabine (eds.), *Rebel daughters: Women and the French Revolution*, Oxford 1992, p. 109.

⁵⁹ J. W. Scott, *Only paradoxes...*, p. 20.

⁶⁰ *Idem*, *L'énigme de l'égalité*, "Cahiers du Genre" 2002, Vol. 33, p. 30.

⁶¹ G. Kates, *The cercle social, the Girondins, and French Revolution*, Princeton 1985, p. 118.

Enlightenment intellectuals believing firmly in the assumption of the natural equality of all people, which naturally led to the support of equal legal position of both sexes, similarly to racial and religious minorities. Those founders of feminist doctrines pointed out that subordination of a woman to a man is unnatural, and that they should have the same status in marriage and equal economic rights – in terms of work and pay – and on political level – primarily electoral rights⁶². Under the slogan “Woman be a citizen! Until now you were just a mother!” the Society proposed to introduce divorce and common, egalitarian education for women, often comparing their status to “semi-slavery”⁶³. The ideological leader of this circle was the well-known thinker Condorcet, who published the article *On the admission of women to the rights of citizenship* (*Sur l’admission des femmes au droit de cité*⁶⁴) in 1790. The French philosopher argued that from the natural law perspective a woman is equal to a man – the only gender differences arose, in his opinion, from cultural and social conditions, while the basic mental and moral abilities for the essence of humanity were identical⁶⁵. “Either no individual in mankind has true rights, or all have the same ones – he wrote, and whoever votes against the right of another, whatever be his religion, his color, or his sex, has from that moment abjured his own rights. It would be difficult to prove that women are incapable of exercising the rights of citizenship. Why should beings exposed to pregnancies and to passing indispositions not be able to exercise rights that no one ever imagined taking away from people who have gout every winter or who easily catch colds?”⁶⁶. Condorcet identified gender as a social concept based on perceived visual differences and rejected biological determinism as being able to explain gender relations in society. One should also mention Etta Palm d’Aelenders (1743–1799), a naturalized Dutchwoman and activist of *Cercle social*, who often used radical rhetoric and compared the situation of women

⁶² J. Abray, *Feminism in the French Revolution*, “The American Historical Review” 1975, Vol. 1, p. 45; U. Dethloff, *Le féminisme dans la Révolution française: Condorcet et Olympe de Gouges*, (in:) G. Beauprêtre (ed.), *Révolution et littérature: La Révolution française dans les littératures allemande, française et polonaise*, Warszawa 1992, pp. 63–72.

⁶³ J. Abray, *op. cit.*, pp. 119–121.

⁶⁴ Originally (in:) A. Condorcet O’Connor, M.F. Fago, *Œuvres de Condorcet*, Paris 1847, pp. 121–130, <https://gallica.bnf.fr/ark:/12148/bpt6k41754w/f6.image> (accessed 27.03.2022).

⁶⁵ E. Meiksins Wood, *A social history of western political thought from Renaissance to Enlightenment*, London 2012, pp. 303–304; S. Lukes, N. Urbinati, *Condorcet: Political writings*, New York 2012, pp. 156–62; J. Pappas, *Condorcet: Le seul et premier féministe du 18ème siècle?* Paris 1991, pp. 430–441; L. Devance, *Le féminisme pendant la Révolution Française*, Paris 2007, p. 341; K.M. Baker, *On Condorcet’s ‘Sketch’*, “Daedalus” 2004, Vol. 133, issue 3, pp. 56–64; J. Landes, *The history of feminism: Marie-Jean-Antoine-Nicolas de Caritat, Marquis de Condorcet*, The Stanford Encyclopedia of Philosophy, Spring 2016 Edition, <https://plato.stanford.edu/entries/histfem-condorcet/> (accessed 27.03.2022).

⁶⁶ N. de Condorcet, *The admission of women to the rights of citizenship*, (in:) L. Hunt (transl. and ed.), *The French Revolution and human rights: A brief history with documents*, Boston 1996, p. 120.

to slaves in her speeches. In one of pamphlets she demanded “equal rights for all individuals, without gender discrimination; the rights of free people must be equal for all beings, like air and sun”⁶⁷.

However, the issues of women’s political participation during the Revolution were not only a domain of intellectual elites. A political club of the Citizens, Republicans, Revolutionaries, founded by Pauline Léon (1768–1838) and Claire Lacombe (1765–?), was active in the *sans-culottes* groups, whose members actively participated in street riots – including in overthrowing the Gironde – as well as debates on key issues of political democracy and social equality at the time⁶⁸. The presence of female activists on the front lines of the Revolution met with violent opposition from the ruling Jacobins, who presented themselves as the party “truly” fighting for establishment of the equality ideal. In addition, Robespierre and his supporters had quite “paternalistic” views. They believed that quality of women’s „organization” is beneficial to the republic, as long as women remain within the domestic sphere, which they infuse with love and tenderness preserving virtue and “morals” of citizenship. But once women participate in the public sphere, their emotions turn them away and produce disorder⁶⁹. As a result, according to the Jacobins, the role of women should be exclusively that of wives and mothers, bearing children for the homeland, but leaving politics to men. A member of the Public Safety regime expressed this conviction in the following words: “Be honest and diligent girls, tender and modest wives, wise mothers, and you will be good patriots. True patriotism consists of fulfilling one’s duties and valuing only rights appropriate to each according to sex and age, and not wearing the [liberty] cap and pantaloons and not carrying pike and pistol. Leave those to men who are born to protect you and make you happy”⁷⁰. In October 1793, the anti-feminist “reaction” of the Revolution reached its apogee when political activity of female clubs was officially banned⁷¹.

After the fall of the Jacobin’s régime, as a result of the revolutionary terror experience, there was a radical shift in public opinion towards restoring social “order”, including overcoming legal chaos. One of the manifestations of these tendencies was the affirmation of “traditional family values” which resulted in restoring the authority of a husband over his wife and in limitation of divorces⁷². These postulates were largely codified by the Napoleon Code of 1804, which was, as is well known, a kind of a compromise between the private law principles

⁶⁷ G. Kates, *The cercle social...*, pp. 122–124.

⁶⁸ J. Abrey, *Feminism in the French Revolution*, “American Historical Review” 1975, Vol. 80, pp. 51–52.

⁶⁹ W.H. Sewell, *op. cit.*, pp. 118–120.

⁷⁰ W. Doyle, *op. cit.*, pp. 420–421.

⁷¹ D. Godineau, *Féminisme*, (in:) A. Soboul, J. R. Suratteau, F. Gendron (eds.), *Dictionnaire historique de la révolution française*, Paris 1989, p. 442.

⁷² X. Martin, *Kwestia prawa rewolucyjnego...*, pp. 379–381.

of *ancien régime* and the revolution⁷³. While maintaining liberal solutions in terms of property and contracts, it restored at the same time the patriarchal model of family relations based on paternal and husband authority, describing a married woman as “perpetual minor” and depriving her of full legal capacity. As it is known, these solutions were subject to a wide reception in Europe and all over the world, while full equality of women under civil law began to be granted only at the turn of the 19th and 20th centuries⁷⁴. It is not surprising then that the criticism of the French Revolution comes also from contemporary feminist circles. For instance, Simone de Beauvoir wrote in *The second sex*: “It might well have been expected that the Revolution would change the lot of women. It did nothing of the sort. That bourgeois revolution was respectful of bourgeois institutions and values and it was accomplished almost exclusively by men”⁷⁵. Nevertheless, it is quite common today to believe that it was feminist agitation and revolutionary private law reforms that initiated the process of transforming the family from the former “patriarchal” and multi-generational model to the modern “individualistic” model of “nuclear” family, which recognizes the rights of its members to a certain degree of independence and the pursuit of happiness⁷⁶.

5. IMPACT OF OLYMPE DE GOUGES’ THOUGHT

Olympe de Gouges inspired and still inspires various areas of discussion on gender equality. The progressive nature of her concepts can be proved, for instance, by the fact that not all of them have been fully implemented yet. The 19th and 20th centuries were, as it is known, marked by successive “waves” of feminism fighting for formal equality in the public sphere – primarily electoral rights and access to public service – as well as equal access to all levels and branches of education. Nevertheless, there are still some issues, especially regarding the labor market, that focus criticism of feminist circles⁷⁷.

⁷³ J. Baszkiewicz, *O powołaniu czasów rewolucji i Napoleona do kodyfikacji*, (in:) *Idem, Państwo. Rewolucja. Kultura polityczna*, Poznań 2009, p. 519.

⁷⁴ K. Sójka-Zielińska, *Kodeks Napoleona. Historia i współczesność*, Warszawa 2007, pp. 67–75; X. Martin, *Fonction paternelle et Code Napoléon*, “Annales historiques de la Révolution française” 1996, Vol. 305, pp. 466 *et seqq*; W. Doyle, *op. cit.*, Oxford 2002, p. 420.

⁷⁵ S. de Beauvoir, *The second sex*, H.M. Parshley (transl.), London 1989, pp. 131.

⁷⁶ R.B. Rose, *Feminism, women and the French Revolution*, “Historical Reflections / Réflexions Historiques” 1995, Vol. 1, pp. 196 *et seqq*.

⁷⁷ E.g. E. Adamiak, *Feminizm*, (in:) B. Szlachta (ed.), *Słownik społeczny*, Kraków 2004, p. 312; B. Szlachta, *Feminizm*, (in:) M. Jaskólski (ed.), *Słownik historii doktryn politycznych*, Warszawa 1999, p. 166.

Declaration of the Rights of Woman and of the Female Citizen and project of the social contract make her a precursor of contemporary radical feminist objections towards certain visions of society and politics in liberal democracy. From this point of view especially interesting could be Olympe de Gouges' criticism of exempting women from full participation in public burdens. As Art. 7 of the Declaration claimed: "No woman is an exception; she is accused, arrested, and detained in cases determined by law. Women, like men, obey this rigorous law". Of course, on the one hand, it can be argued that such views were a direct reference to the previously mentioned popular concepts of Sieyès, radically rejecting all differences in the legal status of individuals as unfounded "privileges", clearly negatively associated with feudalism and *ancien régime*. On the other hand, a rejection of this specific "affirmative action" was directed against a belief, quite common in the 18th-century philosophy, that participation in the public sphere is only a male domain. This conviction developed later a common idea of citizenship that suits only men, both in terms of rights and obligations. De Gouges is clearly approaching here to the radical Enlightenment currents, for example the utopians mentioned before, that perceived equality as identity. Some contemporary trends of feminism derive from this assumption the fact that obligatory social roles were created by men, according to their beliefs and interests. In this situation, the liberal discourse on equal opportunities and "gender neutrality" loses its meaning. The problem is that the roles may be defined in such a way as to make men more suited to the role, even under gender-neutral competition. Women are disadvantaged, not because chauvinists arbitrarily favour men in the awarding of jobs, but because the entire society systematically favours men in the defining of jobs, merit, etc.⁷⁸. As a result, according to feminists, democratic equality requires not only an abolition of discrimination and a creation of equal opportunities for both sexes to fulfill men-defined roles, but also equal ability to create roles specific only to women or "androgynous roles" for which both sexes would be interested to compete⁷⁹. This „remedy" to „subordination of women" was named a "dominance approach" because it claims that gender differences (real or imagined) must never be used as a source of, or justification for, inequality and "male domination"⁸⁰. As one of the representatives of the contemporary feminism argues, such a radical reconstruction of social structures is necessary because "no woman can escape her femininity by remaining in the social system defined according to sexuality criteria"⁸¹. A doctrine of "genderism", quite popular nowadays, is the next logical stage of this reasoning. It assumes a distinction between biological concept of "sex", which means the difference in the anatomical and physiological

⁷⁸ W. Kymlicka, *Contemporary political philosophy*, Oxford 2001, pp. 379–382.

⁷⁹ B. Szlachta, *op. cit.*, p. 167.

⁸⁰ W. Kymlicka, *op. cit.*, p. 383.

⁸¹ C. MacKinnon, *Toward a feminist theory of the state*, Cambridge 1989, p. 38.

individual characteristics of women and men and “gender” as the socio-cultural model femininity or masculinity with social roles corresponding to it⁸².

Moreover, the project of social contract based on the will of the parties and “mutual inclination” might be also an important inspiration for contemporary feminist doctrines. According to some intellectual heirs of Olympe de Gouges, it is necessary to redefine liberal individualism in the context of family relations. They argue that all social bonds, including family, are the result of agreements concluded by autonomous individuals, retaining all their rights, also to freely break these relations⁸³. On the contrary, classical liberals usually assumed that the family is a biologically determined unit, and that justice only refers to the “public” realm, where adult men deal with other adult men in accordance with mutually agreed upon conventions. Family relations, on the other hand, are pre-social, “private”, governed by natural instinct or sympathy⁸⁴. Obviously, this division comes from the idea of “limited government”, in which the individual has natural rights – above all to life, freedom and property – which the authority is to protect and cannot claim any claim against, and therefore must act within their limits⁸⁵. However, feminist trends consider the family to be no less important than the public sphere as a place to fight for individual autonomy and gender equality. The failure of modern liberal state to confront gender inequalities in the family can be seen in this way as a betrayal of liberal principles of autonomy and equal opportunity. According to some feminist critics, liberals refuse to intervene in the family, even to advance liberal goals of autonomy and equal opportunity, because they are committed to a public-private distinction, and because they see the family as the center of the private sphere⁸⁶. As one contemporary theorist writes, “the right to privacy reinforces the division between public and private that (...) keeps the private beyond public redress and depoliticizes women’s subjection within it”⁸⁷. According to this approach, the state should interfere in the life of the family when the autonomy and individual rights, especially those of women, are threatened by other members. Hence the demands for public authorities to intervene when wives and children became victims of violence from their husbands and fathers⁸⁸. Feminists want to emphasize again the personal liberty as a fundamental value, which is a kind of reference to the classical liberalism. On the one hand such understanding of the private sphere in terms of feminism can be compared, to some extent, with the sphere of “individual sovereignty” appearing, as is

⁸² E. Adamiak, *op. cit.*, p. 312.

⁸³ B. Szlachta, *op. cit.*, p. 169.

⁸⁴ W. Kymlicka, *op. cit.*, p. 386.

⁸⁵ M. Merkwa, *U źródeł idei praw człowieka. Kształtowanie prawnych i filozoficznych podstaw koncepcji praw człowieka*, Lublin 2019, p. 266; W. Osiatyński, *Prawa człowieka i ich granice*, Kraków 2011, p. 27.

⁸⁶ W. Kymlicka, *op. cit.*, p. 388.

⁸⁷ C. MacKinnon, *Feminism unmodified: Discourses on life and law*, Harvard 1991, p. 102.

⁸⁸ B. Szlachta, *op. cit.*, p. 169.

known, in the well-known integral liberalism of Benjamin Constant (1767–1830). On the other hand, such feminists may be perhaps situated closer to the social and progressive liberalism because they seek for a state intervention to guarantee personal freedom⁸⁹.

6. CONCLUSION

In conclusion, it is necessary to make some general remarks. Firstly, political and legal thought of Olympe de Gouges should be situated in the context of the clash of two main currents inside the French Revolution – the first was extremely democratic and emancipatory while the other was closer to the classical liberalism, with more conservative vision of society. The author of the Declaration of the Rights of Woman and Female Citizen was a typical member of the first current, inspired by the most popular, but also the most radical ideas of the French Enlightenment. As Enraged or Jacobins pretend to represent the *sans-culottes*, de Gouges' views may be to some extent described as a reflection of *sans-jupons*' (women who did not wear petticoats like upper-class women) political spirit⁹⁰. Her concepts, not very revolutionary for today's readers, were such an extreme, even utopian for revolutionary public opinion, that she was executed as an anarchist. The fate of Olympe de Gouges shows also a real face of the Revolution in the sphere of tolerance and freedom of speech. As it is known, the first "republic of natural human rights" turned out to be far more intolerant than *ancien régime*.

Secondly, the Declaration of the Rights of Woman, as well as the "Form for the social Contract between man and woman", remain as some of the crucial starting points of the feminist fight for sex equality, both in private and public law⁹¹. The claim that "Woman has the right to mount the scaffold; she ought equally to have the right to mount to the tribune" became a motto of the 19th-century French feminist movement⁹². However, as it was demonstrated in the article, ideas of Olympe de Gouges have not only inspired the suffrage movement, asking for gender parity in public life, but may also have a lot in common with the contemporary feminist discourse, demanding radical reconstruction of social institutions. Her vision of equality, associated with identity of all people, was more similar to contemporary concepts than to the suffragists of the 19th and 20th centuries.

⁸⁹ H. Izdebski, *op. cit.*, pp. 62–63.

⁹⁰ P. McPhee, *The French Revolution 1789–1799*, Oxford 2002, pp. 95, 141.

⁹¹ U. Gerhard, *Droit civil et genre en Europe au XIXe siècle*, "Clio. Femmes, Genre, Histoire" 2016, Vol. 43, p. 266.

⁹² J. W. Scott, *Only paradoxes...*, p. 55.

Finally, one may indicate that the roots of modern feminism should be associated more with radical egalitarianism influential during the Enlightenment and the Revolution. As it was presented in the article, some contemporary ideas of the fundamental reconstruction of the political and social system currently widespread in the West, are based on the idea of equality as identity, which appeared for the first time in the 18th century French political and legal thought. As it is often said, the Revolution of 1789 has not been finished yet, but it comes back with next waves, always more radical than the previous ones. Experience of modern revolutions, not only in France, but also in Russia or in Asian countries show one fundamental regularity, which has been already recognized by Alexis de Tocqueville. Indeed, there is a threat that a pursuit of emancipation and equality, while leading to the collapse of social and political order, may transform itself into an even more collectivist regime. As history shows, destruction of one “slavery” sometimes can lead to more powerful enslavement. The same risk seems to exist in case of cultural or moral revolution of May 1968, often perceived as a foundation of modern feminism. Proposals of state intervention into the family relations, even based on good intentions, need therefore a very deep deliberation within democratic procedures, to avoid such risks.

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