

Let's talk about autonomy, vulnerability, and rights with **Silvina Álvarez Medina**

I am Silvina Álvarez Medina. I am a university professor at the Universidad Autónoma de Madrid, the Spanish word which is like autonomous university in Madrid, Spain. I work and I live in Madrid. I'm at the law faculty and within the law faculty I am at the legal philosophy department and for quite long now I have been focused on the area of human rights and specifically from a gender and feminist perspective. So I have worked a lot on women's fundamental rights or women's human rights, that means reproductive rights, sexuality rights, protection against gender violence and at the moment I am specifically working on the area of constitutional law and mainly feminist constitutionalism and one of my topics at the moment, my research topics, is care issues and the value of care within a constitutional perspective.

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Why are you passionate about this field? What motivates you to explore these intersections between law and feminism?

Well, you know, feminist jurisprudence is an area of work and research. It started in the 60s and 70s in the United States within the so-called second wave feminism and at that point in legal academics a very strong perspective started to question the legal system and to question the law as some of the important pillars of the legal systems like the assumption of neutrality and universalism and individualism and feminist jurisprudence

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started to question these aspects of the legal system precisely taking into account that women were not taken into account when legal systems were designed and thought.

So of course within legal feminism there are different schools and different approaches, some of them more on the liberal part of the realm, others are more radical, so-called radical feminism, but all of them, even liberal feminists, agree about this exclusion of women in thinking the legal system. So from this perspective many of the problems and many of the vindications that women pose within the legal system have their cause in this exclusion. Women were not part when thinking the legal system.

So this, answering to your question, maybe this is the beginning of the interest in rethinking the legal system and how to rethink the legal thinking and of course it's a complicated question because we have to think about purposes and objectives but also strategies because it's not easy to reach legal systems which are very traditional systems and so lawyers, female lawyers, know a lot about that. Sometimes, as Ruth Bader Ginsburg used to say, these are battles—small battles—and some of the vindications start in a long way, battle by battle.

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Your academic work also focuses on autonomy. Could you tell us about it?

Okay, thank you. Yeah, well autonomy is as well a very important pillar of our legal systems—personal autonomy. And when we think about personal autonomy maybe the Kantian root comes to our minds because it is a Kantian concept in legal philosophy, but the concept of autonomy has evolved since Kant to these days.

When we refer to personal autonomy we do not consider as much in the basis of morality as Kant thought about it, but we think in autonomy as a capacity. Autonomy is a capacity. Of course there is a normative aspect of this concept and of this capacity,

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but we think about people as able to make decisions and we think about people as making choices. We have to choose along our lives; we have more trivial decisions and we have more transcendental ones in our lives.

So we can talk about autonomy also as a punctual decision: we get up in the morning and we have to decide if we have a cup of coffee or a cup of tea and that's autonomy as well. But then we have other much more transcendental decisions in our life like deciding to marry or not to marry, deciding about our sexual identity and so on.

In the liberal approach of philosophy autonomy was thought as a capacity—sometimes I refer to this approach as autonomy as a full capacity. We think about people as fully deciding all the time about what they want to do with their lives, with their time, with their space, relations and so on.

From the perspective of feminist theory in the last decades another approach has emerged in the realm of philosophy named relational autonomy. Here there are very interesting philosophers like Catriona Mackenzie and Natalie Stoljar—maybe they are the main names—but also in the legal realm philosophers and legal theories as Jennifer Nedelsky for example. They introduced this idea of relational autonomy in the sense that individuals, when they choose—and that means when they act as autonomous persons—this capacity is not only a capacity in terms of rationality.

Of course we are rational agents and when we choose we act as rational agents and we act, the liberal theory says, independently. That means that we are able to take distance from our surroundings and from other people and to base our decisions on our own considerations. So liberal conception of autonomy is based on these two aspects: rationality and independency. Autonomous people are rational and independent.

And the relational conception of autonomy comes to question these aspects. It doesn't reject rationality and independence but it tries to introduce some nuances. Of course we are rational agents and we have all these cognitive capacities and these capacities are

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important, but we are not only rational agents—we are also emotional agents for example. We have other capacities: capacities to communicate, for example, to create, to imagine.

And the second point is the aspect of independence. It is true that we have this capacity to distinguish between what you want me to do and what I really want to do and this is important in order not to be heteronomous. We are heteronomous when we do exactly what the others want us to do and we are autonomous when we can reconsider all those aspects and decide on ourselves. This is important.

But what relational autonomy says is we have to take into account that we are dependent agents in some aspects. We are interdependent. We cannot really become absolutely disconnected from people surrounding ourselves, from society, from culture, from ideology. All these aspects are constituent of the agency as well.

Another important concept completing this map is the idea of vulnerability. This is a concept that has been introduced in the last decades and which is really important to understand autonomy. From the liberal conception, from the Enlightenment on, the individual was thought specifically as only rational, only autonomous, with only capacities to act. But people—all of us—are also vulnerable. And so we have to think autonomy also with this other side of the coin: vulnerability. Sometimes we can act and be fully rational and enforce our decisions and sometimes we have to reschedule our decisions considering our limited capacities because we are also vulnerable.

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What is the biggest challenge facing feminism today, especially within Europe's legal and political context?

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This is really challenging.

Well, of course we are very lucky in the European context as women. We are like in a sort of happy island where women can enjoy lots of rights and lots of guarantees and being considered as human beings. And this is really important because this has been a long, long way. If we think about 50 years ago, for example in Spain—we are celebrating 50 years of the parliamentary monarchy since Franco died—and of course things have changed so much for women in these last 50 years. But 50 years is nothing in history.

So we are really very happy about all the incredible progress of these last 50 years for women. And so which are the challenges even in this lucky context which is Europe?

Considering my main expertise, which is the legal realm, I think that in terms of rights and human rights and also policies and public services, we are lucky because we have these egalitarian systems in which women are considered as subjects of rights.

In the history of legal vindications for women we have different periods. For example, Ruth Rubio Marín says:

- at the beginning women asked to be subjects of rights in the same conditions that men already were (e.g., suffrage).
- In a second moment women realised that this was not enough because rights had been designed for men, not for protecting women’s interests.
- And now we are in a third moment: transforming the system.

The system is still the system of the 18th century—the Enlightenment project—which has accommodated some women’s vindications but has not changed its basis. So the challenge is to change the system. We have to rethink the axiological basis—the values underpinning these systems: the individual, liberty, autonomy, freedom—and incorporate values like care.

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Looking ahead 10 years, do you think these values will change?

Well, this is difficult because vindications have been important and the map for women has changed a lot, but it is always possible to lose what we have gained. We are in a very special moment in terms of ideology with lots of changes taking place, so it's difficult to predict.

But if we think about the latest vindications—for example movements like Me Too—I think this is really important to rethink sexuality and consent. For example in Spain we had an important criminal law reform in 2022 about how to consider consent—this important concept of consent, what does it mean consenting in sexual relations.

I think these conceptual twists are very important.

And regarding care issues, my hope is that spaces for dialogue—in national parliaments, in the media, in European institutions—will open. When we talk about change, it's not only about changing the law but changing the way of thinking when we apply regulations.

We have to rethink certain concepts.

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