

Marianna Haug Reproductive work and legal
form: The necessary relationship
between law and gender
oppression in capitalism

*And if you didn't understand what feminist means
I warm my belly on the stove, I cool it in the basin
I take care of the boss's son, my daughter is alone
The hand is on the job, the mind is on the daughter*

(Ancient Poetry, by Ellen Oléria)

ABSTRACT

This text starts from the contributions of the Marxist critique of law and Social Reproduction Theory to understand why the domestic work done by the family is not waged, since no one receives a salary for cleaning their own house, cooking their own food, or taking care of their own children, which does not enter the logic of the employment contract and abstract work. The law separate what is considered family law from what is labour law as a strategy to guarantee the daily and generational reproduction of the workforce in exploitative conditions. Thus, ultimately, the legal form is directly related to the institution of gender inequalities in capitalism, in view of the historical process of making women responsible for domestic work, inside and outside the family structure.

KEYWORDS

Marxist critique of law
Legal form
Reproductive work
Gender
Domestic work

INTRODUCTION

When I read about Social Reproduction Theory, I got excited again about the feminist movement, which I was slightly removed from in relation to direct tasks of militancy, even though the theme permeated all other possible spheres of action. However, the lack of a material, epistemologically coherent explanation, or a methodological one, which concretely related gender and racial oppression to the reproduction of material life – being, therefore, supported by dialectical historical materialism – meant that I hadn't delved into the field of gender studies before. It seemed like a field in which all new debates turned to postmodern and anti-Marxist or downright liberal elaborations, until the issue of the reproduction of labour power became popular in the movement.

Although Vogel (2022) [1983] had already raised this debate long ago, her book, *Marxism and the Oppression of Women: Towards a Unitary Theory*, was left cornered for many years, only being translated into Portuguese and published in Brazil in 2022. However, by giving centrality to the work, dealing with themes that generate identification for permeating the life and routine of all working-class women through materialist explanations and taking methodological responsibility, this debate is being renewed in Brazil, which is a fertile ground for new Marxist-feminist elaborations.

In this sense, I was interested in researching Social Reproduction Theory in connection with the Marxist critique of law, to understand the legal form as fundamental for the commonplace functioning of expropriation of surplus value, in addition to the fact that legal ideology is a necessary mediation for sociability in the capitalist mode of production.

Edelman (2016) [1978], advancing what Pachukanis inaugurated as the Marxist critique of law, pointed to the importance of law in the mystification of the production relationship, placing employer and worker as equivalent parts of the same contract and legally hiding the surplus labour in this process. With that, he showed the relationship between the legal form and the field of production and productive work, removing criticism that Pachukanis had a circulationist thesis that is not related to the way goods are produced under capitalism.

Since Edelman made this move to analyse the law within the logic of the employment contract in the face of productive work, I was interested in researching how the law relates to the exploitation of reproductive work, which especially affects working-class women, and whose work is indispensable for continued capital accumulation. I elaborated some questions in order to answer the way in which the law is necessary to continue oppression by gender and race with regard to the responsibility of black, Latino, LGBTQIAP+, and Global South women workers, for the daily and future reproduction of the workforce.

THE LEGAL FORM AS THE SOCIAL FORM OF CAPITAL AND THE MARXIST CRITIQUE OF LAW

To understand the relationship between law and gender oppression in capitalism, we need to analyse, first hand, the law in the form we know it today, given that it is usually presented as a necessary and consensual social contract for ensuring order and peaceful coexistence among people.

However, starting from dialectical historical materialism, we verify that the legal form is a social and historical form responsible for the organization of relations of equivalence, in order to enable the exchange of goods, the sale of the workforce as a commodity, generalised exchange and, ultimately, the appreciation of value. If capital is not a metaphysical phenomenon but a material mode of production with specific historical determinations, this does not exist abstracted from its forms (Rubin, 1987: 27), so the legal form is part of this composition.

In this sense, it is possible to understand the legal form as specific to the capitalist mode of production, and that it does not exist without what we call law today and that, in turn, law as we know it only exists and is only possible in these historical conditions in which the commodity form is the ultimate determination of social relations. Only under capitalism is labour sold under contractual logic as equivalent to wages measured over time. While the salary is considered compatible with the working day on a contractual level, this hides the extraction of surplus value during the productive process.

Thus the legal form is essential for obscuring the expropriated surplus value while presenting the boss and the worker as equivalent parts of the same contract, dissolving class relations and presenting only the “subjects of rights”, the “citizens”, who are equal before the law. This legal equality is essential to allow the exchange of goods, since the subjects involved in the exchange need to be legally equal for the mercantile exchange to be fully generalised.

This understanding of the legal form in its historical context – founded on the pillars of legal ideology and the subject of rights, in the materiality of relations – is fundamental for us to analyse the importance of the law for capitalism. Pachukanis (2017 [1924]) inaugurated the Marxist critique of law by writing *The General Theory of Law and Marxism*, pointing out how, being the indispensable legal form for capitalism, “The disappearance of the categories of bourgeois law under these conditions will mean the disappearance of law in general, that is, the gradual extinction of the legal element in human relations” (Pachukanis, 2017 [1924]: 83).

Pachukanis was a Soviet jurist during discussions after the Russian Revolution about what to do about the law in the transition to the end of private property. At the time, he argued against the orists of legal socialism and labour law, who defended the use of law as the main tool for the transition to socialism. Pachukanis, however, argued that the law is not only not the best tool for that – as the legal form is an essentially bourgeois form that allows the exchange of goods – but also that overcoming capitalism would necessarily lead to overcoming the law as we know it too.

To understand the legal form from this perspective, he started from dialectical historical materialism, studying the subject of rights in the same way that Marx studied the commodity, to break with legal positivism and with the neo-Kantian heritage brought by Kelsen to the branch. Likewise, jusnaturalism and legal idealism, influenced by Hegel, are also unable to explain what the legal form is and its relationship to the mode of production, since they understand it autonomously, as a harmonious and closed whole that hovers over other social relations.

By historicising the legal form, it is possible to understand how it is specific to this mode of production and is precisely what allows the sale of labour power and the expropriation of surplus value in a mystified way. Based on Pachukanis' analyses, another author who advanced studies of the Marxist critique of law was Edelman (2016 [1978]), who diagnosed the process that he called "legalisation of the working class" to propose that shifting the class struggle to the legal terrain is not just seeing another place where the results of the class struggle can be manifested, since the legal form only reproduces its own individualising and patrimonialist logic, which produces a different result from that process. Law is an arena of struggle in which the bourgeoisie controls the language, the rules of the game and the possibilities of results, and from which it already derives full advantage. Thus, based on the law, we will not have de facto justice for the working class.

Edelman is not proposing that we never articulate legal strategies as a form of resistance, but pointing to the importance of understanding this agenda strategically with a perspective of dissolving this social form, so that we do not shift our main struggles to the legal arena that surrounds us, imprisons us, and yields limiting results.

In a similar fashion, 60 years earlier, Remy Janneau (Martins, 2022) realised, from practical studies on US trade union movements, that the working class cannot be "legalised" when it intends to act as a class. The legal form does not allow this, since it individualises and categorises its agendas, by shifting them on to a terrain in which victories are partial, pulverized and do not allow for class and mass organisations. With this, we see a convergence in the works of Pachukanis, Edelman and Janneau in pointing to the historicity of the legal form and its intimate relationship with the commodity form.

From these contributions, this article intends to understand how the legal form articulates with gender oppression to allow the reproduction of the workforce in conditions of exploitation and, consequently, the valorisation of value and the accumulation of capital.

SOCIAL REPRODUCTION THEORY AND EXPLANATIONS OF GENDER OPPRESSION

Feminist movements have long sought to explain the origin and functioning of women's oppression, through various political and epistemological proposals. Cinzia Arruzza (2019), in her book *Dangerous Liaisons: Marriages and Divorces Between Marxism and Feminism*, organises these expressions into three key analyses: (i) double or triple systems theories, (ii) independent capitalism theories, and (iii) Social Reproduction Theory.

The first encompasses currents that understand capitalism and patriarchy as autonomous systems, each with their own functioning. This is exemplified by Heidi Hartmann (1979), who argues that gender oppression is independent of capitalism, even though both systems are historically interconnected. Updating this thesis, Sylvia Walby (1990) proposed the theory of triple systems, in which capitalism, patriarchy and racism are organised as three autonomous systems. This starts from an understanding that class relations are defined purely in economic terms, based on classical political economy, which does base itself on the reproduction of material life and social relations. Still, authors such as Christine Delphy (1977), in this same sort of analysis, even argued that men and women belong to antagonistic classes, as if patriarchy was a mode of production.

Regarding the theory of independent capitalism (ii), authors such as Ellen Wood (1995) argued that capitalism has only an opportunistic relationship with gender and racial oppression, but that it is not something intrinsic to its functioning, even proposing that there are women in this mode of production who benefit from a high level of emancipation unknown to them in other historical moments, and that capitalism could exist without these oppressions. However, there is no capitalism "purified" of gender and race oppression: they are a necessary part of its functioning. Arruzza (2015, 37) comments:

In short, capitalism has an essentially opportunistic relationship with gender inequality: it uses what it finds beneficial from existing gender relations, and destroys what becomes an obstacle. This vision is articulated in several versions. Some claim that under capitalism women benefited from a level of emancipation unknown in other types of society, and this would demonstrate capitalism as not being a structural obstacle to women's liberation. Others maintain that we must carefully distinguish logical and historical levels: logically, capitalism does not specifically need gender inequality, and can get rid of it. But historically, things are not that simple.

This key to interpreting independent capitalism understands the mode of production through a reading of "purity", which is anti-historical and closer to Weberian ideal types than to Marxism. Engels, in his Letter to Conrad Schmidt (2000 [1895]), discusses how feudalism in its "purity" practically never existed, not in Normandy, Norway, England or southern Italy, in this logic of natural and closed concepts. Therefore, relying on a non-historical hypothesis of a capitalism that could exist without the production of gender and racial distinctions may fall into idealistic speculation on the mode of production. There is historically no capitalism without gender and racial oppression, and abstracting this historical issue to a supposed logical interpretation of the mode of production would move us away from the method of understanding the concrete social relations that capitalism demands to exist materially.

Capitalism, to be born and exist, historically needed to be gendered and racialised, depending on these conditions to reproduce. Indeed, gender polarity – the idea that there are two genders that are complementary opposites – is a recent colonial invention. In the 19th century, an argument used by the European bourgeoisie to justify the colonisation of African territories was the idea that societies where there was not a great contrast between male and female were not civilised and needed interven-

tion (Schuller, 2017). Thus, the imposition of the genderfication processes was closely related to the discourse of “scientific” racism and the materiality of imperialism and the expansion of capital.

In pre-capitalist societies there were not necessarily gendered processes as we know them today. The traditional Yoruba family in Nigeria is described as non-gendered: “It is non-gendered because kin roles and categories are not differentiated by gender. So significantly, power centres within the family are diffuse and not gender specified” ((Oyèwùmí, 2004: 6).

In the same sense, we can mention the Iroquois who have an egalitarian hunter-gatherer system without distinction into gender roles, as well as the Khasi of India or “the Minangkabau of Sumatra, the Ngada of Flores Island or the Na (also called Mosuo) of China, this people who, undoubtedly unique in the world, do not socially recognise marriage or paternity” (Darmangeat, 2017: 23).

Likewise, racism also needs to be historicised and understood in its intrinsic relationship with the determinations of the commodity form, since it is something relatively recent, as Breitman (1954, 45) exposes:

M. F. Ashley Montagu, discussing the “modern concept of ‘race,’” says: “Neither in the ancient world nor in the world extending to the latter part of the eighteenth century was there any corresponding notion [of racism]. A study of humankind’s cultures and literatures, both ancient and recent, shows us that the notion of races naturally or biologically different from one another, both mentally and physically, is an idea that did not emerge until the late eighteenth century, or thereabouts, of the French Revolution.” (Man’s Most Dangerous Myth: The Fallacy of Race.) [...] Whichever century is chosen, the point is: racial prejudice against the Negro arose to justify and preserve the system of slave labor that operated according to the interests of capitalism in pre-industrial stages, and remained slightly modified by industrial capitalism after slavery became an obstacle to the further development of capitalism and was abolished. Few things in the world are more marked with the characteristics of capitalism. [...] Prejudice against the Negro grew out of the needs of capitalism, it is a product of capitalism, it belongs to capitalism, and it will die when capitalism dies.

In this context, the exploitation of reproductive work does not affect all women in the same way, since the capitalist mode of production is sustained by inequalities and responsibility for domestic work falls largely on working class women, especially black, indigenous, poor women and women from countries in the Global South, so that racial discrimination is closely related to capitalism, being essential to expand the possibilities of exploitation of the workforce (Gorender, 2000: 69), including reproductive work. In this sense, the model of “femininity” that would be constructed and imposed on their bodies was also racialised:

The social role of racialised gender has dimensions in its history that are quite different from the characteristics of docility and fragility attributed to white women. For example, for black women in Brazil, insertion into the job market differs from the direct translation of female emancipation. If, during the enslaved period, activities aimed at black women imposed great physical

effort, such as building houses, harvesting crops on plantations, and carrying heavy loads, nowadays this is updated in the occupation of precarious jobs, materialised in informal work, outsourcing and domestic employment. Incarceration seeks to shape incarcerated women into the racialised profile of femininity, whose stigma deepens the obstacles to achieving better exercise, stability, reduced working hours, labour benefits, pushing them towards even more intense economic marginalisation, and [becoming] more controllable. (Silva, 2018: 772)

In the Brazilian context, most of the domestic work is carried out by black women, according to data from DIEESE (2013: 6-12), and between 2004 and 2011, the proportion in domestic services categorised “No country” grew from 56.9% to 61.0%, but among non-black women this rate was minor, at 4.1%. Thus many of these women are over-responsible for domestic work, carrying it out within their own family while providing services to other families. By carrying out the service in other families’ homes, there is a “liberation” of middle-class women to work in the productive sphere, in addition to women who already work double and triple shifts inside and outside the home.

It is therefore important to understand how the social forms through which we identify gender and race are historical and related to the mode of production, which is necessary to point to the specificities of these oppressions in the capitalist mode of production instead of understanding them as trans-historical.

This also concerns the LGBTQIAP+ agenda, considering that it is “exclusively under capitalism people were categorised in terms of sexual identities based on specialisation of desire” (Sears, 2016: 141), so that the super specialisation of work linked to the structure of the modern subject consolidates this logic of identities related to sexuality, which would not make sense as a categorisation in other modes of production.

In this sense, regarding the legal form, it is relevant to point out how the constitution of subjects of rights in the capitalist mode of production is also related to the constitution of identities and sexualities as such, since:

capitalism is unique among class societies in that members of the working class own their own bodies, creating the basis for the conceptualisation and practice of sexuality grounded in embodied autonomy. Yet that freedom is immediately paired with dispossession, “freedom” from control of the key productive resources expropriated by members of the capitalist class. People develop sexual identities and practices in the context of hierarchies of dispossession that alienate them from effective control over their bodies and lives. (Sears, 2016: 151)

Therefore, by subsuming identities through fetishisation and through the individualisation that is accompanied by the subject of rights, neoliberal capitalism “seeks to transform queer and LGBT subcultures into merchandise; this does not change the fact that these cultures and the policies that they derive from them or that inform them always have a destabilising function for capitalism” (Rebucini, 2019, 121). In this sense, the legal form and the subject of rights interpellate the subjects as such, to enable recurring material practices that allow concrete behaviours concerning gender and sexuality formats.

Still, the organisation of affective and patrimonial relationships

is also specific and historically located, since, although “monogamy” as a form of social and affective relationship can be found in other pre-capitalist societies such as the South Slavs, it is a novelty in this mode of production in terms of being a matrimonial, contractual and exclusive cohabitation model (Álvares, 2019: 134). Engels (1984 [1884]) pointed to the issue of monogamy as a private property mapping strategy to locate direct descendants and heirs, arguing that the origins of the family, private property and the state were intimately interconnected.

I thus point to the need to historically locate the relations of oppression in their specificities to understand how they are linked to the capitalist mode of production and, therefore, to the overdetermination of the commodity form. If we are precisely analysing a mode of production in its complexity and dynamics, we are not dealing with a collection of random and individual events or with the unique performance of a specific capitalist, but with broad relations of production based on the exploitation of an entire class by another and based on the metamorphosis of commodities into money and the production of surplus value in the production process.

In view of this, capital cannot depend on eventual trips of workers to their jobs but depends on regularity in the extraction of surplus value and in the sale of labour power. To ensure that a worker who showed up at work today returns the next day, capital demands specific socio-biological needs, such as being fed, having slept, wearing clean clothes, being in a minimum psychological condition to work and so on. This involves an invisible job of preparing your food, making your bed, washing your clothes, absorbing what distressed you throughout the day, and so on. This work, made invisible, is called reproductive work in Social Reproduction Theory – everything that guarantees the daily and generational replacement of the workforce in conditions of exploitation. As this work is historically constituted as the responsibility of women, especially black, Latino, and LGBTQIAP+ women and women from the Global South, there is a direct relationship between gender oppression and the exploitation of reproductive work done by this prominent portion of the working class.

That is why it is important to approach this debate from the centrality of work, especially reproductive work, linked to processes of gendering and racialisation that are historical. Thus, the Social Reproduction Theory provides us with bases to understand the origin of women’s oppression, as well as the need for capital to produce this specific system of oppression and exploitation. Based on authors such as Lisa Vogel (2022 [1983]), we began to understand the relationship between reproductive work at home and the production of goods outside, proposing a unitary theory of this analysis.

The division between reproductive work inside the home and productive work outside the home, based on gender roles, is something quite recent in history. This division comes from capitalism’s requirement to have a portion of the working class that serves to ensure that the workforce is placed into better conditions of exploitation at a time when relative surplus value was becoming predominant, and it would be in the interests of capital that the working class survived longer, to guarantee new possibilities for exploitation.

There was a process of creation of so-called housewives, from “popular education to teach factory workers the skills needed for housework” (Federici, 2021: 157), while a model of maternal sacredness was being shaped and women were punished for “maternal negligence”, in addition to the progressive degradation of the image of so-called prostitutes. At that moment, the organisation of the family was remodelled to meet the private reproduction needs of the workforce on this scale.

With this, gender roles that articulated with racist stereotypes were strategically constructed in the Global North and South to allow the exploitation of the reproductive work of working-class women and, with it, the daily and generational replacement of the workforce. To this end, the legal form and the family form will be articulated – given the overdetermination of the commodity form – as social relations proper to this historical moment.

THE LEGAL FORM AND ITS RELATION TO THE EXPLOITATION OF REPRODUCTIVE WORK

Among feminists who start from Social Reproduction Theory to understand the oppression of women in capitalism, there are divergences regarding how this process is thought to take place. Silvia Federici (2019 [1972]) joins the Wages for Housework movement, as well as Selma James and Mariarosa Dalla Costa, to argue that the demand for a salary for reproductive work is a fundamental strategy, since the great difference between this work and other work is that it is free work, which would explain the origin of women’s oppression.

However, based on the Marxist critique of law, we know that all jobs, including those that are salaried, have a free part, since the salary is not the equivalent of the time worked, considering that there is a mystified expropriation of surplus value in the productive process which does not appear in the contractual work relationship, where the service is codified as fully paid. Therefore the difference is not in the full payment for the work, but in the fact that it is not mediated by the logic of the employment contract.

Even though the Wages for Housework manifesto states that the problem lies in the lack of a contract and not exactly in the absence of remuneration, focusing on how the legal arena operates in a specific way can help us understand the need for family formation, alongside contractual operation. Even though neoliberalism updated the traditional nuclear family model, allowing the formation of same-sex families, the growth of single-parent families and a decrease in marriages alongside an increase in stable unions, the contractual logic of the obligation to reproduce the strength for work remains intact.

Angela Davis (2016 [1981]), however, argues that since the beginning of capitalism black women have been paid for domestic work and this did not solve the problem of the precariousness of reproductive work and gender oppression:

The experiences of another group of women reveal the problematic nature of the “remuneration for domestic tasks” strategy. Cleaners, maids, housekeepers – these are the wom-

en who know better than anyone what it means to be paid for housework. [...] Remuneration cannot compensate for their situation analogous to slavery. [...]

In the United States, women from ethnic minorities – especially black women – have been paid for housework for countless decades. In 1910, when more than half of all black women worked outside the home, a third of them were employed as paid domestic workers. In 1920 more than half were domestic servants, and by 1930 the proportion had grown to three in five.

However, it seems that these authors are dealing with different areas of reproductive work. By saying that domestic work is free, Silvia Federici is analysing the reproductive work carried out within the family, whereas Angela Davis, when dealing with paid domestic work, is necessarily observing work outside the family. Therefore the same reproductive work of washing the dishes, taking care of children or the elderly, cooking, getting pregnant and giving birth to a baby, and so on may or may not be salaried work, mediated or not by the employment contract.

Thus it is not the nature of the work that determines whether it will be paid for, but who does it and for whom. When a person washes her own dishes, a mother takes care of her own children or cleans her own house, she will not be paid for that, but if she hires a person from outside the family to do it, that person will be paid, otherwise it would be legally considered work analogous to slavery. The question is: why, when this work is done by the family, is it not necessarily mediated by the employment contract?

To answer this, we need to return to Marx (1996 [1867]: 202-103), who proposes the contract as a distinctive feature of capitalism in relation to other modes of production. If in feudalism the peasant knew exactly the portion of his or her production that was intended for himself or herself and the portion that would be forwarded to the feudal lord, while in colonial slavery, all work appeared as unpaid work, in capitalism, the work seems to be paid in full because of the mystification of the employment contract, and therefore, workers seem to work for themselves as a free expression of will:

But, in reality, it makes no difference to a person working three days a week for himself, on his own land, and another three days for free on the master's land, as working daily in the factory, or in the workshop, six hours for himself and six hours for others. your boss; even if in this case the paid and the unpaid part of the work appear inseparably confused, and the character of the whole transaction is completely disguised by the interference of a contract and the payment received. at the end of the week. In the first case, unpaid work is visibly taken away by force; in the second, it seems willingly given. Here's the only difference (Marx, 1996: 102-103, my emphasis).

Thus, the turn that capitalism brings from the legal form is precisely to make it the case that “in a strictly legal logic, the work itself is not fruitful” (Edelman, 2016 [1978]: 31), hiding the surplus value in the equation of salary with work. Thereby it seems that workers work to support themselves, and not to increase a boss's profits. In this sense, reproductive work cannot appear as work that favours capital, but as work that favours the worker herself, otherwise expropriation in the production

process becomes evident. Thus, the family legal organisation will be fundamental to structure this issue.

In colonial slavery in Brazil, when an enslaved person became pregnant, the pregnancy was treated as reproductive work that favoured the slave owner, as he was increasing his possessions with more slave labour (Machado, 2018: 355-356), based on the logic of the *partum sequitur ventrem* [birth follows the womb], that the child inherits the condition of the mother. In this sense, there was no talk of “motherhood” for enslaved women, or “maternal feelings” or “family structure” in this period, since pregnancy was not seen as work for themselves, but for the slave owner.

In capitalism, all the work from pregnancy to child care cannot appear as work that generates fruits for capital, so it is reorganised to appear as “maternal duty”, “affection” and the “own will of the family”, in order to show this work as work for themselves, not to show that the reproduction of the workforce serves capital and that there is, therefore, more work in this context. There was thus a whole violent and racist historical process of constitution the logic of “maternal sacredness”, imposing on women that they should fulfil this role of social reproduction under penalty of being medicated and violated in the logic of legal and hygienist medicine of the 19th century.

Also – as the salary is not, in reality, remuneration for the work done, but remuneration for the reproduction of the workforce, so that the working class has access to goods that will enable them to go back to work the next day – if there was any remuneration for the internal reproductive work of the family that, in theory, is working for itself, this would mean a duplication in remuneration for reproduction of the workforce, which would also unbalance the logic of equivalence that sustains the whole exchange of goods in the production mode.

Therefore, the law had to deal differently with the work done inside and outside the family, composing the family as a unit of production and consumption that works to maintain itself and in which its internal works are not mediated by the employment contract, using affection as a marker of what would and what would not be understood as “work”.

For this reason, family law will have a substantially different operating logic from Brazilian labour law. First, if labour law starts from the idea of the primacy of reality, so that concrete facts are prioritised to the detriment of what is written in the contract, in family law, judicial or notarial declarations are required for recognition of family relationships such as maternity, paternity, marriage or filiation, in addition to publicising these relationships. Second, if labour law provides that work in exchange for housing and food is a relationship analogous to slavery, family law understands that a woman can perform domestic work in her home “in exchange” for housing and food “naturally”. Third, if labour law is based on a logic of subordination and onerousness, family law is based on the idea of “pursuit of happiness”, based on the constitution of the eudemonistic family (Torres and Haug, 2022) and the principle of affectivity. Finally, if labour law proposes monthly remuneration as equivalent to the time worked, family law provides for property and succession links, uncharacterised by any salary nature.

Thus the differentiation of family relations from labour relations

that the law brings, in addition to the specificity of the way in which it organises these family relations, is a necessary distinction from the very functioning of capitalism to mischaracterise labour relations based on affective ties. This does not mean that affection does not actually exist in contemporary families, but that this trait is used to misunderstand the internal reproductive work the family as properly a job.

It is worth highlighting that the contractual logic placed on the family form will not only appear in cases where there is a formal celebration of marriage, since, recalling Marx (1996 [1867]: 209), “this legal relationship, whose form is the contract, whether legally developed or not, ... is a relationship of will, in which the economic relationship is reflected”. Even when not legally developed in the literal nature of a marriage event, the contract form is socially imprinted. The marriage contract does not exist just to impose a family model, especially because it does not do so perfectly, as single-parent families today in Brazil are not exceptional (and this is not an accident along the way, but something imposed, by way of production, also as a work overload for working women), but the contract is central to hiding gender inequalities and to the exploitation of unpaid reproductive work that is mischaracterised as work within the family itself.

Furthermore, unlike the employment contract, the marriage contract is one of exclusivity in opposition to all others, imposing that a person can only have that specific type of relationship (of affection and property ties) with their spouse and, if they have relationships with other people outside of marriage, this does not generate legal effects. This exclusivity reflects the very logic of the property of alienating assets in opposition to others. This does not mean that there is no actual affection and love between the parties in marital relations, just that this issue appears as a distinctive demarcation of work within from work outside the family, in addition to marking whether the same work will be paid or not by the logic of the employment contract – work which was not configured in this way before the capitalist mode of production.

CONCLUSION

I started from the contributions of both the Marxist critique of law and the Social Reproduction Theory to understand how the law today is responsible for organising the form of exploitation of reproductive work and, therefore, the oppression of women, especially black, Latino and LGBTQIAP+ women, of the working class under capitalism.

By proposing the family as a legally organised unit based on bonds of obligations, duties and rights, in addition to mapping successors and equity distribution, the law proposes that these bonds would be different from other social relationships because they are linked to the issue of affectivity, using affection as a distinctive marker to mischaracterise the internal work of the family as work.

Thus, intrafamily reproductive work is not mediated by the logic of the work contract and will not be considered equivalent to a salary, not appearing as abstract work that is equalised and can be exchanged for other work in the form of the commodity,

appearing as concrete work for oneself. It is important for this work to appear to be for itself and to leave the logic of the abstraction of work so that it seems that the worker is reproducing his or her life for the sake of self-interest and manifesting his or her own will, without reproductive work being seen as something that guarantees the accumulation of capital.

As a result, the reorganisation of the family by capital went through a historic and violent process of designing maternal sacredness, family love and the eudemonistic family that “seeks married life as a path to happiness”, to make women of the social class responsible for the reproduction of her own work force and that of her family members, without being remunerated under a work contract for that purpose.

Even when these tasks are transferred to someone outside the family and these jobs are contracted, it is still primarily women who perform them, and in a very precarious way, as is the case with domestic servants or women hired by large cleaning service companies.

By standardising, in legal terms, the category of family, it is proposed that all families are equal before the law, even though working families and bourgeois families fulfil different functions for capital. While working-class families are held accountable as private centres that guarantee the daily and generational replenishment of the workforce in exploitative conditions, bourgeois families fulfil the function of guaranteeing the maintenance of capital possessions among their descendants, without this capital being dissolved in the state, maintaining private property within the same families over generations.

From this, the legal organisation of the family □ understanding the family as a specific social form of this mode of production □ is also a mechanism for the reproduction of class relations and social classes across generations. The legal form, therefore, essential for the mystification of class relations in capitalism, is linked to the family form as a strategy to guarantee the daily and generational reproduction of the workforce, which is structured according to gender roles and racist stereotypes that are constitutive of this mode of production.

Only acting as a class makes it possible to curb the meanings of legalisation and the subordination of the working class to the ideological apparatuses of the state (Althusser, 1996 [1971]) such as the law. In the same way, class solidarity and attention to making women responsible for reproductive work allows for action that goes beyond liberal feminism and, at the same time, goes beyond family morality, which is even what prevents strikes at work. In the intrafamilial reproductive system, a wife failing to cook food for her husband is treated as a matter of negligence and not as a political action.

Mischaracterising work within the family as a job hinders the organisation of strikes in this area and the solidarity of strikes by so-called “housewives” with other, productive sectors. Therefore, analysing domestic work and productive work outside the home in a unitary way, as different stages of the same process that involves the exploitation of one class by the other, is fundamental to understanding that the true struggle of women for emancipation is necessarily a struggle against capital ■

REFERENCES

- Althusser, Louis. (1996) Ideologia e aparelhos ideológicos de Estado. In Zizek, Slavoj (ed.). *Um Mapa da Ideologia*. Rio de Janeiro: Contraponto.
- Álvares, Lucas Parreira. (2019) *Flechas e martelos: Marx e Engels como leitores de Lewis Morgan*. Master's dissertation. Universidade Federal de Minas Gerais (UFMG), Belo Horizonte.
- Arruzza, Cinzia. (2019) *Ligações Perigosas: Casamentos e Divórcios entre o Marxismo e Feminismo*. São Paulo: Usina Editorial.
- Breitman, George. (1954) *When Anti-Negro Prejudice Began*. *Fourth International*. 15(2): 42-45
- Darmangeat, Christophe. (2017) *A Opressão das Mulheres no Passado e Presente – para Acabar no Futuro! Uma Perspectiva Marxista*. Rio de Janeiro: Rizoma.
- Davis, Angela. (2016) *Mulheres, Raça e Classe*. São Paulo: Boitempo.
- Delphy, Christine. (1977) *The Main Enemy: a Materialist Analysis of Women's Oppression* London: W.R.R.C.P.,.
- DIEESE (Departamento Intersindical de Estatística e Estudos Socioeconômicos). (2013) *O Emprego Doméstico no Brasil. Nº 68*. São Paulo (SP).
- Edelman, Bernard. (2016) *A Legalização da Classe Operária*. São Paulo: Boitempo.
- Engels, Friedrich. (1984) *A Origem da Família, da Propriedade Privada e do Estado*. Rio de Janeiro: Editora Civilização Brasileira.
- Federici, Silvia. 2019. *O Ponto Zero da Revolução: Trabalho Doméstico, Reprodução e Luta Feminista*. São Paulo: Editora Elefante.
- Federici, Silvia. (2021) *O Patriarcado do Salário. Volume I*. São Paulo: Boitempo.
- Gorender, Jacob. (2000) *Brasil em Preto & Branco: o Passado Escravista que Não Passou*. Coleção Livre Pensar. São Paulo: SENAC.
- Hartmann, Heidi. (1979) *The unhappy marriage of Marxism and feminism: Towards a more progressive union*. *Capital & Class* 3(2): 1-33.
- Machado, Maria Helena Pereira Toledo. (2018) *Mulher, corpo e maternidade*. In Schwarz, Lilia K. and Gomes, Flávio (eds.). *Dicionário da Escravidão e da Liberdade*. São Paulo: Companhia das Letras. 353-370.
- Martins, Luiz Renato (ed.) (2022) *Cadernos do Movimento Operário, Volume 2*. São Paulo: Sundermann.
- Marx, Karl. (1996) *O Capital, Livro I, Tomo I*. São Paulo: Ed. Nova Cultural.
- Oyèwùmí, Oyèrónké. (2004) *Conceituando O gênero: Os fundamentos Eurocêntricos dos conceitos feministas e o desafio das epistemologias Africanas*. *Codesria Gender Series*. Dakar, Codesria.
- Pachukanis, Evgeni. (2017) *A Teoria Geral do Direito e o Marxismo*. São Paulo: Sundermann.
- Rebucini, Gianfranco. (2019) *Marxismo queer: abordagens materialistas das identidades sexuais*. *Crítica Marxista* 48: 109-125.
- Rubin, Isaak Illich. (1987) *A Teoria Marxista do Valor*. São Paulo: Editora Polis.
- Schuller, Kyla. (2017) *The Biopolitics of Feeling*. Durham: Duke University Press.
- Sears, Alan. (2016) *Situating sexuality in social reproduction*. *Historical Materialism* 24(2): 138-163.
- Silva, Mariana Lins de Carli. (2018) *Maternidades sequestradas pelo poder punitivo: destituição do poder familiar de mulheres presas*. In: Boiteux, L; Magno, P. C.; Benevides L. (org.) *Gênero, feminismos e sistemas de Justiça: discussões interseccionais de gênero, raça e classe*. Rio de Janeiro: Freitas Bastos.
- Torres, Bruna de Vasconcellos, and Haug, Marianna. (2022) *"Ela já é da família": O princípio da afetividade como elo entre o direito das famílias e o direito do trabalho*. Artigo apresentado no Congresso RENAPEDTS, Recife (no prelo).
- Vogel, Lisa. (2022) *Marxismo e a Opressão às Mulheres: rumo a uma teoria unitária*. São Paulo: Expressão Popular.
- Walby, Sylvia. (1990) *Theorizing Patriarchy*. Oxford: Basil Blackwell.
- Wood, Ellen Meiksins. (1995) *Capitalism and human emancipation: race, gender and democracy*. In E.M. Wood, *Democracy against Capitalism: Renewing Historical Materialism*. New York: Cambridge University Press.