

Law and the Reproduction Sphere as the Place of a Double Production of Value

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Abstract

In the general framework of the relationship between women and the law, a large debate is growing on the misconceived value of domestic labour. Within this debate, I argue that the recent transformations that have affected this sphere have further complicated the contradictory situation in which domestic labour finds itself in and which legal studies need to contend with. I will show that the domestic sphere has now become a place where there is a double production of value. I argue that this happened because the production of value connected to the production and reproduction of the labour-force after the feminist struggles of the 70s and 80s had gone into crisis. The crisis originated as women contested and refused to enable such production through the material and immaterial dimensions of their domestic labour, leading to its decrease. The machinisation of the domestic sphere starting in the 90s has therefore been capital's response to this confrontation, the strategy it has employed to extract value from this sphere anew. As consequence, today there are two layers of value production in the reproduction sphere: the first working badly and the

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second functioning better for capital. The complex situation, which is described shortly here, is what legal culture has to deal with, nowadays.

Introduction

The legal system finds itself having to operate in a contradictory, formal framework regarding women, since it does not fully recognise women's capacity as juridical subjects (D'Alto, 2020). For example, labour law does not recognise the right to an economic remuneration for the domestic work performed mainly by women in their homes, but, at the same time, it recognises this right when women do the same work in another house, not theirs. Even more in several cases judges have been required to calculate the value of domestic labour *ex ante*. For example, when a housewife has a car accident, the judge is called to evaluate the economic damage that she has suffered as a result of not being able to perform domestic work. Another example is when a married woman divorces her husband, and the judge must evaluate the maintenance allowance for her and her children, or, if the family is wealthy, a part of the estate. These are few examples in which judges are pushed to contradict the principle of labour law according to which women are not entitled to be remunerated for their domestic labour. Confronted by this complex situation, the law finds itself in troubled waters because its formal framework is incoherent and thus inadequate. The situation gets even more complicated when we acknowledge that the definition of domestic work is quite elusive not only for judges but also for women themselves. Since this work has not been legally formalised, women themselves have had and continue to have difficulty in defining the contents and the boundaries of housework.

However, contradictions add to contradictions, in the sense that the juridical culture today needs to contend with many other changes that have happened in the reproduction sphere, which have further complicated women's situation but also that of other members of the family, and the law has not caught up. For example, in the last decades, an increasing number of men has shared a part of domestic labour and children's care labour with their wives/partners; and an increasing number of separated or divorced fathers have begun to take care of their children regularly, according to what has been established in the separation or divorce judgement. However, the most important change that has occurred in the reproduction sphere is maybe the colonisation of the immaterial dimension of domestic labour by the five giants of the Web: Facebook, Microsoft, Apple, Amazon, Google; and its consequences, as we will see below. The structure of this contribution is organised as follow: in the next section, I will analyse what housework is, since its comprehension, as I mentioned before, is not obvious and, in the subsequent section, I will examine the double extraction of value, which will be followed by short conclusions.

Housework as material and immaterial labour

At first, feminist analysis of domestic labour focused of course on the material dimensions of housework - cooking, washing, and ironing, and so on. However, very soon feminists identified as important also the immaterial part of such work (i.e., Fortunati, 1981). The rich debate generated since the 70s by the feminist movement, and in particular by materialist feminists, arrived at a shared understanding that housework includes both material and immaterial tasks. The immaterial tasks include

dimensions such as sociality, courtship, sexuality, communication, information, education, learning, entertainment, affects and emotions (Fortunati, 2007, 2011).

Moreover, housework was understood as carried out especially by women but not entirely by them. The process of production and reproduction of the labour force requires in fact that a part of material and immaterial labour be done also by the other members of the family (Fortunati, 1981). The *cooperation* by all members of the family is necessary to the functioning of the overall process and shows that no one can be cared for if in turn they do not cooperate in the process. Furthermore, in the neo-capitalist family in which we live now this cooperation becomes even more necessary. The contemporary family is in fact characterised by a high presence of women in the labour market (Brewster and Rindfuss, 2000; England, Privalko and Levine, 2020) and by an increasing share of domestic labour being performed by male adults, as well by adolescents and even children (Ferguson, 2007; Pupo and Duffy, 2012).

In the Anglo-Saxon academic world, the concept of “care” was introduced to define domestic labour, having the merit of being easily understood but which is imprecise. This notion is reductive because it does not include the material and immaterial labour that women as caregivers have to do for themselves (Fortunati, 1981), since they have also to reproduce themselves as unwaged reproductive workers. Nor does it include the domestic labour that necessarily the cared for members have in turn to do in order to cooperate with the caregiver. Furthermore, the invisibility and the consequent unspeakability of domestic work have produced in academic environments another spurious and weak concept such as leisure (i.e. Wearing and Wearing, 1988), which describes what happens in the reproduction sphere as free time dedicated by people to

relax and amuse themselves, misunderstanding the crucial nature of the activities which are performed there.

The *Arcane* (1981) was the first place where Marxist Feminists systematised this discourse on immaterial domestic labour. However, the theoretical efforts of materialist feminists were largely ignored at that time in materialist/autonomist circles. Twenty years ago, autonomists such as Lazzarato (1996) as well as Hardt and Negri (2005) tried to reopen this discourse, attributing to themselves its paternity and mimicking badly the analysis of the immaterial labour which was reduced only to affects and emotions.

To react to this clumsy attempt, we have claimed the maternity of this analysis in order to re-establish not only the true historical genealogy of this concept, but also the magnitude of its meaning, which goes much beyond affects and emotions as we will specify below (Fortunati, 2007). We reacted strongly because at stake was also the political comprehension by young activists of how neo-capitalism works in the reproduction sphere. Neo-capitalism in fact has used not only material domestic labour but also immaterial labour to make women produce the value of the labour force, which is the most precious commodity for the capitalist system.

One of the main problems with the resumption of this discourse on immaterial domestic labour was that the autonomists did not pay attention to the historical dynamics that had developed in the meantime in the reproduction sphere. The problem is that following the feminist struggles of the 1970's, the command and control over both the material and immaterial spheres had become ineffective. In the past decades, women's

struggles, resistance or counter-power have put in crisis the stability and continuity of the man-woman exchange throughout life, even at the risk of their own poverty and social marginalisation (as in the case of separated or divorced women with children). Male wages have lost the ability to command and control domestic labour, which has become, like factory labour, only exchanged for a limited time. Women have decided less and less to marry formally and there has been a growth of cohabitations, divorces and separations, single-parent families, blended families, and people living alone (by choice or absence of viable alternatives) (in relation to Italy see, for example, Rapporto AISP, 2023). In addition, birth rates have continued to decrease. Radical struggles over the very definition of sexual identity have also developed. The explosion of the family in many different forms has to be attributed mainly to the very strong resistance against domestic work and the power structure in the family by women. Moreover, women's struggles have also provoked the crisis of masculinity, which has not been sufficiently elaborated collectively by men.

Not only the quantity but also the quality of the reproduction of labour power has declined with the effect that the value produced in this sphere has decreased, at both material and immaterial levels. Let me take the example of communication. Fortunati and Edwards (2022) recall that after the struggles of the 1970's there were no longer significant differences between men and women in communication. This gives an idea of the power women gained from the feminist struggles since communication is always the first ground of confrontation and negotiation in the man-woman relationship. Sexuality is another example. With the feminist movement of 1970's, women have begun to know better their bodies, to build a common and shared knowledge about their sexuality and to expect to have orgasms in sexual intercourse with their partners.

In sum, the main indicators of the functioning of capitalist society – family, man-woman relationships, birth rate, gender identity - were all under a terrible stress, indicating that not only the reproductive sphere, but also the entire society were becoming dysfunctional.

Neo-capitalism and the double extraction of value

The capitalist answer has been the mechanisation of the domestic sphere and the hyper-development of immaterial labour. Since the 1990's, many technologies (mobile phones, computers, virtual assistants, AI and social robotics) arrived in the homes. As Fortunati and Edwards (2022) documented, digital technologies were all first and primarily designed by hyper-masculine communities of innovators to support and advance male users and give them more power in a domain—communication—in which they had lost it. Worldwide, the percentages of women's access and use of these technologies - through which now communication was increasingly passing - were lower than men's. Especially the diffusion and the social construction of the capability to use the computer revealed to be particularly hostile to women. The penetration of these technologies into the social body has required women to take a long and tiring approach to them in an attempt to redesign and reshape them according to their needs, expectations and desires.

To grasp the political meaning of this attack, we must stress that these technologies, which function as tools of reproductive work, *allowed the direct penetration of capital into the immaterial spheres* of the reproduction of individuals. Through them, capital

has resolved its big problem of having to stop in front of the door of people's homes. This was a structural problem arising from the way it had organised the social system: the home and the sphere of reproduction, receiving no formal status within the public realm, had been confined to the private realm. Command and control over what took place within the domestic walls have always had to take place indirectly, through men's wages and social services. A first step of the direct penetration into the domestic sphere had occurred through analogue technologies, radio and television, by which the capitalist system had succeeded in informing, entertaining, manipulating and disciplining people in their domestic life.

With digital technologies, including social media, big data, artificial intelligence, virtual assistants, and social robots, capital has been able to know what happens in the domestic sphere, the myriad of variations in the styles of living, and to affect not only attitudes and opinions but also behaviours. Personal and social communication, sexuality via porn, education, information, all the immaterial dimensions of reproductive labour have been sucked into these technologies. I would like to stress here that the last generations of parents have allowed and entrusted their children to self-educate themselves through mobile phones and the internet. In the reproduction sphere, new digital workers have emerged, who are more encompassing than they were in the past, because now all the members of families and communities have been pushed to produce value (Fortunati and Austin, forthcoming). The new digital workers are no longer only women but also adolescents, young and adult men and in line with the trend even older adults. Child labour has reappeared in the older industrialised countries with the use of these technologies. In addition, counting on the mechanisation of houses and on the widespread diffusion of digital skills among the

population, public administration has also managed to transform citizens into digital labourers. To receive services or information from the state, people have been required to assume on their shoulder a part of the administrative work and of the costs that this work requires (Fortunati and Austin, forthcoming). In this new context, digital labour has emerged as an extension of reproductive labour, which now includes administrative labour.

The problem is that the automation of immaterial labour de-humanises and impoverishes further all the dimensions of immaterial reproduction such as sociality, courtship, sexuality, communication, information, education, learning, entertainment, affects and emotions. In digital technologies, the framing of contents and narrativity as well as the rigid procedures of the access and use of the devices, platforms and applications are established by information technology (IT) companies. Moreover, automation makes the labour, done in these labour dimensions, mechanical, uniform, and controllable, exactly as opposed to what was the immaterial domestic work performed by women before the advent of automation, which was calibrated to a unique and unrepeatable individual.

Today, in addition to the classical production of value in the reproduction sphere, with these technologies another layer of value production has emerged. The machinisation of the immaterial part of domestic labour has allowed a further extraction of value that takes place in two ways. First, through the transfer of one's data without payment to mega corporations like Facebook or Google that sell such data to other companies or governmental organisations, which, in turn use this data to better exercise control over their markets or citizens. Second, through the free processing of user generated

content by digital companies that directly capitalise on it. This double extraction of money from the reproduction sphere has contributed further to shape this as the strategic sphere of the capitalistic system.

But what is equally important to stress is that not only this sphere has been made to supply a very intense production of value; the specific companies that exploit labourers in the online consumption/production sphere also claim they do not pay taxes to the national states where this extraction of value takes place. The social consequences are several. First, women are now subjected to a double exploitation in the reproduction sphere. Second, children, adolescents, adult males, and older people have joined them in this exploitation. Third, in the face of all of this there will also be a worsening of welfare, due to the non-payment of taxes by these companies to the various nation states. Since the network of rights does not protect domestic labour, it is difficult to build barriers to the extraction of surplus value in the reproduction sphere.

Conclusion

This article has shown hopefully that it is indispensable to continue the work within the framework of law to overcome its existent contradictions regarding the definition of domestic labour and its sporadic economic evaluation. It is equally indispensable to continue to reshape the juridical culture for accomplishing the complete recognition of women's capacity as juridical subjects. In more general, political terms, it is equally indispensable to resume mobilisation and struggle for the economic remuneration of domestic labour by capital through states.

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