ANNUAL REVIEWS

Annual Review of Law and Social Science

Laws of Social Reproduction

Prabha Kotiswaran

Dickson Poon School of Law, King's College London, London, United Kingdom; email: prabha.kotiswaran@kcl.ac.uk

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Annu. Rev. Law Soc. Sci. 2023. 19:145–64

First published as a Review in Advance on July 12, 2023

The *Annual Review of Law and Social Science* is online at lawsocsci.annualreviews.org

https://doi.org/10.1146/annurev-lawsocsci-121922-051047

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Keywords

social reproduction, unpaid work, domestic work, care, legal realism, materialist feminism, law and political economy

Abstract

Feminists have long demonstrated the invisibility of women's reproductive labor, performed in bearing and raising children, maintaining households, and socially sustaining male labor. Every wave of feminist struggle from the late nineteenth century onward has actively queried the inequalities that characterize women's performance of such work, variously referred to as unpaid domestic and care work, domestic labor, or care work. Robust traditions of scholarship on women's unpaid work animate various disciplines, often spilling into political struggles for adequate recognition of this work. As the pandemic has rendered visible once again the reproductive labor of women the world over, this article offers an overview of social reproduction theory, feminist legal theorizations of reproductive labor, and how we might recuperate a rich tradition of theorizing on social reproduction to develop a materialist approach to law's regulation of reproductive labor across the marriage-market spectrum with a view to social and economic justice.

INTRODUCTION

Social reproduction today is as fashionable a term as it will ever be. Long relegated to debates among materialist feminists recouping Marxist theory for feminist ends, the term social reproduction carries its own genealogical imprint that makes it legible to countries with robust leftist traditions of scholarship and activism in Europe, Asia, and Latin America. However, if we understand social reproduction to include all labor that is needed for our everyday upkeep, then feminists around the world clearly have engaged with theorizing such labor (typically performed by women within the home) for more than a century. This work is variously referred to as unpaid domestic and care work, domestic labor, reproductive labor, life's work, care work, caregiving, familial care, unpaid caregiving, and affective labor. Every wave of feminist struggle has actively queried the inequalities that characterize women's performance of such work starting from the late nineteenth century, even before women mobilized for the right to vote (Toupin 2018, p. 48). Robust feminist traditions of scholarship on women's unpaid work animate various disciplines, often spilling into political struggles for adequate recognition with innovative ways to resolve the work/family conflict, in liberal terms, or socializing unpaid work, in more leftist traditions.

The pandemic brought the riches of this feminist theorizing and activism to the fore. The massive care infrastructure that consists of households but also schools and hospitals that hold up the visible gross domestic product part of the economy were revealed for all to see. Ever since, discussions on care and unpaid work have been all the rage. Hashtags like #careincomenow and #carecantwait trend on Twitter. The green shoots of political opportunities that did not exist are emerging even as powerful nations like the United States invest billions in care infrastructure. In 2022, the International Labor Organisation issued a follow-up report to its 2018 report on the care economy (Addati et al. 2018), calling upon governments to invest in a transformative package of care policies and in the care economy for "a breakthrough pathway for building a better and more gender equal world of work" (Addati et al. 2022, p. 24). Even as female labor force participation rates took a tumble with the massive loss of jobs during the pandemic (an estimated 80 million in the United States) and a return to 1980s levels of women's employment, the discourse on how to balance the work of reproducing life alongside paid employment outside the home has assumed center stage, as evidenced by the policy briefs and reports of numerous international organizations (Grantham et al. 2021, Mariotti et al. 2021, OECD 2021, Schnall 2020, UN Women 2022).

Feminists have risen to the challenge of this newfound opportunity. Several feminist manifestoes written just before, during, and after the pandemic seek to reimagine a more just and equal world. These include *Feminism for the 99%* (Arruzza et al. 2019); the Care Collective's *Care Manifesto* (Chatzidakis et al. 2020); a blueprint by the Green New Deal for Europe (Green New Deal Eur. 2019); a Marshall Plan for moms by US tech entrepreneur Saujani (2022); James's (2021) *Our Time Is Now*; and finally, Nedelsky & Malleson's (2023) *Part Time for All: A Care Manifesto*. Special issues of feminist journals in various disciplines have focused on COVID and care (e.g., Curzio 2022, Esquivel et al. 2022, Kabeer et al. 2021). How do we embrace this moment to continue giving life to the anti-capitalist, anti-racist feminism that has had to jostle for too long in a crowded feminist space with various manifestations of lean-in feminism, governance feminism, and carceral feminism (Bumiller 2018, Halley et al. 2018)? This article offers an overview of feminist theorizing of the laws of social reproduction as a step in this direction.

Just as the practice of social reproduction cannot be abstracted out of its varied and dynamic configurations in specific contexts, so too, this article does not purport to present a comprehensive overview of what is a rather rich and fertile ground of feminist theorizing across disciplines and regional and national contexts with diverse intellectual and ideological commitments. Instead, I

start by offering some insights into social reproduction theory and care scholarship (to a lesser extent), tracking points of inflection, convergence, and shifts over the decades. Then I offer an overview of the care turn in law to understand how feminist legal scholars have engaged with the laws governing social reproduction. Here I characterize their synergies (or lack thereof) with social reproduction theorists as equivalent to ships passing each other by in the night. I then offer a research agenda for what I term the laws of social reproduction, based on my work on a cross-sectoral comparison of reproductive labor in India. I conclude by sharing prospects for a revolutionary feminism that can channel feminist theorizing on social reproduction into feminist struggles and organizing.

WHAT IS SOCIAL REPRODUCTION?

Social reproduction as a concept articulated by second-wave materialist feminists is premised on the distinct spheres of production and reproduction produced by industrial capitalism. Prior to the Industrial Revolution, "a strict separation between 'production' and what is now called 'social reproduction' did not exist, and despite a gendered division of labor, men and women did not perform categorically distinct kinds of activity" (Mohandesi & Teitelman 2017, p. 42). Indeed, even the Greek term for economy, *oikos*, referred to the household, indicating that the separation between the household and market was not so distinct prior to the nineteenth century (Halley & Rittich 2010, p. 758; see also Federici 2004). Thus, the creation of the separate spheres is relatively recent.

As the Industrial Revolution forced the divide between the workplace and the household, Engels [1979 (1884); see also Toupin 2018] theorized monogamous marriage as playing a key role in the maintenance of capitalism through the institution of private property, which necessitated the oppression of women within the household. However, even Marxists did not acknowledge the unpaid work women performed within the home; Engels relegated women's labor in the rearing and nursing of children to the realm of nature rather than productive forces (Mies 1998, p. 52). Instead, for Marxists, the key to gender equality was for women to enter paid employment and become financially independent. Marriage was to become devoid of economic calculations, where partners married for love as equals. The socialist revolution, however, came and went while women struggled from the double burden of unpaid work within the home and paid work outside the home. Meanwhile, gender oppression in the form of rape, prostitution, sexual harassment, physical violence, and sexual segregation within the workforce persisted despite women's entry into wage labor for more than a hundred years. This led some feminists to break from the Marxist tradition to theorize feminism "unmodified," where sex/gender was the central axis for analyzing patriarchy's appropriation of women's sexuality and their resultant subordination. Marxist feminists, meanwhile, also signaled a break from Marxist theorizing (Vogel 1995), which gave rise to the Wages for Housework (WFH) campaign of the 1970s and the domestic labor debates of the 1980s.

It is in the context of this break that various scholars have proposed definitions of social reproduction. Put simply, it refers to "a range of activities, behaviors, responsibilities, and relationships that ensure the daily and generational social, emotional, moral, and physical reproduction of people" (Meehan & Strauss 2015, p. 9, citing Bezanson 2006). More specifically, Hoskyns & Rai (2007, p. 300) define it as

> labor involved in biological reproduction; unpaid production in the home (both goods and services); social provisioning (. . .voluntary work directed at meeting needs in the community); the reproduction of culture and ideology; and the provision of sexual, emotional and affective services (such as are required to maintain family and intimate relationships).

Federici (2012, p. 31), a key theorist of social reproduction, expressed this in more colloquial terms:

> Housework is much more than house cleaning. It is servicing the wage earners physically, emotionally, sexually, getting them ready for work day after day. It is taking care of our children—the future workers—assisting them from birth through their school years, ensuring that they too perform in the ways expected of them under capitalism. This means that behind every factory, behind every school, behind every office or mine, there is the hidden work of millions of women who have consumed their life, their labor, producing the labor power that works in those factories, schools, offices or mines.

Although certain elements of social reproduction clearly relate to the reproduction of communal life, the concept of social reproduction was initially centered largely around the labors performed within the household, in contrast to paid work done by men within the factory. It was the invisibility of women's unpaid work within the household that became the impetus for renewed struggles by materialist feminists in the 1970s in the form of the WFH campaign.

The Trajectory of Social Reproduction Feminism

The WFH campaign is probably one of the most revolutionary yet misunderstood (including by feminists) initiatives of second-wave feminism. James (1973) first put forward the idea of WFH in March 1972 at the National Conference of Women in Manchester in a paper called "Women, the Unions and Work, or. . .What Is Not to Be Done."[1] James and Italian feminist Mariarosa Dalla Costa wrote the popular essay "Women and the Subversion of the Community" in 1972 (included in Barbagallo 2019). James then went on to form the Power of Women Collective, which soon became the WFH Committee. Dalla Costa, James, and Federici were part of the International Feminist Collective, which began the WFH campaign in Italy and the United Kingdom. Federici, with her collaborator Nicole Cox, founded the first US chapter of WFH in New York in 1974 with James's guidance. But there was a split on race between the New York WFH Committee and the Black Women for WFH, formed in 1975, which organized with black welfare mothers in New York.

The points of reference for feminists in this campaign were anarchist, socialist politics, and they had a history of militancy in Marxist-identified organizations such as the anticolonial movement, civil rights movement, student movement, and operaist movement. They put forward the concept of the social factory. For them, capitalist relations had become so hegemonic that every social relation was subsumed under capital and the distinction between society and factory collapsed, so that society became a factory and social relations directly became relations of production (Federici 2012, pp. 6, 7). This helped highlight the role of women's unwaged labor in the home and its inextricable connection to the production of surplus value under capitalism. As Federici (2012, p. 19) notes, "To say that we want wages for housework is to expose the fact that housework is already money for capital, that capital has made and makes money out of cooking, smiling, fucking." Further,

> And from the viewpoint of work, we can ask not only one wage but many wages, because we have been forced into many jobs at once. We are housemaids, prostitutes, nurses, shrinks; this is the essence of the "heroic" spouse who is celebrated on "Mother's Day." (p. 20)

Whether the campaign in fact wanted wages to be deposited in women's bank accounts is debatable. Federici clarified that WFH was a political perspective and a revolutionary strategy more than a demand for salaries for housewives. The campaign sought to turn capitalism on its head and

[1] But see Toupin (2018, p. 32), who notes that Dalla Costa wrote her essay "Donne e sovversione sociale" in 1971.

defied many of the Marxist orthodoxies of the time, which insisted that women's housework produced nothing more than use value that was consumed by workers' families. Marxists thought that paid employment was the sure path to women's progress. For them, in Federici's words, housewives are suffering not from capital but from the absence of capital. WFH activists, on the other hand, believed that a second job would not help exploitation, and that it was an extension of the housewife's role. Entering the market did not liberate us, insisted Federici (2012, p. 22), as "the overalls did not give us any more power than the apron—quite often even less, because now we had to wear both and had even less time and energy to struggle against them." Similarly, socialization and collectivization of housework for WFH activists could not be state run. Instead it had to be on women's terms and paid for by the state. Day care centers and nurseries would not liberate time for women, only create time for additional work. Similarly, quite in contrast to the triple R mantra of Sustainable Development Goal 5.4, which seeks to recognize, reduce, and redistribute unpaid domestic and care work, WFH activists insisted that "we are not struggling for a more equal redistribution of the same work. We are struggling to put an end to this work and the first step is to put a price tag on it" (Federici 2012, p. 37). They instead sought time: time to read a book, paint, or go for a walk. However, another strand of WFH based in the United Kingdom viewed WFH as a demand for state payment for housewives, which has morphed over time to what is now a demand for "a care income to compensate unpaid activities like care for people, the urban and rural environment, and the natural world" as part of the Green New Deal for Europe (Green New Deal Eur. 2019). Weeks (2011, p. 147) has similarly reworked WFH in terms of a proposal for universal basic income.

The state-managed capitalism of the twentieth century, characterized by the family wage, soon gave way to a globalized economy based increasingly on financialized capitalism, with a dual-earner model in place. As increasing numbers of women undertook employment, often in the service sector, the unpaid work earlier performed at home became marketized. In other words, socially reproductive work was increasingly commodified, and the vocabulary of reproductive labor has been used to study women's work in various sectors of the economy. Thus, social reproduction includes "not only unpaid domestic labor and low-waged precarious employment associated with cleaning, laundry, food preparation, and bodies but also professionalised well-paid work such as teaching or nursing" (Braedley & Luxton 2015, p. viii). Women's entry into paid work in the West was also enabled by the large-scale migration of women from the third world into paid domestic work, especially since the 1990s.

Materialist feminists offered sophisticated explanations for the emerging international division of labor and lines of extraction between countries at the core and at the periphery; they were, however, reluctant to treat all forms of reproductive labor work. Thus, Mies (1998, p. 142) spoke of sex work in terms of "sexploitation." After all, orthodox Marxist feminist analyses subordinated gender to the study of class, or alternatively subsumed gender within class. This led to silences on the heteronormative, patriarchal family and to the absence of theorizing on sexuality, sexual orientation, and gender identity. This combined with a structuralist account of the exploitative nature of women's work under capitalist patriarchy meant that sex work, egg donation, surrogacy, and sexual entertainment work were not accepted as work. This closely paralleled the radical feminist view of sex work as the paradigmatic form of sexual subordination and as a form of violence against women. I have offered a genealogy of materialist feminist theorizing on sex work elsewhere (Kotiswaran 2011), arguing that despite its failure to recognize commodified, intimate labor as work, it is preferrable to a radical feminist approach both because of its reluctance to pursue carceral strategies (such as criminalization of the customer, which in turn hurts sex workers) and for its critique of marriage (i.e., an unequal marriage motivated by economic interests is not exceptionally different from sex work). Notably, the WFH campaign from the start welcomed women from outside the

fold of the heteronormative and patriarchal institution of marriage, including sex workers, lesbians, single mothers, and African American women. However, there remains a strong antipathy to questions of sexual justice among a section of Marxist feminist scholars, although there is now a belated effort to accommodate gender, sexuality, and race through intersectionality discourse (Bhattacharya 2017).

In the 1990s, feminist scholars of globalization bracketed these polarized feminist debates on women's work to empirically map out global care chains instead, with a focus on the political economy of women's work. They undertook studies of sex work (Bernstein 2019; Brennan 2004; Cheng 2010; Hoang 2015; Kempadoo 1999, 2004; Mai 2018; O'Connell Davidson 2013), sexual entertainment (Parreñas 2011), surrogacy (Deomampo 2016, Majumdar 2017, Pande 2014, Rudrappa 2015, Sangari 2015, Vora 2015), egg donation, paid domestic work (Parreñas 2002, 2008, 2021), nursing (Yeates 2005), teaching, and volunteer work. They documented the precarious lives of female migrant workers arising from their immigration status, exclusion from protections under local labor laws, low wages and poor working conditions, and persistent discrimination. In doing so, they convincingly deconstructed the binaries that had prevented the recognition of the value of reproductive labor within Marxist and materialist thinking and prised open the divides between production/reproduction, the economy/the social, the personal/the social, the market/the household, the household/the workplace, work/homework, public/private, and waged/unwaged socially reproductive work.

Alongside these studies, the field has also witnessed a Foucauldian turn whereby post-structuralist feminists (typically feminist geographers) became equally interested in the cultural work required to shape the subjectivities of reproductive laborers under neoliberalism. There was a renewed attempt to rethink the nature of materiality itself (see Conaghan 2013 on the wave of new materialism). Scholars paid attention to the interaction between nonhumans and processes of social reproduction. Studies of social reproduction further covered a range of institutional settings including the home but also childcare centers, schools, hospitals, nursing homes, care homes for the elderly, camps, dance halls, orphanages, churches, restaurants, cafeterias, bars, massage parlors, and health clubs. Feminists focused not only on capitalist economies but also on diverse economies, including noncapitalist and para-capitalist economies (Morrow & Dombroski 2015, p. 84). Studies of social reproduction are now not limited to women; the role of men in social reproduction is also gaining attention. Feminists put forth the notion of life's work rather than care work (Mitchell et al. 2004). To elaborate,

> material social practices *entangle* the relational spheres of paid and unpaid work, draw them together, and make them difficult to separate, because the material practices that comprise life's work are multidirectional and multilocated. Life's work intersects the activities and spaces of paid work with unpaid labor at home and elsewhere outside the workplace. It is "how we live *in space*—in and between schools, homes, neighbourhoods, workplaces, and institutions of civil society and the state, as mobile subjects both inside and outside the entwined projects of domesticity, schooling, and nation, among others." (Gorman-Murray 2015, p. 66, citing Mitchell et al. 2003, p. 437, emphasis in original)

However, "this ferment of scholarship and activism has led to a wide variety of definitions, conceptions, and applications of social reproduction, with significant slippages, overlaps, and analytical messiness" (Braedley & Luxton 2015, p. ix). As Katz has noted, social reproduction is everywhere and nowhere (cited in Mitchell et al. 2015, p. 185). As the meaning of social reproduction has expanded, such that it is not restricted to the unpaid work performed by women within the household, the possibilities for political action have also expanded. Far from merely lobbying for the recognition of the reproductive labor of women through sector-specific policy changes, feminists understand broader political struggles for housing, health care, food security, universal

basic income, climate change, childcare, education, cost of living, pensions, and benefits as being fundamentally about social reproduction.

WHY NOT CARE?

The expanded understanding of the term social reproduction outlined above is also reflected in the career of the parallel concept of care. Gilligan's (1982) pathbreaking research on the different moral compasses of men and women gave rise to a whole body of work on the ethics of care built upon by political scientists Tronto (1983) and Sevenhuijsen (1998) and feminist philosopher Held (2006). This has traveled through various disciplines, and its impact on legal scholarship has been substantial (see Harding 2017, Hayes 2017, Herring 2013), a summary of which I am unable to offer here. I refer only in passing to the 2020 book *The Care Manifesto* (Chatzidakis et al. 2020) as a recent example of this work to suggest why a social reproduction framework is preferrable (see Kotiswaran 2021). The Manifesto uses the lens of care to envision a restructuring of the community, of the state, and of the market. It shifts the focus away from "hands-on care" performed predominantly by women in the household to recognizing that care is performed by various actors in society, including men; thus, women are not considered to be morally superior actors. Neither does it risk being shoehorned into liberal feminist agendas where the "problem" of unpaid domestic and care work is seen as an obstacle to the promise of paid work. It instead underlines the importance of unpaid work to our well-being as humans and as a community and then goes on to distribute it across society. Like social reproduction theorists, the Manifesto's authors blame neoliberal capitalism for a careless society and crises in social reproduction and articulate a robust feminist, queer, antiracist, and eco-socialist perspective.

There is much to be commended in the Care Manifesto. However, it also illustrates the drawbacks of the vocabulary of care. To begin with, the term care [defined capaciously as "our individual and common ability to provide the political, social, material, and emotional conditions that allow the vast majority of people and living creatives on this planet to thrive—along with the planet itself" (Chatzidakis et al. 2020, p. 5)] seems to do a lot of conceptual and political work, which is not always illuminating. Further, this vocabulary can just as easily be appropriated by conservative, communitarian forces that are exclusionary as by progressives wanting to be inclusive of all members of the community. When it comes to stigmatized forms of women's work, theorists of care offer a generic response to ameliorate feelings of ambivalence by offering increased resources and time (pp. 28–29), when in fact abject forms of care work like sex work, surrogacy, or stripping are paid better precisely because they are stigmatized and are therefore unlikely to become less stigmatized even if well-resourced or better paid. The vocabulary of care further fails to address why hands-on care is often performed by the most vulnerable sections of the population in terms of their class, caste, or racial status. Fetishizing care thus comes at the expense of forefronting inequality as a central concern for feminism. Most significantly, although the expansive understanding of care extricates us from focusing only on unpaid domestic and care work to thinking creatively about caring about and for social institutions and the environment, in zooming the lens of care too far out, we risk not being able to account for the continually lopsided gendered division of labor, which the pandemic exacerbated. For these reasons, social reproduction theory is preferrable (see also Farris 2022).

SOCIAL REPRODUCTION, FEMINISM, AND THE LAW: SHIPS PASSING IN THE NIGHT

Social reproduction feminists say little about the law, plausibly because as Marxist theorists, they view the law as an instrument of capitalist oppression and therefore unworthy of further

elaboration. Materialist feminists have also long been skeptical of liberal legal strategies focused on the individual and have offered a robust critique of the carceral impulses of governance feminism (see also Halley et al. 2018, John 2013), or UN feminism in Federici's terms, preferring instead a longer-term vision for systemic social change. If social reproduction feminists barely invoke the law, conversely, feminist legal scholars seem strangely inoculated from social reproduction theory, barring a few mostly UK-based feminist legal scholars like Alessandrini (2016), Conagahan, Cruz (2018), Goldblatt (2020), Goldblatt & Hassim (2023), and Natile (2020). Although some US scholars do use the term social reproduction, they use it simply to refer to the reproduction of society and its next generation (McClain 2008, Suk 2012). There is no mention of the comprehensive critique of capitalist patriarchy that social reproduction theory entails (but see Schultz 2010, p. 1220), even in the most spirited invocations of the feminists who shaped the postwar constitutions of major European countries with strong socialist traditions.

Despite the disconnect between social reproduction theory and legal scholarship, legal scholars are deeply invested in the study of reproductive labor. This research is done in siloes of legal fields (e.g., family law, criminal law, labor law), in sectoral silos (e.g., nursing, teaching, sex work, surrogacy, domestic work), or in the interstices of interdisciplinary research (feminist sociology of law, feminist law and economics, feminist legal ethnography). Predictably, the most extensive scholarship by feminist legal scholars on reproductive labor is centered around unpaid domestic and care work. I turn now to a discussion of this scholarship, especially as it has developed in the Anglo-American context.

Feminist legal scholars have long demonstrated law's central role in producing and entrenching the invisibility of women's reproductive labor. In rendering such labor more visible, I argue that feminists are engaged predominantly in a politics of "recognition" (Fraser 1997), although they also seek economic outcomes. Fewer feminists are explicitly interested in intragender redistribution. I discuss both strands of feminist legal scholarship here. Starting from Olsen's (1983) pathbreaking deconstruction of the public/private divide that characterizes work/family conflicts and the sameness/difference debates of the 1980s to the care work debates of the 1990s and 2000s, US legal feminism has been the site of innovative legal ideas that have sought to dismantle the separate spheres ideology of American law. A special issue of the *Chicago-Kent Law Review* in 2001 contained "the first collection of some of the primary legal voices on the subject of care work" (Silbaugh 2001, p. 1389). The dual nature of domesticity meant that feminists advocated for the elimination of domesticity through women's greater paid labor force participation, as well as by materializing and compensating the work of domesticity. Paralleling the debates in social reproduction theory, the initial question animating this special issue was about whether to prioritize market- or home-based work. Further, this new writing on care viewed care as a "practice" rather than a "characteristic," the latter being a position taken by cultural feminists invested in an ethic of care. These feminists instead positioned themselves as interested in the marginalized position of caregivers armed with remedial arguments that "acknowledge and respond to the possibility of care's devaluation" (Silbaugh 2001, p. 1395). A few years later, in 2007, a special issue of the *Northern Ireland Legal Quarterly* titled "Legal Constructions of Unpaid Caregiving" featured articles by UK feminists drawing on various strands of materialist feminism, ethics of care, and international political economy (Conaghan 2007).

Feminist legal debates in the United States have been constricted by American feminism's deep roots in a liberal tradition with great value placed on notions of individual liberty and autonomy (Schultz 2010, citing Rhode 1989, p. 12). This has resulted in legal feminism being divided over the pros and cons of equal versus special treatment (Suk 2018a, p. 108), with the equal treatment approach dominating US sex discrimination doctrine since the 1970s (p. 111). This is accompanied by a culture in which "the United States stands virtually alone among developed nations in its

conviction that child-rearing is a private frolic rather than a social enterprise of vital importance" (Williams 2002, p. 430). Even with the passage of the Family and Medical Leave Act of 1993, its paltry entitlements were "attributable more to the inhospitableness of the soil than lobbyists' skill" (Williams 2002, p. 430). As Suk (2018b, p. 176; 2013, p. 475) notes, "Whereas mandatory maternity leave is constitutionally required by the motherhood protection clause in Germany, mandatory maternity leave is constitutionally prohibited by the due process clause in the United States." The hostile and exceptionalist legal environment of the United States is thus palpable. In contrast, when we look at the range of laws and benefits for carers in the United Kingdom with "care" in statute titles (see Herring 2013, chapter 4), it is clear that the starting points for the care debates in the United States and United Kingdom (and Europe) are quite different.

Much of the early, pathbreaking work by legal feminists dealt with the lack of legal recognition of women's reproductive labor as valuable, whether in the fields of family, tort, welfare, bankruptcy, tax, or labor law (Silbaugh 1996). Feminist lawyers showed how unpaid caregiving is regulated by laws as disparate as property law, family law, labor law, tort law, EU and international law (Conaghan 2007, p. 245), tax law, immigration law, bankruptcy law, tenancy law, and household norms (Halley & Rittich 2010, pp. 761–62). More recently, Suk (2018b, p. 178) made a compelling case for constitutional law as a site for embedding national social contracts that secure the state's commitment to the social reproduction of its citizens. That said, in terms of law and policy, feminist legal scholars focused particularly on three sites that structure social reproduction: the market (labor and employment law), the state (welfare law), and the family (family law). These efforts have yielded some success. Family law provided better deductions for childcare expenses, postdivorce compensation, and child support than before (Silbaugh 2007b, p. 1817); yet, rather quickly, the limitations of family law as a site for major or radical redistribution became apparent (Williams 2002, p. 419). The welfare system was for the most part pernicious in how it viewed women's unpaid work within the home as leisure rather than work (Williams 2002, p. 420), whereas the market discriminated against women, and in particular mothers, who tended to be part-time workers. Feminists nevertheless sought to reform the workplace through accommodations; flexible schedules; increased labor law protection, especially for part-time workers (who are predominantly female), and part-time equity; a shorter work week of 35 hours; and the passage of the Family and Medical Leave Act of 1993 (Schultz 2010; Suk 2012, p. 1802).

In the face of a hostile political environment that makes any structural reform of the market, the family, or the state unlikely, feminist legal scholars have adopted creative and pragmatic strategies for recognizing unpaid work. Early on, Fineman (2005), in her book *The Autonomy Myth*, sketched, as a thought experiment, the advantages of abolishing marriage as a legal category and, instead, using contracts and contract rules to regulate adult–adult intimate relationships (see also Fineman 1995). Ertman (2001, p. 1735) argued for developing public–private law hybrids to offset the drawbacks of a purely public or private law approach. This included applying aspects of commercial law to family arrangements such that the lower-earning spouse (typically, the woman) could "recoup her investment in the marital enterprise" through the device of the premarital security agreement (Ertman 1998). Alternatively, she could have limited liability for debts incurred in raising children. Further, prenuptial agreements could be interpreted so as to compensate the spouse that performed unpaid work during the marriage (Ertman 1998). Similarly, having assessed the lack of opportunities for large-scale reform, Williams focused on workplace accommodation (Silbaugh 2001, p. 1392) and eventually decided that litigation could be an effective short-term strategy to counter discrimination that caregivers, particularly women, face (Williams & Cooper 2004, p. 850). She proposed the idea of "family responsibilities discrimination" or "caregiver discrimination," which informed litigation strategies by drawing on empirical evidence generated by feminist economists and sociologists (Williams et al. 2012, p. 55) to document what she calls the "maternal

wall," whereby she claimed working mothers were "rated less like businesswomen and more like housewives," who are viewed on a par with the "elderly, blind, retarded, and disabled" (Williams 2004). This affected women as much as the glass ceiling and the gender wage gap did. This litigation eventually resulted in Equal Employment Opportunity Commission–issued guidance on caregiver discrimination (Silbaugh 2007b, pp. 1812–14).

Aside from efforts to recognize unpaid work, the first step toward redistribution has been to denaturalize the family. Feminists argue that the recognition of female reproductive labor ends up normalizing heterosexual marriage to the exclusion of other living arrangements for the provision of social reproduction—including cohabitation arrangements (Barlow 2007, p. 261; Wong 2007, p. 285); non-couple caregiving relationships; state-dependent single parenthood; and families formed by lesbians, gays, bisexuals, and transsexuals that do not approximate the heterosexual marriage model (Conaghan & Grabham 2007, p. 340; Ertman 2001, p. 1735). Recall here Franke's (2001) warning to feminists about the repronormative conditions under which the state would overdetermine the terms of dependency. Feminists also problematize the presumption that the family's zones of intimacy should not be contaminated by economic calculations, suggesting that "recognizing the key role of exchanges in our love lives can improve family law as well as family life" (Ertman 2012, p. 405). Scholars have also demonstrated how household membership no longer aligns clearly with either meaning of family (defined as either the narrow, marital, normative family or the more common, new-normal, nonmarital family) (Silbaugh 2016, p. 1073) and that housing design must be modified to prioritize extra-household relational proximity, where family members are scattered across households (Silbaugh 2016, p. 1083).

Feminists interested in redistribution also draw on the tradition of American legal realism. They have showed that the jurisdiction of any particular area of law over women's housework is contingent (see also Fudge 2014, p. 19); thus, although we may default to family law for recognizing women's reproductive labor, labor law could just as well be used to mandate wages to housewives. A crucial methodology for legal realists is to investigate background legal rules. Thus, to understand the distributive effects of family law, Halley & Rittich (2010, p. 762) urge us to go beyond family law 1 (namely, the law of marriage, divorce, custody, maintenance, etc.) to consider family law 2 (consisting of family-related provisions in tax, welfare, immigration, and other laws), family law 3 (structural rules that impact the family without necessarily referring to it, like employment or tenancy law), and family law 4 (informal norms governing the household). Confining ourselves to family law 1 maintains the exceptional status of the family as a legal category that performs concrete distributional work (p. 754). Silbaugh (2007b) has similarly drawn on urban geography to show that locating large single-family homes in suburban areas negatively impacts on the time, money, and flexibility available to women to manage their commitments to paid employment and to unpaid work obligations. The "gender of sprawl" (including big-box sprawl; see Silbaugh 2007a) is mediated through property, mortgage, and zoning laws, and these should also form the jurisdiction of the care work debates.

Legal feminists have examined the intragender effects of recognizing women's reproductive labor. They show that accommodations within employment law for working families, which were meant to recognize care responsibilities, can in fact consolidate and entrench class and gender disparities. A working woman might avail herself rather than her husband of the Family and Medical Leave Act of 1993 due to the gender wage gap (Shamir 2009, p. 431). Alternatively, because such leave is unpaid, only middle-class workers might avail of this optional benefit. The UK Work and Families Act 2006 produces similarly class-disparate outcomes (Conaghan & Grabham 2007, p. 335). Case (2001) further argued that accommodations for mothers would effectively subsidize married men's work to the detriment of working women who are not mothers, and hence called for shifting the burdens of child rearing to men. The focus on unpaid domestic and care work can

also ignore eldercare (Ertman 2001, p. 1735). Recognizing the care responsibilities of a household might also ignore protections for the secondary labor market of migrant care workers who support working parents (Fudge 2014, p. 5). Stewart's pioneering work draws on the literature on global care chains to delineate how historical relations of colonialism and recent structural adjustment programs push Ghanian nurses to migrate to the United Kingdom to fill a "care gap," which results in Ghana subsidizing the UK healthcare system. In a globalized world, the care economies of the United Kingdom and Ghana are thus deeply intertwined (Stewart 2007; see also Stewart 2011). Tsoukala (2007, p. 422) draws on the work of Grossbard-Shechtman, who shows that although a joint property regime could work to either encourage a sexual division of labor or discourage it by incentivizing the husband to send the wife to market work, initial evidence suggests that it will most probably do the former. Legal attempts at recognizing women's reproductive labor thus have unintended consequences.

Unintended consequences of law reform are inescapable. But can we better anticipate them? Tsoukala (2007, p. 376) thinks not and argues that "within the debate, legal feminists have adopted the idea that household work is productive, but they have transformed it into a moral concept that guides efforts to ensure greater legal entitlements." But moralizing care makes the "discussion of the costs and benefits of specific policy proposals for different groups of women difficult to sustain, while also rendering discussions of women's own contributions to the current gender system unpalatable" (p. 376). According to her, this explains "feminist resistance to and partial appropriation of economic thought" (p. 363), which sets back efforts to engage in an internal critique of the underlying economic principles, crucial especially given the hegemonic status of law and economics in US law schools (see also Fineman & Dougherty 2005). Hadfield has sought to denaturalize neoclassical economics' reliance on biology for justifying the efficiency of the sexual division of labor (Hadfield 1999, p. 129), yet even she observed that as of 2005, feminist law and economics was not a field in the making (Hadfield 2005, p. 286). This resonates with radical feminists' inability to engage with economically oriented redistributive analysis. As I have noted in relation to a call for developing a feminist economic sociology of law, we need to position ourselves as being "anti" market fundamentalism, yet cultural and radical feminist projects in law exemplify "antimarket" fundamentalism (Kotiswaran 2013, p. 125).

In the United Kingdom, although the influence of law and economics in legal scholarship is minimal, the moralizing vocabulary of care has also detracted from a politics of redistribution. An influential book on caring and the law, for instance, examines several legal fields (medical, family, torts, human rights, and labor laws) but makes little mention of race and immigration law, which fundamentally shape migrant care markets in the United Kingdom, or of distributive effects of recognizing care along lines of race, class, caste, or sexuality.

Underlining the United States's outlier status on care work, US scholars often look to Europe for its more family-friendly policies. In her quest for maternalist jurisprudence, Suk (2018b) analyzes the maternal clauses of postwar European constitutions to underline the constitutional protection of women's crucial role in social reproduction in those countries, going well beyond formal equality and nondiscrimination provisions. But Europe is no paradise either. Waves of austerity measures have hacked away at the foundations of the welfare state. In a recent article, Isailovic (2021, p. 283) offers an overview of EU policies since the 1970s to demonstrate that

> work-life reconciliation measures that were originally justified by gender equality imperatives have steadily morphed into measures of investment in human capital expected to boost economic growth and ensure fiscal sustainability by enhancing individuals' capabilities and opportunities on the market, while also addressing social challenges such as the feminization of work, lower fertility, women's poverty, and claims for equality.

Further, the EU work–life measures marginalize working-class men and women, part-time workers, and migrants (Isailovic 2021, p. 322). Especially after the crisis of 2009, Isailovic (2021, pp. 283, 318) argues, work–life balance measures are driven by a neoliberal rationality with a focus on fiscal austerity, labor flexibilization, and high employment and, consequently, a reduced role for the welfare state. Somewhat presciently, Conaghan & Grabham (2007, pp. 330–31) predicted that the care problem was an economic problem, as welfare states offloaded the care burden to families (including by opening the door of marriage to same-sex couples) and encouraged paid employment to foster independence. Notably, this critique of capitalism is missing in the US feminist legal care work debates.

THE CASE FOR THE LAWS OF SOCIAL REPRODUCTION

So far, I have offered a condensed overview of social reproduction theory and the feminist legal theorizing of reproductive labor. To theorize the "laws of social reproduction" as an iteration of feminist legal materialism (Conaghan 2013, p. 44), I propose both an expansive understanding of social reproduction and the use of a varied critical legal tool kit. In the process, I draw on my work in the developing-world context of India. After all, practices of social reproduction also vary considerably around the world. The Anglo-American care work debates I have referred to presume a particular configuration of what economist Razavi (2007) calls the "care diamond," namely, the organization of care in a society between four institutions: the market, state, family, and community. So, for the Anglo-European context, we assume a postindustrial economy revolving around financialized capital, a welfare state (albeit under attack from austerity measures), and low rates of marriage accompanied by high rates of divorce. Transposing legal responses to the work–life conflict from the American care work debates would, however, make little sense in a developing-country context like India, with a large informal economy, a residual welfare state (Palriwala & Neetha 2011, p. 1050), a high marriage rate of 92%, and a low divorce rate of 2% (Raveendran 2016), alongside a culture of "gendered familialism," whereby care is considered to be a familial and female responsibility, which work in the market devalues (Palriwala & Neetha 2011, p. 1049). Add to that one of the lowest and declining female labor force participation rates in the world. Not only are employment, tax, and family law reforms for recognizing unpaid work somewhat meaningless, one would struggle to find a crisis of care; if anything, there is a crisis of employment, because women are thought to perform too much care. There are also differences in how feminists understand the very concept of unpaid work. Whereas unpaid domestic and care work are the core of the care work debates in the West, in agricultural economies like India, feminists are concerned more about unpaid economic activity in the form of subsistence agriculture, which is not enumerated. Here again the riches of materialist feminism are manifest. Mies and her collaborators (Mies 1998, Mies et al. 1988) drew on dependency theory in the 1980s to argue that subsistence production defied the productive–reproductive dyad and that subsistence farmers were not lumpen proletarians but rather generators of profit for capitalism. The WFH feminists also redefined the working class internationally as including the unwaged and low waged, men as well as women, in the home and on the land. Social reproduction thus connoted more than unpaid domestic and care work. This underlines the need to decolonize the basic premises of social reproduction theory and reimagine vocabularies of social reproduction based on the lived experiences of women in the Global South.

Feminist legal theorizing of reproductive labor has tended to take as its object the middle-class (often heterosexual marital) household to query what it takes to reproduce that household amid competing prerogatives of paid employment and unpaid care obligations. Consequently, the labor of those working in the satellite economies that support the household (by rendering personalized

services like that of a driver, cook, cleaner, nanny, au pair, or housekeeper or rendering market services through the fast-food industry, childcare centers, or old-age homes) and what it takes to ensure the social reproduction of working-class families are rendered invisible. What is reproductive labor for the middle-class family is productive labor for women working in the satellite economies. Meanwhile, stigmatized reproductive labor, such as sex work, stripping, erotic dancing, egg donation, massage, or surrogacy, which seems only tangentially related to this middle-class household, is rendered exceptional on registers of violence or exploitation, especially by "radical" feminists. This normalizes the inequalities inherent in the marital household and precludes a critique of marriage. In theorizing social reproduction, we therefore need a non-exceptionalist account of reproductive labor that does not render marriage special, thus recovering the critique of marriage that Valverde (2015, p. 106) claims is one of the key insights of second-wave feminism, now lost in the course of the transnational travels of feminist legal theory.

An expansive understanding of reproductive labor to include stigmatized work is not only necessary to further struggles for workers' rights asserted against the state (e.g., sex workers seeking decriminalization). Plotting reproductive labor along a marriage–market continuum (see Campbell 2013) also helps identify the roles and interests of reproductive laborers (including married women who do not work outside the home) across sectors and vis-à-vis each other. These relationships can be theorized in terms of overlaps, continuums, or bargains. I address each in turn. Empirically speaking, the same woman can perform reproductive labor simultaneously at two institutional sites, e.g., the housewife–sex worker, the surrogate–housewife, or the domestic worker–housewife. A woman can also move between institutional sites along the marriage–market continuum; thus, 75% of the sex workers in Sonagachi, Kolkata's largest red-light area, had been once married and were deserted, widowed, or divorced. Hence, sex workers aspired to a life of domesticity and sometimes left sex work to become housewives. Similarly, a commercial surrogate at an Indian surrogacy hostel would revert to reproducing for her own household once the baby had been handed over to the commissioning parents. Conversely, housewives are also known to become surrogates to become economically independent and exit their marriage. Similarly, 31% of all Indian domestic workers are widowed or divorced (Neetha & Palriwala 2011, p. 103). Interestingly, although there are rich, sector-specific sociological and ethnographic accounts by feminists of reproductive labor, they are rarely studied in relation to each other. This is surprising because these labor forms share several similarities, whether it is the socioeconomic profile of the workers; their mode of entry into such work; the low barriers to entry and exit, given the perception that they are unskilled; the above-market wage for stigmatized labor; the boundary work women perform in establishing dignity; resistance to stigma, which is often articulated in terms of their maternal compulsions; or the collective action problems they face. Therefore, it is not uncommon to find a housekeeper who was previously a nanny, a caregiver to an elderly person, or a domestic worker or, alternatively, a nanny who has been an au pair and plans to study nursing or train to be a teacher. Finally, reproductive laborers also develop conflicting interests vis-à-vis each other, striking bargains in the process. Examples include wives of men who visit sex workers or dance bars on the one hand and sex workers and dancers on the other, who are likely to push for quite different legislative proposals regulating the form of labor (Kotiswaran 2010).

Notably, the law is a site where the interconnections between various forms of reproductive labor, whether in terms of an overlap, continuum, or bargain, are embedded. Thus, for a housewife–surrogate, surrogacy laws might insist that a commissioning couple obtain the consent of the surrogate's husband so that an embryo transplant to her womb is not considered as adultery (Indian Counc. Med. Res. & Natl. Acad. Med. Sci. 2005). For women moving between unpaid and paid reproductive labor, rules governing marriage and the relevant sector determine her bargaining power within both and relative to each other. Sometimes, courts also construe the

interconnectedness between forms of reproductive labor in terms of a zero-sum game. Thus, Indian courts have upheld the rights of bar dancers to a livelihood only on the basis that they are different from sex workers (Kotiswaran 2010). To the courts, despite the similarities between the sex work and bar dancing sectors, dancing was *res commercium* (within boundaries of commerce) and sex work *res extra commercium* (outside the boundaries of commerce). Thus, despite the interrelated nature of these economies, a change in rules in any one sector could adversely affect women in related sectors.

Mapping the laws of social reproduction also requires the use of innovative methodologies, including empirical research. Legal scholarship has tended to be parasitic on other disciplines. However, social scientists without legal training may not study the law at all or, worse, may assume that the law is irrelevant because societies with opposing legal approaches to an issue often produce similar social effects on the ground (Agustín 2008). Yet sociolegal scholars have long demonstrated how legal entitlements crucially shape bargaining power. Conversely, feminist legal scholars have also benefited from interdisciplinary exchanges. For instance, sociologist Zelizer's work on differentiated ties mediating intimate lives and the market has been used regularly to diffuse polarized debates among feminist legal scholars on the commodification of women's work (Williams & Zelizer 2005). But empirical research can deepen this engagement. When studying fertility clinics conducting surrogacy in India, I found that the claims of the domino effects of global capitalism were exaggerated. Not all doctors could perform the relational work that surrogacy doctors did in bridging the highly unequal relationship between the surrogate and the foreign commissioning couple (Kotiswaran 2013). The delicate nature of this labor meant that fewer than 1,000 babies were born via surrogacy each year in India. Adopting an empirically informed sociological approach to the relation between the law and economy could therefore produce more realistic regulation while showing that fears of the domino effects of capital are overstated.

Empirical research also furthers critical, redistributive projects in law and feminism. Viewing reproductive labor along the marriage–market spectrum makes clear that the default legal categories and legal logics that shape them are in fact contingent. Hence, we cannot take for granted the law's characterization of sex work as a criminal activity. Yet heeding the legal realist call to make visible background legal rules is made feasible only through empirical work. To illustrate, in my research on sex work in Asia's largest red-light area, which is a densely plural legal space, I showed how rent-control laws were far more significant for sex workers' economic bargaining power than the anti–sex work criminal law (Kotiswaran 2011). Having documented the range of social norms and market practices through the lens of legal pluralism, a basic economic analysis of criminal and labor law reform proposals became possible. Again, empirical research highlighted the heterogeneity of the sex worker population in Sonagachi so that a distributive analysis of even seemingly progressive rule changes revealed that every rule change would have benefited some sex workers but not others. If anything, only landlords consistently benefited from every rule change. As feminists wield influence and secure hard-won victories, assessing the costs and benefits of our strategies through distributional analysis is crucial (Halley et al. 2018, Kennedy 1993); empirical research makes the distributional analysis robust (Kotiswaran 2011). Empirical sociolegal research can thus help feminist legal scholars studying reproductive labor to go beyond a politics of recognition to address issues of redistribution.

CONCLUSION

Feminist scholars have long theorized women's unpaid work under the two broad rubrics of social reproduction and an ethics of care. Several commonalities and differences between these two bodies of scholarship have influenced various disciplines. Law is no exception, as feminists have

been frustrated by the "juridogenic" nature of liberal legalism (Smart 1989). In North America and Europe, we find feminist legal scholars persuaded more by the literature on care than that on social reproduction. This is not surprising given the "tainted" nature of materialist feminism (Conaghan 2013). In this article, I sought to make a case for drawing on the riches of social reproduction theory. My exposition of materialist feminism shows not only its pathbreaking analysis of the structuring of social reproduction under capitalism but how its lack of subscription to Marxist orthodoxy and commitment to feminist praxis have allowed it to be inclusive of groups like sex workers, lesbians, African American mothers, and single women in the 1980s, when even today sex workers have to make a case for their demands for workers' rights to be taken seriously. Materialist feminism's transnational "scale," to quote Valverde, also allowed it to redefine social reproduction in the Global South as including not only unpaid care and domestic work but also subsistence production and to plot the interdependent nature of the global economy.

Just as we should not let a good crisis go to waste (Schultz 2010, p. 1211, quoting Rahm Emanuel), post pandemic, we cannot let the moment that rendered women's reproductive labor so plainly visible go to waste. The term care has already become central in policy circles, especially among international and UN agencies (see Federici 2019, p. 177). This could well be because care is an "economic" problem. At a time when households around the world are reeling from high rates of inflation and economic shock, resulting in unbearable levels of debt incurred simply to sustain their social reproduction (Gago 2022), states may well think that the main plank of post-pandemic recovery is for women to get back in the workforce in far greater numbers. "Care talk" is thus a convenient way to clear the pathway to capitalist exploitation. Yet hope may lie even in these interstices of governance feminism. In an unexpected move, and without any feminist advocacy, in 2021, several Indian states have promised 30 million women unconditional cash transfers in an implicit recognition of their role in managing households (Kotiswaran 2022), but feminists have construed this as a retrograde step given the international consensus identifying care as the obstacle to higher female labor force participation rates. Meanwhile, we must continue being reflexive about the blind spots of social reproduction theory. Feminists may have queered social reproduction theory, but a transgender or caste-based theory of social reproduction will likely look very different from current articulations. Indeed, as we aim for the greater legal recognition of social reproduction across the marriage–market continuum and the distributive consequences of rule changes for all reproductive laborers, we must acknowledge that there cannot be any one global "care manifesto." Rather, any care manifesto will hold valid only for the time and space we inhabit (Kotiswaran 2021). And as Federici notes in a call for joyful militancy (Federici 2020), we cannot wait for the revolution to come; the time for revolution is now (Federici 2021). We can perhaps, after all, "flip domesticity against itself in the manner of a judo master, using its own" momentum to throw it off balance (Williams 2002, p. 431). This may well be the jurisdiction for feminist legal theory (Valverde 2015).

DISCLOSURE STATEMENT

The author is not aware of any affiliations, memberships, funding, or financial holdings that might be perceived as affecting the objectivity of this review.

ACKNOWLEDGMENTS

The author would like to thanks Deeksha Vishwanathan for her able research assistance. Research for this article was made possible by The Laws of Social Reproduction project, which has received funding from the European Union's Horizon 2020 research and innovation programme (under grant agreement 772946).

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