

International economic law and the hidden abode of social reproduction

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Introduction

In this essay I argue that a Social Reproduction lens provides us with invaluable resources for thinking about the role that International Economic Law (IEL) plays in the re/production of global inequalities and planetary injustices. Drawing on critical conversations between 'Wages for and against housework', intersectional feminisms, and 'Third world approaches to International Law' (TWAIL), I point to three insights in particular. The first is about the mythical separation of the sphere of production from that of social reproduction under capitalism for the purpose of extracting value and accumulating capital, with IEL involved in constantly re/drawing the boundaries between these spheres. The second insight concerns the centrality - in addition to domestic labour - of unpaid and devalued, including informal and informalised, labour in transnational production, with IEL contributing to the invisibilisation and/or devaluation of specific forms of labour and the overvaluation of others. The third insight is about the role that social hierarchies and divisions, sustained in and through law, play in processes of labour exploitation and devaluation on the one hand and value extraction and capital accumulation on the other. These insights enable us to make two critical moves: first, to denaturalise these processes by showing how they are saturated by law, tracing how IEL - interacting with in/formal norms at the local, national, international and transnational level - re/structures the global economy in deeply unequal and violent ways, immiserating life on earth. Secondly, by emphasising how IEL is an integral part of processes of world-making, it enables us to think of the kind of alternative arrangements, institutional and otherwise, that might be able to challenge current value-making processes so that different ways of being together on this planet can flourish.

On separating and abstracting

First, a few words about how I approach law and social reproduction, given their relationship is far from established. I see law as comprising of formal and informal norms at the local and national, as well as international and transnational, levels, and as 'constructing' the economy and society as well as being shaped by them. In other words, I see these spheres as co-constitutive. At the same time, I approach the legal knowledge that feeds into this process as 'historically and ontologically implicated in producing ongoing colonial conditions and modalities of life' that are exploitative, violent and destructive, and which act against the flourishing of radically different ways of being together in the world (Adebisi 2023, p. 39). As Adebisi has also pointed out, for law and legal knowledge to *be* otherwise, 'we must concern ourselves, not just with what international law has done, but what international law *is* that makes it continually do what it does' (Ibid., 49). Seeing IEL from the vantage point of social reproduction might be a step in this direction.

I take social reproduction, borrowing from Rai *et al.* (2010), to refer to biological reproduction, including sexual, affective and emotional services, the production of

goods and services in the home and the community and the reproduction of culture and ideology that can both stabilise and challenge dominant social relations. Although there has been a resurgence of approaches to Social Reproduction in the last two decades (Bhattacharya *et al.* 2017), I draw specifically on the insights that have emerged from the critical encounters between *Wages for and against housework* and intersectional feminists in Italy, Britain and the United States since the 1970s. This is because, despite being historically and geographically situated, and therefore entailing important limitations (Carby, 1982; Davis, 1998; James, 2012; Bhandar and Ziadah, 2020), these traditions of thought and action have provided us with a powerful analytical and political lens for thinking about law's co-constitutive role in the economy and society without giving primacy to any one sphere; and, specifically with regard to IEL, for denaturalising its role in creating and distributing life chances around the world.

Take the first insight about the separation of production from social reproduction under capitalism. Picchio (1992), Fortunati (1981[1995]) and Federici (2004)'s work has traced the connections between the long transition from feudalism to capitalism in Europe, primitive accumulation, the witch hunt, colonialism and the slave trade on the one hand; and, on the other, the making of the housewife, the native, the uncivilised and the under-developed that were crucial to turbo-charge value extraction and capital accumulation on a planetary scale. All these processes are socio-legal in as much as they are political and economic. As TWAIL and critical legal scholars have also shown, they are entangled with the institution of modern property law, the legal chartering of royal companies, the legal doctrines of *Mare Liberum*, with commercial treaties and insurance law and conventions enabling the valuation, exploitation and disposal of human life (Bhandar, 2018; Anghie, 2012; Knox, 2016). This socio-economic-legal tangle, which continues to be woven as we speak (Koram, 2023), points to the constant re-drawing of this separation, despite these boundaries being (re)drawn differently in different parts of the world.

Within the international legal regime, this separation has been institutionalised through the creation of two distinct realms in the first half of the twentieth century: the domain of social and environmental regulation revolving around the UN with its weak sources of law; and that of international economic law revolving around the Bretton Woods institutions with their legally binding trade, investment and financial rules (Macmillan, 2004). The latter realm has more recently acknowledged environmental and social issues in the form of labour and human rights, environmental standards and gender equality (Rittich, 2006) but this acknowledgment has done nothing to affect the force of IEL with its binding provisions of trade, including digital trade, finance and investment law that enable labour exploitation and environmental destruction for the purpose of value extraction. These areas of law indeed elevate the 'imperatives' of production and growth, and more recently finance and the digital economy, over all other domains of life, intensifying and further abstracting the process through which human and non-human life is put to the service of a racial capitalism that combines extraction of value and expropriation of resources from subordinated groups with the making of certain populations disposable and redundant (Sanyal, 2007; Bhattacharyya, 2018).

Indeed, feminist engagements with Marx' value theory illuminate the role that finance and financial regulation in particular have come to play in our more or less financialised societies, disciplining as well as exploiting labour through at least two specific

channels.¹ The first is financial markets, with contracts like derivatives enabling the commensuration of bits of capital and labour around the world, a commensuration which ends up sending 'price' signals to all parties (companies, states and indeed workers) involved in making decisions (de Angelis, 2005). For example, companies decide whether to relocate, workers whether to strike and states whether to further cut public spending depending on 'valuations' that take place on financial markets, which all but the result of neutral and technical processes (Alessandrini, 2016). The second crucial channel is the household which has become a site of direct value extraction and accumulation through both digitalisation, as Fortunati and Edward (2022) as well as Natile (2020) have argued; and through the financialisation of everyday life and the financial terror it instils, as Cavallero and Gago's work (2021) on debt has shown.

On dividing and immiserating

A Social Reproduction lens emphasises how labour remains the source of all (capitalist) value in our world economy, and this takes us to the second and third insights about the centrality - for value extraction and capital accumulation - of not only domestic labour, most of which remains unpaid, but also of other forms of unpaid and devalued labour, including informal and informalised labour, much of which is migrant. Indeed, as Federici has pointed out, global capitalism is 'structurally dependent on the free appropriation of immense quantities of labour and resources that must appear as externalities to the market' (2019:105), a point which speaks to what Patel and Moore (2018) have called the production of 'cheap natures', which include what we have come to view as environmental 'resources'.

The point is that these socio-legal processes of making 'natures' and making them cheap have to be seen in conjunction with the role that social hierarchies and divisions play in process of capital accumulation on the one hand and labour devaluation or invisibilisation on the other - including through race, gender, sexuality, class, age, and migration status - that are historically and geographically contingent. IEL and institutions have contributed and actively contribute to the invisibilisation and/or devaluation of certain forms of labour and the overvaluation of others (Alessandrini, 2022a). This has happened through various conceptual and institutional mechanisms, including the ideology of comparative advantage, formality, development and innovation that are built in trade and investment agreements, which then interact with social norms that are embedded in different domestic rules (i.e. family, tax, equality, immigration and labour law, etc) - which produce historically and geographically contingent forms of devaluation, invisibilisation and exploitation.

For example, trade and investment agreements construct the support for social reproductive and informal labour, as well as environmental resources, as positive externalities that can be generated by trade and investment liberalisation-led growth: that is, trade and investment (read 'capital') are said to create more formal jobs, income and consequently environmental protection, social spending, gender equality and so on. These forms of labour and environmental 'resources' are never seen as

¹ Marx's 'law of value' is understood not quantitatively - as the socially necessary labour time needed to produce commodities - but, as Diane Elson (1979) has put it, as a quality, a social relation, and a particular kind of (capitalist) connectivity (Alessandrini, 2016). That is, as an historically and spatially contingent way of ordering and disciplining labour processes around the world, especially when there are no central coordinating mechanisms like the ones characterising planned economies.

contributing to, indeed as being the very conditions for, the production of the wealth that is 'freely' appropriated by that very capital. Based on this ideological construction, then, trade and investment law attributes differential power and resources to specific social actors, first and foremost capitals and (certain) states, to the detriment of labour (not to mention our planet), which becomes ever more precarious. This is what we have seen unfolding and intensifying since the 1980s, with IEL providing mobile capital and some states with increasingly stronger legal entitlements to the detriment of other states and labour. In the current phase of value chain capitalism, IELs are adamant countries should continue avoiding rigid labour regulations on the one hand; while committing to the (further) liberalisation of goods, services and capital and the protection of intellectual property (IP) and contractual obligations on the other (Alessandrini, 2022a&b). And, despite expressing concerns about 'extreme' levels of wealth concentration that have gone in tandem with growing socio-economic inequalities (World Bank, 2020:30), they push out of sight the crucial role IEL and its pre-distributive functions play in generating such inequalities (Linarelli *et al.*, 2018) while placing responsibility firmly on the shoulders of those states which have been 'unable' to adopt appropriate domestic policies to redress such inequalities.

On contesting and (re)connecting

I conclude with a couple of reflections: as a lens, Social Reproduction is invaluable because it denaturalises the separation between production and social reproduction as well as the devaluation, invisibilisation and immiseration of different forms of racialised, gendered and classed forms labour; and by showing the mechanisms that enable such processes, it opens them to contestation. Contestation may take the form of articulating demands on states and International Economic Institutions (IEIs) that they, first of all, eliminate the extensive rights they have provided capital with through IEL; and, secondly, that they recognise and remunerate the contribution that different forms of labour and environmental resources make to global wealth through a different regulation of trade, finance, investment, IP, labour, migration, taxation, socio-economic rights, companies, the digital economy, international debt and the environment, as well as through the funding of locally-designed and administered infrastructures that combine income, wage, social and environmental support (Alessandrini, 2016, 2018). This might lead to a more equitable redistribution of resources and perhaps, in time, to more equitable forms of production too.

Exposing what IEL 'is not currently structured to do' is therefore important for 'transmitting critical legal knowledge' and action (Adebisi 2023, p. 122). At the same time, law and legal knowledge are not the end of the story. Indeed, the other reflection is on the political potential of connecting these and other demands transnationally, and I am thinking here of the power of 'provocations' in the tradition of *Wages for and against Housework* struggles. These were struggles for the visibility and remuneration of domestic labour and, at the same time, for the refusal to continue doing it as women's labour, and as labour for capital. And so, I wonder what kinds of transnational connections, if any, might be articulated today when we know just how central, in addition to domestic labour, informal and informalised labour is in the world economy. We know from work on racial and post-colonial capitalism that there is an enormous sphere of human activity - the 'need economy' in Sanyal's terms - which can be at times irrelevant to the extraction of value and capital accumulation, although it is permanently subject to the violence generated by capitalism. Indeed, as Bhattacharya

(2018) has put it, racial capitalism entails simultaneous processes of value extraction, resources expropriation and expulsion of lives. Linking struggles against these simultaneous but different processes is not straightforward. As Lowe has reminded us: 'precisely because global racial capitalism builds upon the histories of colonial divides and operates through newly differentiated logics and asymmetrical scales, our analytical frames and organising practices likewise cannot be limited to a single logic, issue or national frameworks: links and solidarities are imperative... Yet the necessity of linking is not simply a contemporary challenge; it has been part of the anticolonial, pan-African and communist internationalist visions' (Lowe in Bhandar and Ziadah 2020, p. 224).

With this 'imperative' in mind, I wonder what kind of links and solidarities we can build that do not demand a homogenous subject of struggle, certainly not the wage labourer, and that are enabling and pluralising rather than universalising. If, as Mezzadri (2021) has argued, capitalism is not defined by wage labour but by the extraction of surplus through multiple forms of exploitation, and the labours of social reproduction are crucial sites of revolutionary politics, what kind of demands, legal or otherwise, might we think of that make such links and solidarities more rather than less possible? This leads to a fourth and final insight I take from the tradition of social reproduction work I have been drawing from, and that's the fact that social reproduction has always exceeded production, value extraction and capital accumulation, with pockets of non-capitalist or more-than-capitalist forms of economies always in existence. Starting then from the recognition that social reproduction is the very terrain that makes life possible, with economic production being only one of its dimensions, might provide the first step towards articulating demands that enable those pockets and their alternative value-making processes to flourish and multiply, perhaps starting with the widening and politicisation of the notion of and struggle over living conditions, conditions which are contingent on 'historical time and geopolitical space' (Picchio 2003, p. 14). Indeed, what shape these struggles and transformative demands will take and the role law might play in supporting them in different contexts is an empirical as well as a political question.

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