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## Motherhood and Laws of Social Reproduction

A Materialist-Feminist Approach to the International Law of Gender and Labour

— Everything has a value. Even those forms of labour that society persistently devalues, like motherhood and the caregiving work accompanying it. In contemporary societies, motherhood and care work are predominantly framed as a private matter. Within this traditionalist understanding, mothers are expected to care for their children and serve as the moral and emotional backbone of the nuclear family. The mother is defined relationally through her attachment to the child and is socially constructed, through norms that are reproduced and stabilized by legal frameworks, as a caregiver rather than as an autonomous subject. Numerous feminists highlighted therefore, that “[m]otherhood is not a natural condition.” (Smart, p. 37).

Although motherhood plays a crucial role in international human rights law, particularly with regard to protective regimes, two fundamental problems persist. First, motherhood remains insufficiently conceptualized within international law. It is frequently invoked as a protected status but rarely examined as a structural legal category. Second, this lack of engagement has led to the absence of a clear and coherent definition of motherhood in international human rights law.

A recent attempt to address this gap can be seen in the current call for input by the Special Rapporteur on violence against women and girls, who seeks submissions on the forms and manifestations of violence experienced by women and girls on the basis of their status as mothers, including where this status intersects with other grounds of discrimination. The forthcoming report, to be presented to the Human Rights Council at its 62nd session, will be the first dedicated examination of violence against mothers at this level. Whether it will succeed in adequately capturing the specific structural dimensions of such violence, and its intersections with other axes of marginalization, remains to be seen.

Before addressing motherhood primarily through the lens of gender-based violence, a more fundamental step is needed. Motherhood must be understood in broader structural terms. Its traditional framing as a natural and private condition hides its connection to economic organization and social reproduction. The analysis therefore proceeds in three steps: it first introduces a materialist-feminist framework, then situates motherhood within social reproduction, and finally examines its treatment in international human rights law.

### Materialist Feminism within Critical International Legal Theory

Feminist Approaches to International Law (FAIL) and Third World Approaches to International Law (TWAIL) have fundamentally reshaped how scholars interrogate international law, even though traditional doctrinal scholarship continues to marginalize them. Both approaches reveal that law is not neutral: it reflects and perpetuates the hierarchical structures of our society (see Barlett, p. 887). If societies are structured by inequality, law inevitably tends to mirror and stabilize those inequalities, whether intentionally or otherwise.

Analysing law from the perspective of those rendered invisible exposes these embedded power relations. Liberal feminist approaches focus primarily on the protection of women’s rights, often framing the issue as one of formal equality and individual empowerment (as illustrated by Boyd,

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p. 247). Intersectional feminism adopts a more differentiated perspective by demonstrating that discrimination cannot be reduced to gender alone (see [Crenshaw](#), p. 1245f. illustrated by [Barlett](#), p. 847). Rather, gender intersects with race, age, disability, sexuality, and other axes of identity to produce layered forms of marginalization.

TWAIL scholarship extends the critique further by situating international law within colonial continuities and capitalist hierarchies (see [Anghie](#), p. 7). It seeks to reveal how international legal structures reproduce asymmetries between the Global North and the Global South, thereby embedding economic domination within ostensibly neutral legal regimes ([Anghie](#), p. 34).

These approaches have significantly expanded the analytical scope of critical international legal theory. Yet, they often remain focused on categories of exclusion and identity. They identify who is marginalized, but they do not always fully interrogate the structural economic foundations that render such marginalization functional for the global order. And if they do, they leave out the very unique role of women in our economic system.

It is here that a materialist-feminist approach, frequently referred to synonymously as Marxist feminism, becomes indispensable. Rather than treating patriarchy, capitalism, race, and gender as parallel or intersecting systems, materialist feminism insists on analysing them as structurally integrated within a single socio-economic formation (see [Nanopoulos and Ullrich](#), pp. 5-7). It shifts the analytical focus from representation and identity to labour and reproduction that sustain the global economy.

A materialist-feminist approach to international law therefore does not merely add another layer of critique. It reconceptualizes the field itself and interlinks hidden connections between (intersectional) feminist and TWAIL approaches. It understands international law not as a detached system governing interstate relations (“the public sphere”, see [McKenna and Arvidsson](#), p. 13), but as a normative infrastructure that organizes and legitimizes the global division of labour, including the division between productive and reproductive work (“the private sphere”, [McKenna and Arvidsson](#), p. 13).

Within this framework, motherhood is no longer a private role or cultural phenomenon. It becomes a central site of social reproduction. Identifying these connections is not merely an issue confined to niche academia; it is a necessary step if international law is to confront “the various, overlapping forms of subjugation of women’s lives” (see [Mohanty](#), p. 515). Consequently, motherhood is not a peripheral concern for private law alone. A materialist-feminist critique exposes how public international law contributes to the conservation of a system in which reproductive labour is naturalized, feminized, and devalued.

## **Social Reproduction and Motherhood**

The private sphere was, and is, never merely private. It constitutes the foundational unit of social organization and therefore forms the structural precondition of all legal and political orders. Without the private sphere, i.e. without the organization of family relations, care, and reproduction, neither national legal systems nor the international legal order could exist. The international system ultimately rests on this most basic level of social reproduction ([McKenna and Arvidsson](#), p.14).

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Public international law, however, has traditionally conceptualized itself as governing only public relations, primarily relations between states, while leaving the private sphere formally outside its regulatory scope. International human rights law has begun to challenge this dichotomy by recognizing that gender-based violence, long assumed to exist only in the private sphere, constitutes a specific form of discrimination against women and therefore gives rise to state obligations to respect, protect, and fulfil women's right to non-discrimination (cf. General Comment No. 28, para. 9). However, the fundamental division between the public and the private still remains intact. Although this public/private dichotomy has long been criticized in critical legal scholarship (see Crenshaw et al., pp. 625-626, 644), international law mainly continues to operate within this conceptual separation. The private sphere remains formally unregulated or insufficiently addressed, leaving those structurally subordinated within it, most notably mothers, without effective international legal protection.

This omission is not without legal consequence. By failing to address the organization of care and reproduction, international law contributes to the economic dependency of women (Boyd, p. 271). Mothers are legally and socially positioned not only as caregivers but simultaneously as dependents or earners within family structures or the state. Within a capitalist economic order, this dual positioning performs a systemic function: women support the wage labour of their spouses, thereby facilitating capital accumulation, while simultaneously securing its long-term continuation by reproducing and raising future labour power (see Federici, p. 31).

Even isolated contemporary reforms, such as the widespread expectation that mothers participate in part-time employment while maintaining the primary responsibility for care work, do not dismantle this structure. Instead, they institutionalize a “double burden”: mothers are integrated into the labour market without being relieved of reproductive responsibilities. The result is a structural double exploitation, first within the private sphere through unpaid reproductive labour, and second within the public sphere through precarious or undervalued employment.

This double exploitation is and was confined to liberal market economies. Even historical attempts at collectivizing care work, such as those pursued in the former USSR, women were expected to embody a dual ideal: contributing to productive labour while also fulfilling their role as mothers responsible for reproducing the nation's future. Thus, formal emancipation through labour participation did not necessarily dissolve patriarchal role attributions embedded within broader socio-economic structures.

## **A Matter of International Human Rights?**

International human rights law aims at protecting and ensuring equality and non-discrimination. Some approaches in international human rights law even go beyond formal equality and include substantive or even transformative equality, to transform the underlying structures, norms and power relations that produce inequality (arguably such as Article 5 (a) CEDAW; Article 8(b) CRPD). Also, international jurisprudence has increasingly recognized that harmful stereotypes can have human rights implications (e.g. Aksu v. Turkey, para. 58 and Carvalho Pinto De Sousa Morais

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v. Portugal, para. 54 ). Yet the predominant approach remains focused on violations of individual rights and explicit discriminatory acts. While some attempts are made to highlight systemic discrimination in general (e.g. Case of V.I. The Republic of Moldova, para 196), the concrete examples of structural economic interference that make mothers disproportionately dependent and overburdened are rarely addressed.

The emerging scholarship on harmful stereotypes represents an important doctrinal development. However, by concentrating primarily on attitudinal bias, it risks obscuring the material basis of gendered role attributions, namely the capitalist economic order. Addressing stereotypes without confronting the economic organization of social reproduction leaves the structural core of the problem untouched. As Federici rightly stressed, there is a “tendency to view the problems women face internationally as a matter of human rights and privilege legal reform as the primary means of governmental intervention.”

From a materialist-feminist legal perspective, the failure to regulate the private sphere and its economic foundations and only addressing women’s equality through human rights is not an accidental gap but a systemic decision. International law, by generally maintaining the public/private divide indirectly reinforces a legal order in which mothers bear the costs of social reproduction without corresponding recognition or redistribution.

Only a structural legal analysis that integrates the economic organization of care into the scope of international human rights obligations can move beyond formal equality and toward substantive equality. Without addressing the material foundations of gendered labour divisions, the full realization of human rights for mothers remains unattainable.

## Concluding Remarks

A materialist-feminist perspective on motherhood argues that the role of women as mothers is neither a private matter nor a natural destiny, but a central form of socially necessary labour. As part of social reproduction, motherhood constitutes the invisible foundation upon which capitalist production and accumulation depend. Its systematic devaluation is therefore not incidental, but structural.

As long as reproductive labour remains externalized to the private sphere and excluded from the normative core of legal regulation, substantive equality cannot be achieved. International law must therefore confront not only individual discrimination, but also structural discrimination.

Around International Women’s Day on 8th March, this post invites readers to engage more with materialist feminist approaches to international law. Rather than merely ensuring formal equality, it is needed to interrogate the economic and legal structures that render motherhood essential yet undervalued. Without addressing the laws of social reproduction, structural transformation will remain illusory.