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Article · July 2012

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Economic inclusion?

A landing of the feminist accounting project: An Approach to Analyzing the Regulation of Domestic Work in Colombia

Lina Buchely

Abstract— This article analyzes the legislative reform that included the care economy in Colombia's national accounts in conjunction with the transnational feminist accounting project initiated by Marilyn Waring in 1988, which claims to include the domestic work in an alternative GDP measure. The author argues that the new law creates incentives that would turn women into inefficient actors in the market, because it defines women's work as a series of natural activities associated with motherhood and domestic work. Therefore, the landing of the account project in Colombia strengthens a legal standard of family, employment and social security law, which constructs the women as subject by naturalized the care work and a welfare as a female and not a state provision. The article concludes by showing how the current regulations covering domestic work and its associated social costs could be changed by carrying out incremental reforms designed to improve the social position of women in terms both of power and resources.

Keywords: Accounting project, care economy, Domestic, feminist economy.

Introduction

In August 2010 a draft law “*regulating the inclusion of the care economy in the National Accounting System with the object of measuring the contribution of women to the economic and social development of the country*” was introduced in the Colombian Congress. The draft law, presented by the Liberal Party Senator Cecilia López, was intended to “*demonstrate the silent contribution made by women to economic development and to recognize symbolically the undeniable value of the work of women in creating national wealth*” [1]¹. The draft law can boast a number of achievements, including the fact that it has raised the profile of women and of household work as a female activity in several ways. It also proposes establishing Household Satellite Accounts (HSAs) and implementing a method for measuring care activities by requiring the National Statistical office (DANE) to start applying a Time Use Survey (TUS) within a three year period following the passage of the law.

HSAs are accounting systems that operate in parallel to United Nations' Systems of National Accounts (UNSNA),

constituting an alternative approach to the orthodox measurement mechanism adopted by the UN in the 1993 SNA.² They are heterodox economic methodologies designed to enable the measurement of activities that the official national accounting scheme does not recognize as productive (in other words: that are not included in GDP). Similarly, the TUS is an instrument designed by the ECLAC, or Economic commission for Latin America and the Caribbean,³ to calculate the time and energy spent by women on household activities. It raises the possibility of cross-referencing variables to illustrate the negative effects of the incommensurability of domestic work. TUS data is generally used to illustrate the correlations that exist between the absence of free time and poverty, domesticity and violence, and an absence of state protection and the household economy.⁴

However, the contributions the draft law does no more than repeat an old feminist claim. After the important contribution of the North American economist Margaret Reid in terms of highlighting the concern about the exclusion of the domestic production in the national income accounts [2] and those of New Zealander Marilyn Waring in challenging the UNSNA [3], the importance of recognizing unremunerated female labor was accepted as far back as 1991 CEDAW (Committee on the Elimination of Discrimination against Women) recommendation number 17 in terms of suggesting a work measurement and its inclusion in the UNSNA, and 1995 in the Declaration of the Fourth World Conference on Women in Beijing.⁵ Lourdes Benería, who is a former president of the

² The SNA, adopted in its original form by the UN in 1968 (1968 SNA), is the system employed by Colombia to measure its national accounts. It was revised in 1993 (as the System of National Accounts of the United Nations, or 1993 UNSNA).

³ CEPAL in its Spanish acronym.

⁴ These correlation analyses resulted, in part, from a partial application of the TUS in Bogotá. See María Eugenia Villamizar García – Herreros. (2011)

⁵ The Beijing Declaration states (art. 156): “...women contribute to development not only through remunerated work but also through a great deal of unremunerated work. On the one hand, women participate in the production of goods and services for the market and household consumption, in agriculture, food production or family enterprises. Though included in the United Nations System of National Accounts and therefore in international standards for labor statistics, this unremunerated work – particularly that related to agriculture – is often undervalued and under-recorded. On the other hand, women still also perform the great majority of unremunerated domestic work and community work such as caring for children and older persons, preparing food for the family, protecting the environment and

¹ Television interview with Senator Cecilia López on City TV, 28 July 2009, explaining the reasons behind the proposed law. Available at: <http://www.citytv.com.co/videos/17010/cecilia-lopez-propondria-proyecto-de-ley-sobre-la-economia-del-cuidado> [Accessed May 7, 2012].

International Association for Feminist Economics (IAFFE) and a professor Emerita in Cornell University, called the academic and political mobilization against the statistical bias that underestimates the force of women's labor the "Accounting for women's work project" or "The accounting project" [4].

Since the advances of the 1995 Beijing conference, the project has achieved important wins. As a result of the initial Nairobi Conference recommendation, the INSTRAW (International Research and Training Institute for the Advancement of Woman), and the Statistical Office of the UN promote the revision of national accounts and other statistical information on women's work. This initiative produced the measure of the Household Satellite Accounts (HSAs) that I mentioned above. Also, in 2008, the Sarkozy Commission, composed of Amartya Sen, Joseph Stiglitz and Jean-Paul Fitoussi, began a process of reflecting on the limits of GDP as an indicator of economic performance and social progress. Their Final Report, with worldwide recommendations, was published in September 2009 and promoted the previous Beijing recommendations.⁶ In a similar vein, the General Conference of the ILO (International Labor Organization) produced the C189 Domestic Workers Convention in June 2011.⁷ This last international legal instrument was accompanied by a massive mobilization known as the "12 by 12 Campaign," which promoted international networking in support of the ratification of the C189 in different countries.⁸

Additionally, thousands of friendly voices may be heard in the virtual world of the Internet, suggesting that a widespread activist movement has grown up around the impact of orthodox calculations of GDP. In general terms, mainstream critiques of the way GDP is measured are based on the theories of Gary Becker, on the contribution of everyday activities to wealth creation [5], and of Joseph Stiglitz, on the generation of non-monetary resources in households [6]. In a similar vein, there are several feminist projects that promote *alternative* (or *domestic*) measures of GDP. All of these are in some way linked to a movement labeled *Gender and National Accounts* in Latin America. Most of the relevant information has been produced by the cases of France, Spain and Mexico, all of which have

providing voluntary assistance to vulnerable and disadvantaged individuals and groups. This work is often not measured in quantitative terms and is not valued in national accounts. Women's contribution to development is seriously underestimated and thus its social recognition is limited. The full visibility of the type, extent and distribution of this unremunerated work will also contribute to a better sharing of responsibilities".

⁶ The final report can be downloaded at: http://www.stiglitz-sen-fitoussi.fr/documents/rapport_anglais.pdf [Accessed May 7 2012].

⁷ For engaged voices, this convention is important because: "Countries that ratify C189 have to adopt laws that recognise the right of domestic workers to collectively defend their interests through trade unions. In addition, Convention C189 protects the right of domestic workers to a minimum wage in countries where such a wage exists; the Convention guarantees them a monthly payment and access to social security including in the case of maternity; and it gives them one day off per week and regulates their working hours and leave days. C189 recognises domestic work as any other work and ensures that domestic workers are treated as any other worker under labour legislation." See the International Trade Union Confederation News at: <http://www.ituc-csi.org/12-by-12-campaign-uruguay-first.html?lang=es> [Accessed May 7 2012]

⁸ See: <http://www.idwn.info/?q=node&page=5> [Accessed May 7 2012]

accounts that are compiled at the level of the province or *département*.

The framing of the debate has important regional characteristics and will appear as a *cascade reform* if the mobilization sustains current patterns.⁹ For example, in terms of the C189 ratification process, the 2012 mobilization has shown success at the level of regional articulation: Uruguay just ratified the Convention in May 2012, Peru recently announced a commitment assumed by the Commission of Work of the Congress to address the exigency of enforcing the convention, in Paraguay, the Ministry of Justice and Work (MJT) has proposed a series of adjustments to be considered within the legislation in order to grant significant protection to domestic workers, and Colombia organized on the first Domestic Workers Congress March 30th 2010 and founded the Latin American and Caribbean Confederation of Domestic Workers (CONLACTRAHO). Since then, domestic workers in Latin America have been celebrating March 30th as the Domestic Workers' Day of Latin America.

Additionally, the accounting project shows specific outcomes in terms of challenging the UNSNA. Some budgets already take domestic work into account and calculate its contribution to GDP in a process that is parallel to official reporting. The different experiences in this field may be summarized as follows:

✓ **Mexico**

HSAs are carried out in 19 out of 31 of Mexico's federal states, including Mexico City. A draft of legislation has been presented, proposing the creation of an alternative HDP measure and making HSAs compulsory for all states.

✓ **Spain**

⁹ In the article "Regionalizing Women's Human Rights in Latin America," Elisabeth Jay Friedman shifts the traditional focus of the domestic/international level to a regional/national dynamic in order to explain the process of establishing, adopting and implementing norms pertaining to woman's human rights related to gender violence prevention in Latin America. By using the concept of the Ping-Pong effort, the author explains how civil society organizations articulate regional legal standards to produce normative changes at the national level. The author uses the examples of Chile and Brazil to show the legal cascade configuration in the region, a cascade that has helped to nationalize some of the prescriptions of the *Belém do Pará Convention* (1994) in terms of gender violence, moving these issues from the regional dimension to the national scenario. Cascade means that the norms recognized in the Convention – as regional instruments- has been transplanted to the national legal system by means of a regional strategy that organizes the shift between the regional and the national level as a Ping-Pong dynamic. Indeed, the author suggests that the regional level could play a key role in terms of legal changes to national systems. Particularly, Friedman highlights the importance of two legal tools for creating hard law frames (binding norms) that helps in the institutional and social struggle against gender violence: Human Rights discourse and Judicial activism. Regarding these points, the author states that "*women's rights as human rights*" is an especially successful formula in the region, used more in litigation in the Judicial branch, rather than in the Executive branch. However, the author implies that work by the judiciary is succeeded by work with the Executive and Legislative powers during left governments moments (Michel Bachelet in Chile and Luis Ignacio Lula da Silva in Brazil) because leftist parties are traditionally allies of the feminist agenda in the region. See also: Friedman, Elisabeth. 2003. Gendering the agenda: The impact of the transnational women's rights movement at the UN conferences of the 1990's. Women's Studies international Forum.

Domestic work is not recorded in the national accounts, though since 2001, TUSs have been carried out in the 17 Autonomous Communities and the two autonomous cities (Ceuta and Melilla).

- ✓ **France**
France has pioneered the approach, also developing its own unique methodology. Domestic work is remunerated through tax reductions for providers who are designated as such from among nuclear families included in the Census. Millions of families are in this way registered as employers of domestic workers.
- ✓ **UK**
After France, the most important European precedent has been the initiative of the United Kingdom's Office of National Statistics, which made an unsuccessful attempt in 1997 to produce an HSA.
- ✓ **USA**
The HSA approach is implicit in the "Nanny Tax Debate," a proposal to create an additional tax on care work that is "exogenous" to the home in order to finance potential payments to domestic workers "under the same roof."

The Colombian draft law exactly reproduces the Mexican model. It proposes a staged implementation. The first would entail the immediate establishment of an HSA budgetary mechanism designed to assign value to unpaid domestic work. Subsequently, an incremental process would be initiated to establish regular calculation of an integrated, or household, GDP that would reflect unremunerated productive work – that is: reproductive or caring activities [7].

However, the mobilization in which the Colombian Economy Care Act¹⁰ has been involved ignores important differences between local enactments of domestic work recognition, and how such projects are mobilized at the international and regional level by social organizations and by the state. In fact, the mobilization ignores domestic normative agreements that leave the current legal changes inside the Colombian legal system meaningless. The objective of the project then, is purely symbolic. Its scope is no more than to measure, differentiate, include and demonstrate, *not* to pay. In Colombia, the landing of the accounting project does not have a leftist framework in which the unions embrace the legal change in order to transform the daily life of domestic workers.¹¹ Instead, this legal change has been experimented as

¹⁰ The Draft Law ends its process in the Legislature on September 2010 and was promulgated on November 11 2010. Now the Economy Care Act is the 1413 Act of 2010. See: http://www.secretariasenado.gov.co/senadoc/ley/2010/ley_1413_2010.html [Accessed May 8, 2012].

¹¹ In most of the *Pink tide* Latin American countries, the "12 by 12 Campaign" mobilization mentioned above is supported by the international Trade Union Confederation and networking of the national unionist movements, traditionally linked to the left side of the political spectrum. By *Pink Tide* (Turn to the Left) Latin America, I wish to reference the current prevalence of leftist political parties in the region (Argentina, Bolivia, Brazil, Ecuador, Nicaragua and Venezuela), which is currently labeled a *Pink* effect, in reference to the symbolic link between the left and red flags. This tide is basically characterized by political and economic opposition to the 1990 Neoliberal Washington Consensus measures.

a legitimation proposal for one of the traditional parties in the Colombian Political spectrum: the liberal party [8].

Thus, adding the household work of women to the national income accounts does nothing to increase production or generate material change. Rather, it is intended to reveal the amount of hidden productive work that would otherwise remain obscured [9]. But this does not have any redistributive effects, as Cecilia López made clear in a range of opinion pieces that accompanied the promotion of the initiative:

Fortunately, in Colombia, in addition to the modest advances made by the DANE, it has been possible to present the draft Care Economy Law, which is awaiting approval by the plenary of the House of Representatives- where the text has been approved but where the vote to ratify its title has still not taken place. If it proves possible to organize this vote soon, Colombia will be the first county in Latin America to pass such a law. This would compensate for the stagnation that has marked questions of gender in the country in recent years. And to think that at first the government panicked at the thought of the law when statistical offices in the whole of the rest of the Latin American region are already doing what this law would demand in Colombia: to survey the time-use, measure the care economy and include it is a satellite account to the National Accounts; **it will neither increase national wealth nor provide payment to the women and very small number of men who carry out this work. It will make their contribution visible and provide a basis for government policy.**¹² [Emphasis Added]

The intention behind the proposal, then, as I said before, is purely symbolic. It consists in casting light on domestic work, questioning the orthodox measurements used to prepare the national accounts, recognizing the work of women, incorporating the subject into macroeconomic analysis and decision-making by government and society, raising the question of domestic work in public debate, breaking the semiotic chain according to which the care economy involves obligatory activities - without value - and that it contributes nothing to national wealth. Beyond this, the project offers nothing in terms of redistribution: it does nothing to alter the material position of women who work at home; it does not promote incremental redistributive reforms. In sum, it will not lead to more money for anyone.

Based on a case study of the Colombian Care Economy Act, this paper analyzes how domestic work claims travel and change from international to domestic contexts. To that extent, the case study speaks about the transformation of

¹² See: http://www.cecilialopezcree.com/a_Web/2010/g_Julio/a_Cuidado.html [Accessed 11 October 2010].

politics and law in the context of globalization, highlighting how domestic frames should be reconstructed to achieve the international goals of the domestic workers mobilization field. Thus, in this article, I seek to show why the reform promoted by this draft law will prove useless, given that it normalizes the regulation of domestic work, presenting it falsely as a valueless asset. The hypothesis defended in the article is that the recognition of domestic work through a simple process of accounting parallel to the national accounts will have negative consequences for women who are currently carrying out this kind of activity and who wish to incorporate themselves into the dynamic of the market. The current reform, though well intentioned, will in fact generate perverse incentives that will discourage women from establishing links the market, since it naturalizes, normalizes and legitimizes the existing link between women and care work. With this in mind, the principal objective of the article is to focus on the ways in which, by developing regulations such as those included in the draft law, the legal system identifies female work as a dependent role, relatively unproductive economically, and hidden. It also show how, paradoxically, society as a whole assumes the social transaction costs (which might in fact be better described as discrimination).

The article is organized into six main sections. In the introduction I have described the accounting project, international networking, and the main characteristics of the legal reform landing. In the second section, I suggest a general frame in terms of legal change as status quo legitimation, which suggest that the domestic work legal reform in Colombia is only used as a symbolic tool that do not generate a real impact in the women daily life. In the third section I am going to offer two specific frames for the debate analysis, the domestic work and the feminist legal academia and the accounting project in the boarder of feminist economics. The fourth section explores the regional specificity of Latin America neoliberalism and describes the main stakes of the accounting project landing in the *Pink Tide Era*. The fifth section will detail the construction of female identity by the Law, and of care work as a female duty rather than a privilege, a benefit or a right. Finally, I offer some conclusions in the last section that propose incremental reforms in order to break the negative incentives produced by the legal link between women and domestic work.

I. Legal Change as Legitimation

The proposal to grant symbolic recognition to domestic work by including it in GDP measures will have negative effects because of the legitimizing role it will play. In many ways, giving “symbolic” value to the work of women normalizes and naturalizes the current legal orthodoxy that, in this case, establishes an asymmetrical distribution of resources, contingent on power, between the several agents involved in the care economy [10]. Additionally, the compartmentalization created by the project – that is, treating the expropriation and consequent oppression of women as a matter for the national accounts – obscures the existence of norms that indirectly define the room for negotiation women have concerning the time and the energy they invest in maintaining their households. Employment Law, Family Law, the social security system and government social policies

aimed at vulnerable population groups are all relevant here. But, as if this this were not enough, the legitimizing effect also resides in the sensation of change: the draft law will create the warm feeling that with it we are helping women substantially, when in fact the new institutional arrangements will not improve their situation at all. Indeed, it is conceivable that things will worsen, in as much as there will be increased incentives to keep women in the home, since they will have been given “symbolic value” and may in consequence be persuaded not to enter the market. The result, then, is the complete naturalization of the role of women as carers.

Yet, the legitimizing effect that will have the greatest negative impact is the consolidation of the artificial connection between the care economy as unremunerated work and the existence of domestic work as a free product without value (domesticity = no value). The construction of this reality by the law makes it harder to see connections between ways the female is constructed as a subaltern subject and the costs assumed by society to maintain this kind of segregation. Thus, domestic work emerges as a fundamental scenario that demonstrates how discrimination has concrete material costs. In this sense, the vision of domestic work as, in cost terms, an “invisible” contribution hides the true arrangement that the law has established to pay for the goods such activities produce: pension regulations; health spending that concentrates on degenerative pathologies that in turn result from excessive working hours and no free time; and the adverse effects on women who decide to escape its regime. Presenting domestic work as an unremunerated activity implies hiding decisions the law has taken to externalize the price that should be paid to women in direct compensation for their work [11].

In the academic context, if the symbolic is going to be judged a mistaken alternative, additional arguments need to be adduced. For a while now, critical discussions of this law have focused on the semiotic importance of legal changes. To a certain extent, the “progressive” tendency among Colombian academics has been concerned with evaluating the consequences of adopting a self-referential model of the law. This approach contrasts with another current, which has emphasized the essentially “symbolic” effects of reforms. Both these positions are skeptical of the usefulness of analyzing the material effects of the law. To a degree, the academic community in Colombia tends to discard approaches that link the law to distribution, but we love legal reforms that promote “symbolic” changes of reality [12].

Our fascination with semiotic criticism has two sides to it, and two corresponding, perverse, consequences. On the one hand, this fascination is illustrated by our exaggerated excitement at the symbolic gains that result from legal changes. In this respect, arguments such as Julieta Lemaitre’s on legal fetishism provide sufficient warning of the irrationality subtending this kind of predilection [13]. The other side of the coin is represented by arguments about symbolic effectiveness, and the belief that in the Colombia – with more or less negative consequences – there are norms that have no instrumental effect on social reality, but merely respond to a collective anxiety that “someone has to do something about it,” or, simply, that are coopted by political elites to produce a false impression of their “legitimacy” [14].

In concrete terms, the adoption of semiotic criticism has a harmful effect that has led Colombians to lose interest in the material consequences of legal reforms. A concentration on the symbolic has led us to interpret inequality as a consequence of the instrumental inefficiency of the Law, and not of the efficacy of its distributive functions [15]. This is why we continue to insist on reforms as symbolic rather than as distributive victories. Thus, emotionally, it is difficult for us to summon enthusiasm for training in distribution analysis that would develop a sense of responsibility for the “gains and losses” associated with the new regulatory proposals we make. We enjoy indicating the contingency of existing distribution patterns but we are not prepared to take on board the contingencies of the proposals themselves [16].

The different positions that exist on the regulation and understanding of domestic work offer a perfect scenario to illustrate the perverse consequences of applying a merely symbolic approach to legal proposals that are presented as generous. In Colombia, the alternative to the symbolic approach is an emphasis on distribution. The critical aspect of new proposals, then, is focused on illustrating and raising awareness of the distributive effects of the law and on taking initial steps towards meeting the challenge of *changing the rules* so that in the future distribution is more balanced than is at present the case.¹³ My intention in this article is to apply an approach to domestic work that Tatiana Alfonso and Isabel Cristina Jaramillo have called “Law as Distribution and Legitimation” (LDL) [17]. The text therefore represents a first attempt to articulate and reproduce a methodology for the critical analysis of the law that is rooted in what could be cataloged as left wing economic analysis, or the analysis of the law and distribution.¹⁴

According to Alfonso and Jaramillo, three theoretical assumptions contribute to the approach that sees the law as a factor that plays a role in the distribution of resources and power:

- a) Individuals are differently placed in relation to resources and power (some have more while others have less) and goods have ambivalent costs. Not everything is assigned the same value by all agents.
- b) The imbalance in the distribution of resources and

power is the direct result of legal rules, which either permit or prohibit certain actions or allow damage to be inflicted on third parties without any obligation to provide compensation or, indeed, that determine the way in which certain kinds of damage should be compensated (i.e. agreements about externalities) [18].¹⁵

- c) If certain legal rules permitting damage to be caused are changed, the relative power of the parties to a given conflict may be altered too. A change in the current legal arrangements will reconfigure the balance between resources and power, permitting incremental change to occur in the situation of individuals who lost out under previous arrangements, transferring costs to those agents who “won” before.

In this article I follow the above structure to present my arguments before developing them into a concrete proposal for regulating the sphere of domestic work. First, I will apply the principal approaches that have been employed by feminism to map the actors and show which goods are at stake in the debate over the care economy. Second, I will explain how the oppression of women that results from the double burden imposed by domestic work is created by current legal rules. Third, I will show how a change in this system of rules could create incentives that would increase the power and resources available to women.

II. The domestic work debate

In this section I suggest two analytical frames for the domestic work debate. First, I describe a set of ideas that legal academia has proposed that helps to construct the argument I wish to kindle here. Basically, I rely on the legal feminist ideas of Janet Halley and Frances Olson. Second, I briefly describe the feminist economics debate using Benería’s framing of the discussion. At this stage, I am also going to use the classic ideas of Marilyn Waring presented in the book *If Women Counted*. These explanations will supply the basic premises I use later.

a. Feminist legal Academia

According to Janet Halley, feminism adheres to three propositions: 1) M (men, maleness, masculine, provider, active, etc.) is different from f (woman, female, feminine, caregiver, provider of nourishment, passive, etc.), 2) $M > f$, and 3) it is important to be on the side of f. In Halley’s opinion, adherence to these propositions invites us to locate ourselves in relation to what she calls the “injury trio,” which she describes in the following way: 1) women are **injured**, 2) women are **innocent** and 3) men are **immune** (that is, they are not injured). In terms of sexuality this means that women are injured and innocent while men are unharmed [19].¹⁶

The legal academia analysis of the regulation of domestic work begins by demonstrating how, in this specific scenario, women are injured and men are immune. According

¹³ In this sense, distribution analysis in the Law has crucial consequences for at least three reasons: a) first, because it suggests a new economic analysis of the law, from the political left, that develops in reaction to the liberal idea that legal rules are neutral when it comes to the distribution of material goods; b) second, because it destroys the idea resources are distributed according to the natural, fair and immanent rules of the **market** (the invisible hand) and, in the field of the Law, undermines the idea that distribution occurs as the result of exceptional actions carried out exclusively in the Legislature (ignoring the redistributive importance of the treatment of externalities by judges, the Executive and other appendages of political power); and c) third, because it questions the approach that seeks to explain contexts of inequality as causes of the **inefficiency** of the Law rather than its **efficacy**. See generally: Duncan Kennedy (1998)

¹⁴ Professors Helena Alviar and Isabel Jaramillo have been developing their reflections on LDL in the courses they teach on Legal Theory in the LLM course at the Universidad de los Andes, during the regular meetings of the Research Group on Law and Gender, and in numerous national and international seminars and forums that have been organized to advance thinking in this area (e.g. the Seminar on Law and Distribution [*Seminario Derecho y Distribución*] held at the Universidad de los Andes, 22 May 2009).

¹⁵ Reflections on legal rules and the creation of binary oppositions may be found in WN. Hohfeld (1968).

¹⁶ This reference to Halley is taken from Isabel Cristina Jaramillo Sierra (2007).

to Frances Olsen, the scenario of female oppression within which domestic work occurs is the dichotomy between the family and the market.¹⁷ Oppression is constructed by way of a discourse that excludes the family from the market, establishing women as lady and mistress of the former, while segregating them from the logic of competition and wealth creation, which are considered “valuable” within the system we live in. The family takes time and energy away from women, making it hard for them to participate in discussions concerning the distribution of resources. This implies that, rather than operating in the productive sphere, women are required to function in a caring space dominated by the logic of altruism – a space that is socially “relevant” but economically “unproductive” [20].

According to Olsen and the LDL perspective, legal reforms create this artificial distinction. The ideological effect created by the dichotomy between family and market, and reproduced by legal reforms intended to “give equality” to women, “make their oppression visible” or “give them voice,” are constructed to favor an eminently masculine world that assumes the existence of natural dualisms and hides the contingency and artificiality of such arrangements. Symbolic visions are, therefore, damaging to women because they obscure the real nature of the transactions that occur in the care economy. Placing domesticity on the side of the dichotomy dominated by the logic of “altruism” implies an ideological maneuver that hides the identity of the agents who gain from it by imposing the belief that caring activities are the *duty* of women [21].

The manner in which agents relate to the obligations of domestic work has its correlation in their positioning in the face of domination and the negotiating power afforded each party by society. Placing women in the family, or imposing the duty to fulfill a caring role if they decide to exclude themselves from economic activities, places them in a position where they lose resources and negotiating power, constructing their identity as dependent subjects [22]. The time that women invest in fulfilling their duties as carers generates additional costs if they are to improve their chances of gaining access to the resources that are distributed.

b. Feminist Economy

According to Lourdes Benería, the mainstream attitude towards the domestic work debate has *conceptual, theoretical and methodological* axes, and is based on Reid and Waring economic premises [23]. These premises converge on the fact that unpaid work represents between 25% and 50% of the national economical activity, depending on the country and method of estimation, which makes its exclusion from the

national accounts system difficult to justify [24].

First, on the *conceptual front*, we have a discussion about the revision of the National Account System based on the argument that highlights the important contribution of unpaid domestic work to the national economy. Thus, the main remedies to this problem have been historically the “satellite account” as an alternative measurement for the national income. This system use time as a method for imputing monetary value to goods and services produced by time inputs. The question of which household tasks should be included in this new measurement is resolved by the “*third person criteria*” proposed by Margaret Reid [25]. This criterion suggests that domestic production should refer to unpaid activities that could be performed by a third person in a paid scheme. Therefore, all domestic work that could be executed by a third person should be included in the alternative national account system calculating time use as monetary value.

On the *theoretical front* we can find question about the nature of domestic production. We have here the discussion of neoclassical and Marxist economists about the domestic arena and the household economy. The key point here is that generally, the quality of output depends on the place of production: the home or the market. Gender approaches to this discussion suggest that both theories have misunderstood the social construction of the gender roles and women’s exploitation by domestic work roles [26]. In the socialist-feminist approach, domestic work is at the heart of the feminist debate, which understands the oppression of women to be an effect of the division between productive and reproductive work generated by the private property system and the production processes proper to industrial capitalism. Thus, according to Engels, patriarchy – understood as the structure that excludes women from the public centers where economic capital is produced – is the principal cause of the inequality of women [27]. Possible alternatives to this position are the struggle against private property and the permanence of capitalism.

At the *methodological level*, there are three different calculations for measuring the economic value of the unpaid work, which structures the technical discussion: the global substitute method, the specialized substitute method, and the opportunity cost method. The global substitute method uses the cost of a hired domestic worker, assumed to be paid for executing all the daily household tasks as a package. The specialized substitute method uses the average wage of a specialist with skills in each specific household task. Finally, the opportunity cost method is based on the wage that the domestic worker could receive in the market context [28]. Each method has advantages and disadvantages, although the more frequently used are the first and the third, depending on the theoretical position held. The global substitute method is definitively the favorite approach of countries that have already implemented the alternative UNSNA.

Beyond these specialist issues that are raised within the feminist accounting project,¹⁸ there are two kinds of

¹⁷ For Olsen, the oppression of women is fused in countless dualisms, including family/market, productive/reproductive, state/civil society, public/private, altruistic/individualistic, rational/irrational, active/passive, thought/ feeling, reason : emotion, culture : nature, power : sensitivity, objective : subjective, abstract: concrete, universal : private. Two characteristics of these dualisms are pertinent to the current argument. First, all the dualisms are sexualized. Half of each dualism is considered masculine and the other half female. Second, the terms of the dualisms are not equal but, rather, constitute a hierarchy. In each pair, the term that is identified as “masculine” is privileged as superior, while the other is considered to be negative, corrupt, or inferior. See generally Frances Olsen (1990)

¹⁸ It is important to mention that not only has the feminist movement been involved in the challenge of the National Account System of the UN, but some environmentalist and development philosophers are also engaged with

dissents in the domestic work field: the feminist dissent and the economist dissent. On the feminist stage, Benería calls “*post- Nairobi blues*” the criticism that reads the accounting project as a useless effort. For these voices, the accounting project spends too much time and energy on an alternative that does not increase the female bargaining power inside the household (private) nor improve women’s situation by overcoming gender disadvantages in the labor market (public). According to them, feminists should pay more attention to social policies that facilitate the incorporation of women into the paid labor force, such as childcare provisions or family leave, rather than a measurement alternative. In the *post- Nairobi blues* analysis, valorizing domestic work creates a negative incentive that maintains women inside the household and makes costly female access to the labor market [29].

Benería calls the second criticism of the accounting project “*The difference*” argument. This trend emphasizes that there exists a fundamental difference between work executed in the market and the affective task executed inside the household. Thus, there is a basic difference between love and the market. Market oriented caring services are not likely to provide the same quality of emotional support that family offers. To that extent, family dynamics are governed by other rules where altruism, affection and responsibility have effects, in a *quid pro quo* expectation. Additionally, there is a dialectical relationship between market and non-market work: the skill that someone develops in market work is useful for non-market task and vice versa. For this reason, unpaid work has a different value system that we should maintain.

The third criticism of the accounting project comes from economists. Benería refers to this dissent as “*The Theoretically misguided*.” Using Shivakumar’s arguments, this trend suggests that the monetary imputation of unpaid work is inconsistent with the accepted theory of value in economics. Therefore, this last criticism claims that the accounting project is based on Ricardo and Marx’s notion of value (labor theory based) and ignores the orthodox value theory based on subjective preference expressed in market prices. To that extent, for some economists the value of the domestic work is meaningless because it is based on time-use data and not on the demand and supply laws. If there is not bargaining between consumers and producers, there is no possibility for a unit of price to be determined.

In this debate I adopt the “*the post- Nairobi blues*” perspective, with some elements of the feminist legal academia analysis. My interest is in showing how the law can intervene in the construction of the individuals it regulates, construing female identity as subordinate and creating normative systems that ensure it is expensive for women to gain access to the world of the market. According to this reading, the regulation of domestic work is important because it is within the domestic sphere that the circumstances exist for injury to be caused without compensation: men enjoy the goods produced by women at their cost and without having to pay anything in exchange¹⁹. This is possible because, through

the development of indirect regulations, the law has constructed domestic work as a natural *duty* of women, essential to their human condition. The reason I adopt this interpretation is to be able to propose incremental reforms capable of altering the relative power of women by changing current rules that permit men to damage female lives by imposing the duty of domesticity.

III. Landing in regional specificity: Neoliberalism and gender reform in Latin America

The landing of the accounting project in Latin America has certain specificities. In the article, “*The ‘Neoliberal Turn’ and the New Social Policy in Latin America: How Neoliberal, How New?*” Maxine Molyneux suggests re-thinking the understanding of Neoliberalism by localizing the effects of the term specifically in Latin America during the post-Washington consensus era. Thus, while neoliberalism is a term usually connected with the contraction of the state and the aggrandizing of the market, both of these present variations in the Latin American context. For instance, since 1990, the Neoliberalism agenda has been articulated with an unusual attention to regulating social protection issues and social policy (framed by the UN goal of attacking poverty) and has incorporated new dynamics of democratization, co-responsibility and civil society participation that re-shape the orthodox neoliberalism scope. In the same trend, the state remains a primary actor in the distribution of social provisions (as education) in a majority of the region. The *Pink Tide* effect, or the *turn to the left* in the Latin American region also employs this expansion of the public sphere and increase of regulation, rather than market arguments, to distribute material resources [30]. This is also true also in Colombia – a regional outsider in terms of the pink tide²⁰-, where both the left and the right political fractions claim for a major presence of the state as a response of the failed state arguments, in which the Colombia state appears weak and absent. To that extent, the Colombian political arena always demands more state presence in the everyday life.²¹ As a matter of fact, it is the state, and not the

etc. Granted, slaveholders would have said the same of their property. *Nonetheless*, from an economic perspective, this has to be accounted for somewhere.

²⁰ It is important to mention here that some analyst has linked Colombia to a *Pink Tide* for the successful of the left party in the government of the capital city, Bogotá D.C. The Polo Democrático Alternativo, or some of its derivations, has been governing the city since 2004. See generally: Cesar Rodríguez Garavito (2005).

²¹ The common complaint we Colombians employ to criticize ourselves as a “weak, absent and pathological state,” may at times lead to a situation where the most radical factions of the political left and right move in the direction of “strengthening and consolidating the state project” as the only possible political path. For one, in its very beginning, this diagnosis was produced in reaction to mainstream discourse that took the state’s existence as a fact and hid the state construction process as a problem. On the other hand, this explanation of the “weak state” can often be read as a move on the part of a leftist *intelligentsia*, which constantly seeks to augment the state’s powers using the claim of statelessness. This relation involves the ambiguity of linking leftist ideas with the desire for a state, but is an interpretation about

arguments over an alternative measurement of wealth and growth. See generally: Marilyn Waring (1988).

¹⁹ They would argue that they pay the cost of food, clothing, entertainment

market, that concentrates power in Latin America [31].

However, this new or different neoliberalism involving state and third sector participation implies a complex transaction in terms of gender relations, despite being presented as neutral. This is the local normative agreement that the accounting project landing ignores. For example, the important role of the family in the new wave of policies against poverty entails a hidden dependence on women's care work; at the same times, these new trends re-traditionalize gender relations [32]. The welfare policies in the capitalist system hide the transaction between the woman and the state in terms of welfare services such children, patient care and housework, that give women more parallel work to do but also makes their work engagement more risky [33]. Likewise, the social policies and the institutions of social provisions like citizenship entitlements, basic public services, social assistance and social insurance programs, determine gender relations in a way in which women almost always "lose" in terms of the resource distribution [34]. This means that the social division of care work is unequal, which affects the level of women's labor engagement, because men have less reproductive work to do than women and, for this reason, their performance in the job market is much better [35].

Latin American neoliberalism, therefore, is centered in the female figure and the state's provision of social goods. The state engages in a hidden transaction with women in terms of welfare, which is often invisible in daily life because we have normalized the care role of the female actors. The effects of the link between women and state in the neoliberalism context in Latin America are ambivalent and difficult to foresee. Sometimes the neoliberal agendas hijack feminist agendas in order to instrumentalize women, producing economic and anti-feminist goals [36]. But sometimes Neoliberalism breaks up and produces unexpected effects in which women win, enjoying greater levels of empowerment, better bargaining positions and incremental distribution of material resources [37]. This peculiarity is absent in global coordination of the accounting project. Those who propose the landing of domestic work inclusion into the national accounts, ignore the ambivalences and challenges that the woman-state-market triad poses in Latin America. This is the reason why the landing of the transnational accounting feminist project in Latin America should be subjected to more complex consideration. While here I have centered on the political context and the background rules that affect the landing, in the next section, I will consider the normative agreements in the Colombian context.

IV. The Construction of woman by the law: mother, caregiver and provider of nourishment

According to the perspective that views the law as producer of subjects [38], the discourse on female identity has been built on the models of maternity, care giving and reproduction, in artificial opposition to agency, the market and

production. The law constructs female identity using mechanisms that administer its existence by establishing patterns of weakness and dependence that assume, standardize, normalize and naturalize the idea that women have a specific profile; they are tied to the home because cleaning, care-giving and cooking come naturally to them. Women are subsidized by their male providers, who are talented enough to compete in the market and to produce more wealth than a woman would be capable of doing. In the world of the law, women essentially depend on men: they take the male name, they produce less than men, they live off men, are beneficiaries of men in welfare systems, and their children depend on the status provided by men. Women exist thanks to the goods provided by men.

In the real world, the legal construction of this kind of female identity alters women's negotiating power - as much for female subjects produced by the standardizing system (housewives), as for those with a different role (single or working mothers). The reason women are affected is that the law fulfills a role distributing resources and power, creating sufficient incentives for us, as women, to become THAT WOMAN. For women who decide to leave the domestic sphere the costs are similarly high: on the one hand they take on the identity of victim, they assume the high social cost implied in "living incomplete without a man" (single mothers) while on the other, they assume the elevated transaction costs of entering the world of the market (working mothers): lower salaries than men for the same work, the tiredness caused by the double burden, indifference, and the rejection of their husbands, parents and family members, to mention just the most visible [39].

There are three fundamental steps to understanding the ways in which the law constructs women or mothers that are relevant to the regulation of domestic work: (a) First, the construction of the female as universal abstract subject; (b) Second, the recognition of the existence of norms that are not directly relevant but that determine the power of negotiation that constructs the way those affected experience the law: Family Law, Employment Law and the Social Security System. This step should make visible the prevailing norms that keep women as dependents and carers. Finally, I am going to describe the implications of these norms for the configuration of domestic work as a **female duty** [40]. The principal factor explaining why women suffer from domesticity without being compensated by the legal system is the fact that their identity as carers is constructed as if it were natural.

a. Women as Universal Subjects

A common criticism of liberal positions found in critical legal studies concerns the construction of abstract universal subjects that obscure the concrete identities created by the law. Thus, we speak of creditors and debtors as though these were neutral categories rather than references to individual subjects who occupy real economic and material positions and have their own resources and agendas [41].

Something similar happens to women in the world of the law. We all have the mental habit of universalizing women as mothers. The draft law on domestic work contributes to the universalization of the female subject by failing to specify

how the ideological debate was framed in Colombia as a reaction to the neoliberal script of "less-state" within the development debate. In both approaches, the left and the state are together in Colombia.

clearly who it is actually intended to benefit: that is, housewives drawn primarily from the poorer sectors of society,²² who are classified as beneficiaries of their provider-husbands within a functioning marital partnership [42], or urban middle class women, who are the most affected by the domesticity duties of the double workday regime and the formal labor market disadvantages. To speak more generally of “women” as beneficiaries of the plan to include their work in the national accounts is to ignore the fact that many women cannot be placed in the category of housewife it describes. There is, in fact, a significant difference in the hours that women from different income levels and social backgrounds spend on household tasks because unpaid work is not equally distributed across class, ethnic, racial and other social groups [43]. Indeed, the legal system has produced a whole range of identities – female heads of household, for example, or wives, women workers, displaced women, female victims of violence, and others - that preclude the development of any universal vision of the female.

Hence, the question of who the winners and losers are in the domestic work inclusion in the national account system is still not answered, but it is clear that different Colombian women are going to experience different trade-offs of the implementation and are going to have different stakes in the bargaining. Also, different situated men are going to experiment in different ways the enforcement of the law. For example, the project has a negative effect on non-training lower class women because it offers an incentive to stay home. But at the same time, this project empowers urban middle class women because it gives them more bargaining tools to negotiate the care work distribution to her partners. Also, the project hides the effects of the domestic work regulation in the lower class men, who are exploited by the upper class women in an intersectional analysis. In the next sections, I will emphasize how the negative incentive is constructed by focusing in the female perspective.

b. The Legal Construction of Dependence

Including the debate over domestic work in discussions about the accounting procedures used to compile the national accounts has the perverse legitimizing effect of obscuring the legal norms that exert indirect influence on the question.²³ There are at least three important aspects to the construction of the female identity through the chain of meaning that has produced the figure of mother, caregiver and provider of nourishment: Family Law, Employment Law and Social Security Regulations.

This section, then, focuses on reconstructing the normative frameworks that, both directly and indirectly, configure domestic work as a *duty* of women. The legal rules advantageous to men in this area operate to naturalize motherhood and caring activities as essentially female services. To argue that it is the law that produces realities such as these is to emphasize the ways in which it fulfills a double role – as a factor distributing social power and resources, and as a discourse that serves to legitimize existing realities and

impede substantial change.

The starting point for this description of the way subjects are constructed by legal mechanisms is the understanding of legal norms as incentive systems. It is these incentives that determine the results of the transactions between opposing subjects, positioning them asymmetrically and providing them with legal norms that are none other than the chains of advantage, rights, privilege and immunities that their negotiating or bargaining powers enable them to accrue [44]-[45]. These incentive systems respond to various motives: (i) they might result from the instrumental efficiency intrinsic to the norms themselves; (ii) they might – given the instrumental or symbolic ineffectiveness of the norm itself - be constituted as negative normative incentives (a norm that is ignored, for example, or is passed not to be implemented, but to produce effects that are entirely tangential to its apparent intent); (iii) or they might affect distribution scenarios: presuming, taking responsibility for, or (implicitly or indirectly) regulating the situation without explicitly recognizing it. It is at this level that the law serves to naturalize, normalize and legitimize existing reality – that is, materializing, sexualizing and terrorizing women as an essential aspect of all social transactions.

In reconstructing this normative framework I take into account the legal construction of women as subjects. Thus, the law as producer of subjects is understood here as a system of incentives that mixes the instrumental efficacy of norms in producing inequality, their adverse effects when their limited dissuasive powers mean they are not implemented, and the effects of the legal system when it interacts with the implicit rules inherent to the areas it is responsible for administering. Therefore, the analysis consistently contrasts the workings of the normative framework with empirical analysis of the material results they produce (as a result either of their efficiency or their inefficiency) and their symbolic effects (naturalization, normalization and legitimization).

The aim of the section, then, is to demonstrate how the law constructs legal rules as incentives that persuade women that the best thing they can do is remain in their homes and that at the same time administer legitimizing discourses that establish domestic work as a *duty* women are born to fulfill - that is, a part of their identity, as mothers and care-givers. The normalizing mechanism of the legitimizing discourse means that women understand their “duty” as something it is very costly to cast aside. Finally, the comprehension of this complex normative agreement leads us to understand how and why the landing of the accounting approach as a legal reform in Colombia can have the anti-feminist implication of fostering the link between women and care work as a matrix of the legal system.

✓ **Family Law**

Family Law constitutes a fundamental element of the edifice that constructs the female as a subordinate agent. Family Law plays a perverse role, maternalizing the female role through mechanisms that assume the existence of a father-provider (fathers are required to pay for their children’s food in the case of divorce) and parallel rules that take it as

²² Belonging to *estratos* [levels] 2 and 3, according to the classification used in Colombia : a six point scale running from one (the poorest) to six.

²³ On compartmentalization as legitimation, see Jaramillo and Alfonso (2008)

read that mothers will care for the children in the event of a split.²⁴ In this sense, existing regulations in the field of Family Law are fundamental to the naturalization of the caring role and to the configuration of domesticity as a *duty*: the legal mechanisms assume that women construct a natural identity consistent with the values of altruism (care, nourishment and protection), through which they are linked with their offspring. A metaphysical connection is assumed to exist between a mother and her children as a result of which she has a natural vocation to provide them with excellent guidance and to accompany them in their development as human beings – irrespective of the contingent realities of motherhood in the real world [46].

Family Law, then, creates a system of perverse incentives that ensure a negative distribution of the economic costs of child rearing assumed by women. Existing rules assign the costs of childcare to the matrimonial unit (article 257 of the Civil Code), but naturalize the responsibility for welfare by defining it as a relationship that exists between mother and child (That is, article 23 of the Children and Adolescents Code obliges parents to provide custody and care to their children: the domestic contributions to the care and integral development of children and adolescents that are required by the law are the same ones habitually assigned to the female role). This implies that, in the case of divorce, it is the woman who is expected to take on the responsibility of raising the children without any guarantee that she will continue to receive support [47]. Thus, the system contains an implicit poverty trap, ensuring that women receive an inequitable share of resources. They assume higher costs associated with their role as providers, but also, in the event of divorce or separation, it is they as mothers who “naturally” have to take on the costs of childrearing, because it is impossible for their metaphysical link with their children to be broken. The poverty trap is also associated with an ineffectiveness of the process intended to ensure that father-providers cover the costs of their children’s food. Of the total number of unresolved cases that are backed up in the court system 38% concern non-payment of these costs [48].

✓ **Employment Law**

Employment Law also contributes to the maternalization of women. The regulation of maternity leave and the informal rules applied to women of child bearing age by the health system produce an adverse scenario that translates, according to official figures, into the fact that it is 44.3% more expensive to employ a woman than a male equivalent [49]. This being the case, businesses have good reasons to prefer employing men rather than women. This factor acts in addition to the implicit rules that persuade women it is irrational to leave the home and seek opportunities in market circumstances that are more difficult for them than for their male counterparts. This has substantial

material consequences: despite the fact that women make up 53% of the population of working age, male participation in the labor market is 24.9% higher than female, while female unemployment outstrips male by 6.1% [50].

The negative incentives created by employment regulations interact with a series of parallel circumstances. The salary gap between men and women in Colombia is calculated at 23% [51]. Additionally, female participation in the informal economy is higher, at 24%, than male, while 47% more women than men are affected by schemes designed to reduce worker protection [52]. In response to this state of affairs, there has been an astonishingly timid and shameful lack of judicial activism. Judges have interpreted the principal of “equal pay for equal work” restrictively, and have paralyzed the few incremental reforms achieved in the legislature (that is, they have ensured that democratic agreements favoring the inclusion of women, such as the quotas law, have been rendered ineffective) [53].

If the meanings implicitly assigned to the family by the law are combined with other economic and social factors, then the circle of incentives that persuades women to stay in the home is complete. Employment Law maternalizes women by establishing maternity leave and constructing a costs scheme that raises the price of contracting women in the market. In addition, the legal apparatus limits the power of women by producing policy decisions that restrict the scope for interpreting the principle of equal pay for equal work, ensuring that the distribution of resources continues to favor men.

✓ **The Social Security System**

The Social Security System is based on the demands of an imagined masculine contributor: male, provider, heterosexual, salaried. In a similar vein, Law 100 of 1993 defines contributors as *persons in receipt of rent, salaries or any other recompense received in exchange for their services that is sufficient to cover their contributions to the system*. The norms are presented as though neutral, any reference to the position of the individuals it regulates being systematically omitted. But contributor X and beneficiaries Y in the health system occupy different positions in the resource distribution chain: 71% of contributors to the system are male, while 83% of registered beneficiaries are women.²⁵ This distribution speaks directly of how negotiating power is shared out among family members: 83% of the female beneficiaries are dependents of their providers and make no social security contributions. Decisions about how to approach the social security system with its different programs, beneficiary packages and special health and prevention plans are the responsibility of the contributor.

The entire system operates according to the assumption that contributors play a fundamental role in financing the system and gives them substantial decision-making power over the health services their families receive. Despite this, the way the rules have been constructed ensures that domestic work remains a female responsibility. This results from the transfer of responsibilities to provide care

²⁴ Constitutional discourse favors the same interpretation. Colombia’s Constitutional Judge has strongly defended the priority and importance of the relationship between mothers and their children, and not only in custody cases but also in disputes concerning dignity, self-determination and equality in the construction of female identity. See, by way of example, Sentence T- 397 of 2004 (Judgment prepared by the Magistrate Manuel José Cepeda Espinoza).

²⁵ Ministerio de la Protección Social, at: http://201.234.78.38/ocs/cifras_indicadores.aspx [Accessed 16 October 2010].

from the state to those individuals who fulfill the female role. There is, in other words, a systematic decentralization to women of care responsibilities the state cannot fulfill [54].

The general panorama does not change in the pension system. According to Constitutional Court rulings C-058 and C- 623 of 1998,²⁶ women have the right to initiate retirement payments five years earlier than men. The negative effects of this disposition and how it functions as a deterrent to hiring women have been deeply probed [55]. Furthermore, this is a false benefit, because, while the age requirement is lower for women, the required number of worked weeks remains identical, which create a clear inequality: women have to start working earlier because they have less time to complete the number of worked weeks that the law imposes as standard to obtain a pension [56]. Despite the fact that the retirement is not a legal duty, the employer always claims for the early retirement in order to hire “younger and fresh labor force” [57]. If we link these disadvantages with the wage difference and the prevalence of informality in female work, women have a truly discriminatory pension system in Colombia.

Seen as a whole, structural aspects of the social security system illustrate the existence of a constant ceding of responsibilities that are implicitly associated with the care work carried out by women: coverage is not universal, health care is circumstantial and childcare support is specifically designed as the exclusive responsibility of parents; care of the sick is seriously limited and nutritional support is also located on the private side of the public-private division. The law assumes the existence both of a provider who constitutes the connection between the family and the system, and a carer who provides the care assets the state has refused to offer. The administration of the family economy, then, is posited on the existence of this scheme of agency, where someone provides and someone cares. The carer also takes on social protection activities that could be assumed by the state [58].

Then, the law constructs care work as a female *duty* [59]. Since it is experienced as an obligation, all possibility of it being defined as work or of giving it an exchange value is eliminated. This indicates that the women experience the care economy as a series of activities that are costly in terms of time and energy invested and that are carried out as obligations but that attract no recompense beyond the sensation that *their duty has been fulfilled* [60]. The incentive system is forcibly attracted to ensuring that it is more costly for women to escape the home and instead encourage them to remain there carrying out the domestic tasks assigned them by the mechanisms of the law as a kind of “dignified duty.” Given that women are paid less for the same work than their male counterparts [61], incorporating women into the labor market is economically inefficient for the family unit. Women can contribute more economically looking after children and the home than finding a job in the market. This is the legal standard that the landing of the accounting project helps to strengthen.

Therefore, if the material transaction is negative for women and is therefore a serious disincentive to making the

leap into the market, the associated cost implications constitute a perfect argument in favor of domesticity. Transferring a duty or avoiding fulfilling an obligation brings with it powerful societal opprobrium. Our parents and husbands love us less and criticize us more; our children may judge us for *being away from home*; the medical profession may blame us because our children *aren't the right height or weight*; teachers may reproach us because our children are *badly brought up* and – as if that were not enough – our mothers, sisters, in-laws, nephews and nieces and all the other members of our families will blame us for our bad luck *because we are neglecting the essential duty of all women, which is to remain in the home* [62].

That domesticity is a duty has dramatic material consequences, because it is thereby not transferable. That is, it cannot be individualized as a monetizable asset whose execution can in its entirety be passed to a third party. As individuals, we are able to disaggregate care activities: we can contract people to help us keep our houses tidy, to feed and educate our children and to ensure the health and wellbeing of our families. But we cannot cede our responsibility for ensuring success in these activities. If our house is not well kept and clean, if our children are not the correct height and weight, or our husbands are not happy with their supper, then the contractual responsibility will not be the maid's or the nurse's or the teacher's. The responsibility is always ours, *for being bad mothers or wives* [63].

The perverse hidden effect of this construction of domesticity by the law lies in the impossibility of understanding these services as transferable because, despite the sense in which they can be alleviated by contracting the services of unqualified labor to help us in our homes, we cannot evade the fact that the ultimate responsibility will always be ours. This implies that by employing someone to help us in the home we are obliged to assume responsibility for administering and overseeing their work. These responsibilities alter the equation of the time and energy available to us: we are obliged, among other things, to organize the time of the people who help us, to provide them with clear instructions about their daily work, to supervise their cleaning and their food preparation, to ensure their contracts are legal [64].

This resistance to the commercialization of activities that are intended to take on the burden of female care activities is also evident in the treatment given them by the market. The commercialization of care activities is characterized by complex behaviors marked by low levels of competitiveness, poor quality, uncontrolled process and minimal levels of specialization [65]. The regulation provided by the market for these kinds of goods creates a perverse flexibility to their competitive fields: no clear quality standards are in place to regulate the supply of services, there are no rules governing demand and no control of prices. This apparent “deregulation” or “informality” acts as a mechanism that prejudices protection for those working in the sector. Then, how does the accounting project landing fit in these problems? As I argue above, the inclusion of domestic work in the national accounts as a single reform and without redistribution policies only strengthens the legal link between women and care work.

²⁶ Judgments prepared by the Magistrates Eduardo Cifuentes Muñoz and Hernando Herrera Vergara, that established the constitutionality of establishing 55 as the female retirement age.

V. Conclusion

This paper is structured around the question of the exchange among domestic and international actors that articulate transnational legal processes around the inclusion of domestic work in the UNSNA. It analyzes the landing processes through which legal contents and social meanings related to the care economy travel from international contexts to local settings. Specifically, the paper explore one aspect of the “landing path”: what is to be gained and lost in the exchange of legal, politic and economic ideas when they are mobilized from transnational stages to domestic legal systems that construct reality in the local arena. The article concludes that legal mobilization should be careful of legal conditions and realities in the local context that determine the winners and losers of legal reform.

In this frame, the regulations governing domestic work are perverse and designed to prejudice the interests of certain women in Colombia, mostly from the lower classes. The accounting project landing functions as a negative incentive when it deters the hiring of women and makes women’s life in the home a cost saving option. The set of legal incentives that strengthen the link between women and care work are completed by Family Law, the Social Security System and in the oppressive rules that characterize Employment Law.

This analysis has been carried out also with the intention of reconstructing the panorama of actors and incentives that ensures the scenario of domestic work is one where men win and women lose. The challenge when carrying out a distribution analysis is to find how to promote incremental reforms that alter the existing balance of power and resources. As an ending point, I am interested in a reform of the regulatory framework that would alter aspects of the system of incentives that make it difficult for women to enter the market and that consign them to subaltern care roles from which it is hard for them to improve their access to material resources. Two features are particularly important for analyzing the indirect norms regulating domestic work. The first is that, taken together, they construct these activities as the “duty” of women. The second is the implicit transaction that exists between women and the state concerning responsibility for care work. That the state “hands over” these responsibilities to women or decentralizes to them the social protection obligations it is not willing to take on itself implies the construction of a legal *duty*. This brings with it a perverse ideological effect. Certain contributions are presented as compulsory in order to cloak the contingency of the allocation of tasks. In this way, the state contributes to maintaining the oppression of women. In this sense, women continue as subaltern subjects within a power structure that has been identified by feminism as patriarchal and male. The central proposal of incremental reforms involves moving the point of responsibility for care activities from women towards the state: decentralizing the responsibility mothers have for childcare, nutrition, education and housework. This means it is the state, not women, who should pay for family welfare. Incremental reforms that transfer responsibility for carrying out the caring role of women to the state can produce distributive balances that improve their situation in terms both

of power and resources.

References

- [1] Television interview with Senator Cecilia López on City TV, 28 July 2009, explaining the reasons behind the proposed law. Available at: <http://www.citytv.com.co/videos/17010/cecilia-lopez-propondria-proyecto-de-ley-sobre-la-economia-del-cuidado> [Accessed May 7, 2012].
- [2] Reid, Margaret. 1934. *Economics of Household production*. New York: John Wiley.
- [3] Waring, Marilyn. 1988. *If Women counted – A nes Feminist Economics*. New York: Harper Collins Paperback.
- [4] Benería, Lourdes. 2003. *Gender, Development and Globalization: Economic as if all people mattered*. London: Routledge.
- [5] Becker, Gary. 1991. *A treatise on the Family*. Cambridge MA: Harvard University Press.
- [6] Stiglitz, Joseph & Bruce Greenwald. 2003. *Towards a New Paradigm in Monetary Economics*. London: Cambridge University Press.
- [7] Pederio Nieto, Mercedes. 2005. *Trabajo Doméstico no remunerado en México*. Inmujeres, http://www.inegi.org.mx/inegi/contenidos/espanol/eventos/vigenero/dia28/pa_nel3_mesas_pdf/Trabajo/Trabajo-ENUT-y-Trabajo-dom%C3%A9stico-no-remunerado.pdf (Recuperado el 15 de Febrero de 2010).
- [8] Alviar-García, Helena. 2011. Legal reform, social policy, and gendered redistribution in Colombia. The role of the family. *American University, Journal of Gender, Social Policy & the Law*, Volumen 19, No. 2.
- [9] Gómez Luna, María Eugenia. 2003. *Macroeconomía y trabajo no remunerado*. En *Economía y Género*, eds. Icaria. Barcelona: Editorial Paloma Villosa.
- [10] Ladd-Taylor. 1994. *Mother-Work, Women, Child Welfare and the State, 1890-1930*. Chicago: University of Illinois Press.
- [11] Cárdenas, J. Et Al. 2012. *Mujer y Movilidad Social, Misión de Movilidad Social y Equidad*. Departamento Nacional de Planeación, CEDE Uniandes y Banco Interamericano de Desarrollo.
- [12] Alviar-García, Helena. 2011. Legal reform, social policy, and gendered redistribution in Colombia. The role of the family. *American University, Journal of Gender, Social Policy & the Law*, Volumen 19, No. 2.
- [13] Lemaitre, Julieta. 2007. *Fetichismo Legal: Derecho, Violencia y movimientos sociales en Colombia*. Bogotá: Universidad de los Andes, SELA.
- [14] García Villegas, Mauricio. 1993. *La eficacia simbólica del Derecho. Examen de situaciones Colombianas*. Bogotá: Ediciones Uniandes.
- [15] Kennedy, Duncan. 1998. *Law and Economics from the Perspective of Critical Legal Studies*, 2. In *The New Palgrave Dictionary of Economics and The Law*, Ed. Macmillan. New York: P. Newman.
- [16] Jaramillo, Isabel Cristina & Tatiana Alfonso. 2008. *Mujeres Cortes y Medios: La reforma judicial del aborto*. Bogotá: Universidad de los Andes, Siglo del hombre Editores.
- [17] Jaramillo, Isabel Cristina & Tatiana Alfonso. 2008. *Mujeres Cortes y Medios: La reforma judicial del aborto*. Bogotá: Universidad de los Andes, Siglo del hombre Editores.
- [18] Hohfeld, WN. 1968. *Conceptos Jurídicos fundamentales*. Buenos Aires: Centro Editor de América Latina.
- [19] Jaramillo, Isabel Cristina. 2007. *El reto de pensar la Distribución: A propósito del libro de Janet Hallet, Split Decisiones: How and Why to take a break from Feminism*. *Revista de Estudios Sociales* 28: 132-137.
- [20] Olsen, Frances. 1983. *The Family and the Market: A study of ideology and legal reform*. *Harvard Law Review*, Vol. 96, No. 7: 1497
- [21] Olsen, Frances. 1983. *The Family and the Market: A study of ideology and legal reform*. *Harvard Law Review*, Vol. 96, No. 7: 1497
- [22] Ladd-Taylor. 1994. *Mother-Work, Women, Child Welfare and the State, 1890-1930*. Chicago: University of Illinois Press.
- [23] Benería, Lourdes. 2003. *Gender, Development and Globalization: Economic as if all people mattered*. London: Routledge.
- [24] Benería, Lourdes. 2003. *Gender, Development and Globalization: Economic as if all people mattered*. London: Routledge.
- [25] Reid, Margaret. 1934. *Economics of Household production*. New York: John Wiley.
- [26] Waring, Marilyn. 1988. *If Women counted – A nes Feminist Economics*. New York: Harper Collins Paperback.
- [27] Engels, Federico. 2006. *The origin of the family, private property and the state*. Madrid: Fundación Federico Engels.
- [28] Benería, Lourdes. 2003. *Gender, Development and Globalization: Economic as if all people mattered*. London: Routledge.

- [29] Benería, Lourdes. 2003. *Gender, Development and Globalization: Economic as if all people mattered*. London: Routledge.
- [30] Kennedy, Duncan. 1998. *Law and Economics from the Perspective of Critical Legal Studies*, 2. In *The New Palgrave Dictionary of Economics and The Law*, Ed. Macmillan. New York: P. Newman.
- [31] Rodríguez, Cesar. 2005. *La nueva Izquierda en América Latina*. Bogotá: Grupo Editorial Norma.
- [32] Molyneux, Maxine. 2008. *The Neoliberal Turn and the new Social Policy in Latin America: How Neoliberal, How New?* *Development in Change*, Vol. 39, No. 5: 775-797.
- [33] Shamir, Hila. 2010. *The State of Care: Rethinking the Distributive Effects of Familiar Care Policies in Liberal Welfare States*. Tel Aviv University Legal Working Paper Series. Tel Aviv University Law Faculty Papers. Working paper 119, August.
- [34] Shola, Ann. *Gender and The Social Rights of Citizenship: The Comparative Analysis of Gender Relations and Welfare States*. *American Sociological Review*, Vol 58, No. 3: 303, 328.
- [35] Osnowitz, Debra. 2005. *Managing time in Domestic space – Home based contractors and household work*. *Gender and Society Review*, Vol. 19, No. 19: 83-99.
- [36] Ewig, Christina. 2006. *Hijacking Global Feminism: Feminist, The Catholic Church, and Family Planning Debacle in Peru*. *Feminist Studies*, Vol. 32, No. 3: 632-659.
- [37] Simon-Kumar, Rachel. 2011. *The Analytic of Gendering the Post Neoliberal State*. *Social Politics*, Vol. 18, No. 3: 441-468.
- [38] Foucault, Michel. 2003. *Truth and Judicial Forms*. In *Power: Essential Works of Foucault 1954-1984: Volume Three*. Trans. By Robert Hurey. New York: The New Press, and Michel Foucault (1992). *Microfísica del poder*. Madrid: Ediciones la Piqueta.
- [39] Cárdenas, J. Et Al. 2012. *Mujer y Movilidad Social, Misión de Movilidad Social y Equidad*. Departamento Nacional de Planeación, CEDE Uniandes y Banco Interamericano de Desarrollo.
- [40] Perkins, Charlotte. 1997. *Women and Economics Relations Between Men and Women as a factor in social Evolution*. Boston: Dover Publications.
- [41] Molyneux, Maxine. 2008. *The Neoliberal Turn and the new Social Policy in Latin America: How Neoliberal, How New?* *Development in Change*, Vol. 39, No. 5: 775-797.
- [42] Arango, Luis Eduardo y Carlos Esteban Posada (2002); “La participación laboral en Colombia”, *Coyuntura Social*.
- [43] Benería, Lourdes. 2003. *Gender, Development and Globalization: Economic as if all people mattered*. London: Routledge.
- [44] Kennedy Duncan. 1992. *The Stakes of Law, or Hale and Foucault*. *Legal Studies Forum* 15: 327.
- [45] Kennedy Duncan. 1992. *Sexual Abuse, Sexy Dressing and the Eroticization of Domination*. *The New England Law Review* 26.
- [46] Frug, Mary Joe. 2006. *Un manifiesto Jurídico Feminista Posmoderno (Versión Inconclusa)*. En *Crítica Jurídica Teoría y Sociología Jurídica en los Estados Unidos*, Ed. Isabel Cristina Jaramillo, Esteban Restrepo & Mauricio García Villegas. Bogotá: Uniandes.
- [47] Charrad, Mounira. 2011. *Gender in the Middle East: Islam, State, Agency*. *Annual Review of Sociology* 37: 417-37.
- [48] Franco, María. 2005. *Algunos problemas de la conciliación celebrada dentro del proceso de inasistencia alimentaria*. Tesis LLB no Pùblica. Departamento de Derecho y Ciencias Sociales, Universidad de Antioquia, <http://tesis.udea.edu.co/dspace/bitstream/10495/346/1/AlgunosProblemasConciliacionCelebrada.pdf> (Recuperado el 18 de Octubre de 2010).
- [49] Peña, Ximena. 2009. *Paper presentado para el seminario Derecho y Distribución*. Universidad de los Andes, Mayo 22, en Bogotá, Colombia.
- [50] Jaramillo, Isabel Cristina & Tatiana Alfonso. 2008. *Mujeres Cortes y Medios: La reforma judicial del aborto*. Bogotá: Universidad de los Andes, Siglo del hombre Editores.
- [51] Badel, Alejandro & Ximena Peña. 2010. *Decomposing the gender wage gap with simple selection adjustment: Evidence from Colombia*. *Revista de Análisis Económico* 25.
- [52] Badel, Alejandro & Ximena Peña. 2010. *Decomposing the gender wage gap with simple selection adjustment: Evidence from Colombia*. *Revista de Análisis Económico* 25.
- [53] Jaramillo, Isabel Cristina. 2006. *Reforma Legal, feminismo y patriarcado en Colombia: El caso de la ley de cuotas para mujeres en cargos de alto nivel de la rama ejecutiva*. En *Más allá del Derecho*, Ed. Luisa Cabal y Cristina Motta. Bogotá Siglo del Hombre Editores.
- [54] Orloff, Anne. 1993. *Gender and the Social Rights of Citizenship: The Comparative Analysis of Gender Relations and Welfare States*. *The American Sociological Review*, Vol. 58, No. 3: 303-328.
- [55] Cárdenas, J. Et Al. 2012. *Mujer y Movilidad Social, Misión de Movilidad Social y Equidad*. Departamento Nacional de Planeación, CEDE Uniandes y Banco Interamericano de Desarrollo.
- [56] Uribe Mallarino, Consuelo. 2002. *La reforma de pensiones en Colombia y la equidad de género*. UN-ECLAC, <http://www.eclac.org/publicaciones/xml/2/11252/1c11787e.pdf> (Recuperado 8 de Mayo de 2012).
- [57] Uribe Mallarino, Consuelo. 2002. *La reforma de pensiones en Colombia y la equidad de género*. UN-ECLAC, <http://www.eclac.org/publicaciones/xml/2/11252/1c11787e.pdf> (Recuperado 8 de Mayo de 2012).
- [58] Ladd-Taylor. 1994. *Mother-Work, Women, Child Welfare and the State, 1890-1930*. Chicago: University of Illinois Press.
- [59] Perkins, Charlotte. 1997. *Women and Economics Relations Between Men and Women as a factor in social Evolution*. Boston: Dover Publications.
- [60] Rodríguez Enríquez, Carolina. 2005. *Economía de cuidado y política económica: Una aproximación a sus interrelaciones*. Mar de plata: ECLA: Panel de políticas de protección social, economía de cuidado y seguridad de género.
- [61] Badel, Alejandro & Ximena Peña. 2010. *Decomposing the gender wage gap with simple selection adjustment: Evidence from Colombia*. *Revista de Análisis Económico* 25.
- [62] Smeeding, Timothy & Marcia J. Carlson. 2011. *Family Change, Public Response: Social Policy in an Era of Complex Families*. In *Social Class Changing Families in an Unequal America*, Eds. M. Carlson and P. England. San Jose: Stanford University Press.
- [63] Ladd-Taylor. 1994. *Mother-Work, Women, Child Welfare and the State, 1890-1930*. Chicago: University of Illinois Press.
- [64] Ladd-Taylor. 1994. *Mother-Work, Women, Child Welfare and the State, 1890-1930*. Chicago: University of Illinois Press.
- [65] Perkins, Charlotte. 1997. *Women and Economics Relations Between Men and Women as a factor in social Evolution*. Boston: Dover Publications.



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