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The legal subject and the production of women as the legal abject

Luísa Santos Paulo

Belo Horizonte

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The legal subject and the juridical production of women as the legal abject

Dissertação apresentada como requisito parcial para a conclusão do curso de Mestrado em Direito da Universidade Federal de Minas Gerais.

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TODAS AS MALDIÇÕES DE SICORAX: O SUJEITO DE DIREITO E A PRODUÇÃO JURÍDICA DE SUBJETIVIDADES ABJETAS DE MULHERES

LUÍSA SANTOS PAULO

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Her Kind

Anne Sexton - 1928-1974

I have gone out, a possessed witch,
haunting the black air, braver at night;
dreaming evil, I have done my hitch
over the plain houses, light by light:
lonely thing, twelve-fingered, out of mind.
A woman like that is not a woman, quite.
I have been her kind.

I have found the warm caves in the woods,
filled them with skillets, carvings, shelves,
closets, silks, innumerable goods;
fixed the suppers for the worms and the elves:
whining, rearranging the disaligned.
A woman like that is misunderstood.
I have been her kind.

I have ridden in your cart, driver,
waved my nude arms at villages going by,
learning the last bright routes, survivor
where your flames still bite my thigh
and my ribs crack where your wheels wind.
A woman like that is not ashamed to die.
I have been her kind.

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My mother, Nalva, without whom I would not have taken a single step, for the unconditional love she has given me before I even existed. My mother is the marrow of my bones, the blood in my veins and the air in my lungs; if I live is because she has nurtured and cared and taught me what it means to love so deeply it aches deep into my soul. Love everything, without measure, without consequences, love so violently that the world will finally become a better place. You have been my safe harbor, my home, my true north, my ancestry, the opener of doors, the creator of paths, and I have no words to explain how grateful I am to be able to carry you with me wherever I go.

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Finally, to my guides: my father Oxóssi, the one-arrow hunter, *oke arô;* my mother Iansã, the ruler of all winds and storms, *eparrei.* To all the *pretos velhos, exus, erês, pomba-giras, caboclos, boiadeiros, marinheiros, malandros* of all the phalanges of Umbanda, my undying gratitude for illuminating the way, for giving me strength, and for teaching me how to leave this world better than I walked in. *Salve a umbanda, salve as sete vibrações, são sete cores na coroa de Babá, Mãe Logunã é a mãe do tempo e da fé, e o regente da umbanda é o nosso pai Oxalá. Epa Babá!*

This island's mine, by Sycorax my mother, Which thou tak'st from me. When thou camest first, Thou strok'dst me, and mad'st much of me; wouldst give me Water with berries in't; and teach me how To name the bigger light, and how the less, That burn by day and night: and then I lov'd thee And show'd thee all the qualities o' th' isle, The fresh springs, brine-pits, barren place, and fertile. **Cursed be I that did so!—All the charms Of Sycorax, toads, beetles, bats, light on you! For I am all the subjects that you have, Which first was mine own king; and here you sty me In this hard rock, whiles you do keep from me The rest o' th' island**.

William Shakespeare, The Tempest. Act I, Scene II, line 320.

ABSTRACT

In this work I seek to understand how the concept of a “legal subject” allows for the juridical marginalization of women by internalizing and reproducing gender oppression and discrimination. Through a critical and decolonial feminist perspective, I analyze the hegemonic legal discourse to understand how the Law maintains the very structures that allow for capitalist reproduction through the expropriation of women’s bodies. In doing so, I argue the Law produces legal subjects and legal *abjects*, which are to be understood as those excluded from juridically legible subjectivity and whose bodies are made available for exploitation by capitalism and colonialism. I then attempt to trace some possibilities for Critical Legal Theory, and especially one that is attuned with and open to Feminist and Decolonial inquiries, to develop subversive critiques that might let this legal abject speak.

Keywords: feminism; feminist legal theory; decolonial studies; abjection

RESUMO

Neste trabalho procuro compreender como o conceito de “sujeito de direito” permite a marginalização jurídica das mulheres ao internalizar e reproduzir a opressão e a discriminação de gênero. Através de uma perspectiva feminista crítica e decolonial, analiso o discurso jurídico hegemônico para compreender como o Direito mantém as próprias estruturas que permitem a reprodução capitalista por meio da expropriação dos corpos das mulheres. Ao fazê-lo, defendo que o Direito produz sujeitos de direito e abjetos de direito, que devem ser entendidos como os excluídos da subjetividade juridicamente legível e cujos corpos são colocados à disposição do capitalismo e do colonialismo para serem explorados. Em seguida, tento traçar algumas possibilidades para a Teoria Jurídica Crítica, especialmente uma que esteja em sintonia e aberta às investigações feministas e decoloniais, para desenvolver críticas subversivas que possam deixar esse abjeto jurídico falar.

Palavras-chave: feminismo; teoria feminista do direito; estudos decoloniais; abjeção

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1. Introduction

Beware.
Out of the ash
I rise with my red hair
And I eat men like air.
- Sylvia Plath, *"Lady Lazarus"*

On the 3rd of August, 2021, Brazilian newspaper *Folha de São Paulo* reported that private health insurance companies were demanding a husband's permission in order to allow for an IUD insertion in married women. The reasoning given by companies was that the Family Planning Law (Law no. 9.263/1996) requires express consent of the spouse before any permanent sterilization procedures, and while an IUD insertion is obviously not as permanent as a tubal ligation, it still had the potential to cause permanent damage and thus required this consent. While the law does not explicitly require the consent for temporary methods such as the IUD, and the demand of the insurance companies were considered outrageous and illegal by attorneys and law professors, this is far from being an isolated case; even if it was, the truth of the matter is that Brazilian women still need to legally ask for their husband's approval in order to make reproductive choices for themselves[1].

This is merely one of the many examples that highlight how women are not properly considered legal *subjects.* If the legal doctrine understands a subject as the addressee of the law who, in full possession of its rationality, autonomy and bodily integrity, can perform transactions and contracts within the legal system, the mere fact that women cannot dispose of their own body as they see fit is enough to disqualify them from fully being able to be equal participants under the Law.

The conclusion is nothing new, but it still bears repeating precisely because of how insidious the discrimination within the Law has become. While it is rare that a law will explicitly say that women are *less* capable than men, the effects and the interpretation of such norms will consistently push women to the margins of legal protection, and especially so in what concerns reproductive

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[1] DAMASCENO, Victoria. Seguros de saúde exigem consentimento do marido para inserção do DIU em mulheres casadas. Disponível em: <https://www1.folha.uol.com.br/equilibrioesaude/2021/08/seguros-de-saude-exigem-consentimento-do-marido-para-insercao-do-diu-em-mulheres-casadas.shtml>. Acesso em: 12 ago. 2021.

rights. Even the Brazilian Family Planning Law does not state that a *wife* must ask permission from a *husband* in order to access a tubal ligation, but simply *that "within marriage, surgical sterilization depends on the express consent of both spouses"*[2]. The interpretation most favorable is that there is only the need for approval if the person is married, and both parties must agree to the procedure regardless if it is a tubal ligation or vasectomy. In reality, and as the newspaper *Estado de Minas* reports, while men are seldom asked for any spousal consent, women are constantly denied access to voluntary sterilization, even if they are not married. In fact, it is rare that a doctor will perform a tubal ligation on an unmarried woman; most interpret the Family Planning Law in the sense that a woman needs to be married in order for there to be a spouse that can consent to the procedure[3].

What this anecdote seems to suggest is that under the guise of an abstract legal subject, the Law allows for the juridical marginalization of women by internalizing and reproducing gender oppression and discrimination in its daily practices. This appears to evidence that in modern day legal systems the exclusion is not done explicitly as much as it is embedded in the legal practice, which makes it even more difficult to properly understand on how the Law pushes the people to the margins. and exerts power over those dissident bodies in a way that forecloses its fruition at its fullest. Women are often at the end of such mechanism; despite being formally considered subjects, their right to dispose of their own bodies is often thwarted by norms that act under the pretense of equality, but that will alienate them from the right to use and enjoy their own bodies.

But it is not only *women* who are excluded, nor are all women excluded equally. In fact, the exclusion from the Law appears to derive from an intricate web of identities, capital and social status that will intersect and interact in ways that will allow for a differential allocation of marginalities and a *differential production of marginalized*. This production is avowed by the Law, but it is also made possible *because* of the Law; therefore, it seems that the law not only produces its subjects, but also its excluded.

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[2] *"§5º Na vigência de sociedade conjugal, a esterilização depende do consentimento expresso de ambos os cônjuges".* BRASIL. Lei nº 9.263 de 12 de Janeiro de 1996. Disponível em: <http://www.planalto.gov.br/ccivil_03/leis/l9263.htm>. Acesso em: 12 ago. 2021.

[3] EVANS, Luciane. *Ligadura de trompas só poderá ser realizada com autorização do marido*. Disponível em: <https://www.em.com.br/app/noticia/nacional/2012/05/31/interna_nacional,297588/ligadura-de-trompas-so-podera-ser-realizada-comr-autorizacao-do-marido.shtml>. Acesso em: 12 ago. 2021.

This is space I believe contains an immense potential to deepen a critical understanding of the Law, especially in what concerns feminist thought. If the Law produces its own subjects, what are the political calculations involved in delimiting who will be considered one and thus able to demand rights before the justice system? If it produces the very people it excludes, what potential can there be in directing an analysis through the lenses of the marginalized? If the marginalized is always the cost of producing viable subjects, is it possible for the Law to ever be fully inclusive? And if the Law needs to exclude in order to assert itself, is the Law a viable site for Feminist struggle or will any attempt to modify the Law in our favor inevitably incur in other exclusions that we might not have foreseen?

These were the questions that have plagued me for my entire academic life, and so these are the questions I seek to answer with this work. I want to understand how the Law utilizes the idea of the *legal subject* in order to allow and avow the differential production of women as the marginalized, but more than that, I want to understand what happens to those who have been cast out from intelligibility and recognition. That women are excluded from the full protection of the Law is nothing new; in fact, the majority if not the entirety of Feminist Legal Scholars depart from this very understanding. But I want to look beyond the border, to understand what constitutes this exclusion and, more importantly, how this space of refusal can be reworked as yet another tool for feminist struggle. What does it look like, how does it behave and, more importantly, what is its potential of upheaval of the very system that has produced it as this rejected existence? This space of the legally excluded, which offers limitless potential of radical reworking of the system, is what I will tentatively call *legal abjection*.

In Julia Kristeva's *Powers of Horror*, she describes the abject as a physical reaction of the subject to expel that which threatens its individuality. Abjection reminds us constituted subjects of violations of our corporeal and moral boundaries; it is what disturbs order and normalcy by reminding us of the shortcomings inherent to humanity we would much rather forget[4]. Legally speaking then the legal abject will be that which reminds the legal subject of all that it would prefer

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[4] KRISTEVA, Julia. Powers of horror: An essay on abjection. New York, Ny: Columbia Univ. Press, 1982. P. 2 e 3

not to remember – the impossibility of its rationality, the arrogance of its pretense autonomy, and the futility of its claim over intact corporeal boundaries.

On the other hand, Silvia Federici argues that the production of women as marginal subjects and legal abjects was fomented precisely because the exploited need to be dehumanized in order for the exploration seem acceptable. Therefore, the more that the Law allows and actively produces women as the legal abject, which places them in a differential state of humanity, exploration of their body becomes acceptable or, in the very least, possible to be overlooked. Federici argues that the organization of gender in capitalist society is a way of controlling the labor force through the reproductive body[5], and so the production of a legal abject does not exist in a vacuum but rather as a technique of upholding of the capitalist system.

The upholding of Capitalism is the precipitous function of the Law, and the legal subject is its operative. Just as Marx notes that commodity cannot enter the market on its own, needing someone (whom he calls the "guardian of the commodity") who will possess the minimum requirements to engage with commercial exchange, Pachukanis will argue that the bourgeois Law needs the legal subject to put in circulation a specific, historic and socially determined commodity, which is labor. In this sense, the Law serves to uphold capitalism when it designates workers as a subject that is autonomous and rational enough to willingly sell itself in the form of paid labor[6]. It seems to be that those who are not considered capable enough to "willingly" exchange its labor for money are thus not considered subjects, and their exploitation will not be through paid labor but through other forms of bodily expropriation; especially in what concerns women, what needs to be exploited is the reproductive ability, the rate in which the labor force will be replenished and the upkeep of the reproductive labor necessary to maintain its availability.

In this sense, if we can identify the production of women as a legal abjects *because* of the need to produce those who will be exploited, the exclusion that it is subjected to does not seem to be a happenstance, but rather a deliberate choice – the state of abjection then seems to be an active

[5] FEDERICI, Silvia. Caliban and the witch: women, the body and primitive accumulation. New York: Autonomedia, 2004. P. 31.
[6] PACHUKANIS, Evgeni. A Teoria Geral do Direito e o Marxismo e Ensaios Escolhidos (1921-1929). São Paulo: Sundermann, 2017. P. 16

decision in what concerns those who can and will be marginalized and those who will not precisely in order to define what bodies will be made available for which kinds of exploitation.

It is important to note, however, that these possibilities of exploitation – which we might also call differential allocation of marginalities – are not equally divided. Being a legal abject appears to be more of an intricate web of identities that will intersect and enact certain types of oppression in different ways depending on what forms of vulnerability it seeks to exploit; it is therefore less of a binary choice but a state of being where exploitation will be enacted on the body differently for the same purposes.

As an example, the same law that has been used to curb married women (and women in general) from exercising their right to their own reproductive system was also used in a notorious instance where a Judge determined the forced sterilization of a homeless woman with a history of unhealthy substance use. While the decision was overruled in Appeal Court, the decision came three months too late, and the woman was sterilized right after giving birth[7]. Social Workers recount that this is far from being an isolated case, it is frequent that poor or homeless women, and especially those struggling with drug use, will be forcibly submitted to surgical sterilizations, most of the time without their consent or even their knowledge. When those women have given birth, they are separated from their children within days of delivery[8].

It is obvious here that while some women are encouraged to procreate, other women are forbidden from doing so. Both these understandings departed from the same legal instrument, and highlights how despite all discourses promoting equality and freedom, the Law is still the same bourgeois tool for the circulation of labor in all its forms. Some members of society must conceive, some must not, and these two conceptions are maintained by the very structure we, as feminists, are always seeking approval and liberation from.

It seems then that a situated analysis of this legal abject needs to take place if this is a tool that might be used for any potent critique. The legal abject has a gender, a race, and a geographical

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[7] TOLEDO, Marcelo. Esterilização de mãe de 8 no interior de São Paulo vira alvo de investigação. Disponível em: <https://www1.folha.uol.com.br/cotidiano/2018/06/esterilizacao-de-mae-de-8-no-interior-de-sao-paulo-vira-alvo-de-investigacao.shtml>. Acesso em: 14 ago. 2021.

[8] MELLO, Daniel. Esterilização de moradora de rua não é caso isolado, dizem entidades. Disponível em: <https://agenciabrasil.ebc.com.br/direitos-humanos/noticia/2018-06/esterilizacao-de-moradora-de-rua-nao-e-caso-isolado-dizem-entidades>. Acesso em: 14 ago. 2021.

position; it is not abled-bodied, it is not rich and it is not heterosexual. Looking at those intersections is fundamental for a proper conceptualizing of the legal abject to take place, and because these are situated reflections, they are invariably tied to my understanding of the world and of the Law. It seems necessary here to adopt a decolonial stance to criticize the Law, one that will allow us the possibility of taking nothing from granted and taking only that which will serve us to develop a theory that will help topple the very structures it derived from.

In 1920's Brazil, writer Oswald de Andrade published the *Manifesto Antropofágico*, or *Anthropophagic Manifesto*, a landmark on a cultural and political movement titled *Anthropophagy*. It argues that the greatest strength of Brazilian culture is its ability to "cannibalize" the colonizer's culture, and whatever is left from this violent digestion is truly Brazilian and, thus, a way to assert ourselves against European post-colonial cultural domination[9]. This is a movement that might similarly happen with the Law in a decolonial and feminist perspective: we will digest whatever legal impositions were forced upon us via colonization and from our guts we will discover the key to our emancipation. As Andrade says*: "I am only concerned with what is not mine. Law of Man. Law of the cannibal*".

In this context, this work is divided into four main parts. The first (Chapter 2) will discuss the theoretical and conceptual basis for the arguments I want to make. This is not a matter of curtailing the debate, but rather of positioning myself within existing theories to clarify what are the assumptions I am making and how and why certain methodological and epistemological choices were preferred while others were discarded. I try to achieve a concept of *gender* and *women* that while not comprehensive and most definitely not exhaustive of the debates on its meanings, is nonetheless necessary to level the field upon which a proper debate can take place. Then, I take a look into what Boaventura de Sousa Santos will call "epistemologies of the south", trying to understand how certain groups are not considered worthy of producing knowledge and how the decolonizing of hegemonic epistemologies is instrumental for a critique of oppression.

The second part (Chapter 3) will discuss where do women fit within the concept of a *legal subject.* I will first understand the concept of the legal subject, its origins and its development, and

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[9] DE ANDRADE, Oswald; BARY, Leslie. Cannibalist Manifesto. Latin American Literary Review, v. 19, n. 38, p. 38–47, 1991. Disponível em: <http://www.jstor.org/stable/20119601>. Acesso em: 14 ago. 2021.

then begin to understand how does this concept exclude women. Then I want to investigate the opposite relation, and understand the role of the Law in the *subjection* of women in the Foucaltian sense, as people subjected to power. How does Law act upon women's existence to ensure this power will complete its process of subjection? What is the role of the subject of power in the constitution of the subject of Law? With those questions in mind, I will draw some conclusions on the double-bind of legal subjectivity — either we are recognized by the Law and thus excluded by it, or we are *not* recognized by the Law and thus exposed to risk of ceasing to exist.

The third part of this work (Chapter 4) is where I will attempt to define the idea of a legal *abject*. First, I will look into the idea of abjection as determined by Julia Kristeva, and understand its psychoanalytic implications; then, I want to explore the idea of *political* abjection, departing from George Bataille, both of which will be fundamental to the development of a legal abject. Finally, in the last part (Chapter 5), I want to explore what are some possibilities of critique that are announced when we analyze law through the perspective of the legal abject. I try to understand the legal abject as central to an *anthropophagic critique of the Law*, something that will allow for a situated feminist and decolonial legal theory to question the Eurocentric conceptual frameworks that impose such legal abjection on the women of the Global South.

2. Where we stand

Questions of object, justification and methodology are the foundation of academic research. Practically speaking, they provide the limitations for the conversation in question — one must state clearly *what* they seek to investigate, *why* have they chosen said object and, finally, *how* they intend to go about the research. To not do so means to risk either talking too much or not at all.

However, questions of *what*, *why* and *how* appear to be consistently used to curtail inquiries that appear to contradict the consolidated body of knowledge. While some of these constrictions might be a matter of weeding out unethical research[10], these can also provide a concerning amount of scientific gatekeeping by means of deciding what can be talked about, why we must talk about it, and how such topics may be discussed. It becomes clear that there is a delicate balance to be struck — delimiting too much and curtailing the debate, or delimiting too widely and risk incurring in a theoretical flimsiness.

It seems to me then that this balance can only be found if we take nothing for granted. In order to allow for a humanly possible research effort that can still accommodate personal experience, criticism and subversions, I would like to argue in the following paragraphs that establishing my object, justification and methodology must be seen as a way of locating myself within the existent debate, of making clear what are the theoretical assumptions I am making, what are the ones I'm subverting, and what are the basis upon which my arguments will lie.

Traditional scientific practice admits that the only possibility to unveil the truth is through "detached" investigators using an "unbiased" method to analyze "unadulterated evidence", in the

[10] The limitations on human experimentation, for example. Infamous medical atrocities, such as the disastrous handling of the Tuskegee experiment in the U.S, where life-saving syphilis medication was withheld from at least 400 Black men so researchers could understand the effects of the disease on the body, have pushed for a scientific limitation not only on the objects of scientific research involving humans, but also its methodologies and justification,usually by the way of a Research Ethics Comittee approval. For more on this see GRAY, Fred. The Tuskegee Syphilis Study: the real story and beyond. Montgomery, Al: Black Belt Press, 1998.

sense that this alleged objectivity is isolated from the social fabric to achieve the supposed neutrality that will account for unbiased judgements[11]. What it hides, however, is that there is no true impartiality in a deeply unequal society. Political and economic power dictates that some objects of inquiry are more relevant than others, or even more *worthy* than others, and exerts direct influence over *who* are the legitimate researchers and *how* they must go about searching for their answers[12] — which is why, despite claims to impartiality and objectivity, science has had no qualms in experimenting on the unwilling marginalized and silencing those who question the status *quo*.

Feminist scholarship has been on the receiving end of such gatekeeping for decades, and most likely will continue to be so for the foreseeable future. Simone de Beauvoir reported this sort of "pushback" against feminist inquiry in 1947: women either are equal to men and, thus, have nothing to reclaim, or they are so profoundly different that any struggle is futile[13]. This can be felt in all areas of science when matters of gender threaten to destabilize well-established bodies of knowledge, mostly by questioning preconceived ideas of how things are and how they ought to be. Sandra Harding notes that feminists have identified that sexist standards have shaped every step of the research process. From the restrictions on the *objects* of research, deciding what is relevant and what is important enough to be studied and which hypothesis can be postulated, such measures define, through methodologies and epistemologies, what evidences can be held as robust and how it should be interpreted; traditional scientific method shapes also the conclusions that might be drawn from research, to whom they might be made available and, more importantly, who are the agents whose intellect can be trusted[14].

When women walked into a male-dominated field such as academia, it became obvious that the tools and the language used to analyze the themes that concern their lives were inadequate at best and nonexistent at worst[15]. This is precisely the reason why, for the better part of modern history,

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[11] BRISTER, Evelyn. Objectivity in Science: The Impact of Feminist Accounts. In: GARAVASO, Pieranna (Ed). The Bloomsbury Companion to Analytic Feminism. London: Bloomsbury Publishing, 2018. p. 212-235

[12] BRISTER, Op. Cit. 2

[13] BEAUVOIR, Simone de. O Segundo Sexo. Rio de Janeiro: Nova Fronteira, 2009. P. 28.

[14] HARDING, Sandra. Objectivity and Diversity: Another Logic of Scientific Research. Chicago: University of Chicago Press, 2015. P. 30.

[15] RAGO, Margareth. Epistemologia Feminista, gênero e história. HOLLANDA, Heloísa Buarque de. Pensamento feminista brasileiro: formação e contexto. Rio De Janeiro: Bazar Do Tempo, 2019. Pp. 371-388, p. 380.

women were excluded and barred from engaging with themes that concerned their own lives on an academic level. Feminists argued that the systematic exclusion of women from academia made it so that the conceptual frameworks of science were embedded in a sexist society, producing disciplines that hid their social and political biases behind a discourse of neutrality and finally produced the knowledge that was used to reify this exclusionist point of view, simply by not allowing anything else to be known[16]. The feminist contribution here has been precisely to identify the ways in which this exclusion takes place, but also how to build new tools to force the recognition of gender struggles, to varying degrees of success[17]. Precisely for the development of this "feminist toolkit", so to speak, is that Catherine MacKinnon was able to argue that the state is male: it treats women the same way men treat women[18]. This might be said about all areas of knowledge, be it the natural sciences or the Law.

In the realm of the Law, actually this background gives even more cause for concern. Like Science, Law positions itself as abstract, impartial, impersonal; it exists above the quarrels of life precisely because it allegedly must be impartial to accommodate a fair judgement of conflict. Law, as posited by Kelsen[19] when developing his legal positivism doctrine, cannot allow other matters to interfere with its analysis. Gender, race and class are matters that pertain to economy, social sciences and social politics that should not desecrate the Law. In fact, Kelsen states that inviting any other field of knowledge into legal studies is a sort of "methodological syncretism" that threatens to "obscure the essence of the science of Law and obliterate the limits imposed upon it by the nature of its subject matter"[20]. It becomes quite obvious here that this attempt to repel "external" influences and preserve an assumed "purity" of the Law becomes precisely the aforementioned need to control the dominant narrative and curtail the debate, disavowing feminist inquiry into the legal field[21]. Like the State, and perhaps because of the State, it appears that Law too is male.

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[16] HARDING, Op. Cit. 5, P. 30
[17] RAGO, Op. Cit. 15
[18] MACKINNON, Catherine. Toward a Feminist Theory of the State. Cambridge: Harvard University Press, 1989. P. 161
[19] KELSEN, Hans. Teoria Pura do Direito. São Paulo: Martins Fontes, 2009. P. 1
[20] KELSEN, Op. Cit. 19, p. 2.
[21] STUBBS, Margot. Feminism and Legal Positivism. 3 Australian Journal of Law and Society 63, 1986. Pp. 63-91

However, is this all that Law is? Is it enough to stop the critique there? If Law is male because it is produced through a system of knowing that systematically excludes women, it is not a stretch to consider that Law sides with the oppressors because it is produced through a system of knowing that systematically marginalizes certain populations. In this sense, women are not the only ones marginalized — Black people, Indigenous people, disabled people, and many others are also systematically penalized through this production. It seems to me that a more pervasive critique must not be aimed at the *maleness* or *whiteness* or *heterosexuality* of the law, but precisely at this system of knowing that creates a divide between what is valid and what is not.

But if we are to examine this system of *knowing*, even feminist scholarship can be considered guilty of adopting the very standards of scientific objectivity it criticizes. Margareth Rago admits that while Feminist scholars have managed to break with many of the constraints imposed by the traditional scientific method, it is also naive to imagine this has been a clean and total break, as there are some permanencies that are undeniable in feminist thought[22].

This is precisely the issue identified by Yuderkys Espinosa Miñoso. In her view, in order to develop a site where the production of a "truth" about women can take place, developing a cohesive "*woman*" subject in whose name it might speak, Feminism as a consolidated body of work more often than not reifies certain manners of validating knowledge, the ones originated by the very relations of power that build a divide between legitimate and illegitimate knowledge that Feminism *a priori* was eager to criticize. Therefore, Feminism as it exists presently has developed a set of "truths" about what it means to be a woman, and from this category, developed a program for worldwide emancipation that will allow for progress in women's rights — however, this *woman* for whom Feminism speaks is socially, politically, and historically situated.

Much like Science and the Law, the universalist notion of "woman" hides the fact that it is not all women who speak for feminism. Feminist reason, in this regard, is akin to imperialism because it proclaims itself as the only knower of the path for women's emancipation, a path that was forged

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[22] RAGO, Op. Cit. 15, p. 375.

within the specific context of the needs, demands and cultural backdrop of the Global North[23]. Therefore, as Oyèrónkẹ Oyěwùmí notes, while it is not advisable to ignore the role of European-American feminism, such theories must be properly dissected to identify the ways in which they do not reach the colonized[24].

This is an important distinction to be made here. As Donna Haraway so eloquently claims, we must *situate* this knowledge and position ourselves, as feminists, in a condition of vulnerability that allows for a confronting of the basis upon which such knowledge lies. This contradictory self of mine, built out of conflicting experiences, "is precisely the one who can construct and join rational conversations and fantastic imaginings that change history"[25]. As I write, I must locate the place where my questions are erupting from. As a Latin-American, choosing the basis of my work is not simply a matter of political or academic alignment, but also of identifying what theories that are out there that are more amenable to the decolonial subversions that will recontextualize what already exists in terms of theory to the struggles, questions and troubles I am most familiar with.

In order to answer this, I must accept that the categorizations I make are informed by my subjectivity. To deny this would, in fact, be *un*feminist of me, since the backbone of feminist theory has been to uphold the claims that our experiences as marginalized people deserve to be recognized as legitimate objects of research and our voices must be heard. On the other hand, to deny this would also be to position myself in a place where my life can only be spoken of, but never speak, reifying the discourses of the *otherness* of those outside of the european-american axis of knowledge.

This is particularly relevant since I am writing in English on a USian[26]-dominated field, which is feminist legal theory. The decision was deliberate, but it is not without its troubles: first and

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[23] MIÑOSO, Yuderkys Espinosa. Fazendo uma genealogia da experiência: O método rumo a uma crítica da colonialidade da razão feminista a partir da experiência histórica na América Latina. In: HOLANDA, Heloísa Buarque de. Pensamento Feminista Hoje: Perspectivas Decoloniais. Rio de Janeiro: Bazar do Tempo, 2020. P. 97-118

[24] OYĚWÙMÍ, Oyèrónkẹ. Conceituando o Gênero: Os fundamentos eurocêntricos dos conceitos feministas e o desafio das epistemologias africanas. In: HOLANDA, Heloísa Buarque de. Pensamento Feminista Hoje: Perspectivas Decoloniais. Rio de Janeiro: Bazar do Tempo, 2020. P. 84-95, pp. 86

[25] HARAWAY, Donna. Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective. Feminist Studies, Vol. 14, No. 3, 1988. pp. 575-599.

[26] While the construction "USian" is not usual, I deliberately adopt it as a translation of the Portuguese and Spanish *Estadounidense*, reifying that *American* refers to all of the people existing within the Americas and staking a claim that this land does not belong to a single nation, but to all of its people.

foremost, the switch from my native language, Portuguese, to a language with little to none shared cultural background and common history implies in a difficulty to accurately depict my reality, since there are many aspects of it that are simply not translatable[27]. On the other hand, in making my situated reflections widely available in a language that manages to connect people of different backgrounds and provide a fruitful debate, as it was my main reason for the language choice in this work, I also incur in the risk of having my personal experience and my point of view as a woman in the Global South appropriated by the North and refashioned into something that can exclude me even further from this field of inquiry[28].

This means that in order to connect with more people who are also pondering on the same questions I am, I simply cannot adopt any theory or assumption without thinking it critically through a Latin-American and Global South perspective. I must find a way, as Silvia Rivera Cusicanqui explains, to develop an ethic and a "translating" practice that are decolonial, so that this knowledge that was not developed with me and my reality in mind might be translated to my context in some way, the fact that some things are bound to be lost in translation notwithstanding[29]. Again, in the words of Miñoso, it is inconceivable for a Latin-American feminist to adopt a universalist argument against sexist oppression without exposing and exploring the distinctive nature of colonial power that such arguments carry[30]. A struggle for rights within a Global North perspective does not accommodate me simply because my reality is forged precisely through the mechanisms that produces a system of knowing that decides what is "civilized", "knowledgeable", and "valid", and decides that what I produce does not fit within that mold. To accept Global North perspectives perfunctorily would then mean that I accept such divisions and the hierarchy of knowledge it establishes. It becomes imperative then to exert pressure on extant categories and theories in order to create room for us to exist meaningfully within this debate.

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[27] LAZREG, Marnia. Descolonizando o feminismo (Mulheres Argelinas em questão). In: HOLANDA, Heloísa Buarque de. Pensamento Feminista Hoje: Perspectivas Decoloniais. Rio de Janeiro: Bazar do Tempo, 2020. Pp. 172-192, p. 185.

[28] COSTA, Cláudia de Lima. Feminismos Decoloniais e a política e a ética da tradução. In: HOLANDA, Heloísa Buarque de. Pensamento Feminista Hoje: Perspectivas Decoloniais. Rio de Janeiro: Bazar do Tempo, 2020. Pp. 320-344, p. 185.335

[29] CUSICANQUI, Silvia Rivera. Ch'ixinakax utxiwa: Una reflexión sobre prácticas y discursos descolonizadores. Buenos Aires: Tinta Limón, 2010.

[30] MIÑOSO, Yuderkys Espinosa. De por qué es necessário um feminismo descolonial: diferenciación, dominación co-constitutiva de la modernidad occidental y el fin de lá política de identidad. In: Solar, ano 12, vol. 12, nº1. Lima, 2016. P. 141-171.

Therefore, in the next few pages, as I establish my object and my methodologies, I am not trying to curtail criticism nor am I trying to simply set a background to develop my critique. What I aim is to displace the standard narratives of feminist critical legal theories, exposing how they are inherently exclusive of our realities in the Global South and trying to evaluate critically if they allow room for subversion, recreating and refashioning in ways that permit them to be instrumentalized in my reality. With this brief discussion, I want to provide an explanation on why certain themes and lines of work were chosen as a basis for this work. I must also bare myself open and show why these are the answers that most resonate with me and the context I find myself in. But more than that, these are the questions I want to answer: how to make this theory work for *me?* Is it even possible? Should we start from scratch and scrape all that has already been done? Or should we, like the anthropophagic movement, consume it and transform it into something that carries some resemblance to the original but is inherently ours? What sort of feminist critical legal theory is to emerge if, through a process of critical digestion, we transform that which exists against us into something that exists for us?

This is who I am: I was raised under a night sky that has a cross that will perpetually point to the south. Whenever I lose it from my sight, I feel like there's no direction left for me to follow. I was born and raised in a place with open veins hemorrhaging all over the world, the curve of its mountain ranges the spine that holds me straight. I have seen poverty, hunger, and the exhilarating joy of a street Carnival in the February heat. There is nothing in this world made for me; all that I own I had to make mine with bloody teeth. Therefore, I do not imagine that this effort will be easy. To constantly ask the Global South question feels exhausting - it is even more particularly disheartening when the majority of the available theory either engages with my reality superficially or not at all. In the world of feminist legal theory, I am stranded under a foreign sky, looking desperately for the Southern Cross that will point me to the place where I belong. I am starving for it. But maybe it doesn't exist, and like all things in this world I call mine, I will have to carve it out with my bare fingers.

To paraphrase Oswald de Andrade[31]: I asked a woman what Feminism was. She said it was the guarantee of the struggle for emancipation.

I ate her.

2.1. With poetic license

But what I feel I write. I fulfill my destiny.
I inaugurate lineages, fund kingdoms
— pain is not bitterness.
My sadness has no pedigree,
But my desire for joy,
its root goes to my thousand grandfathers.
Go be lame in life is a curse for men.
Women are adaptable. I am.
- Adélia Prado, *"Com licença poética."*

Japanese folklore tells the story of a poor man who, upon finding an injured crane, nurses it back to health and releases it to the wild. A couple of days later, a beautiful woman appears on his doorstep; he falls madly in love, begging her to marry him. But they are very poor, so the woman makes an offer: she will weave marvelous works of silk for him to sell as long as he promises to never see her working. He agrees, and soon they become rich. But the man becomes greedy, as cautionary tales are bound to go, and forces his wife to weave more and more despite her declining health. Curious about her work and impatient at the slow production, he eventually looks into her workroom, only to find a crane plucking the feathers of her body and weaving them into fabric. That was his wife, mutilating herself in hopes he would not find out she was the crane he had saved, working herself to the bone to feed his greed.

Author C.J. Hauser offers beautiful commentary on this anecdote. The crane is a creature that deserves care and love; a creature that *demands*. To erase herself over this man, to use her feathers

[31] In the original: "I asked a man what the Law was. He answered that it was the guarantee of the exercise of possibility. That man was named Galli Mathias. I ate him". DE ANDRADE, Op.Cit. 9

to make him rich, means erasing the parts of herself that demand *something*. She does not ask for much and she gives it all she has, but her husband is unable to abide by the smallest of her wishes. Hauser concludes: "Every morning, the crane-wife is exhausted, but she is a woman again. To keep becoming a woman is so much self-erasing work. She never sleeps. She plucks out all her feathers, one by one"[32].

This folktale is particularly relevant for two main reasons. On the one hand, it offers a deep understanding of a central part of gendered lives: it is a hard, painful process that finds us begging people to believe our status as *human* when we ourselves pluck our own feathers every night. But there is no telling where the woman starts and the crane begins. There is something within us that yearns for recognition, that *wants* — love, respect, freedom, whatever it is — but in order to fulfill that want, in order to achieve that affection and recognition, the very part of us that can articulate those wishes must be constantly hidden away. The world demands our feathers; we deliver, we weave, we sell, we do it all over again, trying to smother the parts of ourselves that can never be fully assimilated.

On the other hand, C.J. Houser is precise in her choice of words. "To keep becoming a woman" implies that *woman* is an unfinished business — something that needs to constantly be redone to become somewhat stable. The crane wife plucks her feathers every night; to *fail* to do so means to *fail* to make herself intelligible and, therefore, puts her very existence in danger. Her husband might have injured her. Killed her, even. Like the crane wife mutilating herself to ensure her survival, we are all well aware of how to contort our bodies to make ourselves less prone to becoming a target, a necessary strategy to finish every day with our lives. Most women do it, but even then, that might not be enough. In Brazil alone, five women lose their lives to femicide every day[33].

Navigating the world as a woman, then, is reason enough for the matter of this peculiar experience to be the subjective passion that ignites my academic inquiry. I know what being a woman is because I know I am one, for better or worse. My experiences, however, are not universal

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[32] HAUSER, CJ. The Crane Wife. *The Paris Review*, 2019. Disponível em: <https://www.theparisreview.org/blog/2019/07/16/the-crane-wife/>. Acesso em: 15 ago. 2021.
[33] RAMOS, Silvia, et al. A dor e a luta das mulheres: números do feminicídio. Rio de Janeiro: CESeC, 2021. P. 6.

and neither should they be universalized. While feminist theory allows for self-exploration, defining an *object* requires more of myself than fairy tale metaphors or personal experience. It requires some categorization, some definition, some *identification*, which will invariably feel exclusionary to some extent. This, I recognize, feels quite hypocritical when what I seek to pursue in this work is precisely a critique against something exclusionary in itself, which is the idea of a legal subject. For this reason, what I aim to do in the next couple of pages is to try to find a category that, while tentative and unstable, allows me to simultaneously define *what* I am talking about and position myself within the existent debate.

Feminists have been trying to decode what it means to be a *woman* since feminist thought is said to begin. In the Women's Convention in Akron, Ohio, on May 29th, 1851, Sojourner Truth's speech presented some long-lasting fractures on what might appear to be an uncontroversial term, beckoning the audience to ponder: "Ain't I a Woman?". If women were measured by the standards of white femininity — fragile, naïve, maternal —, then she would not be one, but there was no one in the audience willing to deny that she was indeed a woman[34]. There must be something that connects the loud women to the soft-spoken women; the working women to the bourgeois women. Their biology seemed to be so; after all, in the dawn of the feminist movement, the debate was largely centered around the matter of *sex*.

It is precisely the matter of sex Simone de Beauvoir decides to tackle when she goes on a lengthy investigation of this figure's biology, history and myth, only to conclude that much like the crane wife plucking her feathers every night, one is not born, but rather becomes a woman[35]. Biology, specifically, does not seem to set out a destiny, as she explains that:

> These biological considerations are extremely important. In the history of woman they play a part of the first rank and constitute an essential element in her situation. Throughout our further discussion we shall always bear them in mind. For, the body being the instrument of our grasp upon the world, the world is bound to seem a very different thing when apprehended in one manner or another. This accounts for our lengthy study of the biological facts; they are one of the keys to the understanding of woman. But I deny that they establish for her a fixed and inevitable destiny. They are insufficient for setting up a hierarchy of the sexes; they

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[34] DAVIS, Angela. Mulher, raça e classe. São Paulo: Boitempo, 2016. P. 65.
[35] BEAUVOIR, Op. Cit. 13. P. 362

> fail to explain why woman is the Other; they do not condemn her to remain in this subordinate role for ever.[36]

On the other hand, and as Anne Fausto-Sterling states, not even the human body is so easily defined[37]. Beauvoir speaks as if there are two well defined types of bodies that are sexually differentiated — Fausto-Sterling notes that this is quite naive. Bodies are complex and we still do not understand all that goes into the making of what we might call a *sex*. If being a woman is the ability to bear children, there are plenty of women who are sterile or simply have no interest in procreating; if being a woman is having a certain set of reproductive organs that comprises of a womb, ovaries and a vagina, there are plenty of women that, for one reason or another, do not have them all or do not have them at all. It seems that biology might be a departing point, if that much, and that speaking of a *sex* is not quite as useful for my proposed academic inquiry.

In the same vein, Joan Scott notes[38], the word "sex" seems to rely on a biological determinism that, as seen previously, cannot be the grounds of a category of analysis by its inherent exclusionism. Besides, speaking in terms of *gender* seems to shift the focus from a single experience to the relational nature of gendered expressions. Woman is a relational term; it exists in opposition to something else. Beauvoir states women are the Other to a One, something that is *not* male. Scott goes beyond, saying that "gender" refers to a social organization of the relations between sexes. [39]

Even though this relational aspect seems to be more adequate than a framework based on "sex", the idea of gender is not without its troubles. There are some feminists who believe there is a *core* experience of womanhood that unites all women, in what we might call gender *essentialism*. Robin West, for example, states that:

> Women's subjective, hedonic lives are different from men's. The quality of our suffering is different from that of men's, as is the nature of our joy. Furthermore,

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[36] BEAUVOIR, Simone De. The second sex. London: Vintage Books, 1991. P. 60
[37] FAUSTO-STERLING, Anne. Sexing the body: gender politics and the construction of sexuality. New York: Basic Books, 2000. P. 3.
[38] SCOTT, Joan W. Gender: A Useful Category of Historical Analysis. The American Historical Review, v. 91, n. 5, p. 1053–1075, dez. 1986. P. 1054.
[39] SCOTT, Op. Cit. 38, P. 1056.

> and of more direct concern to feminist lawyers, the quantity of pain and pleasure enjoyed or suffered by the two genders is different: women suffer more than men[40].

What this means to say, in short, is that a woman's self is inherently different from a man's self. In many ways, as West argues, but mainly because we have been burdened by *reproduction*. She claims that "Women, and only women, and most women, transcend physically the differentiation or individuation of biological self from the rest of human life trumpeted by norm by the entire Kantian tradition"[41]. She seems to understand that the difference between the two genders is so profound that they might as well be different species — we do not suffer the same, we do not bleed the same, we do not experience joy the same, and therefore we are not the same.

Carol Gilligan, however, seems to believe that while the difference might be inherent, it does not lie in the burden of reproduction as much as it lies in the processes of moral reasoning. Based in qualitative research, especially in interviews, Gilligan argues that men and women use fundamentally different approaches to questions of ethics, but because men dominate over the public sphere, women's reasoning is often considered less developed, to the point of being considered rudimentary in some instances[42]. She establishes that while male morality is attuned to an "ethics of justice", based on respect to the rights of others and departing from the idea that there are certain basic rights everyone is entitled to, female morality is about an "ethics of care", recognizing that people have responsibility over the wellbeing and overall happiness of others, translating as a duty of "caring for"[43].

Catharine MacKinnon, on the other hand, is less overt in her gender essentialism in a way that is particularly insidious. In MacKinnon's domination theory, sexuality is to feminism what work is to Marxism: that which is most one's own, yet most taken away[44]. If "class" is defined by a collective that has been expropriated from the fruits of its own labor, "women" are defined by a collective that has been forcibly expropriated from one's sexuality. The *taking* of sex becomes central

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[40] WEST, Robin. The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory. In. FINEMAN, Martha; SWEET THOMADSEN, Nancy. At the Boundaries of Law: Feminism and Legal Theory. London: Routledge, 2016. Pp. 115-135. P. 115

[41] WEST, Op. Cit. 40, P. 116

[42] GILLIGAN, Carol. In a different voice: psychological theory and women's development. Cambridge; London: Harvard University Press, 1982. P. 2.

[43] GILLIGAN, Op. Cit. 42. P.74

[44] MACKINNON, Op. Cit. 18. P. 3.

to a concept of gender: women are women because there is something that is inherently ours violently ripped from our hands. In this sense, she states that "the substantive principle governing the authentic politics of women's personal lives is pervasive powerlessness to men, expressed and reconstituted daily as sexuality"[45]

There are many problems with this postulation, and since MacKinnon is such a prominent figure in Feminist Legal Theory, it feels relevant to take some time to look into the reasons why. The first, and without dwelling on the critique Marxist feminists have made on MacKinnon understanding of Marxist theory, it suffices to say that Mackinnon's idea of a *woman* is someone created through a fundamental expropriation — there was not a sexuality to speak of that pre-existed this violent taking. And because there are no women outside of this violence, it is difficult to imagine a way in which women can act and *not* reify the system of domination imposed by male supremacy. No matter how eloquent her critique on Marxism is, Marxism still offers workers a light at the end of the tunnel. Through MacKinnon's eyes, the tunnel is pitch black. As Mahoney argues, "her emphasis on the ways in which women are constructed as the objects of male power has been criticized for its tendency to overlook resistance to power or to treat as inauthentic interests women perceive as their own"[46].

However, there is something more pervasive at play. By centering that all women everywhere are defined by this core violence, she aims to see women's oppression *as is*, meaning without any other categorization besides being a woman[47]. But can we confidently say that there is such a thing as a pure, unadulterated women's experience? Mahoney argues correctly that while defining women by what is done to us might center our shared experience on the grounds of this specific harm, it also undermines other forms of oppression that might be at play[48]. It also lays the groundwork for an undermining of the privileges certain women possess in regard to their own race or social status, so

[45] MACKINNON, Op. Cit. 18, P. 120.
[46] MAHONEY, Martha. Whiteness and Women, In Practice and Theory: A Reply To Catharine MacKinnon. Yale Journal of Law & Feminism, v. 5, n. 2, 20 out. 2015. Pp. 215-251. P. 215.
[47] MACKINNON, Op. Cit. 18. P. 100
[48] MAHONEY, Op. Cit. 46, P. 226

that the criticism laid on white women becomes an attack on women rather than a call for accountability when it comes to racial relations[49].

Of course, Black USian women had already been voicing this critique for ages. Many Black scholars, from Ida B. Wells to Angela Davis, have noted that white women can also yield powers of life and death over black bodies by crying rape or allowing someone to cry rape on their behalf. MacKinnon's assumption that Black women associate themselves with Black men because being with *men* holds more gravitas than being with white women[50], for instance, has been denounced as a complete misunderstanding of the power white women wield over Black bodies regardless of gender — even more so, it undermines and overlooks the sheer amount of pain Black women experience at the hands of white women, especially when they are constantly burying their husbands, brothers, sons and friends in a world where a white woman's "honor" is worth more than a Black man's life[51].

Even though this criticism might be targeted towards MacKinnon's theory, it is also applicable to West, Gilligan, and many other proponents of gender essentialism. In West's case, the burden of *reproduction* is not shouldered by all women, since some do not want to procreate, and some cannot. On the other hand, and as Angela Davis expertly notes[52], the burden of reproduction does not fall equally on every woman, and while some women, especially the white affluent women that dominated second-wave feminism, might be struggling for the right of abortion, communities of color were struggling even harder against forced sterilization. Lumping all those issues into the umbrella of "reproductive rights", especially when voiced by a white woman, obscures the ways in which gender, class and race will interact and intersect to create different ways to experience the reproductive struggle — and if there's no core unifying reproductive burden to speak of, one that presents some shared grief to bond over, then that cannot be the factor that decides womanhood either.

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[49] MAHONEY, Op. Cit. 46, P. 217.
[50] MACKINNON, Catharine. From Practice to Theory, or What is a White Woman Anyway? Yale Journal of Law & Feminism, v. 4, n. 1, 16 out. 2015.
[51] MAHONEY, Op. Cit. 46, P. 250.
[52] DAVIS, Op. Cit. 34. P. 206

Gilligan's theory, furthermore, becomes highly decontextualized from the environment where those women were raised, as noted by Naomi Wesstein[53]. I would also like to point out there is no deeper racial analysis in her work that can illuminate, for instance, if Black women and white women reason the same, nor are we privy to the racial makeshift of her data to evaluate if race plays any part in this. Therefore, by noting down that women reason through an "ethics of care", Gilligan assumes all women reason the same and she too obscures the many factors that shape the way a woman might understand and act on questions of morality.

The problem with this essentialist approach, therefore, is that women's lives cannot be boiled down to a single core experience, because there might be no such thing as a core female experience. Aspects of gender, race, class, nationality, ability, sexuality, and many others profoundly shape how women experience their lives, not in an arithmetic method of adding one oppression to the other, but in the ways in which the allocations of power will shape their possibilities of living. As Harris states,

> Questions of difference and identity are always functions of a specific interlocutionary situation - and the answers, matters of strategy rather than the truth. Any "essential self" is an invention; the evil is in denying its artificiality. To be compatible with this conception of the self, feminist theorizing must be similarly strategic and contingent, focusing on relationships, not essences. (...) Another will be that women will be able to acknowledge their differences without threatening feminism itself.[54]

It seems to me, then, that an *essentialist* approach to gender is not the best for a critique of the legal subject either. This is precisely what Harris means when she says that we must make our categories tentative and unstable, something of renewed importance when dealing with a subject like Law, which demands abstraction and stagnation in its objects[55]. Rather than trying to define gender as a core shared identity, we might define it as a *signifying practice*[56].

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[53] WEISSTEIN, Naomi. Power Resistance and Science: A Call for a Revitalized Feminist Psychology. Feminism & Psychology, v. 3, n. 2, jun. 1993, pp. 239–245. P. 240.

[54] HARRIS, Angela P. Race and Essentialism in Feminist Legal Theory. Stanford Law Review, v. 42, n. 3, pp. 581-616, fev. 1990. P. 611

[55] HARRIS, Op. Cit. 54, P. 586

[56] BUTLER, Judith. Gender trouble: feminism and the subversion of identity. London: Routledge, 2006. P. 184.

Judith Butler, in her groundbreaking work *Gender Trouble*, localizes this exact issue. In her words, feminist theory always departs from the assumption that there is a previous, cohesive identity that can be identified *as women*, and in whose name the feminist movement speaks. This means that feminist scholarship — and moreover, feminist legal scholarship — has assumed a cohesive identity which acts like a departure point for feminist struggle, a cognoscible "object" that needs to be represented and spoken for[57]. This was true with West's proposition, it was true with Gilligan's ideas, and even more so with MacKinnon's. However, as Butler notes,

> Apart from the foundationalist fictions that support the notion of the subject, however, there is the political problem that feminism encounters in the assumption that the term women denotes a common identity. Rather than a stable signifier that commands the assent of those whom it purports to describe and represent, women, even in the plural, has become a troublesome term, a site of contest, a cause for anxiety. As Denise Riley's title suggests, Am I That Name? is a question produced by the very possibility of the name's multiple significations. If one "is" a woman, that is surely not all one is; the term fails to be exhaustive, not because a pregendered "person" transcends the specific paraphernalia of its gender, but because gender is not always constituted coherently or consistently in different historical contexts, and because gender intersects with racial, class, ethnic, sexual, and regional modalities of discursively constituted identities. As a result, it becomes impossible to separate out "gender" from the political and cultural intersections in which it is invariably produced and maintained[58].

Directly influenced by Foucault, then, Butler develops one of her most significant contributions for feminist theory — if the power that constrains a subject is necessarily the power that creates it, and if gender is a system of allocation of power and regulation of life, gender also creates the very subject it constraints. While this aspect of the theory will be more relevant in the forthcoming chapters, what is important to understand for now, in lieu of establishing what is my analytical object, is that Butler departs from the need to develop a cohesive identity to question the very circumstances this identity comes to be.

In doing so, Butler radically shifts the conversation, stating that seeking to develop a feminist "we", despite having strategical uses in feminist struggle, denies the complexity and the innate indeterminacy of this collective identity and necessarily needs to exclude something to delimitate its

[57] BUTLER, Op. Cit. 56. P. 4
[58] BUTLER, Op. Cit. 56. P. 6

borders and be able to represent anything at all. But this *exclusion* also does away with some of the very people Feminism aims to represent - therefore, every definition that is centered in a cohesive idea is exclusionary by definition[59].

This is because, Butler argues, essentialism is often accompanied by the idea of a foundationalism — there must first be an identity for a demand to be made on its behalf. This is why I believe the matter of understanding *what* makes a woman preoccupies feminist scholarship so; there is an epistemological need to establish an identity that can then speak. This, Butler says, is misguided for two reasons. The first, because it assumes there is a "self" before discourse, even as this "self" can only be properly located *within* discursive practices; the second, because it understands that being constituted by discourse means to be determined by discourse, which forecloses the possibility of action[60].

But to comprehend identities as *signifying practices* means understanding us deeply indebted to the legal and cultural order in which we live, to the extent that our own selves are only possible within that context. Gender, in this sense, is not something one *possesses*; it is something one *does*, that creates and re-creates simultaneously what we would conventionally call our "selves"[61]. This means that there is no possible self *outside* of discourse, and therefore no possible gender *outside* of the discourse of the creative and limiting power of the Law[62]. Gender, she argues, is *perfomative* in the sense that it is constantly being repeated and recreated. There is no original or previous self to be talked about here. As she explains:

> Hence, as a strategy of survival within compulsory systems, gender is a performance with clearly punitive consequences. Discrete genders are part of what "humanizes" individuals within contemporary culture; indeed, we regularly punish those who fail to do their gender right. Because there is neither an "essence" that gender expresses or externalizes nor an objective ideal to which gender aspires, and because gender is not a fact, the various acts of gender create the idea of gender, and without those acts, there would be no gender at all. Gender is, thus, a construction that

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[59] BUTLER, Op. Cit. 56. P. 181

[60] BUTLER, Op. Cit. 56. P. 182

[61] BUTLER, Op. Cit. 56. P. 187-8

[62] Not to be unfair, I have to admit that MacKinnon does approach this perspective somewhat when defining women as those who are expropriated from their sexuality. While the conundrum she finds herself in, epistemologically, makes it impossible for emancipation that doesn't reify the structures of power that submit women to this position of victimhood, she does lay out that there's no womanhood outside this relational aspect. If we were to do away with the centralization of harm in this narrative, we might just come across the understanding of gender not as a cause, but rather as an effect.

> regularly conceals its genesis; the tacit collective agreement to perform, produce, and sustain discrete and polar genders as cultural fictions is obscured by the credibility of those productions— and the punishments that attend not agreeing to believe in them; the construction "compels" our belief in its necessity and naturalness[63].

Every night the crane wife plucks her feathers; every morning she is a woman again. There is no saying if the woman is a crane cursed to be human or if the crane is a woman cursed to be an animal — they are one and the same, and one that must pull out every single one of its feathers if it possesses any aspiration at recognition. And she does want recognition; the crane wife is a creature with needs, who demands shelter, care, and love. Plucking her feathers is the price she pays for all of this, no matter how precarious and extenuating her circumstances are. Because, as Butler argues, the desire for recognition is inherently exploitable, which means we would rather be recognized in terms that harm us than to not be recognized at all[64].

This, I believe, is the best framework for understanding gender in the context of this work. Not only it understand gender as an effect of power, but also allows some space for us to comprehend that not all gender experiences are the same. They happen, as Butler herself argues, within a *matrix*: an overlay of rules, norms and practices that try to keep subjects in their gendered places[65]. Violence, bullying, institutionalization, medicalization, all play a part in enforcing this matrix; but maybe none of them is more powerful, more all-encompassing, and more pervasive than the Law.

In an important work entitled "*Letter of an Ex-Mulata to Judith Butler*", Angela Figueiredo argues that the racialized categories in Brazil — not binary, as in the United States, but falling within a spectrum that varies deeply even within the same family — were formed, established, and sustained by the State and by the Law. By developing categories that allow people to move away from the category *Black*, such as *Pardo*, and encouraging people to choose them over *Black* in official documents,[66] the Law allowed and encouraged the process of *compulsory whitening* that is very

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[63] BUTLER, Op. Cit. 56. P. 178

[64] BUTLER, Judith. The psychic life of power: theories in subjection. Stanford: Stanford University Press, 1997. P. 7

[65] BUTLER, Op. Cit. 56. P. 75

[66] As anecdotal evidence, I remember being at my Grandmother's house as a child when a social worker visited to fill out the census. She asked my Grandmother her race — my Grandmother, a Black woman who was the child of freed slaves, said she

particular to Brazilian racism. In this context and deeply embedded into the idea of colorism, race is not about heritage as much as it is about phenotype, and the Law occupies a central place as it encourages to distance themselves as far from the *Black* identity as possible. In this context, the gendered experience is also pervaded by race, because even *non-Black* women must constantly strive to be removed from Blackness. Women not only have the societal pressure to be aesthetically pleasing, but they also have to strive for whiteness. Hair straightening, avoiding the sun, plastic surgery to erase Black features; all of those are practices Brazilian women, and especially Black women, are intimately familiar with[67].

Illustrating the workings of this gender matrix, Figueiredo notes that the image of the *Mulata* — a mixed-race woman with darker skin, but not so dark as to be called Black — was produced by as a highly sexualized figure who birthed the "racial democracy" of Brazil through her promiscuity. The refusal of the Law to recognize her as Black is a refusal to recognize that the Mulata is the descendant of the enslaved woman, the one who was violently expropriated of her own agency and, as it is the case throughout the history of Brazil, birthed mixed-race children born out of a rape. To push the Mulata out of the scope of Blackness is to deny that Black women's bodies, and especially enslaved Black women's bodies, were the site where the bloody forging of this country took place, and to refuse to accept the racist and sexist foundations of Brazil. In this case, the Law must keep this Mulata in her gendered and racialized place, sustaining the fever dream of a miscegenation born out of a savage lust and not out of an abject violence, in order to uphold its own narrative of civilized history. The Mulata is pushed by the Law and by the State to be the sexually active mother who is often to blame for overpopulating the country with children she can only afford to feed with social aid programs such as Bolsa Familia. In this she is considered to be the source of Brazil's poverty because of her lust, centuries of exploitation and forced impoverishment of slave descendants in Brazil notwithstanding[68].

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was Black. The social worker, a Black woman herself,then said Black was too ugly, and that *Pardo* would look better; my Grandmother, not willing to argue with a government official, let the woman fill the form as she saw fit.

[67] FIGUEIREDO, Ângela. Carta de uma ex-mulata a Judith Butler. In: HOLLANDA, Heloísa Buarque de. Pensamento feminista brasileiro: formação e contexto. Rio De Janeiro: Bazar Do Tempo, 2019. Pp. 240-259.

[68] FIGUEIREDO, Op. Cit. 67.

This example provides an insight on how the Law is a key part in the perpetration of gendered oppression by both action and omission. Therefore, it seems that the Law makes us not only by enforcing rules, by criminalizing and prohibiting certain behaviors, but by *producing* certain ideals that act precisely as the façade to cover the constructed nature of gender. As Butler explains,

> Foucault points out that juridical systems of power produce the subjects they subsequently come to represent. Juridical notions of power appear to regulate political life in purely negative terms—that is, through the limitation, prohibition, regulation, control, and even "protection" of individuals related to that political structure through the contingent and retractable operation of choice. But the subjects regulated by such structures are, by virtue of being subjected to them, formed, defined, and reproduced in accordance with the requirements of those structures. If this analysis is right, then the juridical formation of language and politics that represents women as "the subject" of feminism is itself a discursive formation and effect of a given version of representational politics. And the feminist subject turns out to be discursively constituted by the very political system that is supposed to facilitate its emancipation.[69]

Within this framework, the Law can be interpreted as the centerpiece of this system of unequal allocation of power, both actively and passively. This raises the question, furthermore, if it is not somewhat cumbersome to demand liberation from the very shackles that bind us. Law creates the subject of feminism as much as it controls it, which is why I am interested in the unequal production of subjects through the idea of a legal subject.

This structure also permits different intersections of marginalized identities to coexist while simultaneously allowing our conception of *gender* to be malleable, changeable, and most importantly, contingent. In fact, it is quite possible to understand that no gender expression will ever be the same — we might be forced to similar standards, be subjected to similar violence and experience similar fates, but the ways in which we will experience our gender will be vary quite dramatically depending on how power will act upon ourselves. It is not a matter of addition, but rather a question of how the overlapping norms regulating our bodies and our lives will create uniquely gendered lives. This does not foreclose the object of feminist inquiry, but rather expands it, allowing for different experiences to come the center stage and further destabilize the institutions that uphold marginalization and oppression. On the other hand, this also allows for the possibility

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[69] BUTLER, Op. Cit. 56, P. 4.

that we might construct a gender that is not the one we currently experience, by the ways in which we internalize such structures and the ways in which we subvert them to better accommodate ourselves.

However, even though this conception of gender feels more adequate to the task at hand, there is still a matter that remains unanswered. While understanding gender as an allocation of power and a signifying experience makes it clear that there is not a core *gendered* aspect that might be unveiled by peeling away layers of oppression, the question that remains is: what for? What is the purpose of this intrinsically complex layering and intersections of oppressions, this uneven allocation of power and this constant reification of rules and norms?

This is the question Silvia Federici asks. She notes that in Foucaultian analysis, "power" appears as a disembodied entity, not as a result of complex socioeconomic interactions[70]. In her view, Foucault describes a 18th-century European shift in power within the move towards Capitalism, that went from the right to kill to the control and discipline of life-forces. In her view, however, he does not dwell on the specifics of how such society came to be — besides, she argues, it completely ignores the point of view of how such processes would have been seen should they be examined through women's point of view. This means that to adequately place this shift within history, we must understand that it happened out of a need to control *life* as a way to control the labor force and, subsequently, capitalist accumulation[71].

This is a particularly interesting claim. She argues that Capitalism is intrinsically connected to oppression, utilizing the technique of "divide and conquer" to justify its inherent contradictions, masking them as "natural" to those who are exploited. In this sense, this unequal allocation of power is not a fact of life, but an integral part of modern capitalist society, which needs the extraction of the most amount of value out of laborers[72]. Gender hierarchies work in favor of a domination project that needs the fracturing of the dominated into antagonistic identities, always allocating more power to one end in detriment of the other[73]. In this sense, gender identities are the unequal allocation of

[70] FEDERICI, Silvia. Calibã e a bruxa: mulheres, corpo e acumulação primitiva. São Paulo: Elefante, 2017. P. 34
[71] FEDERICI, Op. Cit. 70. P. 35
[72] FEDERICI, Op. Cit. 70. P. 37
[73] FEDERICI, Op. Cit. 70. P. 18

power in what concerns reproductive work; one end of the spectrum gets the brunt of it, the other benefits from the emotional, physical, and psychological labor performed for free, and both are exploited for their position as the labor-supportive and the laborer[74]. Within this context, Foucault seems to be more concerned about the effects of power than its origins per se[75].

Despite her theory's strong footing on Foucaltian ideas, Butler cannot be accused of the same lapse. In fact, Butler willingly admits that the reproduction of gendered persons as her theory establishes does not exist away from the sexual division of labor and the demands for precariousness pushed by capitalism[76]. This means that gender and sexuality become part of lived reality through the exact mechanisms denounced by the idea of gender performativity — that is, the heterosexual matrix exists to ensure the reproduction of the normative family and, thus, the reproduction of norms that serve capitalism. In this sense,

> The sexual division of labor could not be understood apart from the reproduction of gendered persons, and psychoanalysis usually entered as a way of understanding the psychic trace of that social organization as well as the ways in which that regulation appeared in the sexual desires of individuals. Thus, the regulation of sexuality was systematically tied to the mode of production proper to the functioning of political economy. Note that both gender and sexuality become part of material life, not only because of the way in which they serve the sexual division of labor, but also because normative gender serves the reproduction of the normative family. The point here is that, contra Fraser, struggles to transform the social field of sexuality do not become central to political economy to the extent that they can be directly tied to questions of unpaid and exploited labor, but rather because they cannot be understood without an expansion of the "economic" sphere itself to include both the reproduction of goods as well as the social reproduction of persons.[77]

What we have here then is a tentative definition: gender appears to be this complex interweaving of rules, norms, societal expectations, and culture that exists with the sole purpose, as a *dispositif* in the Foucaultian terminology, to control the body and reproduction in a way that serves capitalism. The ways in which this *dispositif* works might differ, vary, and change over time; it

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[74] FEDERICI, Op. Cit. 70. P. 31
[75] FEDERICI, Op. Cit. 70. P. 31
[76] BUTLER, Judith. Merely Cultural. Social Text, v. 15, n. 52/53, pp. 265-277, 1997a. P. 272.
[77] BUTLER, Op. Cit. 76

ultimately does not matter, since its end goal stays the same. Gender exists as a way to exert control over bodies and ensure human reproduction happens in ways that benefits capitalism.

By controlling reproductive through gender, capitalism is able to ensure the labor force remains available at the rates needed for assure the accumulation of capital. The examples of how this works are abundant: not only in the denial of surgical sterilization or the forced procedures on women as we have discussed, but also on how, for example, homosexuality was a crime for much of modern history and even today it is still more palatable if it is lived within heterosexual molds with a focus on procreation. Throughout the years women have been shamed for having few children or too many children; for staying at home or working outside the home. But men have also been shamed, assaulted, and sometimes even murdered if they acted in any way close to the idea of "femininity". An imagined sway of hips can put a man's life in danger, and we are not even discussing the sheer violence perpetrated against transgender people, especially in the Global South. All of these are examples of allocation of power in what concerns gender, but they are also examples of how this precise allocation aims to control reproductive lives to ensure the availability of the labor force. Women must do care work; men must do productive work, and those who do not conform will be punished by society, by culture, and in many ways, by the law.

This perspective, by the way, offers a path forward. This is because Butler argues that since there is no self outside the norm, the only way in which we can hope to break those oppressive chains is through the subversion of the norm. Not every repetition is the same — by tensioning the Law, by pushing boundaries, by demonstrating the discursive nature of *gender*, we are able to create something different within the frameworks that make us precisely through its subversion[78], but also because there is something in ourselves that resists complete assimilation[79]. Feminist thinking must identify the places and the methods through which this work might take place[80]. In this context, Federici's claim offers us precisely a window into the possibility of such actions, since what we comprehend as gender, what we comprehend as *women*, has changed throughout the ages and it is

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[78] BUTLER, Op. Cit. 56. P. 255
[79] BUTLER, Op. Cit. 64. P.86
[80] BUTLER, Op. Cit. 56. P. 254

never quite the same everywhere this day still. Its end goal however was always the same, has always been the same, and as long as we live in a capitalist society, it will be the same.

Maria Lugones adds to this argument by noting that the elements that constitute the bindings of the capitalist model of eurocentric power are formed *within* this framework of power, do not exist without it and do not precede it. To understand aspects of gender and race as preceding the formation of capitalism is to incur in a mythical error that seeks to separate capitalism from the oppressions that sustain it[81]. This is the reason why she argues that since gender is such an effective tool to exert control over the body for capitalist purposes, it is clear that *gender* was also a tool exported to the colonies in order to control the native population, a process also described by Federici as she discusses the treatment of the rebel body in the Spanish colonies[82]. The conclusion we can draw from this is that gender is not merely a technology of *capitalism,* and to describe gender in the terms I have so far means to describe a process that is historically and geographically situated. As it was with capitalism, and perhaps *because* of capitalism, gender was forced upon the colonized as yet another tool of domination. It becomes clear that an analysis of gender and colonialism is necessary if I am to center this tentative object within my own reality.

Once again adding to Federici's claim, Lugones argues that colonization has introduced gender differentiations and gender violences where before there were none. In her view, gender-based oppression is a corollary of colonization and would not exist without it. She offers two examples to strengthen her claim: Oyèrónkẹ Oyěwùmí's analysis of gender hierarchies among the Yorubá in Nigeria, and Paula Gunn Allen's study of gynocentrism within Native-American tribes in the United States.[83]

I am particularly drawn to Oyèrónkẹ Oyěwùmí's analysis, seeing as Yorubá belief and mythology had a major impact on Brazilian culture. Major African-Brazilian religions, such as Candomblé and Umbanda, still praise the *Orishas*, or the Gods in Yorubá belief, albeit adapted to Brazilian history and cultural faith. In Oyěwùmí's seminal work *The Invention of Women*, in which

[81] LUGONES, María. Colonialidade e gênero. In: HOLANDA, Heloísa Buarque de. Pensamento Feminista Hoje: Perspectivas Decoloniais. Rio de Janeiro: Bazar do Tempo, 2020. pp. 52-83.
[82] FEDERICI, Op.Cit.70, p. 381
[83] LUGONES, Op. Cit. 81.

she conducts a thorough research of pre-colonization Yorubá society, she argues that age, and not gender, was the organizing principle in this community before the arrival of western sensibilities[84]. In this sense, she notes that

> The very process by which females were categorized and reduced to "women" made them ineligible for leadership roles. The basis for this exclusion was their biology, a process that was a new development in Yoruba society. The emergence of women as an identifiable category, defined by their anatomy and subordinated to men in all situations, resulted, in part, from the imposition of a patriarchal colonial state. For females, colonization was a twofold process of racial inferiorization and gender subordination(...) The creation of "women" as a category was one of the very first accomplishments of the colonial state. (...)The transformation of state power to male-gender power was accomplished at one level by the exclusion of women from state structures. This was in sharp contrast to Yoruba state organization, in which power was not gender-determined[85].

It is important to detail what both Lugones and Oyěwùmí aimed for with their theories. By positioning gender as a *capitalist* and *colonialist* imposition on colonized societies, they wanted to highlight how patriarchy and gender domination is not universal, and in fact is a direct consequence of colonialism and capitalist exploitation. While I do understand this to be true, mainly because, as discussed earlier, if I admit there is no *core* gender experience to speak of, I logically cannot imagine gender oppression to be identical and homogenous all over the world, I am slightly hesitant to adopt such conclusions uncritically.

While I am in no position to argue Oyěwùmí's understanding of her own culture, despite being from a country that was highly influenced by it, and I am also in no way attempting to disprove the conclusions of her research, I do have to ask if, as is the claim Lugones makes, no pre-capitalist, and especially pre-colonial society ever used gender as its main hierarchical organizer. Power might not be gender-determined in Yorubá society, but it might have been so in other societies and cultures at different points of the past. What this means is that while the *particular* ways in which gender exploitation happen today might exist because of capitalism, it feels quite premature to argue that there was no gender exploitation at *all* before the arrival of the colonizers.

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[84] OYĚWÙMÍ, Oyèrónké. The Invention of Women: Making an African Sense of Western Gender Discourses. Minneapolis: University Of Minnesota Press, 1997. P. 31
[85] OYEWUMI, Op. Cit. 84. P. 124-125

The argument both Lugones and Oyěwùmí raise is compelling. Euroamerican feminists often assume gender as experienced in the global north is the same everywhere, and therefore their metrics of ethics and morals should also be universalized. This has dangerous consequences, for example, when feminist arguments are uncritically applied to Muslim women, which can easily be coopted and turned into an Islamophobic talking point. Under the guise of progress, the imposition of anti-Muslim policies is considered to be a push for a feminist agenda towards the "liberation" of Muslim women, as explained by Lila Abu-Lughod[86] and Saba Mahmood[87]. Understanding that *gender* is not only historically, but also geographically and culturally contingent, is a major contribution of their work.

There are, however, some issues that might arise from this theory and that should be addressed. To say that gender did not exist *before* colonization and that was an imposition from the West might imply that there was an original state that was better and should be retrieved. In fact, the conversation should be how to move forward now that this imposition has happened, for two main reasons. The first is because while gender might be an imposition, Euroamerican feminists have offered precious insight on its inner workings, something that cannot be ignored if we, as Global South feminists, are to struggle against this imposition in our own terms. The second is because considering every pre-colonial arrangement to be non-gendered forecloses the possibility of other pre-colonial arrangements that were organized in gendered terms, and that while colonialism had a profound impact on how such communities interacted, to return to a previous state will be to return to yet another gender oppression, albeit one that does not serve capitalism.

This is the argument Julieta Paredes Carvajal raises when discussing her native community, the Bolivian *Aymaras*. She states that the *Aymara* organize society in the *Chacha-Warmi* pair, the male-female duality, and that historically this pair has always been hierarchized, with the man on top and woman at the bottom. What she concludes then is that the challenge for this society is not to

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[86] ABU-LUGHOD, Lila. Do Muslim Women Need Saving? Cambridge: Harvard University Press, 2015.
[87] MAHMOOD, Saba. Politics of piety : the Islamic revival and the feminist subject. Princeton: Princeton University Press, 2005.

retrieve an idealized past where men and women lived equally and idyllically; in fact, she doubts that there was anything resembling an equilibrium between genders to begin with[88].

This is particularly interesting in the scope of the debate initiated by Lugones and Oyěwùmí. Carvajal notes that the Aymaran men argue that feminism is something only for global north women, because gender is a western construct and, therefore, there would be no need for an indigenous feminism, precisely because women would already be recognized in the Chacha-Warmi pair. However, Carvajal establishes that this in no way erases the subjugation of women in a gender-hierarchized society — what it highlights is that rather than following western feminism and positioning themselves as *subjects* before men, Aymaran feminism needs to reshape this society in a way that the Chacha-Warmi pair is not hierarchized, but complementary and equal.[89]. This shows the danger of Lugones and Oyěwùmí's argument. By defining gender as something that is *imposed*, it assumes the risk of this same discourse to be utilized to undermine gender hierarchies that preceded colonialism and that were exacerbated by it, while simultaneously foreclosing the possibility of indigenous-centered feminisms to emerge.

To leave this conundrum, Rita Laura Segato proposes the use of the term *patriarcado de baja intensidad*, or low-intensity patriarchy. Her argument is that the system of gender domination of men over women has always existed, one way or another, but it only acquired the characteristics of current gender oppression after the development of capitalism and its exportation through colonialism[90]. She names present day domination as a patriarchal-colonial-modern expression that appropriates women's bodies and makes it its first colony — whatever preceded this moment was *also* an expression of gender subjugation, but less intensely, therefore earning the title of *low-intensity patriarchy*[91].

This proposal is also compelling but is not without its flaws. By calling pre-colonial systems a *low-intensity* patriarchy, Segato is still utilizing present day capitalist and colonial gender

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[88] CARVAJAL, Julieta Paredes. Uma ruptura epistemológica com o feminismo ocidental. In: HOLANDA, Heloísa Buarque de. Pensamento Feminista Hoje: Perspectivas Decoloniais. Rio de Janeiro: Bazar do Tempo, 2020. Pp. 194-205, p. 199.
[89] PAREDES, Op. Cit. 88. P. 198.
[90] SEGATO, Rita Laura. La guerra contra las mujeres. Madrid: Traficantes De Sueños, 2016. P. 18
[91] SEGATO, Op. Cit. 90. P. 19-20

oppression as a referential point. Therefore, pre-colonial gender domination would be like current gender domination, except *less so*. I am not particularly convinced that gender had the same dynamics before colonialism and capitalism, something that only got exacerbated after the arrival of the colonizers, because the dynamic of gender exploitation — that's it, as a function to maintain bodies in their gendered places to control reproduction through exploitation of female-coded bodies for unpaid and reproductive labor — is quite specific to capitalism and cannot be generalized to all societies, unless we are to incur in the risk of generalizing and universalizing the experiences of the global north like the Euroamerican feminists we have criticized.

It seems then we have reached an impasse. On the one hand, Lugones and Oyěwùmí argue that there was no gender before colonialism, which is not quite true. On the other, Segato proposes a less intense version of gender exploitation before this colonization, which is not quite true either. How to move forward with this? How to develop a way of thinking gender that simultaneously recognizes what has been done in terms of theory while allowing it to be located within the realities of the Global South?

Claudia de Lima Costa argues that when we bring the category of gender to the center stage of decolonial perspectives, we might then develop a genealogy that is able to expose how gender is a fundamental pillar upon which capitalism has structured its hegemonic domination project. However, she differs from Lugones, Oyěwùmí and Segato when she states that it is not a matter of the existence or *absence* of gender domination, but that gender is a *misapprehension*. With this she means that gender meant one thing in pre-colonial societies, and that the true violence of colonialism is forcing it to become something else — something foreign and ill-fitting. Because Global South feminists depart from an epistemological background that unites a conception of *gender* that is imposed through the violence of colonization, such feminists must engage with traditional feminist thinking in a way that allows for a *translation*, or *adaptation*, of what has been said within the global north, in order to create the openings for the destabilization proposed by decolonial feminism[92].

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[92] COSTA, Op. Cit. 28

We will discuss more about this *translating* epistemology in the forthcoming pages. For now, the idea that gender is a *misapprehension* within the Global South is precisely was is necessary to move forward. To understand gender as misapprehension is to understand it as a classification of the same concepts with different meanings — almost like a false cognate, or words in different languages that are written similarly but have opposing meaning because they have different etymologies. Colonialism forces a *single* meaning for gender, the one that will uphold and maintain capitalism, and does it by systematically vanquishing all other systems of gender organization, be it a gynocentric one, a patriarchal one, or an indifferent one. Therefore, every feminist must engage in this *translating* work, in order to approach the works that are, in her words, from other latitudes, to our realities, a truly cannibalizing effort to shed new light over the theories, practices, politics and cultures of feminist thinking[93].

What we conclude, with this brief incursion into the ocean of Decolonial Feminism, is that gender is relational, contingent, and a *dispositif* of capitalism as well as of colonial control. From the Aymara in Bolivia to the Yorubá in Nigeria, gender in the Global South is a misapprehension of something that exists to uphold capitalism. Therefore, it is within this *misapprehension* that some subversion might take place, and this is precisely why a decolonial analysis is so important when it comes to destabilizing the heterosexual matrix.

With all of this said, what I would like to tentatively define, and for the purposes of this work, is that when I say *gender*, I am referring to this unequal allocation of power that serves the purpose of facilitating the upkeep of labor and, thus, the accumulation of capital. *Gender* affects us all — it produces us within identities that carry expectations regarding reproduction, reproductive work, and sexuality. No one is excluded from this making, and we are all subjected to it; in fact, we are all made subjects within its framework. Specifically, the Law occupies not only a place of prohibition from deviation from the framework, but also of a production of what is acceptable and recognizable, and we accept such terms because denouncing them means to not exist at all. When I say *women*, therefore, I mean the people who are on a particular end of the power spectrum that was

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[93] COSTA, Op. Cit. 28

burdened with the expectation of reproduction and, therefore, need to be controlled tightly in order to ensure the perpetuation of capitalism.

However, because gender is such a cornerstone of capitalism, it must also be implanted in the Global South by means of colonialism. The *colonial* gender experience is thus a misapprehension of this imposition, a gender experience that was forced to be something that was not before this exploitation took place, and now must be deconstructed through a translating effort that dismembers the theory that has been established in the global north in a way that fits the feminist efforts we undertake in the Global South. There is no gender experience to be discussed that does not constantly engage with decolonial theory, precisely because gender and colonialism are indissociable and need to be addressed together. This means to say that this conjectural gender category I established must always be understood within the expropriation and violence that forged its implantation in the colonies, and it must always be articulated in ways that will challenge colonial, capitalist, and sexist structures simultaneously.

Finally, I would like to add that such categorizations are not the be all and end all; I am not sure they are even enough for the purposes of this work. But what I mean with them is to define what my object of study might be, and that is gender, but more specifically, *women*. While gender plays an important part in all of our lives, I am particularly interested in how such norms and distribution of power will affect women, and more specifically, how the Law operates, through the figure of the legal subject, to ensure that the allocation of power will remain unchanged and unchallenged, and how this will impact the lives of women around the world. I am aware that gender also produces men, and I am sympathetic to their plight, especially in what concerns matters of sexuality. But what I want to analyze here are women, in a category that, as Harris explains, is relational, unstable, and defined out of necessity. Like her, I too invite the subversion and deconstruction of the parameters I have set and the generalizations I have made[94].

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[94] HARRIS, Op. Cit. 54, P. 586

2.2. The man at the crossroads

He is the loop and the shortcut
He is the arm and the hand
Of the flawed and of the righteous
Exu is the cost of movement
the torment of the being
who is not Exu
- Serena Assumpção, *"Exu"*

Even though we have gone over the object of this work, there is still the matter of how will exactly this inquiry take place. Not only this is a rather tall order, but it is also one that has also preoccupied feminists, and feminist legal scholars particularly, for ages. Is there such a thing as a feminist method? Can we conceive a properly feminist methodology that allows us to analyze our objects through gendered lenses? Moreover, is there such a thing as a feminist *legal* method?

MacKinnon states that method is that which organizes the apprehension of truth — it determines what is evidence and what, ultimately, can be considered real. It is not neutral, she adds; on the contrary, by establishing a criterion through which one might judge the validity of conclusions, one invariably makes a choice, whether conscious or not, that is informed by preconceived biases and philosophical commitments[95]. On the matter of a *legal* method, Katherine Bartlett argues that its purpose is to reach answers that are legally defensible — in a feminist context, however, method has a renewed importance to do away with claims that feminist concerns are illegitimate or incorrect. In this sense:

> Feminists have tended to focus on defending their various substantive positions or political agendas, even among themselves. Greater attention to issues of method may help to anchor these defenses, to explain why feminist agendas often appear so radical (or not radical enough), and even to establish some common ground among feminists. [96]

The task at hand then is to define what method I will use to reach the answers I am looking for. But before I attempt to define any method, I must first investigate the claims to truth that methods can make. Again, in Bartlett's words, "*because the status given to assertions of knowledge*

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[95] MACKINNON, Op.Cit. 50. P. 106
[96] BARTLETT, Katharine. Feminist Legal Methods. Harvard Law Review, v. 103, n. 4, pp. 829-888, fev. 1990. P. 831

or truth establishes the significance of the methods that produce those assertions"[97]. In other words, the epistemologies I accept will inform the methodologies I adopt.

The epistemology of this work oversees what I will consider true and what I will contest, and those assumptions will influence on how the methodologies I utilize will help me reach answers that are legally acceptable. In this sense, it becomes relevant to briefly discuss *what* are the epistemological premises of my work. In the next pages then I will discuss the importance of adopting what Boaventura de Sousa Santos will name an "epistemology of the south"[98], and try to present a feminist legal methodology that is able to contend with both the euroamerican-centric nature of hegemonic feminism, but also the specific challenges that are positioned by the Global South experience.

As discussed previously, Oyèrónkẹ Oyěwùmí notes that a marked characteristic of what we call "modernity" is the establishment of a cultural and academic hegemony that is profoundly euroamerican-centric. This is to say that the euroamerican interests, preoccupations, predilections, neurosis, biases, social institutions, and social categories have dominated every scientific analysis — particularly, it has been pervasive in every area of knowledge that seeks to understand human history, organization or behavior[99]. This domination, however, is not a happenstance but rather a deliberate project of epistemological control, one that is particularly vicious in disavowing and smothering any possibility of knowing that does not fit within the colonial structures of service to capitalism.

In Boaventura de Sousa Santos' perspective, *epistemology* is every notion or idea, be it conscious or not, of what knowledge is considered valid. Therefore, there is no epistemology that can be developed in a vacuum, precisely because social relations are always cultural, contingent, and political, and what is considered valid ways of knowing will also follow suit. In the end, it is impossible to think of any epistemology that is detached from its time and place of conception, as it is impossible to think of epistemologies that do not reflect the cultural aspects of its theoretical basis and the unequal allocations of power it embodies[100].

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[97] BARLETT, Op.Cit. 96.
[98] SANTOS, Boaventura de Sousa. Epistemologies of the South: justice against epistemicide. London: Routledge, 2016.
[99] OYEWUMI, Op. Cit. 24
[100] SANTOS, Op. Cit. 98. P. 12

What we understand is that if colonialism allocates certain people as superior and others as inferior, as civilized and barbarians, as "first world" and "third world", it is logical that some ways of knowing would also be considered valid and others not. As Maria Benitez argues, one of the main expressions of coloniality can be seen in the construction of a Western epistemology that, in service of colonial capitalism, will disregard and belittle other ways of thinking that do not serve the same purpose, and particularly so if it seeks to oppose it[101]. This process of discrediting and suppressing social knowledges and practices that defy hegemonic epistemologies is what Boaventura de Sousa Santos called *epistemicide*, or the willful suppression of local ways of knowing that is perpetrated and enforced by a foreign power[102]. Benitez argues, bringing this discussion into feminist theory, that hegemonic feminisms will perform this *epistemicide* on other ways to engage with the critiques of gender and to conceptualize the struggle against gender oppression[103].

Epistemicide seems to be the goal of a colonial project, and with its expansion, epistemological colonialism becomes one of most successful ways of social domination[104]. The goal of a colonial project is precisely to homogenize the world and impose a certain way of *knowing* that is unified and does not allow for an epistemological diversity, which consequently smothers opposition to the economic system it seeks to uphold. If we are to counter this project, we must then provide alternatives that comprehend the world as a place diverse enough to accommodate infinite ways of conferring intelligibility and intentionality to social experiences[105]. This epistemological diversity is what Boaventura de Sousa Santos will understand as *epistemologies of the south.*

South, in this perspective, is a metaphoric conception as a field of epistemic challenges that seek to redress the damage of colonial capitalism around the world. While this concept is connected to the geographic idea of the Global South, or the group of countries that were colonized and share a common history of economic, political and social struggles deriving from this violent process, this

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[101] BENITEZ, María Elvira Díaz. Muros e pontes no horizonte da prática feminista: uma reflexão. In: HOLANDA, Heloísa Buarque de. Pensamento Feminista Hoje: Perspectivas Decoloniais. Rio de Janeiro: Bazar do Tempo, 2020. Pp. 260-283, p. 270

[102] SANTOS, Boaventura de Sousa. La Globalización del Derecho: los Nuevos Caminos de la Regulación y la Emancipación. Bogotá: ILSA, Universidad Nacional de Colombia, 1998.

[103] BENITEZ, Op. Cit. 101.

[104] LUGONES, Op. Cit. 81

[105] SANTOS, Boaventura de Sousa. The end of the cognitive empire: the coming of age of epistemologies of the South. Durham: Duke University Press, 2018. P. 201

is not a full overlap for two main reasons. The first is that there is domination, and even more so *colonial* domination, within the Global North - as exemplified by the violent persecution of Native-Americans and African-Americans within the United States. The second is because, on the other hand, the Global South has always had what Sousa Santos will call the "little Europes", or the local elites who directly benefit from colonial capitalist exploitation[106].

Those internal contradictions are not lost on Sousa Santos, who argues that an epistemology of the south, while connected to geography, has the main goal to address colonialism and the unequal relations of knowing and power that uphold it, suppressing many other local understandings and alternative explanations for the world. Epistemologies of the south are then the entirety of the epistemological intervention that will denounce this suppression, which valorizes the knowledge that has survived and aims to establish a horizontal dialogue rather than a hierarchical imposition[107].

The idea of suppressed and disputing epistemologies is also an integral part of hegemonic feminism. In fact, Oyěwùmí notes that feminists have done great progress by centering the need for an epistemological shift — by taking the reins of what might be considered valid and what might not, feminists were able to turn facts of life, such as femicide and abuse, into societal problems that derive from a gender inequality that must be addressed. However, Oyěwùmí also argues that hegemonic feminism does not detach its epistemologies from the colonial project of epistemicide. This is because as we have mentioned earlier, feminists too have universalized the concept of "gender", understanding it only within its euroamerican and capitalist roots and disregarding other ways in which gender can be articulated[108]. This epistemological stifling affects the ways in which gender is negotiated by racial minorities, indigenous and traditional communities and, in a broader sense, also the ways in which gender factors in the colonialist equation of the exploitation in the Global South.

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[106] BOAVENTURA , Op. Cit. 105, P. 1.
[107] BOAVENTURA , Op. Cit. 105, p. 3
[108] OYEWUMI, Op. CIt. 24. P.89

As explains Lelia Gonzales, women of color and, more importantly, Global South women of color have always been "spoken for" by an ideological domination system that is inherently infantilizing, as if they weren't able to be subjects of their own discourses and their own history. Therefore, a feminism that does not engage in an effort to dismantle such system is a feminism that accepts and reproduces precisely this mechanism of racial subjection, and fails in its purpose to improve and emancipate women no matter their backgrounds[109]. If the foundations of feminist studies, and even more so with feminist legal studies, are derivative of European and American experiences, and those are the main sources and authorities in matters of gender as an analytical category, they cannot be ignored, but they also cannot be adopted without a thorough investigation on their social origins and the interests and preoccupations that have based the production of such knowledge[110].

What this implicates is that in order to apply hegemonic feminist legal theories to our inquiries, we will engage with a *translating* effort in order to subvert understandings that reify this euroamerican colonial domination, refashioning it into something that is able to critique the very epistemologies responsible for marginalizing and silencing racialized and subaltern subjects[111]. This is not, as Ochy Curiel notes, a way to get rid of epistemological guilt, nor it is simply a matter of quoting or citing Black, indigenous, and subaltern voices to only, as Harris argues, diversify our footnotes whenever we must address the diversity-shaped elephant in the room[112]. The work to be done here consists in identifying concepts, categories, theories, and ideas that emerge from subaltern experiences, that are collectively produced and that, most of all, are able to break with the idea of a knowledge that is local, individual, incommunicable, and final.[113]

A feminist legal epistemology of the South must identify the ways in which we must deal with this perpetual epistemological crossroad, so to speak, where we must constantly address the oppression and violence that stems from gender and also the terror and pain that has imposed this

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[109] GONZALES, Lelia. Por um feminismo afro-latino-americano. In: HOLANDA, Heloísa Buarque de. Pensamento Feminista Hoje: Perspectivas Decoloniais. Rio de Janeiro: Bazar do Tempo, 2020. Pp. 38.52, p. 41
[110] OYEWUMI, Op. Cit. 24, P. 86.
[111] COSTA, Op. Cit. 28.
[112] HARRIS, Op. Cit. 54. P. 592
[113] CURIEL, Ochy. Construindo metodologias feministas a partir do feminismo decolonial. In: HOLANDA, Heloísa Buarque de. Pensamento Feminista Hoje: Perspectivas Decoloniais. Rio de Janeiro: Bazar do Tempo, 2020. Pp. 120-139, P. 135

gendered system of domination in the first place. The crossroads are not only a place of divisions, but a place of reencounters, of endless paths and possibilities, where there is a *movement* that allows us to carve our own way forward by taking what we need and combining it with what we have[114]. Therefore, it seems fitting here to bring forth the idea of an Epistemology of *Exu*[115].

Originally named Èṣù, this Òrìṣà in the religion of the Yoruba has been exported to the Americas by way of the slave trade and is mostly cultuated in Cuba (known as Echú in Santería) and in Brazil, where it is known as Exú in the African-Brazilian religions Candomblé and Umbanda. The core belief, however, has remained fairly similar — Exú fulfills the role of a *messenger*, relaying the messages of the living to the Orixás and the messages of the deities to the living. Pierre Verger notes that both in Africa and in Brazil Exú is contradictory and difficult to define; a trickster by the very definition of the term, Exú is capable of the greatest of goods and the most wretched of evils, and exists in the in-betweens, in constant transit between the spiritual and material plane. Exú is the most human out of all Orixás, but we must make no mistake. Exú might look like a man, but He is still a god[116].

Those two characteristics are central to what Sidnei Nogueira develops as an epistemology of Exu: first, this existence as a bridge between two different planes, as a messenger who is the only one able to connect two things that are fundamentally different. Second, as a being of constant movement, who is able to walk in and out of the beaten path as He sees fit, He is able to see truth where our eyes could only see darkness[117]. Exú knows all the paths and shifts between them as He desires, being everywhere and nowhere at once; under his guidance, a mistake becomes righteous, and the righteous become the sinners. Yorubá belief defines Exú as the one who will kill a bird yesterday with a stone he only threw today - in this sense, Exú is able to rewrite the past, who opens the doors for the impossible and that sees time and history not as a continuum towards an inexorable development, but rather as a possibility. [118]

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[114] NOGUEIRA, Sidnei Barreto. Intolerância religiosa. São Paulo: Jandaíra, 2020. P. 61
[115] I am particularly indebted to Aysla Texeira for introducing me to this idea and for the sisterhood that began as a mutual academic respect, but has been forged into a true soul bond in the *terreiro.*
[116] VERGER, Pierre. Orixás: deuses iorubás na África e no Novo Mundo. Salvador: Fundação Pierre Verger, 2018. P. 39
[117] NOGUEIRA, Op. Cit. 114. P. 61
[118] VERGER, Op. Cit. 116. P. 41

This is all to say that if epistemology is a way of organizing what knowledge is considered valid, Exu *disorganizes* it. In opposition to the colonial project of epistemological hegemony, an Epistemology of Exu, as a true exponent of the many possibilities that exist within the epistemologies of the south, refuses a single path, a stern dogma, or an absolute truth. It considers that what is valid knowledge is precisely what is produced in the heart of contradiction, a production of many paths that connect at a crossroad and that *allows* for a choice that is never final — one might simply retrace their steps and decide for a different path, or just decide for a shortcut, or even carve a middle ground between two opposing roads. The point here is that there is no search for the ultimate truth, but rather an exploration of different avenues; an exploration that might evolve, retrace, connect, split, because its purpose is not to unveil the core of an issue but rather drawing connections from it. The validity of this knowing comes from the connections it is able to form, rather than its claim of absolute certainty and hegemonic pretensions.

An Epistemology of Exú aims to allow the transit, the change, the connection, and the communication. Rather than acting as an impartial observer detached from the phenomena it investigates, this epistemology beckons us to be active pursuers of questions, but more than that, to identify how such questions permeate ourselves, as socially and culturally located beings. It means to travel while being aware that there is not one true path to our destiny and breaking with idea for the need of a single ultimate answer. Instead, it seeks a temporary, positional and contingent result that is one amongst many and therefore can be improved, changed, subverted, or even abandoned altogether in favor of something new.

Maria Benítez argues this is a necessary feminist step, not only so we can stand up united against oppression, but also to be able to connect with other feminists in other cultural contexts that, while different, will nonetheless still allow for bridges and understandings to be built as long as we are willing to work within conceptual and cultural displacements. Finding ourselves at the crossroads, with all of its historical imbalances and multiple exclusions, might and be the key to develop a true decolonial feminism: one that "is not fixed here nor there, but migrates through the places of difference so that this difference might acquire a shape that departs from local articulations,

multiple mixings that will reveal not only mechanisms of subjection but also expressions for the exercise of freedom"[119].

But how does one go about making this effort and practicing such epistemological approaches? If our search for validity must depart from the point of view of the subaltern and the marginalized, going back and forth between the reality of our lives and the imposition of euroamerican theory, this is a *translating* effort. Therefore, if method is, as stated previously, the organization of apprehension of knowledge, this knowledge must be absorbed by taking what has been produced and translating it into something that will be contextualized and applicable to a specific setting.

This is the method discussed by Cláudia de Lima Costa when she raises *translation* as the construction of a space that allows for the analysis of points of intersection between what is local and what is global while simultaneously allowing for a privileged perspective of analysis of a relationship between two radically different concepts that, nonetheless, can engage in a dialogue through this bridge built out this translation[120]. Boaventura de Sousa Santos adds to this by proposing a translation theory as a dialogical negotiation that is able to articulate a mutual intelligibility that, however, does not impose a "hierarchy of speech" — in other words, opening oneself to differing perspectives, uprooting ourselves to allow someone else to, albeit momentarily, inhabit the space we live in[121].

To *translate* means, ultimately, to do what María Lugones calls "world-traveling"[122] — occupy the in-betweens, the frontiers, in the borders; ultimately, it means to exist in displacement[123]. And it is in displacement that the geopolitical spaces for the marginalized to engage and subvert the colonial and hegemonic theories are forged. For this reason, Cláudia Costa argues that this translating effort is crucial for decolonial feminists precisely because it allows for the development of a feminist decolonial turn, on the one hand, and the possibility of the construction of

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[119] BENITEZ, Op. Cit. 101. P. 274
[120] COSTa, Op. Cit. 28. P. 338
[121] SANTOS, Boaventura de Sousa. "Para uma sociologia das ausências e uma sociologia das emergências", Revista Crítica de Ciências Sociais, no 63, 2002, p. 237-280
[122] María Lugones, "'World'-Traveling and Loving Perception", Hypatia, vol. 2, no 2, 1987, p. 3- 19.
[123] COSTA, Op. Cit. 28. P. 334

"interconnected epistemologies" that confront the equivocations and mistranslations that have obstructed feminist alliances on the other, something of utmost importance when there is a need for a connection on feminist matters that goes beyond simply the aspect of gender[124]. In the words of Angela Harris, *"We need not wait for a unified theory of oppression; that theory can be feminism"*[125].

In fact, Costa argues that Latin-American feminists are using this idea of *translating* in two different senses. The first, to diminish the noise that exists between Latin-American sisters, precisely because the imposition of hegemonic feminism in different settings makes it so a plethora of different *feminisms* will emerge — the many feminisms of Latin America, however, have more in common with each other than they have differences, and this displacement works in our favor whenever we are trying to build bridges throughout the continent. The next, however, is an effort to develop a translation policy on the knowledge produced by hegemonic feminisms to, much like the anthropophagic movement, cannibalize them and consume them, so that they can be digested into something that will apply to our geographical and cultural contexts[126].

This becomes even more relevant if we are to think on a feminist *legal* method. Feminist legal theory is, like hegemonic feminism, mostly produced in the United States with a focus on working the American legal system to reach answers that are, again in Bartlett's words, legally defensible. Feminist legal theory must then be thoroughly inquired: what are the contexts of its production? What are the differences between its origins and the realities of countries in the Global South - specifically, in my case, with the Brazilian legal system? Which parts might I adopt, which parts might I subvert, and which are too foreign to be useful? The *translation* method, therefore, becomes instrumental in my purpose of identifying what parts of the existent theory I might use to reach answers that are legally defensible in my reality.

To reach such answers, then, I have made some strategic choices in this work. The first is that I will seek to always confront hegemonic thinking with decolonial critiques, ensuring that no

[124] COSTA, Op. Cit. 28, P. 339
[125] HARRIS, Op. Cit. 54.P. 612
[126] COSTA, Op. Cit.28, P. 336

stone will be left unturned in my examination of the work that is available. Second, and most like Boaventura de Sousa Santos has argued, I must engage with ways to displace the reader, blurring the sharp divide between theory and practice and constantly locating the crossroads I inhabit and evidencing the margins I speak from. This will be done through narratives and personal anecdotes, so that this displacement will allow the reader to walk in these shoes momentarily and force a dialogical negotiation of meanings and actions. Finally, all this effort will be directed towards shaping what already exists into something that might speak to my reality, and so I too will cannibalize what is out there, consume it and develop something new that is inherently ours.

I have been a practitioner of the African-Brazilian faith of Umbanda for years now. In the *terreiro*[127], the temple where the meetings take place, I have become intimate with Exú and how He manifests amongst us believers. Exú dresses in black and laughs loudly to ward off evil; he drinks and smokes and dances because we too, as humans, do those things. Nothing that belongs to the living or the dead is beyond the realm of Exú. He takes account of all our doings and relays the messages we need to hear. To witness Exú is to witness humanity at the cusp of disaster or greatness, and whenever He cackles into the dark night sky, we all hold our breaths waiting for what will our fates be. So now it is time to walk the crossroads at midnight, to offer peppers, limes and *dendê*, so that Exú might open the paths for this work to take place. The church bells will ring twelve times. And I sing as I do in the *terreiro,* whenever Exu is ready to take the reins of our souls: *Believer hold your drums, because it is almost time; believer hold your drums, because the time of Exu is nigh.*

3. Women as the Subject of Law

On the December 30th, 1979, Brazilian socialite Ângela Diniz was shot four times by her partner, businessman Doca Street, at her beach house in Cabo Frio, state of Rio de Janeiro. The motivation for the murder was jealousy — their tumultuous relationship had only lasted for four

[127] The word "*terreiro*" in portuguese literally means "backyard". However, this is the title given to the temples of both Umbanda and Candomblé; it can also be called *"barracão",* or shed. The emphasis on simplicity is a mark of these faiths, since the temples are often on the back portion of the house of the priest, called *Pai/Mãe-de-santo* or *Babalorixá*. Unlike the faiths that came from Europe and try to force humility by making their believers feels small inside enormous churches, the point of the terreiro is to make the believer feel at home.

months before Ângela attempted to end it, a decision she paid for with her life. Coincidentally, she was shot four times: once on her nape, three times on her face. This crime, known to Brazilians as *Caso Doca Street*, is to this day one of the most relevant criminal cases in Brazilian legal history.

While Ângela was notorious in her own right — she was, after all, a woman of incredible beauty who was fiercely independent even by current standards — it was not precisely her status as a celebrity that draws attention, and especially feminist scrutiny, to her murder. Rather than a somewhat morbid interest on the circumstances of her death, it is the trial of her murderer that presented a landmark in the struggle for women's rights in Brazil; mainly, the argument utilized by the defense council, which was that Doca Street had merely acted in *"legitimate defense of his honor"*.

The legal reasoning behind such an argument demands a brief contextualization. Brazilian Criminal Law names self-defense as "*legítima defesa*", literally translated as *legitimate defense*. Specifically, the Criminal Code[128] defined such institute, in its article 25th, as the person *"who, by moderate use of the necessary means, repels unjust aggression, current or imminent, of theirs or someone else's rights"*[129]. This definition is mostly interpreted as a defense of the right to life, albeit it can be and often is used in the context of the right to property. Brazilian criminal doctrine understands legitimate defense as an *exclusion of the illicit* or, in other terms, something that removes the illicit aspect of an action and positions it outside of the realm of the punishable.

The case of Angela Diniz's murder, however, applied pressure on the limits of interpretation of a literal legal clause. The defense was headed by Evandro Lins e Silva, one of the most prestigious criminal attorneys of the time and a previous Supreme Court justice, who had been expelled from his seat by the Military Dictatorship in 1968. The foundation of his argument was quite simple: the Brazilian 1967 Constitution considered honor to be a fundamental right of a person, to the point

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[128] The code was enacted during Estado Novo, the period between 1937 and 1946 where Brazil was ruled by the authoritarian regime of Getúlio Vargas. This was a moment of comprehensive legal reforms in Brazil, many of which, like the Criminal Code or the Labor Law Consolidation (Consolidação das Leis do Trabalho - CLT), are still applicable to this day. Obviously, some aspects of the law have not aged particularly well, like the Criminal Code's insistent use of the expression "honest woman" that was only properly removed in 2005.

[129] No original: *"Art. 25 – Entende-se em legítima defesa quem, usando moderadamente dos meios necessários, repele injusta agressão, atual ou iminente, a direito seu ou de outrem"*. Tradução livre. BRASIL. Decreto-Lei 2.848, de 07 de dezembro de 1940. Código Penal. Diário Oficial da União, Rio de Janeiro, 31 dez.

where the threat or direct attack to it would warrant the right to legitimate defense. Of course, Doca Street had exceeded himself — the law did state that one must make *moderate* use of the means available — but there was, the defense argued, a great deal of difference between an excess in legitimate defense and plain murder. Doca Street had reasonable doubt over Angela's fidelity, and the alleged confirmation of her adultery, given by the victim in the throes of an argument, was enough to threaten his constitutionally protected right to honor, and he had reacted accordingly.

Of course, this legal argument was backed by a healthy serving of a *moral* argument — that is, the complete obliteration of Ângela's character. She was an outlier in many ways: allegedly bisexual, financially independent, divorced from her first husband in 1970, seven years before a legal divorce was even possible in Brazil; every inch of her personal life and shortcomings was exposed and scrutinized by a jury and eager audience. Evandro Lins e Silva spared no words to describe her: a *femme fatale*, a lustful Venus who abused alcohol and cocaine and had intercourse with men and women alike, a "Babilonian prostitute" who forced the innocent Doca to leave a loving marriage only to discard his affections[130].

As baffling as this triple pike backflip of an argument was, it worked. Doca Street got a sentence of a meager two years in jail and was immediately granted parole. Not only that, but he left the courtroom acclaimed by the population, hailed a hero for defending himself from the danger that Ângela posed. He left the jury as good as free — the real guilty verdict had been bestowed upon Ângela, for daring to be a woman outside of societal expectations. The virulence of the attacks against a dead woman provoked Brazilian poet Carlos Drummond de Andrade to remark that *"that lady continues to be assassinated every day in different ways"*[131].

I bring forth the case of Ângela Diniz to highlight an important point: women seem to not be considered full subjects under the law. As Kelsen[132] notes, it is not enough to have duties or rights. Something (or someone) must *have* that duty or right, possess it. Thus, the figure of the legal subject

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130 FILHO, Pedro Paulo. O Caso Doca Street. OABSP. Disponível em: <https://www.oabsp.org.br/sobre-oabsp/grandes-causas/o-caso-doca-street>. Acesso em: 17 ago. 2021.
131 MORENO, Jorge Bastos. A morte da pantera. O Globo, 2015. Disponível em: <https://blogs.oglobo.globo.com/blog-do-moreno/post/morte-da-pantera.html>. Acesso em: 17 ago. 2021.
132 KELSEN, Op. Cit. 19. P. 93

emerges. Subject to duties, but also subject to rights, they are the receiver of the Law, the one entitled to its protections and the one who can *demand* certain rights from the legal apparatus. But if women are not entitled to the *protection* against bodily harm or even against death, and especially if the denial of such protections comes as a reaction to one's personal choices on what constitutes a life worth living, it becomes clear that the title of "legal subject" is not universally applicable and, in this case, there are certain people who are less subjects than others. In Ângela's case, her life was worth less than a man's honor.

The mechanism through which women become (or are forced into being) less-than-subjects is important, and it deserves to be discussed at length. Ângela's murder highlights quite clearly that the Law sees women as subjects who do not have access to every available right, seeing as if she did, her death would be at the very least more important than a man's bruised ego. The logical conclusion here is that the Law seems to have established standards on how a woman *can* and *should* act, and will defend her if, and only if, she abides by them. To renounce the legal definitions of a woman's place meant being cast *out* of the realm of protection of the law and, therefore, a life that could be ended without repercussions.

It appears we have reached a certain double-bind of legal subjectivity, one that is once again perfectly captured by the murder of Ângela Diniz. On one hand, the Law did not recognize Ângela as a full subject, granting her fewer protections and punishing her murderer with what amounts to a slap on the wrist. On the other hand, law *produced* Angela as this unequal subject, because her life was already worth less than a man's honor before Doca Street even considered pulling the trigger. In fact, this was the only reason *why* he considered it in the first place — Ângela had never been a whole person, not when she married a man thirteen years her senior at age seventeen, nor when she asked for the divorce, nor when she lost the custody of her three children and was largely prohibited from seeing them after separating from her first husband. Ângela's life and status within the Law had already been *produced* as less-of-subject, someone who was more precarious, someone who would not be as grievable, someone who *could* be killed, and no legal reform, no judicial alteration, no policymaking would ever change that fact because it lies at the foundations of the Law. To change it would mean risking the collapse of the entire system.

It seems to me, then, that analyzing the idea of the legal person through the lenses of women is able to highlight two important issues. The first is that the Law does not recognize women as full subjects, and the second, that it produces the very subjects it does not recognize fully. These two conclusions are followed by a third: subjectivity, and legal subjectivity specifically, is a double-bind. It produces us as beings who will be held in bondage. And any legal reforms that tackles the first problem — that is, the non-recognition of women by the Law — but forgoes the systemic challenges posed by the second will never be able to tackle the difficult challenge of allowing women the right to live.

Therefore, in these next few pages, I would like to analyze the idea of a legal subject, specifically to understand why it does not recognize women, but also how it *produces* women as not quite subjects. I would like then to investigate the double-bind of subjectivity, the crossroads of women's legal existence, and how any project that seeks to emancipate women through legal means is condemned to failure if it does not recognize Law's role in producing the very chains we seek to break free from.

As for Ângela, the choice of her murder to guide us through this path was not a happenstance. The near acquittal of Doca Street caused an uproar on what was, at the time, an incipient feminist movement, one still reeling from the torture basements of a military dictatorship that had ruled Brazil with an iron fist for nearly two decades at that point. The so-called *leaden years* were nearing its end, and the weakened grip of the military over civil society allowed for women's movements to rise, united under the banner of the *"Quem Ama Não Mata"* Movement (*Love doesn't kill*), to demand that Doca Street be adequately punished for his crime. The feminist pushback and organizing that followed was enough for another jury to be called; this time, Doca Street would receive a sentence of fifteen years in prison.

The decade following Ângela's murder would see the return to democracy and the enactment of the 1988 Constitution, largely considered a landmark for civil rights and liberties. The *Redemocratization Period* since the end of the Dictatorship has been marked by the continual push for inclusion and equality, which has brought the issue of women's rights to the forefront of public debate. In this context, feminist organizing in Brazil has managed to transform the country of the

legitimate defense of honor into the country of the Maria da Penha Act, a comprehensive legislation against domestic violence that received a robust backup in 2013, when *femicide* also became a crime. The importance of Ângela Diniz within the Brazilian feminist movement cannot be understated, and it is still a key case in understanding how the Law treats women who love freedom more than they respect men.

But the true reason why Ângela's case is the one I decide to start this discussion with is much more personal and, paradoxically, much simpler. Ângela died in Rio de Janeiro because she had spent the last years of her life there — she was, however, born and raised in my hometown of Belo Horizonte. The house she received as part of her divorce settlement is on the same street of the house I was raised in, which means that I grew up under the looming memory of Ângela Diniz. I knew why she had died before I knew what feminism even was, and the knowledge that the Law would not protect me as it would a man was ingrained in my head every time I walked by her house as I went home from school.

I could not articulate that as a child, of course. What I could articulate was that I knew a woman had been murdered and ghosts of wronged people tend to roam the places they had inhabited, and so it was very likely that her ghost still walked those grounds thirty years later. The house fell in disrepair as the years passed and the neighborhood lost its upper-class appeal; lots became smaller and houses became simpler, and the decay of her once imposing mansion drove the street straight into working class territory, which was how I found myself living in the same street of a socialite in the first place. But in my mind, she was still in there, forever trapped in the injustice of being born at a time where her freedom would cost her life.

Years later, already a law student, I learned about her case once more in class while I tried to pull myself away from an abusive relationship, and I was hit with the realization that even though four decades and oceans worth of money and social prestige separated me and Ângela Diniz, there was something that connected the two of us on a profound level. There was something about the way the Law saw us — or, as it was, did not see us — that ruptured through the money, the racial differences, and the social standing, because the Law makes us in the same breath that it breaks us. While Ângela might have experienced a wide range of privileges, the absence of the legal protection

meant her abuser would feel justified in taking her life to protect his honor. And if I did not find a way to claw my way out of the trap I had fallen into, so would mine.

I am not afraid of walking the streets alone during the day, but I avoid this at night if possible. On the occasions it was not, I would find myself rushing down the street past Angela's house, keys safely lodged between my fingers, teeth clenched shut as I constantly checked behind me to make sure I was not being followed. The house would speak, then — it whistled, moaned, howled, and as I tried to escape a fear that seemed much more tangible than ghost stories, it seemed to ask, *after all these years, what are you still afraid of?*

Brazil has the fifth highest femicide rate in the world[133]. During the pandemic, twenty-five women were subjected to domestic violence every minute[134]. On March 14th, 2018, Councilwoman Marielle Franco was shot four times on the face while leaving an event in Rio de Janeiro. Before her body had a chance to cool, an appeal court judge of the State of Rio de Janeiro put out a statement affirming that Marielle had been elected because of her association with drug dealers and that her death was a consequence of her work with human rights or, as the judge herself said, "defending bandits"[135]. Her death has been associated with her activism against the militias of Rio de Janeiro; her murderer was President Jair Bolsonaro's neighbor, but who actually ordered her assassination remains a question that has become increasingly difficult to answer. On the 29th of September, 2020, the Brazilian Supreme Court upheld the acquittal of a man charged with attempted femicide by stabbing his partner on the grounds of legitimate defense of honor. The opinion was that since the victim was not actually killed, since she escaped with minor bruising, and since the defendant could prove she was indeed cheating on him, there was no need for the Law to intervene.

I am past the age where I can still be afraid of ghosts, but the decrepit house on my street to this day asks me questions I find hard to answer. What am I still afraid of? Not of horror stories or cautionary tales, but of that violence that turns beautiful women into vengeful ghosts, the possibility

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[133] WAISELFISZ, Júlio Jacobo. Mapa da Violência 2015: Homicídio de Mulheres no Brasil. Brasilia: Onu Mulheres, 2015.

[134] BUENO, Samira, et al. Anuário Brasileiro de Segurança Pública 2020. São Paulo: Fórum Brasileiro de Segurança Pública, 2020.

[135] SOUZA, Renato. STJ inocenta desembargadora que fez acusações falsas a Marielle Franco. Correio Brasiliense, 2021. Disponível em: <https://www.correiobraziliense.com.br/politica/2021/03/4910042-stj-inocenta-procuradora-que-fez-acusacoes-falsas-a-marielle.html>. Acesso em: 17 ago. 2021.

of a death that sends a chill down my spine every time another femicide comes out in the news. It could be me, my heart stammers, it could be *me*. This is the violence that haunts women who still fear the fate that has befallen upon Ângela Diniz, even half a century after the earth has swallowed her bones. And if sometimes I am woken in the middle of the night by a grief-stricken shriek piercing the night sky, coming from an old abandoned manor falling apart under the weight of time, I suppose it is because the answer I have to give is much more difficult to bear.

3.1. The subject of Law

To be able to access rights and guarantees under the Law, one must first be a legal subject. This understanding underlines all legal debates since the establishment of the first codified constitutions. The rights and guarantees established in the first ten amendments to the United States constitution would mean nothing if there was not *someone* who was entitled to them in the first place — the right to bear arms, for example, only makes sense if there is a material someone who could possess said arms to begin with.

It is important to notice that the *gatekeeping* of who could be considered a legal subject rises simultaneously with the very conception of the term. Not all living people were legal *subjects* — the United States, being steeped into slavery, did not considered Black people as *people* until the thirteen amendment, and the recognition of Black people as full legal subjects in present-day America is still up for debate. In France, the groundbreaking *Declaration of Rights of the Man and the Citizen,* the model for every subsequent Human Rights Declarations in modern legal history, would very specifically not include women, and it was her staunch opposition against such exclusions that would lead Olympe de Gouges straight to the guillotine.

Of course, modern legal systems would never overtly admit to such gatekeeping. The Universal Declaration of Human Rights is clear: "Everyone has the right to recognition everywhere as a person before the law"[136]. The general consensus by the modern legal doctrine is that we have

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[136] UNITED NATIONS. Universal Declaration of Human Rights, 1948. Disponível em: < https://www.un.org/en/about-us/universal-declaration-of-human-rights>. Acesso em: 12 dez. 2020.

somehow moved *forward* with the debate on the legal subject, seeing as we have all, one way or another, become legal subjects with the "advance" of legal development. Kelsen even states that the subject is simply a minor concern — not necessary for the analysis of a legal order, but merely an auxiliary concept that facilitates the description of a norm and whose use is only permissible if the legal scholar is aware of their insignificance[137].

Ngaire Naffine argues those are exactly the two main reasons why the matter of the *subject* has fallen out of favor in legal scholarships. The first, obviously, because since *personhood* or *legal subjectivity* has been formally extended to all humans, regardless of their personal characteristics, it becomes irrelevant to question the concept if it does not cause any practical effect on the legal order, or so is they claim. While it might have made sense when only a select few were considered able to access rights and guarantees, such inquiries into the concept do not make sense in our modern times[138].

The second reason is because most lawyers, especially those with more orthodox views, tend to see the legal subject as a simple mechanism to achieve specific legal ends, something that is, like Kelsen understood, merely a useful legal fiction[139]. Quoting Richard Tur, Naffine argues most legal scholars would say that the *legal subject* is merely a construct that can be filled by whoever or even whatever is in possession of certain rights and, therefore, can make use of them[140].

This is a similar situation encountered in Latin America. Brazilian scholar Clóvis Bevilacqua argued that Law is a legally-assured action, one that involves a subject, an object and a legal connection between the two[141]. While he does not dismiss the subject as a mere tool, understanding it as a fundamental part of the norm, he does not go much further than considering the legal subject as that which the Law grants the possibility of action within its norms, and nothing more[142]. Mexican

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[137] KELSEN, Op. Cit. 19. P. 169
[138] NAFFINE, Ngaire. Can women be legal persons? In: JAMES, Susan; PALMER, Stephanie (Org). Visible women: essays on feminist legal theory and political philosophy. Oxford: Hart Pub, 2002. Pp. 69-90, P. 71
[139] NAFFINE, Op. Cit. 139. P. 72
[140] NAFFINE, Op. Cit. 139. P. 72
[141] BEVILÁQUA, Clóvis. Theoria Geral do Direito Civil. Rio de Janeiro: Livraria Francisco Alves, 1929. P. 62
[142] BEVILAQUA, Op. Cit. 141, P. 64. It is important to note that, in a footnote, Beviláqua seems to consider the idea that animals and trees might also be considered legal subjects a "manifest absurd", which goes to show how the plasticity of the concept, and especially over time, is much more debatable than what Kelsen proposed.

author Eduardo García Maynez, on the other hand, offers a lengthy explanation on the matter, but ultimately understands the legal subject as a fiction that shatters our personalities in order to fit the smithereens within specific legal roles[143]. In this sense, he states that:

> All aspects of my legal personality are, so to speak, functions or roles that have been previously drawn, silhouettes that have been drawn beforehand and that, even if I am the one occupying it, can also be occupied or performed by any other who fulfills previously established conditions. In return, my authentic personality, my radically individual life, in itself and exclusively, unique and untransferable, is always absent, outside of legal relations[144].

While Naffine concedes that most feminists would agree with traditional legal scholars that the legal subject is a *fiction*, the point of such fiction remains a matter of profound disagreement. Feminists would instead argue that this is a fiction animated by socioeconomic and political factors, which transform it into a site of contested political meanings that will inform how the law will treat certain actors[145]. At most, non-feminist legal scholars who are slightly less spartan about the neutrality and irrelevance of the discussion on the legal subject are more than willing to attribute discrimination to the past; modern Law, they argue, has evolved from the days where certain aspects would curtail someone's ability to move within the justice system in order to claim individual rights. Nowadays, whatever differentiation the legal system produces within the realm of its subject is simply a response to natural human variations[146]. In fact, and maybe more insidiously, the discourse has shifted — treating unequal people *unequally* becomes the measure of fairness and equality. It is expected that the Law will see marginalized people with a more critical eye, rising to the challenge of protection whenever a social stigma or oppression threatens one's integrity or livelihood.

I am not criticizing here lawmakers and legal scholars who have become attuned to the fact that there are inequalities and marginalization in the world and that the Law might as well be an instrument to address them. It is quite obvious that it is fundamentally better to have Law

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143 MÁYNEZ, Eduardo Garcia. Introduccion al estudio del derecho. Ciudad de Mexico: Editorial Porrua, 2002. P. 272

144 MÁYNEZ, Op. Cit. 143. P.279. No original: *"Todas las determinaciones de mi personalidad jurídica son, por así decirlo, funciones o papeles previamente dibujados, siluetas objetivadas y delineadas de antemano, que lo mismo que por mí, pueden ser ocupadas o desempeñadas por cualquier otro en quien concurran las condiciones previstas. En cambio, mi auténtica personalidad, mi vida radicalmente individual, propia y exclusiva, única e intransferible, esa se halla siempre ausente, fuera de las relaciones jurídicas."*

145 NAFFINE, Op. Cit. 139. P. 72

146 NAFFINE, Op. Cit. 139. P. 73

discriminate *positively* and create legal spaces where such oppressions can be addressed, than to discriminate *negatively* and allow legal system will overtly exclude certain people from the realm of the Law. What I am interested in investigating, however, is the extent on which this reliance on the Law is beneficial to the very marginalized people it seeks to protect and, especially, the reliance of the feminist movement on legal strategies when it comes to organizing the struggle. If we are to center most of our debate on demanding certain protections from the Law, then it follows that such reliance cannot happen uncritically, since the Law is not a terrain where one demands without giving something in return. This is precisely the point argued by Carol Smart when she warns us of heeding to the siren's call of the Law:

> But of equal importance has been the attempt to acknowledge the power of feminism to construct an alternative reality to the version which is manifested in legal discourse (...). The feminist movement (broadly defined) is too easily 'seduced' by law and even where it is critical of law it too often attempts to use law pragmatically in the hope that new law or more law might be better than the old law.[147]

Scrutinizing such institutes is a necessary step before any reliance on the Law takes hold of feminist inquiries. And the implicit assumptions that come *before* the actual norms, such as the legal subject, are a good place to start, since they allow for questioning the very foundations of the Law. In this sense questions such as *who* the Law is directed to, *what* is the effect exerted by Law upon its subjects and *who* can be considered a subject under the parameters set by Law become necessary points of departure if we are to understand how feminist pressure on the law might help — or, in some cases, even hinder — feminist causes.

But *who* might this elusive category, the legal subject, be? Naffine suggests that the person in the law is autonomous, unitary, rational and in full possession of one's mental abilities[148]. Jennifer Nedelsky adds a pivotal point to the discussion when referring to the legal person as a "bounded" self, one that is and can be entirely contained within its physical boundaries. All those qualities of the legal subject, Naffine argues, are direct consequences of the very formation of the Modern legal system, one that emerges from a highly stratified and profoundly religious medieval society. The shift towards Modernity, where relations are based in interpersonal contractual obligations, could only

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[147] SMART, Carol. Feminism and the power of law. London: Routledge, 2003. P. 160
[148] NAFFINE, Op. Cit. 138. P. 86

happen if the subject were unencumbered by customs and externally-imposed burdens, emerging as an individual who was the sovereign of themselves - a status that demands rationality, autonomy, and the ability of self-determination[149]

Marcelo Ramos agrees that the legal subject owes its origins to the philosophical developments of modernity, when the word *subject* starts to acquire the meaning we recognize presently as an I that begins thought and action. . The initial idea of the *subject* is the foundation of the rationality of humans, abstractly considered; the subject exists in opposition to an object, as that which possesses enough autonomy and reason to act upon the world to modify it. Ontologically free, individuals in all their complexity are abstractly considered equals[150].

It is important to briefly trace the historical and philosophical development upon which the idea of the legal subject will lie. According to Heidegger, Descartes is the one who connects the subject (subjectum) and the I (ego) as synonyms, but it is Immanuel Kant that defines this concept as to clearly mean the self who has rational conscience and, thus, enough autonomy as to allow for initiative[151]. Celso Kashiura explains that at the core of the Kantian moral philosophy there is an autonomous subject, submitted only to the command of a reason that is simultaneously their own, since reason is a foundational attribute of the subject themselves, but also universal, because it transcends the very subject it stems from. Humanity then is an end in itself and autonomous because it is only subjected to the normativity that imposes on itself — ergo, the imperative that is centered exclusively on rationality and thus is *a priori* and universal, which is the Kantian figure of the *categorical imperative*[152].

This categorical imperative, as Kashiura explains, can be divided into three principles that are embedded in its constitution according to Kant: the universality of its form, the rational being as an end itself, and the rational will as a universal legislator[153]. This means that the subject who can

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[149] NAFFINE, Op. Cit. 138. P. 75
[150] RAMOS, Marcelo. Poderá o Direito ser inclusivo? O sujeito de direito e a produção jurídica de sujeitos marginais. Revista da Faculdade de Direito da UFMG, n. , [S.d.]. Acesso em: 19 ago. 2021. No prelo.
[151] RAMOS, Op. Cit. 150.
[152] KASHIURA JÚNIOR, Celso Naoto. Sujeito de direito e capitalismo. São Paulo: Outras Expressões; Dobra Universitário, 2014. P. 12
[153] KASHIURA, Op. Cit. 152, P. 16

navigate the world and alter it to its own needs is necessarily a rational and autonomous one, and it is through their will that the categorical imperative will become the only normative that binds the subject. This is the basis of subsequent developments in legal theory, and especially so for the contractualist philosophers and political thinkers, and will shape the Law as that which the subject, in its autonomy, rationality and transcendent universality, will develop as the only thing that will offer legitimacy to the constriction of its will.

This is important to mention for two reasons. The first is Kant's understanding of the difference between people and things, where people are the rational beings who are ends in themselves and things are all which depend on nature in other to exist and, thus, are mere means[154]. The second has to do with autonomy, which Kant will define as the will of every rational being when it is determined only by themselves. Therefore, every rational being who possesses a self-determined will must be conceived as free[155].

We will discuss the repercussions of such definitions in a moment. Meanwhile, it is important to note that while Kashiura himself alerts that Kant did not develop a concept of a legal subject *per se*[156], it becomes undeniable that his understanding of a philosophical *subject* becomes the basis not only for the actual development of the idea of the subject of the Law, but also in the very development of *humanity*. Kant conflates humanity and rationality, mankind and autonomy — to be a human is to be a free autonomous and rational person who is able to produce the very norms that will bind them.

This is precisely the object of the critique developed by Soviet jurist Evgeni Pachukanis when discussing the figure of the legal subject. Pachukanis argues that the legal subject is a fundamental part of bourgeois Law because it embodies those abstract ideals of freedom, autonomy and rationality, something that is absolutely necessary for this legal subject to become what Marx has identified as the "guardian of the commodity", or those who are able to physically circulate the products. This "guardian" must have the attributes that interest commercial exchange — therefore,

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[154] KASHIURA, Op. Cit. 152. P. 17
[155] KASHIURA, Op. Cit. 152. P. 18
[156] KASHIURA, Op. Cit. 152. P. 7

the legal subject is not only what allows for commerce to take place, but also a way to circulate a special, historically and socially determined commodity, which is labor.

This is relevant because for the subject to convert their own labor power into a commodity, human subjectivity must have a specific organization in order for the subject to sell their bodies in the form of paid work without losing their own personality. Men must thus be free, ergo, be possessing of an autonomy that will allow them access to civil liberties and make decisions on their behalf; must be equal to other men, meaning that the selling of labor for income will be considered an equivalent trade, and must be able to dispose of themselves as owners of the property of their own bodies, which allows them to commercially present themselves as the commodity named laborer.

There is a critique to be drawn from this brief discussion. If Kant believes the subject and the *human* are one and the same, the human must be rational, autonomous and free. However, Kant himself did not think women qualified as rational and autonomous, arguing that they fell short of practical reason demanded by the predisposition to morality because they were bound to natural impulses and ruled by natural needs[157]. If we take Kant's affirmation that all which depends on nature in other to exist is simply means to an end to be true, then women seem not to be subjects in their own right, but merely *means* to be utilized by the rational subject in order to achieve its autonomy and freedom.

This is where Pachukanis' critique is instrumental. If the legal subject, developed on the basis of Kantian theory of the subject as autonomous and rational, exists to make sure that the individual will make themselves available as labor within the workforce, women are a means to an end for this particular iteration of the legal subject. In this case, Women are not subjects as much as they become the backbone of this availability, precisely by doing the work Federici noted as necessary for the rise of modern Capitalism[158], the reproductive work that allows the basic conditions for this laborer to leave the house for work — a clean house, food on the table, minimum standards of hygiene — but also the *reproduction* work to ensure the production of new laborers.

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[157] MIKKOLA, Mari. Kant On Moral Agency and Women's Nature. Kantian Review, v. 16, n. 1, p. 89–111, 8 mar. 2011. Disponível em: <https://philpapers.org/archive/MIKKOM>.

[158] FEDERICI, Op. Cit. 5

Of course, this exclusion from humanity is not a privilege of only women, and many other marginalized groups are pushed from the realm of humanity in order to be utilized as means to an end, an exclusion the Law is an active participant in. This can be seen quite evidently when we look at the intersections between race and gender, especially in the case of domestic workers. In 2019, the International Labor Organization issued a report stating that Brazil had 6,3 million domestic workers, one of the largest numbers in the entire world. Of these, 92,4% are women and 62% are Black, percentages significantly higher than rest of Latin America and the Caribbean despite the entire region sharing slavery as a historical background[159].

However, despite the large contingent of domestic workers laboring in family homes for pitiful wages, a practice that carried over despite the abolishing of slavery in 1888, this specific form of labor was never properly recognized by Brazilian Law. The first major piece of labor legislation in Brazil emerged in 1943, with the *Consolidação das Leis do Trabalho* (Labor Laws Consolidation), and explicitly did not recognize domestic work as an occupation, deliberately pushing millions of women into informality. The first law to approach the matter only came in 1972 (Law nº 5.859), which recognized the profession and allowed for some labor rights, such as paid time off — twenty days per year as opposed to the regular thirty allowed to every other regular employee. The 1988 Constitution, while granting those workers substantial increase in rights, such as minimum wage and maternity leave, nonetheless deliberately excludes them from the majority of all labor rights it declares in its article 7th. While subsequent legal reforms (Law nº 10.208/2003 and Law 11.324/206) did incredible strides in order to grant those workers even more protection, domestic workers do not have the same rights as other workers in Brazil to this day, something that reflects in the poor wages, the harshness of work conditions and the constant exploitation they are submitted to[160].

This highlights how the overlap of race and gender works for dehumanization that serve a labor-priming purpose. Domestic work, as Angela Davis recounts, is considered a lesser form of work since it does not generate profit, but it is simultaneously desperately needed in order to set the

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[159] ANDRADE, Daphne de Emílio Circunde Vieira; TEODORO, Maria Cecília Máximo. A colonialidade do poder na perspectiva da interseccionalidade de raça e gênero: análise do caso das empregadas domésticas no Brasil. Revista Brasileira de Políticas Públicas, v. 10, n. 2, 26 out. 2020. Acesso em: 20 ago. 2021.

[160] Pinheiro, Luana, et al. Nota Técnica: Expansão dos direitos das trabalhadoras domésticas no Brasil. Brasília: IPEA, 2012. P. 2.

minimum standards of living that will allow the subject to join the workforce.[161] In this regard, the Law excludes domestic workers precisely because it needs to mark their labor as *lesser* labor, the type of labor that must be provided for cheap or free of charge; the black woman providing this labor, moreover, is *not* considered human as much as she is a means for an end as a woman, but also as Black, the one who historically was forced to be expropriated of her labor either by slavery or by dire necessity.

What this highlights is that the idea of a subject must be entirely structured around a series of dualisms that are profoundly gendered precisely because of the deliberate exclusion of certain marginalized people from its philosophical foundations[162]. Maleness is associated with thought, rationality, power and objectivity, characteristics that are instrumental for the development of the Law, and utilized to exclude those who are *not* considered to possess them and thus produce those non-subjects as means to an end[163]. Frances Olsen also notes that those dualisms are also hierarchized, meaning that one has primacy over the other, and therefore maleness is also constructed once again as superior to womanhood[164].

In this sense, whenever feminist critique argues that the legal subject is male, it does so precisely because of the characteristics that have been associated with the Law. Therefore, it is not surprise that, as Naffine argues, there is simply no way for women to fulfill all the requirements of legal subjectivity, since their exclusion lies at the very foundations of the Law[165]. The legal subject becomes, rather than a simple fiction that allows for an easier thinking of the norm, a site of invested power, one that concentrates the attributes that possess the most power in our current society. It is not only male - it is also white, heterosexual, rich, able-bodied, and so forth, and it establishes itself precisely on the negation and the exclusion of marginalized persons[166].

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[161] DAVIS, Angela. Mulheres, raça e classe. São Paulo: Boitempo, 2016. P. 230.

[162] THORNTON, Margaret. Feminist jurisprudence: illusion or reality? Australian Journal of Law and Society, v. 3, n. 7, p. 5–29, jan/1986.

[163] THORNTON, Op. Cit. 161.

[164] OLSEN, Francis. Feminism and Critical Legal Theory: An American Perspective. *In:* OLSEN, Frances E. Feminist legal theory. Washington Square: New York University Press, 1995. v. 1. Pp. 473-489, P. 473.

[165] NAFFINE, Op. Cit. 138. P. 87

[166] NAFFINE, Op. Cit. 138. P. 87

We will discuss this precise mechanism of exclusion in forthcoming chapters. As of now, it is important to note that, as Janice Richardson argues, if this subject is constructed by exclusion, the matter of the inclusion of women (and any other marginalized persons) in the Law goes beyond a simple addition. In fact, simply factoring women into the model disrupts the entire framework — women are not *supposed* to be considered legal persons precisely because women are *not* supposed to be rational, autonomous and "bounded" within an individual, corporeal self. The issue of the legal subject, in this sense, cannot be considered a marginal issue within the realm of feminist legal studies, for not only it undermines any proposed theoretical legal structure from within if not properly addressed, but it also has the potential to underline the very mechanism that continues to push women away from recognition as a true subject before the Law[167]. To challenge the idea of a masculine legal subject is to challenge the very foundations of the Law[168], and to carry on utilizing it without critiquing is to reinforce the same exclusionary standards we, as feminists, struggle against. In this sense, Thornton argues that

> This maleness is embodied in the concept of the "reasonable man", the ideal and objective personification of law, from whose perspective the failings of ordinary people are judged; the reasonable man is the embodiment of wisdom, rationality and good sense. Indeed, the "reasonable woman" is no more than a figment of the feminist imagination; she is unknown to the law and incomprehensible to it.[169]

It feels necessary, here, to embark on an incursion on how exactly the figure of *women* disrupts the triad upon which the legal subject lies. In which ways are women, technically considered legal subjects, not considered simultaneously rational, autonomous and as a "bounded" self? The Law has its own share of responsibility in *producing* women as such, and this too will be discussed in forthcoming paragraphs. However, before we examine the Law in its productive aspect and how it produces the very subjects it marginalizes, it is important to note *how* the inclusion of women within the already existing system destabilizes the very foundations of the Law, precisely so we can better understand how simply changing the Law till leaves its foundations unchallenged.

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[167] RICHARDSON, Janice. A refrain: Feminist metaphysics and Law. In: SANDLAND, Ralph; RICHARDSON, Janice (Org). Feminist perspectives on law & theory. London: Cavendish, 2000. Pp. 119-134, P. 122

[168] SMART, Op. Cit. 147. P. 87

[169] THORNTON, Op. Cit. 162. P. 17.

In what concerns the (ir)rationality of women, the idea that they are too emotional, too sentimental and, therefore, unsuited for rational thought is an old one. While defining his highly influential concept of *Gemeinschaft* and *Gesellschaft*, Ferdinand Tönnies argues that "Men are cleverer. They alone are capable of calculation, of calm (abstract) thinking, of consideration, combination, and logic. As a rule, women follow these pursuits ineffectively. They lack the necessary requirement of rational will"[170] — a sentiment common for is time and not so much dispelled in present day thought. For this reason, women are strongly associated with the private, domestic sphere, where they are concerned with child-raising and homemaking, and examples of male scholars scrambling for justification of such division are abundant in every realm of social sciences.

Feminists have devoted much thought to proving either that women *are* as rational as men and, therefore, entitled to the same rights and prerogatives, or that while they are *different* to men and even more emotional and sentimental, that is not a relevant basis for discrimination or hierarchization[171]. However, the question at hand is not whether women are rational or not, but how they have been forced into the role of emotionality and irrationality, one that confines them to the private sphere and domestic work. In this sense, the construction of women *as* irrational so they can be confined to the private sphere is in tandem with the idea that the inclusion of women as legal subjects is antagonistic with its very structure, something I intend to discuss in the next paragraphs.

Silvia Federici argues that rather than being a collective superstitious delirium born out of the dying breaths of the Middle Ages, witch-hunts set the stage for the capitalist domination of the forthcoming centuries, since the he effort to control the female body was never too detached from the efforts to control and exert dominion over nature. John Bellamy Foster explains that for Marx, the alienation of human labor and the process of primitive accumulation are inherently indebted to an understanding of the alienation of humans from nature[172] — Federici goes even further, arguing that this process *also* involved the forced distancing of women from their bodies, as well as the association of them with nature, as in something to be controlled and used to suit the Capital's

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[170] TÖNNIES, Ferdinand. Community and association: (Gemeinschaft und gesellschaft). London: Routledge & Kegan Paul, 1974. P. 174

[171] OLSEN, Op. Cit. 164

[172] FOSTER, John Bellamy. Marx's ecology: materialism and nature. New York: Monthly Review Press, 2000. P. 9

needs[173]. Women's subjection, therefore, comes from the need to control the reproduction of labor, and this domination was born out of a two-step process that involved expropriating women of the command of their own bodies. Once that was established, it was necessary to maintain this position of submission, something that the then incipient legal system was groomed to do proficiently.

The fundamental role of the witch-hunts in the making of modern gender oppression becomes evident when we realize that while the pyres roared and witches perished between the years of 1560 to 1630, Descartes was simultaneously setting the foundations for what would eventually become Philosophy of Science. At this time, Descartes stated that existence could only come from the mediated experience of rational thought, something of utmost importance for the Kantian ideal of the rational subject[174]. More than simply signifying the Medieval world's hatred of women, witch-hunts rather symbolized the smothering of female agency by outlawing women's traditional knowledge of the land and their own bodies as "witchcraft". The idea that women are "ruled by nature" is not a conclusion as much as it is a death sentence — if knowledge could only come from rational thought and experience, the traditional ways of living that demanded a communion with nature in order to survive should be expunged, so the then incipient capitalist society could utilize nature as a means to profit. This, Silvia Federici argues and as we have discussed previously, was a tactic utilized to associate women with nature and, moreover, to produce women as means to the control of reproductive and reproduction work that sustains labor.

In this case, women could *never* be rational, and the role of irrationality is exactly the place they have to fulfill within a very specific framework of action that designates women as carergivers and mothers first, citizens second, if that much. Women's irrationality makes them incapable for acts of public life, but also primordial for the private spheres. This incursion is important because from the embers of the witch pyres a new model of femininity was forged: the ideal woman, doting wife, passive, obedient, chaste, and concerned with matters of family and housekeeping. This was not a *rational* person, and she *could not* be, because her role within this capitalist society was at odds with the function of rationality, and precisely for this reason their inclusion within the law was

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[173] FEDERICI, Op. Cit. 70. P. 119.

[174] DE LIBERA, Alain. When Did the Modern Subject Emerge? American Catholic Philosophical Quarterly, v. 82, n. 2, p. 181–220, 2008. Acesso em: 18 maio 2020.

denied beyond their position as homemakers and mothers. On the other hand, any refusal of this destiny must mean that she is *incapacitated* for normal life, seeing as she is unwilling to submit to the role she was given, and the Law will either force her into said role or avowal her removal from communal living.

This is very explicit if we look over the Brazilian legislation concerning women for the past century. The Civil Law Code of 1916, written by Clóvis Beviláqua, explicitly said in its article 6th that married women were incapable of performing certain acts, such as selling and acquiring property, finding employment, petitioning to a court or even to accept inheritance. It also established that any property the woman might possess and any money she might come to were to be administered by her husband, and that a husband had ten days from the celebration of marriage to reach for an annulment over the virginity status of his wife[175]. While some improvement could be seen with the *Estatuto da Mulher Casada* (Statute of the Married Woman, Law nº 4.121/1962)[176], where women began to be recognized as fully capable legal subjects, it was only in 1977 that divorce would be made allowed[177] and in 1988 where the Constitution would explicitly recognize them as equal subjects with the same rights and guarantees. The Civil Code of 1916 would only be replaced in 2002.

On the other hand, while this trajectory might be seen as improvement, women are *still* denied the right over their own bodies in Brazil. Abortion has been outlawed since the 1940's, and only recently the Supreme Court allowed for an exception for cases of anencephaly. This case is particularly interesting because it highlights that while an important victory, the framing of the matter by the Court reinforced that women are *still* not allowed reproductive rights. As Gabriela Rondon notes, the justices were adamant that while abortion was wrong and should be punished, allowing for the abortion of a fetus with anencephaly was a humanitarian measure so that women would not be forced to deliver unviable children, something they closely associated with the constitutional prohibition of torture. Therefore, it was not a question of recognizing women's reproductive rights as much as understanding that forcing them to carry a pregnancy that would

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175 BRASIL Código Civil. Lei n° 3.071 de 1° de janeiro de 1916.
176 BRASIL Estatuto da Mulher Casada. Lei n° 4.121 de 27 de agosto de 1962.
177 BRASIL. Lei do Divórcio. Lei n° 6.515 de 26 de dezembro de 1977.

knowingly not wield a living child would be degrading treatment and therefore not allowed by the Constitution. Once again, the decision was not based on women's rational capabilities to choose what is best to herself, but in a need to safekeep her emotionally[178].

As Maria Lugones argues, Capitalism requires the quantification, standardization and objectification of life and people[179]. Law operates in the same framework, and it defines as the subject the one who *can* do all of those actions — a rational one, one that is able to distance itself from nature and people to exert control on them. And the very reason why this system is also embedded in the formation of modern Law and not just a series of happenstances exclusive to the formation of capitalism in Europe is because this same process of women's vilification and, further on, of infantilization, can also be seen accompanying the exploration of the colonized countries.

In fact, colonized women often find themselves in yet *another* crossroad of intersecting identities - the *irrationality* of the colonized, their backwardness and their stunted development before Northern eyes are yet another construction to justify imperialist needs for expansion and exploitation, and adds another layer to the complexity of women's recognition as a full legal subject. To accept the position as irrational means to also accept the condition of *colonized*, to accept a subservient role of exploitation to suit the colonizer's needs. To deny it means to also deny colonialism, something that albeit powerful, will also surely draw all the ire of the empire onto said woman in ways that will weaponize this same imposed femininity, such as sexual violence and exploitation and the violence against their families and livelihoods.

For example, illegal gold mining in indigenous territories of the Brazilian Amazon has made the lives of indigenous women and girls incredibly dangerous. As women in the communities organize against the miners who seek to invade their lands, sexual assault, rape and even femicide have been consistently utilized as tactics to weaken the community and enable their expulsion from their ancestral home[180], a situation that has consistently worsened since the election of Jair Bolsonaro

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[178] RONDON, Gabriela. O gênero da dignidade: humanismo secular e proibição de tortura para a questão do aborto na ADPF 54. Revista Direito e Práxis, v. 11, n. 2, p. 1137–1165, abr. 2020. Acesso em: 4 dez. 2020.

[179] LUGONES, Op. Cit. 81.

[180] RAQUEL, Martha. Ameaças, estupros e prostituição: os impactos do garimpo ilegal para as mulheres. Brasil de Fato, 2021. Disponível em: <https://www.brasildefato.com.br/2021/05/02/ameacas-estupros-e-prostituicao-os-impactos-do-garimpo-ilegal-para-as-mulheres>. Acesso em: 21 ago. 2021.

and the COVID-19 pandemic[181]. If we perceive colonization as an ongoing process, it becomes easy to see how such tactics, extensively used against native Brazilians during the Portuguese colonization and partially responsible for the racial makeshift of the modern Brazilian population, are renewed and reutilized to its original inhabitants, and specially its women, whenever they stand against the brutal exploitation of their people and livelihood.

In this sense, it becomes clear that even if women have been formally considered full legal subjects for quite some time, erasing the discrimination from within the legal system is not nearly as easy. The legal subject is structured on a need for rationality that does not, by definition, include women, and punishes them when they abandon the femininity imposed by what Judith Butler calls the heterosexual matrix[182]. Therefore, merely adding women to the concept of the legal person highlights how the legal person was *not* supposed to be preoccupied with matters pertaining the private sphere — inherently public, the imposition of rationality excludes those who, through the burden of reproductive labor, have been attached to the idea of emotionality and sentimentality.

It is in this same vein that we can understand the idea of the autonomy of the legal subject as also at *odds* with the social idea of a woman. This is because, and as feminists have thoroughly pointed out, "autonomy" finds its roots in the idea of an atomized individual who, by virtue of being self-sufficient, operates in a vacuum, an abstract rational thinker who is stripped of personal biases[183]. Janice Richardson traces this perspective back to Kant, when he argues that *freedom* and, consequently, autonomy, involves making decisions that are unaffected by the material world where said decisions take place[184]. An autonomous person is, therefore, unencumbered — they are able to make choices purely based on reason and detached from the material reality of the world.

While it is questionable to affirm that there are people who are unfettered and unburdened by social expectations when making a choice, the issue at hand is that since women are *not* considered

[181] ASSUNÇÃO, Clara. "Pandemia de garimpo" ameaça yanomamis e expõe política genocida do governo. Rede Brasil Atual, 2020. Disponível em: <https://www.redebrasilatual.com.br/ambiente/2020/07/pandemia-de-garimpo-ameaca-yanomamis-e-expoe-politica-genocida-do-governo/>. Acesso em: 21 ago. 2021.

[182] BUTLER, Judith. Problemas de gênero: feminismo e subversão da identidade. Rio De Janeiro: Civilização Brasileira, 2015. P. 75

[183] STOLJAR, Natalie. Feminist Perspectives on Autonomy (Stanford Encyclopedia of Philosophy). Disponível em: <https://plato.stanford.edu/entries/feminism-autonomy/>. Acesso em: 21 jun. 2021.

[184] RICHARDSON, Op. Cit. 167. P. 126

rational, as we have discussed, it is not too far-fetched to believe women are also not considered autonomous, a conclusion that forecloses political and legal advantages for them.[185] If a legal subject is *autonomous*, and autonomy means being able to construct rational choice, women are not rational and, therefore, they are not capable of free, unrestricted choice. This logic allows for the State to declare major interest on their physical and mental wellbeing, enacting a series of rules that will regulate her body, delimitate the scope of her choices and allow for interventions of the state. As Naffine argues, such interventions would be unthinkable if women were full legal subjects and entirely entitled to their own bodily autonomy. Specifically, she cites pregnancy as an example of a situation that is legally disabling, since the pregnant body is not allowed the full range of rights and protections under the Law; this body will, nonetheless, be the site were legal interference might take place[186].

In this context, feminist scholarship has dwelled into what *would* be a feminist autonomy, or a feminist conception of autonomy. Some feminists, like Maria Elvira Benítez, believe that what we should be discussing is not if women are free to choose or not, but rather how the interlacing relations of power will determine what actions are available and what are foreclosed. This would allow for a focus on the possibilities of action for marginalized subjects, rather than what is not accessible and might even be forbidden to the marginalized.[187]

That being said, the notion of autonomy at the heart of the legal order is still the autonomous self. This is a particularly interesting concept because it establishes the right to self-determination - that means that if a subject is autonomous, that subject has the right to decide to themselves what constitutes a good life. As Jennifer Nedeslki argues, the problem this poses for women is that whenever we are working within the Law, the language available for the principles we strive for is still deeply embedded in this liberal perspective.[188] Therefore, whenever the discourse shifts to the legal sphere, Feminists tend to ask for *more* autonomy, without actually reflecting that this precise

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[185] STOLJAR, Op. Cit. 177
[186] NAFFINE, Op. Cit. 138. P. 88
[187] BENITEZ, Op. Cit. 101.
[188] NEDELSKY, Jennifer. Reconceiving Autonomy: Sources, Thoughts and Possibilities. Yale Journal of Law and Feminism, v. 1, n. 1, p. 7–36, 1989. P. 8

concept is withheld from women because their bodies are still a contested side where the State and the Law will exert its control.

On the other hand, it is important to note how the idea of "autonomy" has been instrumentalized by white feminists in order to perpetuate colonial aspirations though a feminist discourse. By qualifying Global South women as victims who lack autonomy to decide for themselves what it means to live a life worth living, Global North feminism not only diminishes the impact of their *own* terms of legal inclusion, which does not happen fully, but also manages to work as yet another tool for colonial exploitation and white supremacy. By positioning these women as "oppressed" and "victims", Saba Mahmood[189] argues that they foreclose the available meanings of agency, and invariably will also bar other ways of self-determination within an oppressive system, especially those that are not trespassed by an uncritical adoption of liberal western thought and conformation to western cultural standards.

The fact that feminist discourse is utilized to also uphold ideals of white supremacy against the marginalized South, be it in the homeland or in the diaspora, should be cause for concern. This situation became quite clear earlier in 2021, when the parliament of France passed an amendment that would ban women under eighteen from wearing their hijabs in public, and also to forbid Muslim mothers from wearing it on school trips, effectively curbing their right to participate in their children's school lives. The justification offered by the French parliament was that the law would prohibit "prohibition in the public space of any conspicuous religious sign by minors and of any dress or clothing which would signify inferiority of women over men", associating Islamism with the oppression of women[190].

This was also the same rhetoric employed by Laura Bush, wife of then President of the United States George W. Bush, to draw support for the war on Afghanistan[191]. This was a central argument within mainstream media throughout the war, but especially during the USian pullout

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[189] MAHMOOD, Saba. Politics of piety: the Islamic revival and the feminist subject. Princeton: Princeton University Press, 2005. P. 38

[190] LANG, Cady. Who Gets to Wear a Headscarf? The Complicated History Behind France's Latest Hijab Controversy. Time Magazine, 2021. Disponível em: <https://time.com/6049226/france-hijab-ban/>. Acesso em: 21 ago. 2021.

[191] BERRY, Kim. The symbolic use of Afghan women in the war on terror. Humboldt Journal of Social Relations, v. 27, n. 2, p. 137–160, 2003. Disponível em: <https://www.jstor.org/stable/23524156>.

from the country, and it would be brought up by George W. Bush himself as he tearfully recounted being "heartbroken" for the progress lost for Afghan women[192]. It is important to note that despite his claims that the occupation was instrumental in safekeeping women's rights in the region, he was swiftly rebuked by local Afghan activists[193].

What this highlights is precisely how a feminist discourse on autonomy that does not concern itself with the intersections of race, class and colonialism will merely serve as a veneer for the dissemination of bigoted beliefs at best, and downright provide justification for colonialism and imperialism at worst. Believing Muslim women are *forced* to wear the hijab, as well as declaring that the women of Afghanistan will never be able to organize and resist the oppressiveness of Taliban without the help of the West is a denial of women's agency and will that serves specific colonialist and colonialist interests. If further proof is needed that this is the case, one should simply observe how the c*ollective* media outrage at the fate of the women of Afghanistan was swiftly substituted by a concern over the natural resources of the country, which will no longer be available for the United States and its allies. This makes it even more evident that the concern was never about women per se, but this "concern" was merely the façade for the mainstream media's grief over the economic potential that would be lost[194].

Similarly, the disregard for women's autonomy as a mechanism of white supremacy, utilizing the very structures that Feminists developed for the protection of women, is also common in Brazil. In 2020, at least three women lost the custody of their teenage daughters for allowing them to initiate themselves in Candomblé, a process called *feitura de santo*. This period of reclusive contemplation can last anywhere from 10 to 21 days, and the initiates (called *abiãs*) have to shave their heads and perform a ritual scarification of their shoulders. Despite the ritual being safe, the

[192] BENGALI, Shashank. George W. Bush says the events in Afghanistan fill him "with deep sadness." The New York Times, 2021. Disponível em: <https://www.nytimes.com/2021/08/17/world/george-w-bush-afghanistan-taliban.html>. Acesso em: 21 ago. 2021.
[193] JOYA, Malalai. Afghan Activist: George W. Bush's Claim U.S. War in Afghanistan Protected Women Is a "Shameless Lie." Democracy Now!, 2021. Disponível em: <https://www.democracynow.org/2021/7/15/afghanistan_taliban_us_withdrawal>. Acesso em: 21 ago. 2021.
[194] HOROWITZ, Julia. The Taliban are sitting on $1 trillion worth of minerals the world desperately needs. CNN Business, 2021. Disponível em: <https://edition.cnn.com/2021/08/18/business/afghanistan-lithium-rare-earths-mining/index.html?utm_source=twCNN&utm_term=link&utm_medium=social&utm_content=2021-08-18T23%3A12%3A49>. Acesso em: 21 ago. 2021.

teenagers being aware of its implications and testifying in many instances as willing participants and believers of the faith, their mothers were charged with aggravated battery and domestic abuse and had their daughters forcibly removed from their homes[195]. The case was interpreted as a blatant show of racism and religious intolerance, since *Candomblé* is an African-Brazilian religion that still maintains many of the original *Yorubá* beliefs and rituals, but also a significant interference of the state not only on the mothers' autonomy to share their religious beliefs with their children, but of the teenagers themselves as they were escorted out of their temples by the police and forbidden to see their caretakers.

Finally, even though it has become quite clear that trying to forcibly fit women into the ideas of "rationality" and "autonomy" seems to highlight how the legal subject was created to exclude them, it is the idea of a "bounded" corporeal self that seems to drive the last nail on the coffin of the inquiry in the legal subject. This is because, as Naffine argues, the legal subject is considered a self-contained entity, not only in relational terms — as in, the legal subject is not dependent upon anyone — but also in physical and material terms. The physical boundaries of the legal subject are well-delimited and uncrossable, something that, for women, becomes impossible to conceptualize.

While I will refer to physical characteristics in terms of "women/men" for ease of writing, I would like to make clear that this in no way is meant to imply only women possess certain biological characteristics and only men possess others. In fact, gender-nonconformity seems to deepen the relations I would like to investigate. This is because the rejections of a gender assigned at birth and the lived experience as a trans person make this body much more "unbouded" because it positions this person in a place of extreme vulnerability. The precariousness of the recognition in these cases allows trans bodies to be more easily "breached" through violence and, of course, people of many gender identities who have a functional womb can get pregnant and will be subjected to the full scrutiny of the state regardless of how they identify. In fact, said scrutiny will be even worse if the pregnant person is not a cisgender woman.

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[195] BASSETTE, Fernanda. Mãe recupera guarda de filha tirada após ritual de candomblé. O Globo, 2020. Disponível em: <https://oglobo.globo.com/epoca/mae-recupera-guarda-de-filha-tirada-apos-ritual-de-candomble-1-24588190>. Acesso em: 22 ago. 2021.

Although bodily integrity means everything for the legal person, and even though modern legal systems are willing to go to great lengths to affirm women have the same rights as men and that all people are equally recognized as legal subjects under the Law[196], the Law is unable to relinquish the hold it has over women's bodies. It is unable precisely because this hold is the reason why the Law exists in the first place. It was developed and it is sustained as a way to ensure the conditions of for a capitalist system to thrive. This means a tight hold on the reproductive body — whether it is the pregnant body, the sexually "deviant" body or the gender non-conforming body, Law needs to control every aspect of the reproductive life in order to justify its very existence.

This is why Law requires justification for the termination of a pregnancy, the alteration of a name and gender or feels justified to interfere in a woman's medical choice for herself whenever that choice might alter her ability to bear children. And even those countries where abortion is legal, the situation still stands. That the Law had to recognize one's right to use and adapt their own body as they see fit means that it is very much able to take this right away. This is precisely the situation being forced into the public debate by the conservative, fundamentalist Christian political right, as they try, from the United States to Brazil, to take *away* rights that are of extreme importance to the self-determination of women, such as domestic violence legislation or even access to affordable childcare. On the other hand, those very politicians seek to smother Feminist demands by foreclosing the possibility of *expanding* said rights in order to make women's lives easier.

The Law then seems to exist to ensure the availability of women's bodies as a site of exploration and exploitation. All the movements done by the Law to "protect" women are not protecting as much as they are organizing *how* women's bodies might be exploited and *what* is a valid exploitation or what is not. It is impossible to think that the Law will ever recognize women as fully bounded subjects, because the fact that they are *not* is precisely one of the reasons why Law will invoke the right to interfere with a woman's choice regarding her own body. If they are not bounded subjects, then, can they truly be considered full legal subjects?

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[196] SAVELL, Kristin. The mother of the legal person. In: JAMES, Susan; PALMER, Stephanie (Org). Visible women: essays on feminist legal theory and political philosophy. Oxford: Hart Pub, 2002. Pp. 29-68, P. 64

This avowal for exploitation is also not lost on Global South women, whose bodies were sites of domination since the earliest days of colonial times. In the context of Latin America, they were the site where the brutal sexual exploitation gave way to a highly ethnically mixed population that carries such oppression in their blood. Women from the Global South are not only the site for gender exploitation, but also for colonial exploitation, one that *has* to keep itself open and unbounded if it wants to carry on living. It is quite difficult speaking of it as a Brazilian since the divulging of this particular nationality can and will be read as an invitation for violation of my bodily boundaries. As my country must always present itself open for the taking, unprotected and unguarded, so must I allow my body to be utilized by those who see exploitation as birthright.

While all Brazilian women, myself included, have many stories of sexual harassment and abuse that followed the divulging of our nationality, nothing highlights this view of Brazilian women as sites of sexual exploitation than the divulging of Brazil as a "paradise" for sexual tourism, which more often than not also involves children. As Ranjan Bandyopadhyay and Karina Nascimento inform, Brazil is often associated with free sexuality, scant clothing and a sexual playground in a tropical costume, despite the local attitudes towards sexual behavior varying quite significantly and being generally conservative throughout the country[197]. Brazilian women embody this imaginary on their corporeal self, which is why the idea of this sensual body is so closely associated with its nationality[198], and the "openness" that the country is known for is transposed onto that Brazilian body, which This is translated onto the Brazilian woman when she leaves the country, where it will be seen as a willing body that will be simultaneously punished by its alleged hypersexuality but also if it fails to correspond to the stereotype, a situation extensively reported by the NGO *Brasileiras Não Se Calam*[199]. Therefore, the boundaries of this body are pliable, and can be extinguished with the right amount of coaxing, coercion or downright violence.

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[197] BANDYOPADHYAY, Ranjan; NASCIMENTO, Karina. "Where fantasy becomes reality": how tourism forces made Brazil a sexual playground. Journal of Sustainable Tourism, v. 18, n. 8, p. 933–949, 7 out. 2010. Acesso em: 15 abr. 2019.

[198] CASTRO, Ana Lúcia; PINTO, Renata Pires. Corporalidade brasileira na fabricação da identidade nacional. Ciências Sociais Unisinos, v. 50, n. 1, 26 mar. 2014. Acesso em: 22 ago. 2021.

[199] MIRANDA, Giuliana. Grupo de brasileiras expõe centenas de casos de assédio e xenofobia em Portugal. Folha de São Paulo, 2020. Disponível em: <https://www1.folha.uol.com.br/mundo/2020/08/grupo-de-brasileiras-expoe-centenas-de-casos-de-assedio-e-xenofobia-em-portugal.shtml>. Acesso em: 22 ago. 2021.

This is quite clear in the case of Gisberta Salce Júnior, a Brazilian transgender woman murdered in Portugal in 2006. Immigrating from São Paulo to escape a wave of transphobic murders in São Paulo, she was a sex worker and entertainer who became ill with HIV and found herself homeless, taking shelter in an abandoned building in the city of Porto, Portugal. She was then brutally tortured and sexually abused by fourteen men, aged 12 to 16, and thrown in a 100-meters deep well while unconscious, where she would finally drown. In the sentencing of the perpetrators, the judge argued it was simply a "joke that went too far", and none spent more than a year in a correctional facility[200]. Much like Ângela Diniz, the Law not only allowed for her murder, but it *produced* her as this murderable victim, as the one so deeply removed from the realm of humanity that her death meant absolutely nothing.

In this short excursion, therefore, we were able to conclude that if the legal subject is rational, autonomous and "bounded", then women are not considered with those attributes and, therefore, even though the Law might formally admit her equality, the very foundations of the Law were created precisely from her exclusion and for her exclusion. Not only that, however - the Law has a key role in *producing* women as less-than subjects, to develop them as the very subjects it will marginalize. The question that remains, therefore, is very simple: How do those mechanisms produce exclusion?

In 1979, Brazilian singer Chico Buarque published the song *Geni e o Zepelim,* a ballad about a transgender woman who suffers relentless abuse from her neighbors because of her work as a prostitute. The song was written for a musical called *Ópera do Malandro*, written at the height of the military dictatorship and severely censored by the regime, and it was only through Buarque's literary genius that the real meaning of the song was hidden in between the lines. Geni is harassed, beaten and abused every day of her life, until a mysterious man driving a Zeppelin threatens to raze the city to the ground, unless Geni services him sexually. For the first time in her life, Geni tells someone *no*: she had no interest in the man. The very city that detested her begged her on their knees so she could secure their saving, and she was moved by the heartful requests, accepting the Zeppelin

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[200] RODRIGUES, Catarina Marques; COSTA, Andreia Reisinho. Gisberta, 10 anos depois: a diva transexual que acabou no fundo do poço. Observaor, 2016. Disponível em: <https://observador.pt/especiais/gisberta-10-anos-diva-homofobia-atirou-fundo-do-poco/>. Acesso em: 22 ago. 2021.

Man's proposal. And once he was done, subjecting her to a myriad of sexual acts that left her disgusted with herself, she went back home and tried to sleep, but could not: the day had risen, and the city inhabitants were back at her house, threatening to beat her for being a whore.

Gisberta embodied many of the vulnerabilities that made her body an open wound, someone whose boundaries mattered little and whose life even less: transgender, sex worker, immigrant and Brazilian. Thirty years after the story of Geni was sung in the theaters of the very city she ran away to escape death, it found her regardless, because she dared to live life in her own terms — the Law rejected her so violently it denied her a name, a home, an identity and, finally, any kind of justice. To this day, the legal subjects recognized by the Law haunt those who are deliberately excluded by it, singing *throw stones at Geni/ she was made to be beaten/ she is good for spitting/ she will fuck anyone/ damned Geni*!

3.2. The subject in the law

Greek mythology tells the story of a bandit named Procrustes, who had a house by a main road and offered hospitality to the passerby. When travelers accepted it, however, he laid them on a bed of a certain size, and stretched the short men or sawed off the limbs of the tall men to force them into this specific mold. The trick, however, is that Procrustes had more than one bed — therefore, no one could ever properly correspond to the standards he had set[201].

This tale becomes a particularly interesting analogy for our investigation into the legal subject. As we have seen, it becomes clear that the Law defines what sort of individual characteristics are necessary for one to be considered the subject of legal duties and legal rights. But we have also seen that not everyone fits into said characteristics — while our analysis was centered on women, it is not difficult to understand that deviating from those characteristics in any way, shape or form is enough for one to not be fully recognized as a subject before the law, in any particular way that defines certain marginalized communities.

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[201] APOLLODORUS; FRAZER, James George. The library. Cambridge, Massachusetts: Harvard University Press, 1921.

It might seem curious, then, that certain people need to *reshape* themselves to fit within the mold of a legal subjectivity. As Procrustes cut off limbs or stretched spines so his victims would fit a specific form, there are many people who need to stretch themselves thin or cut off parts of themselves to fit within the concept of a legal subject. If we are all equal under the law, why is it that some people must mutilate their own existences to be seen by it? And if this process is so painful, why do it at all?

Judith Butler[202] expertly notes that the desire to survive is pervasively exploitable. To *not* be legible under the law is to not exist at *all*. If Law regulates the possibilities of social interactions between persons[203], being *outside* of the Law means being *outside* of the realm of interaction, outside of the realm of recognition, and outside of the realm of *existence*. Frederick Pollock notes[204] that, at one point in English history, an *outlaw* ceased to be a legal subject and was outside of its protection, to the point where their murder was not a crime. Being an *outlaw* then means being under the threat of not-being.

In this sense, and if we take Foucaultian theory to be correct, this state apparatus upheld by the Law not only constrains the legal subject but produces the very subject it bonds. To be a legal subject, then, appears to mean simply to be a *subject* - or, as Butler[205] aptly puts it, to be someone who has been subjected to power. As she also states,

> Identities are formed within contemporary political arrangements in relation to certain requirements of the liberal state, ones which presume that the assertion of rights and claims to entitlement can only be made on the basis of a singular and injured identity. (...) Indeed, we might understand this contemporary phenomenon as the movement by which a juridical apparatus produces the field of possible political subjects.[206]

The foundation of identity politics, then — or, in this case, the part of identity politics that marks certain identities as *unrecognizable* as legal subjects — is precisely this constant production of subjects that can claim status as persons before the Law by a state which itself will "allocate

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[202] BUTLER, Judith. The psychic life of power: theories in subjection. Stanford: Stanford University Press, 1997. P. 7
[203] KELSEN, Op. Cit. 19. P. 3
[204] POLLOCK, Frederick. The history of English law : before the time of Edward I. Vol. 2. Indianapolis: Liberty Fund, 2010. P. 54.
[205] BUTLER, Op. Cit. 202. P. 2
[206] BUTLER, Op. Cit. 202. P. 100

recognition and rights to subjects totalized by the particularity that constitutes their plaintiff status"[207]. In other words, while the state produces the legal subject that it recognizes (rational, autonomous, and corporeally bound) it also produces those it does *not* recognize. The question here is not that there is a hidden or repressed subjectivity that can be unveiled away from the oppressive glare of the Law, nor one true subject to be discovered by chipping away the legal structures that define it in the aforementioned terms, but rather a construction that produces the very subject it creates.

It is important to make a distinction here. All people in the world are, one way or the other, *subjects*. They have all been impacted and produced by power and will continue to be so as long as they breathe. In fact, it is this exact continuous process of subjection that will unequally allocate the *precariousness* of certain lives and make certain subjects more vulnerable to arbitrary violence than others[208]. One aspect of this unequal allocation of precariousness is the unrecognition as a legal subject, making violence and dispossession easier on those that were not awarded the full protection of the Law.

In this context, the Law is not simply yet another tool for oppression, but rather the most important one. It is the Law who decides who is worthy of protection and who is not, and more importantly, it is the Law that legitimizes the unequal allocation of vulnerabilities. The very *nature* of the subject is vulnerable — human beings, against liberal claims to individuality, are deeply entrenched and intertwined with each other, and fundamentally dependent on one another to survive. Humanity by its very definition cannot exist, let alone thrive, on its own. People need connections, affections, reliable ways to source food and shelter; a human being left without any sort of human interaction for long stretches of time will suffer from severe and complex consequences stemming from exposure to such trauma. The legal subject, however, is the one for whom the Law will do the work to cover its inherent vulnerability precisely by exacerbating those same vulnerabilities for the groups pushed to the margins.

[207] BUTLER, Op. Cit. 202. P. 100
[208] BUTLER, Judith. Precarious life: the powers of mourning and violence. London: Verso, 2006. P. XII.

In this sense, Butler argues that the subject must then be investigated not as something that is tied to the individual, the corporeal unit of a human, but as a category in constant formation, a site invested in power and, therefore, a place where subversion, contestation and struggle can take place[209]. A critical evaluation of this subject must engage with three main points: the first, how regulatory power (and, in this case specifically, the Law) produces and exploits the vulnerability inherent to our need to continue living; the second, how such recognition and subjectivation is invariably limited and is accompanied by conflicting experiences and emotions that will mark the limits of the subject and finally, how the constant repetition of this process of subjectivation will enlighten possibilities that this repetition might be done *someway else* that disrupts this unequal allocation of vulnerabilities and precariousness[210].

We will address all three points in this work. For now, I am particularly interested in looking at the first point closer, or in how power produces and maintains our need for subjectivation and, consequently, the subjects we become. For this reason, we must temporarily lose sight of the subject who has already been located within this process to account for our own becoming, in all its uneasy repetition and the risks it entails, even though this account does not represent a process that comes *before* the existence of a subject and functions merely as a tool for understanding a complex process[211].

Cameroonian author Achille Mbembe in his seminal work *Necropolitics* argues that late political criticism has privileged hegemonic theories of democracy that have centered reason as the core element of modernity and the foundation of the idea of sovereignty. This is a relevant idea to discuss since in his perspective, this expression of sovereignty implies the production of a political body composed of free and equal individuals who are, as we have discussed earlier, self-understanding, self-conscious and self-representing. The differentiation between reason and unreason, therefore, becomes central to the idea of subjectivity, developing the modern-day subject as the one that possesses reason as their main truth and who is capable of articulating such reason in

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[209] BUTLER, Op. Cit. 202. P. 10
[210] BUTLER, Op. Cit. 202. P. 29
[211] BUTLER, Op. Cit. 202. P. 30

the public sphere. To exercise reason becomes to exercise autonomy, which in turn becomes exercising freedom, the cornerstone of modern political and legal systems.[212]

While this system has been the object of critique earlier in this work, it is important to reposition this narrative. The point of sovereignty is not the struggle for autonomy of free and rational subjects, Mbembe argues, but to instrumentalize human existence and allow for the material destruction of persons and populations. For this reason, it is important to shift our analysis from rationality to how this system, under the guise of protecting freedom and autonomy, is in fact structured around the control of more tangible categories, such as life and death, and thus the regulation the ones subjected to its power[213].

To understand subjectivation in such terms is to find oneself in a paradox — Foucault's use of *assujetissement* in this context, as Butler recounts, implies both the process of becoming a subject and the process of subjection. To inhabit this place of autonomy and rationality, one needs to submit to a power, a subjection which implies a radical dependency. This power, which subjects me into terms of intelligibility that I did not agree with, is nonetheless the power that will allow for my life to be recognized as a life, and therefore I am dependent on it to carry on living. This body, subjected to such conditions, will not only be the site where this raw *humanity* will be forged and shoehorned into a certain subjectivity, but is itself formed through a discursive matrix of a juridical subject.[214]

Butler notes here that to say that a subject is "formed" by discourse is a complex claim that must be properly distinguished from "causing" or "determining"[215]. To say subjectivity is discursively formed does not mean that this subject is made of *only* discourse, but neither does it mean that it is acting *on* some preexistent identity that is subsequently shaped into subjectivity. It means instead the very making of said subject through the regulations according to which it will be produced. This configuration of power not only acts as a form of domination, but also as avows the viable subjects under its discursive matrix. In other words, subjection is not only domination or only production, but it is instead a *restriction* in production, a restriction that is central for said

[212] MBEMBE, Achille. Necropolitics. Durham: Duke University Press, 2019. P. 67
[213] MBEMBE, Op. Cit. 212. P. 68
[214] BUTLER, Op. Cit. 202. P. 83
[215] BUTLER, Op. Cit. 202. P. 84

production and through which it takes place.[216] In this context, the Foucauldian concept of *biopolitics* — defined by Foucault as the function of power that will "ensure, sustain, and multiply life, to put this life in order"[217] and will consequently shelter or disavow life — becomes central to our understanding of the subject, precisely because it establishes the framework of such restriction.

It is important to note here that Foucault sees two main mechanisms for such framework to be established. Carol Smart recounts that the first stems from the *core* of power, such as Law and legal institutions. The second is the development of various *disciplines*, such as the organization of educational institutions, work rules and ethics, but also prisons and mental institutions. He seems to argue that while Law and institutions have not ceased to exist, they will eventually do so; Smart disagrees, seeing as the disciplines he identifies as emergent from political practices and academic investigation become increasingly connected with the center of power in order to draw its legitimacy. This can be very easily seen as when we understand how deeply connected to the Law are the disciplines that will analyze the economy, birth rates, longevity, housing, social security and migratory patterns, for example, since the State is dependent on such knowledge to enact its policies of inclusion and exclusion[218].

With the years, there has been an explosion of techniques that were developed precisely for achieving the subjugation of bodies and exerting control over populations, what Foucault will call *biopower,* or the way in which *biopolitics* will exert power and influence a society[219]*.* This arrangement of rules and ways of disciplining life, avowed and authorized by the Law and the State, is precisely what characterizes the right of death and power over life in Capitalism. Differently from the power of *killing* an unwilling subject, capitalist subjectivity molds it, disciplines it, engineers it into bodies that will function as cogs in economic machinery. Not only that, they also act as baselines for segregation and the unequal allocation of precariousness, guaranteeing relations of domination.[220] In this sense, Foucault states that "the adjustment of the accumulation of men to that of capital, the joining of the growth of human groups to the expansion of productive forces and the

[216] BUTLER, Op. Cit. 202. P. 84
[217] FOUCAULT, Michel. The history of sexuality: Volume I. New York: Pantheon Books, 1978. P. 138
[218] SMART, Op. Cit. 147. P. 8
[219] FOUCAULT, Op. Cit. 217. P. 140
[220] FOUCAULT, Op. Cit. 217. P. 4

differential allocation of profit, were made possible in part by the exercise of biopower in its many forms and modes of application."[221]

Foucault argues this is why the pre-modern forms of government and ruling, consubstantiated in the right to take life or let it be, were replaced by a power that fosters life or disallows it to the point of death[222]. Public policies that foster livability, such as mass vaccination campaigns, free schooling or affordable housing, are juxtaposed with those that disallow it, like hostile urban architecture, *favelization* or restrictions in public transportation. The Law will develop ways in which populations might be controlled, produced and engineered into living or dying.

Achille Mbembe argues that this appears to divide people into those who must live and those who must die, since the control of life and death presupposes a division and categorization of humans between groups with different characteristics, as well as the establishment of a biological discourse that will separate and hierarchize such groups[223]. For this reason, Mbembe argues that Foucault posits the sovereign right of the sword and the engines of biopower as central to the functioning of the modern state. It can even be seen as constitutive of state power in modernity, seeing as the state cultivates the management and disposition of life as much as the right to end it. [224] The example that he gives on this reading of Foucault is the Nazi state's consolidation of the right to kill, which would render it the archetype of a power that congregates several excluding characteristics as its core[225].

I would like to disagree with Mbembe to the extent that it is not the right to kill that the Nazi regime consolidated as much as it highlighted the possible extent of a disavowal of life. The difference might seem merely a matter of wordplay, but it is actually quite relevant. To kill means to end something that has lived and was a life. Death crowns the existence of a life, because while all that lives must die, all that died must have lived. To disavowal life, on the other hand, means to render it a not-life, something that by definition cannot die. This is Giorgio Agamben's conclusion

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[221] FOUCAULT, Op. Cit. 217. P. 4
[222] FOUCAULT, Op. Cit. 217. P. 138
[223] MBEMBE, Op. Cit. 212. P. 71
[224] MBEMBE, Op. Cit. 212. P. 71
[225] MBEMBE, Op. Cit. 212. P. 71

when, as he analyzed the testimonies of the witnesses of Auschwitz[226], he noted that the death in the camp was not as much a death as a ceasing to exist. The body that died in the camp had lost their lives and, in some way, "died" way before they would even reach the crematory ovens[227]. Whatever perished in the camp and went through the full process of dehumanization that the Nazi regimen had concocted was its true victim, in the extent that it was only at the point where it ceased to exist that the regime had succeeded in its goal to turn them into a non-life. Therefore, if the Nazi death and work camps are to be the archetype of the workings of power within the modern state, it is not because it solidifies the right to kill but rather because it consolidates the processes to disavow life. Modernity is not as much about killing as it is about negating death and, through it, eradicating life. In the words of H. P. Lovecraft, it is where even death may die[228]. This is exactly Foucault's point when he argues that:

> One might say that the ancient right to take Life or let live was replaced by a power to foster life or disallow it to the point of death. This is perhaps what explains that disqualification of death which marks the recent wane of the rituals that accompanied it. That death is so carefully evaded is linked less to a new anxiety which makes death unbearable for our societies than to the fact that the procedures of power have not ceased to turn away from death[229].

However, Mbembe is correct on his assessment that colonialism and slavery, two institutes that have walked hand-in-hand since the beginning of modern times, were the first instances of biopolitical experimentation. In the plantation, the slave is a non-life, whose death means property damages if only that much[230]. As Saidiya Hartman argued, any recognition of harm against a slave in the United States was not so much a recognition of injury caused to a person as it was a seeking of reparations for the devaluation of the value a property caused by said injury[231]. In the colonies, the

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[226] AGAMBEN, Giorgio. O que resta de Auschwitz: O arquivo e a testemunha (Homo Sacer III). Tradução Selvino Assmann. São Paulo: Boitempo, 2008. P. 63

[227] AGAMBEN, Op. Cit. 226. P. 77

[228] LOVECRAFT, Howard Phillips. O Chamado de Chtulhu. In: LOVECRAFT, H. P. Medo Clássico. Traduçao Ramon Mapa da Silva. Rio de Janeiro: Darkside Books, 2017. P. 137. I am not a fan of Lovecraft's writing not only for his outrageous racism, classist views and repetitiveness, but also for his problems with pacing, exposition and dialogue. Generally, I find that his interpretation of cosmic horror is not groundbreaking as much as it is simply a metaphor for his deep abiding fear of anyone with a skin color deeper than ivory. However, the line *"That is not dead which can eternal lie, / And with strange aeons even death may die"* perfectly captures the ambivalent reaction of modern capitalist society towards death and the disavowal of life. That I am using it to criticize all the Lovecraft held as his dearest values is merely an added bonus to this particular choice.

[229] FOUCAULT, Op. Cit. 217. P. 138

[230] MBEMBE, Op. Cit. 212. P. 74

[231] HARTMAN, Saidiya. Scenes of subjection: Terror, slavery, and self-making in nineteenth-century America. New York: Oxford University Press, 1997. P. p5.

native population were a question to be solved, a population to be managed and disavowed; from the brutal slaughter and enslavement of native indigenous peoples all over the Americas to present-day displacement, erasure and impoverishment, it becomes quite clear that the aim of colonialism was never to reach an end to its war on colonial resistance but to wage a perpetual battle to transform those communities into non-lives[232]. Said battle involves, for example, the prohibition of languages, the outlawing of traditional practices, the forced expropriation of traditional lands and, as evidenced by recent Canadian findings in Residential "schools", the separation of families and the forced conversion and disappearance of thousands of indigenous children.

In this sense, Mbembe locates the shift from an imperialism that installed itself through military expeditions to an imperialism that ensures its control over the dominated populace through the status given to those it defeated and conquered. Colonial occupation, therefore, one of the main pillars of capitalist modern society, involves delimiting and conquering an area forcibly, which will then be controlled and disciplined by the new set of social and material relations imposed by the colonizer. This new set of social rules is what produces the boundaries and hierarchies that will classify the different groups within the colonized society and, therefore, will allow for the differential allocation of precariousness that will characterize the marginalized. If, as we have discussed earlier, sovereignty is the instrumentalization of human existence, colonization becomes the exercise of sovereignty. In this sense, Mbembe argues that "sovereignty meant occupation, and occupation meant relegating the colonized to a third zone between subjecthood and objecthood"[233].

Mbembe's analysis here becomes important departing from this conclusion. Taking Foucault's idea of biopolitics one step further, he develops his idea of *necropolitics*, meaning not only the disavowal of life but the exposition to such disavowal. This means that under modern capitalist legal systems, certain lives are protected, and certain lives are disposable, and they are disposable precisely through their exposure to many ways to die. Suicide, starvation, aggression,

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[232] MBEMBE, Op. Cit. 212. P. 78
[233] MBEMBE, Op. Cit. 212. P. 79

disease are politically produced ways that will allow for the appearance of a death that is not quite death, but a ceasing to exist[234].

Biopolitics on its own does not account for this particular way of producing non-existences, but rather accounts for the ways that life is furthered and assumes that the absence of such institutes will determine a disavowal of it. Necropolitics, on the other hand, accounts for the various ways in which such lives will be actively disavowed, or the social engineering necessary to subject people to living conditions that strip them from all of their humanity[235]. Therefore, if biopower will discuss the avowing of life, necropower will discuss the proliferation of death, and they must be understood together if we are to retrace how certain subjects are produced as viable and protected in detriment of those produced as vulnerable and precarious. As Jasbir Puar argues, necropolitics acts on the borders of biopolitics and biopolitics, in turn, masks how closely connected it is to death to enable the proliferation of necropolitics[236].

While Mbembe wants, in line with Fanon, to understand how "today's form of necropower blurs the lines between resistance and suicide, sacrifice and redemption, martyrdom and freedom"[237], my questions veer off a different path. If the framework of production maintained by biopolitics and necropolitics produces a subject that might be exposed to death in ways that are irrevocable, and if we as marginalized people are allocated precariousness in ways that makes us even more vulnerable to this multiplicity of ways to further our deaths, why accept this at all? Why do we become attached to the very system that produces us as unequal subjects?

Like I have discussed earlier, human beings are vulnerable by nature. Our need for other people and for material conditions that will allow us to keep living becomes a vulnerability that can be and is exploited. Humans starve, thirst, feel pain; humans love, grieve, rage. All of those, which Butler will aptly call as ways of being dispossessed[238], constitute us politically as socially formed bodies, who are attached to others, in need of others, and constantly at risk of losing said

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[234] MBEMBE, Op. Cit. 212. P. 80
[235] MBEMBE, Op. Cit. 212. P. 92
[236] PUAR, Jasbir. Terrorist assemblages: Homonationalism in queer times. Durham: Duke University Press, 2017. P. 35
[237] MBEMBE, Op. Cit. 212. P. 92
[238] BUTLER, Op. CIt. 208. P. 23

attachments. Attached and vulnerable, we are exposed to others in ways that will make us be at a constant risk of violence because of said exposure[239].

This fundamental dependency on others, be it the known other I love and grieve for or the unknown other I am not aware but nonetheless depend on to keep myself clothed, housed, and fed, is not a condition that can be disregarded, no matter what self-sufficient discourse is furthered by capitalist ideals. While the ways in which this vulnerability will be addressed differ — which is how certain populations will be subjected to more arbitrary violence than others[240] — the inevitability of our vulnerability cannot be foreclosed or willed away by sovereignty. There is only so much *avowal* a life can receive, an avowal which attempts to obscure the depth of our dependency on others but collapses when we are faced with how easy it is to expose us to our demise. In this sense, Butler argues that:

> In a way, we all live with this particular vulnerability, a vulnerability to the other that is part of bodily life, a vulnerability to a sudden address from elsewhere that we cannot preempt. This vulnerability, however, becomes highly exacerbated under certain social and political conditions, especially those in which violence is a way of life and the means to secure self defense are limited.[241]

To speak of oppression without speaking of this primary condition of vulnerability becomes downright impossible, but to speak of the subject without discussing this primary condition also becomes increasingly complicated. If the subject is formed within discourse and will only achieve subject status within those specific parameters, this means that said subjects will be formed within what Butler will call "frames" that will allow them to be recognized as such. Subjects are constituted through norms that will facilitate or hinder our ability to quickly recognize them as long as they fulfill certain conditions of existence[242]. A life has to be understood as a life, has to be conformed to an overall idea of what a life even *is*, in order for it to be considered recognizable[243].

This highlights quite well the profound need that we have of the same systems that will marginalize us. To submit to the norm, to become a subject, means to become legible, recognizable;

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[239] BUTLER, Op. CIt. 208. P. 20
[240] BUTLER, Op. CIt. 208. P. XII
[241] BUTLER, Op. CIt. 208. P. 29
[242] BUTLER, Judith. Frames of war: When is life grievable? London: Verso, 2010. P. 3-4
[243] BUTLER, Op. Cit. 242. P. 6-7

this exposes our vulnerabilities and the ways in which we can hurt, things that are imposed on us precisely by this process of subjectivation. But to deny it means to not be recognized at all, to not be seen as *life*, to be seen as *nothing*. This is a worse predicament than being a marginalized subject because even in our marginalization our status as subjects guarantees us a place in this interwoven web of dependency. Even in our exploited precariousness we are still able to benefit from the visible and invisible network of people that sustain us materially and emotionally. To not be a subject means to not be, simply, and once again in Butler's words, the desire to survive is inherently exploitable. If vulnerability is the precondition for humanization, and if said humanization happens through this process of subjectivation, vulnerability is also inherently indebted to those norms that govern recognition before it can even be attributed to any subject[244].

Finally, after all this discussion, we must also comprehend that the Law occupies a different place within this production. Rather than being what decides what is legal and what is not, it must be seen as an instrument that can be applied and restrained at will[245]. And it is in this context that we must comprehend the legal subject, as yet another tool for this unequal allocation of precariousness, but also that which allows us to be viable under the law. To accept it means to submit to the trauma it causes; to deny it means to subject oneself to terrible harm. As Butler notes once more, anyone who holds the promise of continued existence will wield and control the subject through its desire to survive[246].

However, this abstract definition is not able to tell us how exactly Law will service power by targeting and managing certain populations, nor does it tell us why it discriminates on the basis of ethnicity and race. The suspension or the application of the Law in itself is a political exercise that shapes and conforms the world that we live in in concrete ways and cause material harm or award tangible protections [247]. Therefore, if this removal or granting of the Law is in itself a form of enactment of power, and if by reclaiming more from the Law we are in fact claiming for *more*

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[244] BUTLER, Op. CIt. 208. P. 43
[245] BUTLER, Op. CIt. 208. P. 83
[246] BUTLER, Op. CIt. 208. P. 9
[247] BUTLER, Op. CIt. 208. P. 68

subjection, the question we must answer is what sort of liberation, emancipation or empowerment can we expect from it.

3.3. The double-bind of legal subjectivity

As I have discussed earlier in this work, it was only due to the struggle and the relentless activism of Brazilian feminists that a legal landscape that considered "legitimate defense of honor" a reasonable ground for dismissing murder charges was transformed into a structure that recognizes and punishes domestic violence and femicide. The road until this point has not, by all means, been easy. In fact, it has taken the organized feminist movement a sentencing in the Interamerican Court of Human Rights for the Brazilian government to be pushed towards a comprehensive domestic violence legislation, the aforementioned Maria da Penha Act and Femicide Act. By discussing this effort and the legislation it brought forth, I am not trying to disqualify the very real, tangible effort Brazilian feminists have made towards this point. But considering all that we have discussed so far, I believe the domestic violence legislation available in today's Brazil highlights many of the issues that arise when we think about the Law's role of producing marginalized and oppressed subjects.

A mechanism such as the Maria da Penha Act, which has been considered by the United Nations as the third most advanced legal instrument against domestic violence in the world[248], does not act merely as a simple guideline for the imprisonment of abusers or the criminal procedure that must be undertaken in cases of domestic battery. While it offers clear definitions on domestic violence and abuse, it also sets protections for victims and increases punishment for perpetrators, and it establishes an increasingly complex network of police officers, specialized police stations, prosecutors, public defenders, judges, social workers, health care professionals and many others with the sole purpose of supporting people, but especially women, who have survived domestic violence. A few years later, in 2015, the Act received some robust backup - the Femicide Act, enacting even

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[248] GOETZ, Anne Marie, et al. Progresso das Mulheres do Mundo 2008/2009. Brasília: Onu Mulheres. 2010.

harsher punishments for gender-motivated killings. Had it happened today, Ângela Diniz's murderer would have received far worse than a slap on the wrist.

However, one of the greatest effects of the *Lei Maria da Penha* was exactly the cultural change that it brought about. Law can enact change not only through institutional means, but also by changing a community's mindset. Whereas before the law it was common to hear Brazilians repeat the popular saying of "*briga de marido e mulher, não se mete a colher*"[249] ("between a husband and wife's argument, you do not put in a spoon", in a literal translation, meaning roughly that one is not supposed to intrude in in a marital quarrel"), another took its place: *"Vou chamar a Maria da Penha"* ("I'm gonna call Maria da Penha").

Most of the success of the law came from the robust social security system it established and the massive investment in awareness campaigns. After the enactment of the act, all levels and branches of government started on aggressive campaigns to raise awareness on the existence of the law, on one hand, and the criminal nature of domestic violence, on the other. It is common to have prosecutors, police officers, judges, and public defenders giving lectures in schools, health care units and even in workplaces. They are adamant: between quarreling partners, you put in a spoon, three knives, five forks, the whole cutlery drawer, and more importantly, the authorities. Brazilian Law went from being tacitly accepting of honor killings to one of the most advanced legal systems of protection of domestic violence survivors in the world in a span of four decades.

A 2013 survey found that 98% of Brazilians had heard of Maria da Penha and 66% of those were familiar with its purpose. 86% believed that women who reported violence were acting according to the law and were within their right to do so. On the other hand, however, 85% believed women would expose themselves to further harm if they were to report their abuser, and 88% of the interviewees believed femicides to have increased in the previous five years[250]. Attuned to this perception, legal professionals understand the Act as central to the struggle against domestic violence, precisely for its expansion for the access of the battered woman to the legal system and the

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[249] Literally, "You're not supposed to put a spoon in between a quarreling couple".
[250] GATTEGNO, Mariana V.; WILKINS, Jasmine D.; EVANS, Dabney P. The relationship between the Maria da Penha Law and intimate partner violence in two Brazilian states. International Journal for Equity in Health, v. 15, 17 nov. 2016. Disponível em: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5112634/>.

overwhelmingly positive culture change it brought about. On the other hand, they also recognize that it still has weak spots, such as the inefficiency in the application of restraining and protective orders, lack of resources and funding for the social safety network needed, the lack of capillarity of the law in the most isolated places and, finally, the constant pressure of conservative sectors to delegitimize the law.[251]

Those surveys are important for two reasons. From the point of view of those working with the Act in practices all over the country, it shows the obvious challenges that it faces going forward. Despite popular impressions to the contrary, statistically femicides in Brazil have diminished since the enactment of the Maria da Penha act[252], but have not done so equally — while the femicides of white women were reduced, the femicides of Black women increased[253]. The geographical size of Brazil, the disparity in income and urbanization, and the difficulty of establishing a nation-wide plan that is able to take into consideration cultural, ethnic and economic differences posits the need for a constant evaluation of the Law so that its impact is continuously reviewed and improved.

On the other hand, the data available also reveals something quite interesting and that is more relevant to our current investigation than the needs of legal practice. It highlights this exact mechanism of the Law, which in order to include, to address, to support and to protect, it needs to individualize and conform the subjectivity at hand to a specific idea of the legal subject in order to be able to develop anything that resembles a public policy choice. The issue of domestic violence, as it is inserted into the Law as an object of its attention and concern, is not seen a direct consequence of a systemic misogyny, one that also benefits and supports the Law and it is upheld by it, but rather a matter of an interpersonal problem, something that concerns the affected parties only and not the entirety of the society.

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[251] MENEGHEL, Stela Nazareth *et al.* Repercussões da Lei Maria da Penha no enfrentamento da violência de gênero. *Ciência & Saúde Coletiva*, v. 18, n. 3, p. 691–700, mar. 2013. Disponível em: <https://www.scielo.br/j/csc/a/gZtYwLDYSqtgp7wGTTXHw4z/?lang=pt#>. Acesso em: 29 jun. 2021.

[252] ICERQUEIRA, Daniel *et al. 2048 AVALIANDO A EFETIVIDADE DA LEI MARIA DA PENHA*. [S.l.]: , [S.d.]. Disponível em: <https://www.ipea.gov.br/portal/images/stories/PDFs/TDs/td_2048.pdf>. Acesso em: 10 jul. 2021. P. 33

[253] SILVA, Ariane. Entre machismo e racismo, mulheres negras são as maiores vítimas de violência. Disponível em: <https://azmina.com.br/reportagens/entre-machismo-e-racismo-mulheres-negras-sao-as-maiores-vitimas-de-violencia/>. Acesso em: 10 jul. 2021.

This analysis is not new, but it manages to evidence well the two issues we have discussed so far. Not only women are not properly seen as a legal subject, and thus are forced into a mold that was not thought for them, but also it is this precise mold and this exact exclusion that will shape them into the identity of *woman.* In this sense, women *cannot* be equal to men because they are not *made* to be equal to men, and the answer the Law offers them, under the guise of progress, is to shift the blame away from them and onto someone else and call it equality. The Law, however, does not address the centrality of the argument, that women are disproportionately victims of domestic abuse because they are *made to be* unequal to men, a making that has the involvement of the very Law that claims to offer her protection.

The liberal foundations of Law, as Carol Smart expertly notes, despite being terribly limited in its ability to affect structural inequalities precisely because they are responsible for them, award themselves as the guide for legal and social policy, making it so that equality under the Law is the desired form of equality and that it might only be achieved through legal mechanisms. If liberal philosophy is convinced that Law is a neutral arbiter who will invariably protect the weaker side of a dispute, legal rights are seen as this protection and the goal of every social movement must be seeking an equality that will be translated as a right under the Law[254].

This is not news for the feminist movement in Latin America. Cecília Santos argues that one of the most marked tendencies of feminist struggle in Latin America from the 1990's onwards was the absorption of the most "digestible" aspects of feminist struggle by the State and, internationally, by International Organizations and Development Agencies. In fact, the question of the *woman* in development became a marked goal for the development of a country, and Women's rights a frequent flag for those that would advocate for interventions, explorations, or downright invasions of countries in the Global South. However, this incorporation meant additional challenges. The difficulty of getting said legal rights to be implemented through laws, and even when they are, that the mechanisms they projected to defend vulnerable women would constantly be under attack are obvious ones, but there is also the difficulty of ensuring that the interpretation of such laws would be done in a way that is befitting of the feminist thought that gave way to those norms in the first

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[254] SMART, Op. Cit. 147. P. 140

place. What becomes clear here is that the incorporation of feminist demands into the legal system is, in fact, a sort of translation that will always somewhat betray the original plight since it will allow certain demands and silence others [255], and what is silenced is, as we have discussed, all that escapes the rational, autonomous, and corporeally-bound nature of the legal subject.

As Sonia Alvárez notes, public policies are also institutionalized interpretative systems that will also partake in the Law's role in the construction of *women*. Public policy affects the way that the State will see the subjects under its control; more importantly, it is also able to shape this subjectivity even as it develops ways to allegedly protect them from harm[256]. Legislative measures such as the Maria da Penha act and its counterparts do not position the victim of battery as a citizen who has had her right to physical integrity and life threatened and, therefore, needs the Law to reinstate the equality between parties. Rather, the victim is positioned and constructed as a ward of the State, who will say that that body cannot be exploited in such terms, but will never say that that body will not be exploited at all. How can the Law say something of the sort? It is through the exploitation of the reproductive body that Capitalism will ensure its perpetuation, and it is this exploitation that produces the Law and it will be upheld by it.

The way that the Law leaves this dilemma, to answer for the demand for rights and the pressure from organized movements in a way that still ensures the core of the system will remain untouched is to, as Fraser notes, push for an individualization of a matter that is systemic and political[257]. The Law will add protections, shelters, facilitate access to medical treatment; the battered woman will be medicalized, tried, categorized, and disciplined psychologically. All of those are, simultaneously, invaluable instruments to secure the individual woman under the threat of violence but are also reproducing and consolidating a construction that positions women precisely as not quite legal subjects, subjects that are not fully formed and, therefore, always the weakest in a conflict. The Law and the State will occupy the place of a proper Husband, stepping in to protect that woman

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[255] SANTOS, Cecília MacDowell. Da delegacia da mulher à Lei Maria da Penha: Absorção/tradução de demandas feministas pelo Estado. Revista Crítica de Ciências Sociais, n. 89, p. 153–170, jun. 2010. Disponível em: <https://journals.openedition.org/rccs/3759>. Acesso em: 29 jun. 2021.

[256] ÁLVAREZ, Sonia E. ¿En qué Estado está el feminismo? Reflexiones teóricas y perspectivas comparativas. Estudios Latinoamericanos, v. 7, n. 12-13, p. 48, 17 jan. 2000. Acesso em: 1 maio 2021.

[257] FRASER, Nancy. Talking about Needs: Interpretive Contests as Political Conflicts in Welfare-State Societies. Ethics, v. 99, n. 2, p. 291–313, 1989. Disponível em: <https://www.jstor.org/stable/2381436>. Acesso em: 22 ago. 2021.

when her actual husband would cause her harm, a position that will immediately hide its hole in upholding the very systems that allow for domestic violence to take place. As Smart[258] notes,

> "(...) In engaging with law to produce law reforms, the women's movement is tacitly accepting the significance of law in regulating the social order. In this process the idea that law is the means to resolve social problems gains strength and the idea that the lawyers and the quasi-lawyers are the technocrats of an unfolding Utopia becomes taken for granted. In consequence while some law reforms may indeed benefit some women, it is certain that all law reforms empower law."

It becomes clear, then, that there is a marked problem in seeking to find emancipation and empowerment through legal practices. Changes in the Law might be important, and it is crucial to stop or at least mitigate the immediate violence women endure. However, no only such changes are limited in scope and reach, but they also reinforce the very system that allows this violence to take place. As Carol Smart notes, attempting to construct a feminist jurisprudence does not decenter Law, but rather reinforces it, and it reaffirms that Law is a legitimate arbiter in possession of truth and justice. It encourages, moreover, the constant search for the law when in need of solutions. While a feminist jurisprudence and legal theory might start from a challenge to the Law, it will invariably end with a positivistic feminism that will replace one hierarchy of truth with another[259]. In doing so, feminism will become yet another tool of oppression; if what is socially constituted as a woman is dependent on many factors such as race, sexual orientation and mainly on colonial perspectives of womanhood, this hierarchy of truths will smother other ways of articulating gender and violence, other ways of interacting with the State and with the Law, and other ways of existing as a woman. Again, in Smart's[260] words:

> (...) The growth of legal rights which can be claimed from the state has induced the concomitant growth of individual regulation. Hence rights can be claimed only if the claimant fits the category of persons to whom the rights have been conceded. Hence the state must have a detailed knowledge of each individual in terms of marital status, employment status, citizenship status, age, sex, legitimacy, contributions records, and so on. In order to claim rights the individual must fit into the specified categories; the rights are not basic rights but formal rights and conformity to specification is a prerequisite for exercising such rights.

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258 SMART, Op. Cit. 147. P. 161
259 SMART, Op. Cit. 147. P. 89-90
260 SMART, Op. Cit. 147. P. 162

Smart affirms, and I believe her to be correct in her assessment, that the feminist movement is all too willing to heed to the “siren’s call” of the Law, by holding the belief that new law or more law is better than old laws or no laws[261]. This, in her view and also in mine, is naive. Law is not the only mechanism to enact change, no matter how important it is; it will not, under any circumstances, solve problems that lie at the root of its very existence. Not only that, but Law’s legitimation of women’s rights is all too easily taken away, and one does not need to look very far to find examples of right-wing movements against abortion laws, against domestic violence and against women’s empowerment[262]. The USian Violence Against Women Act of 1994 did not even need a cohesive right-wing movement to be written off — it expired on its own in 2019 with no perspective on when or even if it is ever going to be reinstated[263].

On the other hand, it is counterproductive to deny the sheer impact of the Law in providing almost instantaneous relief to women and marginalized people under threat of violence. There is a symbolic aspect of illegality that is undeniable; to say that something is wrong, that it is illegal, and that there is an entire apparatus of the state dedicated to fight it has a psychological and social impact that cannot be understated, undermined or foregone. In the same vein, it is impossible to believe we will ever get rid of the Law as a foundation of society, and it seems quite selfish to ask of women, and especially the most marginalized of them, to wait in suffering while the feminist movement tries other methods to solve their problems. Pain, like hunger, is urgent, and the time of political change is not always as expeditious as human lives need it to be.

Joan Scott attempts to offer a way out of this paradox. She argues that placing those two perspectives as opposites is to lose sight of the ways in which they can be interconnected. Rather than going for one or for other, the best outcome is a perpetual tension between what secures us and what binds us, which will invariably achieve the best results that are, nonetheless, still incomplete and tentative. The best solution in her view is to recognize the danger of seeking a single answer or a

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[261] SMART, Op. Cit. 147. P. 160.
[262] SMART, Op. Cit. 147. P. 81
[263] FANDOS, Nicholas. House Renews Landmark Domestic Violence Bill, but Obstacles Wait in Senate. The New York Times, 2021. Disponível em: <https://www.nytimes.com/2021/03/17/us/politics/violence-against-women-act.html?action=click&module=RelatedLinks&pgtype=Article>. Acesso em: 22 ago. 2021.

totalizing solution, since this antagonism between those two perspectives are the what politics is made of[264].

Let us go back to the Maria da Penha example. The shift in cultural perception on domestic violence was definitely important, but it comes directly from an understanding that it is *against the law* to use women's bodies in such ways. It does not address the wrongness of exploiting women's bodies at all, and I know it does not. It reinforces the power that Law wields over our bodies, and I know that it does. This knowledge, however, has never stopped me from calling the police on family members, neighbors, and even friends, whenever I witness a situation of violence. It has never and it will never because the present-day pain speaks louder than the long-term comfort. Therefore, this is the conundrum we, as feminists, find ourselves to be: to use the Law as the medium through which we, as women, must voice our demands for recognition means to adhere to the same system that locks us in this place of exploitation. As Stubbs[265] notes, while the liberal ideology of the Law requires that it provides women and other marginalized groups with some degree of protection every once in a while, such as with the Maria da Penha Act its general function still remains to confine the exploited to its place of subjugation. How to escape this deadlock, then? How to resist the very system that binds us, but also makes us?

Black Brazilian singer Elza Soares, one of the most characteristic voices of the 21st century, has a tragic personal history of losses, abuses, and domestic violence. Notoriously, she suffered a great deal at the hands of her second husband, Garrincha, one of the most famous soccer players in Brazilian history. His biography was never tainted by his violence, but hers was; despite being an incredible singer, Elza was often associated with the violence she spent most of her life under the threat of. A renowned samba singer and a favorite of my parents and grandparents, Elza released her album *Mulher do Fim do Mundo* in 2015, the first of new releases after a decades-long career of being an interpreter and the first time where the songs were written with her life in mind. Pitchfork

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[264] SCOTT, Joan W. O enigma da igualdade. Revista Estudos Feministas, v. 13, n. 1, p. 11–30, abr. 2005. Acesso em: 22 ago. 2021.
[265] STUBBS, Margot. Feminism and Legal Positivism. Australian Journal of Law and Society, v. 3, n. 6, p. 63–91, 1986.

argued that "You don't need to understand the Portuguese to feel the weight of her words "[266]; NPR added that "It's like after decades of strolling along as an object, the girl from Ipanema finally marched over, grabbed the guitar and sang her own wild desires".[267]

I tell the story of Elza Soares for the same reason why I told the story of Angela Diniz. I knew Elza's voice from the records and tapes of my parents from the crib, and I also knew she was a victim of domestic violence since I was old enough to understand what those words meant. I thought her sad, sorry, worn. But in 2015, one of the tracks of her album was Maria da Vila Matilde, where she sang as a woman who, under the threat of violence, called the Maria da Penha hotline for help. She mocks her abuser, exposes his deepest and darkest secrets, lets everyone know that that man is a batterer and makes sure he is shunned from their community. In Pitchfork's words, "she sounds exhausted, worn out, run into the ground by sorrow. But in every click in her voice, in every catch in her throat, there is also defiance"[268].

This defiance was not given to her by the Maria da Penha Act. This defiance was there before, it was there besides, and it was there despite. There was something in her that resisted the destiny that was given her, as a Black and poor woman hailing from the Rio de Janeiro favela. There is something in all of us that resists this overarching power of the law telling us how and when our pain is valid and how this pain might be heard. And suddenly all that I thought about that woman changed — what I thought a worn out figure was a pillar of ultimate strength, her knees digging deep into the soil of the earth and refusing to move. The key for our emancipation might lie on that part of us that refuses to be swallowed by the law; that part which might even remain hidden, or even suppressed for decades on end, only to be let out as a defiant scream singing, in Elza Soares' voice, *"you're going to regret ever raising your hand to me".*

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[266] SHERBURNE, Philip. Elza Soares: A Mulher do Fim do Mundo (The Woman at the End of the World) | 8.4. Pitchfork, 2016. Disponível em: <https://pitchfork.com/reviews/albums/22173-a-mulher-do-fim-do-mundo-the-woman-at-the-end-of-the-world/>. Acesso em: 22 ago. 2021.
[267] MERCER, Michele. Music Review: "Woman At The End Of The World," Elza Soares. NPR, 2016. Disponível em: <https://www.npr.org/2016/06/20/482832762/music-review-woman-at-the-end-of-the-world-elza-soares>. Acesso em: 22 ago. 2021.
[268] SHERBURNE, Op. Cit. 266.

4. Women as the Abject of Law

When I was a child, I called my mother a witch.

It was not derogatory. For reasons we could never really understand, instead of using "mom", I would call for my "witch", something my parents thought was hilarious and were slightly disappointed when I grew out of it. In 1990's Brazil, whatever idiosyncrasies I accumulated (and there were several of them) were the least of my parents' concerns. Food was expensive, the economy was fluctuating, the political scenario was not favorable, and many other things occupied their minds; I suppose whatever unprovoked quirk I developed was a welcome relief to the harshness of Latin American living in those years.

This is to say that I was obviously obsessed with witches. I watched all the witch movies, I read all of the witch books, I was enthralled by the evil queens and witches turning into dragons and unleashing their rage as fire and thunder. I dressed up as a witch for Carnival, I had witch-themed birthday parties. There was something that pulled me towards the figure of this mysterious woman, wielding powers beyond human comprehension, living a life that was far more interesting to me than a happily ever after, fade-to-black, roll-the-credits, end-of-story.

Playing make-believe was always an interesting experience. I pretended to have magic, to bend the universe under my might. I pretended I could see it all: present, future, and past, unfolding in front of me like a book waiting to be written. I controlled the winds, I caused rain, I brought out the sun. In my childhood, I was as much a witch as my mother, and as her mother before her, and that was my biggest source of pride. I was loud, curious, brash, overly excitable, gullible, naive, too smart for my own good — but most of all, I was myself. And I was mine.

In reality, the world is not a kind place for witches and it has not been for hundreds of years. I struggled with friends, with focus, with keeping my interest in the mundane, something that in hindsight was simply a neurodivergency that went undiagnosed until my mid-twenties. The loudness of me was what bothered people the most, I remember: a teacher once told me that a pretty girl was a quiet girl, and that as long as I kept making noise people would think I was horrid and ugly and no one would ever like me. That I dared to want to occupy some space in this world, no matter

how little it was; that I had a voice I wanted to be heard was a flaw that had to be pushed out and hidden. Who I was was ugly and disgusting, and the more I left my house and interacted with the world, the more witches seemed alluring; the more hated, the more wretched, the more powerful, the more I loved them with a passion so fierce it ached deep in my bones.

Witches, however, are never meant to persevere. This is part of the fairy tale happy ending; the witch is defeated, and must be defeated, in order for the prince and princess to live happily ever after. I knew this too. My parents might have indulged me, but the truth of the matter is that they willed themselves to forget this: it is a cruel world that we live in, and it is not a place for witch-children to roam about.

When Simone de Beauvoir famously said one is not born, but rather becomes a woman[269], we often forget that becoming is a process rooted in pain. If caterpillars could talk, they would surely tell how painful the chrysalis is; they would moan in pain as their bodies dissolved into something far more appealing and yet far more fragile. If they could remember, they would surely resent the change — even though it is the beauty of this post-chrysalis being that makes us less inclined to kill a butterfly. But maybe nature has been kind to insects in a way the world has seldom been to human women, because they might not speak, but they also do not remember.

But I do. And I have a mouth and tongue and teeth. The chrysalis of womanhood is a scar that aches when it gets cold, misaligned bones creaking when the sky threatens rain. The process of becoming a woman is painful, torturous; it means breaking bones, chucking off flesh, and rearranging skin. In order to forsake the witch, I have learned silence, I have learned patience, I have learned the flourishes of language that would not allow a "no" to become a death sentence. I have learned care and affection. I have learned how to concern myself with the details necessary to sustain life and to make myself agreeable. I have learned how to smile when my rage threatens to engulf my whole being, I have learned the horror of being trapped within a body used for someone else's pleasure. And yet I am constantly learning, constantly molding myself, constantly stumbling on this becoming. The true horror of womanhood is realizing there is no leaving this chrysalis, but I was

[269] BEAUVOIR, Op. Cit. 35.

cursed with memory, and I remember the little girl who wished she was something powerful enough to resist all of the forces pushing her shoulders to buckle her knees. That little witch is beating at the walls of my psyche, begging to be let out; to howl, to cackle, to ponder, to resist. She is loud and brash, and she is so very angry, and every single day I wake up and I tell her *no*.

I tell this narrative for a couple of reasons. The first is that the question on why certain people are not entirely seen as people has always concerned me, as it was my experience growing up managing a series of identities that awarded me more or less privilege and demanded certain adaptations on my part. My struggle with my hair, for instance, was intimately connected with a need to be "pretty", but in a way that fit a specific colonial white supremacist standard that demanded hair to be straight when mine was anything but. On the other hand, it highlights something that is important for the continuation of this work: there is always something within ourselves that resists assimilation. It has been some years of trying to work myself around standards of recognition as a human, but the witch is still here, talons digging into my ribs and making a meal out of my lungs. She hurts and she is violent and yet I cannot let her go.

Foucault argues that where there is power, there is resistance, but it is never a resistance that is positioned outside of power. Rather, the resistance to power in his view is not a single cohesive movement, but a multiplicity; we contest power in different points by confronting, subverting, deconstructing and reshaping those power relations that bind us together. In this sense, our resistance can never be thought to be external, nor can they be a single defining moment of revolt that will uproot the entire system. Foucault argues in this sense that

> There is no single locus of great refusal, no soul of revolt, source of all rebellions, or pure law of the revolutionary. Instead, there is a plurality of resistances, each of them a special case: resistances that are possible, necessary, improbable; others that are spontaneous, savage, solitary, concerted, rampant or violent; still others that are quick to compromise, interested, or sacrificial; but definition, they can only exist in the strategic field of power relations. But this does not mean that they are only a reaction or rebound, forming with respect to the basic domination an underside that is in the end always passive, doomed to perpetual defeat[270].

[270] FOUCAULT, Op. Cit. 217. P. 95

If we as subjects cannot be constituted outside power, our resistance cannot be constituted outside of it either. The same logic can apply to the legal subject. If we are all subjected to the rule of the Law, our resistance needs to be thought as an exploration of its cracks and crevices, to the point where the possibilities for change come from subversion and resignification rather than a complete upheaval of existing structures or, on the other hand, relying on reforms to achieve some marginal improvement in our lives. The question that remains to be answered here is how to destabilize the law from within, and I believe the answer may as well be found in that witch resisting assimilation, still living in the back of my mind seething at any attempt at normalization thrown her way.

But what is this resistance made of? Once again, I agree with Butler when she argues that to understand how power produces the subject and how this subject might resist the very power that constitutes it, one must investigate the domain of psychic subjection. The purpose here is not only to understand how such power acts on the psyche, but also how it is precisely through this acting that it is under the constant risk of being misdirected. This is to say that power, working through the psyche to enact subjection, functions in ways less explicit than coercion, becoming formative to the subject; on the other hand, it also becomes vulnerable to psychic and historical change[271].

Turning to psychoanalytic theory proves useful in order to understand how exactly this resistance might exist within the psyche of the subject. Elizabeth Grosz reminds us of the basic triad of the Ego-Id-Superego in Freud, where the Id is the unencumbered desire, the Superego is the internalization of morals and social norms concerning our behavior, and the Ego, the *self*, is the mediator between the two urges: one that seeks to completely obey the rules of society and another that seeks to completely disregard it in favor of unabridged pleasure and instant satisfaction[272]. The superego houses the ego-ideal, the idea of who the subject should *be*[273].

Lacan will rearticulate this in a way that will position this ego-ideal within the symbolic, or the order within his triad of imaginary-symbolic-real that will inscribe the subject within language and, thus, within available schemes of cultural intelligibility. The subject that emerges from this web

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[271] BUTLER, Op. Cit. 202. P. 21
[272] GROSZ, Elizabeth. Jacques Lacan: a feminist introduction. London: Routledge, 1995.
[273] BERNE, Eric. A layman's guide to psychiatry and psychoanalysis. New York: Grove Press, 1975. P. 96

of meaning will be produced at a cost, and whatever resists the imposition of normativity will be pushed into the unconscious realm. If the psyche includes the conscious and the unconscious, it is different from and exceeds the subject, since it also contains everything all that exists beyond the limits imposed by the discursive demands of subjectivity. The psyche is what resists regularization and normalization[274]. In this sense,

> Those discourses are said to imprison the body in the soul, to animate and contain the body within that ideal frame, and to that extent reduce the notion of the psyche to the operations of externally framing and normalizing ideal. This Foucaultian move appears to treat the psyche as if it received unilaterally the effect of the Lacanian symbolic. The transposition of the soul into an exterior and imprisoning frame for the body vacates, as it were, the inferiority of the body, leaving that inferiority as malleable surface for the unilateral effects of disciplinary power. I am in part moving toward psychoanalytic criticism of Foucault, for I think that one cannot account for subjectivation and, in particular, becoming the principle of one's own subjection without recourse to a psychoanalytic account of the formative or generative effects of restriction or prohibition[275] .

What we can understand of this is that being subjected to power forms our psyche in ways that force us into conformity, but also create the very resistance that struggles against such bonds. This resistance exists within our psyche, the vector for the action of power, and is pushed aside the more power acts on the subject. In a way, we are formed by power but we exceed it, and so power can never totally capture subjectivity due to the very nature of its functioning.

Bringing this to the legal subject, however, proves to be a challenge. If the very production of the subject also produces the resistance against it, it means that the production of the legal subject produces that which will resist against such making. Therefore, no one can fully be a legal subject, because there will always be a part of ourselves that will resist assimilation and normalization by the Law. If the psyche is that which exceeds normalization, what can we call what exceeds the legal subject’s constraints? And, more importantly, what sort of subversion can this resistance bring forth?

In order to answer such questions, I want to look at this space of resistance that emerges from the formation of the subject. What does it look like, how does it behave, and more importantly,

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[274] BUTLER, Op. Cit. 202. P. 86
[275] BUTLER, Op. Cit. 202. P. 87

why is it not embraced? What about this resistance is so dangerous that we would prefer to be attached to terms that are injurious? How can this resistance be understood in opposition to legal subjectivity? And, most of all, what tools do this resistance hold that will allow us to subvert those structures from within?

If we are to understand construction in such terms, as Butler questions, we might also ask how those constraints on the production of subjectivity produce not only the subjects that are intelligible, but also subjects that are unthinkable and unlivable; it is not a matter of opposition, but a matter of exclusionary formation, since this resistance that rises from the formation of the subject seems to be precisely what is coded as impossible, unlivable, unacceptable. In fact, the characterization of this resistance *as* impossible seems useful to protecting the foundations of this productive power. Subjectivities are formed and this excess remains outside of its borders, haunting its domain as "the specter of its own impossibility"[276].

In the late medieval period, a form of *memento mori* funeral art that became somewhat popular amongst the upper classes was a *cadaver tomb*, a form of burial effigy. Instead of displaying the actual likeness of the dead, the cadaver tombs were carved to look like a decaying body, sometimes depicting maggots, exposed bones or sunken facial features. This was a way to somewhat guilt the living to offer prayers on the behalf of the dead's souls. Some of them contained the Latin inscription *eram quod es, eris quod sum,* meaning "I was what you are, I am what you will be"[277]. The cadaver tomb was meant to disrupt the living with the image of the dead, to force them to think on the fleetingness of life; it was also designed to accumulate prayers for the souls of the departed so they would reach paradise. Some of them resisted time and can still be seen today, beseeching us to pray on their behalf by stating the obvious truth that all that is living will one day die.

The borders of subjectivity are much less defined and much less stable than what we would like to believe. Just as death is one misstep away from the living, to be on the side of that resistant excess is as easy as breathing — that those borders are shifted in deliberate efforts to render bodies as

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[276] BUTLER, Judith. Bodies that matter: on the discursive limits of "sex." London: Routledge, 2014. P. XI.
[277] WELCH, Christina. For Prayers and Pedagogy. Fieldwork in Religion, v. 8, n. 2, p. 133–155, 26 nov. 2013. Acesso em: 22 ago. 2021.

possible or impossible depending on political needs is nothing new. The borders seem to be an interesting place to view this resistance and to understand in which ways it functions both as a gatekeeper and a threat, and how certain bodies are produced into this odd position.

The witch inside my mind is made of the limbs I have cut off and the spine I have twisted in order to make myself understandable. She is gruesome and hideous; it is difficult to look at her for too long. But much like the cadaver tombs scattered around Europe, she holds my gaze and grins, says: I am what you will be, you are what I was. But the breaking point here is not quite death. The moment where I feel her closer is when the reality of being a woman hits me and I am left with clenched teeth and trembling fingers, a rage boiling the marrow of my bones, and I can hear her calling upon all the charms of Sycorax inside my mind, threatening to raze it all to the ground, brimstone and divine judgement against those who dared to confine me to this eternal chrysalis of existence, and it would be so *easy* to let her out.

But I cannot. To let her speak means to let my own subjectivity be threatened by that which exists beyond its boundaries, something that is out for blood and wants, more than anything, to collapse my sense of self, the same sense of self that confines me to this exploitation. The witch is what resists assimilation, that which was too much to be comprehended within the confines of the Law, and must be locked tightly inside my mind so I can be intelligible. To let her take over is to become an *outlaw.* You can call her madness, if you will. You can also call her *abjection*.

4.1. On abjection

In the Mantiqueira Mountains, one of the many mountain ranges within the State of Minas Gerais, the city of Barbacena rises from one of its peaks, standing at an altitude of 1,160 m (3,806 ft) above sea level. Barbacena is one of the largest producers of roses in the country, earning the nickname of *City of Roses*, but its notoriety comes from the large number of psychiatric institutions it houses, which earned it the moniker *City of Madness*.

In 1903, Barbacena was chosen as the location for the construction of the Hospital Colônia (*Colony Hospital*) for its altitude and climate, which is considerably colder than the surrounding

areas and was thought to be ideal for the treatment of psychiatric illnesses. From its foundation until it ceased its activities in the mid-1980's, the hospital was the largest institution of its kind in the state and one of the largest in the country, frequently receiving patients from all over Brazil. The arrival of patients via train was so common the local population called it the *trem de doido*, or "crazy train". At its peak, the hospital housed over five thousand patients, between men, women and children — The only problem, however, was that those five thousand patients were committed to a hospital designed to house, at most, two hundred.

Barbacena is a beautiful, quiet city, but there is nothing in the tranquility of its landscapes that denotes the scale of the human disaster that was the Hospital Colônia de Barbacena. Life in Brazil is full of such jarring juxtapositions; a place with good coffee, nice people, beautiful scenery and incredible waterfalls was also the setting to what Brazilian historians and psychiatric activists call the Brazilian Holocaust.

Brazilian journalist Daniela Arbex notes that using comparisons to the holocaust is, at the very least, a tone-deaf comment on one of the largest crimes in world history. But she also argues, and I agree, that there is simply no other word left to describe what was hidden within the walls of the Hospital Colônia[278]. Over sixty-thousand people lost their lives there; the majority was buried on a cemetery on the grounds, but some of the dead (1,853 between 1961 and 1980, to be exact) were sold to schools of medicine throughout the country, offering prices so low the institutions would battle each other for first purchase. When the market became oversaturated with corpses, the ones that were not sold would be dissolved in acid buckets on hospital grounds, their bones cleaned and sold as specimens. In total, the Hospital profited an estimated R$ 933.379 in corpse sales alone, and that figure does not include the bones and organs sold as separate anatomic pieces[279].

Death was profitable in Barbacena simply because there was so much of it. Up to seventeen people died every day — some of hunger, some of tuberculosis or typhoid fever, a great deal of cold. Patients were housed in warehouses with no heating and no beds, only piles of straw, a deliberate

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[278] ARBEX, Daniela. Holocausto brasileiro. São Paulo: Intrínseca, 2019. P.10.
[279] ARBEX, Op. Cit. 278. P. 80. The value has been properly updated, since Brazil changed currencies many times before the enactment of the Plano Real in 1994.

choice by the hospital directors to ensure more space for more people and thus, more funding. With temperatures reaching 0ºC (32F) or even lower during winter, patients slept in piles in order to share body warmth. There were no proper clothes, simply a single pair of light blue denim shirts and pants for each person. If the patients needed to have it cleaned, they were forced to walk around naked, which only amplified their exposition to the elements. Food was a stew of beans, rice and some meat on a good day, all of which was ground up to bits since knives were not allowed and served on aluminium bowls that were seldom washed. There were no plumbing or sanitary facilities, and the patients drank the sewer water that flowed freely into the hospital patio where they spent the day, before being ushered inside to sleep or, in most cases, to die. Vultures were constant over the building, where the dead piled, and hope withered.

If the conditions of living were not enough, the treatment offered for the patients were another issue altogether. Security guards, and not nurses, administered medication; most of them, being illiterate, learned how to use colors and shapes to differentiate the pills that would calm the patients and those that would render them unconscious, and would decide without any medical education the dose and the frequency of medication. Electroconvulsive therapy was used as punishment, usually performed by workers with little to no training, and were so frequent and so intense the sessions would often cause power outages for the entire city of Barbacena. Scottish showers, physical and sexual assault, forced sterilizations, medical experimentations, beatings, and many other forms of torture were daily occurrences, and pregnant patients would often cover themselves in their own feces to protect their unborn child from the same abuses.

The conditions of the Hospital Colônia were documented on three separate occasions: in 1961 by photographer Luiz Alfredo, in 1979 by filmmaker Helvécio Ratton for the documentary "Em Nome da Razão" (*In the Name of Reason*) and again in 1979 by photographer Napoleão Xavier. The three of them are unanimous that while the photos and videos are shocking, they are lacking the most important factor: the smell. They describe an odor of dirt, excrement, sewer water and sweat, but also something deeper. If fear and despair had a smell, it would be what they felt at the Hospital Colônia[280]. It was so pungent that journalists, researchers and unseasoned doctors

[280] *Em Nome da Razão.* Belo Horizonte: Quimera Filmes, 1979.

would gag, eyes watering, immediately compelled to recoil from the scenes unfolding in front of their eyes. It was so viscerally wrong that their bodies recoiled in horror, but either they got used to it, or they would not last a day in the job they decided to take. For most of the workers at the Colônia, withstanding that horror was the only way to feed their families back home.

I bring forth the story of the Hospital Colônia for three main reasons. The first is that it highlights very well the concept of *abjection*, in all its difficulty and elusiveness. Abjection, in its simplest terms, refers precisely to that which the body revolts against, hurls and gags in an effort to distance the witnessing subject from the offending sights. While the term means, quite literally, “what is thrown away” (from Latin, ab- ‘away’ + jacere ‘to throw’), it has also been explored in philosophy as that which disturbs conventional identity and is what culture will exclude in order to sustain itself, which is as tempting and fascinating as it is disgusting and revolting[281].

On the other hand, however, the case of the Hospital Colônia offers an interesting way to think not only how abjection is politically constructed, but also how *political abjection* works. I say this because an estimated 70% of all patients in the Colônia did not have any mental illnesses; most of them were sent there because they were alcoholic, got on the wrong side of someone politically relevant, were homosexual, were raped by their bosses and got pregnant, or even were dumped there by husbands willing to live out their days with a younger lover. Barbacena was not a place for madmen as much as it was a place for the socially excluded. Blacks, indigenous, poor, beggars, homeless, all of those characteristics were plain markers on why someone would be thrown into that hospital, never again to leave, and why did the hospital work for as long as it did under the conditions it offered.

Finally, as we have discussed before, the case of the Hospital illustrates quite well how the Law will not only permit the exclusion of certain marginalized communities, but also *encourage* it. The Hospital was not a private institution, but rather a public one, funded with government money with the specific purpose of prohibiting the “insane” from occupying the same places of polite society. The law that instituted it, State Law nº 290/1900, specifically instituted that the Hospital

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[281] CHILDERS, Joseph W; HENTZI, Gary. The Columbia dictionary of modern literary and cultural criticism. New York: Columbia University Press, 1995.

must have a section for the isolation of those considered "suspect" and a room for electrotherapy, both treatments that would be applied according to governmental judgement. The idea of the mentally ill or socially undesirable as dangerous would be reified in with the Decree nº 1.579/1903 and again with the State Law nº 961/1927, which considered public health as part of the Secretary of Public Safety. The same law, firmly rooted in eugenic perspectives, explicitly stated that there was a need to eradicate and isolate the mentally ill. This was the legal foundation the government would utilize to justify its decision to replace beds with piles of straws in 1959 and was also the reasoning for the constant sweeps on impoverished areas to isolate the homeless, the substance users, the unemployed and the poor. As we have argued since the beginning of this work, there is no exclusion that is not avowed by the Law — therefore, studying the ways in which it allows for such abhorrent conditions is a key aspect in understanding its role in perpetrating marginality.

There is also something else underlying this particular choice. Whenever we discuss great tragedies or great abject horrors, we think of war trenches, concentration camps, or airplanes flying into skyscrapers. These tragedies are mine because I am human, but these tragedies are *not* quite about me. They happened too far away, too long ago, to people who bear no connection with me or my family. But Barbacena is difficult to discuss *because* of how woven my own life is with its existence; it is too connected to my present, my work, my travels, my affections, and it shatters the divisions between myself and the past. I do not know much about the people outside of my immediate family, but I know they were exactly the people Barbacena held in its vice grip, holding tightly even after death. The hospital held people like the ones that brought me to this earth: the forgotten, the poor, the unimportant, a litany of erased names, a cacophony of silenced voices, of people who died with no one to remember that they even existed. In a way, Barbacena is my land, my birthright and my future tomb, and I carry it with me, a perpetual weight on my back. I want to scream it from the rooftops. I want to take it to my grave.

Barbacena highlights a particular kind of abjection that envelops us living in the Global South. The pain we bear and the dead we bury cause no major impact in the world; if much, it is simply a headline solidifying our position as undeveloped and savages under the eyes of the North, reifying the need for our exploitation and our subjugation. Had Barbacena happened in France or the United States, the whole world would have mourned its dead, but since it happened in the

countryside of Brazil, the sixty thousand people who died there did not, and will not, be cause for collective outrage. There will be no homages, no exhibitions, no days of remembrance. Eduardo Galeano said, in The Open Veins of Latin America, that every year, "*without making a sound, three Hiroshima bombs explode over communities that have become accustomed to suffering with clenched teeth*"[282]. This silent suffering too is a form of abjection, and denouncing the ways in which the degradation of humanity becomes commonplace in the South is a necessary effort in order to confront the category of abjection against its own colonial roots.

But what *is* abjection, after all? In order to discuss it properly, we must begin by identifying the two main forms abjection takes. First, there is abjection as a psychoanalytic category, one that would explain the formation of psychosis or melancholia as argued by Julia Kristeva. However, abjection is not controlled and maintained by a single individual, which is why we must also understand abjection in its political sense, using George Bataille as a starting point. Then, I want to look at the issues that are posed by the adoption of this category from a decolonial perspective, so that we might have a proper foundation to understand the subversive power it holds and how we can wield it for our own means without falling into the trap of reifying our place as what Franz Fanon would call the "Wretched of the Earth"[283].

4.1.1. Psychoanalytic Abjection

Elizabeth Grosz notes that for the majority of contemporary philosophy authors, the body is fundamentally central for the study of power because it is the site where the relations of power and resistance occur. In terms of feminist scholarship, this importance is renewed and reinforced, since feminists are acutely aware of the role the body plays in inscribing an oppression and a discrimination upon a material surface. While we must not favor the reductions of the body to the status of ascetic object that is simply described by science, it is nonetheless important to understand this *material* site as necessary precondition for the development of subjectivity, seeing as the subject is produced by

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[282] GALEANO, Eduardo. Open veins of Latin America: Five centuries of the pillage of a continent. New York: Monthly Review Press, 1997. P. 5

[283] FANON, Frantz. The wretched of the earth. New York: Grove, 2002.

social and institutional practices that will attribute physical significance to biological structures. Therefore, the placement of the body within a larger scheme of signifying systems is the necessary condition for a somewhat stable identity for the subject to emerge, as well as allow the regulated production of discourses to take place[284].

This is precisely the reason why the body is so closely regulated by the State and the Law. If the body is the site where such subjectivation will take place, the Law must ensure that this is a fertile ground for normalization rather than a barren land. Therefore, the Law must constantly avow or disallow certain uses of the body, in ways that Smart notes will unite what Foucault understands as institutionalized power and disciplinary power[285]. Certain *practices* will be allowed and encouraged, while some will be discouraged and forbidden. This disposition of the body by the Law allows for the continuous influx of subjectivating forces to unceasingly exert pressure on this material surface.

In this sense, instead of understanding the body within the Cartesian dichotomy of mind/body, Grosz argues that those preoccupied with the body as a site of power must understand the fundamental interdependence between mind and body, as well as the need to theorize about what the body's exterior and interior means for this inscribing of power. In order to understand how the psychic interior of the body is externalized in ways that will exceed its normalization, Grosz traces a timeline of psychoanalytic theory and its conjectures on the ways in which the subject's psyche is interwoven with the representation and the material conditions of the physical body[286].

Beginning with Freud, there is a direct link between the structure of the ego and the child's investment in their own corporeality. In his view, the ego's identification with other humans, but most importantly with the child's mother, swaddles them in the illusion of a coherent and unitary body. This will subsequently form the groundwork for Lacan's understanding of the mirror stage and the imaginary identifications with others. In this collective fantasy of a cohesive identity

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[284] GROSZ, Elizabeth. The Body of Signification. In: FLETCHER, John; BENJAMIN, Andrew (org). Abjection, melancholia, and love: The work of Julia Kristeva. London: Routledge, 1990. P. 81

[285] SMART, Op. Cit. 147. P. 8

[286] GROSZ, Op. Cit. 284. P. 82

centered in a stable and well-defined material body, the person is able to fashion itself as a subject that occupies and is contained within the space of a singular corporeal unit.[287]

It is important to define this idea of the mirror stage to elucidate our understanding of abjection. Noelle McAfee explains that in Lacanian theory, subjectivity rises when the child catches a glimpse of themselves in a mirror at any point between six and eighteen months of age, and understands that single, cohesive image to be a reflection of their unitary self. While this is a false identification, since the self and the reflection are not the same, this nonetheless aids the child in developing a sense of unity within themselves. This solidifies that the self is its own being, separate from other beings, and organizes what was perhaps a disordinate flush of experiences and feelings into a single I[288].

This is an important concept for Julia Kristeva. While she agrees that the mirror stage is about consolidating the idea of bodily unity, she argues that even before this stage the child will begin a process of separating themselves, precisely because this coherence can only be established if said child develops borders between the "I" and the others. This pre-mirror stage process of delimiting borders of the self is what she will call *abjection*, or a process of expelling a part of oneself that is intrinsically tied to other people or, evem, foreclosing what was once part of oneself, that which was inherently tied to another for survival[289].

Despite having undergone this difficult transformation, the self is never too far removed from the abject, for its absolute horror. In this sense, Kristeva will differ from Freud in that the *abject* is not *repressed*. Freud believed the denial of the subject's desires and its subsequent push into the realm of the unconscious was a necessary precondition for the emerging of society and civilization; therefore, as long as such desires did not reemerge and remain cloistered within the unconscious mind, it would pose no threat to the self. Kristeva, on the other hand, sees the abject as that which

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[287] GROSZ, Op. Cit. 284. P. 82

[288] MCAFEE, Noëlle. Julia Kristeva. New York: Routledge, 2004. P. 46

[289] MCAFEE, Op. Cit. 288. P. 46. There has been a substantial amount of controversy regarding this, since Kristeva argues that the body of the mother is the site of the very first abjection, which is rejected by some feminists as a reifying of the maternal body as horrendous. I suppose there is some merit to those claims, since it is only *because* disgust and abjection create the womb and birth as disgusting that this is seen as traumatic in the first place; However, I do not think it is a claim that can be adopted uncritically either.

borders subjectivity, never straying too far from consciousness to be entirely forgotten. There is no "out of sight, out of mind" with the abject precisely because it is never too far away from sight or from the mind. We are constantly reminded of our deep abiding necessity of the other, and the position of vulnerability that this implies[290].

This is an ambiguous predicament to be in. We both yearn for the return to a simpler state, where all of our needs were met without needing to voice or communicate our demands (a pre-verbal stage of development) because we feel as if there is always something that language cannot quite convey, a sense of completeness that eludes us whenever we use language to articulate our needs. On the other hand, to go *back* to this stage is to give up our sense of individuality, wholeness, completeness, cohesiveness; we are perpetually afraid of that which might breach the barrier between our subjectivity and the external world. This paradox of conflicting psychic needs ensures that that which was cast *out*, the abject, is not a simply passing stage of development but a constant in our lives, forever tempting us with the promise of security and terrorizing us with the certainty of obliteration[291].

This is also why the Law becomes such an alluring figure for this anguished subject. It establishes a collective fantasy that we are all fundamentally independent and we will be treated as such, while simultaneously going to great lengths to hide this inherent vulnerability. The legal subject, in this sense, is able to provide a false sense of security by determining that there is no threat to individuality as long as we are consistently within the expectations of autonomy, rationality and corporeal boundness. Since those attributes are connected with the idea of Humanity, as we have seen, we convince ourselves that Humanity is only that which is recognized by the Law, in its sanitized iteration and interpretation. However, not even this fantasy can hide this abjection from ourselves, because we are all deeply aware that the conditional recognition of the Law does not foreclose the possibility of our own vulnerability. The predicament then is transferred from the realm of the psyche to the realm of the Law – the possibility to be engulfed by the abject becomes synonym with the possibility to be cast out of the realm of legal recognition.

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[290] MCAFEE, Op. Cit. 288. P. 49.
[291] MCAFEE, Op. Cit. 288. P. 49.

With this in mind, we might understand the relevance of a psychoanalytic account of the embodiment of power in the body, precisely by accounting for all the ways in which it must physically be assigned meaning so that the subject might develop a stable position as a unit[292]. This process of delimiting a subject is one deeply embedded into cultural and moral parameters, but also in *legal* normatives that will avow or foreclose the possibility of existing in certain ways. When the Law outlaws homosexuality, for example, it acts as the medium through which those societal expectations will be inscribed upon that body; it is thus marginalized, medicalized, and criminalized. However, the *removal* of homosexuality from the realm of the *criminal*, but the denial of access to marriages and adoptions becomes a partial avowal: the homosexual body can exist, but only in the ways allowed by the Law.

All of those factors will be responsible for the ways in which a subject will understand themselve as a *person*, including the material and physical ways that this body will be determined as socially appropriated. Therefore, to account for the corporeality is to account for how it is circumscribed, delimited and produced, but also to account for what of this corporeality is excluded from the process of psychic subjection[293].

In this context, Elizabeth Grosz ponders that the notion of abjection in Kristeva offers a glimpse into this period at the threshold of the child's acquisition of language. In this sense, abjection provides a clear sense of the inscribing of psychic domination over the body, as soon as certain material things begin to elicit a physical reaction to what is considered improper, dangerous and unclean, a definition that is inherently dependent on cultural, legal and societal ideas of what *is* proper, safe and clean. These are the parameters that will allow for a coherent subjectivity to emerge by understanding, through language and speech, that there are certain *ways* in which one can be and certain ways they cannot. The ability to exist in certain spaces depends on disavowing certain modes of existing, modes that are intrinsically tied to the subject's very formation and that, thus, are never entirely banished[294]. This is what Kristeva means when she writes, in *Powers of Horror*:

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[292] GROSZ, Op. Cit. 284. P. 85
[293] GROSZ, Op. Cit. 284. P. 85
[294] GROSZ, Op. Cit. 284. P. 85

> There looms, within abjection, one of those violent, dark revolts of being, directed against a threat that seems to emanate from an exorbitant outside or inside, ejected beyond the scope of the possible, the tolerable, the thinkable. It lies there, quite close, but it cannot be assimilated. It beseeches, worries, and fascinates desire, which, nevertheless, does not let itself be seduced. Apprehensive, desire turns aside; sickened, it rejects. A certainty protects it from the shameful-a certainty of which it is proud holds on to it. But simultaneously, just the same, that impetus, that spasm, that leap is drawn toward an elsewhere as tempting as it is condemned. Unflaggingly, like an inescapable boomerang, a vortex of summons and repulsion places the one haunted by it literally beside himself.[295]

Expelling the abject is a process that precedes and opens the way for language and inscription of that subject upon the order of the Symbolic, but it is also a byproduct of it; in its excess, it looms over the newly-minted subjectivity, a cliff from where the self is always threatening to slip into. Just as we feel the sudden urge to jump when facing the abyss, so does abjection extract a violent physical reaction from us, the social inscribed onto the material surface of the body causing its guts to react violently upon the sight of what is considered socially unacceptable, unclean. This violent reaction, furthermore, will be utilized to outlaw certain modes of being and try to expunge them from reality through the force of the Law. To exemplify this, Kristeva mentions her disgust at the thin skin that forms on top of boiled milk:

> I experience a gagging sensation and, still farther down, spasms in the stomach, the belly; and all the organs shrivel up the body, provoke tears and bile, increase heartbeat, cause forehead and hands to perspire. Along with sight-clouding dizziness, nausea makes me balk at that milk cream, separates me from mother and father who proffer it. "I" want none of that element, sign of their desire; "I" do not want to listen, "I" do not assimilate it, "I" expel it. But since the food is not an "other" for "me", who am only in their desire, I expel myself, I spit myself out, I abject myself within the same motion through which "I" claim to establish myself[296].

While her example was about this particular food, we are all familiar with this specific feeling she recounts. Certain foods, smells, tastes, textures will activate a certain irrational reaction of our biology that makes us recoil violently from the offending object. Certain animals and insects will provoke a virulent reaction that seems to come out of the deepest layers of our guts; we shrivel away, goosebumps raising the surface of our skin. This reaction, albeit involuntary and seemingly innate to our biology, is nonetheless explained by Kristeva as pertaining to abjection. It is important to

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295 KRISTEVA, Op. Cit. 4. P. 1
296 KRISTEVA, Op. Cit. 4. P. 3

clarify here that the skin of the milk or any other source of abjection does not *signify* the space of rejection, but rather, and with every other thing that might elicit a violent reaction of disgust, *shows us* what we permanently thrust aside in order to live; feces, excrements, maggots, certain textures and certain smells remind us of that border of our own subjectivity, one that must be violently expelled if we are to remain living[297].

This is where the Law becomes an instrumental tool for the expulsion of the abject. We utilize the Law to uphold minimum standards against certain sources of abjection — it is through the Law and the State we forbid the sale of rotten food and the utilization of public spaces for defecation, for example. What the Law will comprehend as minimum standards of living can also be comprehended as an attempt to push this abject away from a legally structured society, and thus this expelling will only happen in a societal scale if it is backed by the Law as the object of a prohibition.

In this sense, the abject is a necessary condition of the subject by presenting the borders of our identity, but it is simultaneously the place that must be expelled by the subject to maintain the coherence of said identity. Grosz explains that even when the subject is at its most coherent, it is always at the brink of the abyss, simultaneously terrified of the height and feeling drawn to the fall. This is a place of formative potential, but also a place of potential obliteration — abjection is the basement of the Symbolic, that which must be cast away and contained. The Symbolic might attempt to hold it in the dungeons of the psyche, but it haunts, tempts, looms; it is our primordial relation to death, the corporeal, to the impossibility of eternity, simultaneously the subject's recognition and refusal of this material corporeality. It is, in the end, the impossibility of clear divisions and ascetic borders. The abject is the permanent remembrance that order, rules and norms are not enough to sharply divide the subject from the unclean, the improper and the disorder, something that is even more particularly disturbing to the Law and for those who depend on it to assert their individuality and integrity[298]. For this reason, Kristeva argues that:

> It is thus not lack of cleanliness or health that causes abjection but what disturbs identity, system, order. What does not respect borders, positions, rules. The in-between, the ambiguous, the composite. The traitor, the liar, the criminal with a good conscience, the

[297] KRISTEVA, Op. Cit. 4. P.4
[298] GROSZ, Op. Cit. 284, P. 89

> shameless rapist, the killer who claims he is a savior.... Any crime, because it draws attention to the fragility of the law, is abject, but premeditated crime, cunning murder, hypocritical revenge are even more so because they heighten the display of such fragility. He who denies morality is not abject; there can be grandeur in amorality and even in crime that flaunts its disrespect for the law-rebellious, liberating, and suicidal crime. Abjection, on the other hand, is immoral, sinister, scheming, and shady: a terror that dissembles, a hatred that smiles, a passion that uses the body for barter instead of inflaming it, a debtor who sells you up, a friend who stabs you.[299]

There is no shortage of examples of abjection available. In fact, this dual nature of both attraction and repulsiveness is thoroughly explored in art, literature, cinema and many others. Our obsession with serial killers and true crimes, or even our enjoyment of media that uses body horror, gore and gratuitous violence as its main themes, such as the *Saw* movie franchise, the *Resident Evil* game franchise, or the infamous movies *A Serbian Film* and *Human Centipede*, prove that we are obsessed with this looming thing as much as we are terrorized by it. This can also be seen in the ways that the Law is obsessed with legislating over the abject, as if enough norms and rules could ever permanently push it aside. Kristeva herself admits that this characteristic of the abject provides fertile ground for a sublimating discourse, rather than a scientific one[300]; she conducts an investigation on how this is worked in literature in *Powers of Horror*.

However, I am quite interested here in how abjection can be weaponized as a tactic of dehumanization, and especially so as a tactic of legal exclusion. While we will look into political abjection more closely in forthcoming paragraphs, it nonetheless feels relevant to understand *how* this exposure to abjection works to reinforce that certain people are *not* quite human and therefore not quite a subject. It is important here to go back here to the Hospital Colônia de Barbacena, to exemplify this exact feeling of revulsion evoked as an instrument of dehumanization that happens through the avowal of the Law.

By forcing the human to live *in* abjection, rather than just bordering it, their sense of identity and self are shattered, and what was once a cohesive subject becomes enveloped by this state that disavows it from their very humanity. In the case of Barbacena, abjection was the main tool for the dehumanization of inmates, and understanding it seems to provide an important background to

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299 KRISTEVA, Op. Cit. 4. P. 4
300 KRISTEVA, Op. Cit. 4. P. 7

understand how the abject, by being the border of subjectivity, can encroach on that which was still alive in ways that completely shatter one's sense of personhood.

Kristeva will distinguish three main categories of abjection: food, excrements and sexual difference. The visceral reaction to things in these categories signals bodily functions that are outside of the realm of rational consciousness and cannot be accepted, but cannot be denied either, and will represent a body that is punished by a virulent physical reaction to that which is unable to ignore[301]. This provides a roadmap for understanding this weaponization of abjection. How do those three categories work to encroach upon the human body? What is the result if we let abjection rule uncontested?

Beginning with oral abjection, Kristeva understands this as a refusal of the corporeal limits of the self. What is ingested will become part of the body - therefore, many cultures establish specific taboos and rules regarding the edible and the inedible. This can be seen in Abrahamic religions, for instance, in their rulings on what foods might be consumed and what foods are off-limits to the believers[302], but it is also extremely common in the majority of religious beliefs. In the African-Brazilian faiths, specifically in Candomblé, the practitioners have food restrictions based on the Orixás they are consecrated to, called *Quizilas*[303], or anything that goes against the energy (*axé*) of that particular deity. For example, a believer consecrated to the Orixá Ogum will have a *quizila* on okra, while another believer consecrated to Oxóssi will have the *quizila* on bee honey.

The *quizila* is a particularly interesting example because it is believed that upon initiation in the faith, the child of a certain Orixá will develop a deep loathing of those forbidden foods, a visceral rejection they did not experience when they were a simple visitor of Candomblé. The belief is that as soon as the initiate, or the *abiã,* is aligned with the energy of their "pai-de-cabeça", their guiding Orixá, they will immediately understand that particular food as *impossible to be absorbed*, which will often lead to those violent physical reactions associated with abjection, such as retching and

[301] GROSZ, Op. Cit. 284, P. 89
[302] GROSZ, Op. Cit. 284, P. 90
[303] Quizila is also used colloquially, meaning something or, most times, a person who causes a visceral aversion for no particular reason. Another thing that is important to note is that while some Umbanda centers are more aligned with Candomblé practices and might believe in the *quizila*, the absence of *quizila* in the belief system is one of the major differences between the two.

gagging. The connection to the deity establishes another limit on the subjectivity, almost as if consuming the food would be a direct attack on the soul.

If food is such an important part of the construction of this subject, to the point where culture will develop rituals that will cleanse it from its perceived impurity and determine what is edible and what is not, to force someone to eat food considered inedible is a way of reinforcing that that individual is dirty, impure and, therefore, outside of the realm of humanity. This is why food production and its presentation is so tightly controlled by the Law, and why it is such a prominent site of control and a form of discipline. Providing food is humanizing; withholding it or serving food that is not appealing is a direct attack on subjectivity.

For this reason, the Brazilian 1988 Constitution considers the right to balanced meals to be a fundamental pillar of social life. However, that does not stop the utilization of the constitutional command for the providing of food when citizens cannot do it for themselves as yet another form of dehumanizing the oppressed, this time with the avowal of the Law. The Law doesn't say *humanizing* food, but rather *nutritious* food, which is a marked difference that is thoroughly exploited. In a notorious case, the then Mayor of the City of São Paulo, João Dória, tried to distribute a processed form of protein balls in lieu of providing food, which activists denounced as being akin to the distribution of human feed. In his defense, he argued that "poor people do not have food choices. They have hunger, and will eat whatever will end it"[304]. Of course, people pushed to the extremes will most certainly accept whatever they can get; this does not mean that the deliberate serving of poor food is not a tactic of dehumanization that uses the Law, in this case, as a justification.

This too was case in the Hospital Colônia de Barbacena. As Daniela Arbex reports, the food in the Hospital was atrocious. While rice and beans are a staple of the Brazilian diet, the hospital kitchen would use 120kg (264lbs) of rice and only 60kg (132lbs) of beans per day to feed approximately five thousand people. The two grains were boiled together in a pot without any spices

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[304] BETIM, Felipe. João Doria e arcebispo de São Paulo: "Pobre não tem hábito alimentar, pobre tem fome". El País, 2017. Disponível em: <https://brasil.elpais.com/brasil/2017/10/18/politica/1508347385_718583.html>. Acesso em: 23 ago. 2021.

or salt, and since it was too little to feed so many people, the black water of the stew was thickened with cassava flour. Inmates had their meals from an aluminum tin, sipping straight from the rim the foul-smelling, tasteless soup, and had to wash their own dishes in sewer water[305]. More than once, freshmen doctors arriving at the Hospital were convinced the kitchen was making pigwash for the hospital's swine livestock, only to be completely taken aback that the swill was served to the patients instead[306].

Sueli Aparecida Rezende, one of the most prominent inmates of the Hospital, wrote a rhyme that is still remembered to this day by the survivors of the institution. Sueli herself was recorded singing it in the documentary *Em Nome da Razão*, where she was filmed at the place where she had been committed to since she was a child. In it, she appears as a young woman of twenty-five, some teeth gone due to the poor nutrition and hygiene at the Hospital. Before telling her story to the camera, she sings: *Mr. Manoel, have some compassion/ Take us all from this prison/ We are all dressed in blue/ Washing the patio and barefoot/ Here comes the food of the inmates/ Raw rice and beans with no salt/ And after that comes the pasta/ It looks like glue to fix balls/ And after that comes the dessert/ Rotten banana over the table/ And after that come the women nurses/ that are the cheapest of the whores*[307].

To eat is a necessary part of life. Before being born, we are fed through the umbilical cord, the ultimate mark of our dependence on other humans. After birth and as we grow and age, food becomes a major concern — we learn how to eat it, when to eat it, what to eat and what to discard. There is a lot of power that can be exerted through food and the access to it; after all, starvation is a technique that can be used to, among other things, to facilitate genocide, control or weaken a

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[305] ARBEX, Op. Cit. 278. P. 43
[306] ARBEX, Op. Cit. 278. P. 214
[307] *"Ô seu Manoel, tenha compaixão/ Tira nós tudo desta prisão/ Estamos todos de azulão Lavando o pátio de pé no chão/ Lá vem a boia do pessoal/ Arroz cru e feijão sem sal/ E mais atrás vem o macarrão/ Parece cola de colar bolão/ Depois vem a sobremesa/ Banana podre em cima da mesa/ E logo atrás vêm as funcionárias/ Que são umas putas mais ordinárias."* "Seu Manoel" is a reference to José Manuel de Rosa Lucinda, one of the Hospital's directors who was notoriously cruel to the patients.

population, enact ethnic cleansing or impose collective punishment[308]. Food is consumed by the body and is partly absorbed, partly refused, and what is absorbed becomes, in a way, part of the self.

In this sense, it is important to note how food was a major part in the destruction of this woman's subjectivity. Food and the abuse Sueli went through as a child in order to get it was the reason she was sent to Barbacena in the first place. When there was food to be offered, it was something most people would consider inedible, disgusting, foul. If part of that swill was absorbed and became the self, it is possible to understand that part of the self *became* that gruesome meal, that garbage, that *abject*. By forcing the inmates to eat what society would deem uneatable and impure, the Hospital reinforced the abjection of its patients, breaking down the barrier of the psyche that differentiates the subject from that which the subject must never allow to be absorbed and, thus, shatters the division between subject and abject.

The opposite end of food consumption is, of course, excretion. Corporeal wastes are the second category of abjection in Kristeva, where she will define bodily fluids, waste, and refuse of any kind as the trigger for a horror and disgust at our inability to accept the materiality of the body. Every ingestion presupposes an absorption, but it also presupposes an excretion — something that, much like the abject, cannot be incorporated into the self and must be expelled. For Kristeva, this means that the subject is not quite ready to accept the natural cycles of living, which includes the bodily fluids it produces, but also the ultimate defilement, which is death. This waste is the reification of the impossibility of the complete cleanliness of the subject, because no matter how much it seeks to purify itself, it will always *produce* the impurity as a condition of its material existence[309].

As we discussed earlier, waste was abundant in the Hospital Colônia. The hospital was poorly cleaned and overpopulated, so that the waste was everywhere — feces and urine of both humans and rats crowded the floor, the patio and the rooms where the inmates lay. Open sewers ran through the patio and were the only available water for washing, drinking and bathing; the collective

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308 CONLEY, Bridget; DE WAAL, Alex. The Purposes of Starvation. Journal of International Criminal Justice, v. 17, n. 4, p. 699–722, 1 set. 2019. Disponível em: <https://academic.oup.com/jicj/article/17/4/699/5721410>. Acesso em: 29 jul. 2021.
309 GROSZ, Op. Cit. 284, P. 91

bathtubs were filled with feces and urine instead of water, and there the patients would wash themselves[310].

It is important here to remind that the State was entirely to blame by the conditions in the hospital not by neglect, but by deliberate decision. As mentioned before, the head of the Neuropsychiatric Assistance Department in the State of Minas Gerais, José Consenso Filho, proposed the removal of beds and their substitution for piles of straw. This means that the Law saw the inmates as figures so distant from humanity that not even the right to a proper bed and dignified rest had to be guaranteed, which lead to the horrid sleeping conditions in the Hospital's pavilions. This form of abjection was not only allowed, but it was *fostered* by the Law[311].

Excretions take place because the body cannot absorb all that it consumes. Feces, specifically, mark the threshold of the division between body and not-body. This refuse marks the other side of consumption; this material that is produced by the body but nonetheless must be expelled if it is to continue living marks not only that the material borders of the body are permeable, but also that this permeability gives way to an unacceptable *defilement*, positioning the body on a perpetual edge of the *uncleanliness*. Excrement is the ultimate proof that this body is not able to be entirely clean and immaculate, and as a result, it must be cast away and erased from view in order for the human to remain cohesive in its fantasy of hermetic individuality and material cleanliness. In this sense, corporeal fluids become a reminder of what resists assimilation in ourselves, or a materialization of the abject.

When forced to live amongst its own excrement, then, this subjectivity is pushed away from this space which is clean and towards a place beyond the border of the subject, amongst the visceral reminder of the impossibility of a totally autonomous subjectivity. If excrement is that which reminds us of that excess that will refuse to be assimilated into the self (hence the name), living in waste means becoming that excess, becoming that space where normalization will not reach, and *becoming* the abject.

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[310] ARBEX, Op. Cit. 278. P. 52
[311] ARBEX, Op. Cit. 278. P. 24

Forcing the inmates to live amongst their own filth is yet another way to destroy this subjectivity that was, one way or another, still somewhat coherent before institutionalization. It seems odd to say that it *broke their spirit*, but this is precisely what this pushing *away* from subjectivity will do — no longer intelligible, an abject made flesh by bathing in urine and feces, this is a non-subject, one that can be submitted to the greatest of horrors and, ultimately, killed or left to die without any repercussions. That this was a deliberate choice of the State, upheld by a Law that does not see the inmate as human, should not be a cause for surprise.

In this sense, Kristeva argues that the ultimate form of corporeal abjection is the dead body. It is a border that has found the heart of life and overtaken conscience and reason, and questions the stability and control of the ego over itself while being an unrelenting reminder of the impermanence and fragility of the self. It is intolerable precisely because it is at the edge of life[312].

Universally surrounded by taboos and rituals, the practices meant to "cleanse" or "purify" that corpse are made to prevent the tainting of the living, while simultaneously defiling those that perform them in such cultures. An example is the *burakumin* in Feudal Japan, the lowest caste in the society who received degrading treatment precisely because of their role handling the dead[313]. The same understanding can be seen in Judaism, where the contact with a corpse is the highest form of defilement according to the Mishnah[314]. Kristeva sees the corpse as the border that has encroached on everything, the ultimate destruction of a barrier constantly under attack through the expulsion of excrements which allows the abject to overcome that subjectivity[315]. The necessity of purification, then, is for the living — this corpse provokes a defilement of the highest degree on the community it belongs to and must be thoroughly cleansed and purified in order to allow the living to carry on.

There are two possible analyses to be done on how the corpse, specifically, is also able to be weaponized to provoke abjection. On one hand, living alongside corpses is abjection, as the living is forced to share their space with the utmost reminder of their impermanence. This could be seen

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[312] GROSZ, Op. Cit. 284, P. 92

[313] WAGATSUMA, Hiroshi; DE VOS, George. Japan's Invisible Race: Caste in Culture and Personality. California: University of California Press, 2021. P. 18

[314] NEUSNER, Jacob. The Idea of Purity in Ancient Judaism. Journal of the American Academy of Religion, v. 43, n. 1, p. 15–26, 1975.

[315] KRISTEVA, Op. Cit. 4. P. 4

clearly at the Hospital Colonia, since the daily death rate was so high, especially in winter months. While morning revealed many corpses amongst the barely living, there were also many other ways to die throughout the day. Malnutrition, exposure, electric overload by deliberate misuse of Electroconvulsive Therapy, badly conducted lobotomies and physical and sexual assault were amongst the many possible causes of death. Many of the death certificates note the term "enteritis of the insane", or acute diarrhea caused by the conditions of internment which killed around sixteen people per day[316]. Living alongside death, therefore, was inevitable, as it was inevitable to be defiled by the familiarity of a corpse, denied any ritual or any access to clean themselves from its impact.

There is something else, however, that can be understood by investigating the Barbacena corpse. Agamben mentions that the Auschwitz's *Musselman* was the inmate who was completely taken by the cruelty of the camp; in the throes of malnutrition and exhaustion, it signified not the threshold of life and death but the division between human and non-human[317]. Therefore, the *Musselman* never really quite died, since death is what is reserved to the living and these inmates could hardly be said to be living before perishing, and precisely for this reason their dead bodies were not called *corpses*, but *Figuren*, dolls. The move away from humanity took away the inmate's ability to die, and thus their corpse would not even be considered as such. This means that the corpse of that particular human is not quite as impactful because it was abject before its heart stopped, and if overarching abjection strips the self of its humanity, then it also strips the corpse from its threat. It is no longer a powerful defiler, but rather a material that can be stored away or even sold.

This is a progression important for the case of the Hospital Colônia. The dead were so plentiful that the cemetery on hospital grounds, called Cemitério da Paz, simply could not absorb more bodies by the 1980's, and it was deactivated. The smell of rotten flesh and the onslaught of scavengers looking for food in the poorly-built graves had become a constant source of complaints by the surrounding communities. The number of "insane" dead was not necessarily a problem until it began to threaten the "sane" living, which required inventive solutions, such as the sale of corpses.

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316 ARBEX, Op. Cit. 278. P. 81
317 AGAMBEN, Op. Cit. 226. P. 55

The corpse of the Hospital, then, was not a corpse as much as it was a resource to be sold. There was no ritual purification or cleansing — this corpse, which was non-human, could be exploited in a way that stripped it of whatever little meaning it could still possess. Vomited by an oversaturated earth, sold to be dissected until it disintegrated and quartered and preserved without their consent, the sixty-thousand dead of Barbacena did not die: they were forbidden to live.

It is important to note here that, once again, the corpse and bone trade happening within the walls of the Hospital took place with the complete avowal of the Law. In fact, Brazil only criminalized the selling of human remains in 1997, with the Organ Transplant Law (Law nº 9.434/1997), but by that moment the sales had ceased for over a decade. What is important to examine here, however, is that while Brazil forbids the possession or sale of any human living tissue or remains by unauthorized agents, the same cannot be said for the Global North. In the United States and the United Kingdom, for example, it is permitted to privately own and trade human remains; it is illegal, however, to skeletonize a corpse within its borders[318]. This means that the bone trade in those countries is entirely serviced by black market operations from the Global South, especially in Southeast Asia, and the legal loophole existent in developed countries not only allows for the commerce of human remains, but specifically only permits the bones of those hailing from developing countries to be sold, reinforcing their status as the colonized abject. Their deaths are not deaths — like the land that they live in, their very bodies are simply raw material for profit.

The final iteration of abjection for Kristeva is sexual difference, which might be represented in the horror of incest and menstrual blood. The abjection of sexual difference is linked to maternity, to that primal interdependence of our origin; we would not be on this earth if not for another's body, who nourished us from before birth severed this material connection and abjection, this psychic connection. The fetus is one-and-the-same with the mother, and part of its process of individuation is this separation from this maternal entity that offers every possible resource and caters to every need, but does so in detriment to our own sense of individuality. Sexual difference marks the

[318] MARSH, Tanya. The law of human remains. Tucson: Lawyers & Judges Publishing Company, Inc, 2015.

unspeakable and unpayable debt of existence that the subject and the culture it is immersed into owes this maternal body[319].

For this reason, there are many rituals meant to cleanse markers of sexual difference, but also many belief systems where this difference is, in itself, defiling and abject. Kristeva focuses specifically on menstruation, which offers many examples of this understanding both as needing cleansing but also inherently defiling the menstruation-having body. Menstruation is considered unclean for many beliefs: the *niddah* in Judaism establishes the "impure" state of the period-having person who experienced uterine discharge but has not been immersed in a *mikveh*, or a ritual bath. In Islam, a person in their period is not obliged to fast during Ramadan, but should not touch the Quran due to not being considered ritually pure; scholars differ in the opinion if they can read and recite the Quran during this time. In Candomblé, the menstrual period is called *abajé*, and while the intensity of the prohibitions varies from *terreiro* to *terreiro*, it is common for people to be forbidden from participating in the ritual incorporations of the spirits, prepare any of the foods that will be used as offerings and to touch any of the ritual objects of the altars as well as the ritual drums, the *atabaques*.

On the other hand, the pregnant body is possibly the greatest source of sexual difference. The entirety of it is shifted and changed to accommodate the growing life; the muscles distend, the stomach enlarges, the bones shift, and the organs are displaced to cater to this new body. This marks an invasion of the body that the Law cannot comprehend, as discussed before, but also the space where this new life will bring, this inherent dependence upon another clear in the changing body. It is no wonder how not only this is a process that is highly scrutinized, but also highly controlled by the Law: from conception to birth, the Law will summon to itself the need to regulate every instance of this generation of a new human, seeing as this process of reproductive work is of utmost importance for the upkeep of the labor force.

Barbacena offers an interesting analysis of how this process of pregnancy was specifically used as a targeted sort of abjection towards those inmates. It was relatively common for inmates to become pregnant within the context of the Hospital, despite the atrocious living conditions. It was

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[319] GROSZ, Op. Cit. 284, P. 92

so much so that the hospital even had a nursery, run by nuns, and cared for the children of the inmates who, despite being subjected to a poor diet and exposure, still managed to have children healthy enough to survive birth. However, while rubbing feces over their bellies might have worked to keep workers away from the pregnant inmates, it was almost impossible to do so after delivery. Children were taken from their mothers and registered by community families and hospital workers as their biological children, an extremely common practice called *"adoção à brasileira"* (Brazilian adoption)[320]. While the practice has been technically outlawed since the 40's, it was seldom enforced, since the idea of adopting a child to take them out of poverty and "immoral circumstances" usually was considered to be in the best interest of the child and consistently upheld by the courts whenever it was questioned judicially.

The rhetoric of "best interest of the child" is an interesting one, and a common tool utilized by the Law to expropriate certain women from their right to motherhood, since their marginalization will not produce the laborers in the best interest of the workforce. Angela Davis remarks that while the struggle for reproductive rights is mostly focused on the right to contraception and the right to an abortion, it purposely obscures that for most women of color and impoverished women, the right to a secure *motherhood* is what is consistently taken from them. In this sense, it is implicitly believed that these are women who have a "moral duty" to restrain their offspring and the size of their families. Contraception then becomes a right to white women, but a duty for women of color[321]

This becomes clear in the case known as *Mães Órfãs* (or Orphaned Mothers). In 2014, the Child and Youth Court of the City of Belo Horizonte, together with the Prosecutor's Office, published a series of recommendations that award authority to doctors and other health care providers, who might identify a newborn as "being in particular risk of neglect", to alert Child Protective Services, who will then place the child in foster care as soon as they are released from the hospital. The mother is never heard in this process; the baby is taken first and the mother will be heard later, if at all. This is because the vast majority of victims of this system are women who are

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[320] ARBEX, Op. Cit. 278. P. 15

[321] DAVIS, Op. Cit. 162. P. 213

homeless, struggling with substance use or mentally ill, and almost all of them living in poverty and, most times, illiteracy. It is important to note also that the majority of those women are non-white. These are the ones the Law deemed not fit for motherhood, whose bodies are barren terrains for the normalization it imposed and thus unable to raise a proper laborer — which is what the Law will understand as an upbringing "in the best interest of the child"[322].

The situation of the *Mães Órfãs* is particularly interesting to understand how exactly the Law works in symbiosis with disciplinary forces, on one hand, but how it utilizes abjection as a weapon to exert control over women's bodies. The Law grants medical professionals the right to decide who are the mothers fit for the job and who are the ones who are not, and trusts their judgement to the point where it moves the entire state apparatus in order to ensure that that child will be raised "properly". This is not a legal decision, nor it awards the women subjected to it the right to legal counsel or to defend themselves from the accusations of maternal ineptitude, but is nonetheless transmuted into one by the power of the Law. Alongside this, the ways of living that are considered to be *outside* of the realm of the Law, such as homelessness, substance abuse or mental illnesses turn that human into a non-human who, nonetheless, might still produce "regular" humans. This becomes a form of immaculate conception without the defilement of birth, where the only sin is taking a new life from mothers too abject to be considered human. The process, already abject, was utilized to reinforce the utter dehumanization of those in the margins, regardless if said margins are forced into the cells of a psychiatric hospital in Barbacena or forced into homelessness by social and political circumstances.

As we have seen, abjection is simply the subject's acknowledgement that the boundaries and limits are contingent and dependent on social projections, but also of legal permission. It reifies the fact that the subject has merely a tentative grasp over its own identity, marking the perpetual possibility that it might always slide back to the impure chaos that was its own creation[323]. Imogen Tyler argues, however, that while Kristeva's account of abjection is compelling as an explanation, it

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[322] BARROS DE SOUZA, Cristiana Marina et al. Mães Órfãs: o direito à maternidade e a judicialização das vidas em situação de vulnerabilidade. Saúde em Redes, v. 4, n. 1suplem, p. 27, 20 jun. 2018. Acesso em: 23 ago. 2021.

[323] GROSZ, Op. Cit. 284, P. 90

is precisely this account of what it means to *be* abject, or to *be* subjected to this disgust on a political level and its consequences that is persistently lacking from her work[324]. Therefore, raising the situation of Barbacena is not merely exemplifying as it is, in itself, a critique: the abjection of Barbacena did not exist in a vacuum, and the abjected of Barbacena were sent there for very specific political reasons, all of which sustained by the enthusiastic endorsement of the Law. Before being defiled by the Hospital, they were already defiled by society. They were the mentally ill, yes, but also the poor, the unemployed, the alcoholic, the political dissidents, the single mothers, the raped employees — Barbacena was a punishment on a *social* abjection by a *material* forceful abject condition. The story will never be complete, therefore, if we do not continue with the effort to understand this abjection in its political sense.

4.1.2. Political abjection

As we have seen previously, Kristeva's account of the abject concerns mostly the formation of the psychic subject, departing from the psyche's negotiation of this primordial differentiation that is central to the development of the ego. While this is an important step for the comprehension of the abject as an idea, we must go a little bit further to explore how exactly it functions within the realm of politics, and more importantly, how it will be inscribed withing the domain of the Law.

In this sense, it is nearly impossible to consider political abjection and not to go over the work of Georges Bataille. In an essay titled "Abjection and Miserable Forms", written during Hitler's rise to power in the 1930's and nearly five decades before Kristeva's inquiry on the matter, Bataille notes that abjection is a necessary component of sovereignty, since society is constituted precisely on this foundational exclusion. This process constitutes some members as what he calls the "wretched"; they are cut off from communal life while exploited for production, which is facilitated by its representation as *disgusting* and, therefore, impossible or forbidden to be touched or even contacted[325]. What he argues here furthermore is that the abjection that avows exploitation is the

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[324] TYLER, Imogen. Revolting subjects: Social abjection and resistance in neoliberal Britain. London: Zed Books, 2013. P. 4.

[325] BATAILLE, George. Abjection and its miserable forms. In : LOTRINGER, Sylvère; KRAUS, Chris (org). More & less. Pasadena: Fine Arts Graduate Studies Program And The Theory, Criticism And Curatorial Studies And Practice Graduate Programsn, 2006.P. 9.

same abjection that will confine workers to it, since exploitation drains the subject of the energy to react strongly against the filth and decay surrounding their situation. Thus, they are forced into living in a situation beneath what is considered acceptable for humanity, which is then utilized by the dominant classes to justify the exploitation of the vulnerable; in Bataille's words, *"they have taken away from these disinherited the possibility of being human"*[326]. In his perception, and much like our previous inquiry into the Hospital Colônia de Barbacena, human abjection emerges from the impossibility of avoiding contact with abject things; much like a disease, the abjection of things is passed on to the people consistently exposed to them.[327]

In this context, Imogen Tyler argues that for Bataille, those so-called "surplus populations" are disenfranchised to the point where they can seldom be considered human, and are deemed fundamentally unequal and thus, not a proper legal subject, and will not access certain rights and guarantees that are granted to those perceived as human under the law. The key aspect here, however, is that while these people are excluded on many different grounds - sexuality, race, class, disability, to name a few - this is an exclusion that must consistently intrude daily life as the directed objects of disgust and horror if this sovereign power is to continue existing. It is a paradoxical situation: while the disciplinary forces of sovereignty produce abject populations as an excess that threatens from within, they also cannot fully expel them as this excess is required to constitute the boundaries of the state and of the Law and to grant legitimacy to the powers in charge[328]. In this sense, much like Kristeva's account of the psychic abject, the political abject is also that which borders the conceivable sovereignty. If we stretch this comparison even further, however, we are able to achieve this political abject as not only oppressed, but also fearsome. This necessary evil to the construction of society must be persistently banished because its mere existence is a stark reminder of that which must be oppressed and exploited for society to rise.

It is important to bring forth the two views on abjection, Bataille's and Kristeva's, to understand how this foundational feeling of rejection to that which might threaten our sense of identity is nonetheless deeply ingrained in cultural perceptions of what is acceptable and what is not,

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[326] BATAILLE, Op. Cit. 325. P. 11
[327] BATAILLE, Op. Cit. 325. P. 11
[328] TYLER, Op. Cit. 324. P. 19

a perception that can only take place if it is avowed by the Law. It does not go unnoticed that the socially abject are often associated with filth, danger and lack of cleanliness, and considered by the law as incapable and criminal, feeding into the vicious cycle of visceral disgust by association with refuse and being impoverished and exploited because of said association.

In example, while the mere uttering of the word *favela* to a foreigner might evoke the images of open-air sewers and barefoot children of color living in filth, the idea of Black people as *filthy* was ingrained in Brazilian society way before the first recorded *favela* in the country, *Morro da Providência*, ever began. During slavery, Black bodies were considered ugly and rough, but also filthy and of despicable stench. Patricia Pinho notes that the expansion of soap manufacturers in the 19th century were responsible for the establishment of new standards of personal hygiene for the upper classes and thus, yet another class and racial divide between the white slave owners and the Black slaves. A clean body emanating a pleasant scent, only achievable with a functioning water and sewer system as well as the purchase power of fine soaps and lotions, became a sign of not only wealth, but also humanity; the slaves that obviously did not have access to such luxuries and were forced to live their days in filth had their own imposed condition as the justification for their exploitation, since a person who emanated such a revolting stench could not be considered human[329].

Black bodies, impoverished and forced to live in *contact* with abjection since the formal end of slavery, were then expelled from their homes in the more central parts of most Brazilian cities in early 20th century, and pushed to the outskirts to build shacks on the numerous slopes of hills surrounding the areas. This process, called *favelization*, happened with the full avowal of the Law and was invariably racialized, and those "filthy" bodies would also taint this new space where they found a possibility to live in. The favela was then seen as a place of filth, uncleanliness and moral degradation, and it always a source of concern for governors because of how deeply associated such characteristics were with unlawfulness, illegality and criminality, which made the *favelas* a concern of the Law since its beginnings[330].

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[329] PINHO, Patrícia. Afro-Aesthetics in Brazil. In : NUTTALL, Sarah (org). African and diaspora aesthetics. Durham: Duke University Press, 2006. Pp. 266-289.

[330] GONÇALVES, Rafael Soares. Favelas do Rio de Janeiro: História e direito. Rio de Janeiro: Pallas Editora, 2016. P. 37

This is a history expertly narrated in Carolina Maria de Jesus' poignant diary, published in English under the title *Child of the Dark*. Relaying her daily life as a Black, single mother of three who worked as a scrap collector, de Jesus explain her own process of expulsion from collective houses near the center of São Paulo in 1948 and her subsequent move to the *Canindé* favela, where she wrote the entirety of her journals. Amongst the painful accounts of starvation, discrimination and the difficult living conditions in the Canindé, she offers a poignant metaphor for the idea of political abjection: *"the favela is the garbage room of the city, and we the poor are simply old tatters"*[331].

The favela as the garbage room is a perfect exemplification of what we have discussed so far, and the Canindé favela, where de Jesus lived, particularly so. While it was completely dismantled after a particularly severe flood in 1961, the Canindé used to lie at the edge of the Tietê river, known for its absolute abysmal state of environmental degradation even at the time of her writing. The river, no matter how thoroughly polluted with the waste of a rapidly industrializing city, was where the inhabitants of the favela did their laundry, took drinking water and bathed. These were people who were legally expelled from their houses, who built shacks by the river as an alternative to being in the streets and bathed in the polluted waters of the open-air sewer of the largest city in Latin America. They were pushed into abjection, as de Jesus notes, and it was the Law and the State that held them in place.

It is important to note that the same Law that pushed de Jesus into this political abjection is still the one allowing and encouraging the absolute terror of the occupations in Favelas in present-day Brazil. Pushed to the outskirts of the city and in terrible living conditions, most Favelas became overrun with drug dealing when formal employment became increasingly difficult to access and the State failed to provide basic structures for dignified living, which allowed these people to live in material abjection. This process gave way to the full incorporation of the war on drugs into the fabric of the Law, directing the entire might of the state apparatus to those it had abandoned. Drug traffic is considered a heinous offense, and the State treats it like so, but curiously only when it takes place in the narrow alleyways and run-down houses of Favelas — which means consistent invasions that kill dozens of people at a time under the guise of "fighting drug traffic". Earlier in 2021, the

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[331] DE JESUS, Carolina Maria. Quarto de despejo: diário de uma favelada. São Paulo: Editora Ática, 2014. P. 17

Prosecutor's Office went against direct orders of the Supreme Court and authorized an operation in the Favela do Jacarezinho, in Rio de Janeiro, that killed 29 people, the majority of them Black and unemployed. Most had no connection to drug traffic, but had criminal records for petty crimes[332].

Despite the images of streets covered in blood, disfigured corpses and one particular instance where the police officers posed a dead 18-year-old on a chair, as if he was sucking on his thumb, the Police of Rio de Janeiro insisted that the operation had merely killed 28 criminals, and the only unfortunate execution was of a police officer shot in the head in the gunfight. The majority of the dead were not investigated in the inquiry that gave way to the operation, but their corpses were stolen by the police regardless, leaving behind a mess of body parts, sewer and blood that the inhabitants of the Jacarezinho had to clean themselves as best they could. The policed called the massacre a "house cleaning". Despite explicit orders by the Supreme Court that no operations could take place during the COVID-19 pandemic, no one was punished by the incident[333].

What we conclude from this brief narrative is that disgust, as an integral component of abjection, is socially constructed but legally maintained, and evokes this violent rejection described by Kristeva at the sight of people who appear to be against *order* - be it by way of cleanliness, by what foods do they eat, or simply from being part of groups considered to be marginalized. This construction of the marginalized as abject is precisely the mechanism that makes prejudice irrational, but extremely powerful, since the marginalized appear not as a different and unknown other that is nonetheless also human, but as a threat to the very subject and its own individuality, a perpetual reminder of all that society must cast aside for this intelligible subject to emerge.

This cultural and legal development of disgust and its political use has two main consequences. The first is that it is frequently used to establish superiority over the dominated, especially in what concerns other cultures or other ways of living. While this is a useful mechanism

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332 GORTÁZAR, Naiara Galarraga. "Não vai embora, vão me matar!": a radiografia da operação que terminou em chacina no Jacarezinho. El País, 2021. Disponível em: <https://brasil.elpais.com/brasil/2021-05-13/nao-vai-embora-vao-me-matar-a-radiografia-da-operacao-que-terminou-em-chacina-no-jacarezinho.html>. Acesso em: 23 ago. 2021.

333 MERCIER, Daniela. Polícia insiste em criminalização de vítimas de massacre do Jacarezinho, mas recua sobre 29a morte. El País, 2021. Disponível em: <https://brasil.elpais.com/brasil/2021-05-08/mortos-na-chacina-do-jacarezinho-sobem-para-29-e-policia-insiste-na-criminalizacao-de-vitimas-sem-provas.html>. Acesso em: 23 ago. 2021.

to understand nearly every system of domination, this is particularly interesting from the context of colonization and decolonial perspectives, since it is the backbone of the colonial and imperialist discourse: we are better than them because *we do not act like this*, and to make sure we *never* act like this, the Law will forbid any sort of behavior associated with the colonized. Their customs of the become marks of savagery, even when the colonizer pillages, rapes, murders and massacres entire populations. The colonizer's hands coated in blood are not disgusting; after all, it is simply a reaction to the true source of disgust, the native's customs and practices. In this sense, the oppressed are always disgusting; it lies in the smell of the Black body or the fluids of the female reproductive system, posing a threat to mainstream subjectivity.

On the other hand, this also means that certain marginal practices need to be "sanitized" to be somewhat accepted in society. This sanitization always comes hand in hand with the avowal of the Law — if this behavior is *accepted* by the Law, or even not forbidden, then it is a behavior that is not disruptive to a cohesive subject and therefore can be accepted. This becomes evident, for instance, when we analyze the recent efforts of LGBTQ+ activists to push for a heteronormative view of dissident sexualities, in an attempt to push non-heterosexual relationships away from the stereotype of promiscuity and inherent filth that became even more closely associated with the community during the HIV/AIDS epidemic in the 1980's[334]. Iara Beleli argues in her analysis of Brazilian *novelas*, the wildly popular soap operas of Brazil, that the representations of LGBTQ+ characters are only meant to be taken seriously if they adhere to the strict rules of heteronormativity, which generally mean a monogamous marriage with the intention of adopting children, stripping them of their sexual energy and whatever mannerisms are associated with such identities and, thus, are mocked, belittled and disrespected[335].

This is precisely the understanding upheld by the Brazilian Supreme Court when it decided to allow the registry of homosexual marriages in the Court Case *ADPF 132*. It is interesting to note that the decision and the Justice's votes barely mention the word "homosexuality", instead preferring

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[334] SAMPAIO, Juliana Vieira; GERMANO, Idilva Maria Pires. Políticas públicas e crítica queer: algumas questões sobre identidade LGBT. Psicologia & Sociedade, v. 26, n. 2, p. 290–300, ago. 2014. Acesso em: 23 ago. 2021.
[335] BELELI, Iara. "Eles[as] parecem normais": visibilidade de gays e lésbicas na mídia. Bagoas - Estudos gays: gêneros e sexualidades, v. 3, n. 04, 27 nov. 2012.

the term "homoaffective" to signify LGBTQ+ relations, removing the *sexual* aspect of the identity that still is invariably associated with the disgust evoked by HIV/AIDS[336]. In order to accept homosexuality, the Law had to sanitize and adapt it to its own standards: it will be allowed and accepted as long as it follows the same norms that have been established and demanded of heterosexual couples, and on the same terms. While a landmark judgment, it was not an avowal of difference as much as it was a normalization of the deviant.

In this sense, Imogen Tyler argues that a disgust consensus develops in such a way that allows this feeling of repulsion to be operationalized in sociopolitical and legal contexts as a form of governance and, thus, must be seen as symptomatic of wider social relations of power and as a tool for understanding why certain bodies, practices and lives are considered disgusting[337]. Sarah Ahmed develops this even further when she adds that while disgust is inherently tied to the notion of the corporeal boundaries of the subject, it is also closely connected with the idea that certain objects are "lower", "below" or "beneath" the subject. This division between "lower" and "superior" objects implies a sense of defilement of the "above" that comes in contact with the "below" and a sense of disgust at "that which is below" that serves as maintenance of the power relations of those considered to be beneath this disgust-feeling subject. On the other hand, feeling disgust at something immediately positions the disgust-feeling subject as "above", since the sense of defilement comes from things beneath it. In other words, in order to assert its superiority, the subject must also position itself in a vulnerable position as something that *might be tainted* by what is beneath them, while simultaneously needing this "below" in order to differentiate themselves from it and achieve the superior position in this relation[338].

This is exactly the formulation utilized in the construction of a legal subject. The legal subject is what exists above: it is sanitized, normalized and properly packaged in ways that obscure its relationship to vulnerability and reinforce the fantasy of its independent individuality. To be a legal subject is to be "above" those who are not, which grants it a sense of superiority, on one hand,

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[336] SUPREMO TRIBUNAL FEDERAL. Tribunal Pleno. ADPF 132/RJ, Rel. Min. Ayres Britto, j.05/05/2011

[337] TYLER, Op. Cit. 324. P. 24

[338] AHMED, Sara. The cultural politics of emotion. Edinburgh: Edinburgh University Press, 2004. P. 89

and a sense of impunity on the other. If the Law exists to back the legal subject, it will protect it from what is “below” — not only that, but it will also sustain and normalize whatever the legal subject might do to those “beneath” them as a way to protect itself from the onslaught of the abject. Not only the Law forbids the non-subject to interact with the legal subject in ways that can permanently taint them, it will also avow the legal subject’s need to destroy that which threatens its boundaries. This is why Ângela Diniz, Gisberta, the twenty-eight men of the Jacarezinho and the sixty thousand dead of Barbacena could be killed with impunity: their deaths were the affirmation of the legal subject, and for this exact reason it was avowed and encouraged by the Law.

Since disgust is culturally constructed and legally maintained, we must not look inside ourselves to understand why something is disgusting; it is not enough to say that the politically abject are constructed as such because they are associated with the abjected mother, as Kristeva does[339]. In fact, and as Tyler argues, this simplistic association Kristeva develops is based on a false sense of ideological universality behind western values regarding the State and Law, and legitimizes the politics of imperialism, colonialism and exploitation, all of which are based on a traditional understanding of the legal subject as rational, autonomous and corporeally bound. The construction of the political abject as lacking such characteristics is a legitimizing tool for such violence, since not only positions the exploited *other* as beneath the legal subject, but also frames it as a danger to society as we know it. In Kristeva’s understanding, abjection is nothing more as a way to deliberate ignore colonial and exploitative history, willfully glossing over the violence towards this exploited abject and, more importantly, enacting an epistemic violence that insists that this *other* might be respected as long as it tries to fit within mainstream western subjectivity[340].

On the other hand, and developing this further, I believe that by doing this oversimplification on the politics of abjection and disgust, Kristeva loses sight of the radical potential of her own work. This is because when she argues, in *Powers of Horror*, that abjection is what we thrust aside in order to live, since it is an unbearable reminder of our own dependency and frailty, the abject becomes our vulnerability that must be forgotten, erased, and systematically denied in

[339]TYLER, Op. Cit. 324. P. 30
[340] TYLER, Op. Cit. 324. P. 33

order for the subject to remain cohesive. Political abjection becomes this *exact* process: what is considered abject is precisely that which the political subject needs to survive, but needs to deny to mark themselves as *not that*. The colonized, the exploited, the poor, the ones society has failed — all of these are stark reminders that one's comfort and pleasure within capitalism is directly dependent on exploited blood and sweat. Therefore, when the refugee, the beggar, the person of color, the colonial subject or the worker invade spaces where only the fruits of their labor might exist, since they have been properly cleansed by its proximity with the upper classes, they threaten not only to defile that space but also to be a perpetual reminder, looming over the subject's shoulder, of their need of those it loathes.

This is the argument Judith Butler raises when she argues that subjects are formed through an exclusionary matrix that produces an intelligible subject but also abject *beings*, who are not subjects per se but form the political outside of the subject's domain. Abjection, in her view, will designate those "unlivable" zones that are nonetheless populated by those who are not given the protection awarded to the subject but are required to circumscribe its realm. This zone is foundational to constitute the site where identification against and by virtue of which the subject will be able to stake its claim to autonomy and life, and it is produced and maintained with the avowal of the Law, which will remove such persons from the realm of the legally possible and thus subject them to this exclusion. The subject is constituted through the force of exclusion and abjection, which will also need to exist "within" the subject as it is its own founding repudiation[341].

What we conclude here is that the political abject is not simply an embodied fear or, as Kristeva seems to understand, a vessel for the abjected mother, where our own neurosis are unreflectively dumped onto as some sort of scapegoat. Rather, political abjection is that which is injured and exploited for the political subject to emerge. It must be constructed through culture and maintained by the Law as disgusting, revolting and, thus, as abject, so that it can position the subject as an "above" and grant it its sense of superiority, but also to justify the own exploitation of those "below" and legitimize the violence against the "misplaced" abject who rises to places where they are not allowed to exist. This complex interaction of subjects and abjects is produced by the Law, is

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[341] BUTLER, Judith. Bodies that matter: on the discursive limits of "sex." London: Routledge, 2014. P. 3

maintained by the Law, and it is perpetuated by the Law. It is important to emphasize: there is no political abjection or political subjection without the avowal of the Law. It is the groundwork for every instance of dehumanization and exploitation: this system only exists because the Law, together with the force of the State apparatus, will sustain it in such way.

However, since this is not what Kristeva had in mind when she developed her idea of abjection, this interpretation gives way for a possible decolonial critique and reworking of this concept of abjection as a possible tool for decolonial efforts. As Imogen Tyler recounts, Gayatri Chakravorty Spivak had some harsh criticism to offer on the concept of abjection and its use a possible tool, which she considered eurocentric in nature due to its necessity of psychoanalytic theory[342]. But Tyler argues that there is a possibility to turn this concept against its own roots and employ it for decolonial purposes, as long as this category is permanently employed *against* the very structures developed. This can only be done through a consistent effort to investigate the conditions in which the colonized and the marginalized are confined to this place of abjection[343].

This is precisely the argument Anne McClintock raises within her discussion of race, gender and sexuality in colonial contexts. She notes that under imperialism and colonialism, certain groups are expelled to the physical edges and secluded areas of modernity, such as slums, *favelas*, ghettos, brothels and red zones, hospitals and asylums. Therefore, the people pushed to the margins are exactly those industrial capitalism rejects, but cannot exist without: the slaves, prostitutes, domestic workers, the mentally ill, the unemployed, and finally, the colonized. It is easy to perceive how both the spaces of marginalization but also the subjects of marginalization are produced by the Law: it defines *what* those spaces are and *who* those people are, and it does so in the exact moment it seeks to *outlaw* them. The legal effort to push the abject away creates the very abject it expels — it gives it a name, a face, a shape and an address. For this reason, the marginal areas where those people inhabit will then become increasingly policed and regulated by the Law, and since they inhabit the threshold

[342] TYLER, Op. Cit. 324. P. 34
[343] TYLER, Op. Cit. 324. P. 35

of private life and the public domain of Capital and empire, the political abject will perpetually haunt modernity as its constitutive that is, nonetheless, kept close [344].

Furthermore, she argues that abjection lies in the in-between space between the material body and the politics of the body, and therefore at the edge of both psychoanalysis and material history. In this sense, she states that:

> All too often, traditional Freudian psychoanalysis seeks to expunge certain elements from the family romance: the working-class nurse, female sexuality (especially the clitoris), economics and class, homosexuality, race and empire, cultural difference and so on; but these abjected elements haunt psychoanalysis as the pressure of a constitutive, inner limit. Likewise, material history, especially in its more economistic Marxist form, repudiates unruly elements such as the unconscious, sexual desire and identity, the irrational, fetishism, and so on; these elements return to structure Marxist economics as an insistent inner repudiation. Abjection shadows the no-go zone between psychoanalysis and material history, but in such a way as to throw their historical separation radically into question[345].

The solution she offers for this conundrum is a *psychoanalytically informed history*. This is an important concept to understand how abjection will manifest differently and in different intensities in social-historic contexts, and allows for an understanding of abjection not as an universally defined form that might be reduced to an abjection of the primordial mother, but rather as interrelated and contradictory elements of the delicate and intricate process of social and psychic development of the subject[346]. This same idea could be adopted to forge a *psychoanalytically informed legal critique,* since it also highlights the ways in which abjection will make itself known by the regulations, avowals and exclusions existent within the Law. The examples she offers are very clear in this regard for both history and legal critique: abject *objects* (feces, menstrual blood, the corpse) are different than abject *states* (mental illnesses, psychosis, drug abuse), which in turn are different from the the abject *zones* (the Gaza strip, the favelas, the red-light districts), socially appointed agents of abjection (police officers, funeral workers, nurses) and the socially abjected *groups* (people of color, ethnic minorities, LGBTQ+ persons). Processes of psychic abjection (fetishism, horror, disavowal) are then also different from processes of political abjection (genocide,

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[344] MCCLINTOCK, Anne. Imperial leather: Race, gender, and sexuality in the colonial conquest. New York: Routledge, 1995. P. 72

[345] MCCLINTOK, Op. Cit. 344. P. 72

[346] MCCLINTOK, Op. Cit. 344. P. 73

etnic cleansing, forced incarceration). All of these *states of abjection* interweave and overlap in accordance to the many identities we negotiate on a daily basis, but also in the ways in which they are produced, regulated and maintained by the Law. [347].

However, a truly decolonial critique must also be aware of how such states of abjection are historically contingent, legally maintained and socially determined, as well as embarking on the difficult journey of exploring the in-betweens and uncertainties of discourse. This effort will only be successful, she argues, as long as we are continuously contending with the task of persistently interrogating the "social practices, economic conditions and psychoanalytical dynamics that motivate and constrain human desire, action and power".[348]

Furthermore, this decolonial effort to consistently evaluate the conditions of emergence of such states of political abjection is also important to, in Fanon's words, mobilize this critical effort to explore this very abjection as a site for political agency and resistance[349]. While colonial power might negate the humanity of the colonized precisely by pushing them into the abject margins of society, negating them the status of full humanity, the colonized subject is in no way convinced of their innate inferiority[350]. As we have discussed earlier, there is always something that exceeds the attempt of colonizing the subject thoroughly, no matter how brutal that colonization might be, and I would go as far as to say that the colonized are very much aware that the superiority of their colonizers stems out of a deep-abiding fear that one day they might break free of the shackles that bind them, as the subject is perpetually afraid of the bordering abject. While this is a situation that becomes more understandable with our previous inquiry into the political abject, this also gives way to the main question that remains to be answered: how exactly does the Law *facilitate* this process of political abjection by designating certain persons as *legal abjects*?

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[347] MCCLINTOK, Op. Cit. 344. P. 72
[348] MCCLINTOK, Op. Cit. 344. P. 73
[349] TYLER, Op. Cit. 324. P. 44
[350] FANON, Op. Cit. 283, P. 53

4.2. Legal Abjection

While we have discussed the material conditions of the Hospital Colônia de Barbacena at length, albeit not exhaustively, there is one aspect of the institution that needs to be discussed in order for it to be wholly comprehended, and one that offers the perfect background for the discussions on legal abjection and the role of the Law in producing and maintaining it.

One of the marked characteristics of the Hospital was the absence of any medical criteria for internment, especially so after the 1964 Military Coup. Daniela Arbex notes that Maria de Jesus, at the time only twenty-three years of age, was sent there because she suffered from "sadness" in 1911. Likewise, many others were committed not because they were mentally ill, but because they were somehow disruptive to society: political disaffections, activists, homosexuals and *travestis*, single mothers, lovers, unmarried daughters, alcoholics, beggars, Blacks, poors and all the somewhat socially undesirable, including but not limited to the mentally ill, were sent to the hospital without any perspective of ever being allowed to leave. Seventy percent of all people committed to the Colônia were not ill in any way when they were admitted, but would invariably develop responses to the harsh living conditions and would also perish regardless. Their bodies too would be sold, their bones cleared in acid the same; they would be subjected to the same medication, electroconvulsive shock therapies and even lobotomies[351]. Crossing the doors as a patient meant losing their humanity. No longer human, they could not demand anything from the state that committed them to that fate by funding such an institution, nor hope for any sort of justice from the Law that not only turned a blind eye to the abuses they were subjected to but also deliberately and actively imposed them. The inmates of the Hospital Colônia were not legal subjects: they were legal *abjects*.

While we have extensively discussed the meaning of psychoanalytic and political abjection, the idea of legal abjection is one that needs to be investigated carefully. As Imogen Tyler recounts, the state is not an abstract almighty, all-seeing and all-powerful entity that is detached from our lives, but it is a network of practices that are sometimes contradictory, sometimes cohesive, and always intricately and complexly affecting every moment of our lives. Despite neopositivist efforts to

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[351] ARBEX, Op. Cit. 278. P. 28

convince us that this is the case, the State and the Law that upholds it are not only perceived in the legislations passed in Congress, within the jurisprudence repositories in courts or even in the principles inscribed in constitutional texts, but rather in our daily interactions with one another. In this sense, and since the Law regulates our interpersonal relations, political abjection will become the tool this Law will utilize to establish itself, since the State is constituted, much like the subject, through exclusion[352].

This is tantamount to saying that rather than conferring rights, the mechanism through which the State and the Law will exercise power is precisely through its ability to shift the borders of recognition and the looming threat of *making abject*, or rather, of forcing someone into a state of abjection. The Law removes rights, disavows recognition, allows exploitation, all the while maintaining that all people are equal, and the Law applies equally to all. As Tyler argues, it is through this possibility of making abjects that the Law will determine the value of a life and, thus, which are the lives expendable and which are worthy of protection, a calculus that not only is reiterated at every single interaction, but it is also relational. While someone might be considered expendable within a relation, such as white, wealthy women who are victims of domestic violence, like Ângela Diniz, they might also simultaneously be considered of more worth than other lives in other occasions. This illuminates the fact that the Law and the State are not cohesive, unitary entities, but rather a collection of practices where the borders of legal subjectivity are constantly being redrawn. In this sense, the state and the Law are what abjects[353]; I would go even further and consider that they are precisely the mechanism through which any sort of political abjection in modernity will take place, simply because it is in this exclusion that the abject is formed.

If the legal subject is what the Law creates in order to be able to function, the legal *abject* is what the Law excludes in order to exist. Similarly to how the psychic abject is what reminds the subject of its perpetual necessity of other people to survive, or how the political abject is what reminds the political subject of what it needs to exclude to achieve its intelligibility, the legal abject is precisely what reminds the Law of its inherent fallibility. Despite its claims to impartiality,

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[352] TYLER, Op. Cit. 324. P. 46
[353] TYLER, Op. Cit. 324. P. 46

universality and rationality, the legal abject reminds the Law of its own contradictions, of the impossibility of total detachment, of how deeply human and flawed the operators of the Law are, which will curb any attempt at an ascetic independence, such as the one proposed by Kelsen.

In fact, this offers a very interesting critique on the foundations of the Law. Once again, when Kelsen argues that Law should be analyzed purely, without interference from matters from social sciences, he argues that inviting any other field of knowledge into legal studies is a sort of "methodological syncretism" that threatens to "obscure the essence of the science of Law and obliterate the limits imposed upon it by the nature of its subject matter"[354]. This is a citation that bears repeating because of the theoretical richness of the critique it invites. Law avows itself as *detached* from human life — it hovers above our conflict, ready to intervene if necessary. However, if we understand that Law is an integral part of the very conflict it seeks to mediate, then its claims to impartiality are shattered; furthermore, any attempts to expel criticism from other areas from the Law becomes simply a desperate attempt at preserving this structure of oppression in favor of those it serves, and denotes quite frankly a deep abiding fear of what might surface if the right questions are asked. As we have seen, the word for things that threaten to destabilize a system and must be excluded to preserve its integrity is, after all, abjection.

This is precisely the argument that Butler raises when she states that despite the Law being considered ahistorical and universalistic, it seeks to affirm itself as exempt from the discursive and social relations that it itself creates. This is a problematic stance since the intelligibility of subjects is avowed and produced by the Law, and it does so by barring certain modes of living from cultural intelligibility and rendering politically abject whatever organization of the subject that exceeds the borders it mantains[355].

On the other hand, it is important to reiterate that this production of marginality does not exist in a vacuum. As Stubbs[356] notes, the so-called *neutrality* of the Law hides the fact that it is intimately involved in the reconstituting and upholding capitalist relations, and it exists to ensure

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[354] KELSEN, Op. Cit. 8
[355] BUTLER, Op. Cit. 341. P. 191
[356] STUBBS, Margot. Feminism and Legal Positivism. Australian Journal of Law and Society, v. 3, n. 6, p. 63–91, 1986.

certain separations are still maintained as to guarantee the continued existence of the capitalist system. The truth is, as Federici argues[357], that capitalism exists because it exploits, and to exploit, it must somehow diminish those who are on the receiving end of such violence. In the case of women, unpaid reproductive work is a cornerstone of capitalist production, because it allows for the upkeep of the labor force — in this aspect, confining it to women is of utmost importance[358].

If legal abjection is that which the Law must exclude and disallow to permit the maintenance of the legal subject, on one hand, and the establishment of Capitalism on the other, then we might try to articulate the legal issues women face within this optics. This is because the Law will render illegible, impossible or downright criminal any articulation of womanhood that will defy the aforementioned need for control over reproduction. It will criminalize the access to abortion; it will make access to proper childcare difficult and nearly impossible in some instances; it will unequally place the duty of child raising and housekeeping on women, it will deny the right to motherhood to those women it considers incapable of raising laborer to the workforce and will only be able to address situation of violence through a system that will repeatedly demand women to be victimized in order to achieve a modicum of justice. In this sense, while the Law in modern times might not explicitly say women are *not* fully legal subjects, the quiet part is said out loud in the ways in which Law will make women's lives nearly impossible to be lived fully, and the harshness with which it will punish any sort of attempt a woman might make in order to stand up for themselves.

I could probably spend the rest of my life collecting stories on how women were wronged by the Law, or how they were forced to carry the misdeeds of men in order to protect their reputation and their own cultural intelligibility. Women live and breathe at the cusp of abjection; we are very much aware of how to navigate the world in ways that will try to keep us safe from being pushed into that zone of no recognition, where harm might come to us and go unpunished and unaddressed. We all have stories like this to tell, but the existence of such stories never fails to hurt deeply. While researching the Hospital Colônia of Barbacena, those were very stories that were the most painful to read.

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[357] FEDERICI, Op. Cit. 70. P. 17

[358] FEDERICI, Op. Cit. 70. P. 2

Isabel Teixeira was sent there after refusing to hand her inheritance to her husband[359]; Geralda Siqueira Santiago Pereira, orphaned as a child, employed as a housemaid at age ten and raped by her boss at age fourteen, was sent to Barbacena to hide the pregnancy[360]. Leonora Correa de Almeida was sent to the Hospital after her husband took on a new wife, something he hid even from her own children[361]. Barbacena is an extreme example of how the Law will avow the consistent abjection of women, but it is by no means the only one. If the Law's purpose is to defend fairness as an impartial observer, as it claims it is, places like the Hospital Colônia de Barbacena would never be allowed to exist. But they were, and thus they become the ultimate proof that the Law does not protect, the Law does not include, the Law does not provide any shred of dignity or justice. The Law controls. And any humanity that the marginalized still possess exists despite the Law, and not because of it.

The legal abject, therefore, is that which the Law must exclude in order to define the limits of its normalizing power. It is constructed not in the formal declarations of inequality, but in the ways in which the Law will deny full participation, full representation and full protection, a construction that is reiterated daily. And while the efforts towards inclusion are laudable and necessary, they do not change the fact that the Law excludes because it requires such exclusion to exist, and the more mechanisms we try to develop to *stop* such exclusion, they will only stop exclusion in that specific way. As long as women need to be controlled in order to ensure the control over reproductive labor and the labor force, the Law will consistently find new ways to deny women the full status of subjects before the Law.

This is particularly relevant when we think that, as we have seen previously, abjection is a *state* rather than a characteristic, and it overlaps and interacts depending on our identities. This allows us to understand that legal abjection is *also* a state, one that is constantly being negotiated and imposed; in this regard, even marginalized people might utilize the Law to obtain some recognition *at the cost* of someone else. Once again, the desire to survive and the desire to be legible in society is

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359 ARBEX, Op. Cit. 278. P. 263
360 ARBEX, Op. Cit. 278. P. 170
361 ARBEX, Op. Cit. 278. P. 275

exploitable, and this need will push for different marginalizations to be at constant odds with one another without ever turning to the *real* source of their abjection, which is the Law.

A great example of this precise interaction can be found in the literary classic *To Kill a Mockingbird*, where the main character Atticus Finch defends a Black man, Tom Robinson. In his closing argument, he recreates the difficult life of Mayella Ewell, the white woman who accused the defendant of rape: she is poor, uneducated, lonely, and lives under the constant threat of violence of a violent father. Her poverty and social class push her into a state of abjection, forcing her to live isolated and afraid for her life; Atticus is sympathetic to her plight. But as he adds,

> I have nothing but pity in my heart for the chief witness for the state, but my pity does not extend so far as to her putting a man's life at stake, which she has done in an effort to get rid of her own guilt. I say guilt, gentlemen, because it was guilt that motivated her. (...) She is the victim of cruel poverty and ignorance, but I cannot pity her: she is white. She knew full well the enormity of her offense, but because her desires were stronger than the code she was breaking, she persisted in breaking it.[362]

Atticus Finch explains something crucial about the sheer difference race makes in the gender experience. Mayella Ewell suffered and suffered greatly; her father terrorized her in every possible way. But she was white, and she knew well, as did every single person in Maycomb County, that her word against a Black man would mean she would save face and he would die. Her race did not discount her suffering, but it gave her the power of life and death over someone else — specifically, over a Black man. In the book, Tom Robinson was convicted without evidence. In real life, many white women were key parts in the lynchings that ravaged the South of the United States - famously, it was a white woman's testimony that got Emmett Till, a fourteen-year-old child, brutally murdered and left to rot.

What I want to highlight is that speaking of the *legal abject* is nowhere as easy or as uncomplicated as it might seem at a first glance. The legal abject is not a monolith; it cannot be defined by legal doctrines or chased from the legal system. True to its name, it lives in the inevitable cracks of the Law, and must be identified in every concrete situation before it can even be addressed.

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[362] LEE, Harper. To kill a mockingbird. New York: Harpercollins, 2002. P. 231

It is a complicated interrelation of different identities, material conditions, historical settings and social possibilities, and it looms, haunts, and forecloses the possibility of the Law every being totally inclusive. While a somewhat lackluster conclusion, its importance lies exactly in reminding every attempt at legal reform that the struggle does not end when a project is made into law, and that we can not, and should not, trust the very structures that oppress us in the first place, regardless of how much we negotiate better living conditions within its domain.

The end of the Hospital Colônia de Barbacena exemplifies this exact argument. After a psychiatric reform in the 1980's and a subsequent one in the 1990's, the hospital radically changed its way of treating patients. Since the inmates had been living in horrid conditions for years, some for their entire lives, an entire effort was necessary in order to acclimate them to society. The hospital changed names, being called *Centro Hospitalar Psiquiátrico de Barbacena*, and began adopting outpatient approaches in order to weed out long permanence stays. A little over 150 survivors of the Colônia remain as wards of the state; while the majority live in assisted living facilities and receive a small compensation pension from the state, some are still unable to live without full-time care and are still committed to the hospital, albeit in far better conditions than they ever had before the reforms.

In 2001, after twelve years of political struggle, the Brazilian Congress approved Law nº 10.216/01, or the Psychiatric Reform Law, which aimed to gradually extinguish all long-term psychiatric living facilities in the country. The Anti-Asylum Movement formed since then fights for an outpatient model of care that is connected with social workers and social assistance, in hopes of diminishing the number of people forgotten in psychiatric hospitals as a solution to socio-economic struggles. Every May 18th, activists all over the country promote activities to raise awareness in honor of the National Day of Struggle Against Asylums.

The first time I heard about this day, incidentally, was by being caught mid-parade as the local activists in my hometown did a symbolic walk from Hospital Galba Veloso to Instituto Raul Soares, two major psychiatric hospitals that were contemporary to the Hospital Colônia de Barbacena. I was making my way to the Instituto Raul Soares; as an intern at a Law firm, I was asked to take some documents to the hospital's administration.

Upon getting there and telling the security guard I had documents to deliver, the guard looked me up and down and asked my age; I said I was twenty-one. He then looked me in the eyes and said: walk straight down this hallway and turn left. If someone talks to you, you do not answer. If someone screams, you do not listen. If someone tries to touch you, you run. And as he finished this piece of advice, I heard a shriek so loud it made my ears ring, and saw hospital workers manhandling a visibly agitated man into a room with a barred door, much like a prison cell. The guard then sighed and moved over to help the nurses while I hurried down the hallway, eager to get out of that place as soon as possible.

Psychiatric hospitals nowadays do not serve the illegitimate children of important members of society, the drunk or the women who stand between a husband and an inheritance. Long term stays for difficult cases, while not uncommon, are also not preferred; if possible, the patients are either directed to an assisted living facility or given treatment options at home. However, psychiatric hospitals have increasingly begun to receive substance users under judicial rulings that have them forcibly committed. The same rulings that remove newborns from vulnerable mothers also have them and many others in the same situation indefinitely detained in psychiatric facilities. Since hospitals are no longer structured towards a model of permanent stays, hospital staff find themselves often returning to old methods of restraint, such as removing clothes to avoid suicides, heavy medication, barred room doors, and physically restraining patients to beds, walls, or even hallways if needed. As Américo Azevedo and Tadeu Souza argue, in the context of a pointless war on drugs, the drug addict is a blight in society; they feed the drug traffic, they destroy their families, and need to be forcibly expelled from society with the blessing of the Law if society is to carry on living normally[363].

Years after the closing down of the Hospital Colônia, the madness is never really gone - it shifts, it moves, it recedes, but it never quite disappears. Barbacena is still the City of Madness. And in the cold winter nights of my home state, where the wind blows on the dirt that was used to make the very marrow of my bones, abjection still looms; it whispers, moans, cackles like a mad witch, digs

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[363] AZEVEDO, Américo Orlando; SOUZA, Tadeu de Paula. Internação compulsória de pessoas em uso de drogas e a Contrarreforma Psiquiátrica Brasileira. Physis: Revista de Saúde Coletiva, v. 27, n. 3, p. 491–510, jul. 2017. Acesso em: 23 ago. 2021.

its talons in the same heart that stuttered through the corridors of a psych ward, and reminds me that struggle as I might, it does not intend to go anywhere.

6. Conclusion: Abjection as the Revolution of Law

Before the Portuguese discovered Brazil,
Brazil had discovered happiness.
- Oswald de Andrade, *"Manifesto Antropofágico"*.

After understanding the working of legal abjection, I would like to briefly investigate the possibilities that arise from taking the legal abject as a departure point for legal analysis. This is because, as we have discussed earlier, there is always something that will exceed the attempts of normalization of the subject. Cast out or pushed out, this excess haunts the normativity that constitutes the subject, which is what I have called abjection.

However, as Imogen Tyler notes, the imperative need to survive causes the marginalized to organize in ways that are able to radically transform our critical perspectives. The task at hand therefore lies in considering abjection not simply as what contests the norms that constitute the subject and are bound to failure, but rather as a powerful resource to rearticulate what it means to be intelligible[364]. In other words, such borders are a two-way street: as the Law will push and modify the boundaries of the subject by consistently shifting the borders of the abject, so can the abject invade, infiltrate, or downright destroy certain barriers between the legal subject and the legal abject. In this context, abjection not only describes a specific state and mechanism, but is inherently troublesome to the borders and categories it edges. In Tyler's words, *"it is the insurgencies of those designated as abject which enable us to unravel histories of violence and lay them to waste"*.[365]

If the borders of the legal abject are constituted daily and renegotiated with every interaction, then it follows that these borders might be negotiated in other terms, in other circumstances, with different allocations of power. In this case, rather than trying to make the legal abject into a legal

[364] TYLER, Op. Cit. 324. P. 47
[365] TYLER, Op. Cit. 324. P. 47

subject, I believe looking at material issues of the law through the lenses of legal abjection might prove useful to understand what are the cracks and loopholes in the legal system that we might exploit so that this renegotiation of borders might be able to offer interesting ways of reorganizing the struggle within the very frameworks that constitute us as legal abjects.

This is to say that the abject must not be seen as a mere cast out or excluded. It is important to remember that Kristeva herself admits that the abject looms and *haunts* the subject. As I have suggested earlier, there is a potential of power that exists within abjection precisely because of how deeply afraid we are of its potential to completely overtake our own individuality. Therefore, if the abject possesses this *ability* to haunt, what might come out if we decide to let it use it?

To draw another parallel with witches, Ronald Hutton argues that in Medieval Europe, the burning of witches was considered the key step towards a perfect Christian society[366]. The infamous Malleus Maleficarum specifically argues that the witch was exclusively female; as the bearer of the original sin, the woman was prone to demonic possessions and immoral temptations. It argues that women *"are deficient in all strengths, as much of mind as of body, no wonder that they cause a great deal of witchcraft to be done to those who oppose them"* and that *"it is a natural vice in them to refuse to be governed, but to follow their impulses without any due reserve"*[367].

In short, the Malleus Maleficarum argues that women are liars, proud, vain, refuse their place as subjected to men, and are so weak of mind that any attempt at gaining control of their own lives must be the work of the devil. The only available solution for such wretched creatures, then, is the pyre[368]. A couple hundred of years later and proving progress is not quite as linear as we would hope, an Iowan televangelist named Pat Robertson wrote in a scathing letter in which he argued that

[366] HUTTON, Richard. Grimório das Bruxas. Rio de Janeiro: Darkside, 2021. P. 342
[367] SPRENGER, Jakob; MACKAY, Christopher. Malleus maleficarum. Cambridge: Cambridge University Press, 2011. P. 4 e 12
[368] BROEDEL, Hans Peter. To Preserve the Manly Form from so Vile a Crime: Ecclesiastical Anti-Sodomitic Rhetoric and the Gendering of Witchcraft in the Malleus Maleficarum. Essays in Medieval Studies, v. 19, n. 1, p. 136–148, 2002. Acesso em: 26 mar. 2021.

feminism "is about a socialist, anti-family political movement that encourages women to leave their husbands, kill their children, practice witchcraft, destroy capitalism and become lesbians"[369].

Behind the violent misogyny of both arguments, it becomes clear that the figure of the *witch* has rented a cottage in the minds of bigots since times immemorial. However, what else would be the reason for such an insurrection against the female figure if not a deep abiding fear of what it could *do*? The figure of the witch had to be chased off and eradicated because otherwise it would threaten that society, which means that it had the power and the means to terrorize an entire group. To be terrorized is to be vulnerable. It is to look abjection straight in the face and recognize it is capable of destroying everything that conveys order with a simple flick of the wrist.

In this sense, the child I once was provided the answers to the adult I am today: the more cast out, the more rejected, the more misunderstood, the more we must inhabit the place of the margins, possessing this power that exists in embodying that which threatens the status quo by merely existing. Embracing this legal abject as some sort of *haunting* of the status quo might prove fruitful as a strategy of struggle within the legal field.

Of course, this conclusion offers more questions than answers properly. How does one go about haunting the Law? What are the limits of this legal abject's power, and how much of it can we embody before our own identity is completely collapsed and our humanity loses meaning, like what was forced upon the inmates of Barbacena? Is this a strategy that can be divorced from material analysis of historical and social contexts or, contrarily, is this a possibility of action that can only be enacted within the material conditions of existence and can never be divorced from the corporeal body? All of these are still in need of answers, but I find that it opens the doors for a new wave of feminist thinking, especially one that is centered in the Global South. As we have seen, since Kristeva argues that abjection is all that disrupts order, everything that will disrupt it will be seen as abject, including that which will question this *order* as it is translated into colonialism, capitalism and other

[369] SCHWARTZ, Maralee. EQUAL RIGHTS INITIATIVE IN IOWA ATTACKED. The Washington Post, 1992. Disponível em: <https://www.washingtonpost.com/archive/politics/1992/08/23/equal-rights-initiative-in-iowa-attacked/f3e553a1-b768-449f-8d65-d096f9e318ee/>. Acesso em: 23 ago. 2021.

systems of oppression. If this is our goal, then there might be a way out in occupying this place proudly.

In 1552, the first Bishop of Brazil, Dom Pedro Fernandes Sardinha, was involved in a shipwreck in the coast of Brazil while attempting to sail back to Portugal. His attempts in these lands were to control the habits and the morals of the settlers, who had taken many habits of the indigenous population, such as smoking. He was also concerned with the frequency of interracial relations between settlers and indigenous women, which albeit almost certainly non-consensual, were of more concern to the Church of Portugal for the mixed children it would yield. His attempts, however, were unsuccessful and profoundly displeased the then General-Governor of Brazil, Duarte da Costa, which forced Sardinha to resign. He survived the shipwreck, but landed straight into the territory of the indigenous Caeté who, subjected to the brutal exploitation by the colonizers, saw this as an opportunity to perform a ritual cannibalism. Bishop Sardinha was eaten[370].

This moment was pivotal in Brazilian history not only because it served as the justification needed for the extermination of over 60 thousand Caeté natives, but also because of its cultural impact. It is because of the cannibalism of Bishop Sardinha that Oswald de Andrade wrote the Anthropophagic Manifesto: in his understanding, Brazilian culture developed right in this moment, where the native population consumed this foreign imposition in an attempt to get stronger for the fight against this very colonizing agent[371].

The idea of anthropophagy was first thought within the context of Brazilian arts, and it is a central aspect of the ways we interact with culture. We consume media that was imposed on us, and from it we adapt, change, reinvent; in truly abject form, we consume what we desire and discard what we do not. This is not a peaceful process because no imposition is ever peaceful. The colonization of Brazil, be it forcefully by Portugal or indirectly by the United States, has always been and always will be steeped in violence and suffering. However, the idea of *anthropophagy* is not one that needs to be restricted only to Brazil nor to the arts: in fact, I strongly believe it has the potential

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[370] VASCONCELLOS, Simão de. Chronica da Companhia de Jesus de Estado do Brasil. Lisboa: Officina de Henrique Valente de Oliveira impressor del Rey, 1663, Livro I, n.º 46, p. 32.
[371] DE ANDRADE, Op. Cit. 9. P. 5

to extrapolate our borders of the Brazilian context and allow us a glimpse on how to move away from the hegemonic legal models and practices of the Global North.

The truth of the matter is that the Law as we know it was developed in Europe and in the United States, and it could only be done in such way because of the exploration of those of us living in the Global South. It was forced upon us as a condition for our "civilization"; to be recognized as sovereign countries, we had to adapt to this legal system that came from abroad. An even if Feminist Legal Theory seeks to address the inequalities existing within the legal system, it still departs from its point of view, and the fact that the majority of legal feminist thought was conceived in the Global North makes it so that even if we try to depart from it, we will still be incurring in practices that will marginalize us. But there is always something within ourselves that resists assimilation, and occupying this space, inhabiting this anthropophagic land, seems to offer a way out of the onslaught of domination that is imposed upon us. As Oswald de Andrade says, "We want the Carib Revolution. Greater than the French Revolution. The unification of all productive revolts for the progress of humanity. Without us, Europe wouldn't even have its meager declaration of the rights of man"[372] — and without us, I would add, Olympe de Gouges would have nothing against which she could rebel either.

It seems to me then that a tentative possibility of action for this legal abject might be a *legal anthropophagy*. This is a form of action that is not centered on great ruptures, but rather localized subversions, or in what Foucault calls the "cleavages in a society that shift about, fracturing unities and effecting regroupings, furrowing across individuals themselves, cutting them up and remolding them, marking off irreducible regions in them, in their bodies and minds"[373]. It is a recognition that without the exploited, the marginalized and the abjected, the Law would simply not be. It is an understanding that if we temporarily seek to embrace the side of us which might horrify the established order with our subversions, we might destabilize power in such way that something new might emerge, something that might allow us to live lives that are truly worth living.

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372 DE ANDRADE, Op. Cit. 9. P. 39
373 FOUCAULT, Op. Cit. 217. P. 98

In a certain way, this is a practice that is already adopted in Latin America. Latin American Constitutionalism, especially in Ecuador and Bolivia, subverted the idea of the legal subject by explicitly declaring *Pachamama* as a legal subject. Pachamama is the Andean goddess of the Earth, and is still worshipped throughout all of the Andes — recognizing her as a legal subject not only awards her the protections of a subject, such as the right to life and protection against harm, but gives her a way to fight back. As a symbol of indigenous practices and the respect of nature, it means that Bolivia and Ecuador award nature an active role in fighting against deforestation and exploitation. With Pachamama as a legal subject, both countries were able to stop foreign enterprises from pursuing a predatory exploration of their natural resources[374].

Therefore, in order to disrupt order, we must let this legal abject cannibalize anything and everything is forced upon it Eat the scientific method, digest the proper rules of writing, cannibalize academia; we will make a meal out of Kelsen and serve Beauvoir on banana leaves. The Feminist Legal Theory of the South is starving, and it will cannibalize everything and everyone until through incorporation of what it understands as important, it will be strong enough to fight the very oppression it ate in the first place. Look at us: the wretched of the earth, the poor women who need saving, the savages, the uncivilized, the source of all your riches and gold. Look: you have bled us dry. You have laughed at us. You have made us beg for recognition; you have made us believe we are nothing next to you. Look at the massacres you have made, the disasters you have wrought. Behold: this is the monster you made of us. And may the image of us with bloody lips, ripping apart and eating everything you hold dear, haunt you until the ends of the earth.

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When I first started with this work, in 2019, the idea that a worldwide pandemic would shut me inside my house for over a year would seem absolutely ludicrous. I thought of abjection as something abstract, distant — I was only somewhat aware that I *could* become abject, but never

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[374] FERREIRA, Marcilene Aparecida. Pacha Mama: Os Direitos da Natureza e o Novo Constitucionalismo na América Latina. Revista de Direito Brasileira, v. 4, n. 3, p. 400, 4 set. 2013. Acesso em: 23 ago. 2021.

believed it would be so. In my mind, I would write about horror stories, gothic aesthetics, *memento mori* and *ars moriendi*. I foresaw many hours reading. I did not foresee 600.000 dead.

The development of the COVID-19 crisis throughout the world has made it clear that abjection is simply a cough away. Ariano Suassuna, one of my favorite writers, once wrote that death is what equals all that is living in a single flock of condemned[375]. Death might be an equalizer, but there is a perpetual horror in dying heaving, gasping for air, isolated from everyone you hold dear while you drown on dry land. My doctor friends would call me in tears about the ones they could not save; my Lawyer friends would call me in tears because of the ones that they lost. For the past year, grief was so heavy it was difficult to breathe, and I sat with it. Held its hand.

The truth of the matter is that it is so very easy to be rendered abject. The Law needs that we trust its promise of stability and justice, all the while allowing for a world that is becoming increasingly difficult to live in. The truth of the matter is that we are all abject. And developing a perspective of abjection is instrumental for us to think the ways in which we will survive in the forthcoming years. I say this because I saw how deeply dependent on one another we are, how desperately we need other people to live, and how miserable existence is when you are not allowed this contact.

On the other hand, this pandemic also solidified to me that my life, as a Global South woman, means nothing in the great scheme of things. While the U.S and the U.K were on a race to be the first country to vaccinate its citizens, the city of Manaus ran out of oxygen, and the speed in which the new variant Gamma spread condemned hundreds of people to die gasping for breath in front of overcrowded hospitals. While we died at rates abnormally high even for a country this size, the president played games with our lives and delayed the purchase of vaccines, completely obliterating an inoculation program that has been recognized by its efficacy worldwide. I watched in horror as people died just weeks away from getting their vaccines, as the dead were too plentiful to count, and as abjection loomed so close, I could taste its foulness on my tongue. My neighbor, who lives next door to the abandoned house of Ângela Diniz, died waiting for a hospital bed; since

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[375] SUASSUNA, Ariano. O Auto da Compadecida. Rio de Janeiro: Agir. 1975.P. 25

there was no room available for his corpse, he was placed right next to the hospital's front door, covered with cardboard paper and a blanket. This was the horror of Barbacena I was forced to witness every day for the duration of my degree, and while I cannot say *how*, I can confidently say it has changed me forever.

As I write this, I have finally gotten a vaccine. It is a privilege that many did not have, and I ponder on what it means now that my fear has subsidized. What feelings can emerge in its place? Anger, definitely, as I see myself getting closer and closer to simply becoming one with the witch inside my mind. Grief too — insurmountable amounts of it, not only for the ones I have lost, but for the life I thought I had before all of this, where I thought that a degree and a job would be able to award me more recognition than my family could have ever dreamed of. It would not. All it took is a single virus for my position to be made clear: I am a South American woman of color living in a world that would not hesitate to set me on fire to light a single cigarette. Despair, then. An impossibility of thinking anything beyond the current cloud of abjection and death looming in the horizon.

But I light candles to my gods, I pray for their protection. I sing their *pontos*, I read their stories, I bury my dead, I believe in their purpose. And as I listen in to their chanting, I can hear them in the rhymes I repeat incessantly not to go insane: Listen. The night is not forever - it will dawn, it will dawn, it will dawn. Look at the sun, my child. Can you hear me?

I can.

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