

Law as a Political Technology of Gender

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How to cite this paper: Baggenstoss, G. A. (2025). Law as a Political Technology of Gender. *Beijing Law Review*, 16, 1667-1685. <https://doi.org/10.4236/blr.2025.163082>

Received: May 9, 2025

Accepted: August 29, 2025

Published: September 1, 2025

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Abstract

Initiatives by the Brazilian Judiciary, such as the Protocols for Trials from a Racial Perspective (2024) and Gender Perspective (2021), proposed by the National Council of Justice, face not only the challenges of judicial policy for their implementation, but also a type of subjectivity disconnected from its own individual, social and political context. It is therefore necessary to revisit the legal language itself, the teaching of Law and the history of the people who work in the area, who have been subjectified with this language of neutrality and impartiality that disregards the contextual and discriminatory formation of people and Brazilian society itself. In this context, the present study, of a qualitative nature and based on a narrative bibliographic review, based on feminist post-structuralist epistemology, aims to investigate how Law contributes to the constitution of subjectivities alienated from their contextual condition and to the reproduction of vulnerabilities through biopolitical and necropolitical devices in its teaching and professional practice. Based on the theory of gender performativity, it is understood that social and legal norms not only recognize bodies, but produce them by determining legitimate forms of existence and forms excluded from legal language.

Keywords

Gender Technology, Law, Politics, Legal Language

1. Introduction

In Western teaching and professional practice, the field of Law has traditionally and historically been understood as a neutral and objective normative system, guided by principles of justice and impartiality. In Brazil, in view of this scenario, guidelines and directives such as the Protocol for Judgment from a Gender Perspective (National Council of Justice, 2021) and the Protocol for Judgment from a Racial Perspective (National Council of Justice, 2024) aim to change legal grammar so that principles of justice and impartiality are understood with a semantics

different from the traditional sense. By recognizing the Brazilian State in a discriminatory architecture, these regulations of the National Council of Justice also recognize the Judiciary as an institution organized in discriminatory practices, which reinforce violence from the historical and political processes of formation of its society (Baggenstoss, 2025). These trial protocols attempt to recognize and include gender and racial identities, which can serve to exemplify the regulation of gender performativity in Brazilian legal practice.

In this institutional effort of the Judiciary, there is a background that needs to be highlighted: a new language is proposed, so that the meanings analyzed in Brazilian Law also contemplate contextual issues of the people involved in certain cases. This exercise involves not only a hermeneutic task, but also an arduous need for an epistemological change in worldview, of how subjects are perceived, of what the flow of social relations is and, especially, of what effects are imposed by the practice of Law. A methodology for revisiting legal language itself also requires revisiting the construction of Brazilian legislation, the teaching of Law and the historicity of people who work in the area, who were subjectivized with this language of neutrality and impartiality that disregards the contextual and discriminatory formation of people and Brazilian society itself (Baggenstoss, 2025). It is in view of this current and urgent context that this study is proposed, of a qualitative nature and based on a narrative bibliographic review, which investigates how Law contributes to the constitution of gendered subjectivities and to the reproduction of vulnerabilities through biopolitical (Foucault, 1978; 1979; 1999; 2002) and necropolitical devices (Mbembe, 2016).

Based on the theory of gender's performativity, proposed by Butler (2018b), it is understood that social and legal norms not only recognize bodies, but produce them by determining legitimate forms of existence. With a critical theoretical reference, this theoretical research is based on the approach of Gender Studies and post-structuralism, which question this supposed neutrality, highlighting how legal discourse acts in the production and regulation of subjects. From this critical perspective, it becomes evident that Law not only reflects social norms, but also actively participates in the constitution of these norms, legitimizing certain identities, behaviors and relationships to the detriment of others.

By presenting itself as neutral, legal discourse hides the social markers of difference—such as gender, race, class, sexuality and disability, among others—that permeate its structure and application. This invisibility is not merely rhetorical, but operates in a concrete way in institutional organization, judicial practices, and the distribution of rights and duties. Gender Studies, in particular, contribute to destabilizing essentialist conceptions of the legal subject, exposing how the legal system tends to recognize as universal a certain model of life, which is embodied in Eurocentric and androcentric figures. Butler (2006; 2018b), for example, argues that the subject is only intelligible, and, therefore, subject to legal recognition—within gender norms that regulate social life. This implies that those who escape these norms find it more difficult to access justice, often being silenced or pathol-

ogized. Thus, the promise of impartiality of the Law must be reviewed in light of its practices of exclusion and hierarchization, which are denounced by feminist epistemologies. Thus, Law is recognized as a discourse and as a technology of gender (Lauretis, 1994). Legal discourse, when operating as a technology of gender, establishes limits to the intelligibility of bodies, granting recognition to certain subjects while making others precarious. This precariousness is deepened by the power relations that structure disciplinary and control societies, as proposed by Foucault (1978).

Furthermore, the analysis of public policies reveals how biopolitics, when managing life, and necropolitics, when determining which lives are likely to be discarded, shape the experience of subjects in the social space. In this framing of life, marginalized groups, such as trans people, find themselves at the center of this dynamic, subjected to norms that frame them within an exclusionary biomedical and legal logic. Legal discourse, by claiming the status of universal truth, silences subalternized experiences and perpetuates structural inequalities. It is in this context that this article proposes a reflection on the effects of law on the production of precariousness and vulnerabilities, problematizing its claim to neutrality. By articulating critical theories and intersectional analyses, we seek to understand the ways in which law not only regulates, but also disciplines and subjugates historically marginalized bodies.

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2. Gender Studies: Performativity and Legal Discourse

Gender Studies recognize the existence of social and legal norms that guide the reading and recognition of bodies and expressions in a social group. Thus, they highlight how social and legal norms shape the way bodies and their expressions are perceived and recognized in different social contexts. From this perspective, gender is understood as a social construction that is achieved through the repetition of certain practices and behaviors. Inspired by the notion of performativity proposed by Butler (2018b), Oliveira (2017) argues that these repetitions do not reveal an original essence of the masculine or feminine, but rather produce the effects of gender that are taken as natural. In other words, gender expressions do not derive from an authentic model, but from a series of repeated imitations, which create the illusion of originality. This process of performativity contributes to the belief that gender has an essence, often confused with biological data considered natural. However, the critical perspective does not deny the existence of biological differences, but proposes that the meanings attributed to these differences are socially constructed. As Oliveira (2017) highlights, it is from social sys-

tems of representation that gender gains meaning, even when there are bodily variations that could indicate sexual distinctions.

The studies of biologist [Anne Fausto-Sterling \(2013\)](#) reinforce this argument by demonstrating that human sexual classification is not restricted to the traditional binary model. By identifying at least five biological categories of sex, she proposes a more complex and dynamic understanding of the relationship between body, gender and sexuality—relationships that are permeated by historically situated social constructions. In these studies, the biologist invites us to reflect on how sex, gender and sexuality function as interconnected and socially mediated systems, which are expressed in the body, but have their origins in historical and cultural constructions, and not an ontological origin. In view of this, it is essential to recognize that gender expressions, as well as desires and affections directed at other bodies, are understood and validated based on norms that operate in the social field. To this, [Oliveira \(2017\)](#) suggests that, in the effort to understand this dimension, it is essential not to lose sight of the material and symbolic effects of gender in everyday life, including access to rights and recognition.

By recognizing the performative dimension of gender, it is understood that gender expressions, forms of masculinity and femininity, and desires for other bodies are mediated by social norms that operate, regulate, and organize the existence of subjects. This reading can be done based on the Theory of Social Markers of Difference, which indicate codes of intelligibility by which certain bodies are recognized; just as gender is characterized. From these categories, it is possible to observe the inequalities and hierarchies between bodies, among themselves and in the treatment before the State, in which justifications based on essentialism are verified so that hierarchical differences are maintained. Gender, in this prism, in its normative-social form, promotes the formation of a binary of sexes, which are perceived only as masculine or feminine, thus excluding any other possibility considered healthy ([Oliveira, 2017: p. 15](#)). Furthermore, it is worth noting that the relationship between the representative figures of this binomial is not horizontal: due to patriarchal thinking, there is the subordination of female bodies in homage to male bodies, to which the spheres of power and examples of success are relegated. Once these initial articulations have been made, the following is an explanation of some effects of gender norms in the social environment, in a hypothetical-dynamic manner, considering the investigation of such norms “as social regulations that give legitimacy to gender and govern its recognition” ([Oliveira, 2017: p. 14](#)). Gender norms promote the formation of a social order that is marked by heteronormativity and gender normativity. Here, therefore, heteronormativity can be understood as “[...] the norm that regulates, justifies and legitimizes heterosexuality as a more natural, more valid and more normal form of sexuality to the detriment of others, seen as negative and inferior”. Therefore, analyzing gender normativity refers to the observation of the social dynamics that exist in its reason, as well as the way in which they are identified in their concrete expression, still interspersed “by other matrices of oppression and privilege, such as race, sexual-

ity, class position, among others” (Oliveira, 2017: p. 15). Both heteronormativity and gender normativity constitute, in other words, a social and legal organization, since they promote the structuring of how people should exist and live, which, according to Oliveira (2017: p. 14), can expose them as vulnerable and precarious and leave them subject to certain forms of violence depending on their (il)legibility/recognition and positioning. Consequently, gender norms provide centrality to gender constancy and privileges to people who obey them and perform gender expressions considered appropriate, also guaranteeing them an apparent sense of immutability (Oliveira, 2017: p. 15). It is in this line of reasoning that we find the understanding of what gender identity is, a condition recognized by Brazilian law based on Decree 8727, of 2016, as well as by the STF decision on the Recognition of Gender Identity, in 2018, in Direct Action of Unconstitutionality (ADI) 4275. In this sense, transgenderism emerges as a qualification of gender transition, based on the woman-man binomial and having sex as a reference. In other words, the law regulates gender performativity not only through formal legislation, but also through judicial and institutional practices that recognize or deny certain existences. One example is the historical difficulty in recognizing trans identities in civil registration systems, forcing trans people to resort to the Judiciary to rectify their name and gender. Until 2018, the STF had not recognized this right in an unbureaucratic way—the requirement for reports, surgeries or pathologizing diagnoses was a form of coercion on how a body should “perform” its gender in order to be legally recognized.

If, on the one hand, we observe the occurrence of gender transitions, on the other hand, it is possible to examine a supposed permanence of gender. For people whose performativities fit into such permanences, equally binary, we have the qualification cisgenderism. It is essential to mention that cisgender existence was named precisely by trans people for discursive reasons: that person who receives a specific denomination, to be identified as “diverse” or “different” from a materiality that is understood as standard, ends up being placed as an exception, in a marginal or invisible place. In order to balance the narratives, a linguistic shift was necessary, so that there would exist that which would be different from trans existence, that is, cis existence. Given the centrality and order determined by gender norms, trans people, for example, find themselves in a place of transgression of such norms. Therefore, “[...] the bodies of trans people still suffer from colonization by gender norms and the biomedical model that constantly resorts to norms as a way of exercising biopower and necropolitics over these bodies [...], a transfemicide [...] with no end in sight” (Oliveira, 2017: p. 16). Biopolitical and necropolitical orientations do not only affect bodies based on gender identity, although their impacts are clear in this social marker.

There are other categories of social markers that need to be considered due to the necessary intersection observed in bodies, which is why it is considered a reductionist stance to compartmentalize research into isolated categories: researching only race, or social class, or gender. It is in the conjunction of the categories

of social markers that the complexity of life occurs and through which the processes of precariousness of bodies operate.

Performativity, Precariousness and Vulnerability

Thinking about precariousness is an invitation to reflect on interdependence as a condition of the Other, who depends on me and on those I depend on, and on the mistaken conception of an individualized existential autonomy. This condition reveals, through the Other, the self and the connections necessary for an ethics of nonviolence. Its non-recognition, in another way, leads to violence and revenge (Butler, 2006). In this sense, this recognition offers an “awakening to what is precarious in another life or, rather, to what is precarious to life itself” (Butler, 2011).

To this end, it will not be an “awakening, to use that word, to my own life and, in this way, extrapolating to the understanding of another person’s precarious life. It needs to be an understanding of the Other’s precarious condition” (Butler, 2011). The Other and the self, there, are linked to an idea of humanization or dehumanization, depending on whether or not there is representation of such people, to which Butler brings Levinas to speak of representation and self-representation. There is the assumption that those who gain representation, especially self-representation, have a better chance of being humanized. Those who do not have the opportunity to represent themselves run a great risk of being treated as less than human, of being seen as less than human or, in fact, not being seen at all” (Butler, 2011). Precariousness, as a condition of the subject, can be reinforced by structures that cause the vulnerability of bodies. There, the ideas of precariousness, performativity and vulnerability are aligned.

In the interview conducted by Sara Ahmed, Butler suggests the existence of “two dimensions of gender’s performativity from the beginning” (2017) of a person’s life. The first dimension of gender performativity would be “the unchosen or unwanted situation of gender assignment, one that we can deliberate and alter over time”. The second dimension would be “[...] the performative action that takes up the terms by which we have been treated (therefore reclaiming, assuming or refusing), the categories through which we have been formed to begin the process of self-formation within and against their terms” (Butler, 2017). Thus, when we think of Butler’s gender performativity, we are linked to a norm that affects many people, with its due time and space cuts, and that cannot be reduced only to the collective or the individual, the effects of this norm occur in both fields. A woman, for example, can be something, based on the effects of the norm, and represent what is called femininity. In reaction to this interpellation, there is the production of cultural diversity, specifically gender diversity.

Thus, the performative acts that we embody and reinterpret gender are individually performed, but shared collectively. At this point, according to Butler, it is a perspective in the sense of Louis Althusser, in the sense that it affects a number of people and where the responses to this interpellation of the social norm can be different (Butler, 2015a). Performativities rarely occur in isolation: they occur

among us, from a preconceived social network, in the social environment, and are found in various forms of institutionalization of the path in society, especially in the State. There is an intelligibility of performativity, an understanding of what is performed and of a possible performance. In these recognitions of performativities, people are on a frontier asking if there is anyone in the world like them; and when they find people who can recognize them, these movements become important expressions of solidarity. And it is at this moment that communities can articulate and support each other, such as trans people, women, nonconforming, intersex, bi-communities that are commonly in search of someone who can recognize and understand them, without risking their lives (Butler, 2015a). Here, Butler's thinking is interested in Hannah Arendt's work, given that she also has a performative vision of how to act in order to produce a different reality, considering that she understands that action is always in the plural, presupposing plurality. Even though nothing necessarily acts in isolation, according to Arendt, the right to act means acting in a common agreement, representing that we are plural and social, that we are potentially political when we act together. In this, an important way of thinking stands out that offers a different way of seeing the subject: with the potential of a subject of political and performative act (Butler, 2015a).

Vulnerability, in this sense, can be characterized as the "condition of responsiveness" of these dimensions, which affects people and produces effects on them. Thus, "we are driven to speak, to accept the terms by which we are treated or to refuse them, or, in fact, to twist or homosexualize them in directions that, [...] deviate from what seems to be their original goals" (Butler, 2017). The process of constructing people's subjectivity, then, is permeated by vulnerability, since it is affected by multiple unchosen social norms of gender attribution. In this, in order to "contest the terms of this attribution or engage in practices of self-attribution that refute or revise (deviate from) attributions given by others and prior to the formation of my will" (Butler, 2017), there are dilemmas to be faced: the assumption of the task of self-attribution, which comes from the linguistic register of personal autonomy. In the relationship between gender and vulnerability, Butler reveals that vulnerability exists from the beginning, whether in her literature, in the book *Gender Trouble*, or for any of us, in each existence.

In the case of women, gender is attributed through the indication of a proper name, which already makes them affected by gender before any understanding of what it means or its effects. But these vulnerabilities are not associated with passivity or a locus that demands, from some other relational pole, a paternalistic posture. On the contrary: vulnerability can give rise to the formation of one's own will (in the book *Antigone's Claim*, 2000), as well as the alliance of bodies in assembly (in the book *Corpos em Aliança e a Política das Ruas*, 2018a). In the idea of gender assignment, Butler (2017) teaches that "we are vulnerable to this assignment and subject to it from the beginning, against our will. In fact, we can understand the first discursive practices of gender assignment as potentially exploiting our vulnerability". This is established by virtue of our existential condition of

needing “[...] being treated for living, that is treated by other people through language or other meaningful practices, including touch and noise, and without these ways of enabling treatment, we really don’t survive. Being fed and put to sleep are also ways of having the body treated at a very basic level. So without treatment, there is no survival, but survival means that we do not fully control the ways in which we are treated, and we can live with that as adults more or less well, or we can seek to exert power over the way we are treated. Indeed, much of our work [...] derives its political power and appeal from holding out the possibility that we can speak out against those who treat us in ways that are radically unacceptable or against those who do not really address us and thus potentially endanger our existence” (Butler, 2017).

Vulnerability, in this context, while highlighting the precariousness of life, also increases its potential for unpredictable transformations based on a given context. From this, it is important to think specifically about the production of precariousness by the State, which is achieved by a biopolitical situation that subjects various social groups. This process, “generally induced and reproduced by governmental and economic institutions, adapts populations, over time, to insecurity and hopelessness” (Butler, 2018a: p. 21). It is structured through various legal institutions, such as temporary work, destroyed social services, and scrapped health and education services, in conjunction with “the general erosion of the active vestiges of social democracy in favor of entrepreneurial modalities supported by strong ideologies of individual responsibility and the obligation to maximize the market value of each person as the ultimate goal in life” (Butler, 2018a: p. 21).

At this point, it is stated that, through power, there is an unequal production of life, with normative mechanisms to regulate the flow of information about life. Thus, there are ways of distributing vulnerabilities, some more arbitrary than others, based on social markers. One of the forms of power is legislative and judicial management by legal norms, and this is addressed in the next topic from the perspective of biopolitics and necropolitics.

3. Orientation of Public Policies: Biopolitics and Necropolitics

In Foucault (1978), we understand how power acts to control subjects as individuals and as collectives, based on biopolitics, implemented in disciplinary societies. Biopolitics, from this perspective, confers the docility of the subjects’ bodies, so that they become components that are easily molded to a certain logic. To this end, one of the mechanisms used is the articulation of social life in binarisms, specifically between a model to be followed and a configuration (of existence, behavior, interaction) to be avoided. Foucault, therefore, analyzes power as a conduct that forms a certain intelligibility. Thus, without a necessary link to repressive force, it is effective because it represents an effect of discourse and is not in the possession of any one person. In view of this, the occurrence of cultural and institutional practices must be analyzed as producers of the social subject, whose

definition will be affected by eventual changes in society, which give rise to other discourses based on practices and knowledge. It is these discourses that produce the subject of contemporary Western society, which is completed in an individual with desires, thoughts, peculiarities and autonomy monitored by consciousness, which, in turn, contains elements of intelligibility of recognition of bodies and behaviors arising from the social environment. Thus, control will not necessarily be through the use of force.

Mbembe (2016) dialogues with Foucault insofar as he professes that, if biopolitics will condition the life of certain bodies, the same political choice will induce the death of others—this is what he calls necropolitics. He states that “[...] the notion of biopower is insufficient to explain contemporary forms of subjugation of life to the power of death” and “that, under necropower, the boundaries between resistance and suicide, sacrifice and redemption, martyrdom and freedom disappear”. The Mbembean view also provides an improvement in the way of observing political choices, which are not restricted to the state environment, but which spread throughout the whole of life in society, even if in an institutional form, and which, in truth, “subjugate life to the power of death (necropolitics) and profoundly reconfigure the relations between resistance, sacrifice and terror” (Mbembe, 2016).

In the scene of the dynamism of life, Deleuze also proposes, along Foucaultian lines, a change in society: a new order has been established, driven by the Second World War, which represents the transformation of disciplinary societies into control societies. The change would be stimulated by capitalism and would be linked to technological innovation. In this context, the technological apparatus developed under the aegis of capitalism would be used for the purposes of social control, as an exercise of power for contemporary society. Through this discernment, surveillance (which, in Foucault, was characterized by institutional surveillance) is transformed into a pulverization of power no longer restricted to institutions, but encompassing a general character of the signs of society, through, for example, security cameras, social networks, credit cards, consumer scores. In such a scenario, see: the docility of bodies remains, but no longer from the discipline of institutions, but through the voluntariness of subjects in their environments, who internalize control, organizing life and controlling it in an omnipresent way (Deleuze, 1992).

Foucaultian sphere of discipline, the Mbembean sphere of necropolitics, and the Deleuzian sphere of control, begin the debate on how law, as a discourse of legitimate symbolic force, can be conceived as a set of state instruments with these theoretical configurations. Deepening the discussion, law is analyzed, initially, by the category of gender, as a discourse that, by authority, claims to be legitimate to construct political subjects in the binary perspective, man and woman, to attest to social inequalities and, thus, to promote the maintenance of the aforementioned binomial of gender, as well as the differentiated structure maintained from social markers.

In Brazil, the war on drugs policy is a clear example of necropolitics, as defined by Achille Mbembe. It operates selectively, allowing certain bodies—especially black, poor, and peripheral bodies—to be disposable. Police lethality in the favelas of Rio de Janeiro or Bahia, often against young black men, is justified as “public security”, while in practice it is a policy of death. In the field of biopolitics, we have the management of bodies through conditional social assistance, such as the Bolsa Família program, which requires school attendance or vaccination in order to access the benefit—or even reproductive control policies for poor and black women, as pointed out by Sueli Carneiro and Lélia Gonzalez. These are forms of administration and regulation of life that expose how the State decides who deserves to live and who can die or be controlled.

4. The Non-Existent Claim of Neutrality of Legal Discourse

To find political orientation and its impact on bodies, it is necessary to locate them in their social markers. [Harding \(1996\)](#) proposes examining social phenomena with the existence of the following interdependent nuclei of phenomena based on gender: gender symbolism (related to the dual intelligibility criteria of gender), gender structure (sexual division of labor) and gender identity (through the process of subjectivation and socialization). In this perspective, the legal profession would be permeated by gender symbolisms, as well as presenting a hierarchical division of types of work, as well as constituting and reinforcing the subjectivation of women who experience the aforementioned training.

Gender in the dichotomous prism, in turn, already denounced by Foucaultian thought, also forms binomials that are sexualized and hierarchical: nature-culture, sex-gender, rational-irrational, active-passive, thought-feeling. In this conception, the masculine pole is valued superiorly to the feminine, which remains (or should remain) submissive. In this sense, as rational and cultural, Law would primarily fit into the masculine extreme ([Olsen, 1995](#)). Here, it is important to warn that the configuration of law as a masculine polarity, as “masculine”, will receive criticism from some feminist theorists, such as Carol Smart. For Smart, the understanding that law is masculine will be linked to the understanding of radical feminism, which is seen as a defender of an essentialism, which is criticized by postmodern feminist thought. And this essentialism refers not only to the framing of law as something intrinsically masculine, but also to the generalization and universalization given to the female political subject, hiding the distinctions of ethnicity, race, class, etc. ([Smart, 1999](#)). As a proposal for correction, Smart offers the view that “law has gender” ([Smart, 1999](#)). This warning also serves to note that Law proposes discourses that foster polarities and hierarchies between subjects based on gender, through the symbolic. Thus, legal discourse has “countless dualistic metaphors about the feminine and masculine” ([Campos, 2011](#)).

Still, for Alda Facio Montejo, a Costa Rican feminist jurist whose studies promote what has been called Latin American legal feminism, an important criticism that feminism promotes of law is the conception that men and women are essen-

tially equal and that it would be enough to incorporate women into power to guarantee “the elimination of all discrimination suffered by different women, for being women” (Montejo, 2014: p. 2). Thus, the solution to this would be to occupy the spaces of power with women. However, such a proposed solution “[...] it does not contradict traditional conceptions of law, nor does it question its focus on the wealthy class, its racism, homophobia, or any of its exclusions. Even less does it question the decisive contribution of law to the oppression of all women and so many men [...]. This is a criticism that focuses on the access of some women to public life, as this is the place from which, according to this current, women have been excluded. It also assumes that women, because they are women, when they are in power, will want or be able to eliminate all discriminatory norms” (Montejo, 2014: p. 2).

Furthermore, what Montejo (2014) also questions is legal logic as a masculine logic, in the sense that it is necessary to reflect on the “[...] intention of reducing legal reasoning to logical-mathematical reasoning. It means questioning the dogmatic deductive system of formal logic because it is not the appropriate procedure for knowing, interpreting and applying the law” (Montejo, 2014: p. 2). Furthermore, it asks about the implementation of justice itself, which “[...] does not have a unequivocal solution but rather several possible alternatives from which one must be chosen. It means knowing what is fair for each specific case” (Montejo, 2014: p. 2). So, remember that [...]what is questioned is the androcentric content that has been given to human rights in general, not to devalue them, but to give them content that is more inclusive of the needs of human diversity, with the aim of making them truly universal (Montejo, 2014: p. 2).

In this context, it is possible to recognize law, “as a regime of truth”, as “a knowledge produced in and by society, a value that circulates and creates discourses and praxis, guiding ways of ordering the world and the rules of action” (Duque & Prando, 2016).

And an important reference is legal education in Brazil, that still operates largely within a positivist and universalist logic, which tends to disregard social markers of difference (gender, race, disability, class, sexuality). This alienates subjects from the concrete context in which they live. One example is the teaching of the concept of “citizenship” without considering the structural inequalities that impede the real exercise of rights. In jurisprudence, we can think of decisions that treat cases of gender violence in a decontextualized way, as if all women had equal access to State protection. This logic produces an abstract legal subject, without territory, color, gender or class—and, therefore, inadequate to guarantee justice in an unequal society.

Here, it is necessary to understand the way in which gender operates in law and helps to construct it. Thus, law can be qualified as a gender technology, insofar as it attributes “[...] meanings to what it means to be a woman, to the way one should be a woman, and to the way the world should view bodies stigmatized as feminine,” as well as “in immediate coercions under the sign of material violence or in

the dissemination and interaction of images, procedures, rules, and representations that flex them toward the model of ‘being a woman’” (Duque & Prando, 2016). In the same context, law can be qualified as a technology for maintaining the structure of social hierarchy.

An examination of gender, as mentioned, carried out only under the scrutiny of the woman-man binomial, provides a reduced observation of reality. If we observe bodies, existences are crossed by various social markers, depending on their context. Based on a neutral discourse of equality, the structural inequalities of culture and society that exist in the plurality of women are hidden, since the political subject of women, contemplated in the legal system, does not reach those who resist structural and institutional racism, nor discrimination based on class or sexual orientation. The silence of the Brazilian legal system regarding women and their markings (and scars) of race, class and sexual orientation makes their existences invisible. This is where the determined model of whiteness and heterocisnormativity comes in.

In this sense, whiteness is characterized “as a stage of awareness and denial of privilege experienced by the white individual who recognizes the non-existence of the right to structural advantage in relation to black people. The nomenclature whiteness, on the other hand, takes the place that until then belonged to whiteness, to define the practices of those white individuals who assume and reaffirm the ideal and unique condition of being human, therefore, the right to maintain the privilege perpetuated socially” (Jesus, 2018).

Regarding heterocisnormativity, the characteristic pattern of these identity criteria, conveyed by the hegemonic system, is heteronormativity, which is embodied in a set of informal and institutionalized agencies, through discourses, values, practices and procedures, through which heterosexuality and its consequences are imposed and experienced as the only natural and legitimate option of expression, as well as what we understand as something of a woman or something of a man—feminine/masculine (Junqueira, 2010). This is what can be understood as a heterocisnormative pact and which organizes not only interpersonal relationships, but also institutional and social organizations (Baggenstoss, 2021). Law, as a discourse guided by universality, aims to be true to the extent that it silences and disqualifies the experience and plurality of bodies, especially women (Smart, 1999). And this is done in a scientific conviction, in which it presents its own method, a certain language and a system of specific results (Smart, 1999). Considering that law is a science, to which Smart is affiliated, this distances itself from Foucault’s conception, which considers law as a regulatory instrument of the pre-modern era, as it would be tied to the “power regime that precedes the growth of the modern episteme” (Casaleiro, 2014). Thus, it would not fit into the conception of the discussion of science, knowledge and truth.

Law can also be considered a discourse that is equivalent to both a government technique and a scientific sphere (as presented in academia). This is because legal discourse finds a procedural basis that is supposedly authentic in science – which

promotes it to a sphere of definition of truth, knowledge and a model to be followed. This “scientific” method gives prevalence to the model indicated by law as the most legitimate and, furthermore, the true or correct one. In this way, “power, knowledge and truth are closely linked: they produce each other” (Casaleiro, 2014). It is important to highlight that, in this sense, legal discourse is seen as backward in relation to other human and social sciences. In law, the idea of truth still persists, while other areas permeate their studies with probabilities, narratives, rationalities of consensus and opinions. However, the backwardness is not inadvertent: it is necessary, for its own discourse, to resort to the argument of authority, from which the power to resolve conflicts would emanate. In the configuration of the Brazilian State, therefore, the argument of authority would come from the basis of the law, due to the representative system, which, in turn, would confer legitimacy on state action because it is the result of a process of political discussion by the people (even through representatives).

In addition to the fallibility of the representative system, it is seen that state actors (whether judicial, police or political) use the argument of authority in their own name, as if the person exercising power had, intrinsically, the so-called state powers. And, more than that: in addition to the claim to truth, legal discourse also claims the archetype of salvation, presenting itself as the legitimate means to correct errors and promote the ideal of justice (Smart, 1995). Thus, the meanings of law are articulated as a science and technique of government, in which the model of the positively determined subject is the target of biopolitics, the subject of its margins, is what remains with necropolitics, while everyone is internally controlled by the disciplinary signifiers of contemporaneity. As the bearer of an archetype of salvation, claiming for itself the legitimate role of correcting errors and realizing the ideal of justice, it has a constitutive power function as a technology. This dual function—of enunciation of truth and redemption—is deeply articulated with its dimension as a science and as a technique of government. In this process, the relationship between law and subject reproduces the logic of master and slave: law, as master, establishes the conditions of existence, determines the limits of action, and defines the parameters of correction and punishment; meanwhile, the subject, as slave, is shaped by these limits, submitting itself to a condition of recognition that is only possible through domination. In the contemporary configuration, the “positive” subject, the one fully integrated into disciplinary norms, becomes the target of biopolitics, regulated, protected, and governed for the production of life.

On the other hand, the subject on the margins—the one who does not fit in, who escapes or is disposable—is relegated to necropolitics, where management is done through exposure to death, exclusion, and violence. However, even the positive subjects remain internally controlled, captured by the disciplinary signifiers of contemporary times, so that the promise of legal salvation masks the permanent reproduction of relations of domination, a sophisticated update of the old dialectic between master and slave (Hegel, 1939). Such invisibility is already a form of vio-

lence, which has the function of disguising the violence that occurs in the materiality of the social environment. These women are left with necropolitics. And, for all of them, the control imposed by the neoliberal model of woman, which is outlined as one who, performing femininity in a representative degree of sensuality through the use of medical, cosmetic, clothing, cybernetic technologies, etc., performs the idea of ableism, mainly through professional success; independence, by making decisions for herself or her family (she is the superheroine, in an abusive overload of demands); competitive in the professional and personal spheres, in competition with other women, especially due to aesthetic standards. If she has children, she must quickly return to the body shape she had before pregnancy or better; if she ages, she must be guided by the idea of beauty of infinite youth, with anti-aging products and procedures (Wolf, 1992).

The proposal also highlights that the aesthetic standard, despite the acceptance of diversity through market co-optation, still remains in the white European figure (Baggenstoss, 2022). In this sense, one can think of the concept of vulnerability in its resonance in peripheral countries, such as Latin America. Thus, one reflects on the boundaries of collective life. An example of this is to think that the periphery would always be outside the United States; but it would also be inside, if one looks at the bonds of solidarity between people native to American countries. Thus, it is possible to consider the relationship between the populations of the periphery and urban and metropolitan life. In Europe, borders are also thought of, as are the people who are in refugee camps, in Italy, in North Africa, in Greece. Thinking about the precariousness of work in the peripheries, the conditions of work in today's markets, legal slavery and precarious work in Brazil is one example of this. These people are extremely vulnerable and are having to think about the best way to achieve a certain emancipation, mobility and citizenship. Thus, Butler states that, from her perspective, the periphery occurs everywhere where global capitalism is functioning, everywhere where state power is in complicity with capitalism (Butler, 2015b).

Biopolitics is producing effects all over the world and needs, precisely, a more flexible geopolitical map of power to account for this (Butler, 2015b): here we observe how, from the perspective of the geopolitical map, power is performed and vulnerability is installed. In this scenario, vulnerability ceases to be merely an externally imposed condition and becomes part of the very subjectivity of those affected. The identities formed in these contexts of exclusion are not structured solely around lack or precariousness, but also around resistances that emerge from within these adverse conditions. The production of vulnerable subjectivities is therefore also the production of new forms of agency, which do not deny vulnerability, but recognize it as a starting point for the construction of alternative political practices. Social movements that emerge in urban peripheries, solidarity networks among migrants and refugees, indigenous mobilizations against environmental devastation, and forms of organization of precarious workers are expressions of this resistance that challenge the dominant biopolitical logic.

They show that vulnerability is not merely a state of passivity or domination, but can be reappropriated as a collective force that strains the limits of the system. Thus, thinking about vulnerability from a critical perspective implies recognizing its ambiguous nature: it is both an instrument of control and a potential catalyst for social transformation. By mapping these insurgent practices on a new geopolitical map, we glimpse the possibility of new political configurations that escape, even if partially, the constraints of globalized neoliberal biopolitics.

Butler intends to promote an observation of the multiple geopolitical movements of people with precarity, learning about their activism, their form of solidarity, in order to articulate this concept (Butler, 2015b)—precarity—in an embodied way. As a consequence, Butler dialogues with Lauren Berlant, through her theory of affect, in which “precariousness implies an increased sense of being dispensable or discarded that is not equally distributed in society”. In an individual connotation, “the more one conforms to the demand of ‘responsibility’ to become self-sufficient, the more socially isolated one becomes and the more precarious one feels; and the more social support structures cease to exist for ‘economic’ reasons, the more isolated one feels in one’s sense of heightened anxiety and ‘moral failure’. The process involves an escalation of anxiety about one’s own future and about those who may depend on one; it imposes on the sufferer of this anxiety a framing of individual responsibility, and redefines responsibility as a demand to become an entrepreneur of oneself under conditions that make a dubious vocation impossible” (Butler, 2018a: p. 21). The biopolitical management of vulnerability acts in the formation of subjects, imposing vulnerability as a fundamental criterion that connects them to the exercise of power. In this process, the subject is qualified as a being susceptible to exploitation, because, although power has the capacity to subordinate, it is also through it that the possibilities of agency and resistance arise. Thus, vulnerability and resistance are shown to be inseparable. A paradox is thus formed: the same power that subjugates the subject is also what makes their capacity to act possible, albeit in a conditioned manner (Butler, 2018a).

In this sense, the notion of performative precarity, proposed by Butler, becomes fundamental to understanding how vulnerability can be resignified in resistance practices. Precarity, far from being just a state of exposure to loss and violence, also configures the possibility of collective action, as it reveals the interdependence of bodies and lives. The performativity of precarity manifests itself when vulnerable subjects and collectives make their conditions visible and politically significant, refusing invisibility and demanding new forms of belonging and recognition. By occupying public spaces, by forming unlikely alliances, by demanding the right to exist in their difference, these groups perform a politics that emerges from the very condition of exclusion (Butler, 2018a). In dialogue with decolonial perspectives, it can be said that these resistances from the margins not only question the center, but also affirm other ways of life and social organization.

It is not a question of abandoning the law, but of recognizing its limits and

investing in parallel and complementary forms of justice. Realistic alternatives include restorative and community practices of conflict resolution, forms of social justice based on listening, symbolic reparation and collective construction of meaning. In addition, social movements, popular knowledge and care practices promoted by collectives and solidarity networks are ways of producing justice that are not based exclusively on punishment or institutionalization. Overcoming the law is not a denial of its existence, but a rearticulation of its ends and its subjects, in dialogue with the ethical and cultural plurality of society.

Thus, the power of the margins does not reside only in denouncing oppression, but also in creating other worlds—alternatives of existence that challenge Eurocentric universalism and propose plural modes of coexistence, politics, and care. In this context, vulnerability, far from being an imposed destiny, can be reconfigured as a field of experimentation and invention of new ways of life, in which resistance is not only a reaction, but an active creation of possible futures. Thus, in the same way that it is not considered appropriate to isolate social markers for analysis, it is considered essential to observe precariousness and vulnerability allied to the agency of bodies. At the same time, it is necessary, from the state perspective, to observe biopolitical and necropolitical operations together, thus finding the state policy for treating bodies.

As presented, these terms are important for thinking about material articulation in specific contexts. In Brazil and Latin America, gender is inextricably intertwined with race, class, territory, and access to basic rights, in a context of coloniality and precariousness in the Global South. For this reason, performativity is not seen in isolation, but in conjunction with authors such as Lélia Gonzalez, who invites us to think about the black woman's body as a target of multiple layers of oppression. Furthermore, it is essential to consider the material conditions that allow or impede certain performances: a person can only "act" a recognized gender if there is a support network, access to resources, and a minimally safe environment. Therefore, performativity can be perceived not as a universal concept, but as a critical lens that needs to be located and tensioned in the Global South.

5. The Non-Existent Claim of Neutrality of Legal Discourse

Many defend the claim of law, based on the state normative system, as a science, under the guise of impartiality, neutrality, and objectivity. The legislative process helps to achieve this objective, since it is configured as a purge of moral, political, and ideological values from certain norms, in order for them to become legal norms, of state authority, with the legitimacy of violence. The analysis of specific cases, to configure a positivist examination, is limited to verifying who the parties involved are, in a limited way, without considering family, community, historical, and cultural contexts.

The legislative process, then, forms a discourse incorporated into legal praxis: the alleged neutrality of the legal system, with the aim of equality, freedom, security, education, and life. However, this metadiscourse hides, from the legal dis-

course, the ideological values that are not purged by the legislative process; it also silences structural issues of the social group and, thus, the alleged neutrality does not occur. What is perceived is the state policy of treating bodies, in which, structurally, differences are located that justify, in a harmful way, hierarchies. Here we find law as a technique of power, or technology of hierarchies. The defense of law as pure science is an argumentative articulation that serves to convince us of scientific truth. This is the very discourse of law, which, from this side, becomes a technique of government with biopolitical and necropolitical potential. This analysis is evidenced by examining the law through the category of gender. Observing the legal discourse, its method and scientific aspirations, we find the intertwining of heteronormativity, whiteness, elitism and the reinforcement of the maintenance of the status quo in the model of subject proposed to a neoliberal way of life (in individual and competitive perceptions) and when the silence regarding women and their markings (and scars) of race, class and sexual orientation makes their existence invisible.

Thus, as mentioned previously, invisibility is already a form of violence, which contains the power of violence that has occurred in the materiality of the social environment. If the law is examined from the category of race, we still find, in its original justification, the foundation of the colonial and elitist State that supported the existence of the enslavement of bodies for the maintenance of an economic status and social development, considering that the social, here, is exclusionary. The same meaning is found when analyzing law and the State from the category of disabilities: we find communicative structures and architectural barriers that exclude bodies with disabilities. In this ableist logic, the institutional system reveals itself to be exclusionary and incommunicable. It is thus noted how legal discourse produces precariousness, institutionally legitimized by the logic of biopolitics and necropolitics. Thus, we have the boundaries of legal discourse, between what is recognized and what is unknown: bodies that are recognized as part of the system, as fragmented from the system or as dissidents of the system, which can be read as an abject body or a body that is a threat to the norm. Such is the politics of legal discourse. Understanding precariousness as a field of performativity and recognizing the power of the margins are fundamental steps towards thinking about political practices capable of breaking with the dominant biopolitical logic.

However, this process of resistance and invention also requires a critical analysis of the role of law as a technology of power. Law, as structured in colonial and capitalist modernities, is not a neutral or simply technical instrument for regulating social life: it is, in itself, an essential mechanism for the production and management of vulnerabilities. By establishing criteria for inclusion and exclusion, by defining who is a subject of rights and who is disposable, law actively participates in the maintenance of the global biopolitical and necropolitical order. In light of this, it is essential not only to denounce the limitations of the law, but also to radically question it, investigating its foundations, its silences and its operations of power. Criticism, however, does not mean giving up all possibilities of its use:

there are times when using the law strategically, by addressing its gaps and internal contradictions, can be an effective tool of resistance, especially for populations in situations of extreme vulnerability. On the other hand, it is also necessary to think beyond the law, to imagine and build emancipatory practices that do not depend on legitimation by a legal system that, in its current form, operates mainly to reproduce inequalities. Overcoming the law, in this sense, does not mean simply rejecting it, but creating new grammars of justice, based on relationships of solidarity, mutual recognition and respect for the plurality of modes of existence.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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