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THE HANDMAID'S TALE: (DE)PERSONIFICATION AS AN EPISTEMICAL-MORAL DIMENSION, FOUNDER OF THE CONDITION OF SUBJECT OF LAW FOR WOMEN

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ABSTRACT: The suppression of the moral and juridical status of the woman is discussed hereby, as an extension of the process of depersonification of the human being in the work *The Handmaid's Tale*, by Margaret Atwood. Offred's story unfolds in a dystopian future where women are the main victims of a new political order. In a United States transformed into the Gilead dictatorship, in the face of eventual loss of fertility by the female population, women are divided into castes and practically lose their rights over themselves, becoming the property of men. Personalization means more than observing rights to the biological being, it is a dialectical process in which individuality and rationality flirt with the inscription of moral importance. This process, being built in the instances of practical philosophy, is prior to the definitions of Law, characterizing itself as a moral construct. Personally, the human being happens to be accepted as the impregnable subject of the Law, which has precisely in the entity of the person its nucleus and the very meaning of its existence. This essay works with the idea of person as a complex being, as in the works by Immanuel Kant (1785), Lucien Sève (1994), Raquel Hogemann (2015) and Oswaldo Pereira de Lima Junior (2017).

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1 INTRODUCTION

Law and Literature are presented to the reader as exclusive products of human culture. The well-known Latin saying *ubi societas, ibi ius* clearly portrays the cultural nature of the legal manifestation, since a society without law sounds like a contradiction in terms: these expressions are almost synonyms, since, a group without a sense of justice and control is not conducted communally, it is plain barbarism. Similar analysis can be inferred from the literary manifestation, surely the emergence of society is linked to the historical consciousness of family, belonging, home, gods and heroes, in short, everything that written or spoken literature shows capable of translating, disseminating and perpetuating as the indelible knowledge of a time, a people and a tradition. Both are thus situated in what is the main inheritance of the human: “Culture or Civilization, taken in its wide ethnographic sense, is that complex whole which includes knowledge, belief, art, law, morals, custom, and any other capabilities and habits acquired by man as a member of society” (Tylor, 2016, p. 20).

The need to conciliate the study of the legal phenomenon through literary manifestations, or the literary phenomenon, overcomes the use of the writing technique to describe, conceptualize, analyze or synthesize the Law. It goes much further, since it seeks to make use of two phenomena of human culture to show its obligatory interlacing, and from this, to grasp that living essence of the Law, something that, by the way, it should be noted, no culture has done better than Ancient Rome:

Nam quod quisque populus ipse sibi ius coustituit, id ipsius proprium civitatis est, vocaturque ius civile, quasi ius propriuin ipsius civitatis; quod vero naturalis ratio inter omnes homines constituit, id apud omnes paraeque

custoditur vocaturque ius gentium, quasi quo iure omnes gentes utuntur (Justinian, 1889, p. 199)³.

It is imbued with this methodological composition that this article intends to discuss the moral status (and a subject of law) of women in Margaret Atwood's *The handmaid's tale*, its process of depersonalization, and to establish a brief parallel with the increasing attacks that the feminine population has suffered in the Brazilian democracy. In order to do so, this paper starts from the Kantian idea of dignity of the person as a being endowed with autonomy (Kant, 2007, p. 77) and puts it in assonance with the person's relational perception (Lima Junior, 2017, *passim*), as Lucien Sève (1994, p. 86) and Raquel Hogemann (2015, p. 170), mediated by a process of moral relevance. This constructive process proves to be, in another way, deconstructive in Atwood's work, through attacks on social *ethos* and on Law itself.

The concept of "person" usually points to an entity situated historically and socially under a figuration of moral content. By designating a moral substrate, its cognition reveals itself to be metaphysical and epistemic, grounding its ordination as a subject of law. Exposed in another way, the person is first recognized for their moral capacity and importance and, afterwards, wrapped up in the Law, which creates juridical situations capable of ensuring their flowering in society. This foundational proposition of moral status and juridical status is verified as an example in the stages of human life, in which the person, as a conscious and autonomous being, is not yet fully established, as in the case of the unborn child.

This article begins with a review of what happens to women in the work by Atwood, in which concrete deconstruction of the concept of person is seen through the suppression of rights (the most personal rights are the firstly attacked), also causing the consequent regression of its moral agency. Rather than imputing value to a being who does not yet share the full moral condition, that dystopia proceeds in an opposite way, withdrawing the moral value of beings that had previously had integral moral capacity.

³ Our translation: "For the Law which each people makes for themselves and for themselves, in the same city, is what is called civil law; but what natural reason establishes among all men, and is observed equally by all, and is called the law of the people, as a Law that has validity for all peoples".

Therefore, this theme is developed in three parts. The first describes the woman and her role in the work of Atwood, portraying the action of deconstruction of the concept of person that underlies the reading. The second is direct reflection on the motto of this text, and it exposes the statement about the epistemic and moral nature of the concept of person in a State of Law as a founding idea of the legal status of women as subjects of law. In dialectical comparison, this paper refers to sexism, described in the work and present in the contemporary society, as the main catalyst for loss of moral authority and, thus, of rights. Finally, in a comparative dialectic between the loss of moral agency and legal agency, this article brings the moral and juridical profile that is expected of society and the Law for the understanding of women as beings endowed with dignity or, in other words, seen individually as persons.

The methodology is basically hypothetic-deductive, determined by the minimal bibliography pertinent to the theme and the dialectical-narrative compound of the hypothesis inherent to the social and legal deconstruction and reconstruction of a community through new imposed moral precepts (moral status of the woman), as it is verified in facts described in the work and facts of the current Brazilian daily life. This paper is part of the methodological assumption of “Law and Humanities”, referring to the study of moral and legal issues in literature through the concept of law as a constructive narrative of ideas impregnated in society. The perspective of this study is, after all, based on the method composed by “Law in Literature”, as it aims at the analysis of Atwood’s work regarding “[...] common legal sense, written and unwritten rules, the feeling of the law, the visions of the legal system and of its operators, using it in the construction of hypotheses about the relation between law and man, community and society” (Mittica, 2015, p. 27).

2 THE WOMAN AND HER ROLE IN *THE HANDMAID’S TALE*

Woman and her condition not only of being human, of the human species, but of the person in the strongest sense that the term can denote – therefore, in a metaphysical and moral aspect – is the motto of both this text and the work of the Canadian writer Margaret Atwood. *The handmaid’s*

tale was released in 1985 and is mirrored in a dystopian society, as seen in the classics 1984 by George Orwell (1949), and *Brave New World* by, Aldous Huxley (1932). It refers to the literary enterprise in which symbolic patterns of society as an ethical and juridical community are broken, made and redone in the light of a new narrative paradigm that uses Ethics and Law as instruments of social oppression.

In this complex dystopic social fabric, the approximate technique of the Law to the stories that give it life allows to perceive the “law as a narrative”, exposing “[...] as ‘legal’ all the narrating activity that has the effect of defining a symbolic and behavioral order, and then law is also seen as a practice or set of narrative practices” (Mittica, 2015, p. 6).

The word “dystopia” reveals its literary inspiration in the work of Thomas More, *The Utopia*, which, etymologically, comes from two Greek words “ου” (not) and “τοπος” (place), meaning literally “non-place”. Clearly, this “non-place” refers the reader more attentively to a state of affairs that does not exist, that is, to a state of perfection of government and politics only idealizable, and not to facts existing in one place or another. In view of this, utopia dominated the popular imaginary as the perfect place, composed of an ideal social, economic and political order, where people find their space, their rights and their happiness.

In a dystopia, reality is very different. Using the same linguistic resource of, for example, the word “dysthanasia”, which means “bad death”, the dystopian world involves just an intolerant, unequal, totalitarian and politically oppressive reality in the face of human beings who, in reality, are no longer people. This is the world in which Atwood introduces Offred, the protagonist of this disturbing novel, strangely coincident with several situations that an increasingly despotic Brazilian society, which holds a single view of the world, guardian of morality and good manners, has been imposing on women and the feminine in general.

In the terrible reality exposed in the work, the body politic of the United States of America is simply suppressed – the congressmen, the opponents of the new order and even the president are assassinated –, and a new State, called Gilead, rises from the coup. It is important to point out that, in chilling resemblance to what is being shouted at in the Brazilian

social networks, permeated by hatred, this seizure of power is erected through a fundamentalist elite, extremely attached to religious and opportunistic premises, and acts by taking advantage of the fragility of their peers. It acts at a time when people are in disbelief of the typical liquidity of the postmodern world, centered on capital and consumption, and, selling itself as an advocate of morals and good manners, the group is called representative of the “good people” and promises to put things back on track.

Atwood’s book is thus extremely up-to-date. This is even more revealing when looking at the difficult moment that Democracy is going through all over the world, and especially in Brazil. A process of depersonification of the minorities and the most vulnerable people, such as that which is established against women in *The handmaid’s tale*, seems to be under way, and, once again, a growing portion of the population, tempered by intolerance, and a hatred typical of ignorance and ideological fundamentalism, seeks to suppress important democratic achievements of these historically persecuted and marginalized people.

But it is important to know that in order to arrive at the state of things as seen in the work, a more or less intense or direct process of deconstruction of the person, a moral instance of the determination of women’s rights, must be completed.

2.1 The deconstruction of the concept of person

A democracy and its conquests can be extinguished in different ways. It may be by pure physical violence, as it has been so common. But it can also be by deconstructing the epistemic concepts that underlie it and, in this way, assuming the typical nature of a regime based on the collective well-being and the rule of law. This type of democratic destabilization is more serious and much more drastic, since it slowly and incessantly undermines people’s own mentality, creating individuals disconnected from the maximum need of respect for their neighbor, true monsters, ideologized on a premise that does not belong to them, given the certainty that only a small elite will benefit from this new state of things.

Human dignity, as it is still today presented to us in many literary texts, and especially in juridical texts, is a construct formally and masterfully stoned by Immanuel Kant. The philosopher of Königsberg, in constructing his ethical theory based on the rational will, which is good in itself, entails the assumption that the human individual qualifies as a being of dignity precisely because he possesses this free will, ruled by reason and separated from the outer motivations which make it subject to the contingencies of life and soul. As a being of freedom, within what he calls the “kingdom of ends”, the value of the person escapes the possibility of pricing and poses as something with intrinsic value, which is worth in itself and thus cannot be priced: “Therefore morality, and humanity as capable of morality, are the only things that have dignity” (Kant, 2007, p. 77-78).

Boaventura de Sousa Santos (2014, p. 23) emphasizes the preponderance of human rights as the main language of the dignity of the human person. The dignity of the person is thus led by a moral instance that gives it origin and concept and by a necessary and extremely important juridical body, which should give him effectiveness. Harmony between both jurisdictions is crucial to calcify rights on socially understood bases as morally correct. This is an important premise, of course there is a normal sense of justice, involved in the moral aspect, which can strengthen the concept and legal protection that extends to people in a democratic and emancipatory space.

For some time now it has been emphasized that the understanding of the concept of person, both for Political Science and for Law, must first respect the moral construction or, rather, Ethics, which supports it (Lima Junior, 2017, *passim*). Vazquez (2017, p. 21) corroborates this understanding, defending that Ethics coordinates the theoretical, investigative or explanatory contours of a given human experience, or also about ways of behaving in a collective way; this experience, or this behaving, lies on what is moral, the universal way that an individual should behave before himself and before others. It is a tool indispensable to life in the community, since it aims at determining not only the flowering of the

person, but, above all, the recognition that, without well-accepted and thought-based rules of behavior, society itself cannot exist.

Ethics hereby is, as in other definitions, a preordained discipline to the analysis of the rules of conduct that human beings must observe in order to reach the highest levels of social coexistence. Its main premise is to lead the individual to a true critical reflection that enables their personal and collective growth, allowing them to live better with themselves and with the society that surrounds them (Lima Junior, 2010, p. 74).

In an established democracy, more than a mere center of power, one must recognize the existence of a Law that solidifies the political, social and economic structure around the perception about the dignity of the person. The nuclear concept, the premise that must not be disregarded, the moral minimum from which to start is thus the human person.

In *The handmaid's tale*, more than a series of physical and psychological atrocities committed by the new order against the people in general can be seen. It is extremely clear that the guilt is almost exclusively directed at women as responsible for the evils of the world, generating a charge of gratuitous brutality against them. Apart from the withdrawal of rights, the opposite process is made to the one briefly described above. The very personality of women is amputated, deconstructed through the process of domestication of the will and of the imposition of roles within the patriarchal and stratified society, which is then installed.

The establishment of this process of depersonification drastically affects the core of women's most personal rights. The condition of legal person (subject of rights) is initially dismantled in the work, at the same time, undermining the women's own situation as moral agents or of beings with moral status.

A great example is the loss of personal identity, a very personal right of extreme relevance for configuring the very psychological and individual manifestation of women in the community in which they live.

It must be remembered that Personality Rights express the projection of important fundamental rights of the human person, as embodied in the Federal Constitution. They construct prime spheres of protection for the

personalities and all that they enunciate, especially, but not only, within private relations. They are associated with the understanding of the notion of the subjective legal situation of the human person (Perlingieri, 2007, p. 106), constituting as the basis of value to existential human situations. They go beyond the notion of the Law to understand each other as value, in which several important situations develop (Barça, 2007, p. 2).

Its elimination pronounces, in short, frontal attack to all rights and to the very moral interpretation, or of moral person, that is made on a being.

In the work of Atwood, the protagonist has its name modified to *Offred*. The same procedure had been adopted for all women in the position of begetters or handmaids. There are, for example, *Ofglen*, *Ofwarren* and so many whose names have been replaced by the new order by a real property nickname, translating into possession of the body, life and personal identity of these beings by their commanders, men.

There are as many examples of rights suppressed, however, the right to having a name is used in this study because it is one of the first and most important markers of the social individuality of the human being. By the name one person is identified and differentiated from the other. It confers identity and personality in the individual sense. It differs. The loss of this marker sanctions a symbology of power and domination, a sign of reassurance about one's own body that immediately becomes detached to become an object. There is no person without identity and no identity without name.

The loss of rights, then, reflects in a gradual change of moral status. It comes from someone for something. There is no way to cross the barrier of the breaking of essential rights without proceeding, directly or indirectly, to the admonition to the moral condition of the person. The woman, in this society, becomes, in fact, an object arranged in the most diverse situations. They are mothers and matrons (wives), workers (Marthas), educators (aunts) and begetters (handmaids), the latter are, according to one of the characters “[...] receptacles, only the bowels of our body are considered important” (Atwood, 2017, p. 118).

The suppression of personal rights attests, in this measure, a (prior) procedure of deconstruction of personalities. This process occurs in several instances against being established that is the woman. It is carefully infused into the “established being”, or person, because there is no doubt about the moral instance of the woman, since she is outside the edges of the extremes of personality⁴, an instance where the person is not dubious, but certain and present. However, not only the question of the subject of law but the moral validity of the idea of the person, which is undermined by various social and moral practices, is destroyed amongst the general population (and with women themselves), also in the sense of certainty related to that situation of inferiority.

Literary fiction is capable of showing how Law, which is one of the great instruments not only of control, but above all of social mutation, can fracture a structure that is composed of constituent ideas of the person and their value in society. By using the literary narrative one can perceive what juridical texts, imprisoned in the “[...] rationalizing reduction of their arguments, limited to the rational pretension of their paradigms, considered dogmatic and ‘scientific’” (Pêpe, 2016, p. 8) often fails to show. This metaphorical awareness that attaches itself to the structures of everyday life in the daily narrative is of great importance to nourish the social perception of all that the Law and Ethics can do and do in the lives of individuals.

The annihilation of personal identity and control over the body reveals the erasure of one’s control over the will, and thus also the denial of a right to the autonomy of the will. Put in other words, the withdrawal of rights leads to disregard for one’s own *being*. This illness, in turn, causes the loss of respect and social consideration for the woman, who will increasingly be seen as an inferior, vile creature, also undermining the moral ambit of the social relations that involve her. Then, directly, the female moral instance is hit as a target.

⁴ It is not like the case of the unborn child, which, as will be seen later, because it is at the very beginning of the personality, must be evaluated according to the interrelated attribution of moral importance.

3 THE PERSON AS AN EPISTEMIC-MORAL CONCEPT, FOUNDER OF THE LEGAL CONDITION OF SUBJECT OF LAW FOR WOMEN

Peter Singer (1999, p. 83-89) reflects on the need for understanding about the diversity of meaning behind the words “human life”, “human being” and “human person”. This is because, although they can be used in a common discourse as being synonymous, in the technical, moral and legal discourse, they point to very different considerations. *Human life* is conditioned to the acquiescence that it is biologically immanent to the individual, affirming, in this case, the most relevant predicate of being alive and living (organically and psychologically). *Being human*, by the etymological approximation of being part of the human species, is more suited to the biological premises that make an entity belong to a species. Finally, a *person*, a word whose etymology refers to the Latin *persona* and the role played in society, is better suited to the moral and juridical agency that establishes itself on this human being and makes one a subject with moral status and holder of rights.

A woman, as an individual within a morally and legally ruled society, also encapsulates each of these concepts. She has a life; is a human being; and, above all, has moral and legal importance: she is a person. The concept of person is, therefore, the notion of greater relevance for the attribution of social (moral and juridical) significance to women. In other words, the conceptualization of person is the very epistemic-moral dimension that underlies the legal status of the subject of women's rights. That is why the Brazilian Civil Code, the true status of the person in Private Law, refers to the personality as being an exclusive attribute of the person, leaving aside concepts more directed to the biology of the species (such as that of being human): “Art. 1. Every person is capable of rights and duties in the civil order”.

With these words, the legislator wants to affirm that “person” is a concept of a primarily moral nature. It underlines the moral importance of this being in society, a moral agency that spreads to the need for legal reception, forging the apprehension of this concept in legal norms. Otherwise, as stated by some, the great difficulty contained in the juridical concept of person is in its extremes, especially in the beginning and in the

end⁵, but one should never inquire with moral seriousness about the fact that a woman is included in this situation of subject, as she is a person in full condition.

3.1 Getting rid of the ghost of sexism

Sexism is a term that denotes discrimination based on sex. In Atwood's book, sexism is a feature of the way women are treated and interpreted in the community. It may be said that the word owes similar semantic content to "speciesism", a term first created by Richard Ryder, a British professor and psychologist who understands it, in his own words, as "prejudice based on morally irrelevant physical differences" (Ryder, 2005). The morally irrelevant physical characteristic that underlies sexism is sex, in this case the feminine sex (gender).

Sexism removes the moral sense of the woman in due to her own gender condition, that is, because she is a woman. It is an attack that occurs in the moral sphere of belonging to the concept of person, an autonomous moral agent, and which diminishes its moral significance to the condition of an inferior being, controlled or protected. Woman and her gender symbolize sin, concupiscence, hence their social role as the procreative, tutelaged by men, and their color is red:

I get up from the chair, I advance my feet into the sunlight, even the red shoes, without heels to spare the spine, not to dance. The red gloves are on the bed. I pick them up, put them in my hands, finger by finger. Everything, except for the big cap around my head, is red: the color of blood, which defines us (Atwood, 2017, p. 16).

The destruction of the very personal rights of women usually expresses a later stage, an end to the Law, which crystallizes the terrible social process of destruction of the moral status of women. And sexism acts as a phase of contempt for the personality of the woman who ordinarily precedes the destruction of her rights. Their human condition, their moral

⁵ One can take as an example the legal status of the unborn child in relation to art. 2 of the Civil Code – "The civil personality of the person begins from birth with life; but the law safeguards the rights of the unborn from conception" – and of the various theories that attempt to explain and give meaning to their subjection of rights (conception theory, birth theory, conditional personality theory).

status, is being mined, and then, as society no longer understands them as the holder of this moral credit, they will usurp their rights as persons⁶.

The very general idea of respect that the handmaid possess, given their high social value as reproducers, eclipses a symbology of power, in the sense of domination by gender superiority, one that values women as “a uterus” and promotes the glamorization of the female gender by the manifestation of their sexual role. It is pertinent to recall the words that open *The second sex*: “What is woman? It is very simple, say the amateurs of simple formulas: it is a matrix, an ovary; it is a female, and this word is enough to define it” (Beauvoir, 2009, p. 32).

3.2 The depersonalization of women in Brazil

The fiction shocks, but the reality may be even more shocking. The attack against women in the dystopian universe of *The handmaid's tale* is brutal, but unfortunately, it seems that better luck is not being given to thousands of women in Brazil, especially when one observes a clear similarity to such process of disqualification of their personality. Recently, the National Justice Council (CNJ) released the results inherent in the second mapping of the judicial structure and litigation of cases involving violence against women. Regarding the protection measures, both against the offender (prohibition of contact with the woman, suspension of carrying guns, restriction or suspension of visits to dependent minors etc.) and in favor of the offended (referral to protection programs, removal from home etc.), we can see an increase of 21% in the years 2016 and 2017, consubstantiating numbers of 194,812 and 236,641 episodes, respectively (Brazil, 2018, p. 11).

The numbers are alarming. In 2017, referring to *cases of violence against women that culminated in lawsuits*, there were 452,988 new registered criminal proceedings; a number that increased by 12% compared

⁶ It is important to note that this suppression of the moral personality of women is presupposed in Atwood's work simply because it is an American society like the contemporary one. This presupposes the existence of moral sorts similar to the current ones. However, in the work, one sees a sudden rupture of this deconstruction that would normally occur in the moral sphere, and then in the juridical sphere, since this passage occurs in a revolutionary context, of breaking one regime and replacing by another with new institutions, new morality and a new concept of person.

to the previous year, 2016, which registered 402,695 new cases (Brazil, 2018, p. 12-13).

Closing this true map of violence against women, *the number of femicides in Brazil* in 2017 was 2,643 new cases and 1,287 cases in 2016⁷ (Brazil, 2018, p. 19). Data such as these places Brazil in the fifth worst ranking of countries with the highest rate of female homicides, with an average of 4.8 murders per 100,000 women (Waiselfisz, 2015, p. 27).

Added to all this vast statistical material, the daily reports that swarm in the news show the most varied offenses and aggressions directed exclusively to women because they are women. BBC News (Guimarães, 2016), for example, has provided an interesting report in which it analyzes the male behavior of oppression in everyday life through apparently banal phrases but reveals the state of contempt, of personal disregard, and therefore of the moral status of women. Ordinary phrases like “Why is a beautiful girl like you without a boyfriend?” or “Why are women against being hit on? Don’t they like compliments?” are permeated with symbolic violence, since they treat the woman as if she were a “mere womb”, as handmaids of the present day, pre-comprehending them as incubators of their sexual desires and thus providing gradual loss of their status as moral persons.

This diminution of moral personality takes place within homes, on the streets, in hospitals, in schools, in politics and everywhere. And this behavior does not go unnoticed, it is quickly assimilated by children and by those whose lack of discernment does not allow them to think critically, that degenerate to similar habits. It also embodies odious social learning. In other words, the cooling of moral status leads to its gradual and effective loss, and the next step will be, as shown in this text, the suspension of rights that are proper to people with full moral status. Women suffer the erasing of their moral relevance to society; then, it advances onto their condition of subject of rights, diminishing, disregarding, turning “blind eyes”, creating

⁷ It is worth remembering that the CNJ itself recognizes that it is dealing with partial numbers due to the notable underreporting of cases.

disinterest, discrediting of their own condition of persons with rights. Soon there will be nothing left to be defended.

In *The handmaid's tale* there is certainly a more violent method of de-accreditation of the moral personality of women, since the process does not face a prior stage of moral disbelief. The suppression of rights is the result of a coup d'état, and in this way the woman abruptly becomes a being with little legal status and, subsequently, unheard of moral status. However, in cases such as violence directly affecting the rights of the person, as in the work, the victory of a regime or of an oligarchy, which already understands the woman as a morally inferior entity, must be considered. Women are seen as a second-rate people, otherwise the regime's ideas would not find support in their peers or in a substantial part of society.

In summary, it is glimpsed that the loss of moral consideration as a person was already present and rooted in the opinion of the individuals who provoked the coup.

4 THE EMANCIPATED WOMAN

As has already been elucidated, this article starts from the premise that the personalization of the human being, a project that emerges in the field of Ethics, is the epistemological basis for the attribution of rights to this same being. Women are framed in this concept by sharing the assumptions of fact and law that lead to their personalization. They are beings of the human species, creatures of biological nature, phatic support to social and moral valuation. They are also endowed with moral subjectivity; hence, they manifest *per se*, regardless of their sex or gender, the characterizations of an individual: individuality and rationality.

However, as seen in Atwood's literature, it is sometimes observed that their person status is disregarded or diminished, leading to the inverse situation of the process of personalization, as described by Sève (1994, p. 44): a transposition of the being-species to the being-person through real social mediators that integrate the individual to the world, constituting a

real process of *hominization*⁸. It is worth explaining that the Sève's premise of constitution of the person through social mediators invokes access to the moral that is due to the person at the extreme of its beginning, as a being of the species. Explaining, his premise of social personification is applied to the unborn child, for example, at times when it does not yet commune with the full moral personification of a human being who is already a person, as is the case with women. This is the reading of the author (Lima Junior, 2017, *passim*), betting on a complex constitution of the person and considering the unborn as a living being with potentiality of existence as a person, from the moment the biological aspect admits the latent possibility of the minimal moral characteristics that are exactly the individuality and the rationality. These are summed up in a single predicate which is the lowest capacity of sentience, as a minimal consciousness. Before that moment, its moral characterization is admitted by social mediators, who integrate it into the world and make it a being with moral singularities: a person. The same thing happens to the women in Gilead, however, in an inverted process.

The process of social degradation of women thus reaches its composition as moral persons, consciously or unconsciously manipulating its validity by means of deconstructive discourses. This mischievous discourse is included in phrases such as the previously exemplified, which shift the moral reference point of women to situations of marginality, or insert it in the context of loss of rights, or even blame it on the most varied problems, from the economic ones to those related to the moral and the traditional good customs.

There is a need, therefore, to identify and understand this phenomenon. And afterwards, one is able to reinsert in moral and juridical discourse the moral characteristics and the rights that are, daily and little by little, suppressed. It is a true process of emancipation of women in the face of this discourse of oppression and disregard as a person and moral agent.

⁸ It is better to adapt to the present times, the word *personalization*, hence to Sève, *hominization* is nothing more than the adaptation of the biological to the moral embodied in the concept of person.

4.1 The moral emancipation of women

The gradual emancipation of women must follow the reverse process of their deconstruction as a person. This means that one must begin by reinserting the moral importance that has gradually been usurped.

In Atwood's novel, the social relevance of women is disjointed from their dignity as persons, with a view to their use as a reproductive matrix. This procedure involves the necessity of displacing it from the condition of subject with dignity, from entity whose condition person is placed in its intrinsic value, impassible of valuation, to the condition of thing, or object (of right), something susceptible of appropriation: "Man, and, in a general way, every rational being, exists as an end in itself, not only as a means for the arbitrary use of this or that will" (Kant, 2007, p. 68). The moral disarticulation of women in the work unquestionably portrays the complete perversion of the Kantian ethical matrix.

Returning to the example on the determination of the moral personality of the unborn child, in the clash between the social forces that create respect and determine the criterion of *ascription*⁹ of moral value for a being in a moment in which it does not maintain itself as a person, this process of *hominization* (*personalization*), is based on the family and especially of the pregnant woman for the attribution of moral valuation to

⁹ As already stated (Lima Junior, 2017, p. 168): "The word 'ascription' – originating from both French *ascription* and Saxon roots (*to ascribe*), in Portuguese also translatable by *ascripção* – has a very peculiar meaning in the work by Lucien Sève for commemorating the transcendent meaning of the mere predicative attribution, noted by Paul Ricoeur when he retakes the meaning of the term first used by PS Strawson, in a construction that surpasses the Cartesian cogitative self, strange to the 'other': 'Now, one thing is certain: if the things to which one can ascribe states of consciousness by assigning them to another are thought to be a set of Cartesian egos to which only private experiences can be ascribed in the correct logical grammar, then such question is unanswerable and such a problem is insoluble.... All particular experiences, all states of consciousness, will be mine, i. e., no one else's. To summarize. States of consciousness can be ascribed to someone only if one can also ascribes them to other people. One can only aspire to others if one can also identify other subjects of experience. And other subjects cannot be identified if they can only be identified as subjects of experience, possessing states of consciousness' (Strawson, 1996, p. 100). According to Ricoeur, breaking the barrier of the self as a simple isolated locutionary statement, strange to reflection between oneself and the other, goes beyond the attributive and predicative description typically postulated when the subject appears externally to oneself and to the other, just as an object of analysis of another subject: '[...] there is not me at the beginning; the attribution to others is as primitive as the attribution to oneself. I cannot speak meaningfully of my thoughts if I cannot, at the same time, attribute them partially to another: [...] To say that a state of consciousness is felt is to say that it is ascribable to oneself (*self-ascribable*)' (Ricoeur, 2014, p. 12, 16-17)".

this same being. In the case of women in these dystopian societies, the reverse is true. The process of social respect, susceptible of moral ascription in beings without this predicative, is corrupted to conform the institutional and collective thought of withdrawal of respect to the being that had already acquired to herself such a condition of dignity, considered her autonomy as person (in the Kantian sense).

A clear example of this aim, in Atwood's work, is consolidated in the "ritual" of conception, an act permeated with symbolism, which places women, both as a handmaid and as a wife, in a role of moral subalternity (mother and reproductive handmaid) to the marital (and political) will, disregarding its autonomy as a person:

The ceremony unfolds as usual. I lie on my stomach, fully clothed except for the large cotton shorts. [...] Above me, toward the head of the bed, Serena Joy¹⁰ is positioned, stretched out. Her legs are open, I lie between them, my head on her belly, her pubic bone at the base of my skull, her thighs on either side of me. She is also fully clothed. My arms are raised; she holds my hands, each of mine in one of hers. That should mean that we are one flesh, one being. What it really means is that she is in control of the process and therefore of the product. [...] My red skirt is pulled up to my waist, but not above that. Below it the Commander is fucking. What he is fucking is the bottom of my body (Atwood, 2017, p. 114-115).

The description is permeated with an unspeakable violence against the person. It places women at the lowest level of morality, denying their autonomy of will (which, for Kant, shapes their own morality), either in the position of reproducer or in the position of wife, who has to submit to faking coitus with the husband (his Commander). The bestiality imprinted in the act causes the handmaid to absorb all the tension of this horrible theater play, which she describes in the novel, as follows:

I do not say making love because it's not what he's doing. Copulating would also be inappropriate because it would *assume two people and only one is involved*. Nor does rape describe the act: nothing is happening here that I have not formally agreed to do. There was not much

¹⁰ There is subtlety in the author's choices, since the name of the commander's powerful wife poses as "serene joy", the metaphor of literature helps to understand the ethical role of women in society then...

choice, but there was some, and that's what I chose
(Atwood, 2017, p. 115, our highlight).

A similar thing takes place when, in our day, women are referred to as a being with inferior dignity, as a person of the second category, or by arguments that reinforce the popular sexist imaginary around a figure of complementary contemplation within a supposed correct model of family. Recently, for just one example, one of the candidates for the presidency of the republic in Brazil was against a woman member of parliament stating that he would not rape her because she “does not deserve it”. As Cioccarì and Persichetti (2018, p. 208) point out, this discourse of hatred reports, in its subliminal context, a supposed “male biological superiority”, which makes the woman, the victim, seem to deserve the violence to which she is submitted.

The moral emancipation of women is subordinate, first and foremost, to the fight against hate speech. The public manifestation of this type of speech has the ability to leave the sphere of intimacy of the aggressor to attack the victim directly, causing damage; and, what is worse, has strength in a society mediated by the spectacle, to influence a vast audience (Cioccarì, Persichetti, 2018, p. 207).

The emancipation of women, on the level of morality, tones the fight against discourses that seek to “stop seeing women as victims” in a context of constant aggression to their personalities and, thus, to their moral legitimacy. Phrases that diminish their moral legitimacy, such as “I have five children. They were four men, the fifth one I was weak and a woman came” (Silva, 2017) (Cioccarì, Persichetti, 2018, p. 208), only serve as ammunition to the social destruction of women's moral respect, as in a process of ascription¹¹ (Serve, 1994, p. 74) in reverse.

¹¹ As previously argued (Lima Junior, 2017, p. 170): “Ascription is not limited only to the attribution of qualities, or the description of a particular way of existing, or of behaving. Rather, it reveals a kind of attribution in a strong sense, which only acquires meaning when preaching to the individual being the universal specificities of the person, so that respect for their dignity is given through the inscription of that same dignity to each part of the human being, in a constructive and evolutionary process: ‘... by which the individual being comes to have in oneself and by oneself the quality associated to the human kind’. In it, one reveals oneself as a human relation, determined by their ethical qualification, which, at the same time as it belongs to them, surpasses them: ‘[...] that which belongs to me surpasses me, it surpasses me, it belongs to me’ (Sève, 1994, p. 74)”.

The moral emancipation of women also presupposes the recognition of this discourse of imposition and the clarification of the collectivity regarding the need to respect the person in an environment that is intended to be concrete and minimally democratic.

4.2 The legal emancipation of women

The legal emancipation of women, in turn, is subject to the deconstruction of any norm of elimination of their fundamental rights. This suppression is based on the perfidious and passive acceptance of the community about the loss of moral importance (of personality, therefore) of women, as has been defended in this text.

In the context of the book under debate, this affects, among many other rights, the very personal right to identity, as observed.

In the Brazilian legal order, on the other hand, measures such as those in ADI 4424 and ADC 19, which required the nullity of the Maria da Penha Law (Law 11.340 / 2006, protecting women against gender violence) on the grounds that the rule violated the principle of equality between men and women, bear an unquestionable affront to the rights of women (Oliveira, 2012). In fact, the law in question introduces measures of protection to women tending to constitute a relation of material equality, and not only formal with men, especially in their private relations, in which their vulnerability is conspicuous: “For the rapporteur, ‘women are eminently vulnerable when it comes to physical, moral and psychological constraints suffered in the private sphere’, stressing that the norm mitigates the reality of social and cultural discrimination” (Brazil, 2012).

On the other hand, measures such as the creation of the crime of feminicide (Criminal Code, Article 121, §2, clause VI – Law 13.104 / 2015), which makes it clear that a murder can be perpetrated for the simple reason that the victim is women (domestic and family violence and / or disparagement or discrimination against women), concretely carry out the opposite: protection of their status as a subject of law, contributing openly to their legal emancipation.

The exacerbated restriction of this type of delinquency reveals a special perception about the woman’s morality as a person and, therefore, serves as a parameter, or as a type of measure, that attends to the legal

emancipation of the woman and, clearly, makes it clear that decent treatment is a question morality of the highest seriousness. Just as suppression of rights fosters the sense of loss of moral status, the creation of measures that didactically attest to the need for an equal understanding of the moral agency of men and women, especially of the latter, creates an environment of respect for the human person with dignity above all else. It is also capable of overcoming the insolent manifestations of differences between the sexes, the already referenced sexism, to compose relevant instrument of effectiveness of the feminine equality.

In short, thinking the woman as a person, with dignity and moral significance, should automatically be inserted in the normative context of the subject of law. One system nourishes and strengthens the other. And women's legal emancipation, which presupposes a culture and an education that take into account their moral emancipation, delineates the moment of effectiveness of their personality, now permeated by the condition of subject of rights.

5 CONCLUSION

The major purpose of this article was to articulate the manner in which the woman had degraded her condition of person in Margaret Atwood's *The handmaid's tale* and the conception of person as a moral agent with rights. We worked with the moral perception of the person that combines the Enlightenment notion of the Kantian matrix – a person as an autonomous agent – with the interrelation of respect constituted by Lucien Sève, Raquel Hogemann and Oswaldo P. de Lima Junior.

In addition, it was chosen, within the proposed study, by comparing the representation of the woman as composed in the literary work of Atwood and the Brazilian woman of reality, who has been constantly attacked as a person of the female gender. In both cases, there are clear attempts to deconstruct the personality. In Brazil, there is a growing conservative discourse that seems to propose the overlapping of women's achievements in the field of family and social relations by their classic role as mother, caretaker, maid or wife, as in the dystopian reality of Gilead.

Hence, it must be said, Margaret Atwood was very knowledgeable of the social reality of the women of her time, and of the present times also, because she accurately draws the caricature worsening of these roles in a society that tries to cure itself of evils that only the elite can see. This institutional blindness is forged in the unitary and universalizing worldview, which seeks to eliminate differences and models that do not fit into the traditional pattern advocated. Behind its moralistic discourse, it hides the attempt to maintain caste privileges, forging situations that gradually weakens the woman's human condition so that she is completely deprived of the respect she should have as a person.

In this field, Literature is exteriorized with a powerful cultural protest that brings to the reader important clues about other cultural expressions equally disposed in its context (such as Law). These manifestations, as organized in this work, refer to the social *ethos* and the (de)construction of the legal concept of person (subject of law).

It was concluded that, as in the society of Atwood, our Brazilian society also makes use of discursive tooling that attacks the moral condition of the woman. These attacks, directly or indirectly, have the function of undermining their moral status as a person, so as to weaken their social perception as a subject of law and, by the same token, suppress or diminish several of the rights that women already have. Discourses that place women as a vile being, who lie and corrupt men, serve as a moral discursive substrate to propose the suppression of extremely important rights to women, as was attempted in the attacks on the Maria da Penha gender violence Law.

It is necessary, in a few words, to recognize, regardless of the ideologies or moral theses that sustain the condition of human personality, that this same personality is backed up in a moral respect that cannot be suppressed. Even more so in a being that is not found in the extremes of the person's life (the unborn and the dying, for example). Respect for this moral condition is an instrument for achieving the total independence of the woman, who will be understood as a person with rights really equal to men. From the moral dimension, finally rises to the legal dimension, recognizing that their moral emancipation will only be effective in a society whose Law

recognizes them within their particularities and that promotes their integral protection. Law acts as an instance of repression against attacks on the moral status of a woman and, at the same time, serves as a preventive measure and as an educational measure so that other (male) people perceive that differentiating women from men by gender is not morally valid. It is plain sexism.

REFERENCES

ATWOOD, Margaret. *O conto da aia*. Rio de Janeiro: Rocco, 2017.

BARÇA, Antonio Paulo. As situações subjetivas existenciais e o direito civil. *Revista Consultor Jurídico*, 16 dez. 2007. Available at: <https://www.conjur.com.br/2007-dez-16/situacoes-subjetivas-existenciais-direito-civil>. Access: 15 Sept. 2018.

BEAUVOIR, Simone de. *O segundo sexo*. 2. ed. Rio de Janeiro: Nova Fronteira, 2009.

BRASIL. Supremo Tribunal Federal. Direto do Plenário: STF confirma constitucionalidade de dispositivos da Lei Maria da Penha. *Notícias STF*. Brasília, 9 fev. 2012. Available at: <http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=199817>. Access: 27 Sept. 2018.

BRASIL. Conselho Nacional de Justiça. *O poder judiciário na aplicação da Lei Maria da Penha 2018*. Brasília, 2018. Available at: <http://www.cnj.jus.br/files/publicacoes/arquivo/5514b0debfb866190c20610890849e101c3f3d621da010274f3d69e6a6d6b7e6.pdf>. Access: 19 Sept. 2018.

CIOCCARI, Deysi; PERSICHETTI, Simonetta. Armas, ódio, medo e espetáculo em Jair Bolsonaro. *Revista Alterjor*, São Paulo, ano 9, v. 2, ed. 18, p. 201-214, jul./dez. 2018. Available at: <http://www.periodicos.usp.br/alterjor/article/view/144688/141608>. Access: 26 Sept. 2018.

JUSTINIANO. *Digesto: primeira parte*. Barcelona: Jaime Molinas, 1889.

KANT, Immanuel. *Fundamentação da metafísica dos costumes*. Lisboa: Edições 70, 2007.

GUIMARÃES, Thiago. Onze coisas que as mulheres não aguentam mais ouvir no Brasil (e por quê). *BBC Brasil*, 18 jun. 2016. Available at: <https://www.bbc.com/portuguese/brasil-36522791>. Access: 27 Sept. 2018.

HOGEMANN, Edna Raquel Rodrigues Santos. *Bioética, alteridade e o embrião humano*. Rio de Janeiro: Multifoco, 2015.

LIMA JUNIOR, Oswaldo Pereira de. Ética, corrupção e responsabilidade social do agente público. *Revista Ciências Humanas*, Taubaté, v. 3, n. 1, pp. 67-86, 2010.

LIMA JUNIOR, Oswaldo Pereira de. *Bioética, pessoa e o nascituro: dilemas do direito em face da responsabilidade civil do médico*. Rio de Janeiro: Multifoco, 2017.

MITTICA, M. Paola. O que acontece além do oceano? direito e literatura na Europa. *Anamorphosis - Revista Internacional de Direito e Literatura*, v.1, n. 1, p. 3-36, jan./jun. 2015. Available at: <http://dx.doi.org/10.21119/anamps.11.3-36>. Access: 23 Mar. 2019.

OLIVEIRA, Conceição. Lei Maria da Penha não ofende princípio da igualdade, afirma AGU e STF confirma por unanimidade. *Blog da Mulher*, 9 fev. 2012. Available at: <https://www.viomundo.com.br/blog-da-mulher/lei-maria-da-penha-nao-ofende-principio-da-igualdade-afirma-agu-e-stf-confirma-por-unanimidade.html>. Access: 27 Sept. 2018.

PÊPE, Albano Marcos Bastos. Direito e literatura: uma intersecção possível? interlocuções com o pensamento waratiano. *Anamorphosis – Revista Internacional de Direito e Literatura*, v.2, n. 1, p. 5-15, jan./jun. 2016. Available at: <http://dx.doi.org/10.21119/anamps.21.5-15>. Access: 23 Mar. 2019.

PERLINGUERI, Pietro. *Perfis do direito civil: introdução ao direito civil constitucional*. 3. ed. Rio de Janeiro: Renovar, 2007.

RICOEUR, Paul. *O si-mesmo como outro*. São Paulo: WMF Martins Fontes, 2014.

RYDER, Richard. *All beings that feel pain deserve human rights: equality of the species is the logical conclusion of post-darwin morality*. Available at: <http://www.theguardian.com/uk/2005/aug/06/animalwelfare>. Access: 20 Sept. 2018.

SILVA, Detona. Bolsonaro: “Eu tenho 5 filhos. Foram 4 homens, a quinta eu dei uma fraquejada e veio uma mulher”. *Youtube*, 6 abr. 2017. Available at: <https://www.youtube.com/watch?v=Cp1GdBx32CM>. Access: 26 Sept. 2018.

SINGER, Peter. *Practical Ethics*. New York: Cambridge University Press, 1999.

SÈVE, Lucien. *Para uma crítica da razão bioética*. Lisboa: Instituto Piaget, 1994.

SOUZA SANTOS, Boaventura de. *Derechos humanos, democracia y desarrollo*. Bogotá: Centro de Estudios de Derecho, Justicia y Sociedad, 2014.

STRAWSON, J. F. *Individuals: an essay in descriptive metaphysics*. New York: Routledge, 1996.

TYLOR, Edward Burnett. *Primitive culture: researches into the development of mythology philosophy religion, language, art and custom*. Nova York: Dover, 2016. v. 2.

VÁZQUEZ, Adolfo Sánchez. *Ética*. 37. ed. Rio de Janeiro: Civilização Brasileira, 2017.

WASELFISZ, Julio Jabobo. *Mapa da violência 2015: homicídios de mulheres no Brasil*. Brasília, 2015. Available at: https://www.mapadaviolencia.org.br/pdf2015/MapaViolencia_2015_mulheres.pdf. Access: 19 Sept. 2018.

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