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A (DES)Valorização jurídica do cuidado: uma análise crítica do auxílio- cuidador do projeto de lei nº 3022/2020 sob a ótica da dependência humana[*]

The legal (DE)Valuation of care: a critical analysis of the caregiver aid of bill n. 3022/2020 from the perspective of human dependence

La (DES)Valorización jurídica del cuidado: un análisis crítico de la asistencia- cuidador del proyecto de ley nº 3022/2020 bajo la óptica de la dependencia humana

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Resumo

Este artigo analisa o auxílio-cuidador previsto no Projeto de Lei nº 3022/2020 da Câmara dos Deputados, tendo em vista as complexas exigências das relações de cuidado. A pesquisa teve abordagem dedutiva e caráter bibliográfico-documental. No primeiro capítulo, demonstra-se a adesão da proposta legislativa ao modelo social e a tentativa de materializar o direito ao cuidado previsto na Lei Brasileira de Inclusão (Lei nº 13.146/2015). O segundo, a partir do marco teórico de Eva Kittay, explora os fundamentos para a compreensão do cuidado em perspectiva relacional e jurídica, enfatizando a necessidade de que os cuidadores, que normalmente são mulheres, também recebam cuidado, especialmente em forma de responsabilidade político-pública. No último, formulam-se críticas construtivas em direção ao projeto, de modo a reconhecer o cuidado como um trabalho merecedor de remuneração e direitos sociais.

Palavras-chave: ética do cuidado; feminismo; pessoas com deficiência; seguridade social; trabalhadoras da dependência.

Abstract

This article analyzes the caregiver assistance intended for the Bill nº 3022/2020 of the Chamber of Deputies, in view of the complex requirements of care relationships. The research had an deductive approach and bibliographical-documentary nature. In the first chapter, the adherence of the legislative proposal to the social model and the attempt to materialize the right to care provided for in the Brazilian Law of Inclusion (Law nº 13.146/2015) are demonstrated. The second, based on Eva Kittay's theoretical framework, explores the foundations for understanding the care from a relational and legal perspective, emphasizing the need for caregivers, who are usually women, to also receive care, especially in the form of political-public responsibility. In the last one, constructive criticism is formulated towards the project, in order to recognize care as a work which deserves remuneration and social rights.

Keywords: *ethics of care; feminism; people with disability; social security; dependency workers.*

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Resumen

Este artículo analiza la asistencia-cuidador previsto en el Proyecto de Ley nº 3022/2020 de la Cámara de los Diputados, teniendo en vista las complejas exigencias de las relaciones de cuidado. La investigación tuvo enfoque deductivo y carácter bibliográfico-documental. En el primer capítulo, se demuestra la adhesión de la propuesta legislativa al modelo social y el intento de materializar el derecho al cuidado previsto en la Ley Brasileña de Inclusión (Ley nº 13.146/2015). El segundo a partir del marco teórico de Eva Kittay, explora los fundamentos para la comprensión del cuidado en perspectiva relacional y jurídica, enfocando la necesidad de que los cuidadores, que normalmente son mujeres, también reciban cuidado, especialmente en forma de responsabilidad político-pública. En el último, se formulan críticas constructivas hacia el proyecto, de modo a reconocer el cuidado como un trabajo merecedor de remuneración y derechos sociales.

Palabras clave: *ética del cuidado; feminismo; personas minusválidas; seguridad social; trabajadoras de la dependencia.*

1 Introduction

The United Nations Convention on the Rights of Persons with Disabilities and Law 13.146/2015 have brought several achievements in the field of human rights and public policies for older people and/or people with disabilities. A project of inclusion and emancipation was outlined for the present and future, with the recognition of the right to equality and non-discrimination, to life, habilitation and rehabilitation, health, education, housing, work, social assistance, culture, transport and mobility, accessibility, access to justice, etc. It was not overlooked, however, that certain people who experience this condition may need others for day-to-day activities, from the most basic, such as satisfying physiological needs, to the most complex, such as entering into a legal transaction. This inevitable vulnerability that everyone has to a lesser or greater degree points to human interdependence, that is, the fact that we are dependent on each other to live.

People with disabilities or advanced age, despite substantial reforms in legal statutes, cannot be seen as independent by a normalistic and simplistic idealization. Autonomy, by the way, is not to be confused with independence. Civil capacity and autonomy, in the truest sense of the term, can be realized through a relationship of dependence. This is what occurs, for example, through supported decision-making, created by the Statute of Persons with Disabilities, Law 13.146/2015 (Brasil, 2015a).

The struggle for the emancipation of this group, therefore, involves the recognition and appreciation of relations of dependence. This requires, therefore, the guarantee of rights and material conditions not only for people with disabilities, but also for the third parties who care for them, the so-called caregivers, *dependency workers* or *caregivers*.

A truly fair and inclusive legal and social political system must demonstrate concern for the care and for the parties involved in this relationship. As the interconnection of dependence is unequal, due to social, political, economic and cultural factors, the State must act on it to reward its measures; it must have support mechanisms for those who receive care, as well as for those who provide it on a daily basis.

The Brazilian normative scenario, however, is not favorable to care and dependence relationships. Although the gains for people with disabilities are substantial due to the advent of the New York Convention and the Brazilian Inclusion Law, it is not possible to identify legislation that is directly and effectively intended to subsidize dependent workers, which, by reflex, affects and harms the former. Although the Statute of Persons with Disabilities expressly provides for the social assistance right to caregivers in article 39, paragraph 2, the lack of a parallel norm that also provides guarantees for caregivers compromises the achievement of this goal. In other words, the relationship of dependence is not profitable if only the demands of one of the parties are satisfied.

There are, however, efforts to fill this gap. Bill No. 3022/2020, authored by Maria do Rosário (PT/RS), Rejane Dias (PT/PI) and Camilo Capiberibe (PSB/AP), is being processed in the Chamber of Deputies with the proposal to establish the "caregiver aid" for the elderly and/or disabled person who needs third parties to carry out activities of daily living. The bill was attached to a previous one No. 4840/2012, authored by Eduardo Barbosa (PSDB/MG), with a similar foundation and proposition, and is in progress, awaiting the opinion of the Commission[1].

The legislative proposition of the Chamber has nine articles and is articulated with several rules of the legal system, such as the Convention on the Rights of Persons with Disabilities, Law 13.146/2015 and Law 8.742/1993. Your justification consists of guaranteeing the right to care, urging the Government to regulate and provide conditions necessary access to this good.

In this context, this article aimed to evaluate, from a jusphilosophical point of view, the conditions that the "caregiver help" intends to provide to relationships of dependence, taking into account the interests of both parties, both the person under care and the one who provides them, but especially the latter, to whom the legal value of care does not seem to be attributed doctrinally – we have the hypothesis. Specifically, the objective was, first, to dissect the provisions, foundations and justifications of the Bill. Then, it was intended to associate them with the feminist philosophical approach of the ethics of care and relations of dependence, together with the normative-constitutional paradigms that illuminate this social issue.

The deductive approach method was chosen in order to verify whether the premise of care, as a legal value, can be materially verified in the sphere of the caregiver. As for analysis

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[1] It is important to point out that there are other bills referring to caregiver support (Bill No. 2029/2015 in the Chamber of Deputies, Bill No. 5791/2019 in the Chamber of Deputies and Bill 2797/2022 in the Federal Senate), however, this article will be based, as a form of methodological approach, only on the aforementioned bill, without prejudice to the fact that the results and conclusions presented may serve for the analysis of the others.

techniques, the research will be bibliographic and documentary, through literature review and study of laws and bills. As a theoretical framework, in particular, the feminist reflections of Eva Kittay were adopted, establishing an interdisciplinary dialogue with national and international researchers who focus on the ethics of care, the right and duty to care and relations of dependence.

2 Normative aspects of the caregiver allowance of Bill No. 3022/2020

Bill No. 3022/2020 was presented in the Chamber of Deputies on 06/01/2020 by Deputies Maria do Rosário (PT/RS) and Rejane Dias (PT/PI), with the objective of creating caregiver assistance for elderly and/or disabled people who need third parties to carry out activities of daily living, providing other pertinent measures.

Article 1 of the legislative proposal establishes the creation of this aid as a way to materialize the right to care for the elderly and people with disabilities (Brasil, 2020). This right, with this configuration and projection, was already provided for in article 39, paragraph 2, of the Statute of Persons with Disabilities[2], but it still does not have a norm that materially operationalizes it (Brasil, 2015a)

Next, article 2 establishes the biopsychosocial assessment as a criterion for granting the rights and benefits provided for in this bill, in accordance with Law 13.146/2015 and the Convention on the Rights of Persons with Disabilities (Brasil, 2020). Biopsychosocial analysis is intended to consider the individual's bodily functions and socio-environmental factors and circumstances for the vocabulary of disability. It is a result of the efforts of international health organizations and critical academia to escape the domain of the "consequences of disease" to the "health domains", comprising the biological, individual and social dimensions (Diniz, 2012, p. 50). This mode of analysis reflects attempts to unify the understanding of disability under an umbrella concept, which sets aside strictly biomedical terms such as *handicap*. In this sense, there is an approximation to the teleological adherence of the social model of approaching disability[3], understanding it as the interaction between the individual condition of long-term impediment and the socio-environmental conditions that

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[2] Article 39. The services, programs, projects and benefits within the scope of the public policy of social assistance to people with disabilities and their families aim to guarantee income security, welcoming, habilitation and rehabilitation, the development of autonomy and family and community life, for the promotion of access to rights and full social participation. [...] Paragraph 2 - Social assistance services for people with disabilities in situations of dependence must have social caregivers to provide basic and instrumental care (Brasil, 2015a).

[3] Although, of course, distinctions persist as to the foundation, concept, and teleology of these approaches. Even so, as Débora Diniz (2012, p. 53) points out, it is possible to say that the biopsychosocial assessment incorporated at the beginning of the century by the World Health Organization's International Classification of Functioning, Disability and Health (ICF) is close to "the proposal of the social model to qualify disability as an experience of segregation and oppression, emphasizing the negative result of the interaction between the body with injuries and society".

surround it and obstruct the full participation of these people in society, as seen in article 2 of the Statute of Persons with Disabilities[4]5 (Brasil, 2015a).

> Paragraph 1 - The assessment of the disability, when necessary, will be biopsychosocial, carried out by a multiprofessional and interdisciplinary team and will consider:
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> I - impediments in the functions and structures of the body;
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> II - socio-environmental, psychological and personal factors;
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> III - the limitation in the performance of activities; and
>
> IV - the restriction of participation.
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> Paragraph 2 - The Executive Branch shall create instruments for the assessment of disability (Brasil, 2015a).

The social model of disability, also known as the Human Rights model, is what underlies the need for human interdependence as a condition for the emancipation of vulnerable people (Dhanda, 2008). By recognizing that disability, as a reflection of the impossibility of being included and exercising rights, is the result of the social and institutional structures created by society, the latter is assigned the duty to act, and therefore to care, for people with disabilities (Diniz, 2012). It is in this perspective that disability is no longer seen as an "individual problem", an abnormality to be hidden or eliminated (Palacios; Bariffi, 2014, p.15-16), to then be perceived as a relational social issue.

Soon after, the project deals with the conditions and values of the benefit. Article 3 proposes aid in the amount of 1 (one) minimum wage to the target audience of the measure. Paragraph 1 of the same provision aims to ensure such an increase to disabled or elderly people who receive Continuous Cash Benefit (BPC). Paragraph 2, in turn, seeks to guarantee the same minimum wage for those people with disabilities who do not receive the BPC. Paragraph 3, in sequence, also assigns the benefit to people retired due to disability, provided that they do not receive the additional 25% on the amount of the retirement; or even that they receive such an addition, with the condition that they total up to 4 minimum wages, according to items I and II (Brasil, 2020).

To give systematicity to the intended changes, articles 4 and 5 of the legislative proposal seek to add paragraph 2 to article 2 of Law No. 8,742, of December 7, 1993 (Organic Law of Social Assistance), in order to ensure caregiver assistance to people with disabilities or elderly people who need daily assistance (Brasil, 2020).

In the same sense, article 6 intends to amend article 23 of the aforementioned assistance law, with the insertion of paragraphs 3 and 4. The third seeks to establish the caregiver assistance exactly in the manner previously defined, that is, 1 minimum wage for

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[4] Art. 2 A person with a disability is considered to be one who has a long-term physical, mental, intellectual or sensory impairment, which, in interaction with one or more barriers, may obstruct his or her full and effective participation in society on an equal basis with other people.

elderly people, with disabilities, retired due to disability, who do not receive BPC, with the defined objective of improving their lives in relation to the need for a caregiver for the development of their daily activities. The fourth paragraph, as outlined above, establishes the criterion of a maximum income ceiling of up to 4 minimum wages (Brasil, 2020).

Next, article 7 deals with the legitimacy to postulate the benefit in question. The provision prescribes that the applicant for caregiver assistance will be a person with a disability, an elderly person or a person retired due to disability, or their legal guardian, through curatorship or guardianship (Brasil, 2020). This last provision, regarding curatorship, seems problematic in the light of the Brazilian Inclusion Law, because if the act of requesting caregiver assistance is understood as existential or personal in nature (art. 85, § 1), it would not be possible for the curator to have competence for such a request, since, for acts of such nature, the person with disabilities remains capable in fact.

There is also a benefit directed to the caregiver. Article 8 addresses item II of paragraph 2 of Article 21 of Law 8212 of 1991 (Organic Law of Social Security), adding item "c" to reduce from 20% to 5% the contribution rate of the optional insured without their own income who dedicates themselves within the scope of their residence, to the care of a person with disabilities, retired due to disability or an elderly person who needs daily and permanent care from a third person because they are unable to to do so on their own, regardless of whether they belong to a low-income family (Brasil, 2020).

Further, article 9 intends to determine the competence of the municipal councils of Social Assistance, Health, Persons with Disabilities, the Elderly and the like, for the monitoring and inspection of caregiver assistance. The provision also has a single paragraph, which identifies the duty to verify any crime of bad acts and notification, if applicable, of the competent police authority or the public prosecutor's office (Brasil, 2020). This provision leads to article 10, which, finally, establishes the entry into force of the alleged law on the date of its publication (Brasil, 2020). In the section of justifications presented by the proponent deputies, we verified the recognition of the right to care for people with disabilities, the elderly or retired (Brasil, 2020). The authors highlight that care can be provided by professionals or family members, but declare that it is a public duty of the State to guarantee it through financial resources intended for the hiring of caregivers (Brasil, 2020).

They also emphasize the context of the COVID-19 pandemic and the health crisis that the country has gone through since 2020, a situation that has exposed the indispensability of care for this vulnerable group (Brasil, 2020). The deputies choose, in view of this scenario, as a principled foundation, the principle of the dignity of the human person, "both of those who depend on care and in the recognition of the fundamental and selfless role the caregiver" (Brasil, 2020, p. 4).

The normative aspects of the bill under analysis show that the caregiver allowance is a reflection of the right to care. The chain of the rule shows that this measure seeks to follow the objectives of the Convention on the Rights of Persons with Disabilities and the Brazilian Law of Inclusion. The normative proposal recognizes the indispensability of this right for the quality of life and development of people with disabilities and the elderly and conjectures financial resources to facilitate access to caregivers.

This bill ended up being appended[5] to No. 4840/2012, authored by Eduardo Barbosa (PSDB/MG), as it was understood that they have the same objects and purposes. In fact, when analyzing the propositions of this second, it is clear that the "dependency aid" is directed to the insured who needs permanent assistance from another person, either to carry out their work activities or for daily life, according to the proposal for the inclusion of article 86-A in Law 8213/91. It is also proposed the value of 60% of the benefit, without prejudice to reaching any maximum limit, ceasing with death, under the terms of article 86-B, 86-C and 86-D. The provisions and justifications follow a similar line to Project No. 3022/2020, with the notable difference of covering people with disabilities and elderly people in situations of dependence in the labor market (Brasil, 2012).

Bill No. 3022/2020, however, seems more relevant to serve as a paradigm for this analysis, as it is more current and attentive to contemporary socio-political problems and, therefore, in greater harmony with the system for the protection of the rights of people with disabilities. Not to mention that, as seen, it proposes more systematic changes, more benefits and higher reference values than those provided for in the 2012 project.

There is no doubt that the provisions contained in the bill examined, if approved, will optimize the well-being and social participation of these people. However, care inexorably denotes a relationship of dependence or interdependence; an interpersonal connection that is not necessarily egalitarian (Kittay, 1999). In fact, the legislative proposal itself guarantees that it is intended for the care of those who depend, as well as the "selfless role of the caregiver" (Brasil, 2020, p. 4). Therefore, in addition to recognizing the importance of balancing the scales of the care relationship, it is necessary to effectively have material conditions for caregivers to perform their function. If care is a matter of relational justice[6], there can be no omissions of care provision in relation to one of the parties.

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[5] Being attached means that a previous project, or more, has similar content and purpose, so that the oldest one heads the progress and has priority in the Chamber. Thus, the opinions of the Commissions may pronounce on the points of all the projects and even replace the original project with the inclusion of excerpts and provisions of the subsequent one or even recommend the approval of the attached project and rejection of the others. Cf.: https://www.camara.leg.br/noticias/67516-apensacao/. Accessed on June 22, 2023.

[6] The terminology used proposes to highlight, based on the theoretical framework used, that justice is only guaranteed when both people involved in the relationship are able to sustain such a relationship in a healthy way.

3 Feminist foundations for the recognition of the right to care from a relational perspective

Having the premise that disability and aging are not merely individual or functional conditions refers to the requirement that one intervene in the social environment to adjust it to the needs of people in these conditions. This perception signals that there is no justice in simply ensuring freedom and independence to subjects who experience such vulnerabilities. Dependence, on the contrary, is an inevitable circumstance and at the same time fruitful for individual and collective human development.

Relations of dependence are praised, among other feminist philosophers, by Eva Feder Kittay, as a criticism of individualist liberal currents in which care is not to be found[7]8. Such a consideration, in fact, is even directed at the social conception of disability developed from 1960 onwards by American and English sociologists based on historical materialism[8]9. The feminist critique of the social model of approach, as a way of reinvigorating it, drew attention to factors that can add to the disability of some people[9], such as also for the relations of dependence that are established in favor of these people (Kittay, 1999; Diniz, 2012). Relations of dependence, and all that they incite, such as empathy, responsiveness, trust, and other human emotions, are essential for the exercise of democracy and for political and justice dispositions (Held, 2006). The American philosopher looks at issues linked to disability from a relational or connective point of view.

It formulates an "*equality based on connection",* which is not restricted to the individual considered solely and which is based on the duty of care that we have or will have at some point in life (Kittay, 1999, p. 66). By the maxim that "*we are all equally children of some mother",* Kittay claims that care falls on the two parties of the relationship of dependence, the one who is cared for, called by the author a *cartoon*, and the one who performs the work of caring, called the "*dependency worker"* (Kittay, 1999, p. 66).

The proposal of individual independence, which took shape with the structuring of medicine as a branch of knowledge and with the wave of quantitative and statistical studies on disability (Albrecht, 2002), was silent about the fact that some people would never get rid of

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[7] The political-philosophical state of the art based on it certainly came from John Rawls' Theory of Fairness, which proposed two basic principles to ensure that essential constitutional elements are decided discursively: a scheme of equal basic freedoms and equitable equality of opportunity and the benefit of the less favored members of society. In this structure, care, as well as other values, such as desire and compassion, should not be guaranteed for the exercise of public reason, given the veil of ignorance, which has been the target of feminist criticism (Rawls, 2003, p. 60-63).

[8] The social model of approach, although positively pointing to the barriers that prevent the inclusion of people with disabilities, rather than the injury itself, was headed by white, privileged adults with a high level of education and visible disabilities. Thus, originally, this perspective was not able to shed sufficient light on issues linked to poor, black people with disabilities without visible disabilities (Albrecht, 2002, p. 30-31).

[9] Such as gender, race, class, social and economic status, nationality, etc. (Kittay, 1999; Diniz, 2012).

the needs of others (Kittay, 1999). The discourse that independence is an indispensable normative and performative condition is not consistent with the variability and reality of the human condition. This myth was responsible for attributing a pejorative connotation to care, linking it to incapacity or infantilization (Kittay, 2011). Against this liberalist idealization, feminism reinserts care and human interdependence in the debates around the meaning of justice (Fietz; Mello, 2018). Recognizing interdependent relationships as necessary for the well-being of vulnerable people means respecting and valuing the interests of the caregiver, because he or she is also a "*mother's child*" (Kittay, 1999). The work of caring needs to be properly rewarded, so that the burden that this relationship naturally requires it to be relieved, enabling the caregiver to take care of himself (Kittay, 1999).

Dependency work, however, is a job that differs from the others, which are characterized especially by the counterpart of remuneration, in addition to labor rights and career plans (Kittay, 1999). In a different way, many *dependency workers* perform the care of the elderly and people with disabilities in the domestic-family environment and without any payment for it, which represents a challenge to ensure their well-being[10]. It is common for care to be provided by women who are relatives of those in a situation of dependency: the wife, the daughter or even the daughter-in-law; only lastly, the son[11] (Pinto, 2005). In addition, there are non-white and poor women summoned from outside the family circle to perform this function, who have remained and remain trapped in precarious, sexist, and oppressive work contexts (Hook, 2022,). Thus, as this role was historically linked to the female gender, the need for consideration was never envisaged; This issue took a long time to be considered in the public-political sphere. Contemporary feminism draws attention precisely to this problem.

Care is in the field of ethics, but it must also be in the field of politics. In the words of Eva Kittay herself, "we need a stronger normative sense of care" (Gesser; Fietz, 2021, p. 6). If before the relationships of care were evaluated under the walls of the houses, it is necessary to break them, in order to place them in the public debate, as a goal for a more democratic and materially equal society (Tronto, 2007). The family cannot continue to be the main instance to deal with care. Its character should be supplementary to the role of the State in supporting *dependency work* (Moraes, 2019). As Virginia Held puts it, care is a philosophical approach that is designed to integrate thought in a general way, addressing life, society, and conceptions of justice that have been impregnated with male dominance over time; this turn makes it necessary to consider the value of care in the political and legal spheres, in order to

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[10] Bell Hooks explains that work performed within the home is much more complex and exhausting than outside work, because "problems at home cause great stress and are difficult to solve", while "problems in the workplace are shared with everyone, and the attempt to find a solution is not an isolated thing" (Hooks, 2022, p. 84).

[11] In an empirical psychosocial research, Meyre Pinto (2005, p. 129-130) concluded that, in Brazil, women are considered the main taskmaster of care for the elderly, according to tradition and social culture.

highlight certain issues that affect the members of this relationship (Held, 2006).

Caregivers should be given resources and opportunities to preserve themselves when performing this function. However, considering that relations of dependence may not be materially resolved in the private sphere, it is necessary for the Government to intervene in them as *a doulia*[12] of the *dependency worker* (Kittay, 1999). Among those principles of justice such as equal opportunities, there must be a third, social responsibility for the care, in order to perceive the vulnerability inherent to the relationship of dependence; the power-duty to respond to the needs of others; and the primacy of human relationships for common well-being and development (Kittay, 1999). Acknowledging, publicly and institutionally, the vulnerability of caregivers imposes the inadmissibility of the persistence of spaces of inequality in which this condition can be amplified (Feito, 2007).

Such statements lead to the realization that, in order for the principle of care to be properly put into effect, given its relational or connective character, the State and society in general must be responsible not only for the people who need it, but also for the elderly, retirees and people with disabilities; but, at the same time, to the people who perform it, the workers of dependency. In fact, the fact is that justice is not guaranteed when care is not guaranteed; valuing care is an inexorable condition for achieving social justice (Held, 2006; West, 1999).

As much as feminism, especially in the United States, starts from the problematization of factual issues and local movements, as well as establishes a particularized teleology, with the necessary adjustments and critical commitments[13], it is possible to apprehend its foundations and paradigms for dealing with the political and legal issues of the Brazilian scenario. Even more so because care, built on this feminist philosophical basis, has been increasingly embodied in Brazilian Law, assuming true *normative* status.

Through a systematic and contextual reading of the Federal Constitution of 1988, following the movement of constitutionalization and valorization of affectivity in human relations, care, from a relational perspective, is no longer limited to the level of ethics, but is part of the legal field[14]. As such, care is a normative paradigm that imposes a legal duty – and corresponding right – to provide conditions for the development and expression of existential autonomy (Almeida; Dalsenter, 2021).

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[12] Eva Kittay uses the Greek term *doulia* to compare the situation of the caregiver to the pregnant woman during the period of pregnancy, childbirth and postpartum. Just as, throughout history, pregnant women and pregnant women needed servants to provide for their well-being when taking care of their children, the caregiver also needs someone to take care of him during this work (Kittay, 1999, p. 68-107).

[13] In this sense, Luana Araújo (2022) addresses Eva Kittay's feminist theory to evaluate the moral and legal recognition of people with disabilities in general, without neglecting possible problems that this construction leaves in its wake. The fact is that this philosophical problematization is essential to deepen the structure of today's legislation and political discourses.

[14] Proof of this is the jurisprudential recognition that care projects obligatory legal consequences in relationships within the family, as decided in Special Appeal No. 1,159,242/SP, judged in 2012, and reported by Justice Nancy Andrighi (Brasil, 2012).

According to Brazilian scholars, it is an implicit legal value that binds any relationships of affection, solidarity and responsibility, not being narrowed in eminently family relationships[15]16. It represents the transition from subjectivity to intersubjectivity typical of the rupture of the modern period, to charge the being-in-the-world, that is, in its relational projection with the Other (Barboza *et al*, 2020).

There seems to be no doubt, at present, about people with disabilities and elderly people, due to their vulnerability, having the right to positivist benefits that deal with their specific needs and provide them with autonomy, social participation, self-fulfillment and dignity, including under penalty of liability for affective abandonment (Pereira; Marchioro, 2023). A point that has not yet been so much academically and legally evidenced, however, is that this jusphilosophical construction must necessarily be seen from a relational perspective, as Eva Kittay's feminism points out. In other words, care, since it is always established in the dialectic between the subject and the other, imposes the protection of both; For it to be satisfied, the caregiver's care is essential.

If Bill No. 3022/2020 has, as its principled foundation, care, implicit legal value, and, consequently, the dignity of the human person both of those who receive care and of those who care, and if there is no doubt that its propositions would bring benefits to the former, it is necessary to verify whether such a proposal provides, in fact, from a set of goods and guarantees to the latter.

4 Critical notes on the caregiver aid projected by the Chamber of Deputies in search of greater guarantees for caregivers

Bill No. 3022/2020 catalogs measures for the direct benefit of people with disabilities, the elderly, and retirees. Its foundation and axiological vector are found in the Brazilian Law of Inclusion and the Convention on the Rights of Persons with Disabilities. They are the target subjects of the predisposed guarantees. On the other hand, caregivers, although their role and human dignity are recognized, appear only as supporting actors.

By the way, a first observation to be made is that there is no legal-normative reference at the national level for the provision and guarantee of social rights of *dependency workers*. In Brazil, there is no legislation analogous to the Statute of Persons with Disabilities to declare the rights of those who perform caregiver work, who, therefore, they are held hostage to broader rules that are inappropriate to their peculiar context, such as labor laws in general and Complementary Law No. 150/2015 (which provides for the domestic employment

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[15] So much so that it can even lead to the material recognition of the so-called solidary family, that is, "the social relationship formed by people who have the end to build their experience and reduce the amplitude of their vulnerabilities" (Pereira, 2018, p. 12).

contract). This gap may have been one of the reasons why the project failed to recognize caregivers as subjects who truly hold the rights provided for therein.

The project was accurate in denoting the dependence inherent to the biopsychosocial context of some elderly, disabled and retired people, and, consequently, the need for care. However, the proposed normative chain evidences the lack of understanding of care in its entire structure, undertaken in connection, in a relationship whose parts, all of them, need to be supported, and not only the beneficiary of care.

The amount of 1 (one) minimum wage[16] is directed to people with disabilities, the elderly or those retired due to low-income disability[17] so that they can cover the expenses with daily assistance – that is, care – that they need to live well. The benefit, therefore, belongs to the people who receive care; they are the ones legitimized to postulate it, as mentioned in article 7 of the bill. Therefore, although this benefit has the dependency relationship as a taxable event, because otherwise the aid no longer fits, it is completely and directly managed for the dependent. In other words, in the proposed way, the caregiver assistance resource is intended for those who are cared for and not for those who provide care.

This ownership must be rethought. As in the Brazilian political-economic framework, there is a tendency towards familism with regard to social security and solidarity actions (Teixeira; Silva, 2020; Teixeira, 2018), the role of caregiver is traditionally assumed by female relatives, such as mothers, wives, daughters or daughters-in-law (Pinto, 2005). This is a reality that must change, but, concretely, it still persists and needs to be taken into account at the political level. There is no guarantee that caregiver assistance will be effectively directed to the needs of women caregivers; It is not certain that people with disabilities, the elderly or male retirees, for example, given the sexist culture, will consider the demands of their *dependency workers* and offer them the amounts obtained with the companion allowance. The uncertainty and impropriety of the forecast can even sabotage family relationships and even the affection between the parties or, at least, contribute nothing directly to the relationship of dependence.

Even in an ideal scenario in which the elderly, disabled or retired people do not have sexist thoughts and attitudes, directing caregiver assistance to those who care can be a very fruitful way to raise awareness about the importance of care. Such a measure could even reverse the negative evaluation that people, in general and especially dependents, have about their own condition, as has been empirically verified for some time (Pinto, 2005). Knowing that those who care are also receiving care, as a fair reward for the work they do, can modify the

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[16] It is worth remembering that, in the original project to which the examinee is attached, the proposed amount is only 60% of the benefit received (Brasil, 2012).

[17] Paragraph 4 to be inserted in article 23 of Law No. 8,742, of December 7, 1993 (Organic Law of Social Assistance) is intended to establish a maximum ceiling with an income of 4 minimum wages.

pejorative idea that many have about dependence and lessen the feeling of "burden" that some usually have.

The only provision of the bill[18] that falls properly on caregivers is in article 8, which intends to reduce from 20% to 5% their contribution rates as optional insured persons. Such a forecast, however, is also problematic. Although at first glance it seems to imply a reduction in the contribution burden, the provision ignores that care is a job. By considering caregivers as optional insured persons, that is, as subjects who are not obliged to pay the social security amount monthly – unlike CLT employees, domestic workers, public servants and self-employed professionals – the legislative proposal considers that unpaid domestic care is not in the nature of work and, consequently, should not generate the obligation to contribute to social security.

The non-obligation, in practice, given the context of poverty and economic difficulty of most Brazilian families, is synonymous with non-contribution and, therefore, lack of protection. As a result of the lack of collection, caregivers who find themselves in this situation lose a list of protective social rights, such as retirement and sick pay. In the short, medium and long term, this can generate several and recurrent damages to the physical and mental health of *caregivers*.

It is true that many caregivers identify themselves as female and develop their activities in the domestic sphere without any recognition of rights or even remuneration. This does not mean, however, that care is not a job. It is precisely this change, in fact, that contemporary feminism desires boost. The degenderization and professionalization of care, seeing it as an ethical attitude, but also as a job that demands social and public responsibility, is a requirement of justice and equity for women (Kittay, 1999). If dependency work has no political value and, consequently, does not matter in terms of rights and guarantees, the people who perform it are doomed to unequal and unjust situations, such as economic dependence on men, submission to traditional marriages, and imprisonment for abusive relationships (Kittay, 1999). Based on these verifications, it is possible to conclude that Bill No. 3022/2020[19], despite having high relevance for the well-being and development of people with disabilities and the elderly, does not adequately meet the requirements of care and dependence relationships. Its provisions are silent on responsibility towards caregivers, failing to recognize care as an authentic work that demands remuneration and social rights. And this negligence, indirectly and directly, can affect the health and integrity of the people themselves beneficiaries of care.

The findings reached can serve as a basis for the modification of some provisions, in order to ensure care from a relational perspective, that is, meeting the needs of both parties. Based on the analyses and evidence set out above, it is proposed:

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[18] A provision that, by the way, is not provided for in Bill No. 4840/2012 (Brasil, 2012).

[19] As well as other projects that have been processed in the National Congress in search of social justice for caregivers, such as those mentioned above.

1) The caregiver allowance must be established in sufficient resources for the payment of at least 1 minimum wage, without prejudice to the labor and social security charges applicable to the benefit of the caregiver;
2) The caregiver assistance must also be able to be requested directly by the caregiver who fits the criteria of the law;
3) The caregiver allowance must be paid monthly to the caregiver, provided that it is proven to comply with the legal requirements for the exercise of care;
4) The caregiver assistance needs to be periodically monitored, through inspection, report and whatever else is necessary, by the municipal councils of Social Assistance, Health, Persons with Disabilities, the Elderly, social assistance services and similar structures at the municipal level.

There are many other complex and casual issues that need to be discussed. There are even other lenses that must be applied to see care relationships from another perspective. For example, the situation of the right to paid weekly rest and vacation of the dependent worker is a point that cannot be resolved by mere standardized subsumption. The reflections undertaken here, however, serve to shed light on the problem, attesting to the need for greater social efforts and public interventions. This is a demand of the elderly and disabled people, their caregivers and society itself, which has always needed and will need care.

5 Conclusions

In the first chapter, it was found that the caregiver assistance provided for in Bill No. 3022/2020 sought to materialize the right to care for people with disabilities provided for in article 39, paragraph 2, of the Statute of Persons with Disabilities. The normative structure reveals the adoption of biopsychosocial assessment and, therefore, shows adherence to the social model of approaching disability, which understands this human condition as an interaction between the individual functional situation and the socio-environmental structures that surround it and obstruct social inclusion.

It was also possible to note that the legislative proposal recognizes the provision character of the right to care, by highlighting that it is the public duty of the State to guarantee it through financial resources for the hiring of caregivers. In this sense, the principiology and teleology of the project demonstrates that it seeks protection for those who depend on care and those who care.

The following chapter, on this normative framework, sought to explore the foundations for understanding and defending the right to care from a relational perspective, that is, not merely and virtually individual. Eva Kittay's feminist philosophical theory, together with critical and interdisciplinary reviews, grounded this investigative enterprise and led to the conclusion that care should fall on the two parts of the relationship of dependence, the one who is cared for, called the cartoon by the author, and the one who performs the care work, called the *dependency worker*. The latter, as seen, is in a work situation quite different from the others, especially when it is developed in the domestic-family environment and without any payment for it.

The reflections in this section of the work pointed to the need for care to be finally emphasized and addressed in the public-political field, as endorsed by contemporary feminist theorists. The Public Power, it is thus concluded, must assume direct responsibility towards the dependent workers, in order to realize that their vulnerability is not normally resolved in the private sphere, intervening in it with resources and normative guarantees.

The scientific path, based on these theoretical conclusions, then resumed the normative chain of the aforementioned bill with constructive criticism. It was inferred that the lack of specific legislation to deal with the rights of those who perform caregiver work was a reason why they appeared in the project only as supporting actors in the care relationship. So much so that the benefit provided for in the proposition has the people who receive the care as legitimate assets, and there is, therefore, no guarantee that those who provide it will receive any type of support.

This issue takes on an even more problematic dimension due to the fact that the Brazilian political-economic context drives familism in social security and solidarity actions. In other words, the task of care is predominantly centralized in the family environment, and is assumed by women, such as mothers, wives, daughters or daughters-in-law. Therefore, the need to rethink the ownership of the caregiver assistance was highlighted, associating it with the requirement that it be directed mainly to female caregivers, whose interests are usually overshadowed or disregarded in a sexist culture.

The critical analysis of the project continued to article 8, which provides for a reduction from 20% to 5% of the contribution rates of caregivers as optional insured persons. It was sought to make clear the damage that this proposition can cause to these people in the short, medium and long term. This provision ignores that care is a job and, consequently, claims protective rights like any other. As well as CLT employees, domestic workers, public servants and self-employed professionals, *dependency workers* must be in the condition of mandatory insured, so that, when they find themselves in adverse situations, they can enjoy guarantees such as retirement and sick pay. An aid that aims to support the relationship of dependence, therefore, cannot omit the reality that care is a job, weighing all its formal and material requirements.

In conclusion, armed with the reflections reached in this methodologically inductive process, it was argued that Bill No. 3022/2020, despite having high relevance for the well-being and development of people with disabilities and the elderly, shows that the legal system does not adequately meet the requirements of care and dependence relationships. Failing to recognize care as authentic work, which demands at least remuneration and social rights, is an affront not only to the dignity of caregivers, but also to those who are cared for, due to the precariousness of the care provided. Thus, the need to review some structural points of the project was pointed out, in order to ensure care from a relational perspective. This would be a first step in the field of care in search of a truly just society.

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