Who cares?

Rebuilding care in a post-pandemic world

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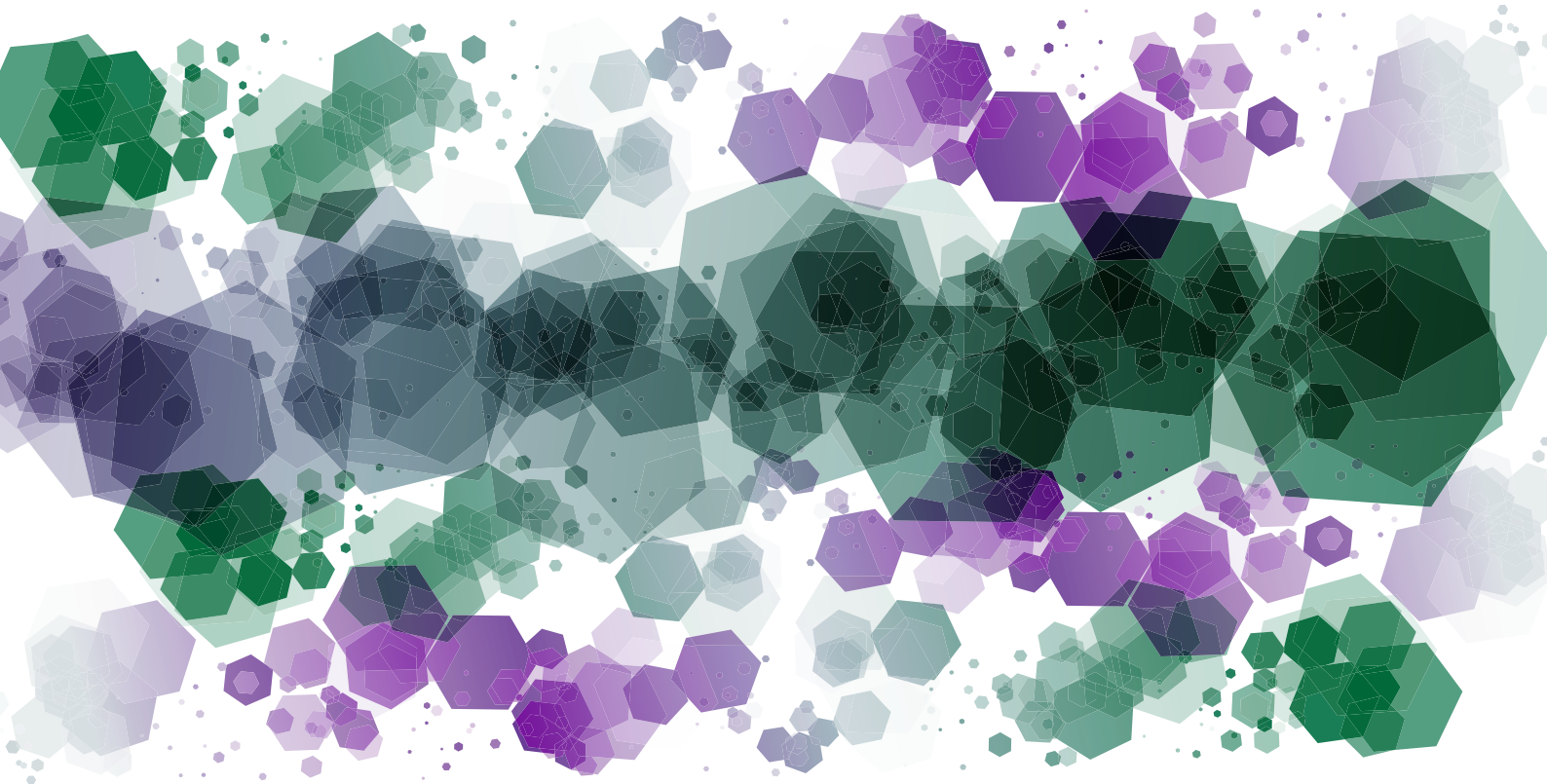

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Brazilian care law: elements for an architecture of the legal field of care in Brazil

Pedro Augusto Gravatá Nicoli
Regina Stela Corrêa Vieira

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Boa leitura!

Brazilian care law: elements for an architecture of the legal field of care in Brazil[1]

Pedro Augusto Gravatá Nicoli[2]
Regina Stela Corrêa Vieira[3]

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2 PhD in Law from the Federal University of Minas Gerais (UFMG). Professor at the Faculty of Law of the Federal University of Minas Gerais (UFMG). Co-coordinator of Diverso UFMG – Legal Center of Sexual and Gender Diversity. E-mail: pedrogravata@gmail.com

3 PhD in Law from the University of São Paulo (USP). Professor at the Faculty of Law of the Federal University of São Paulo (Unifesp). Member of the Cebrap Law and Democracy Center. E-mail: regina.vieira@unifesp.br.

Abstract

This paper aims to work on the idea of a *Brazilian care law*. It intends to formulate it as such in the horizon of the legal reflection, seeking structural elements for the constitution of a branch that thinks in an articulated way about the many ways of legally treating care, whether directly or indirectly. For that, it makes a set of movements, of bibliographical and legislative research, to understand the entry and circulation of care in the field of law. An attempt to understand how care has been translated legally. In conceptual formulations, in the spheres of regulation, in direct and indirect expressions, in application. And also in a future nod to what this field can be. The paper is divided into three parts. An introduction. A section on the entry and circulation of care in the Brazilian legal literature, considering four legal approaches of care: as family responsibility, as work, as a research and legal analysis instrument, and as an obligational legal relationship. Later, a section that attempts to build an initial map of the legal framework of care in Brazilian law. It closes with final considerations and future nods towards a care law.

Keywords

Care; Work; Social protection; Rights; Care law.

Summary

1. Introduction

This article aims to work on the idea of a *Brazilian care law*. Or, to say it more explicitly, it intends to formulate it as such in the horizon of the legal reflection, seeking structural elements for its constitution. The idea of a *care law*.[4] To be positioned as a branch that thinks in an articulated way about the many ways of legally treating care, whether directly or indirectly. As in established branches of law, such as employment law, contract law, intellectual property law, and so on. In a qualifying evocation that draws attention to an element of its own, in its existence and organicity associated with a socio-legal phenomenon that is claimed to be central. For that, it makes a set of movements, of bibliographical and legislative research, to understand the entry and circulation of care in the field of law. An attempt to understand how care has been translated legally. In conceptual formulations, in the spheres of regulation, in direct and indirect expressions, in application. And also in a future nod to what this field can be.

The idea starts from a disengagement, a delay, typical of the legal phenomenon. Among the applied social sciences, the field of law is one of the most refractory in terms of incorporating new ideas and demands coming from civil society and academia. Whether due to intrinsic characteristics of the very organization of state law — responsible for legally prescribing facts of life prior to it, without the capacity to do so at the speed of social demands (WOLKMER, 2001) —, or the universalizing profile of its norms — which reinforces the creation of subjects outside of legal guarantees — legal science was structured to privilege the maintenance of the status quo in the face of changes in the social order.

The case of care is no different. Care is a topic that is largely invisible to the law, or one where there is significant resistance regarding the incorporation of guarantees related to it. Or even with opaque forms of treatment, which reinforce, even if obliquely, a preponderantly obligatory and profoundly unequal distribution of care burdens. And in spite of that, the language of rights appears as a legitimate tool that is widely used in the claims of groups that work with care, from feminist movements that plead for the socialization of domestic work, to demands for decent working conditions for caregivers and domestic workers (GROISMAN, 2015; ACCIARI, 2020; VIEIRA, 2021).

Coming from these claims, a new context is established. One of a denser entry of care in the legal domain, with understanding, regulating, applying, and disputing it. Something is put in motion in law. And what we want is precisely understand what this movement is, where it comes from, what lines and trends it has been following, what indications for the future it gives. Here, our work will be twofold. First, understanding the legal mechanisms for dealing with issues related to care prior to this clearer conceptual entry. At a time when law regulated (and still regulates) care without naming it. Here, we will make an effort that is al-

4 Care law is an expression that is already established in anglophone worlds, associated with the domain of health care, the medical field and the law. A similar thing does not happen in Latin languages, such as Portuguese, French or Spanish. In the original version of the article, we are proposing the idea of a *Direito do Cuidado*, that does not appear formulated that way in our legal horizon. In any case, we are dealing with something different: care law as the branch of law that deals with care relationships, in all its dimensions.

most archaeological, excavating in the many dimensions of Brazilian law that in direct and indirect ways regulate care, in areas where this occurs more or less explicitly. And second, to advance more articulated meanings resulting from this knowledge of the first moment, which understand how law is expressed and what happens to it when the legal discussion of care takes on its own contours, with demands arising from the social struggle and a conceptual recognition that is relatively new.

This is why we are proposing a legal architecture of care law. In a loose appropriation of the term architecture, in its primary senses of structural elements that make up a whole. Whether concretely or symbolically. Or perhaps also in the sense of Iraqi architect Zaha Hadid, for whom "Architecture is really about well-being. I think that people want to feel good in a space... On one hand it's about shelter, but it's also about pleasure".[5] So we operate in this hybrid, which wants to understand how law already structures a treatment of care, in a "shelter", often structurally precarious and violent, of the theme. And, concretely knowing this structure, thinking about the nascent legal reflection in terms of an architecture of well-being, individual, collective, social, in which care is distributed in a fair and protected way, and which is a fundamental theme for the regulation of social life.

In this working paper, we present what we understand to be the preliminary indications of the research "Care and Law", which integrates the "Axis III – Understanding care as a strategic and central dimension for the reconstruction of social infrastructure and public policies" of the organization of the Brazilian team in the project "Who Cares: rebuilding care in a post-pandemic world". It is, therefore, preparatory writing for a project that is much more comprehensive. And it has, therefore, a primarily exploratory function, of mapping the main lines and guiding further advancements to be developed in the course of a broader research.

Our work agenda is divided as we have divided the text, into two investigation fronts: (1) the entry into circulation of care in the legal literature, in bibliographical research that plans to outline a state of the art; (2) the legislation as a legal framework for care in Brazil, in legislative research, which collects and consolidates elements in the direct and indirect regulation of the subject. In addition, we are interested in knowing the contemporary legal formulations of care, in an initiative of a theoretical-speculative nature that allows the understanding of the present ways of legally imagining care.

With this outline, our objective is to build bases for this idea care law, which allows it to contribute in social responses to the demands derived from its various dimensions. In this sense, this essay is also a bet. One that sees in this moment of explicit affirmation of care as a legal concept a window, intending to intervene conceptually from it. To move structural ideas forward in this care law, which is based on thinking about forms of dignity, systematicity, legibility, in a field that has historically been treated in oblique and unfair ways by the law. A care law that takes on the mission of perceiving how care is in itself a fundamental right, in all its dimensions, and that must be taken as a legal value to be cultivated. An attempt of conceptual elaboration of a legal field, drawn from historical claims, with dense social connections and with purposes for the future.

5 Cf.: https://www.vogue.com.au/vogue-living/design/zaha-hadids-most-memorable-and-inspiring-quotes/image-gallery/b92978d33fc292acc66edd1945b2d1bc

2. The entry and circulation of care in the Brazilian legal literature

Legal literature seems to be a good entry point into a debate that is particularly difficult to access. The entry and circulation of care in the so-called scientific field of law is an ongoing, highly complex process: there is an intense past in the indirect ways of treating the theme; a moving present, which goes through a moment of special speed, with a profusion, sometimes contradictory, of texts about care; and a disputed future, in the face of the legal lines of force that arise sociopolitically. In this context, the way in which the theoretical elaboration of care in the field of law has appeared gives us good indications of what it meant, means and could mean for the legal arena.

The starting point is a well-known difficulty in defining the concept, considering the polysemy of the word "care", which is present in the different areas of study of the theme. There are multiple characteristics to be considered when analyzing the phenomena and dimensions of care, and the conceptual scope changes the object of analysis whether considered from narrower or broader perspectives, whether focused on dependent populations or collective demands, whether thought of as intersubjective arrangements, relationships, work or in terms of providing public services, for example.

For the science of law, the difficulties related to the legal concept of care are of the same order, added to a specific problem related to the functioning of this field. Law can be understood as a communication system aimed at mediating human behavior and resolving conflicts (FERRAZ JÚNIOR, 2001). Therefore, the discipline is structured through and for communication, with legal norms coated with legal discourses, incorporated into the legal order or interpreted in its application by actors of the legislative and judicial branches.

As it is a system that deals with normative operators of obligation, prohibition and permission (FERRAZ JÚNIOR, 2001), as well as with the interpretative gaps of these commandments, the delimitation of concepts for the legal system has significant importance, both legal and political. A legal concept has its own operability, projecting normative effects and immediate consequences for social life. The conceptual dispute, therefore, has a particularity when it comes to a legal concept. As an example of this, we can mention the incorporation of the crime of femicide into the Criminal Code, whose contention in the Brazilian Congress involved the relevance of specifically naming a crime of homicide perpetrated for gender reasons, as a way to make it visible to the criminal process — and to society (ANGOTTI; VIEIRA, 2020).

Consequently, the complexity related to the notion of care and its scope gains specific notes when we enter the field of law. And here our problem is revealed, indicating a state of the art that is very difficult to trace. Care is an elusive legal concept, and no unified effort among actors in the area was made to understand its meaning in theory or in institutional arrangements, or to even minimally homogenize its background senses. The absence of such content generates relevant dissonances for the legal application and the judicial interpretation of the guarantees, obligations and prohibitions aimed at those who demand or offer care.

To better understand the angles of care treatment in Brazilian law, we chose to map and analyze the publications in the area that address the topic. The methodological approach involved collecting data on entries and publications' profiles that had the word "care" in their titles or keywords, while taking into account the peculiarities of the circulation of knowledge within the discipline of law.

Brazilian legal theory, historically, disseminates theoretical theses and jurisprudence production ["teses e linhas doutrinárias"] through books and handbooks ["manuais"]. This fact makes it very difficult to carry out a systematic literature review along the lines traditionally known, since the available databases of articles and/or academic works — such as the Capes catalog of theses and dissertations — do not comprehend a number of jurists capable of consolidating a certain knowledge for the field. Although there is a contemporary changing trend in the profile of publications, which progressively incorporate dissemination through indexed and qualified journals, the texts known as "handbooks" or "courses", which systematize legal disciplines, still seem to be the priority circulation references in the context of law — those that, ultimately, give an account of how the reflection structurally appears in the field.

Considering that organizing the legal literature's state of the art is something profoundly challenging, our methodological approach in this working paper is a preliminary mapping of profiles and trends in this universe, focusing on the publications of individual and collective books of legal scholars ["doutrinadores do direito"]. Thus, we chose to start the analyses from authors who are a reference in legal thought, whose ideas are reproduced by legal professionals [operadores do direito], whether by lawyers, judges or prosecutors, in justice institutions in general, or in the faculties themselves.

Preliminarily, based on these exploratory efforts, we hypothesized that there would be four major approaches to care in this national legal literature: (1) a traditional and family-oriented approach, focusing on rights and, above all, duties resulting from private relationships; (2) a line focused on care as work and its treatment by law; (3) a branch dedicated to the use of care as an instrument of legal analysis; (4) a perspective of care as a legal relationship of obligations, linked to the resumption of the familial reflection in recent years.

As the grouped approaches take shape, this priority strategy will be complemented by the growing production of research papers and scientific articles. Incidentally, for perspectives more connected to the very meanings of care in recent social struggles and critical reflection in other fields of the humanities, cutting-edge legal reflection will mainly take place in this more "academic" profile of publications, so to speak.

Along these lines, a fifth perspective will be added later to the research. One that focuses on the scientific production of advances in the field of law, by taking the issue of care with centrality and in a more situated way in a transdisciplinary debate. We will explore, there, after also raising the respective regulatory elements, how care gains its own legal formulations. How it, in fact, has also become a legal concept, not only in correlation with other established branches of law, but in innovative formulations and angles.

For the time being, the plan of attack for this peculiar "state of the art" description was based on a traditional separation of the branches of law — Family Law, Labor Law, Civil Law, Social Security Law, etc. —, as well as on knowledge regarding the way in which rights

and obligations are set out in the constitutional text and legal norms in the national legal system. We focused, of course, on the branches of legal specialization that more explicitly touch upon the dimensions of care, in its relational, social and generational context, as well in its considerations as work and in its more outstanding institutional repercussions. Thus, the systematization of this literature followed, in a structural manner, the way in which legal courses are organized in terms of disciplines.

2.1 First legal approach to care: the classical family and obligation perspective

The first approach to care, based on a traditional and family-oriented understanding, can be found in the classic books on Private Law, a legal branch aimed at disciplining the relationships established between individuals, whose heritage comes from Roman-Germanic legal constructions in the structuring of the family, its relationships, positions, roles and prerogatives. The choice of the family domain as the starting point for the proposed research comes from the perception that this seems to be the branch that has explicitly thought about care. It thought about it, in fact, quite precociously, but in its own terms: strongly attached to the duties' distribution within the family, similar to the law of obligations, and normatively ready to punish non-compliance.

In this area, we take as a starting point the work of Lafayette Rodrigues Pereira, *Family Rights [Direitos de Família]*, from 1869. Written in the light of the first Constitution of Brazil, of 1824, still in the imperial context, the work is considered one of the first writings, perhaps the first one, to deal with Family Law in the country. Inspired by the German legal thought, before any regulation dealing with the family subject was formulated in the country, it stands as a fundamental work in the formation of Brazilian Private Law. In the book, although without explicit elaboration, this first way of thinking about care in private legal relationships begins to be developed. And this conception maintains its influence throughout the decades.

The first finding underlying the legal concept of care at the time is its very specific relationship with the family, as a social, moral and legal phenomenon. For Lafayette Rodrigues Pereira (1869, p. 68) "the relationships that form the web of intimate life belong to the moral domain; the law only intervenes to regulate and guarantee those duties, whose non-observance, contrary to the end of the marriage, could cause serious disturbances". From this predominantly moral matrix of marriage and family derives the basic form of power in the relationship, which organizes the distribution of obligations, strongly associated with gender. This is the "marital power, whose name comes from having been exclusively conferred on the husband, as the most apt due to the predicates of his sex to exercise it" (PEREIRA, 1869, p. 69-70).

The dynamics of this power is well defined, associated with the essentialist view of the "predicates of the sexes". Marital power confers on the husband "the right to demand obedience from the woman, who is obliged to shape her actions by his will in everything that is honest and fair" (PEREIRA, 1869, p. 70). On women, it confers "the right to be fed by him" (PEREIRA, 1869, p. 75).

From this design of marital power, paternal power over the offspring unfolds. This is also essentially masculine, but based on many feminine obligations. Faced with the child's incapacity, Lafayette Pereira (1869, p. 223) says "it is necessary that someone take the infant under their protection, feed him, cultivate the germs that sprout in his spirit; that, in a word, educate him, and watch over and defend his interests. This noble mission, nature entrusted to the father and mother". From this condition of incapacity of the "minor", paternal power emerges and is translated into a "right to educate him, to defend his person, and to guard and care for his assets" (PEREIRA, 1869, p. 223).

The obligational dimension attributed to mothers in the context of paternal power, in turn, gives rise to this family-oriented legal view of care. Even if paternal power is denied to the mother, for Lafayette Pereira (1869, p. 244) "the sacred bonds that exist between them and their children are of such energy and such a living reality" that they will deserve their own legal safeguard, in the protection of the family. For example, in the context of divorce, although not fully regulated in Brazil at the time, Lafayette Pereira reinforces a dimension of this sacred bond between mother and children, in the translation of a legal obligation: "the children continue under the power of the father, but the mother is obliged to raise the breastfed babies until they are three years old" (PEREIRA, 1869, p. 64). That is, a legal obligation to breastfeed.

This idea of care in a predominantly obligational set[6] is confirmed by the guardianship of the incapable in the absence of the father. Lafayette Pereira (1869, p. 309) says that "one of the most important duties of the tutor is to take care of the maintenance and education of the orphan". Therefore, care obligations of high legal density can be quite precociously observed in Brazilian private law reflection. And with a very strong obligational design.

A few decades later, Pontes de Miranda, one of the main Brazilian scholars of the 20th century, continues to elaborate this obligational force of care. His most renowned work is the *Treaty on Private Law [Tratado de Direito Privado]*, a 60 volumes work, released from 1954 to 1969, later updated. Volumes 7 to 9 make up the *Treaty on Family Law [Tratado de Direito da Família],* focusing on relationships established by marriage and kinship. Searching for references to care in these volumes, we found the following passage:

> A father who neglects upbringing and education, that is, **who does not take care** of the physical, moral and intellectual development of the child, who does not provide for the minor's medication, is a father who can be suspended from paternal power. (...) A father who does not have the moral strength to demand that his son obey and respect him, it is for his own good and that of the son that the suspension should be decreed. (PONTES DE MIRANDA, 2001, p. 197).

What we can see, therefore, is that this approach elucidates a perspective of care that dialogues directly with the obligations of Private Law, with the penalty of suspension of that

6 In parallel, the verb *to care* also appears in an important dimension for the legal understanding of care, although not directly linked to its contemporary formulations: the patrimonial dimension. Taking care of the property. This is what Lafayette Pereira (1869, p. 166) says about the dowry in marriage, with the attribution to the husband of a duty to "preserve the dowry, inestimable or estimated *taxationis causa*, with the same diligence with which he takes care of his own".

"paternal power" — today called "family power" — in case the father "does not take care" of his child. This care is understood as the guarantee of physical, moral and intellectual development, as well as the health treatment of the child or adolescent — formerly called "minor".

A few more decades later, another author of great influence in Brazilian Private Law, Silvio Rodrigues, recounts in the 1990s the history of the private law tradition in the country, speaking of a tradition that was very strongly established among us. "Our law was inspired by the secular division of labor between the spouses, with the woman remaining at home to take care of the children and the domestic economy, and the man going to work outside the home in search of means to support his family" (RODRIGUES, 1993, p. 250). And further on, he consolidates this reading, when talking about the right of the divorced woman to receive a pension, given the fact that, "in most cases, the woman does not have her own savings, since she has dedicated most of her time to the unpaid domestic service" (RODRIGUES, 1993, p. 253).

In summary, this traditional and family-oriented framework links the responsibilities for consanguineous members of the family, whether descendants or ascendants, to intersubjective and private relationships, with State interference only in cases of omission, abandonment or violence, with the punitive goal. And, despite profound changes in its base, due to advances in terms of gender equality in the world of law, it is still a very influential matrix in the primarily obligational formatting of care. In reasoning used even in recent regulations — such as Article 227 of the 1988 Constitution and Article 4 of the Child and Adolescent's Statute (Law n. 8.069 of 1990) —, the "general duty of care" is imposed on parents or guardians. That is, these are ways of juridically thinking about the structure of care (in its content, in the poles of the legal relationship, in the obligations' distribution and in the punishment) that are still quite influential, even if in new guises.

2.2 Second legal approach to care: care as work and its (non) regulation

Our second legal approach is the one focused on care as work and its regulation. The disciplinary segmentation of law links the area of Labor Law to debates related to the regulation and protection of professional categories that work in care activities, such as paid domestic workers, babysitters, elderly caregivers and nursing professionals.

For this second approach, we take as a starting point the classification made by Gaspar Andrade (2008), between "classical scholars" ["doutrinadores"] and "critical theorists" of Labor Law. According to the author, the former leave aside questions necessary for the critical analysis of the discipline, thus reproducing the same arguments for decades (ANDRADE, 2008, p. 38). From this classification, we selected the main Brazilian authors who fit as "classical scholars", namely: Antonio Ferreira Cesarino Júnior; Arnaldo Sussekind; Waldemar Ferreira; Gentil Mendonça; José Martins Catharino; Evaristo de Moraes Filho; Octávio Bueno Magano; Amauri Mascaro Nascimento.

Practically all of these Labor Law scholars reproduced, without a question, the legislative choice to exclude domestic work from the scope of the Consolidation of Labor Laws (*Consolidação das Leis Trabalhistas*, known as CLT in Brazil, of 1943), besides assuming that the universal legal subject of the discipline would be a man, taking women as an exception. For example, in the *Labor Law Course [Curso de Direito do Trabalho]* by Amauri Mascaro Nascimento (2011, p. 939) we find:

> Domestic worker is "that who provide services of a continuous nature and for a non-profit purpose to the person or family in their residential context" (Art. 1 of the CLT). The characteristic of the domestic worker results from the lack of economic purposes in the work he or she performs for the person or family. Domestic is the cook, the cleaner, the driver, the gardener, etc. However, if there is economic activity in the residence, and the employee collaborates in it, he or she will not be a domestic worker, but an employee, with all the rights of the CLT, as in the case of a person who sells jewelry in his own home, assisted by an employee.

The rule of exclusion of domestic workers from the CLT, with a subsequent edition of a specific law for the category (Law n. 5.859 of 1972), was partially overcome with the approval of Constitutional Amendment n. 72 of 2013, which established the equitable treatment for these professionals. Even so, the characterization of domestic work continues to follow the model of Article 1 of the CLT, without further problematization about the fact that there is a qualitative distinction in the type of work performed in this case.

The exception among the classic scholars is Alice Monteiro de Barros who incorporated, in her doctoral research that resulted in the thesis *Woman and Labor Law [A Mulher e o Direito do Trabalho]*, finished in 1995, feminist debates into the Brazilian Labor jurisprudence for the first time. In her work, she addressed issues related to care work from a critical perspective, stating that the so-called "protective" legislation for working women, present in the CLT even before the 1988 Constitution, was based on "physiological and eugenic reasons, connected, respectively, to the reproductive function and to the strengthening of the race" (BARROS, 1995, p. 36).

In other words, according to the author, norms such as maternity leave and breastfeeding intervals were concerned with social reproduction, not with any sensitivity in terms of care. Furthermore, Alice Monteiro de Barros (1995, p. 36) understood that prohibitions on night work and overtime work, which existed until the 1980s, were camouflaged as protection for female work, while grounded on "spiritual, moral and family reasons, which strictly reside 'in the protection of the woman in the home'."

The circulation of feminist studies in Labor Law, however, took time to consolidate since then. Although the classical doctrine has started to address norms aimed at combating inequality in the labor market and guaranteeing the fundamental right to equality, it is limited to touch upon legal changes carried out in the legislative sphere, without incorporating critical questions aimed at reflecting on the applicability and effectiveness of such commandments. Only in 2017 did the critical labor theory begin to expressly incorporate care studies in its analyses, with our initial productions on the subject (NICOLI; RAMOS, 2017; VIEIRA, 2018). The developments from that point on, which are very significant, will be collected in the progress of the research, in a repository of dissertations and theses that deal with care work from feminist perspectives and in the light of the field's literature.

2.3 Third legal approach to care: care as a research and legal analysis instrument

Following the previous approaches, the third strand is dedicated to the use of care as an instrument of legal analysis, using theoretical foundations coming from the economy

and ethics of care. As previously mentioned, there is frank development of research and study groups focused on care in the labor sphere, as occurs at the Universidade Federal de Minas Gerais, with Diverso UFMG – Legal Center of Sexual and Gender Diversity, and at the Universidade Federal de Pernambuco, with CAPIBARIBA. Fortunately, we found similar movements in other areas of law, in particular, research aimed at understanding how care is articulated by actors of the Judicial Branch. This is the case of using the lens of care to analyze the dynamics of jury trials in cases of infanticide (ANGOTTI, 2019) or the positioning of male and female judges in cases of removal of family power (GOMES, 2022).

2.4 Fourth legal approach to care: care as an obligational legal relationship in contemporary times

The fourth and last approach mapped was the one that takes care as an obligational legal relationship in contemporary times, which focuses on the individual accountability of primary caregivers. This line of interpretation based on the caregiver's obligations, aimed at protecting the person being cared for as a passive being,[7] has a large space in current Family Law. The line is, ultimately, a resumption of what was formulated in the first perspective of analysis, familial and obligational, in its current contours. But it also impacts other fields, social rights, for example, and stands as a perspective of important influence in the present.

The most renowned jurists in the discipline are represented at "IBDFAM" – Brazilian Institute of Family Law *[Instituto Brasileiro de Direito de Família],* a civil society entity expressively active in legislative and judicial debates. Although the entity assumes progressive stances, regarding debates on the individual rights of LGBT+ people, for example, the notion of care that it has articulated seems to essentialize, in one way or another, family responsibilities.

As a major reference for this approach, we cite the book *Care as a legal value [O cuidado como valor jurídico]* (PEREIRA; OLIVEIRA, 2007). According to one of its authors, Tânia da Silva Pereira (2006), care is a legal value based on the recognition of socio-affective ties by Family Law, as it is an attribute of family and institutional relationships for the protection of children, young people and the elderly. The notion of care would then encompass "respect, attention, support, understanding, affection, solidarity and protection" in marital relationships, as well as "patience and tolerance with the elderly" (PEREIRA, 2006). In legal terms:

> The investigation of the elements that make up its [care's] evaluative content can help us to identify it, not only in the dimension of rights, but also in the scope of duties and obligations, in the face of carelessness, neglect, omissions, discrimination and negligence, calling it us to indicate alternatives, guidelines and standardization of procedures [...]. Care should inform private and institutional relationships. Effective violations linked to a lack of responsibility and commitment must justify the mobilization of cogent State forces (PEREIRA, 2006).

7 Here, we follow the criticism formulated by disability studies against approaches that treat people who demand care as passive subjects, in the face of whom the State should take a guardianship stance. (FIETZ; MELLO, 2018).

Although based on different principles, part of the IBDFAM's protective stance ends up being added to the movements to "rescue" the roles of the traditional family, which increased its relevance in Brazil, from 2011[8] onwards, due to the dissemination of the conservative agenda driven by the moral panic associated with gender guidelines (JUNQUEIRA, 2018). The occupation of political spaces by religious groups such as reactionary Catholics and Pentecostal Protestants, especially during the Bolsonaro government (2018-2022), increased the dispute over the production of discourses on the content of human rights.

We saw, in this period, the Ministry of Women, Family and Human Rights, occupied by a pastor and lawyer who calls herself a specialist in Family Law, in which much effort was dedicated to opposing concepts such as "diversity" and "gender" to the ideal of the "Brazilian family", which should be protected and preserved (TEIXEIRA; BARBOSA, 2022). Indeed, policies related to the care of children and the elderly incorporated narratives about strengthening values and affective bonds, unloading on families — and consequently on women — responsibilities that the neoliberal State no longer intends to assume (DELLA TORRE, 2022).

It is worth mentioning that even with the end of the family-oriented institutional policy in the Federal government, after the change of presidency in 2023, the dispute for the grammar of human rights anchored in conservatism and in the traditional roles of men and women cannot be considered overcome. An example of this is the increasing conquest of national and international space by "ANAJURE" – National Association of Evangelical Jurists *[Associação Nacional de Juristas Evangélicos],* which declares as its mission "to glorify the Lord Jesus, to build and help the Church and to proclaim the values inherent to the Christian faith in Brazil and in the world".[9]

At the end of the analysis of the legal approaches to care proposed here, it is worth noting that in addition to the four approaches to care present in the Brazilian legal literature, there is a legal field of care emerging in other countries, which aims to structure a specific way of dealing with the theme. We highlight here publications such as the books *Caring for Justice*, by Robin West (1999) and *Caring and the Law*, by Jonathan Herring (2013). We will return to the theme and its developments after the preliminary legislation review, in a fifth perspective that is dedicated to the contemporary formulations of care in law.

8 The year in which the "School without homophobia" campaign was launched during the Dilma Rousseff government, consisting of the distribution of didactic materials on diversity in public schools — which was named by homophobic critics as "gay kit".

9 Available at: https://anajure.org.br/missao-objetivos-e-declaracao-de-principios/

3. The legal framework of care in Brazilian law: legislative mappings

In the wake of the proposal to apprehend the meanings of care in the legal literature, in its different approaches, our second step was to map how the term circulates in Brazilian legislation. This is because, as discussed in the previous section, the segmentation of law into specific and independent disciplines interferes with how obligations, rights and duties are handled in each sphere regulated by legal norms.

In this sense, each area of law that addresses care, even if it does not explicitly use the term, does so from its referents, such as labor in labor law, or family arrangements in civil and family law. We have therefore chosen to arrange these different normative structures into groups in order to organize structured care approaches, whether in the provision of care, the obligations of care, or the guarantees of specific dependent populations, going through the following blocks: labor and social security law; civil and family law; criminal law; and regulation of childhood, aging, and disability.

Before analyzing each block specifically, however, the first look should be at the 1988 Brazilian Constitution, whose legal value is hierarchically superior when compared to the other norms. To facilitate the visualization of its commandments, we organized the analysis in tables, in which is identified the norm studied, its content and the classification we assigned to it.

Thus, in the Brazilian constitutional structure, one can find:

Standard	Content	Classification
Constitution	BASIC PRINCIPLES Article 1. The Federative Republic of Brazil, formed by the permanent union of the states, the municipalities, and the Federal District, is a democratic State ruled by the law and founded on: (...) III -human dignity; (...) IV - social values of labor and free enterprise.	General warranties
Constitution	Article 3. The fundamental objectives of the Federative Republic of Brazil are: I – to build a free, fair and solidary society; (...) III – to eradicate poverty and marginalization and to reduce social and regional inequalities; IV – to promote the well-being of all, without prejudice as to origin, race, sex, color, age and any other forms of discrimination.	General warranties
Constitution	FUNDAMENTAL RIGHTS AND GUARANTEES Article 6. Education, health, food, work, housing, transportation, leisure, security, social security, protection of motherhood and childhood, and assistance to the destitute, are social rights, as set forth by this Constitution. Sole Paragraph. Every Brazilian in a social vulnerability situation shall be entitled to a basic family income, granted by the State in a permanent income transfer program, with norms and access requirements determined by law, according to the fiscal and budgetary legislation.	Right to receive care from the State

cont.

Constitution	Article 7. The following are rights of urban and rural workers, among others that aim to improve their social conditions: (...) XII – family allowance paid to each dependent of low-income workers, under the terms of law; (...) XVIII – maternity leave without loss of job and of salary, for a period of one hundred and twenty days; XIX – paternity leave, under the terms established by law; XX – protection of the labor market for women through specific incentives, under the terms of law; (...) XXIV – retirement pension; XXV – free assistance for children and dependents of up to five years of age, in daycare centers and pre-school facilities; (...)	Workers' Rights of provide care and receive parental leave
Constitution	Article 7. (...) Sole paragraph. Domestic workers are ensured the rights set forth in items IV, VI, VII, VIII, X, XIII, XV, XVI, XVII, XVIII, XIX, XXI, XXII, XXIV, XXVI, XXX, XXXI, and XXXIII, and, observing the conditions established by law and with due regard for simplified compliance with both primary and ancillary tax obligations arising from labor relations and from their peculiarities, also those rights set forth in items I, II, III, IX, XII, XXV, and XXVIII, as well as integration into social security.	Domestic Workers' Rights
Constitution	SOCIAL ORDER - HEALTH Article 198. Health actions and public services integrate a regionalized and hierarchical network and constitute a single system, organized according to the following directives: (...) Paragraph 4. The local managers of the unified health system may hire community health workers and endemic disease control agents by means of a public selection process, considering the nature and complexity of their duties and the specific requirements of their activity. (...) Paragraph 12. Federal law will establish national professional salary floors for nurses, nursing technicians, nursing assistants and midwives, to be observed by public and private law legal entities.	Right to receive care from the State

We can see that, although care is not explicitly dealt with in the constitutional text, many of its dimensions are disciplined in a very dense manner in the Brazilian Constitution. Whether in more open principled dimensions (such as the social value of work and the eradication of inequalities and discrimination), or in the structuring of a system of social rights (labor, social security, social assistance, health), care appears as a constitutionally protected value.

Moving on now to the Brazilian labor norms, from the reading of the Consolidation of Labor Laws (CLT, Decree-Law 5,452/1943), and other specific norms that make up the employees' legal framework, we extract:

Standard	Content	Classification
CLT	Article 7. The precepts contained in this Consolidation (...) do not apply to: a) domestic workers, generally considered to be those who provide non-economic services to a person or family in their own homes;	Restriction of rights for domestic workers
CLT	Article 389. Every company is obliged: (...) Paragraph 1 - The establishments in which at least 30 (thirty) women over 16 (sixteen) years of age work shall have an appropriate place where the employees are allowed to keep their children under surveillance and assistance during the breastfeeding period. Paragraph 2 - The requirement in Paragraph 1 can be supplied by district daycare centers maintained, directly or through agreements with other public or private entities, by the companies themselves, on a community basis, or under the responsibility of SESI, SESC, LBA, or union entities.	Rights for unpaid caregivers
CLT	Article 392. The pregnant employee is entitled to a maternity leave of 120 (one hundred and twenty) days, without prejudice to her employment and salary (...) Article 392-A. The employee who adopts or obtains judicial custody for the purpose of adopting a child or adolescent will be granted maternity leave pursuant to article 392 hereof. Article 392-B. In the event of the death of the mother, the employee's spouse or partner is assured leave for the entire maternity leave period or for the remaining time to which the mother would be entitled, except in the event of the child's death or abandonment.	Rights for unpaid caregivers
CLT	Article 394-A. Without loss of salary, including the insalubrity additional pay, the pregnant employee shall be kept away from: I - activities considered unhealthy to a maximum degree, for the duration of pregnancy; II - activities considered unhealthy in a medium or minimum degree, III - activities considered unhealthy to any degree, (See ADIN 5938)	Rights for unpaid caregivers
CLT	Article 396. In order to breastfeed her child, even if by adoption, until the child is six (6) months old, the woman will have the right, during the workday, to two (2) special breaks of half an hour each. Paragraph 1 - When the child's health requires it, the period of 6 (six) months can be extended, at the discretion of the competent authority. Paragraph 2 - The resting times provided in the caput of this article shall be defined in an individual agreement between the woman and the employer.	Rights for unpaid caregivers
CLT	Article 400. The places where the workers' children are kept during the breastfeeding period must have, at least, a nursery, a breastfeeding room, a kitchen and a sanitary installation.	Rights for unpaid caregivers
LC 150/2015	Article 1. The provisions of this Law apply to domestic workers, defined as those who provide continuous, subordinate, onerous, personal, non-profit services to individuals or families in their homes for more than two (2) days a week.	Domestic Workers' Rights

cont.

Ordinance 394/2002	Article 1 - Approve the Brazilian Classification of Occupations - CBO, version 2002, for use throughout the national territory. 5162 :: Caregivers for children, youth, adults and the elderly Titles 5162-05 - Babysitter 5162-10 - Elderly caregiver Caregiver for the elderly and dependent persons, Home elderly caregiver, Institutional elderly caregiver, Gero-sitter 5162-15 - Social mother Daycare provider, Surrogate mother 5162-20 - Health Caregiver Summary Description They care for babies, children, young people, adults, and the elderly, based on goals set by specialized institutions or those directly responsible for them, looking after the well-being, health, food, personal hygiene, education, culture, recreation, and leisure of the assisted person. This titles do not include: 3222 - Nursing technicians and assistants	Recognition of the occupation of paid caregivers
Law 7.498/86	Article 1. The exercise of nursing is free throughout the entire national territory, subject to the provisions of this law. Article 2. Nursing and its auxiliary activities can only be exercised by people who are legally qualified and registered with the Regional Nursing Council with jurisdiction over the area where the exercise takes place. Sole paragraph. Nursing is exercised exclusively by the Nurse, by the Nursing Technician, by the Nursing Assistant, and by the Midwife, respecting the respective degrees of qualification. Article 11. The Nurse exercises all nursing activities, being responsible for I - privately: (...) l) direct nursing care of critically ill, life-threatening patients; m) nursing care of greater technical complexity and requiring scientifically based knowledge and the ability to make immediate decisions; Article 13. The Nursing Auxiliary exercises medium level activities, of repetitive nature, involving auxiliary nursing services under supervision, as well as the participation in simple execution level, in treatment processes, being responsible especially for (...) c) provide hygiene care and comfort to the patient;	Regulates nursing professions
Law 14.434/2022	Alters Law No. 7.498, of June 25, 1986, to establish the national wage floor for Nurses, Nursing Technicians, Nursing Assistants and Midwives.	Rights of nursing professionals
Law 11.770/2008	Article 1. The Citizen-Company Program [Programa Empresa Cidadã] is instituted, aimed at extending: I - for 60 (sixty) days the duration of the maternity leave provided in item XVIII of the caput of art. 7 of the Federal Constitution; II - for 15 (fifteen) days the duration of paternity leave, under the terms of this Law, in addition to the 5 (five) days established in § 1 of art. 10 of the Act of Transitory Constitutional Provisions.	Rights for unpaid caregivers

Regarding social security norms, which comprise the provision of public health, social assistance and social security, one can list:

Standard	Content	Classification
Law 8080/90	Article 2. Health is a fundamental human right, and the State must provide the indispensable conditions for its full exercise. Paragraph 2 - The duty of the State does not exclude the duty of individuals, families, companies and society.	Right to receive care from the State
Law 8080/90	Article 8. The health actions and services, executed by the Unified Health System (SUS), either directly or through complementary participation of private initiative, will be organized in a regionalized and hierarchical manner in levels of increasing complexity.	Right to receive care from the State
Law 8080/90	Article 19-I. Home care and home hospitalization are established within the scope of the Unified Health System. Paragraph 1 - The assistance modality of home care and hospitalization includes, mainly, medical, nursing, physiotherapeutic, psychological and social assistance procedures, among others necessary for the integral care of the patients at home. Paragraph 2 - Home care and hospitalization will be carried out by multidisciplinary teams that will act on the levels of preventive, therapeutic, and rehabilitative medicine.	Right to receive care from the State
Law 8.212/91	Article 21. The contribution rate for insured individual and optional contributors will be twenty percent on the respective contribution salary. (...) Paragraph 2. In case of exclusion from the right to retirement due to contribution time, the tax rate levied on the contribution salary will be: II - 5% (five percent): b) to the optionally insured worker with no income of his/her own who works exclusively as a housekeeper, provided he/she belongs to a low-income family.	Right to receive care from the State
Law 8213/91	Article 1. Social Welfare, through contributions, has the purpose of assuring its beneficiaries indispensable means of maintenance, due to disability, involuntary unemployment, advanced age, time of service, family burdens, and imprisonment or death of those on whom they were economically dependent.	Right to receive care from the State
Law 8213/91	Article 65. The family-allowance will be due, monthly, to the insured employee, including domestic workers, and to the insured independent worker, in proportion to the respective number of children or equivalent, as per the terms of Paragraph 2 of article 16 of this Law, observing the provisions of article 66.	Right to receive care from the State

cont.

Law 8742/1993	Article 20. The Continuous Cash Benefit is the guarantee of one minimum monthly salary to the disabled and to the elderly aged 65 (sixty-five) years or more who prove they do not have the means to maintain themselves or to have them provided for by their family. Paragraph 5 - The condition of being sheltered in long-stay institutions does not affect the elderly or disabled person's right to the continuous cash benefit. Article 20-B. In the evaluation of other evidential elements of the miserability condition and of the vulnerability situation (...) the following aspects will be considered for the expansion of the criterion for measuring the per capita monthly family income dealt with in Paragraph 11-A of that article:. I - the degree of disability;. II - the dependence on others for the performance of basic activities of daily living; and. III - the commitment of the budget of the family nucleus referred to in Paragraph 3 of article 20 of this Law exclusively with medical expenses, with health treatments, with diapers, with special food and with medications of the elderly or person with disability not provided free of charge by SUS, or with services not provided by SUAS, as long as they are proven to be necessary for the preservation of health and life.	Right to receive care from the State

Turning now to the Family Law, we see a perspective that is more focused on obligations towards those who demand care and less concerned with guarantees from those who provide it. Furthermore, it can be observed that the Brazilian Civil Code places more emphasis on the care of goods than on the care of persons, a phenomenon that we have chosen to call the "supremacy of things". Below we list the highlights:

Standard	Content	Classification
Civil Code	Article 1,511. Marriage establishes full communion of life, based on the equality of rights and duties of the spouses.	Duty of Care
Civil Code	Article 1,638. By judicial act, the father or the mother will lose the family power if: I - punish the child immoderately; II - leave the child in abandonment; III - perform acts contrary to morals and good customs; IV - repeatedly incur in the failures foreseen in the preceding article.	Duty of Care
Civil Code	Article 569. The renter is obliged: I - to use the rented thing for the agreed upon or presumed uses (...), as well as to treat it with the same care as if it were his own.	"Supremacy of things"
Civil Code	Article 629. The custodian is obliged to use the same care and diligence in the safekeeping and conservation of the thing deposited as is customary with what belongs to him.	"Supremacy of things"

cont.

Civil Code	Article 696. In performing his/her duties, the commissioner is required to act with care and diligence, not only to avoid any loss to the principal, but also to provide him with the profit that could reasonably be expected from the business.	"Supremacy of things"
Civil Code	Article 1,011. In exercising his functions, the company's administrator shall exercise the care and diligence that every active and honest man usually employs in the administration of his own business.	"Supremacy of things"

Turning now to the Brazilian criminal legislation, what was evident in the analysis of the norms was the predominance of punishment related to the obligation to care or the omission of care. The passages identified are transcribed below:

Standard	Content	Classification
Criminal Code	Art. 13 - The result, on which the existence of a crime depends, can only be attributed to those who caused it. A cause is considered to be the action or omission without which the result would not have occurred (...) Relevance of the omission § The omission is criminally relevant when the omitter should and could have acted to avoid the result. The duty to act is incumbent upon whoever: a) has a legal obligation of care, protection or vigilance.	Omission in care
Criminal Code	Art. 133 - Abandoning a person who is under your care, guardianship, vigilance or authority, and for any reason, unable to defend himself from the risks resulting from the abandonment: Penalty - imprisonment, from six months to three years. § 1 - If the abandonment results in bodily injury of a serious nature: Penalty - imprisonment, from one to five years. § 2 - If death results: Penalty - imprisonment, from four to twelve years.	Duty of Care
Law of Criminal Enforcement	Article 83. The criminal establishment should have in its premises, according to its nature, areas and services intended to provide assistance, education, work, leasure, and sports practice. Paragraph 2. The criminal establishments intended for women shall have a nursery, where convicts can take care of their children, including breast-feeding them, at least up to 6 (six) months of age.	Rights of those who offer and those who demand care

Moving on to the topic of care regulation for target populations, we present the set of laws focused on childhood, old age, and disability.

Standard	Content	Classification
Child and Adolescent Statute (Law 8.069/90)	Article 4. It is the duty of the family, the community, society in general, and the public authorities to ensure, with absolute priority, the enforcement of rights to life, health, food, education, sports, leisure, professionalization, culture, dignity, respect, freedom, and family and community life.	Duty of Care

cont.

Child and Adolescent Statute (Law 8.069/90)	Article 18-A. Children and adolescents have the right to be educated and cared for without the use of physical punishment or cruel or degrading treatment, as a form of correction, discipline, education or any other pretext, by parents, extended family members, guardians, public agents carrying out socio-educational measures or any person in charge of caring for them, treating, educating or protecting them.	Rights of the person in need of care
Early Childhood Law (Law 13.257/2016)	Article 12. Society participates jointly with the family and the State in the protection and promotion of children in early childhood: (...) V - creating, supporting and participating in protection and care networks for children in the communities;	Social duty to provide care
Early Childhood Law (Law 13.257/2016)	Article 13. The Union, the States, the Federal District, and the Municipalities will support the participation of families in networks for the protection and care of children in their social, family, and community contexts, aiming, among other objectives, at the formation and strengthening of family and community ties, with priority to contexts that present risks to the child's development.	Duty of the State to offer care
Elderly People Statute (Law 10741/2003)	Article 18. The healthcare institutions must meet the minimum criteria for the care of the elderly, promoting the training and qualification of professionals, as well as guidance to family caregivers and self-help groups.	State's duty to provide care
Elderly People Statute (Law 10741/2003)	Article 48. The elderly care entities are responsible for the maintenance of their own units, observing the planning and execution norms emanating from the competent body of the National Policy for the Elderly, according to Law nº 8.842, from January 4th 1994. VIII - provide health care, according to the elderly person's needs;	State's duty to provide care
Elderly People Statute (Law 10741/2003)	Article 96. Discriminate against the elderly, preventing or hindering their access to banking operations, means of transportation, right to contract or any other means or instrument necessary for the exercise of citizenship, due to age: Penalty - confinement from 6 (six) months to 1 (one) year and fine (...) Paragraph 2. The penalty will be increased by 1/3 (one third) if the victim is under the care or responsibility of the agent.	Duty of Care
Elderly People Statute (Law 10741/2003)	Article 99. To expose to danger the integrity and health, physical or psychological, of the elderly, submitting them to inhumane or degrading conditions or depriving them of food and indispensable care, when obliged to do so, or subjecting them to excessive or inadequate work: Penalty - detention from 2 (two) months to 1 (one) year and a fine. Paragraph 1. If the fact results in bodily injury of a serious nature: Penalty - imprisonment from 1 (one) to 4 (four) years. Paragraph 2. If death results: Penalty - imprisonment for 4 (four) to 12 (twelve) years.	Duty of Care
Brazilian Law for the Inclusion of People with Disabilities (Law 13146/2015)	Article 3. For the application of this Law, the following are considered: (...) XII - personal attendant: a person, member or not of the family, who, with or without remuneration, assists or provides basic and essential care to the person with disabilities in the exercise of their daily activities, excluding the techniques or procedures identified with legally established professions;	Duty of Care

cont.

Brazilian Law for the Inclusion of People with Disabilities (Law 13146/2015)	Article 39. The services, programs, projects, and benefits within the scope of the public social assistance policy for persons with disabilities and their families aim to ensure income security, shelter, habilitation and rehabilitation, the development of autonomy, and family and community life, in order to promote access to rights and full social participation. (...) Paragraph 2. Social assistance services for the dependent person with disabilities should have social caregivers to provide basic and instrumental care.	State's duty to provide care
Brazilian Law for the Inclusion of People with Disabilities (Law 13146/2015)	Article 88. To practice, induce or incite discrimination against a person due to his/her disability: Penalty - confinement, from 1 (one) to 3 (three) years, and fine. Paragraph 1. The penalty is increased by 1/3 (one third) if the victim is under the agent's care and responsibility. Paragraph 2. If any of the crimes foreseen in the caput of this article is committed through media or publication of any nature: Penalty - confinement, from 2 (two) to 5 (five) years, and fine.	Duty of Care

The panorama presented, albeit initial, aims to make visible and tangible the normative designs that organize the care system in Brazilian legislation, which for disciplinary reasons are separated into norms of different spheres. The most evident in the analysis of the framework presented is the clear segregation between rights and obligations, so that the caregiver occupies either the place of worker with rights or that of provider with duties. The guarantees for those who need care are also compartmentalized between sectors, which makes it difficult to establish a dialogue between norms related to their interests.

4. Final considerations of an ongoing project: future nods towards a care law

Care is definitely a concept that is also legal. From the preliminary surveys of the legal literature, as well as Brazilian legislation, we can say this with confidence. But what this legal concept has been meaning in the regulation and legal reflection on care relations, its subjects, its arrangements, its expression as work, as a moral value, as an element in the family, as a social issue, all this is not crossed by the same existential certainty. Without fearing a certain commonplace in the critical evocation of legal concepts, we can say that care is a disputed concept in the arena of law. And, in order to move forward in the constitution of a field, which communicates at the grassroots with social struggles for fairer arrangements around care, it seems very necessary to understand well where we step.

The first thing to consider is that there are direct and indirect ways of legally dealing with care. And perhaps in the recent history of Brazilian law, indirect ways of understanding and regulating the issue have prevailed. Something that characterizes a reflection and regu-

lation of a high degree of opacity, with high loads of mediate connection with relationships, social roles, spheres of life that, obliquely, are sustained by care. Hence, realizing that in order to understand the legal meanings of care we are dealing with what is implied, buried, illegible, helps to perceive the ways in which law constituted its traditions.

In this scenario of concealment, we notice a very significant force in the world of law coming from two perspectives, which widely communicate: a legal character of care that is family-oriented and obligational. The structure of the family, the powers exercised within it, its centrality in the constitution of legal values, all this attracts the first legal formulations of care to this domain. Implicitly, underlying the very division of legally assimilated gender roles in figures such as marriage, or explicitly, in typical care obligations in the family.

Obligations, by the way, that largely give the tone of how the law sees care: a strong perspective of attribution, and also of strong punishment. Law conceives care as something to be attributed to someone who is obliged to do it and will be punished if it is not carried out as determined. And nothing much more than that. With this, it reinforces not only the duties in their materiality, but the very position of those in charge of care: mothers, wives, domestic workers, and so on. An obligation, therefore, that contributes a lot to legally establish unequal positions.

A note on more recent Brazilian legal development. We found that, despite the non-explicit logic being also maintained here, the democratic legal order implemented by the 1988 Brazilian Constitution assumes care as a value. It is an implicit value, certainly, but no less of a legal value for that reason. A series of constitutional provisions take care as something central. It is directly associated with the social value of work, the reduction of inequalities, and the fight against discrimination. It is treated in the guarantees that touch work in gerberal, domestic work, social security, social assistance and health policies. And, despite not yet being treated in a completely fair and equal manner, with all the acknowledgments and explicit lines that seem necessary to us, it seems to us that care is already a constitutionally embraced value in Brazil, progressively guiding future advances in the legal agenda.

Advances, by the way, that come in the wake of the most disruptive line in face of the traditional, obligatory and family-oriented discipline of care in the Brazilian legal order: that of care as work. In the struggle to make care visible as a form of work, in the ongoing acquisition of rights for domestic workers, in the growth of the agenda for the legal recognition of unpaid care work and forms of its social protection, things are changing in substance in the legal debate. The language of rights, and no longer of obligations, comes into play. Not without conservative counterfires and a defense of privileges from those who have access to free or cheap care, it is true, but in a central battle, which changes right now the contours of law. Not just because of the appearance of new rights, it should be noted, but because of this change in the tone, in the substance of the legal debate. That legally articulates care as a relationship, the caregiver as a worker, and the person cared for as an actual person.

In this line, the perspective of the care-receiver also makes explicit a dimension that the law traditionally hides. That of dependency. Traditionally, dependency is assimilated by law as an atypical condition, which activates exceptional legal responses, in figures of suppression of will, capacity, self-expression. Little by little, the contemporary debate on topics such as childhood, aging and disability, as well as their correlation with care, also changes the meanings of dependence. From being taken as an exceptional condition that

alters the general regime of capabilities, dependency is progressively seen as a fact of life, demanding more appropriate legal responses to each situation. Without the care-receiver being suppressed, the caregiver being reduced to an obligation, and the work provided becoming invisible, transmuted into what does not translate well legally, such as love. And without cultivating an abstract idea of autonomy, which does not correspond to people's concrete lives.

All this will give room to a proper conceptual appearance of care in law. Which gains its own contours from the affirmation of a feminist and critical legal academy. Deeply connected with the background political processes, the struggle for rights. And that promotes both an unearthing of what were indirect concepts associated with care, and a reformulation in other terms. This is where the window of this article, which we were talking about at the beginning, opens up.

The window that allows us to formulate the idea of a *Brazilian care law*. We understand care law as the field of law that is dedicated to the regulation of the social processes of care, attentive to care as work, to caregivers as workers, to care-receivers as people, and to an inherent relational character, crossed in many ways by human dependence. Care law considers these elements from the understanding that care is indispensable to the production of life, and must be socially organized based on principles of justice and dignity, with special attention to the need for legal formulations that are attentive to gender and race, as well as the forms of vulnerability that underlie the expressions of care in social life. This field positions itself as an articulator of spheres of life and regulation that touch the theme of care, given its transversality as a social phenomenon, involving constitutional, labor, social rights, social security, social assistance, health, anti-discrimination law, criminal regulation, administrative law, tax law, and everything else that substantially affects the way care is provided, by its agents, relational designs, in time and space. We see care law as a law of liaison. That articulates existing protections, denounces indirect forms of legal discrimination, and projects legal futures based on a substantial and critical understanding of care.

In the next steps of the research, we intend to deepen the analyzes of the dimensions of this field (both in the literature and in regulation), as well as to carry out deep empirical research in case law, aiming to map the contemporary legal formulations that come from labor and family courts. Thus, our focus will be on cases that involve debates on paid and unpaid care from a work perspective, as well as cases dealing with duties and obligations linked to intersubjective care, mainly ones of affective abandonment and destitution of family power. All this to sustain the formulation of the idea of care law, in its legal contexts.

What we were able to preliminarily conclude is that the legal field of care is under construction. And also in dispute. There are theoretical strands open to incorporating demands from social movements and civil society, attentive to interdisciplinary studies that can bring new and critical perspectives to law. On the other hand, there are aspects linked to notions of care as an obligation, particularly in the domain of families, which end up adding to conservative and reactionary lines that seek to link care to the private and intimate space, without interference from the State.

We tend to see regulatory transversality and co-dependency in the formulation of care aw, which must permeate duties and guarantees that pervade "being cared for", "caring for others", "caring for oneself" and "not caring", incorporating not only guarantees and res-

ponsibilities, but also the opposite of the legal world of punitivism, which is freedom. In this sense, we point to a possible claim for proper legal principles for this emerging field, which allows the formulation and the legal dignity incorporated to what is elaborated for this new branch, of a proper care law.

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