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**THE LEGACY OF
GINSBURG DIVERGENCE
IN THE INSTITUTION
OF RECOGNITION BY
GENDER EQUITY FROM
THE REVERSE**

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Abstract: This article stems from academic research that aimed to analyze the possible extension to a diverse genre of social rights that, according to the thesis, represent protection and guarantee of the female gender, as a mechanism for achieving equity. To do so, it applied as a research methodology the case study, based on the analysis of the judgment before the 1st Court of the Public Treasury of Paranavaí-PR - Brazil, in addition to the cinematographic works “Suprema” and RBG (A Judge) that portrays part of the life of United States Supreme Court Judge Ruth Bader Ginsburg, in comparison with the Theory of Recognition, in the form proposed by sociologist Axel Honneth, especially when considering the presence of a merely ideological recognition. In the end, it sheds light on the importance of the normative review of guarantees that take as a starting point exclusively the criterion of gender, placed or constructed, under penalty of producing a reverse offense to the law.

Keywords: Gender equity; Ginsburg; maternity leave; struggle for recognition; reverse protection.

THE BIOLOGIZATION OF THE SOCIAL AND THE SOCIALIZATION OF THE BIOLOGICAL IN THE ESTABLISHMENT OF EQUITY

There is an intense symbiosis between biological and social criteria in the cultural construction of the roles conceptually assigned to men and women in society. This theme was approached by Pierre Bourdieu in the work *Male Domination*, in an instigating scientific analysis of the effects that this symbology produces in the universe of

social domination by the male, supported by strictly psychological and biological criteria stigmatized throughout a long and long-lasting process of cultural construction. stable. The author criticizes the scientific production elaborated until then, to the point of causing an inversion of the logical order of cause and effect, as we can infer in the following quote:

The biological appearances and the very real effects that a long collective work of socialization of the biological and the biologization of the social produced in bodies and minds combine to invert the relationship between causes and effects, and make a naturalized social construction visible (the “genders” as sexual *habitus*) as the in natura foundation of the arbitrary division that is at the beginning not only of reality but also of the representation of reality and that sometimes imposes itself on research itself.¹

The conscious and unconscious implications of this process in the individual and collective field greatly influence the idealization of standards and models of social conduct² that inspire the normative social construction reflected in the law as an instrument of containment. The French sociologist also observes how much the biological pattern affects the social field that

[...] in the construction and description of their object, they often let themselves be guided by the principles of vision and division inscribed in common language, whether when they endeavor to measure differences evoked in language - such as the fact that men would be more “aggressive” and women more “fearful” - either when they use current terms, and therefore pregnant with value judgments, to describe such differences.

1. BOURDIEU, Pierre. *Male domination – the female condition and symbolic violence*. Translation by Maria Helena Kuhner. Rio de Janeiro: Bertrand Brasil, 15. ed. 2019, p. 14-15.

2. In the same sense: “The symbolic mechanisms that lead to female underrepresentation are at different stages of life: the values reproduced at home, children’s stories, behaviors and reading encouraged in schools, the structure in churches and other religious forums are accepted naturally and perpetuated as standards of “correct”. PANKE, Luciana. How women politicians in Latin America portray women in their electoral campaigns. In GOSTINSKI, A.; MARTIM, F. (Orgs.). **Feminist studies for a less sexist right**. 1. ed. Santa Catarina: Empório do Direito, 2016. cap.10, p.146.

Taking the condition of women in society as the only parameter, in a straight and decontextualized view, starting from a preconceived biological or sociological model as an inexorable pattern, does not cooperate with the recognition of their dignity as a person, which demands recognition in the difference and equity in similarity. Equality for men and women proclaimed as a fundamental right³, is based only on criteria of biological social construction, sometimes, paradoxically, it can demand a kind of reverse protection, indicating that the granting of ‘privileges’ under these conditions, under the myth of offering a pedestal, actually culminates in confining the protected individual in a hidden cage.

It is in this context and in the light of this reflection that we analyze the cases proposed for this investigation. All have a common point where an individual belonging to the genre, in theory, not protected, is forced to invoke the enunciation of reverse protection, as a mechanism for the effective implementation of the balance between the genres.

When discussing the theoretical contours of the principle of equality, it is quite common to refer to the Aristotelian statement according to which effective justice consists in treating equals equally and unequals unequally, to the extent that they are unequal. Regarding this assertion, Celso Antônio Bandeira de Mello questions: but “who are the equals, who are the unequals and what is the legitimately manipulable criterion – without harm to isonomy – that authorizes distinguishing people and situations in separate groups, for the purposes of treatment different legal?”⁴ In other words: what distinctions would

3. CF/88 Art. 5.º All are equal before the law, without distinction of any nature, guaranteeing Brazilians and foreigners residing in the country the inviolability of the right to life, liberty, equality, security and property, in the following terms: I - men and women are equal in rights and obligations, under the terms of this Constitution;

4. MELLO, Celso Antônio Bandeira de. **The legal content of the principle of equality**. 3. ed. 25 print run. São Paulo: Editora Malheiros, p. 11.

5. MELLO, Celso Antônio Bandeira de. **The legal content of the principle of equality**. 3. ed. 25 print run. São Paulo: Malheiros Publishing. P. 41.

be lawful, just and justified? And what are the fundamentals that would justify the imbalance? The author’s argument goes like this:

[...] discriminations are received as compatible with the equalitarian clause only and only when there is a link of logical correlation between the differential peculiarity accepted by resident in the object, and the inequality of treatment conferred on it, provided that such correlation is not incompatible with interests honored by the Constitution [...]

And so it would be stated that “what the legal order intends to establish is the impossibility of fortuitous and unjustified disequilibrium” that would effectively violate the parity clause. Therefore, for a privilege to be considered legitimate, conceivable and fair, the indoctrinator offers some indicative characters, when he exposes:

[...] it is necessary: a) that the inequality does not reach, in a current and absolute way, to a single individual; b) that the situations or people that are unequaled by the rule of law are effectively distinct from each other, that is to say, have characteristics, traits residing in them, differentiated; c) that there is, in the abstract, a logical correlation between the existing differential factors and the distinction of legal regime based on them, established by the legal norm; d) that, in concrete, the aforementioned correlation link is relevant in terms of constitutionally protected interests, that is, it results in a differentiation of legal treatment based on a valuable reason – in light of the constitutional text – for the public good.⁵

Continuing with the analysis of the fair criterion of distinction, with thought founded on reason, Rousseau was invited by the Dijon

Academy, which proposed a prize to those who answered the question about the origin and the foundations of inequality between men. In response, the philosopher prefaces his speech, written in 1755, stating that he conceives in the human species the existence of two types of inequality: one that would be natural or physical, and the other moral or political. Differences arising from human nature, such as age, health or strength, would be natural. On the other hand, they would be moral or political, the “different privileges that some enjoy to the detriment of others, such as being richer, more honorable, more powerful than them, or even being obeyed by them.”⁶

Although not properly directed to the comparison between the differences between the genders or sexes, starting from this conception, it makes sense to attribute to inequality between men and women the attribute of moral or political order, considering that, throughout history, those have the condition of distinct beings, worthy “to be obeyed” by women “who must be educated only to become good companions for men”⁷, as argued by Rousseau himself.

CASE STUDIES

THE EXTENSION OF THE PREROGATIVE OF THE MATERNITY LEAVE TO THE PARENT IN THE EXCLUSIVE EXERCISE OF FAMILY POWER⁸

A municipal public servant from Paraná assumed the full exercise of the family

power of his newborn son, the result of a circumstantial relationship. Aware of the commitment inherent to paternity and the full demand that the child at an early age requires, he postulated the removal from work aiming at the full exercise of the new solo function, all according to the unilateral custody term judicially approved before the competent court.

In a purely grammatical and literal interpretation of the municipal social security legislation, which reproduces the federal legislation at this point, the only leave granted to the server in the administrative scope was the one corresponding to 15 (fifteen) days for paternity leave, followed by the refusal to extend the maternity leave benefits, with exemption for 180 (one hundred and eighty) days, since it is a benefit exclusively directed to the pregnant employee⁹, soon after childbirth.

In full exercise of the right of access to a fair legal order, through a mandatory action, the civil servant entered the court postulating the recognition of his right not to be discriminated against based exclusively on his gender condition. Still, it invoked constitutional precepts of protection to the child and the family, long understood as that group formed by people who maintain ties with each other by blood or not, united by relationships of affection that maintain the bonds between the members.

Under the understanding that the fundamental human right of parental coexistence goes beyond the social and

6. ROUSSEAU, Jean-Jaques. **Discourse on the origin and foundations of inequality among men**. Introduction by João Carlos Brum Torres] Translation by Paulo Neves. Porto Alegre: Editora L&PM, 2017, p. 43.

7. Mary Wollstonecraft in comics, in the work WOLLSTONECRAFT, Mary. **Claiming women's rights**. Annotated edition of the feminist classic. São Paulo: Editora Boitempo, 2016, p. 254.

8. 0005279-46.2020.8.16.0130, which was processed before the 1st Civil Court and the Public Treasury of the District of Paranavaí-PR.

9. Municipal Law no. 3891/2012. Art. 93. Maternity leave will be granted to the pregnant employee, for 180 (one hundred and eighty) consecutive days, perceiving, during the period of leave, the basic salary plus annual fee, observing the following: § 3º Paternity leave, granted due to of the birth or adoption of a child, it will be 15 (fifteen) days, counted from the birth or the beginning of custody.

biological constructions that impose only binary criteria of male and female gender, the court guaranteed the parent the right to enjoy the extensive benefits of maternity leave, namely: absence from work for a period of 180 (one hundred and eighty) days, in order to provide the child with the essential care with absolute priority and in their best interest.

As highlighted in the security concession decision:¹⁰

Brazil has already formally committed itself to the implementation of public actions and policies that lead to the results recommended by the UN.

And it is precisely from this gender perspective that this achievement needs to be evaluated and judged. It is beyond doubt that there is an inalienable right to the best interest of a child to be served on the

merits. But it is also necessary to consider a human right to a parental coexistence that goes beyond the paternal/man or maternal/mother gender. The family arrangements in force in today's plural society no longer support the closure that the exclusively binary model of sex and gender inexorably imposed on paternal and maternal roles.

The narrated situation denotes how pernicious the invocation of a single biological or social criterion can be, as eligible for the purpose of ensuring full citizenship to the gender. It also points out that the absence of gender equity affects not only women, but society as a whole. And a brief jurisprudential consultation is enough to identify other cases with similar discussions¹¹

10. Excerpt from the reasoning of the sentence handed down in the judgment of the writ of mandamus assessed under no. 0005279-46.2020.8.16.0130, which was processed before the 1st Civil Court and the Public Treasury of the District of Paranaíba-PR. Still in the reasoning of the decision: The present writ of mandamus deals with the intended right of a father - a male human being - to enjoy a guarantee originally intended for a mother - a female human being. However, the conceptions of guarantees and construction of human rights have long been going beyond the limiting boundaries imposed by both sex and gender. The French Revolution of 1789 and the unmistakable motto of fraternity, liberty and equality was a milestone in the historical process of construction of the so-called Human Rights that, in the end, were not conceived as human as well, since they were directed only to men, whites and with possessions, the only ones raised to the condition of citizens and voters. However, since then, mainly due to the struggle and at the cost of the lives of many women, the conception of these rights is no longer linked to a single gender or a single sex. The Federal Constitution of 1988 finds a wide connection with this Universal Declaration of Human Rights, especially considering, among others, the provisions that refer to freedom (art. 5, 12 and 17) and equality (art. 11 and 69). As if the clarity, sufficiency and immediate effectiveness of the fundamental rights expressed in the Federal Constitution of 1988 were not enough, here especially highlighted by the gender equality proclaimed in the first item of art. 5th, when he asserts that men and women **are equal** in rights and obligations, under the terms of this Constitution; achieving gender equality and realizing human rights was the main mission established through the 2030 Agenda for Sustainable Development. (UN. United Nations Brazil. Transforming Our World: The 2030 Agenda for Sustainable Development. Agenda 2030. Sustainable development. Available: at <https://nacoesunidas.org/pos2015/agenda2030/>. Accessed on 23 Jan. 2019.) Through this global pact, the UN established 17 goals to transform the world, with special emphasis on goal 5, expressly addressed to the effective construction of gender equity, proclaiming, among other goals, "to recognize and value the work of unpaid care and domestic work, through the provision of public services, infrastructure and social protection policies, as well as the promotion of shared responsibility within the home and family, according to national contexts;"

11. This is also observed in a very peculiar case that is being processed before the 1st Court of the Judicial District of Morada Nova-CE (Cases No. the right of the non-pregnant plaintiff, identified as female and civilly married in a same-sex union, the right to enjoy 120 (one hundred and twenty) days of maternity leave was recognized. In the decision, the court highlighted that: "The Federal Constitution guarantees public servants the enjoyment of maternity leave (art. 39, § 3º), with the aim of ensuring that the mother can assist the child at all initial moments, considering the dependence of the human being in its first days of life, mainly in relation to the maternal figure. It must be noted that maternity leave is aimed at training the child within the family, at which time he needs all the necessary support to meet his basic needs. (...) Furthermore, it is mandatory to take into account the rights conceived by the Supreme Court with regard to homosexual relationships, given the impossibility of differentiated treatment. Thus, even if the plaintiff is not the pregnant woman, she must be considered as a biological mother."

RUTH BADER GINSBURG AND THE FORCE OF DIVERGENCE

Charles Moritz V. Commissioner of the Internal Revenue¹²

Professor and attorney Ruth Bader Ginsburg took to the United States Court of Appeals in 1972 to challenge a tax court decision that denied a male taxpayer the right to deduct taxes payable from the salary portion paid for hiring a nurse who is essential for the care of the incapable parent. The tax legislation then in force (Section 214 of the Tax Code) guaranteed the benefit only to married women or men, with disabled or widowed wives, not to single children who provided such care to the parent. The defender argued that there was discrimination against men, based exclusively on their sexual status.

The then law professor saw in that case an opportunity to create a precedent and shake the entire legal system that imposed a subordinate status on women, showing that their rights must also be considered civil rights and that a differentiation based exclusively on sexual criteria found no constitutional foundation in light of the principle of equal protection, reflected in the 14th Amendment to the United States Constitution which, in response to the racial issues that erupted there in 1868, provided for equal protection for all citizens before the law.

In order to defend her thesis, Ruth Ginsburg began to catalog numerous laws that challenged this principle, abstractly and generically assuming that women stay at home while men go to work and, as such, only widowed/divorced people or those with incapable wives. would be entitled to the tax deduction benefit. In this reflection it is possible to glimpse the parameterization of what Bordieu called the biologization of the

social, or the socialization of the biological, from when culturally created data is taken as a criterion for the implementation of a distinctive public policy that, in the end, if not properly considered in all its aspects, it culminates in fomenting the unjust.

The Court of Appeal decided to uphold Ruth Ginsburg's argument and, overcoming long-established precedents, overturned the administrative court's decision, asserting that the tax law effectively clashed with the US Constitution. The benefit of the tax abatement was also extended to single men who paid for the maintenance of incapable parents, which represented a significant paradigm shift.

Weinberger v. Wiesenfeld¹³

In 1975, the then American lawyer, one of the few women in her class at Harvard University who had recently admitted female admission, brought the case of Weinberger v. Wiesenfeld, in which a man sought recognition of his right to enjoy the benefit of the "maternity grant" in view of the early death of his wife shortly after the birth of their child. The claim was administratively dismissed on the grounds that he "did not qualify" as a mother so that he could enjoy the support of social security.

The case also presented the peculiar condition of a man who suffered discrimination due to his gender and, in order to defend his right, it was essential to prove that it actually existed and what was the intensity of the discrimination involving sex.

In oral argument before the Court, Ginsburg stated how much the father's exclusive dedication to the care of his son deprived him of the exercise of another remunerated function¹⁴ and how much this impacted the quality of life of the family

12. SUPREME Mimi Leder United States, Participant Media, 2019. (2h).

13. RBG (A JUÍZA) Julie Cohen, Betsy West, Estados Unidos, CNN Films, Storyville Films, 2018. Blu-ray (97 min).

14. Mr. Chief Justice and may it please the Court. For the eight months immediately following his wife's death Stephen Wiesenfeld

group. In the opinion of that lawyer, already a civil rights activist, it was the perfect example of how gender discrimination harms everyone, not just women, insofar as it does not provide that man with the same benefits that his wife would have, in an eventual death of the former, producing the same effect of not taking into account the necessary gender equity.

By unanimous deliberation, after several contrary decisions in cases that discussed a similar theme, the Supreme Court recognized the unconstitutionality of the social security legislation attacked, for establishing distinctions based exclusively on gender.

The two cases highlighted above and portrayed in a recent film production, inspired by the trajectory of Judge Ruth Bader Ginsburg, appointed to the United States Supreme Court in 1993, who died recently, indicate how much society - including men and people of all the genders - are affected by the distinction that is based exclusively on the criterion of gender, creating stereotypes cultivated from culturally imposed beliefs and constructed by assumptions about innate abilities. Countless laws that were conceived from the conception of ensuring care and protection for the female gender and, under the cloak of a pseudo-privilege, culminate in imposing unjustified restrictions that denigrate and restrict women's autonomy and citizenship.

With a markedly liberal-progressive profile, Judge Ginsburg gained notoriety in several dissenting votes cast as a member of the Supreme Court, especially in defending

the civil and social rights of minority groups, against discrimination, for gender equity. Although such positions did not prevail, the ideas that he defended in his dissenting votes, by other means, ended up being materialized, as for example, when in 2009, President Barack Obama sanctioned the first law of his administration, which renewed with each new payment. the lower, the deadline for filing a claim in actions involving salary difference¹⁵

HONNETH AND THE STRUGGLE FOR A RECOGNITION THAT GOES THROUGH MERE IDEOLOGY

The German sociologist Axel Honneth proposes the construction of a concept of recognition from the conception that, as sociable beings, we inspire reciprocity in our relationships that take place in the dimensions of emotion, cognition and social esteem, each responsible for an aspect of personality. To the extent that there is disrespect, equivalent to denial of recognition, whether due to mistreatment, deprivation of rights and exclusion or moral degradation, there is an incentive for social struggles for the transformation and reconstruction of the affronted dignity.

In a first form of recognition, which is developed within the scope of primary relationships of love, friendship, pertaining to the field of affection; the sense of self-confidence is developed and, to the extent that it is eventually affronted, physical integrity is challenged, as a component of the personality. The dimension of cognitive respect, where the moral imputability of legal relationships

did not engage in substantial gainful employment. Instead, he devoted himself to the care of Jason Paul. Numa tradução livre: Senhor Presidente da Justiça e que agrade ao Tribunal. Durante os oito meses imediatamente após a morte de sua esposa, Stephen Wiesenfel não teve um emprego remunerado substancial. Em instead, he devoted himself to the care of Jason Paul. RBG (THE JUDGE) Julie Cohen, Betsy West, United States, CNN Films, Storyville Films, 2018. Blu-ray (97 min).

15. MOLITERNO, Daniel. Journal of the University of São Paulo. **Judge Ruth Ginsburg's death could change the course of US elections.** Available at: <https://jornal.usp.br/atuais/morte-da-juiza-ruth-ginsburg-pode-mudar-os-rumos-das-eleicoes-estadunidenses/>. Access in Sept. 2020; FERNANDES, João Renda Leal. **'Notorious R.B.G.' and the power of a dissenting vote.** The incredible stories of US Supreme Court Justice Ruth Bader Ginsburg and Lilly Ledbetter. Available at: <https://www.jota.info/opiniao-e-analise/artigos/notorious-r-b-g-e-o-poder-de-um-voto-divergente-13022020>. Access in Sept. 2020.

is developed and induces the production of the practical self-respect of self-respect, has its counterpoint in the deprivation of rights and exclusion, affecting the social integrity of the personality. Finally, the sociologist argues that the last dimension of reciprocal social recognition occurs through social esteem, in the field of capacity, reflected in the community of values through solidarity, which induces a practical self-relationship of self-esteem. In turn, disrespect in this field is identified by degradation and offense, affecting the honor and dignity of the individual.

The structures of legal relations of recognition and disrespect, in all its dimensions, serve as lenses for the analysis of the female condition in ancient and contemporary society, insofar as, as a group endowed with social vulnerability, it had self-confidence, self-respect and self-esteem affronted, whether through mistreatment, deprivation of rights or degradation and offense. Both physical integrity (primary relationships dimension), as well as social integrity (deprivation of rights and exclusion) and honor and dignity (community of values dimension), had in the identification of disrespect the motive for the construction of struggles that consolidated conquests. such as the right to legal recognition of equity in the constitution and management of the family group, in the right to property and to vote as a condition of citizenship, in access to education with equal opportunities, among other battles, struggles and relevant achievements.

Advancing in the construction of his theory, Honneth conceives the circumstantial notion of a recognition where individuals show a solid realization in values and the peculiarities of the group are effectively

respected, with autonomy and inclusion. On the other hand, he asserts that not every lack of recognition induces a process of struggle in resistance, and denial can be absorbed in different ways that can even produce the victim's own paralysis or alienation. In this last hypothesis, according to the author, there is recognition as an ideology, when the agent remains inert to the dominant moral rules and, sometimes, adheres to the conduct of the offending agent who is socially perpetuated based on false beliefs. Inquiring specifically about gender discrimination, the author explains: "Aren't women partially compensated by the fact that they found public recognition as providers of the disrespect that was inflicted on them due to the impediment of work and services outside the home?"¹⁶ Through this merely ideological recognition, the idea of a masculinization of command and a feminization of subalternity is consolidated¹⁷

The cases analyzed in this study point to classic examples of purely ideological recognition, insofar as, under the fragile premise of protecting the vulnerable gender, it considers elements that socialize biological characters as a reason to discriminate, without addressing the underlying issue. Effective emancipation by law and law bypasses the poor binary construction of male and female genders. And sometimes, as the cases under consideration have shown, in order to see and highlight such disparities, it is necessary to start with the safeguarding of alien and antagonistic rights.

There are significant advances to be made towards the construction of effective equity. The segmentation of the right and the recognition to a class or category, culminates

16. HONETH, Axel. Recognition as ideology: on the correlation between morality and power. **February Magazine**. July 2014. Available at: <http://www.revistafevereiro.com/pag.php?r=07&t=09>. Access in Jun. 2019.

17. MELO, Mônica de.; NASTARI, Marcelo; MASSULA, Leticia. The participation of women in the Brazilian judiciary: considerations about partial data from 1999 to 2004. **Virtual Legal Magazine** - Brasília, vol. 6, no. 70, Mar. 2005. Available at: <https://revistajuridica.presidencia.gov.br/index.php/saj/article/.../539/1105>. Access in Jul. 2019.

in producing a ricochet effect of vulnerating precisely the one who originally proposed to emancipate. More legislative dialogues are needed to consolidate public policies to guarantee social rights.

It is possible to identify a common theoretical line in the cases indicated in this analysis, with a significant factual similarity: in all the narrated circumstances, gender equity was invoked as a presupposition for the recognition of the emancipatory right to be enjoyed by a subject who identifies with the sex masculine. Paradigms are not isolated in the legal scenario. This allows us, at least, to question the legitimacy of the parameters legally chosen for the framing of rights and guarantees based exclusively on the male or female gender of the recipient of the norm, without taking into account other variants.

As occurred in the North American Supreme Court, a similar discussion found resonance in the Brazilian Federal Supreme Court which, in November 2019, admitted, in the General Repercussion seat, the discussion about the feasibility of extending maternity leave to a non-pregnant mother in a relationship homosexuality, in the light of the fundamental principles of equality and human dignity, as a corollary of reproductive freedom, the best interest of the child and pluriparenthood.¹⁸

While the principles that ensure the best interests of the child are equally relevant and fundamental¹⁹ in controversies of this nature;

18. menu. Extraordinary Resource. Constitutional. Administrative. Maternity leave. Homoaffective union. Artificial insemination. Extension of maternity leave to non-pregnant mothers. Right to equality, human dignity and reproductive freedom. Best interest of the minor. Multiparenting. Demonstration for the general repercussion. RE 1211446 RG Judging body: Full Court, Rapporteur: Min. Luiz Fux, Judgment: 11/07/2019, Publication: 11/19/2019. Available at: https://jurisprudencia.stf.jus.br/pages/search?classeNumeroIncident=%22RE%201211446%22&base=agreements&synonym=true&plural=true&page=1&pageSize=10&sort=_score&sortBy=desc&isAdvanced=true. Access in Sept. 2020

19. FC/88. Art. 227. It is the duty of the family, society and the State to guarantee children, adolescents and young people, with absolute priority, the right to life, health, food, education, leisure, professional training, culture, dignity, respect, freedom and family and community life, in addition to protecting them from all forms of negligence, discrimination, exploitation, violence, cruelty and oppression..

20. MATOS, Ana Carla Harmatiuk; OLIVEIRA, Lígia Ziggotti de. **Gender equity in the constitutional program of family relations**. In NOWAK, Bruna (Org.). *Feminist Constitutionalism. Expression of public policies aimed at gender equality*. 2 vol. Salvador: JusPodivm, 2020, p. 353-370.

pragmatically considered, the social benefit of such an invocation will only be possible to verify in the future. In turn, from the point of view of guaranteeing to the parent the extension of the distinction, gender equity reaches a greater scope of protection and guarantee, meeting, since then, the pretension, interest and need of both. All this clearly indicates that “the oxygenation of the positive norm in the familiarist field has shown itself to be relevant for women’s rights”.²⁰

FOR A NEW CONCEPT OF PROTECTION TO VULNERABILITY THAT ENABLES WITH AUTONOMY

The cases analyzed in this study give clues that defending effective gender equity implies questioning socially biologized patterns and, considering diversity, goes far beyond a binary classification based on the narrow concepts of sex and gender. Still, it raises a concern about the standard of protection offered to the female gender, insofar as it does not emancipate for recognition with autonomy, but offers an idea of recognition as mere ideology, in the conception coined by Axel Honneth.

The mistake of the model of defense of the vulnerability of the female condition was identified in the examples discussed, since, in order to ensure the right of equitable treatment to the male gender, it is necessary to deconstruct a pattern of protection and justification of discrimination against the

female gender based on criteria of biological, social and cultural order that do not subsist. Therefore, much more than a matter of constitutional order, it is necessary to question the social facts that will, inexorably, cause changes in human interactions.

As an instrument of domination and social restraint, a critical analysis of the law indicates that it has an important role in accompanying such changes²¹, without, however, transmuting into a mechanism of intensification and endorsement of stigmas mistakenly raised to the condition of dogmas, in a reverse and perverse counter-protection.

Experiences of countermajoritarian action, such as that of Judge Ruth Bader Ginsburg, who became an icon in the fight for the defense of the human rights of the vulnerable, inspire actions and movements, perhaps effective social transformations that transcend hypocrisy and achieve the true emancipation of women who identify as human beings. endowed with human dignity in its fullness and not those who are entitled to a favor in the face of the ‘fragility’ of their sex.²²

Despite the valuable achievements achieved at the cost of a lot of struggle, there is still a way to go for everyone, to build an effective protection for the vulnerable, which emancipate with autonomy, regardless of the sex or gender with which they identify.

21. Transformation of the “woman-family” to the “woman-for-herself”, in the happy expression of FREITAS, Maria; COSTA, Marli. The deconstruction of the concept of woman-family for woman-for-herself: an analysis of the (re)inclusion of women in society and in the contemporary labor market. **Argue Journal Law**, Jacarezinho – PR, Brazil, n. 32, 2020, p. 297-316.

22. “I don’t ask for favors for my sex. All I ask of our brothers is that they take their feet off their necks.” Quote by Sara Grimké quoted by Ruth Bader Ginsburg. RBG (**THE JUDGE**) Julie Cohen, Betsy West, United States, CNN Films, Storyville Films, 2018. Blu-ray (97 min).

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