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## ***THE HANDMAID’S TALE: A LEGAL-LITERARY ESSAY*<sup>1</sup>**

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**ABSTRACT:** This paper proposes an analysis of the legal aspects present in the narrative of *The Handmaid’s Tale*, a novel by Margaret Atwood. First published in 1985, and heavily influenced by second-wave feminism, *The Handmaid’s Tale* addresses, mainly, the matter of gender inequality, once it creates a reality in which fertile women are compelled to reproduce through a servitude system. Through a rupture with the Cartesian dichotomy whose dualist notion separates objectivity from subjectivity, reason from emotion, this paper exposes that this oppression is not a literary creation by Atwood, but a reproduction of the power relations put forward in the history of humankind. In this regard, it is explored how Literature can aid the Law in facing the questions that come up in the resolution of legal and social problems. Besides gender inequality, it is possible to spot in the novel several violations concerning the principle of human dignity. Therefore, this research analyzes the legal provisions taken in the fictional space of Gilead, as well as in the country that preceded it, the United States of America, as well as in Brazil. In addition, it studies the symbolic violence to which women are submitted in Gilead and how it relates to the experiences lived by contemporary Brazilian women.

**KEYWORDS:** *The Handmaid’s Tale*; human dignity; gender equality; symbolic violence.

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## 1 INTRODUCTION

This is an article based on a literary work in order to provoke reflections about the Law. *The Handmaid's Tale*, by Margaret Atwood, is a novel that was published in 1985 and can be classified as a dystopia. Dystopia means, according to Gorman Beauchamp (2009, p. 11-25), “a genre that projects an imaginary society that differs from that of the author, primarily because it is significantly worse in important aspects, and secondly, worse for trying to materialize a utopian ideal”.

The proposal of this article is integrated with the studies carried out in the scope of fundamental rights, especially those related to the dignity of the human person. This reflection is made from the discussion about gender inequality (or inequalities) narrated in the novel *The Handmaid's Tale*, by Margaret Atwood. It is, therefore, a study that promotes the encounter between Law and Literature.

*The Handmaid's Tale* portrays a confessional and totalitarian state, whose main features is the annihilation of women's rights and the implementation of a system of compulsory reproduction through the servitude of fertile women. These women are called handmaids and are assigned to serve as incubators for the children of families who are at the top of Gilead's social stratum but are barren. The main character in the novel is Offred, who serves the family of Commander Fred and his wife, Serena.

The story of the novel is set in Gilead, a country that replaces the United States after a coup. As the book itself puts (Atwood, 1985, p. 317), no new system can be implemented over another without incorporating some of its elements, and for this reason, this article analyzes, in addition to aspects of Brazil, the characteristics of Gilead and the United States of America, in order to compare the Brazilian reality with that narrated in the book before and after the coup devised by Atwood.

The book addresses a number of topics worthy of discussion by the legal community, but in this article the issue of discrimination against women and the fundamental rights violated in relation to women are addressed. Gender discrimination is a constant topic throughout the narrative and is raised, sometimes subtly, in virtually every chapter of the book.

Man's domination over women is not an invention of *The Handmaid's Tale*, nor is it a recent fact in the history of our society. According to Simone de Beauvoir (2016a, p. 191), "this world which has always belonged to men is still in their hands; the institutions and values of patriarchal civilization survive to a great extent". In this way, we can analyze *The Handmaid's Tale* not only as a work of fiction but as an investigative tale about the dangers of gender inequality. The relationships established by the novel are not supported by unrealistic hypotheses, but by the reproduction of situations that can be found in women's daily lives.

Beauchamp (2009, p. 11-25) once stated that *The Handmaid's Tale's* dystopia would not be as effective as the ones in *1984* and *Brave New World* by George Orwell and Aldous Huxley, respectively, as the threats posed by the novel would not be so realistic. However, in 2018, one can say that the return of conservatism and practices restricting women's rights make *The Handmaid's Tale* one of the best suited dystopias regarding the context in which we live. Norberto Bobbio (2004, p. 140) states that "the return to old themes that seemed exhausted is neither a re-exhumation nor a repetition. Problems arise when certain historical conditions give rise to them, and assume at different times different aspects, adapted to circumstances".

The importance of interdisciplinary analysis, such as that used in this production, is exalted by Umberto Eco (2016, p. 26) when he states that:

In order to develop a "philosophical" discourse about a world of tomorrow, I consider that the first step to be taken is exactly that of an interdisciplinary research that, by reducing the various phenomena to descriptive

models, can then allow the identification of structural similarity between them and from there proceed to establish the deeper relations between the various facts.

Leonor Suárez Llanos (2018, p. 349-386) states that “law is narration”, which is why Literature is the most appropriate way to know and rebuild it. Thus, the joint use of the two fields can solve the problems that often Law or Literature alone cannot.

In studying Aldous Huxley’s *Brave new world*, a dystopia like *The Handmaid’s Tale*, Germano Schwartz (2010, p. 37-57) analyzed:

The method of study called Law in Literature has, among others, the advantage of being able to verify, according to Morawetz, the symbolic use of Law, that is, its expression of meaning and the representations that a society externalizes regarding its legal norms. In this line of reasoning, García Amado suggests that the study of the role of law in traditional utopian literature and the examination of dystopias in which, in more advanced societies, law is replaced by less generous social control techniques with freedom, it is the vivid case in Huxley’s works, like *Brave New World*.

The relevance of this proposal lies in the interdisciplinary research on the interfaces between the two areas, assuming the scientific understanding that Literature, through language, as well as Law, can provide a fundamental reference to the mind and states of consciousness in the process of understanding of oneself and the other, situated historically (Damasio, 1996, p. 254).

This research disagrees with the Cartesian dichotomy whose dualist notion separates the mind from the brain and body, the reason for emotion, and the objectivity of subjectivity, through *Cogito ergo sum* (Descartes, 1970, p. 101). In addition, this proposal aims at studying the sociocultural meanings, mainly linked to the Law, that can be constructed from the recognition of a new paradigm that narrows the complementary relations in the encounter between the above-mentioned areas of knowledge. The argument of Prigogine (1996, p. 14) adds to this idea:

We are witnessing the emergence of a science that no longer limits itself to simplified, idealized situations, but puts us before the complexity of the real world, a science that allows human creativity to be lived as the singular

expression of a fundamental trait common at all levels from nature.

It deals with facing challenges that call for a new rationality for the Law and will be translated as a paradigm shift for Legal Science. The recognition of the inexistence of hermetically sealed systems is one of the main paradigms of contemporaneity. Morin (2000, p. 24) already pointed out that, “since our mode of knowledge disassociates objects from each other, we need to conceive what unites them”.

It is also important to note that the approximation between legal discourse and science implies potential horizons of meaning that can always be updated in different meanings for new juridical hermeneutics in the state of the art.

Thus, among the objectives of the research, the following stand out: (1) to deepen theoretical and practical studies on the interdisciplinary relationship between Law and Literature based on scientific interdisciplinarity; (2) to investigate the possibility of new paradigms for the legal area focused on legal studies; and (3) relate constitutional interpretation to literary narratives.

This research seeks to establish the use of literary production as a means of legal interpretation, considering the use of Literature as a methodology to better understand social reality. Through this method, it will be possible to observe narratives so subtle that they do not reach the eyes of the juridical world:

Literature allows us to acquire a critical perspective that is external to the narrative of Law and transcends the directives that make it self-immune to self-criticism by allowing oppressed characters to speak by giving voice to those outside the prevailing economy and established power. (Suárez Llanos, 2018, p. 349-386).

Thus, a relevant issue that guides the present research proposal is how Literature can help the Law to face the doubts that arise in the solution of legal and social problems. It is, therefore, a new hermeneutic challenge.

It is important to note that the Courthouses and the Congress have a very small diversity. Doctrine is created, in large part, by people who do not know the social reality of most Brazilians. The traditional tools available to

law practitioners do not allow a universal understanding of the adversities faced by the people. Access to justice is guaranteed by the Brazilian Federal Constitution. However, it is not enough that citizens can have their demands appreciated by the Judiciary, their problems should be understood by the judges.

The legal treatment of abortion, racism, homophobia and sexual violence is done by people who, for the most part, have never experienced their effects. Only 113 of the 513 federal delegates elected in 2018 are black, and only 13 black women were elected in the last elections (Assis et al., 2018). There are only two gay congressmen and one senator in Brazil (Moreira, 2019). In the Brazilian case, currently, of the 11 ministers of the Federal Supreme Court, no judge is black and only two are women.

How, then, can we expect institutions to understand the discrimination suffered by the majority of the population? It is necessary to use a tool that can also be created by those who are not actually represented in those entities.

Although illiteracy continues to exist in the country, Literature is one of the most democratic forms of everyday expression and popular opinion. The use of literary creations by lawmakers may allow voices to reach distant ears in the judiciary. The author of a literary work not only describes what is observable, but puts the reader inside the mind of the character. Schwartz (2006, p. 14-15) states:

The connection between Law and Literature aims at recovering, if even possible, the sense of a time when justice was poetic, when academic and social debates unfolded in an environment of passion, abandoned today by the growing bureaucratization of the role played by the researchers in our Universities and by the law practitioners in the legal praxis.

Therefore, Literature can be an exceptional instrument for the Law, since it allows the creation of empathy between the judges and the parties involved in the litigation.



*The Handmaid's Tale* is a literary work in which the theme of gender inequality is central. In a reality in which fertile women are forced to breed through a system of servitude, oppression is presented not only as a literary creation by Atwood but as a representation of the power relations existing throughout the history of humanity.

## **2 DIGNITY OF THE HUMAN PERSON**

The emergence of women's oppression may be associated with the arrival of private property. Until then, community ownership was transmitted by women (Beauvoir, 2016a, p. 102), but with the emergence of private property, the "master of slaves and of the land, man also becomes owner of woman" (Beauvoir, 2016a, p. 84).

In *The Handmaid's Tale*, it is noted that the handmaid becomes a good of the household head by acquiring a patronymic denoting property (Atwood, 1985, p. 318). The handmaid is not allowed to keep her name, but is referred to as being "of" her Commander. Offred, for example, is "Of Fred", as she is the handmaid of the family of Commander Fred. The handmaid, thus, is stripped of an element that identifies her as unique – her name – and, from then on, is treated only as the property of a man (Trujillo, p. 185-211). It is important to note that the handmaid does not belong to the family, but to her patriarch. In this way, it is possible to verify the violation of intrinsic value, one of the characteristics of the dignity of the human person that derives from Kant's idea that the person cannot be used as a means, but must always be considered as an end (Barroso, 2014, p. 76).

The dignity of the human person is one of the foundations of the Federative Republic of Brazil, and although not expressly foreseen in the Constitution of the United States of America, its elements can be evidenced in the American reality and, at a fictional level, also imagined in Gilead. Thus, it is observed that the legal elements of the dignity of the human person would be present in the three legal systems studied, but that their application is different.

It seems that Gilead uses the biblical provisions as a legal basis. Such an inference is sustained, for example, in the part in which the legal

prediction for the crime of rape is referred: “The penalty for rape, as you know, is death. Deuteronomy 22:23-29” (Atwood, 1985, p. 290). Therefore, in order to analyze whether the dignity of the human person would be a positive principle in the reality proposed by Atwood, it is important to consider its presence in the Bible, in the present study. This reading can be confirmed by the understanding of the study by Jónatas E.M. Machado (2013, p. 36-37) when he maintains that “men and women have special intrinsic value, being endowed with special solemnity, sacredness, dignity and honor because God has given them an eternal value in the act of creation, having confirmed it at the moment of incarnation and redemption”. In addition, Ingo Wolfgang Sarlet (2004, p. 31) states that, according to Thomas Aquinas, dignity “also lies in the capacity for self-determination inherent in human nature, in such a way that, by virtue of dignity, free by nature, exists in function of their own will”. Thus, violation of the dignity of the human person would cease to be merely a violation of morals and would effectively be a violation of the law.

We note that the very designation of Offred to fulfill the function of a handmaid can characterize a violation of the dignity of the human person, since it is not only a job or an occupation, but an attribution that defines the way she dresses, the places she goes and the whole purpose of her life. Offred, like the other handmaids, ceases to be seen as an end in herself, as prescribed by Kant (2002, p. 69) and becomes an instrument in the service of the state to repopulate the nation of Gilead. Her intrinsic value is replaced by an instrumental value, which deprive her dignity as a person.

According to Luís Roberto Barroso (2014, p. 71), autonomy is the second constituent element of the dignity of the human person. Conceptualized by him as the person’s self-determination ability to define the rules that will govern their life, autonomy is also violated by the Gilead state. Since autonomy presupposes the actual existence of options for making a decision, the absence of alternatives places the subject in a position whose only choice has already been made by other people. In *The Handmaid’s Tale*, it is not possible to consider that Offred is exercising her autonomy, when she reveals she had chosen to live as a handmaid (Atwood,



1985, 105), since the alternatives given to her were death or exile in Colonies of forced labor.

In the United States, there is no express mention of the dignity of the human person in the constitutional text. Barroso (2014, p. 40) points out that, although “dignity” has appeared in some trials previously, the term “human dignity” was first used only in *Rochin v. California*, lawsuit of 1952. Although the frequency of use of the concept has increased since the end of the 20th century, Barroso (2014, p. 42) states that

Human dignity has never been considered in the arguments of the members of the Supreme Court as a particular or autonomous fundamental right, but as an underlying value, both to rights expressed and not enumerated, such as the rights to privacy and equality, to protection against cruel and unusual penalties and against self-incrimination, among others. Therefore, the role of human dignity has been mainly to inform the interpretation of specific constitutional rights.

As there is virtually no discussion of the dignity of the human person in the United States Constitution, the question of law to choose is discussed from another fundamental principle: that of privacy.

However, in analyzing the reasons given by Lynne Curry) for the jurisprudential understanding in *Roe v. Wade*, a lawsuit that used the principle of privacy as a basis for the criminalization of abortion to be declared unconstitutional, we see that it has a close resemblance to autonomy, an essential element of the dignity of the human person: “the case represents a specific and important milestone in the broad record on the rights of individuals – men and women – to make determinations about their own bodies, free from state interference” (Curry, 2010, p. 166-170). This relationship between the right to privacy and the dignity of the human person is confirmed by Luís Roberto Barroso (2014, p. 43) when he points out that the *Roe v. Wade* case brings:

The central ideas underlying dignity – autonomy and freedom to make personal choices – were essential to these decisions. Some authors even claim that privacy is an “improper term” and that dignity is a more adequate expression for the right in question.

As with the right to privacy, the right to equality also covers the argumentation of the dignity of the human person.

### 3 EQUALITY

Simone de Beauvoir (2016a, p. 118) postulates that dignity is directly associated with the woman's right to property:

At a time when patriarchy is powerful, it robs the woman of all rights to the detention and transmission of property [...] because she has nothing, woman is not elevated to the dignity of a person; she herself is part of the patrimony of man, first of the father and then of the husband.

This statement is in line with what happens in Gilead, since the first step taken to restrict women's rights was the revocation of their right to property (Atwood, 1985, p. 187). Women are again dependent on their parents and husbands, making them inferior to the law. This is a clear violation of the principle of equality, present both in current Brazil and the United States system, but revoked by Gilead.

Although, in the United States, equality between men is provided for in the Declaration of Independence, its implementation in the Constitution came only with the advent of the 14th Amendment in 1868. The Supreme Court's decision after *Reed v. Reed* (1971) extended the so-called "equal protection" of the said Amendment and declared the unconstitutionality of gender-based discrimination (Rossum; Tarr, 1983, p. 620). Thus, transposing the empirical reality to the context of the novel *The Handmaid's Tale*, it is observable that, in the United States that preceded the coup narrated in the work of fiction, there used to be the guarantee of equality between the genders.

It occurs that in Gilead the Bible is used as a legal source, and one of the interpretations that can be drawn from it is that the woman is inferior to the man. For example, Eugenio Raúl Zaffaroni (2011, p. 33) argues that the Holy Inquisition was based on arguments transcribed in the book *Malleus Maleficarum* by Jacob Sprenger and Heinrich Krämer in 1487. The work supported the inferiority of women from a curvature in the rib of Adam, thus rendering her defective and more susceptible to the charms of

Satan. As Beauvoir (2016a, 135) transcribes Thomas Aquinas's argument, "it is certain that the woman is destined to live under the dominion of man and has no authority of her own" and then argues that "the canon law only admits as a matrimonial regime the dowry regime that makes women incapable and powerless. Not only are manly jobs forbidden to her, but she is even barred from testifying in the courts, and no value is given to her testimony". Similar situations are evident in the novel. In Gilead, the word of the woman is worthless, since, according to Offred, testimonies by a single woman are disregarded, for example (Atwood, 1985, p. 43).

It turns out that the Gilead government uses paternalistic arguments to justify the restrictions imposed on women. It is said, for example, that the old regime did not protect women, but that now, although they have no more freedom to make their own decisions, they would be free from the acts of other people (Atwood, 1985, p. 34). However, it is possible to extract from the text that the insecurity that women felt in the past was related to the violent attitude of men:

I remember the rules, rules that were never spelled out but every woman knew: Don't open your door to a stranger, even if he says he is the police. Make him slide his ID under the door. Don't stop on the road to help a motorist pretending to be in trouble. Keep the locks on and keep going. If anyone whistles, don't turn to look. Don't go into a laundromat, by yourself, at night. (Atwood, 1985, p. 34).

Thus, the protection of women is not guaranteed by restrictions on the rights of men, but rather by the limitation of women's freedom. Affirmative actions are an important practice for the reduction of material inequality, however, they cannot be used as a means for the absolute segregation of genders. What happens in the fictional Gilead is not the adoption of measures that repair the disadvantages suffered by women throughout history, but a true legal separation between men and women. A similar situation can be identified in American history with the Jim Crow laws that prevailed in the United States until 1965. Through them, legislators established a "separate but equal" policy for black people. It would be, according to Beauvoir (2016a, p. 20), the concession of "equality within difference". The philosopher says that both black people and women

are subjected to similar paternalism, which keeps them at a level of inferiority to this day.

In Gilead, since women are not entitled to patrimony, their activities are not waged. They remain dependent on their parents, husbands, or the state, and thus under their control. The Bible states that God created woman to help man (Genesis 2:18) and that she should submit to her husband (Ephesians 5: 22-24):

Wives, submit yourselves to your own husbands as you do to the Lord. For the husband is the head of the wife as Christ is the head of the church, his body, of which he is the Savior. Now as the church submits to Christ, so also wives should submit to their husbands in everything.

There are indications that the biblical writings are literally followed by the inhabitants of Gilead. As an example, the handmaid gives birth on the knees of the Bride as predicted in the Bible (Genesis 30:1-5). Thus, it is possible to conclude that the gender discrimination present in the Bible justify the behavior of Gilead society.

In Brazil, equality in a broad sense is a right guaranteed by article 5 of the Federal Constitution. Likewise, there is provision for equality between men and women in section I of the same device. Taking Beauvoir's relation between inequality and patrimony, one can affirm that the constitutional provisions that guarantee the protection of the labor market of women (article 7, XX) and the prohibition of gender wage discrimination (art. 7, XXX), for example, are rights aimed at promoting the economic independence of women. Beauvoir (2016a, p. 133) further states that "it is by work that women achieve their dignity as a human being".

The other extreme of access to the labor market by women is their confinement in the domestic environment, often through compulsory maternity. This practice can be verified in both the fictional Gilead and in Brazil, since the imposition of maternity does not require its express prediction. As envisaged by Beauvoir, compulsory maternity can be enacted by the simple extinction of viable alternatives: "it would not be possible to force a woman directly to give birth: all one can do is to close it in situations where motherhood is the only way out; the law or customs impose

marriage, and prohibit contraceptive measures, abortion and divorce” (Beauvoir, 2016a, p. 89).

The use of contraceptive methods helped to achieve the independence of this way of life for women, allowing family planning autonomously. However, there remain the moral judgments about these practices. The opinion of some conservative groups largely influences how the legislation is created and the public policies adopted by the government. In Brazil, family planning is a right guaranteed by the Constitution, which establishes in its article 226, paragraph 7, the prohibition to any coercive form on the part of the State or private institutions and relating it with the dignity of the human person. It is important to observe the choice of the legislator to place the dignity of the human person as the guiding principle of family planning, since “to ignore individual autonomy in this matter, through forced practices, would mean giving the human person a treatment of a thing, opposite, thus, of dignity” (Moraes; Teixeira, 2013, p. 2122).

The dignity of the human person and equality are intimately linked with the control a person must have over their own body. In the novel, as artificial insemination and *in vitro* reproduction were outlawed by the Gilead government because they were irreligious (Atwood, 1985, p. 317), the only solution would be to use “surrogate mothers”. However, a regime of servitude is imposed onto the women who offer their wombs for the repopulation of the country. In this regard, it is worth noting that, in studying the question of abortion in the face of the dignity of the human person in the empirical reality, Luís Roberto Barroso (2014, p. 101) pointed out that, although the fetus has an intrinsic value:

Because the fetus depends on the mother, but not the opposite, if the fetus’s “will to be born” prevails, the mother would be totally instrumentalized by this project. In other words, if the woman were forced to keep the fetus, she would become a means to the satisfaction of another will and would not be treated as an end in herself.

This is exactly one of the situations that can be problematized from the novel. In Gilead, the imposition of pregnancy on the inexistence of viable alternatives makes women mere instruments to ensure the subjection and viability of the state. Since sexual relations with handmaids

have a precarious consent, the interruption of pregnancy in situations of sexual violence would be contradictory, as all pregnancies generated from conception ceremonies would be subject to interruption.

Between the United States, Brazil and Gilead, three different perspectives are observed, when still considering the differences between reality and representation. In the first, in its empirical context, the decriminalization of abortion occurs with the decision of the Supreme Court in *Roe v. Wade*, 1973. In Gilead, at the fictional level, there is an absolute criminalization of abortion, including those carried out before the implementation of the new legal regime, since Gilead's abortion illegality goes back to times when abortion was legal. Since the Bible never authorized abortion, the practice would be illegal from the outset, and the effects of the law of the new regime are retroactive (Atwood, 1985, p. 43). Brazil lives a reality between the two extremes, authorizing the practice in exceptional situations, as in case of rape or risk of death of the mother. However, a proposal for amendment to the Constitution (Deputies, 2018), which may restrict the right to abortion even further, is being processed in the National Congress, bringing the Brazilian legal regime closer to the Gilead.

Gender inequality is a controversial issue, albeit analyzed in the light of feminism. It is argued that the correct term would be “feminisms”, since there are multiple realities of what it is to be a woman. Beauvoir thus represents only one of those aspects. Traditionally, the history of feminism is divided into three “waves”. The first, which emerged in the late nineteenth century, aimed at achieving equal political and civil rights (Rodríguez, 2017, p. 19). It also questioned property rights, which at the time were guaranteed only to men. Liziane da Silva Rodríguez (2017, p. 20) argues that, in addition to liberal feminism, influenced by John Stuart Mill and Harriet Taylor, Marxist feminism emerged, which saw in economy the root of female oppression. Friedrich Engels (1980, p. 55) wrote, for example, that “the private character of man's predominance over women in the modern family, and the need to establish authentic social equality among them, will not be fully brought to light while the two sexes do not have equal legal rights at all”. Advances in this wave include women's right to vote and divorce.



The second wave of feminism, which emerged in the 1960s, not only fought for gender equality, but raised the issue of male domination over women. Thus, the discussion evolved from mere formal inequality between the rights of each gender to the consequences of one's oppression over the other (Pinto, 2010, p. 15-23). Radical feminism, which is critical of Beauvoir's ideas, also appears in this context. According to it, the philosopher proposes "a *repressive feminism*", that is, women should change their behaviors, they should act in the same way as men in the most diverse spheres of life, so that it would be possible to achieve some recognition" (Rodríguez, p. 25). During this period, the achievement of the right to abortion in several countries stands out.

In the 1990s, the third wave of feminism, identified by the search for deconstruction "of the categories of *women, gender and sexuality*, is born, since such categories are not neutral, they are loaded with social conceptions used as means to maintain and transmit hierarchies and roles of gender" (Rodríguez, 2017, p. 34). Also, the emergence of a fourth wave of feminism is discussed through the influence of the internet. Regardless of the denomination used for contemporary feminism, the fact is that today the discussion about oppression is not homogeneous, and the experiences of black, lesbian, transsexual, and other women are debated.

In view of the different feminisms, it is important to note that *The Handmaid's Tale* is a feminist critical dystopia, conceived in the context of the so-called "second wave" and, according to María Paulina Moreno Trujillo (2016, p. 185-211), "The hopes and fears of women in the face of a changing world that demands a constant redefinition of their feminine identity". Thus, the confrontations posed by the novel reflect, mainly, the anxieties of that phase of the movement, like the necessity of breaking of the relations of power imposed by the patriarchal culture.

#### 4 WALLS AND VIOLENCE

The Wall can be considered the great building to ensure the discipline and obedience of the inhabitants of Gilead. There, the bodies of people executed by the Government for their transgressions are exposed. The

purpose of the exhibition is precisely to impose fear and demonstrate what the Government is capable of doing with those who disrespect the dogmas of the state. However, it is not only through explicit constructions that states manage to frighten and control their citizens.

Fear plays an essential role in maintaining the discipline of the inhabitants of Gilead. In fact, as Vera Malaguti Batista (2005, p. 367-378) argues, “authoritarian and unequal societies, violently hierarchical, use fear through a very subtle relationship with otherness”. In a patriarchal state, as Beauvoir (2016a, p. 13) states, man occupy the position of Subject, and woman is the Other, and then she questions the reason why women do not dispute such sovereignty (2016a, p. 14). This subordination, according to the philosopher (2016a, p. 18), is based on the fact that “women do not claim as subjects because they do not have the concrete means to do so, because they feel the necessary bond that binds them to man without claiming reciprocity, and because often takes pleasure in the role as Other”.

It is observed that the alterity that is reinforced by fear in Gilead is present in Brazil. Several authors deal with the imposition of inferiority on the Other, who accepts it as truth and does not rebel. Bourdieu (1999, p. 47) argues that this conformation with domination is the result of the incorporation of symbolic violence suffered by women. There are several traces of this symbolic violence in *The Handmaid's Tale*. One of them, the imposition of the patronymic, was already treated in this work by the perspective of the dignity of the human person, but it is worth mentioning that it is also a form of violence. The word is used as a means of annihilation of the autonomy and the intrinsic value of the handmaids, since, according to Bakhtin (1995, p. 36), “the word is the purest and most sensitive way of social relation”, and cannot be considered isolated (Bakhtin, 1995, p. 41):

It is so true that the word literally penetrates into all relations between individuals, in relations of collaboration, in ideological bases, in the fortuitous encounters of daily life, in political relations, etc. [...] The word is the medium in which there are slow quantitative accumulations of changes that have not yet had time to acquire a new ideological quality, which have not yet had the time to engender a new and finished ideological form.

The word is capable of recording the most intimate, ephemeral transitional stages of social change.

By being called the property of the Commander, the handmaid recognizes reality in the word and submits to its meaning. It would be a form of domination that does not use physical violence, but symbolic violence. Domination, according to Bourdieu (1999, p. 52-53):

Far from being a conscious, free, deliberate intellectual act of an isolated “subject”, is itself the result of a power, inscribed enduringly in the body of the dominated in the form of schemes of perception and dispositions (to admire, to respect, to love etc.) that make it sensitive to certain symbolic manifestations of power.

Judith Butler (2017, p. 90-92) points out that according to Foucault's theory:

The individual is formed – or rather formulated – as a prisoner by his discursively formed “identity” [...] if speech produces identity by providing and imposing a regulatory principle that completely invades the individual, totalizes it and makes it coherent, then it seems that every “identity”, insofar as it is totalizing, acts precisely as a “soul that has imprisoned the body”.

In this way, handmaids become prisoners within their own bodies. In this context, it should be remembered that, according to Butler (2017, p. 91), Foucault's theory was used by feminists to elaborate a theory of disciplinary production of the genre. The philosopher affirms that “as the soul has an incarcerating effect, Foucault affirms that the prisoner is submitted ‘in a more fundamental way’ than that of the physical space of the prison represented by jail”.

Throughout the novel, it is possible to observe, in Offred, the effects that restrictions can have on a person's subjectivity. Since “power acts not only upon the body, but also within the body, that power not only produces the limits of the subject, but also permeates its interiority” (Butler, 2017, p. 96), we can conclude that “detours” from the linearity of Offred's story, that is, when she comes to remember the daughter in her most emotional and nostalgic aspects, are quickly hindered by her own sense of discipline.

Discipline is reinforced by the panopticism to which women are subjected. While anyone can be an “Eye” and denounce women to the Gilead government, the handmaids cannot express their real desires and must conform their bodies and minds to the state rules. In this sense, it is worth mentioning Foucault, when he states that in panopticism, “the emperor is the universal eye focused on society in all its extension. The eye is aided by a series of glances, arranged in the form of a pyramid from the imperial eye and that watch over the whole society” (Foucault, 2002, p. 107). According to the philosopher, the most important effect of the panoptic is “to induce in the prisoner a conscious and permanent state of visibility that assures the automatic functioning of power” (Foucault, 1987, p. 166).

Trujillo (2016, p. 185-211, our translation) states that “language is thus manifested as a powerful weapon of control over oppressed societies, and it is evident that whoever controls language can exert power over those who do not have it”. The control of language in Gilead is explained by Offred, who states that the power relationship between her and the Commander is uneven, since she “has the word” (Atwood, 1985, p. 99). According to Foucault’s (2002, p. 51) lesson, “political power is not absent from knowledge, it is woven with knowledge”, so that who owns the control of language also has control of political power.

Symbolic violence through discourse is not exclusive to Gilead, being present, also, in the contemporary world. Women are still subject to social impositions about their role and their place in society. Their position as wives and mothers is more accepted than as providers of the home, and this view of society becomes the view that women have of themselves. Beauvoir (2016b, p. 79) explains that women “do not dare to undertake, to revolt, to invent: given to docility, to resignation, they can do nothing but accept in society a place already prepared”, and thus have difficulty to achieve the same independence as men. Once imprisoned in the domestic environment, according to Bourdieu (1999, p. 41):

Because the limited world in which they are confined, the space of the village, the house, the language, the utensils, keep the same calls to the silent order, women can only become what they are according to mythical reason, confirming thus, and first of all in their own eyes, that

they are naturally destined to the low, crooked, small, petty, and so on.

In *The Handmaid's Tale*, Atwood constantly works as freedom is something to be feared. The solution would be protection through restrictions to fundamental rights. According to Vera Malaguti Batista (2005, p. 367-378), “the diffusion of fear from chaos and disorder has always served to detonate strategies of discipline and control of the impoverished masses”. Freedom, for the woman, means liberation from the stereotype built for her by society. In order to do so, it is necessary to effectively implement the rights provided for by the Constitution, in order to guarantee not only formal equality, but also material equality between men and women.

## 5 CONCLUSION

The deepening of theoretical and practical studies on the interdisciplinary relationship between Law and Literature was one of the main objectives in the development of this article. In 2017, Margaret Atwood stated that the reality she brought to *The Handmaid's Tale* was based on “history and probability” (House, 2017). In this way, it is observed that, even if it is a work of fiction, the novel is sustained by relations of power present in the daily life, which favors the dialogue between Law and Literature.

The link between the constitutional interpretation and the themes discussed in the novel was put through the analysis of two important principles contained in the Brazilian Constitution: equality and dignity of the human person. The gender inequality that existed in Gilead, as evidenced throughout the narrative, is similar to that found in Brazil today. This is because it is not just some Atwood's baseless claim, but a representation of the systematic oppression suffered by women in history. The author only exposes a world in which formal equality disappears, and women are placed inferior to men by the actual legal regime in force. Compulsory maternity through forced reproduction may not occur in Brazil, but the country is moving towards withdrawing rights such as family planning and abortion in case of rape. The revocation of rights won by

women over the last few centuries represents a movement of contraction of fundamental rights and expansion of conservative policies.

The dignity of the human person, so valued by the Brazilian Federal Constitution of 1988, which places it not only as a principle but as the foundation of the Federative Republic of Brazil, has been replaced by the instrumentalization, especially of the body of women. It has been observed in history that whenever women are deprived of intrinsic value and autonomy over their own lives, they become mere means for human reproduction. As Beauvoir (2016b, p. 280) puts very well, it is important to note that “society, so bitter in defending the rights of the embryo, becomes disinterested in the child from birth”. Beauvoir’s thinking was of great influence for *The Handmaid’s Tale*, and consequently for this work, however, it was noted that all different feminist movements bring relevant contributions to the discussion presented. It is not possible to conceive the current difficulties of confrontation without taking into account the plurality of existing feminisms.

It was possible, as initially proposed, to investigate the possibility of new paradigms for the legal area in justice studies. We present that language control is an important form of manifestation of power. Fear is not only imposed by large buildings, but also by violence. In the same way, this violence does not occur only by physical acts, but by the aggression to the soul of the person. The concept of otherness and the use of the word for oppression were studied. In both Gilead and contemporary Brazil, we see the use of language as a form of imposition of women’s place in society. Still, we see that *The Handmaid’s Tale* presents a form of resistance. According to Trujillo (2016, p. 185-211), the process of rescuing the very name faced by the main character of the novel reflects “an attitude of resistance against the regime”.

In this way, we are faced with a novel that has legal elements, and, unfortunately, we are before a society that has elements of the work by Atwood. *The Handmaid’s Tale* is a novel that cannot be considered solely for the entertainment it offers, but also for the criticism it presents.



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