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**LIFE-NARRATIVES AND HUMAN RIGHTS:
REFLECTION ABOUT WOMEN’S RIGHTS
AND STATE OF EXCEPTION¹**

LUANA MATHIAS SOUTO²

ABSTRACT: This paper aims to analyze the women's rights in the Brazilian context, mainly, reproductive rights. So, to achieve this purpose, this paper through the combination of Law, philosophy, and Literature tries to rethinking why women can't have a voice when the decisions about their rights are taken? Methodologically, it was used a bibliographical revision, the novel *The Handmaid's Tale*, wrote by Margaret Atwood (2002) and the concepts of *Homo sacer* and state of exception developed by the philosopher Giorgio Agamben (1998; 2005) to illustrated how life-narratives can promote human rights.

KEYWORDS: Life-narratives; Human rights; Dystopian fiction; Agamben; State of exception.

1 INTRODUCTION

Nowadays, Brazilian society has been living stranger days, mainly, for women. The Brazilian first female president was impeached in a controversial process. One of two councilwomen from Rio de Janeiro city was assassinated after to report abusive actions from local police in a poor community. Then, when the world was talking about legalized abortion; see Ireland recent case, a controversial Constitution Amendment Project

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² Ph.D. student in Public Law at Pontifícia Universidade Católica de Minas Gerais (PUCMinas). Master's degree in Public Law at PUCMinas. Bachelor degree in Law by PUCMinas. CAPES PROEX Researcher of Law Pos-Graduation Program at PUCMinas. Belo Horizonte (MG), Brazil. ORCID: <https://orcid.org/0000-0002-6961-0187>. CV Lattes: <http://lattes.cnpq.br/4054571372584546>. E-mail: luana.mathias.souto@gmail.com.

(PEC 181/15) arrives at Congress trying to condemn women for abortion even in the situations that they already are supported by the Brazilian legal system.

With all these facts urges to ask what it is happening in Brazil it is normal? Is it normal at this time women lose some rights? Lose political spaces? To answers, these questions are used in this paper the combination of theories from Law, Philosophy, and Literature and methodologically it is used a bibliographical revision.

To achieve its objective, the article used the reality illustrated in the novel *The Handmaid's Tale*, wrote by Margaret Atwood (2002) to try rethinking this Brazilian moment connecting reality and fiction. This analyses it is also supported by the concepts of *Homo sacer* and state of exception developed by the philosopher Giorgio Agamben (1998; 2005), which will provide a unique reflection about how in the Rule of Law it is possible that human rights remain only in the paper without effectiveness.

Although, before analyzed how this fictional and dystopian autobiographical novel relates to the theory of state of exception, especially that one constructed by the Italian philosopher Giorgio Agamben, it will be necessary that first we present and understand how life-narratives, as a literary genre, contribute to the promotion and defense of human rights, premise defended by Meg Jensen and Margareta Jolly (2014).

Once this relationship has been elucidated, the agambenian theories about *Homo sacer*, biopolitics and state of exception which will be presented with the intention of supporting this debate, it is time to showed some aspects and elements from the novel *The Handmaid's Tale* that can be used to make some reflections about the violation on women's rights in Brazilian society, especially, the reproductive one.

Through this interdisciplinary study, it will be possible to show t the dangers already visible in the current Brazilian and USA context that are quite similar with the reality exposed in the novel *The Handmaid's Tale*, where we have an illustration of a configuration of an undeclared state of exception, which suspended a lot of women's rights, making possible that all juridical system constructed along of all these years about the protection of women body can be destroyed in a few years.

2 HOW TO PROTECT HUMAN RIGHTS?

According to the Universal Declaration of Human Rights:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. [...] Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or another opinion, national or social origin, property, birth or another status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. [...] No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms (United Nations, 1948).

The human rights' concept conceived in the Universal Declaration it is a symbol and a response against the horrors perpetrated during the World War II, when the human life value was near to zero and when governments decide who lives and who dies. Nazi ideas spread through the world and a lot of people lose their identities, their home, their families, their memories and their lives. This traumatic episode in the History made the world think how we can protect life just for the fact that someone is a human being, regardless where this person came from or how powerful and wealth he or she is? Or another distinguished status the society can create? So, concerning at find answers to this question a lot of institutions, government and non-government bodies were created around the world:

In the 1960s, group action and advocacy led to the adoption of the Convention on the Elimination of All Forms of Racial Discrimination (1969). In the 1970s, women's and feminist activism led to the adoption of the Convention on the Elimination of All Forms of Discrimination against Women (1981). In the 1990s, trade union and indigenous advocacy led to the adoption of the International Labor Organization Convention 169 concerning Indigenous and Tribal Peoples (1991) and the Draft Declaration on the Rights

of Indigenous People (1993). Together, these latter two instruments, if and where ratified, could significantly alter the parameters of rights discourse in that they acknowledge and support group rather than individual rights, encompassing the aspirations of indigenous and minority peoples for self-determination and their claims to culture, language, religion, and land rights, sometimes in opposition to states' claims of sovereignty. In the early 1990s, rights activists lobbied for the Convention on the Rights of the Child (Schaffer; Smith, 2004, p. 3-4).

Although exists all these documents and these organizations, the reality besides the paper indicated another face. Because the human rights issues are more delicate than just define what they are and establish that everyone needs to respect them, to really protect people against any kind of violation urges to find a way to compel everyone and the governments to respect this principle.

A lot of efforts to guarantee and defend human rights are created over the years, such as an example, recently the United Nations (UN) developed a system, known as Universal Periodic Review (UPR), which involves a review of the human rights records of all UN Member States with this, each State demonstrated what actions they have taken to improve the human rights situations in their countries and to fulfill their human rights obligations.

However, even with all these efforts every single day a lot of news came from different places informing that some kind of human rights violation happens, especially the women's rights.

Women's human rights are violated in a variety of ways. Of course, women sometimes suffer abuses such as political repression that are similar to abuses suffered by men. In these situations, female victims are often invisible, because the dominant image of the political actor in our world is male. However, many violations of women's human rights are distinctly connected to being female-that is, women are discriminated against and abused on the basis of gender. Women also experience sexual abuse in situations where their other human rights are being violated, as political prisoners or members of persecuted ethnic groups, for example. In this paper, I address those abuses in which gender is a

primary or related factor because gender-related abuse has been most neglected and offers the greatest challenge to the field of human rights today (Bunch, 1990, p. 3).

Observing these facts, it is possible to conclude that all these documents and mechanisms it isn't enough to protect one human being against another. Reflecting about this one of the solutions can be making people aware about the importance to respect each other and, maybe, the assistance in the promotion and guarantee of human rights can be provided by another field of research and just not by the legal system. The juridical field can be isolated and away from the others. An interdisciplinary analysis can be crucial in the promotion of human rights. Because, we already now that the legal tools sometimes can't provide an efficiency guarantee of human rights, especially if the possibility of the law suspension. But we as individuals and as a society needs to find new ways. Hereupon, this purpose, this paper introduces a literary tool that can promote the human rights' crusade: the life-narratives genre.

3 LIFE-NARRATIVES AND HUMAN RIGHTS

One of the mechanisms used to promote human rights besides the legal instruments was through personal witnessing.

The United Nations itself has generated audiences for local stories muted within the dominant cultures of member states through its "decade" strategy; that is, through the targeting of a particular group and the concentration of attention on its issues for a decade, as in the International Decade for Women (1975–1984) and the International Decade of Indigenous People (1995–2004) (Schaffer; Smith, 2004, p. 4).

Persuaded this same goal, the Brazilian's Commission of Truth and the Nuremberg Trials used personal witnessing to understand these traumatic events from the past: Brazilian Ditadura Militar de 1964 and the Holocaust, respectively. This strategic permitted that the country, the society, the victim and their parents find a way to repair these human rights violations. The main objective of this initiative is to make the oppressed to be heard:

Emergent in communities of identification marginalized within the nation, such movements embolden individual members to understand personal experience as a ground of action and social change. Collective movements seed local acts of remembering “otherwise,” offering members new or newly valued subject positions from which to speak and to address members of their own community in acts of solidarity. They also offer members of the dominant community occasions for witnessing to human rights abuse, acknowledging and affirming the rights of others. Through acts of remembering, individuals and communities narrate alternative or counter-histories coming from the margins, voiced by other kinds of subjects—the tortured, the displaced and overlooked, the silenced and unacknowledged—among them. These counter-histories emerge in part out of the formerly untold tales of those who have not benefited from the wealth, health, and future delivered to many others by the capital and technologies of modernity and postmodernity. Individuals and groups may also engage in narrative acts of critical self-locating through which they assert their cultural difference and right to self-determination, or they may imagine leaving the past behind for a new social order or a newly empowered collective subjectivity. Members of collective movements deploy personal narrating to witness many forms of trauma—sexual violence and abuse, economic and political degradation, racism, terrorism, and forms of genocide. Their stories enable new forms of subjectivity and radically altered futures (Schaffer; Smith, 2004, p. 4).

This technique used in the Courts that through the testimonials or personal witnessing expose what really happened during traumatic events, over the years, earns a new meaning and conquered an important literary and legal place:

Stories emerging from collective rights movements and the cataclysmic geopolitical displacements of the last two decades have been identified with a larger body of literature concerning trauma and traumatic remembering. The cultural focus on “trauma” in the last decades of the twentieth century, arising out of feminism, psychoanalysis, and ethnic identity studies, motivated life writing that mapped and mined the disruptive effects of significant events in the past.

Circulating within professional, academic, and popular perceptions of and discourses about trauma in the West, this literature has become a prominent genre of personal narrating at the end of the twentieth century. Journalistic reports, popular magazine articles, academic studies, feminist activists around sexual abuse, and medical diagnoses of Post Traumatic Stress Syndrome (officially accepted in 1980) as a condition suffered by victims of the war in Vietnam—all have contributed to the public awareness in popular and academic domains of multiple forms of trauma and traumatic remembering (Schaffer; Smith, 2004, p. 4).

The Literature on trauma and the life-narrative bring another perspective on the human rights battle because of shows that, when the legal system is not able to provide a repair, the victims and the society together can. This is what Meg Jensen and Margaretta Jolly (2014) analyses when they connect human rights and life-narratives:

Rather, life stories gain political purchase in the context of particular historical conditions and opportunities. These conditions are part of what shapes testifiers' classic journeys from silence to speech gaining a hearer, being actively listened to, finding particular representational forms, and then finding their way to a juridical context. This is more than a political and legal journey; it is a psychological one. How could it not be? (Jolly; Jensen, 2014).

Because, sometimes the answers for who has a right violated it is not only a legal solution but a humanitarian one, which only happens when the victim has a space to talk and to be heard. With this new proposal, the human rights battle finds a new companion: the life-narratives, which needs to be used in conjunction with the other juridical or not, instruments.

With this brief exposition on how life-narratives are important for human rights promotion, it is time to analyze how women's rights have been violated over the time and how Literature can help us to reflect on this.

The benefits of the relation between Law and Literature are bigger than the describes here between life-narratives and human rights, because even we thing that the relation between Law and Literature is new, we have to be aware that is “a centuries-old tradition, as they go through the history of the 20th century, as Sansone (2001) points out.” (Trindade; Bernsts, 2017, p. 226). And it is a relation that can be demonstrated in two

faces: Law and Literature and in “the literary quality of Law.” (Trindade; Bernsts, 2017, p. 226). This paper will use only the Law and Literature perspective.

The Law and Literature movement it’s meaningful for modern and plural societies because has the purpose to “provide a more open view about human condition to jurists [...] [and] for not been a properly juridical testimony, the writers, *a priori*, haven’t the commitment to stick to a juridical and an official speech.” (Morais; Souto, 2018, p.81). From the opposition of this two fields: the rigidity legal technique of Law and the free literary of Literature discourse is permitted to jurists (lawyers, scholars or judges) a new view about life and a more compatible hermeneutic analyses about the reality, because the “monopoly of legal rationalization makes it difficult to effectively exert citizenship as defended by democratic Constitutions.” (Pêpe, 2016, p. 6). This difficult happens when the jurist can’t see the life, the society and the juridical problems beyond of your own juridical tradition and realize that there are a lot of unknown realities and Literature can reveal this to him (Lima; Chaves, 2011). When this relation occurs, the juridical standards become more compatible to reality and the rights that once only existed in the paper are bring to life.

So, the benefits of this interdisciplinary relation will be important to this paper and beyond to this meaningful use of the Literature it will also use the assistance of philosophic concepts in a way to provide a substantial analysis, which aims to understand the legal system beyond of what we receive from the Constitutional theories because now it is time to understand the Rule of Law beyond of its positive and normative standards.

4 HOMO SACER: THE BIOPOLITICAL MACHINE AND WOMEN’S RIGHTS

Giorgio Agamben (1988; 2005) is an Italian philosopher best known for his work investigating the concepts of the state of exception, bare life, *Homo sacer* and the concept of biopolitics that he borrowed and adapted from Michel Foucault in his book *The history of sexuality*. Besides Michel Foucault’s works, Agamben is also influenced by Hannah Arendt - *The*

human condition; Carl Schmitt - *Political theology* and Walter Benjamin - *Critique of Violence*.

All these concepts can be found in his book *Homo sacer: Sovereign Power and Bare Life* (1998) that can be considered his main work and the first in his *Homo sacer* collection. So, to develop his theory, first Agamben expresses what the word life means to the Ancient Greeks. Because, according to him, the Greeks hadn't had a single term to express life, they used two terms that are semantically and morphologically distinct: *zoē* and *bios* (Agamben, 1998).

The term *zoē*, refers to all simple natural life “the simple fact of living common to all living beings (animals, men, or gods) [...] even God is a living being” (Agamben, 1998, p. 9) and *bios* it is “the form or way of living proper to an individual or a group [...] a qualified life” (Agamben, 1998, p. 9) it is a political life, a life that it is included in the *polis*, in opposite of *zoē*, which is a reproductive life, excluded from the *polis*.

Agamben (1998) in *Homo sacer: Sovereign Power and Bare Life* establish some ideas beyond this Greek's analysis. With the concept of biopolitics, that he borrowed from Michel Foucault when he lays down the difference between Greek and modern philosophies and how the human life became a mechanism of the State power and the politics, he establishes that: “for millennia man remained what he was for Aristotle: a living animal with the additional capacity for political existence; modern man is an animal whose politics calls his existence as a living being into question” (Agamben, 1998, p. 71). In conclusion, what Agamben wants to say is that in the modernity, the health and biological life became important national's resources, which represents that improve in the health of the citizens it is an improvement in the sovereign power. So, with this point of view, Agamben wants to indicate that the body [the human body] became a mechanism of the state: a weapon and a weakness!

This biopolitical theory, according to Agamben, had already been analyzed by Hannah Arendt when she wrote *The Human Condition*, but neither her and Foucault, according to Agamben, had ever connected their theory of biopolitics with the concentration camp and the Totalitarian states. Agamben also analyses that Foucault left his work unfinished, without answered a lot of questions that it's important to understand how

the biopolitical power influences the state's decisions. So, in his book, he proposes to unveil "this hidden point of intersection between the juridico-institutional and the biopolitical models of power." (Agamben, 1998, p. 11). He wants to demonstrate that meanwhile, the Greeks, Romans and the first rulers, measured their powers by its territorial conquest, in the Modern times, the power of a state it's measured by how many human bodies it can control.

It can even be said that the production of a biopolitical body is the original activity of sovereign power. In this sense, biopolitics is at least as old as the sovereign exception. Placing biological life at the center of its calculations, the modern State, therefore, does nothing other than bringing to light the secret tie uniting power and bare life (Agamben, 1998, p. 11).

From this analysis, Agamben introduces the idea of exception, which happens when the human life it is expressed by "his own bare life and, at the same time, maintains himself in relation to that bare life in an inclusive exclusion." (Agamben, 1998, p. 12). With this de human life it's a biopolitical organism in bare law space.

In this way, in the modern state's calculations, the human life indicates a bare life, a life of a *Homo sacer*, the sacred man, "who may be killed and yet not sacrificed" (Agamben, 1998, p. 12). A life that the body it's more important than the rights, which the biological life it's preserved but the real life with your fundamental rights doesn't matter:

An obscure figure of archaic Roman law, in which human life is included in the juridical order [*ordinamento*] solely in the form of its exclusion (that is, of its capacity to be killed), has thus offered the key by which not only the sacred tests of sovereignty but also the very codes of political power will unveil their mysteries. At the same time, however, this ancient meaning of the term *sacer* presents us with the enigma of a figure of the sacred that, before or beyond the religious, constitutes the first paradigm of the political realm of the West (Agamben, 1998, p. 12).

So, according to Agamben the main modern politic problem it's what Walter Benjamin indicates that the exception becomes the rule and not only:

The inclusion of *zoē* in the *polis*, [...] the fact that life as such becomes a principal object of the projections and calculations of State power. Instead, the decisive fact is

that [...] gradually [...] exclusion and inclusion, outside and inside, *bios* and *zoē*, right and fact, enter into a zone of irreducible indistinction. [...] The state of exception actually constituted, in its very separateness, the hidden foundation on which the entire political system rested (Agamben, 1998, p. 12).

The modern democracy system, in that way, was built on the state of exception bases, under “the bare life of the citizen, the new biopolitical body of humanity.” (Agamben, 1998, p. 13) which indicated that the human life will be protected - see the UN Declaration - but even with this juridical instrument permits that some *kind* of lives [the *homo sacer*] can be destroyed without punishment.

The Agamben’s philosophy tries to show that although all the standards that the French Revolution brings to the humanity – *liberté*, *fraternité*, and *égalité* – the human *biological* life still been a captured because remains as state property, that only the sovereign can decide.

Using the Schmitt’s definition of sovereignty that “sovereign is who decides on the state of exception” (Schmitt, 2005, p. 5), Agamben concludes that “the problem of sovereignty was reduced to the question of *who* within the political order was invested with certain powers, and the very threshold of the political order itself was never called into question.” (Agamben, 1998, p. 14). These theories developed by Giorgio Agamben (1998; 2005) are important to understanding how the state biopolitical machine undermine women's rights because the strength of power it is not anymore calculated by territorial dimensions but in population and body’s dimensions. And because women are *Homo sacer* their bodies are more valuable than their fundamental rights.

The physical territory of this political struggle over what constitutes women's human rights is women's bodies. The importance of control over women can be seen in the intensity of resistance to laws and social changes that put control of women's bodies in women's hands: reproductive rights, freedom of sexuality whether heterosexual or lesbian, laws that criminalize rape in marriage, etc. Denial of reproductive rights and homophobia are also political means of maintaining control over women and perpetuating sex roles and thus have human rights implications. The physical abuse of women is a reminder of this territorial domination and is sometimes accompanied by other forms of human

rights abuse such as slavery (forced prostitution), sexual terrorism (rape), imprisonment (confinement to the home), and torture (systematic battery). Some cases are extreme, such as the women in Thailand who died in a brothel fire because they were chained to their beds. Most situations are more ordinary like denying women decent education or jobs which leaves them prey to abusive marriages, exploitative work, and prostitution (Bunch, 1990, p. 7-8).

The main reason for these conclusions it is because women's reality it's always surrounding by a patriarchal culture that imposes to women a lot of rules - social, economic, political and biological that controls every single aspect of their lives. To clarify this idea, shows this excerpt described by Elisabeth Burgos-Debray (1984):

I remember that when we grew up our parents talked to us about having children. That's the time parents dedicate themselves to the child. In my case, because I was a girl, my parents told me: "You're a young woman and a woman has to be a mother." They said I was beginning my life as a woman and I would want many things that I couldn't have. They tried to tell me that, whatever my ambitions, I'd no way of achieving them. That's how life is. They explained what life is like among our people for a young person, and then they said I shouldn't wait too long before getting married. I had to think for myself, learn to be independent, not rely on my parents, and learn many things which would be useful to me in my life. They gave me the freedom to do what I wanted with my life as long as, first and foremost. I obeyed the laws of our ancestors (Burgos-Debray, 1984, p. 59).

This oppressive way of life is imposed on women when they still are young and remains for their entire life. It's constructed by culture and the society replicated decade after decade without making any reflection about how this can be abusive and painful. These arrangements are brought to the law and what it's understood as a father concern becomes a legal statement and if you disrespect them, would be consequences.

Just as an example of how this oppression happens, according to Charlotte Bunch (1990):

There is increasing documentation of the many ways in which being female is life-threatening. The following are a few examples: -Before birth: Amniocentesis is used for sex selection leading to the abortion of more female fetuses at rates as high as 99 percent in Bombay, India; in China and India, the two most populous nations, more males than females are born even though natural birth ratios would produce more females. - During childhood: The World Health Organization reports that in many countries, girls are fed less, breastfed for shorter periods of time, taken to doctors less frequently, and die or are physically and mentally maimed by malnutrition at higher rates than boys. -In adulthood: The denial of women's rights to control their bodies in reproduction threatens women's lives, especially where this is combined with poverty and poor health services. In Latin America, complications from illegal abortions are the leading cause of death for women between the ages of fifteen and thirty-nine (Bunch, 1990, p. 5-6).

These facts prove that the women lives are controlled and captured by the state and society. In some cases, they even have the right to born. Women are who may be killed and not yet sacrificed. But to argue all this and demonstrated the implications of the existence of the exception within the Rule of Law is not an easy job. This is a calculated difficulty, so as not to tarnish the very notion of the Rule of Law (Agamben, 2005). Harder it's found a way to reveal how women's rights have been violated even by the legal system.

Being aware from this difficulty, the strategy used, in this study, is to seek in the literature's genre life-narrative an exemplary context that allows the discussion and elucidates about the dangers of the practice of suspension of the Constitution provokes. Because at this moment when Constitution Amendment Project (PEC 181/15) with its Trojan horse is been sent to the Congress' vote, the time it's to a state of exception, not a declared one, but an undeclared, when the fundamental law that shapes the society needs and says that everyone is equal, the Brazilian Constitution, has been suspended because all that it promotes: the good of all, without prejudice of origin, race, **sex**, color, age and any other forms of discrimination are been neglected, when the decisions about women's rights has been taken without observing their right to choose: about their bodies, their lives, and their minds.

Because the legal solution that is appropriate when fundamental rights collided - in this case, the right to life of the fetus and right to a secure abortion - is to listen everyone involved, see Argentine and Ireland example, where *The Handmaid's Tale* became a protest symbol.

On July 25, 2018 a female group wearing the Handmaid's red clothes made a protest for abortion in Argentina. During the protest, under the rain, they read a support letter wrote by Margaret Atwood, that says that:

nobody likes abortion, even when safe and legal. It's not what any woman would choose for a happy time on Saturday night. But nobody likes women bleeding to death on the bathroom floor from illegal abortions, either. What to do? (The Associated Press, 2018).

In the same way, on May 25, 2018, a referendum was voted in Ireland to overturn the country's abortion bans by 66.4% to 33.6%. Ireland it's a Catholic country and these numbers reflex a new way of thinking – that promote dignity it's also a religious concern. One day before the referendum pro-choice campaigners in Dublin dressed up as handmaids.

But in the other hand, what often happens is that the female voice that calls for the liberation of abortion is not even called into question. The legislative debate is surrounding by men, mostly whites, and heterosexuals that decide about a question that does not concern about their bodies. The main cause that they ignore is legalizing abortion is to be pro-life, in favor of the life of the woman who clandestinely undergoes an abortion, just because the state denies her right.

For the purpose of to promote the debate about the women's rights, especially, the reproductive rights have been chosen in this study the novel *The Handmaid's Tale*, wrote by Margaret Atwood in 1985. A fictional and dystopian autobiography, which remains a lot of similarities to the current context when reproductive rights have been debated in a lot of countries, including Brazil.

5 DYSTOPIAN FICTION AND STATE OF EXCEPTION: THE NOVEL *THE HANDMAID'S TALE*

Even as already been elucidated in the introduction, this article uses the life story described in *The Handmaid's Tale* to debate the outlines of human life when the Constitution is suspended. In this way, this dystopian fiction will be able to reveal the dangers in the current Brazilian context that seek to eliminate women's rights, especially reproductive rights. The sensitivity of this study lies in the fact that sometimes it is necessary to resort to other forms of knowledge to understand how a legislative process or judicial process can generate much worse effects than those that, legally can be observed.

In this narrative, it is clearly stated that the Republic of Gilead was established after the suspension of the Constitution and that this only happens because of the massacre of the President and when an infiltration in the security system of the Congress occurs. Thus, the contextualization of the events narrated by Offred, refers to the life lived in the state of exception, when the law was suspended (Atwood, 2002).

Offred it's the name which June receive when she arrived at Republic of Gilead, the name it's composed by the possessive preposition "of" and the first name of her owner "Fred". In this way, the narrative proposed by Atwood in the novel *The Handmaid's Tale* confused past time when June was a free woman, and the present time, when she is a Commander's property. The author uses elements to mark the difference, with the things which have been taken from them: magazines, newspapers, work, ways of dressing, etc. These parallels of time and actions presented in Offred's narratives makes possible to understand the brutality by which women dignity and citizenship was subjugated in Gilead. The body anyway was maintained, especially the fertile one, but the soul, the knowledgeable structure of the human being, was violated, and there was no more dignity.

This attack that women suffer as soon as they arrived in Gilead when they lost their own name it's part of a "process of depersonification drastically affects the core of women's most personal rights (Lima Júnior; Hogemann, 2019, p. 76). With this they lost the condition of subject of rights and their moral agent's condition, because "by the name one person

is identified and differentiated from the other. [...] The loss of this marker sanctions a symbology of power and domination, [...] becomes detached to become an object.” (Lima Júnior; Hogemann, 2019, p. 77). And this horrible transformation is vital to Gilead “with a view to their use as a reproductive matrix.” (Lima Júnior; Hogemann, 2019, p. 85).

Although, the attack to women’s rights are more latent than we can imagine and in Gilead is promote the exclusion between women which is manifested even in the way of clothing: red for the Handmaids, blue for the Wives, faded green for the Marthas and mixed colors for the Econowives, which in addition to segregating women according to their values in this society, inform what each body represents (Atwood, 2002). They are castes: castes of the female gender, social castes, corporeal castes and castes of power. And that it’s not so different from now, is it?

Besides this, the conception ritual realized by handmaids, Commandants and their wives shows us that even handmaids and wives belongs to different social status, both as women are in the same place in the “role of moral subalternity (mother and reproductive handmaid) to the marital (and political) will, disregarding its autonomy as a person.” (Lima Júnior; Hogemann, 2019, p. 86). Show to us that women in general are less than men in Gilead and what divide them is the reproduction.

The Handmaid’s tale also talks about other kinds of human dignity attacks and not only about women. In this dystopian fiction created by Atwood (2002), intellectuals, lawyers, and activists are executed and placed, hanged, in a Wall, symbolizing what happens when abortion, gender diversity and religious peaceful coexistence are manifested and defended. Regardless of, in the past, these flags were raised, when none of these actions were illegal. Now raised these flags can costs lives. Addiction to this, in the dystopian reality of *The Handmaid’s Tale* there is no judgment, there is no information and there is no freedom (Atwood, 2002).

The narratives of June, now named Offred, enunciates the dangers behind the veiled restrictions and impositions of now. When the decisions were founded by the strict rigor of the law, by the good customs, by the traditional Brazilian’s family. These were the first steps towards to Gilead.

The novel created by Atwood (2002), under the life-narrative fiction of Offred imposes the needs to reflect about on the way to go, in the moments of “the sacredness of life, makes it killable, without committing murder.” (Agamben, 1998, p. 48) the time when the human body it’s more important than the human rights and dignity when the biological life remains but the social, political and ideological life it’s annihilated.

Ignorance and apathy in cases and situations of human rights violations that are distant from us or touching only other lives are the fertile ground for the permanent exception flourished. Talking about a time before Gilead, Offred says:

There were stories in the newspapers, of course, corpses in ditches or the woods, bludgeoned to death or mutilated, interfered with as they used to say, but they were about other women, and the men who did such things were other men. None of them were the men we knew. The newspaper stories were like dreams to us, bad dreams dreamt by others. How awful, we would say, and they were, but they were awful without being believable. They were too melodramatic, they had a dimension that was not the dimension of our lives. We were the people who were not in the papers. We lived in the blank white spaces at the edges of the print. It gave us more freedom. We lived in the gaps between the stories (Atwood, 2002, p. 49).

This fiction narrative reminds that when freedom depends on no others’ freedom, it is when everyone becomes an agent of the exception. When the society allows that biopolitics penetrated another's body, as long as it is not yours, the path becomes without a return. In a certain moment, not too far away, your body will also become an important government tool. This is what the novel talks about when common citizens had their freedom and their bodies robbed. The context proposed by Atwood (2002) in her dystopic narrative it is the endless war which freedom, information and the right to choose are transforming in the enemy and good people starts to ask for their ban.

The bodies become docile transforming in a government instrument used for the overall good, and it’s not long yours! (Agamben, 1998). This is

biopolitics *par excellence*, and if what happened with others live have not yet convinced you of this, perhaps and hopefully, the fiction of dystopian life-narrative of Offred, can. This is how life-narratives and human rights are connected and through another narratives or trauma narratives lives can be change and rights can be promoted.

Because the way which the women's and reproductive rights are being dealt in Brazil and in other places in the world is nothing different than what happened with the handmaid's and who is hanged at the Gilead's Wall. All forms of inequality between men and women are a reference to this exception, which includes excluding.

As an example, which how this inclusion/exclusion happens it is possible to see when we analyze the wage inequality. Because the women's right to work out its preserves but the wage must be lower. The women are included in the labor system but only if they have a lower wage. So, we can't say that women avoid working, because the Constitution affirmed that they are equal to men, so they also can work, but this right only exists if they labor force are unequal. It is the same to said you [women] have the same right just because we [men] give this to you, but don't be so happy, we [men] still have the better jobs and better wages.

The lower wage example also it's represented in *The Handmaid's Tale*. June before being Offred had her own salary confiscated. The first action against women in the novel was to remove their jobs and delegated their money to their husbands or fathers. Luke, June husband, was nominated as her guardian and could access and control her money, which is fruit from her work. This mandatory statement represents in the novel reflect a general reality. In how many situations independent and successful women are exposed to the need for a tutor? How many times society imposes standards that aim to establish that to be an accomplished woman, she needs to have a partner at her side? The exclusion begins with the ideological models, planted in the minds, which sometimes can be seen jokingly, but that, in an extreme degree, become Byzantine. Willing to teach to not transgress (Atwood, 2002).

In a report made by a Gilead's history expert, it is established how the control of these fertile women, who formerly free and independent, was possible and how now they were held to such violations. So, he tells that such control was performed by the female control agency known as the *Aunts*:

That the best and most cost-effective way to control women for reproductive and other purposes was through women themselves. For this there were many historical precedents; in fact, no empire imposed by force or otherwise has ever been without this feature: control of the indigenous by members of their own group. In the case of Gilead, there were many women willing to serve as Aunts, either because of a genuine belief in what they called "traditional values," or for the benefits they might thereby acquire. When power is scarce, a little of it is tempting. There was, too, a negative inducement: childless or infertile or older women who were not married could take service in the Aunts and thereby escape redundancy, and consequent shipment to the infamous Colonies, which were composed of portable populations used mainly as expendable toxic cleanup squads, though if lucky you could be assigned to less hazardous tasks, such as cotton picking and fruit harvesting (Atwood, 2002, p. 220).

So, for transforming any society in a Gilead it just needs to create spaces and rules that demark differences between people and give to a small group the control for the others' lives. This reminds what it's happening in Brazil, when a small group, that in theory represents what the people want, the Brazilian Congress is trying to do when the Constitution Amendment Project 181 that refers only about maternity leave in case of preterm birth receives a Trojan horse that tries to extinguish all the rare possibilities that allow abortion in the Brazilian legal system. Situations like this are the initial push that brings democratic societies to become Gilead and this is what we need to fight against.

6 PATRIARCHAL STANDARDS IN 2019

With the analyses promoted by the novel *The Handmaid's Tale*, another reflection about women human rights can be made. Besides the Brazilian Constitution Amendment Project, the context emerging in the

United States of America it's also dangerous. In the same conservatory environment, a lot of states are reviewed their laws about abortion.

Since 1973, with the *Roe v. Wade* precedent the USA juridical reality is that there is a constitutional right to access abortion in a legally way. But this access only can occur observing these statements: approximately the end of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician. For the stage subsequent to approximately the end of the first trimester, the State, in promoting its interest in the health of the mother, may, if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health. For the stage subsequent to viability the State, in promoting its interest in the potentiality of human life, may, if it chooses, regulate, and even proscribe, abortion except where necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.

With these statements, the states can legislate how it'll finance and permit abortion access. So, the exercise of this constitutional right depends on how each state will support it if it will be providing or not public financial, what pre-requirements will be necessary and other rules. This juridical possibility sometimes represents a real negation of this right, what was confirmed by *Maher v. Roe* (1977) precedent:

Despite the Court's sensitivity to practical obstacles to the exercise of abortion rights-including its intolerance of regulations that would significantly drive up the cost of an abortion – it has held that government may refuse to pay for abortions, even if they are medically necessary to preserve the mother's life or health. Even if the state pays for all other medical treatments, and in particular funds all health care incident to childbirth, the state needs to pay for the far less expensive abortion procedure. Although the state's interest in encouraging childbirth is not compelling until after viability, the Court has held that it is nonetheless 'a significant state interest existing throughout the course of the woman's pregnancy.' The state can, therefore, make 'a value judgment by the allocation of public funds' (Tribe, 1988, p. 1345).

Nowadays, since President Donald Trump was elected the *Roe v. Wade* precedent faces another reverse with an argued possibility to be overturned. This possibility became more oncoming with the nomination of Brett Kavanaugh as a Supreme Court Justice, who has conservatory views about abortion and homosexual marriage. One indication of his opinion was his dissent in Louisiana abortion clinic case.

On 15, May 2019 another fight was lost, when the state of Alabama voted to permit that doctors who perform abortion procedure under the *Roe v. Wade* statements could go to prison for 99 years. This new law doesn't offer an exception for rape or incest victims based in a pro-life argument. This legislative movement became stronger after Kavanaugh dissents and has been followed by other states than Alabama such as in Mississippi, Kentucky, and Ohio based in 'a fetal heartbeat in the womb' premise. The increase of this legislative ban abortion is an act to force the Supreme Court to overturn *Roe v. Wade* precedent and accomplish the Donald Trump promises campaign.

This oncoming overturn from *Roe v. Wade* precedent confirms what Laurence H. Tribe (1988) already indicated and it goes in the same way of what it is supported in this paper:

[...] the issue of individuals autonomy-of control over one's body and reproductive destiny-is in turn a question of power, pure and simple. *Roe v. Wade* was less a judgment about the relative importance of maternal liberty and fetal life, than it was a decision about who should make judgments of that sort. [...] Abortion has not been perceived by the Court as involving the intensely public question of the subordination of women to men through the exploitation of pregnancy. [...] Such governmental choices require women to sacrifice their liberty in order to enable others to survive and grow in circumstances likely to create lifelong attachments and burdens. A woman forced by law to submit to the pain and anxiety of carrying, delivering, and nurturing a child she does not wish to have is entitled to believe that more than a play on words links her forced labor with the concept of involuntary servitude. To give society-especially a male-dominated society-the power to sentence women to

childbearing against their will is to delegate to some a sweeping and unaccountable authority over the lives of others. Any such allocation of power operates to the serious detriment of women as a class, given the myriad ways in which unwanted pregnancy and unwanted children burden the participation of women as equals in society. Even a woman who is not pregnant is inevitably affected by her knowledge of the power relationships thereby created (Tribe, 1988, p. 1352-1354).

This analysis indicates that Agamben's theory about *Homo sacer* and state of exception it is what justifies why women are facing this battle for the right to have access a legal abortion in some many places. And this analysis only can unify women to fight for their human rights when novel such as *The Handmaid's Tale* become global. Because sometimes the negation of fruition of some rights it isn't clear to all women or to all people. A lot of women, before the novel became famous as a TV show, even though how the right to do a legal abortion could be so vital in the promotion of women rights. The novel became a symbol of resistance because expos how women rights can be denied by the State and how women bodies can be captured by the State and used as a sovereignty tool. With a dystopic fictional novel, Margaret Atwood can save lives and the juridical system needs to see how the other fields can assistance human rights effectiveness.

7 CONCLUSION

Margaret Atwood's novel contributed to discusses human rights in a context of the exception. A life-narrative, in a dystopian fiction novel, that alert about the dangers of the biopolitical modern power when the human body is more important than human rights.

This dystopian fiction narrative became distinguished and non-fiction when the Agamben's philosophy it is introduced because imposes to reflect: *why women can't choose about their own body?* And the answer is: because women are *Homo sacer*.

The Constitution Amendment Project 181 that tries to avoid any kind of abortion reflects the idea that in Brazilian society men can choose about women's body when by the law they said that they can't abort. The

first decision in Gilead when the Constitution was suspended was to remove women's legal rights. So, using the Literature to analyze about this condition, the Atwood's dystopian fiction novel helps to make some reflections about how Brazilian law's and political decisions try to control women.

Recently, the neighbors from Argentine made an incredible effort when their Lower House decides to legalize abortion, even the law project has been rejected by the Senate. In other hands, Catholic Ireland made an advance and legalize. But in Brazil and in the USA, the reality it is in the opposite direction because this Constitution Amendment Project insists to remove the rare cases in which abortion is possible and now the important *Roe v. Wade* precedent is under attack. The reality described in *The Handmaid's Tale* is not so far from ours and that is a need to pay attention to this: women are living in strange times and the biopower still catching them.

REFERENCES

AGAMBEN, Giorgio. *Homo Sacer: o poder soberano e a vida nua I*. Belo Horizonte: Editora UFMG, 2007.

AGAMBEM, Giorgio. *Estado de exceção*. Trad. Iraci D. Poleti. São Paulo: Boitempo, 2004.

ATWOOD, Margaret. *The Handmaid's Tale*. Trad. Ana Deiró. Rio de Janeiro: Rocco, 2006. [e-book].

BUNCH, Charlotte. Women's Rights as Human Rights: Toward a Re-Vision of Human. In: BUNCH, Charlotte; CARRILLO, Roxanna. *Gender Violence: A Human Rights and Development Issue*. Center for Women's Global Leadership. Available at: <http://www.cwgl.rutgers.edu/docman/cwgl-publications-video/285-gender-violence-eng/file>. Access: 15 July 2018.

BURGOS-DEBRAY, Elisabeth. *I, Rigoberta Menchú: An Indian Women in Guatemala*. London: Verso, 1984. 274p.

JOLLY, Margaretta; JENSEN, Meg. *We Shall Bear Witness: Life Narratives and Human Rights*. Madison: University of Wisconsin Press, 2014. [e-book].

LIMA, Carla Sales Serra de; CHAVES, Glenda Rose Gonçalves. Dom Casmurro de Machado de Assis: uma interface entre direito e literatura. *Revista Ética e Filosofia Política*. Juiz de Fora v. 2, n. 14, p. 151-163, out. 2011. Available at: http://www.uff.br/eticaefilosofia/files/2011/10/14_2_lima_chaves_10.pdf. Access: 22 June 2016.

LIMA JÚNIOR, Oswaldo Pereira de; HOGEMANN, Edna Raquel. O Conto da Aia: a (des)personalização como dimensão epistêmico-moral fundadora da condição de sujeito de direito da mulher. *Anamorphosis – Revista Internacional de Direito e Literatura*. Porto Alegre, v. 5, n. 1, p. 69-93, jan.-jun. 2019. Available at: http://rdl.org.br/seer/index.php/anamps/article/view/479/pdf_1. Access: 8 May 2020.

MORAIS, Clarice Paiva; SOUTO, Luana Mathias. Decisões judiciais constitucionais: hermenêutica, cultura e retratos da sociedade brasileira. In: SERRANO, Antonio Salamanca; VASCONCELOS, Fernando Antônio de. (coord.). *Cultura jurídica e educação constitucional*. Florianópolis: CONPEDI, 2018, p. 78-97. Available at: <https://www.conpedi.org.br/publicacoes/5d6x83my/ro2i8skx/Pdco12Wt43maDKU.pdf>. Access: 8 May 2020.

PÊPE, Albano Marcos Bastos. Direito e literatura: uma intersecção possível? interlocuções com o pensamento waratiano. *Anamorphosis – Revista Internacional de Direito e Literatura*, Porto Alegre, v.2, n. 1, p. 5-15, jan.-jun. 2016. Available at: http://rdl.org.br/seer/index.php/anamps/article/view/207/pdf_1. Access: 8 May 2020.

SCHAFFER, Kay; SMITH, Sidonie. Conjunctions: Life Narratives in the Field of Human Rights. *Biography*, Honolulu, v. 27, n. 1, p. 1-24, 2004. Available at: <http://muse.jhu.edu/journals/bio/summary/v027/27.1schaffer.html>. Access: 15 July 2018.

SCHMITT, Carl. *Teologia política*. Trad. de Luiz Moreira. Belo Horizonte: Del Rey, 2006.

THE ASSOCIATED PRESS. 'Handmaid's Tale' March for Argentine Abortion Rights. *The New York Times*, July 25, 2018. Available at: <https://www.nytimes.com/aponline/2018/07/25/world/americas/ap-It-argentina-handmaids-tale-protest.html>. Access: 28 jul. 2018.

TRIBE, Laurence H. *American Constitutional Law*. 2 ed. New York: The Foundation Press, 1998. 1435p.

TRINDADE, André Karam; BERNST, Luísa Giuliani. O estudo do Direito e Literatura no Brasil: surgimento, evolução e expansão. *Anamorphosis – Revista Internacional de Direito e Literatura*. Porto Alegre, v. 3, n. 1, p. 225-257, jan.-jun. 2017. Available at: <http://rdl.org.br/seer/index.php/anamps/article/view/326/pdf>. Access: 9 May 2020.

UNITED NATIONS. *The Universal Declaration of Human Rights*. 1948.
Available at:
<https://www.ohchr.org/EN/UDHR/Pages/Language.aspx?LangID=por>.
Access: 20 May 2020.

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