



Caregiving from Feminist Paradigms: Social Reproduction and Ethics in Regulations and Public Policies

Cuidados desde paradigmas feministas: la reproducción social y la ética en la normativa y políticas públicas

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Abstract

The purpose of this article is to analyze the treatment of caregiving at the level of international law, comparative law and public policies in the Latin American region, in light of the feminist paradigms that have sought to conceptualize and take charge of caregiving in a broad sense. To this end, feminist theories that approach it from the perspective of social reproduction and the ethics of care will be presented, and reference will be made to the incorporation of caregiving in democracy and through the transformation of concepts of citizenship. Then, the international and national frameworks and public policies referring to caregiving will be analyzed, considering the feminist paradigms mentioned above. It is concluded that in practice, elements of both paradigms have been incorporated, both from the theory of social reproduction and from the ethics of care. At the same time, the absence of the incorporation of elements linked to feminisms of the commons, ecofeminism and post-humanist feminisms is recognized.

Keywords: *Caregiving; Feminist theories; Ethics of care; Social reproduction.*

Resumen

El presente artículo tiene como objetivo analizar el tratamiento de los cuidados a nivel de derecho internacional, derecho comparado y políticas públicas en la región latinoamericana, a la luz de los paradigmas feministas que han buscado conceptualizar y hacerse cargo de los cuidados, en un sentido amplio. Para ello se expondrán las teorías feministas que se aproximan desde la reproducción social y desde la ética del cuidado y se hará una referencia a la incorporación de los cuidados en la democracia y a través de la transformación de conceptos de ciudadanía. Luego, se

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analizarán los marcos internacionales, nacionales y políticas públicas que han hecho referencia a los cuidados considerando los paradigmas feministas mencionados anteriormente. Se concluye que en la práctica se han incorporado elementos de ambos paradigmas, tanto desde la teoría de la reproducción social como desde la ética de los cuidados. Se reconoce a su vez la ausencia de la incorporación de elementos ligados a feminismos de lo común, ecofeminismos y feminismos poshumanistas.

Palabras clave: *Cuidados; Teorías feministas; Ética del cuidado; Reproducción social.*

I. INTRODUCTION

The crisis of reproduction of life - denounced for years by feminisms - is today unquestionable. The climate emergency, the global crisis of caregiving and the increase in patriarchal violence have forced most disciplines to question the argumentative framework that has historically placed productivity - and capital accumulation - at the center of social problems.

Analyzing the crisis of reproduction of life today implies analyzing the crisis of caregiving. This crisis deepened with the pandemic, highlighting the injustices behind the current social organization of caregiving. In particular, it made visible how fragile and vulnerable life is and how much caregiving is required to sustain it; the excessive workload experienced by women in caregiving, who in the region spend three times more time on unpaid domestic and caregiving work than men, the growing gender inequalities in lower-income households; In addition, as the health systems are under pressure, many of these caregiving tasks are transferred inside the home, increasing pressure on the time dedicated to these tasks, particularly for groups in situations of dependency.¹

The aim of this article is to account for the coexistence of different models or paradigms on caregiving from feminist theories and the recognition of their influence on the international agenda, constitutions and regional regulations, as well as in various public policies. In order to do this, first of all, we will point out what has been understood by caregiving from the feminist perspective. Reference will be made to elaborations that understand caregiving as the basis of social reproduction and to those that relate it to ethical theories. Secondly, we identify approaches determining how caregiving should be incorporated into political systems and democracies, transforming fundamental notions of these, such as the notion of citizenship. Thirdly, we analyze the influence and incorporation of the previous currents in practice, i.e., how caregiving has been incorporated at the international and domestic levels, what elements have been considered and in what form, and who supports caregiving. Finally, and with no intention of setting up a particular normative notion of caregiving, the conclusions of the article are presented, which show the influence of feminist paradigms in the normative order of caregiving, as well as the great debts, such as the lack of proposals from feminisms of the commons, ecofeminism and post humanist feminisms.

II. CAREGIVING AND FEMINIST THEORIES

Definitions of caregiving are multiple and varied in social sciences and feminisms. One of the most common classifications indicates that they gravitate between two poles.² On the one hand, one referring to caregiving as a concrete activity and task for the maintenance of daily life, constructed mainly on the basis of the elaborations of feminist economics and Marxist feminism.³

¹ ECLAC (2020b), p. 2.

² VEGA & GUTIÉRREZ (2014).

³ DALLA COSTA & JAMES (1972); PÉREZ (2004); CARRASCO (2006).

And, on the other hand, one relating to caregiving as ethical-affective dispositions and motivations, born in the warmth of reflections in psychology⁴ and the sociology of emotions.⁵ However, although the classification may be - at first sight - useful, there are close links between both definitions, and there are currents and disciplines moving between both poles, such as ecofeminism⁶ or philosophy and ethic-politics.⁷

This paper will use a definition of caregiving broad enough to incorporate the heterogeneous practices and dimensions that compose them, bringing together some of the valuable contributions that have emerged over at least five decades of debate. While it is impossible to model an exact genealogy of caregiving, there are significant aspects that can be traced in the history of this field of research.

Feminist economics studies are often situated at the origins of this genealogy. Starting from its questioning of the foundations of classical economics, due to the invisibilization, marginalization and naturalization of social reproduction in economic analysis,⁸ the notion of domestic and caregiving work and social reproduction began to be modeled, as well as the discussion between wages, reproduction and gender. The contributions of this field of research characterized the domestic and caregiving tasks performed by women within the household as exploited labor,⁹ analyzing in depth the notion of work, gender and racial division of work, its role in the accumulation of capital and its differentiated consequences for women. In the midst of an intense debate in academia and the feminist movement in the 1960s and 1970s,¹⁰ important notions were developed that transcended the discussion within economics. For example, the concept of reproduction was clarified, distinguishing biological reproduction from the reproduction of the labor force, and both from the general process of social reproduction,¹¹ conceived as “a complex of activities and relationships through which our life and our working capacity are reconstructed on a daily basis”.¹² Consequently, from these elaborations, within the tasks socially necessary to replenish the daily life force one can name those related to the organization and management of domestic life that aim to provide clean clothes, a plate of food and even a conversation or a hug. In this sense, for feminist economics caregiving is a central

⁴ GILLIGAN (1982).

⁵ HOCHSCHILD (1979).

⁶ PULEO (2009); HERRERO (2015); NAVARRO (2021).

⁷ TRONTO (1993); BUTLER (2010); GIL (2013).

⁸ Feminist reflection in the 1970s was led by socialist feminism. From that position they questioned and pushed the limits of Marxism, which up to that time did not consider the sphere of the home, family, and the production of immediate life as a socially and politically significant activity, but rather as a product of the natural division of labor, a mere extension of instinct and, in some cases, of the ideology of the socialist ideology. (VEGA, 2014, p.10).

⁹ CARRASCO (2019).

¹⁰ Federici in “Revolución en punto cero” (FEDERICI (2012)), notes that between 1974 and 1980 she was involved in the organization of the Wages for Housework campaign. The main objective was to demonstrate the fundamental differences between reproductive work and other kinds of work; to unmask the process of naturalization to which, due to its unpaid status, it had been subjected; to show the specific capitalist function and nature of the wage; and to demonstrate that historically the question of “productivity” has always been related to social power struggles.

¹¹ VEGA (2019).

¹² FEDERICI (2013) p. 21.

element,¹³ an invisible engine that makes social reproduction possible.¹⁴ In this way, a profound critique was made of the fact that the most widespread interpretations of Marxism focused on production and not on reproduction, which is fundamental to life itself and its continuity.

At the other pole, there are the contributions concerning the ethics of care, that is, the elaborations on care as ethical-affective dispositions and motivations. One of the most relevant founding authors in this pole is Carol GILLIGAN, author of *In a Different Voice* (1982), who, after studying the shaping of gender identities and the way people socialize based on their proximity or distance to life-sustaining tasks, described care as a form of ethical relationship with the world based on affective relationships and bonds, attention to emotions and the undertaking of responsibility for the needs of others.¹⁵

The ethics of care, proposed by GILLIGAN, influenced legal discussions in the 1980s and 1990s in the Anglo-Saxon sphere. The contribution of this author was particularly relevant for feminist debates on law, justice and morality. In her elaborations, she not only discussed psychological categories, but also the foundation of moral development on which notions of justice had been based until then.¹⁶

The strongest criticism of the ethics of care theory came from feminists who accused it of homologizing the voice of women to the voice of white, heterosexual, professional women¹⁷ and of contributing to the essentialization of characteristics that would be proper to women. Thus she also received harsh criticism from radical feminists, as can be seen in the work of Catharine MACKINNON, for whom care has only a subordination value:

Women are said to value caregiving. Perhaps this is so because men have valued women according to the caregiving they offer. It is said that women think in relational terms. Perhaps women think in relational terms because their social existence is defined in relation to men (...).¹⁸

Although most of the literature reviewed so far has been generated in the global North, there is an interesting debate on caregiving in Latin America, as well as in other non-Western geographies, in its own keys and in relation to other concepts such as the sustainability of life or the notion of interdependence. The contributions of anti-racist and anti-colonial feminists, who have highlighted the diverse nature of the production-reproduction link, as well as the impossibility of thinking of the latter in a uniform way,¹⁹ as often postulated by liberal feminisms, are also crucial.

III. INCORPORATION OF CAREGIVING INTO STATE STRUCTURES AND DEMOCRACY

Every society has a way of managing, providing and distributing caregiving. Who should care, how they should care, how these tasks are socially valued, the conditions under which they are exercised, and even who deserves to be cared for. The concept of “social organization of caregiving” has been coined to indicate, in particular, the way in which a political community distributes this activity among the State, the family, the market and community organizations. As

¹³ Although we will not delve into this debate on this occasion, it is important to point out that criticisms have arisen both of the link between wages and the production of labor power and of the very idea of maintaining the distinction between production and reproduction. (CARRASCO, 2013; PÉREZ OROZCO, 2014).

¹⁴ DRAPER (2018), p. 185.

¹⁵ LIEDO (2022).

¹⁶ BODELÓN (2010).

¹⁷ See the criticism of NICHOLSON (1983).

¹⁸ MACKINNON (1995), p. 106.

¹⁹ RAZAVI (2011).

RAZAVI puts it, through the figure of the caregiving diamond, we can represent how caregiving is provided by different actors, which makes it possible to visualize the architecture through which care services are provided.²⁰ But thinking about caregiving implies not only observing the way in which it is distributed, but also considering the keys in which the reproduction of human and non-human beings, ecosystems and communities develop - or not - in the capitalist system and in its forms of the political.

Therefore, as Joan TRONTO points out, for us to speak of a revolution of caregiving, it is not enough to transform certain structures, but it must be accompanied by a revolution in all political, social and cultural institutions.²¹ For this author, there are three elements of the democracy of caregiving: redefining democracy itself, reorganizing the responsibilities of caregiving and using democratic means to adopt caregiving solutions. With regard to the first element, TRONTO states that democracy should be understood as a way of allocating care responsibilities in a society in a fair manner that is consistent with human rights. This idea is aligned with that proposed by GIL in “*¿Cómo hacer de la vulnerabilidad un arma para la política?*”, since, in short, incorporating caregiving and interdependence challenges us to question how we organize life in common in a society and find mechanisms with which to procure a livable life.²² These proposals invite us to radically change our understanding of politics and to rethink, on the one hand, how, who assigns and how caregiving responsibilities and, on the other hand, what and who deserves to be cared for.

Regarding the reorganization of caregiving responsibilities, which fall disproportionately on women, especially if they are precarious, racialized and migrant women, TRONTO proposes to assume that these responsibilities correspond to all people, as it is recognized in terms of feminist economics that we are not rational and autonomous beings but interdependent.²³ This vision changes our image of how we live in the world and how we approach caregiving. Especially if we also incorporate a notion of interdependence beyond the human or eco-dependence. In this sense, the feminist Amaia PÉREZ-OROZCO points out the following:

Life is vulnerable and precarious, so it does not exist in a vacuum and does not go forward if it is not taken care of; life is possible, but it does not happen always and in every circumstance (...) The question is how we organize ourselves in common to make life happen and how we deal with that interdependence.²⁴

This understanding does not imply neglecting the obligations or commitments that states must assume to meet caregiving needs, but rather to think of mechanisms that together with social services can enhance the allocation of collective responsibilities in caregiving.²⁵

Finally, TRONTO points out the use of democratic means to reach care solutions, since caregiving often expresses asymmetrical relationships, making it necessary to limit hierarchies, encourage the participation of all people and recognize us as fragile individuals and bodies.

It is also necessary to problematize the notion of citizenship in modern states, insofar as this construction has been made in sexual terms “converting not only women, but also men, in their respective citizen roles, into its focus of attention”.²⁶ In this sense, the sexual division of work based on binarism and hierarchy of public/private, production/reproduction, constitutes

²⁰ RAZAVI (2007).

²¹ TRONTO (2013), pp. 6-7.

²² GIL (2013).

²³ ENGLAND (2004), p. 71.

²⁴ PÉREZ-OROZCO (2014), p.4.

²⁵ VIVALDI *et al.* (2022).

²⁶ RODRÍGUEZ (2017), p. 144.

the construction of citizenship.²⁷ To overthrow the above, it is not enough to deconstruct gendered citizenship in the public/political space (parity democracy), but there is a need to transform the domestic by redefining these categories, as proposed by various authors through the concept of caregivingship²⁸ (*cuidadanía*) which does not imply a new status based on the acquisition of greater rights, but a transformation of political and social life, through a society that places caregiving at the center and recognizes the interdependence.²⁹ In this sense, RODRÍGUEZ argues that the language of rights - meaning only a greater incorporation of rights into an already constituted system - is exhausted and we have reached the limit of its capacity to impact and transform gender relations. What is required, for this author, is to transform the model and paradigm from which we constitute ourselves, that is, to move from a model of citizenship to one of *caregivingship*,³⁰ assuming the interdependence and relational nature of all living beings, in the terms of the ethics and politics of care, that is, as moral values referring to solidarity and caring, not only as social reproduction but as an organizing principle of society that considers the affective and the ethical dimensions, not only the productive ones.³¹

To make this proposal more complex, it is important to add that the notion of citizenship has not only been realized in generic terms, but it also has specific contours of “race”, class and sexuality. In this sense, we cannot ignore, for example, the racial division of labor, global caregiving chains and their implications in the conception of citizenship, even more so at a time when anti-migration discourses are beginning to have greater visibility and acceptance, i.e., incorporating the power relations present in theories of social reproduction. Following this line, it is worth recalling the notion of *cuidatoriado* by María de los Ángeles Durán, who appeals not only to recognize caregiving as part of the social structure, but also includes *cuidatoriado* as a political and social category, such as the proletariat, and seeks to account for the structural relations between caregivers and cared-for.³²

Therefore, the incorporation of caregiving in a broad sense in the State should theoretically include an ethical and political aspect that recognizes vulnerability and interdependence as central and therefore fosters moral elements of solidarity and affection, but at the same time not ignoring the power relations that are currently present in society.

IV. MODELS AND PARADIGMS OF CAREGIVING SYSTEMS AT THE INTERNATIONAL AND NATIONAL LEVEL

The above currents and models have influenced, to a greater or lesser extent, the development of state commitments, the creation of specific regulations regarding caregiving and the design and implementation of public policies. Each of these paradigms contains elements that influence practice. These influences at the various levels will be discussed below.

4.1 International framework: recognition in international treaties and conferences

At the international level, the caregiving dimension has been addressed in conferences, conventions, declarations and treaties, although not always expressly or under this nomenclature. Are caregiving not part of the right to life with dignity, food, education and housing? If we consider domestic and caregiving tasks as work, are they not already regulated by the covenants

²⁷ Another relevant criticism to the concept of citizenship has emerged from the field of migrant and racialized persons activism, that has pointed out that human rights universalism is challenged as the quality of a person is no longer enough as its assumption.

²⁸ JUNCO *et al.* (2004); PÉREZ OROZCO (2006), p. 30.

²⁹ PÉREZ OROZCO (2006), p. 31.

³⁰ RODRÍGUEZ (2010), p. 98.

³¹ DOWLING (2021), p. 45

³² DURÁN (2018), p. 38.

and treaties that enshrine the right to work? In principle, we answer that, yes, caregiving, before its recognition as an autonomous right, was part of the *corpus* of human rights. PAUTASSI explains, in this sense, that although the International Human Rights Treaties and Covenants have not included the “right to care and self-care”, it can be affirmed that it is incorporated in accordance with the provisions of each of the social rights included.³³

The author reaches this conclusion based on the methodology of the rights-based approach:

It was possible to identify in the corpus of human rights whether there was express recognition of care activities, whether in the Treaties or through the interpretative work carried out by the Committees of the main human rights covenants or other bodies of the system, as well as in the constitutional guarantees in the countries that have recognized care as having constitutional hierarchy.³⁴

However, in addition to their identification based on the methodology of the rights-based approach, there have been explicit references to caregiving that we are interested in highlighting in this presentation. One of the first mentions of caregiving is the reference in the Universal Declaration of Human Rights, which, like the Convention on the Rights of the Child (1990), the Convention on the Rights of Persons with Disabilities (2006) and the Inter-American Convention on the Protection of the Human Rights of Older Persons (2015), shares the recognition of caregiving obligations for parents or the State with respect to particular groups. The first declaration does so in relation to motherhood and childhood in its Article 25.³⁵ The second, by ensuring children and adolescents the “care” necessary for their well-being in its Article 3.2. The Convention on the Rights of Persons with Disabilities places emphasis on who provides care, with the aim of preventing exploitation and abuse, as well as ensuring access to care services. And finally, the Convention on Older Persons, which defines caregiving as a principle and also as an obligation for States, by establishing the duty to implement comprehensive caregiving systems with a gender perspective, being the first binding human rights instrument that recognizes the right to care as such.³⁶

On the other hand, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), although it does not expressly refer to caregiving, tangentially addresses caregiving by recognizing in Article 5.b maternity as a social function and acknowledging the common responsibility of men and women in relation to the development of children. In turn, the preamble recognizes that the role of women in maternity should not be a cause of discrimination and establishes joint parental responsibility between men and women, as well as with society as a whole,³⁷ through the social services guaranteed by the State.

³³ PAUTASSI (2007), p. 40.

³⁴ PAUTASSI (2007), p. 40.

³⁵ Article 25 of the Universal Declaration of Human Rights: 1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. 2. Motherhood and childhood are entitled to special care and assistance. All children, born of marriage or out of wedlock, are entitled to equal social protection.

³⁶ PAUTASSI (2018), p.733.

³⁷ Thus, in Article No. 11 point 2 paragraph c, it explicitly states as the role of the states: “To encourage the provision of the necessary social support services to enable parents to combine obligations to the family with the responsibilities of work and participation in public life, especially by encouraging the creation and development of a network of services intended for the care of children.”

Finally, Convention 156 of the International Labor Organization (ILO) of 1981 recognizes that workers should exercise caregiving as part of their family responsibilities,³⁸ establishes that States should adopt all appropriate measures to create equality of opportunity and treatment between men and women workers; develop or promote community services, public or private, for child and family care; and, among others, consider the needs of workers with family responsibilities in planning.³⁹

Therefore, it can be concluded from this brief review, first, that caregiving has been incorporated into International Human Rights Law as an autonomous human right. Although PAUTASSI's position is shared, it was previously incorporated into the *corpus* of human rights through the right to life with dignity, to adequate food and other related rights.⁴⁰ And, therefore, from the framework of rights granted by the International Human Rights System, it is possible to promote instances of monitoring and enforceability to each of the States. Second, although the explicit recognition of the right to care as such is a step forward, it is still associated with special protection groups such as children and adolescents, older adults and persons with disabilities in a situation of loss of autonomy. Thirdly, caregiving continues to be preferentially rooted in families, which implies in most situations the exclusive and individual assignment of caregiving to women. Thus, the States are responsible only in a subsidiary and focused manner for those families living "in situations of poverty". Fourth, duties of parental co-responsibility have been established, to a lesser extent of social-state co-responsibility and even more marginally of community co-responsibility, thus ignoring the contributions of the feminisms of the commons that affirm that community care as a promising political horizon from a feminist point of view, which does not limit it to the situation of women, but rather supposes a democratizing proposal for society as a whole.⁴¹ Fifth, caregiving in international human rights law remains in the human register, without understanding caregiving in its broadest sense, i.e., as "the activities that humans carry out to reproduce themselves in interdependence with nature".⁴² Care in international law continues in the framework of interpersonal relationships, ignoring the environment and the resources and material supports necessary to sustain life.

With regard to the commitments adopted by the States in international conferences, one of the first references to caregiving, although not explicit, can be traced back to the First World Conference on Women (Mexico, 1975), based on the treatment of domestic work and the need

³⁸Article 1, paragraph 2: The provisions of this Convention shall also apply to male and female workers with responsibilities for other members of their immediate family who clearly need their care or support, where such responsibilities limit their possibilities of preparing for, entering, participating in and advancing in economic activity.

³⁹It also established that caregiving work is a priority as a consequence of the adoption of the Sustainable Development Goal (SDG) (ILO, 2019).

⁴⁰PAUTASSI (2007).

⁴¹LIEDO (2021).

⁴²LÓPEZ CANELAS & CIELO (2018).

for its redistribution⁴³ so that women could have massive access to paid work in accordance with the requirements of the international economic agenda.⁴⁴

Twenty years later, the Fourth United Nations World Conference on Women (Beijing, 1995),⁴⁵ was held after the first impact of the neoliberal policies implemented since the 1980s in the region. Although it was the first time that the importance of fully recognizing the economic contribution of all forms of paid and unpaid work was discussed, as in CEDAW, the responsibilities of caregiving were placed mainly on the family. The structural causes of the delegation of caregiving to women and what this meant, especially for the most precarious women, were not addressed.⁴⁶ Although it cannot be ignored that, echoing the feminism of social reproduction, the text points out certain measures to be adopted by the States regarding domestic work, establishing distinctions between “paid work”, “family responsibilities” and “other forms of work”, pointing out the benefits to be obtained by those who perform them,⁴⁷ and considers including unpaid work in national accounts and recognizing the economic contribution made.⁴⁸ This is in line with the Commission on the Status of Women (CSW) -in charge of carrying out the International Conferences-, whose focus was first on the incorporation of women in development centered on production, and then on incorporating gender in development.⁴⁹

The measures in this sense did not aim at a transformation of social relations -in terms of the ethics of care-, but at greater conciliation and co-responsibility with respect to paid and unpaid work. Furthermore, mentions of “caregiving” are made throughout the text in reference to children and adolescents, the elderly or people with disabilities. Subsequently, the 2030 Agenda, in particular SDG 5.4, provides that States should “recognize and value caregiving and unpaid domestic work”, through public services and social protection policies, promoting co-responsibility.

⁴³ Different strategies were established, ranging from educational opportunities for women and the creation and maintenance of services to facilitate housework, to changing social attitudes so that men and women would accept household and childrearing responsibilities. A position similar to that put forward by JENNIFER NEDELSKY in *The Gendered Division of Household Labor*, as she argues that no institutional change in this regard can work without a change in attitude, belief and desire. She points out that men have to want to care for their children and feel the bonds that practical care produces. She also points out that there should be a change in women’s desire to share responsibility.

⁴⁴ FEDERICI, critical of the role of the UN, points out that this and subsequent conferences paved the way for the full exploitation of women not only in the home, but also in wage labor. She asserts that these were convened out of the certainty that women’s struggles over reproduction were redirecting postcolonial economies toward increased investment in the domestic labor force and thus posed the main factor in the failure of developmentalist plans. Perhaps the most illustrative example of this trend was the African case, where women refused to be recruited to work in their husbands’ fields, and instead advocated subsistence-oriented agriculture in open contestation with the development needs of the global North (2014, p.163).

⁴⁵ Unlike what happened at the I Women’s Conference in Mexico in 1975, where alternative forums were created autonomously to the international cooperation agencies, in Beijing, the Alternative Forum was planned from the United Nations itself and convened mainly NGOs, which speaks of the process of *NGOization* of the feminist movement. See in the doctoral thesis of CABEZAS, 2013: “La política parlamentaria de los derechos de las mujeres frente al “proceso de cambio” boliviano.

⁴⁶ From women’s and feminist organizations there was an important criticism of the content of the declaration. The “Declaration of Indigenous Women of the World in Beijing, at <https://www.nacionmulticultural.unam.mx/movimientosindigenas/docs/92.pdf>

⁴⁷ IV CONFERENCIA MUNDIAL SOBRE LA MUJER (1995), párr. 179 letra f).

⁴⁸ IV CONFERENCIA MUNDIAL SOBRE LA MUJER (1995), párr. 206, letra f.

⁴⁹ ZWINGEL (2016), p. 71.

Latin America has been particularly developed through the Regional Gender Agenda for Latin America and the Caribbean. Over the course of 45 years, the Conferences on Women in Latin America and the Caribbean have developed agreements for drafting public policies on caregiving and the call for joint-responsibility between the State, the private sector, the community and families,⁵⁰ incorporating approaches ranging from social reproduction - the acknowledgement of work, the need to remunerate caregivers - to the ethics of care, reflected in the latest documents that aim to build a care society that transforms the ways of relating to one another, where interdependence and vulnerability are recognized as part of the human condition.

Since 1977, the need to grant attention and care to certain groups has been emphasized, considering the disproportionate impact that caregiving has had on women. However, it was not until the Quito Consensus (2007) that it became clear that the language used pointed to structural elements of caregiving rather than focused elements. The sexual division of work is recognized as a structural knot of gender equality and, therefore, feminist economics becomes fundamental. It is considered that social reproduction, caregiving and the welfare of society should be the central objectives of the economy, as opposed to the unlimited growth and efficiency of orthodox economics. This should be expressed in comprehensive social security systems that allow for adequate welfare. In Quito, it was also explicitly recognized that there is a “right to care, to be cared for and to self-care” which implies obligations for the State.

Several elements were subsequently reiterated, and in Brasilia (2010) it was explicitly stated that domestic work perpetuates the subordination and exploitation of women and mentions, for the first time, that the right to care is universal and requires co-responsibility by society as a whole, the State and the private sector to achieve its effective materialization; and the creation of public policies and universal care services (together with parental leave for caregiving), in addition to seeking the social and economic valorization of these services. The Brasilia Consensus recognizes, in this sense, the fundamental role of the State in the establishment of a caregiving society.

In Santo Domingo (2013), the emphasis is on the need to redistribute caregiving between the State, the market and society, considering co-responsibility between men and women; the creation of universal, comprehensive and efficient public systems of protection and social security; as well as the creation of satellite accounts. In 2016, the Montevideo Strategy consolidated the work done, and the sexual division of work and the unfair social organization of care are established as one of the structural knots in the progress towards gender equality and reaffirms the need for comprehensive systems with public funding.

The Santiago Commitment⁵¹ maintains the role and relevance of caregiving in changing global economies; the conflict of global caregiving chains and emphasizes the care economy; to this end, it establishes that States must adopt countercyclical policies that dynamize the care economy and establish comprehensive caregiving systems from a gender, intersectional, intercultural and human rights perspective. In 2022, the Buenos Aires Commitment reiterates the notion of people’s right to care, to be cared for and to self-care, and gender co-responsibility.

At the regional level, the Inter-American Commission of Women drafted a Model Law on Caregiving (2022), which is based on the need to recognize the work of caregiving and the universal right to care for all dependent persons; the reduction and generic redistribution of caregiving work; adequate remuneration or compensation for caregivers, considering the State’s duty to provide social security to those who perform unpaid caregiving; and the representation of those who care for and are cared for. The Model Law is not only intended to articulate various services or deliver targeted benefits but aims at a new paradigm of society: a caring society, “which

⁵⁰ ECLAC (2022), p. 12.

⁵¹ ECLAC (2020a).

places caregiving as a fundamental public good where all actors are jointly responsible for the creation and maintenance of sufficient, adequate and freely chosen caregiving networks. The fostering of the transformation towards a caring society installs us in a new ethic and allows us to make it culturally sustainable”.⁵² It incorporates elements of social reproduction, insofar as it includes caregiving as work, but it also incorporates later elements that make it possible to account for an ethics of care as an ideal framework to be followed, recognizing the interdependence and essential vulnerability of the human condition (art. 1°). It also establishes the obligation of the “Caring State” not only at the national level, but also in relation to foreign policy and global value chains.

In short, it can be seen from this overview that the issue of care has been addressed in conferences and conventions on the basis of the need to redistribute domestic and caregiving tasks so that women can enter paid work on a massive scale, following the MED “Women in Development” approach.⁵³ The measures proposed have revolved, on the one hand, around a greater balance between family and work, with little consideration of the fact that for women, who have historically been responsible for unpaid work, this does not necessarily imply more free time. And, on the other hand, the establishment of measures of co-parental and social-state responsibility for the care of dependents. Over the years, more and more elements and notions of feminist economics have been incorporated, and formulas for the de-privatization and socialization of care, which continue to focus mainly on state obligations, have been put forward. The treatment of care as an ethical principle has only recently appeared, linked to interdependence and sustainability of life.

4.2 Recognition in comparative law at the constitutional and legal level

In Latin America, several constitutions, following the framework of feminist theories of social reproduction, have recognized the contribution of caregiving to the economy and the obligation of States to adopt public policies aimed at people in situations of dependency; some also state that the State must adopt comprehensive care systems. The Constitution of Ecuador recognizes caregiving as a contribution to the economy by recognizing as “productive work the unpaid work of self-support and human care performed in the home” (art. 333); in turn, it states that the State must promote a labor regime that is compatible with the needs of caregiving and therefore, establishes adequate services and infrastructure, in addition to establishing an appropriate working time; for its part, it is established that the protection granted by social security will be implemented progressively to people who are in charge of unpaid family and domestic work (art. 333). It is also established that special attention will be paid to people with disabilities, children and the elderly, who will be beneficiaries of state policies dedicated to providing adequate attention in nutrition, health, education and daily care, among others (art. 38). On the other hand, regarding co-responsibility between men and women, it establishes that both are obliged to care for, raise, educate, feed, develop and protect their rights (article 69).

The recognition of household work as part of the economic activity and therefore, as part of the national economies and producer of wealth, is recognized in the Constitution of the Plurinational State of Bolivia in its article 338 (2008), in the Constitution of Venezuela in its article 88 (1999) and the Constitution of the Dominican Republic in its article 55 (2010). Although they recognize domestic work as part of the economy, the aforementioned Constitutions do not normatively enshrine caregiving as a right but limit themselves to recognizing its importance and establishing that the State will grant benefits to particular groups. However, the Political Constitution of Mexico City (2017) does give express recognition to the right to care in its text by stating that “everyone has the right to care that sustains their lives and provides them

⁵² CIM (2022), p. 18.

⁵³ KABEER (1998), p. 37.

with the material and symbolic elements to live in society throughout their lives”; to guarantee the right to care, it determines that the State must establish a “caregiving system that provides universal, accessible, relevant, sufficient and quality public services” in addition to developing public policies in this regard.

In Chile, the draft Constitution that was rejected on September 4, 2022 incorporated principles related to the ethics of care, the recognition of interdependence as a principle of the State; and elements of social reproduction such as the recognition of domestic and caregiving work as work worthy of being recognized and that should be socially and generically redistributed and incorporated into national economies. It also established the right to care in its three manifestations: the right to care, to be cared for and to self-care.

Despite the scant constitutional recognition, throughout the region there have been regulations that create comprehensive care systems and those that establish particular services or benefits. Among the latter, those that grant maternity and paternal leave, recognize domestic work and seek to quantify and implement time policies stand out. Care services are mainly dedicated to the population in a situation of dependency, either because they are people with disabilities, the elderly or children.

Among the most outstanding examples are Argentina and Uruguay. Regarding the latter, Law No. 19,353 was passed in 2015, which recognizes caregiving as a social right, being a pioneer in the region. Anyway, the purpose of this law was to promote the development of the autonomy of people in a situation of dependency, and the care and assistance of these through the creation of a Sistema Nacional e Integrado de Cuidados (SNIC), which consisted of a set of actions and programs aimed at designing and implementing public policies based on a solidarity and co-responsible model between State, market, community and families (article 2), whose principles are universality, progressiveness, equity, integral quality, inclusion of the gender perspective - promoting the overcoming of the sexual division of labor - generational, and solidarity in financing.

The legislation seeks to establish a series of rights that include caregiving, but only for those who are in a situation of dependency (children up to 12 years of age, people with disabilities and people over 65 years of age who lack the necessary autonomy to carry out their daily activities), and to guarantee rights for those who provide care services; therefore, there is no recognition of an ethics of care at the societal level. The rights that are recognized include the right to receive information in accessible and understandable terms, protection and confidentiality, equal opportunities, universal accessibility to services and benefits provided for in the regulations.

Argentina stands out for the creation of the “Cuidar en Igualdad” bill, which proposes the creation of a comprehensive system of care policies, which is necessary to “prioritize and articulate caregiving policies in pursuit of a fairer social organization of caregiving, which recognizes it as a need, a right and a job, and redistributes the responsibility of caring among all gender identities and all actors in society”.⁵⁴ The bill incorporates elements of both paradigms. On the one hand, it recognizes care as work and, therefore, requires remuneration; but, on the other hand, it recognizes the human condition of vulnerability, extending care as a guiding principle of society, which would approximate an ethics of care.

The bill creates a new institutional framework that articulates existing services, recognizing caregiving as a social function, as a strategic sector and as an investment, and also proposes the modification of the current maternity and paternity leave regime. Article 2 establishes that the comprehensive caregiving system aims to: recognize the “right of all human

⁵⁴ BILL (2022), p. 7.

beings to receive and provide care, as well as the right to self-care”; contribute to overcoming the sexual division of labor and the reproduction of gender inequality; promote a fair social organization of caregiving; and recognize the value of caregiving, as well as promote the formalization of caregiving when it is performed on a paid basis. Although all persons would be entitled to the right to care, there are priority groups such as children, the elderly and persons with disabilities, in addition to considering “women, lesbians, gays, bisexuals, transvestites, transsexuals, transgender, intersex and more (hereinafter, LGBTI+) and persons who, due to their socioeconomic status, ethnic origin or any other condition, are in a situation of special violation of their rights” (Article 7). Intersectionality, interculturality, territoriality and universality are incorporated.

It recognizes and values the work of caregiving, both direct and indirect, those carried out in the public, private, family or community sphere (Chapter 3). It also considers the care economy, i.e., that caregiving work has an economic value and is a source of well-being and wealth and must be quantified in public budgets (Article 12). On the other hand, it establishes policies for redistribution, conciliation and co-responsibility in the social organization of caregiving. The project in question establishes the hierarchy of paid caregiving work, considering recognition, adequate remuneration, training and education, certification of knowledge, professionalization and specialization and its consideration as a strategic source of employment generation, as well as the consideration of a national registry.

The models proposed in Uruguay and Argentina present relevant conceptual differences. In the first place, the model proposed by Uruguay recognizes only those in a situation of dependency as beneficiaries, i.e., a targeted system -although with pretensions of universality within these groups-, it is not a policy that places caregivers at the center of the economic system or that seeks to recognize that caregiving is necessary for the sustainability of life, in terms of the ethical paradigms of caregiving. Secondly, it does not seek to recognize a right to care, but rather a series of rights associated with the caregiving activity that will be granted, unlike the Argentine bill, which recognizes the existence of a “right to care, to be cared for and to self-care”,⁵⁵ recognizing all human beings as entitled to this right and prioritizing certain particular groups. Thirdly, Argentina’s bill considers caregiving as a need and a strategic social function; Uruguay’s legislation recognizes that caregiving is a matter of general interest but does not address the issue with the depth that Argentina does.

4.3 Some examples of public policies in the region

In terms of public policies, the countries of the region have established specific caregiving systems, policies or programs. As noted in the previous section, Uruguay has a SNIC which, through an integrated approach, defines and regulates benefits for children, the elderly, people with disabilities and caregivers.

However, all the States at the regional level have policies and/or programs that do not encompass a National Caregiving System (SNC) but are directed at specific populations and with respect to certain benefits. In general, most of them have services aimed at early childhood and, in particular, at children in situations of poverty or vulnerability; however, they are scarcer in relation to the elderly and people with disabilities and dependency, and are absent in some of them.⁵⁶ The objective of most policies aimed at children is to improve development conditions, but not only that, but also to continue in the logic of improving the incorporation of women in

⁵⁵ The conceptualization of the right to care, to be cared for and to self-care has been developed by Laura PAUTASSI (2007).

⁵⁶ BANGO & PIÑEIRO (2022), p. 13.

paid work outside the home, in the same logic of “women in development”, and not as recognition of care and interdependence as the basis of social relations.

For example, Costa Rica has a Red Nacional de Cuido y Desarrollo Infantil (National Child Care and Development Network) aimed at early childhood; and a Red de Atención Progresiva para la Atención Integral de las Personas Adultas Mayores (Progressive Care Network for the Comprehensive Care of the Elderly).⁵⁷ The Red Nacional de Cuido (National Care Network) establishes a care system with universal, public access and solidarity financing that articulates various private and public services that provide care services aimed at comprehensive child care,⁵⁸ mainly for families living in poverty, to provide services to children between 0 and 6 years of age. It is relevant to highlight the approval of a National Caregiving Policy 2021-2031, which aims to implement a care system for people with some degree of dependency; and, for its approval, a series of dialogues were held at the national level, with the objective of laying the foundations for the construction of a Caregiving and Dependency Care Support System.⁵⁹

Argentina, which is in the process of creating a National System as described in the previous section, stands out for the participation of the communities in the “Cuidar en Igualdad” campaign, which since 2020 seeks to promote new social representations around caregiving in order to build from the local to the federal level and transform the unfair social organization of caregiving. In the same sense, “parliaments” are used, spaces for dialogue with different actors that are part of the social organization of caregiving in the various territories and include social organizations, feminists, politicians, public and private institutions and academics, among others; in order to collectively build a common vision and establish proposals for actions to reverse the feminization of caregiving and the unfair social organization of caregiving. On the other hand, the “Mapa Federal de Cuidados”⁶⁰ is a tool that seeks to facilitate the search for care services for early childhood, the elderly and people with disabilities throughout the country. Another program is the “Calculadora del Cuidado” (2021), a platform that aims to measure the time and economic contribution of domestic and care tasks.

Although Chile is in the process of creating a SNC, it currently has several Social Protection programs related to care: Crece Contigo, Chile Cuida, Chile Seguridades y Oportunidades and Elige Vivir Sano.⁶¹ These policies have contributed to changing the living conditions of many women, but on many occasions, they have lacked a gender perspective and have had a markedly family-oriented imprint,⁶² improving practical interests but not strategic needs. Recently, the Registry of Caregivers was established, aimed at identifying all persons who perform unpaid care work, on a permanent basis, for people with disabilities with moderate and/or severe functional dependence and/or with permanent special educational needs. When the caregiver is registered, he/she will have preferential attention in public health (primary) and other public services.⁶³ This contributes to the recognition of caregivers and those who need to be cared for, but it focuses on particular population groups, thus considering dependency as something exceptional and not interdependence and sustainability as structuring principles of the system (at least until the CNS is created).

⁵⁷ RICO & ROBLES (2016), p. 34.

⁵⁸ See: <https://redcuidoinfantil.go.cr/> [last retrieved May 30, 2023]

⁵⁹ INSTITUTO MIXTO DE AYUDA SOCIAL (IMAS), MINISTERIO DE DESARROLLO HUMANO E INCLUSIÓN SOCIAL OF COSTA RICA (2021).

⁶⁰ See “Mapa Federal de Cuidado” at: <https://mapafederaldelcuidado.mingeneros.gob.ar> [last retrieved May 30, 2023].

⁶¹ FERNÁNDEZ ET AL. (2021), p. 40.

⁶² MORENO (2017).

⁶³ See Registro de Personas Cuidadoras at: <https://registrosocial.gob.cl/> [last retrieved May 16, 2023].

In Colombia, in 2010, the inclusion of the care economy in the system of national economies was regulated, the objective of which was to measure the contribution made by care work to national development.⁶⁴ In addition, the Mesa Intersectorial de Cuidado was created, made up of various civil society organizations, political and academic institutions, which establishes a permanent dialogue with State institutions⁶⁵ and seeks the design and implementation of a CNS. This, in line with the Plan Nacional de Desarrollo 2018-2022, which included among its objectives: “1) to develop a public policy on care that contemplates the articulation and coordination of inter-institutional systems and instances that serve populations subject to care and people engaged in domestic and unpaid caregiving work; 2) to generate guidelines for the articulation of the supply of programs available at the territorial level with a gender approach for women, to reduce women’s care burdens”.⁶⁶

In Colombia, the Sistema Distrital de Cuidados de Bogotá (2020) also stands out, which articulates caregiving programs and services based on joint-responsibility between the District, the Nation, the private sector, the communities and households; on the recognition of those who perform caregiving tasks, redistribution between men and women and reduction of unpaid caregiving work time.⁶⁷ It has programs such as Manzanas del Cuidado, identification of services available in a nearby territory, considering that it is not necessary to walk more than 20 minutes to access them; the Program Cuidado Casa a Casa, which consists of free cleaning services to reduce the time of unpaid caregiving work;⁶⁸ Unidades Móviles de Cuidado, mobile services that carry the caregiving offer; Oferta Cuidando a Cuidadoras, with training services for caregivers and self-care;⁶⁹ A cuidar se aprende,⁷⁰ which includes the Hombres al Cuidado School, which seeks to transform the cultural representations of care by promoting co-responsibility. Although many of the policies recognize women as the main caregivers, the objective of the System is to place caregivers at the center of urban development.⁷¹

Of note is the recent enactment of Law 2,881 of 2023 in Colombia, which establishes in Article 6 that a national caregiving system will be created “with the aim of responding to the demands of household caregiving in a co-responsible manner between the nation, the private sector, civil society, communities and between women and men in their differences and diversity to promote a new social organization of caregiving in the country and guarantee the human rights of caregivers.”

In Mexico, the Programa Nacional para la Igualdad entre Hombres y Mujeres 2020-2024 incorporated as one of its priority objectives the creation of conditions for recognizing domestic and care work and redistributing it among the State, families, the community and the private sector.⁷² In this sense, the Women’s Institute is promoting the creation of a CNS, with emphasis on certain particular groups.

The examples mentioned above show the inclusion of elements associated with theories on social reproduction, insofar as they incorporate caregiving as work, establishing the

⁶⁴ BANGO & PIÑEIRO (2022), p. 23.

⁶⁵ FRIEDRICH-EBERT-STIFTUNG COLOMBIA (2020).

⁶⁶ BANGO & PIÑEIRO (2022), p. 24.

⁶⁷ See: <https://www.manzanasdelcuidado.gov.co/#popup> [last retrieved May 20, 2023].

⁶⁸ See: <https://www.manzanasdelcuidado.gov.co/cuidado-casa-a-casa.html> [last retrieved May 20, 2023].

⁶⁹ See: <https://www.manzanasdelcuidado.gov.co/cuidado-cuidadoras.html> [last retrieved May 20, 2023].

⁷⁰ See: <https://www.manzanasdelcuidado.gov.co/acuidarseaprende/index.html> [last retrieved May 20, 2023].

⁷¹ BANGO & PIÑEIRO (2022), p. 23.

⁷² INMUJERES (2020).

recognition of the people who perform it, the quantification of unpaid domestic and caregiving work in national economies, ensuring benefits for particular groups, and focusing care services mainly on children, people with disabilities and elderly people with degrees of dependency. At the level of policies and programs, the participation of the community in the creation of some of these is highlighted, particularly in Argentina through the “parliaments”, but the community is not mostly considered in the management and provision of caregiving. As there are sectoral policies or programs, it is not yet possible to incorporate principles such as interdependence and sustainability, more typical of the theories of the ethics of care, ecofeminism and feminisms of the commons.

V. CONCLUSIONS

The article sought to account for the models or paradigms that have been developed from feminist theories to understand and capture the meaning of caregiving, on the one hand, associated with social reproduction, such as labor or work; and, on the other hand, associated with an ethical dimension that should underpin social relations. These frameworks undoubtedly have crossovers and porosities that become evident when analyzing the policies themselves.

In the international framework, emphasis has been placed on the role of the State - insofar as it is currently responsible for effectively establishing social policies and benefits - in order to move towards a care society that places not only social reproduction at the center, insofar as this may not guarantee well-being, but also the sustainability of life, which is incorporated as a foundation. Proposals have been made for the creation of systems and mechanisms for the generic redistribution of domestic and caregiving work, for the social co-responsibility of these, and to a lesser extent, for building a care society that takes as its starting point the recognition of vulnerability, interdependence and eco-dependence, understanding these as constitutive of people, social relations and the environment.

At the constitutional level, the recognition of caregiving as work or labor, in the terms of the feminism of social reproduction, is highlighted, without making further reference to notions of interdependence of social relations to approach a theory of the ethics of caregiving. In this sense, the failed project of the Chilean Constitution of 2022 that recognized the interdependence of the human condition and of humanity with nature as the foundation of the State, which contributed to the construction of a democracy of care, stands out.

With regard to the internal normativity exposed, we can deduce the existence of different paradigms of how caregiving and the relationship with the State, families, the market and the communities are confronted. In general, caregiving policies focus on people in a situation of dependency. Without prejudice to the fact that caregiving may be required more intensely at some point in life, it is urgent that States recognize caregiving as a human right and implement it.

On the other hand, caregiving can be seen as a foundation of the State (in the sense of a care society) and/or as a right that does not permeate the State as a whole. The former implies a transformation of structures, since it is based on principles of social justice - it considers then that all people can exercise care and can receive it; the latter may imply, even if the right is enshrined in individual terms, the maintenance of structures and the existence of sectoral and particular regulations.

In terms of public policies, only Uruguay and -recently Colombia- stand out with the creation of the SNC, in contrast to most of the countries in the region that have sectoral and focused policies, which aim more at providing solutions to practical needs than to strategic interests that will transform the unjust organization of care. In this sense, elements of the theories of social reproduction are recognized, but little recognition is given to considerations of the ethics of caregiving, and even more absent are considerations from the feminisms of the commons, ecofeminists and post humanists.

Although this is an exploratory analysis and does not aim to propose how the norms on caregiving should be in the continent, it seems important to point out that the norms of caregiving should be built around an understanding of caregiving in a version that is neither essentialist nor expressive of a lack, but rather revealing of a historical and contingent relationship with the tasks of maintaining life, which are not necessarily anchored to being a woman. And assuming, in turn, that this relationship varies according to social class, gender identity, sex-affective orientation, racialization, territory, among other factors. In this sense, it seems crucial to us the incorporation of ecofeminist, communitarian and post humanist keys that link caregiving with the care of nature and relationships with other species; that highlight the links established in spaces that transcend the nuclear family. That take into consideration care practices in precarious environments, in conflict, persecution or imprisonment, that consider the place of black and indigenous women and girls in domestic and caregiving work, all fundamental challenges for a democracy in which caregiving and the sustenance of life - human and non-human - are at the center.

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