


## **PATHS OF JUSTICE: AUTISM AND THE ETHICS OF CARE AS FOUNDATIONS FOR INCLUSIVE PUBLIC POLICIES IN EDUCATION**

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### **ABSTRACT**

This article analyzes the relationship between the rights of people with Autism Spectrum Disorder (ASD) and the ethics of care, in the context of inclusive public policies aimed at education in Brazil. The main objective is to investigate how the ethics of care can influence the creation and implementation of policies that promote the inclusion and protection of the rights of autistic people, addressing issues such as equality, access to education, and the construction of a more inclusive society. In the functionalist society of social roles and utilitarian values, an essential contour to the dignity of the human person and its evaluative consecrations, embodied in constitutional norms, marks a hermeneutic criterion for the construction of a just, fraternal and solidary society. Emancipatory policies aimed at children with ASD imply the realization of social rights, emphasizing the maximum effectiveness of fundamental rights. Furthermore, the ethics of care in the social right to education of people with ASD, addressing concepts from Winnicott and Boff, and highlighting the importance of affection and recognition, envisage the overcoming of ethical models based on legalism and utilitarian culture, rewriting the history of fraternity to superimpose itself on the functionalism of risks and calculations in the plan of social engagement so recurrent in the society of statistics and budget.

**Keywords:** Ethics of care, Autism Spectrum Disorder, Human dignity, Fair Law.

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## INTRODUCTION

Complex societies present great challenges to politics and law, as modernity has assumed promising commitments to human progress and emancipation, making the passage from "childhood" to enlightenment, in Kant's perspectives, through law and politics.

Notably, anthropocentrism receives the chaotic world by formulating rational solutions to human dilemmas, and the scientific form developed by formal rationality was forged on the way to transformative utopias, however legal technique and political science were not enough to circumvent the civilizational malaise, so that both rationalist functionalism and Kantian-Kelsenian dogmatism resulted in great wars and genocides, still pulsating in the heart of the planet, and law, which is the central theme of the exhibition, has been nothing more than an arsenal of regulatory norms postulating economic equalization.

The reading of the dignity of the human person as a central value of constitutional law, based on which the social promises of health and education are erected, via programmatic norms, in spite of the formal principles of constitutional hermeneutics, primarily the maximum effectiveness, has only yielded an ideological-evaluative cut, since the background of the abstract decision, in the normative, or concrete, consolidation in the sentences, it excels in budgetary security and distribution, maximizing social well-being with great economic efficiency.

Autism emerges in this context as a peculiarity of individuals who, as people, have the right to different treatment, from the perspective of legal protectionism, overcoming their own vulnerabilities, whose nuance requires belonging, which can only be achieved in the realization of health and education. This pleiad of constitutional values exhorts public policies of commitment to people, more than the performance of numbers, statistics and budgetary criteria, typical of the economic version of law and the functionalist system that are shaped in the contemporary scenario.

Behold, the ethics of care points to the new perspectives of becoming, from whose source drinks the right committed to the dignity of human persons, standing out the atomistic and massified version from which postmodern subjects are treated, substantiating affection and belonging in a singular treatment of inclusion through health-education.

At the end of the text, final considerations will be issued about the excerpt.

## WHO IS THE HUMAN PERSON

The conception of the person is rooted in nascent Catholicism, with the increase of the Council of Nicaea, when patristics resorts to the hypostasis of the person to give meaning to the three manifestations of the same God, in the father, son and spirit.

If the Son became a historical God-man, presenting himself in the cultural compendiums of humanity, the Father-God, invisible in the human condition, had the role of distinguishing himself from the Son, establishing a relationship, nourished by the Spirit, that groan of love that unites them on the ontological level, but also on the axiological level, although it is a union whose telos is the good and the agape.

From the premises placed in theodicy, philosophy produces the sense of the human person, so that Severinus of Boethius will emerge as a pioneer in recognizing it as a singular substance of rational dimension (BOETHIUS. Severino, 2.005). With this, he intended to clarify what substance is the same as being under, that which is supplied to a certain subject – a support in relation to accidents, that is, individuals not only subsist but are under, being a singularity that goes beyond the contingent, calling itself a person.

"There is, therefore, both the essence of man, that is, ousia, and subsistence, that is, ousiosis; as the hypostasis, that is, the substance, as the prosopon, that is, the person. There is certainly ousia, or essence, because it is; ousiosis, however, or subsistence, because it is not in any subject; prosopon or substance, because it is under others that are not subsistences, that is, ousioseis; and prósopon, or person, because he is a rational individual (BOETHIUS. Severino, 2.012, 240-245).

His definition of a person is not restricted to an ontic subject, on whom accidents would be projected, but to someone whose combined capacity allows, in addition to the theatrical sense of person – mask (role or function), the ability to inquire, judge, dialogue, which is proper to rational beings.

From this appreciation, whose ontological dimension is extraordinarily rich, we move on to the conclusion of St. Thomas Aquinas, for whom the person gathers in himself potentialities whose existence and, therefore, historicity, through the beacon of freedom, must reach its fullness. Being a person in Thomas of Here is a task free of being to becoming, and the conformation of this essence with the cardinal virtues of the choice of truth, ethics (justice), aesthetics to the supreme becoming of the deity, on the plane of existence, guarantees him dignity, in short, the person is a self-transcendent being (THOMAS AQUINAS, 2.016).

It is also very relevant to point out that the cause of amoris magnetizes people, giving a relational block amalgamated with love to intersubjectivity, establishing criteria for the rapport between person and society, through the crease of fraternity (ST. THOMAS AQUINAS. Q. 28, a. 1.). That is, human society, unlike other animals, whose bonds are formed by reasons of necessity, instincts and appetites, is united by love.

Even Nietzsche, who was repugnant to the castration moralism that he nicknamed the ethics of Christianity, did not neglect the importance of the historical conquest of humanity of the sense of person, originally defined in Boethius, in the sense that substance cannot be predicated of another or another, but the support of any other predication, that is, a person subject, that individual substance of a rational nature already announced, which is strictly a singularity, bearer of rational will (freedom) from which principles and rules of action and existence start. Being responsible who seeks to act towards something-someone.

Speaking about anthropology and picking out the temporal factor, the philosopher of the hammer distinguishes the human animal from any other at the moment when he recognizes in the first the consciousness of time, hence the possibility of becoming, or making oneself, something that does not present itself in another ignoble animal of past, present and future, that is, animal of the moment. The human being is built in time, makes culture, is a historical being, has a dimension of the past as a memory and a perspective of the future in action, from which anguish emanates.

This human animal, a being of language, makes promises because somehow it overcomes the purely animalistic condition of any ahistorical animal that lives in the instant, invests itself with memory, knows itself responsible for the time of life that remains to it and makes promises. To launch oneself into the future, as historical, is to take responsibility for oneself and to assume obligatory commitments and fulfill them, even opening oneself to the other, and assimilating the promise through language (obligation). Herein lies the ethical and political quality of humanity in Nietzsche, in the possibility of promising, taking responsibility and obliging oneself, when it comes to being of will. This is the historical task imposed by nature on the human. (NIETZSCHE. F. Genealogy of Morals, 2.009, p. 255).

What is intended to be emphasized, from essentialists to historicists, is that the singularity of the person allows for a temporal, historical existence, and not an abstraction, whether it is of definition, postponement, or simile of the mask-function assumed. Human beings,

as persons, are bearers of freedoms and seek their dignity in the historical future, being non-fungible, ends in themselves, each of the human singularities.

Kant, in the metaphysics of morals, masterfully argues that:

In the realm of ends, everything has either a price or a dignity. When something has a price, it can be replaced by something equivalent; on the other hand, the thing that is above all price, and therefore does not admit of any equivalence, comprises a dignity. (...) what is made a condition for something that is an end in itself, this does not simply have relative value or price, but an internal value, and that is to say, dignity. But morality is the only condition that can make a rational being an end in itself, for it is only by virtue of morality that it is possible for him to be a legislating member of the kingdom of ends. Therefore, morality and humanity as capable of morality are the only things endowed with dignity. (KANT, Immanuel, 2004, p. 64).

The subject and end in itself, this is the meaning of a dignified human person, and this implies that any person is insusceptible to price, being absolutely mistaken and antipodean to the historical concept erected in human culture the treatment in terms of risk and calculation in the social engagement of any person.

Following the paths of philosophy, dignity corresponds to the value according to which human beings cannot be considered means or parts, nor mere functions, in order to fulfill certain objectives, in view of the historical conquest of the person's culture.

And it was for no other reason that the Nuremberg Tribunal recognized it as a supra principle that is not subtracted or withered in the face of positive law, being a hard and absolute core, from which, without distinction of any human being, their physical and psychic integrity, their life and autonomy are prioritized, denouncing the ills of the regime of exception installed by the law itself in German Nazism.

In this regard, Agamben will talk about the indignity in the extermination camps, pointing to the figure of the "Muslim", that bloodless and ashamed subject who, deprived of minimum living conditions, cadaverous and physically and psychically mutilated, was no longer alive despite not having yet died, and without any power of language, transmuted into "man not man", had in the sovereign power the ability to decide on life and death and, in Auschwitz, the State defines what life and death are, the latter was fabricated, unlike a biological process of finitude of existence. (AGAMBEN, Giorgio. 2009, p. 168).

Clarifying what happened in the German regime of exception of Nazism, the Italian philosopher resorts to the figure of Roman law called "iustitium", according to which the situation and risk to the Republic granted the Senate, praetors, tribunes and, "at the limit, each citizen, to make any measure considered necessary for the salvation of the State" (...)

generating a decree that "declared the tumultus (that is, the emergency situation in Rome, caused by an external war, an insurrection or a civil war) and usually gave rise to the proclamation of an iustitium (iustitium edicere or indicere)"(...) "The term iustitium — constructed exactly as solstitium — literally means "interruption, suspension of the right." (AGAMBEN. Giorgio, 2.004, p. 66).

Considering that Agamben, in an in-depth reflection, points out that the extermination camps of the contemporary are spectral<sup>3</sup>, presenting themselves as a status that is not exactly locatable, in which bare lives are wide open and kidnapped by power, left to die and/or indignity, gaining contours of legitimacy in the self-suspension of the law itself.

Ab initio wants to show that people with autism spectrum disorders, in view of the characteristics and weaknesses experienced in daily life, receive attention and investment from the government, which can overcome persistent deficits in the ability to initiate and prolong reciprocal social interaction and communication.

In fact, due to a series of restricted, repetitive and inflexible patterns of behavior and interests, autistic people demand public policies aimed at an environment of coexistence especially equipped with<sup>4</sup> peculiar health and education.

## **THE LAW AND ITS ONTOLOGICAL FOUNDATION IN THE DIGNITY OF THE HUMAN PERSON AND AXIOLOGICAL IN JUSTICE**

Certainly the conception of law adopted in the text does not please the dark ones who identify it with the device of capturing bodies, but it is not in vain that Agamben was consigned to denounce the risks that the law deprived of its foundations of validity, whether of its ontology rooted in the person, or of its telos directed to justice, it can appear as a set of normative acts that, legitimizing extreme situations of exclusion – inclusion, produces great symbolic violence.

<sup>3</sup> When the question is posed about what a field is, the philosopher mentions that the field would not be reproduced as a pure historical fact belonging to the past but as a "hidden matrix, the nomos of the political space in which we still live", that is, if the factual reproduction of a contemporary extermination camp would not be glimpsed, it leaves its legacy of a state of exception with the suspension of the law to the individual and to the humanity of man, in which lives are disposed of and captured, because "the countryside as a displacement location is the hidden matrix of politics, which we must learn to recognize through all its metamorphoses, from the zones d'attente of our airports to certain peripheries of our cities" (AGAMBEN, Giorgio, 2.007, p. 182).

<sup>4</sup> Recently, the doors of exception were presented in Binding Precedents 60 and 61 of the STF about the right to health in cases of medicines and treatments not incorporated by SUS or approved by Anvisa.



It is essential that the law be placed as a guide to support the person and his or her eminent dignity, as a coryphaeus of a just, fraternal and solidary society, even because it becomes the hermeneutic north from the constitutionalization of values.

In fact, in Paul Ricoeur points to the sense of justice and its institutionalization by the normative way, with the decision-making capacity to stop revenge, giving civilizing and evolutionary meaning to society. If in historicity humanity resents injustice, it is the instants of indignity of people that make the collective insurgency cry out in the name of the just (RICOUER. Paul, 1995, p. 90.)

It is the feelings that arise from memory, in concrete situations, and trigger in people the commitment to responsibility for distribution and retribution that invigorate the just, however, contrary to the rusticity of the vindictiveness, something that naturally flows from human passions, there is an urgent need for proper channels from which the just will be beckoned (RICOUER. Swamp. 2008, vol. I.)

Rawls dwelt on a powerful theory of contractualist profile, seeking to establish forms of guarantees of goods, talents and opportunities that can placate the impetus of human association, so much so that he argues "that free and rational people, desirous of favoring their own interests and placed in an initial position of equality, would accept, and that they would define the fundamental terms of their association." (RAWLS, J. 1.971, p. 37).

And in this vein, Rawls declines the two principles of justice in the division of goods as rights of the people who are part of the contract, namely:

1. All persons shall have an equal right to the most extensive total system of basic freedoms equal for all, compatible with the same system for all. 2. - Economic and social inequalities must be such as to be: a). For the greatest benefit of those who have fewer advantages, within the limits of a just principle of saving; and, b). linked to functions and positions open to all in accordance with the principle of fair equality of opportunities. (RAWLS, J., 1.971, p. 341).

In this geometry of measures to be shared, the philosopher of law enunciates the principle of equal freedom and the principle of difference with equal opportunities, ensuring the freedoms of citizenship, expression, assembly, voting, locomotion, work and private property, privacy to all without distinction, at the same time that, by virtue of the second principle, thinking about the inequalities that constitute people in the position of entry to life, in the talents that contribute to the community and distinctions of qualification and competence in the responsible exercise, something that is impossible to conceive

throughout history, a provision of goods that can result in something less unfair in the way of dealing with inequalities.

From this point of view, it is possible to affirm that the conditions of inequalities preferable to scandalous inequalities will be made through equal distribution, in the case of justice as equity, in which goods, talents and opportunities are distributed (known as the principle of difference) and ends with the guarantee of possible engagement in situations of authority and responsibility.

This agenda elaborated in justice as equity escapes the premises of utilitarianism and also communist sharing, so much so that it adduces that "attacks on basic freedoms, equal for all those who are protected by the first principle, cannot be justified or compensated through greater social or economic advantages." (RAWLS, J. 1.971, p. 92).

The reading of the theory raises that the disadvantaged will have priority in relation to the other partners in the contract, even if it was considered to achieve the collective, that is, this verve of the priority of the group to the detriment of the subject, in Rawls, is unknowable.

But in Recouer we find an argument of capital importance to immunize once and for all the utilitarian examination of the conception of justice as equity. Alluding to the ethical superabundance of love (treated in this article as care), human existential capacities expanding to legal predictions (RICOUER, Paul. 2010).

The French existentialist does not decline the law because he censures the space that immorality could occupy in the distribution of values to the people who make up society, and this was done by normative justice, whose root, in his judgment, is in the maxim of the golden rule, so much so that there is in the postulates of justice a predominance of equivalence – a measure that, In any case, it is also included in the golden rule.

Likewise, the self-giving love that is presented in agape and makes itself resident in the bosom of the person, in his repository of memory and in history, exactly what is done without retribution and/or equivalence, and seems to be so distant from the concept of justice and not to be attached to the golden rule, both translated by equivalence, proleptically, they receive notes from Recouer:

In this relationship of living tension between the logic of superabundance and the logic of equivalence, the latter receives from its confrontation with the former the ability to rise above its perverse interpretations. Without the corrective of the commandment of love, in fact, the Golden Rule would be incessantly inflected in the sense of a utilitarian maxim whose formula would be *do ut des*, I give you to give. The rule: give because it has been given to you, correct the in order that it may give



you a utilitarian maxim, and save the Golden Rule from a perverse interpretation that is always possible. (RICOUEUR, Paul. 2.010, p. 36.)

In fact, to do the same retribution from the other would only be purified of utilitarianism in careful action. And, equally, projected to the principle of difference in the theory of justice, he adds:

insofar as love is directed against the process of victimization that utilitarianism precisely sanctions, by proposing no more the ideal than the maximization of the average advantage of the greatest number at the price of the sacrifice of a small number, before which this sinister implication of utilitarianism must remain concealed... This is one of the unspoken assumptions of the famous reflected balance, of which the Rawlsian theory of justice is ultimately authorized, between abstract theory and our best-considered convictions. (...) Justice becomes a necessary medium of love (RICOUEUR, Paul. 2.010, p. 39).

Because love (care) is beyond morality, in the sphere of justice it becomes practical and ethical, and removes from justice the utilitarian sense that touches it in the contemporary. The same can be said about officialdom.

Durkheim consolidated the understanding that the priority of harmony and stability indispensable for the functioning of society lies in the relationship of functions that, as a gear, work together towards the order and preservation of the social system. Once the functional roles are distributed to social beings, which is consolidated through law, the driving wheel of the system is that there is compliance with laws, this becomes free will, which is very different from the freedom assumed as the ability to promise and respond.<sup>5</sup>

In this way, the budgetary principle superimposes itself on the dignity of the vulnerable, even though the law is crossed by the theory of justice as equity, the sensible reduction of what is conceived as an existential minimum from the legal perspective,

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<sup>5</sup> In another passage Zenni proclaims that

"The choice of values is standardized, focusing on certain interests explored by technology, having as a proportional inverse the minimized autonomy, which is why it is affirmed that there is a uniform and apparent freedom. Law, in this new context, far from enshrining human self-realization, can, at most, institutionalize risks, establishing sanctions against violations of the apparent will, as if a social cost-benefit calculation of engagement. Another consequence is the strictly judicial function of the judge. The provisions of contracts in conflict before the court are reconstituted in terms of calculating freedoms, the intention of the parties, the interest of the company or social interest, there is no choice of the parties. Before the judge, the parties are not individuals endowed with free will, they are true objects, the contracting parties are legal fictions that sign calculation contracts – prediction, the instrument itself is fiction, a calculation game, there is anticipation of risks." (ZENNI, Alessandro S.V., 2.006, p. 51).

produces an ideological castration in the primeval value of all legality, something quite paradoxical.

### **THE FUNCTIONALISM OF LAW AND THE ROLE OF AXIOLOGICAL IDEOLOGIES – THE EVALUATIVE REDUCTION THROUGH WHICH THE DIGNITY OF THE HUMAN PERSON PASSES (AN EXCLUDING INCLUSION)**

It is known that the principle of dignity raised to constitutional value and foundation of the entire axiological constellation. There is a legal content in the principle of the dignity of the human person that consists of guaranteeing, and, at the same time, harmonizing, autonomy (freedom) and isonomy.

In view of the strong evaluative load of the principle, whose bases have already been manifested in the conception of the person and all its theological-philosophical baggage, becoming one of the most relevant and exquisite norms of the principle, the filling of the legal content of dignity deserves reflection.

Larenz, addressing the dignity of the human person in its so-called ethical personalism, in the light of civil law, points out that its graft concerns respect for the person as an existential entity, in the material sense, such as life, physical integrity and health (LAREZ. Karl, 1978. p. 46.)

The jurist and magistrate Ernest Benda, referring to the post-war German Basic Law, points out that the dignity of the human person proposes to shield the human being from all degradation, not allowing anyone to be converted into a means to achieve group ends, especially the state objectives, on the contrary, it is the community that must serve the human that is in each being, raising the vision of minimum existentiality (BENDA. Ernesto, 1996. p. 124-127).

For Flórez-Valdéz, human dignity takes on a broader content. The Spaniard's starting point is to bridge the content of the principle of isonomy, spreading legal guarantees to absolutely all men, in addition to the citizens of a collectivity. Along with equal treatment, the freedom that confers autonomy to the human being must be a full conquest, so that the limits against the group and the interference of the State in the sphere of people's free will becomes a task of the law, the so-called negative freedoms, at the same time that the existential minimum requests from the group substitution and contribution, including the state apparatus. These are the fundamental and human values, which, in our legal system, are included among the inalienable rights and guarantees that make any person notable as

an autonomous entity. And he concludes that the sense of horizontal effectiveness of the human values engraved in the law ensures guarantees in relation to the State and individuals (FLÓRES Y VALDÉZ, 1990. p. 149).

The symmetry of the position of the legal philosopher with the position of the Brazilian legal system has a legal content of caliber within the dignity of the human person, and it is enough to refer to article 5, I, of the Federal Constitution and to the equality of treatment, as well as article 5, III, which prevents cruel and degrading treatment of the subject, the entire arsenal of guarantees of the law and criminal procedure against the exacerbation of the State in its *jus puniendi*, bundled, basically in the presumption of innocence clause, strict reservation of criminal legality and due process of law, as well as, at the level of private legislation, respect for personal rights, blocking of actions contrary to the autonomy of the will but, at the same time, limits to the same autonomy even if exercised by the subject himself, restrictions on genetic transmutations, barriers and sieges to cybernetic audacity with the recent Data Protection Law, and the implementation of social, economic and cultural rights tending to crown the minimum existence of any person.

This mortar that entangles the dignity of the human person, for the purpose of approaching people with autism spectrum, is of capital acuity, either to make them autonomous as a personality and citizenship, in the wake of article 205 of the Federal Constitution, through education, or to insert them into social belonging, through public policies that provide them with material equality before the community. And with this perfunctory approach, person and justice are used as a magna question of law.

Furthermore, seeing rights as protections of social roles without the prudent evaluation of the actions carried out behind these functions, the assumptions of responsibilities and subsidiarity present in the groups for strengthening assertive freedoms, including the State itself, a phenomenon called axiological ideology emerges that, at the same time that it promotes the hard core of law through normative means, it relaxes its decision-making capacity through hermeneutic bias, aviating a kind of etiolation of content.

Tércio Sampaio Ferraz Junior teaches that law in the functionalist perspective proposes the stabilization of social expectations that show certain disturbances in the communication systems between society. The legal norm has this capacity to imprint any invariant on the system, likewise at the moment of the command acting, in the name of formulas of justice, an instant of flexibility is inserted.

Here are the ideologies associated with the axiological aspect. The hermeneutic has the capacity, through the interpretation of the facts, to propose an evaluative attitude, not exactly about the preferability of values, but about the definition of what value itself is. As Ferraz Junior points out, "ideological valuation creates the possibility of estimating one's own estimates, selecting the selections, ultimately valuing the values." (FERRAZ JUNIOR, Tércio Sampaio, 2007, p.587).

This means, ultimately, that valuation, submitted to ideology, is discredited, since it is from ideology that the conditions are established for values to be "evaluated" according to the needs and possibilities of the decision, and this generates a systemic functionalism because it admits that society communicates based on values with the hypothesis of its own neutrality, because ideology in a certain way adulterates value, withering or amplifying it.

This is the theory developed by Tercio Sampaio Ferraz Junior about the evaluative field (input channel of facts and values) and normative program (output channel of values in the form of decision), corresponding to the realization of values that are directed to social behaviors but always observing the maintenance and survival of the system as a condition of decisions

Concretely, the spectrum of people with autism, requesting inclusive education, and the technical and economic difficulties that schools present, even for the enrollment of students with the disorder. This materialization of the values normalized in the constitutional text and outlined in the infra-constitutional laws is irreconcilable with the daily plan, either because educators still maintain a segregating view, there is great ignominy on the subject and, at the end of the day, economic restrictions make the substrate for all the difficulty in the postulated inclusion.

If, eventually, autistic people are admitted in the sense of educational inclusion, these are the data, numbers and statistics in accountability that proposes an education system as a requirement of the global agenda on education proposed by international organizations such as the World Bank and UNESCO, under the ideological discourse that vulnerable groups should be included in the system as a way of forming human capital to face the brutal inequalities in the accumulation of capital. This wants to result in touching very distantly the meaning of the human person as it has been sought to refer elsewhere, since imposing public policies on client countries so that inclusive education promotes "human capital" (being competitive), has the scope of qualifying labor as the last of the vectors of

education in the environment of capitalism (ROBERTSON, S.; VERGER, 2012, p. 1.133-1.156).

The value of human development sought by the World Bank, strategies for promoting this, also defines which are the priorities and interests to prevail and which would be the adjacencies of the second suit, imposing on client countries, as is the case of Brazil, through regulations, the transnational agendas of progress (PEREIRA, J. M. M., 2010).

It is evident that the economic system, which underlies the political-legal system, strives for the promotion of human development, conceiving it as a potential to be competitive, and if the technical capacities (*homo faber*) translate the human phenomenon, people contains an ontophenomenological opulence that greatly affects the register envisioned by capital, and here there is a striking example of evaluative ideology that withers the sense of human dignity.

This is because the education agendas carried out by international institutions with direct influence on the Brazilian legal and political system aim at a systemic programming of the education market, submitting internal public policies (in Brazil) from private mechanisms, where competition is sharpened and, especially on inclusive education, there is a "politically correct" labeling that submits to the economic directives that propel the so-called development.

João Marcio Pereira and Márcia Pletsch conclude that deficiencies are evaluated in these agendas of international organizations in a selection process of the functionality of individuals based on the framework of human capital, that is:

It is, therefore, a matter of thinking about the functionality of individuals as a labor force for capital. On the other hand, humanitarian considerations (such as autonomy, dignity, equality and freedom) of people with disabilities raise the discussion about their inclusion in the field of human rights, which, contradictorily, opens spaces to question the economic premises of the inclusion itself sponsored by the RMD. Historically, the WB has sought to deviate from the issue of human rights in order to avoid criticism of the socially regressive impacts of its economic agenda." (PEREIRA, J.M and PLETSCHE, M., 2021).

Why, then, an ethics of care that allows another glimpse of law and politics and in what sense this could contribute to inclusive public policies in the field of education, is what is announced below.

## **AUTISM AS A DISORDER AND PUBLIC POLICIES FOR INCLUSION IN EDUCATION - A SOCIAL RIGHT**

Kanner already in 1943, in an article entitled "The Autistic Disorders of Affective Contact", describes autism as a peculiar syndrome, marking a fundamental disorder identified as the inability of these individuals to relate to other people from the beginning of life, with solipsism being the fundamental symptom (SUPLICY, 2013, P. 23).

In the 70s, a new panorama circumvents autism, considering cognitive impairment to replace the primitive social deficit, until in 2013, another reconfiguration engenders the Diagnostic and Statistical Manual of Mental Disorders – DSM-5, where the term Autism Spectrum Disorder (ASD) is recorded, and it is worth describing the main characteristics of autism according to the aforementioned manual:

Table 1: Autism according to the DSM-5

Key features	Age of manifestation	Important aspects for the differential diagnosis
<p>Impairment in the development of social interaction and communication.</p> <p>There may be delay or absence of language development.</p> <p>In those who have it, there may be stereotyped and repetitive use or idiosyncratic language. Restricted repertoire of interests and activities.</p> <p>Interest in non-functional routines and rituals</p>	<p>Before 3 years of age.</p>	<p>Impairment in operation or delays in at least 1 of the 3 areas: Social interaction; Language for social communication; Symbolic or imaginative games.</p>

Source: DSM-5 and prepared by the author himself, 2024.

It is worth noting that in the research by Ana Maria Costa da Silva (2018, p. 1.343), 1% of the population has some of the autism spectrum disorders (ASD), so autism is the third most verified type of Pervasive Developmental Disorders, behind only congenital malformations and Down Syndrome. The Brazilian Autism Association estimates that 1 million and 600 thousand people have ASD.

Regarding the etiology, the causes of ASD are divided into genetic and environmental, and the risk of a child developing autism is from 0.2 to 0.35%, while genetic studies have pointed out that familial recurrence is increased by 3% to 8%.

Autistic people manifest a predilection for inanimate objects to people and human faces, generating complex issues of recognition of those close to them, such as parents, teachers, siblings.



Social development is marked by impaired attachment behavior, they do not recognize or differentiate the closest people in their lives and, subsequently, they may demonstrate extreme anxiety when their routine is interrupted, although when they reach school age, they suffer an evident deficit in the ability to play with their peers and make friends and, despite the fact that cognitive functions have great ability in verbal reasoning, they do not vocalize feelings, are oblivious to the interpretation of social behaviors and do not interact socially (SADOCK and RUIZ, 2016).

A scientific consensus detects in autism organic neurological dysfunction, which affects the ability to communicate, consequently, relationships, and with it aversion to touch, perception and motor disorders, apparent insensitivity to pain, among other consequences.

The challenge that is imposed in the face of the attested metric about autistic people in Brazilian society is to promote their inclusion and the use of playfulness in this process, a theme that has been much discussed contemporaneously, so that their vulnerability, with group subsidiarity, allows them to expand as a person in the most sublime sense.

In Brazil, the rights of people with Autism Spectrum Disorder (ASD) are guaranteed by a series of laws and regulations that aim to promote their inclusion and protection.

The Berenice Piana Law (Law 12.764-12), known as the Autism Law, establishes guidelines for early diagnosis, comprehensive care and the guarantee of the rights of people with ASD. It also defines the obligation of public policies aimed at these individuals.

The Statute of Persons with Disabilities (Law 13.146-15), recognizes people with ASD as disabled, providing them with rights provided for in the statute, such as accessibility, inclusive education, health, work and social assistance.

The National Policy for the Protection of the Rights of Persons with Autism Spectrum Disorder (Interministerial Ordinance No. 02, of 2.018), establishes guidelines for the implementation of public policies aimed at the protection and promotion of the rights of people with ASD.

The right to health, which includes access to specialized services, therapies and specific treatments for the development and well-being of people with ASD, as provided for in the Unified Health System (SUS).

The Right to Work and Social Security, which provides for measures for inclusion in the labor market, such as training programs and vacancy reservation, in addition to ensuring access to social security benefits in a way that is appropriate to the needs of people with ASD.

Especially on inclusive education, it dates back to the Federal Constitution with the reinforcement of the Statute of Persons with Disabilities, through the National Policy for the Protection of the Rights of Persons with Autism Spectrum Disorder (ASD) that ensure access to education in regular schools, with necessary adaptations to meet the special educational requirements of students with ASD, also recommending article 7, that the school manager, or competent authority, who refuses to enroll a student with autism spectrum disorder, or any other type of disability, will be punished with a fine of 3 (three) to 20 (twenty) minimum wages and, in case of recurrence, may lead to the loss of the position.

The Law of Teaching Guidelines 9.394-96 requires the State to ensure free specialized educational care (SES) to students with disabilities, including those affected by developmental disorders, including autistic people, which was endorsed by Law 12.764-12, already considered.

The LDB leaks into its core the support of curricula, methods, techniques and educational resources, as well as specific organization, without neglecting qualified educators to promote the integration of students in common classes, with the emphasis that this inclusion is done in ordinary schools, with specialized ones being an exception.

Furthermore, among the most pressing challenges for people with autism spectrum in education is the barrier raised by education managers themselves in conceiving them as people who are part of the school, not composing a contingent of special education dedicated to their own space<sup>6</sup>. There is no clarity about the equality of treatment and the deserved privilege of vulnerability on the part of education professionals, certainly because, without the development of care and affection skills, students, under any circumstances, are seen as functional roles, just like teachers and educators, immunizing themselves all with the humanity that resides behind the "social masks".

## **ETHICS OF CARE IN THE REALIZATION OF INCLUSIVE EDUCATION THROUGH LAW**

Ethics gains the Aristotelian understanding of designating upright behavior according to the common good of the city, presenting it with happiness, that is, in the realization of the virtues, a good act and a good living, result in eudaimonia (ARISTOTLE, 1999). Greek

<sup>6</sup> In addition, the authors point to the scarcity of public policies in inclusive education, lack of coordination between health, social service and education for autistic people in order to stimulate human development and therapeutic follow-up at the heart of the school. And that's not all: teachers are not enough to placate the demand for special students, and of that contingent gathered, few are those who have the technical baggage to deal with inclusive education. CAPELLINI, Vera Lúcia Messias Fialho and RODRIGUES, Olga Maria Piazzentin Rolim, 2009, pp.355-364.

metaphysics is embodied in the Aristotelian rule and was so until the lights went out in the Middle Ages.

Kant draws a dividing line in history by raising the categorical imperative as a universal law from which the concept of humanity is constructed; According to its prescriptions, individual action must coincide with a conceivable universal maxim, becoming the philosopher of the law, so to be ethical is to comply with the law. The sublimating role of law results from this mismatch between subjective action and the generic plane, that is, it will be up to the legal norm to fulfill this rite of passage between pubescent human beings and enlightened humanity (KANT, Immanuel, 2004, p. 52.)

As pointed out in another passage, compliance with the law, in the coeval, translates into a stratagem of risk and calculation in systemic engagement, especially in the face of the society of functions, whose relations decant any appreciation of ethics in acting, much less trigger responsibility deliberately assumed by the agent.

The ethics of the law, if still subsisting in the program of the social contract, in order to avoid immoral perversions in the perspective of the just, no longer responds to the realization of the human person as a task to be fulfilled. This astute rationality meets the expectations of the stabilization of the social system, long ago hijacked by statistical economics, as has often been pointed out elsewhere.

Referring to the ethics of care in Winiccot, Loparic highlights that before being a thinker, the human being is a needy being, needs care, an entity that longs for care, the formation of subjectivity presupposes sensitivity, which, in itself, imposes a cognitive turn, and formal reason is not the appropriate stage to process this ethical perspective (LOPARIC, Zeljko, Winiccot, 2.013).

It is undeniable that the human phenomenon is the bearer of the entire history of billions of years of the universe, attracting in its integument the traces of cosmology, biology, up to the recognition of anthropology with the development of rationality, however, before being human sapiens, it is a mammal that, by the work of the species, has a limbic system forged thousands and thousands of years ago and that is experienced in care. What adds to the human condition is the awareness of care, the understanding that, as the manager of this totality materialized on the planet, interconnected among all living beings, it is up to him the mission of an ecozoic becoming, an expression recently treated by cosmologists and theologians recognizing the same invisible and spiritual dimension deposited in the universe of which the human makes his home and is partly constituted.

Therefore, this immaterial that is planted in all beings, of whose pleiad man generates, but is also composed of it, deserves attention in the ethical and juridical dimensions, not only to ensure the permanence of humanity, but to guarantee the dimension of the future.

It is good to recover the myth of Care, and its implication with the human, to refound another ethical paradigm, dealing with the work of Leonardo Boff (BOFF, Leonardo, 2012, p. 76):

One day, when Care was thoughtfully crossing a river, she decided to pick up some clay and start molding a being, which in the end presented the human form. As he looked at his work and evaluated what he had done, Jupiter approached. Carefulness then asked him to give the spirit of life to that being, to which Jupiter promptly complied. Careful, satisfied, she wanted to give a name to that being, but Jupiter, proudly, said that it was her name that should be given to him. While Care and Jupiter were arguing, Terra appears and reminds him that she is the one who should give a name to that being, since he had been made from the matter of his own clay body. Finally, to settle the issue the three disputants accepted Saturn as judge. Saturn decided, in his sense of justice, that Jupiter, who gave the spirit to the being, would receive back his soul after death; Terra, as she had given her own substance to his body, would receive it back when she died. But, Saturn said, "since Care preceded Jupiter and the Earth and gave him human form, let her give him assistance: may she accompany him, preserve his life and give him support as long as he lives. As for the name, it will be called Homo (the Latin name for Man), since it was made from the humus of the earth.

The basic and central issue in the course of the ethics of care and affection lies in the suffocation of Eros and Anima, by Western rationality, since the first thinkers, leaving the theme of love to the peripheral plane, sometimes treated as a lack and desire by Plato, sometimes treated as philia or affection only by friends and countrymen in Aristotle, sometimes as drive and desire in Freud, but the one who had best dedicated himself to the theme of love, in the condition of fraternity, Christ, was dogmatized in rules and canons, generating its repercussion to politics, law, and to the systemic, closed, organic and complete culture itself.

Love is openness, says Bergson<sup>7</sup> (BERGSON, Henri, 2.009, p. 20), as pulsating and latent as the conceptual halo of the dignity of the human person, a being in relation<sup>8</sup>, it is the anima potion that presents itself to every human being in its harmonic dance with animus in Jung's archetypes. The critical judgment present in the human condition, proper to its organic and anthropological development, must correspond to a first dimension of loving-kindness and care, and only in this perspective will there be a conception of person and dignity.

The scientific rigor that promised progress in modernity declines in juridical-economic rationality, stabilization of social expectations through decision, without neglecting the fact that economic transnationalization controls even internal public policies and client countries are indoctrinated by governance norms, with disdain for the notions of person and dignity as an end in itself. This is the gap dug at the expense of justice.

Eduardo Bittar, explaining care in law, stresses that

"As a science, Law, by immunizing itself from the contamination of the afflictions of the unjust, the fundamental nourishment of every necessary demand for justice, becomes a set of conceptual formulas that, divorced from sensory reality, are projected as knowledge in the dimension of a mind that has no body and is not related to the human bodies of living individuals whose real needs the legitimacy of the legal system itself should feed. For this reason, the knowledge of law becomes cold and sterile, formal and formulary, abstract and conceptual, instead of human and sensitive, dialogical and reflective, socially vocational." (BITTAR, Eduardo C.B, 2.008, p. 99-128).

The autistic person cannot be added, purely and simply, to a subject of law, this abstract category stamped in legal functionalism, it is a person, open to realization as such, urging the substitution of the groups to the State. Projecting sensitivity to this notably

<sup>7</sup> Bergson makes an interesting point dividing the cognitive capacity of the human being into surface and depth. The first would respond to the most basic impulses and to the ordinary circumstances that require pragmatic and daily action, providing the human with reflexes and (re)actions, even if there is some intermediation of time between provocation and response. In relation to absolutely free action, Bergson highlights a contemplative dimension of existence, where inventiveness and creativity emerge with free action, because, here, a deep memory of past and experiences is accessed and becomes a beacon for the next act, so the present is imbued with the past towards the future, Time is no longer that of the instant and that of chronology, it is as if it were a time of duration, the very ontology of the human. In BERGSON, Henri. *Spiritual Energy*. Translated by Rosemary Costhek Abílio. São Paulo: Martins and Fontes, 2.009, p. 20 et seq.

<sup>8</sup> In a text in honor of Professor Oswaldo Giacoia Junior, it was emphasized that the dimension of person is relational, an expression of love, therefore of ethical superabundance, for this reason person, and any person, has a universal connotation, as a concept, but is always singular, in the face of memory and history, and cannot be assimilated apart from a whole, otherwise any person is totalizing in relation to which everything becomes a part. ZENNI, Alessandro S. V. *A Profanação do Estado e do Direito como Direito a Ser Pessoa*. In *Labyrinths of Philosophy. Studies in Honor of Oswaldo Giacoia Junior*. Organizers Caio Henrique Lopes Ramiro and Alan Ibn Chahrur. LiberArs Editora.

human issue corresponds to safeguarding from the calculating vision, restoring to the human what is rightfully theirs. Humans are living, dynamic and interactive beings.

Again turning to Bittar

"Contemporary philosophical reflection must be sensitive to the issue that reason is replaced by affection, but incorporates affect as a way of practicing an ethics of care. (...) Therefore, the philosophy that extracts its foundation from biophilia must necessarily be aligned with the perspective of the dissemination of a human identity capable of exuding responsibility and affection in the dealings between ego and alter." (BITTAR, Eduardo C.B, 2.008, p. 109).

In summary, as long as the law treats the dignity of the autistic person within the standards forged by the World Bank, from the perspective of scores, numbers and data guaranteeing monetary injections, the entire abundance of the concept of person will suffer evaluative castration convenient to the instrumentalization of humans for economic purposes. Caring is understanding the sensitive and neutralizing the pragmatic, technical-rational.

It is punctuated with Warat, by focusing on the category of power, narrating all his predatory and controlling perversity, leveraged in strategies, while loving-kindness would foster a society whose alchemy is of union and feelings, and not of a thought of rejection and burden, fear and defense of all against all. (WARAT, Luis Alberto, 2.004, p. 301).

Caring is a permanent action, a way of being proper to humans in relation to other humans, it is a communion of interests, respect for people, regardless of labels, qualifications, imprecations. It is in this new ethic, as old as the limbic part of the mammalian brain, that the article bets on the care of people with autism spectrum disorder.

## **FINAL CONSIDERATIONS**

The article deals with inclusive education as a fundamental right of people with autism spectrum disorders.

If the law is nourished by the ethics of the human person as an end in itself, embodied in a source value of constitutional matrix, superior to and prior to any legal positivity, a paradoxical phenomenon begins to neutralize the phenomenon of the human person, by the yardstick of axiological ideologies, significantly reducing the realization of value in the plane of facts.

This explains the abundance of legal norms supporting autistic people with inclusion in education and, at the same time, complaints of denials of enrollment, scarcity of



professionals equipped to receive autistic people in schools, lack of preparation of education professionals to deal with the relational limitations of such students, and, above all, the concerns centered on the "development" of autistic people forming them for the world of capital, especially the holder of technical training, when education rigorously encompasses two other important goods: formation of the person and awareness of citizenship.

The elaborate and technical legal language, submitted to numbers, data and statistics, instead of emancipating, represents segregation, normalization and control, cooling the personal development of the subject.

If justice is the foundation of the validity of the law, and is also indispensable to prevent a world of profound inequality, restriction and human degradation, an ethical superabundance based on love and care deserves the investment of jurists, seeing subjects of law, these cold and abstract categories, as living, sensitive and coexisting humans, who, in addition to ownership and portability, they will be cared for as people.

Spectral fields do not cease to appear in ghettos, prisons, refugee spaces and perhaps in schools. Sensitivity reveals itself to be the ethical path in making legal decisions in favor of people, especially those who, vulnerable, request for substitution and inclusion due to their own condition.

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