

## SILENCED NARRATIVES<sup>1</sup>

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**ABSTRACT:** This article aims to discuss the possibility of thinking Law not from a supposedly universal and abstract perspective, but from what the German philosopher Walter Benjamin called the tradition of the oppressed. The fundamental question here is not about who narrates the Law, but about which voices could have narrated them if they had not been silenced. Assuming with Benjamin that it is impossible to criticize an institution such as the law without deconstructing the language in which the legal universe is sedimented, the article resorts to literary language as a way of bringing to light silenced narratives. To do so, it also dialogues with the history of silence as told by the American writer Rebecca Solnit, aiming to see the reports of those who are authorized to speak as a small island in the middle of an ocean of silence. Finally, storytelling will be used as a privileged example of the type of linguistic deconstruction that is being defended.

**KEYWORDS:** Narrative; Silencing; Critical legal theory.

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**RESUMO:** O presente artigo visa discutir a possibilidade de pensar o direito não a partir de uma perspectiva supostamente universal e abstrata, mas desde aquilo que o filósofo alemão Walter Benjamin chamou de tradição dos oprimidos. A pergunta fundamental não é aqui acerca de quem narra o direito, mas de quais vozes poderiam tê-los narrado se não houvessem sido silenciadas. Pressupondo com Benjamin que é impossível criticar uma instituição como o direito sem desconstruir a linguagem na qual o universo jurídico está sedimentado, o artigo recorre à linguagem literária como forma de trazer à tona o que aqui se intitula narrativas silenciadas. Para tanto, dialoga também com a história do silêncio tal como contada pela escritora norte-americana Rebecca Solnit, visando assim enxergar como os relatos daqueles que são autorizados a falar como uma pequena ilha em meio a um oceano de silêncio. Por fim, usar-se-á o *storytelling* como um exemplo privilegiado do tipo de desconstrução linguística que se está defendendo.

**PALAVRAS-CHAVE:** narrativa; silenciamento; Teoria Crítica do Direito.

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**RESUMEN:** Este artículo tiene como objetivo discutir la posibilidad de pensar el derecho pero no desde una perspectiva universal y abstracta, sino desde lo que el filósofo alemán Walter Benjamin llamó la tradición de los oprimidos. La cuestión fundamental aquí no es quién narra la ley, sino que voces podrían haber participado de la narrativa de la ley si no hubieran sido silenciadas. Asumiendo con Benjamin que es imposible criticar una institución como el derecho sin deconstruir el lenguaje en el que se sedimenta el universo jurídico, el artículo recurre al lenguaje literario como forma de sacar a la luz lo que aquí se denomina narrativas silenciadas. Para ello, también dialoga con la historia del silencio contada por la escritora estadounidense Rebecca Solnit, con el objetivo de ver como los relatos de quienes están autorizados a hablar son como una pequeña isla en medio de un océano de silencio. Finalmente, se usará la narración de cuentos como un excelente ejemplo del tipo de deconstrucción lingüística que se defiende.

**PALABRAS CLAVE:** Narrativa; silenciando; Teoría Crítica del Derecho

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## 1 INTRODUCTION

This article aims to insert itself into a tradition of critical theory of law based on literary categories constructed by the German Jewish philosopher Walter Benjamin, especially in essays such as the *Theses on the concept of history* (Benjamin, 1987) and other essays on literature, especially those about Franz Kafka and Marcel Proust.

By mentioning critical theories of law, I refer to works such as the recent *The Radical Philosophy of rights* by Costas Douzinas (Douzinas, 2019), *Thinking like a negro* by Adilson José Moreira (Moreira, 2019), Fernanda Bragatto's critique to the colonialist element of the traditional human rights discourse (Bragato, 2014), as well as to other authors who, without in any way abandoning law and especially human rights as an essential emancipatory tool, nevertheless realized the need to rebuild the bases on which some of its fundamental assumptions are based.

Two questions characterize the approach that I will seek to carry out: I) If human rights are a democratic construction, who participated in such construction? This question leads to another, much more uncomfortable and hard to answer, which concerns those who did not participate in such construction; II) The second question concerns not directly who could speak and who had their voice silenced, but how law and human rights are narrated. It is, therefore, a dimension that questions the linguistic assumptions from which our discourse on law was constructed.

In this short introduction, I will try to highlight how the structure of this article intends to develop the questions summarized above. In any case, it is imperative to point out that this is a project under development, which is why the hypotheses to be brought forward and some

intuitions that guide the readings that will be presented are still a work in progress, of an essayistic nature.

The article will have three parts. In the first, I will expose the most political element that surrounds the idea of silenced narratives, namely the idea that there is a tradition of the oppressed that is silenced and from which the vision of law is totally different. This is a development of Benjamin's thesis according to which "the tradition of the oppressed teaches us that the state of exception in which we live is actually the general rule" (Benjamin, 1987, p. 226).

This passage has lately been almost automatically associated with the interpretation given by Giorgio Agamben in his "State of Exception" (Agamben, 2004) and in other parts of the *Homo Sacer* project. However, in the present research the path is different, since the dialogue will take place more closely with Benjamin's writings on narrative, rather than with his specific reflections on law.

Even though Benjamin is the fundamental reference of this paper, I must mention the immeasurable importance of the essay by the American writer Rebecca Solnit entitled "A brief history of silence", published in the book *The mother of all questions* (Solnit, 2017). This text, although or precisely because it concerns above it all the silencing of women, touches on a fundamental dimension of the relationship between what is said and what is not said. Although, as far as I know, Solnit makes no references to Benjamin in his work, such a dialogue is far from arbitrary and proves to be a very fruitful one.

In the second part of the article, I will try to raise the hypothesis according to which it is impossible to build a critical and emancipatory vision of law if we use the same tools as the vision we want to criticize. In other words, a critique of legal praxis needs to be accompanied by a critique of language, or rather, of the linguistic assumptions from which law is constructed.

The Swiss philosopher Jeanne Marie Gagnebin argues in *History and narration in Walter Benjamin* how this relationship between critical thinking and the invention of another form of narrative crosses several of the philosopher's essays and shows the literary dimension of Benjamin's thought (Gagnebin, 2013). This is the case in his texts on Proust, Kafka, as well as in his essays concerning the potential of cinema and photography. Despite the specific issues developed in these different texts, all of them point to the fact that we need to discover another way of recovering the dimension of human experience in the contemporary world.

Finally, in the third part I will try to exemplify, by way of sketch, how these theoretical concerns cross the new constructions within the studies of law that are presented from a critical perspective. Although I will bring more than one example, my central focus will be the book *Thinking like a negro* by Adilson José Moreira, as well as the book that inspired

Moreira, entitled *The alchemy of race and rights* by Patricia Williams (Williams, 1991). Written in the form of personal narratives, both represent, in my view, a very important and productive attempt to deconstruct not only the racism and sexism that permeate the law, but also the language that sedimented them.

## 2 SILENCED NARRATIVES

In *Walter Benjamin and the pieces of history*, Jeanne Marie Gagnebin presents the temporality of Benjamin's historical conception as something that happens in the future past, that is, something not simply within the scope of the supposed facticity of the past, of what happened, but a temporality which seeks what could have been, with the intention of “making the unrealized hopes of that past emerge, inscribing in our present its appeal for a different future” (Gagnebin, 2018, p. 58).

Indeed, beyond the critique of historicism and the supposed search for an objective knowledge of the past – which for Benjamin hid a secret empathy with the winners – the author sought to build a critical language capable of revealing the hidden potentials of the past.

The acceptance of the inevitability of the past hides a theological conception that leads us to see the present as inevitable too. Such way of regarding the past as something that could not possibly have happened otherwise hides a supposed determinism, which in turn is supported by a conception of linear progress of time, which needs to be exploded in order to give way to new possibilities, just as the revolutionaries shot the clocks to symbolize the beginning of a new era (Gagnebin, 2013).

To illustrate this image of a temporality of supposed progress that makes us look only forward and forget the “rest” that is being left behind, Benjamin used of an imagery metaphor, based on the painting *Angelus Novus* by Paul Klee. The painting shows an angel who, with his back turned to the future, looks to the past and sees in it the pile of ruins that keeps piling up as a wind blows everything forward. While we all look to the future and its promises, the angel sees the weight of those who are being forgotten in the rubble of the past (Benjamin, 1987).

Although he does not quote Benjamin, Adorno was certainly inspired by this criticism when, upon his return to Germany after World War II, he saw that no one was discussing anti-Semitism anymore and that the new enemy was entirely the threat of communism. Reflecting on this, Adorno found that capitalism always makes us look towards the future and prevents an adequate elaboration with the past, a reckoning that could prevent the return of that past. The similarity with the lack of a reckoning with the dictatorship in Brazil is evident.

Returning to Benjamin, what is important to emphasize here regarding the metaphor of the angel of history is not only the philosophical argument about progress, but the fact that the philosopher used an imagistic metaphor. This is because, in the same “Theses on the concept of history”, a few pages earlier, Benjamin talks about this rescue of a silenced past and uses the metaphor of a lightning, which shines brightly and soon after disappears (Benjamin, 1987, p. 224). Readers who knew Benjamin's inspirations could not go unnoticed by this implicit mention: it was Marcel Proust who, in the last volume of “In Search of Lost Time”, used the same metaphor to talk about catching time out of its unstoppable flow. (Proust, 2016).

Unlike Proust, for whom the past is saved from the flow of time through the work of art, in Benjamin it is up to the political struggle to “awaken the sparks of hope in the past” (Benjamin, 1987, p. 224), since “the dead will not be safe if the enemy wins. And that enemy has not ceased to win” (Benjamin, 1987, p. 225).

The Proustian metaphor of lightning reveals a very important element for Benjamin, which is the fragmentary and not fully controllable character of our access to silenced history. If the search for this enlightenment must be a political purpose, the researcher cannot consider himself as someone who is outside of history and can look at it from above and manage it as he wishes. The hope of this remembrance, which is intense and tenuous at the same time, implies taking a position against historical neutrality and its supposed scientific access to the past that is related to it. On the contrary, it is in the face of the inevitability of danger that this flash of the past appears that impels us to act.

If we remember that Benjamin wrote his theses under the shadows of the fascism that roamed Europe and sought precisely to think about the political consequences of historiographical decisions, we can read the excerpt commented above as the perception that, amid the fascism that threatens to crush once again the oppressed, history shows its forgotten and potentially redemptive face.

### **2.1 The dimensions of silence**

The impetus that I take from Benjamin in trying to hear what is not said in the stories, to perceive the silence that surrounds the small portion of what becomes official and what is authorized to be spoken, led me to a text that, as I will argue, has a proximity to the concerns brought up above that is greater than simply its imagery metaphors. This is *A brief history of silence* by the American historian Rebecca Solnit (Solnit, 2017).

The central objective of Solnit's essay is to talk about the silencing of women in history. In this sense, it is not a text that addresses the issue of silence in a way that some would call universal<sup>3</sup>, but rather from the perspective of a group especially oppressed by various forms of silencing. This first element is important here because the perspective of reading history from the point of view of the excluded implies at the same time a critique from an Archimedean and disinterested point of view.

This element will prove to be especially important in the third part of this article, when I will try to show that the concrete and experiential perspective on law opens an essential path for a legal study with emancipatory perspectives.

The text was built as a web of reports of silencing experiences and thoughts about the devastating power of this silence and there is no way to read it without both dimensions.

First, the author reverses our everyday perception according to which the voice is the rule and silences are the exception, reminding us that “Silence is the ocean of the unsaid, the unspeakable, the repressed, the erased, the unheard, it surrounds the scattered islands formed by those authorized to speak, by what can be said, and by listeners” (Solnit, 2017, p. 21).

This inversion has some similarity to the Proustian inversion between remembering and forgetting, according to which our memories are a point of light in the darkness of forgetfulness. Here, however, Solnit begins by emphasizing more the so-to-speak political dimension of silencing, although he is not restricted to it.

By “political dimension” I mean power relations and above all their effects on women's silencing. Let's see the following lines:

Not being able to tell your personal story is na agony, a death in life that sometimes can be quite literal. If nobody listens when you say your ex-husband is trying to kill you, if nobody believes when you say you are suffering, if nobody listens when you ask for help, if you don't dare to ask for help, if you were taught not to bother others asking for help [...] Stories save your life. Stories are your life. We are our stories, which can be the prison and the crowbar that will break down the door (Solnit, 2017, p. 23).

The dimension in which no one listens to what women say cannot be restricted to individual reports, but also concerns the standards of what deserves to be heard or not, what

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<sup>3</sup> I do not call the supposedly neutral and disinterested perspective ‘universal’ because such concept is far more complex and plural than some current critics has led to believe. Although it is quite important, specially in Law, to criticize a liberal perspective of universalism that has proved itself to be not only partial but racist and sexist, there are indeed other perspectives more emancipatory and nuanced of Universality that would demand a broader discussion. For instance, the argument brought up by Donna Haraway (Haraway, 1995) in *Situated Knowledges*, in which the term universality is a blend of perspectives and not the voice of a person or a group that aims to impose itself to the others.

deserves credibility or not. These are legal and political schemes for defining what is considered acceptable in terms of reporting, in terms of speech.

That is why this research does not merely speak of silence, but of silenced narratives, as it is not just about silencing people, but about erasing ways of telling stories, of truth schemes, which also makes us think about broader historical insights concerning what counts as history and what counts as myth, etc. To be more precise, it is also about silenced *ways of narrating*.

There would still be much to be brought here about this first dimension, but here the intention is not to make a general overview of this text, which certainly deserves an integral and attentive reading. Now, I would like to emphasize two other dimensions of silence addressed by the author and which are kind of submerged in the text, although equally vital.

The first of these is the issue of speech ability. To remove someone from silencing, it is not only necessarily to let the person speak, since they need to be able to understand the silencing that was imposed on them as such. This point is mentioned in passing in the text, but I think we need to dwell on this idea.

Often, due to a romanticization of ethnography, we are led to believe that any group can come out of silence as long as we learn how to listen to them. However, if notions such as ideology and neoliberalism are at least a little bit right – and I believe it is not just a little bit – people do not necessarily understand the oppressions they suffer as oppressions<sup>4</sup>. It has been common to see reports of extremely precarious workers who, however, see themselves as “their own bosses”. There are even reports of workers in conditions analogous to slavery in the countryland of Amazonia who do not see themselves that way and even protect their bosses from inspections.

On the other hand, just as dangerous as overestimating the groups' own narratives about their condition is completely underestimating them and believing that silenced groups are totally passive. Against this, it is important to understand the resistance and struggle to get out of this condition of oppression. This point is fundamental if we do not want to run the risk of using the category “silence” in a *de-empowering* way<sup>5</sup>.

Finally, the third element of silence in Solnit that I would like to stress concerns the unspeakable, that which escapes the everyday dimension of language and which precisely for

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<sup>4</sup> In this regard, it is interesting to read Jesse's Souza critique of the concept of place of speech as it was presented by the philosopher Djamila Ribeiro (Souza, 2021).

<sup>5</sup> This is the content of the criticism made by Judith Butler (2018) to the agambenian concept of bare life.



this reason requires the deviation that often, even in the author's text, makes of language poetic a privileged path<sup>6</sup>.

Although in the text under analysis the author already introduces this theme when she says that “new recognitions require a new language” (Solnit, 2017 p. 30), a broader perception of this element is found in another essay by the author that composes the book *Men explain everything to me*.

The essay discusses Virginia Woolf and the unspeakable and it cannot go unnoticed that Solnit has sought in a literary work the perception that “it is the task of writers and explorers to see beyond, to travel with low weight when it comes to prejudices”, to enter the darkness with open eyes” (Solnit, 2017, p. 60). It is not by chance that the essay is called “The darkness of Virginia Woolf – accepting the inexplicable”.

Solnit criticizes our generalization of transparent language and clear thinking as capable of enlightening each and every domain of our existence. The author opposes it to deviant, nuanced and ambiguous thinking, which she finds in Woolf. This will not serve to say that everything that cannot be said in the clear language of a scientific report can be said in a literary way. In fact, it is at the same time a question of facing the ambiguity, the harshness and the constitutive limitation of language.

## **2.2 Benjamin and Solnit in constellation**

The approach of the literary domain developed by Solnit as a way of facing the darkness of the unspeakable brings us back to the narrative path of Benjamin's theses.

This is because, when talking about the tradition of the oppressed and seeing it as a pile of rubble that keeps piling up and becoming invisible, the German philosopher does not treat the recovery of this destruction as a merely political issue. This happens precisely because doing justice to the excluded implies giving voice and bringing to light something that has been destroyed and sedimented by a language that in itself makes it invisible.

Although he recurrently mentions historical materialism, Benjamin several times manifests himself contrary to the Marxian thesis of the cultural world as a mere reflection of an economic infrastructure, at the core of which would be found the true dispute over the historical course. Although he uses concepts such as superstructure and infrastructure at the beginning of *The work of art in the age of its technical reproducibility* (Benjamin, 1987) Benjamin believes that this relationship between the world of cultural productions and the

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<sup>6</sup> The relationship between the potential of art in facing the silencing arising from traumatic experiences was interestingly addressed in a paper written by Arnaldo Godoy and Raquel Braga, entitled “Law and art in resistance to patriarchal authoritarianism during the Brazilian military dictatorship (Godoy; Braga, 2021).



scope of the economic structure is reciprocally conditioned and that the way dealing with the aesthetic realm has (or should have) a central importance for historical materialism itself.

It is for this reason that Benjamin can say that Proust and Kafka are revolutionary authors, despite the fact that their personal political views are not this and so are not the expressed political content of their books. What is revolutionary is the break in language, the act of facing the narrative limits of bourgeois linguistic categories and the need to work amidst the ashes of narrativity.

When Solnit seeks in Virginia Woolf the confrontation with the philosophical dimension of silence, which concerns not the imposed silencing, but the representational limits of language, it is certainly not because she sees in Woolf's life the type of oppression of women that is described by the Solnit throughout the book and which generally targets lower-class black women, but precisely because Solnit combines this political dimension with the philosophical dimension of the break in language.

Since Benjamin does not use the words silence or silencing in his theses, although he points to this buried element at all times, just as Solnit does not use the narrative dimension, but speaks in various forms of silence, I believe that thinking these authors together allows us to think about the category "silenced narratives", which, as already mentioned, does not merely concern the silencing of people, but the refuse of narratives and ways of narrating.

When Hayden White discusses in *Metahistory* the "ineluctably poetic nature of historical work" (White, 2019, p. 13), and when he later states that "it is no accident that the main philosophers of history were also quintessentially philosophers of language" (White, 2019, p. 13) his intention is to perceive precisely the narrative assumptions that generally go unquestioned in historical accounts.

This is how, therefore, in this article I sought to unite the political and philosophical dimensions of silencing, which can only be faced if we combine the first field with the questioning about who can speak and who has their voice silenced, and the second field with the question about which intrinsic elements in the language we build prevent many forms of life from emerging and being part of our narratives.

### **3 THE LAW UNDER THE POINT OF VIEW OF THE OPRESSED: THE EXAMPLE OF STORYTELLING**

In his book entitled *The End of Human Rights* (Douzinas, 2009), the Greek philosopher Costas Douzinas ironizes the post-war belief in human rights as the ideology

after the end of ideologies, that is, as a normative core capable of serving as an ethical minimum beyond any political differences. It was believed that no matter which political spectrum took power, this fundamental consensus around irrevocable human dignity would be guaranteed.

However, the history of the 21st century does not seem to be any less violent, less exclusionary or less bloody than past times thanks to human rights. It is enough to remember that events like the American invasion of Iraq were carried out in the name of human rights, that conservative movements fight against the right of homoaffective people based on human dignity.

In short, what should have given minimal content has become an empty simulacrum, vulnerable to the same hypocritical uses that other foundations used in the past. The attempt to bring a dispute from the political level to the level of protection of rights, an old tactic of liberalism by the way, proved once again to be insufficient, as once again the political choices passed over human rights as a tractor. But not fully.

On the other hand, several instances could be brought in which the human rights flag worked as a tool of resistance. Whether in the struggles in Amazonia against land grabbers and loggers, or in the struggles of social movements in Rio de Janeiro against the extermination of black youth, the same field of power that sometimes served to exclude also served to protect.

No matter how critical authors such as Douzinas, Betania Assy or even Hannah Arendt with her relentless criticism of the declarations of rights at the end of the 2nd part of *The origins of totalitarianism* (Arendt, 2012) may be, no one hesitates in recognizing that human rights are an essential victory which we cannot allow to be completely destroyed or subverted by its most cynical detractors, who use it ironically when it suits them.

Even Judith Butler, who in *Gender Trouble* (Butler, 1999) appeared to have an exclusively negative perspective on the emancipatory role of Law, in more recent works has brought law and its normative dimension as a domain of political struggle. Writing in opposition to Agamben's concept of bare life, Butler argues that the exclusions developed by law cannot be peacefully accepted, because the legal domain is not ontologically static (Butler, 2019).

As critical as we may be of the ways in which dignity is sometimes unevenly distributed, creating lives embraced by the incommensurability of the incalculable and lives whose death

is not even mournable, it suffices to read a few pages of something like an economic analysis of law and its utilitarian way of dealing with human rights so that we know that, with all the problems, this argumentative tool is an unavoidable civilizing landmark.

In any case, as stated throughout this article, it is impossible to criticize a tradition without deconstructing the language in which it was based. In the case of human rights, this has been effectively done in many ways. The literary dimension that I will bring here has as its great merit the ability to unveil the narrative element of law, that is, to show that law has always survived on top of what Robert Cover calls a “nomos”, that is, a narrative universe that gives meaning to this complex social practice (Cover, 2016).

But it is not enough to say that law is supported by a nomos, and therefore has a narrative dimension. A critical proposal needs to modify the fundamental question and argue not only about what sustains the coherence (if such exists) of law as praxis, but who narrates law and who is silenced in such narration.

As already mentioned, the language of law – and of human rights as will be seen – is constructed all the time under the assumption of a certain impersonality. The man, the woman, the creditor, “that the claimant arrived, etc.” everything conveys a tone of sobriety and abstraction, which, as with the definition of human dignity, do not correspond to reality.

When Benjamin stated that the exception is the rule in the lives of the oppressed, what is inserted here is the fundamental perspectivist question, that is, the idea that the point from which one looks at the phenomenon influences the way we see it. Legal scholars are familiar with this definition, at least formally from H.L.A Hart, who once stated that we need to see law from a participant's point of view (Hart, 1986). In any case, as Peter Fitzpatrick reminds us, this supposed sociology does not take long to become more and more formal, until in the end, as always, only the authorities and the official status of its word remain (Fitzpatrick, 2005).

If we wish to look for reflections on law that take this perspectivism seriously, we need to look not to Hart, but to those excluded from law. This is why Costas Douzinas once organized a collection of papers on critical legal theory and selected Kafka's “Before the Law” as opening text. This short tale deals exactly with Law from the point of view of those who have their entrances denied.

I intend to show here how the critical theory of race forged in a very interesting way a break in language that proves to be fruitful precisely for us to criticize legal language.

### 3.1 Perspectivism and Storytelling

Is it possible for us to look at the law from the perspective of a person who is excluded from its universe? How can anyone exist outside the walls of law if human rights include everyone? Does it include? Is there such a thing as an excluding universality?

We usually take for granted an official view of law, imbued in a triumphalist narrative of human rights and, in the case of Brazil, the 1988 Constitution as a framework for the realization of fundamental rights and guarantees. However, when we read the Constitution, we rarely ask the question of who is not part of it. In other words, we rarely think about what our constitution might have been like if Blacks, Native Peoples, and various other groups could have participated more effectively in this democratic process.

By making precisely this type of questioning through a denunciation of the supposed impartiality of official narrators, the so-called critical theory of race points the way towards a perspective based on the silenced narratives. Indeed, few things materialize as much what Benjamin called a state of exception as the racist treatment of black people in Brazil.

Critical race theory argues that we cannot answer questions about human rights in the abstract. To talk about exclusion, we need to listen to the narratives that have been silenced. But, as Proust reminds us, what was buried requires excavations (Proust, 2016). Such excavations are above all linguistic, and it is no coincidence that the work I will use here as an example is a veritable construction site of language.

*Thinking like a negro*, by Adilson José Moreira, is certainly one of the most interesting Brazilian books published in recent years. According to the author, his work aims to criticize the way in which the constitutional principle of equality is traditionally read, that is, as equality between individuals. In the opposite direction, the author argues that constitutional equality should be read primarily as equality between social groups, as equality of status between different groups.

This is, however, only one of the aims of the book. The other, much more daring, is to make it possible for white people to be able to see the law from the point of view of a black person, that is, under the eyes of someone whose life formation was constituted amidst the racism of Brazilian society, someone for whom the law works in an entirely different way.

To accomplish such purpose, Moreira follows the extraordinary book called *The alchemy of race and rights* (Williams, 1991) by Patricia Williams and adopts the methodology known as Storytelling, in which the author uses the first person and builds his

theses through personal narratives. It all works as if we were reading a novel in which the protagonist wants us to change places with him and visualize the law from his perspective.

Following this line, Moreira writes his book assuming that “being in a specific social place makes the world to be apprehended from a particular cognitive position” (Moreira, 2019, p. 24). The author also recalls that this seems strange to many people, since we generally believe that people have homogeneous social experiences.

To prove the opposite, the author makes use of literary language, which he believes capable of touching us more intimately than an academic argument conventionally written in a dissertation. Following Patricia Williams, Moreira uses the Storytelling methodology and invites us to immerse ourselves in his life.

Such a distinct methodology does not mean that the book is not a “law” book. Rather, it is a book on constitutional law and human rights, which talks over and over about how the courts problematically interpret the principle of equality. However, the difference is that rights are not approached in an abstract<sup>7</sup> or purely conceptual way, but from the experience of a black person.

The author intends his reader to be able to “think like a black man”, that is, to see the law from the perspective of a subordinate, thus reinterpreting his own conception of law, dignity and, above all, of equality.

An addendum here is essential. When he talks about the vision of a black or a white person, the author is not talking about essential identities, that is, he is not saying that only a black person can regard the law from this critical perspective and that white people will always see the law from the perspective that makes racism invisible and does not perceive the various levels of inequality in Brazil. In a different sense, the author makes it clear that he is talking about *hermeneutical positions*.

In this sense, Moreira brings in the book a certain optimism regarding the possibility of law playing a truly emancipatory role in Brazilian society. To do so, it is first necessary to problematize in a more robust way the meaning of neutrality and impartiality that permeates our legal education. Therefore, the author says that “I distance myself from the image of the

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<sup>7</sup> The article by Saulo Matos entitled ‘Human rights, humiliation and forms of life’ is an important example of how the philosophical concept of human dignity can be developed in such a way as to avoid the pretension of abstraction whose partiality and bias has been already strongly denounced. On the contrary, his defense of human dignity as the right not to be humiliated becomes palpable to the extent that, in order to define dignity, he departs from concrete experiences of humiliation. Thus, the research inserts a narrative comprehension of dignity, renewing the philosophical and political potential of this concept (Matos, 2019).

interpreter as an abstract subject who observes the world from a posture supposedly based on objectivity and impartiality (Moreira, 2019, p. 30).

By facing this myth of neutrality through his personal reports, giving his text a literariness tone, the author broadens the horizon of perception of his work, but at the same time becomes subject to criticism from the old analytical tradition, which prides itself on to analyze concepts dissociated from the world of life. From this point of view, which is not so difficult to locate although it naively thinks itself as abstract, personal reports are of no interest, since it presumably only concerns the experiences of those who narrate them and cannot be dimensioned as a social or political vision.

Here I shall return again to Benjamin and to literature. It is necessary to understand that Moreira's reports are not an autobiography, because, in short, what matters is not exactly his experiences per se, but the social dimension that is outlined behind the what is said. When a black person narrates his experiences of racism, there is an immediate political dimension to this account, both by breaking the imposed silence and by forcing the language to bend to the different.

Deleuze and Guatarri masterfully realized this in *Kafka – for a minor literature* (Deleuze; Guatarri, 2014), when they stated that “minor literature” is that made by a minority in the language of a majority, which in itself makes it a political act. Deleuze gives the example of what black people do with the English language in the United States.

Although Deleuze and Guatarri were there talking about Kafka, a Czech Jew who wrote in German, the same can be said of a black person who takes the language of law and twists it to make something else out of it. This is exactly what Adilson Moreira does and, in doing so, he shows us that the path to dignity and universality must not be sought in disinterested philosophical meditation, but in the middle of the street, watching people die of hunger, seeing how blacks are treated by the justice system and by not agreeing with this false neutrality.

### **3.2 Future of the past**

To regard the law in a narrative perspective, and to do so as a critique of its abstract language has been one of the arguments used by the tradition known as “Law and Literature”. In this last topic, I would like to briefly show some distinctions drawn by this research in relation to this broader field.

Often, researchers in the field called “law and literature” use the narrative dimension only to reveal something like a fundamental structure of legal praxis that is often repressed

by legal positivism. Thus, contrary to a set of static norms and propositions, the aim is to show that this entire framework is part of a broader *nomos*.

It is common to the natural law tradition to use Shakespeare or Dante Alighieri to talk about something like the immaterial dimension of law that would be constant throughout the history of legal thought. In this sense, even the various historical changes that always occur would be like the turns of the tide, which change based on a fundamental law that governs its alterability (Billier; Maryioli; 2005)5).

Even Renée Girard's rich reading of Shakespeare, Proust, etc. to discover the fundamental mimetic mechanism has something of that philosophical revelation that occurs regardless of time and that is even reinforced by its variations.

In addition to the *jusnaturalists*, it can be said that an immense range of scholars in the current law and literature follow a more or less predictable script, namely the use of the great literary canons to reveal the great questions of the philosophy of law.

In the Benjaminian approach that was followed in this article, literature appears in a different way. Fundamentally, literary language is brought to light not to reveal what the law fundamentally is, but to question the way in which this tradition was constructed and to think about the possibility that things could have been otherwise. To use an example from philosophy, instead of talking about Descartes and showing his fundamental relevance for the philosophy of modern science, one could ask what would have become of such a philosophy if Vico had had the importance that the French philosopher had.

This perspective leads to two fundamental questions. First, it deals with the issue of canons and why several key literary texts are treated as of minor importance. So much literary production talking about the most varied themes that are not part of the editorial choices and are not listed in lists made by specialists who act as gatekeepers of what deserves recognition or not.

When Walter Benjamin wrote the essays on Proust and Kafka, neither author was yet famous and, so to speak, a literary canon. Proust had died 7 years before Benjamin's essay and was still read in Germany as if he were making an ode to the snobbery he denounced in his book. Kafka was then fundamentally read from the biography written by Max Brod (1978), who treated him as a religious man who wrote metaphorically about the absence of God.

While Benjamin wrote about writers like Goethe and Baudelaire, he also scrutinized the authors that represented a break with narrative traditions in his contemporaneity. This is because, as already mentioned, the philosopher believed that something can be revolutionary not only because of the content being expressed, but also because of its form. Form and content cannot be separated here.



That doesn't mean that only aesthetic innovators deserved his attention. Just as it is possible to use a new form and not have anything different to say, it is also possible to use an old form to say new things, as in the case of Goethe's *Elective Affinities* (Goethe, 1968)<sup>8</sup>.

In the case of Adilson José Moreira's text, I consider it revolutionary not exactly because of the legal theses defended throughout the book – in which I even see a certain liberal optimism – but because of the break in form, that is, because he realized how Law's traditional language is part of the problem of racist exclusion denounced throughout the book.

In addition to Storytelling itself, Moreira brings much of the orality dimension that plays an extraordinary role in the tradition of critical race theory. It is no coincidence that the book opens talking about the stories his father told him. These dimensions are not purely aesthetic, but a way of strongly questioning the epistemology of legal knowledge. In this sense, as in the case of a novel, the important thing is not to read the text only for the content expressed there, but to pay attention to how the language is being worked on in the construction of its objectives.

A Benjaminian approach to the field of law and literature fundamentally needs to ask how the law could have been if the silenced voices had participated in it. How could our Federal Constitution be if the indigenous people who were victims of an unspeakable genocide had been part of its construction? Who is being silenced so that certain narratives about law appear coherent?

Terry Eagleton interprets Benjamin as a kind of poststructuralist *avant la lettre*, that is, someone who already thought from the point of view of questioning the relationship between center and margin, between what is considered important and what is forgotten, left in a dark corner. or denied (Eagleton, 1981). Whether when analyzing children's toys, city ruins, forgotten stories, Benjamin always sought to see history as what was not said, that is, from the tradition of the oppressed.

If we think about the recent history of Brazilian law as a state of normality that have been broken since 2016, we also need to ask ourselves who this normality functioned for. Could it be that for some people the violence and authoritarianism that has been seen in Brazil since 2019 was already the general rule? How Law would look like if regarded from such a perspective?

Faced with this, Benjamin believed that what was silenced can be brought to light and that literary language is a possible way to do so.

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<sup>8</sup> I own this idea to Ernani Chaves, whose critics were fundamental to the Whole development of this research.

#### 4 CONCLUSION

As the reader may have observed, this text is part of a project that unites issues such as racism, legal language, critical theory of race and subalternity, reading such categories in the light of Walter Benjamin and, in the present text, also dialoguing with Rebecca Solnit.

Although it is a cliché, I must emphasize that the intention of this article is to participate in a dialogue that already exists and to launch arguments for discussion, without any conclusive pretension. If I need to write a conclusion here, I can only do it in the form of a request so that whoever reads this text considers herself an active participant in the process of deconstruction that the law needs to go through so that we can account for the silencing that we perpetuate until today.

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