

**LAW AND LITERATURE: A POSSIBLE INTERSECTION?
CONVERSATION WITH THE IDEAS
OF LUIS ALBERTO WARAT**

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ABSTRACT: This article, besides stating the need for a closer discourse between law and literature, is an attempt of bringing back the importance of Luis Alberto Warat as the precursor of Law and Literature studies in Brazil. By using a fictional “ghostly” interview, this paper offers a synthesis of the ideas of Warat about the possibilities of conversing law and literature.

KEYWORDS: Luis Alberto Warat; legal discourse; literary narrative; epistemology of meaning.

Law has been, in the past years, a study area for several knowledge fields, either scientific ones or not: Political Sciences, Sociology, Philosophy, Linguistics, as well as literature in its narratives, which results from the creative imagination of its creators, derived from our mixed cultural formation. Especially in literature, the legal discourse, as well as its authors, is already present in classic Greek narratives. Sophocles and Aristophanes are examples of writers of narratives about judgments, penalties and the legal ideas derived from the ancient western legal tradition, as in *Antigone* and *The wasps*. In classic modern ages, characters as the ones created by Shakespeare are objects of several reflections and researches, as with *The merchant of Venice*, among other stories. Other good examples are novels from the late 19th century. Within that group, there is Dostoyevsky with *Crime and punishment*, as well as Tolstoy with *The death of Ivan Ilich*. In Brazilian literature, Machado de Assis and Graciliano Ramos are examples

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among many others who serve as inspiration for the possible universes of the legal discourse.

These are only small examples of the absence of rigid borders between the legal discourse, with its pretentious status of science, and literary narratives, fruit of the imaginative creativity of writers and poets. We did not directly inherit the Republic of Plato, thus we did not expel our poets and narrators. We aesthetically coexist with *poiesis* and its creative power, which unveils existence and different worlds. Contradictorily, we also coexist with a crescent control of society through technology and techniques of formatting human existence. It interests us, presently, to highlight a deeper judicialization of daily life, which gets suffocated by legal structures, concretized in rules, doctrines and jurisprudences and crystalized by the institutes which create, apply and teach law. I could even state that such monopoly of legal rationalization makes it difficult to effectively exert citizenship as defended by democratic Constitutions. It is as though we were constantly getting farther from institutional autonomy, limited to be simply regular jurisdictional individuals under the Rule of Law of a totalitarian state, as proposed by Hobbes in his Leviathan.

Studies, research, publications and seminars have been happening in academic fields in order to analyze these thoughts. It seems that they indicate something new that has been happening in the reception of the legal discourse by literature. Received by many with a little skepticism and by others with a lot of enthusiasm, it is important to emphasize that critically and reflectively approaching literary narrative to the descriptive and prescriptive formulation of the legal discourse is a difficult task. Literary narrative is related, one could assume, to a kind of rationality that Habermas could name *expressively aesthetic*; whereas law has the pretention of placing itself in the middle of a strategic, instrumental rationality, even though Habermas thinks this supposed rationality aspect of law is a *moral-practical rationality*. As to avoid this discussion, it is clear that the merit of law is in its principles of a formal validity of its enunciation, as well as in the efficiency of its application, which is the mark of a strategic, instrumental rationality.

Studies and publications about a possible approach between law and literature initiated in the end of 1970s by the Argentinian-baiano (as he

liked to call himself) legal philosopher Luís Alberto Warat, in the beginning of his trajectory in Brazilian universities. Warat brought from Argentina a vast baggage of knowledge on the relation between these two discursive formations. As a reader of authors such as Jorge Luis Borges, Julio Cortázar and Manoel Puig, he added to his library Brazilian writers such as Jorge Amado and Mário de Andrade. Characters from some of these authors emerged in his thought while dealing with possible relations between law and literature. Some of them such as *cronopios* and *famas* from Cortázar's *Famas and cronopios* (Warat, 1994-1997); as well as Dona Flor, Vadinho and Teodoro, from *Dona Flor and her two husbands*, by Jorge Amado (Warat, 1985), composed Warat's surrealist narratives he used to make in order to produce a mood, a background, an atmosphere (*Stimmung*), in which law and literature got closer at each reflection, at every sand sheet – paraphrasing Borges –, which was made and unmade dialectically.

In building a language that is carved within the narratives of a Magic Realism, Warat invited to sit at his table thinkers such as André Breton, Roland Barthes and Mikhail Bakhtin and, which these interlocutors, included significance fields that opened up towards surrealism, carnivalization, transgressive semiology (Warat, 1988). Hence, I am allowed to state that he started, in Brazil, this extremely fertile movement of dialog and approaching of literature towards legal texts. The seeds he planted expanded as time went by, creating roots in the form of new narratives, new readers and new interlocutors.

It is clear that in the daily basis of law schools new interlocutions appear, every time more fruitful than before, opening up new paths on the field. Law and Literature, by the time being, as a curricular subject, is becoming more present in law schools. One could even consider that daily legal practices can also intersect new narratives, which can be assimilated by new reflexive processes of autonomies, of singularities and of alterities, so needed in a contemporaneity that is so judicialized.

Judicial power, on a daily basis, establishes punctual limitations around pillars that are known by those who dwell within its corridors, cabinets and instances. There, they breathe the air of their own myths, rites

and symbols. There, the operators of law punctually and disciplinarily standardize interests, conflicts and aspirations of a normally conflictive society, ever more dependent of decisions of processes and other decisions that become judicialized as time passes. Starting a legal demand means, for the common citizen, to lose control over their conflicts, interests and singularities. As well as autonomy, the historical identities of the social actors are pushed aside, as if they had never existed, as they become prisoners of the coercive power of the state. Narratives are transformed into punctual testimonials and taken notes of by official bureaucratic scribes. The polysemy field, fruit of experiences told by the deponent gets reduced to the body limits of the process, as the sediments and affections are thrown away and there is no track of the conditions of sense of what was being narrated, both from the victim and the transgressor. The case files become autonomous and far from the evolved ones. It is a Kafka-like dimension of the process. The interested parts can exclusively accompany by far the struggling process, through their attorney, in the labyrinths of law, which can never be understood by them.

Differently from literary narrative, which is rich in its metaphorical language and its devices of magic realism for dealing with existential (and thus polysemic) themes, the legal discourse is structured on a positivist, scientific matrix. One of its characteristics is the rationalism of its arguments, reduced to a rational pretention of its paradigms, said to be dogmatic and “scientific”. Warat, among other approaches, named such pretension “unique thinking”. He said it was the responsible trace for the legacy of “a rational language for the *status quo*, which, as a dignified descendant of the modern paradigm, identifies reality with a pompous modern rationality and covers contradictions and conflicts with a disguise of efficiency and development” (Warat, 2004). One could state the legal pretentions of legitimacy of the legal enunciation found in “scientism” the support base for statements about efficiency and validity of law.

Thus, validity and efficiency gravitate around what has been consecrated as legal dogma. According to Warat, the propositions of legal dogma are based on a work of legal logic and techniques that aim at concretizing a series of concepts and principles which are objectified on a clear interpretation of legal rules that integrate positivistic law. Such technical or, one could say, logic-abstract rationality, made operational through a legal technical method, is determined by legal dogma as the only possible method for studying legal sciences.

I believe that is how we enter the core of legal discourse as the concretization of a dogmatic method. Still according to Warat and aiming at unveiling the ideological veils of law, it presents, in his *General introduction to law*, traditional dogma from three stages of application and his legal method (Warat, 1994-1997):

- 1 The first stage relates to the conceptualizing time of legal writings, which is based on the assumption that law is nothing more than the legal order established by valid edited and present regulations. This way, legal dogma is attached to positivism and limited to its function of interpreting the law.
- 2 The second stage is properly the legal dogmatization, the enhancement of legal dogma, the creation of propositions, categories and principles obtained from legal concepts extracted from written regulations.
- 3 The third stage of legal dogma is characterized by systematization, and it finally reaches the focus that was established by this positivistic science, which is the concretization of a specific subject, object of knowledge, in a system.

Having such structure, legal discourse relies on its interventions on the social field, and grants the State with its legal coercive force. Thus, jurists believe in the scientism of their specific theoretical production. By producing a rigid network of meaning, law does not allow transgressions of any order. It becomes possible to understand, then, Warat's proposition of

crossing the limits of the legal, official, academic discourse. Based on an epistemology of meaning, Warat elaborates, as I see it, a new hermeneutic posture, which can be found both in literature and in psychoanalysis through the *Stimmung* that can tease and create understanding of the effects of the legal discourse in the jurisdictional world we dwell.

Towards a provisional conclusion:

Similarly to Jorge Amado, who gave voice and a diffuse materiality to Vadinho in his novel, my intention is to create a surreal touch in a narrative. Thus, I invite Luis Alberto Warat for a surreal conversation about law and literature:

Albano – My dear friend, I would appreciate if you could tell me about questions related to the legal discourse and literary narrative. I would begin by asking you about what is it that you characterize as an epistemology of meaning when you deal with the legal discourse?

Warat - *Conceptual knowledge of law is unable to explain the social effects and the political reactions that it can cause and that can only be understood through the epistemological point of view I propose, called epistemology of meaning. It is an attempt to form a reflective plan, denying the identity between the concept and significance, it would force to establish a discursive analysis can show us the reference size or connotative of different types of enunciation made in the practice of law. I intend to define this issue in order to try to locate the process of production of critical knowledge of law as an epistemological method, and not as an alternative theory of law and society.*

Albano – So, your proposal is to discuss about the distance between the pretentious conceptual knowledge of law and the realities in the world, therefore...

Warat – *Actually, the science of law the jurists summon in their professional areas is a methodical, systematic “doxa”, the group of opinions of action, that is, a discursive practice fundamentally*

determined by semiologic habits and intellectual mores. We claim a critical knowledge of law as a new epistemological point of view that has as object of analysis of competent science discourse and legal epistemology. These discourses are forged on the very legal praxis, which we named “theoretical sense of jurists”. Metaphorically, we characterize the common theoretical sense as a group of echoes that legitimate a set of beliefs from which we can repel or approve the fundament of conditions and relations such beliefs mystify.

I understand this is a fight to be dealt with in the legitimacy field understood by the official legal discourse. However, we could move this discussion to an attempt to overcome the stereotypes produced by such world conceptions.

Albano – Which crossings could we expect with the contribution of literature and its narratives to a possible reception of the legal discourse?

Warat – *Men are filled with stereotyping, of linear and single visions that are imposed onto them, and there is no space for creativity and autonomy, for a non-official understanding of senses, which could mean a plurality of meaning. The dominant semiology, appealing to language, establishes models of desire in which enjoying is the same as possessing. Through these models, the men not only accept hierarchy but learn to love it. We are all bourgeois owners of our desires, we all help to build and keep the illusion of an immobile reality. The boldest way of substituting participation by looking is the reflexivity of science. In this comprehension mode, logic creates the greatest of taboos and admits languages that are exterior to each other. Facing it all, it appeals to fantasy, in order to fertilize reality and its symbols.*

Albano – In the story of *Dona Flor*, her lover *Vadinho* returns to her life, which magically institutes a surreal aspect in the narrative by Jorge Amado. What represents the return of *Vadinho* for the game of symbolic meaning?

Warat – *The return of Vadinho symbolizes how, in a fantastic way, one can have an adulterer relationship with reality. It is a husband deprived of the legality spirit every woman dream about, which spices up an alchemy of tenderness and safety of the instituted desire. Rediscovering a passion for life, a passion for understanding others, comes from a confrontation with desires that flow sideways. Marginality is a place of recovery of free relationship with desire. It is where we can find the hot blood and the urgent sperm. His return symbolizes how, through the fantastic, we can keep an adulterer relationship with reality. It is a husband deprived of the legality spirit every woman dream about, which spices up an alchemy of tenderness and safety of the instituted desire.*

The return of Vadinho allows Dona Flor to break the impulses of desire to duty, by accepting adultery as a natural condition of marriage. Dona Flor ends up stirring inside a logo-mythic imagination, keeping her marriage with a solid order of concepts and enchantments; adulterer, with the spontaneous rascal, hence the tramp meanings of the senses in the wind, tousled of democratic senses.

Albano – What are the possible indications you could give to the legal world in its conceptual, existential formations where desire is silenced?

Warat - *I want to propose to lawyers in general to accept a speech from the most indefinite place that language tolerates: novels, poems and desires, for them to come and invade all the speeches of social or metaphysical sciences; let it be born in a bar table, a bed, in this afterness full of distinction and affection; serving with the same efficiency as the established truths, to choose meanings to the world. We must undermine the legal language to learn that law is also the mirror of human irrationality. Justice is also the theater of the absurd.*

Albano – What is the role of language as a producer, also, of transgressions?

Warat – *We must reinvent language. In order to do so, it is necessary to recover the place of language in our own body, and with it, start some criticism.*

Opening up territories of ambiguities is my intention by writing this, since I feel the need to bust myself as an academic subject of enunciation. Hence the importance of putting into my will and my pleasure what I write, in order to escape from three major ghosts: stereotyping, analogy and the myth of unity. Transgressing permanently – in this expedition for knowledge by jurists and other social creatures – the ruled-over deformities of scientific semantics.

Albano – I would like you to tell me about the importance of Barthes, Bakhtin and Breton's surrealism for this crusade, it is a little like Don Quixote, don't you think?

Warat - My enchantment with Barthes is firstly due to the possibility that his work gives me to think of the world as an infinite plurality of meanings; secondly, because his chronicles of imaginary allow me to place the truth as one of its dimensions. Also because it invites me to convert into an alive reader who does not feel the text only as something readable, but as something I can also write, even move, that is, whose symbolic inputs (poetry, rhetoric, economics, psychology, politics) also depend on my sensitivity, my power of seduction, for example, introducing the body to the intellect, disturbing the seriousness and good conscience of speech with parody. Also, to the extent that invokes the indecipherable aspect of language, showing that it includes invisible markings, and oblique mistaken senses. An enigmatic power that functions as the significance of supplement that the intellect cannot absorb very well. It is the same dispersion of meaning - which cannot be an expression of any code – in which is the origin of all myths. I also learned that the meanings are always intuited that the exorbitant polysemy of meanings will never let them remain the same. Anyway, along with Barthes I could see that the meanings are in history, they are the ways of our actions and, yet, are what we can call reality.

Albano – About your readings of Bakhtin, what can you say about canavalization?

Warat – *Carnavalized literature has the contact with life as the mean component, and not reason. I could say it materializes men and the world symbolically exalting the existential “me”, that is, non-rationalized. Bakhtin inspires me in crowning a carnavalized didacticism with a literary metamorphosis in an epistemical profanation. I envision I am moving the concept of canavalization from literature to the study of science, law and contemporarily. Canavalization is a practice of language that proposes, as with childish unconstructed games, a writable mode of having courage to pursuing the changes that could disturb the solidity of my world. The result is a group of truths in transit that helped me understand that life, before being a problem to be solved, is a desire to be lived.*

Albano – What about Breton’s surrealism?

Warat - *What attracts me most in the surrealism is its carnivalized proposal to merge poetry, dreams and life. Surrealist magic causes an emotional reading, as well as a sensory, corporal, hearing and visual desire and the senses of a lost pleasure. Surrealism invites us to have another attitude to learn. It shows that knowledge has to stop being the bleachers of life. The future of totalitarianism depends on a Triple Apocalypse: nature, emotions and language. Basically, I'm preaching a return to the Greek world, where the truth dependeds on Eros; freedom, self-control; and beauty, an aesthetic of life.*

Albano - With such provocations, you bring the reader to the roots of the Western culture where, I believe, literature and poetry unite, referring the concept of poetry to its broadest sense, **poiesis**, that is, making something creatively. I am “delighted” do conclude our meeting. What reflections would you leave us in the end?

Warat – *Uniting law to poetry is a surrealistic tease. It is the sunset of the knowledge gods. The fall of their rigid masks. The death of legal Manichaeism. A call of desire. A protest against the mediocrity of the erudite mentality and, at the same time, a healthy scorn for teaching.*

It is to recreate men by teasing them in order to search for a full belonging, to feel a deep aversion against the infiltrations of a guilty, mystically objective rationality, converted into a “gendarme” of creativity, of desire, as well as of our connections to others.

Poetry makes it possible. It brings along the understanding of our limitations, and puts into evidence the artificial, deadly order of a culture which is embedded in presumptuous legalities. It may serve to awaken the senses and desires which had been buried by centuries of knowledge, worried about guaranteeing every kind of immobility. By practicing poetry we can make desire triumph over good sense and good feelings, leaving them with no ears for noble and truthful values, the ones which had been sacralized, with civism, with love for power. It is desire dismissing at once both Gods and Masters. It is the seed of subversion where we less hope to find it: the “magic flashlight of desire”.

Albano – Thank you for leaving your “rest” for this conversation, and see you next time.

REFERÊNCIAS

- WARAT, Luis Alberto. *A ciência jurídica e seus dois maridos: fragmentos de uma expedição pelo direito, pela ciência e outros lugares de arrogância*. Santa Cruz do Sul: Faculdades Integradas de Santa Cruz do Sul, 1985.
- WARAT, Luis Alberto. *Manifesto do surrealismo jurídico*. São Paulo: Acadêmica, 1988.
- WARAT, Luis Alberto. *Introdução geral ao direito*. Porto Alegre: Sérgio Fabris, 1994-1997. 3v.
- WARAT, Luis Alberto. *Surfando na pororoca: o ofício do mediador*. Florianópolis: Fundação Boiteux, 2004.

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