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REDE BRASILEIRA
DIREITO E LITERATURA

WHO IS THE READER OF LEGAL TEXTS? AN EXPLORITION BASED ON RICARDO PIGLIA'S PRODUCTION

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ABSTRACT: Using the description of the literary reader provided by the Argentine novelist and literary criticist Ricardo Piglia in his work *El ultimo Lector*, this paper, written as an essay, seeks to identify what is the profile of the reader of legal texts, verifying if such characteristics resemble to those of the "piglian" reader.

KEY-WORDS: reader of legal texts; Ricardo Piglia; *El ultimo lector*.

CREATING THE QUESTIONS

Who, after all, is the reader of legal texts? Does such a reader have a different profile from that attributed to fiction readers? The answer to this question will be based on a comparison exercise that seeks to provide a layout, or at least a silhouette of the reader of legal works. As a parameter, this paper analyzes the description and the reflections by Argentine novelist and literary criticist Ricardo Piglia, who sees the figure of the reader as a particularly literature-driven person. After that, we move on to investigate whether or not the legal reader resembles this universal literary reader. The characterization of the *piglian* reader provides an objective anchor to the essay, preventing the essayistic reflections I use to explore the image of the "legal reader" to undermine the intentions of the text. The path that follows, then, is to question the possibility of a particularization. From the universal

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reader, as represented by the reader of literature, to the legal reader. If Ramón Bonavena, Borges and Bioy Casares character, faced with the herculean difficulties imposed by literary creation, was obliged to accept as an object of their production the description of the limited corner of the pine table on which they worked, the author who writes this paper is also shaped by a formation that is, in literary terms, anemic, and in legal terms, bulimic (Bioy Casares, Borges, 2014). Whilst this personal description of me closes the doors to an exercise of disagreement or complement to the description of Ricardo Piglia on the reader of novels, it opens the possibility for me to investigate, with the minimum of security, if that description applies to the types of readers with whom I have most contact, that is, the legal readers.

THE READER ACCORDING TO PIGLIA

In the prologue to *El último Lector*, a set of essays on the personality of the reader in universal literature, Piglia provides us with a metaphor that becomes the key to the understanding of his cogitations. In it, the narrator visits Russell, a photographer who had built a small replica of the city of Buenos Aires at his home in the Flores neighborhood. The metaphorical game occurs to the extent that Russel believes that his creation would not be a simple representation of the Argentine capital; Reversing the relation of representation, the destiny of the city of Buenos Aires is directly dependent on what happens in the invention of the photographer. The channel that allows the representational twist between the city and the replica is the observer of the invention itself: “I saw the city and what I saw was more real than reality, more indefinite and even purer” (Piglia, 2014, p.15). The experience of impact that assaults the observer of the fictional city allows this subject a new look at reality, a new way of seeing “the real” Buenos Aires. The fantastic, Piglia points out, is capable of more profoundly affecting its interlocutors than raw reality itself. Russel's machine is Piglia's image for literature, while its observers correspond to the readers of literature themselves. Fiction thus transmutes itself into the conventional reality, and what we can only imagine is already there for the simple reason of imagining.

The pictorial tips left by the prologue about the reader's profile are developed throughout the book in six essays. Piglia's method in these

writings is to pick up and comment on specific cases in which writers have, directly or indirectly, looked towards the not-always-passive figure of the one who reads. The work is presented as difficult because, by its nature, the reader tends to be invisible in the literary narrative. The direction of our paper allows us to condense the digressions realized by Piglia in the six tests, in order to form a composition one of his *reader*. This unitary composition does not mean, however, the assembling of a coherent character with no paradoxes. Piglia's reader does not reveal him or herself as a planned city, but rather personalizes confused color stains. "Radical reader", "modern reader", "contemporary reader" and "perfect reader", are some of the images forged by Piglia to undertake his descriptive and analytical proposal. If the unit of meaning of what is read is something illusory, the reader's own profile is also an illusion.

Beginning this characterization by its opposites, a "radical reader" sees in reading a way of life. This borderline dimension is the same as that advanced in the preface, the reader being the articulator between the real and the imaginary. This way of experiencing by the reader is thus an eternal communication, not between fiction and reality, but between two dimensions of reality: the reality produced by reading and the ordinary reality. It will be the reader, therefore, the one capable of having his or her life modified by reading. A concrete example of this figure is given to us when the Argentine essayist discusses the change that the typewriter caused to the life of women by making the exercise of typing possible, which symbolizes at once the copyist and the reader ladies. Typists are, first and foremost, readers who have had the materiality of their lives altered by the possibility of reading.

The duality between literary reality and ordinary reality, however, also poses risks. Two of them are explicitly commented. The *bovaryism*, referring to Flaubert's work, would be the inclination of the reader to incorporate the life of the character presented to him in the literary narrative. The reader would mimic the passages of the characters with whom they identified. The characters' exotic or alternative life would induce readers to relinquish their moldy existence, in order to pursue themselves in the inspirations of literary lives. The second is *quixotism*. Founder of the modern novel, Cervantes' hero is the idealist cloistered in

reality. His hallucinatory imaginative reality is so absurd that it can no longer interact with the ordinary dimension of reality. *Quixotism* would be the sickness of the impotent reader; The hypertrophy of literary reality over ordinary reality. In a hypothesis raised in his essays, drawn from the thesis of the French historian Roger Chartier, the Argentine essayist gives space to the suspicion that the novel, as a genre, was able to redefine the reading form of all other literary genres. With the novel, one no longer reads the signs or decipher meanings, but rather relies on the signs already disposed in the reading. In other words, with the novel we read to believe. Piglia seems to want to tell *his reader* that radicalism in reading should also be avoided. The existence of two dimensions of the same reality does not imply the inference that there is no difference between them.

Literary and ordinary realities, however, change. This vertex is approached by Piglia when he goes over the transformations of the reader throughout the centuries. From Shakespeare to Borges, through Kafka and Poe, the modern reader and the contemporary reader face asymmetrical dilemmas. For our Argentine theorist, Hamlet inaugurates the modern man by founding the reader as a symbol of modern consciousness. *Hamletian* rationality is forged in reading. It is a period of study in Wittenberg that allows the prince of Denmark the emergence of an individuality that is capable of challenging the impositions that unknown variables (fate, oracle, shadows, gods) imposed on his humanity. Chronologically later, the detective of the police fiction genre appears as a variation of this rational man, an ingenious agent capable of revealing obscure crimes in the hostile scenario of the industrialized metropolis. In the first scene of *Murders on the Rue Morgue*, by Edgar Allan Poe, Auguste Dupin is precisely in a bookstore and it is through reading that he solves the crimes in the narrative. The reader is, for Piglia, one of the origin myths of human modernity.

If this image founded on Shakespeare and advanced by Poe characterizes the modern reader as a socially dislocated being, ready to disturb the naturalness of daily life, the contemporary reader, in its turn, will be disturbed and lost in the face of a surrounding flood of signs. In contemporaneity, we seem to move from the challenging reader to the

reader challenged by the very signs to be read and deciphered. Citing Borges, Piglia points out that, in a universe where everything is written, we can only reread, that is, read otherwise. What is written does not depend only on the ones who write or wrote, but also on the ones who read. The reader is challenged to find connections not yet made between the materials already written. This challenge, paradoxically, seems to be consummated in writing. Here, Piglia imposes the necessary correlation between the reader and the writer. Because we read, we write. The way we write changes the way we read, as well as the way we read changes the way we write. We write to make connections, to interweave readings, to forge still latent but not yet expressed meanings. Connections that the lived reality without written reflection does not allow to see.

The challenges imposed by reading to the reader compel him or her to look for alternative ways. Ricardo Piglia identifies there the soul of the literary and social movement of the *beat generation*. The reader tries to get away from common sense, to differentiate him or herself by means of a “deliberate misalignment”, that is, to weave an alternative way that can be used to highlight a literary identity in the midst of a sea of available readings. Ernesto Guevara de la Serna, Che, exemplifies the model reader of this stage of art. The imaginary burden of his celebrated compatriot raises the discussion about the relations between reading, intellectuality and politics. Guevara has allied his reading personality with alternatives to his ability to weave an original political path. As Piglia mentions, no one becomes a guerrilla leader by reading Marx. Reading and practical life are, in fact, antagonized, as if the reader were preventing the birth of the political actor, and vice versa. Guevara represents the breaking of this tension. For him, it is about living what one reads and writing what one lives. The politician shares with the reader the search for a new reality. Two ways to promote the making of the imagined from the present concreteness.

In the last of the essays presented in the book, the discussion on the problems of construction and interpretation in the works of James Joyce leads Piglia to suggest what is the reading model of the perfect reader. Perfection would be in the reader’s ability to resolve the ciphered meanings that the authors leave in the work, requiring those who read

them to pay close attention to detail and an almost intuitive understanding of the writer's intention. The perfect reader is able to reach the author's private language, finding treasures of meaning that the writer hides in the middle of the text. It is, in fact, what proves that there is no private language; there is only language in contact with the other. The writer would be unable, through his or her productive actor alone, to lend full meaning to the text. It is the reader who, knowing more than the author, is able to decipher all the senses of the work. There is no better way to read the texts themselves than through the eyes of others.

Discussion between reality and fiction, as well as the dangers of this polarization of reality; The challenging reader of ordinary life and the reader aspired by the plurality of meanings of contemporaneity; The enemy reader of common sense, engaged in an alternative way beyond fiction, reaching the political; The perfect reader, apt to the herculean task of interpreting what does not want to be interpreted: with these digressions, Piglia gives us a relevant panorama of the figure of the reader in the literary milieu. From this point our essay will try to discuss to what extent this reader's representation of literature applies to one who reads legal texts. When jurists take a legal text to read, would it be their intentions and the nature of the interaction that they establish with the text the same as for the literary reader?

CHARACTERIZING THE LEGAL READER

If literature does not exist without the reader, the legal phenomenon has lived for centuries without the readers taking a leading role in its trajectory. Law used to be constituted by speakers and listeners and differentiated by means of specific rituals in which these oral relations were established (Pádua, 2011, 115). Even though orality is predominant, written ordinations are not devoid of importance. Legal tabulations have been known since pre-Roman civilizations. The meanings of these written supports, however, differ from present ones. Carving law on stone or paper was an eminently evidential act, not a constitutive one. Ancient civilizations registered what was already constituted from an act of speech (Tiersma, 2000, p.110). With the prevalence of orality over writing in the profusion of legal reality, there is a predominance of the listener over the

reader, the audience over the library. Law was learned and exercised orally. Unlike the solitary interaction between Russell's machine and its observer, that is, from the reader to the book, the legal phenomenon has its genesis as a collective construction, through community discussion assemblies.

In this hardship of written words, the role of readers was played by the speakers themselves. Cicero wrote his speeches not to be read, but to be heard from the top of the Tribune and discussed by the voices of the Parliament. The legislator, a person with the paternal responsibility to give birth to Law, is not only the one who writes the laws, but rather the parliamentarian, the one who talks, who speaks the law. Speaking differs from writing. When the speech overwhelms writing, it is important to be a reader one's own words, only. In legal terms, Cicero is the only reader of himself, as he followed with his eyes what he had written for the pulpit. Analyzing once more the firstly published modern novel, we find out that Cervantes already makes it possible to visualize the tension between orality and writing. While Don Quixote is the one who reads, Sancho boasts himself for being unable to read. Orality and writing unite, however, in symbolizing different nuances of the linguistic phenomenon. The fact that Law is deprived of the written word does not mean, therefore, the absence of a language. Orality used to be the language of law.

The prevalence of orality was not just a choice for the legal world. It was rather a necessity. The problems caused by the absence of a crystallization of orality are symbolized by the Latin idiom – which makes special sense nowadays – “*Verba volant, scripta manent*”. Words fly by, writings remain, and with the rise of a model of economic production in which the limitation of choice, the value of security and the predictability of legal relations should be the most protected assets, a scenario with fewer listeners and more readers would be the ideal one. From Speeches we turn to Declarations of Law. From speakers to interpreters. As much as the legal product had divine or natural source, it was necessary to write it to endow it with readers and, consequently, of authority. Legal readers, especially those embraced by the state entity, become guarantors of security whom writing represented, bearers of the state-legal truth. Legal

reality is constituted by the eyes of legal readers; And the exercise of force, a stranger to the official readings of legislation, gains illegal status. The positive law, written down, is meant to be a totalization of the stable legal reality. It is true that there is social life outside the law and that the law does not regulate everything, but at the places where the normative legal mark is found there would only be the reality of the legal texts that the official readers should be able to follow and that the Citizens, in turn, should be willing to comply.

The claim of truthfulness of the legal text as a documentary phenomenon, however, runs against the claim of the legal reader. It is essential to note the ontological tension between the pretensions of the texts and the reader in the legal habitat. While normative texts intend to lend boundaries and borders to the construction of meanings in legal reality, the legal reader uses writing to the flavor of the interpretive fiction that they intend to see prevailing in a legal case. If the pure reader of literature is the one who, by believing in what is written, has his or her ordinary life modified by the fictional reality, the reader of legal texts will be the one who will force the diffusion of the application of his or her interpretive reality of the norm. The legal sphere seems to lead to the practical antipodes of Piglia's statement that the constitution of the text depends, to the same extent, on who interprets texts it and who writes them.

The difference between the fiction reader and the legal reader seems to be that the former is consumed by being transformed by the text, having their particular infinite enlivened by fiction, while the latter is not completed until their fictional interpretation of the legal text is transmuted into reality, beyond itself. Both intend to promote the affectation of the ordinary reality by the fictional reality of their interpretations, that is, to guarantee a practical expression of the non-literary reality. The difference, however, is discerned in the extent of this influence of fiction on what is real.

While the *piglian* reader seems satisfied with the revolution that the novel provokes on the self, the legal reader needs to make the reality of his or her fiction reach others; otherwise the fictional reality becomes real, but does not become legal. Forcing others, apart from him or herself, to

embark on a personal interpretive reading, therein is the challenge of the legal reader. Those who read legal texts are necessarily involved in a political and social task, in a reality that overflows their own navel and that varies the intention of the collective transformation, depending on the legal social function that this reader attempts to fulfill. While the relation of persuasion in the *piglian* reading operates only between the book and its reader, the legal reader is doomed to failure if he fails to impose his fictional reality on the reality of state law, that is, to make his interpretation accepted by the State and, through that State, becomes forceful to a third party. The lawyer who goes against a prevailing interpretation in a particular court is simply stating that it is his reading of legal texts, his own legal fiction, which holds the truth about the text. The legal dispute is, above all, a dispute between readers who must convince other readers of the correctness of their interpretations;

In this dispute, presenting oneself as a reader is one of the most distinctive marks of legal communication. Quotations, mobilized in the most diverse shades, from academic articles to *habeas corpus* requests, are expressions of the authority that the reader's position contains in the context of legal conflict. The argument is good when it can be confirmed through the endorsement of other readers. Referencing is synonymous with sharing the same way of reading the text. Academic texts that are poorly referenced, that is, deficient in echoing readings, have a visual argumentative flaw. Judicial pieces in which there are no references to the prevailing reading reality of state courts already denote how fragile the probability of victory is. The incorporation of reading may reach the level at which the writer of plays or legal studies seems to want to hide himself completely behind the authority of the written by his references. In court, the recommended strategy may be that you prove to be much more a reader of authority arguments than a writer who can properly give authority to some argument of his own. If one proves to have read some excerpt from the individual or institution to which the document is addressed, it is even more effective. As in the days of Cicero, but for other reasons, legal readers remain readers of themselves.

The distinction between the image of the reader and the image of the intellectual seems to confuse the minds of readers and, consequently, of legal writers. In a literary work, aesthetics conforms to the transformative goal that the work wants to cause. When Julio Cortázar decides to play with the literary making and invites the reader to read his novel *Hopscotch* by different paths, he is emphasizing that the trace, the order in which one reads the chapters of a novel, can make the text possible to be interpreted in different ways, but still make sense. Cortázar's "reading board" does not try to hinder the reader's life, but rather to guide him or her to a new aesthetic experience, without which the work of art would not fulfill its function². That is to say, the aesthetics of the work is part of the very functional substance of writing.

In the legal text, the goal of transforming the reader's interpretation of the norm into official interpretation is often blurred by demonstrations of vocabulary styling and cultural richness inappropriate to the task. Aesthetic artifacts of linguistic research, instead of serving the purpose of the work – the convincing of the reader –, end up distancing those who reads of the argument that one intends to develop. If we are dealing with actors who produce texts focused not only on the juridical microcosm, but on the whole society, the care with the editorial style should be further increased. In these cases, where magistrates and government officials are directly involved, it is not only a matter of convincing other legal readers, but of communicating a message to society in general. There is a responsibility to cherish intelligibility between writers and readers, and the composition style of this task is as important as its content (Sachs, 2009, 270). If Piglia's perfect reader is the one who can interpret the subtleties and grasp the details of the narrative, the legal writer cannot expect from the reader the perfection capable of intellectual-minded reveries and seek in the textual soul the place where the arguments of interpretive fiction are hidden. The perfect legal reader, on the contrary,

² Cortázar even writes, through the pen of Morelli (fictional writer of the novel *Hopscotch*): "As far as I'm concerned, I wonder if I'll ever be able to make sense that the only real character that interests me is the reader, as something of what I write should contribute to change him, displace him, shock him, or alienate him" (Cortázar, 2014, pp. 496-497).

demands of the writer literary clarity of an esthetics directed to the specific purpose of convincing. Nothing can be more literary and pleasurable to a legal reader than a text that does not hide its truths behind dysfunctional words and expressions.

The panorama of the use of quotations and the disease of intellectual exhibitionism occasioned by the urgent necessity of showing oneself to be an encyclopedic reader implies that readers do not deepen in the works they read. The superficiality hardly offers the search for connections and relations between previously written materials, a task that Piglia sees as a key to make the contemporary reader differentiate. Reading is seen as an instrument for affirmation of what is meant before reading. The imperfect legal reader has a prior reading argument that needs to be reinforced and reinforced by other similar readings. The reading, which for Piglia ought to be the art of scale, distancing and approximation, occurs to the legal reader as an artifice in order to ameliorate those realities that are more contiguous, to strengthen conceptions that are previously necessary to him. In the academic domain, the works that succeed in highlighting themselves are precisely those that do the opposite, that is, that can deepen and reflect on works, letting them affect and modify people. It is necessary that legal readers present themselves as readers not only through quotations, but rather demonstrate connections and in-depth conversations with writings that deal with their research and work themes. With the deepening, the correlations become opportune, and the singularity of the literary experience comes to surface.

LEGAL READER: TRANSFORMED BY TEXT AND A TEXT TRANSFORMER

With the help of the freedom of the essayist genre, the reflections drawn in the last lines allowed, in addition to a description of what I believe to characterize the legal reader, the incorporation of some normative recommendations necessary for those who deal with a legal text. We can argue that the nature of this reader is different from that with which Piglia characterizes the reader of novels. While the latter is constituted when really affected by the work, the legal reader needs to go

beyond and convince third parties to embark on their interpretation of the legal work. Besides being transformed by the text, as is the reader of Piglia, the legal reader needs to be a transformer of the texts that he reads. In this ontological dimension, the legal reader seems to be doomed to be synthesized in the bad reader profile, the one who disagrees with hermeneutics, who presents himself as an interpretive dissident. The fact of being in a legal dispute indicates, at the very least, that his reading will almost always be mistaken in the light of someone else's reading.

The legal reader should also not be someone who interprets encrypted messages or implicit meanings. Unlike the perfect reader of Piglia, who constructed the sense of the text by revealing details left by the literate, the legal reader is a friend of the clarity of the argument and the pretensions of the interlocutor. This is not a statement of inferiority of the legal reader, but only a finding ancillary to the very purpose of reading. Nor does it follow that the legal reader does not complement the meaning of the texts he reads. His transforming role suggests precisely the opposite, but this transformative task must be aided by an aesthetic that does not hide truth from the texts. At this point, clearly, the description of the legal reader matches the recommendation to legal writers.

Not only do distances exist between the different types of readers. We can see how depth and otherness are important to both. Both types of readers should let the text speak in order to make the associations and connections with their prior knowledge flow more easily. This form of interaction allows the legal reader to stop being just a repository of quotations and to be born as a reflective reader about what one reads. Only knowing the object in hand can the jurist exercise his or her characteristic trait of reader, passing from someone who was transformed by pages to someone capable of transforming the reality of what has been read.

REFERENCES

- BIOY CASARES, Adolfo; BORGES, Jorge Luis. *Crônicas de Bustos Domeq*: novos contos de Bustos Domeq. São Paulo: Globo, 2014.
- CORTÁZAR, Julio. *O jogo da amarelinha*. Rio de Janeiro: Civilização Brasileira, 2014.

PÁDUA, João Pedro Chaves Valladares. Vale o que está escrito: considerações em torno da relação entre direito e escrita. *Direito, Estado e Sociedade*, n. 38, p. 112-132, jan/jun 2011.

PIGLIA, Ricardo. *El ultimo lector*. Buenos Aires: Debolsillo, 2014.

SACHS, Albie. *The strange alchemy of life and Law*. Oxford: Oxford University Press, 2009.

TIERSMA, Peter. *Legal language*. Chicago: University of Chicago, 2000

Original language: Portuguese

Received: 07 Feb. 2017

Accepted: 11 Apr. 2017