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THE LAW IN PALOMAR'S POINT OF VIEW

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ABSTRACT: In this article the concerns about the legal universe and the need for a greater approximation with Literature are focused. In order to do so, the first assumption is that Law is a form of human language and creation and that, to better understand it, there must be an interface with fiction. The paper begins with an incursion into the novel *Palomar*, by Italo Calvino, more specifically with the third part of the work, “The silence of Palomar” and “The voyages of Palomar”. It then ventures into the Poetic Theory of Law, for which is used as a backdrop the book *The Poetic Theory of Law* by Willis Santiago Guerra Filho. The main objective of this study is to analyze the application of this theory in *Palomar*, seeking to contemplate the different lenses with which one can exercise the activity of looking, perceiving, positioning oneself at different angles to seek the vision of the whole – although understanding the impossibility of its total apprehension, especially in the juridical field –, in a perspective of transforming the paradigm from the philosophy of conscience to the philosophy of language. The research carried out, in relation to the objective, is dialectical; and the method used, phenomenological-hermeneutic, through a deductive and bibliographic approach.

KEY WORDS: law; literature; poetic theory of law; *Palomar*.

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My confidence in the future of Literature consists in knowing that there are things that only Literature with its specific means can give us, [...] some values or qualities or specificities of Literature that are particularly dear to me. (Ítalo Calvino)

1 INITIAL CONSIDERATIONS

This paper is permeated with the typical preoccupations of an observer, of a seeker, but often cannot or may not, with words, express the breadth of everything they see, what they feel and what they imagine that should be said, revised or forgotten. It is based on the assumption that Law is a human creation and that an understanding of the juridical universe is necessary in approximation with that of fiction and, more specifically, with Literature, as is proposed by several internationally renowned philosophers, such as the case of Ronald Dworkin and Martha Nussbaum.

Among the set of theses already defended on the subject, two are the theoretical matrices that were chosen to support the study proposed in this article: Poetic Theory of Law, fruit of the doctoral thesis of Professor Willis Santiago Guerra Filho, and the book *Palomar*, by Italo Calvino.

The intention is, therefore, to analyze *Palomar* from the poetic theory of law, so as to contemplate the different lenses with which one can exercise the activity of looking, perceiving, positioning oneself at different angles to seek the vision of the whole, despite the understanding of the impossibility of their apprehension.

Also discussed is the passage from the paradigm of the philosophy of consciousness to that of the philosophy of language, as well as the three judge models elaborated by François Ost as a basis for the proposed analyzes of the fictional work and the characters.

The research carried out, in relation to the objective, is dialectical; and the method used, phenomenological-hermeneutic, through a deductive and bibliographic approach.

2 WHY PALOMAR?

The election of the work *Palomar* as a background for this article is due to the very meaning of its title, which, as is believed, has the power to

represent what is intended to be transmitted with the observations that are punctuated in this text on a theme that, at first, seems to be distant to it. But to better understand what has been said, or rather written so far, in this introductory intention, it is necessary to clarify: the choice of Italo Calvino for the title of that which was his last published book in life is worthy of analysis. Palomar is the name of a famous astronomical observatory which, for a long time, boasted the largest telescope in the world, according to information contained in the book presentation. And so, Palomar works as a telescope in the opposite direction, focused on things that are close and not to the vastness, but, in apparent paradox, precisely seeking the comprehension of the vastness of the universe.

Already in the first pages of the book, Palomar is watching a wave, or in doubt about whether or not to look at the naked breast of a bather, or to practice his afternoon swimming that confronted him with the sword of the sun, or in the garden, to observe the love of the turtles... Everything for him is an object of study, of curiosity, of wonder, of questions, of doubts, which, moreover, is a constant in the life of the observer, of the one whose profession is to observe, and so he is always at work, even when he is resting.

Palomar's arduous work is portrayed in several chapters of Calvino's work, in which the author's vast literary qualities emerge, the qualities which have made him worldwide renowned and acknowledged. However, in view of the impossibility of approaching all the titles of the chapters index and not losing sight of the objective proposed in this study, with due respect to the author and also to the reader, the analysis is concentrated in the third title: "The Silences of Palomar".

Among "The Silences of Palomar", stand out "The voyages of Palomar"; after all, "the journey is one of the thematic and symbolic archetypes among the most productive of Literature. Always renewable, it offers literature one of its great raw materials" (Bernd, 2007, p. 675). In fact, considering the multicultural world in which one lives, travel is a cognitive and symbolic operator of the semantic exchanges and multiplication of the signs produced by the narrator, just as Palomar does.

In this way, it begins more specifically with "Serpents and skulls". This is a trip to the ruins of Tula in Mexico:

In Mexico Mr. Palomar is visiting the ruins of Tula, the ancient capital of the Toltecs. Accompanied by a Mexican friend, passionate and eloquent connoisseur of the pre-Hispanic civilizations, who tells him beautiful legends about Quetzalcoatl. [...] In Mexican archeology every statue, every object, every detail of low relief means something that means something which in turn means something. An animal means a god that means a star that means a human element or quality, and so on. We are in the world of pictographic writing; to write, the old Mexicans drew figures, and even when they drew figures it was as if they were written: each figure presents itself as a rebound to be deciphered. Even the most abstract and geometrical friezes on a temple wall can be interpreted as arrows presenting a pattern of dotted lines, or in them we can read a numerical succession according to the way the Greek representations develop. Here in Tula the low-reliefs repeat stylized animal figures: jaguars, coyotes (Calvino, 1994, p. 88-89).

Opposing the figure of Palomar's friend, who develops theories that explain the reasons for everything – “The Mexican friend stands before each stone, turns it into a cosmic narrative, allegory, moral reflection” (Calvino, 1994, p. 89) –, is the teacher who guides a group of students, whose lines were spoken by Palomar as he listened to the explanations of his Mexican friend who was leading him.

About these three characters, Palomar, the Mexican friend and the teacher, it is possible to establish a connection with the text “Júpiter, Hércules, Hermes: tres modelos de juez”, originally published in *Doxa Review* in 1993, relating three models of judge with mythological features of the gods Jupiter, Hercules and Hermes, which represent different legal paradigms. Jupiter is at the top of a pyramid and his gaze comes from a sacred place, applying the laws and codes, while Hercules builds law from decision. Hermes, however, represents a new model whose combinations do not fit into codes or decisions (Ost, 2007).

The first model, legalistic and bureaucratic, does not exercise creativity and does not worry about transformations. The second model, attentive to everyday life, seeks to transform the generality and abstraction of the law, aiming at apprehending the meaning of a concrete case, while the third model, aware of the multidimensionality of law, is concerned with

the constant transformations and the various senses arising from the intangible realities that follow.

Thus, the positions of the three characters, drawn from the characteristics observed in the text, reveal these three models brought by Ost: the teacher can be associated to Jupiter, Palomar to Hercules and the Mexican friend to Hermes. Such positions are revealed in some parts of the text, as explained below.

Then, Palomar began to observe that, after giving some factual information about the place, the statues and the figures, the teacher concluded with “one does not know what they mean”. About this position radically opposed to that of the guide, one has the attitude of Palomar:

He is fascinated by the richness of his friend's mythological references: the play of interpretations, the allegorical reading always seemed to him a sovereign exercise of the mind. But he is also attracted to the opposite behavior of the school teacher: what seems to him at first an expedient lack of interest gradually reveals itself to him as a scientific and pedagogical stance, a method choice of that grave and conscientious young man, a rule that he does not want to give up. A stone, a figure, a sign, a word that comes to us isolated from its context is only that stone, that figure, that sign or word: we can try to define them, to describe them as such, only this; if they are beyond the face that they present to us, they also have another face, it is not given to us to know it. Refusal to understand more than what these stones show is perhaps the only possible way to show respect for their secret; trying to guess is presumptuous, it is a betrayal to the true lost meaning (Calvino, 1994, p. 89-90).

Therefore, as in a rite of passage representing an intermediary bias, Palomar's investigative and observant stance faces the counterpoint of the professor, whose legalistic reading allowed him to see nothing beyond what was set and his Mexican friend, whose playful reading allowed to see everything that can be grasped by the lenses of creativity, creating senses that do not exist for the teacher.

So much so that when they reach the Serpent Wall, the high point of the narrative takes place:

The students pass. And the teacher: “This is the Wall of the Serpents. Each snake has a skull in its mouth. It is not known what they mean”. The friend cannot help himself: “Of course you know! It is the continuity of life and death, snakes are life, skulls are death; the life that is life

because it brings death and death that is death because without death there is no life...” (Calvino, 1994, p. 90).

At that high point, the reactions of those involved, as well as the reflections of Palomar:

The boys are listening with their mouths open, their eyes black with astonishment. Mr. Palomar thinks that every translation requires another translation, and so on. He asked himself: “What did death, life, continuity, a passage for the old Toltecs mean? And what could it mean for these boys... And for me...” However, he knows he could never suffocate in himself the need to translate, to move from one language to another, from a concrete figure to abstract words, from abstract symbols to concrete experiences, from weaving and re-weaving a network of analogies. Not to interpret is impossible, as it is impossible to refrain from thinking. As the band of students disappears in a corner, the stubborn voice of the little teacher continues: “It is not true, it is not true what that señor said. It is not known what they mean” (Calvino, 1994, p. 90).

From what is exposed in these reflections, one realizes that the title of the novel is intentional. In fact, like a telescope to the contrary, aimed at things close and seemingly simple, Palomar seeks to understand the vastness of the whole, shrouded in all its complexity. In this quest, “Palomar appropriates the world through his eyes, a full space of representation where he inscribes himself while he looks” (Hellmann, 2010, p. 58).

This appropriation of the world and the new glances that result from this process of observation bring as a consequence the clash of ideas, which forces us to deviate from the common gaze, to leave the comfort zone, facts of which Palomar reveals to be aware, according to the narrator:

The fact is that more than asserting his truth he would like to ask questions, and understand that no one is willing to leave the tracks of their own speech to answer questions which, from another discourse, would compel them to rethink the same things with others words, and who knows to be in unknown territory, in front of the safe routes (Calvino, 1994, p. 95).

In the quest for answers are the looks of the one who observes and of whom is observed: Palomar, the Mexican friend and the teacher, each with his world view, his cultural determinants, his idiosyncrasies, his personal formation:

But how is it possible to observe something by leaving aside the self... Whose are the eyes looking... [...] Therefore, it is not enough that Palomar observes things outside and not within: from here onwards observing them with a look that comes from the outside, not from within oneself. He tries an experience: now it is not he who is looking, but it is the outside world that looks out. This establishment turns the gaze around waiting for a general transfiguration. Alas! It is the usual everyday sameness that surrounds it. You need to reread everything from the beginning. It is not enough that the exterior is observing the exterior: it is the observed thing that must break the trajectory that associates it with the thing it observes (Calvino, 1994, p. 102).

From the passages cited above, it is clear that Palomar, in his keen curiosity, is not content with simple answers, problematizing the objects of his observation in the search for complex answers, precisely because he understands the complexity of the world expressed in all things, simple at first glance. Such complex answers to complex questions go through creativity, responsible for the innovative posture of Palomar's Mexican friend, and also require some digressions on the different philosophical paradigms that emerge from the proposed analysis.

In this way, a paradigmatic change can be perceived also in the relation between the models previously mentioned and the transition from the philosophy of the conscience or the subject to the philosophy of the language, with influences as much in Law as in the Literature. Whereas in the former the subject-object relation prevails, more specifically the subject's action on the object, privileging a single language, that of rationalism, of science in its Cartesian model, in which there is true knowledge translated into interpretive theories of reality; in the second, language is put as the central question, as the constituent of the world, from the senses which are given to things, to signifiers and meanings.

Although worthy of further writing, it should be mentioned that this paradigmatic rupture has innovated old metaphysical problems of the Platonic order, being the forerunner of a new form of thought, in which meaning cannot be sought in reality nor in consciousness, but constructed from language.

Thus, the “observed thing” in the Palomaresque terminology, because of this rupture, when it comes to the body, is no longer seen as something eminently biological, characteristic of traditional logic, but as a sociocultural and linguistic construction, product and effect of power relations, being called by Michel Foucault as “biopolitical reality” (1992, p. 77), producer of multiple and complex senses. These new narratives that do not have ready answers begin to appear also in legal and literary narratives, and can be seen in the innovative ways in which many writers construct their plots and characters, Palomar being one of many examples.

In this context, the answers, the truth, are no longer based on content to assume a “necessary idealization”. In Streck’s words: “It is an argumentative truth, reached by consensus. There is no valid basis for any statement other than the argumentative way” (2006, p. 31). This argumentative way passes through language, but not in the strict sense of communication. For Stein, philosophy speaks of language in the sense that language is not treated as the sciences, only within the world, as do the jurist and the novelists. It does not deal with languages within the world, but it speaks of language as it is the world about which it is spoken. So, it is the philosophical treatment of language that is at stake when one speaks of the questions of hermeneutics, or of philosophical hermeneutics. It is a matter of speaking about the world and of realizing that one cannot speak of the world other than speaking of language (1996, p. 14). As stated by the author,

Interpretation is hermeneutic, it is understanding, therefore, the fact that we do not simply have access to objects via meaning, but via meaning in a given historical world, in a given culture, causes the logical structure to never fully account for knowledge. [...] This means that our access to objects is always an indirect access, [...] that is to say that we know something as something. We can imagine a logos that bifurcates: the logos of the understanding of language, which communicates (apophonic *logos*, which manifests itself in language) and the logos in which the meaning that sustains language is given (hermeneutical *logos*, the one that is not understood) (Stein, 1996, p. 27).

Therefore, Stein states that

Philosophical hermeneutics arises where we have neither the empirical as a fundament nor that which is affirmed

within a rigid, determinate context, nor that which can be established on the basis of the ultimate fundament, but that which occurs in the fluidity of history itself, of the culture itself. We know that something always escapes to the extent that we can only base something that is called good circularity. We are unable, in the hermeneutic universe, to expose all the presuppositions or, in a way, to arrive at the ultimate, not surpassable element. The hermeneutic universe is exactly this floating universe (1996, p. 45-46).

On the same line of thought, Streck warns of the fact that:

We do not interpret to understand, but rather, we understand to interpret, making it clear that hermeneutics goes beyond metaphysics, from the idea that the duality of explaining and understanding will always be preceded by an understanding that is given as a condition of possibility (Streck, 2006, p. 22).

According to Streck, it is necessary to understand the great revolution represented by the linguistic turn, from which it is possible to overcome the metaphysical dualisms that dominate the imaginary of the jurists, since

Real truth, because unreachable, is philosophically unsustainable, truth is a hermeneutical truth, which derives neither from the knowledge of the essences nor from a privileged mind of a knowing subject. With the linguistic turn in philosophy in our century, it must be made clear that the discovery of the true/correct/univocal meaning of the text is not the result of the interpretative process, but rather the production of a sense originated from a process of understanding, where the subject, from a hermeneutic situation, makes a fusion of horizons from its historicity. There is no interpretation without social relation. This is because the words of the law are not univocal but plural, reason why it elaborates a critique to the traditional legal hermeneutics, through the approximate contributions of semiotics (general theory of the signification) and philosophical hermeneutic, in which the horizon of sense is given by the understanding (Heidegger) and the being that can be understood is language (Gadamer), where language is not simply an object, but an open and structured horizon where interpretation makes sense. [...] Language is analyzed not in a closed system of references, but in the level of historicity, approximated to human praxis, as existence and fate, in which the text is linked to a concrete existence, to a pre-ontological load which in existence has already anticipated (1999, p. 79-80).

About all this, it is also necessary to record Streck's words:

[...] in support of this prevailing juridical imaginary, the epistemological paradigm of the philosophy of

consciousness – based on the logic of the known subject, where life forms and relationships are reified and functionalized – is now disseminated, everything being compressed in subject-object relations (Habermas) – lacking and/or refractory to the pragmatic-ontological linguistic turn that occurred contemporaneously, where the relation or relations become subject-subject. That is, within the common theoretical sense of the jurists, consciously or unconsciously, the horizon from which language can and must be thought is still that of the isolated subject (or the consciousness of the individual) – which the world has before it of objects and other subjects –, the main characteristic and point of reference of the whole philosophy of subjectivity (1999, p. 92).

Following this reasoning, Streck cites Heidegger, for whom 'language is the house of being', Gadamer, for whom 'being that can be understood is language', in affirming that the contributions of philosophical hermeneutics bring new perspective to legal hermeneutics, assuming fundamental importance the works of Heidegger and Gadamer. Heidegger, developing hermeneutics on the ontological level, works with the idea that the horizon of meaning is given by understanding; Gadamer, in saying that being that can be understood is language, takes up Heidegger's idea of language as the home of being, that is, language is not simply an object, but an open and structured horizon.

It is necessary to take advantage of this linguistic-philosophical turn and of this ontological shift provided by hermeneutics, which is precisely the rupture with the metaphysical-objectifying conceptions through the mediation of language: the fact that we do not simply have access to objects via meaning, but via meaning in a given world, in a given culture, makes the logical structure never fully account for knowledge, that we cannot account for the logical analysis of the whole process of knowledge. In this way, to make legal hermeneutics is to carry out a process of understanding the Law. To make hermeneutics is to distrust the world and its certainties, is to see Law upside down. With the hermeneutic understanding of the Law one recovers the sense-possible-of-a-world-determining-text and not the re-construction of the text coming from a signifier-primordial-founder. Perhaps because they believe in *a priori* senses or in apophanetic truths, Law enforcers, inserted in the already delineated paradigm crisis, are able to (re) produce decisions without realizing the social repercussions and their own social function – jurist – and of the (dis) compliance with the constitutional text (1999, p. 108).

Also in this direction, Ost recently mentioned the importance of understanding this rupture of models thanks to the understanding that we are beings of language:

From the moment we are beings of language, expressing ourselves through words and texts, I think that it is the whole of the human and social sciences, and not only of the juridical sciences, that belongs to the art of understanding. The hermeneutic paradigm characterizes them, polarized by the infinitely relativized question of meaning, rather than the analytical paradigm, unfortunately dominant today, which believes to be able to reason in terms of uncontested truth and logical closure (2017, p. 267).

It is in this north that follows Mr. Palomar, walking on known and unknown paths, the rational and the sensible, uniting in the complex task of relating the objects of his observations with the world, or between him and the objects, or between him and the world. Even without certainty, he continues his quest, conscious that “[...] the important thing is not so much to say the right thing as to say it starting from premises and implying consequences that give the thing its maximum value” (Calvino, 1994, p. 94).

However, Palomar doubts his own conclusions, for although he tries to construct an ideal model through which he could draw precise conclusions from his observations, he is faced with the impossibility of total understanding of the world:

There was in the life of Mr. Palomar a time when his rule was this: first, to construct a model in the mind, the most perfect, logical, geometric possible; second, to verify if such a model adapts to the practical cases observable in the experiment; third, to make the corrections necessary for the model and reality to coincide. This procedure seemed to Palomar the only one able to allow him to face the most tangled human problems. [...] The model is by definition the one in which there is nothing to modify, the one that works with perfection; while reality, we see well that it does not work and that it smashes on all sides; therefore, it only remains to compel it to acquire the form of the model, for good or ill (Calvino, 1994, p. 97-98).

Then, after several attempts and often reluctant, Palomar came to accept the idea that reality can only be understood by several models, and not only by a single one, precisely because the angles are diverse, just as there are several who look, in such a way that such models must be in a

permanent state of construction/reconstruction, adaptable to the realities and complexities that surround them:

Mr. Palomar's rule was gradually changing: now he wanted a great variety of models, if possible transformable to each other according to a combinatorial procedure, to find the one that best suited a reality that in turn was made of so many realities time and space. [...] He only has to expose these beautiful thoughts in a systematic way, but a qualm holds him back: what if this created a model to follow? Thus, he prefers to keep his convictions in a fluid state, to check them on a case-by-case basis and to make them the implicit rule of his own daily behavior, doing or not doing, choosing or excluding, speaking or saying nothing (Calvino, 1994, p. 99-100).

Thus, the activity of the gaze is made evident through which his observations have become possible, so that Palomar “[...] rehearses various forms/ways of looking/reading, experiences various angles, but this gaze is not a reflection of the universe, because vision is refracted, the world is a simulacrum in this critical-reflexive activity” (Hellmann, 2010, p. 54).

According to the Palomaresque view, it might be necessary to use different methods, to approach reality by different paths, to look at it from different points of view, because reality is, in fact, unachievable by a single path; but even so Palomar does not want to understand it, proposing to throw new and disordered looks on his observations:

Each process of disaggregation of the order of the world is irreversible, but the effects are hidden and delayed by the myriad large numbers that contain practically limitless possibilities of new symmetries, combinations, couplings (Calvino, 1994, p. 92).

The solution seems to lie in the choice of a point of view: it is from a certain perspective that the story can be constructed; it is from a previously established point of view that it is possible to approach reality:

[...] the things one must observe are just a few, not all, and it is looking for those that one must walk; for that, it is necessary to face at each moment problems of choices, exclusions, hierarchies of preferences; then one realizes that is ruining everything as happens every time one puts their own self and all the problems one has with their own self (Calvino, 1994, p. 101-102).

Palomar reminds us that it is difficult to choose and once it is done, it becomes necessary to accept that it is only a perspective; a perspective that may account for reality better or worse than other perspectives, but which will never account for the totality of reality, no matter how numerous their attempts, no matter how great their efforts.

So much so that on the trip to one of the most important monuments of Japanese civilization, the rock and sand garden of Kyoto Ryoanji Temple, Palomar begins to observe a small courtyard covered with thick white sand, rocks, trees, in fact, everything that composed it, but it was squeezed in the middle of many people. In the story, the narrator says that:

We can see the sand garden as an archipelago of rocky islands in the immensity of the ocean, or rather as the tops of high mountains that emerge from a sea of clouds. We can see it as a picture framed by the temple walls, or forget about the frames and convince ourselves that the sand sea can expand without limits and cover the whole world. [...] But this conclusion that leads to the habitual nostalgia of a paradise lost by the invasion of a mass civilization sounds too easy for Mr. Palomar. He prefers to set out on a more difficult path, to seek to understand what the Zen garden can offer him in view in the specific situation in which he can be observed today, by stretching his own neck among other necks (Calvino, 1994, p. 86-87).

In the section of the novel analyzed hereby, it is interesting to observe that travel is used as a background, which is verified to the extent that the events are in Mexico and Japan, and the use of such strategy is not without reason. In doing so, the narrator accompanies Palomar and assumes the status of the narrator traveler, in relationship with Benjamin's theory, as explained in sequence.

A profound connoisseur of the various artistic languages, Walter Benjamin (1999) summarizes the figures of the sedentary peasant and the merchant sailor in his well-known essay "The storyteller". The philosopher, historian and literary critic blames the traveler for one of the basic ways of narrating. Although he associates narrative with oral tradition and novel with writing, Benjamin elevates the journey to the condition of primordial motif of Literature, as exemplified by Palomar. Thus, it is possible to affirm

that the two groups – the sedentary peasant and the merchant seaman – are metaphors that represent a more limited space in the first case, and an expansion of space, linked to the displacement provided by the travel, in the second case.

The knowledge of the narrator-traveler imbues himself with a reflexivity through writing, when the journey becomes an operator of cognition. The narrator is in an exotopic position, which, being the *locus* of the gaze on the otherness, allows to know the other through variants such as customs, religion, language, people, State, etc. These elements relativize the familiar, the quotidian, at the same time as they question the stranger (Remédios, 2004, p. 287), providing reflection situations to reveal new possibilities for understanding the world, as in *Palomar*, transcribed:

What do you see? He sees the human species in the era of great numbers stretching out into a leveled crowd made up of distinct individualities like this sea and little grains of sand that submerge the surface of the world... See the world although continuing to show the granite backs of its nature indifferent to the destiny of humanity, its hard substance irreducible to human assimilation [...] And between humanity-sand and the world-dream we intuit a possible harmony as between two non-homogeneous harmonies: that of the nonhuman in a balance of forces that does not seem to match any design; that of human structures that aspire to a rationality of geometric or musical composition, never definitive... (Calvino, 1994, p. 87).

In his journeys, the narrator makes observations thanks to the look of Palomar, more attentive than the conventional of a daily situation of non-journey, a look that does not perceive things outside time, but presently, uniquely, with lights and colors exact only at that precise moment upon which his observation falls. Often, it is a seemingly commonplace thing, with nothing special to point out, but which, under certain light offered by Palomar's gaze, acquires special significance in the narrator's account, as in the different points of view pointed out by Galeano in his work "Legs to the air: the school of the world inside out" (2015).

Thus, the traveler narrator accompanies Palomar's inseparable investigative spirit and his tendency to look admiring, contemplating,

incorporating of the other and their historical, natural, landscape, cultural, and other signs. When faced with the object observed in this way, Palomar holds his eye, which is processed according to the information and sensitivity of each object, each moment, each context:

It is not enough that Palomar observes things outside and not within: from here onwards observing them with a look that comes from the outside, not from within oneself. He tries an experience: now it is not he who is looking, but it is the outside world that looks out. This establishment turns the gaze around waiting for a general transfiguration. Alas! It is the usual everyday sameness that surrounds it. You need to reread everything from the beginning. It is not enough that the exterior is observing the exterior: it is the observed thing that must break the trajectory that associates it with the thing it observes (Calvino, 1994, p. 102).

In this way, Palomar's gaze leads him to singular experiences, which are revealed in the outpouring of his impressions, when the impact before the unknown induces a desire to embrace it; hence the various metaphors and analogies employed by the narrator to relate the Palomar experiences, marked by the encounter with the new in a permanent scheme of similarities and differences that enrich the viewing angles of the Palomaresque gaze, based on Calvino's conviction of the importance of the role of the Literature to achieve these goals.

Italo Calvino, in 1985, therefore more than thirty years ago, when he wrote five lectures for Harvard University, which, because of his death, were never delivered, carried out a profound reflection on five of the qualities of writing (the sixth would be a theme for the last conference, never written), hence the title of "Six proposals for the new millennium". Through them, Calvino seeks a conception of Literature as transparency and lucidity, with its own instruments and objects, in a true project of resistance to the impoverishment of the language, which he finds and criticizes:

Sometimes it seems to me that a pestilential epidemic has struck the whole of humanity in its most characteristic faculty, that is, in the use of the word, this plague of language consisting in a loss of cognitive force and immediacy, as an automatism that tends to level the expression in more generic, anonymous, abstract formulas, to dilute meanings, to blunt expressive points, to extinguish every spark that crackles in the encounter of

words with new circumstances. I am not interested here to inquire whether the origins of this epidemic should be researched in politics, ideology, bureaucratic uniformity, the homogenization of *mass-media* or the academic diffusion of a medium culture. What interests me are the possibilities of salvation. Literature (and perhaps only literature) can create antibodies that inhibit the expansion of this linguistic scourge (1990, p. 74).

Therefore, as Palomar's journeys, being literary themes, always involve displacement and contact with the other, his reports inevitably register the natural and human landscape, from which diverse and unexpected reflections arise which disconcerts him in his apparent certainties, it is possible to affirm that the reports of the Palomaresque voyages are, par excellence, the space of the creation of the other, but also of a Palomaresque self that, in the journey, constructs the image of the other and of itself. It is this multicultural look that leads Palomar to the experience of estrangement, provided by the novelty, a new one that only is so due to the look that thus determines.

This generates feelings, emotions and, in particular, concerns that can also be felt in different areas of knowledge, such as Law, insofar as the so-called Legal and Social Sciences are influenced by an imaginary theory. In order to better understand this confluence, the poetic theory of law can be employed and, for this purpose, the teachings of Willis Santiago Guerra Filho.

3 THE POETIC THEORY OF LAW

In this itinerary, after the trips of Palomar, the excursion towards the objective proposed in this text continues in the work of Willis Santiago Guerra Filho, visiting his different impressions and interpretations that lead to the poetic theory of law. The literary imagination cannot be alien to the Law, and the latter cannot be unrelated to the former, because Law is also language. This can already be seen in the Palomaresque preoccupations mentioned above and is coined by Guerra Filho, who used the expression "imaginary theory of law" to better define this interrelation. According to the author, this theory presents an epistemological and an ontological postulation. The first, referring to the nature of Law Theory, points to its

imaginary character, while the second, “referring to the nature of Law itself, object of such a theory, also points to its imaginary character as a hunger for knowledge” (Guerra Filho; Cantarini, 2014, p. 23).

The mentioned epistemological postulation confronts the Cartesian rationalist tradition, which reverberates in the Sartrean conception of the imaginary, “the image, as a deficient symbol, ontologically emptied, to be surpassed by the concept, correlated with rational activity” (Guerra Filho; Cantarini, 2014, p. 23).

Regarding the ontological postulation, that is, in the imaginary character of Law itself as the object of theoretical studies, it is necessary to take into account that Law is also a form of knowledge, a way in which society discloses to its members the behavior which is expected from each of them by the others. These two postulates, the epistemological and the ontological, converge, show themselves as “the two sides of the same coin”, which emphasize the fundamentally poetical, poiesis, creative, imaginative character of all human the law as the knowledge that is produced about it, and also in general, the totality of what is known, while dependent on some form of decoding (Guerra Filho, Cantarini; 2014, p. 25).

In order to better explain the use of an imaginary or poetic theory in Law, its interface with Literature, Nussbaum states that, in an exemplary way, certain situations may arouse in the reader emotions that lead them to discover that often a character’s attitude is motivation so that they too act in a certain way. It is in this sense that Nussbaum calls this kind of imagination a ‘literary imagination’, since it is being formed from Literature (1997).

However, one cannot fail to observe that the judgments in the fictional universe differ from those of reality itself; after all, the “reality” of fiction is a simulation. The same, however, cannot be said of the judgments made in the Law, which refer to a possible “state of affairs”, to a reality in the scope of being, “endowed with a binding character, which imposes it as if reality it were, in which one must believe, and this in order to avoid that, due to the discrediting, one will suffer very real consequences, as are the legal sanctions” (Guerra Filho; Cantarini, 2014, p. 33-34).

The Law provides the subjects with the means *to produce a real story*, a binding one for those who are part of it, in the sense of acquiring rights and duties and of obedience to what is previously established, codified, as the plot (Guerra Filho; Cantarini, 2014, p. 34), thus revealing the importance of feelings and emotions for lawyers and scholars, as well as the faculty of the imagination: Law is seen as a mere technical instrument, of control of behavior, of human conduct, without realizing it, as well as having the burden of justifying itself, of justifying what it presents as valid, beyond the mere reference to standards, because it is a technical view that predominates. It is necessary, then, to involve more the subject in charge of the interpretation and application of the norms in this process, with his experience of the drama that has before them. According to the authors,

[...] it is necessary to pay more attention nowadays, which is the very feeling or the sensitivity of those who will be subject to these ordinations, so that these ordinations are not perceived and, in fact, implemented in a way that disregards the dignity proper to these subjects. And that is where I understand that we must develop a poetic approach to law. Poetics is a philosophical discipline that goes back to Aristotle, in his treatise of the Poetics, therefore, of this one that is one of the authors of the standard philosophical canon of the western thought, being that of this work what remained was, mainly, the theorization on tragedy. I think that we really have a key to be used also to reevaluate theoretical thinking, as a whole and, of course, equally from the field of law, considering that faculty as much as traditionally neglected, which is the faculty of imagination (Guerra Filho; Cantarini, 2014, p. 151).

In this sense, the authors cited, as Dworkin did in his book *A question of principle*, more specifically in the chapter “How law resembles literature” (2000, p. 217-254), when it supports the thesis that legal practice is “an exercise in interpretation not only when jurists interpret specific documents or laws but in general” and that “we can improve our understanding of law by comparing legal interpretation with interpretation in other fields of knowledge, especially literature” (2000, p. 217), and Martha Nussbaum, who affirms the need for a legal interpretation in an

interface with Literature, arguing that law must be recognized as imaginary, in the sense of fictional, a product of desire:

[..]the law is seen, perceived and conceived always *in fieri*, never ready and finished, from which the autopoietic character of the law and the necessary and indissoluble linkage of it with philosophy and theater, especially that which arises with it, in ancient Greece. This is what can be considered a synthesis of the Poetic Theory of Law. This is a way for the recognition of otherness as the foundation of human rights, which highlights the right to love, the right to not be submissive, the right to be different, original and creative and the right to move outside the common places (2014, p. 139-140).

Law is part of this ludic universe, the creation of human desire, a way of imagining the real in descriptions that make sense, as the anthropologist Clifford Geertz (Guerra Filho, Cantarini, 2014, p. 36-37) would say. Dworkin understands that the point that approaches the juridical domain of literature, of the fictional, of the imaginary, is precisely the interpretation. In portraying an effort of literary imagination, he says that:

Deciding controversial cases in law is more or less like this strange literary exercise. Similarity is most evident when judges examine and decide *Common Law* cases, that is, when no law occupies central position in the legal question and the argument revolves around which rules or principles of law 'underlie' the decisions of other judges, in the past, on similar matter. Each judge, then, is like a novelist in the chain of events. He should read everything that other judges have written in the past, not only to find out what they said, or their state of mind when they said it, but to get an opinion on what these judges did collectively, in the way each our novelists formed an opinion [...] (2000, p. 236).

Interpretation must be done in order to correctly think the law to apply it to the simpler or more complex issues that permeate the complex world. In this sense, Streck questions the "common sense of jurists", already worked by Luis Alberto Warat (1979), making an appeal to literature and to the use of narratives, because literary art humanizes Law (2006).

The Law, then, rather than merely positive, shall have to be "conceived before as possible, imaginary, for fiction is the truth of Law, and Law is the camouflage of the proper power and exercised by the 'authors-interpreters' of this great assembly, which is society" (Guerra

Filho; Cantarini, 2014, p. 41). Hence the type of discourse to be developed within the legal theory should be “a fictional, poetic, or rather “poietic” discourse (from the Greek *poiesis*, “to do”, “to produce”, “to create”), for the better “to be able to imagine several versions for the history of the origin of the human being, always remaining the same end, namely, that of being a being produced by the prohibitions imposed on us and, therefore, we also impose ourselves” (Guerra Filho, Cantarini, 2014, p. 42).

It is, then, an imaginative work, consciously fictional, that evaluates – and endorses – by its effects, and in this perspective, Mythology, Philosophy, Law or religion and even the other sciences are literature, fictions; “what one intends to do is to tell a story as best as possible, to make it credible”, giving meaning to their lives (Guerra Filho; Cantarini, 2014, p. 36-37).

It is necessary that, in the legal arena, rationality be defended

[...] contemplating the soil from which it emerges, the humus of the culture from which the human emerges: the symbolizing capacity present in language, in its most diverse forms (the law being one), as the producer (and product) of the effort to produce a sense for the existence of this open, free being that we are. What is needed, then, is to promote a (re) approximation of theory to a rather poetic, rather than a philosophical (or religious) way of developing reflection and its exposition (Guerra Filho; Cantarini, 2014, p. 49-50).

There is, therefore, a need to practice a non-reductionist and non-simplifying perspective, but capable of articulating explanations of a sociological, economic, juridical, biological, philosophical and even theological nature (Guerra Filho, Cantarini, 2014, p. 69).

If the human being cannot be known only in parts, it must be understood from a complex game, in an uninterrupted circular motion, as Edgar Morin said, which takes into account the passions, emotions, pains and joys which are inherent to the human condition, it is precisely because a poetic theory of law is necessary so that law can actually create conditions for the development of critical capacity.

Palomar himself makes a pertinent criticism of the cut of the disciplines, of the sciences, which makes it impossible to learn and

understand what has been woven together, in its original sense, which is always more complex than one might believe in the thesis of reductionism³, which restricts the complex to simple. The principle of reduction cannot be applied in order to know, to study a science as the legal one, since it works with the problems of human beings, who, by their nature, are complex beings.

All this must be unfolded in a space of aesthetic search, of provocation, of reflection, of interrogation, of sharing experiences, in a truth that represents a true emancipatory attitude towards life:

Mankind, for the most part, lives the superficial. There are millions who are born, grow... will they die? Maybe they never even really felt alive. And we, in what dimension of reality do we want to live and build for those who will succeed us? Do we want to look at the world with the eyes of life in its unprecedented process, or let the world limit the view of the sense of existing with mechanical eyes of technique? (Silva; Maragon; Rosa, 2009, p. 37).

Like people, law is also and must be constantly in the making, because it depends on the subjectivity of its addressees, interpreters and applicators, hence the option to conceptualize it as a synonym for dream, “with the same character as the latter, as the fruit of human desire, and not only of the objective will or of primary or secondary needs, falsifying notions on which the existing technicalist utilitarianism is based” (Guerra Filho; Cantarini, 2014, p. 147).

Theater, philosophy and law are essential tools for identifying the interests, desires and feelings of “the other”, widening the gaze to this other. For this reason, to relate theater, literature, philosophy and law, in order to favor the questioning of the origin of the changes brought to the world by

³ Reductionism, from the method, is the emphasis on the approach of isolated, fragmented, analytical, compartmentalized elements. It is the fragmentation of knowledge and disciplines. Such fragmentation and the directing role of the method generate the loss of the dimension of complexity and the interdependence of factors, that is, the systemic and synthetic view, since the prevailing view is analytic. Complexity would require redoubled procedural care and a precautionary principle that would “delay” the so-called progress. It opens the way to a scientific materialism, in the consideration of physical-chemical elements, to the absolutist predominance of the natural sciences and its epistemological-methodological status over all knowledge. It leads to scientific determinism, to a mechanistic approach that removes the ambiguity, mystery, and complexity of realities or living things. This also means the loss of the holistic view of the whole, of the unity and participation of consciousness in the world (Pelizzoli, 2007).

this human way of being, allows us to reach a better understanding of man and law, which is both produced by it and produces it, creating a broad comprehension of the other (Guerra Filho; Cantarini, 2014, p. 139 and 148). Such subjectivity is related to emotion, whatever the issue is being dealt with, since

An argument about respect, ethics, human rights does not convince anyone who is no longer convinced. Because it is not the reason that justifies the concern for the other, but it is the emotion. We make a wonderful and impeccable speech, but that is of no use, not because it is not impeccable, but because it does not make reference to the space of mutual acceptance in which ethical concern has meaning (Maturana, 2001, p. 61).

This implies that also emotions, subjectivity, must be part of interpreting, of understanding. They (the emotions) are not enemies of reason, because if they were, they would deny their condition in the human being. That is why,

What is important, in order to avoid misunderstanding, is to choose the emotions that depart from rationality and to potentialize them, because in the name of neutrality one could not erase emotion, otherwise decisions become extremely abstract and calculated far from reality to whom they are intended. With regard to judicial decisions, then, one should not forget that they are handed down to someone and not just to something (Duarte; Maders, 2016, p. 166).

Literary narratives, fiction, and art, in themselves, reproduce real experiences in a stylized, dramatized way, which are capable of constructing a common imaginary, not merely individual but collective, and, when published, have a dimension of collective refusal. So, according to Nussbaum, unlike the prevailing model of justice, there must be no withdrawal of emotions so that there is greater impartiality and neutrality in judgments, insofar as they help to see the whole in a more authentic way.

Martha Nussbaum acknowledges that there is a lack of an essential ingredient of humanity in the dominant rationalist logic that could be termed the poetic view of the world. If we think of Heidegger as the poetic intuition of artists and writers that best captures the essence of things, we can see in works of art and literature a valuable contribution to teach us to look at the world more truthfully (Silva, 2006, p. 158).

Understanding is not limited to subsuming facts to texts, or vice versa, or recovering a supposed intention of the author. Understanding presupposes several encounters and means

[...] to realize that the construction of meanings is related to the work open by certain conditions of possibility, since to understand is an ontic manifestation of the existent. On the other hand, such a creative dimension of the act of applying legal texts does not matter to defend the existence of an absolute freedom to say the juridical sense. In this aspect, the narratives produced are fundamental elements to focus the dialogue, allowing the emergence of the script of the work, the questions posed by the historicity of understanding (Ohlweiler, 2008, p. 195-196).

This model of understanding represents the revolutionary power of literature, as Nussbaum (1997) argues, because Literature and poetic imagination are subversive, create criteria of empathy and recognition of differences, which is why the author states that without literature, judges cannot be good judges, lawmakers good lawmakers, economists good economists (*apud* Duarte; Maders, 2016, p. 168).

In this north, returning to Calvino, who served as the basis for the initial part of this text with the voyages of *Palomar*, it is noteworthy that he already mentioned that literature is the Promised Land in which language becomes what it should actually be (1990, p. 74), the Midas touch to legal science. Thus, in order for the wealth of possibilities provided by language to be better explored, the jurist must take a critical-sensitive stance, moving away from the traditional profile, which “considers Law as a system of norms dominating the word par excellence, manifestation of the said, of the writing, of the knowledge and symbolic thought” (Sbizera, 2015, p. 135). This is because the traditional model

[...] forms jurists without sensitivity, bodies with no ability to relate sensibly to others and to the world, unable to perceive and literally listen to people's feelings. At a time when every mode of communication that wants to be effective must also pass through touch, sound and image, Law remained at the stage of discourse and, primarily, of discourse. Its reason to be consists in the existence of at least encouraging or persuasive norms, but much more prescriptive, imperative or prohibitive, insofar as individual and social behavior is concerned. If these behaviors are submerged in reality, law seems to take them into account only when it substitutes the real for the signs.

From then on, a Law function is born that constitutes an operation of deviation from reality. What was a world, unstable, multiple and contradictory, is reduced and becomes a word in the law and in the process [...] (Sbizera, 2015, p. 135).

Law, in this sense, is to be recognized as imaginary, in the sense of fiction, a product of desire, with the same status of dreams, but a collective and semiconscious dream; because

[...] Law is nothing more than the local vision and temporarily cut out by a human holder of the capacity and function of saying the law as a real event. Another human, will say another law. Law works, then, as a fictitious system, but actually placed under the uninitiated and subversive individual and collective imaginaries. By crystallizing a certain understanding, it not only rejects other possible ones, but also mummifies everything that was originally alive (Sbizera, 2015, p. 136).

Therefore, in order to be creative, dynamic and plural, the precise Law of Literature, insofar as this is a privileged place of formation of the critic-sensitive jurist, “one of the most capable places to make fit the learning and the use of knowledge and thoughts that go far beyond words, goes to reality, the sensitive and the human, of the human” (Sbizera, 2015, p. 139). In view of the dynamicity of law, the theory developed by Ost (2009) about the three models of judges previously referred to and compared to the characters of Calvino’s work in this article is insufficient, especially in the Brazilian case, which is criticized since there is not one judge model or three, just as there is no model of justice, even more so in the era of complexity. One such critic is Lenio Streck in his work *Truth and Consensus* (2006). In addition, Rafael Tomaz de Oliveira and Alexandre Morais da Rosa (2013) suggest a new archetype of judge appropriate to the *theoretical common sense of Brazilian jurists*, which state the “MacGyver complex”.

In Law, it is necessary to reduce a fact of people’s lives – which may have lasted for a long period of time and is involved in a series of events and feelings – a few pages of a text, either to petition or to judge. Therefore, it is an illusion to believe in the completeness and uniqueness of the legal world, when, in fact, law is polyphonic, as is life itself; the

human being, the word and the language. Thus, in the wake of the ideas by Ost (2004) and corroborating that the Law is indeed Palomaresque, the approximation between Law and Literature leads to a double inversion: the inversion of the possible to the real and the inversion of the singular to the universal.

The first is to witness that the real itself is nothing but a modality of the possible, that is, it is a question of seeing reality through the mirror of fiction. The second inversion leads thought to conceive the particular as an entity that only exists allowing itself to be subsumed under the universal empire, thus delineating a well-ordered universe, marked by a linear logic and strictly hierarchical classifications that, in the act of inversion by the imaginary, proposes singular intrigues that have the effect of disarranging and defying the formal universal that would like to encode the whole real; it is (dis) occurring due to ruptures (Ost, 2004).

In this way the study of Law can become critical as it moves, alternating the perspective of the observer's gaze, and makes of itself an object to be studied from the outside, using an extrajuridic language, a metalanguage, which may come from the most diverse areas of human knowledge, such as Literature. Thus, when directed by lawyers to the study of law in non-reducing approximations, we begin to study the law critically, starting, necessarily, from the modification in the language provided by an arsenal of categories and references that the law by itself refuses to use and cannot even perceive (Sbizera, 2015, p. 125-127).

5 FINAL CONSIDERATIONS

Palomaresque angles pose the question of the relation of the subject to the other, intertwined by language; hence the density of the characters. They express this transition of paradigms, in which language is seen as the structuring element of the relation of the human being with reality. Mainly from Habermas, the objectivity of science is relativized to emphasize narratives, intersubjective and cultural relations, hermeneutics, from different readings of reality provided by different models and by the plurality of languages. The “world of life” and the

“horizon of meaning” in the wake of Habermas and Gadamer, respectively, only become possible through language, opening up new hermeneutic horizons.

Such a thought is perceptible in the work of Italo Calvino, as the points of view of *Palomar* reveal that the only truth that can be found is that of the certainty and ambiguity of the concepts sought, as well as that those meanings presented may both be true and may be obscure of true definition, because they can reduce or reify it, and therefore should be read as temporary responses.

As we could see, when we apply the Theory of Law in the reading of *Palomar*, it is evident that Literature works as a vehicle of ideas, as a reflection on social reality, as an expression of the thought of an author. It is thanks to the literary effect of estrangement that the everyday world becomes something unfamiliar: it has the power to bring a dramatic awareness of language. Hence, when Literature struggles with language more laboriously, more self-consciously than usual, it renews the closed world by this language (Eagleton, 2006).

Literary idiosyncrasies have the power to operate this magic: to increase the capacity to see and to feel. Literature satisfies the basic needs of the human being, enriching the perception and the vision of the world. Thus, it is possible to know the Law through the art, reconstructing images on the legal world and perfecting the rethinking about its social insertion, its social role and image. Therefore, the Palomaresque angles addressed in the present study bring the issue of the Law approach by the bias of Literature, in order to allow a better understanding of Law by its professionals, in which it causes anguish and fascination.

Literature, through its discourse, is itself a condition of possibility of producing new discourses, capable of transforming reality. It is one of the functions of Literature as art: the social function, with a social objective, altruistic, as well as seeking to provide the human being a more poetic existence, recognizing in Literature, through the literary imagination, a performance that disturbs, intrigues, unsettles, confronts.

In this sense, it is opportune to recall the content of the Roman saying, according to which Law is made by and for people. It must provide itself, as comprehensively as possible, to meet the needs, conflicts, and problems of human life in its social, cultural, political, and philosophical aspects. Therefore, the complexity of human life presents new challenges to the Law and requires reflection, new postures and thus new glances, and therein lies the main contribution of the angles analyzed under the Palomaresque views.

As previously mentioned, the Palomaresque views appear under the different lenses with which one can exercise the activity of the gaze, of perceiving, of positioning itself at different angles to seek a view of the whole, although the understanding of the impossibility of apprehending the whole, to exhaust all its possibilities. Such angles show that there are many situations, theories, possibilities. There is no way to specify all situations, nor how to point out some answer as the most correct or complete, inasmuch as it is impossible to close such rich possibilities with the still predominantly Cartesian rancidness of human knowledge. In this sense, it is worth bringing the intriguing question posed by Ost, as well as his interesting answer: “In what way does Literature provide answers? I would say: always in an indirect, oblique, unforeseen way” (2017, p. 264).

Like Palomar, human beings often try to conceptualize, explain, answer complex questions that may not have concepts, explanations, answers. Perhaps the reason for its existence and importance is to explain everything and explain nothing, answer everything and answer nothing, in one of the most instigating paradoxes of the so-called postmodernity. In the meantime, others do not seek answers, explanations, concepts, simply because their personal and cultural constraints do not allow them... they prefer the comfort of common sense, since treading the known path is less laborious than walking inhospitable paths, to venture for quicksand.

Therefore, one must be prepared to reverse the roles and place oneself in the place of the different in order to better perceive and understand them, since the points of equality and difference interest in the understanding of oneself and of the world, as the Palomaresque angles now visited reveal, without an end to their possibilities. After all, the Law is

nothing more than Palomar, because it must be seen, perceived and conceived always *in fieri*, never ready and finished, recognizing its necessary and indissoluble link with Literature, recognizing that Literature establishes experiences in whom reads, in order to exercise different types of impacts, because it is problematizing at different levels and in different situations. Literature is problematizing as Palomar, as Law, as life.

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