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## QUIXOTIC UTOPIA OF HUMAN RIGHTS

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**ABSTRACT:** The aim of this article is to (re)tell the legal discourse of human rights across the emancipatory lens of literature through Miguel de Cervantes' *The Ingenious Nobleman Don Quixote de La Mancha*. The objective is to draw a parallel between Quixote's struggle and the battle for human rights in the present day, showing his points of approach, with no intention to exhaust them. From this opening of Law to literature, the legal discourse of human rights will be explored based on the literary narrative of Cervantes. The quixotic vocation of fighting injustices, the focus on the vulnerable, the dimension of dialogical alterity - all marked by the tension between reality and ideality - that stand out in the chosen work are points of communication with the paradoxes and dilemmas of the realization of rights in contemporary times. The challenge that arises is, from a different posture of - and before - the law, from the dialogues with Quixote, to give possible concreteness to human rights, thus unveiling the horizon of a possible utopia to transform them into a tangible dimension of reality.

**KEYWORDS:** Quixote; human rights; emancipation; utopia.

### INTRODUCTION

The crises currently experienced – the demise of democracy in Brazil; the bankruptcy of a global system capable of responding satisfactorily to the humanitarian crisis – lead us to a necessary evaluation of the human rights tradition. This alarming scenario denounces an unsustainable human rights environment that is deaf to the cry of the excluded.

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The gap between theoretical enunciation and actual practice in human rights expresses the need to seek compromised alternatives. This balance can come from a critical and innovative mirage that contains other theoretical possibilities that are especially critical of the role of order in safeguarding human and fundamental rights. Literature emerges as one of these possibilities of analysis in the field of human rights, as emancipation of these in front of the traditional legal rationality.

The literary discourse is more diverse, complex, heterodox and imaginative – which allows it greater plasticity, sensitivity and attention to reality; Ingredients that the law needs in order to commit to the reality of those whom it seeks to protect. Literature offers law a vast repertoire of observation of human social relations, as well as bringing freedom to the law by repeatedly dismantling the formalisms of the legal structure.

The analysis of literary works – such as *The Ingenious Nobleman Don Quixote de La Mancha* – offers different perspectives to the interpretation of human rights, especially to those committed to reality.

The link between law and Literature flourishes in narrative. The articulation of the legal discourse with the literary narrative is appropriate, since it urges the contextualized opening of the law. Norms and rules are worthless without context, without history, without a fact to attribute meaning to it. Thus, the use of literature (re)leads human rights to the real dimension. To (re)tell human rights (OST, 2004) from literature breaks down, therefore, the normativist apprehension and claims its openness. This gives to the rights the possibility of going beyond mere description and prescription, adding narrative and criticism to its hermeneutics and application.

Literature operates a fundamental refoundation in the legal conception of rights. The possibility of overcoming the practical distance that keeps traditional law through a literary bridge that is able to approximate it to concrete subjects and material justice is what makes it imperative for this simple reflection to deal with the set of ideas above.

The aim of this article is to (re)tell the legal discourse of human rights through the emancipatory lens of literature. For that purpose, the work *The ingenious nobleman Don Quixote de La Mancha*, by Miguel de Cervantes

was chosen. By analyzing the literary work and by bibliographical research, the objective is to draw a parallel between Quixote's struggle and the struggle of human rights in today's world, showing the points of convergence based on the salutary dialogue between law and literature.

### **QUIXOTE AND RIGHTS: SUBVERSION AND EMANCIPATION**

*The ingenious nobleman Don Quixote de La Mancha* is a complex work by a complex author. Miguel de Cervantes reflects much on the very meaning of writing and gives it the critical direction of the world around him. *The present time, present men and the present life* are his tools, to paraphrase Carlos Drummond de Andrade (1969, p. 14). His literature undoubtedly reflects the vicissitudes, peculiarities and idiosyncrasies of his subjects, as well as the context in which he is inserted.

Obviously there is not only a possible reading of the work in question, which makes this paper a point of view among so many. In fact, the richness and highlight of the quixotic trajectory lies precisely there, as José Garcez Ghirardi makes clear:

That *Don Quixote* can be read in a Marxist, liberal, or feminist key, for example, does not tell us that the novel is poorly written or confused, nor does it imply that Cervantes was not clear about what he meant. On the contrary. We admire the author even more because his text allows us to articulate so many different perspectives. The overlapping sense, often conflicting, is seen as a wealth of this wonderful classic. Contrarily to our expectations regarding the law, we tend to understand that in Literature different interpretations are a virtue, not a problem (Ghirardi, 2016, p. 59).

Hence emerges the political substratum that is very present in Cervantine literature and which matches with the inspiring sense of political and juridical reforms that literature can have – in Morawetz's lessons: "These literary productions tend to shape popular attitudes; These attitudes may in turn affect legal approaches to rights and other claims of the less favored classes" (Morawetz, 1996, p. 453).

Literature, especially those that, like the Cervantine one, assume a critical posture of the real, can be a great driving force to propose and problematize the alteration of social and legal directions. In general,

literature has always had a political substrate that has inspired political and legal reforms. Victor Hugo agreed with this order of ideas when he affirmed that “la littérature commence par former le public, après quoi elle fait le peuple. Écrire c’est gouverner” (*apud* Ost, 2004, p. 17).

Under the aegis of dogmatism, the social and political effects that stem from this transformative dialogue that literature can have in law and rights have for a long time been enclosed in consonance with a closed view of reality and also rights – as Ost points out, “literature has been placed under guardianship to preserve the integrity of dogma” (2004, p. 9).

Literature as a human product, like legal science, undoubtedly reflects, to a greater or lesser extent, the vicissitudes, peculiarities and idiosyncrasies of its subjects, as well as the context in which it is inserted. According to Lukács, “there is no composition without conception of the world” (*apud* Konder, 1980).

The political, critical and liberating dimension of literature is already present in the work of Cervantes, since it was precisely books that *disturbed* the order and reason of Alonso Quijano. It is the books that are to blame for the madness of Quixote – so much so that the solution presented by his daughter and maid was just to burn them. They believed that “From reading so much, he dried his brain”. On the contrary, it was precisely his readings that opened the subversive possibility of emancipating himself and giving life to Quixote.

The criticism of dogma and its transforming sense is in the work represented as madness, which is nothing more than insurgency with the order and the ability to see beyond. It is here that Alonso Quijano and Quixote are set apart: He was Alonso Quijano, when he was “right”; after he had gone mad – if he had gone mad – he became Quixote. For Saramago (2005), in his reading of the work, Quijano was just tired of the life he led and – by deciding radically to change his life – he says he is crazy because that way everything is allowed to him. He declared himself thus – in the purest act of sanity – mad! Madness is characterized as such by subverting the static, dogmatic and normative order of life (Olivo; Lehmann, 2015).

From this emerges the transformative potential of literature: Quixote entered immortality, eventually becoming Quijano again to die in the

limited space of reason. His death is precisely the return to the supposed barren lucidity of imagination. Madness, therefore, is here apprehended in its emancipatory dimension of the enclosure of the established forms of rational normativity.

The emancipatory potential of the imagination propitiated by literature emerges here as a central element. Quixote was what filled his life; To rights, the poetic imagination can aid the determination of its own object in the measure that unveils the subjects, their suffering and pretensions. Nussbaum corroborates this order of ideas by stating that “al imaginar cosas que en verdad no existen, la novela, como ella misma lo manifiesta, no es *improductiva*, pues ayuda a sus lectores a reconocer su propio mundo y a escoger más reflexivamente” (Nussbaum, 1997. p. 60).

Although problems arise from this approach – doubtlessly the exaggerated imagination of Quixote placed him in complex circumstances, the very finding of problems is beneficial since it is taken as an existing constitutive dimension. That is to say, “La pratique aura vite fait de re-problématiser les normes ainsi définies: des conflits de devoir apparaîtront, des situations inédites se présenteront qui feront que le décideur renouera avec la sagesse pratique, et parfois le tragique de l’action: nos pas choisir entre le blanc et le noir, mais entre le blanc et le gris, ou pire encore, entre entre le gris et le gris ou le gris et le noir” (Ost, 2004, p. 33).

If conflicts are part of reality, they become part of the law – not as something to be excised; As a disease to be cured –, but as a constituent element of its own core and not an evil in itself. The conflicting, agonistic and dialogical dimension of human rights allows us to shed light. The political tension in the exercise of democracy in its radicalism is therefore essential to the notion of human rights. “An agonistic approach recognizes the real limits of such boundaries and the forms of exclusion that flow from them, rather than trying to disguise them under the veil of rationality and morality”, warns Chantal Mouffe (2005, p. 22).

From this opening of the right to literature, we will explore the legal discourse of human rights with contribution in the quixotic literary narrative of Cervantes. Several points of Quixote’s ingenious narrative can be approximated to the discourse of human rights. The quixotic vocation to

combat injustices, the focus on the vulnerable, the dimension of dialogical alterity – all these marked by the real/ideal tension that stood out in the work and is today the great *paradox in the dilemma* of the realization of rights. The purpose of the present discussion is to explore some of these points with no intention to exhaust them.

### THE FIGHT FOR (IN) JUSTICE

The motive of the work and of Quixote is the denunciation of injustices; The knight reports that his duty and destiny is to repair the injustices of the world: “The duty and stated destiny of the knight of the sad figure is to repair the injustices of the world”, Cervantes tells us. In this respect, the Cervantine text is very close to the counter-supremacy vocation of human rights. It is human rights produced from the social dynamics, “in defense of new freedoms against old powers” (Bobbio, 2004, p. 51), fruits of a “rationality of resistance” (Flores, 2009, p. 163).

It is in this influx that human rights emerge as a counterpower, in the expression of Luigi Ferrajoli (2007, p. 346), which marks the constant process of struggle against the law of the strongest. In the words of the author: “Los derechos fundamentales son siempre leyes del más débil frente a la ley del más fuerte, que bien puede ser la ley expresada por sus mismas culturas, incluidas las que conviven en nuestros propios países occidentales: [...] a los oprimidos de las prácticas opresivas de sus culturas” (Ferrajoli, 2007, p. 369).

This perspective matches with the tonic of human rights aimed at balancing the asymmetric relations of power as insurrections against despotisms, from the public or private fields. At the same time, Ronald Dworkin points out that these rights are powerful – majoritarian, but, above all, counter-special rights – for the struggle to build a more inclusive society in which everyone is subject to equal respect and consideration. The author asserts: “Rights are best understood as trumps over some background justification for political decisions that states a goal for the community as a whole” (Dworkin, 1984, p. 153).

Justice, rights and literature meet here. Poetic justice ruled by sweet rights, in the lesson of Nussbaum (1997) and Mireille Delmas Marty (2005).

By means of this rationality, the law happens to see the subjects no longer as members of an innominate and undifferentiated fiction, the recipient of the abstraction of the legal texts, but as unique singularities. This is because law as literature tells a story – the story told by human rights is the history of the prevention or combat of human suffering. In so saying, “induce al lector a interesarse por los personajes, a participar de sus proyectos, temores e esperanzas, a compartir sus intentos de desentrañar los misterios y perplejidades de sus vidas” (Nussbaum, 1997, p. 59). In glimpsing the concreteness of the other, the readers also understand their own history and, in the exercise of otherness, they also become characters – just as Quijano became Quixote.

On the conformation of the discourse of law as poetic justice, Nussbaum teaches:

Todos somos, en la medida que interactuamos moral y políticamente, proyectores fantasiosos, todos creamos ficciones y metáforas y todos creemos en ellas. Lo cierto es que la escuela “fáctica”, que niega experiencia subjetiva a las vacas y caballos – y humanidad a los obreros –, se embarca en la creación de ficciones tanto como los lectores de novelas y los soñadores. Su rotunda negación de la vida y la humanidad exceden, como los asertos de los otros, los límites de la evidencia. Nunca conoceremos con certeza el contenido del corazón de esa forma que percibimos, sólo podemos escoger entre una interpretación generosa y una interpretación mezquina. La visión interna o fantasía, la gran caridad del corazón, alimenta una interpretación generosa del mundo. Esta interpretación, como bien sugieren las novelas, no sólo es más adecuada como explicación de la totalidad de la conducta humana tal como la experimentamos, sino que también es causa de mejores modos de vida (Nussbaum, 1997, p. 60).

The affectionate generosity that emerges therefrom matches with the law – and rights – that is sweeter. In his work, the ‘soft’ (*droit mou*) or ‘sweet’ law (*droit doux*) appears, in Mireille Delmas-Marty’s lectures, not as a fragile law, but as a flexible and therefore lasting law. In the same sense, the ductility of law announced by Zagrebelsky, who points to “una construcción necesariamente no rígida que dé cabida a las combinaciones

que deriven no ya del derecho constitucional, sino de la política constitucional. Se trata de lo que podría llamarse la inestabilidad de las relaciones entre los conceptos” (Zagrebelsky, 2003, p. 17).

It is precisely this porosity that allows the pluralistic emancipation of the juridical phenomenon of homogeneous and pasteurizing normativism that holds it far from the social reality that the literary discourse allows us. In this passage, Ost affirms: “alors que la littérature libère des possibles, le droit codifié la réalité [...] Tel est bien le travail de la littérature: bousculer les conventions, suspendre nos certitudes, libérer des possibles – dégager l’espace ou libérer le temps des utopies créatrices” (Ost, 2004, p. 10).

Associated with the defense of injustice, Quixote defends the weakest army and fights for the weary, injured. These are the subjects of rights. The weary, the bruised for whom Quixote fights.

#### **THE MARGIN AS A CENTRAL ELEMENT AND THE PLACE OF ANOTHER**

It is from Bobbio the celebrated phrase that the struggle for human rights is the battle for the possible, not for the desirable (Bobbio, 2004, p. 24). The same author also puts to us that, where the protection of human rights is most necessary, it is not always possible, and where it is possible it may not be so necessary.

The same applies to the subjects of these rights. Those who need it most are often excluded from the very discourse of protection, are those not recognized by law in its radicalism. These rights are the reflections of the possible protection, not the desirable one, within the advances and retreats of the social movements, and therefore they are born when they can, and not when they should, “not all at once and not once and for all” (Bobbio, 2004, p. 25).

It is precisely these figures that Cervantes privileges in his work – the outcasts are exactly the protagonists chosen by him to stamp the novel of chivalry carried out by Quixote. His central character, the knight Mr. Quijano was old (“going on 50’s”), thin, with a bony-clad face – a “sad figure”. His beloved, Dulcinea del Toboso, is described as ugly and smelly. In his turn, his faithful squire, Sancho Panza, was fat, who sees nothing and listens (he did not share the soundness of Don Quixote, he saw things



closely as they were). Even his horse, Rocinante, was not purebred. They emerge as central characters, the excluded and vulnerable, who, with Cervantes, gain prominence. The central element for his characterization is precisely the non-dominance.

As a result of Cervantes' literature, the normative literalism of human rights has not yet been fully opened to the recognition and inclusion of the excluded. The language of human rights must be that of alterity and reciprocity, Nancy Fraser teaches us by including the dimension of the politics of recognition as one of the guiding criteria of justice in its substantial dimension.

The contemporary mark of human rights is linked to the ethics of otherness: to see in the other a being worthy of equal consideration and deep respect, guided by the universal affirmation of dignity and the prevention of human suffering. It is, however, insufficient to treat the individual in a generic, general and abstract way. It is necessary to specify the subject of law, who is now seen in its peculiarity and particularity. Certain individuals and certain violations require a specific and differentiated response. Thus, alongside the right to equality, the right to difference with respect to difference and diversity also arises as a fundamental right (Piovesan, 2008).

The processes of seeking equality and recognition are deeply linked to the re-signification and emancipatory possibility that human rights under this new perspective are capable of generating. Fraser points out that “la justicia exige sistemas sociales que permitan que todos los miembros adultos de la sociedad interactúen unos con otros en pie de igualdad” (Fraser, 2003, p. 107-108).

With regard to the protection of human rights, the notions of equality and vulnerability are united. Are vulnerable, for different reasons, those who have diminished their coping capacity and resistance to violations of rights. This decrease in abilities is associated with a certain condition that allows the individual to be identified as a member of an excluded group.

These subjects are still stripped of rights and law. It is “the paradox as an organizing principle of human rights” (Douzinas, 2009, p. 13), since “the other, in the singularity of his dignity and vulnerability, remains outside the

concept and the essence” (Douzinas, 2009, p. 367) of humanity forged in the liberal modern setting.

The classical human rights rationale contains only one kind of abstract human: the male, the white, the proprietor, the one who fits in and does not resist the dominant social and economic model, as Costas Douzinas put it, in elucidating that:

The *man* of the rights of man has no concrete characteristics, except for free will, reason and soul, the naked outlines of humanity. [...] this *man* is an abstraction without body, color, gender or history. However, the concrete man who actually enjoyed rights was, literally, a man – a rich, white man. Christian, urban. He condensed the abstract dignity of humanity and the privileges of the powerful (Douzinas, 2009, p. 14).

The rights founded on the bourgeois modern tradition, still perpetuated in contemporary times, do not reach all, in fact, exclude most human beings: “History has taught us that there is nothing sacred in any definition of humanity and nothing eternal about its reach” (Douzinas, 2009, p. 14).

To see the other and to consider them in their peculiar dimension implies the exercise of alterity and tolerance which is the recognition of the other and calls, therefore, for dialogue as a constitutive element inseparable from the notion of human rights. This dialogical perspective is also present in classic literature.

The work is a broad dialogue between an intellectual, Quixote, and an illiterate, Sancho Panza, in the discussions of the fundamental questions of life. We are always in relation to the other relational beings, and rights are born of this relation. It reinforces the lesson of Charles Taylor: “This crucial feature of human life is its fundamentally dialogical character” (Taylor, 1994, p. 7).

Thus, rights should not be considered exclusively as the innate and abstract quality of the insularly considered individual, insofar as they have a cultural-relational-social meaning, being the fruit of mutual interaction. Rights are therefore an exercise of otherness, inasmuch as they are a call to openness to the other, as did Quixote and Sancho.

The dialogic dimension must be understood as a joint interaction, an act of linguistic donation from one to the other, when individuals put themselves in/with the Other (Levinas, 2009, p. 50). By opening to the heterogeneity and plurality that dialogue allows, the communicative action between two reciprocally recognized subjects as capable of communicating makes themselves necessary for intercession – that is, a mutual assignment.

We become subjects and define our identity always from and in relation to others. That is why the book ends when Quixote has just spoken, he returns to silence and shares with the skeptics (barber, priest...) – therefore perseverance ends – bringing back reality and thus utopia dies.

Besides the duality that marks the work and also the dialogue of human rights, there is a central binomial of quixotic reflection – one could say that it is even the motto of the work: reality/dream.

#### **THE DREAMED REALITY**

The difficulty of dissociating what is imagined – the dream – and reality is the instigating feature chosen to explore the approaches of the quixotic battle of human rights in the contemporary world. There is in Cervantes' work a difficulty of dissociation between reality and the dream. In the celebrated passage of the seventh chapter on windmills, this perspective looms with maximum force.

Quixote encounters little more than thirty giants, and is *corrected* by the faithful squire who tells him they are but windmills. Unconvinced, the rider advances against one of the windmills as he shouts that the cowardly creatures do not run away. Quixote collides with one of the blades, which knocks him down with his horse Rocinante.

Upon being alerted again by Sancho, Quixote orders his friend to shut up, explaining that “the things of war, more than the others, are subject to continuous change”. In this case, according to him, the sage Frestón turned the giants into mills to take the glory out of their defeated battle.

In this aspect, one more bridge with human rights: its continuous mutability. Rights are historical and contextual categories. They are not born when they should, but rather how they can be born – they are fruits of

the possible advances and retreats immersed in the context where they are inserted (Bobbio, 2004). Continuous change of rights operates in time and space. Text and context thus intertwine (Flores, 2009). Now rights are powerful giants, sometimes they are static totems such as mills.

The important dimension that opens here and that is very explicit in the metaphor of the mill is the struggle of the dream in relation to reality. Fighting the windmills is the (de)construction of reality from the dream/madness of Quixote. The paradox already begins with the very title of the chapter: “Del buen suceso que el valeroso don Quijote tuvo en la espantable y jamás imaginada aventura de los molinos de viento, con otros sucesos dignos de felice recordación”. That is, defeat is viewed as a successful expedition. Reason gives way to madness.

It remains to be seen whether our contemporary battle for rights is to break against established windmills. We live paradoxically the triumph of the normative discourse of rights with its universal extension, on the one hand, but, on the other, we live an unprecedented humanitarian crisis in terms of the disposability of rights and their subjects.

On the one hand, normativity reigns. The Brazilian constitutional text in article 5, paragraph one, gives prominence to fundamental rights when it states that “the norms that define fundamental rights and guarantees have immediate application”. Nothing is more bitter than our feeling about rights, since for many it still lacks the will to make itself present, exercising its normative force in the face of reality. The distance between the constitutional text and the social efficacy of the norm, understood as the effective obedience of norms in social fatigue (effectiveness), often makes the struggle for rights exactly the one that Quixote fought against the mills.

It is precisely this arc between the applicability of the norm *in abstract* and the result of its effective applicability that must be traced to overcome the abyssal gap between practice and human rights theory. Although it looks like fighting in vain, the trajectory of the ingenious nobleman proves us wrong.

The latent deception with (and from) the constitutionalism of the country is linked to the lack of effectiveness of constitutional norms, since,

in regressive analysis, one notices the lack of harmony of the constitutional precepts, or at least of its practical adaptation to social reality. There is a clear “contrast between the solemn declarations and their attainment, between the grandeur of the promises and the misery of the achievements” since “moral growth is not measured by words but by facts. The road to hell is paved with good intentions” (Bobbio, 2004, p. 64).

Among the giants and windmills is the contemporary struggle for rights. Normative prediction and the legal status of rights hang between the reality of windmills and the ideality of the giants fostering a sense of constitutional frustration of a future (whether giant or windmill) that does not seem to arrive.

Rights are born with the gigantic pretension of empowering the subjects, however, hinder them with their own static blades. They were transformed by the “villains” into devices of their own violation. This is the process of reversing protection in which the rights discourse itself is used to justify its violation.

The foundations of rights, still captured by the liberal tradition, end up implying the naturalization of a process that leads them to closure, preventing their practical realness, except for those who already enjoy it. It is therefore necessary to seek theoretical alternatives that escape this commonplace.

Here it is not only a problem of practical verification, but of fundamentation. Therefore, the famous idea of Bobbio (2004) – for whom the problem of human rights is no longer to justify them, but to implement them, does not serve us. Precisely because in order to have a rights model committed to practice, a theoretical alternative is needed that rejects abstract naturalism on the basis of rights and seeks a contextual and historical perspective on the reality of human rights. In Flores’s words:

Cuando se dice que o principal problema dos direitos é de aplicação se está dizendo que o problema não é normativo, legislativo, mas da necessidade de sua implementação. Mas a implementação da legislação não é um problema só jurídico, mas de poder social, de estruturas y relaciones de fuerzas que impiden la realización de derechos consagrados para determinados grupos sociales (en este caso las mayorías de la población

mundial). Tal afirmación es profundamente ideológica, pues al decir: la institución está bien, el problema es de aplicación oculta precisamente el problema que tratamos de mostrar: que la principal causa de la violación de los derechos humanos en el mundo de hoy no es producto de un poder despótico que rechaza la institución derechos humanos, sino de un sistema democrático de derecho que lo consagra y se declara además su “inventor” (Flores, 2000, p. 187).

As in the battle of Quixote, the tension between reality and ideality is inherent in the legal system itself, and therefore in rights. However, the tension between the ideal and reality should not serve as a subterfuge for conforming to the current practical application of human and fundamental rights. Thus, we must have a perception of rights as a practical reflection in the daily life of its operators, in an attempt to mediate the quixotic utopian ideality and the harsh reality of Sancho Panza.

### CONCLUSION

From the tension between the ideal and reality emerges the need to keep the utopia alive. It is this very prospective sense that urges us to go forward, a step further, always in search of the utopia of tomorrow, as Eduardo Galeano teaches us, appearing on the near horizon, but unattainable. In this more pragmatic influx one seeks the concrete utopia of tomorrow (Ramonet, 2005).

When Quixote rides toward the windmills, he falls and falls – he falls, but continues with his belief –, in the perseverance that he could overcome the obstacles, although gigantic. Here again the link with the theory of rights.

Human rights are, in their contemporary face, the history of perseverance. They arise precisely from their denial. It was the breaking of the idea of rights that left us rights after the war. From breakage came protection. Rights thus became “the cry of the oppressed, the exploited, the dispossessed, a kind of imaginary or exceptional right for those who have nothing else to lean on” (Douzinas, 2009, p. 157). Therefore, it is important to look for alternatives that aim to give them concreteness, even if in a utopian way.

Thus, utopia is a project, projecting a proposition: it becomes concrete when there is action directed at willing to change. This political action, of nonconformity with the data, with the seemingly unmodifiable, must be eminently challenging and contextualized, in the terms advocated by the critical theory of human rights. It is necessary to apprehend rights under this critical perspective and to re-signify its foundations and content from human flesh-and-blood beings.

Zizek elucidates how utopian thinking also approaches the openness that literature provides, since “it has always been replete with repressed popular images and reminiscences, untold dreams and stories, modest memories, and emotional affections projected into a lovable future”. In this sense, the utopia of human rights is transforming the very way of thinking about rights and law, the author continues:

Human rights can fill the non-place of postmodern utopia: they produce a powerful political and moral energy, unlike any other ideology; They draw their strength from past memories and future hopes; Its promise exists, hidden beyond conventions, treaties, and statements, in a variety of inconspicuous cultural forms. Human rights, grounded as they lie in the fragile sense of personal identity and the hopeless hope of social integrity, connect the individual and the collective. Like all utopias, they deny the present in the name of the future, which means that, paradoxically, they deny the rights of laws and states in the name of the plural humanities yet to come (Douzinas, 2009, p. 348).

The utopia can come to fruition. Rights can be reality. Yet another stance is required before the law and the world for this to happen. From the interlocution with the quixotic literary imaginary and the opening it provides, it is possible to construct a critical theory of human rights based on a critical, peripheral, dialogic and utopian posture. As Antonio José Avelãs Nunes teaches us:

The necessary changes do not just happen because we believe a better world is possible. These changes must come as a result of the laws of motion of human societies, and we all know that voluntarism and good intentions have never been the engine of history. But awareness of this does not have to kill our right to utopia and our right to dream. Because utopia helps to make the way. Because dreaming is necessary, because the dream commands life (2003, p. 123).

While maintaining its prospective meaning, the protective order of human rights must land on reality as a tangible utopia to those who need an urgent response. The law cannot evade this practical commitment to the observance of human rights, essential to a minimally dignified existence, still unknown to a significant part of the world's population.

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