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**THE MISERABLES OF LAW: AN ANALYSIS OF SOCIAL
INEQUALITY IN THE BRAZILIAN PUNITIVE SYSTEM BASED
ON THE NOVEL *LES MISÉRABLES*, BY VICTOR HUGO**

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ABSTRACT: *Les Misérables* is a great novel not due to the long text, but mainly for being able to deal so simply with the complex debate about the ideal of justice. Through the saga of Jean Valjean, sentenced to prison for stealing a loaf of bread, Victor Hugo unveils all the cruelty of the nineteenth-century French society, denouncing its extreme social inequality and its biased judiciary system. The author warns that the narrative would remain necessary for as long as the real situations similar to those described in the book should last. Almost two hundred years later, in the twenty-first-century Brazil, there is a surprising similarity to the French reality: miserable women and men, taken by crime due to the extreme poverty and receiving the disproportionate punishment of a selective judicial system. Thus, the objective of the article is to draw the parallels between the time and space of *Les Misérables* and the Brazilian reality, through an analysis of the punitive practice in force within the country. Using the literature review of Law and related areas, in addition to statistical studies of the contemporary Brazil, the aim is to draw parallels between the two realities. This study demonstrates how gravely contemporary Victor Hugo's ideas are, especially in light of the data collected, which demonstrates the urgent need to explore them.

KEYWORDS: penal system; social inequality; punitivism of misery.

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1 INTRODUCTION

The field of study of Law and Literature has grown over the last few years. Although this approach might initially lead to strangeness, a closer analysis is able to highlight more similarities than disparities between the areas.

Literary criticism is the area that focuses on the making of a text, exploring its meanings, seeking to uncover the intentions of the author, expressed in linguistic constructions, in the narrative and in a whole historical and cultural context. Similarly, those who study legal phenomena, whose raw material is the text of the law, analyze written materials, from which one can explore a range of interpretations, having as one of the main tasks to discover the best possible meaning, which goes through text analysis and also includes research on the will of the legislator. Godoy (2003, p. 134) sums up this relationship by verifying that “interpretation creates the text, just as it gives genesis and life to the Law. Readings enable hermeneutical procedures that reveal reservations of meaning, opening up the real life of entanglements, plots, fights.” Schwartz (2006, p.1015) defines this point of contact in the sense that “Law and Art are abstractions built on other abstractions (norms and works). Thus, at the level of cognitive strategies, there is no difference between abstractions of abstractions. The process of knowledge, therefore, of Art and Law is correlated.” Llanos (2017, p.350), in turn, speaks of the fictional character of the legal norm, who elaborates abstractions:

Law creates social fictions that are legally real (citizens, foreigners, society, nation, objective responsibility, etc.), considering the fact that this Law is constitutively full of stories, written by legislators, judges and lawyers, on the good and the evil, about reasons to be right, about power and vulnerability, family, education and health, life and death, pardon and forgiveness, etc.

Olivo (2013, p.20) argues that this relation is more than an interesting approach, stating that “it is possible to better understand the question of the interpretation of Law by comparative method with other fields of knowledge, and especially Literature.” Both Olivo (2013) and Godoy (2003) refer to the work of Dworkin, who was, according to Dmitruk (2007, p. 144), “preoccupied with the positivist definition of law, which reduces it to a rule model and authorizes the judge to use the discretionary power when

faced with complex cases”. It is this dogmatic limitation that Moreira (2014, p. 30) thus defines:

Legal positivism was characterized as a “closed system.” This means that the judge should stick to the law, to what was written in the law, without getting involved and interpreting the rule. [...] There being such rigidity, it is obvious then to say that in positivism, law was not related to any other science. Only the law was enough and everything should be decided on the basis of its form and not its substance.

In fact, it is precisely in the field of positivism, with its rigidity in the application of the norm, that Literature has more to contribute with the Law. It is through this artistic expression that one has the freedom to question, reflect and point out solutions to the legal system in a free way, without the obstacles of arduous legislative cases and the inaccessible judicial apparatus. The advantage of Literature lies in its power to transform thought, not only as a mere pamphlet, but with a potential for much greater involvement on the part of the reader. This is done through empathy exercises, since extremely relevant subjects are treated in a personal context, within a frame that emotionally involves the receiver, facilitating sympathy for one’s cause, as if the reader became the very character in the narrative.

More than mere entertainment, Literature can contribute to true social and cultural revolutions, given its attractive capacity. This is what Hunt (2007, p. 38) found in his study on the development of Human Rights:

Novels such as *Julie* led readers to identify with ordinary characters, who by definition were personally unknown to them. The readers felt empathy for the characters, especially the heroine or the hero, thanks to the mechanisms of the narrative form itself. By means of the fictitious exchange of letters, in other words, the epistolary novels taught their readers nothing less than a new psychology, and in that process laid the foundations for a new political and social order. The novels presented the idea that all people are fundamentally similar because of their intimate feelings, and many novels showed in particular the desire for autonomy. In this way, the reading of the novels created a sense of equality and empathy through passionate involvement with the narrative. Would it be a coincidence that the three greatest novels of psychological identification in the eighteenth century - *Pamela* (1740) and *Clarissa* (1747-8), by Richardson, and *Julie* (1761) by Rousseau - were all

published in the period immediately preceding the emergence of the concept of “human rights”?

And it was in the revolutions of the nineteenth century that Victor Hugo built the foundations of his masterpiece, *Les Misérables*. By setting the rabble of French society as the protagonists, the author seduces the reader to live the daily lives of the Paris gutters, opening the sewers of the luminous city and questioning a world that gives hope to the rule of law. This novel is part of a trilogy, as the author himself put it in the introduction of *The Toilers of the Sea* (Hugo, 1979, p.11):

Religion, society, nature: such are the three struggles of man. These three struggles are at the same time their three needs; need to believe, hence time; need to create, hence the city; need for living, hence the plow and the ship. But there are three wars in these three solutions. It comes out of all the mysterious difficulty of life. Man has to struggle with the obstacle in the form of superstition, in the form of prejudice and in element form. Triple *ananke* weighs upon us, the *ananke* of dogmas, the *ananke* of laws, the *ananke* of things. In *Notre-Dame de Paris (The hunchback of Notre Dame)*, the author denounces the first; in *Les Misérables* he highlights the second; in this book, he indicates the third.

Thus, the anachronism of law is the main theme of *Les Misérables*, as something that is both necessary – given the inevitability of living in society – but capable of provoking conflicts and perpetuating injustices. *Ananke* is used here as a fate, something that cannot be escaped, being embodied in the novel in the figure of Inspector Javert – the embodiment of law and state – in his ruthless hunt for the miserable Jean Valjean. This *ananke* can be translated in the words of Lyra Filho (2012, page 8, *apud* Santos, 2017), in saying that “legislation always includes, to a greater or lesser extent, Law and Anti-law: that is, Law itself, straight and correct, and denial of the Law, bent by class interests and continued whims of the established power.” A definition that may sound natural in the contemporary world, but unlikely in the context of Victor Hugo.

The nineteenth century started off under the auspices of a new sovereign. The great revolutions – American and French – established the beginning of constitutionalism, spreading throughout the world a model of government in which sovereignty was with the Law. Everyone should bow to it. Obedience to legal principles would be the solution against tyranny,

enchancing a world already saturated with so much despotism, “for they should not rule men, they should govern the laws!” (Dimoulis, 2011, p.86).

In this world that consolidated its codes proudly and in a France that was considered the birthplace of this new reason, Victor Hugo says that “dogma can contain errors, the code is not complete, society is not perfect, authority can falter, disagreement in the unchangeable is possible, judges are men, the law can be deceived, the courts can make mistakes” (Hugo, 2012, p.1787) and that “by effect of laws and customs” (Hugo, 2012, 27) there would be misery in the world. It was, in fact, an opinion that shocked itself against the intellectual optimism of the time, but which was a prognosis of what would be ahead in this so-called civilized world, as Vieira (1994, p. 72) observed, in recognizing that “totalitarianism demonstrated the fragility of state law in securing the essential rights of the human person”.

Hugo’s opinion was based on intense research. His books were the result of what he found in the real world, not the other way around. Ferreira (2016) thus defined the genesis of French literary production:

It was in the year 1824, with only 22 years of life, that the author [...] was engrossed in the mischief and darkness of the world of penalization, phobia and terrible enclosure. In this environment his researches brought to life no more than an excellent character, but also the sequels that the own author imagined that such subject prisoner would have after his freedom. Hugo thus created Jean Valjean: from within one of the most atrocious prisons in France.

The ubiquitous reality in these researches and, consequently, in the fiction of the author, was the criminal matter. Peruvian writer Mario Vargas Llosa (2012, p.11) says that this interest goes back to the childhood of Victor Hugo:

When he returned to France in 1812, he saw for the first time the gallows, and the image of the man who was to be subjected to the “stick,” “mounted on his back surrounded by priests and penitents,” was engraved like iron and fire, in his memory. Shortly afterward he saw the remains of a quartered man on a cross, and this would prompt him, years later, to speak with horror of the French occupier’s ferocity against the rebels. It is possible that from these atrocious childhood experiences his rejection of the death penalty – against which he fought without rest – was born, the only political conviction to which he was faithful throughout his life.

This political commitment against death penalty and also against the inhuman practices in the prisons is what makes *Les Misérables* an object of study also in Criminal Law and not only in the field of literary criticism. Victor Hugo visited several French prisons, especially the fearsome galleys³, reported in vivid details the destiny of the condemned, from the penalty to the life as an ex-prisoner; critically analyzed the entire legal system of French punishment, from the production of laws to tendentious trials in the criminal courts. According to Broca (2010), it was “visiting the prison in Toulon that the writer had taken several notes, especially on the forced Pierre Maurin, who inspired Jean Valjean’s character” and also in the Conciergerie: “he walked all the premises, including the cells reserved for the minors, on which he gives very interesting impressions” (Broca, 2010). Pierre Maurin, as well as Hugo’s future character, was convicted of stealing a loaf of bread. And this is the starting point of the criticism made in the novel.

2 MISERY AS A PROTAGONIST IN CRIMINAL LAW

All the questioning about the authoritarianism of the law and the criminal question in Victor Hugo’s work starts from social inequality. For the author, the judicial system, despite evoking impartiality, reproduces the same discrepancy of treatment found everywhere, varying the elaboration and application of the norm as the individual advances in the pyramid of society. To make this clear, the writer chooses three icons of Parisian misery to illustrate reality: the convict, the prostitute and the street child.

For Broca (2010), “his purpose would be to make it a sum of all the problems that worried his spirit of social justice. He wanted to state message to humanity in the novel”. Once again, there is a pioneerism on the part of the author, since poverty, although severely felt in Europe at the time, was still ignored in both the world of Law and Art. Ribeiro (2012, p.20) confirms the Frenchman’s success in achieving his objectives:

³ A very slender vessel, about 20 meters by 5 wide, with two castles, one to stern, one to the prow, moved by rowing, usually about 30 to 60 oars that oscillated between 9 and 12 meters of length. Each rowing was yielded by three or four, which means something from 90 to 240 men in each boat (Braga 1999, 187).

⁴ An old French palace that became one of the main French prisons in the 15th century.

“Victor Hugo was the main responsible for forming, in France and in a whole world that read and felt on the basis of French culture, a concern with misery”, adding that society was the main target of the accusation, since “all the deeds in the novel result from the social errors that surround us on all sides, and even the police, with their instruments of repression, are involved by these errors” (Ribeiro , 2012, p.26). The intention of universality of the work was achieved and there was even a Brazilian version of the novel, titled “The True Miserables” (Broca, 2010), by Manuel Antonio Major.

And Brazil is one of the countries where the logic that inspired *Les Misérables* remains unchanged. The cruel logic not of the lack of resources, but of an extremely unequal distribution. In the France of the nineteenth century, two societies coexisted, one that inspired and served as a model for the entire Western world, with its avant-garde and sophisticated culture, and another, in which “Dante would claim to see the seven circles of hell in march” (Hugo, 2012, p.1250). The same contrast is easily verified in Brazilian society, which falls within a group of countries where absolute poverty subsists, “those in which the national product is actually sufficiently high to guarantee the minimum necessary for all, but poverty results from the poor distribution of income” (Rocha, 2000, p.3).

This inequality is closely related to the rates of violence; “In international literature, numerous authors have pointed out the relationship between socioeconomic inequality and crime” (Cerqueira et al., 2005, p.9). Fajnzylber and Araujo Jr. (2001, p.8) state that “inequality in the distribution of income should be associated with higher rates of crime”. According to Resende and Andrade (2011, p. 174), “although the results are not always convergent, many studies find positive and significant coefficients for income inequality as a determinant of urban violence”. The subject has been widely debated in the fields of Sociology, Criminology, Psychology and even Economics. Works such as those by Hagan and Petersen (1995) and Fajnzylber, Lederman and Loayza (1998) attempt to link reasons such as frustration on the part of the materially disadvantaged population or the effects of poverty over moral behavior.

According to Resende and Andrade (2011), Brazilian research on this relationship is based on homicide rates, considering both the victims of this type of offense and the offenders. Carvalho, Cerqueira and Leão (2005) studied the probability of being a victim of homicide, considering several socioeconomic variables, such as per capita income, income inequality index, poverty intensity, out-of-school children, etc. They concluded that “the empirical results suggested [...] the effect of socioeconomic conditions to feed the dynamics of homicides” (Cerqueira *et al.*, 2005, p.12).

According to Mendonça, Sachida and Loureiro (2003, p.2), however, “poverty by itself does not appear as a factor that triggers crime.” As Fernandes and Fernandes (2012, p. 333) emphasize, “for the outbreak of crime, other layers of the social group, also in the socially more developed sphere, contribute”, as is the case with so-called white-collar crimes. In fact, according to criminologists, it is not necessary to speak of a single or a few factors in the origin of crime, but of a complex combination of elements. The Chicago school, for example, cites elements such as the emergence of large urban centers as a destabilizing factor and triggering criminal conduct:

In their view, social mobility, as well as the division of labor, destroyed the classical forms of social control, as established by the family, the neighborhood, and local community groups. The rupture of local ties and the weakening of the restrictions and inhibitions of the primary group, under the influence of the urban environment, is largely responsible for the increase in criminal conduct in large cities (Shecaira, 2014, p.).

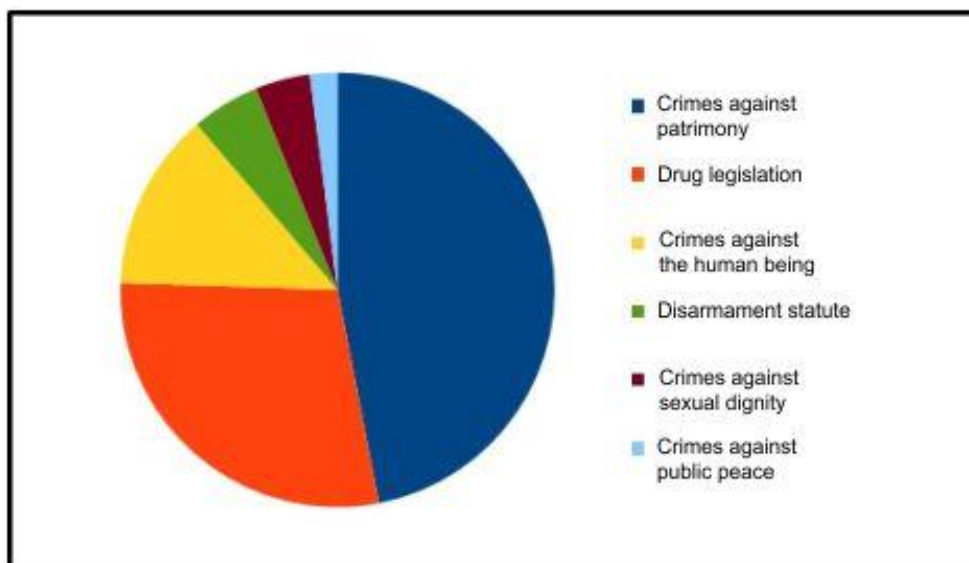
The level of education, for example, is seen by many as an antidote to crime. Fernandes and Fernandes (2012), however, argue that crime arising from bad education is more related to education in the sense of *example* than merely in formal years of study. Thus, the small corruptions of daily life, in the case of Brazil, would be an example of bad education that would not necessarily be linked to formal study. There would be, in Brazilian society, some idea of tolerable impunity, or, in other words, “a little way”, that would function as a factor of influence to the criminal conduct. There are also a number of other elements, such as profession, migration, politics, etc., according to Garrido (2016), which can contribute to crime.

Therefore, it is necessary to consider whether it is the poor who commit the most crimes, or whether the crimes analyzed in the surveys (which verify the probability of the socioeconomic factor) are the most common among the poor. In a study of the Brazilian prison population, Monteiro and Cardoso (2013, p.102) found that

Most people in the prison system committed crimes within the category “crimes against property” (51.9%). In addition, of all these crimes, 83.5% were robbery and theft and only 6.1% were robbery followed by death. Serious crimes, such as homicides or even international drug trafficking, have had low percentages compared to other property crimes. In relation to crimes that are linked to qualification and more time spent in planning and execution, such as crimes against public faith or against public administration, the percentages do not reach 1%.

The study also concludes that Brazilian prisons, whose population is mostly poor, “are not full of dangerous and violent criminals, but people convicted of doing business with drugs, theft, robbery or public order” (Monteiro, Cardoso, 2013, p. 104). Data from the latest Infopen Report (National Penal Information Survey), of December 2014 (Chart 1), confirm that crimes such as robbery and trafficking “account alone for more than 50% of the sentences of those currently convicted in prison. It is important to point out the great number of people arrested for non-violent crimes” (Moura, Ribeiro, 2015, p.33).

A similar conclusion is reached by Resende and Andrade (2011, p. 190), in their research on crime in large cities: “the results indicate that income inequality is determinant of crimes oriented to the transfer of property, but not so much for crimes of passion against life or against the person”. Barros Filho (2014, p.50) says that “the penitentiary system is full of people from socially excluded groups: poor, black, with low schooling, discriminated and marginalized”. Viewed from this perspective, it is clear that crimes typical of the most disadvantaged sections of the population are punished more frequently, even when they have insignificant offensive potential, compared to other modalities.



Graph 1 - Distribution prisoner sentences in Brazil by major categories⁵

Even the application of alternative sentences is determined, in practice, by social profile. Pellegrini (2011) notes that “police actions and judge decisions about which offenders may or may not enjoy the right to alternative sentences still rely on discriminatory racial and socioeconomic profiles from the nineteenth century”.

This statement is more evident when compared to typical crimes of the middle and upper classes. Adorno (2002, p. 50) notes that the “rates of impunity for white collar crimes committed by citizens from the upper and middle classes of society are high”. Coleman (2005, p. 2), in turn, demonstrates that it is these crimes that have the most devastating effects on society and should therefore have a greater focus on the judiciary:

Losses from antitrust violations – just one item on a long list of major white collar crimes – are estimated to be greater than all losses caused by crimes reported to the police in more than a decade, damages and deaths caused by this crime are even higher. The asbestos industry’s concealment of the dangers represented by its products probably cost as many lives as those destroyed by all the

⁵ Official data from the Justice Department of the Brazilian Government. For details, see: BRASIL. Ministério da Justiça. Departamento Penitenciário Nacional – Sistema Integrado de Informações Penitenciárias (Infopen). Brasília, 2014. Available at: <http://www.justica.gov.br/seus-direitos/politica-penal/documentos/infopen_dez14.pdf>. Access: July 31 2017.

murders that took place in the United States for a whole decade.

A reality that inevitably leads to the conclusion by Flauzina (2006, p. 23):

Crimes committed by individuals in hegemonic groups tend to be immunized, as opposed to those committed by vulnerable segments, which are easily hit by the criminal justice system. As a result, criminal statistics lead to distorted interpretations, indicating that crime is prevalent among marginalized segments, on grounds of social factors, such as poverty, for example.

This selectivity, which takes off the focus of such damaging crimes as the white-collar crime and maximizes prison rates for infractions of small offensive potential, is not unique to a particular era or society. Rusche and Kirchheimer (2004) made an analytical-historical survey – a study that influenced Michel Foucault’s *Discipline and Punish*, on the punitive mechanisms of social control – demonstrating that criminal control has always been more severe with the economically inferior classes. During the Middle Ages, criminal law served as an efficient form of hierarchical maintenance of feudal lords over servants. By the fourteenth and fifteenth centuries, there were “different applications of the law, made according to the social class of the convicted” (Rusche, Kirchheimer, 200, p. 31). According to the authors, the emergence of Capitalism brought a renewed concern for property and the creation of laws to protect it “is one of the main concerns of the emerging urban bourgeoisie” (Rusche and Kirchheimer 2004, p. 33). This concern in fact took legal form as the bourgeoisie gained influence in the legislative and judiciary – powers that began to consolidate themselves after the great revolutions.

From the eighteenth century, according to De Giorgi (2006), the social control that was previously made through elimination, pure and simple, began to operate through legal control. Apparently it is an evolution, since the changes would have a positive function, aiming at the recovery of the convicted. But what happens is that “the poor, vagabonds, prostitutes, alcoholics and criminals of all kinds are no longer torn, placed in the wheel, annihilated [...]. In a much more discreet, silent and effective way, they are seized” (De Giorgi, 2006, 26-27).

The accusation of *Les Misérables* focuses precisely on this imbalance of the punitive system, in which crimes of lesser offensive potential, common to a given social class, are punished with severity, in a disproportionate manner in terms of the damages caused. With this in mind, Victor Hugo focuses his story on the character Jean Valjean, condemned to the inhuman gallows for the simple theft of a loaf of bread:

This is the second time that the author of this book encounters the theft of bread as a starting point for the disaster of an entire existence in his studies on the criminal issue and condemnation by law. Claude Gueux had stolen a loaf, like Jean Valjean. An English statistic finds that, in London, out of five robberies, four have hunger as an immediate cause” (Hugo, 2012, p. 148).

Similar cases occur in Brazil with astonishing frequency. In 2015, a woman was convicted in the state of São Paulo for 3 years, 2 months and 3 days for stealing Easter eggs and a pound of chicken breast, serving the sentence in an overcrowded cell (Cople, 2017, Bergamo, 2017). The penalty was higher than that imposed on several defendants of Operation Lava Jato – an investigation about the billion-dollar misuse of public funds by politicians and entrepreneurs. In the state of Minas Gerais, a man received the condemnation of 7 years for stealing three briefs and a pair of used socks (Santos, 2011). But the most unlikely case, similar to that of Jean Valjean, is perhaps the one from the state of Pernambuco, with a man called Marcos Mariano da Silva. He spent 19 years imprisoned for having the same name as a true criminal. In prison, he contracted tuberculosis and became blind. He died a few hours after the news that he would be compensated for the error (Miranda, Tinoco, 2016). The Superior Court of Justice (STJ) defined this as “the greatest and most serious violation of human rights ever seen in Brazilian society” (Rêgo, 2011).

These cases have in common the marginality of the defendants, who were harmed by the lack of access to justice. The judicial apparatus does not guarantee a decent sentence trial to those who cannot afford to pay for legal advice. There are no official data on unfair convictions due to the socioeconomic situation, there seems to be no state interest in the subject:

The National Penitentiary Department (Depen) says it does not count on studies on unjustly convicted persons and suggests a consultation with the National Justice Council (CNJ) databases; the CNJ states that it does not

follow these cases and suggests that Depen be sought (Miranda, Tinoco, 2016).

Although there is no nationally available data, there are some regional studies. This is the case of the extension program of the ASCES / UNITA college, in the city of Caruaru-PE, which in 10 years, only in that municipality, “released more than 200 citizens unduly detained” (Alves Ribeiro et al., 2015), thanks to free legal aid. The vast majority fell victim to the very condition of poverty, which did not allow a basic level defense. Mendez (2000, 247) confirms that “the real problem is that women, children, indigenous peoples, landless peasants, prisoners, landless workers and other equally deprived sectors of our societies simply do not have access justice”.

As for the crimes that are common to the economically favored people, however, the opposite happens, since they have access to the best professionals in the law field, guaranteeing not only a more just defense, but in many cases impunity itself – and not only in Brazil. Coleman (2005, p. 287) describes the situation:

The chance that white-collar defendants have to pay a front line defense – the best lawyers, numerous appeals and, if necessary, private investigators and witnesses – is probably far more relevant. Many former defenders openly admit that the possibility of “hiring the best” was a decisive factor in their cause. Conklin cites the example of a Texas oil-rich millionaire who admitted he had been acquitted of clandestine phone charges because he had spent more than \$ 1 million in his own defense.

It is not enough that constitutional charters guarantee access to justice in their texts, because

Courts and legal services are in theory available to everyone, just as the Sheraton Hotel, where anyone can enter; all you need to have is money. The truth is that justice is an expensive commodity, even in those countries with the highest levels of education and a generous allocation of social welfare expenditures (GARRO, 2000, p.)

International studies have already found that the Brazilian judiciary is one of the most unequal in the world. Moura (2017) published a study by the NGO World Justice Project in which the country ranks 94th among 101 countries when the requirement is discrimination in the criminal justice system.

This is the complaint that Victor Hugo makes when portraying his character arrested for 19 years because he had no way of defending himself, since “in his boyhood, he had not learned to read. As an adult, became a lumberjack” (Hugo, 2012, p.143), a commonplace case in Brazil and Latin America as a whole, where, according to Garro (200, page 308), the poor do not have “access to legal service, courts and formal legal institutions. Due to ignorance, lack of bargaining power [...] or even fear that the judicial machine will work against them”. In the same way, Brodeur (2000, p. 101):

In every society I have studied, the answer to such questions as “who has been punished in this society” or “who is in prison” is usually those segments of the population that are less powerful and non-privileged. (...) the main aim of criminal law is, in its definition and application, street crime, perpetrated by the poor and excluded members of society.

Thus, in the narrative of the novel, Valjean is the embodiment of all this mass of the wronged, excluded from a fair appraisal of their causes, and Inspector Javert symbolizes the ironic figure of the judiciary, with his enlightened ideals, but with the heavy arm over one of the sides of the scale. The numerous confrontations between the two characters are not simply Manichaeism, but a representation of the only possible result of an unequal judicial system: the promotion of injustice. The same conclusion was reached by Cook (2000, p. 127): “Discrimination against the marginalized is not simply a lack of luck associated with their particular status but an injustice”.

The question goes even deeper into the novel. From Jean Valjean’s case, one can see not only the reality of an inefficient judicial apparatus and promoter of injustices, but also an instrument that punishes doubly. Valjean’s reflections are the same as those of Marcos Mariano, the mother who stole the Easter eggs, and many others:

Was it all his fault in this whole story? It was equally serious that he, a worker, had no work; he, a worker, had no bread. After the offense was committed and confessed, was not the punishment too fierce and excessive? Where would there be more abuse: on the part of the law, in the penalty, or on the part of the guilty, in the crime? Would not there be excessive weight in one of the dishes of the scale, precisely on the one of atonement? Did not the exaggeration of the penalty fully extinguish the crime, almost reversing the

situation, making the guilty victim, the creditor debtor, definitively putting the law right on the side of the perpetrator? This punishment, increased and aggravated by successive attempts to escape, was not by any means a kind of attack of the strongest against the weakest, a crime of society against the individual, a crime that was renewed every day, a crime that extended for nineteen years?” (Hugo, 2012, p.).

Bolívar (2000, p. 57) states that poor people are not only marginalized in the economic, political and social fields, but “they are victims twice: first by the perpetrators of abuses and then by the system that is reluctant to act in their interests”. It is the logic of this kind of punishment, as seen in its historical development. Rusche and Kirchheimer (2004, p. 20) found that “to combat crime among underprivileged social extracts, the penalties must be such that they fear a worsening of their modes of existence”. This worsening is equivalent to another conviction.

The core of this punishment is not deprivation of liberty *per se*, but the place to which the condemned are destined: imprisonment. Although the numerous codes based their creation and maintenance in terms of promoting resocialization, it is no secret to any society that prisons generally are nothing but human deposits, as summarized in Sequeira’s (2006, p. 668):

The prison is a human dump, a place of horror, of total invisibility, a place of annihilation of man, of imprisonment of the being. Inhuman conditions, or, as prisoners teach me, a place where one does not sleep in peace, where no one trusts anyone, nor is it guaranteed who will be alive tomorrow, an unlawful place. In the name of the law and supposed criminal treatment, we find men abandoned, in groups, excluded, without place, although included by the law. One finding is inevitable: non-place kills man in life. It is absurd that, in the name of the law, one has to submit to subhuman conditions of life, has no possibility of personal, cultural, educational development or training and professional qualification, having to submit to rules of sociability in which predominates a logic of favors and benefits dictated by those who have power over others, including the lives of others.

Almost 200 years earlier, Victor Hugo described the temporary prisons in Paris, a description that more closely resembles Sequeira’s (2006) study cited above:

At the Châtelet de Paris there was a long underground, eight feet below the level of the Seine. It had neither windows nor vents; the only opening was the door; the men could come in, not the air. [...] There the men condemned to the galleys were thrown until they were transported to Toulon. [...] They would arrest them and leave them there. Because the chain was too short, they could not lie down. They were immobile in that underground that night [...]. It was the antechamber of the gallows. One was thrown there because of a simple hare robbed of the King. In that tomb-hell, what did they do? What can be done in a sepulcher: they agonized; and what can be done in hell: they sang, then, where there is no hope left, the singing continues. (Hugo, 2012, p.1355)

This report of men almost without breathing or moving seems, in fact, a diary of the Brazilian prisons. The non-governmental human rights organization, Human Rights Watch, has stated in its 2016 report that the occupation of prisons has already reached a quota that exceeds 60% of incarceration capacity. Not only selectivity in the rigor of law enforcement, but also the environment of punishment compliance is different when it comes to social class. This prison situation so well described by Victor Hugo (2012) is almost exclusive, once again, of the economically disadvantaged. Despite the apparent motivation of the legislator, there is a legal provision in the Brazilian legal system of a type of detention that is different for certain individuals. A higher-level diploma holder is one of those cases, which is an institutionalized form of social differentiation, since in Brazil, the longer the study time, the higher the income (De Vizia, 2008). Cury Jamil and Nogueira (2001, p.105) affirm that these mechanisms “constitute a further form of legitimizing social differences, having as a background the maintenance of hierarchies in Brazilian society and their intersection with social inequalities and existing discriminations”.

And the numbers speak for themselves. In the study by Monteiro and Cardoso (2013, p.105), it was found that among the prisoners “77% had not passed elementary school” and that “most of the incarcerated people have very low level of schooling”.

Besides all the legal exclusion, in practice and in interpretation, it all can be even crueler for those who cannot afford the cost of good technical defense in the judiciary. The case of Brazilian businessman Eike Batista,

who was detained on January 13, 2017, due to his alleged involvement in a corruption scheme (Martín, 2017) was emblematic. He was sent to the overcrowded prison Ary Franco, known as “the dungeon”, in the state of Rio de Janeiro. Although he did not have a high school diploma, he spent less than two hours in the place, transferred to a prison with better conditions. The allegation was that there was a risk to his safety at the site (Vettorazzo, 2017). The approximately 2,000 Ary Franco prisoners continued their unsafe lives in the same place.

The federal police jail in Curitiba may be the ultimate symbol – and confirmation – that there are two types of prisoners in the country. Some defendants of the Lava Jato operation, who are mostly businessmen and holders of senior positions in the Executive and Legislative branches, are being sent there. The maximum capacity of the cells is 3 people, about 6m² per person, at a time of maximum stocking (Oliveira, 2015). It is not uncommon to find jails and prisons under 1m² per prisoner (Yafusso, 2016). The Law on Criminal Executions fails at the outset, since it provides – in line with the constitutional text – that “there will be no discrimination based on race, color, sex, language, religion, political opinion or any opinion, national or social origin, birth or in any other situation” (Batistela; Amaral, 2009, 2).

As a partaker of these institutionalized exceptions is society itself, since it passively accepts this differentiation. It not only accepts but contributes to it. In the popular imaginary, crime is associated with the image of the marginal bandit, who lives in the ghettos and favelas, and very little in the high class clothes, and it is easier to grind those who already have nothing. Victor Hugo (2012, p. 47) questions the easy hostility to the outcast, stating that society will be “guilty of not instructing for free and will respond for the darkness it causes. Can a soul in the shadow of ignorance commit a sin? The fault is not of him who does it, but of him who provoked the shadow”.

A society that knows what goes on in prisons across the country, but that remains in silence and agrees that this situation is part of the punishment – and is well deserved, by the way. Chevigny (2000, p. 71), when analyzing police violence against the poor, finds that

When the military police killed 111 prisoners [...] in the São Paulo detention house, in response to a rebellion in 1992, a large percentage of the population said they approved the police, and when a TV crew filmed the summary execution of a suspect in a shopping mall in Rio de Janeiro in 1995, most respondents supported the crime. The general view is that deprivation of personal liberty is not the only punishment associated with detention: prisons are not expected to be comfortable and people resign themselves to being subjected to a variety of additional sufferings, with physical coercion being one of them.

In *Les Misérables*, as already analyzed, this society, “so formidable for those who are outside, so terrible for those who are overcome by it” (HUGO, 2012, 156) is embodied in Inspector Javert and his tireless fight for justice. In trying to recapture the fugitive Jean Valjean, he plans to contribute to a more just world, in which the state is the guarantor of the social order. However, in a confrontation on the barricades of the revolution in Paris, Valjean has the opportunity to put an end to the life of his tormentor, but frees him.

The crisis of consciousness experienced by Javert after the event is the point of reflection that the author intends to impose on society, deconstructing the whole constitutionalist ideal that the world would be safe under the rule of laws:

Society, mankind and the universe were now summed up in their eyes in a simple and terrible sketch - the penalty, *res judicata*, force due to legislation, judgments of sovereign courts, magistracy, government, prevention and repression, official wisdom, infallibility of law, principle of authority, all dogmas on which political and civil security rests, sovereignty, justice, logic derived from the code, social absolute, public truth, all this was nothing but rubble, wreckage, chaos (Hugo, 2012, p. 1789).

The legal fiction of the social contract is then put to the test, exposing a judicial apparatus that functions more as an instrument of perpetuating privileges than guaranteeing the vulnerable against tyranny. Espindola (2017, p. 313) translates this reality by saying that the Law can be led “to arbitrariness, as [...] nothing else has to speak, since in its generality and concrete realization it is conditionally determined by the most appropriate political or social interests”.

Javert’s reflection goes through decades and continues to challenge a well-off society on the other side of the Atlantic. Dias and Dias (2011, p. 55)

express the anguish of the inspector when affirming that “it is not only the Law’s duty to guarantee the discipline and control of society, it is indispensable to ensure the prevalence of human values over all forms of domination, exploitation and social exclusion”.

3. FINAL STATEMENTS

Victor Hugo subverts the popular imaginary – both in nineteenth-century France and contemporary Brazil – of the criminal convicted as a dangerous and savage individual, who must be chained and kept as far away as possible from society, viewed with suspicion for the rest of his or her life. In choosing a convict as the main character of his epic novel, by giving him a story and a heroic demeanor, the author gives voice to this stereotyped portion, who carries a prejudicial stigma that is undeserved and largely disproportionate of the offense committed. The dimension of this novel is understood when one considers the harmful effects of a segmental vision, which removes any humanity from these individuals. Crochik (1972, p. 22 *apud* Sequeira, 2006) summarizes clearly how a preconceived imaginary can have serious and lasting consequences:

The stereotype of the criminal as a highly dangerous, intractable, bad-tempered individual assists in the characterization that the healthy individual must have to know how to act when confronted with one, while at the same time preventing identification with them. The more distinct we judge ourselves to be of a criminal, the more protected we are to feel the hostile impulses that belong to us. In this sense, stereotypes avoid thinking about how the social conditions in which we live and that we strengthen contribute to crimes, and how much we ourselves, under those conditions, could commit them. In other words, they avoid reflection on the social world and on ourselves.

Seeing the criminal and the whole penal system through *Les Misérables* is to experience the point of view of a criminal and realize that there is no such distinction. It is an experiment in empathy that reveals how the flags raised since the great revolutions of the eighteenth century, especially the French Revolution, remain on the agenda of nations, and Brazil in particular. The ideal of equality remains like most ideals – far from reality. The most dangerous is the false idea of legal security, because the fact that the Brazilian judiciary has consolidated as an independent institution or even that the legislative is free to legislate is not a guarantee

of justice. Social inequality remains one of the worst violations of the rule of law.

One of the points that are drawn from the reading of the novel, and perhaps the main contribution of this interdisciplinary analysis, is the very legitimacy of the law. The presumption of the correct norm, especially by the operators of the law, perpetuates this type of injustice, which is the most lethal, since it passes through the acceptance of the judiciary:

Is there greater insecurity than a limitless determination, through legislation, of what is allowed or forbidden, and more so by a certain power that is exempt from proving its own legitimacy? This power, on the contrary, is presumed to be legitimate, from the fact that it is in exercise and has reached its position, following the processes which it itself establishes, alters and in any way controls at its pleasure (Lyra Filho, 2012, pp. 37-38).

It is the role of academia to remain a center of reflection and resistance to all kinds of tyranny. And this seems to rise uninterrupted in human history, though they change their garments, their claws are always on display, either through arms or through laws, as it does today. To insert Literature in the debate is to take include humanitarianism in the dogma, to give voice and history to the millions of prisoners, as the humans they are. These miserable ones are still heard and noticed thanks to the visionary wisdom of Victor Hugo and his fascinating Parisian epic novel. Its characters can be found in the streets and prisons of all of Brazil today, suffering double punishment, which in the opinion of many Brazilians is still bland.

It is not only a faculty, but a duty of scholars and lawyers to criticize the current legal system and its application. Literature gives us the alert and, through the character Javert, shows that it is necessary to recognize the tyranny of the law and adopt a more active conduct in the fight against inequalities. After all, as long as there is misery, there will be injustice.

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