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INTERDISCIPLINARITY IN THE HUMANISTIC SENSITIVITY EDUCATION OF THE JURIST, AND STEREOTYPING OF POSITIVISM AND NATURAL LAW IN *LES MISERABLES*

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ABSTRACT: Considering the promising results of studies in the field of Law in Literature, as well as its interfaces and connections, this article seeks to defend interdisciplinary dialogue as a pedagogical practice in the jurist's humanistic sensitivity training, having as guiding principles legal and literary hermeneutics. Through the deductive method, used in qualitative research, this paper encompasses the importance of interdisciplinarity in the education of the humanistic sensitivity of the jurist, the contribution of Literature to the teaching of law, as well as an analysis of two of the central characters in the novel *Les Misérables* by Victor Hugo, correlating them as stereotypes of positivism and natural law theory in relation to the law and to human attitudes. It questions the role of literature in legal education and in the constitution of the human being, who exists, necessarily, among heterogeneity, diversity, historicity and sociability. Taking an interdisciplinary position between Law and Literature allows the breaking of barriers that still remain rigid, especially in the task of rethinking law and the education of jurists and lawyers beyond legal positivism. Therefore, the correlation of these two disciplines, especially considering the emotive and educational function of Literature, is a proposal for an interdisciplinary study in favor of a legal formation also directed to the formation of the humanistic sensitivity of the jurist and the lawyer.

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1 INTRODUCTION

The first relation that must be established is that, without reservations, Law and Literature are only possible if there is a means which is necessary in order for both to exist: the word. Words, as Lenio Luiz Streck defines them, are “plowing tools”, they are means, instruments, actions, significant and meaning, sound, symbols, is path and walk. Law and Literature establish such connections as to enable a more in-depth study, having as its main focus the reading, interpretation and construction of a critical and sensitive view of social reality (literature) and, consequently, of the juridical phenomenon (law).

Taking an interdisciplinary position of Law with Literature allows the breaking of barriers that still remain rigid, especially in the task of rethinking the law and the education of the jurist beyond legal positivism.

In this sense, and paraphrasing André Karam Trindade (2008), it is a great challenge to defend a study focused on the various forms of disciplinary links, especially in the face of the most varied discourses connected to the idea that such study proposals are entertainment, or that they are a kind of escape from the really serious themes, mainly in the field of Law, always seemingly robust, symbolically omnipotent and complex as they truly are, in the face of the obscurity of the legal order.

The interdisciplinarity between Law and Literature can be a way and, more than that, an important methodology in defense of a humanistic legal education. This is a very promising way, especially given the unquestionable capacity for transformation that the work of art in general causes in readers.

In this sense, it is relevant to establish between the legal and literary sciences a feasibility of interdisciplinary study in search of a less technical, more humanistic academic qualification. It is primarily an awakening to

the need for literary reading, fostering critical reflection on legal knowledge and the role of the lawyer in society, as well as reflection beyond practical rationality, but from an emotional, sensitive and empathic rationality through culture, art and, specifically, Literature.

Therefore, it is urgent to approach and reflect on the need for a legal education which is more focused on the humanist sensitivity training for the jurist and the important contribution of Literature in interface with the Law as an interdisciplinary methodology.

As a sample of interdisciplinary study, characters from Vitor Hugo's *Les Misérables* are analyzed in the light of two main concepts for the Law: legal naturalism and positivism. Two characters of this work become stereotypes in representing with propriety such conceptions: Monsignor Bienvenu and Inspector Javert.

Thus, through a small example of interdisciplinarity between the disciplines Law and Literature, it is made evident the competence of Literature to assist the teaching of Law in addition to technical positivism and rationalism.

The method used in this research is the deductive bibliographical method, focusing on the bibliographic review of the legal and literary literatures and the analysis of their interrelationship with one of the classic works of universal literature. In fact, the present research has its relevance deriving from the reflection that is proposed on the interdisciplinarity of the study area called Law with Literature and its contribution to the creation of a more humanistic legal sensitivity.

2 FOR A HUMANISTIC SENSITIVITY IN THE EDUCATION OF JURISTS AND LAWYERS

The interdisciplinarity of Law with other areas of knowledge, such as sociology, psychology, anthropology, philosophy and other artistic manifestations, is of considerable importance for the humanistic, critical and sensitive education of the lawyer and the jurist. The relevance and role that Art, in a general way, has to influence the humanization of the being is unquestionable. José Roberto de Castro Neves affirms (2015), even, that the

legal thought is analogical and, thus being, it needs a starting point that, in his view, can be no other than the one of culture. For this author,

[...]the Law, as stated, claims this analogical appreciation. The facts of life, which serve as a source for legal analysis, are not ready, as in a computer survey. The interpreter must find them by means of this analogical reasoning, which demands standards and starting points. Without culture, this search, if not impossible, is at least seriously damaged (2015, p. 31).

If culture is the fundamental starting point, then it is through the most varied forms of its manifestation through Art (literature, theater, music, dance, painting, cinema and others) that one can find the path of intersection with Law.

Richard Rorty places “literature as a fundamental critical tool when it comes to reflecting on the essential values of humanity” (*apud* Talavera, 2015, online), granting literature with a value even superior to that of philosophy itself.

According to Melina Girardi Fachin,

Both law and art have the same ontological character, that is, the expressive manifestation through man. Within the artistic manifestations, literature gains prominence because it has a peculiar way of “touching” people (*apud* Trindade *et al.*, 2010, p. 382).

This peculiar way of touching people, characteristic of Literature, is what enables it as an effective methodological tool in the interdisciplinarity with the Law for the humanization of the jurist.

In the same sense, in supposing a possible dialogue between the legal discourse and the literary discourse, Fachin collaborates with the idea that this “phenomenon” would bring to the Law a series of benefits with regard to its praxis, characterizing more than a form of interpretation of the juridical discourse, but “a greater hermeneutical comprehensiveness in terms of understanding” (*apud* Trindade *et al.*, 2010, pp. 380-381).

It is important to point out that this phenomenon, as the author states, is related to the power of Literature and this interdisciplinarity with the Law is more than just an interpretive tool. Literature can serve “to build a bridge between the theoretical sphere and the practice of the legal discourse, and even more than that: as a pedagogical instrument capable of

making society aware of the feasible existence of fundamental rights” (*apud* Trindade *et al.*, 2010, p.381).

However, the study of law through these relationships and the interdisciplinary methodology is quite recent. Some sociologists, philosophers, jurists, linguists and literary critics have advocated this transdisciplinary study, especially in a context of “postmodern” science, which suggests peaceful coexistence between different cultures, whose most relevant expressions are manifested through language and law.

Thus, it is of great value to consider the functions of Literature and Law, as well as the main points of intersection between one and another, in order to reinforce the need for the interdisciplinarity between both as a teaching method, whose objective is the training the humanist sensitivity of the jurist and the lawyer.

2.1 Literature and humanistic training

An important scholar on the subject of Law and Literature, Streck constantly inquires about “how much reality is found in fiction” and “how much fiction conforms our reality”. He makes a quotation and refers it to the Grimm brothers, more specifically to Jacob Grimm (1785-1863) who studied law at Masburg, a remarkable comparison: “law and poetry rose from the same bed” (2013, p. 3).

According to Juliana Azevedo Arneitz, the interdisciplinarity between Law and Literature requires previous research on the relation between literature and the way of production of life, and there must be a pre-questioning about “whether literature is a mirror of life, constituting itself as a perfect historical source, or whether it has its own nature, which could make it a rather peculiar form of representation of the world” (2017, online).

Regardless of the fact that it is a mirror of life, or reality in fiction, or fiction in reality, as Streck emphasizes, “in literary works, the fictional character not only does make a contrast with reality as it is the one who enables the very representation of reality” (2013, p. 3). Themes centered on analyses of the relationship between literature and law constitute the “reality of fiction”. Within the scope of “fiction of reality”, there is a greater

focus on political, juridical and social aspects, “evidencing that some of the elements that conform Brazilian reality often find extreme proximity to the diegetic components of the fictional universe” (2013, p. 4). Thus, law can be told from literature, so that in addition to enabling the humanization of law, it shows that it does not “always have to play the role of villain” (2013, p. 6).

Literature has the power to teach law. Moreover, Streck states that literature has the power to “humanize” law and, in fact, it allows the occurrence of

[...]different ways of saying things. An island is a piece of land surrounded by water, but it can also be a piece of land that bravely resists the harassment of the seas. It is common to say that the cock sings to greet the morning that arrives; but who knows, maybe it sings gloomily about the sadness of the night that is gone (2013, p. 227).

This is one of the peculiar characteristics of Literature, capable of transcending language and transforming it into a metaphorical, artistic, sensitive and beautiful sense, an effect that only art can promote.

And so, interdisciplinarily, law teaching can draw on the reading and analysis of various works of classical literature – from the Greeks to the modern and contemporary classics – in order to interrelate knowledge, with the aim of broadening wisdom and comprehensiveness of the legal science.

It is only a contribution, or rather, an additional path to be taken in order to overcome the crisis in legal education. However, it is one more proposal that can collaborate in the direction of an education that can be more oriented to the humanization of the Law, using, essentially, the contribution of the powers that Art is capable of producing, in this case in particular regarding the Literary Art.

Antonio Candido, master of Brazilian literary criticism, attributes to Literature an educational function. For him, literature makes possible an investigation on the “human” being in its most diverse aspects and social relationships.

However, Afrânio Coutinho defends the autonomy of literary teaching and confers to Literature a merely phenomenal and aesthetic character. Literature for him is the art of the word that provides pleasure, that is, its purpose transcends education and social study. Educational characteristics can be attributed to Literature, but only secondarily. He affirms that

Literature is no document and with it “one must not aim at learning, nor informing, or documenting. And no reader seeks it to carry out any of these activities” (Coutinho, 1978, p.9).

In these terms, Afrânio Coutinho defends Literature as a manifestation of art and as a form of transfiguration of the real, or as a re-creation of reality. In his words,

[...]Literature is an art, the art of the word (not everything that uses the word is literature, and it must be done in a specific way) and, like all art, it originates in creative imagination, whose purpose is to awaken an emotional state, an artistic pleasure. It is not, therefore, aimed at knowledge, information, teaching. It is not because of knowledge or information that literary works become eternal in the admiration and pleasure of readers. But by the aesthetic-literary elements that constitute the intrinsic of its composition, and that are responsible for its specifically literary value and for the aesthetic pleasure coming from its reading (1978, p. 91).

In addition, he states that literature is

[...]thus, life, part of life, not admitting there may be conflict between one and the other. Through literary works we make contact with life, in its eternal truths, common to all men and places, because they are the truths of the same human condition (Coutinho, 1978, p. 10).

To assign to the role of Literature a path of contact with life and its eternal truths is a way of attributing to it an important role in the humanistic aspect of the being. Thus, Afrânio Coutinho reiterates the function of Literature and resembles it to the concept of verisimilitude, created by Aristotle in his work *Poetics*. The verisimilitude present in Poetry for Aristotle is equivalent to the function of Literature in enabling contact with eternal human truths. According to Aristotle,

[...]the work of the poet is not to tell what happened, but rather things that could happen, possible from the point of view of verisimilitude or necessity.

It is not in verses whether or not the historian and the poet differ; the work of Herodotus could be in verse; it would not be less historical with the verses or than without them; the difference is that one narrates events and the other, facts which could happen. Therefore, *Poetry contains more philosophy and elevation than history; the former utters general truths; the latter reports particular facts*. To utter general truths is to say what kind of things an individual of such nature comes to

say or do in verisimilude or necessity; this is the function of Poetry, even when it names characters (1981, p. 28, highlighted for this analysis).

Aristotle evidences the function of Poetry, given its imitation nature – mimesis or representation – and its scope in relation to History. Literature does not simply narrate the facts, as History does, but it essentially fulfills the task of “enunciating general truths” in a verisimilar way, as similar as possible to real life.

The aspect of verisimilitude with reality, according to Antonio Candido, was, at first, considered of essential importance in a work of literary art and that, later,

[...] has come to the opposite position, trying to show that the material of a work is secondary, and that its importance derives from the formal operations put into play, giving it a peculiarity that makes it in fact independent of any constraints [...] (2000, p. 5).

However, the same literary critic reiterates that

[...] the integrity of the work does not allow us to adopt any of the dissociated visions; and that we can only understand it by merging text and context into a dialectically integral interpretation, in which both the old viewpoint which explained by external factors and the other, guided by the conviction that the structure is virtually independent, combine as necessary moments of the interpretative process. We also know that the *external* aspects (in this case, social characteristics) matter, not as cause, nor as meaning, but as an element that plays a certain role in the constitution of the structure, thus becoming *internal* (Candido, 2000, p. 5-6).

Thus, according to Antonio Candido, the work of literary art, besides allowing the credible representation of reality and presupposing a certain degree of aesthetics and stylistics, requires respect for its integrity, valuing the dialectical interpretation between text and context, a true fusion between the internal and external aspects of the work.

As noted by the teachings of Aristotle’s *Poetics*, besides being a field of delight in knowledge, culture and literacy, literary art has been considered, from the earliest days of the history of Western knowledge, as a means of “purification”, or still, “purging” of the most hidden feelings or emotions.

Alfredo Bosi, emeritus professor of Brazilian Literature at USP, agrees to attribute to literature a liberating function, but states that such a function “is not the only one: it is one of them and has its specific place of study in the work / reader relationship” (*apud* Rocco, 1992, p.99).

Many literary critics give literature a cathartic, liberating function; others define it by its ideological, political or social function; there are still those who defend the utopian and even the futuristic function. There are, therefore, many and varied functions attributed to literature by many authors over time: educational, aesthetic, historical, cathartic, ideological, political, social, among others. What is more significant, however, is that Literature is capable of eliciting the “beautiful” and the “sensible” aspects of life which, by the way, can be achieved by making use of all or only some literary functions. And so, “when the author knows what he wants, he can combine all the functions at the same time and draw out different kinds of readings, renewable for each reader” (Czekster, online).

In the words of Antoine Compagnon:

[...] let us keep all this in mind: literature is an inevitable petition of principle. *Literature is literature*, what authorities (teachers, editors) include in literature. Its limits sometimes change slowly, moderately, but it is impossible to move from its extension to its comprehension, from the canon to the essence. Let us not say, however, that we have not progressed, because the pleasure of hunting, as Montaigne reminded us, is not the capture, and the reader’s model, as we have seen, is the hunter (2010, p. 46).

In this sense, in addition to the functions assigned to Literature, we also consider the incredible role attributed to the reader of the literary text, who, as a *hunter* is inferred in the maximum sense and function of literary art: aesthetic pleasure plus the inevitable humanistic education from oneself.

For Fachin, through literature we are able to “put ourselves back in the place of those who live in our surroundings, of understanding their feelings and aspirations in a contained way. Literature is one of the elements capable of bringing the idea of ‘fraternity’ and ‘otherness’ to the forefront in a clear way” (*apud* Trindade et al., 2010, p. 397).

Eduardo Carlos Bianca Bittar states that “rudeness, coldness and insensitivity block the access bridges to the *alter*” (2012, p.695). It is understood, therefore, that the path to be followed in the proper

understanding of the pains of the “other”, or of the feeling of what is described by otherness, is possible through the capacity of humanistic sensitivity.

3 FROM LITERATURE TO LAW: AN INTERDISCIPLINARY ANALYSIS

Literature, as an art form, responds with eloquence by allowing readers to go deeply into great questions of human nature. The importance of reading and analyzing a classic of universal literature, therefore, is to be able to get in touch with social and naturally human questions, and to find, often and in the most varied forms, relief for various existential conflicts.

Les Misérables is one of the main artistic productions by the French writer Victor Hugo, published on April 3, 1862. This novel was considered one of the greatest literary events of the time, continuing alive and very current, enchanting readers of all ages and places of the world. After Shakespeare, Victor Hugo was “the Western author who generated more literary studies, philosophical analyzes, critical editions, biographies, translations and adaptations of his works on the five continents” (Vargas Llosa, 2012, p.13).

In this sense, it becomes almost impossible for the reader of this work, however inattentive, not to be struck by existential questions and instigated to reflect on crucial aspects of the human condition.

Characterized as a social novel, *Les Misérables* is a reflection of the customs of nineteenth-century France, revealing the complex plot and spectacular resourcefulness of its many significant characters.

With characteristics of Romantic but also of Realist literature, the work is considered of great social importance, because it represents criticism and scolding to various types of human injustice.

The story of this work unfolds between two historical moments in France: from the Battle of Waterloo in 1815, which represented the fall of Napoleon Bonaparte’s imperialist dream, to the riots in Paris in June 1832, when Republican students tried, in vain, to overthrow the regime of King Louis Philippe I.

In this context, it tells the moving story of Jean Valjean, a man who practiced the crime of “starvation theft”³ by breaking a bakery shop window to get a loaf of bread, and was therefore sentenced to prison, resulting, due to various attempts to escape, in nineteen years of punishment.

What happens in the first place in this work is the primordial question of a confrontation between positive law and natural law. An example of a masterpiece that translates into fictional situations what reality supports, revealing, through examples, language, narrative technique, characters and social plots, that, in fact, not always does the law result in justice. It would be possible, through the richness of the compositional elements of the work, to carry out innumerable analyzes and also raise numerous aspects of relevance to an interdisciplinarity of law with literature.

However, this study is directed to the interdisciplinary analysis of two main characters, whose actions and attitudes represent stereotypes to which one can associate the positivist and naturalistic conceptions of law and justice.

3.1 Plot and characters:

Jean Valjean, Monsignor Bienvenu and Javert

Les Misérables was written and subdivided into five parts, each one being named and dedicated in a special way to a certain character (Fantine; Cosette; Marius; The Idyll in the Rue Plumet and the Epic of the Rue Saint-Denis; Jean Valjean) and their condition of life in the social context of France in the early nineteenth century. It is a work of fiction, but it accepts the task of describing what deep down the people of that time wanted or thought to be,

[...] that is, animated beings by ways of acting that romanticism conceived in a schematic way, as emblems of vices or virtues incompatible with each other, able to incarnate in individuals without nuances that manifest them uninterruptedly in all their actions. Each epoch has

³ In contemporary society, in the democratic state of law, this is no longer considered a crime, much less could the practitioner be condemned since he acted in a state of necessity. However, not long ago, a housekeeper girl went through a similar situation for stealing clothes and shoes in a shop in Sao Paulo. News published in the Folha de São Paulo newspaper, on August 09, 2010. Available on: <<http://www1.folha.uol.com.br/fsp/cotidian/ff0908201006.htm>> Access: 14 Apr. 2017.

its unreality: its myths, its ghosts, its chimeras, its dreams and an ideal vision of the human being that the fiction expresses with more fidelity than any other genre (Vargas Llosa, 2012, p. 63).

The central character of the story is Jean Valjean, whose fate is to suffer the unfair penalties imposed by the state when practicing a crime of theft. This character was raised by his sister who was later widowed, having seven children to care. Very hardworking, he soon became the breadwinner of the family. Soon, therefore, he saw himself without work and in dire need. Such a situation led him to break a bakery shop window and steal a loaf of bread to satisfy the hunger of his family. Caught in the act, he was sentenced to five years' imprisonment.

Jean Valjean was found guilty. The code words were formal. There are terrible moments in our civilization: when the penalty announces the wreck. What an unfortunate minute, in which society deviates and decrees the irreparable helplessness of a rational creature! Jean Valjean was sentenced to five years in the galleys (Hugo, 2014, p. 124).

After repeated attempts to escape and new convictions, Jean Valjean ended up serving nineteen years in prison, having been forced, during all this time, to provide forced services in the French galleys⁴. Upon receiving parole, he had to carry a “yellow passport” that had stigmatized him as “former convicted” and “dangerous” to society.

Marginalized because of his records and broken down by the identification he had to carry, Jean Valjean could not even find work or a place to take shelter. However, he found in the kindness of Bishop Monseigneur Bienvenu a chance of redemption. The Bishop offered him food, housing and trust. But Jean Valjean, so strongly attached to the monster in which he had been transformed for so long incarcerated, succeeded in stealing the bishop's silverware and fleeing in the night.

The next day, soldiers brought the fugitive along with the silver to the bishop to check what had happened. At that moment, in anticipation of what had happened, Monsignor Bienvenu tells the soldiers that the silver

⁴ Galley slavery was a punishment in which the prisoners served their time with hard labor. It was a kind of criminal sanction that ordered the defendants to work in chains on rowing vessels, which only entered the sea by the force of many men.

had been given to the guest, who had forgotten to take with him the candlesticks which were also of silver. With this attitude, the Bishop had not only liberated him from prison but also provided him with a tremendous reflection on himself, his past, and his future.

The narrator plays an important role in leading the reader to follow the same path as the character. It takes the reader to realize all the introspection that Jean Valjean has gone through. Among many passages, one is cited to exemplify the shock that the attitude of the Bishop of Digne⁵ caused for the character:

[...] in any case, this last bad action produced a decisive effect on him; quickly crossed the chaos in his spirit and dispelled him; put darkness on one side and light on the other, and acted upon his soul as it stood, as certain chemical reagents act upon a blurred mixture, precipitating one element and clarifying another. [...]. When he shouted: *I am a miserable man!* He saw himself as he was, and he was so far apart from himself that he appeared to himself to be no more than a ghost [...] (Hugo, 2014, p. 151-152).

From that moment, through an act of extreme consciousness, Jean Valjean rips his yellow passport and goes away. In the town of Montreuil-sur-Mer, he took the name Madeleine, becoming a prosperous man, owner of a factory that housed “two vast workshops, one for men and one for women” (Hugo, 2014, 203). Employment, respect and dignity were offered to anyone in need. Madeleine was a man of integrity, whose fame spread throughout the village, soon to be named the mayor.

In the midst of all these events, there was still the figure of police inspector Javert, who met Jean Valjean in prison while he was still a guard of the prisoners. Javert was promoted to police inspector in Montreuil-sur-Mer. He was a cold, calculating, methodical, law-abiding man. He learned from childhood to see and act in the cruel world of prisons, soon entering the police and adopting a rigid posture, widely feared by the prisoners. His mission was to supervise, maintain and enforce order and severe compliance with the law. Jean Valjean had him

⁵ Small French village.

as a ghost, always in his wake. To him, Inspector Javert was a monster, a “hideous hunting dog” (Hugo, 2014, 267) in the relentless pursuit of the fugitive criminal.

After the episode of the arrest of Mr. Champmathieu – mistaken as the fugitive Jean Valjean – Inspector Javert was summoned to the city hall of Montreuil-sur-Mer to apologize to the mayor (Mr. Madeleine) for the complaint and suspicion that he had deeply held upon the nobleman, since they finally arrested the much sought-after fugitive. In this circumstance, Madeleine hurries and attends the trial of the prisoner Champmathieu, surrendering like the true fugitive Jean Valjean. On account of this confession, an arrest warrant had been issued and handed over to Inspector Javert, who, in the face of such a feat, culminates in ecstasy for having fulfilled his most honorable function. Thus describes the narrator:

[...] At that moment Javert was in heaven. Without clearly realizing, however, with a confused intuition of his need and his success, *he personified, he, Javert, justice, light, and truth, which have a celestial function to of ending evil. Behind and around him, to an infinite depth, he had authority, reason, res judicata, legal conscience, public punishment, all the stars; he protected order, made lightning come out of the law, avenged society, gave a strong pulse to the absolute, went to glory; there was in his victory a touch of defiance and combat; standing, haughty, flashing, he bore, in the immense blue, the superhuman bestiality of a fierce archangel; the fearsome shadow of the action which led to it made visible in his contracted fist the vague flame of the social sword; happy and indignant, he kept crime, addiction, rebellion, perdition, hell under his feet; he shined, he exterminated, he smiled, and there was an undeniable grandeur in that monstrous Saint Michael* (Hugo, 2014, p. 333, highlighted for analysis).

The character Javert is the personification of the imposition of order represented by the Law and the State. His personality is shaped, clothed in redoubled attention to the strict compliance of the norms enacted to guarantee order and social protection. There is so much rigor in his attitudes that when confronted with his impotence in being a guarantor of the fulfillment of the law and maintainer of the order in the society, Javert lives an agonizing situation:

[...] He saw before him two paths, both straight, but two; and this frightened him, who never in his life had known but a single straight line. And, poignant anguish, these two paths were opposites. Any one of these straight lines

excluded the other. Which one was true? (Hugo, 2014, p. 1368).

Faced with the impasse Javert encounters for the first time in his life, when the path of the law is opposite to that of consciousness; when what the law determines comes into conflict with the effectiveness of justice; when there is no possibility of action in consonance with the punishment of the evildoer, mainly because he no longer sees it as that figure built during a lifetime of persecution; when he does not see himself more possible within himself, he throws himself on the river Seine. Acting strictly against himself!

These are, therefore, highlighted characters, each one representing a role of relevance to this interdisciplinary analysis of the law with literature in the work *Les Misérables* by Victor Hugo.

3.2 Stereotyping in *Les Misérables*

In the light of law, the novel *Les Misérables* presents numerous possibilities of analysis and intersections. However, for the present study, such aspects will be focused on two characters, as previously said, Bishop Bienvenu and Inspector Javert.

These characters, facts and rights attributed to them reveal, albeit in a stereotyped way, much of the characteristics of a legal system based on positivism, whose norms, eminently abstract and general, were designed to guarantee security and social welfare. In this sense, Cesar Carneiro explains that the historical context of the work reveals the reality of a legal position in which

[...] legal codes were mechanisms used by the state to manage as much as possible of social life. Of mandatory observance in society, they would contain, presumably, all possible factual situations of being observed in the social environment. This body of codified laws was legitimized by a bureaucratic state structure that gave validity to these legal diplomas. It is from the codifications that the Positivist Juridical Culture develops, which gains strength due to the abstract and general character of the laws that guarantee greater juridical security, opposing and surpassing the Legal Naturalism, immutable, preexisting in relation to the laws and with great axiological sense. The Positivist Ideology gains strength and passes the idea of duty in the observance of the positive regulation, so that only through the norms would be found the Law in society, the Law would be solely what is disposed in the valid norms,

that is, elaborated regulations made institutionally by the rule of law (2016, *online*).

Thus, the law would be guaranteed by the norms that, due to their imposition and compliance, would in turn be a reflection of justice. However, “it is in the barn of criminal injustice that the novel gains its decisive highlight – the punishment of the bagatelle, the disproportionate penalty, the cruelty of prison, the eternalization of the sentence, and the criminal selectivity in all its dimensions” (Semer, 2013, *online*).

Because of this masked injustice of social order and legal security that the writer Victor Hugo denounces through the brilliant literary work *Les Misérables*, the terrible problems and social injustices of his time. The unmistakable mark of his omniscient presence in the work, revealing his position and his fierce criticism in the midst of events, materializes in the form of the narrative. It is the narrator, according to Vargas Llosa, the main character of *Les Misérables*, becoming the main character, therefore, the very writer Victor Hugo, the one who gives life to this

[...] intrusive narrator that arises continually between his creatures and the reader. Constant presence, sweeping, so that at every step he interrupts the narration to give his opinion, sometimes in the first person and under a name that wants us to believe that it is Victor Hugo himself, always loudly and clearly, to interpolate moral reflections, historical associations, poems, intimate memories, to criticize society and men in their great intentions or their small miseries, to condemn their characters or to praise them. He tells us that he is only a scribe of a story before the novel, real as life and true as the truth itself, which precedes, annuls and transcends it, simple intermediary, mere copyist of the real (Llosa, 2012, p. 23).

Then, as an observer narrator, whose voice represents the very person of Victor Hugo to “incorporate” the place of main character of the narrative, it urges to observe that, in this way, besides giving life to his voice and through it denounce social miseries of his time, this narrator allows the reader constantly to reflect on several important aspects of law.

In the voice of the narrator, the book that the reader has in hands

[...] before the eyes is, from beginning to end, as a whole and in its details, whatever the intermittency, the exceptions or failures, the journey from evil to good, from

unjust to just, from false to true, from night to day, from appetite to conscience, from rot to life, from bestiality to duty, from hell to heaven, [...] (Hugo, 2014, p. 1291-1292).

According to the professor of the Law School at PUC-RS, Fábio Roberto D'Ávila, from the perspective of criminal law, *Les Misérables* is a wonderful book “because it works with two themes that are central: what crime is, and how to think this criminal fact – with its context or without its context; and what pity is, what is expected of the penalty and how to have this criminal back to society” (Programa Direito & Literatura, 2012, online). And yet, under the same perspective, the central idea portrayed majestically in the work is the now widely held idea that “no crime can be thought out of context”.

For this reason, the interdisciplinary analysis of the inexorable relations between Law and Literature, which is presented here, is in keeping with the historical-social-legal context of France at the beginning of the 19th century. And so, it limits the analysis of the facts to their time and their context, which, however, does not prevent the possible and inevitable analogy that may happen from the reflections on what still today is remnant of that time, although remote and covered by other contexts and concepts, but rooted in the postures, customs and the very Law of contemporary society.

It is no wonder that one of the functions of Literature is precisely that of revealing the timelessness of the work. At any moment, in any context, the work is regenerated, molded and contemplated the new time. What is documentary certainly can age and grow old, but what is poetry, criticism, human or inhuman, remains new. Masterfully, Victor Hugo writes the following preface to his work:

As long as, by virtue of laws and customs, there are social outcasts, and the existence, in the midst of civilization, of living hells, distorting, by human fatality, a destiny created by divine nature; while the three problems of the century – the degradation of man by the proletariat, the prostitution of women by hunger, and the atrophy of the child through ignorance – are not solved; as long as there are places where social suffocation is possible; in other words, and from a broader point of view, while on earth there is ignorance and misery, books like this will not be useless (2014, p. 37).

They will never be useless! In this case, in particular, the usefulness that is imposed calls for Law and Literature “with the objective of discovering the interfaces between the disciplines and transcending the traditional focus of law studies” (Silva, 2010, p.9).

Thus, Ada Bogliolo Piancastelli de Siqueira affirms that “law consists first and foremost in the human attempt to seek a social understanding” (2011, 142) and that literature “traces daring perspectives to law before they are considered viable in the legal framework” (2011, p.145). Given this ability of “bold” anticipation in the horizon of expectations of law by literature, and, being the nature of law the constant search for the understanding of social relations, the individual analysis of the mentioned central characters of the book *Les Misérables* in the light of Law follows in the next section.

3.3 Inspector Javert: personification of legal positivism

The social question is extremely exposed in the plot of *Les Misérables*, but from the whole plot stands out from its midst the existential conflict between norm and principle, law and justice, right and wrong, just and unjust.

Such conflicts are experienced mainly by the character of Inspector Javert, whose function is to find the fugitive Jean Valjean, chasing him tirelessly throughout the narrative of the work.

The legalistic view of Inspector Javert, a faithful and law-abiding man, is associated with the basic principle of “legal positivism: rule of Law as a Law of rule. Once a rule, as such, the norm must be inexorably obeyed, and the judges must confine themselves to their expressed limits, bound in turn to the legal order in which the norm is included” (Söhngen, 2015, p.110). This criticism of the positivist view of the character Javert is not induced by the unnecessary fulfillment of the norm, on the contrary, what is sought to emphasize are the formal exaggerations, and the effects that such conduct cause in relation to the effectiveness of justice.

The philosophy of life and justice of police officer Javert, according to Vargas Llosa, is

[...] based on two simple feelings – respect for authority and hatred of every form of rebellion – which are admirably summed up in the phrase he says to Monsieur Madelaine: “*My God, how easy it is to be good, it is difficult to be fair*” (I, VI, II, p.220). The narrator, a romanticist, hates the law: he prefers the impulses, the individual and sovereign gesture to the collective norm. Javert, like the judge of Camus in *The foreigner*, puts justice before life, and the narrator, life to justice. Both unknowingly agree that the two are incompatible [...] (2012, p. 80, highlighted for analysis).

Inspector Javert has as prerogative the conditioning of the order to the fulfillment of the law; his role in the exercise of verification and the obligation to ensure that the standards are observed; guaranteeing order, legal certainty and social peace. Thus behaves this character who, for a lifetime, watches, enforces, and complies with all state regulations. Javert incorporates a

[...] formalist. The law must be enforced and applied without exceptions, without a benevolent interpretation or any discretion. In this case, even because transgressing the human law would also be a transgression of the divine law, as Hugo reveals in the reasoning of the inspector. In Javert’s work, it is evident how the form loses any link with justice, which should be inherent in law [...] (Söhngen, 2015, p. 111).

Systematic, methodical, formalistic, Javert reasoned according to the parameters of positivist scientism, refraining from formulating certain value judgments, since for Javert suffices to exist and respect the norm for the realization of law. The idea of justice is tied to the duty to comply with the law. His claim that “it is very easy to be good, the difficulty is to be fair” (Hugo, 2014, p.253) is an example of the conception he has adopted, because, to be fair, he should only comply with the law, without any questioning or any relation of value judgment to fact.

According to legal positivism, “the affirmation of the validity of a legal norm does not imply also the affirmation of its value” (Bobbio 1995: 131). As can be seen from Norberto Bobbio’s teachings, of the fundamental characteristics of legal positivism, the first problem that arises is precisely

related to “the way of approaching, of facing the law” that for positivism is seen as a fact and not a value.

In addition, Bobbio highlights another feature of legal positivism that also reminds us of Inspector Javert’s behavior. This characteristic is revealed by considering “the norm as a command, formulating the imperative theory of law, which is subdivided into numerous ‘subtheories’, according to which this imperative is conceived: as positive or negative, as autonomous or heteronomous, as technical or ethical” (1995, 132). In addition to being normative, imperative command, the norm is embedded in a complete legal system that encompasses all situations, so there are no gaps or contradictory norms in law, which would result in justice understood under the theory of absolute obedience, since “law is law”⁶.

If “law is law”, in juridical positivism would it be possible to question what law is? What about justice?

Roberto Lyra Filho affirmed that,

[...] although the laws present contradictions, which do not allow us to reject them without examination, as pure expression of the interests of a (dominant) class, it cannot be said, naively or manically, that all legislation is authentic, legitimate and indisputable law. In this last statement, we would allow ourselves to be wrapped up in the legislative “packages”, dictated by the simple convenience of exercising power. Legislation always encompasses, to a greater or lesser extent, law and anti-law: that is, law itself, right and correct, and the denial of law, bent by the class interests and the continuing whims of established power (1999, p. 8).

At some point in the plot, Javert is faced with situations that lead him to unavoidable questions about his conduct. Doubts plague Inspector Javert’s mind, and the world does not look more logical and simple, revealing an overwhelming and unbearable complexity. One fact puts Jean Valjean again face-to-face with Javert, but this time in opposite situations, Jean Valjean having the chance to end up with the pursuer Javert.

When, in the midst of the mutiny of 1832, when he declared himself a partisan of the cause and established himself as a spy among the revolutionaries, Javert was unmasked and held prisoner by the insurgents,

⁶ Aphorism of legal positivism: “*Gesetz ist Gesetz*”.

among whom was also Jean Valjean. He, in turn, had the opportunity to kill the inspector, since they were enemies in the insurrection. However, he frees Javert. In addition, Valjean reveals to Javert his new address if he wanted to arrest him after the riot had ended. It turns out that the inspector, at an opportune moment, faced with the power to arrest Jean Valjean again and finish with the search that had been installed so many years ago, thus cannot proceed, leaving Valjean behind without arresting him. At that moment, what does Javert discover?

[...] that law and morality may be different, even enemies, and that by liberating the fugitive galley prisoner he acted according to his feelings and his reason, which preferred this confused, unwritten, moral rule arising within his individual conscience, and induced him to return a favor to the man who had saved his life on the barricade, the written rule, the social law, which ordered him to return the prisoner who had escaped to prison. [...]. In fact, he discovered the existence of contradictory truths, values incompatible with each other, the inexorable confusion between good and evil in certain human experiences. To realize that good and evil are not, as he certainly saw, something rigidly separated and recognizable, but paths that cross and unravel and sometimes lose each other without being able to distinguish them, afflicts Javert and causes in him the “conversion” that leads him to kill himself. The most terrible thing that happens to him is to discover that in his own being there is something that he does not control, a feeling that clouds reason (Vargas Llosa, 2012, p. 82-83).

To find himself impotent and confused in such a way as to act contrary to his precepts, and to what he believed to be his function, provokes in Javert a great existential conflict. Thus, confirms the narrator of the story, Javert

[...]he told himself that then it was true, that there were exceptions, that authority could be confused, that the rule might be insufficient in the face of a fact, that not everything fits the text of the code, that it was necessary to obey the unforeseen, that virtue of a criminal could prepare a trap for the virtue of an official, that the monstrous could be divine, that fate had these traps, and thought with despair that he himself had not been sheltered from a surprise.

He was forced to acknowledge that goodness existed. This criminal was good. And he himself, incredible thing, had just been kind. Therefore he was depraved.

He thought he was a coward. He had horror of himself.

For Javert, the ideal was not to be human, to be great, to be sublime, to be irreproachable.
But he had just spoken [...] (Hugo, 2014, p. 1371).

Such a conflict leads Javert to suicide by throwing himself on the River Seine. Extremism – a reflection of the anguish of the character – is typical of the romanticist stylistic exaggeration, whose goal is to exalt virtues or vices, to establish divergences and extreme opposites, to stereotype behaviors. In this case,

[...] Javert's work raises reflection on a disembodied legalism, which generates the distortion of legality and is found in innumerable judicial decisions, in which judges do not end up embracing the full role they play in the configuration of law, trapped in a rigid and unscrupulous intellectual formalism (Söhnngen, 2015, p. 112).

However, what is most important in relation to the analysis of Javert's character is the reflection that can be built around his personality and actions before the law and society. By establishing himself as a maintainer of order and guarantor of security, in blind obedience to the imperatives of the law, Javert embodies juridical positivism. Yes, he is considered an exaggeration, a stereotype, as previously mentioned, but instigating an interdisciplinary analysis, in which the interfaces of Literature intersect with Law, resulting in knowledge and apprehension of what the movement of legal positivism that dominated the legal culture for more than a century was, leaving clear remnants of this movement in contemporary society.

3.4 Monseigneur Bienvenu: stereotype of humanity!

The character of the Bishop of Digne, Monsignor Bienvenu, stands out for his benevolence in welcoming an ex-convict, whose yellow passport made him a holder of high danger status to society. Thus, through kindness, charity and humanity, he gives Jean Valjean something far beyond the justice denied him, for

[...] the welcome of the bishop, whom he steals, and his charity, far beyond justice, lead him (Jean Valjean) to a decisive resumption: freeing himself from the past and from what the world considered, he resumes a new life inspired by the good that he received. Freed from himself, he is able to always be aware of others. (Söhnngen, 2015, p. 114).

For Monsignor Bienvenu, the principle of the dignity of the human person and the principles of natural law prevail. It matters much more to him to believe in the human being and in the innate capacity of restitution of the humanity, than to consider the time or the reason of his arrest. The attitude of the bishop was contrary to the dominant legal culture in the context of the legal positivism of France in the early nineteenth century, which did not admit much less provided for a possibility of resocialization to a former prisoner. At that time,

[...] Current law required law enforcement at any cost – something evidenced by the character Javert's attitudes. The system preached the persecution of the miserable ones by small crimes, infractions that the society did not see as light and that, therefore, justified rigorous penalties. Mechanisms for balancing rights did not, therefore, exist the blatant disproportion between the crime committed and the penalty applied. Current principles of insignificance, proportionality and social responsibility were constantly violated (Costa, 2015, online).

Opposing an entire rigorous and formalist legal system, Monsignor Bienvenu provides Jean Valjean with a hope of redemption, a path of freedom and salvation in the face of a severe regime and unjust punishment. As is well-known, were it not for the Bishop of Digne, Jean Valjean would not have the courage to rebel against the system that dominated and punished him. Much less would he have been shocked by his conscience to bring about change in himself, and more than that, he would be suffering the most cruel punishment, the consequence of which would become worse than imprisonment itself: social judgment.

However, by offering a chance of change and revolutionizing the life of the former prisoner, Monseigneur Bienvenu plays an interesting role in the work *Les Misérables*. Although he is mentioned only at the beginning of the story, the reflexes of his attitude accompany Jean Valjean throughout the whole plot, standing out as a primordial character to the rest of the narrative, for his attitude reveals the necessary sense of humanity that lacks in a society ruled in the predominantly positivist legal culture.

Although the criminal justice system of today has undergone numerous changes from the historical context covered by the novel, the practice of judging, condemning and punishing still results in many failures and

[...] analogous to what happens with Valjean, the social body of the present time, for the most part, also shows rejection to those who have already fulfilled penalties. Thus, often deprived of qualifications and deprived of opportunities, the ex-convicts return to commit crimes. In “Les Misérables”, the good action of the bishop provokes in Jean a process of “re-humanization” making clear the idea that man can be good and virtuous, when society stops to hinder opportunities (Costa, 2015, online).

This process of “re-humanization” that occurs with Jean Valjean due to the attitude of compassion of the Bishop of Digne is a rare event and is still today a challenge in the contemporary time. As the jurist Marcelo Semer points out, “serving as a way of perpetuating stigma, compliance with the sentence itself has been intrinsically the largest contributor to recidivism and continuous feedback from the criminal justice system” (2013, online).

As a result, “resocialization” and “humanization of punishment” have long been a matter of concern not only to the legal system, but to all humanity. From this constant concern, it is therefore important to point out that the study of “the evolution of ideals, based on Beccaria’s Enlightenment, seeks to explain and justify the current trends of ‘alternative criminal policy’”. In short, the objective is to move from strictly punitive penalties to resocialization, in the sense of humanizing criminal law” (Costa, 2015, online).

Not very different from the social context of France in the early nineteenth century, social issues continue to exert a strong influence “from the commission of the crime on the return of the sentenced to freedom, although, despite the current existence of the progressive regime of punishment, conditional release, pardons and amnesties, the social factor continues to marginalize those who, in theory, should be re-socialized” (Barbosa *et al.*, 2016, online).

Certainly, the character Monsignor Bienvenu instigates the reflection of the role that society has in view of its share of responsibility for the crime, the penalties and, even more, for the restoration and reinsertion of the inmate. Through this character, therefore, one arrives at the awareness that in “every criminal fact there is at one side a guilt of all, a guilt of

society, an idea of co-responsibility, and that the penalty must necessarily be just” (Programa Direito & Literatura, 2012, online).

Monsignor Bienvenu, therefore, offers a path of analysis of his conduct versus the still prevailing conduct in a society that, anxious for punishment, blind for security, disbelieving in humanity, convinced that “the place of bandits is in prison”, welcomes cruel punishments, calling for reforms that result in an increased sentence and thus guarantee social security and peace.

4 FINAL CONSIDERATIONS

Although aspects of Law education still influenced by remnants of a methodical, formalist and positivist legal system are perpetuated, the tendency of contemporary teaching is the search for innovative strategies, interdisciplinarity and pedagogical methods that help in the training of a more critical jurist or lawyer, attentive to their relevant social role, with humanistic education, sensitive to their professional and human objectives.

However, the establishment of a bridge between Law and literature, focusing on the studies of “Law in Literature” – a field of studies analyzed starting from the literary work and the juridical aspects contained therein – becomes, therefore, of great value for an interdisciplinary teaching aimed at the legal-critical education of a professional who is sensitive to the complexity of human life and its social conflicts.

It is through literary art and its timeless nature, given its educational social function, which compounds the critical sensibility, relevant in the role of the constitution of the human being, that the study of law can be transdisciplinary. As seen from the interdisciplinary analysis of the great characters of universal literature, it is evidently an argument that it is possible to approach juridical aspects in the works of literature focusing on the humanistic and sensitive formation about reality reflected in fiction and the connections with the real facts to which the law relates.

Jean Valjean, central character of *Les Misérables* by Victor Hugo, is a romanticist hero, idealized, and as such, does not revolt on the law nor on its pen, and accepts judicial decisions in resilience. As a victim of a rigorous and cruel penal system, he completes his sentence without any

prospect of resocialization. This character represents the wronged of the penal system and the stigmatized by prison and social discrimination. Its main evildoer, Inspector Javert, representative and loyal stereotype of legal positivism, has as its main professional eagerness to capture the fugitive Jean Valjean and thus make him rigorously comply with all the laws.

The character of the Bishop of Digne, Monsignor Bienvenu, acting in accordance with natural and universal values and precepts, when he offers the former galley slave an opportunity for justice and freedom, represents a kind of counterbalance to tyranny, the extreme opposite of Javert, a hope amidst the chaos of Jean Valjean's life. While one is the law, the other is redemption, the possibility of social reintegration, justice that restores humanity. Each character, therefore, is a possibility of reflection in interface with a legal conception model.

Thus, it is important to emphasize that such interdisciplinary studies collaborate in the academic awareness, especially regarding the social role that fulfills university, expanding the construction of knowledge beyond dogma and technic, education jurists aware of their role of understanding and interference in the social context.

This research is neither complete nor exhaustive. It opens doors to other and perhaps new discoveries provided by the transdisciplinary experience in favor of a change not only relevant to legal education but, essentially, to the way, as jurists and lawyers, we see the world.

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