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THE IMPORTANCE OF LITERATURE FOR LEGAL PROFESSIONALS (WITHOUT EXAGGERATION)¹

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ABSTRACT: This paper discusses the moral value of literature for jurists. The common view (espoused by authors such as Robin West, Martha Nussbaum, and Lynn Hunt) that literature is capable of “humanizing” the reader – making one more sympathetic and benevolent – has not been clearly corroborated by empirical studies on the subject. In addition, this is a politically risky idea, which interests both the friends and the foes of literature. On the other hand, it is possible to argue that literature is able to refine our understanding of moral and social problems. Perhaps literature does not make readers better people, but it can still make readers more aware of the complexity of moral issues that tend to be underestimated.

KEYWORDS: law in literature; legal lessons; moral lessons.

1 INTRODUCTION

It is clear that legal professionals, jurists, must acquire general culture, and that frequent reading of good novels, short stories and poems contributes to this. Lawyers who read will most likely be able to write more eloquent and persuasive petitions. The same principle applies to judges’ sentences, prosecutors’ denunciations, and academic papers produced by law professors: those who read the more often write better. In addition to

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general culture and eloquence, however, books and articles on “law and literature” usually highlight specific lessons that jurists can learn from good literary works: namely, legal and ethical lessons. The nature of these lessons will be discussed below.

This paper explores the moral value of literature for jurists. The common idea that literature is capable of “humanizing” the reader – making one more understanding and benevolent – is subject to different objections, which are discussed in section 3. On the other hand, literature is able to refine our understanding of contemporary moral and social problems. Perhaps literature does not make us better people, but it increases our ability to perceive the complexity of moral issues that deserve careful reflection. This subtle distinction – between humanization and sophistication – is one of the central aspects of this article.

Literature is not the only possible source of lessons about the complexity of contemporary moral problems. In the academic environment, this function is traditionally fulfilled by textbooks on ethics, political philosophy and other similar non-fiction works. We know, however, that while some readers and students prefer to listen to abstract arguments, others are more susceptible to narratives. From a pedagogical point of view, courses that combine the two types of approach are likely to attract the attention of both types of students – those who like to analyze arguments and those who prefer stories.

Hence, psychologists draw a distinction between persuasion through argument and narrative persuasion. They are different ways of trying to get an interlocutor to believe in an idea (regarding moral, politics, society, science, etc.). For example, in order to try to persuade a person to rethink the way they dispose of their garbage, it is possible to present evidence on the impact of domestic garbage production on the environment. On the other hand, it is possible to tell a story about individuals who, by recycling their garbage, were able to positively affect the community in which they live. As Philip Mazzocco and Melanie Green explain, the first type of persuasion “[presents] a series of logical and cogent arguments in favor of a

given viewpoint” (Mazzocco and Green, 2011, p. 27). Narrative persuasion, on the other hand, “describe[s] a series of interrelated events that take place in a particular setting and typically involve one or more specific characters. Lacking straightforward arguments, narrative persuasion tends to be driven by the actions and portrayal of antagonists and protagonists” (Mazzocco and Green, 2011, p. 27). In front of a plural auditorium, as is usually the auditorium that hears Law professors, it is perfectly possible to use both types of strategy.

2 LEGAL LESSONS

Fiction is not usually the best source of information about the inner functioning of specific legal systems. Perhaps there are some exceptions, such as Ian McEwan’s *The children act* (2014), which chronicles the dilemma faced by an English judge in charge of determining whether or not a seriously ill young man should be forced to accept a blood transfusion in spite of his religious beliefs. The novel presents the judge’s work routine with such rich detail that the attentive reader can learn some interesting things about the functioning of the English legal system. For example, the book well illustrates the importance of precedents in judicial reasoning and the “adversarial” nature of English legal proceedings.

In general, however, reading novels is not the easiest, or the most reliable, way of learning about the rules and procedures of modern legal systems. It is common for literature to be seen as the source of more general and abstract lessons about law. They are lessons that can still be characterized as “legal” and are important for the training of jurists, but which do not concern the bureaucratic details of any particular legal system. Let us consider some examples of works commonly explored in “law and literature” courses. *The merchant of Venice* (1596-1599) motivates us to think about the excessive formalism that characterizes many juridical debates and shows that legalistic arguments can serve both good and evil, to benefit and / or to harm the defendant. Susan Glaspell’s *A Jury of Her Peers* (1917) makes us think about the dominant male mentality, to the

detriment of feminine perspective, in the legal process and about the errors of judgment that result from this imbalance (especially when there are women among the litigants). Kafka's *The trial* (1925) stimulates reflection on the alienating coldness and the indecipherable complexity of the legal bureaucracy. Camus's *The stranger* (1942) highlights the jury's obsession with the character of the defendant and past actions that have little relation to the crime under scrutiny at the time. Harper Lee's *To Kill a Mockingbird* (1960) makes one think about the lawyer's ethical obligations, especially when acting in an oppressive and unjust legal system.

As can be seen, the lessons of these classical works transcend national boundaries and juridical-cultural specificities: they are lessons that interest practically every judge and lawyer in virtually any legal system. Consider one last example. In *Gulliver's Travels* (1735), the protagonist attempts to explain the working of English law to the Houyhnhnms, inhabitants of an idyllic society in which there had never been judges and lawyers (Swift, 1983, p. 229):

It is likewise to be observed, that this society [of lawyers and judges] has a peculiar cant and jargon of their own, that no other mortal can understand, and wherein all their laws are written, which they take special care to multiply; whereby they have wholly confounded the very essence of truth and falsehood, of right and wrong; so that it will take thirty years to decide, whether the field left me by my ancestors for six generations belongs to me, or to a stranger three hundred miles off.

Of course this is a caricature of law, but it is an instructive caricature. It is through hyperbole and exaggeration that Jonathan Swift's satire gives visibility to some of the major problems affecting legal practice: incomprehensible jargon, the sheer volume of obscure laws, judgments that run counter to the good sense of people who do not have legal training, etc. Every jurist should be able to recognize these problems precisely in order to minimize them ("minimize them" because their full elimination is very unlikely). Every jurist should stop at some point to think about how their profession is viewed from the outside, by people who do not know the law and perhaps feel intimidated or alienated by it.

The general lessons that can be derived from literature are not, therefore, at the level of so-called “legal dogmatics” – that is, of subjects explored by practical disciplines such as civil, criminal, or commercial law. They are at the level of theory of law, a discipline – or rather a set of disciplines that encompasses the philosophy of law, the sociology of law, the history of law, and so on – which is devoted to discussing law *in general*. The theory of law analyzes law as a social institution that usually manifests a series of virtues and flaws and that is related in a complex way with other systems of social regulation: ethics, politics, religion, etc. Literature is an important source of stimulus for reflection on issues that are at the (philosophical, sociological, historical) level of legal theory, not at the level of legal dogmatics.

The theory of law is traditionally taught through “non-fiction” books written by experts in philosophy of law, sociology of law, history of law, etc. The argument put forward here is not that literary works would be superior to specialized books, nor that literary works should replace specialized books. On the contrary, from the pedagogical point of view, it is interesting to combine the two types of text in order to expose students to a varied bibliography and to maximize the chances that everyone will have access to the kind of text that will seem most persuasive to them. The idea, in other words, is not to replace Hans Kelsen by Harper Lee, but to introduce the student to the two authors, in the same course³.

3 ETHICAL LESSONS

It is also common to say that literature is a source of ethical lessons. This idea is subject to two interpretations, here called “strong” interpretation and “weak” interpretation. In this section I question the strong interpretation and advocate the weak interpretation.

3.1 Strong interpretation

According to Robin West (1988, p. 877-878), “Literature helps us understand others. Literature helps us sympathize with their pain, it helps us share their sorrow, and it helps us celebrate their joy. It makes us more

³ For a detailed account of a pedagogical experience that combined literature and philosophy of law, see Philip Kissam (1998).

moral. It makes us better people”. West believes that literature is capable of humanizing the jurist. The lawyer who comes into contact with literature will be less opportunistic. The judge, less cold. The prosecutor, less insensitive to the defendant’s suffering. And so on.

Another author who did much to lend credibility to this idea was Martha Nussbaum. Nussbaum (1995, p. 27-34; 90-97) argues that the novel is particularly effective in the jurist’s moral transformation. The very structure of the novel tends to convey an egalitarian message. Although dealing with universal themes (love, death, betrayal, justice, etc.), every novel delves deep into the lives of specific characters (Madame Bovary, Capitu, Pedro Bala, Macabéa). To ensure dramatic effects, novels usually focuses on the lives of characters who suffer in some way (by virtue of poverty, betrayal, discrimination etc.). According to Nussbaum, this combination of elements – universality of the theme, focus on specific characters and suffering – has a subversive effect. It is more difficult to preserve our stereotypes and prejudices against certain social groups after coming into contact with a credible story about the suffering of individuals within that group.

Nussbaum gives as an example the novel *Maurice* (1971), by E. M. Forster. *Maurice* leads the reader to closely follow the suffering of a homosexual man in early twentieth-century England. The book presents no abstract arguments against homophobia; it invites us to live the drama of a specific individual, who is attracted to other men and suffers intensely because of it. Social conventions reject him, his own family does not understand him, and he feels lonely. More important, according to Nussbaum, is that the book avoids the stereotype of the homosexual as a man of dissolute life. Maurice, the protagonist, is a middle-class man who is nothing special – he is neither good nor bad, he is neither a hero nor a villain. The only thing that distinguishes him, the reason for his suffering, is the fact that he is a homosexual.

Another author whose work is relevant to this discussion is Lynn Hunt (2009). Hunt makes a statement about the moral impact of literature that is at once more modest and more audacious than the ideas of West and

Nussbaum. Hunt believes that the growth of the epistolary novel as a literary genre in the eighteenth century contributed to the emergence of the notion of human rights. The plot of works like *Julie* (1761), by Rousseau, is developed through letters that reveal the intimacy of the characters. Epistolary novels moved generations of readers who are supposed to have been encouraged to expand the boundaries of their empathy, beyond the immediate community, toward other groups and cultures. Hunt's thesis is audacious because it treats the epistolary novel as one of the factors responsible for establishing one of the most important political concepts of modernity – the concept of human rights. On the other hand, Hunt's thesis is relatively modest insofar as it concerns a specific type of literary work that achieved success in a particular historical moment. Perhaps Hunt would not say that literature makes people better (at different times and contexts), but that a certain type of literature contributed to social progress at a given historical moment. Whether literature holds that power contemporaneously, it is another question. (Hunt's ideas will be discussed again in section 3.3.)

3.2 Explanation on the strong interpretation

It is possible to be moved by the suffering of another person (real or fictitious) without being impelled to help them or to help other people in a similar situation. In other words, empathy and sympathy do not necessarily lead to benevolent actions⁴. West and Nussbaum seem to think that literature is capable not only of moving the reader, of making them feel affected by the feelings of characters of fiction, but also of leading the reader to somehow change their behavior towards people who face similar problems. This is one of the reasons why the position of these authors can be referred to as “strong”. They think that literature is capable of changing the reader's opinion and behavior, making him / her a better person. (Hunt

⁴ Empathy and sympathy are subtly different concepts (Keen, 2007). We empathize with another person when we feel what he / she feels (we suffer with their suffering, we rejoice with their joy). On the other hand, sympathy does not come when we feel *the same* as someone else, but when a feeling of support is stimulated in us by what another person feels (we feel *sorry* for someone else's suffering or *relief* from their joy). Empathy can lead to sympathy and thus to benevolent action. But this does not always occur. Empathy can also have the inverse effect of generating a sense of aversion that leads us to avoid the subject rather than combat the problem. Think of the person who, faced with the suffering of a character in a movie, prefers to stop watching so as not to suffer as well.

might have meant that literature *was* capable of changing the eighteenth-century reader's political mindset, which differs from believing it still has the ability to continue to exert moral influence on the contemporary reader.)

Another important distinction concerns the moral impact of *reading literary works* in contrast to the moral impact of *the teaching of literature in the school or university setting*. It is one thing to say that reading novels has a positive effect on people's behavior; another thing is to say that literature courses (or "law and literature") have a positive effect on people's behavior. West and Nussbaum argue that the reading of works of fiction, by itself, has a positive effect on the formation of the jurist. For them, it is important that judges and lawyers read novels like *Maurice*. It would be better if they had the opportunity to discuss the novel deeply in the classroom under the guidance of a specialist, but none of this seems to be strictly necessary.

In short, authors such as West and Nussbaum think that reading literary works has in itself a positive effect on the behavior of jurists. This is the idea that I intend to question in the following section.

3.3 Objections to the strong interpretation

West and Nussbaum's ideas are plausible and attractive. However, they are subject to some important objections. In this section, I make three of them. The first objection is well known among "law and literature" scholars. The other two are less discussed.

First objection: *while there are good works, there are also bad works*. If literature is capable of humanizing us, then perhaps it is also capable of generating the opposite effect. Not every novel has a benevolent message like *Maurice's*. Some books, though well written, may be immoral or, at least, morally controversial. If literature is as persuasive as West and Nussbaum think, then it can lead the reader to adopt moral opinions of all sorts, for good and evil. As Joshua Landy (2008, p. 79) says, "anyone who can be converted to a view by a fiction can be converted *out* of it by a fiction. If *Gandhi* is enough to turn me into a pacifist on Thursday night, then *Malcolm X*, which I watch the following evening, is enough to make me believe in the necessity of violence".

According to Richard Posner (2009, p. 462), the classics of literature are “brimful of moral atrocities [...] depicted with uncritical acceptance and often with relish”. Posner formulates a long list of atrocities that appear in famous literary works – for example: homicide, slavery, misogyny, racism, homophobia, fascism, religious obscurantism, torture, mutilation and sadism. What does this list of atrocities reveal? Instead of saying that “literature helps us to understand others”, the most West could say is that *one part* – perhaps the smallest – of literature helps us to understand others, while another part encourages prejudice, hatred, revenge, elitism, sexism, etc. Literature does not always attack stereotypes; sometimes it incorporates and reaffirms stereotypes that are already in place.

Second objection: *the idea that literature is influential is also popular among censors*. Besides noting that not every literary work carries the kind of message valued by West and Nussbaum, it is important to keep in mind the political risks associated with the dissemination of the idea that literary works are persuasive. The idea that literature influences our beliefs and behavior is often used by official institutions interested in controlling artistic expression. Take the case of *Madame Bovary* (1856), a novel that faced legal problems by exploring the subject of adultery, seen as taboo in nineteenth-century France. One of the concerns of the prosecutor of the case was precisely that *Madame Bovary* had a bad influence on young readers: “Who reads Mr. Flaubert’s novel? Are they men engaged in political or social economy? No! *Madame Bovary*’s frivolous pages fall into more frivolous hands, into the hands of girls, sometimes married women”⁵.

In an internal report, a Russian censorship official stated that Ivan Turgenev’s book, *Sketches from a hunter’s album* (1852), “does more harm than good”. The accusation is elaborated in the following terms (Turgenev, 2017, p. 478)⁶:

What is the use of, for example, showing our learned people [...] that our peasants are oppressed, that the

⁵ This is an excerpt from Ernest Pinard’s address, transcribed as part of the case file against Flaubert in one of the Brazilian editions of *Madame Bovary* (Flaubert, 2009, p. 317).

⁶ The quotation appears in the afterword by Irineu Franco Perpetuo.

landowners, whom the author so much humiliates, exposing them as clumsy, savage and extravagant, behave in an indecent and illegal manner, that the village clergy crawl before landowners, that *ispravniky* and other authorities accept bribery and that, of course, the freer the peasants are, the better? I do not think all this can bring any benefit or satisfaction to the virtuous reader; on the contrary, all reports of this kind leave an unpleasant sensation.

As disagreeable as the censor's opinion is in the specific case of the *Sketches of a hunter's album*, this view rests on the basic idea (shared by West and Nussbaum) that well-told stories have persuasive power. They impact our way of thinking and acting; they are able to transform our opinions and our values. It is important to keep in mind, therefore, that this is a two-sided relation. The idea that literature helps to shape the thinking of the reader is as much a reason for celebration among friends of literature as a historical source of motivation for censorship. The list of authors who have been censored throughout history is impressive. It includes Flaubert, Turgenev, D.H. Lawrence, Joyce, Nabokov, Soljenitsin, Jorge Amado, Plinio Marcos etc⁷.

Third objection: *the empirical evidence of literature's influence is not strong*. The idea that literature is capable of humanizing the jurist (as well as the idea that it is capable of doing the opposite) rests on empirical assumptions that deserve careful investigation. Is it true that a novel can significantly alter our point of view, disrupting our stereotypes and prejudices? If a novel can change us for the better, could it also change us for the worse? Fortunately, there are some empirical studies on the subject in the international literature. Some are psychological studies; others are historical-sociological studies.

Among the studies of the first type emerges a particularly important notion, the notion of *transportation* (Liao and Gendler, 2010, p. 84-87). Transportation is the psychological process that occurs when a reader plunges into the world of fiction and momentarily loses contact with the

⁷ Elisabeth Ladenson (2007) analyzes in detail the legal controversies that have arisen around some of these works.

real world. Interesting is what happens when the reader “returns” from the imaginative journey (Mazzocco and Green, 2011, p. 27-28):

[...]recipients of persuasive narratives (e.g., films, books, verbal communications, etc.) can become mentally transported into the world of the story [...]. While in this story-world, participants are said to partially lose touch with their own world. In this way, narratives can function as an escape from reality. When recipients return to their own world, the theory of transportation suggests they often return bearing the influences of the story world. [...] For example, readers of Steinbeck’s *The Grapes of Wrath* are likely to become more sensitive to the plight of the working man, and perhaps also more skeptical about motives of big business.

The transportation phenomenon is evidenced in psychological studies with participants reporting the experience of engaging intensively with a story and having their opinion altered at the end of the experiment. In one of these studies, college-age students were exposed to a story that promoted tolerance toward homosexuality⁸. In the story, two school-age friends talk about sexuality. One of them recently came out as homosexual; and the other, who is heterosexual, reacts positively. In order to control differences in the affinity of each participant for fiction, the researchers proposed to them at the beginning of the experiment some questions to ascertain whether they were naturally inclined to be moved by stories. In fact, participants who claimed to be persuaded by the story about homosexuality were also those who, at first, presented themselves to researchers as highly susceptible to fiction. Participants who were persuaded by the story are the same ones who indicated they were easily involved with the plot of films, books and other types of narrative discourse. They are people who already recognized themselves as having a propensity to identify with the characters and be moved by their suffering. On the other hand, other participants, those who soon claimed to have difficulty digging into fiction, responded to the story differently. At the end of the experiment, they said they were less affected by the contact with the story proposed by the researchers. They experienced what can be called “imaginative resistance”.

⁸ On this and other studies, see Mazzocco and Green (2011).

In summary, the studies on transportation only *partially* corroborate West and Nussbaum's point of view. On the one hand, they indicate that literature has the capacity of transforming the reader's opinion⁹. On the other hand, the effectiveness of transportation depends on the reader's *previous tendencies*. There are readers who are more easily involved with stories and who are therefore more susceptible to transportation. Other readers are less susceptible. The latter will hardly have their point of view transformed by novels and other works of fiction. They will experience imaginative resistance more often. That is, they will have difficulty digging into a story and performing the mental exercise that fiction requires: the characters will not seem interesting, the story will not appear to be natural or believable.

The reforming power of literature is also an object of discussion from the historical-sociological point of view. If literature were really capable of deconstructing prejudices and stereotypes among its readers, it would also eventually be able to undermine political institutions. In order to do so, it would be sufficient for books with subversive potential to spread and reach politically influential readers. In the global literature, there are several authors who receive credit for having promoted social transformations of first importance. Consider some examples¹⁰.

Harriet Beecher Stowe's *Uncle Tom's Cabin* (1852) offers a critical and dramatic portrait of slavery in the United States. The novel is said to have helped to provoke the American Civil War and, indirectly, the abolition of slavery in that country. *Sketches from a Hunter's Album* (1852), by Ivan Turgenev, brings together tales that portray the poor Russian peasant in a humane way, in contrast to the frivolous and cruel landowner. The stories supposedly helped persuade Czar Alexander II to abolish the system of serfdom in 1861. *One day in the life of Ivan Denissovitch* (1962), by Alexandr Soljenitsin, is a detailed account of the harsh living conditions in a Soviet labor camp. The book contributed to the defamation of Stalinism and, indirectly, to the overthrow of the Soviet system.

⁹ It is important to note that a transformation of the reader's opinion does not necessarily generate a behavioral transformation, as we saw in item 3.2. People susceptible to transportation are easily moved by dramatic stories; but this may not result in clear behavioral change.

¹⁰ These and other cases are studied in detail by Michael Hanne (1994).

Affirmations like these should be interpreted with caution. It does not mean that they are false, but they are all a bit misleading. It is very natural to understand them as pointing to direct relationships between the publication of each work and the occurrence of the respective social transformation. Michael Hanne offers qualifications to this kind of interpretation. They are caveats that help us understand the kind of contribution – limited and unpredictable – that the publication of a literary work can bring to social progress.

Hanne begins with an analogy. The above statements can give the impression that a literary work is capable of having on the existing social institutions an analogous effect to that of a stone thrown into calm waters. When it falls, the stone generates small waves that gradually spread over the surface of the water. The image is familiar but dubious. A preferable analogy would be that of a rock thrown upon the surface of turbulent waters. The waves generated by the rock collide with preexisting waves that run in different directions and interact with them in a less predictable way. The truth is that all the highlighted works have emerged in complex political contexts. Their social impact, however positive it may have been, depended on their interaction with social factors over which the authors had no control. In some cases, the effects of the work may not have been those the author intended. Notably, some of these works could even have generated more negative than positive effects.

Hanne narrates, as an example, some facts about Turgenev's biography that make it doubtful that his book was written with the intention of promoting the freedom of the serfs. The book *Sketches from a Hunter's Album* introduces the reader to the cruelty of the system of serfdom and suggests that Turgenev was against the institution. But when Turgenev himself inherited the family serfs in 1850, he freed only the domestic serfs, keeping the field workers (though they allowed them to buy their freedom if they had the money). In addition, "The limits to Turgenev's sense of responsibility [...] are also indicated by his sexual exploration of serf women, by whom he had one, and possibly two, children" (Hanne 1994, p. 46). Perhaps Turgenev wanted to promote a somewhat more humane

treatment of Russian serfs by their owners. The effect attributed to *Sketches from a Hunter's Album*, however, is the very abolition of serfdom.

But even when the author's intentions are clear and benevolent, the social impact of a work of literature is unpredictable. If, on the one hand, the work serves as a source of inspiration for those who agree with its message, it can also fuel the anger of those who reject it. There is no guarantee that the work will be read by its opponents, who will tend to rely on third-party testimony and possible slanderous distortions. According to Hanne, *Uncle Tom's cabin* stimulated both the sympathy of the Americans of the North and the fury of the Americans of the South. The book came to be characterized by its detractors, without any foundation, as a book containing "ideas of loathsome depravity and habitual prostitution" (Hanne, 1994, p. 93). Decades after the publication of *Uncle Tom's cabin*, one's impression of the book was largely based on grotesque theatrical depictions that obliterated "all the moral seriousness and subtle ambivalence of Stowe" (Hanne, 1994, p. 108).

In addition to misinterpretations, books that touch on socially sensitive issues can be the target of political propaganda and deliberate manipulation. Since its publication, *A Day in the Life of Ivan Denisovitch* was used as a political party weapon. At first, the fate of the book was uncertain in the face of censorship in the Soviet Union. However, in 1962, Nikita Khrushchev personally promoted the publication of Soljenitsin's work believing it would have an important role to play in his political campaign against Stalinism. The success of Khrushchev's campaign depended on his ability to bring out Stalin's crimes. A vivid account of life in the forced labor camps might be useful for this purpose, even if the account appeared in the form of a book of fiction. For Khrushchev, it mattered little whether Solzhenitsyn's real intention was to attack Stalinism or if he had much broader targets, such as Soviet socialism itself or totalitarianism in general.

As seen in section 3.1, Lynn Hunt attributes to the eighteenth-century epistolary novels the great feat of having paved the way for the dissemination of the concept of human rights. She does not say that novels were the only ones responsible for this political revolution, but she says

they had an important role to play: “I do not dare say that the reading of novels was [the only factor]. Still, reading novels seems especially pertinent, in part because the peak of success of a certain type of novel – the epistolary – coincides with the birth of human rights” (Hunt, 2009, p. 40). At another point, she poses the following rhetorical question: “Would it be a coincidence that the three greatest novels of psychological identification of 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»?” (Hunt, 2009, p. 39).

Hunt acknowledges that the novels to which she attributes the positive effect of expanding the limits of readers’ empathy were also the object of the charge that they would have socially degrading effects: “In 1792 an anonymous English critic still insisted that «the rise of novels helps explain the increase in prostitution and the numerous adulteries we have heard of in the different regions of the kingdom»” (Hunt, 2009, p. 53). It is likely that the English critic was exaggerating the increase in prostitution and infidelity during the high point of the epistolary novel. But even if he could present statistical evidence, what would his argument prove? Would the temporal coincidence between the popularity of novels dealing with such topics as adultery and the increase of infidelity show that novels are among the causes of infidelity? It is possible that there is no causal relation between these things or even that the relation runs in the opposite direction: the social perception that adultery occurs frequently can serve as a stimulus for authors to write on the subject.

Hunt does not consider the fact that her position is subject to the same objections that may be opposed to the English critic she cited. The temporal coincidence is a relatively weak indication of the existence of a causal relationship between the popularity of the epistolary novel and the advent of human rights. In fact, it is probable that these phenomena were both effects of some independent cause, such as capitalism and the expansion of the middle class. These and other social factors may have simultaneously fostered the taste for literature and the spread of bourgeois antipathy to caste systems.

There is a relationship of temporal coincidence between the publication of each of the books discussed above – *Uncle Tom's cabin*, etc. – and every political event that has ever been associated with them – the abolition of slavery, etc. Hanne's research is justified precisely as an attempt to investigate several factors that could have contributed to those political events and which, therefore, allow us to estimate with more precision the effective contribution of each work. Hunt does not offer the same kind of thorough analysis – which makes her conclusion appear hasty.

3.4 Weak interpretation

Perhaps it is an exaggeration to attribute to literature the ability to make us better people. On the psychological level, we have seen that there are limitations to the persuasive power of literature: however good a work is, not every reader will be “transported” by it. On the historical-sociological level, we have seen that the social impact of a work depends not only on its moral merits, but on a series of historical contingencies over which the author has no control. But this does not mean, of course, that literary works are innocuous. Even when they are unable to convert their readership or promote social progress, good works are still capable of motivating us to think carefully about important moral problems.

The psychology studies mentioned earlier also serve to clarify which are the factors that maximize the persuasive power of fiction. A bad storyteller can fail to be persuasive even when the public is susceptible to transportation. The storyteller is always partly responsible for the success of narrative persuasion. Persuasive stories tend to be those that have the following characteristics (among others): vivid description of characters, clear causal structure and – most important for the purposes of this article – subtlety of meaning (Mazzocco and Green, 2011, p. 27-30).

To facilitate transportation, it is necessary to describe well the characters and the environment that surrounds them. When readers and listeners can clearly imagine the setting and the individuals who act on it, they are more likely to delve into the story and to understand the feelings and motivations of the characters. The structure of the story, in turn, is important because viewers often feel more comfortable with stories that

have beginning, middle, and end, in which events are well-concatenated and it is possible to clearly state what causes which effect. Plot holes and improbable coincidences are structural problems that undermine narrative persuasion¹¹. Finally, people do not always respond well to obvious messages or blatant attempts to persuade. When a salesperson or politician tells a personal experience that purports to be touching, we tend to react with skepticism because their intentions are more obvious. First of all, they want to sign a contract or win a vote, which makes their stories seem insincere¹². The same principle holds true in the field of literature. One trait of fiction that is able to persuade the reader is its relative subtlety. It does not deliver its message in a direct or pamphleteering way, but gradually and obliquely.

Recognizing the importance of the subtlety of literature is an important step in explaining the weak version of the idea that literature is the source of ethical lessons. One characteristic of good literary works is their subtlety¹³. They do not usually present an obvious message, nor do they clearly separate the heroes from the villains. Good literary works do not usually paint social life in black and white, but they paint moral problems with different lights and with attention to their various aspects. They do not give a ready answer to the reader, that is, even when they suggest a response at the end, they reach it gradually, portraying the different sides of the question. Good literature is averse to ready-made answers. As James Seaton puts it, it is important to use literature to address moral problems “not because any univocal answer is forthcoming, but because literature provides a salutary check on the human willingness to be

¹¹ The authors of the psychological studies in question have little to say about the possibility that chronological inversions, inconsistencies and other structural “problems” are deliberately used by authors whose aim is to shock or disturb the reader. Perhaps this omission is due to the fact that researchers test the persuasive power of unpretentious narratives that may appeal to the average reader. The focus of the studies is not on the contact of readers with narratively complex or works that are innovative from the literary point of view.

¹² The effectiveness of commercial and political discourse depends, of course, on the ability of the speaker and the degree of naivety of the audience. There are many politicians who manage to engage their audience with personal stories. The point is that the politician and the salesman face a greater challenge to overcome the skepticism of their audience than speakers who are not seen from the beginning of the speech as having second intentions.

¹³ In addition to a factor that maximizes the persuasive power of narrative, subtlety is often valued as something that gives *artistic* value to the literary work.

satisfied with slogans, especially those of one's own party” (Seaton, 1999, p. 507).

Consider an example. Emma Bovary, the famous protagonist of Gustave Flaubert’s book, betrays her husband, Charles Bovary, on different occasions. Charles is a passionate husband and a loving father. Emma has affairs with other men and indebts her husband with her extravagant habits. Thus described, the book may sound like a denunciation of Emma’s frivolity. But the story is much more complex than that. Emma was raised in the countryside and educated in a convent. She agrees to marry Charles probably because he was the first man to propose marriage to her. Charles also impressed her by being a doctor and enjoying a certain prestige in the provincial society in which they lived. In a short time, however, Emma realizes Charles’s mediocrity. He is a doctor, but a doctor of limited ambition and abilities. In fact, Charles has several faults: he is conformist, conventional and insensitive to his wife’s longing. Emma, on the other hand, is romantic, likes to read and dreams of traveling.

The reader (unless unsusceptible to transportation) is induced to feel the deep boredom and moral suffocation that Emma suffers as the mother, housewife and wife of a country doctor. It was not what she wanted for her life. Emma becomes involved with other men, is also disappointed with them, despairs and dies in a tragic way. The book’s message is not clear in terms of heroes and villains. The reader is torn between contempt for Emma (who ruins both psychologically and financially a kindly husband) and compassion for the psychological prison in which she finds herself (by marriage without passion and the insipidity of life in the countryside). Whatever the conclusion a reader can get from *Madame Bovary* (1856), the novel compels one to think carefully about marriage and the conventions that define it. The transformation does not necessarily take place because the reader will be *converted* to some moral position clearly defended in the book by Flaubert himself. On the other hand, a subtler transformation can be made to the extent that the book contributes to make the reader a person with more reflected, deep and thoughtful opinions about marriage. In my opinion, this is the great moral value of literature: good books, at least, inspire thoughtfulness.

Madame Bovary is not a novel that discusses the law explicitly. Its lessons relate to other aspects of social life: family, marriage, romanticism, etc. In section 2, on the other hand, I mentioned different examples of literary works that have the law as a prominent theme. The value of the works by Shakespeare, Swift, Glaspell, Kafka, Camus and Harper Lee is not in their (dubious) ability to make us more benevolent jurists, but in their ability to make us think deeply and critically about law and perceive problems in law that usually go unnoticed.

4 CONCLUSION

The “law and literature” movement – especially in the area that is usually identified as “law *in* literature” – discusses the value of literature for the jurist. Reading good literary works could be a way of acquiring general culture, gaining eloquence, and also learning important lessons about law and ethics. Not every literary work deals with law, but those that explore legal issues are able to make us reflect carefully on general characteristics of the legal system. These works are also capable of making us reflect carefully on our ethical obligations as lawyers, judges, prosecutors, law teachers, etc.

This paper sought to show that the ability of literature to make us reflect on the jurist’s ethical obligations should not be confused with its (supposed) ability to humanize us, that is, to make us more honest lawyers, more understanding prosecutors, more just judges. The role of literature as an agent of this type of moral reform is subject to different objections. It is an empirical hypothesis that has not yet received clear confirmation in the fields of psychology and sociology. It is also a politically risky idea, serving the purposes of censors and other enemies of literature.

Another way of characterizing the position advocated in this article is as a kind of middle ground between extreme positions that have already been defended by other authors. If, on the one hand, there are those who think that literature is capable of making us better people, on the other hand there are those who think that literature stimulates “moral anarchy” (Posner, 2009, p. 463). It is true that there are works that convey a moral

message of inclusion and benevolence, but others convey a message of intolerance and prejudice. In speaking of moral anarchy, Posner suggests that the jurist who comes into contact with the two types of work will have access to diametrically opposed messages – positive and negative – and therefore only some kind of moral nihilism or relativism can derive from this experience.

It is here that the importance of professors of “law and literature” (as suggested in section 3.2) becomes evident. It is true that the indiscriminate reading of literary works can expose the reader to antagonistic messages. But the teaching of “law and literature” requires discrimination – not between “good” and “bad” works, but between subtle works and works that read like pamphlets. The works that are usually valued in courses of “law and literature” are works of the second type; those that do not offer obvious and definitive answers to the problems they raise or that offer them only in a nuanced way. The lesson of these works is not relativism – that is, the idea that “anything goes” in the field of morality – but the very different idea that moral problems require careful thought and reflection.

It is necessary to recognize that the weak version of the idea that literature is the source of ethical lessons, that is, the hypothesis that good literature can motivate us to reflect carefully on complex moral issues also depends on empirical corroboration. But even in the absence of specific experiments that test this hypothesis, it has clear advantages with respect to the strong version. The weak version avoids the other objections discussed throughout the article. The weak version applies to both benevolent works and to works with morally dubious messages: any work can provoke reflection, whatever its final message is, provided that it describes it subtly. Moreover, the weak version is not also subject to strong reactions by censors. Censors often invoke the idea that literature is capable of corrupting, not the idea that it makes us think. Closed political regimes are also concerned with the second effect, but this concern hardly appears in their official rhetoric.

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