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THE TALE AND THE LAW: *HÄNSEL UND GRETEL* AND THE LAW ON FALLEN WOOD THEFT

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ABSTRACT: This research aims at demonstrating the multiple aspects of a law through the analysis of different forms of stories, such as literary narratives and journalistic articles. The object of this analysis is the Theft of Fallen Wood Act and its impact in Germany in the 19th century. One of the hypothesis is that there was strong criticism directed to the criminalization of this conduct (the gathering of fallen wood, which used to be recognized as legitimate) in the folk tale *Hansel and Gretel*. The research studies short stories as a literary narrative form, focusing on the work by W. Benjamin, and the tale *Hansel und Gretel*, by R. Darnton, based on the social history of childhood, by P. Ariès. It also analyses the law on fallen wood theft and its debates and reports by Marx in the *Rheinische Zeitung*. The research shows that the reactions and consequences of a law may be registered in many ways.

KEYWORDS: Law; Literature; Folk tales; Law on fallen wood theft.

1 INTRODUCTION

A law has legal but also political and social dimensions. Therefore, the isolated study of a law is not sufficient to understand it in all its dimensions, considering its reasons to be and the further consequences due to it. The aim of the research is to demonstrate that the same phenomenon can be dealt with by different forms of language and that the unfolding of a legal

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act can be achieved by analyzing different forms of linguistic expressions that report it, such as literary narratives and journalistic articles. This possibility amplifies the total understanding of the phenomenon that one wants to understand, in order to additionally demonstrate that legal acts have deep social and political articulations.

The pluralism of a legal act allows its comprehension by means of the knowledge of the law in which it is projected, but also by the reading of literary narratives, as well as by journalistic reports. The subject of analysis in this article was the law on theft of fallen wood and the repercussion of its proposal, approval and validity in Germany, in the 19th century. Karl Marx produced a series of journalistic articles on this subject, and the hypothesis of this research is that there is also a veiled representation of criticism directed to the criminalization of this conduct (the recollection of fallen wood, hitherto seen as a common habit, recognized as legitimate) in the narrative of the children's story *Hansel and Gretel* (*Hänsel und Gretel*). To begin the investigation, the story was studied theoretically as a literary narrative, based on the writings by W. Benjamin. This study was accompanied by a previous analysis of the implied meanings in the “stories that the peasants tell”, as proposed by R. Darnton, in a specific analysis on the tale *Hansel and Gretel*. Furthermore, the social history of childhood was investigated, with reference to the study of P. Ariès, aiming at determining what exactly was seen as a “children's tale” in the 19th century.

Finally, the paper analyzes the case of the law on theft of wood and the interpretation given by Karl Marx in the *Gazeta Renana*, through journalistic materials that seek to demonstrate the selfish foundations and perverse consequences of this law. Marx's criticism had as its main basis a claim to the “natural right” of men to survival. By proposing a re-reading of the story *Hansel and Gretel*, it is possible to identify in the social condition of the woodcutter, parent of the children, a cruel consequence of the criminalization of collecting fallen wood, which determines the impossibility for the family to obtain firewood to produce heat, cook, and sell. In several literary narratives which depict the world of the European peasant in the previous and current period of the Industrial Revolution, there are recurrent records of death by cold or famine.

The research revealed that the literary production of the Grimm brothers constituted a vigorous work of registering the folk culture, reason why Jacob and Wilhelm Grimm are considered founders of the German philology, pioneering a method of folklore preservation, that exerted considerable influence to the Historical School of Law in Germany. It also revealed that the reaction and consequences of a legal act can be recorded in many ways, allowing for further revision and discussion of law and power relations by reading multiple forms of literary narratives, including popular children's tales. Thus, this is a bibliographical and transdisciplinary research, which relates to Law, History and Literature.

2 THE TALE, SURVIVAL AND THE INVENTION OF CHILDHOOD

One of the objectives of this study is to explore the relationship between Literature and Law, increasing the thesis that it is possible to extend the understanding of legal forms through the knowledge and analysis of multiple literary narratives. For this, the research is guided by the concept of A. Candido (2011, p. 176), when he defines literature as “all creations of poetic, fictional or dramatic touch at all levels of a society, in all types of culture, ranging from what we call folklore, legend, joke, to the most complex and difficult forms of written production of the great civilizations”. In this way, it is recognized that all peoples had some sort of fables and that all individuals experience daily fictional or poetic creation experiences.

The interface between Law and Literature necessarily recognizes the multiplicity of possibilities for the latter, since it recognizes the existence of fictional and historical narratives and its functionality as a social reporting tool. Beyond this function, we have literature as an instrument of formation and persuasion, as in the proposal of engaged literature, or, as Sevcenko (1985) supported, literature taken as a mission. Literature can also turn to delight, to the elevation of the spirit, by pure aesthetic enjoyment, as recorded by Candido (2011). This multifunctionality is put to the most diverse forms of written expression, from scientific treatises to romantic literature, as long as the objectives of the novel are questioned. This paper explores, in its application perspective, whether the reading of the world

can be obtained in literary sources as diverse as academic texts, opinion pieces, and children's stories. What does a writer want when writing a short story? What is children's literature? What are fairytales? Is it possible to imagine a historical and critical reports from reading one of the Grimm brothers' tales?

To answer these questions, the articulation of Law and Literature cannot escape the encounter of the historiographic components that this articulation implies. Benjamin (2016, p. 11) teaches that historically articulating the past does not simply mean recognizing it "as it was": "it means to take possession of a memory (*Erinnerung*) when it comes over as a flash in a moment of danger". This article is the result of an investigation that sought to bring light to a strategy of domination that used juridical forms as its main instrument and that has in literary narratives a form of denunciation. The reflections that were made to articulate the story and the law begins with an understanding of what a tale is and what it means to label some of them as "children's stories".

2.1 Tales as literary forms: the importance of telling stories

This research encountered as its first challenge the definition of tales as literary forms and justifying why children's stories are seen as a variety of literature or a literary genre. On the question of literary genres, Todorov (1975, p. 12) states that "not recognizing the existence of genres is equivalent to supposing that a certain literary work does not maintain relations with previous works", since "genres are precisely these scales through which the work relates to the universe of literature". Thus, in beginning a study of the tale, one must see it as a specific literary genre, in prose, to be read. Being it a specific literary genre, it is framed as a form of narrative and, from this perspective, it is important to analyze the theory of narration conceived by W. Benjamin, in order to guide our first reflection.

The reflections of W. Benjamin compose a mosaic that reoriented the conceptions of historiography itself. For Gagnebin (1987, p. 7), based on the production by Benjamin, it is possible to formulate "a critical reflection on our discourse on history (and on stories), a discourse that is inseparable of

practice, so to speak”. Through the question “what does it mean to tell a story, stories, history?”, Gagnebin seeks in Benjamin his theory of narration, which aims at overcoming the dichotomy established up to that time between a progressive historiography and a bourgeois historiography. The first was a conception of history in force in the German Social-Democracy of Weimar, driven by the idea of inevitable and scientifically foreseeable progress; the second, named historicism, sought to revive the past through an affective identification of the historian with its object. For Benjamin, according to Gagnebin (1987, p. 8), both are based on the conception of a homogeneous and empty time, a chronological and linear time, generating now an eternal image of the past (historicism), hence, they are theories of progress. Thus, Benjamin’s proposal is that a historical study should promote an “experience with the past”. This experience with the past partly depends on how it presents itself to us. And here a twist is made toward another of Benjamin’s great contributions: his critical analysis on the effects of modernity in art, centered on the loss of magic through reproducibility and technique.

On the craft of constructing narratives, Benjamin (1987, p. 197) states that “the art of narration is on the verge of extinction. People who know how to narrate properly are more and more rare”. For this reason, Benjamin focuses on the art of telling stories, and his criticism runs the risk of losing this possibility of historical experience through narratives: “the art of telling stories becomes more and more rare because it starts, fundamentally, with the transmission of experiences in a full sense, whose conditions of realization no longer exist in the modern capitalist society” (Gagnebin, 1987, p. 10). One of the causes of this loss is the rupture between narrator and listener, since the experience transmitted by the narrative must be common to the narrator and the listener, presupposing a community of life and discourse that the development of the world, subjected to technology, has destroyed. The world of modern (non-artisanal) industrial capitalism installs a distance between human groups, especially between generations, since they constitute such different living conditions that the human capacity for assimilation and understanding becomes incapable of accompanying. Human groups lose the ability to exchange experiences.

The art of telling stories loses its power, its function and its meaning when the communion of experience is lost. What, however, does not subtract the importance of narrating, but rather highlights the importance of its existence. Examining secular (and even millennial) narratives, it is possible to agree with Benjamin that their longevity is due to the fact that they have been told without definitive explanations, thus allowing the story to admit several different interpretations, remaining open, available for a renewal which each future reading is capable of promoting. Benjamin (1987, p. 204) states that “Herodotus explains nothing. His report is one of the driest. That is why this history of ancient Egypt is still capable, after millennia, of arousing astonishment and reflection”.

It was with this orientation that the research undertaken sought to reveal what was historical in the story of Hansel and Gretel, what can still be surprising in this little children’s story, in an attempt to demonstrate that Benjamin (1987, 205) was correct in affirming that “telling stories has always been the art of retelling them”. In this endeavor, the production by historian R. Darnton (2015) provided another perspective of foundation for this study. Darnton is engaged in an investigation into the *stories that peasants tell*, searching for the meaning in the stories of Mother Goose, placing as his field of study the cultural history, the North American correspondent for the history of the mentalities, from France.

For Darnton (2015, p. 13), ethnographic historians study how ordinary people understood their world by showing how they organized reality in their minds and expressed it in their behavior. The force of these stories is due to the universality of the motif of the narratives, which are adapted to the time and place in which they appear. But one should not expect direct social commentaries or metaphysical allegories, but “a discourse capable of communicating a particular *ethos* and worldview” (Darnton, 2015, p. 29). By these narratives, the American historian asserts that common life required a strategy. Under this double contribution, by Benjamin and Darnton, what is it that presents itself as history and as living strategy in the narrative of *Hansel and Gretel*?

2.2 *Hansel and Gretel*: telling and remembering

Benjamin (1987, p. 37) teaches that “the event remembered is limitless because it is only a key to everything that came before and after”. The narrative may be stronger than time, when the task of the writer is not limited to simply reminiscing events, but, as Proust defended, to subtract them from the contingencies of time and turn them into a metaphor. Under this guidance, a new reading of the children’s story *Hansel and Gretel* was proposed.

The focus of the narrative for this study is the first part of the story. In the chosen version, translated from German by Tatiana Belinky, the tale *Hansel und Gretel* is titled *Joãozinho e Mariazinha*, in Portuguese, and thus begins:

Near a great forest lived a poor woodcutter with his wife and two sons; the boy was called Joãozinho and the girl Mariazinha. The man had little to eat, and once, when there was a great famine in the country, he could not earn even for the daily bread (Grimm; Grimm, 1989, p. 79).

The narrative follows with a dialogue between the woodcutter and his wife, who suggests that the next day the two should take the children to the forest and leave them there before they go to work to get rid of them. The man refutes vehemently, but the woman insists and does not “leave him alone and quiet until he agreed”. At this point, the narrator states that the children heard what the stepmother said to their father. Joãozinho reassures his sister and collects pebbles to map the way back home. When they arrive in the middle of the forest, the father asks the children to gather firewood to light a fire so that the children would not feel cold. Joãozinho and Mariazinha *collect the sticks*, light the fire, and are informed by their stepmother that they must stay there while she and her father enter the forest in search of firewood.

The narrative follows with the return of the children home and again with the statement that “soon there was misery again everywhere”. This time, as they are led into the forest, they leave a trail of crumbs, which are eaten by the birds. The elements searched for by this research are already in place. From this point on, the fantastic becomes the predominant bias, when the children are hungry, on the third day in the forest, and find the house of bread, cake and sugar where dwelled a witch (“a very, very old woman, supported by a crutch”). She holds and feeds the two children

until she is defeated by them, thrown into the oven and ends up dying of burnt. Then the children find treasures in the house of the witch and carry pearls and gold home. When they return, it is known that the woman had died and the father had not had “a moment of peace since leaving his children in the forest”. The three of them lived happily together.

Not without first suggesting the evil in the figure of the stepmother and the witch-woman, the tale refers to a desolate scenario of hunger and misery. The narrator gives no specific cause for such poverty. There is no mention of weather disasters or other circumstances that determined that a couple could not continue to be able to feed their children with their work. The adults in the story show that they have full capacity for work, as do the children themselves. Darnton (2015, p. 17) suggests that “diverting from the beaten path may not be a great methodology, but it creates the possibility of appreciating some unusual points of view, which may be the most revealing”. Thus, new questions are put to the tale in order to overcome what Darnton (2015, p. 23) called “blindness to the historical dimension of folktales”: what has changed in the conditions of survival of the woodcutter and his family? What did Jacob and Wilhelm Grimm want to re-tell and report?

The Grimm brothers, as they became known, performed a powerful work of recollecting the oral narratives that were transmitted from generation to generation in the Germanic communities. The forest, as one of the literary components present in this narrative and in many others of the Grimm brothers (*Snow White and Rapunzel*) and other authors (such as *Little Red Riding Hood*, by Perrault), suggests the coexistence of human groups surrounded by woods and isolated from others, thus not yet urbanized and in close contact with nature, in a relationship of dependence. Communities still immersed in an understanding of the world in which the forces of nature loomed as explanatory forms for real events. The forest fulfills the function of representing the abode of magical beings, the place of entities that were repudiated by Christianity, the last refuge for witches and fantastic beings. For Darnton (2015, p. 37) Grimm’s tale *Hansel and Gretel* “emphasizes the mysterious forest and naivete of children in the face of inscrutable evil, and has touches more fanciful and

poetic, as in the details of the house of bread and cake and the magic birds”.

The forest, however, is also a place of wealth and therefore of survival. The passage of the tale in which the woodcutter leaves his children in the forest for the first time suggests the importance of keeping them warm as well as fed. In the forest, wood was found to cook the bread, to heat and even to sell, in a world in which the occupations were already minimally organized. Note that the children’s father is a lumberjack. He has his identity linked to a work activity. Therefore, the forest assures him of subsistence.

The houses of the tale are also symbols explored in the various literary analyses of folktales. This is because the houses are not really two, but only one: the houses on both sides of the forest – the house of misery and the house of plenty – are actually the same house, which, in analyses that seek to explore the symbolic aspects of the tales, also represent the body of the dead mother. But these readings treat the tales as if they had no history, and therefore are not the object of further analysis in this study. For Darnton (2015, p. 29), in fact, before concealing any message with symbols, the eighteenth-century storytellers “portrayed a world of naked and raw brutality”.

The painstaking work of collecting and organizing oral narratives by the Grimm brothers became a powerful record of a time, a way of life, social and economic conditions that formed in the dawn of industrialization, which would be accompanied, in turn, of their ways of understanding and explaining the world (rationalism). In analyzing the birth of the German Historical School during the nineteenth century, Kelly (2010) tells of a generation of young German intellectuals who, to some extent inspired by the patriotic intention of resisting the French dominion over Europe, turned their interests to their own nation and its people. A genuine sense of history and a sincere passion for the understanding of the German past was awakened, and between academic study and literature, no rigid frontier was outlined. Among these intellectuals were the brothers Jacob and Wilhelm Grimm and their German folktales:

Jacob Grimm was also the founder of Germanic philology, the study of the history of language. This mentality spread both among German jurists and among

writers and poets; and the consequence was the emergence of the “historical” school of juridical science, a denomination that designates the almost two hundred year old tradition of studying not merely the law in force, but the special history, popular roots, conditioning factors, the environment of different epochs, of the legal institutions of a nation (Kelly, 2010, p. 423).

The Grimm brothers were at the dawn of the Historical School of Law, known movement of law students through the disciplines of Law Theory or History of Law. The famous lessons of the Winter Course given by Savigny in 1802 were preserved with the participation of Jacob Grimm, as quoted by Larenz, in an explanatory note (1983, p. 9): “We have two expositions of Savigny’s legal methodology: the Winter Course of 1802-1803, notes taken by Jakob Grimm and published in 1951”, being the second, more elaborate exhibition, published in 1840.

Jacob Ludwig Carl Grimm and Wilhelm Carl Grimm were born respectively on January 4, 1785 and February 24, 1786. According to *The New Encyclopædia Britannica* (1974, p. 501-502), their father was a lawyer, having acted both in the office of public prosecutor and in the magistracy, passing away in 1796. The death of the mother in 1808 left for Jacob, at the age of 23 years, the responsibility to support 4 younger brothers and sister. It is said of Jacob that he was sleek while Wilhelm was tall and sociable. Both studied law at the University of Marburg between 1802 and 1806. There they were under the influence of F. Karl Von Savigny, one of the founders of the German Historical School of Law, who taught the brethren the method of inquiry that formed the basis for their future works. In 1805, Jacob was Savigny’s assistant in a survey conducted in Paris with legal manuscripts of the Middle Ages. The following year, Jacob began a successful bureaucratic career, getting to participate in the Congress of Vienna in 1815. It was during this period that the brothers abandoned any pretensions to legal careers in favor of literary research.

In the years that followed, they lived frugally and worked intensely: “their whole thinking was rooted in the social and political changes of their times and the challenge these changes held”, which made them more

realistic than the romantic ones. In investigating the more distant past, they identified in these societies the foundations of the institutions that surrounded them in the nineteenth century, from the expressions of joys and sorrows, hopes and fears. Their narratives have certain simplicity of language that goes back to the tradition of oral culture transmission.

These narratives did not emerge as children's literature. The stories collected were addressed to adults and children, indistinctly. The stories are small narratives in which converge the imagination and popular beliefs that have been transmitted through the centuries, maintaining this characteristic of popular folklore. So they were quickly acquitted not only in Germany but throughout Europe and have already been translated into more than 70 languages. They are considered as a model for collections of folk tales, providing a scientific method for this activity, which in Brazil finds in Câmara Cascudo, with his "Antologia do Folclore Brasileiro" ("Anthology of Brazilian folklore"), one of the exponents of this type of research. For over 20 years, Jacob and Wilhelm Grimm worked in Prussia, well-provided and respected. They witnessed the Revolution of 1848 in Berlin and had an active participation in the political disputes around this episode. They maintained their contact with Savigny throughout this period.

It is then valid to ponder that conditioning factors determined the scenario described by the Grimm at the beginning of the tale *Hansel and Gretel*, and in many others, as when the Bremen musicians go out in search of the city to exercise their art and craft. Before beginning this task and proposing a possible explanation, it should be examined why popular tales have been turned into fairy tales or children's tales. It is thus necessary to examine the invention of childhood.

According to Ariès (1981), childhood as understood contemporaneously differs greatly from the treatment given to children during previous centuries. Medieval European society considered as infancy only the earliest and most fragile years as a child; hardly acquired any physical detachment, the child was soon mixed with the adults,

sharing their activities, be they works or games. The socialization of the child, that is, the transmission of knowledge and values, was neither assured nor controlled by the family. Coexistence guaranteed the learning of the skills necessary for survival. Ariès (1981) intends to show the place assumed by the child and the family in the industrial society, in the invention of childhood, previously non-existent in the artisan and manufacturing society.

There was no literate childhood, especially in the countryside, and storytellers performed their activity with the help of repetitions and rhymes, like mnemonic devices, which, in a diffused way, amused adults and frightened children, sometimes serving as a warning. The school took centuries to impose itself as a means of education, characterized by a formal and controlled process of learning. The child was separated from the adults in school, in a long way of enclosure corresponding to those of the insane and the delinquents. On the other hand, the family began to be organized around the child. Looking for the confirmations of his theses in the iconographic representation of the customs from the 12th century (paintings, tapestries and sculptures), Ariès (1981, p. 43) states that “in everyday life children were mixed with adults and every meeting to work, walk or play brought together children and adults”. It was only at the end of the 19th century that the tendency was established to separate children from the world of adults. It is the modern feeling of childhood.

The contribution of Ariès and his theses are largely referenced in research on education, family relations and child labor. For the purposes of this study, it is important to provide the affirmative element that the chosen research object, that is, the story of *Hansel and Gretel*, does not constitute literature originally written for children, since the concept of childhood was still under development, although it is possible to affirm that the stories bring clear pedagogical elements, but that their inscription in the culture was not a project for the childhood, but for the preservation of a social history.

For this reason it is valid to look in the story of Hansel and Gretel for narrative elements of a specific time and way of life, beyond its

comprehension as a text for the moral formation of children. As already described, the narrative focus is the setting in which the story unfolds: misery and hunger that invade the family structure in an insidious way and shatter it. Is there another story to tell? If yes, one of them may refer to the moment of enclosure of the fields. The other may refer to the approval and enforcement of the law on theft of fallen woods. The first possibility will be studied for a more vertical examination of the second event, since it is accompanied by a series of journalistic articles by K. Marx.

Centuries went by before Europe could turn uncultivated land into productive land. According to Darnton (2015, p. 41), the apparent immobility in the history of medieval peasants is due to the fact that their subsistence economy “kept the villagers bent over the ground and primitive farming techniques gave them no opportunity to get it undone”. Yields were minimal, experiments were not feasible, and peasants sowed and harvested collectively, maintaining common pastures, and “depended on common lands and forests, beyond cultivated fields, for pasture, firewood and nuts or strawberries”. For most peasants

life in the village was a struggle for survival, and survival meant staying above the line separating the poor from the destitute. [...] In times of famine, poor families had to buy their food. They suffered as consumers, while prices skyrocketed and the more prosperous peasants made big profits. Thus, a succession of bad harvests could polarize the village, leading marginal families to destitution, while the rich became richer. Faced with these difficulties, the little ones (*petit gens*) survived with cleverness. They worked as peasants, woven and hung cloths in their huts, did odd jobs and went out on the road, picking up services where they could find them. Many did not resist, in this case, they would go out on the road forever, following adrift like the wreckage of France’s *population flottante* (“floating population”), which included several million desperate creatures, around 1780 (Darnton, 2015, p. 43).

This life on the roads meant spending time collecting remains: food, rags, fruits and fallen wood. Death came ruthlessly also to those who remained in the villages; so the tales are populated by stepmothers,

married to widowers. Infant mortality was so common that it was not surprising that the lumberjack would just leave the children in the forest for nature to finish its work. No one thought of children as innocent creatures, nor in childhood as a different phase of life, distinct from adolescence, youth and adulthood by special styles of dressing and behaving: “children worked with their parents almost immediately after they began to walk, and entered the adult labor force as peasants, servants, and apprentices as soon as they reached adolescence” (Darnton, 2015, p. 45). So why were not Hansel and Gretel thought of as a work force? Why is the lumberjack from the story so desperate? Deciding to get rid of the children was a recurring option in Grimm’s tales, meaning that there were even worse periods than others.

A great transformation in the life of the peasants occurred when the land became object of purchase, sale and exchange, freely, like any other commodity, determining the end of the feudal world. According to Huberman (1980), there were two ways to get more money out of the land: land closures and leases. The open field system had been gradually abandoned, but it was the enclosure of the sheep-raising fields for the textile industry that harmed thousands of people as farmland turned into pasture for sheep, whose wool price had risen. With this there was loss of employment and livelihood for many farmers. Heilbroner (1996, p. 34) also refers to this enormous expropriation movement, the land-closing process:

Wool had become a new, profitable commodity, and had demanded that its producer had extensive pastures. The pastures are part of the common lands; a real and crazy quilt made up of small, scattered properties (without fence and identifiable only by a tree here, a stone there, which functioned as boundaries between the lands of one man and another) and by the common lands, in which the livestock of the little farmer feeds and where he collects the peat. These lands are suddenly declared entirely as absolute property of the lords and no longer available for use by the peasants. Where once there was a kind of common property, now there is private property.

Huberman (1980, p. 118) concludes that when land became a source of income, it came to be regarded as property in general, and thus the land-

closing movement caused much suffering and a propitious setting for exploitation: “when capitalist industry had need of workers, found part of the workforce in these unfortunate landless, who had come to have only their ability to work to earn a living”. To eat or not to eat was the most important question in the daily life of a huge population contingent. In most folktales, the satisfaction of desires for magical objects or the achievement of prowess was directly related to a program for permanent survival, with food abundance and filled pantry, more than any other dream of power and prestige.

In another reference to pauperization as an effect of industrialization, Rusche and Kirchheimer (2004, p. 126) state, specifically about the situation in England, where:

The introduction of the steam engine at that time [first decades of the nineteenth century] was destined to produce catastrophic effects. It started with the textile industry. Home spinning, which used to occupy entire districts, was unable to meet the yarn demand of the textile industry. The introduction of mechanical looms increased the output per worker employed to such a degree that it became possible to develop the textile industry in order to meet the needs of all possible markets without relying on manual wiring. The consequence was that weaving ceased to be one of the subsidiaries of the domestic industry with which the poor English people managed to complete the insufficient gains from the work of the camp. All weaving was now done in factories and men often found themselves unable to compete with women and children. The same process of industrialization gradually shifted from cotton weaving to other types of enterprise. More and more people were thrown out of work, increasing industrial unemployment.

As for Germany, there is more evidence, in this case concerning emigration, an indication of the pressure of economic and social conditions at the time, considering that all legislation restricting freedom of movement was abolished:

In Germany, such pressure peaked between 1820 and 1880, and the period between 1845 and 1855 was the worst phase for the working class in various parts of the country. Only between 1847 and 1855 did Germany lose more than 1 million of its citizens through emigration (Rusche; Kirchheimer, 2004, p. 131).

The question posed is this: did Jacob and Wilhelm Grimm want to record the passage of men, women and children through the hard process of land enclosure and the great social transformations of the nineteenth century? Is it possible to suggest that perhaps they also wanted to refer to another event, much closer in time, linked to Savigny himself, presented in the form of the law that made collection of fallen wood a crime of robbery? To answer this question, the series of articles that Marx dedicated to the subject in the *Gazeta Renana*, between 1842 and 1843, was investigated as follows.

3 THE LAW ON FALLEN WOOD THEFT: THE YOUNG KARL MARX GOES TO THE NEWSPAPERS

To conclude this study, the so-called Law on fallen wood theft is analyzed. In a series of articles for the newspaper *Gazeta Renana* (1842-1843), Karl Marx registers his indignation against the classification of a conduct previously accepted in Germany: the collection of fallen wood in the forests, even after the enclosure of the fields, was considered only as an appropriation allowed by law and validated by custom. The law criminalizing this conduct, passed by the State Assembly of Rhineland, considered as theft the subtraction of fallen wood from the ground or the gathering of dry wood, a conduct equated with the subtraction of green wood still in the foot. The research analyzes part I of the debate, according to the digital version of the text.

It should be remembered that in modernity, for Benjamin (1987), novel and journalistic information are seen as forms of narrative that have become predominant with the end of spontaneous narrative. Regarding journalistic information, it can be said that it needs to find an explanation for a real event. Information must be plausible and controllable. Its goal is not to stay open, but to reach a conclusion. Marx, in this debate, refers to the speeches of the members of the Assembly to reinforce the real, mundane character of their discussion.

Differing from the possibilities of Jacob and Wilhelm Grimm, Marx intends to use, as categories of analysis of the facts concerning the proposition, approval and validity of the law on theft of fallen wood, that is, the political and juridical forms, which means that State and Law are under his focus of attention. From his article “Debates on the law punishing the

theft of wood”, Marx states philosophy into the concrete world; for Pereira Neto (2015, 65), “philosophy enters the editorial offices of the newspapers and sets a new standard of criticism” and must take care of the real issues of the people.

It should be noted that Marx views with reserve the Historical School of Law that was then developing in Germany. More interested in Philosophy, Marx refutes Gustav Hugo, considered as the founder of the German Historical School, and touches on the debate between Thibaut and Savigny, in which the first defends the unification of the legislations of the different German states in a single Code, in his book *On the necessity of a general civil law for Germany*, while the second defended historicism in the book *On the Vocation of our Age for Legislation and Jurisprudence*. Savigny was Minister of Justice and had been Professor of Marx at the University of Berlin. At the age of twenty-four, Marx published in the *Gazeta Renana* an article entitled “The Philosophical Manifesto of the Historical School of Law”, pointing out as its main problem the affiliation to the natural law of the contractualists of the eighteenth century and the absence of a dialectical understanding of history, which would thus reorient the science of History itself by the production of Marx (Hegel’s disciple), in the same way as Benjamin, Ariès, Braudel, and Bloch, in the twentieth century, would redefine the science of History through the *Annales* School.

Therefore, the debate surrounding the fallen wood law raises questions about the roles of Law and the State. But what law does Marx claim to be possible? According to Pereira Neto (2015), in the writings of youth, in which the production under consideration is framed, Marx recognizes a customary right of peasants. With this recognition, Marx was revolting against the representatives of private property, since the absolute exercise of property rights would lead to the pauperization of the peasantry, which Marx identifies as cause and consequence in the episode of the law on theft of fallen wood. It is possible to affirm that they are the first articles of Marx directed towards a concrete situation. To the particularity of the right of property, Marx opposes the universality of the state: “in the debates about the theft of wood, Marx feels the heat of the earth firmly touch his feet and questions concerning material needs point him to the uncertainties

of the economic world, strange to him until then” (Pereira Neto, 2015, p. 102).

The law on fallen wood theft would lead thousands of people to misery and crime: “a mass of human beings, without criminal intent, be felled from the verdant tree of morality and thrown into the hell of crime, infamy and misery, as if they were fallen wood collected from the ground” (Marx, 2007). Considering the collection of fallen wood as theft confuses distinct actions and intentions, and it should be one of the tasks of the law to take care of the distinctions in the nature of things. According to Pereira Neto (2015, p. 104), in the articles analyzed, “the defense of the customary right of the poor in dispute with the rights of the aristocracy” stands out. The latter would be customary illicit acts, more consonant with the absence of laws. The law that emerges from the poor and miserable is in harmony with the universal law: “it is therefore a rational law, for even customary rights must pass through the court of reason” (Pereira Neto, 2015, p. 104). The rationality of the customs takes place with the seal of the State. While this does not occur, the notion of law is not opposed to customs, for it can acquire form.

In the writings from his youth, Marx sees misery not because of the material conditions of his time, but as an issue to be solved through the theory of the State and the Law. The criminalization of poverty, which Marx identifies in the law on fallen wood theft in 1823, is pointed out as one of the most common and recurring measures of the State and the Law to solve the social question, according to Marx, as well as to several Criminal and Criminology studies, as Georg Rusche and Otto Kirchheimer (2004), still in the 19th century, and Loic Wacquant (2013), at the turn of the millennium. Marx, in his time, stated that the law, by converting misery into crime, did so because of the private nature of the decisions of the Assembly, since the representatives therein acted in their own interests. In 1843 Marx left the *Gazeta Renana*, in repudiation of the censorship that prevented the media from exercising their political function, suspending the activity of writer, which would be resumed the following year, through the *Franco-German Annals*, connecting his thoughts to the Socialists in France.

Marx goes to the newspapers as a columnist to talk about the nature of things: cut down wood and fallen wood are different things. In the case of fallen wood, nothing is separated from property by human action. That is why the law cannot create a legal lie; therefore, one of the theses that supports his argument is that the law is not detached from the “general duty to speak the truth”. Moreover, Marx wants to propose the debate about the difference between a conduct being criminalized or constituted as a criminal offense, therefore having civil nature. These categories of analysis require intellectual effort. Therefore, the proposal of this study is also to oppose two discourses on the same phenomenon: the rational one and the poetic one. Two ways to think about the same problem.

4 FINAL CONSIDERATIONS

The starting questions of this research led to the obtaining of data with which it was possible to elaborate provisional answers. With the information collected and systematized throughout the development, it is possible to conclude that there is a function of historical record in what is called fairy tales or children’s literature in the 20th century. From the propositions by the historians presented, it was seen that the tales told the peasants how the world was and also offered them a strategy to face it, not a narrative elaborated with sophistication but transmitted with technique by storytellers. This means of transmission, maintained by the force of orality in societies with little literacy or without the habit of reading, gains in the literary record by the Grimm brothers a perpetuity that the journalistic writings of Marx would not be able to obtain by the sophistication of arguments that generally dominate the works with claims for scientific validity.

The initial hypothesis is that the legal forms take on a much more precise shape when traced with the help of other forms of writing and reading in the world. The use of a possible reading for Grimm’s *Hansel und Gretel*, from the knowledge of the episode of the German law on theft of fallen wood, turns it into a prism, an opening to re-tell the story and the history of misery and struggle of subjects against forms of exploitation and the criminalization of their conduct. It has been found that folktales

are not the result of arbitrary inventions of a collective imagination, but they express the common basis of a particular social order, and so are legitimate documents to which historical questions can be asked. Hunger and misery were shared experiences in these narratives, in the challenge of surviving in the daily lives of villages and roads.

It should be emphasized that the art of narration is in a relationship of absolute reciprocity with the art of listening. Good storytellers call for good listeners, and good listeners require good storytellers. The legal discourse has become a sophisticated narrative, but the listeners of this community have not responded with the same capacity, which is the reason why there is an imbalance in the process of communication of the legal community within itself and to the other political, social and economic systems, all intermediated by language.

Finally, it is noted that to narrate a history shows that there is a History being narrated in that moment. Training good storytellers may allow for the realization that everyone is in a common, living narrative flow, as history remains available for new proposals, and is accomplished *together*. We can learn with Benjamin that, if this flow is exhausted, collective memory no longer exists and the human community disintegrates, leaving isolated and disoriented individuals. This research, however, is a proposal to retake literary narratives to understand this other great narrative in which there is also the Law.

REFERENCES

- ARIÈS, Philippe. *História social da criança e da família*. Trad. de Dora Flaksman. 2. ed. Rio de Janeiro: LTC, 1981.
- BENJAMIN, Walter. *Magia e técnica, arte e política: ensaio sobre literatura e história da cultura*. Trad. de Sérgio Paulo Rouanet. 3. ed. São Paulo: Brasiliense, 1987.
- BENJAMIN, Walter. *O anjo da história*. Org. e trad. de João Barrento. 2. ed., 1.reimp. Belo Horizonte: Autêntica, 2016.
- BROTHERS Grimm. *In: THE NEW encyclopaediabritannica*. 15. ed. Chicago, Encyclopaedia Britannica, 1974. Macropaedia, v. 5, p.501-502.
- CANDIDO, Antonio. O direito à literatura. In: CANDIDO, Antonio. *Vários escritos*. 5. ed. Rio de Janeiro: Ouro sobre Azul, 2011. p. 169-191.

DARNTON, Robert. *O grande massacre de gatos: e outros episódios da história cultural francesa*. Trad. de Sônia Coutinho. 2. ed. São Paulo: Paz e Terra, 2015.

GAGNEBIN, Jeanne Marie. Walter Benjamin ou a história aberta. In: BENJAMIN, Walter. *Magia e técnica, arte e política: ensaio sobre literatura e história da cultura*. Trad. de Sérgio Paulo Rouanet. 3. ed. São Paulo: Brasiliense, 1987. p. 7-20.

GRIMM, Jacob. GRIMM, Wilhelm. *Os contos de Grimm*. Trad. de Tatiana Belinky. São Paulo: Paulus, 1989.

HEILBRONER, Robert. *A história do pensamento econômico*. 6. ed. São Paulo: Nova Cultural, 1996.

HUBERMAN, Leo. *A história da riqueza do homem*. 16. ed. Rio de Janeiro: Zahar, 1980.

KELLY, John M. *Uma breve história da teoria do direito ocidental*. Trad. de Marylene Pinto Michael. São Paulo: WMF Martins Fontes, 2010.

LARENZ, Karl. *Metodologia da ciência do direito*. Lisboa: Fundação Calouste Gulbenkian, 1983.

MARX, Karl. *Debates acerca da Lei sobre o furto da madeira (Parte I)*. 2007. Available at: <<http://www.scientific-socialism.de/KMFEDireitoCAP7Port.htm>>. Access: 7 Mar. 2016.

PEREIRA NETO, Murilo Leite. *Conversando com Marx sobre o Estado e o Direito: análise dos escritos da Gazeta Renana para a política, comércio e ofícios*. 2015. 122 f. Trabalho de Conclusão de Curso (Graduação)– Faculdade de Direito, Universidade Federal do Ceará, Fortaleza, 2015.

RUSCHE, Georg. KIRCHHEIMER, Otto. *Punição e estrutura social*. Trad. de Gizlene Neder. 2. ed. Rio de Janeiro: Revan, 2004.

SEVCENKO, Nicolau. *Literatura como missão: tensões sociais e criação cultural na primeira república*. 2. ed. São Paulo: Brasiliense, 1985.

TODOROV, Tzvetan. *Introdução à literatura fantástica*. São Paulo: Perspectiva, 1975.

WACQUANT, Loïc. *Punir os pobres: a nova gestão da miséria nos Estados Unidos [A onda punitiva]*. 3. ed., 1. reimpres. Trad. de Sérgio Lamarão. Rio de Janeiro: Revan, 2013.

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