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ON THE ETHICAL RESPONSIBLE ACT, POLYPHONY, AND THE AESTHETIC PERSPECTIVE IN THE BAKHTINIAN VIEW: APPROACHES WITH THE LAW

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ABSTRACT: This article is based on the philosophical thought of M. Bakhtin. It thus elaborates the dimensions of the philosophy of the ethical responsible act, and the construct of polyphony, the latter extracted by the author from the works by Fyodor Dostoevsky. It also aims at questioning possible approaches of the Law with the Bakhtinian literary studies and language philosophy, highlighting the perspective of the event and its aesthetical objectification. Hence, it proposes to establish an initial dialogue that can contribute to the overcoming of both subjectivist and objectivist postures in the juridical interpretation, which are still dominant in the traditional imaginary and the daily practice of Law in Brazil.

KEYWORDS: Mikhail Bakhtin; Law and Literature; ethical responsible act; polyphony; ethical-aesthetical architecture.

The last great book I read was *Poems* by Alberto Caeiro. Let me analyze the famous “It is not enough to open the window”. This text eloquently indicates the problem of objectification. The objective view – which is also that of Law – must be suspended if it one intends to meet the occurrence of human existence in its irreducible character.

(Jorge Roggero, 2017, p. 3, translated)

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1 INTRODUCTION

The epigraph of this article was taken from an interview given to the Brazilian Law & Literature Network (Rede Brasileira Direito & Literatura – RDL), in the beginning of 2017, by Jorge Roggero, professor at the Law School of Universidade de Buenos Aires, to Dieter Axt. By mentioning poems by Fernando Pessoa, the quote gives us the tone to introduce the ethical-aesthetical architecture of the world of life on the borderline with culture, as proposed by the Russian thinker Mikhail Bakhtin. Such architecture is solidly based on a philosophy of the ethical responsible act³, which points to polyphonic plurality and answers to the constitution of alterity in the relation between the self – the other, constantly in motion, in the being-event of life, open to the forthcoming. Besides, imbricated in such architecture, the contributions of Bakhtin for language philosophy and literary studies⁴ have influenced all the Western thought to date. To what extend the ideas by this thinker, who was active in the soviet scholar circles between the 1920s and 1970s, can reverberate in the Law field, the readers (and time) will tell.

Bakhtin, better known for his concepts of dialogism, polyphony and carnivalization than for the architecture of the act, was a contemporary of great thinkers from the first half of the twentieth century, with whom he dialogued, discussed and shared constructs in the intertextuality of his philosophical work.

Among his main contributions, we emphasize the principle of otherness or alterity as an ethical assumption and condition of dialog. This is shared by the German philosopher Martin Buber (1979), who was highlighted by the Russian scholar Tzvetan Todorov (1981). Furthermore, we emphasize the importance of dialogue as a condition of language, which Todorov – as remembered by Brazilian researcher Marília Amorim (2009,

³ From the early 1920s, the work *Toward a Philosophy of the Act* was translated and published in Brazil in 2012. Before that, it could be found in scholar circles in the form of an unrevised translation by Alberto Faraco and Cristóvão Tezza (s/d), based on an English edition (of 1993).

⁴ We refer especially to the works *Aesthetics of verbal creation* (Brazilian Portuguese Edition, 2015; First translated edition in 1997), and *Problems of Dostoevsky's Poetics* (Brazilian Portuguese Edition, 2013; First translated edition in 1981). Regarding both works, part of them was written in 1920, published in 1924 and 1929, respectively; and part was written in the following decades, either as revised materials (as for the second work), or as individual articles with related objectives (as for the first work), compiled by the organizers and translators.

p. 20) – indicated to align with the Heideggerian line of thought. Additionally, the role of language as a constituent of the subject in its otherness, tributary of a split speech and of words that – before being mine – are those of the other, which makes a *philum* of the Freudian thought (1969) reverberate in the Bakhtinian text, as suggested by the reflections of the Spanish-language thinker Iris Zavala (2009). Also, the notion of the subject implicated and situated social-historically, as well proposed and discussed by another Brazilian thinker, Adail Sobral (2005). And, regarding this idea of implicated and situated subject, we highlight – in line with the French philosopher Gilles Deleuze and the Brazilian friend Félix Guattari (1995) – that the Bakhtinian theory can be seen as a pragmatics⁵ study of Language. This can be understood in a context of collective enunciation, producer of subjectivity. In other words: every meaning in language emerges from the enunciative encounter with other meanings, going through an intersubjective, interdiscursive context, in the relation to the other, leaving thus a mark, regardless of one's will or choice in a certain phenomenon, by the involved subjects. Furthermore, for Axt (2011), it is about the cruciality of a philosophy which, as it is of life itself, as defended by the philosopher Henri Bergson (2006), can only be such thing when related to the ethical responsible act, concretely seen in the alterity relation between the self – the other, in the very living in process.

Precisely, this latter matter is discussed in the work *Toward a Philosophy of the Act* (2012), created by Bakhtin before 1924 – thus in his youth. From such work, little more than the introduction is left nowadays, which did not hinder a strong influence in the rest of his work, according to several authors, among which are the Italian linguist and philosopher Augusto Ponzio (2012), in his preface to the very publication, and also being notable by reading his later works.

As mentioned, the central aim of the work is, especially, the architecture of alterity relations between the self – the other, and the aesthetic view regarding the objectification of the world and its relations, the production of truth in the factual aspect of life (*pravda*), and the

⁵ Pragmatics, in the philosophy of language area, is not related to pragmati(cism), nor to utilitarianism, the first obsessed with efficacy, the second dominated by interest.

exchange of tension that is made with the theoretical, abstract world of universal truth (*istina*).

In this brief essay, we attempt to find, via dialogic-interpretative approaches, some accordance points between these areas of the philosophy of language, of literature and of the Law, making an effort to establish dialogue between them⁶. We expect such enunciative gathering can contribute to the rationale of the ethical-aesthetical perspective, by creating conditions for the finding of new meanings that can be extracted and incorporated to the discussion about interpretation in the theory of sentence decision, so lacking in the area of Law.

This article is inserted in the research context related to Law & Literature promoted within the scope of the Brazilian Law & Literature Network (RDL), and it results of the resumption, with deepening of dialog, of previous works proposed by us, authors: the first, in the *literary special* “On ethical act and polyphony – between the event and its objectification”, which made up the *RDL Bulletin No. 16*, in the 2nd quarter of 2017; and the second, from the *Letras de Hoje* journal (PUCRS), “World of life and research in education: resonances, implications, replications”, which was part of volume 46, referring to the first quarter of 2011. In the subsequent sections – on the situated ethical act; on the non-alibi in existence; on the aesthetic-objectifying perspective; on polyphony in Dostoevsky – this work, in the Bakhtinian view, dialogues with some authors of Law, tributary to the hermeneutic line of interpretation in the area of legal studies

2 ON THE SITUATED ETHICAL ACT

In a relational architecture of the act, which speaks of the real world, Axt (2011) points out that the fact of belonging to the flowing life produces mandatorily the architecture of the *event*, which cannot be hardened. Living out one’s unique place and history in the being-event – the area where life happens in the process of being – makes the intentional *self* to

⁶ It should be noted that, from the perspective of polyphony, or even carnivalization, the approach between Bakhtin and Brazilian law has already been premiered by authors such as Warat (1985), Pinheiro (2010), Moraes da Rosa (2011), Trindade (2014), Pêpe (2016), Karam (2017) and others. In October 2017, the program of the VI International Colloquium on Law and Literature (CIDIL) exposed the panel “The notion of polyphony and procedural truths” presented by Prof. Dr. Henriete Karam and by Prof. Jacinto Nelson from Miranda Coutinho.

acknowledge (thus, to respect) that it is among legitimate others. This creates a demand – which is always mandatory – of an ethical acting, in which every current intention *responds* to another act. And every act is involved in a situational context of space and time, which is axiological, in which it lies implicated, perceived by sensibility, i. e., it affects and to a certain extent determines the act. Therein – how it responds to the previous act – lies, thus, its *responsibility*, considering this particular context where it is situated.

Such a place to be concretized will always be, from then on, historicized, that is, determined by memory (collective, individual), which is marked by acts and effects of those acts, to which it responds by intervening: even though it is inconclusive, since it is continually open to the forthcoming. In life – in the process of always coming to be – there is only uninterrupted, unfinished movement, inviting the immanent realization of this unique place, which is so as it confronts the other in alterity and responds to it, as emphasized before, in Axt and Axt (2017).

Departing from the *world of life* in order to think, appreciate, evaluate, decide, theorize, conceptualize life itself, or society, or other areas where human activity and its ways of knowing develop: it is in this place, as highlighted by Axt (2011), that the world of life contrasts to a world of the concept; and, equally, a theoretical philosophy ends up being pressured by a philosophy of life which focuses on the ethical act, of responsibility. Philosophic, scientific, normative theories usually have their main basis in abstract thinking, thus related, at first, to the conceptual constructs on the world, to which the human being is invited, many times, to integrate only late. As for an internalized life philosophy in the ethical responsible act responds firstly for a situated and implicated subject in the context of concrete reality, with his / her participative action in the world.

Axt and Axt (2017) highlight, in continuation to Axt (2011), that operations of theoretical objectification acquire consistency only when sustained by the previous operation with factual basis. Only by this measure – by recognizing a previous factual event – do the conceptualizing and objectifying processes happen. These processes hold, somehow, an aesthetical character, since they are reflexive ends with axiological-existential value). Also, such processes contribute to the position and

decision making related to the existent and their context of reality, presenting themselves as *valid* (and effectual). In this sense, Ponzio (2012) highlights, regarding Bakhtin, that an ethical responsible act is like a *double-faced Janus*, oriented toward two opposite directions – toward the unrepeatable singularity of the being in process of being and toward the conceptual-theoretical unity, which is abstract and objective (or objectifying).

It should be said that, to Bakhtin (2013), every *unity* is always a paradox, since it does not stop being hybrid, heterogeneous, in its factual basis, inasmuch as it is composed (polyphonically) of singularities from many voices: voices that have engineered it (the unity) through time, giving it extra breath of conceptual-objective character. Thus is with cultural knowledge, as well as scientific, philosophical, legal, artistic knowledge...

On this matter, Brazilian professor Albano Bastos Pêpe (2016), following the ideas by Luis Alberto Warat, points out that, in Law, this same debate is present between the juridical discourse of positivistic, i.e. scientificist aspect, and the epistemology of meanings. This one starter in the 1970s and 1980s, stimulated by the Argentinian juridical philosopher Luis Alberto Warat, based mainly on the semiology of Roland Barthes and the Bakhtinian concept of carnivalization, by developing the idea of a new hermeneutical posture in the legal field in order to think the world we live in, establishing dialogue with Literature and Psychoanalysis. In the first approach, validity and efficiency gravitate around a legal dogmatic that is made through a technical method, which is logical-abstract: linked to the construction of concepts and principles objectified and generalized, according to the rules of the positive law, such approach would be imposed in the form of a *unique line of thought*. Such a rationalized reduction of arguments could originate an important effect, the covering of contradictions and conflicts present in the reality of concrete life, particularly the polysemic aspect with its plurality of points of view, which is the central object of the studies emphasized by the second theoretical approach. Thus, in the words of Pêpe, when contrasting both approaches:

The polysemic field, fruit of experiences narrated by the deponent, is reduced to the limits of the body of the trial, discarding the feelings and affections that offered conditions of meaning to what was narrated, both by the possible victim and the possible transgressor. The case

file becomes autonomous and distances itself from those involved. This is the Kafkaesque dimension of trials. (Pêpe, 2016, p. 8)

Together with Warat, mentioned above, as well as other thinkers, is the Brazilian professor and jurist Lenio Streck (2018; 2017; 2011), one of the pioneers of the Law and Literature movement in Brazil. He is the founder and main name of the approach proposed in the Law Hermeneutics Criticism (Crítica Hermenêutica do Direito – CDH). It also studies the tension stated above, but focuses on the Heideggerian line of thought (Heidegger 2012a; 2012b), especially based on the interpretation by the philosophers Hans-Georg Gadamer (1997) and Ernildo Stein (2008; 2012). Streck (2018) highlights the importance of the dialogue between Literature, Hermeneutics and Law, insofar as “Literature helps to existentialize the Law”.⁷ For the author, “hermeneutics is always very close to literature. Anguish [a characteristic of modernity], in order to be ‘treated’, demands intermediation. It demands the other. We cannot offer sacrifice to the gods anymore”, says Streck (2018, p. 617), in a truthful mention to existential immanence, in which all of us lie [given to interpretation] on our own, and to the subsequent indispensability of recognition of otherness [since we are not allowed to interpret by ourselves], with no possibility of pleading to transcendence.

Thus, back to the Bakhtinian view on ethical responsibility, which is of existential order (and, consequently, political as well), it seems that it can dialogue positively to the hermeneutic approach to the Law. As seen in Axt and Axt (2017), the assumption of the Bakhtinian thought in the juridical-judicial sphere imposes the judge to *decide* (and not to *choose*) he / she is confined by the concrete ethical act in the picture. Hence, it is supposable that it is not possible to be the *free appreciation of evidence*. In the Bakhtinian thought (2012), the purely formal decision – as a point of application of a theoretical ethics with no consideration about previous events –, privileged mainly the production of the notion of an abstract duty (in Bakhtin’s words, *empty formulae of pure theoreticism*), which

⁷ “Law is an art, since it is a culture of argumentation”, says, in the wake of James Boyd White, the Dutch researcher in Law and Literature Jeanne Gaakeer, professor of Law Theory at Erasmus School of Law, Rotterdam (Netherlands), and senior judge in the criminal section of The Hague Court of Appeal, in an interview with Dieter Axt in 2016 (Gaakeer, 2016, p. 483) for the *Anamorphosis* journal.

impoverishes the concrete ethical act of its responsibility sense, as of its valid truth potentiality.

Aiming at accentuating the situated and engaged character of the ethical act – implicated since ever in otherness –, thus underlining the prevalence of the event over the conceptual-theoretical thought (the latter always in second place facing the former), Bakhtin (2012) proposes a philosophy he names the *prime* or the *moral* philosophy. Axt and Axt (2017) state, based on Axt (2011), that the author refers to morality not in a rigid, common sense meaning, of rules and codes of conduct previously stated that should be obeyed; rather, it is taken in a more philosophical meaning, considering that human life, updated in the being in the process of being, unique, singular and intentional, and in the middle of the relation of the self with the other, respected and acknowledged, it generates, inside the being, the idea of a *must-be*, since it is responsive and responsible, compromised with otherness (which could be seen in its deontological aspect). Thus, Bakhtin proposes as a *moral act* what could be understood as an *ethical act, situated in the sphere of relational architectures between the self and the other of the act, in the real world*.

3 ON THE NON-ALIBI IN EXISTENCE

In the considerations by Axt (2011), a concrete human life – a self – produces, from their historical, unique place, and their participation in the world, certain effects which cannot be produced by any other self, who respond to them, by continually moving an interactional process of mutual interdependence. The self-recognition of this affirmative participation in the self-other relationship is what underlies, according to Bakhtin (2012), the sense of responsibility of the being, in the concreteness of reality in motion.

It should be emphasized that this recognition does not occur all at once; It is a recognition that is given each time, and in each new event situation, setting in motion the architectural relationship between the self and the other, unfolding in three dynamic positions between each other: one self, at the same time, one self as seen by the self, responsible by oneself, in the process of self-realization of one's historical place, in life in their uniqueness; and of one self to the other in tension with the other to

the self that crosses it, i.e. one self as shown to the other, in view of the interventions one produces, depending on the cruciality of recognition and acceptance given to this other one. It is the effects of this interaction that reverberate in both selves, moving the relationship. As Bakhtin (2012) proposes, the relational (dialogical) self-other architecture of the ethical act is always updated based on a *decision* to act – and, therefore, *marked* –, which is based on the recognition that “there is no way to avoid it”, keeping in mind one’s responsibility

There is no way to avoid it, as observed by Axt (2011) is the main point of subjectification of the self, and it opens up, in our understanding, to the possibility of embarrassment, once again emphasizing the importance of this self to recognize the importance of the otherness of the relationship self-other, which certainly makes one to be responsible for it and to respond to it, thus imprinting their mark.

As for the Law area, as seen in Axt and Axt (2017), considering the view by Streck (2017, p. 116), whenever one says – “I have historical consciousness of myself”, or “I have the historical consciousness that I am a jurist” –, *having such conscience* represents to us an operation of thought that always recognizes itself as a crucial participant, in this concrete and historical relationship, which mandatorily includes the other, by concretizing an ethical responsible act that is unable to alienate the other.

This is why an intervention (listening, axiological appreciation, evaluative judgment, decision...) that supposes and recognizes itself in otherness is always in the order of an implicated responsibility, being non-indifferent, therefore *with no alibi*. In other words, a decision-making intervention, or another one, does not dispense with taking into account all the components of the act’s relational architecture – from its historical factuality to its theoretical validity of meaning, in the breadth of the horizons concerned: in this case, the theory (always second in relation to the event) operates, either as a limit or as a situationally elaborated parameter... In relation to Law, by extension, *not being able to avoid it* would be equivalent to saying, in a judicial decision, that there is no theoretical alibi, that is, there is no way to ignore the factual roots of the trial in its entirety

Under the hermeneutic bias – tributary of the Gadamerian (1997) and Steinian (2008; 2012) perspectives –, Streck (2017, p. 189-190) points out that the judge is surrounded by a “horizon of understanding”, as he /she finds him / herself immersed in a hermeneutic circle⁸ that stems from a certain tradition⁹ that binds him / her and in which he finds him / herself (and will remain) hopelessly and tacitly “lying”. That is to say, this tradition, whose horizons surround and bind (the judge), is not in principle and by itself at his / her disposal.

⁸ Comprehension, for hermeneutics, occurs within the hermeneutic circle. In the classic *Truth and Method*, Gadamer (1997) states that the movement of comprehension, which is always anticipated by pre-comprehension, constantly goes from the part to the whole and then from the whole to the part again, so that the corresponding criterion for the correction of understanding “is always the agreement of each particularity with the whole,” otherwise there is the very failure of understanding itself. (Silva, 2010). It is noteworthy here that Bakhtin (2012) criticized the idea of understanding a process based only on a part of such process, disregarding its entirety. (Todorov, 1981, p. 37). Pre-understanding, in turn, conforms our pre-judgments. Prior comprehension – which “involves our own relationship with the whole of the text”, that is, having to do with the whole treatise (Silva, 2010, p. 7) – constitutes the first of the hermeneutic conditions. The finite condition of the human being (Heidegger) implies that understanding exposes to error the previous opinions in the confrontation with the thing. Meaning, therefore, is only given in the application act, which is precisely when, by the ontological difference, the thing comes to the surface through language. Being does not happen universally and abstractly. Heidegger (2012b, p. 617) says: “the enunciation and its structure, the apophantic, are founded on interpretation and its structure, as hermeneutic, and, even more originally, on the understanding and opening of Dasein”. Heidegger introduces this distinction between explicit discourse (manifestative discourse) and underground discourse, which occurs simultaneously with apophantic discourse, called the hermeneutic dimension. (Stein, 2008, p. 58). It is for this reason that the Hermeneutic Critique of Law (CHD) does not rely on apophantic, analytical and merely argumentative discourse, but on the hermeneutic, pre-comprehensive, structuring discourse that supports it. (Stein, 1996). (For details, see Dieter Axt (2018)).

⁹ The tradition Gadamer (1997) speaks to us about is the ever-existing sphere of meaning that comes to us through the mediation of language. Tradition is led back by language – which does not mean passive reception. In Gadamer, understanding interpretation as a unitary process (applicatio) means that the interpreter always attributes meaning (Sinngebung). The hermeneutist’s task, therefore, is applicative, not reproductive – and in that application there is always something that escapes and something that is created. Bakhtin (2015, p. 371) addresses this by working on the other’s word: “I live in the world of the words of the other. And all my life is an orientation in this world; it is the reaction to the words of the other”. In the same sense, the philosopher of language says that “the search for my own word is, in fact, the search for the word not precisely mine but for a word greater than myself; it is the attempt to get out of my own words, whereby I cannot say anything essential”. (Bakhtin, 2015, p. 385). This points to an idea of pre-comprehension and, at the same time, of dialogicity, this being the space in which words (and ideas) settle: either because they exist and have already been spoken by the other, it is up to me to appropriate them through dialog, either because they are forged in dialog, and develop in it as a result of this self-other relationship. Language possesses me and I relate to objects through and by language. Our access to the world is always linguistically mediated. “You do not go from object to word, but from word to object,” since it is the word that “creates the object”. (Bakhtin, 2015, p. 390). The meaning thus emerge from a collective, intersubjective construction linked to this tradition. For details, see Dieter Axt (2018).

Axt and Axt (2017) highlight, thus, the importance of an *excavation* work that explores consciousness, by opening up to new horizons of understanding and truth that cannot be concrete if not via otherness relations – dialogic and polyphonic ones –, in the process of *concentration* of *combination* of different voices. In other words, the authors remind us that judging, as well as interpreting, can never be arbitrarily subjected to an isolated mind, filled with individual ideas and values, alien to otherness which Bakhtin refers to, or even to past memories. These acts, judging and interpreting, are, since ever, linked to this tradition that delivers us something, which is mentioned by Streck (2017, p. 115) as “this anticipation and more aggregations of meaning, that develop from the fusion of horizons, from time distance and consciousness that history has over us”... And here it could be added, based on Axt and Axt (2017): consciousness of the effects our own ethical (responsible) acts have over the relationship with the other, and of history itself, since every act is linked to its historicity, in concrete reality contexts and past memories. What’s more: these actions in the world cannot be alien to otherness, since it produces, by contest, the condition of possibility to the existence of the self and the very being-in-the-world, through language and inter-subjectivity, as also taught by Heidegger (2012a; 2012b).

To sum up, saying *there is no way to avoid it* is equivalent to saying *there is no alibi in existence* (Bakhtin, 2012), thus it is a duty of the judge to exert certain ethical responsibility when acting, in such an implicated degree that the judge takes commitment in tradition, in which he / she is inserted before, as mentioned. This works just the same as the very factual event that takes place before the decision act: it is not only about suspending possible pre-judgements, but mainly about justifying decision, understanding they can only happen while based on factual previous events and as a result of a relational *dialogical* and *polyphonical* process (Bakhtin, 2013).

That is, observing Axt and Axt (2017), a decision is not produced in isolation from the context in which it is formulated, but rather results from intersubjective relations produced by language, in the plural confrontation (and of equal axiological value) of different voices and their perspectives.

These are preserved by the attention to the contradictory procedures, characteristic of tensions, in the juridical-democratic scope, in which the act of deciding is, and always must be, ethically responsible.

Finally, the act of deciding, as the theoretical-objectifying view that it is – and which, for this very reason, tells us of a worldview that is always also in the order of an existential aesthetic – cannot happen without reflexive aspects of axiological value. These, clearly, demand to be sustained in previous events, which are inserted in the dialogical and polyphonic context of the voices in motion, which demands empathically listening to the other in the horizons of tradition.

4 ON THE AESTHETIC-OBJECTIFYING PERSPECTIVE

How can this real-world architecture of Bakhtin's proposal escape an absolute and solipsistic relativism? It emphasizes and gives centrality to concrete consciousness, as voices or centers of axiological values. Agreeing with Axt (2011), we point out that the answers are immanent to the relational architecture itself of the responsible ethical act in the world of events, therefore rooted in the notion of *concrete duty* as a fundamental constituent of a philosophy of *participatory and implicated ethical act: concrete duty as architectural duty*, by empathizing with the self and the other in their perspective relations

Such an understanding crucially implies creatively understanding the other, reaching their horizon of truth, that is, as Axt (2016) points out in relation to Bakhtin: being able to temporarily abandon one's own perspective, to promote a radical inferential movement towards the horizon of this other, while guided by empathic and sensitive listening; And thus being able to respond to them dialogically, by resuming one's position of enunciation in the return to one's own place, now enriched by a widening of one's own horizon.

Such horizon broadening, which, for Bakhtin, is more than a fusion, since there are no erasures of one or the other, allows a self to effectuate reflexive-objective alterations: (provisory) alterations, as an effect of all this excavation process in the consciousness that opens up for new horizon lines, through the dialogic dynamic of approaching-deviating from the

other, returning to one's enhanced enunciative place. The truths of every *one* are thoroughly connected among themselves and committed to their relational historicity. Thus, the truths of one and the other are related, intertwined, mutually contaminated, advancing together into new horizons of comprehension and truth...

There is no relativism here: the truth (*pravda*) of the event-being contains within itself the extra-temporal absolutism of theoretical truth (*istina*). (Bakhtin, 2012, p. 89)

For Axt (2011), since empathy seems to be the key to the responsible ethical act in the self-other relationship, exotopy (i.e. the prerogative of the self, of space-time axiological detachment from the other's perspective, returning to one's own place...) is the propeller of objectifying abstraction, but as rooted in the concrete act (of thought), from the enunciative-historical position of the self, opening up to the aesthetic view of a whole – the *whole* seen as a partial totality made possible by the set of voices in a dialogic and polyphonic context, also preserving the horizons of tradition.

Consequently, these two combined operations – ethical and aesthetical – seem to be the key to a position, or decision, whose effect will be the completion of a whole, extracted from the event, related to the being and the forthcoming: a position, a decision, an evaluation... which always produces, by an objectification operation anchored in the event, a reflective aspect, even when paradoxically transient or inconclusive, over time, in medium or long term. Every one of these aspects is paradoxical, in that – if a given enunciative position produces an action seen in perspective to a factual whole (a fact, an idea, an assessment, a decision, a judgment) – such action is always in itself. It is of course inconclusive, and can once again be resumed and reopened in a new procedural-dialogical round, based on new positions or enunciative instances, by the same or other participants. In this sense, dialogue is always, too, unfinished, infinite, and the meanings always renew themselves...

With regard to the excavation of consciousness as a process of production of understanding and truth, a thought that moves out of the

eventual dwelling of the ethical act (in the self-other relation), precisely because it produces a detachment, is capable of an *excess of vision*, as it adds to the horizon itself new horizons associated with the other. As in the movement against the zoom of the camera, this thought is able to perceive a broader (however provisional) horizons, positioning itself in relation to it, but is still invested with the affects of the relational ethical act that gave it, through the dialogical process, this possibility of growth.

The act of enunciative positioning, facing the relational event of which there was an exotopic departure, produces an objectifying effect of the relationship, transforming it into an object of valuation of an existing being, of axiological understanding of a particular architecture between self-other. By *architecture* we mean here, as a reminder, the different modes of relationship that can be engendered and acted by the self and the other, these always assuming positions as confronting voices in a certain enunciative context.

Such movement of objectification, when offered to art, transforms the objectified relationship into an aesthetic object, sustained by an axiological architecture of values, whose consistency comes precisely from the relational dynamics between self-other... when offered to culture, science, or philosophy, it transforms the objectified relation into object of knowledge, normative object, or conceptual object etc.... which, nevertheless, bring in themselves the same architecture of axiological values, defining, in this sense, a certain worldview that is also existential (and aesthetic).

5 ON POLYPHONY IN DOSTOEVSKY

Dostoevsky, in the art of literature, aimed at representing this creative process of the architecture of the act. The author achieved it masterfully, so much so Bakhtin studied his work thoroughly. Firstly, Dostoevsky registered the diversity of voices (social, psychological, political ones...) of his time, with his ideas – a deed Bakhtin (2013) defined as *prototype-ideas*, from which he extracted the tensions of factual architecture. Secondly, the writer transforms such ideas into *force-ideas*, by putting them in dialogical confrontation, in an authorial sphere of objectification and aesthetical

organization – in a (fictional) place where he puts them back, by the exotopic effort of being separated from concrete reality. *Force-ideas* are, according to Bakhtin (2013), the ones that boost and enhance the drama of fictional narrative, in a motion of character encounter, a process of self-development that allows the ideas to mature and always restart the (infinite) dialogue.

The most striking feature of Dostoevsky's perspective is that the author recreates in the sphere of fictional-aesthetic objectification another ethic, factual sphere (in the relationship between the characters), linked to an exotopic sphere (now) accomplished by the characters in the novel: empathy and exotopy in relation. This recreates within the narrative an architecture of the fact that is intertwined with excavating processes by the characters' consciousness, finding its pinnacle in objectifying thought acts (*a double-faced Janus*) – plurality and diversity of voices, in tense, dialogical relational coexistence, in which all have the right to visibility and to the saying of their word. There is no silencing, no erasure of the contradictory, only mutual contagion and joint advance of the dialogical polyphony of voices towards new horizons of understanding of ideas and truth.

This universe drew special attention from Bakhtin (2013, p. 1), for whom Dostoevsky was one of the “greatest innovators in the field of artistic form”, responsible for unprecedented polyphonic artistic thinking, in surpassing the European novel hitherto, with monological characteristics, whose type characters bowed to the hegemonic axiological perspective of their authors.

For Bakhtin (2015, p. 347), Dostoevsky inaugurated deep dialogism in discourse, since “man is always represented on the verge or, in other words, in a state of crisis”¹⁰, without the author being able to typify it and so give it a predetermined or definitely conclusive axiological appearance; or, in other words, without the author being able to say something ‘behind the

¹⁰ While admitting that this representativeness of Dostoevsky's characters – which is a “representativeness for all mankind, for the whole world” – does resemble the ancient tragedy and those plays by William Shakespeare, Bakhtin (2015, p. 389) points out that even so, it “differs substantially” from these in that they obey a higher plan, predetermined by the tragic genre, from which the characters can never escape.

back' of the character, something the character never knew about him / herself, or that some other character couldn't tell him / her.

This innovative literary construction proposed by Dostoevsky gives rise to the consecrated Bakhtinian thesis, which perceives in it the struggle against the objectification of man, as Marchezan (2006) observes. With immense insight, Dostoevsky was able to identify the penetration of this objectifying devaluation of man into every pore of life in his time and into the very foundations of human thought, as Bakhtin commends (2013).

Bezerra (2005) points out that work of Dostoevsky allows Bakhtin to distinguish two modes of novel: the monological one and the polyphonic, dialogic one. The first is associated with the ideas of monologism, authoritarianism and conclusive finishing; As for the second one, the concepts of dialogism, polyphony and reality in formation, therefore inconclusiveness. In Dostoevsky's novels, this polyphony is verified precisely in the face of the multiplicity of voices that, oriented for different purposes, are freed from the single center embodied by the author's will, as emphasizes Discini (2006).

Dostoevsky's hero, therefore, is not merely the fruit of the author's final artistic authority, but is ideologically autonomous, independent and, so to say, emancipated. In short, it is not the image of the traditional hero, objectified and typified by the author's own axiological values. The plurality of voices reflects the plurality of independent and unmistakable consciousness. Between hero and author, no relationship of subordination is established. In his narrative fiction, the hero's voice sounds *alongside* the author's own word, since the author is included in the dialogue with the characters (Bakhtin, 2013).

Dostoevsky thus does not speak *of* the hero, but *with* the hero, as notes Bakhtin, (2013): deep down we do not see in this author a definition, in advance, of who his character is, as a typified one, but only of how this character sees him / herself or how he / she "becomes aware of [her or] himself" (Bakhtin, 2013, p. 54). Their characters are not *established* either, but they are in a permanent unfinished process of formation, because they are dialogical. The character interests Dostoevsky as an embodied idea, i.e.

as a specific point of view of the world or about him / herself: in the words of Bakhtin (2013, p. 52), he is interested in expressing “rational and evaluative position of man in relation to himself and the surrounding reality”. They are, therefore, diverse characters, with status of fully-grown consciousness, placed in dialogic interaction. And what these consciences put into interaction are ideas, leading them into confrontation with what Bakhtin calls the *last questions*, because they are committed to the horizons of truth:

Only a polyphonist such as Dostoevsky was able to probe, in the struggle between opinions and ideologies (of various eras), the unfinished dialogue around the last issues (in the great time). [As for] Others [, they] deal with issues that can be solved within a period. (Bakhtin, 2015, p. 388)

It is important to emphasize, again, that it is not the characters, in principle, who evolve in the dialogue, but the ideas they embody. And they do not evolve through dialectic¹¹, but rather through an incarnate dialogic of the characters, related to the event taking place. In a passage from the *Aesthetics of Verbal Creation*, Bakhtin (2015, p. 348) states that: “dialectics is the abstract product of dialogue”, i.e. where the boundaries between dialogue participants are erased and what was dialogue suffers from an abstract theoretical process of monologization. As the author emphasizes, once again, in another passage, “for Dostoevsky, the last datum is not the idea as a monological, albeit dialectical, conclusion, but the event of the interaction of voices” and how, embodied in the character as a voice, the idea evolves (Bakhtin, 2015, p. 200).

This multiplanar logic – of author and protagonist characters – produces a complex movement. Starting from the architecture of the event

¹¹ It should be clarified that Bakhtin firmly refutes the hypothesis that the dialogues in Dostoevsky are dialectical: “In this case we should recognize that the authentic idea in Dostoevsky is a dialectical synthesis: for example, Raskolnikov’s thesis and Sonia’s antithesis. Aliocha’s thesis and Ivan’s antithesis, etc. Such a conception is deeply absurd. Now Ivan does not argue with Aliocha, but first of all with himself, and Aliocha does not argue with Ivan as a single and integral voice, but interferes with his inner dialogue by seeking to reinforce one of his replicas. One cannot speak of any synthesis; one can speak only of the victory of this or that voice, or the combination of voices where they are chords [two alternatives that refer to dialogical polyphony] (Bakhtin, 2015, p. 200).

in life – this one guided by the multiplicity of relationships – the author outlines what are the prototype-ideas, which the novelist will use for his / her fictional work; The author then traces the aesthetic-literary and fictional exotopic plan, where the prototype-ideas become force-ideas, which self-develop at each encounter between characters and which lead the plot. And on the literary level, the novelist objectively and stylistically articulates the different characters, their ideas and the voices that cross them, without the latter undergoing homophonic reduction or any form of silencing: that is, the author recreates, within the fictional narrative plot, the plan of the event, in which the multiple voices of the characters, including the author's own, as a voice among the others, are fully meaningful, are equally potent.

The characters face their living questions invested in their singularities and have sufficient autonomy to develop their ideas and concerns to the limit of their possibilities, also assuming, beyond the author, their own existential positions. They are inconclusive characters whose voices, in the process of opening to what's forthcoming, go beyond the author's own ideological horizon, at the same time producing an objective glance at their own situational relations, thus imprinting their mark on them. This is what Bakhtin called polyphony, in which the centers of axiological values, or consciousnesses, coexist in dialogical interaction, in spite of the real multiplicity of planes in an objective social universe and their profoundly contradictory aspect, as reminded by Axt et al (2011).

6 FINAL THOUGHTS

As we have seen, in polyphony the meaningfulness and equivalent potency of voices prevail, the position of equality – in their right to manifest – in their relationship (Bakhtin, 2013). It is these voices that, in the *willingness of fact* whose character is collective and relational, are combined into a higher order unity than homophony. That is, the (polyphonic) will to happen is the will to combine many wills that, although they are in themselves individual, end up realizing, in a collective instance, “the departure of principle beyond the limits of a will” (Bakhtin, 2013, p. 23): a departure of principle that involves an ethical dimension of the

excavation of consciousness, with a view to understanding the horizons of truth; which does not mean the requirement for consensual agreement. Rather, it has the meaning of an agreement, made by the collective of participants, obeying, at the same time, certain coexistence and procedural rules, which may be those provided by the institutional agency, within which the dialogue is concretized. Such an agreement – or the point of intersection, where consciences are chords – is by nature provisional, punctual, and may culminate either in a victorious point of view (though always permeated by the horizons of the other), or in an advance towards new horizons not previously delineated ...

Willingness of fact implies a structuring intersubjectivity at the language level on the one hand. But, on the other hand, the willingness of fact and the combination of individual consciousnesses to be realized in a collective instance seems to depend on an intentional effort of each one of these consciousnesses; which, first, points to the overcoming of relativism as well as solipsism, without falling into the opposite pole of the simplifying reduction to universal truths...

A universal truth (thought of as a heterogeneous and hybrid unity in the tension between *pravda* and *istina*) is left as (a utopian) further point, always in motion, wishing to be attained, of course, by the willingness of fact. This is how it is in art, culture, science, philosophy and, perhaps, Law: and with each question eventually solved, others will come... in infinite dialogue!

In this sense, polyphonic dialogue seems to be a democratic demand, fully suited to the intersubjectivity paradigm. This is because it requires, in principle, that the various voices of our community may rightfully be heard and that they be assured the space for voice expression on an equal footing. And if this is a pillar without which political democracy is not built, in the jurisdictional framework it can be no different. The polyphonist judge, in the process of objectifying his / her decision in the form of a sentence, is responsible for substantiating his / her resolutions, while considering the perspective voices of the participants in the process, thus building what Bakhtin traces beyond the limits of one's own will, an outlet that dialogically welcomes a collective instance, defining one of two polyphonic alternatives: the victory based on this or that voice, but without the others

being erased, or the combination of voices in solidarity commitment where they are like chords

To finish, going back to the epigraph by Jorge Roggero, and in view of what we understand, from the authors placed in dialogue, we can say that the objective view (be it artistic, theoretical-conceptual, philosophical, scientific, normative...) is always second-place, in relation to the event. It is the happening in process, historically, and dependent on an otherness-based and polyphonic relationship – whose comprehensive horizon is sustained by the responsible ethical act –, which gives consistency to the operation of objectification established by the theories.

Conversely, not observing this premise, the operation of objectification will remain abstract, accounting only for a technical competence in itself, not rooted, easily draining into the void of existential meaning. We believe the deepening of this study may allow the consideration of the *responsive* and *responsible* interpretative act by the judge, within the horizons of tradition, as a *must-be*, in the event of a process – already committed to otherness, and the set of voices that are part of it; and that *there is no way to avoid it* – and it all can be considered as the first condition for broadening horizons and objectifying the decision-making process.

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