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"THIS STRANGE INSTITUTION CALLED LITERATURE" AND THE LAW

FERNANDO ARMANDO RIBEIRO[1]

TRANSLATED BY FELIPE ZOBARAN

ABSTRACT: This paper analyzes, in a punctual and problematic way, the famous article by Jacques Derrida titled *This Strange Institution Called Literature*, with aims of finding possible implications for law and legal thinking. Based on Derrida's ideas, we attempt to map the fundamental aspects of the Law and Literature approach, as well as its meaning regarding philosophy. By studying Derrida, however, we do not hinder the dialogue with other thinkers, who may have influenced him as well as opened up the possibility for disagreeing in substantial matters, such as the supposed possibility of literature to "say everything". Thus, the non-institutionality of literature and its intrinsic democratic power are hereby explored as fundamental elements to see this approach as more than casual. With its invaluable capacity of raising questions, literature is a powerful rival to totalitarian regimes and a strong democracy fosterer. Furthermore, with the aesthetic pleasure granted by its narratives, literature also has a deconstruction trait, and it shields us against the ever-present risks of decisionism.

KEYWORDS: literature; law; democracy; Derrida; decision.

1 INTENTIONS

The purpose of this paper is to analyze, in a punctual and problematic way, the famous article by Jacques Derrida titled *This Strange Institution*

[1] Ph.D. in Philosophy of Law at *Universidade Federal de Minas Gerais* (UFMG). Post-doctoral degree at University of California, Berkeley (USA). Professor of the Law Post-Graduation School at *Pontifícia Universidade Católica de Minas Gerais* (PUC-Minas). Judge at the Court of Military Justice of Minas Gerais. Member of *Academia Mineira de Letras Jurídicas* (chair 34). Belo Horizonte (MG), Brazil. ORCID: https://orcid.org/0000-0002-4788-2368. CV Lattes: http://lattes.cnpq.br/2441692531789249. E-mail: fernandoarmandoribeiro@gmail.com.

Called Literature, originally conceived as an interview given to Derek Attridge, and first released in the book *Acts of literature*.

The Brazilian edition of the book by the French-Maghrebi philosopher is divided in two parts. The first one is an introductory preamble on the central ideas developed by Derrida in the interview. This part was written by Evando Nascimento, reviser of the work and one of the greatest disseminators of Derrida's thoughts in Brazil.

This paper dwells, however, in the second part of the book, which contains the interview itself. Our focus is to find the main points for understanding the text in the context of Derrida's production, and its possible correlations to the law. Thus, the ideas defended in the text are compared to other aspects of the thinker's production throughout his work, as well as other authors who dialogue and influence Derrida's views.

Such problematic approach, fundamental for philosophically thinking, seems indeed indispensable for reading an author who analyzes the "forthcoming", and points at limitless thinking in order to find a way of permanently refounding the human aspect.

2 BETWEEN PHILOSOPHY AND LITERATURE: CONVERGENCE

In the very first question of the interview, Derrida is asked about the intensity of his interest in philosophy and literature. He makes it clear that, for him, there is no favoritism of one over the other, since what truly interests him lies in the indefinable space between both disciplines, which makes it impossible to renounce any of them.

This thin line between philosophy and literature gives origin to the concept of self-biography (a less inadequate name), which reveals itself as an event whose trail we would like to preserve.

Derrida believes there is no difficulty to differ, but to separate historical narrative, literary fiction, and philosophical reflection. He states:

> [...] I don't dream of either a literary work, or of a philosophical work, but that everything that occurs, happens to me or fails so, should be as it were *sealed* (placed in reserve, hidden so as to be kept, and this in its very signature, really like a signature, the very form of the seal, with every paradoxes that traverse the structure of a seal) (Derrida, 1992, p. 35).

3 CAN LITERATURE "SAY EVERYTHING"?

Literature's particular characteristic of being non-limitable by precepts or categories makes Derrida conceive it as a strange institution that is able to "say everything". On that element, which is one of the most important ideas in the text, we can draw some reflections.

Unlike the English language, in which the text of the magazine was originally released, French and Portuguese have a double meaning for the expression "*dizer tudo*", or "*tout dire*". In French, *tout dire* may have the meaning of exhausting or finishing something (which corresponds to the expression used in the English translation, *to say everything*). However, it may also mean *to say anything*, that is, acknowledging the freedom of imagination and expression that is intrinsic and necessary for the author to write.

Here, while recognizing the importance of polysemy for the Franco-Maghrebi thinker, we understand that the expression should not be read in the first meaning, that is, *to say everything*. That is because literature is a space where the conglobating and omniscient pretentious ideas are abandoned and give place to valuing singularity and concreteness. This is one of the reasons why literature can stand in opposition to both metaphysics and ideology.

About that, ideology may be the main rival of literature. Otto Maria Carpeaux (2017), in an instigating essay titled "Poetry and ideology", shows how everything ideology makes in form of abstraction, in order to describe a world it cannot grasp, is precisely the opposite way of making poetry. It should be said, poetry, and, as we see it, all good literature, are marked by a reduction of abstraction (oppositely than what common sense usually thinks) in order to materialize words and human relations that are fundamental for the world (Carpeaux, 2017). It is noticeable, thus, that the conflict is between the "discourse of abstraction" – which is in the ambit of ideology and omniscient conceptualisms – and the "particularization discourse" – which belongs to literature and poetry.

That is why it seems so difficult for many poets and authors to become good politicians. The Brazilian poet Drummond, for example, who

approached the Communist Party, refused to linger in it, because it bothered him to have to obey the party's guidelines, which parties usually have, so that such guidelines may limit one's freedom and imagination.

Let us study some ideas by Martin Heidegger, a great influence on Jacques Derrida. One of the foundations of Heidegger's anti-metaphysical thinking is that thinking allows the *Dasein* to leave its daily routine, thus transcending the scope of the merely *ontic* (in which only the entity exists) to reach the *ontological* (in which the Being exists).

For Heidegger, to think is different than to represent. In representation, reason seeks definitions, developing concepts through clear and distinct concepts. However, in thinking pragmatics, (*pragma* = action), man is not satisfied with the "evidence" of public opinion and beyond calculations and representations, allows the thing itself, the Being, to show itself in the most proper way.

For Heidegger, the language of metaphysics, which may be seen as founding of the western institutions, only conceives as real what can be stated. Metaphysical language is logical and always apophantic. This is because, in the search for a more accurate determination of their knowledge, science and metaphysics reduce reality to what they can express, that is, to the entity (Heidegger, 1967).

Thus, what is distinguished or placed as another to the entity enunciated by the concept is nullified, taken as nothing. This nothingness is one of the reasons metaphysical discourse can only recognize Nothing in the Being. And one must remember that science and technique develop in the common ground of metaphysical discourse (Heidegger, 2008).

Moreover, there is also a negation of the finitude contained in apophantic and conceptualist discourse. This is so because the latter has the pretention of concealing or domaining reality. In this sense, Heidegger uses an etymological analysis of the expression *Begriffe*, which in German means *concept* (Heidegger, 2008). As the Black Forest thinker suggests, this word has a semantic field directly linked to the verb *Greiffen*, which in turn means *to grasp*. In other words, the notion of *concept* is intrinsically

linked to a notion of "grasping", or "domaining". Or, approaching Derrida again, to a pretense of "saying everything".

In contrast, poetry and literature are marked by a language that expresses itself and has very different intentions. Literature is not reduced to the logical relation of subject-object-predicate. The writer is able to say without stating, and the closer he or she comes to the truth, the less he or she intends to support it. Their constructions, because they do not bring veritative pretensions, also include the hidden and diversified side of their entities. Now it is by this concealment that the unveiling is allowed. Contrary to concept, which uses technique and science, literature illuminates without stunning and allows the entity to manifest itself in an infinite plurality of meanings.

Thus, based on his readings of Hölderlin, Heidegger introduces a new way of thinking that approaches the poetic. The language of poetry is thought of as a new possibility of human existential attitude that goes beyond the usual meanings: "poetry is letting one dwell in their own sense" (Heidegger, 2003, p. 167, translated). As pointed out, we must move the dwelling as possession or dominion away and bring it closer to human presence, human navigation.

> To think language one has to penetrate language speech in order to be able to live in language, that is, in its speech and not ours. Only in this way is it possible to reach the realm in which it may or may not happen that, from that realm, language entrusts us with its way of being, its essence. We deliver speech to language. We do not want to base language on anything other than itself or to clarify other things through language (Heidegger, 2003, p. 9, translated).

According to Heidegger, one must think the language of poetry as a mysterious and privileged measure of the being, since the poet is dedicated to the unknown as a means to remain unknown and searches for new meanings in obscurity, not bothering to find solid and universal meanings. In this road for familiarity into the unknown, it is possible for man to dwell. Heidegger hence goes beyond logical, mathematical and technical logic, and sees the man as a poetic act, not a metaphysical one.

> We know too much and believe too quickly in what we know. Perhaps this is why it is so difficult for us to

> become familiar with a question born of true experience. For this to happen, one must be able to be amazed at the simple and assume that astonishment as a dwelling place (Heidegger *apud* Franceschini, 2012, p. 32, translated).

Thus, facing these thoughts, it is necessary to highlight that the capacity of literature to "say *everything*" should not be understood as an exhausting pretension, since literature is precisely conceptually unpretentious, and its richness lies in the absolute inventiveness that allows one to "say *anything*".

This is an important observation in the general context of the interview, and is not limited to the question of translation. It is that, more than once, Derrida uses expressions that can lead his readers to the misperception that literature can indeed "say *everything*". Thus, in one passage he says that "everything is in Shakespeare", "everything is also in Celan", and, likewise, "in Joyce", "or in Kafka" (Derrida, 1992, p. 67).

Moreover, the French-Maghrebi thinker also highlights another important trait of "saying everything". The idea that writers must have the right to say everything they want, protected, at the same time, of any kind of religious or political censorship.

Here, history seems to bring very valid and appropriate examples to Derrida's thesis. The troubled political scenario lived by Shakespeare was undoubtedly a powerful catalyst for the frequent spatial dislocation in his texts. As is well known, the controversial succession of Queen Mary I of the Tudor dynasty would lead to a deep stir of political and legal contours. After all, who would be the legitimate heir to the English throne? According to some, Elizabeth (who would later become Elizabeth I), despite being a father's sister to Mary I, found no legal backing as successor to the throne, since she was the daughter of King Henry VIII with Anne Boleyn, a "Commoner" who did not have royal blood. Thus, Elizabeth's ascension to the throne was accompanied by long and dramatic controversy periods that would result in countless persecutions, tortures and deaths of people who risked controversy over the political and ideological issues surrounding the succession of the crown.

Such historical background points to the main reason why Shakespeare supposedly chose distant lands in long-gone times for most of

his plays. In such a period of political persecution, this was the genius' way of finding the freedom to be able to "say everything" (or "say anything").

4 LITERATURE AND DEMOCRACY

We must also bear in mind that the possibility of "saying everything" brings in itself an intrinsic democratic commitment. Any art worthy of such title will always be a powerful opponent to authoritarian regimes, since it represents a vigorous refusal to accept a single truth. On the contrary, the homogenization of aesthetic standards may prove to be the gateway to the castration of freedom. Therefore, freedom of imagination and being able to say everything represents a denial of kitsch and stereotyping simplifications so dear to ideologies and so widespread nowadays.

Analyzing such phenomenon, which is one of the main topics of his work, Milan Kundera (2000, p. 7) states that:

> Man desires a world where good and evil can be clearly distinguished, for he has an innate and irrepressible desire to judge before he understands. Religions and ideologies are founded on this desire. They can cope with the novel only by translating its language of relativity and ambiguity into their own apodictic and dogmatic discourse. They require that someone be right: either Anna Karenina is the victim of a narrow-minded tyrant, or Karenin is the victim of an immoral woman; either K. is an innocent man crushed by an unjust Court, or the Court represents divine justice and K. is guilty. This "either-or" encapsulates an inability to tolerate the essential relativity of things human, an inability to look squarely at the absence of the Supreme Judge.

The Czech writer conceives of the novel as intrinsically incompatible with authoritarianism, especially in its most radical form: totalitarianism. In *The Unbearable Lightness of Being*, the narrator proclaims: "In the realm of totalitarian kitsch, all answers are given in advance and preclude any questions. It follows, then, that the true opponent of totalitarian kitsch is the person who asks questions" (Kundera, 1999, p. 254). Well, the "person who asks questions" is, more than anyone, the novelist, the writer, the poet, since they do not intend to find final solutions. In another remarkable reflection, the writer states:

> [the] incompatibility [between the novel and totalitarian universe] is deeper than the one that separates a dissident from an apparatchik, or a human-rights campaigner from a torturer, because it is not only political or moral but ontological. By which I mean: the world of one single Truth and the relative, ambiguous world of the novel are molded of entirely different substances. Totalitarian Truth excludes relativity, doubt, questioning; it can never accommodate what I would call the spirit of the novel (Kundera, 2000, p. 14)

Good literature helps us overcome the siren calls represented by easy final solutions, either in its more extreme forms in authoritarian ideologies, or in the utopian and subtle forms contained in some traditions of western thought. These, as Isaiah Berlin (1991, p. 15, translated) critically pointed out, insist on forging the common sense that "for every problem there is a solution" and "all solutions will eventually be potentially compatible".

5 A FICTITIOUS INSTITUTION

According to Derrida, literature should not be seen as "institutionalized fiction", but rather as a "fictitious institution". This position has much to tell us about the important role that should be attributed to literature in human experience, as well as its strangeness.

This strangeness stems from the fact that literature is an "institution" that defies the very concept of institution, which in the Western thought received exemplary systematization by Hegel. In his *Elements of the Philosophy of Right*, Hegel expresses his most mature political system, seeking to analyze the materialization of freedom by institutional mediation. For him, the law should be conceived as the institutional realization of freedom, that is, freedom as subjectivity and objectivity, concrete freedom (Hegel, 1993).

For the Stuttgart thinker, "ethical life" represents the realization of the concept of freedom, the final synthesis of his process of determination. Here, freedom is in its most developed form, demanding political effectiveness, and becoming a "world" present in social institutions. The "second nature", in which the ethical appears as custom, includes the full realization and determination of man's freedom, who comes to self-consciousness as a member of a community. In this full realization of

freedom, there is the identity between the universal (substantial) will and the subjective (private) will. (Hegel, 1995).

By making literature a fictitious institution, Derrida eventually reaches one of the central assumptions for the construction of this understanding. It is that literature becomes an institution that rejects the prominent objectivity of the institution, seen by idealism as a "suprasumption" of subjectivity.

Thus, if, on the one hand, it becomes intersubjective by sharing narratives, metaphors and aesthetic elements, on the other, it refuses any objectifying claim, since it assumes diversity and alterity as constitutive parts of itself. That is to say, literature is an institution that lacks the hardcore structuring of institutions and which relies on individual autonomy and freedom as requirements for its continued reinvention. In other words, it is an institution that expects to be denied so that it is actually conceived.

6 IS LITERATURE A RECENT PHENOMENON?

When answering the third question of the interview, explaining the difference between literature and poetry, Derrida states that the term *literature* is a very recent invention, connected to the modern notion of democracy.

Thus, for him Greek or Roman poetry do not seem to be examples of *stricto sensu*, literature, since: "the principle of 'being able to say everything', the socio-juridico-politico guarantee granted 'in principle' to literature, is something which did not mean much, or not that, in Graeco-Latin culture and *a fortiori* in a non-Western culture" (Derrida, 1992, p. 40).

Derrida even mentions a "set of laws or conventions which fixed what we call literature in modernity" (Derrida, 1992, p. 40). Even if we may agree with the idea that Western literature does not begin at the same historical moment of the founding of science and philosophy, the thesis of Derrida's seems to contain exaggeration and a contradiction. The precursor works of the European novel and of modern written literature were conceived well before the emergence of the "socio-juridico-politico" framework which ensured that literature could say anything.

In this sense, William Shakespeare (1564-1616), Miguel de Cervantes (1547-1616) and François Rabelais (1483-1553) are striking examples. They all wrote inaugural works of modern literature, but none of them could count on the guarantees to which the French-Maghrebi thinker refers. But they each found their own ways of maintaining their freedom of imagination. Shakespeare, as aforementioned, used the strategy of spatiotemporal displacement of his narratives to avoid the increasing censorship in England at his time. Others, such as Rabelais, despite facing the misunderstanding and attack of their peers, had their works preserved thanks to the admiration of influential personalities of the period, such as members of the *du Bellay* family, who won the approval of the King of France, François I, so that Rabelais could continue publishing his works.

It does not seem to us that Derrida disagrees with the traditional view that inserts the works of such authors as founding marks of modern literature. On the contrary, by the end of the interview he grandly acknowledges the fundamental importance of Shakespeare:

> I would very much like to read and write in the space or heritage of Shakespeare, in relation to whom I have infinite admiration and gratitude; I would like to become (alas, it's pretty late) a "Shakespeare expert"; I know that everything is in Shakespeare: everything and the rest, so everything or nearly (Derrida, 1992, p. 62).

Lastly, it seems contradictory to us that the main characteristic of literature, this "strange institution with no institution", depends so much on an institution that Derrida himself acknowledges to be so institutionalized such as law, marked by calculation and violence in order to exist (Derrida, 2010).

7 THE PLEASURE OF (AND IN) THE TEXT

In a significant passage, Derrida maintains that the pleasure and enjoyment of the text are inherently deconstructive properties. "Every time there is '*jouissance*' [enjoyment] [...], there is 'deconstruction'. Effective deconstruction" (Derrida, 1992, p. 56), Derrida categorically states, and acknowledges that perhaps it is this point, the pleasure of the text, that most irritates the opponents of deconstruction. "There is no effective

deconstruction without the most possible pleasure", he later states (Derrida, 1992, p. 56).

Jacques Derrida's words seem to us to be invaluable so that we can unleash the aesthetic and libertarian forces that permeate literature, making it a powerful catalyst for human autonomy and enlightenment. Pleasure deconstructs because it frees literature from the ideological, moral and even theological prisons in which it is so often entangled. Thus, the pleasure "of literature and in literature" now calls us to make a reflection.

When writing about the pleasure of the text, Roland Barthes teaches that there needs to be a "game" between writer and reader in order to create an opening "space" that must be provided by the writer for the reader to enter the text. Therein lies one of the main pleasures of the text, which results from the impossibility of predicting the various readings, whose gaps, far from being problematic, are the very condition for the participation of readers and the renewal of the work by reading (Barthes, 1996).

Hence, in the face of a "very talkative" text, the fruition ends up being castrated, because the text no longer invites the reader, and he or she no longer ventures to travel its ways, reading it in a different way. This is what leads Derrida to say that "the text is atopic, at least in its production" (Derrida, 2014, p. 41, translated), as it is inserted in a system that is expected to be organized by the writer and then by the reader.

From what these authors taught us, we can say that the deconstruction of the text is intrinsically connected to the opening for the reader to interact with it. The reader will sip the story not for an explicit message or predication, but for the pleasure that surrounds and seduces him or her, assembling the pieces that the author, also pleasantly, leaves along the way. Pleasure results from a text that teaches less and invites more; less philosophizing than inciting; a text that avoids describing realities but introduces life possibilities.

This pleasure, which is the "staging of an appearance-disappearance" (Barthes, 1996, p. 16, translated), is also a condition for deconstruction. Through it, not only does the reader deconstruct the text, but also its values, its worldviews, its previous understandings. He or she will not let the text be obscured by his or her preconceptions, and these will not leave

unharmed by the pleasurable act of reading either. Imbued with pleasure with each displacement stimulated by the text, the reader must engage in this fruitful, libertarian and profoundly human act that literature alone can germinate.

7.1 A digression about pleasure in literature

Contrary to popular belief, Josef K. was not always considered an innocent man oppressed by arbitrary power. Some of his most famous interpreters never stopped looking for reasons for his verdict. Among them, Max Brod, Kafka's personal friend and responsible for one of the main keys of interpretation of the great Czech writer[2], never doubted the assumption that Josef K was guilty as charged.

For Brod, in *Despair and salvation in the work of Franz Kafka*, Josef K. is guilty due to his "inability to love" (*Lieblosigkeit*). According to him, "Josef K. love no one, only flirts and has fun, so he must die" (*apud* Kundera, 2001, p. 204, translated).

One of the alleged "evidences" to attest to his guilt is contained in a chapter left incomplete that Kafka wanted to be excluded from *The Trial*. By Brod's interference, however, the text was eventually published as an appendix in several editions of this work. In the narrative of this chapter, Josef K. had spent three years without visiting his mother, satisfied with sending her money and finding out about her health through a cousin.

A second "evidence (?)" comes from the relationship between K. and Fräulein Bürstner, which, for Brod, is based on the "lowest sexuality", since

[2] The so-called "Kafkology" was a creation from Max Brod's imagination that, with the presumed authority deriving from his friendship with Franz Kafka, led us to believe in the image of the caricatured friend in the character Garta. In his book "The Enchanted Kingdom of Love", Kafka / Garta is described as "a saint of our time, a true saint", someone who "wanted to live in perfect state of purity because he could not conceive otherwise". But Garta was not announcing a new religion, for he merely wanted to live his faith, and because his writings were merely steps to his climb to the Heights, they had no value to him and should be destroyed. Thus was established the image of the suffering and sad man and, above all, of a religious thinker (*der religiöse Denker*). According to Kundera (2001, p. 38-40, translated), "Max Brod created the image of the image of Kafka and his work at the same time as Kafkology. Despite a huge variety of texts, Kafkology continues to elaborate variations on the same discussion, the same speculation, which, increasingly disconnected from Kafka's work, feeds only on itself. In prefaces, afterwords, notes, theses, biographies, and dissertations, Kafkology produces and sustains its own image of Kafka, to the point that the author known by the name of Kafka is no longer Kafka, but only a Kafkologized Kafka."

Ms. Bürstner was merely someone for whom he has a deep desire, so he sees her only as a sexual object and not as a person (Kundera, 2001, p. 204).

It is a thought aesthetically based on an absolute misunderstanding of the role of pleasure (and sex) in Franz Kafka's literature. Starting from the stereotypical interpretation of St. Garta, we end up obliterating the delight that the writer inserts, in true delirium, in so many of his texts.

In *The Castle*, the sex scenes between K. and Frieda are both poignant eroticism and deep lyricism. An hour after meeting her, K. is shown hugging the "little blonde" behind the bar, "between puddles of beer and dirt covering the floor". The next moment, however, poetry seems to echo in the conjunction of their bodies:

> There, hours went by, hours of mutual breaths, of mutual heartbeats, hours in which K, continually had the feeling that he was going astray, or that he was farther inside the strange world that any person before him, in a strange world where the very air had in it no element of his native air, where one must suffocate from strangeness and where, in the midst of absurd enticements, one could do nothing but keep going, keep going astray. (Kafka, 2017, p. 40).

8 ON HISTORICITY AND READING MODES

When asked about transcendent reading and its relation to literary texts, Derrida argues that it is possible to escape this type of reading, but it cannot be prohibited.

According to the philosopher,

> poetry and literature have as a common feature that they suspend the "thetic" naivety of the transcendent reading. This also accounts for the philosophical force of these experiences, a force of provocation to think phenomenology, meaning, object, even being as such, a force which is at least potential, a philosophical *dunamis* – which can, however, be developed only in response, in the experience of reading, because it is not hidden in the text like a substance (Derrida, 1992, p. 45-46).

Thus, according to him, the literary character and the meaning of a text are not empirical matters, nor do they depend on each reader's subjectivity. There are in the text elements that summon literary reading

from conventions of the very history of literature. Thus, this structure makes literarity to transcend empirical subjectivity, connecting to intersubjectivity.

Derrida's view should be seen as a warning to all readers of literature who honestly intend to have their horizons broadened and enriched by reading. A warning against every moralizing, ideological interpretation of literary texts, those which are always eager to establish judgment and manicheist divisions in the core of narratives. In the illusion of sophisticating Reading, many end up filling it with biographical inferences, ideological points of view, or parodies of consecrated texts.

Hence, these people tend to forget the aesthetical element that nourishes and encompasses the literarity of texts. And this is what makes literature have its greatest deconstructive force, since it is due to the beauty and the pleasure of a text that we are able to unveil the common place and the cliché that make up our common sense and hinder the authentic reality perception.

To read Drummond, Joyce, Kafka, or Hemingway without sensitizing oneself to the beauty of their words is to trail a path (which is commonly encouraged by society and even academia) of *kitsch* readings, and, above all, it is the ruin of the very legacy of art, since it is able to castrate its transforming power to see beyond and anticipate the forthcoming.

After all, as Milan Kundera (2001, p.7) says:

> Suspending moral judgment is not the immorality of the novel; it is its *morality*. The morality that stands against the ineradicable human habit of judging instantly, ceaselessly, and everyone; of judging before, and in the absence of, understanding. From the view-point of the novel's wisdom, that fervid readiness to judge is the most detestable stupidity, the most pernicious evil. Not that the novelist utterly denies that moral judgment is legitimate, but that he refuses it a place in the novel.

Derrida highlights the uniqueness of the literary work by saying that it happens only once, and, far from going against history, becomes completely historical. (Derrida, 2014, p. 105-106).

Echoing lessons from philosophical hermeneutics, Derrida recognizes that the uniqueness of the literary work is never closed as a point or as a fist, for an absolute, pure uniqueness, if possible, would not even be visible

or available for reading. To become readable, it needs to be shared, participating and belonging (Derrida, 2014, p. 106).

According to Gadamer, in the hermeneutic experience of the work of art, we face the possibilities of owning the work, and it is precisely with the "thing itself" that we can establish an authentic dialogue, together with a whole rich tradition of meanings expressed by the work. This contingency of the work of art allows us to investigate the very possibilities of truth, since the content of what is understood has a mobility of meaning that goes beyond the mere subjectivity of the viewer (Gadamer, 2010).

Such mobility of meaning occurs not due to the subjective will of the interpreter, but rather to what Gadamer (2010, p. 93, translated) calls as the "historical occasion" in which the interpreter and work lie. "Reality is not that real", states Gadamer (2010). Whatever we call reality is a description of something from a certain point of view. Having no purely descriptive concern, literature brings different possibilities of meaning, making the texts understandable from different perspectives and with different shades.

9 THE "PERMANENT REVOLUTION" OF LITERATURE

In a fundamental moment of the interview, Derrida recognizes that the aesthetic form of literary writing is more important and deconstructive than supposed content or messages that the text may carry: "Sometimes theoretic arguments as such, even in the form of criticism, are less 'destabilizing' or, say, simply less disturbing to metaphysical assumptions than this or that 'way of writing'" (Derrida, 2014, p. 74, translated). In so doing, the philosopher seems to recognize something fundamental to the work of art, which often ends up obscured by other less important factors. By reading a literary work seeking a political, philosophical or religious position, many people end up forgetting the aesthetic element as a catalyst for understanding and unveiling.

Thus, the work speaks beyond its author's intentionality and even against their intentions, because it speaks not only through its explicit predications, but also through its metaphors, silences and especially the

displacements it provides in the construction of the narrative. Literary narrative, as well stated by Derrida, regards not only the act of writing, but also of reading, and of the countersignature that the act of reading represents. Between writer and reader there is a *duet* (Derrida first says "duel", but considers it not the best expression, afterwards)

> [...] of singularities, a duel of writing and reading, in the course of which a countersignature comes both to confirm, repeat and respect the signature of the other, of the 'original' work, and to *lead it off* elsewhere, so running the risk of *betraying* it, having to betray it in a certain way so as to respect it, through the invention of another signature just as singular. (Derrida, 1992, p. 69).

It is in this game, this duet of countersignatures that the potentially revolutionary aspect of literature emerges. In a lecture delivered in Havana, a few years after the Cuban Revolution, Argentinian writer Julio Cortázar (1993, p. 160-161, translated) made an instigating reflection on the topic:

> I believe, and I say this after having weighed all the elements that come into play for a long time, that writing for a revolution, that writing revolutionarily, does not mean, as many people believe, writing about the revolution itself. [...] Contrarily to the narrow criteria of many people who confuse literature with pedagogy, literature with teaching, literature with ideological indoctrination, a revolutionary writer has every right to address a far more complex reader, far more demanding in spiritual matters than imaginable for the improvised writers and critics, convinced that their personal world is the only existing world, that the concerns of the moment are the only valid concerns.

In this magnificent lecture, the author of *Rayuela*, in every way, unsuspected of being a conservative, leaves us a lesson that seems elucidative and complementary to Jacques Derrida's reflections. For literature to be authentically revolutionary, writers must have full creative freedom, not obsessively surrendering even to the theme of revolution.

For the revolutionary trigger of literary texts lies mainly in their singular ability to suspend the veil of previous opinions in the reader, freeing them from the oppression of their previous worldviews. As well said by Gadamer (1997, translated), "those who want to understand a text need to be willing to let it say something to them".

A literary text contains alterities, and if the reader can grasp them, they will lead him or her to deconstructive dislocations due to the awareness of previous opinions, worldviews, and personal prejudices. Here dwells a foreshadowing of the possible but never paved paths that lead to the "forthcoming".

Regarding the importance of the habit of reading and the diffusion of literature as transformative practices, the following statement by Cortázar seems to us of particular importance and clarity (1993, p. 161-162, translated):

> Beware the easy demagogy of demanding literature to be accessible to everyone. Many of its supporters have no other reason to do so than their obvious inability to comprehend a far-reaching literature. They clamorously ask for popular themes without suspecting that the reader, as simple as it may be, will instinctively distinguish between a more difficult and complex tale, but that will force him out of his little surrounding world for a moment and show him something else, whatever it may be, but something else, something different.

10 LITERATURE AND ITS CONTRIBUTION TO NORMATIVE CORRECTNESS

Having said that all, we understand how literature can contribute to the strengthening of pluralism, contributing directly to the manifestation of democracy. Good literature always leads us to understand the world by its wide spectrum, with its many and diverse characters and plots.

The reading process is complex and intricate, and its results are concretely verifiable. From the initial effort to identify with the characters and their points of view, through the mental construction of the images that form a world of words and the breaking of stereotypes about good and evil, the beautiful and the ugly that are inserted in the great narratives, all contribute to our perception of the world being no longer guided by less centralizing sense vectors. And such learning is not through abstract concepts or ideas, but through the perception of concreteness and particularity provided by the reading experience.

Making a reflection on this phenomenon, Nobel literature writer Orhan Pamuk stated that "when we read, we understand that not only the

world but also our mind has more than one center". According to the Turkish author,

> The fact that there was no single center became evident to me when I read literary novels and when I saw the world through the eyes of conflicting characters. The Cartesian world in which mind and matter, human figures and landscapes, logic and imagination are separate and distinct cannot be the world of a novel. It can only be a world of power, an authority that wants to control everything – for example, the monocentric world of the modern nation state. Rather than pronouncing a global judgment on an entire landscape, the task of reading a novel is the joy of experiencing every dark corner, every person, every color and shadow of the landscape. When we read a novel, we devote our primary energy not to judging the whole text or understanding it logically, but to turning it into clear, detailed pictures in our imagination, and taking our place in this gallery of images, opening our senses to all its many stimuli (Pamuk, 2010, p. 172).

We have here one of the most powerful foundations for the construction of this new parameter of impartiality to be developed from literature, that is, the "judicious spectator" (Nussbaum, 1995). This spectator does not personally participate in the deeds he or she witnesses, but is interested in the participants. He or she sees the situation with the necessary distance to avoid thinking about his or her own happiness and security. One can use their own information when facing events, but one must be critical so that they do not bias one's judgment. "Among his most important moral faculties is the power of imagining vividly what it is like to be each of the persons whose situation he imagines" (Nussbaum, 1995, p. 73). That is why Jeanne Gaarkeer claims that it was exactly when she became a judge that she came to realize the potential that the field of law and literature has to offer. And this came from her realization that "success in the practice of law largely depends on the development of the imagination, constantly keeping us alert to the snares of our linguistic uses in relation to our private and professional predispositions as we read and write legal narratives" (Gaarkeer, 2019, p. 7, translated).

Quoting Adam Smith, Martha Nussbaum argues that emotions (fear, pity, anger, joy) are based on reason and judgment. Thus, the spectator's point of view is rich in emotions. These emotions are implicit in certain

thoughts that are considered appropriate to present facing what happens to the people around us.

Hence why great importance should be given to literature as a source of moral guidance. This is because reading is seen as an artificial substitute for the situation of the judicious spectator, naturally leading us to the attitude that characterizes the good judge and the good citizen.

In the novel *A hora da estrela*, by Clarice Lispector, observing the narrative of Macabéa and Olímpico, we find a good example of the destruction of stereotypes and stratified conceptual models. This allows the reader to broaden their horizons, leading them to a better understanding of the world. Although both characters have identical origins, since both came from poor regions of Northeastern Brazil, they have completely different personalities.

Fragile, humble and innocent, Macabéa is a woman who accepts her insignificance, and has no expectations of being recognized for anything special. Her biggest wishes are simple things like an evening meal and having someone to love. Olímpico, on the other hand, proud of having been forged by strong peoples and having iron teeth, is interested in public affairs, dreams of "conquering the world" and one day become a politician (Lispector, 1998). Henceforth, as noted by Calvo González, "the literary culture of law helps us better interpret Clarice Lispector's commitment to human rights, and to promote the responsibility for thinking the difference from the language of literature, which, like that of law, has a universal vocation" (González, 2016, p. 141, translated).

The enrichment of our reality perception in literature is hinted by Walt Whitman in writing about the importance of poets for the public life of the nation. In the poem "By Blue Ontario's Shore", belonging to the majestic *Leaves of grass*, Whitman (*apud* Nussbaum, 1995, p. 80) states that only poets are fully capable of producing normative judgments that can enable the unity of a nation, thus describing them as judges:

> By blue Ontario's shore
> Of these states the poet is the equable man,
> Not in him but off from him things are grotesque, eccentric, fail of their full return...
> He bestows in every object or quality its fit proportion, neither more, nor less
> He is the arbiter of the diverse, he is the key,
> He is the equalizer of his age and land, ...

> The years straying toward infidelity he withholds by his steady Faith,
> He is no arguer, he is judgment (Nature accepts him absolutely)
> He judges not as the judge judges but as the sun falling round a helpless thing
> He sees eternity in men and women, he does not see men and women as dreams and dots).

Indeed, literature makes us judges. Our experience as interested readers makes us seek a human good that we attempt to accomplish in and for the community. Guidelines are sought in order to give meaning to our personal experience, but also to be sustained before others with whom we intend to live in community. This prevents reading from becoming an open field for the exaggerated freedom of interpretative faculties, as the reader applies the global meaning of a principle and tradition to a concrete context.

Through literature, the reader experiences many different lives. These lives consciously unfold in various social strata, and the way in which circumstantial arrangements organize the materialization of these lives, are elements of the reader's personal experience. It is noteworthy how Whitman refers to the poet judge, stating that he does not judge people as mere "dreams and dots". For some theorists of legal positivism, people only have legal meaning when conceived as "points of imputation" to use the famous expression coined by Kelsen in his *Pure Theory of Law* (Kelsen, 2005).

Such distancing is not incompatible with the literary imagination of the judicious viewer, but this does not mean that one should ignore or refuse to acknowledge the sufferings and inequalities that are part of history: "literary impartiality, like Whitman's sunlight, like reading a novel, comes close to people and their actual experience. This is how the reader is able to be fair and correctly perform his own assessment with distancing" (Nussbaum, 1995, p. 90, translated).

As Streck argues, "we jurists cannot alienate ourselves. Law is not mere instrumental rationality. It is not a technique in which we can place the 'blame' for running over someone, applying Musil's metaphor. A jurist cannot be alienated" (Streck, 2016, p. 196).

Moreover, literature can contribute to facilitate and rationalize the introjection of moral vectors into law. It is so because the experience of reading leads us to better understand the values that permeate history from the perspective of a particularity, leading us to understand the uniqueness that marks all human experiences. This, on the one hand, increases our chances of escaping traditional forms of hatred manifestation and collective oppression, often masked under the cloak of impersonality.

Furthermore, the struggle for recognition that permeates the grammar of social actions becomes faster and more effective. Now the steps for the introjection of values promoted by such struggles can be safely abbreviated through the value constructions brought about by literary narratives. The literary experience thus produces an enlargement of intersubjectivity and, consequently, of the foundations to the social spheres. After all, as Henriete Karam states, "by being organized through language, individual experiences can easily be conveyed and transmitted and, as a whole, make up a collective patrimony, a cultural heritage that integrates a horizon of meaning that is shared and shareable" (Karam, 2018, p. 536, translated). Literary reading thus allows for axiological vectors to interpenetrate legal arguments without being marked by simplistic subjectivism.

A judge who has well developed the "judicious spectator" characteristic (Nussbaum, 1995) will have greater protection against the ever-imminent risk of decisionism. That happens because the very support of his or her values will be shifted with the concrete intersubjectivity brought by literary narratives. These therefore fulfill an intrinsically critical and constructive function, subjecting individual values to the filter of a subtle, autonomous and vigorous self-reflection from the place and worldview of the other. We thus develop a richer and truer experience of understanding, as it takes very concretely into account the experience of negativity. The true experience is not one that confirms our expectations, but one in which those same expectations can find their denial.

The negativity of experience has a markedly productive meaning through which one acquires broader knowledge. It reveals itself to be

essentially dialectical, in the sense that it infers prior knowledge (without rejecting it), rising to the level of broader knowledge. In the Hegelian analysis, this breach of expectations causes consciousness to reverse itself, that is, to turn on itself, enabling self-awareness of experience. This is why Hegel's "inversion of consciousness" can be seen as the truest essence of experience (Gadamer, 1997, p. 463).

11 CONCLUSIONS

Having based this paper on the interview article *This Strange Institution Called Literature*, by Jacques Derrida, we sought to address the fundamental elements for the approach of law and literature. Thus, we pointed out the important contribution of literature to democracy, and how freedom of imagination and "being able to say everything" represent a denial of stereotyping simplifications, which are so dear to ideologies and so presently widespread nowadays.

We showed to what extent can literature, in its deeply intersubjective and at the same time non-institutional configuration, offer to the field of law, as an institutionalized reality, critical parameters and paths for transformation. Thus, through the pleasure of reading, we can be led to devise alternatives so often obscured by the momentarily shared consensus.

The pleasure granted by literature deconstructs paradigms because it frees us from the ideological, moral and even theological prisons to which we often find ourselves entangled, developing empathy and strengthening pluralism. Literature consolidates democratic foundations, helps to facilitate and rationalize the introjection of moral vectors of the law. Through reading literature, we come to perceive the values that permeate history from the perspective of particularity, leading us to understand, from a concrete worldview, fundamental dimensions of human life. Thanks to this convergence, therefore, the fight for recognition that permeates the grammar of social actions becomes faster and more effective, allowing axiological vectors to interpenetrate legal arguments without being marked by simplistic subjectivism.

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