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**THE LEGAL PARADOX IN THE WORK OF EÇA DE QUEIROZ:
THOUGHTS ON THE NOVELS *O CRIME DO PADRE AMARO*
AND *O PRIMO BASÍLIO***

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ABSTRACT: This paper searches for one possible way of understanding the Law based on the novels *O crime do padre Amaro* and *O primo Basílio*, by Portuguese writer Eça de Queiroz. In both novels, the deaths of the female characters (Amélia and Luísa) are consequences of their lovers' conducts (Amaro's and Basílio's), with no legal punishments for any of them. After reading these novels, there might be a feeling of injustice to the women, even if the male characters had not formally done any criminal actions. Precisely, this lack of action of the Law creates a paradox: even though the search for Justice is its main objective, by attempting to accomplish that purpose, sometimes severe injustice is brought by it, such as what happens to Amélia and Luísa. This research used the inductive scientific method, so the analysis of specific phenomena serves to generate generic conclusions. In this case, the main conclusion is the paradoxical trait of the Law, which is the main instrument for Justice, but is, at the same time, strongly capable of generating injustice because of its correct application.

KEYWORDS: Law and Literature; Eça de Queiroz; *O crime do padre Amaro*; *O primo Basílio*; Justice.

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1 INTRODUCTION

Research in Law and Literature is the proper field for new readings of relevant philosophical matters from the perspective of literary works. It is so because literary narratives are capable of developing reflections on law and themes alike in more natural ways than Academia, rid of the technicism² of the legal discourse.

According to Llanos (2017, p. 356, translated), there are two possible approaches in the Law *in* Literature branch: the first one places literature as a kind of “tool” for teaching the Law, that is, it uses literature to convey knowledge about the Law; and the second one, which effectively questions “essential legal values”, such as the idea of Justice. In the author’s words, the latter has the strategy of “analyzing and comparing legal and literary texts in order to clarify important aspects of the theory and application of Law and justice”.

In the novels *O crime do padre Amaro* (“The Sin of Father Amaro”) and *O primo Basílio* (“Cousin Basílio”), both written by Portuguese Eça de Queiroz, the reflection on the Law (in the “second approach”) is interesting, especially due to the fact that the Law is not the main concern in the narratives. Much oppositely, the Law is almost not featured in both novels. Even so, as this paper discusses further, both novels have the potential of causing to the reader several questionings on the active (or commissive) and negative (or omissive) role of the Law in society. They can also make the reader ask “what is the Law?”, or “what is the use of the Law?”.

It is not simple to answer both of these questions. To do so, some may relate the concept of Law to the cosmos, to nature, to God (Legal Naturalism); others may relate the concept of Law to legal norms posed by

² On that subject, Fábio Perin Shecaira (2018, p. 358, translated) states: “Literature is not the only possible learning source on the complexity of contemporary moral problems. In the university environment, this function is traditionally performed by books on ethics, political philosophy and other similar works of “non-fiction”. We know, however, that while some readers and students prefer abstract arguments, others are more susceptible to narratives. From a pedagogical point of view, courses that combine the two types of approach are likely to be more likely to attract the attention of both types of students – those who like to analyze arguments and those who like to hear stories.”.

the State or the legal norms developed from general principles (Legal Positivism, Legal Neo-positivism). In any case, the intimate link between the idea of Law and the idea of Justice seems to always be there – even though these two concepts are not necessarily synonyms (Derrida, 2007, p. 30). So much so, in Law School, fellow students are educated to move and circle in *Justice* environments (Justice Prosecution, Courts of Justice etc.) among the professionals of *Justice* (Prosecutors, Bailiffs, Judges etc.).

Notwithstanding, the Law has an eternal paradox, since, although it is certainly created and developed to reach and promote Justice, there are situations in which the paths of Justice and the Law clearly go in different ways. Sometimes unjust situations happen within the scope of the Law, either because the Law is unable to hinder injustice, or simply because certain determinations of the Law are unfair themselves.

In the novels *O crime do padre Amaro* and *O primo Basílio*, Eça de Queiroz established narratives about injustice, in situations that were not reached by the Law – at least not in terms of accounting the responsibility of inflicted damage on the responsible people. When reading these novels, it is easy to reach the conclusion that Amaro and Basílio were responsible for the deaths of their lovers, since they created chains of events from irresistible seduction that made the young women fall into disgrace and death. Even so, both the evildoers are not accounted for their actions, since, in Eça de Queiroz's works, Law is not able to save the “victims” of the title characters. That may be the reason why none of them seem to regret what they had done in the end. The final scenes of *O crime do padre Amaro* and *O primo Basílio* show a rapid overcoming of the committed actions and, what's worse, leave the reader with the impression that both men are probably going to repeat their conducts in the future.

Thus, the question: if the main characteristic of Queiroz's novels is the prevalence of injustice towards the seduced young ladies, do they philosophically represent the fallibility or incompleteness of the Law? Now, both stories unfold outside the law, or better, independently of the

law. What was Amaro's crime? Did he actually kill his lover or his son? No. What was Basilio's crime? Did he actually kill his cousin / lover? No. However, even if it is not possible to legally attribute any criminal conduct to the two male characters of Eça de Queiroz, the reader of those novels will still feel the injustice in relation to the girls and some disappointment in relation to the Law. By the ending of the novels *O crime do padre Amaro* and *O primo Basílio*, the male main characters follow their lives normally, with no regret. This creates for readers a sense of injustice, a crave for punishment, for state intervention, in both cases. It is as there were something lacking in the conclusion of Queiroz's works: readers with a strong sense of justice end up missing the presence of the Law, but the Law is not there to attend that. The feeling is that the Law has abandoned the reader, as it had abandoned the fragile female characters who suffer from the actions of Amaro and Basílio.

O crime do padre Amaro and *O primo Basílio* are relevant Works for the Law, especially because they break an old idea from academia and its jurists: the idea that the Law can solve anything; that everything is controlled by the Law; or that no wrong deed goes unpunished by the Law. Hence, the absence, or the omission, of the Law in both novels is more eloquent to understand its meaning, than its presence could ever be. By reading the Portuguese novelist's works, the reader may reach the conclusion that the Law is not able to solve every problem and that, therefore, it would be wrong to consider the Law as an end in itself. More so: based on the both novels analyzed, one may question the consecrated legal dogma that the main objective of the Law is to reach Justice. At least, one may question the circular (and empty) argument that Justice is the faithful, pure, integral fulfillment of the Law.

Summing up, *O crime do padre Amaro* and *O primo Basílio* show that the sense or feeling of Justice / injustice manifests itself in society regardless of the instituted Law or the legal qualification of the actions done by its people. It is not relevant whether both characters directly killed their female lovers or not, since in the novels by Eça de Queiroz the guild of Amaro and Basílio is well stated, as well as the unfairness of the

lack of consequences for them. Even so, despite these judgements being enough for readers to condemn the characters, they end in harmless safety, with no state punishment whatsoever (and no moral punishment as well, since they go on with their lives as normally as possible). That is to say, in the works by Queiroz, together with the accomplices Amaro and Basílio, the Law is the culprit itself. And it's because of its omission to punish the male characters.

For this research, the inductive method was used, so that the analysis of specific phenomena from the literary works are the foundation for more general conclusions. Above all, the actions of the characters Amaro and Basílio, which cannot be labeled as crimes, but whose consequences ended up in tragedies. By analyzing such conducts, it was possible to reach a paradoxical conclusion: that the Law is an instrument of Justice promotion, but, sometimes, it creates injustice due to the way it is supposed to work. The research technique applied in this paper was bibliographic. The results were analyzed and interpreted in a qualitative approach, so that a global appreciation on its conclusions was accomplished.

2 FOR A PHILOSOPHY OF LAW IN THE WORK OF EÇA DE QUEIROZ

Portuguese novelist Eça de Queiroz was a bachelor of laws. Although he effectively acted as an attorney³ in the second half of the nineteenth century, his true passions were journalism and literature.

³ In research signed by Ana Cláudia Marques, Ana Cristina Gonçalves, and Maria Fernandes, published on the website of the School of Social and Human Sciences of *Universidade Nova de Lisboa*, it is possible to find excerpts from newspapers of the time, with advertisements from the Law Firm of Eça de Queiroz. On February 10, 1867, the newspaper "*O Distrito de Évora*" published the following: "José Maria d'Eça Queiroz has opened his lawyer office, in Praça D. Pedro, 3A, where he can be sought from the 10th of February onwards, from 11 am to 4 pm". Then, on December 20 of the same year, the following advertisement was published in the newspaper "*Diário de Notícias*": "The distinguished academic Mr. E. Q. is going to establish himself as a lawyer in Praça de S. Pedro nº 26, 4th floor. Mr. E. Q. is a young man of great intelligence and illustration; has collaborated on '*Gazeta de Portugal*', and has recently written a journal in Évora" (Marques *et al.*, undated).

Biographer Vianna Moog reports that very early Eça de Queiroz became disappointed at the University of Coimbra. Instead of meeting the so-called “Areopagus of knowledge”, he saw Coimbra as a dull institution:

Solemn and emphatic gentlemen, monotonous and tiring, filling the hours of boredom, reciting the contents of the gourds, until the ring of the bell, at six in the afternoon, at the top of the tower, gave the sign of liberation, with the same indifference with which marked, inexorably, in the morning, the odious hour of entering class. Students were not required to have their own ideas, but only to keep up with the texts of those lithographed papers, which passed from generation to generation, from parents to children, and often from grandparents to grandchildren, without alterations and without additions, until the excess of use reduced them to being excessively worn-out (Moog, 1977, p. 27).

In short, the learning method used at the time, consisting of reading and memorizing articles of law (a method that, in a way, does not seem to be completely overcome by the method still used today by several law students), did not encourage Eça de Queiroz to go deeper into the legal disciplines, so the Portuguese writer concluded his college life as a mediocre student, more involved with his bohemian life than with the prominent academic circles that were frequented by several of his classmates, considered by many to be the true intellectuals of Coimbra (Simões, undated).

According to Arnaldo Sampaio de Moraes Godoy, based on the works by Vianna Moog, the main factor that set Eça de Queiroz apart from the Law was “monotony”. For the researcher, “Perhaps Eça intended to go on with his legal career, using the vague knowledge obtained in Coimbra, with the best purposes, exercising the profession with affection, sincerity, zeal, and with ambition. But disappointment came” (Godoy, 2012, translated).

In fact, without disagreeing essentially with the erudite Professor, but advancing a little in the analysis, it could be said that such “monotony” was not properly the reason why Eça de Queiroz gave up the Law, but, on the contrary, it was the starting point for the aversion to Law developed by him. However, as it is possible to conclude from Eça de Queiroz’s literary

work, this aversion did not necessarily translate into a posture of “contempt” in relation to the Law, but, rather, it probably caused the outbreak of the critical bias used by the Portuguese writer in many of his works, especially those in which the background is implicitly the Law.

The peculiarity of Eça de Queiroz is that, although his writings may have relevance for a legal analysis, the author has never, properly, highlighted the Law in his stories. Unlike writers such as Kafka, Camus or Dostoyevsky, who explicitly used legal features in their works, like courts, judges, lawsuits, sentences, etc., Eça de Queiroz almost always limited himself to narrating everyday situations that could be of interest to the Law, but that are not necessarily reached by it. This is the case of Father Amaro, who, legally, did not commit any crime to be punished by the State, and of cousin Basílio who, likewise, did not violate the legal system in force at the time.

The relevance of Law in the work of Eça de Queiroz lies, among other possibilities and readings, in the fact that its stories have the power to awaken and bring out the reader’s feeling of Justice / injustice. Even when the law is silent, that is, even when it does not regulate a certain situation, consequently not being able to solve certain “injustices” committed against someone, such as those that ended up in the death of Amélia and Luísa in *O crime do padre Amaro* and *O primo Basílio*, respectively, the impact of the “legal” aspect on the reader is still relevant. And, when this happens, the reader is already thinking and reflecting on the Law, that is, on the function of the Law and, consequently, its absence, within a given society. Hence the possibility of thinking about a Philosophy of Law in the works of Eça de Queiroz.

Now, if the Philosophy of Law has as object of study the Law and the analysis of Justice / injustice behind its practices⁴, both literary works

⁴ According to Sérgio Sérvulo da Cunha, “The objective of the Law – as the art, technique, and science of legal specialists – is the institutionalization and materialization of power relations according to justice, and not the mere reproduction of natural, social or economic power relations. In any human group, consensus is reached even on matters of taste and preference, and it would be strange if not also on justice: the feeling of what is just and what is unjust is the basis of any criterion about what is allowed or prohibited” (Cunha, 2009, p. 7, translated).

hereby analyzed can contribute even to existential matters of the Law, making it possible to debate the very existence of this knowledge area and its importance for humankind. Indeed, if one of the purposes of law is the promotion of justice, then how can we admit that acts considered by all to be unjust, but not necessarily contrary to the legal system, can pass through the state's *jus puniendi* intact? For the purposes of ascertaining the justice / injustice of an act, what should prevail: the stated norm or the argument conveyed? These are the questions addressed implicitly (or that can be thought from the narratives presented) by Eça de Queiroz in the two novels analyzed here.

The unease produced by the literature of Eça de Queiroz is, above all, in the questioning that it helps to promote in relation to the “dogmas” of Law, many times treated as “sacred” by the great majority of jurists. At least with regard to the two works under analysis, the reader is often led to rethink values considered by jurists to be “unquestionable”, such as the due process of law, the right of defense or the presumption of innocence. Throughout the narrative, the injustice perpetrated by the male characters against their lovers end up overlapping the notion of licit / illicit and, at those moments, as already said, a discussion about the very nature of the Law becomes possible.

Nevertheless, one of the most fascinating aspects of *O crime do padre Amaro* and *O primo Basílio* is that their author does not “take sides” in the discussions proposed. Queiroz states the problems, but does not provide any answers. Law, legalism and technicality are called into question, but they are not directly criticized. As already said, in the literature of Eça de Queiroz, it is up to the reader – converted into a legal-philosopher reader – to draw his / her own conclusions.

3 THE NOVELS *O CRIME DO PADRE AMARO* AND *O PRIMO BASÍLIO* BASED ON AN INTUITIVE UNDERSTANDING OF LAW AND JUSTICE

Written in 1875, *O crime do padre Amaro* (The Sin of Father Amaro) was one of the first writings by Eça de Queiroz. Soon after, in 1878, *O primo Basílio* (Cousin Basílio) was published in Portugal. As

known, the second novel is not a sequel of the first, and therefore has no relationship of literary continuity with it. However, the two works have a similar theme, as will be seen below.

Let us see, for example, the mention that Eça de Queiroz makes to the novel *O primo Basílio* in his *Note to the second edition* of the novel *O crime do Padre Amaro*: “*O crime do padre Amaro* received some critical attention in Brazil and in Portugal, when a novel was subsequently published entitled *O primo Basílio*” (Queiroz, 2013, p. 5, translated).

In fact, the two novels deal with similar subjects: in the two stories, the male central characters (Amaro and Basílio) seduce young women and do actions that ultimately lead to their deaths at the end of the stories.

In *O crime do padre Amaro*, the character who gives the title to the novel is portrayed in the first pages as an ambitious young man who, after articulating himself politically, was appointed parish priest in Leiria. Upon arriving at his new parish, Father Amaro Vieira is received by Canon Dias, his former seminary teacher, who hosted him in the home of a woman – later revealed to be the Canon’s lover –, Mrs. Joaneira, mother of the young Amélia (Queiroz, 2013, p. 8, 11, 40-41).

From the beginning of the narrative, Father Amaro’s sexual interest in young Amélia is quite clear. On one of his first nights as a guest, from his bedroom, Amaro hears the sounds of Amélia’s skirts, just as she undressed in the upstairs room. Days later, when he enters the kitchen at dawn, he comes across Amélia in the hall: “she was close to the lamp and her sleeves were short, the neckline of her shirt showed her white arms, her delicious breast”. According to the narrator, that night Father Amaro “went to bed without praying”. And, later that same morning, “Amélia felt nervous steps on the floor downstairs: it was Amaro who, with his cloak over his shoulders and in slippers, excitedly smoked while walking around the room” (Queiroz, 2013, p. 21, 52- 53, translated).

As time went by, Amaro and Amélia became very close, developing great intimacy. However, after the couple’s first kiss, which took place on a farm, the parish priest chose to walk away, due to the great embarrassment he experienced. Days after the event, although Amélia had

shown interest⁵, Father Amaro decides to move out of Mrs. Joaneira's house.

It is only out of jealousy that Father Amaro returns to Amélia's life. In order to ruin the recent engagement between his beloved girl and the scribe João Eduardo, the parish priest returns to Mrs. Joaneira's house, which quickly allows him to resume his intimate relationship with Amélia. And, with João Eduardo out of the game, Amaro and Amélia finally become lovers.

When Amélia gets pregnant, Father Amaro and Canon Dias try to find a "solution" to avoid the involvement of the clergy in the scandal. With no alternatives, they send Amélia to give birth at the home of an elderly woman outside the city, with the objective that her "condition" would not be discovered in Leiria.

In parallel, Father Amaro begins to prepare the arrangements for when the child is born. His maid, Dionísia, suggests that the child be initially given over to a nurse to raise. She indicates to Father Amaro two names: Joana Carreira, who lives in Ricoça, and Carlota, known as a "weaver of angels". The maid explains to Father Amaro what the nickname means:

Dionísia stammered an explanation. They were women who received children to raise at home. And without exception, the children died... As there had been a well-known one who was a weaver, and the little children went to heaven... Hence the name.

"So the children always die?"

"With no exception."

The parson paced the room slowly, rolling his cigarette.

"Say it all, Dionísia. Do the women kill the children?"

Then the excellent matron declared that she did not want to accuse anyone! She hadn't been peeking. She didn't know what was going on in other people's houses. But the children always died...

"But who would deliver a child to one of those women?"

Dionísia smiled, pitying that man's innocence.

⁵ Shortly after the episode in the farm, the narrator highlights Amélia's feeling: "She had been in love with Father Amaro for a long time – and sometimes, alone, in her room, she despaired of imagining that he had not perceived in her eyes the confession of her love! From the first days, just by hearing him in the morning asking for lunch from below, she felt a joy penetrate her whole being without reason, she started humming with birdlike volubility" (Queiroz, 2013, p. 94-95, translated).

“Oh yes, people do that, by the dozens!” (Queiroz, 2013, p. 351-352, translated).

At first, Father Amaro is convinced that the best solution is to hand the child over to Joana Carreira. However, after the boy’s birth, Amaro decides to take the child to the “weaver of angels”, although the emotion of having his son against his chest made him recommend the following to the nurse: “Now, this is serious. Now it’s something else. Look, I don’t want him dead... It’s for you to care of him. What happened is not valid... It is for you to raise him! It is for him to live. You have your fortune... Take care of him!...” (Queiroz, 2013, p. 365, translated).

Afterwards, Amaro is informed that Amélia’s state of health worsened when they took her son away, which ended up leading the young woman to death. A maid says: “She was doing so well, and suddenly this... That was because her son was taken away from her... I don’t know who the father is, but what I do know is that everything here is a sin and a crime!...” (Queiroz, 2013, p. 373, translated).

At the end of the novel, Amaro decides to leave Leiria and move to Lisbon. There is a suggestion that the Father overcomes the episode and goes on with his life normally, including nurturing positive ideas about the clergy. In conversation with Canon Dias about “things in France”, the following happens:

“And what say you about these things from France, Amaro?” Exclaimed the canon suddenly.

“A horror, Father-Master... The archbishop, a wealth of shot priests!... What a joke!”

“A bad joke”, snarled the canon.

Then Father Amaro said:

“And here in our corner it seems that these ideas also begin to spread...”

The canon had heard this. So, they were outraged at this mob of masters, republicans, socialists, people who want the destruction of everything that is respectable – the clergy, religious education, family, army and wealth ... Ah! society was threatened by unleashed monsters! The old repressions, the dungeon and the gallows were necessary. Above all, to inspire men with faith and respect for the priest.

“That’s the problem”, said Amaro, “They don’t respect us! They do nothing but discredit us... They destroy veneration for the priesthood among the people...”

“They slander us infamously”, the canon said in a deep tone. (Queiroz, 2013, p. 390, translated).

However, ironically, and later on, the hypocrisy in the speech of Canon Dias and Father Amaro is revealed by the following excerpt:

Then two ladies passed by, a grey-haired one, looking very noble; the other one, a thin, pale little creature with dark eye circles, sharp elbows put close to a sterility belt, a huge *pouff* on the dress, strong hips, high heels. “*Caspite!*”, said the canon quietly, touching his colleague’s elbow. “Oi, Father Amaro?... Is that what you wanted to confess!” “Those times are over, Father-Master”, he said and the parish priest laughed, “I only hear confession from the married ones!” (Queiroz, 2013, p. 390).

The experience lived with Amélia, which resulted in the death of her and their son, is treated with laughter by Father Amaro. It is as if the affair with Amélia had been nothing but an innocent mischief, something banal, with little relevance. At this point in the novel, the feeling left in the reader is that Father Amaro, along with his accomplice, Canon Dias, escaped unharmed from the crime they had committed.

In this context, there is notorious injustice. A regular reader, with no technical knowledge of the Law whatsoever, is to feel outraged with the Law’s neglect in punishing Father Amaro. As the originator of the death of Amélia and the baby, should he not be punished by his deeds?

Following to that, Eça de Queiroz published the novel *O primo Basílio*. In this story, the author introduced his readers to the young spouses Jorge and Luísa, who were forced to separate temporarily on the first pages due to a business trip of the husband.

During Jorge’s absence, Luísa stayed home alone and, on a beautiful day, was surprised by the visit of her cousin Basílio, who had lived abroad for many years and, at that moment, had returned to Portugal on business.

What people around Luísa’s did not know was that Basílio had been her first boyfriend, before moving abroad. And also, that the loving relationship between the two had been maintained for a while, even if at a distance, until the moment when Basílio decided to end the commitment by sending a letter to Luísa. However, the reunion between the two cousins revives the old passions and, in the absence of Jorge, they reestablish their old love relationship.

At this point in the text, the reader finds the theme “adultery” on at least two occasions: (1) in the introduction of the adulterous character Leopoldina, Luísa’s old friend, to whom Jorge had an aversion⁶; and (2) in the discussion about the end of a play, admired and corroborated by Jorge, in which the adulterous woman was punished by her betrayed husband⁷.

Due to her husband’s opinions, Luísa felt it necessary to take extra care regarding the secrecy of the adulterous relationship she experienced. So, after being informed by a friend of Jorge about “malicious comments” in the neighborhood, Luísa stopped receiving her cousin Basílio at home, and started to meet him in a small rented apartment, referred to by them as *Paradise* (Queiroz, 1994, pp. 179-180).

In an act of carelessness, Luísa loses one of the letters she had written to Basílio inside the house. Frightened by a noise coming from the front door, and thinking that her husband could have returned from a trip, she leaves the letter in a wastebasket and goes to meet the visitor. Relieved to know it was just a friend of the family, she later turned to the wastebasket to collect the letter, but the papers were gone, supposedly discarded by the maid. Later, in a regular confrontation that she had with Juliana – the maid –, due to negligence resulting from the cleaning of the room, Luísa discovered the whereabouts of the letter, in the following discussion she had with the maid:

⁶ “She was her close friend. They had been neighbors, when they were single, at Rua da Madalena, and studied at the same school, at Patriarcal, with Rita Pessoa, the lame one. Leopoldina was the only daughter of Viscount of Quebrais, the wanton, the cachectic, who had been a pageboy of D. Miguel. She had had an unhappy marriage to João Noronha, a customs officer. They called her “Quebrais”; they also called her “Bread and Cheese”. It was known that she had lovers, she was said to have vices. Jorge hated her. And he had said many times to Luísa: “Everything but Leopoldina!” (Queiroz, 1994, p. 26, translated).

⁷ “Ernestinho, radiantly, largely outlined the plot: “She was a married woman. In Sintra she had met a fatal man, the Count of Monte Redondo. The ruined husband owed a hundred contos de réis to game. He was dishonored, he was going to be arrested. The woman, mad, runs to some castellated ruins, where the count lives, drops the veil, tells him about the catastrophe. The Count throws his cloak over his shoulders, leaves, arrives at the moment when the bailiffs are taking the man. It is a very moving scene”, he said, “it is at night, in the moonlight! The count gets out, throws a gold pouch at the feet of the bailiffs, shouting to them: ‘Salute yourselves, you vultures!...’” (Queiroz, 1994, p. 45, translated).

“Don’t make me lose my mind, mistress. Don’t make me lose my mind!” And with a strangled voice through clenched teeth: “See, not all of your letter papers went to waste!”

“What are you saying?”

“That the letters you write to your lovers, I have them with me!” And she hit the pouch, ferociously (Queiroz, 1994, p. 227, translated).

From then on, Luísa’s life turned upside down. She considered abandoning everything and fleeing the country with her lover. However, Basílio did not share this desire. From the hotel where he was staying, Basílio considered his situation and regretted his involvement with his cousin. According to him, it would be better to have completed his business and returned to Paris, without any scandals. So he fulfills his plan and leaves Portugal, leaving his lover on her own. As Juliana intended to sell the letter and earn money, Basílio’s departure had an impact on her financial plans:

“You know, mistress, that if I kept the letters, it was for something! I wanted to ask the lady’s cousin to help me! I’m tired of working and I want my rest. I was not going to make a fuss, what I wanted was for him to help me... I sent it to the hotel this afternoon... the lady’s cousin had gone away! He had gone to the Olivais side, or to hell! And the servant went with his bags at night. But do you think I can be tricked?” And she resumed her anger, banging her fist furiously on the table: “Damn me, if there is no disgrace in this house, which will be spoken in all Portugal!”

“How much do you want for the letters, you thief?”
Asked Luísa, rising in front of the maid.

Juliana silenced for a moment.

“Either you give me six hundred thousand réis, or I will not drop the papers!” She answered, irritated (Queiroz, 1994, p. 253).

Having no money to pay, Luísa started offering little pleasures to Juliana, who soon became the “lady” of the house in the eyes of many: she was entitled to a new room, took several breaks during working hours, including going to the theater, got gift clothes, etc. However, when Jorge returned from his trip, he soon realized that things were out of place, getting irritated by the benefits granted to Juliana. The last straw was when, one morning when he arrived home early, he found the maid in the room reading the newspaper, while Luísa starched the clothes, to which he

asked: “Tell me, who is the maid and who is the mistress here?” (Queiroz, 1994, p. 338-339, translated).

With the maid’s death, it should be assumed that everything would be solved, and the adultery would remain a secret forever. However, Juliana’s death shook Luísa, who fell ill instantly. Amid his wife’s fevers, Jorge received at home a letter addressed to Luísa. When he decided to open and read it, he realized that it was a message from cousin Basílio, in which he declared his love and recalled the afternoons in Paradise.

Suddenly he stood up, grabbed the letter, and went with it to Luísa’s bedroom. But the memory of Julião’s words immobilized him: let her be calm, no conversations, no excitement! He closed the letter in a drawer, put the key in his pocket. And standing up, trembling, with eyes streaked with blood, he felt unreasonable ideas lightening his brain abruptly, like lightnings in a storm – kill her, leave the house, abandon her, make her brains explode... (Queiroz, 1994, pp. 385-386, translated).

When Luísa gets a little better from her fever, she notices that Jorge had changed. After insisting that her husband tell her the cause of his distress, he finally reveals that he had intercepted a letter from Basílio, which ends up causing his wife to fall to her knees, lying on the carpet (Queiroz, 1994, p. 397). From then on, Luísa gets worse of her illness. She goes through many days unconscious, with Jorge by her bed swearing he had forgiven her betrayal. But the woman never listens, and, within some hours, begins having delirious crises and dies suffering.

The last paragraphs of the novel, dedicated to Basílio, reported the disdain with which the cousin received the news of Luísa’s death. In a conversation with a friend, it becomes evident:

Viscount Reinaldo, gently, lamented the poor lady, poor thing, who had let herself die due to such a beautiful time! – But in short, he had always found that connection absurd...

Because if they were frank at last: what did she have? He didn’t mean badly “about the poor lady who was in that horror of the Pleasures”, but the truth is that she was not a chic lover; she walked in square slings; she wore loom socks; she had married a paltry secretary; she lived in a small house, she had no decent relationships; she played the *quino* naturally, and

walked around in simple shoes; she had no spirit, no *toilette* ... what the hell! She was a sloppy mess!
“Good for one or two months I was staying in Lisbon...”
Basílio mumbled with his head down.
“Yes, maybe for that... A hygienical solution!” Reinaldo said with disdain (Queiroz, 1994, p. 418, translated).

And, lastly:

“Now you have no woman...”
Basílio gave a resigned smile. And, after silence, he gave a strong graze on the floor with his cane:
“Oh bother! I should have brought Alphonsine!”
(Queiroz, 1994, p. 418, translated).

Although he was the cause of Luísa’s misfortune, having actively participated in all the actions that led to the death of his cousin, Basílio’s main annoyance, at the end of the story, seems to stem from the fact that, from that moment on, “he would be with no woman”. More than that, the “resigned smile” the narrator describes seems to point to the fact that, looking back, Basílio felt proud for the whole story.

This ending, similarly to *O crime do Padre Amaro*, is capable of provoking a feeling of injustice in the reader. From the legal point of view, there was no crime perpetrated, but, under the common (or intuitive) understanding of Justice, both characters should have been punished, preferably by the State.

4 THE PURPOSE OF THE LAW: THE MATTER OF JUSTICE IN CONTEMPORARY PHILOSOPHY OF LAW

Regarding the dichotomy Law / Justice, it brings to mind the Greek tragedy *Antigone*, created by Sophocles and first staged in 441 or 442 b.C. In that narrative, the Greek author promotes a symbolic comparison between two conceptions of Justice, one of them emphasizing Positive Law, and the other acknowledging Natural Law⁸.

⁸ Obviously, this is not the only possible interpretative bias of the work, and it is necessary to highlight the words of Marcelo Alves: “In the legal sphere, to refer to the conflict between the conceptions of justice defended by Creon and Antigone, the use of the expressions ‘positive law’ and ‘natural law’ can only be done as long as it is acknowledged how extemporaneous these ideas are, and, above all, the complexity that is at stake in the context of the play. In general terms, it seems more appropriate to use, for didactic purposes, Law and Morality, respectively, to designate the normative forces that are, at first sight, placed at the center of the tragic plot” (Alves, 2008, p. 99, translated).

In the tragedy, the main character, whose name is in the title, sees herself in a great dilemma: facing the deaths of her two brothers in war – Eteocles defending Thebes and Polinices defending the rival city –, and having the newly crowned King Creon determined that a decent funeral should be held only for Eteocles, decreeing that the body of Polinices should serve as food for the vultures, Antigone had to decide between fulfilling the order of the King and seeing the body of one of her brothers humiliated in a public square, or fulfilling the desire of the Gods, embodying in the sacred right to bury the body of a family member (Sophocles, 2002).

Regardless of the option chosen by Antigone – and, obviously, her choice was to fulfill the desire of the Gods – it is relevant to note, for the single purposes of this topic, that, in Antigone, there is a tension between these two conceptions of Justice. One of them favors Positive Law (of the State, inflexible, legislated) and the other favors Natural Law (customary, malleable, sensible, presupposed) ⁹, and that both valid, from a logical-argumentative point of view.

Over the years, the controversy surrounding the conceptions of Law and Justice has gained new contours with the development of the so-called Legal Positivism and the vestiges it has left since the beginning of the 20th century.

Hans Kelsen, the most famous of the legal positivists, wrote his name among the notables of the Philosophy of Law, defending that the object of legal science should be exclusively the legal norm and not human conduct and its meaning in general. For him, “legal norms are the object of the legal science, and human conduct is only insofar as it is determined in legal norms as a presupposition or a consequence” (Kelsen, 2003, p. 79,

⁹ This is, for example, Wayne Morrison’s first interpretation of the legal tensions in Antigone. For the author, “The tension occurs between the social demand to obey the laws of the community as strict injunctions, accepting their immemorial status as the basis of the truth they enunciate, and the supra-state demand to obey the law of burying her brother and recognizing the sacred nature of the family bond”. In addition to this, the author also presents other possible tensions, such as, for example, the individual’s duty to his family versus that individual’s duty to the State; or the conflicts between an individual rationality and a conception of Justice that preaches obedience to the objective rules as prescribed by the legal system (Morrison, 2006, p. 29-30).

translated). The “purity” of his theory is precisely the fact that jurists should have as a the subject of their studies the positive Law in general, that is, the Law as foreseen by the legislation, the Law as it “is”, and not the Law idealized by the interpreter, Law as it “should be” – the latter being object of sciences such as Sociology, Ethics or Political Theory (Kelsen, 2003, p. 1). In this sense, Ivan de Oliveira Silva states that “the usual duality of law and justice, in Kelsen’s view, must be rejected when formulating a universal concept of law” (Silva, 2012, p. 121).

In a way, this “divorce” between the Law and Justice ended up in an exacerbated automatism of the Law, which rescued the so-called “judge mouth of the law”, as suggested by Montesquieu in *The spirit of laws*:

It could happen that the law, which is both clairvoyant and blind, is in some cases too strict. But the judges of the nation are only, as we have said, the mouth that pronounces the words of the law; they are inanimate beings who cannot moderate neither their strength nor their rigor (Montesquieu, 1996, p. 175, translated).

The position of the positivist magistrate was widely criticized in the second post-war period, mainly on the grounds that the exacerbated attachment to the written law and the consequent disregard for general principles of law ended up allowing the atrocities carried out by the Nazi Party in Germany. From that historical moment, the need to rescue the idea of Justice was identified, through a less “legalistic” and more “principialist” action from the Judiciary.

Jacques Derrida, in a small work dedicated to the theme “Law and Justice”, stated that “The law is not justice”. According to him, “The law is the element of calculation, it is just that there is a right, but justice is incalculable, it requires that the incalculable be calculated” (Derrida, 2007, p. 30, translated)¹⁰. And, based on similar ideas to Derrida's, important jurists have theorized on Law and Justice.

¹⁰ “To be fair, a judge’s decision, for example, must not only follow a rule of law or a general law, but must assume it, approve it, confirm its value, by an act of reinstating interpretation, as if the law did not exist previously, as if the judge invented it himself in each case. Each exercise of justice as the law can only be fair if it is a ‘fresh judgment’, an expression taken from Stanley Fish’s ‘Force’ in *Doing What Comes Naturally*. The new freshness, the initial character of this inaugural judgment may repeat something, or, it must be in accordance with a pre-existing law, but the reinstating, re-inventive and

In the book *Law's Empire*, Ronald Dworkin defends the idea of the Law being integrity, that is, judges and jurists should not only know the laws, but also compromise with other equally important ideals, in a kind of “community of principles”¹¹. For the author, Law as integrity requires that judges recognize, whenever possible, that the basis of the Law is in the consecrating principles of Justice, equity and the due legal process that accompanies the previous values, which cannot be ignored when applying the law, “in such a way that the situation of each person is fair and equitable according to the same rules” (Dworkin, 2007, p. 291, translated). Thus, through the approximation between Law and Morality, mediated by constitutional principles, the Law is able to truly promote “Justice”.

With Dworkin, Justice was revitalized as the ultimate purpose of the Law. That is, in contemporary times, strict compliance with legality no longer makes sense, and it is necessary that the final result of a process be in accordance with the ideas of Justice.

After the era of Legal Positivism, the dominant conception of Law, be it called neo-legal naturalism, post-positivism or neo-constitutionalism, seems to have enshrined the return of the concept of Justice to the “heart” of the Law, so that, today, no-one denies that justice is the primary purpose of the Law.

On the purpose of the Law, Eduardo Bittar and Guilherme de Almeida state:

The question of justice, when seen as a founding element of the legal system, can be considered as something related to the granting of meaning. This is

freely decisive interpretation of the responsible judge requires that his ‘justice’ does not consist only in conformity, in the conservative and reproductive activity of the trial. In short, for a decision to be fair and responsible, it is necessary that, in its own moment, if there is one, it is at the same time regulated and without rule, conservative of the law and sufficiently destructive or suspensive of the law to reinvent it in each case, re-justify it, reinvent it at least in the reaffirmation and new and free confirmation of its principle. Each case is a new case, each decision is different and requires an absolutely unique interpretation, which no existing or codified rule can and must absolutely guarantee” (Derrida, 2007, p. 44, translated).

¹¹ “Law as integrity, then, requires a judge to test his interpretation of any part of the vast network of political structures and decisions in his community, wondering if it could be part of a coherent theory that would justify that network as a whole.” (Dworkin, 2007, p. 294, translated).

because, since Antique times, justice has always represented the fulfillment of the meaning of Law practices, which ended up becoming a mere technical procedure, emptied, without precise content, object of work, in Modern times.

The very history of mankind, its ideologies, as well as its political-economic tendencies, have made Law fragile, susceptible and subdued to the excesses of political and economic power. Law, often a coercive framework for human social conduct, if devoid of essence and purpose, serves any purpose, regardless of any value, and can be an important ingredient of utility for the domination and interest of minorities.

However, it is necessary to bring back the idea that the semantic fulfillment of Law entangled to justice has to do with the teleology of the movement from what is legal towards what is not legal, but valuative, and this axiology is the one that must come true: justice. In this sense, justice becomes the *ratio essendi* of the Law, which in itself and by itself, without this evaluative parameter, has no meaning whatsoever (Bittar; Almeida, 2012, p. 538, translated).

Summing up: regardless of the philosophical approach chosen, without the idea of Justice, or of Justice promotion, Law becomes meaningless, it becomes a decoy.

But how does all this relate to the reading of Eça de Queiroz's literary work? Weighing Positive Law and Natural Law, or Positive Law and Justice, and emphasizing the latter, how can one understand the implicit message behind *O crime do padre Amaro* and *O primo Basílio*?

5 THE LEGAL PARADOX IN THE WORKS OF EÇA DE QUEIROZ

In Criminal Law, there is a basic principle, *nullum crimen nulla poena sine praevia lege* (“there is no crime without a previous law defining it”). For many people, this is the maximum expression of the criminal principle of legality. Such guarantee, as a constitutional one in most modern democracies, avoids people to be sentenced for a certain “crime” that was not previously written by the legal order, and prevents lawsuits from happening if they are based on crimes that were only typified after the criminal event took place. This is so because it would be unfair for a conduct that was not considered as a crime by the State to be

later seen as criminal and generate punishment for all the citizens that, possibly by good faith, had not had the intention of committing illicit acts.

In classic writings, José Frederico Marques emphasizes that this principle

has political and legal significance: in the first case, it is a constitutional guarantee of human rights, and in the second, it establishes the content of the incriminating norms, not allowing the criminal offense to be established generically, without prior definition of the punishable conduct and determination of the applicable *sanction juris* (Marques, undated, p. 66, translated).

Many researches consider that the origin of such principle goes back to the norm contained in the Magna Carta of King John, published in England in 1215. For others, the origin is even older, since, in 1188, it was already consecrated, in Iberian Courts (Noronha, 1973, p. 65, translated).

One way or another, regardless of its origin, the fact is that the criminal principle of legality has been enshrined and developed over the centuries, always under the premise that its command mirrors a basic guarantee, a fundamental right; the materialization of Justice.

This criminal principle has as foundation an *a priori* legal abstract logic, the premise that suing and sentencing people based on actions seen as criminal *a posteriori* would create a certain legal chaos, since it would create extreme unease in social relations. On the other hand, since it is abstract, it is clear that a previously-established formula is not enough to solve all the troublesome situations of daily life.

In the cases narrated in the novels *O crime do padre Amaro* and *O primo Basílio*, there is no mention of Amaro and Basílio's legal guilt, although the acts committed by them are censored by the secondary characters, as in the situation of Amélia's death, in which a servant of Basílio expressed the opinion that everything had been a "sin" and a "crime" (Queiroz, 2013, p. 373, translated).

Considering the aforementioned, the question that is presented to the reader of the novels is simple: if, as it is said, Justice really is the sole purpose of the Law, then how to deal with a situation in which the non-

punishment of a given citizen goes against the basic canons of Justice? Despite the existence of the criminal principle of legality, should not the law have helped the victims of Amaro and Basílio's doings?

It is not Eça de Queiroz who raises this issue. The legal point is not discussed in either of the two works. However, the reader of those plots cannot fail to sympathize with Amélia and Luísa. What is more, it is not possible to stop wishing that, in the end, the criminal system avenges the death of the two young women. And, as this does not happen, the bitter taste of injustice remains in the reader, mirrored in the State's failure to promote what could be conceptualized as the "good Law".

Further from indicating a possible criticism by the author against the ways of the Law – especially considering Eça de Queiroz's disappointment regarding the legal career – the strength of the literature under analysis is in the refinement of the legal reflections it provides. At stake is not simply "this" or "that" legal norm, but rather the imperfection or incompleteness of law as a supposed instrument of pacification and social Justice. In short, the novels under analysis are relevant to the Law, precisely because they incite these reflections.

Many defend that the due legal process, conceptualized as "the set of constitutional guarantees that, on the one hand, assure the parties the exercise of their powers and procedural powers and, on the other hand, are indispensable for the correct exercise of jurisdiction" (Cintra et al , 2005, p. 84, translated), would be above the material law itself, insofar as a procedural irregularity would justify the annulment, for example, of a criminal process by a confessed defendant. Or that a procedural error could justify setting free a deservedly condemned man. That is supposedly a kind of "price to pay", in the sake of a more secure and predictable penal system.

In effect, as it establishes the "rules of the game", the Law needs to create minimum guarantees, so that the subjects submitted to it, that is, all citizens, are not surprised by any eventual punitive, willful actions by the State. In this sense, it is not an exaggeration to say that one of the main characteristics expected from the Law is predictability. It is not

enough to know that the acts performed will have consequences; it is necessary that such consequences are previously established, and clearly. Even if this causes situations in which the “form” overcomes the “content”, as in the examples mentioned in the previous paragraph. Summarizing: there are situations in which the application of the law results in the impunity of guilty criminals, or the punishment of innocent people, but such situations should, desirably, be exceptional and rare.

In *O crime do padre Amaro* and *O primo Basílio*, Eça de Queiroz dealt with these anomalous situations of exception, in which the Law does not answer to the population’s needs. From these texts, the questions that arise are: is it worth it for the Law to be like this? Is it worth that the performance of the Law is self-restrictive, even in extreme situations such as those portrayed in the two novels in question? Reading the novels does not provide an answer. At least not closed answers, or supposedly “correct” answers. And, strictly speaking, such answers are not necessary, as it is the unveiling of the inevitable legal paradox that shocks the most attentive reader: the most perfect application of the law does not always result in the promotion of Justice, although Justice is the most “sacred” value for the Law.

Summing up, the concern caused by the works of Eça de Queiroz is precisely this: even if not formally censored by law, the conduct of the main characters of the two novels is, in itself, objectionable, unfair, – even criminal. In this condition, under the eyes of some, they should deserve the State’s legal punishment. That is, based on the reading of the two novels, the reader may have the feeling that the Law should penalize Amaro and Basílio, despite the criminal principle of legality prescribing a different solution.

6 CONCLUSIONS

Amélia and her son died as a result of the acts perpetrated by Father Amaro. Luísa died because of the attitudes of her cousin Basílio. Amaro and Basílio were undoubtedly fully aware of their actions. However, the hypothesis of homicide, or any other crime that could fall under the

responsibility of the two agents in question, was never socially present, neither at the time the two novels were written, nor even today.

Regardless of the reader's philosophical convictions, the conclusion seems the same: Amaro and Basílio could not be held legally responsible for any of the deaths that occurred around them. Not even the most activist of the magistrates could claim to guilt for the male characters of *Eça de Queiroz* solely based on the acts they committed. Also, as previously seen, formally there was no crime attributable to them.

Even so, the absence of Law is felt like a punch in the stomach onto the reader, especially if that reader is initiated in legal matters and for whom the primary function of Law should be precisely the promotion of Justice.

But what is “Justice” in the case of Amaro / Amélia and Basílio / Luísa? Would it be a conviction without a previous crime under the law? Would it be a state punishment due to the bad conduct of the two characters at the end of the novels – something like Meursault's sentence in Albert Camus's novel *The Stranger*, because he did not cry at his mother's funeral (Camus, 1972)? Would it be some kind of divine punishment – and, in that sense, would the fact that Amaro was a priest mean anything?

Rationally analyzing Amaro and Basílio's conduct, there is no way to conclude that state punishment would make sense. The acts perpetrated by both are too indirect to justify a murder conviction. At most, both would be entitled to divine punishment, but in this case, such punishment would not be of interest to the Law and, therefore, could not be analyzed from the point of view of the Justice of men.

So, what do readers crave after reading the novels? Perhaps the doctrines of law, to which the ideas of due process of law, the principle of legality, the reserve of law, the presumption of innocence, etc., are generally not able to satisfy the notion of Justice espoused by the readers of these novels.

No reader finishes these novels stating that the acts of Amaro and Basílio would not be punishable, in view of the dogmas of the Law. Nobody claims that Amaro and Basílio would not be condemned, under penalty of affront to the principle of previous criminal law or due process. The readers, as a rule, get angry at the women's deaths, and feel betrayed and abandoned by law. In many cases, readers can even resent the dogmas mentioned above, as if they were empty notions used only to justify the impunity of two powerful men, to the detriment of two female characters, portrayed as fragile young people, susceptible to the evil deeds of their lovers.

In this sense, the two novels by Eça de Queiroz are also related to our present days, insofar as they allow the questioning of the logic behind the creation and application of the Law. Based on Eça's work, without any conclusion in one sense or another, it is possible to reflect on what the Law is and for what purpose and to whom it serves. More than that: with the Portuguese writer, it is possible to conclude that the Law can also be a villain; that, contrary to what is promised, it can promote injustice, with even more potency than when it promotes Justice.

Eça de Queiroz's contribution to the Law is not of criticism or of praise. Through his literature, he produces strangeness, perplexity. The reader is not authorized to draw conclusions from Eça de Queiroz's thoughts; he/she is authorized only to think from the novels, drawing conclusions from his/her own conceptions of the World and of Justice. For the legal initiated reader, it is possible to go further and question legal values considered by many to be sacred, such as, for example, due process of law, the presumption of innocence, the principle of legality or the reserve of law, etc.

But it would be too simple to say that Eça de Queiroz wrote novels against the Law. That, taking advantage of his university disappointments, he wrote two works in which Law appears in the list of the main villains. It seems more sensible to conclude that the Portuguese author only described scenarios in which the Law was omitted and, based on these scenarios, provided the reader with more reflection on all the

consequences speculated in this short essay, in addition to many others not perceived by the essayist, obviously.

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