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**A DRAMATIC NARRATIVE: CRIME OR FATEFULNESS?
FELONY, FELON AND VICTIM IN *THE ATTENDANT'S
CONFESSION*, BY MACHADO DE ASSIS**

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ABSTRACT: Studies of Law and Literature have been fruitful due to the area's interdisciplinary aspect, as well as the possible effects that literature is able to bring to the Law, that is, due to the dialogue between such opposite situations. Thus, the Law's dogmatism and conventionalism, not to mention its pursue for legal safety, are interposed by the playfulness, the inventiveness, and the flexible, progressive aspects so dear to literature. Understanding how the two areas articulate to each other has gained momentum. This paper is an analysis of the short story *The Attendant's Confession*, written by Brazilian author Machado de Assis, within the Law in Literature approach. Hence, the fictional traits seem to point to formal aspects regarding legal offenses, as well as the felon and the victim, which go beyond the facts narrated by the character in the short story.

KEYWORDS: law; literature; interdisciplinarity; felony; Machado de Assis.

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1 INTRODUCTION

Law is usually seen as a set of pragmatic formulations. Studying law in literature, however, is justifiable due to the idea that legal practitioners can grasp from literature indications of theoretical effects, and the fact that simply knowing literature makes jurists understand human nature better, as they become readers of people's habits, secrets, virtues, wrongdoings and good deeds that are common in social life. This assertion is evident when a lawyer in a jury has to show his or her rhetoric ability, and the pedagogical effect of the reasons brought by it.

A very lucid study by Henriete Karam (2017), dealing with theoretical and methodological matters of Law and Literature, highlights the fact that the several currents previously introduced exhibit their richness indeed, but also raise questions regarding the different articulation forms between the two areas in each of them, and the degree of confluence of their epistemological foundations, as well as their concepts and methodological precepts. Trindade and Bernsts (2017, p. 225-257) develop a thorough study on the creation, development and expansion of Law and Literature in Brazil. They highlight the main moments, since the early-twentieth century, with all the different approaches and the volume of intellectual production on the topic. The authors thus conclude that the Brazilian experience in the area is innovative and promising, although lacking of theory production.

Literature is seen in the broadest sense here, and it includes every creation with poetic, fictional or dramatic traits, in every level of society, in all types of culture. Law has justice as its main purpose and it is a cultural concept, that is, it relates to a reality based on values, which are consistent in the set of rights that the human societies acknowledge as granted.

In Ancient times, law was written in form of poetry and thus was learned and internalized, soon becoming part of tradition and culture.

Poets helped cities understand the world, man, death, justice, and triumph.

In this paper, a short story written by Machado de Assis is analyzed from the perspective of the Law and Literature movement. The text was written in the nineteenth century, but strongly relates to present times, as it approaches situations in which the characters are led to take actions to be judged by the reader, as in a modern jury.

2 LAW AND LITERATURE: CONNECTION AND DISTINCTION

In Western cultural tradition, the connection between law and literature is recurrent – legal writers used to be literature writers as well. Law was taught and explained from resources or genres of literature, such as poetry, which allowed people to understand the law. Once internalized, it easily passed on to following generations, becoming part of the people's culture.

The relation between law and literature proposes the overcoming of classic conceptual borders, since there are many distinctions made between the two areas, such as the ones that characterize the contributions of each (Ost, 2007, p. 13-18). The law finds its foundations in the generality and abstraction of laws, it defends instituted positions, and searches for instituting positions from new meanings, by deconstruction the old ones. It puts together formality and abstraction, it codifies reality in closed systems.

It is adequate for the law to grant value and importance to legal safety, as it is responsible for taking decisions on quarrels, hierarchizing rival pretentions. In order to better organize its purposes, the law, with its conventional statutes, creates legal persons onto paper, and consecrates normative guidelines. Thus, it brings a theatrical logic to social life, and imposes onto individuals a certain masquerade (*persona*), which serves as reference for the standard behavior expected of citizens.

Literature is manifested in particular, concrete cases, and it expresses singular and real stories, since it acts in the imaginary dimension but depends on instituted norms and forms, being part of them. Even though its register is individual, its reach is usually collective and generalist.

It creates surprise, it frights, it awes, it disturbs. When creating characters that have dubious traits, literature experiments metamorphosis, inverts roles, put in check the current habits. Fiction works can capture reality and at the same time propose new worlds. They suspend certainty and deconstruct social conventions, which goes against the legal certainty.

Regarding that, the comment by François Ost (2007, p. 13) should be highlighted: “Also here Plato was aware of facts: a legislator never laughs – his supposed righteousness cannot be corrupted by such ‘easy passion’”. There is deep distrust toward the playwrights, the poets, who supposedly fostered the creation of a certain enchantment or seduction when mixing truthfulness and falsehood. Literature has codes and stereotypes that bring forth constant questioning, in a way that leads to radicalism of ethical demands, that is, it leads us to becoming free and responsible for our own actions.

As seen, even though each area has its particularities, law and literature have many convergence points, as an arena where different types of knowledge intertwine. In it, a dialogue is set in constant tension, which is almost necessary to corroborate their roles so that their statutes are accepted by their peoples.

3 WHAT IS THE LAW?

Generally speaking, law is a technique for human coexistence, as it is a set of rules which aim at reaching the intersubjective behavior, that is, of men among themselves.

Fundamental historical conceptions about the validity of the law can be summarized in four movements (Abbagnano, 2007, p. 328). First, there is the law as a set of rights that human societies have acknowledged as basic, usually called natural law, which eternal, unchangeable traits. Second, law based on moral, an imperfect form of morality. Third, law reduced to strength, as a historical reality, politically organized. Fourth, the conception that sees the law as a social technique.

Natural law, as a constant and unchangeable set of norms, grants the realization of a better organization of human society, as it is the foundation of positive law. The latter, to certain extent, adjusts to the former's fundamental ideas: while natural law represents the perfect rationality of the norm towards its end, which is granting human coexistence, positive law, on the other hand, is made of imperfect representations, or only close to perfect normativity.

The tradition that confronts both natural law and positive law has persisted for over two thousand years. It splits in two fundamental branches. The ancient one is a Stoic heritage, and it defends the participation of human community in the rational order of the universe. The modern one, juridical naturalism, sees the law setting comprehension as a rational technique for coexistence.

In the idea developed by Radbruch (2016, p. 11), law is a human doing, and only through this idea can it be understood, in attempt to refer to value as a cultural manifestation. The idea of law belongs to valutive actions. Thus, logic, aesthetic, and ethic duty constitute the laws of duty related to the most basic actions of human beings: the rules of fairness and adequacy generate morality, customs, and, finally, the law.

The human being assimilates customs, law and morality, elements that constitute culture (Radbruch, 2011, p. 3)². The valutive consideration that places the law as a cultural value characterizes the philosophy of law as a doctrine of fairness. It goes together with the idea that valuations or judgements are derived from facts, even though they are not founded on these facts, besides presenting possibilities for the individual to take position among the legal conceptions, and their ultimate and opposing assumptions, of certain world and value conceptions, regardless of the correction of such value and world judgements.

² “If the moral law purely means duty, totally removed from the world of facts, then customs, laws and morals are nested in effectiveness: they are a desire, a real desire, whose intention is to substantiate a duty. Morality is, so to speak, due: custom, right and morals are due only because they are desired – by society, by the State, by conscience” (Radbruch, 2011, p. 3).

From the nature of the law, simultaneously positive and normative, comes the idea of legal precept and its components, de facto situation and legal consequence.

The main controversy around the concept of law is the connection between law and morality, which develops into two classic positions: the positivistic one, and the non-positivistic one (Alexy, 2011, p. 3-6)³. Positivistic theory stands for the thesis of separation, in which the concept of law must be defined so as not to include moral elements, because there are no connections between these two aspects. The positivistic concept of law considers two elements of definition: legality and social efficacy. On the other hand, the non-positivistic theories stand for the idea of interconnection, that is, the concept of law must include moral elements.

In other words, the law is a social phenomenon, but its complexity, function and consequence depend on its structure. To practice the law is to accomplish an argumentative action (Dworkin, 2014, p. 17). On that idea, Guimarães Filho and Martinho de Matos (2019, p. 441-462) bring some thoughts regarding the perspective of law as a theory whose starting point is a heuristic set of characters, plots, stories, narrative genres, etc. Their conclusion is that Dworkin's theory of law must be seen as a kind of narrative theory.

In positivism there are elements that match the necessary and sufficient conditions to reach the truth of a certain legal proposition, as well as the rules adopted by specific social institutions, and rules that dictate what the law should be and how the legal institutions should behave, considering the idea that the law and all institutions should be at the service of the general well-being.

As seen, it is very difficult to conceptualize the law itself, as a cultural phenomenon. However, the philosophy of law tends to consider its object of study as a cultural value, connected to the idea of justice. In in, there are the ideas of fairness, ethic duty towards the activities of human beings, and adequate rules of good deeds, which culminates in the making of morality, of customs, and of the law as we know them.

³ “Controversy about the concept of law is controversy” (Alexy, 2011, p. 6).

3.1 Prudential law

Prudential law represents, as a custom, the area of the juridical structure that is placed outside of the creative action of power. It overlaps the written law and plays an interpretative role, integrating the law with reality, in a creative aspect of the norm.

It is the order created by the ones who are *prudent*, those who know the law, fairness and unfairness, whose authority (*auctoritas*) makes them able to declare the legal truth in real cases (Albuquerque e Albuquerque, 2005, v. 1, p. 261-264).

The medieval jurist is different, since for him, solutions are not reached based on the subsumption of facts to the legal norm, but by the ponderation of possible solutions. Cases were weighed and considered from all angles. The elements of *ars inveniendi* are split in three types: *leges, rationes, and auctoritates*.

Leges finds its expression in text, in written forms, and apprehends the signified from the signifier. It obeyed the grammar rules by which the spirit expresses itself. It was connected to logic, dialectic, rhetoric.

For the medieval jurist, knowing grammar would bring forth the logic consideration of written texts, and would make it possible to dominate them in their literal meaning based on the study of signifier modes.

Rationes deal with arguments of equity, of natural law, of opportunity and logic, the spontaneous argumentation of jurists. Hence, the more one resorts to *rationes*, the more law will be prudential and less legal, since it accepts *alegal* solutions that are founded by the thirst for justice, utility, or rationality. By their means, the medieval jurist could censor the written law.

Assertions that do not conceal within themselves hints of truthfulness or falsehood, whose legitimacy depends on probability, point out the problem of criterion identification for the credibility they deserve. *Auctoritates*, in the context of the roman laws, used to designate the intervention of those who could secure or grant something.

The final opinion was a lesson by an expert in an art in which testimony and experience were opposed to the credibility of something unsusceptible of demonstration in terms of truthfulness or falsehood. But

the opinion of doctors did not have the strength to make certain or evident the advocated solution; rather, it had a more modest role, concealed in the realm of the probable.

4 LITERATURE: WHAT IS IT?

Literature is every creation with a poetical, fictional or dramatical touch, in every culture, from the simplest manifestations to the most complex and difficult written productions made by civilizations. Literature is a universal manifestation of men in all times; no people can live without it, with no imaginative fabulation whatsoever. Literature is “the lucid dreaming of civilizations” (Candido, 2004, p. 17).

Among the immaterial powers that surround men and whose present is seen from generation to generation, there is the literary tradition, the set of texts that humankind has made for loving itself, for pleasure, for spiritual elevation, regardless of practical effects. Besides being based on vehicles that until very recently used to be paper-based, in remote times these texts were made public by the voice of memorized oral traditions (Eco, 2014, p. 11-13).

Literature creates identity and community, and it contributes to form language (Eco, 2014, p. 12-13)⁴, which is a collective patrimony. It invites people to freedom of interpretation and proposes countless layers of reading the ambiguity of language and life, since every generation reads the literary works with new eyes.

The world of literature inspires trust in the existence of propositions that should not be doubted, and offer a model of literal truth that is reproduced in hermeneutical truths.

As an indispensable asset for humanization, literature confirms men in their humane aspect, and acts, both consciously and subconsciously, as a result of social creation of fictional, poetical, dramatical manifestations

⁴ “Without Dante there would be no unified Italian. [...] It is true that, in order to become the language spoken by all, the common Dantesque language took some centuries, but if it succeeded it was because the community of those who believed in literature continued to be inspired this way. [...] think about what Greek civilization would have been without Homer, the German identity without Luther’s translation of the Bible, the Russian language without Púchkin, or Indian civilization without its founding poems” (Eco, 2014, p. 12-13).

in their beliefs, feelings, and laws. The humaneness aspect⁵ so dear to literature brings the possibility of reflexive thought, and makes the readers more comprehensive people, open to nature and the other people.

The first characteristic of the function of literature (Candido, 2004, p. 18-23) is that a literary work is a construct of autonomous objects such as structure and meaning. So, every work of literature is a constructed object, with humanizing power as a construct. The organized aspect of literary works is an important trait that makes it possible to organize the readers' minds and feelings, thus, organizing their own world view.

The second characteristic identifies literary works as forms of expression that reveal the feelings and the world views of other individuals and groups. Organized words (Candido, 2004, p. 21)⁶ say important things because they obey a certain order, and they are impressive precisely because of such order made by the writer. Chaos becomes order and form. "Every literary work presupposes the overcoming of chaos, due to a certain special arrangement of words, in a proposition of meaning" (Candido, 2004, p. 20).

Literature humanizes all its readers, it is a standard for the organization of emotions, for the overcoming of particular situations toward generalization and permanence, and thus it places itself above the passage of time (Rodrigues de Moraes, 2015, p. 145). It is an elaboration process that allows some distancing and meaning creation, and it represent humanization itself.

The third characteristic of literature is the fact that it is also a form of acquiring knowledge, even if it is more diffuse and unconscious than other learning processes. The content of a literary work, together with its form, is an element of a certain modality of knowledge, and it is processed

⁵ Humaneness is understood as the process that confirms in man certain essential traits, such as reflection, the acquisition of knowledge, the disposition towards others, the sense of beauty, the perception of the complexity of the world, the cultivation of humor, etc. (Candido, 2004, p. 22).

⁶ Candido highlights the humanizing power of literary works: "The regulated alternation of stressed and unstressed syllables, the suggestive power of the rhyme, the cadence of the rhythm – created a definite order that serves as a standard for everyone and, therefore, humanizes everyone, that is, it allows feelings to pass from the state of mere emotion to that of the constructed form, which ensures generality and permanence" (Candido, 2004, p. 21).

mostly unconsciously, but equally enriches people's perception and worldview.

The greatest stories, in their inalterable function, teach us that, even though we desire change destiny, it is impossible to alter it. However, literature is collective in requiring a communion of expressive means, affinities that bring men together from one place and one moment, and, finally, a form of communication (Candido, 2000, p. 127).

Literature congregates men belonging to a certain group, both intellectually and formally, according to a certain style, even if people are not aware of it.

As for language, it is composed of statements of multiple functions. For the legal science, the most important linguistic functions are: the indicative or descriptive one, in which information is communicated, and the prescriptive one, in which people try to stimulate behaviors through orders or advice. The nature of the statement is linked to its function or meaning.

4.1 Brazilian literature

When dealing with literature, it is necessary to formulate a definition of Brazilian literature, which has a different history from that of European literature, for example, or from other modern nations, since it is conditioned by the cultural history around it. Literature made in Brazil is decurrent of a complex colonization process of life and thought (Bosi, 2013, p. 11)⁷.

Thus, Brazilian literature acquires self-acknowledgement of its existence after the independence of the country, in 1822, when the culture starts seeing itself as divergent from the Portuguese tradition, especially due to the desire for political freedom when splitting from Portugal (Candido, 2000, p. 154-155)⁸. Thus, a very slow process of finding and expanding the Brazilian identity begins.

⁷ For Bosi, "The colony is, at first, the object of a culture, the 'other' in relation to the capital: in our case, it was the land to be occupied, the brazilwood to be explored, the sugar cane to be cultivated, the gold to be extracted: summing up, the raw material to be carried to the foreign market" (Bosi, 2013, p. 11).

⁸ For Candido, being literary good meant being Brazilian; "[...] being *Brazilian* meant including in the works what was specific to the country, notably the landscape and the native people. For this reason, Indianism appears as the supreme mark of Brazilianness, and the critical task was immediately oriented towards its retrospective search, seeking to probe the past to locate the true predecessors, which, according to the Romantics,

Colony stops being so when it becomes the main element of its own history. In the Brazilian case, this transformation happened in a slow context, in a process of acculturation of Portuguese and black peoples to native races, in the midst of crises and imbalances (Bosi, 2013, p. 12)⁹.

It was the beginning of the preparation for a mind shift, and, in face of the decay of the previously fruitful economic cycles, new, liberal ideas, with abolitionist, republican traces started to gain momentum during the Realism movement. Themes such as abolition and the republic then become ideological options for the Brazilian cultured man from 1870, faithful to the English molds of constitutional monarchy.

Realism in Brazil had much influence of another movement, Naturalism, both in novels and short stories. In fiction, Realism appears in the works of the great writers, and deepens the idea of narrating customs, with touches of analysis and scientific observation. The ills of public life are exposed in contrast to the intimate life. The writer takes his / her characters seriously, seeking to discover the truth in their behavior (Bosi, 2013, p. 173-178).

Having dealt with general characteristics of law and literature in Brazil, this article now proceeds to the analysis of a literary work whose author is an outstanding 19th century Brazilian writer.

5 MACHADO DE ASSIS: A BRAZILIAN WRITER FROM THE NINETEENTH CENTURY

Joaquim Maria Machado de Assis, or simply Machado de Assis, was a journalist, short story writer, chronicler, novelist, poet and playwright. He was born in 1839 and died in 1908. He is considered one of the most important Brazilian authors. He also presided *Academia Brasileira de Letras* for ten years.

had been achieved, thanks mainly to the picturesque, breaking the shell of the Portuguese (classic) convention” (Candido, 2000, p. 154-155, originally emphasised).

- With the loss of political autonomy between 1580 and 1640, Portugal passed to the category of peripheral nation in the European context, reflecting its literature, which started to revolve around other cultures (Spain, Italy, France), also affecting the colonial lands, that in the 17th century reflected “second-hand” currents, reducing themselves to the condition of sub-colonies (Bosi, 2013, p. 12).

An ironic writer, Machado de Assis had a refined style, nowadays seen as modern-like. Much of his short stories have open plots, and allow different readings. For Candido (1970, p. 23), “his technique is essentially to suggest the most tremendous things in the most candid way (like 18th century ironists); or to establish a contrast between the social normality of the facts and its essential abnormality; [...]”. Thus, the author in his work suggests that the exceptional action is normal, and the abnormal one is ordinary, everything has the appearance of the opposite.

Luz Segundo (2017, p. 171-195) dealt with Machado de Assis from the perspective of modern legal imagery in Brazil. He considered that the author, having worked as a civil servant for a period of thirty-five years without joining any party or tendencies of Parliament or Congress and without expressing preferences for political systems, has, however, a literature full of surprises.

The writer’s originality comes from the feeling of relativity of the acts and the impossibility of conceptualizing them, highlighting the feeling of absurdity. Machado de Assis’ style presents itself with a certain impartiality, demands intensity from the strange cases presented, however, with carefree moderation (Candido, 1970, p. 28-29)¹⁰, whose aesthetic distancing reinforces the sense of reality.

For Del Pino (2015, p. 157-173), reflecting on one of Machado de Assis’ works, the author parodically personalizes the scientist who became highly valued from the 19th century. Thus, Machado’s work recovers the conditions to which modernity is submitted. “For this reason, Machado’s narrative, under the cover of irresponsible playful reporting, has the function of warning us to the fact that science is not always what it shows in appearance (...)” (2015, p. 172).

¹⁰ “Personally, what attracts me most in his books is another theme, different from the previous ones: the transformation of man into an object of man, which is one of the curses linked to the lack of true, economic and spiritual freedom. This theme is one of the familiar demons of his work, from the attenuated forms of simple selfishness to the extremes of sadism and monetary looting. [...] But in addition, a broader connotation is notorious, which transcends satire and sees man as a devouring being, with the dynamics of the survival of the strongest as an episode and a particular case” (Candido, 1970, p. 28-29).

The short story of his authorship called *O enfermeiro* (Assis, 2011, p. 213-222) (titled *The Attendant's Confession* in English language publications) was originally published in 1896 in the collection *Várias histórias*. Written in first person, the text explores a confessional tone of a man on the verge of death, narrator of a fact that he wants to keep secret, but stating it can be made public after his death.

5.1 The short story *the attendant's confession*: analysis of a dramatic narrative – crime or fatefulness?

Procopio, the narrator and main character of the short story *The Attendant's Confession*, tells his story in first person, as a kind of biography based on facts he took part, in 1860.

When the narrative happened, the narrator was 42 years old and worked copying the theological studies of a priest in Niterói (formerly spelled Nictheroy), a Brazilian city in the state of Rio de Janeiro¹¹. Feeling tired of his job, Procopio becomes aware of a letter from a vicar asking for a “discreet and patient” person to be an attendant to an old colonel. He then accepted the job and travelled to a small village in the interior of the country, where he met the man, a “disagreeing, harsh, exacting fellow”.

When he arrived at the village, he knew of the difficulties and disturbing facts surrounding his new job, all due to the colonel's attacks, who allegedly had “broken the face” of two previous attendants. Even so, as a challenge, he decided to stay at the village and accept his new position.

At this point, the author introduces two antagonist forces: on the one hand, an arrogant man, used to mistreating those who served him, with primitive, barbarian habits of a colonel who ruled over the little village, far from the civilized customs of the city, so the man was never punished for his horrid actions.

¹¹ As determined by D. José (1714-1777), metropolitan power moved from the city of Salvador to São Sebastião do Rio de Janeiro, in 1763, which became the capital of the Portuguese colony, the seat of the Portuguese empire with the coming of the monarchy from Lisbon to Brazil. Only in 1960, with the founding of Brasília, the country's capital was transferred, until today.

On the other hand, there was a healthy man, much younger than the colonel, who had willingly travelled to the village for work. Coming from a big city culture, he was used to respect and urban protocol; at the same time, he seemed vulnerable due to financial struggles that forced him to accept jobs with poor conditions for survival.

During the first few days of his new job, Procopio believed he had reached good terms with the colonel, who even treated him with some respect. However, it would not take long until this reality changed, and a new period of cruelty and contempt started: the old man started to relentlessly treat him “like a dog”. The attendant, at first, accepted all the offense he was suffering, as he thought it was all due to the “illness and temperament”.

The patient was a grumpy old man, used to having his whims and wishes met all the time. He did not have any relatives left, and very few friends continued to visit him. He had a malicious personality, and seemed to have fun by humiliating and bringing pain to others.

By then, the readers of the story might measure the degree of difficulty faced by the attendant. Although the patient was absurdly rude, his medical condition and old age somewhat explained all that behavior. Such consideration, even if it happens unconsciously, probably brings to the reader the idea of balance, which may create a very good impression of the main character, who was facing a very uncomfortable situation with patience and resignation, and revealing a righteous, dutiful personality.

As the narrative moves on, three months go by and the attendant finally decides to quit his job. He considers it as “the last straw” when he is hit by the old colonel with a walking cane. Before leaving, however, he is convinced by the old man to stay, after a convincing, regretful apology. But again, within a very short amount of time, the narrator learns that the apology had been empty, since the old man’s behavior becomes inhumane, cruel, offensive once again.

Then the attendant lives a moment of tension: he wanted, simultaneously, to go back to civilization, and get rid of such angst, as it had emptied him of any compassion and patience that might had helped

him to stay there for so long. He now hated and disgusted the colonel. It was a new period, in which his deepest and darkest feelings arose. He talked to the vicar once more about leaving the colonel's farm, only to be convinced of staying there for another month.

Then, in the dark of a silent night, a dramatic event happens. The colonel had an anger attack and cursed the attendant, while hitting him with a plate, which almost hit his face. The young man did not react, as he was aware of the difficulties of the illness for the old man, who ended up sleeping after that. The attendant stayed beside the patient, waiting for the medication time, sitting near his bed.

Tired of such difficult routine, the attendant also started to sleep. Suddenly, he wakes up startled with the noise of the sick man screaming and throwing him an object, which hit his face. In pain and anger, the young man goes after the old man and strangles him. The narrator then confesses to the reader: "I strangled him", to death.

Then the Young man is astonished, recalling the details of the fight, hearing voices in his mind, accusing him: "murderer!". The house, however, is silent, the night is calm. Catching his breath, the narrator thinks over all the consequences of his actions, the possible punishment, and his crime.

The author gives descriptions so that the reader is able to reach conclusions and judgements individually. Of course, judgement requires impartiality, consciousness, and justice. Along the narrative, it was possible to understand how cruelly the attendant was treated by the colonel, who did not show respect for the human and professional relations he had, and who was guilty of physical and psychological violence.

Back to the scene, before dawn, the attendant goes back to the bedroom, and, looking at the corpse, he even considers fleeing. But then he realizes it would be equivalent to confessing murder, so he starts hiding the vestiges of the fight. There were nail marks on the victim's neck. He thus calls a short-sighted old servant and announced the lord was dead, sending the news to the vicar.

Simulation actions are evidenced in the narrative, in order to hide the signals of fight on the body of the deceased. The narrator desires to flee, but such action would correspond to confessing. This covering-up effort is full of guilty and fear. During the funeral he also wanted to go away, but feared raising suspicion. He prepared the body and did not leave the mortuary room, as he did not want anybody to discover anything, so he closed the coffin himself after the service. Did he veil the victim and had he kept quiet in order not to raise suspicion of his crime, or was he truly sorry?

For the present people, the trembling hands of the attendant seemed like an indication of his pain for the loss of his patient, like a certain friendship he supposedly had developed during his professional duty. After the burial, he felt “in peace with men”, knowing that the evidence of his crime had been placed six feet under together with the victim, and that he need not worry any felony charges, but he did not feel at peace with his own conscience.

Back to his hometown, the attendant schedules a mass to be sung in honor of the dead colonel. Seven days after that, he receives a letter from the vicar with news of the colonel’s testament, and, surprisingly, he had been chosen as the inheritor of all the colonel’s possessions.

At this point, he feels even more guilt and regret, since the inheritance was a really considerable amount of money, which would change his life completely. He thought and revisited the facts, the irony of all the events, and thought it would be shameful for himself to accept the inheritance in such conditions. He thinks of refusing it.

However, after three days deliberating, he concludes his refusal would probably bring suspicion over himself. So, he decides to accept the money: “I would accept the inheritance and would distribute it in small sums, secretly”. He believed it was a good solution to atone for the crime with an act of virtue; it seemed like a kind of reckoning.

The attendant tried to recall the events and he himself questioned: had it all been a crime or a fateful accident? He comes to the conclusion that there had been a struggle, he needed to defend himself, and the end

of it had been fatal. When in doubt, the attendant oscillated between retaining the injuries, blows and suffering in his mind, and alleviating the occurrences as arising solely from the illness that had affected the man, as if to excuse the one who had chosen him as universal heir.

The idea that the struggle resulted in a fateful death loomed in the attendant's mind, who meditated on the colonel's health, a collector of diseases that would soon lead him to die a natural death. In the list of various arguments in his favor, he confirmed that there was no quality in the colonel's life, just pure suffering. "Didn't he say every now and then, 'How much longer have I to live? Two weeks, or one, perhaps less?' This was no life, it was slow agony, [...]" And who knows indeed whether the struggle and natural death could have been coincidental? It was almost as if he had done an act of mercy.

The attendant could have claimed in his favor the right of self-defense¹² due to the history of the aggressions and in view of the risk of death¹³.

The people who knew the colonel started to openly state their thoughts about him; despite the visible defense by the attendant, these people highlighted how evil the old man had been, a "demon". They shared stories of his evil doings, which seemed as evidence of his weakness of character. This attitude of the people awoke in the attendant a mitigation of his guilt, which gradually became pleasure and fulfillment.

At that point, a catharsis seemed to occur, which freed the attendant from guilt, relieving him of the weight of the feelings that had oppressed him, and he felt free to receive and enjoy the inherited money. He did so,

¹² Decree-Law No. 2,848, of December 7, 1940. Brazilian Penal Code. "Art. 25 - It is understood as acting in self-defense those who, using moderately the necessary means, repels unjust aggression, current or imminent, in their own or someone else's right. (Wording given by Law No. 7,209, 7.7.1984)" (Brasil, 1940).

¹³ When dealing with death penalty and relying on Beccaria in the course of contractual theory, Radbruch emphasizes that in the occurrence of legitimate defense the social contract is interrupted, as it is unable to protect the legal assets of defense, since, at that moment, the organs instituted to do so are inaccessible. The right of defense is presented as an original right of man, granted to the victim. "The right to self-defense is directed towards the repression of the attack, to the annihilation of the aggressor's capacity, the real result of which may be the death of the aggressor, but it is not directed at that same death, so that this right in itself does not address to such annihilation, but only the threat of life" (Radbruch, 2016, p. 254).

and invested it in cash and bonds, and after a few months, the idea of donating to the poor was faded, except for very small alms he gave to the Sacred House of Mercy and to a marble monument upon the colonel's grave. After some years, his memory of the event had become "vague and unreliable".

The attendant told several doctors about the illnesses that the colonel suffered and all of them were unanimous in answering that the patient's death was certain, marveling that he had resisted so long. "It is just possible that I may have involuntarily exaggerated the description of his various symptoms; but the truth is that he was sure of sudden death, even had this fatality not occurred...".

The narrative concludes with the attendant's farewell asking the reader, if the story was considered any good, to buy him a marble tomb with an epitaph, part of the sermon on the mountain: "Blessed are they who possess, for they shall be consoled".

5.2 Law in literature and the analyzed story

The lines of investigation between Law and Literature include several research areas (Godoy, 2008, p. 26): law in literature, law as literature, law of literature, literature as a possibility for expressing the law, law and literature as narratives and rhetoric possibilities, law and literature as a hermeneutic convergence, standard and impulse to reform the law, law and fiction in search of ethical references.

The area of law in literature is an approach that favors the approximation of the jurist to literature, by the possibility of collecting examples and systemic generalities of human behavior, in pedagogical effects that instrumentalize his / her work with greater comprehensiveness. Literature as fiction lends itself as models for identifying and problematizing the ills of the law (Godoy, 2008, p. 10). It is also about investigating the presence of law in literary texts in their various genres, an aspect that indicates ethical references.

The short story hereby analyzed is found in the line of investigation of law in literature. Fiction brings, even if in sketches, the elements of felon, felony, and victim.

In the story narrated by the attendant, several types can be identified, considering the rules currently in force in Brazil: from simple homicide to manslaughter, if the crime results from failure to comply with the technical rule of the profession or if the agent fails to provide immediate assistance to the victim¹⁴.

In addition to the criminal classification, the narrative also highlights aspects related to the application of penalties, as is the case in the prediction, in simple homicide, of penalty reduction¹⁵ in the event that the agent commits the crime under the control of violent emotion, immediately following the victim's unfair provocation. Also, the increase in the penalty in which the homicide results from non-observance of the profession's technical rule or, even, if the agent fails to provide immediate assistance to the victim.

Can the attendant's narrative as a terminal patient's confession be treated as remission of guilt? Or does he assume that no result will affect his integrity, physically, at that time sick and in a final state? The inversion of roles continues to work and confuse the reader's reasoning.

The reader will also be able to decide and deliberate that the events of the night the patient died were mere fatality, after a discussion whose provocation was clearly the patient's initiative

Throughout the report, the antagonistic scenario was created by the author in the outer layer (Rosenfeld, 2014, p. 37)¹⁶: the rich and the poor, the cultured and the ignorant, the powerful and the vulnerable, and

¹⁴ Paragraphs 3 and 4, article 121, Decree-Law no. 2,848, dated 12.7.1940 - Penal Code (Brasil, 1940).

¹⁵ Paragraph 1, article 121, Decree-Law No. 2,848, dated 12.7.1940 - Penal Code. "Art. 121. Killing someone: [...] Case of reduction of sentence § 1 ° If the agent commits the crime impelled by reason of relevant social or moral value or under the domain of violent emotion, immediately afterwards the victim's unjust provocation, the judge can reduce the sentence from one sixth to one third" (Brasil, 1940).

¹⁶ "However, the creation of a vigorous imaginary world, of 'living' characters and 'true' situations, already of high aesthetic value, requires in general the mobilization of all language resources, as well as many other elements of literary composition, both in the horizontal plane of the organization of the successive parts, as in the vertical of the layers; in short, of all the means that tend to constitute the literary work of art" (Rosenfeld, 2014, p. 37).

occasionally the roles were reversed, with the powerful weakened by the disease and the vulnerable optimistic by health and disposition.

The description of the most apparent characteristics of the characters in a literal way, related to the need to concretize and enrich the intentional layers towards a deeper meaning (Rosenfeld, 2014, p. 32-33), allows the reader on the imaginary plane to understand the meaning or idea of the work and leads them to admit the presence of transition zones between fiction and reality.

That sort of game seemed important for the colonel to stop his boredom, and he conducted it as someone who is in search of the perfect opponent, as a last effort to remain alive, since his body was decaying. He was counting his days of living, until the time when the provocation came true and he died. Did he want to die? Was he searching for someone who he could annoy to such extent his life would be taken?

By imposing the condition that the story could only be revealed after his death, did the narrator want some kind of justification? Would the situation of being on the verge of death in any way relativize the story he intended to tell but required to be kept confidential? Do the form of biography and the confessional tone induce the reader to be condescending to the outcome of the narrative? Or did the author simply seek a necessary distance from the event, in order to better fit it in the reader's perspective? However, in literary works, time has a different characteristic than that of real time, past tense loses its historical function and the form of discourse appears in two perspectives, that of the character and that of the fictional narrator. The reader, an accomplice in that playful endeavor, enters the game and participates in "non-seriousness" and make-believe (Rosenfeld, 2014, p. 21).

One of the functions of fiction works is precisely to enable a more complete and coherent knowledge than the fragmentary knowledge¹⁷ (Candido, 2014, p. 67) reality provides. The characters thus have well-

¹⁷ For Candido, "In this fictional, different world, the characters obey their own law. They are clearer, more conscious, have a defined outline, - contrary to the chaos of life - because there is a logic pre-established by the author, which makes them paradigms and effective" (Candido, 2014, p. 67).

defined contours and a cohesion that allows the reader to grasp the world in which they live.

Machado de Assis built the characters of the short story *The Attendant's Confession* with well-defined cutouts of human characteristics, whose attitudes reflect, and even convince, that these are acts that could have happened in reality, in real life. So real that criminal types appear clearly from the criminal actions practiced in the fictional world.

6 CONCLUSIONS

Law and literature have a long tradition of contiguity, intertwining and closeness, since antique times, when the teaching of law used literary works to better explain its rules, limits and commands. The law was, in many cases, written in the form of poetry, recited to the people in order to be apprehended and learned, to become tradition and culture. The poets sang the city's connections with divine protectors, helped it to understand the world, man, death, justice and triumph.

The law is grounded in legal security and regulations and dwells, nowadays, in coding systems whose characteristics are abstraction and generality. In turn, literature, in the face of law and customs, acts as an agent to provoke the legitimacy or validity of defined roles, by raising questions, creating scenarios capable of showing how the opposite would be, the specific in relation to the generic, the real in opposition to the abstract.

By creating an imaginary world in which representations stage the real world, literature records concrete and individual situations, but which expand to the group, capturing realities in order to design new worlds. When confronting this worldview, dialectics is made real.

The parameters that enable the interdisciplinary nature of studies in law and literature and the promotion of new concepts, methods and procedures of investigation, represent the effort of the doctrine in its main lines of investigation involving law and literature.

Literary narratives promote a representation of man and the world, which highlights the importance that the activity acquires as an object capable of raising themes for reflection in the legal area.

The observation that the law makes of literature and vice versa is marked by distinction. For example, in the arts system, like in the religious system, participation is optional, while in the legal system it is mandatory. The legal area has the lawful / illicit pair as a code, and as a function the generalization of normative expectations. Literature or the literary work, on the other hand, has as its code the ugly / beautiful, innovative / old pair, as a program of style and as a function the production, presentation and reflection developed by works of art.

Observing the legal scenario revealed by literature with its fictions and constructions, its artifices and its scene effects, can produce critical knowledge of legal constructions based on a form of knowledge expanded by language, as well as the intricacies of practical reason. However, when investing in the fictional character of law, a finding stands out: law and literature find their own foundations in narrative.

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