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"LITERARY WOMAN" *VERSUS* "ECONOMIC MAN": ANTAGONISM BETWEEN LEGAL FEMINIST ANALYSIS AND LAW AND ECONOMICS

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ABSTRACT: Law and Literature studies are an opponent of a reductive analysis of Law and Economics. In the same context, there is a new perspective: the Legal Feminist Analysis, which deals with indispensable reflections to accentuate certain aspects of the specificities of women's rights. Instead of simply trying to find reality or to disagree with how other lawyers understand reality, feminist studies tried to change it, transforming the way legal scholars used to understand it. In developing a feminist perspective on law and jurisprudence, however, feminist scholars deployed legal modernism to question dominant practices and methods used by traditional scholars for reading and understanding the law.

KEYWORDS: law and literature; gender; legal feminist analysis.

INTRODUCTORY NOTE

> "But does the word woman, then, have no specific content? This is stoutly affirmed by those who hold to the philosophy of the enlightenment, of rationalism, of nominalism; women, to them, are merely the human beings arbitrarily designated by the word woman" (Simone de Beauvoir).

For several centuries, in patriarchal societies, woman was seen as an object that, at first, belonged to her father and, then, passed on to the hands of her husband. According to such social logic, her violation was considered a transgression to the property of a man, as the concept of protecting female

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physical integrity did not exist. As highlights Eduardo Rabenhorst: "What Freud seems to offer, thus, is a negative definition of woman (which Jacques Derrida and some feminists would call phallogocentric). Woman was seen as a non-man, a man without a phallus, inverted, incomplete" (2012, p. 27).

Gender emerges out of the petrified, frozen form of sexualization derived from the lack of equality between man and woman. Hence, the feminist perspectives that started gender analyses kept a fundamental focus on the situation of women, even though their studies were not exclusively about women.

This simple paper starts from the perspective that Law and Literature studies should not exclude the feminist point of view and was mainly inspired by a chapter from a Robin West book, in which she calls attention to the differences between men and women and insinuates that the feminine gender fits the profile of literary woman, whereas the masculine one is what she calls economic man. In the same ironic sense, another significative article, by Ana Galdêncio, alerts likewise how important it is to develop a feminine jurisprudence in Law.

Similarly provocative, the terms economic law and literary woman are used many times in the text, which makes even the more skeptical reader think differently. Law, like Literature, shares actions in different narratives, which highlight, create and reflect, in normative words, experiences normally silenced by public vision or by common sense. The vision of a woman is also relevant for Law and Literature. Is it not?

THE FIRST MOVEMENT: LAW IN LITERATURE AND LAW AS LITERATURE

> "The process of reading is not a half-sleep; but in the highest sense an exercise, a gymnastic struggle; that the reader is to do something for himself" (Walt Whitman).

Law and Literature started as a movement in 1973, with the book The Legal Imagination, by James Boyd White, which showed that Literary

Studies should be part of legal training, since literature is connected with Law and adjudication[2] .

There are two basic strands of thought in the Law and Literature movement: Law in Literature and Law as Literature. Proponents of literary jurisprudence state that the great books of literature are useful to help comprehend legal patterns applied on hermeneutic possibilities developed from a literary vision of legal concepts – such as intentionalism, formalism and objectivism. The main contribution of this contemporary approach to Law in Literature is The Failure, by Richard Weisberg of Cardozo Law School.

Despite the differences, all the supporters of the movement seem to argue that law is a story to be interpreted as any other literary narrative. Thus, several legal critics, such as Roland Dworkin[3] and Stanley Fish, have become advocates of the movement. Regarding Feminist Theory in the movement, Robin West, from the U.S.A. is one of the biggest names, with her research on Feminist Legal Theory:

> On the one hand, Robin West's acknowledged traces of a critical reading of the legal neoliberal thought, filled with literary examples that make her be classified in Law and Literature (now focused on Kafka), and revealing her feminist orientation (in the scope of the Feminists jurisprudence) which results in a communitarian tradition – gathering men into an experience of achievement in collectivity, appealing to a certain ethic-legal altruism, recovering – not repeating, maybe diverging – selectively that for which the hard core Critical Legal Scholars had advocated (Galdêncio, 2010, p. 135)[4]

[2] About Law and Literature also by lawyers: "Law and literature practitioners, following the example of Dean Wigmore, explored the way law as used in the great literary classics of Dickens, Kafka, and Melville, and examined the legal content of those and other literary Works in law. This older, Great Book approach to the study of law and literature was based on the belief that the study of literature was necessary to give lawyers a literary sensibility" (Minda, 1995, p. 149).

[3] By Aroso Linhares: "This reductive comprehension is what authorizes our humanistic font to treat Dworkin as a formalist more or less in disguise... and that in the end imposes that the alternative do legal pragmatism – and the choice of a pretension of interdisciplinarity that distinguishes it – must be searched (and found!) in a propelling hunger for another pretentious interdisciplinarity" (Minda, 1995, p. 149).

[4] According to Ana Galdêncio, quoting the homo economics definition: "And, on the other side, there is homo economics, from Richard Posner, nicknamed legal liberalism, with a formalist complexion, stated neoliberalism of Richard Poster, in his pragmatic version of Law and Economics Scholarship, which configures legal relations as market transactions,

THE LANGUAGE OF WOMEN

> "The lovely part of being a woman teaching law students is that they often speak in ways unavailable to them when their male professor, but the speech sometimes lacks an awareness of the students´ own power, of the interdependence of teacher and student, and of the needs of a teacher (particularly if she is one of few women on her faculty, or visiting from another faculty) to be accepted and supported as a teacher by the students" (Carolyn Heilbrun).

Even before elucidating about the Feminist Theory in Law and Literature movement, it is important to describe that the specific recognition of gender violence[5] as a violation of human rights was a slow process, despite its severity and importance internationally.

The awareness of the problem was, mainly, a product of the activists' campaign for women's human rights, developed in a relatively recent period. However, enduring discrimination[6] and its virtual invisibility make violations to human rights still recurrent[7]. Not aiming at exhausting the subject, this paper aims at, particularly, approaching women's conditions in a language perspective that represents them – a language of women.

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and presupposes an individualism that atomizes every subject as a rational maximizer of all their forms of behavior" (2010, p. 135).

5 About equality culture: "Sexuring gender equality is an ongoing democracy challenge. The "culture of equal" is intrinsic to democracy, as Anne Philips has written: democracy involves an assertion about the fundamental equality of all human beings and an expectation that this will be reflected in public policies and law. Principles of gender, equality are written into international governments, national constitutions, laws and bureaucratic guidelines. But highly controversial politics. Gender equality is conceived of in various ways. But all kinds of gender equality politics contain battles over rights, recognition, participation and distribution" (Hellsten; Daskalova, 2006, p. 86).

6 Discrimination suffered by women still persists: "If a decade ago or two ago, gender discrimination applied tacitly to women, that no longer serves as the exclusive framework for understanding its contemporary usage: discrimination against women continuous-especially poor women and women of color" (Butler, 2009, p. 230).

7 About subordination of women: "They are women due to their physiological structure; the further back in History, they have always been subordinated to men: their dependence is not a consequence of an event or evolution, as it did not happen. And, in part, because is escapes the accidental character of the historical fact that alterity is seen as absolute. [...] The division of sexes is, definitely, a biological feature and not a moment in human history (Beauvoir, 1970, p. 14). About subordination of women: "They are women due to their physiological structure; the further back in History, they have always been subordinated to men: their dependence is not a consequence of an event or evolution, as it did not happen. And, in part, because is escapes the accidental character of the historical fact that alterity is seen as absolute. [...] The division of sexes is, definitely, a biological feature and not a moment in human history (Beauvoir, 1970, p. 14).

Considering this changing framework, regarding international women protection, there has been another relevant movement that helped enhance women's visibility. In such feast of ideas, the first measures that assured women protection and gender equality appeared as a dismemberment of Law and Literature, Feminist Legal Theory.

FEMINISTS LEGAL SCHOLARS

> "The female is a female by virtue of a certain lack of qualities, says Aristotle" (Simone de Beauvoir).

Violence, in its most variable forms, is inherited in all human situations. As a constant structure in the human phenomenon, it is, unfortunately, present in pretty much all social classes, cultures and societies. In search for understanding gender violence, it is essential to comprehend that its genesis and its maintenance in society are strongly related to the concept of patriarchy. Feminists, in all their dimensions, since their very first studies about women and gender equality, in the 1970s, introduced the concept of patriarchy as one of their key-words. Patriarchy is seen as a group of social relations that are materially based and that create hierarchical bonds between men and solidarity among themselves, which empowers them to control women. It is, thus, a masculine system that oppresses women.

Such regime makes women socialized as examples, role models, by passing through a special gender education, which is to say, there is a whole system of exploration/domination in our society.

In response to all those social movements, feminists worked on developing Law in order to create strategies of gender equality protection[8]

[8] Definition of the term "gender": "Gender is a more complicated term. It once applied mainly to language – in English as well as in languages in which far more words are gendered. In its new, much larger meaning, the world refers to the deeply social institutionalization of sexual difference. This new meaning, developed by feminists scholars in many disciplines, reflects the fact that we now think that so much of what has traditionally been thought of as innate, sexual difference is socially produced constructed" (Okin, 2004, p. 1539).

via legal actions. That way, all legal diplomas previously mentioned were a result of the *Feminist Legal Theory* and emerged from the development of Law theories, focused on women.

The first time the term *feminine jurisprudence* was used was in an article by Ann Scales, in 1978, entitled *Towards a Feminist Jurisprudence*.[9] Even if some feminists believed it was difficult to generalize women jurisprudence, it was, nonetheless, possible to understand *Feminist Legal Theory* as a reaction to the jurisprudence of the *Modern Legal Scholars*, which tended to use Law as a process of interpretation and perpetuation of a universal gender[10]: *public morality*. On the other hand: "feminist legal scholars, despite their differences, appear united in claiming that masculine jurisprudence of all stripes fails to acknowledge, let alone respond to, the interest, values, fears and harms experienced by women" (Butler, 2014, p. 456).

Feminine jurisprudence was to defy traditional actions and beliefs regarding gender, which is basic in Law's professional discourse: "the realities of women´s lives are central to feminist description, analysis,

[9] About feminine jurisprudence: "I suspect that it will ultimately be feminism, feminist jurisprudence, and feminist legal theory – not the Critical Legal Studies movement – that develops a vision and an account of law that is responsive to the authoritarian dimension of liberal legalism. It is too easy – way too early – in the development of a feminist jurisprudence to say that feminism has already done so. Nevertheless, for several reasons I believe it is more likely to do so than the Critical Legal Studies movement. First, feminists share the CLS scholar's sensitivity to and criticism of liberal legalism's sentimental strand. Feminists understand both the contingency of legal choice and its malignancy. Feminists jurisprudence, however, unlike the Critical Legal Studies movement, promises more; it is in those promises, not yet fulfilled, that one can discern the beginning of a response to liberal legalism's authoritarian side and to the fear of both internal and external nature that is its affective root" (West, 2008, p. 1010).

[10] Judith Butler, in her book *Gender Trouble: Feminism and the Subversion of Identity*, originally from 1990, shares certain foucaultian references and asks herself whether sex has a history or is a natural structure, exempt of questioning due to its undiscussable materiality. She disagrees with the idea that gender belongs to social theories while sex is body and nature. Similarly to Joan Scott, she intends to historicize body and sex, undoing the sex *versus* gender dichotomy, which give the feminists limited possibilities of scrutinizing the "biologic nature" of men and women. For Butler (2014), in our society we face a "compulsory order" that demands complete coherence between a sex, a gender and a desire/practice that are completely heterosexual.

theory. Given the subject matter here- bringing feminist to a world of law and literature- our own experiences are relevant"[11].

With all that has been historically related so far, it is comprehensible that women used to suffer a lot because of the way they had been treated by society as a whole. There was a real need for change, for freedom, through the movements in the decades of 1960s and 1970s, so that they would have their rights assured.

It is true that women have more rights now by law; however, it is still a very masculine society, with laws made by men and with prosecutors and judges who still evaluate female conducts with a masculine point of view – which *still reverberates*.

Richard Posner (1985) thinks Literature is subversive[12], and there's no way of interpreting it without considering the ethical or political position of a given text. As a part of all this critic consciousness, which started with the movements, some feminists developed a vast jurisprudence strictly about the experiences – frequently negative ones – lived by women. Thus, the focus is to demonstrate how Law subordinates women.

In the beginning of the 1980s, *Feminist Legal Theory* presented three different schools of *Modern Feminist Jurisprudence* –, liberal feminism, cultural feminism and radical feminism –, which worked together in order to establish a modern feminine jurisprudence[13]. Even having different

[11] The same author adds: "the underscoring of experience is, in part, an act of recognition. A key issue for feminism in general – and for feminist revision of both law and literature in particular – is that proximity, the closeness of the intellectual discussion to the experiences of daily life. No matter how passionate we are about a range of issues, from the various voices in detective fiction to the relationship among courts in United States, this work is at some distance from the exchanges of our everyday lives. But with feminism and literature and with feminism and law, there is no such space, no cushion between topic and ourselves" (Resnik; Heilburn, 2014, p. 23).

[12] Robin West describes how Posner understands Law: "Most importantly, Posner does not sentimentalize law. Indeed, it is important to emphasize that Posner is aggressively unsentimental about law and legal authority. Posner insists throughout Law and Literature not only that a line should be drawn between law and politics (a familiar claim), but that an even more absolute line must be maintained between law and justice. Law has no necessary connection with justice [...] There is no necessary connection between lawyer´s law and justice" (1989, p. 983).

[13] Such separation was made by Robin West. The one established by Martha Nussbaum is quite different: "articulating a distinctive conception of feminism, the feminism defended

methodologies to analyze Law, the three schools focused on women's rights. *Liberal Feminists* are committed to formal equality as a demonstration of the *Equal Rights Amendment,* and the Civil Rights Movement. These feminists advocate for gender equality because of "the assumptions of male inferiority- the belief that women fall too short of the unstated male norm to enjoy male privileges or benefits inappropriate for them" (Minda, 1995, p. 134).

Other *Liberal Feminists* believe the differences of gender exposed by dominant men are an attempt of establishing a new legal paradigm in order to promote women's rights. This feminist school discusses the fact that the theory of *equal treatment* hinders the search for equality in Law and a meaningful freedom for women, because it perpetuates gender differences that sustain the hierarchy of sexes. According to a *minority* point of view, a dialog process is needed, in which the listener, for real, tries to go beyond assumptions of a reality, of a *version of truth*. There is a debate within the field of *Liberal Feminists*, regarding whether women must be treated equally or differently from men, usually acknowledged as the similarity-difference debate (Nussbaum, 1999, p. 136).

The contribution of *Feminism Liberalism* has been the defense of a normative vision for women: "liberal feminist legal theory carries with it the same problems that now plague liberal legalism, but multiplied. Modern liberal feminists, like modern liberals generally, have failed to examine the essentially descriptive claims about the human being that underlie their normative model" (West, 1989, p. 179).

In turn, *Cultural Feminists* tend to equate women's liberation to the development and maintenance of a women-centered counterculture. *Cultural Feminists* are different from *Liberal Feminists* when they emphasize that the fundamental differences between men and women lie in

here has five salient features: it is internationalist, humanist, liberal, concerned of preference and desire, and finally, concerned with sympathetic understanding" (1999, p. 23).

the fact that women raise children, whilst men don't. That is, they state that women are more caring, loving and responsible toward others than men.

The followers of the *Legal Feminists* School have been, however, taken a paradoxal position regarding modern jurisprudence. This paradox can be illustrated by the conflicting position that the *Legal Feminists* have defended regarding the discussion on whether women should or not search protection via legal rights. Some feminists argue that feminine jurisprudence demands the recognition of a feminist concept of rights – a concept that could provide effective solutions for the specific ailments women experience.

Radical Feminists understand differently the causes of women oppression. One of their main supporters, Shulamith Firestone, details in her book *The Dialectic of Sex* that the origins of female subordination are visibly located in the reproduction process. The roles played by men and women in the reproduction of the species are fundamental factors from which derive the characteristics that make it possible for men to exert domination over women (Firestone, 1976).

In the 1980s, the feminist movement had established itself within the *Critical Legal Studies* movement.

These feminists, organized and encouraged, tried to create a feminist perspective inside the *Critical Scholars*, in order to advance towards a political criticism of modern liberal forms of jurisprudence, based on the feminist theory.

Instead of simply trying and discovering reality or disagreeing with the way other jurists understand reality, feminist studies have a different intention, they attempt to *change reality*, to transform the way scholars and jurists understand it. Feminists argue that meaning and interpretation must be examined against a background of interpretation assumptions that have the feminist theory as a reference point. Such scholars claimed to have discovered a new universal norm and evidence criteria to evaluate gender in Law.

More recently, *Post-Modern Feminism* uses strategies of critical interpretation to break the credibility of the most essentialist claims and the categories in which these claims dwell. *Post-Modern Feminists* use deconstructivist strategies in their production in order to show how modern jurisprudence forms venerate values and interests of men, over the voices of women. Accordingly: "Joan Williams at American University, used Jacques Derrida´s notion of the dangerous supplement to reveal how the ideology of conventional femininity, supplements the strain of mainstream liberalism that enshrines the importance of self-interest" (West, 2008, p. 143).

In Post-Modernity, theoretically, feminists have advanced in elaborating new conceptions about Law and court decision that emphasize feminist thinking. *Post-Modern Feminists* try to go further, as they accept the idea that Law is undetermined, but reject the idea that there is a hedonic legal response for difficult cases. They offer new strategies to end gender oppression. According to them, theory is just a tool that can be used for strategic means. Gender oppression is considered a fact, and "reality" can only be understood from many different perspectives from many different women. Based on women's experience, *Post-Modern Feminists* state there is more than one right answer for the problem of inequality of gender in Law (West, 2008, p. 144).

Feminists are still ambivalent regarding Post-Modernism, because they fear the Post-Modern strategies can stop combating social and political conditions responsible for gender discrimination. Thus, they questioned if feminism will survive Post-Modern criticism. Post-Modernism threats the modern conception of reason, which might have reached the end of its line[14].

[14] About the way feminists analyze Law in Postmodernism: "postmodern feminists have attempted to develop a form of postmodern gender analysis for the law is more responsive to the needs of all women. Instead of advancing a universal concept of gender identity or an objective description of gender reality, they argue that the emancipation of women (and men) can be achieved by undoing the power of sex stereotypes embedded within all objectivist representations of reality" (West, 2011, p. 147).

In turn, Post-Modern pragmatic ones argue the *alternative for the equality/difference dilemma in the Feminist Theory is in different women acknowledgment*, that is, they bet in the circumstances, in which women are different, as in pregnancy, while, at the same time, they try not to reinforce the stereotypes of patriarchy that have limited women's power.

Robin West's criticism to feminism, for example, may be seen as a promotion of a diversity movement, especially because of the several perspectives of different women. Her critical questions the modern belief in universal or essential gender entities. Her line of thought could be seen as an emergent Post-Modern Feminist Movement.

Black feminist writers contemporary claim, for example, that the construction of gender categories with different voices, the ethics of care or domain cannot comprehend the dynamics of racism and sexism in black women's point of view. The new studies based on these interests have launched Feminism to the inside of Post-Modernism, starting at the Academic level[15].

A recent development in jurisprudence, mentioned in the previous paragraph, is *Black Feminist Criticism*, which reacted against a tendency of feminist jurists to treat ethnicity and gender as mutually exclusive categories of analysis and experience. This feminist current tends to decenter the position of the feminist subject who claims ethnicity and Law criticism. Theories and strategies that state the promotion of the interest of black people are criticized as they cannot include a sexism and patriarchy analysis. Likewise, *Feminist Critical Theory* is equally criticized for not considering experience and aspirations of *non-white women*.

[15] When mentioning a black feminist, Robin West highlights: "Kimberle Crenshaw, a black feminist legal scholar at UCLA, has forcefully argued that a persistent dilemma that confronts black women within prevailing constructions of identity politics: dominant conceptions of racism and sexism render it virtually impossible to represent our situation in ways that fully articulate our subject position as black women. Crenshaw claimed that the problem is that women of color are overlooked and sometimes excluded by White feminists who claim to speak for all women" (2008, p. 147).

Black Feminism illustrates well how the legal theory of feminism started to represent the challenge of Post-Modernity, as it problematizes the emphasis given to Modern Theory, in attempt to decentralize the identity of a universal concept of *self* in the contemporary legal criticism.

The hallmark of feminine deconstructivist thought is trying to bring to light the possibility of interrogating implicit assumptions of the feminist philosophy, usually non-problematized and attacked in the kernel of the movement itself, such as the impossibility of an elaborate or defined universality from a single point of view. The production of the colored women or the ones from the third world, thus, have received particular attention, since they can overcome epistemological problems surrounding assumptions of the feminist theory.

Activist women have questioned the deconstructive perspectives and ended up showing how women still occupy a minimal place, sometimes a negative one, as they have destabilized the very concept/category of woman, a necessary starting point for all feminist theories and politics.

So, what is the dilemma these new perspectives place on feminism? Linda Alcoff explains that the feminist theories – considered as the re-evaluation of the theory and the social practice from the point of view of women –, just like feminist politics – focused on the transformation of the life experience of women in contemporary cultures –, perfectly coherent to a perspective that weights on culture as built over the base of men supremacy and control over women (patriarchy), has its roots in a concept – woman –, that now can deconstruct *ad infinitum*. Besides melting the feminine political subject, the deconstructive perspectives are also accused of reestablishing distances between theory and politics (Alcoff, 1998, p. 415).

The focus should not be finding a single vision or voice, but finding common aspects between women. Not underlining differences in excess, as in the beginning of the movement.

LITERARY WOMAN AND *ECONOMIC MAN*

The conceptualization and criminalization of rape and sexual harassment, as an example, have captured different subjective experiences of shared social realities (Mert; Frohman, 2010, p. 831). Pornographic representations of women that end up legitimating brutal body violence are another example, likewise. Many men are plainly ignoring how important and needed a feminine jurisprudence is, as they have not experienced conditions and situations lived daily by women. Some of these conditions are painful, frightening, torturing – including domestic violence, sexual assaults in the street, sexual harassment at work and school (West, 2011, p. 179).

What should be, in such a context of abuse suffered by women, the role of Law in Literature? Why then should jurists read Literature? Why should professors teach such a subject? Why use fiction when reality and science have empirical mechanisms for human studies? Which would be more useful: Law and Literature or Law and Economics? In the concrete world, why is literature interesting? Does it really humanize people?

In a chapter from one of her books, Robin West differentiates the economic man in relation to literary women. Economic man comes from Law School or studies Economics, as based on Richard Posner, who coined Economic of Justice. Such a complex figure focuses on rationally maximizing his own usefulness.

A distinctive quality of the economic man is that he calls impotence what clearly is empathy, since, as a completely rational being, who knows a lot about numbers, data, mathematics, who respects the knowledge of his own subjective well-being, he knows nothing of empathic knowledge regarding the subjective well-being of others. This is the main concern of the mentioned author, because, only in economic terms, it is impossible for one to compare the intensity of personal pain to the pain of others, or vice-versa.

Though the technical language or jargon of the Law and Economics movement may hide it, the economic man is unable to make comparisons

and lacks abilities of empathy, even the most basic ones. Unable to feel empathy, he cannot make comparisons.

Rationalism is a fake value of the economic man. The human being is not a completely rational maximizer of his or her utility, both cognitively and motivationally: not always do we know what is best for ourselves, and seldom are we invariably motivated for searching it. At this point, Literature is able to help us search and understand our value. This is the moment when literature exerts its function[16].

As a response to the economic man, with opposite characteristics, there is the literary woman, who is altruistic, masochistic, automatic, submissive, selfish, oppressive and perhaps sadistic. Thus, she is made of literature as her characteristics are multidimensional and worth of exploration. Her complexity is a constant surprise, for women and for the others. Also, the author adds that, as a reader, literary woman is educable (West, 2011, p. 255).

Unlike economic man, the literary woman is not a rationalist. Neither is she weak regarding empathy. On the contrary, she is perfectly able of making intersubjective comparisons. Truthfully, the concept of literary person coined by Legal Literary Theory is distinctively capable of that: a literary person has a virtually infinite empathic potential. He or she has an endless understanding of being, even at the hardest of situations, such as when the other person belongs to a different racial inheritage, or a different family, intelligence, ambitions, objective, happiness or even sadness[17] (Kristjánsson, 2006, p. 82).

[16] About humanization: "As Gadamer righty insists, we discover ourselves as we engage in dialogue with texts, and part of what we discover in the text as well as in ourselves are wants, needs, prejudices, desires, and even preferences that we did not know we had, and for which we had no plausible explanation, so long as we focus narrowly on our individualist histories. This process of self-discovery would be literary meaningless if we were as knowledgeable o four subjectivity as is economic man" (West, 2011, p. 255).

[17] The same author adds: "the odds may seem to be stacked against the enterprise of justifying the experience of desert-based emotions – and, more generally, the salience of desert in distributive justice – from a utilitarism standpoint" (Kristjánsson, 2006, p. 82).

Still talking about emotions, Martha Nussbaum admits that "the emotion´s eudaimonistic character rests upon a sense of the self, its goals and projects [...] Furthermore, humans have an unparalleled flexibility in the goals they will pursue" (2001, p. 147).

Additionally, says Aroso Linhares:

> What to say about the second level? Simply enough, it is an interest of Martha Nussbaum (in a position that sets her apart from Boyd White and closer to Robin West!) less as the search for an identity nucleus (or the core of a reflexive model) for thought and praxis than as the opportunity of focusing on a mediation and recognizing in it (and in its power of emotion, for once taken seriously, rationally understandable) the means of measuring a possible resistance (capable of "cultivating" in the guardians of the State a richer and more responsible life) (2009, p. 132).

The primary characteristic of the idealized literary person is his or her empathic intersubjective competence. Thus, while the literary woman may be rationally inept, her emphatic capacity might be true. The empathic competence of the literary woman, which is not shared by the economic man, is what constitutes the moral promise of literary women (West, 2011, p. 259).

In order to exemplify compassion, the author uses as an example the pain felt by a person with a dislocated shoulder. Empathy, according to her, is hard to be felt, mainly when the person is a stranger[18]. West highlights: "It is very difficult, for example, for a member of the racial majority in a racist society to empathize with the subjective pain of a racial minority" (2011, p. 260). It is not impossible, but it seems very difficult to feel empathy towards the pain of those who are different from us.

The way a literary woman reaches the empathic bridge on the hard case, the means with which she gains access to the subjective life of the

[18] Oppositely, there is Lynne Henderson's thinking, which considers that: "The claim that moral narrative has improved Law usually associates narrative with empathy for others is seen as deficit only that the dimensions. Henderson argues that the empathic answers to suffering are discouraged by some characteristics of legal philosophy. The author identifies legality with the following rule and the role of morality, arguing that fidelity to rules and official documents, sometimes, induces decision-makers, will suffer of "empathic torment" unless the suffering of others. His legacy discourages empathy to be fought as indulgence in favor of the case" (Henderson, 1996, p. 1598).

other is via metaphor and narrative. Metaphor and narrative make us understand what was previously out of its context.

Narrative is a communication form that facilitates useful intersubjective comparison when the commoner means fail. In politics, metaphor is useful when our differences bring despair, when nothing else seems to work and we have no choice left[19].

The author says she has been working for several years with abused children and, to date, she had not find answers for such questions. However, according to a Lillian Kelly study, who uses both narrative and metaphor in order to communicate with abused patients that managed to survive: "aside from the fear, confusion, and shame, the molestation was as if I'd passed through an enormous threshold, as big as birth" (Henderson, 1996, p. 1598).

Knowledge of the subjectivity of the other is not rationally acquired nor measurable, quantifiable, classifiable. It is the kind of knowledge that, instead of only informing, moves people – in the heart. Knowledge of others, this empathy acquired through metaphor and narrative, becomes a part of our sense of selfness, of who we intimately are, of our sense of otherness, of our sense of union with the other.

TOWARDS A CONCLUSION

Philosophy is not a science of nature; its objective is clarifying, logic of thought. Philosophy is a science that limits thoughts, otherwise, it becomes politics. In this paper, Philosophy was used as a science that tries, above all, to produce thinking.

[19] About how much narrative can help one understand facts: "Let me give an example of question a narrative or literary perspective can help us answer. How does it feel to be an adult survivor of incest, or more broadly, a survivor of childhood sexual abuse? How much lingering physical, psychic, emotional, and moral pain is involved? How bad is the pain? How does the intensity compare with other pains? What are the implications for adult life? How does it affect one´s integrity? How does it affect one´s sense of self? Does it damage one´s capacity to tell the truth? Does it preclude adult trust, in either oneself or others? Obviously, there are questions regarding the subjectivity of the other, and they are questions for which, as lawyers, we need answers. If for no one reason, the legislator needs to know how many collective resources to expend on the problem of sexual abuse of children. To answer that question, we need to understand the subjectivity of the abused" (West, 2011, p. 260).

New analyses set: not only the old ones from Law and Economics, which were so ironically scrutinized throughout this article. However, there is a new possibility, mentioned first by Robin West: the one of a literary woman, a new way of jurisprudence with a feminist focus. This could be a good track to walk on. New analyses may include: reflecting on how empathy abilities are needed in jurisprudence studies, for example.

The institution of literary women brings an alternative of world comprehension, in a more human way, via empathy. And, as highlighted above, it has worked well with abused victims.

It is a new form of dealing with Law and Literature: with a feminist focus and from a deconstructivist analysis of Literary Theory. It could be a new phase for Law and Literature, with new possibilities of applying theory. An alternative to theory forgotten in books that could be useful for people who need it. Clearly, "something that has no use can hardly be true" (Castanheira Neves, 2003, p. 8).

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