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HUMAN LIFE AS NARRATIVE AND THE RESEARCH IN LAW AND LITERATURE

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ABSTRACT: The purpose of this article is to articulate the philosophical perspective of human life as narrative with the humanist project of law and literature research. For that, an approximation is made between the novel *The House of the Dead* and the writings about the APAC Method; then, the narrative perspective of human life in its relationship with literature is discussed. After that, possible objections to the humanist project are analyzed. The conclusion is the possibility of a dialogue between law and literature, as long as the autonomy of both areas is recognized.

KEYWORDS: Law and Literature; APAC Method; Philosophy of Law.

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1 INTRODUCTION

Research in Law and Literature, as will be developed in the third section of this paper, is developed by three different projects; one of them is the humanist project, to which this article attempts to contribute. In this project, the humanist value of literature is emphasized in its dialogue to the law.

The first section of the article is about a possible matching point between the law and literature, based on a concrete example: the intersection of the novel *The House of the Dead*, by Dostoyevsky, and some of the writings of the APAC method of prison rehabilitation. The idea is to highlight similarities of perception – and differences of form – between the two texts.

Following to that, the paper delves into the philosophical perspective of human life as narrative, by Julián Marías and Alasdair MacIntyre. Through such view, it is possible to realize how narrative is an essential part of human life, instead of mere abstraction. Literature, thus, consists in the expressions of possible human narratives.

Lastly, in the final section, certain important objections to the humanist project of law and literature are brought up. Also, this section shows how a conception of literature that sees fiction as autonomous can contribute to the deepening of the dialogue between law and literature.

2 *THE HOUSE OF THE DEAD* AND THE APAC METHOD: AN EXAMPLE OF POSSIBILITY?

For illustration purposes, this article firstly approaches the example to later bring its possible justification. The reason for such option is to straightly deal with a connection possibility between law and literature, keeping the specific traits of both areas unharmed, and, due to that, contributing to the deepening of the dialogue between them.

The concrete example from law is the APAC method. A brief explanation of the method and its functioning in Brazil is necessary. APAC stands for *Associação de Proteção e Assistência a Condenados* (Association for the Protection and Assistance of Convicts); the APAC entity itself applies the homonymous method and was founded by the

lawyer Mário Ottoboni in 1972, in the city of São José dos Campos, in the state of São Paulo (Cachichi, 2019, p. 107). The organization was born attached to the church prison ministry, firstly called *Amando ao Próximo Amarás a Cristo* (By Loving Thy Neighbor You Can Love Christ), so the initial acronym was kept despite the change of the official name.

The APAC method has expanded through the decades and continues to act in Brazil to this day. Its purpose is to concretely answer to the impossibility of rehabilitation in the current prison system: not going against the Criminal Enforcement Law – actually, in attempt to comply with it – the APAC method seeks to humanize the sentence fulfillment. Humanizing does not mean emptying punishment but making it effective: the unities of APAC are small and the convicted receive individualized treatment. Thus, they are imprisoned, but treated as what they are, that is, real people.

Even though it is not possible to deal with the APAC method thoroughly in this short article, it should be said that it was a very personal and concrete response by its creator toward the prison reality of Brazil. Mário Ottoboni, when visiting prisons, with the support of equally worried friends, starter to work. This is an important reality of the APAC, since the writings (scientific or not) about the method application and about the prison reality of Brazil are mostly from after the practice of APAC.

Mário Ottoboni himself wrote books about the method application and the current prison system of the country. In one of them, he points to a series of problems of the Brazilian prison system:

- (1) idleness; (2) violence; (3) widespread lack of trust; (4) suppression of the truth; (5) absence from the family (gradual loss of affective ties); (6) feeling of self-punishment and guilt; (7) loss of self-esteem; (8) feeling of inferiority turning into aggressiveness; (9) the prisoner's personality is conditioned by what he lives inside the prison; (10) loss of a normal day-to-day condition of social coexistence; (11) lack of hope (Ottoboni, 2001, p. 23, translated).

Such problems happen due to the general condition of the Brazilian prisons. Mário Ottoboni noticed them while visiting and interacting with the convicted in the system and in units of APAC itself. This observation of the problems is related to an excerpt of the novel *The House of the Dead*, by Dostoyevsky, when the narrator-character starts to serve his sentence:

I could not have imagined how terrible and painful it would feel never to be alone, even for a minute, in all ten years of my hard labor. At work, the escort is always present; in the fort, always among my two hundred companions, and never, not once—alone! Besides, this was not the worst thing I would have to get used to! (Dostoyevsky, 2003, p. 11, translated).

The novel *House of the Dead* was published in 1862; it is a literary account of the experience Dostoyevsky himself had had in prison. It is not a scientific document of course, even though many experiences suffered by the leading character might have been real, but it is an aesthetic work. However, the excerpt mentioned above is related to what Mário Ottoboni analyzed: the character of Dostoyevsky expresses the impossibility of being by himself, of having privacy whatsoever, within an oppressive environment. Another excerpt can be mentioned:

Well, for so many years, it was impossible that I had not noticed, had not caught, had not found in those hearts at least a trace of inner hurt, of suffering. But no, definitely not. Yes, it seems that crime cannot be understood from preconceived points of view and that its philosophy is a little more complicated than one may think. There is no doubt that prisons and the forced labor system do not correct the criminal; they just punish him and give society the guarantee that there will be no further attacks on its tranquility. As for the criminal, his imprisonment and punishment by forced labor only serve to develop hate, the craving for forbidden pleasures and a terrible evilness (Dostoyevsky, 2003, p. 17, translated).

In this fragment, the narrator shows he had not been able to notice regret from his fellow imprisoned convicted men during his sentence and considers the validity of forced labor prisons in Russia. His perspective, narrated in first person, attempts to find regret in the facial expression of the imprisoned; his craving was to find craving in the face of the others.

But he saw none of it. So, symbolically, he moved his eyes away from the prisoners and looked around. In the quote transcribed from Mário Ottoboni's analysis, not of symbolic but of realistic nature, there is a similar observation about the imprisoned people in Brazil; however, the way the results of his observations are presented is different. His language is descriptive and broad, aiming at listing the concrete problems he had seen. The excerpts from the writings by Ottoboni and Dostoyevsky can dialogue to one another; not that the former is objective while the latter is subjective, but because they communicate the same sense of worry in different ways. The dialogue between the authors is possible exactly because they use different forms.

Another similarity can be found when the character by Dostoyevsky describes the work in the Siberian prison:

It once crossed my mind that if they wanted to crush and annihilate a person completely, to punish him with the most terrible of punishments, to the point where the worst of murderers trembled in anticipation of such punishment, it would be enough giving his work a completely useless and absurd motivation. If, currently, forced labor is of no interest to the inmate and is tedious for him, this work, in itself, is still sensible: the prisoner makes bricks, plasters walls, builds; it is work with some meaning and purpose. The prison worker sometimes even gets excited about it, wants to do it more skillfully, faster, better. But if they force you, for example, to pour water from one bucket to another, and from this one to the first, if you force them to crush sand, to carry the earth from one place to another and then backwards – I think, in such cases, the inmate would hang himself within a few days or commit a thousand crimes, he would prefer to die but flee from such humiliation, shame and torture (Dostoyevsky, 2003, p. 25, translated).

The narrator makes it clear that labor should have a purpose in the eyes of the inmate, with an objective finality, in order to bring benefit to someone. Even if it is forced labor, according to the narrator, the purpose might be exciting for the inmate, as it would not be a useless effort. Before moving further, it is necessary to compare it with the perspective of work for the APAC method:

APAC understands that labor is important and must be part of the context, but alone it does not solve the problem. If that were the case, the countries and some

states in Brazil that adopt private prisons would have already solved the problem of high rates of reoffending. In this sense, APAC recognizes the value of labor, but it cannot be the only instrument applied for the recovery of the human being (Ottoboni; Ferreira, 2016, p. 72, translated).

Labor as the only instrument for social rehabilitation would be something like crushing sand or carrying earth from one place to another, just for the sake of doing an endless activity. APAC acknowledges the importance of work and its context – as said by Mário Ottoboni and Valdeci Antônio Ferreira above – during the sentence fulfillment, which means the inmate needs to see the point in doing those tasks; more so, when fulfilling the sentence, labor should help the complex process of resocialization, as “[...] labor is essential to rehabilitate the inmate, but labor alone cannot change the mentality of a sentenced person” (Ferreira, 2017, p. 28). Once again, it is possible to see how the description by Dostoyevsky matches the perspective of the APAC method.

There is yet another possible approach. The inmates of the APAC method are called recovering. Mário Ottoboni (2001, p. 99, translated) justifies the wording with the argument that:

[...] in a proposal of human valuing, a euphemism such as “recovering” is plausible in order to avoid terms such as imprisoned, inmate, convicted or sentenced, which, although true, still shock and demean human beings.

The word is considered euphemistic by the founder of APAC himself, that is, he understands its imprecision. However, he also understands that it is necessary when considered within the broader context of the APAC method and its approach to prisoners. “The term represents the search for the recovery of man in different dimensions” [...]” (Cachichi, 2019, p. 138, translated). In *The House of the Dead*, the Russian author also used a specific word to refer to the criminals:

The people never blame the prisoner for his crime, however terrible it may be, and due to the punishment, he suffers and for the criminal’s misfortune, they forgive him everything. It is no coincidence that all over Russia people call crime a disgrace and criminals disgraced. This is a profoundly significant definition. It is even more important because it is done unconsciously, by instinct (Dostoyevsky, 2003, p. 67, translated).

The recovering and the disgraced are the same people at the end of the day, since crime and its consequences are indeed a disgrace for the victim, for the criminal and for the families involved. For that reason, the APAC method can have “[...] its philosophy summarized in the statement: ‘kill the criminal and save the man’” (Cachichi, 2019, p. 115, translated). The descriptions of criminals made by Dostoyevsky and Mário Ottoboni are very similar: the inmate is a person – and only a person can commit a crime and pay for it, and regret; all these actions are eminently human.

The ways of communicating this description of human possibilities may differ between the two authors, due to their objectives and forms of expression. One cannot see Mário Ottoboni as being an artist, nor can we understand Dostoyevsky as a criminal law specialist. However, Ottoboni shows strong sympathy for the imprisoned person in his writings; and Dostoyevsky shows in his novel that he had acquired concrete knowledge of that reality. What the English novelist Maurice Baring says about the experience of Dostoyevsky as an inmate in Siberia may be clarifying:

It was during the time he spent in prison that Dostoyevsky really found himself. To share the hard labour of the prisoners, to break up old ships, to carry loads of bricks, to sweep up heaps of snow, strengthened him in body and calmed his nerves, while the contact with murderers and criminals and prisoners of all kinds, whose inmost nature he was able to reach, gave him a priceless opportunity of developing the qualities which were especially his own both as a writer and as a man.

With the criminals he was not in the position of a teacher, but of a disciple; he learnt from them, and in his life with them he grew physically stronger, and found faith, certitude and peace (Baring, 1912, p. 143-144).

This section emphasized the history of the APAC method and its founder, and this choice was purposeful. It was necessary to show to what extent of the personal narrative of Mário Ottoboni intrinsically influenced the creation of the APAC method. That narrative was lived out, and the books dealing with criminal law came after it. Dostoyevsky also had an

experience in prison and, of course, lived it; however, as a writer (artist), his response came in literary form (art form) so that he could better communicate (even for himself) his imprisonment experience.

The next section of this article deals with the philosophical approach of human life as narrative, and how it is symbolized – but not completed – in literature.

3 THE PHILOSOPHICAL PERSPECTIVE OF HUMAN LIFE AS NARRATIVE: APPROACHING JULIÁN MARÍAS AND ALASDAIR MACINTYRE

The philosophical perspective of human life as narrative can be summarized (not thoroughly) in the fact that every person tells stories: each event of human life is narrated by the people who lived them or who want to understand them. As a person tells a story – their own story – this person understands it better: “[...] man is in his actions and practice, as well as in his fictions, essentially a story-telling animal. He is not essentially, but becomes through his history, a teller of stories that aspire to truth” (MacIntyre, 2007, p. 216). This short sentence by Alasdair MacIntyre is actually very broad in the following sense: to say that a person becomes someone through their stories does not mean they invent every aspect of them, as fiction writers can well do (even if too much invention may also bring problems in fiction, especially if we think about the lack of verisimilitude), but that people revisit (and revise) their own life stories while telling them and understanding their elements, even personality traits that might have remained unseen in other moments:

The adequate method may be to give in to the dramaticism of life, as it is effectively lived, without imposing onto it an alien scheme, which does not come from itself. It must be a *narrative* method, that reconstructs the flow of life, its real connections, its forms of foundation and justification. The effective form of life in its occurrence has to be reflected in its *theory*, thus being translated into conceptual terms (Marías, 1997, p. 65, highlighted by the author, translated).

The theory Julián Marías mentions in the above excerpt is not a rationalized formula, but an intrinsic theory (Marías, 1997, p. 36), that is,

a theory that means the contemplation of life itself as it is lived, so it is impossible to establish a distance from the “object” observed. For that reason, the method to understand – and to live – human life is a narrative one. It is no exaggeration to state, from the intrinsic theory explained by Julián Marías, that the method is also intrinsic, as it happens to every person who gains consciousness of their own biography. Human actions must be justified – not always facing others, but by the person who acts toward their own self:

Human life has an *argument*. What man does, he does for something and because of something, and that is why it is only possible through constant justification, which gives him the condition of responsibility. In doing things “because” of something lies the past works; in taking actions “for something” we see the future; but the articulation of the two creates an internal tension, which gives life an argumentative trait. From this system of facilities, man is projected vectorially in different directions and with variable intensities, in such a way that the whole of the circumstance and the possibilities that it constantly offers must be present, so that the *justified choice* that allows the action is possible. None of this seems to exist in merely biological life, not even in that of superior animals. (Marías, 1994, p. 21-22, highlighted by the author, translated).

The argumentative aspect of human life, which is a plot, demands justification: the person must explain to oneself the reasons for their choices and refusals. When, on the other hand, justification seems to lack or not to be solid or sufficient, the person feels insecure. Unsureness and the need for a justification, thus, can often create tension in human life; this tension is not at all anomalous, it is an important part of the biographic plot that every life presents. “The human life has a *dramatic* trait, as it is not just a series of actions or deeds, it rather *happens* in the way something *happens to someone*” (Marías, 1994, p. 22, highlighted by the author, translated). When Julián Marías says that something happens to *someone*, he emphasizes the personal aspect that events have over human life, that is, the necessity of them to be narrated by the person. Biographic narrative – more precisely, autobiographic – is yet to be closely connected to the insecurity of what might be expected of the future. “The person is a projective, *futuristic* reality that escapes the present and transcends it” (Marías, 1997, p. 15, translated). In the entity of

a prison, there is a narrative unit: in the present the person revisits their past and projects oneself into the imagination of the future. The core of unity is the present and “[...] the person is intrinsically *futuristic*, projected toward the future, the person is anticipation, projection to something that lacks reality and might never have it, due to the insecurity the person holds (Marías, 1997, p. 31, highlighted by the author, translated). The projection toward something that (still) lacks reality is the essence of the personal project of human life:

This unpredictability coexists with a second crucial characteristic of all lived narratives, a certain teleological character. We live out our lives, both individually and in our relationships with each other, in the light of certain conceptions of a possible shared future, a future in which certain possibilities beckon us forward and others repel us, some seem already foreclosed and others perhaps inevitable. There is no present which is not informed by some image of some future and an image of the future which always presents itself in the form of a *telos* – or of a variety of ends or goals – towards which we are either moving or failing to move in the present. Unpredictability and teleology therefore coexist as a part of our lives; like characters in a fictional narrative we do not know what will happen next; but nonetheless our lives have a certain form which projects itself towards the future (MacIntyre, 2007, p. 215-216, highlighted by the author).

The concepts of human life as narrative by Julián Marías and Alasdair MacIntyre meet in the perception of both authors regarding the projective element of human life which, in the present, is directed towards an imagined future; not necessarily to achieving *something*, but of *someone*, that is, the realization of an expectation that is eminently biographic. Another approximation between MacIntyre and Marías, in the same philosophical perspective, is the similarity between the dramaticism of concrete human life and the dramaticism of fiction characters:

Lastly – and this is perhaps most important – imaginative fiction means *rehearsals of life*, in which man imaginatively assumes and lives other lives than his real one. The reading of novels and stories, the contemplation of scenic or cinematographic fictions are the means of acquiring vital situations and reactions to them; and thus, a preparation for real life: love, honor, jealousy, ambition, heroism, deception, are accessible to us without having really lived them, thanks to fantasy; we know what they are, we understand them, we move

in their environment, we know how to react to them, because we have made the unreal rehearsal of living them. Our lives are much richer and more complete because we double it due to fiction; strictly speaking, multiplication by a considerable factor. Narration in its broadest sense is an instrument that allows us to fabulously enrich life, which without it would be of incredible simplicity and poverty (Marías, 1955, p. 31-32, highlighted by the author, translated).

Literature fiction, more precisely when it comes to its plots, shows a vast set of possibilities of human lives with intense dramaticism and endings that are related to the characters' narratives, choices, and fates. Through linearity contained in literary narratives – an inner linearity, even if not necessarily chronological – the reader is able to see a model of human life in perspective:

Fiction narratives are like maps through which we know the structure of our vital reality; and they are responsible for showing us the scheme of what we are doing – living –, usually making fruition possible (Marías, 1955, p. 28, translated).

This mechanism mentioned by Julián Marías is made possible thanks to literature because, in it, readers gain contact with the full narrative of a character: a narrative with a beginning, a middle and an ending, where the justifications are presented – even if not understood – by the narrator. So, the scheme of projection opens up to the reader, especially after the reading process is done, so that a broad perspective of the character takes place:

And in addition to all this, the life of the imagined character, who is a spiritual creation, therefore offers maximum transparency to thought and allows one to immerse oneself in it to the depths, without encountering the essential opacity of reality. We will see later the importance and the fruitfulness that this has. A fictional story, without mixing with reality in the sense of things, shows the pure example of human drama and at the same time the greatest adequacy and homogeneity with the spirit that tries to penetrate it. Especially, of course, when it comes to imaginatively penetrating it, creating it. It means projecting oneself outside, in transparent nakedness, to oneself. (Marías, 1950, p. 38, highlighted by the author, translated).

The dramaticism in a fiction character's life can be immediately perceived by the reader in this transparency that Julián Marías mentions,

because in fictional life there is an *abstract intensity*. At first, this expression might seem to contradict what has been said so far; however, the abstraction mentioned now is the way of reading the distancing from the opacity of reality (as mentioned by Julián Marías) that happens through literature, that is, the writer creates certain elements and events that have importance for the whole of the narrative. That is why Autran Dourado highlights that the reality of a fiction character is the reality of a novel itself:

Novelists and writers, in their apparent modesty and simplicity, are able to use reality with full freedom. They know the character is related to the reality inside the novel, its plot, its architecture (the word structure becomes dangerous, but I use it every now and then, I have used it forever, Lévi-Strauss alone will not make me use it more or less...) and not to the reality of the environment where men dwell, from which the novelists draw their source material. The artist models and uses reality to create another reality, a reality that obeys to the complicated literary geometry, its system of forces, which has nothing to do with the physical, natural, or social sciences (Dourado, 2000, p. 72, translated).

The remark by the Brazilian novelist is important because, instead of hindering the length of literary interpretations, it relocates it around its very core: the aesthetic development of the character. This development is what allows for the identification of the reader and the possibility (verisimilitude) of a human life in fiction:

With two or three simple, divest, stylized elements, a character is formed, and articulates to other or others in the composition, in the fabric of the novel. These elements (often only one, the mechanical leg of Ahab, the hump of Quasimodo, for example) work as a symbol for the reader, who can glimpse that character for a moment. Sometimes the reader, when the symbol is very clear and strong, can perfectly “see” the character, and even know his or her face, something that does not happen to the novelist, who almost always does not know what the creature looks like. I say it again: one should not mistake “innocence” and personality with inconsistency, confusion, lack of control of the material, lack of artistic preparation, art lucid by nature (Dourado, 2000, p. 72-73, translated).

A person cannot be formed, following the expression by Autran Dourado, by two or three simple elements. More so: no-one can see

oneself from those same elements. However, faced with a literary character whose traits carried by his / her creator set the tone of his / her personality and human drama, the reader can perceive the transparency that Julián Marías spoke of and concentrate on this concrete drama – without the need of knowing, for example, whether the character had paid his or her bills. “The souls in a novel do not have to be like the real ones; it is enough that they are possible” (Ortega y Gasset, 1966a, p. 418, translated).

The *abstract intensity* provided by fiction allows the reader to focus only on what is essential to understand the character’s life. Thus, the artistic form (symbolic language) will also be accessible to the reader so that they can adapt it to the elements of their autobiography.

Saying that literature brings with it human possibilities does not necessarily mean that the events told in fiction can be repeated in the life of the reader, but that the way the author narrates can be incorporated by the reader in their concrete life.

4 LAW AND LITERATURE IN RELATION TO THE PHILOSOPHICAL PERSPECTIVE OF HUMAN LIFE AS NARRATIVE

The interdisciplinary research of law and literature can be classified, as Julie Stone Peters (2005) proposes, in three projects: the humanist, the hermeneutic and the narrativist one³. This last section of this paper is about a possible approximation between the philosophical perspective of human life as narrative and the humanist project, concretely, in the relation between law and literature. On the humanist project, Julie Stone Peters (2005, p. 444) observes that:

³ This taxonomy is adopted by Amanda Muniz de Oliveira who, referring to the narrativist project, highlights: “[...] this perspective should not be confused with the Narrativist Theory of Law by José Calvo González. While in Calvo González (1996) there is a discussion stemming from the hermeneutic project itself, related to language and interpretation, the North American narrative project is influenced by feminist theory and critical theory of race that become part of the theoretical body of the literary theory.” (Oliveira, 2019a, p. 398, note 14, translated). Narrativist theory cannot be confused with the philosophical perspective of human life as narrative – the object of this article – based especially on the works of Julián Marías and Alasdair MacIntyre, as explained in the previous section.

At the center of this humanist vision was the notion that literature could somehow bring the real to law. [...] earlier in the century legal realism had attempted, with the help of the social sciences, to bring social reality to law as an antidote to the sterile technicality of the social.

The response of the humanist project to face the hard aspect of the law and the legal norms especially was bringing literature to the legal field from the humanist project, that is, of putting the human being and their personality at the core of the discussion. “Literature could save law from itself by reminding it of its lost humanity, infusing it with the human in order to grant it a new reality” (Peters, 2005, p. 445). For this project, literature is seen as an instrument of reality and concreteness facing legal abstraction:

[...] literature’s wounded sense of its insignificance, its inability to achieve some ever-imagined but ever-receding praxis; law’s wounded sense of estrangement from a kind of critical humanism that might stand up to the bureaucratic state apparatus, its fear that to do law is always already to be complicit, its alienation from alienation itself. Each in some way fantasized its union with the other: law would give literature praxis; literature would give law humanity and critical edge (Peters, 2005, p. 448).

This relation of the humanist project, for Peters, represents the ambitions of both literary and legal theorists. The contact with fictional narrative could thus bring the researchers of law closer to the reality of human life. But this justification is somewhat abstract:

One of Weisberg’s great concerns (1989, p. 6-7) is the conceptual meaning of this interdisciplinary study. For him, the law and literature movement has a peculiarity that cannot be overlooked; when seeking help in the social sciences (more specifically in economics, with the economic analysis of law), the legal practitioner seeks to explain how the law works or should work to achieve certain goals. But when it comes to literature, this objective cannot be achieved, because literature is not an explanatory discipline (Oliveira, 2019a, p. 409, translated).

Literature is an aesthetic construct that, as seen in the previous section of this paper, consists of a corpus of verisimilar reality. Inside of fiction, the author’s accuracy is toward fiction itself and not necessarily

toward the real world outside of fiction, that is, the world of the reader that is brought closer to the literary work:

This ‘use’ of literature in relation to law often takes a somewhat sentimental form. Lawyers are urged to be less abstract and more humane, and to become so by reading great literature that will make them more sensitive to human foibles, particularly (though not logically necessarily) through literature that actually has law as content. But of course, most of the academic practitioners of law-and-literature go further. They recognize that the connection must be something different from the explanatory law-social science connection, that they must be more conceptually and formally self-conscious in defining the connection. The general claim is essentially that law and literature are two parallel cultural phenomena; they are both attempts to shape reality through language, and are both concerned with matters of ambiguity, interpretation, abstraction, and humanistic judgment. They are also both performative activities which require us to engage in some combination of description of reality and ethical judgment (Weisberg, 1989, p. 5-6).

The sentimental form of the relation between law and literature criticized by Weinsberg points to the direction that “[...] the use of literature to explain the legal phenomenon has been done informally, in order to show human life in a dramatic way – which is quite objectionable” (Oliveira, 2019a, p. 409, translated). The dramatization of human life, seen by a legal perspective, could not contribute to a better understanding of the law (much less for its application) and yet would tend to relativize the perception of the legal practitioner of law itself:

In this founding perspective of the referred [humanistic] project in the United States, literature humanizes the law, associated to a positive bias, while the law is connected to sheer technique, a negative bias. It is conventional in the legal sphere of law and literature, thus, the idea that literature can make the law better (more humane), and this premise is accepted as valid and usually not objected⁴ (Oliveira, 2019b, p. 187-188, translated).

⁴ More precisely in legal education, Gemmette (1989, p. 292) defends the approximation of law and literature also from a humanist point of view: “With the loss of a continued faith in the absolute truth once thought to be inherent in legal texts, exposure to the classics will prepare lawyers and judges to the contemplation of the human condition – a contemplation necessary if lawyers and judges are to be actively engaged in interpretation of legal documents”.

In this sense, research and association between law and literature would depart from a preconceived idea of the humanist natural capability, so to say, of literature over the legal practitioners. This capability, in theory, would make the legal practitioner closer to the complexity of the real and, thus, of the people to whom the law concerns.

Back to the example of the first section of this article, where the attempt was to create an approximation between the writings related to the APAC method – especially by its founder – and the novel *House of the Dead*, it was possible to see that the humanist initiative of Mário Ottoboni did not start as a mental abstraction: he founded the APAC method from the contact to prison reality. This scenario may strengthen the following argument by Robert Weisberg (1989, p. 17-18):

It is obviously desirable that law should be informed by the voice of the concrete, the particular, the empathetic, the passionate. But to make this point about legal discourse hardly should require recurrence to the great works of the Humanities. In effect, this part of the law-in-literature scholarship constitutes a kind of remedial reading. Lawyers or law students are or should be perfectly aware even from conventional case analysis that human pain underlies doctrinal abstraction, that the general rules of common law doctrine live in tension with and are often undone by the particular stories of the parties to the case.

The contact with the human suffering, for Weisberg, may well be perceived by students and practitioners of the law in their dealing with each concrete case, with no need for intermediation. This supposed dependence of the law to literature to perceive reality is visible in the relation between the objection by Weisberg and the view of T.S. Eliot:

Eliot's is a wonderfully perverse dream of a world in which law and literature are united, in which judgment of precedent haunts all present action. So Eliot's primal social structure is a perpetual moral contract, and in the ideal world literature embodies the contract. Eliot does not want belief or myth. He does not want a society where law and letters enjoy a rich and interesting relationship. Eliot hates the modern-romantic idea that poetry does not give the reader a char of rules, but merely a measuring guide for significance. Rather he wants law, and a world where the letter is the law. Art is a vision of a legislated world. Ironically, Eliot respects the devaluers of art, like Trotsky, and fears the worshippers, like Arnold (Weisberg, 1989, p. 14).

The purpose of this article is not to comment on the interpretation that Weisberg brings of Eliot. But it is worth mentioning that for Weisberg the conception (at least the way he sees it) of an artist legislator represents the impossibility of criticizing or discussing laws and ideas (Weisberg, 1989, p. 13). This fear is comparable to the vision of art that, for José Ortega y Gasset, people had in the 19th century:

The discussion is not well understood if it is not seen in confrontation with what art had been thirty years ago, and, in general, throughout the last century. Poetry or music were then activities of enormous caliber; little less was expected of them than the salvation of the human species over the ruin of religions and the inevitable relativism of science. Art was transcendent in a double sense. It was because of its theme, which used to consist of the gravest problems of humanity, and it was because of itself, as a human power that gave justification and dignity to the species. It was to see the solemn gesture that the great poet and genius musician adopted before the masses, the gesture of a prophet or founder of religion, the majestic posture of a statesman responsible for universal destinies (Ortega y Gasset, 1966b, p. 383, translated).

Artists were themselves characters for the audiences, people who – due to their inspiration – perceived more and beyond, and that, because of that, could somehow dictate the rules. Their opinions were always heard (think of Victor Hugo) and their social engagement was visible in their works. Weisberg seems to fear something similar repeats itself in certain interpretations of the dialogue between law and literature. To see human life from a dramatic point of view could, in this sense, become a sentimental (and dangerous) way of bringing literature to the law. As much as Mário Ottoboni did not need – contrarily to what one may think after the first part of this article – to read Dostoyevsky to create the APAC method, a lawyer would not depend on literature to be more humane.

A similar question could be raised on whether literature can or cannot make the legal practitioners more humane, and it relies on a previous question, about the very nature and objective of literature. Writer Flannery O'Connor attempted to answer that question:

Now the second common characteristic of fiction follows from this, and it is that fiction is presented in such a way that the reader has the sense that it is unfolding around him. This doesn't mean he has to

identify himself with the character or feel compassion for the character or anything like that. It just means that fiction has to be largely presented rather than reported. Another way to say it is that though fiction is a narrative art, it relies heavily in the element of drama (O'Connor, 1970, p. 73-74).

An author, contrarily to the nineteenth-century artist or the lawyer-artist feared by Weisberg, should not take a stand via fiction, but present the whole narrative with figures that happen in a dramatic succession. The relation between the fictional characters and the dramatic succession is the very form of the work of art (which is not set apart from its content):

This means that it must carry its meaning inside it. It means that any abstractly expressed compassion or piety or morality in a piece of fiction is only a statement added to it. It means that you can't make an inadequate dramatic action complete by putting a statement of meaning on the end of it or in the middle of it or at the beginning of it. It means that when you write fiction you are speaking *with* character and action, not *about* character and action. The writer's moral sense must coincide with his dramatic sense (O'Connor, 1970, p. 75-76, highlighted by the author).

When the writer intrudes and starts judging the characters instead of giving them voice and autonomous will, he or her may compromise the work. This is regardless of the fact that their intentions might be good or bad; regardless also of the fact that the reader may agree or not with his or her opinion on the actions of the characters. By saying that the moral sense of the writer must coincide with his or her dramatic sense, Flannery O'Connor intends to explain that the way of narrating (the form) and the narrated event (the matter or plot) need to coincide so that the work achieves its dramatic effects. The worry of the artist regarding his or her work should be solely realizing it. This sentence might sound very simplistic, but it means that any engagement, social pretension, or opinion by the artist must not hinder the consecution of the work.

However, if the work of fiction needs this autonomy to exist, what relation could it have to the philosophical perspective of human life as a narrative? Furthermore, how can the elements approached in this paper – law and literature, philosophical perspective of human life as narrative, and a possible approach of both – be related when considering the

criticism to the humanist project of law and literature? The first question can be answered by a literary critic:

[...] the artist's eyes must be distinguished somewhat from those of the common man, and this distinction consists in seeing, as between shadows and figures, the same thing that the philosopher achieves by discursive procedures, that is, the marrow of the things, and the most essential and hidden of them. Where it comes from that the great characters created by art (which in its own way is creation; and forgive Zola and his followers) have a much more pulsating and dense life than most of the pale and fuzzy beings that we see around the world (Menéndez-Pelayo, 1908, p. 369, translated).

The connection between the philosophical perspective of human life and literature is maintained, even though thanks to the autonomy of literature. That literary characters consist of *abstract intensities* and not of living portraits of common human reality allows for the approximation of the reader to them and the grasp, by the reader, of the form used by the artist. It is possible that the philosophical perspective of human life as narrative ends up falling into sentimentalism, as warned by Robert Weisberg, but this is not a necessary fate. The contribution of literature to the biographical narrative of each human life occurs when it comes to the concept, the word, resulting of meditation:

Impressions form a superficial tapestry, where ideal paths seem to lead to another, deeper reality. Meditation is the movement in which we leave the surfaces, such as the coasts of the continent, and we feel ourselves thrown into a more subdued element, where there are no material points of support. We advance attentive to ourselves, hanging over thanks to our own effort within an ethereal orb inhabited by weightless forms. A lively suspicion accompanies us that at the slightest hesitation on our part everything would collapse and we with it. When we meditate, the spirit must be sustained under all tension; it is a painful and wide-ranging effort (Ortega y Gasset, 2016, p. 34-35, translated).

Weisberg is right when he says that the contact with a concrete case can awaken the consciousness of the student or practitioner of law to the reality of human suffering. However, this contact – and this consciousness – will still need to be communicated. “Only vision through concept is

complete vision; sensation gives us only a diffuse and formable matter of each object; gives us the impression of things, not things themselves” (Ortega y Gasset, 2016, p. 47, translated). In a way, one could say that the consciousness of human beings needs words: it is necessary for humans to know how to see and how to answer to their vision in order to grasp it:

Before you can express anything in tangible form, you first need eyes to see. The mere attempt, therefore, to create an artistic form compels the artist to take a fresh look at the visible reality; it requires authentic and personal observation. Long before a creation is completed, the artist has gained for himself another and more intimate achievement: a deeper and more receptive vision, a more intense awareness, a sharper and more discerning understanding a more patient openness for all things quiet and inconspicuous, an eye for things previously overlooked. In short: the artist will be able to perceive with new eyes the abundant wealth of all visible reality, and thus, challenged, additionally acquires the inner capacity to absorb into his mind such an exceedingly rich harvest. The capacity to see increases (Pieper, 1990, p. 35-36).

To mention once again the example from the first part of this paper, both Mário Ottoboni and Fyodor Dostoyevsky had *seen* the prison system up close and communicated their reality: the former via law (by concretely taking action) and the latter via literature (by creating an aesthetic work). What caused their reactions was concrete reality, the human experience of the prison as observed by one (the jurist) and lived flesh and bone by the other (the writer). There is indeed an independence of both ways of communicating these similar experiences; it means that one does not need the other. The way the artistic work, by its nature, tends to remain in time; it remains because it symbolically appeals to the marrow or things (Menéndez-Pelayo, 1908, p. 369). This is the more or less permanent form that can be verified by a legal researcher when he or she cannot communicate his or her experience. Form remains because, in its structure, it is plastic of meaning. The observation by Johann Huizinga on the relation between law and historiography also deserves consideration when it comes to law:

The plastic matter of literature has always been and is a world of forms that is, at bottom, a historical world. What happens is that literature can handle this matter without submitting to the postulates of science. The

figures of that world are, for it, nothing more than motives. The value of its creations lies in the representative or symbolic efficacy of these figures, not in the problem of their 'authenticity', of 'how things really happen'. That is why literature likes to create its figures taking inspiration with absolute freedom from its world of forms, although sometimes, for special reasons, it takes them out of the true 'history', that is, from the world of the past, conceiving it as what 'really happened'. Literature constantly deciphers a series of cosmic or human problems that science, with its own forms of expression, does not address nor is perhaps in a position to address. The strength of literary forms, compared with those of the sciences of the human past and of society, lies in their absolute spiritual flexibility, in their freedom of composition, in the infinite possibilities of suggestion that they contain. Its weakness resides, instead, in the incoherence of its creations with each other and in its eternal vagueness (Huizinga, 1980, p. 41, translated).

The dialogue between law and literature definitely poses some risks. It can even impoverish one of the two areas. However, with the awareness of these risks, the enrichment of the dialogue does happen when – from one side or the other – this interdisciplinarity is recognized as not always necessary, but complementary.

5 FINAL CONSIDERATIONS

The awareness of possible risks – for both areas – when approaching law and literature is an important element to be considered by the researchers who decide to venture through this dialogue. Law and literature are indeed independent scholar studies, but it does not mean that an approach is not possible. It is the opposite: both autonomies, when respected, tend to contribute to one another in a fruitful dialogue.

Weisberg's criticism of the humanist project, especially that there are sentimental interpretations of literature both in itself and in law, deserve consideration. However, the philosophical perspective of human life as a narrative offers a possibility so that such sentimentality does not occur. The narrative of human life, when considered intrinsically, is part of the very structure of life. And literature, that is, the artistic form, is a consequence of the previously existing need of narrative in human life

The example brought in the first part of this paper attempted to show how the autonomy between Dostoyevsky's literary work (*The House of the Dead*) and the work of the APAC method in the recovery of prisoners can dialogue due to the expressive similarity of their forms. This dialogue was never essential (in the sense of constituting the very essence of the forms), but it can help the researcher to approach the problem with a broader view: the concrete reality of the current prison system and the symbolic vision of human suffering (and even of hope) in prison.

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