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**THE ABSURD OF BRAZILIAN LEGAL THEORY IN PANDEMIC  
TIMES: THOUGHTS FROM THE NOVEL  
*THE PLAGUE*, BY ALBERT CAMUS**

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**ABSTRACT:** This paper is an analysis of the Legal Theory in Brazil during the COVID-19 pandemics, in 2020, highlighting the normative science, based on the philosophical perspective of the absurd, as developed in the novel *The Plague*, by Albert Camus (1936-1960). Since the beginning of 2020, the Brazilian state has been dealing with the global challenge of facing the erratic and fast contagion of the virus SARS-COV-2. A vast number of texts has been issued, in every sphere of the federation, to justify the public state actions, in order to maintain the legal social control. The constant quarrels of power, together with the economic decrease caused by social isolation, brought elements of distrust and denial regarding state actions, even when supported by the Law. A comparable situation is seen in Camus' novel, in which, in the face of an epidemic, the worst of individuals is exposed, as the social cohesion of solidarity is abandoned. The methodology used focuses on bibliographic research. The conclusion identifies the presence of the same denial present in the absurd, already proclaimed by the Algerian thinker in the mid-twentieth century, which represents, in the public sphere, a threat to the continuity of democratic health.

**KEYWORDS:** Law; Literature; corona virus; Camus.

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## 1 INTRODUCTION

Humankind is fueled by the crises it faces. The evolution of history is marked by countless scars from past moments of angst, displeasure, uneasiness, either for individuals or for the whole of society. These instants often receive different names, encompassing the idea of confrontation, survival, victory, and even the stoic acceptance of the paroxysm that seems to integrate the human condition, in a way. Ontologically, suffering organizes social systems of control and integration, especially regarding religion, Morality, and Law.

The eagerness for control is visible in this triad. Revealing and deciphering patterns of truth and conduct, oftentimes as a purely creative action, is a trace of social control. The will to avoid human suffering seems to be the origin and inspiration of the movements surrounding life in society. The most encompassing element of the triad is the Law, as it seeks the universalization of its aspects. However, the essence is inescapable: to put away human pain and lead the individuals, whenever possible, to safe distances from suffering.

As in King Arthur's adventures, the most important thing is the path, not the holy grail. Being away from pain and suffering is never a permanent state, so the Law must continuously act as a protector of individuals. Certainly, it is not always used and practiced towards the well-being of all. The philosophy of Utilitarianism, lacking foundations to the teratology of its maximum application, can be an exceptional starting point for the political use of the Law. Social control in Contemporary times, that is, after the French Revolution, tends to associate the legal norm to the well-being of the majority of people.

This small set of considerations serves to demonstrate the incidence of the first hypothesis in this paper. Suffering and the Law are always connected. With the refining of the social paroxysm processes and the enlargement of technological bases in the science of Law, intriguing new challenges arise for the Philosophy of Law, which gains sensible

responsibilities in its wholesome objective. The epistemology that gathers these aspects of the legal science is the General Theory of Law.

In 2020, the second decade of the 21<sup>st</sup> century, arises the most intense paroxysm of a generation on Earth. The Brazilians of then, too young to recall the horrors of World War 2, too apart and alienated to understand the dangers of warfare and conflict, were fighting their regular, everlasting problems, such as political and private corruption, unemployment, economic variations. There was no time to imagine questions of importance, such as the exploration of the labor forces, the generalized lack of education, or the patrimonialism of public institutions. There was a whole lot of nothing in every bit of everything.

SARS-COV-2, a virus, first detected in the Chinese province of Wuhan, in the end of 2019, did not attract much attention when first reported between October and November, that year. In March 2020, the World Health Organization classified the pathogeny contagion as pandemic. A new microorganism, it had low lethality rates, but proved to be versatile and highly transmissible. Deaths caused by COVID-19, respiratory syndrome derived from viral infection, traveled the world in images and reports. The first world-wide acute suffering of the 21<sup>st</sup> century had begun.

Brazilian Law did not linger to act. Ordinance No. 188, of February 3, 2020, edited by the Ministry of Health, declared a state of national emergency due to the virus. On the same day, through Bill 23/2020, the then holder of the ministerial portfolio sent a message to the Presidency of the Republic, in which he requested the forwarding of the normative proposal to the National Congress, with a request for agility in the analysis. Three days later, after unanimous approval of an urgent procedure, the text was converted into Law 13.979/20. In its content, there are practices that, at first sight, are intense, such as hospitalization, isolation, and compulsory collection of biological material from people with suspected contamination, for testing and treatment.

As of the second half of March 2020, the country received the first indications that the contagion had reached the national territory, without passing through health control. The barriers had failed, and the perplexed population began to communicate with little-known terms, such as mandatory social isolation, closing schools and businesses, artificial respirators, and hasty assembly of intensive care beds. At each step of the quarantine itinerary that, little by little, became a quarter, a semester, and the following ordinals, the legal universe was changed.

There has been an increasing distrust with the political power, whose reputation has become completely wrecked since the previous two years among the population and the public authorities themselves. The edition of laws about the pandemics was immediately followed by judicial questionings about the competences on the concurrent application, by the federated entities, of local health measures. The roles and circumstances of the judicialization of health are well known by contemporary jurists, who link it to the structures of fundamental rights. However, the public behavior of State management, mixed with moments of social polarization, is not included in recent books of doctrine. It is a recent phenomenon, and a new one for the Theory of Law.

Literature, however, has discussed the subject. Albert Camus (1913-1960), French Algerian writer and philosopher, winner of the Nobel Prize for Literature, released, in 1949, the novel *The Plague*, whose content describes the community of Oran, Algeria, taken by a deadly disease. The inhabitants, beset by the disease, suffer more due to the devastating effects of living in isolation from the rest of the world, adopted to avoid contagion, than due to the deaths. Social relationships fray, and absurd skepticism takes over homes and individuals. And yet, there is solidarity among the suffering. The paradox of suffering is exposed by the absurdity and the nihilist skepticism, which reveals the hidden facets of people who used to take their daily lives for granted.

This paper brings, as a philosophical provocation, the idea that absurdity has encompassed Brazilian Legal Theory during the SARS-COV-2 virus pandemic. The writing has as background the literary production of Camus, often mentioned. Its focus is the observation of legislative creations in times of crisis, and the exploration of possible reflections in

the comparison between the history of Oran and social situations, under the regulation of the Law, when facing the pandemic.

There are elements of phenomenological methodology in the text. The development of points of view, interpretations and dialogues with reality derive, largely, from the authors' view of the social moment. However, these perspectives are not free of criticism, and we sought, as much as possible, to observe the situations narrated based on the premises of the Theory of Law, especially regarding the necessary dialogic posture of the reader.

In a concluding note, the text seeks to demonstrate that there is no possible optimism, in the context of the current crisis and in the moments of the future, without resorting to the reality behind the veil. The absurdity in Camus does not serve to discourage actions or deny the movement of life: on the contrary, they signify the necessary shock with the storm in order to survive its waves.

## **2 NOTES ON THE APPROXIMATION BETWEEN LITERARY HERMENEUTICS AND THE THEORETICAL FOUNDATIONS OF THE LAW**

To the eyes of those less accustomed to transdisciplinarity, the relationship between Law and Literature may seem like a superficial whim, an excess of ornament. Such presumption becomes blatantly wrong when confronted with the lessons literature can bring to the Law. Strictly speaking, Legal Hermeneutics is the area to explore this connection in depth. However, by limiting itself to the – quite arduous and complex – task of recognizing the meaning of a normative text, with the objective of embodying its essence, it is possible to leave aside the prospective character that literary writings have.

It is possible to say, in line with the epistemological proposition adopted by the exposed concept on Theory of Law, that Literature can be a creative source of the norm, precisely because of its lack of belonging to the field of facts. Dystopias warn of the indiscriminate use of politics and its pernicious consequences. The books “The Handmaid’s Tale” by Margaret Atwood, “1984” and “Animal Farm” by George Orwell, as well as “The Man in the High Castle” by Philip K. Dick, are notable examples of this inclination.

The short story “Mineirinho”, by Clarice Lispector, sets the tone for the indignation over the death of an individual, who, because he is a criminal, is shot by the police; thirteen bullets, each equivalent to a human action or trait. Machado de Assis, with the short story “Teoria do Medalhão”, teaches how to be a successful mediocre, but also, and mainly, serves as a guide for the identification of the conscious fools. The legal experience finds good and valid arguments for its attribution, creative and normative, when relating to Literature.

The Theory of Law subsidizes and creates elements for life that the legal field aims to protect. Suffering permeates, as above, the dimensions of existence. It is interesting to realize how literary works prepare the mind for the conditional speculations of suffering, but the Law experiences them. In this scope, it is possible to read it like Gervasoni; Amaral (2020, p. 606) did, that the individual becomes a kind of host of modernity itself, an attractive feature for the greatness of literature. It is opportune, perhaps as poetic justice, that the terminology used by the aforementioned authors relates the human being to accommodation, to the receptacle of life, as occurs in the novel hereby discussed, and in the striking reality of Brazil.

### **3 THE EXPERIENCE OF THE BRAZILIAN THEORY OF LAW IN TIMES OF CRISIS**

Historically, in times of crisis, the healthy development of the Law in Brazil seems to be threatened. In addition, the human lack of comprehension and meaning, sometimes voluntary, affects the power struggles and the threat to freedoms. Since the first vestiges of European civilization, the territorial imbroglio caused by the Treaty of Tordesillas could already be seen. France wanted to see the testament of the first humans, the only document capable of dividing the new equatorial land between Portugal and Spain. The Portuguese royal codifications, especially the Philippines, set the tone for almost two hundred years of legal history in the lands of Santa-Cruz.

The Bonapartist revolutions brought, through war, the beauty of the French Civil Code of 1804, prepared to contain political absolutism; the diploma was used in the occupied nations. When Bonaparte’s troops invaded Portugal, the consequence was the hasty elevation of the Brazilian



colony to the level of a United Kingdom, to be the shelter of the fleeing Court. According to Fausto (2015, p. 109), this change started national development by force, but for few people. The Treaty of Navigation and Commerce, of 1810, brought England's power over Brazilian customs and ports, with small concessions to the locals.

From the Empire onwards, constitutions followed constitutions in moments of suffering. The one from 1824 marked the disillusionment with the first great monarchic hero, who granted it with the support of several municipal councils. The one of 1891 consolidated the republican regime, but showed the people its unnecessary presence, even for the fall of the previous regime, in force in the country for sixty-five years.

World conflicts also left marks on Brazilian civilization and Law. Colonial disputes settled under the blast and mud of the trenches in World War I were brought to an end with the Treaty of Versailles, which in turn helped to instill a terrible feeling within German society. Even with the beauty of the Weimar Constitution, National Socialism emerged, enabled and set in motion. In 1934, the São Paulo blood marked the pages of the new Brazilian constitution, only to be ostracized later by the totalitarian flirtation of Getúlio Vargas and Francisco Campos in 1937.

In 1945, after the end of the Second World War, the remains of European suffering hastened the end of Estado Novo, through the Constitution of 1946. In 1967, another constitution pronounced two decades of malice, with the mixture of constitutional texts to the infamous Institutional Acts, signed by the civil-military movement of 1964. In 1967, an expected surprise, but no less cruel: as if the resurgence of freedoms were not enough, suffering needed to increase in the heart of certain classes, and therefore a constitutional amendment changed all the previous text. Constitutional Amendment n<sup>o</sup> 1/1969 was the amalgamation for Institutional Act n<sup>o</sup> 5, the infamy of the dictatorial period that lasted until 1985.

With regard to diseases spread on a scale, Law 1,261/1904 stood out as the normative diploma that sought to eradicate smallpox, an intense disease in Brazil in the early years of the 20th century. However, despite its beneficial essence, the publication of the rule unleashed urban conflict

of great proportions. The Vaccine Revolt, channeled from general dissatisfaction with the federal government, made difficult the efforts of Oswaldo Cruz, a Brazilian public health specialist who promoted, on more than one occasion, resolute wars against epidemics.

In 1918, Decree 2,918, of April 9, instituted the State Sanitary Code within the scope of São Paulo. According to Duarte (2009, p. 08), the norm was the most comprehensive and prescriptive of all the legal instruments available to the inspection and control of health-related activities at the time. As with the recent Law 13.979/20, the code anticipated the arrival of a flu pathogen in Brazil by a few months. The same author mentions that the Spanish flu of that year, between the months of October and December, was “indelibly” marked by the contagion of three hundred and fifty thousand people, which corresponded, then, to a third of the population of São Paulo.

Del Priore (2017, p. 493) recalls that Brazil has always fought against violent epidemics that attacked the population, especially the poorest. Faced with plagues and common diseases, there was a lack of doctors, beds, medicines, and treatments. In popular memory, remain the wars fought in the solitude of bed against the offensive of pain and fever. The Spanish flu of 1918 has surprising parallels with the current situation, even after one hundred and two years of facing it.

According to Del Priore (2017, p. 493), the city of Rio de Janeiro was one of the most damaged places in the world. There were about eleven hundred deaths per day, shortage of coffins for burials, and the dead bodies lingered on the streets in front of their former homes. While this paper was written, Brazil reached the symbolic mark of eleven hundred deaths due to COVID a day, with recurrent figures of more than a thousand deaths per day. The current Law has preceded suffering, but even with its most valuable semantic efforts, it is not able to avoid the case. One should even question whether it has enough strength to even soften social suffering.

It is possible to say that the legal norm in Brazil is no longer in its formal aspect, that is, of coherent adequacy to the texts of superior



hierarchy. In times of accentuated social suffering, regulation is not reinforced by minimum effectiveness, as assumed by Hans Kelsen, when evaluating the potential of positive law. Brazil demonstrates, at this moment, with accurate precision, how the tensions of power impact in the legal set of support to the public confrontation of the pandemic contagion.

While this paper is being written, the number of deaths due to respiratory disease is close to three hundred thousand. In the political science of the current Rule of Law, there is no record of rulers who take responsibility for the amount of dead people in situation of social suffering. The possible exception might be the case of international warfare. The rule of power, however, is to set apart from guilt, to escape from reality, to instigate the wrong narratives.

The loss of lives by thousands is frightening. In Brazil, there is a dispute declared on which is the better version to enter history. The Law is the background of this dispute. The National Congress, by constantly altering Law 13.919/20, has shown the problems politics have imposed onto the control of the pandemics. At first, the law stated that medicines should be subjected to the National Health Surveillance Agency (ANVISA), unless registered by a foreign health authority. Law 14.006/20, however, limited approval to European and US entities.

The general context of change was the heightening of public tensions between the federal government of Brazil and the Popular Republic of China, which, at the time, was the most advanced country in the creation of a vaccine against the virus. The debate that gave rise to the feud is not very academic and will not be addressed in this article. However, it is important to point out that the legislation was changed by the influence of the rulers, in a minimum time. Other examples followed, with emphasis on Law 14.019/20, which made the use of masks mandatory in any collective, public, or private environments.

The measure was accompanied by the provision of a fine for individuals who refused to wear masks, of artisanal or industrial authorized origin. The importance of the apparatus is self-evident to all those who know the minimum required for collective life. It is empirical and does not require further academic study, because if the viral pathogen

causes respiratory syndrome, protecting the respiratory system is the first act to control the spread. It is a notorious and disturbing social fact, however, that many individuals put aside such precaution in favor of affirming individual freedom, or, in a grotesque way, to mark a position of political language.

Law 14.022/20 established virtual service to deal with violence against children, adolescents, elderly people, and people with disabilities, given the constant needs of isolation. Law 14.023/20 provided for essential services during the health emergency, whose time was extended. The gap was filled by the list of thirty items demonstrating professional categories that, in addition to being essential for pandemic control, received the benefit of not having to pay for personal protective equipment to perform their duties. It is symbolic, in a terrible way, that this minimum level of civility requires the protection of positive law.

Law 14.028/20, still in the wake of the extended contagion time, removed the validity period of prescriptions for continuous use medicines, while the isolation measures last. Law 14,035/20 revised the original public procurement procedures to deal with contagion, in addition to expanding the power bases of federated entities to restrict the movement of people. However, the text changed, for the greater, the attributions of the Ministry of Health and ANVISA in the authorization of restrictive measures.

The narratives of the law expose the conflict of reality between the federative units. Governors and Mayors distanced themselves from the protocols and determinations of the central power due to political dispute. Technological issues, such as the schematization of medical treatment, and the management of vaccination, are deliberated based on the consensus of the time. It is true that technology has never been immune to the practical uses given by human beings, and thus its teleology is made ethical or moral. However, before the social suffering of the pandemic, there were no arguments capable of stopping national emergency public policies.

On the edges of pure rationality, it is possible to make questions on the morality of a government regime that feeds from authority

concentration or indicates such characteristic. In democracy, dissent is part of the essence of power. Brazil has already been mistreated by the infamy of excessive Executive power concentration, and the 1988 Constitution broke with this possibility. There is no longer a Moderating Power, which strengthened the emperor, nor is the National Congress closed, as was the case in the 1937 Constitution, and there are no more Institutional Acts serving an authoritarian narrative.

The effort concentration to hinder the deadly consequences of social commotion due to the virus is necessary, but the union of the powers around a single leadership is not desirable. Collaboration is needed, even between political enemies, who are almost recognizable as enemies of the system, in an unsuitable rereading of Law and politics as seen by Schmitt (2009, p. 28): “The ontic objectivity and autonomy of the political are already present in this possibility of separating from other differentiations such a specific opposition as that of friend and enemy and of conceiving it as something autonomous”.

#### **4 THE ABSURD IN ALBERT CAMUS**

The absurd, in Camus, is human nature, but it must accompany it from beginning to end, as a measure of extreme courage. The condition of being alive is to live with hardship, to struggle with it, to question the very reason for continuing existence. It is not the crisis, considered in itself, that demonstrates the nature of being it is a means of revelation. What was on the sidelines, overcome by the insistent daily life, finds ways to manifest itself. The absurd is fear, the clash with the real, uncertainty, insecurity, fright, terror, but it is also the demand for action, contact with the essence.

The Theory of Law, in this Brazil of the health crisis, has fear as its energy and fuel. The valuation of the fact does not derive only from the constituted power, but from the fear of death and helplessness, hunger, the loss of loved ones, the ceasing of love. These are constant elements in Camus' work. In “The myth of Sisyphus”, the author seeks to elucidate how the contrasting forces of existence interfere with the continuity of life.

The book is disturbing, and its first statements provoke: the question of suicide should be the starting point of philosophy.

But it is not through nihilistic denial that Camus' ideas are developed. In fact, completely denying an aspect of morality can serve as a lever for transformations of intimate morality. It is a constructive way of questioning reality, but, for the Law, it is pernicious. Nihilist thinkers move their axis of morality away from a certain orientation, and leave it ostracized. The absurdist embraces it like a bundle of thorns:

And taking this absurd logic to the extreme, I must recognize that such a struggle presupposes the total absence of hope (which has nothing to do with despair), continuous refusal (which should not be confused with renunciation) and conscious dissatisfaction (which could not be assimilated to youthful restlessness). Everything that destroys, evades or undermines these requirements (and in the first place the admission that destroys divorce) ruins the absurdity and devalues the attitude that can then be proposed. The absurd only makes sense as long as it is not admitted (Camus, 2010, p. 42, translated).

The author moves on with the statement that man is always a victim of his truths, and, when he recognizes them, he is not able to get rid of them. There is a price to pay for conscience and, once guided by the absurdity that surrounds existence, no longer does it belong to the future. For Camus, this is an orientation of normality, but it is also normal for the individual to strive to escape the universe he/she created. In these terms, one might ask whether the Brazilian legal norm, in times of crisis, is at the moment of recognizing the absurd or of assuming responsibility for it. There is skepticism in its creation and interpretation. Even though it maintains minimal effectiveness, its healthiness is called into question. Camus' narrative can shed light on this question.

## **5 THE PROBLEM OF SOCIAL DISRUPTION IN *THE PLAGUE*, AND ITS PARALLELS WITH THE BRAZILIAN EXPERIENCE**

There is no technical language capable of removing the mark of suffering. Before getting to Camus' text, it is necessary to reaffirm that, for the purpose of this article, the speculation carried out leans towards the Philosophy of Law. It is not possible to measure the discouragement,

sadness and helplessness caused by public suffering, much less to observe it in its intimate dimension. The response to external stimuli is given by culture and is manifested in it. It is up to the theorists to criticize, formulate and structure possible ways of thinking that clear the fog of immediacy and reactivity.

In this regard, the criticism made, especially in the circles of the so-called legal dogmatism, around the Theory of Law is not of little importance. In fact, when the problems arise, vivacity and an eagerness for solutions come together with it. The sufferers cry out for the end of their burden. However, there is no way to remove the tenacity of thought and the myriad of alternatives, each one mediated by its presuppositions and consequences, given by serious and responsible elucubration. Philosophy does not lend itself only to contemplation; its function is to think about the problems of humankind.

And also to formulate arguments for a public response to suffering. The current situation of human civilization responds to the centrality of state power, especially when we see that most individuals of the species do not have access to the great monetary means of survival. The State is still responsible for the lives of many. Biopolitics is on the rise regardless of punitive means, and the current pandemic demonstrates the validity of such proposition.

The novel “The Plague” was written in 1947, in the midst of Camus’ experiences as a political thinker. The work is marked by the consideration that human beings are immersed, but often unnoticed, in the activities and entanglements of politics in the shared space. The plot takes place in North Africa, in the city of Oran. At the time of the narrative, the locality was part of the French colonial territory, and the facts are narrated from this perspective. The streets have French names, as do the inhabitants and buildings.

Oran is the second largest city in Algeria, the birthplace of Camus. The author grew up during the colonial period, mixed with the panorama of the Second World War. The Algerian nation, grounded in Arab culture, left him with a feeling of non-belonging, which soon impelled him to academic life. He was a journalist, playwright, novelist, and essayist, and his writings gave him the keynote for the formulation of his own

philosophy. The description of the absurd, the need for responsibility and revolt due to the annihilation of belief in the world, and the time of publication of “The Plague” make scholars identify his writing as allegorical.

Aronson (2017, n/p), in a critical encyclopedic entry, states that the novel’s narrative reflects peaceful resistance against a disease of unknown origins. Camus had integrated the French movement organized in the face of Nazism during the German occupation from 1940 to 1944, and was editor of the journal “Combat”, a well-known political periodical against the Nazis. However, his confrontation with German totalitarianism was not limited to the search for the liberation of France. When Japan was hit by nuclear bombs, Camus’ position was one of the few to reject the initiative.

In 1947, thus, *The Plague* is released through the writing of an author who felt unattached from the world, reconnected through academic vigor; a critic of violence, and a member of the French resistance; an enthusiastic about the end of the conflict, but concerned about the means of achieving peace. The foundations of Camus’ reality are nurtured by the density of the narrative. The plot begins with the city routine of Oran amid the tranquility of habit. An ordinary city, which is nothing more than a French town on the Algerian coast (CAMUS, 1988, p. 2).

During times of tranquility and health, it is natural to see people work from morning until night, and in the meantime, talk about the rest of life they have, which they call the future. The omniscient narrator traces these words when talking about the cafes of an unsuspected, common, modern locality, like any other. A place where the rumors of business, commercial transactions, the hotels and homes of the wealthy and the working poor are unaffected by the situations happening around the world.

The great difficulty, the real problem for the community of Oran is death. Death breaks everyday life, because, unlike in other cities, in Oran no one is supported by illness, care, esteem and the treatment of the sick. It is not paradise, but it is no hell either. To live in such a dry place, you need good health. The individual, when sick, is alone. Nothing could,



therefore, instill fear in a population that does not worry too much about death, and only sees it as a simple mistake of word exchange.

The most striking character of the novel is Doctor Bernard Rieux. This is because, from the beginning, it has been his efforts to understand the chain of events that took place in Oran. At the end of the novel, it is discovered that the omniscient narrator is the doctor himself, which can leave the reader exasperated, and with the feeling of belonging to the course of events. The beginning of the prose heralds the death of rats, all over town. At first, there are few animals, coming out of the sewers and garbage cans next to the houses. The common trait of the corpses is putrefaction concurrent with death: passersby, in the streets, houses and trams, saw the rodents give their last spasms with pustules and bile running down their bellies and backs.

Only after the dead rats numbered in the hundreds did the municipality act. Even so, they only started to collect the animals, without investigating the cause of their deaths. In the meantime, there were public councils, instigated by the press, which began to trumpet public discomfort. Increasingly numerous, the corpses caused an intense and strange sensation to the narrator:

One could say that the very earth on which our houses were built was purged of its humours, as it allowed boils to rise to the surface which, until then, had undermined it from within. Just imagine the astonishment of our small town, hitherto so peaceful, turmoiled in a few days, like a healthy man whose thick blood suddenly turns to revolution! (Camus, 1988, p. 15, translated).

The rats suddenly disappear, and the clamor around the people begins. The first person infected was the doorman of Rieux's building. The narrator explains that the worker became angry with the number and repetition of dead rats. His efforts to clean the building had shaken his nerves, making him anxious. Such feelings were followed by vertiginous fever and malaise. Purulent swellings appeared on his body, and only cross-shaped scalpel abscesses were able to prevent tumors. But the man dies abruptly, while he was being put onto the ambulance stretcher.

Other people start to become sick in the city. Immediately, there is denial. The population does not realize that there is a connection between

the putrid rats and the death of so many people. There is a lot of talk about the rats, but only gossip. There is not much talk about the fever, a synonym given by the narrator to the disease. Despite the efforts of more responsible individuals, with Rieux at the helm, the word “plague” is not daringly said.

The disease starts to spread freely. The most noble and wealthy refuse even to comment on the events. Camus designates a specific family to illustrate the event. The group, formed by a man and his wife, in addition to two children, obeys the patriarch so that, at dinner, the subject is not brought up. It is their so-called domesticated puppies (Camus, 1988, p. 24, translated), the children, who suffer the greatest silence: “We don’t talk about rats at the table, Philippe. I forbid you henceforth to utter this word”.

Rats die in the street, and men, at home (Camus, p. 29, translated). The newspapers only talk about the street, as proclaims the narrator. This sentence is really impressive. Morality does not erupt into public space, except through conscious acts of socialization. Private vices, however, erode shared places. Only public opinion must be preserved: let there be no panic, it is the order of the authorities. Everyone knew that the “plague” had disappeared from the West. “Yes,” continues the author, “all but the dead”.

As the deaths erupt, Oran is isolated, its gates closed, and a long quarantine begins for the population. The residents’ departure is prevented by armed soldiers, who exercise intense surveillance in the urban perimeter. At one point, some individuals try to flee, but are shot dead by the sentries. The city authority enforces martial law while dealing with the logistics of the rapidly rising corpses. Funerals are abbreviated, mourning spreads across the city, and the citizens’ emotions become increasingly frayed. Isolation camps for the sick and convalescent are set up, which drives the distancing of individuals.

In a sieged city, with certain death for those who tried to escape, public disorder and internal problems for each group of people, whether family members or not, multiply. There is looting in the shops and riots at

the closed gates due to the controlled entry of foodstuffs. Hopelessness is abbreviated by the promise of a healing serum, which does not become the expected synonym of cure. Still, after months of confinement, of diminished correspondence and telegrams, the plague begins to fade. Patients who, before, would have low life expectancy, start to recover. The statistics lean towards a decrease in contagions and deaths. Almost as quickly as it had arrived, the plague ceases.

Bernard Rieux is not alone in the plot, even though his performance can be considered as the link between the actions of all the characters, which, in part, derives from his performance as an omniscient chronicler. He works with other characters, who are also connected to the city, dealing with the contagion. Sometimes organizing fronts of volunteers, or consoling helplessness, and even in finding new meanings of life to ward off suicide, the other characters offer different nuances to the narrative.

Jean Tarrou is a traveler with unknown motivations until the end of his journey. Although he has an intense moral code, it is not linked to religion, and his efforts to contain the tragedy of death in Oran are not rewarded beyond intimate support. His secret was having fought in the Spanish Civil War, which left him skeptical and disillusioned. Under Rieux's care and watch, he valiantly withstood the disease and its effects, but died with the most abrupt symptoms of the plague. He is one of the last to die before the plot ends.

Raymond Rambert is a journalist who, just passing through Oran, finds himself forced to stay in the city when the contagion means cutting his connections with the outside world. During the story, he tries to flee the city, to the point of hiring smugglers to help him escape. However, when he sees the efforts of others, he finds in himself the impulse to stay and contribute. Joseph Grand is a middle-aged municipal employee who is part of the corps of volunteers dedicated to containing the disease. He handles the statistics with great courage and emotional resilience, given the intimate devastation caused by his recent divorce. His wife no longer wanted him due to the lack of development of his public career.

Cottard was Rambert's neighbor. At the beginning of the plot, he tries to kill himself by hanging, but the Rambert and Rieux are able to stop him. With the disease, he finds new strength to continue living, and shares with the people of their moments of pain, bringing them some comfort and hope. As the contagion wanes, he starts to attack the population, jealous of the end of his support and the need for his word. He is arrested. The last great character is Father Paneloux, a Jesuit priest who seeks to understand the misfortunes of Oran from the perspective of faith. In one of the most moving parts of the novel, in which everyone seeks, without success, to cure a boy, the religious predicts that it is necessary to look at faith, not reason, in order for human intelligence to grasp the meaning of death. His personal efforts also do not lead him to a better end: he dies of a suspicious cause at the end of the book.

Rieux was not a hero, at first sight. At the beginning of the novel, he sends his sick wife to a sanatorium far from the city. With the contagion raging through the streets of Oran, he thinks about leaving the place. He quickly abandons the idea. It is not the religious belief that moves him, nor a political ideal. It could not even be said that it was the link to his Aesculapian oath. Only an ideal of duty impelled him. So much so that, along the way, his heart and feelings slow down with the increase in deaths. There was no time for mourning, as other patients were waiting for him.

Patients who wait, social conflicts, intimate and collective disturbances are the mark that crosses the population described in Camus' work. The similarity with Brazilian daily life is quite significant. No wonder, still in 2015, with the Ebola virus crisis on the African continent, Vulliamy (2015, n/p) stated that the fascist plague that inspired "The Plague" may have passed, but other varieties of pestilence urgently maintain the book relevant. The SARS-COV-2 pandemic has brought to the visible surface the reticent problems that accompany humanity in all its moments of great social suffering.

For Metcalf (2020, n/p), in a commentary during the rigid social isolation in New York City, reading *The Plague* is a blunt wound to the face. Camus would have shown that a disease has a political dimension

and seeks vulnerability. Since the end of World War II, the globe has not experienced such a lack of security. Painful paradox: the microbe is natural, but there is a questioning about the continuity of this nature in the essence of deaths derived from contagion.

The latest communication technologies once served as a trumpet for the clamor of the end of the 20th century. During the pandemic, they became the magnifying glass capable of causing fear with the smallest and insignificant events, opinions, and insults. The month of March 2020, by historical force, recreated the fictional environment of Oran, with remarkable variations. The first is that it was not possible to put the entire world behind closed doors, with armed guards on sentry duty. On the opposite, every person was instructed to remain in their homes, since this contagion was not due to rats, but through sharing the air with other people.

Now, the philosophical conjecture alluded to at the beginning of the section needs to be recalled. The possible reflection from the comparison of the two contexts, the Brazil of 2020, and the fictional Oran of the 1940s, is that the anguish remained the same, the individual reports of heroism, such as those of Rieux and his companions, had space to happen. But the Brazilian population, unlike the people in Camus' novel, was not outraged to the point of carrying out public looting and destruction, nor was intimate suffering allowed, even if stoic or auspicious. The panic that inspires restlessness and agony has been replaced by a perverted form of hatred and skepticism.

In Oran, suffering was shared, and space was found for those who panicked, although the consequence was martial law. The Brazilian people, still in the wake of the memory of years of political authoritarianism, did not let themselves be limited in favor of a common good. There was no panic, but a distillation of dispersed, cruel opinions, within the novel virtual public space. Camus' Cottard anticipated, to great extent, the Brazilian experience, as individuals started to attack each other, anxious and fearing that their opinions would not be heard. The fear of not being important, useful anymore, was one of the first moments of the Brazilian pandemics.

In the novel, Oran society lived in relative economic stability. The poor and the rich would continue to be so, were it not for the contagion. In Brazil, it is possible that the persistent social inequalities have contributed to the confrontation of opinions and postures that followed the beginning of the public rules for the contingency of the disease. Social mobility has increased significantly, but on a downward tendency. Despite the authorities' efforts to inject resources for the most disadvantaged, the scourge also extends to the dimension of food and ailment. Certainly, the central power, as in Camus, was slow to respond to the signs of the disease. And many, like the puppy family episode, refused to even comment on the dead rats.

However, the Brazilian debacle in the face of contagion is, in fact, denial, and everything that comes from it. For Camus, the characters found in revolt and responsibility the means of facing the absurd. In Brazil, self-imposed blindness by the population, fueled by the speeches of individuals fearful of losing their importance, often in self-declared manners, emerged at the beginning of the crisis and took root. The rats came, died and rotted away; patients were isolated and died. The wakes were abbreviated, and the mourning was imperiously contained. The corpses had to be metaphorically affixed to the doorsteps of the houses, but denial persisted.

There is a justification, far from empiricism, which can perhaps clarify the reasons for such persistent denial. This is the breath of democratic freedoms given by the Federal Constitution of 1988. Free access to health systems, the economic development provided by social development policies, especially from the 2000s, and the rise of many to the so-called middle class, has anesthetized Brazilians for the eternal risks around its democracy. The vulnerability of the Brazilian community was intensified by the growing political polarization. The pandemic contagion hastened, as an irritating flame, the knowledge of the fears rooted in the national population.

Camus (1988, p. 30) describes that, for the community of Oran, denial was supported in two aspects. The impossibility of understanding the nature of suffering, and its relation to freedom, is the first of them. For



the people of Oran, the view persisted that there had always been wars and pestilence, and both would soon cease. Human idiocy was underestimated: “How could they have thought of the plague, which suppresses the future, displacement and arguments? They thought they were free, and no one will ever be free as long as there is scourge”.

The second aspect means, as Metcalf asserted, a painful thrust against the face. Denial is not just a conscious choice, it can be the inability to understand. The narrator of *The Plague* asks how it would be possible to understand the existence of thousands of dead people:

But what are a hundred million dead? When the war started, it's already a lot to know what a dead person is. And since a dead man only has meaning if we see him dying, a hundred million corpses sown throughout history go up in smoke in the imagination. The doctor remembered the plague of Constantinople, which, according to Procopius, had claimed ten thousand victims in a single day. Ten thousand dead is five times the audience of a big cinema. Here's what should be done. People gather at the exit of five cinemas to lead them to a city square and make them die in droves in order to understand something. At the very least, some familiar faces could be placed in this anonymous jumble. But, of course, that's impossible to do, and then who knows ten thousand faces? (Camus, p. 15, translated).

Understanding it is an absurd possibility, thus. It would be necessary for every Brazilian citizen to see, or feel, in their own emotions, the pain of loss and the shock of death from contagion. Even so, there would be nothing natural in the action, which would only add argument to the idea that those deaths, and the future, are normal events in the human nature. Furthermore, at least under the expected healthiness of common minds, no-one desires the growth of the number of dead people. On the contrary, all the work undertaken by anonymous characters like Rieux and his companions, in Brazil, is aimed at the cessation of deaths.

Thus, denial finds a possible solution in the unthinkable of cruelty, the inescapable demonstration of pain. In the absence of this scenario, skepticism grows and prevails. However, it is not the moral denial carried out by modern philosophy, but a disharmonious crescent of overlapping opinions. The absurdity found, in the national reality of the pandemic, its

worst forms of demonstration, as it did not face the sense of overcoming the crisis, but a mere reaction to the misfortunes of politics.

If masks are not used for minimal personal protection, there is a deontological duty of doing so, under penalty of a fine. This legal situation is not directed only at the individuals, but it is a clear message from politics: it is not allowed to question freedom for statements that put the collectivity at risk. The free supply of personal protective equipment is an ontological derivation of the safety guaranteed to the laborer through the fundamentality of the rights contained in art. 6, and art. 7, XXII, of the Federal Constitution. It is an exegetical hermeneutic result of constitutional interpretation.

There is debate on the individual right to refuse the vaccine, which is the closest thing to solving the crisis, and such discussions are held not by minority groups, but by the highest levels of representative democracy. The legal dispute between the federated entities put the Federal Supreme Court in a new line of intense protagonism, and, among the current pantomimes in the weak common sense, the court is the new locus of power disease. These discussions require detailed comments, but, in order to answer the question raised at the end of the previous topic, it can be said that the structure of the Brazilian legal norm regarding the health crisis is lacking.

## **6 THE ABSRUD AS A STRUCTURING ELEMENT OF THE LEGAL THEORY IN BRAZIL DURING THE CONTEXT OF CRISIS**

### **6.1 The dismay of the law**

The legal norm does not exist to bring human beings to perfection, but, on the contrary, it was created and is present due to the irremediable imperfection of the species, as gregarious beings. From legal naturalism, from its Greek origin, linked to cosmology, with pervading theogony as the foundation of nature, to the predominance of reason, with all its sophisticated explanations, law does not lead humankind to perfection. Also Positivism, with its various sources and schools of thought, cannot explain, nor sustain, an objective idea of social cohesion. The legal field

has its genesis, maturation and teleology focused on incompleteness and error.

But mistakes, although present in human conduct and actions, are welcomed by culture with a certain degree of predictability. The epistemology of legal knowledge, in a traditional way, defines Law as a science, submitted to its own method of apprehension, and divides the fields of learning of the knowable object between zetetic and dogmatics. This refinement exposes an assumption of the must-be, typical of the Theory of Law, that is, the intention to predict, regulate and stabilize behaviors.

By virtue of its own rationality, the Law does not admit unpredictability, except in specific situations in which the human will is desirable. In Public Administration, the acceptance of the human expression of choice is called discretion, while, in private legal fields, autonomy and freedom are regarded. The phenomenology of law, however, does not lead to excuses outside the presuppositions of tutored behaviors. The error in the correlations between the normative text, although full of semantic openings at will, and the social experience, is not accepted by the Law.

The legal infraction is punishable, from the liberal guidelines of guilt: the greater the competition of the individual subject to the norm for the occurrence of a non-normative, or illicit act, the more intense the reprimand. The sequence of internal processes of regulation of the legal order gives the law the attribute of autonomous in the face of other systems of human conduct regulation, such as Religion and Morals. The claim of Law is to be universal, and to overcome the limits of being, as something that is, and to reach the metaphysical dimension of prediction and ordering of behavior.

The most elementary lessons of Sociology enshrine the deviation from the social norm as an intrinsic datum of human communities. The systems of control for individuals' actions always find barriers in the possibilities of punishment. Law shows itself to be the cultural instance most insensitive to anthropological relativisms, and, through the structures initiated in modernity, it seeks to reach the maximum political consensus between the subjects and the sources of power.

The development of the Law, from the Modern State, intertwines with common sense itself. The abandonment of private justice, of vendetta and murder as a way of overcoming everyday problems, gave way to a change in the instinctive axis of the social response. Before using violence against the other, the protection of the police is sought. In an obtuse non-criminal conduct, resorts are claimed to the Judiciary. The ramifications of Law's incidence are shown in the very feeling of belonging to social groups.

This complex explanation of the Law, however, is not sustainable in the face of moments of serious social commotion. The reality of power often disquietingly overwhelms the theoretical standardization of behavior and begins to admit systemic failure under the protection and support of politics. For Hans Kelsen, there was already a risk of admitting politics as an integral part of normativity. The Pure Theory of Law, however, left the hermeneutical framework open to accept interpretation as an act of will. With Ronald Dworkin, it was possible to accept and correct the imperfection of positivism, without putting it aside as a whole, to bring the Law together with community aspirations of values. Even so, times of social torture challenge the sufficiency of Law as an instance of society's control.

Political science shows itself as a useful diagnosis for the dilemma of law. The expression "State of Exception", coined from the analysis of the domain and management of life, mixed with certain projects, or directives of power, by the rulers of a certain country, denotes the precariousness of institutions whose main objective was to be the embodiment hallmark of law. If the constitution does not serve the project of power, let its terms be changed, or let a new version be enacted. If the supreme court fails to follow the popular desires that support the power of the time, let its members be suppressed, or, at the very least, let them be concealed in silence.

If the parliament imposes itself as an inopportune scrutineer, let its seats be emptied, or let them be occupied by malleable and complacent individuals. The maneuvers of power, when it finds itself harassed, or stimulated, by social commotions, are steep and ramified. Under certain conditions, it is possible to say that power is expressed despite the law. It

is not without reason, therefore, that individuals who believe in the legal field, and wait for the promises of stability of social control, find themselves in a situation of dismay.

The word dismay has an intense and plural meaning. In common sense, it is the situation of helplessness and hopelessness. In Brazilian studies on employability, for instance, the dismayed person is the person who would like to work, is available to do so, but does not look for work because he/she thinks he/she would not find it. The impossibility of moving, of personal adaptation to the activity, little or old age, as well as the absence of previous experience are characteristic reasons for dismay (IBGE, 2020, n/p).

In the context of doctrinal discussions of Law, the term is used in proximity to common sense. Santa Rosa (2019, n/p), when debating the fundamental social right to health, with an emphasis on human dignity, states that poor women, when interrupting a pregnancy by their own action, are without state support. The criminalization of abortion, at least in the current context (which brings together the hypotheses of permission to the norms of the current Penal Code) would be the specific factor that leads to dismay.

In attention to these observations, there is added the fact that the philosophical writing around the absurd involves non-belonging, and also abandonment, both by others in relation to the individual, and by the individual in the face of him or herself.

### **6.2 To see the absurd is to invite oneself to action**

The potentiality of denying the world and the “self” manifests in the distancing process written by Albert Camus in “The Stranger”. In the text, a certain man is in jail, awaiting the fate that will be decided by his peers. He had committed murder on the beach, on a sunny day, for no apparent reason, and for that he will be judged.

What drove him to kill was not a victim’s offense, an unfair provocation, or an old feud. It was not premeditated or impulsive. The narrator claims that he killed because he had the revolver in his hand, and the sunlight, with its heatwave, dazzled his face and made him pull the trigger. This is the big nothingness, the emptiness of rational justification

that moved his actions. There is no regret, no guilt, no personal atonement, only the internalization that one's inner moral acts and guidelines are alien and distant from the context of one's presence in the world.

Such an impulse seems too extreme to be described within the present work, of academic nature. However, it is a possible way of social manifestation, given the context of extreme disaggregation that is experienced. Brazil is a land of great illusions sold and bought, at a high price. Social well-being is the rough diamond of the 1988 Constitution, and, in the face of the pandemic, the national community finds itself in energetic disputes to ensure health, the basic needs of life, and dignity. The question is whether a constitutional value that demands a crimson fight to be consolidated is desirable, and one time, by both the governors and the governed.

The disease has turned into a phenomenological collective evil. Everyone feels great pain from the pains of the others, dead or sick, but this feeling is not only of solidarity: it is of denial of alterity and of the surrounding reality itself. It is impossible to speak of homogenized collective feelings, of course. However, it is bordering on madness to observe that there are people, in the private and public spheres, who, with a simple shrug, fail to understand the sadness in the loss of hundreds of thousands of human lives from a viral pathogen.

When he ends his reflections on the absurd, especially in the creation of art, Camus calls his interlocutors to a certain perspective of life that, of course, has repercussions on political life. For him, intelligence and passion mix and mesmerize each other, and the absurd man finds, in this clash, the discipline that will be the essence of his strength. Application, in the sense of dedicating oneself, and obstinacy, coincide in the attitude of conquering, and to create is also to give shape to destiny (Camus, 2010, p. 116).

The sadness, the suffering, the sacrificial life of the inhabitants of Oran, in literature, and in Brazil, in contemporary times, are not reasons to deny reality. They are, in fact, predicates of unrestrained crying, revolt, discouragement, frustration, of hiding in fear. However, if the absurdity operates only in shock and madness, there is no way to overcome it. The



absurd is the impulse of helplessness in the face of the great social commotion of suffering; it is desirable, it takes all comfort away, it turns unrest into an everyday practice.

It is through the absurd that creation arises. It is necessary, thus, that the Legal Theory in Brazil be embedded in the absurd of a time, but not restrained to it. The social statements tend to suffocate the different, searching for uniformity. It is not possible, facing the ultimate end of death, to ignore the question of why politics, narratives and the whims of governors would be capable of harming the common well-being by using the legal norms.

At last, Camus' addendum to Sisyphus, the challenger of the Greek gods. Punished for the useless work of rolling the stone up the hill and watching it fall, every day, without ceasing, the absurd touches him. Where, he wonders, would be the minimum strength to lift the stone, and the support for the suffering of seeing it fall. Life is clumsy, confused, sleepy and pitiful, however, it is at the moment when Sisyphus descends to catch the rock that his existence is most unbearable. At that time, he has nothing, not even the activity of torment.

His absurdity becomes less painful when the stone returns to his shoulders. Here, even the vainest of hopes emerges as encouragement, for his action, his hands and sweat will be able to respond to the punishment imposed on him by the envious Olympians. Fate, however bad it may be, is not overcome by contempt. It is imperative, therefore, for the absurd, to imagine Sisyphus happy (Camus, 2010, p. 124).

## 7 CONCLUSIONS

To future readers, we are grateful for the attention. The lines of this text are written with the brand of suffering in mind and sharing the worldview of the absurd is not yet another attempt to spread suffering. It is a brief, even aphonic, call to action. With a fondness for rhetoric, the question is: what can the academic and the theorist of Law do in times of great social suffering?

Writing is what is left, a crystalized voice. Pablo Neruda attempted, in his sonnets of love to his wife, to use words to create life. The writing related to the epistemological union between Law and Literature

transforms the signs on paper, in a virtual canvas, into the mute desire that the reflections may serve for others to face their own moments of darkness or isolation. There is not much reason to believe in change and goodness, but such things are known to exist, and perhaps scholars are blessed to see them with the Law.

Brazil suffers with the sharp thorns of disease, to which there is a vaccine, but not a cure. One trusts the body to overcome the disease, but to trust in the public sphere for the same result is not possible. The centralization of coping with the disease, political narratives, virtual guerrillas, and constant attempts to appear in the space of life make the examples of Bernard Rieux, the persistent doctor, rare, but they provide fertile ground for Cottard, the cowardly man who soared high and then he murdered those who had forgotten him.

The Covid pandemic will certainly end, as its lethality is low compared to other diseases. However, in the land of billions of inhabitants, the smallest percentages are already equivalent to deaths, suffering and consequences with no counting in mathematical terms. Brazilian civilization will not emerge unscathed from its own plague, which, in any case, may reappear at another time, in a different guise. It is desirable that the scenario of the future does not repeat the mistakes of the present.

The Theory of Law can extract important inflections about the devastation caused by SARS-COV-2. First, it is not sustainable for legislation to serve to political demands. Neither does the Federal Constitution, although its interpretation is the result of a time. Finding the Aristotelian virtue of balance is a task of sound politics, arising from accepted dissent, from strengthened democracy, and not from changes in the rules of law to remedy imperfections in the public discourse.

Subsequently, there is the emergence of new federative disputes, which did not exist before the contagion. Party opposition lost strength in the face of the impositions of reality, and alliances between individuals desirous of power failed in the face of the multitude of dead. It is worth asking, not just as a mental exercise, if the maintenance of authority, through power itself, can bear the consequences of ignoring different opinions. Absurdity does not dispel platitude or the turmoil of voices. You

fight with them, you fight for the loudest voice, but they all coexist. Denying these sounds would be the apology of perennial silence.

If the story of “The Plague” were not told by an altruistic doctor, a man dedicated to alternative assistance, but by a person who was not worried about the contagion, the isolation measures, and the restriction of his freedom, the whole narrative would be different. In literature, there are no multiple writers; fortunately, in the historical evolver, there are several subjects. May the Law be told, theorized, and lived by individuals committed to the health of people’s bodies and hopes, despite the absurdity that overwhelms, but that leads to the path of virtuous deeds.

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