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MACHADO DE ASSIS TEACHING SUCCESSIONS: THE SHORT STORY "VERBA TESTAMENTÁRIA"

ELPÍDIO PAIVA LUZ SEGUNDO[1]

TRADUÇÃO DE ANA PRISCILA CORREIA LUZ

ABSTRACT: From the methodology of law *in* literature, the article suggests to Civil Law teachers – specifically those of Successions – that using literary texts as instruments favor the learning of law, and for that purpose resorts to the short story "Verba testamentária", by Machado de Assis.

KEYWORDS:Law *in* Literature; Successions; Machado de Assis.

[1] Phd in Law – Universidade Estácio de Sá (Unesa/RJ). Bachelor in Law - Pontifícia Universidade Católica de Minas Gerais (PUC/Minas). Deputy Coordinator of the Post Graduate Program in Law (PPGD/UniFG/BA). Professor of Law (UniFG/BA). Leader of the research group "Frontiers of Private Law" (PPGD/UniFG/BA). Member of the Basic Board of Advice and Evaluation of the Law Area(FAPESB/BA).Orcid: https://orcid.org/00000001-9365-203X. Lattes: http://lattes.cnpq.br/8222031049497571. E-mail: elpidioluz@gmail.com

1 THEORETICAL AND METODOLOGICAL ASSUMPTIONS

The way of considering law or “the legal world” as something separate from events can alienate jurists regarding not only the past but also the present, as they don’t question the historical character of legal production, neither the horizon its realization.

The methodological path inaugurated by law in literature requires a gaze that considers the legal expression coming from an interior complexity, not factual or naturalistic. If the legal experience is looked upon that way, it is possible to make all kinds of connections in several levels of complexity.

Dealing with law in a distinct way is challenging because on the one hand, it needs literary knowledge. On the other hand, it needs law itself. In other for this to happen, new meanings have to emerge considering teaching and legal reflection. In this bias, the bet on literature as an expression of culture implies a close connection between the world of life and the life of rights, favoring through literary works a more enlightening reading of human reality (Karam, 2017, p. 829).

This poses challenges to the teaching of law that has been built so dogmatic and often not even that, whereas law courses have been thrown into a practice that cannot be called pragmatism, as it cannot handle technique, practice and much less theory.

This context can be aggravated by the authorization of distance law courses in Brazil (Brazil, 2018), which liquefies legal education, paralyzes the critical eye and avoids complexity. That said, consent of Public Authority reduces teaching to function[2] and specialization, dispensing as a rule practical knowledge, theory and contemplation.

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[2] The thematic approach of the text is legal education, especially civil law - succession -, which does not mean that the other dimensions can be neglected. An adequate theoretical approach, the methodological option and the frame of this article do not allow for taking care of them simultaneously. The Federal Council of the Brazilian Bar Association (CFOAB) filed a lawsuit for knowledge to the detriment of the Federal Government, with a request for the anticipation of the effects of the guardianship so that "it is granted the unprecedented injunction alters pars to determine the Ministry of Education to paralyze requests for accreditation of institutions and authorization of law courses in the form of distance learning, until the judgment on the merits of the present action".In the decision, the federal judge of the 7th Court Civil of the Judiciary Subsection of the Federal District, ruled the rejection of the urgent relief under the

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There are theoretical and methodological challenges to legal education that will need dialogue with new technologies. At the same time, it will be necessary to rethink teaching models, research, university extension, internship and professional practice[3].

If the science of law operated by positivism was responsible for restricting it to the technical sphere (causing the weakening of its factual dimension and value), approaching law in literature is meant to provoke thinking beyond the modern *more geometric* and the dissolution of humanity *(humanitas)* in the technical age.

To relate the legal in Literature and, simultaneously, the Law in the literary, a careful approach must be taken (González, 2019, p.626). It is essential to delimit the central character of the narrative to understand the element around which others revolve, and thus the very structure of the short story.

2 THE OBJECT OF INVESTIGATION: "VERBA TESTAMENTÁRIA", BY MACHADO DE ASSIS

In the manner of "Memórias póstumas de Brás Cubas", the short story "Verba testamentária"[4] starts at the end (Machado, 2017, p. 123). It

reasoning that "there is no competent and reputable proof in the case file about the alleged retraction of the face-to-face teaching simply because the private sector offers more distance learning places when compared to the public sector; that the defendant purposely weaken the rules to facilitate accreditation and authorization for the operation of distance learning courses; or a precipitous drop in the quality of teaching in the higher education caused exclusively and directly by poor quality distance courses. As of now, the author only exhibited in court texts of law, decrees and regulations and journalistic news taken from the internet. At this procedural moment, I don't see any breach of constitutional duty by the defendant nor the illegality mentioned, which is why I see no probability of the right sought in copyright claims. On the other hand, I don't see danger of damage or of difficult repair in the fact that the operation of courses in EAD, because years ago others were authorized by the MEC, which, in fact, can at any time, after assessment/reassessment and due administrative process, disallow or disaccredit the HEI that violate industry standards". Available at: https://www.conjur.com.br/dl/justica-nega-pedido oab-suspend.pdf. Accessed on: March 8th. 2020.

[3] The thematic approach of the text is legal education, especially civil law - succession -, which does not mean that the other dimensions can be neglected. An adequate theoretical approach, the methodological option and the frame of this article do not allow for taking care of them simultaneously.

[4] More information about the publication of the short story in the newspaper Gazeta de Notícias, and in the collection Spare papers can be obtained in the study by Fabiana da Costa Ferraz Patueli (2011).

begins with the description of Nicolau B. de C.'s last days[5] – reference that appears in the first mention of the character – who is 68 years old and who, in his will, gives instructions for his coffin to be manufactured by Joaquim Soares, causing revolt among coffin manufacturer's competitors (Assis, 1994, s/p).

Following the story, the narrator makes a temporal cut, directing the readers to the character's childhood, to the possible origin of the problem that will be the object of the narrative, listing the main events to disclose about the protagonist's history (Machado, 2017, p. 124).

Envy is an attribute of the main character of the short story, who is resentful since childhood. He destroys his colleague's toys just because they are better than the ones he owned. Only toys equals to his or of worst quality escaped Nicolau's irascible temper (Assis, 1994, s/p). The text's background is the discussion of social life as a space for differences between men since birth, basis of pain and humiliation. It thus presents a sequence of episodes of the protagonist's life, increasingly irascible and violent. It is not just about a morbid locket. Nicolau would like to compensate for the random differences produced by nature and consecrated by society: that is why he wanted to be buried with a coffin made by the city's most despised carpenter (Bosi, s/d, p.25-26).

The reasons for this behavior would find explanation in Nicolau's biography. His father was of poor origins, although he improved his life very much, even allowing his family to live without difficulties (Assis, 1994, s/p). The worm in the spleen is the reason suggested by the brother-in-law, and indicated in the story characterizing a problem of organic origins. Maybe it was the envy of clothes and toys or uniforms. What is unsaid is that his conduct, whether benevolent or ruthless, makes it possible to anticipate the exercise of institutionalized violence (Trindade; Alcântara, 2020, p. 22), relating abuse of words and indiscriminate use of force.

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5 The initials of Nicolaus' surnames (BC) reinforce the approximation with *Posthumous Memoirs*.

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His story is marked by riddles. The repetition of the term "obscure" throughout the narrative is indicative of the protagonist's unexplained pathology. The acceleration of the narrative's time and of the fragmentary character of Nicolau, as well as the relationships that revolve around him, satirize the photographic reproduction of a reality sustained by naturalists (Machado, 2017, p. 128).

The touchstone of Nicolau's life is not accepting to live with those that, in his understanding, present a set of characteristics superior to his own. The character's pathology was of reassurance regarding others, which is exemplified in the hatred spilled over with the use of torture on the slaves who served the house and on the dogs he owned. Nicolau would always be the best among his peers, who should revere him (Assis, 1994, s/p).

With a dispersed personality, Nicolau had no concentration for studying, and did not have a job nor the disposition for work. Apparently, despite the difficulties arising from his disease, he lived without major concerns.

By refusing a job in diplomacy, recommended for him by his brother-in-law, Nicolau realizes that he is intimately uncomfortable with the reverential formalities of the servants of the Ministry of Foreigners, and decides that he does not want to be anything (Assis, 1994, s/p).

At that point, he was a mental misfit who detracted from those he considered socially inferior to him. Battered by disease, he rarely leaves his house. Nicolau suffers from the noise of applause in the theater. Later, he starts to hire services of several professionals, including for his coffin, a reason for his brother-in-law's indignation (Assis, 1994, s/p).

The author structures a narrative that rejects the simplification of the world and the simplification of man supported by naturalists. Thus, the character is contextualized clandestinely through what the narrator did not say or implied. It becomes a matter of understanding why the testamentary disposition of the protagonist is what it is. When discarding the heredity hypothesis to explain the character's problem, Machado de Assis unveils a certain scientific discourse that played the role of justification and naturalization of violence and social hierarchies (Machado, 2017, p. 129).

This is accomplished through satire on the pathological behavior of the protagonist, when the fiction writer rejects that his case can be understood by science with the imputation of organic weaknesses to social conducts, as was common in the medical discourse of that time.

In "Verba testamentária" there is an intertwining between the paradoxical and conflicting trajectory of a protagonist that escapes description, which would explain the ambiguities of Nicolau's cordiality and angry disposition, the practice of private violence. It would also justify the social and familial hierarchy that suggests clues about who we are and represent the legal and political reality of Brazil, whether intentionally or not (Trindade; Alcântara, 2020, p. 21-22).

From a technical-legal point of view, the codicil is responsibility of the legal subject - an abstract construction typical of modernity. In that part of history, civil law was often expressed in a commodified way and supposedly removed from public issues, which remains, to some extent, true to the current state of affairs, considering the difficulties in rethinking inheritance law not as a concept or purpose, but as a something that goes through a reflection by legal education, which will later be addressed in this article.

3 ADVACING THE PLOT: LEARNING INHERITANCE LAW THROUGH LITERATURE

Nicolau states in his will that this coffin had to be manufactured by a specific artisan: Joaquim Soares. Although they do not know each other, the disposition of Nicolau's last will was carried out upon his death. Ironically, Joaquim did not accept any payment for the work perfomed. He only requested a copy of the deceased's will (Assis, 1994, s/p).

The case resonated for a while and the fell into oblivion. As the narrative progresses, the narrator explains the testamentary motivation. (Machado, 2017, p. 122). The choice had fallen on one of the worst artisans in town, highlighting Nicolau's tendency to take part in the "social scum", as Joaquim Soares' coffins "were good for nothing", as Nicolau's brother-in-law states in the end of the short story (Assis, 1994, s/p).

Apparently, Nicolau is unable and unfit to make his last will, considering his pathological condition. However, considering that his

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disability setting occurred after the drafting of the will, it would remain valid.

Although this analysis extrapolates the elements that figure in the short story, it is a hypothesis that services the comprehension of a didactic exercise that favors critical understanding of legal contents, specifically the codicil.

The steps to be covered by the end of this section are: 1) etymological; 2)historical; 3) the theory of law. The central legal issues are the codicil, a discussion on electronic codicil, inheritance law and new technologies.

In the Consolidation of Civil Laws, the codicil was listed among arts. 1.077 to 1082 (Freitas, 2003, p. 634-635). At the time the short story "Verba testamentária" was written (1882), the Consolidation (1858-1917) functioned as a true Civil Code, considering that the civil codification only came into force in the year of 1917.

When Machado de Assis writes the short story, the institute seems to be used, for example, in Gazeta de Notícias, in a text published on September 6, 1896. When making considerations about death, he sensed that anyone could have organized this world better than it came out. In this sense, it could mean retirement of life with a fixed term. No one would die from illness or disaster, which by making someone incapable would not place them under the responsibility of themselves or others. This would be the beginning of things. There would be no pain or fear for those who chose to stay or to go. It would become costume being sober, not sad, because the future dead would say his goodbyes, make recommendations and give advice. Even better, he would be able to say nothing at all except verbal and friendly goodbyes. (Assis, 1910, p. 352-353). Here, Machado criticizes the institute of will and the codicil itself.

On March 11, 1894, he noted: "[...] if it is true that the dead rule the living, it is also true that the living live on the dead" (Assis, 1910, p. 118). Note that car hirers, coachmen, pharmacists, clerks, judges, marble workers, tailors, not to mention the funeral home, earn with what others miss (Assis, 1910, p. 118-119). From this excerpt emanates a subtle criticism to inheritance, succession and transmission.

In the Civil Code of 1916, the codicil was listed among arts. 1.651 to 1.655. By current rules, the stipulation about the funeral (in this case, the making of the coffin) must be made by means of codicil, written, dated and signed by the "codiciler", observing the arts. 1881 to 1885 of the legislative act.

Of Latin origin, codicil means small writing. Like the will, it is an act of last will disposition. But it is a minus in relation to the will, for not being an act of patrimonial disposition. It is a memo of last will and it does not have the formal rigor of the will (Maia, 1980, p. 119).

By means of last will provisions (which cannot be confused with voluntarism) occurs one of the most important repercussions of a human being's personality, who would carry out their will in relation to assets gained in life. More importantly, last will provisions project events beyond death: dispositions of non-patrimonial legal entities that can be considered more valuable than the other dispositions about death (Cahali; Hironaka, 2014, p. 264)[6].

The codicil has an ethical foundation that can be summarized in this formulation by Hans Jonas: "Act in such a way that the effects of your action are compatible with the permanence of an authentic human life on earth" (Jonas,1995, p. 40), which points to an overlap between human actions and their repercussions regarding other human beings and nature.

This ethical imperative of responsibility seeks to provide answers to the challenge sposed by a technological society. Immersed in technique, man intends to move away from responsibility for intentional acts through the government of the man-machine.

[6] In the words of the cited authors, there is a kind of aversion to the practice of testing in Brazil, whether for reasons cultural, customary, folkloric, and psychological. There would be no habit of acquiring the place destined for the grave, life insurance would not be contracted, many would reject the idea of donating organs, because these issues, in the popular saying, attract bad luck (Cahali; Hironaka, 2014). Contrary to such statement, writing last will provisions was quite common in Brazil, especially before going through the secularization process that started to conceive it as a means of transmission of goods to the detriment of their religious character.

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At this point, the codicil is criticized for supposedly not being in tune with the current world, for having been suppressed by Modern Codes (Veloso, 2007, p. 173), on the grounds that its content is restricted. A draft made by Orlando Gomes in 1963 did not foresee the institute (Gomes, 1963); and Brazil would be one of the last countries to keep it (Lôbo, 2018, p. 182).

On the other hand, there is no longer any prayer about the suffrage of souls, considering the de-Christianization of the sacred[7] and the donation of personal goods of small value would not be relevant from an economic point of view. In a way, the proposition of the suppression of the codicil is compatible with a utilitarian view or even marked by a bias heritage in a strong sense, incompatible with political pluralism and with the various possibilities of "the good life", recognizing the possibility that it can be outlined by the constitutional text (Dworkin, 2011, p. 615). In this sense, denying the codicil is to weaken the very condition of subject, taking away its private autonomy. To present it exclusively as a Roman concept from the time of Augustus, renewed by Justinian[8] (Douverny, 2013, p. 154), who admitted the simultaneous existence of codicil and of will and use it as an argument to justify his characterization in the current

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[7] In past times, concerns about death occupied an important dimension of everyday life – prayers and intercessions to souls, forms and burial place and shrouds used – were thought out and recorded in wills by individuals concerned with the burdens necessary for the salvation of their souls. The will was the privileged means to have a good death, it was the main vehicle of the Christian salvation (as long as it encompassed pious legacies), remembering that this would be a planned death, no surprises. In the past, in addition to being a religious act, it contributed to create bonds of affection with others, a solidarity aimed at the earthly existence and the survival of the entities that stayed. The will was more than a simple act of private law for the transmission of a heritage, a means for each one to affirm their deep thoughts and convictions (Martins, 2015, p. 68). Although the text referred to is a dissertation focused on local analysis, its arguments can be used for the context of the 19th and even the beginning of the 20th century.

[8] It is commonplace that before Augustus' time there was no right to make codicils; and the first to introduce them to him was Lúcio Lêntulus[...]. When he died in Africa, he wrote codicils confirmed by will in which he asked Augustus [to] do something for him. As Augusto responded freely, everyone started to do the same. [...] It is said that Augusto summoned the jurists [...] and asked them if the practice could be admitted and if the use of the codicil did not differ from the legal reason. Trebacio, a jurist of great authority, persuaded Augustus by saying that the codicil was useful and necessary to citizens on account of the large trips that the ancients took, in which if it was not possible to make a will, they could make codicils. After that time, the codicil was admitted as a good right (Douverny, 2013, p. 154).

art. 1882 of the Civil Code (Lôbo, 2018, p. 183) seems to require higher analytical density.

Today, in the crisis of conceptions about the human being, ethical nihilism has occupied the intellectual scene and designed mechanical systems that are supposedly regulated by rational and effective models of control of will (Lima Vaz, p. 173-180), which gives rise to consequentialism, characterized by the rejection of metaphysical foundations of Ethics. Currently, alongside the growth of techno sciences there is a rapid and comprehensive dissolution of the traditional social fabric and its replacement by new forms of human coexistence and organization of society (Lima Vaz, 2000, p. 240) which are expressed in the ethical-juridical field through secularism.

Giacomo Marramao alerts that the word secularization is a metaphor that alludes to the time of the Reformation in the legal sphere, and indicated the expropriation of ecclesiastical assets in favor of European monarchies and national reformed churches (Marramao, 1995, p. 29). Later, there is a transformation in the value system that is in the basis of the humanist presupposition and that intends to remove the theological aspects from the scene, maintaining only its formal aspect, which can be symbolized by the concepts of person, individual, humanity, reason, historical development, progress, among others (Marramao, 1995, p. 29).

Here the philosophical bases of Western modernity point to a conception of world that desacralizes man, which contrasts with the universe permeated with magical and divine forces of traditional societies[9]. The development of science, of technique and rationalism pushes back the sacred and religious conceptions of man and of the world,

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[9] Passport to heaven", "safe conduct on earth", the will was compared to a contract made between the individual and the Church (Vicar of God), having two purposes: to guarantee the acquisition of eternal goods made possible by the masses, acts of charity through payment in cash, andallow the enjoyment of pleasures in life by legitimizing the goods acquired through the final reconciliation present in the act of testing. Thus, the will(despite being written in a moment of material detachment) was supposed to be focused only on the salvation of the soul, but it was also concerned with temporal goods (Martins, 2015, p. 69-70). Yet extensive, the quotation is important to understand the importance of the will and the codicil in traditional societies. Also note that for the field of law and literature, the will can be a literary genre (Ariès, 2000, p. 244).

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which does not mean abandoning metaphysics, because you cannot escape it without conscience (Marramao, 1995, p. 29).

Once of a religious character, the will slipped from evergetism (good works, large donations in favor of the public interest and the community) to the government and to family; at the same time, the will became an act of foresight and prudence that predicted death (Ariès, 2000, p. 239). Still, the concept did not cease to exist and is still present today in the creation of foundations and in volunteer practices.

Although it is not the purpose of this article to examine secularization - one of the constitutive factors of modern law - it is important to discern the ethical foundation of a codicil. Because of its anthropocentric foundation, private autonomy is an attribute of the human being without further motivation than its own essence. This makes the individual responsible in the face of freedom and decision to pursue their goals, whose realization takes place in concrete relationships with people. It is based on that level of abstract reflection that failing to comply with the codicil is to prevent the execution of the acts of last will, which may subject the damage compensation (art. 186 of the Civil Code) in the perspective of non-contractual liability.

The codicil can only contain provisions on the author's burial, alms of little assembles as well as legacies of furniture, clothing and jewelry that are not very valuable to the applicant’s use (art. 1881), and may also appoint or substitute executors (art. 1883) and order the expenses of suffrages by the codicile's soul (art. 1998, second part).

Regarding art. 1881, the law establishes a subjective criterion. The allowed amount in codicils is a question to be investigated and verified in each concrete case. After an analysis of the disposition of the codicil, a balance must be made; you have to compare the value of the codicile with the amount of assets left by the deceased, because for some what is a large amount may be considered small by others. Therefore, high value goods cannot be codiciled as they are considered expenses of lesser economic potential. Anyway, it has been understood that the amount may not exceed one twentieth or five percent of the deceased's estate. If that sum is overcome, it may be subject to judicial review (Lôbo, 2018, p. 183).

The codicil's form is holographic, related to art. 1.879, which considers a private will made "in exceptional circumstances", despite not obliging the designation of the date as well as in the ordinary forms of will (Veloso, 2007, p. 173).

Furthermore, only those who know and can write are qualified to make a codicile. It can be done mechanically as long as all pages are signed by the author (Veloso, 2007, p. 174). Writing, dating and signing the document is indispensable. The omission of any of these requisites renders the act null and void. It is forbidden for a third party to write or sign at the applicant's request. The law exempts witnesses.

In another line of reasoning (Lôbo, 2018, p. 183), it is argued that the codicil is informal in its attributes and destination. Thus, the private writing can be done by hand - by mechanical or electronic means - it is not necessary to be written in own fist, with the waiver of witnesses. This proposition seems to fit better with the codicil for reasons that will be explained below.

A capable person can grant a codicil whether or not they have made a will. The codicil will coexist with the will, integrating and completing it in the aspects allowed to the regular author by this act. In the event that the grantor does not make a last will, the codicil will have a separate existence, obeying for the rest rules of the legitimate succession (Veloso, 2007, p. 175).

Note that the codicil may be revoked by another codicil or by a later testament, as disposed in the Civil Code[10]. However, the later codicil not always revokes the previous one, as the instruments can be integrated to complement each other. In this sense, the new codicil only suppresses the previous one if there is express clause, or if the provisions are opposed to the former (Veloso, 2007, p. 175).If there are conflicting determinations, those of the last codicil prevail as the true expression of the declarant's last will.

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[10] *In verbis*: "Art. 1884. The acts provided for in the preceding articles are revoked by equal acts, and are considered revoked, if appearing a later will of any nature, it does not confirm or modify them" (Brasil, 2002a).

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The later will can revoke the codicil. But the later will can silence, so the Civil Code in art. 1.884 says that the acts provided for in previous articles (which list the codicils) are considered revoked, if the later will does not confirm or modify them. It is a hypothesis in which, by legal provision, silence operates as a manifestation of will (Veloso, 2007, p. 175). But could the codicil revoke a will? Certainly not in view of the greater formality of the will in relation to the codicil.

Like the closed will, the codicil can be closed by its author. When the author of the codicil dies, as well as in the case of a closed will, the opening will be made by the judge, who will have it registered, ordering its compliance if there is no external vice that makes it suspect of falsehood or that causes its nullity (Veloso, 2007, p. 175).

Finally, Bill 5820/19 (Brazil, 2019), presented by the deputy Elias Vaz (PSB-GO) on October 31 of 2019 (pending at the Chamber of Deputies), allows the codicil to be done electronically. The text proposes to change the Civil Code, which today provides for documents to be written, dated and signed. *Mutatis mutandis*, the electronic signature does not require physical presence, what is also true for the witnesses in the performance of the act. Prove of that fact is Special Appeal No. 1.495.920/DF 11[11], reported by Minister Paulo de Tarso Sanseverino,

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[11] "SPECIAL RESOURCE. CIVIL AND CIVIL PROCEDURE. EXTRAJUDICIAL TITLE EXECUTION. ENFORCEMENT OF DIGITALLY SIGNED ELECTRONIC MUTUAL CONTRACT (ASYMMETRIC ENCRYPTION) IN ACCORDANCE WITH KEY INFRASTRUCTUREBRAZILIAN PUBLIC SERVICES. TAXATION OF EXECUTIVE TITLES. POSSIBILITY IN FACE OF THE PECULIARITIES OF THE CONSTITUTION OF CREDIT, WITH EXCEPTION OF THE PROVISION IN ART. 585, ITEM II, OF THE CPC/73 (ART. 784, ITEM III, OF THE CPC/2015). WHEN THE EXISTENCE AND HEALTH OF THE BUSINESS CAN BE VERIFIED IN OTHER WAYS, NOT BY WITNESSES, THE ENFORCEMENT OF THE ELECTRONIC CONTRACT IS RECOGNAZIBLE. PRECEDENTS. 1. Controversy about the condition of extrajudicial executive title of electronic loan agreement without the signature of two witnesses. 2. The list of titles extrajudicial executives, provided for in the federal legislation in “numerous clausus” shall be interpreted restrictively, in accordance with the calm guidance of the jurisprudence of this Superior Court. 3.Possibility, however, of exceptional recognition of the enforceability of certain securities (electronic contracts) when special requirements are met, given the new commercial reality with the intense exchange of goods and services on a virtual basis. 4. Neither the Civil Code nor the Code of Civil Procedure (including the one of 2015) proved to be permeable to the current business reality, especially the technological revolution that has been experienced with regard to modern means of celebration of businesses, which no longer use only paper, but are now consubstantiated in electronic media. 5. The digital signature of an electronic contract is intended to certify, through disinterested third party (certifying authority), that a certain user of a certain signature will effectively sign the electronic document, ensuring that the data from the signed document that is being sent confidentially. 6. In the face of these new instruments to verify the authenticity and

judged on May 15, 2018. At the time, the Third Panel of the Superior Court of Justice understood that the ICP-Brasil (Brazilian Public Key Infrastructure), established by art. 6 of Provisional Measure 2200/01 works as a Notary Public's Office (Brazil, 2018b, p. 4). It is appropriate to mention, by way of explanation, that Minister Ricardo Villas Bôas Cueva recognized that the legal validity of a document is different from attributing enforceable force to a contract (Brasil, 2018b, p. 37), considering that the claim, in this case, was conveyed through the case records files (still on paper form).

In the words of Minister Paulo de Tarso Sanseverino, “the Civil Code and the Code of Civil Procedure are permeable to the current business reality", especially in what concerns the modern "means of business celebration", which have been no longer made on paper, but “consubstantiated in bits” (Brasil, 2018b, p. 15).

This understanding was argumentatively expanded in the Special Appeal No. 1.633.254/MG, reported by Minister Nancy Andrighi and judged on 03/11/2020. In her vote, Minister Nancy writes that people are not individualized by signing their own handwriting but by logins, keys, passwords, tokens, digital certifications, eyepieces, among others. However, if complex legal transactions with high economic value can be carried outon social media, the ballpoint pen should not be required for last-minute dispositions of will (Brasil, 2020, p. 8), especially in times of a global pandemic.

There are palpable difficulties between inheritance law and new technologies. The law still does not seem to understand that the primacy of the electronic over the physical has modified not only the codicil but also the wills. Furthermore, the conceptions of heritage and wealth undergo transformations considering cryptography, artificial intelligence, information technology, digital law, among other elements that change the

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presence of the contracting party, it is possible the recognition of the enforceability of electronic contracts. 7. Concrete case in which the executed was summoned to respond to the execution, an opportunity in which he may raise the defense he understands pertinent, including about the formal regularity of the electronic document, except for pre-enforceability, or in terms of embargoes on execution. 8. Special Appeal provided” (Brazil, 2018b).

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context of understanding personal data, legal business, digital currencies, as well as the fact that new reproduction have the potential to change even the notion of what aheir is (Ribeiro, 2021, p. 18).

Thus, the legislative wording (art. 1881, § 1) proposes to update the model already used. By providing that any capable person can choose the way of their burial and how to allocate up to 10% of their assets to certain people. That way, anyone can choose how to bequeath furniture, real estate, clothing and jewelry, among other tangible or intangibles[12], subscribing by hand or by electronic signature and digital certification, with the registration of the date of the act. This practice only consolidates the existence of the digital codicil, while losing the opportunity to discuss the security and reliability of electronic documents, as well as differentiating electronic signature and digital certification (Brasil, 2019, p. 1).

Also according to the Project (art. 1881, § 2°), the codicil may be recorded in digital sound and image system with sharpness and clarity in images and sounds, as long as it has a declaration of the date of the act. If there is a destination of equity, the act must register the presence of two witnesses (Brasil, 2019, p. 1). At this point, the proposition is silent on the technique employed in data and file security of the encrypted archive (Dadalto; Faleiros Júnior, 2019, p. 17). In addition, the participation of witnesses is questionable for the reasons abovementioned.

Regarding the digital heritage, the project provides that videos, photos, books, passwords for social networks and other elements stored exclusively on the internet do not require witnesses for its validity (art. 1881, § 4) - (Brasil, 2019, p. 1). It does not appear appropriate that digital inheritance should be treated alongside the codicil, even because it traces guidelines on small value goods. Perhaps with regard to digital heritage (whether its own legislation is relevant or an amendment to the chapter on inheritance and administration), it should be acknowledged in the Brazilian Civil Code.

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[12] The proposed wording of the caput of art. 1881 of the Civil Code is as follows: "Art. 1.881. every capable person of testing may, by private instrument, make special provisions about his burial as well how to allocate up to 10% (ten percent) of its equity, observed the time at the opening of the succession, to certain and determined or indeterminate people, as well as bequeathing furniture, real estate, clothing, jewelry among other tangible and intangible goods” (Brasil, 2019).

The proposal of the provision of art. 1881, § 5, allows the use of the Brazilian language of signals (Libras) in the recording of video or any other mode of official communication (Brazil, 2019, p. 2). This is a debatable change, considering that the Law 10.436 of April 24, 2002 recognizes Libras and other language resources to it associated as a legal means of communication and expression (Brasil, 2002). One systematic interpretation of current law would be enough to admit this understanding.

Finally, the justification of the Project argues that the digital codicil will bring benefits to Brazilian society, covering greater access to the right of successions (Brasil, 2019, p.4), which seems reasonable despite the objections made to the proposition.

4 PROJECTING TEACHING SUCCESSIONS FROM LITERATURE

Generally, knowledge of law is acquired through abstraction, from presentation to debate on concepts and classifications. It is easy to verify this flipping through a civil law textbook.

This happens because many courses are based on the teacher's style of exposition, whether at undergraduate or advanced levels such as specialization, masters and doctorate, in which students are more encouraged to debate abstract notions and to think about their concrete application (Sundfeld; Palma, 2012, p. 168).

This article seeks to encourage law professors, especially those who teach civil law to abandon this kind of practice. It presents an example of an approach on "verba testamentária" through the law *in* literature, which allows the learning of law to be, to some extent, sensory.

Classes that allow students to work with literature are capable of generating richer and more complex knowledge about legal experience, in addition to allowing the development of skills and abilities, which can be an encouragement for a course in dogmatic and well as legal research.

Traditional legal discourse has stereotyped reflection making it self-centered, which compromises cognition by avoiding questioning and dialogue with different meanings of the legal phenomenon (Warat, 2002, p. 337).

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This understanding can proved by the absence of significant advances in the traditional teaching models, centered on the figure of the teacher, which gave rise to the distance between the courts and the university, between theory and practice (Espindola; Seeger,2018, p. 99). The epistemic displacement contributes to a conceptual dismantling and prevents the mediation between theories such as Law and Literature. If allowed, this mediation comes off as pasteurized (Warat, 2002, p. 339).

One way to overcome this state of affairs is to adopt approaches that provide training in a balanced way, consisting of: a) legal knowledge – technical and practical - with ethical, theoretical and methodological foundations; b) teaching, research and university extension; c) interdisciplinary and multidisciplinary knowledge.

These criteria bring out the complexity of human understanding and end up humanizing the Law, considering that the overlap between Law and Literature can bring significant changes (Espindola; Sangoi, 2016, p. 51).

An authentic reform of thought is urgent, involving integrative mentality in which not only the university but also legal education contemplate a space for problematization (Espindola; Sangoi, p. 42), especially in the scope of legal education.

For all these reasons, learning should not follow the organizational standards that manuals and theoretical studies offer. A successful civil law course is not one that organizes a fixed set of concepts and classifications in students' minds. A great civil law course should be capable of: a) familiarizing students with the use of technical language, with its dynamism and its contradictions; b) make them understand how everyone involved with the legal field act and think; and c) enable them to take action autonomously as legal parts of a larger picture (Sundfeld; Palma, 2012, p. 170).

To achieve this, the class must necessarily make an immersion in the legal experience, taking it in as a process, not as a product (Warat, 2002, p. 343). Therefore, it can be useful as an introduction to a topic, to debate a literary work or to read something that situates the normative locus in a more broad way, explaining its origin and relating it to other norms, showing its applications.

A class like this requires prior preparation of the teacher in a personal effort to understand a very complex situation. Previous reading of the literary text is essential. A strategy to encourage student participation in the classroom is to demand that they do (individually or collectively) previous written work, based on the reading of stories (Sundfeld; Palma, 2012, p. 176, adapted). This approach force students to handle the material more carefully. They can prepare a text or a written answer, fostering their own reflections based on other people's ideas (Marchi, 2009, p. 227).

The combination of previous written work with subsequent discussion can do wonders. With the opportunity to reflect in more depth about the main aspects of the debate, students can feel more secure to present their arguments in the classroom (Sundfeld; Palma, 2012, p. 176), renouncing those who are proved to be unfounded (Marchi, 2009, p. 228).

However, it is not always feasible to work with literary texts integrally, as they can be hundreds of pages long. The teacher must do a selection of the parts whose reading is necessary (Sundfeld; Palma, 2012, p. 176, adapted). On the other hand, a poorly chosen text can undermine the possibility of success of the class, as it does not instigate preparation prior to the debates and subtracts the emotion necessary to a participatory class (Sundfeld; Palma, 2012, p. 176).

For this kind of activity, preliminary information is needed which can be done through evaluation of doubts and observations. It is not necessary to present a long theoretical system. This is something students have to learn, which makes it essential to always read, go to libraries and be around books (Sundfeld; Palma, 2012, p. 171). It is necessary, therefore, to seek inspiration in movies, music, paintings, photographs, poems, dreams, random conversations, architecture, street signs, trees, clouds, light and shadows, among other things (Kleon, 2013, p. 21).

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From this point on, students can face the normative texts without ignoring their layers of meaning, including symbolic ones that leave their traces in legal institutes. This can contribute to authentic learning.

These questions lead to constant rethinking about the challenges of legal education, as well as future actions. Without a doubt, researching and reflecting on the teaching process is challenging. In the case of Brazilian civil law, this difficulty is explained by the use of two criteria in the Civil Code, namely: a) if the law of successions intends to meet the factual, sociological reality; b) the right of obligations and things are thought of from strictly legal categories. This split is maneuvered by the legal system for the feasibility of its application and predictability of decision, which points out the susceptibility of succession law to circumstances of life in society (Canaris, 2002, p. 26).

However, inheritance law has been on the sidelines of the reconstruction of the Brazilian civil law. Perhaps this difficulty resembles civil liability; both institutes seem to drain all the problems of civil law. That is dangerous ground because it constitutes very reductive, mechanistic thinking, which empties the language and authorizes will (Espindola; Sangoi, 2016, p. 44).

These problems along with the growing internationalization and virtualization of law and legal careers, impose on jurists the challenge of understanding the particularities of varied legal experiences, without prejudice to employment for analysis of proposals for regulatory harmonization, for the improvement of legislative techniques (Cortiano Júnior; Ramos, 2015, p. 43) or jurisdictions that comply with the legal thought to apprehend (Catalan, 2010, p. 147). (Catalan, 2010, p. 147).

Finally, all these difficulties must be solvable in different ways. This is where creativity plays a central role, which differentiates it from a strictly technical, empty approach.

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