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**AURELIA CAMARGO: A FEMALE SUBJECT OF LAW AND
LANGUAGE – THE LEGAL SPEECH IN THE NOVEL
SENHORA, BY JOSE DE ALENCAR**

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ABSTRACT: This article aims at problematizing what the fictional legal discourse in the literary narrative *Senhora* reveals about the apparent empowerment of Aurelia Camargo, who is, in a tense relation of subjection, the protagonist of the novel, a female subject of law and language. To do so, it is necessary to identify elements of legal discourse existing in the novel through the legal institutes and the gender roles in force at the time José de Alencar lived. The study uses hermeneutics and discourse analysis in a phenomenological and epistemological method. As a theoretical framework, the article is based on the relation that Foucault established between discourse and power and the premise that the legal and literary phenomena constitute fictional discourses, from the Theories of the Imaginary and of Poiesis / Poetics of Law, as well as the Law and Literature movement, under the theoretical postulates of Guerra Filho, Cantarini and Trindade, in addition to Bakhtin's contributions. It concludes by recognizing a juridical discourse in the novel *Senhora*, with a strong patrimonialist and patriarchist bias, which unveils expectations of behavior of the 19th century society. In addition, it demonstrates the protagonist as a female subject of law and language, whose constitution in these categories occurs from a male perspective with frustrated female empowerment.

KEYWORDS: law and literature; imaginary theory of law; poetic theory of law; José de Alencar.

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1 INTRODUCTION

From a theoretical framework on the intrinsic relation between law and literature and on the fictional nature of law, arises the possibility of analyzing the fictional legal discourse present in literature in order to understand not only the law, but society itself. Aiming at achieving the objectives it proposes, this work brings together the theoretical school of law in literature and the French tradition of discourse analysis. We believe that it is possible to analyze the legal discourses that are present in the literary universe, because, as we shall see later, legal discourse, whether literary or not, is fictional. We consider that the narrator, subject enunciator of *Senhora*, vocalizes the author and his time, according to Michel Foucault (1971), as he was a historically positioned person, a construct of language, subjected and objectified.

From the Foucaultian premise that discourse is a type of exchange, a dispute over power and of power, we question, in this work, what the legal discourse present in the fictional universe of *Senhora* reveals about the protagonist as a female subject of law and language, representative of the gender roles in force at the time José de Alencar lived. We use the Foucaultian notion of subject, understood as a being of language that is constituted in relations of subjection.

Thus, the objective of this work is to find out what the legal discourse present in the literary narrative of *Senhora* reveals about the apparent empowerment of Aurelia Camargo, who constitutes, in a tense relation of subjection, a female subject of law and language.

The research hypothesis to be ‘verified’ is that the novel *Senhora* points out a juridical discourse of patriarchy and patrimonialism and, in this bias, builds the narrative of apparent feminine empowerment by the acquisition of patrimony and consequent constitution as a female subject of law in the bulge of intricate relation of subjection. For this ‘verification’, the present article uses phenomenological hermeneutics and French discourse analysis, based on the authors Helena Brandão and Eni Orlandi, and the coexistence of methods is based on phenomenological pluralism.

In view of the relevance of José de Alencar’s work, according to Antonio Candido (2006), published through newspaper serials in the 19th

century and reaching a significant number of readers, the justification of the development of this research is the possibility of the author to have influenced, directly or indirectly, in dialectic relation, collective positions on, for example, the institute of marriage, a transversely presented theme in *Senhora*. Allied to this, the scarcity of papers that deal with the relation between law and literature, in the face of maintaining the Kantian tradition in the epistemological matrix of law³ and the perpetuation of uncritical dogmatism, reinforces the pertinence of this thematic approach, so as to produce, under the limitations of a scientific article, new views for law, besides the traditional studies with legislative, doctrinal and jurisprudential approaches, that cannot account for the complexity of the legal phenomenon.

This work starts by defining law as a fictional speech. It contextualizes the Movement Law and Literature, based on the production by André Karam Trindade, characterizing the theoretical branch of Law *in* Literature, and presents the theoretical framework of Imaginary Theory and poetics / poiesis of Law, by Willis Santiago Guerra Filho and Paola Cantarini. From that point on, it explains the need to use the postulates of discourse analysis formulated by Helena Brandão to extract, from the interpenetration between law and literature, considering the point of articulation of ideological processes and linguistic phenomena, the unveiling of the legal discourse with patriarchal and patrimonialist bias.

Afterwards, we analyze the discourse of legal institutes explored in the novel, such as the distinction between legitimate and illegitimate children, inheritance and guardianship. Also reviewed are period customs narrated in the novel, such as the 'counter sample'. The legislation of the time (Ordenações Filipinas - Philippine ordinations), as far as the narrative is concerned, are addressed. The imaginary theory of law and the feminine empowerment theory of Srilatha Batliwala are crucial for the analysis.

Special attention is given to the analysis of passages of the work, including dialogs of the character Aurelia about marriage. Here, we add to

³ The subject of law is bound up with the understanding of an individual capable of reasoning and acting freely, becoming subject to a juridical order, such as the rational Kantian man, by having a universal, necessary and *a priori* structure that necessarily organizes reality in terms of the forms of the sensibility and the concepts and categories of the understanding (Kant, 2003).

the discourse analysis of French origin, the resources of Bakhtin's theory of polyphony, and Michel Foucault's theoretical influxes about subjection. Finally, in the analysis of Aurelia Camargo, protagonist of *Senhora*, as a subject/subjected feminine character of law and language, gender reflections of Simone de Beauvoir and Pierre Bourdieu are brought up, in order to verify the hypothesis and to achieve the intended purpose.

2 LAW AND LITERATURE: FICTIONAL DISCOURSE

Concerning the proximity between law and literature, we borrow Lenio Streck's theory (2013), according to which law and literature, in revealing the presence of reality in fiction; also reveal how much fiction compounds our reality. From this one can deduce that from the literary narrative it is possible to infer social and gender patterns, as well as information about the legal system. It is also possible to conclude, with some assistance, as it is explained later in this paper, that the legal discourse itself is fictional. Concerning the proximity between law and literature, more remotely, we find an eighteenth-century idea in Jacob Grimm's *Von der Poesie im Recht* (1882, online): "It is not difficult to believe that law and poetry have risen up from the same bed"⁴.

As Guerra Filho and Cantarini (2015) assert, based on the understanding of law as a human creation, an understanding of the legal universe has been proposed in relation to the fictional one and, more specifically, to literature. In this line of thought, we find, as Guerra Filho (2010) points out, studies developed by the theorists who make up the Law & Literature Movement. Trindade (2012) presents the diversity of approaches⁵ of the Law and Literature Movement. Three strands are presented: Law in Literature, Law as Literature, Law of Literature. This

⁴ Originally, "Dasz recht und poesie miteinander aus einem bette aufgestanden waren, hält nicht schwer zu glauben".

⁵ The second strand, "Law as Literature", developed, according to the author, especially in the United States, is characterized by the application of methods of analysis and interpretation of literary criticism for the examination of texts and legal discourse, with the objective of analyzing the rationality of the constructions realized in the scope of the judicial decisions. Finally, "Law of Literature", not always considered as part of the Movement, but rather as a transversal approach that studies the intellectual property, copyrights, crimes against the press, freedom of expression, censorship and regulation of the exercise of the literary professional activity.

work is part of the Law in Literature approach, developed, according to the author, especially in Europe, and which is linked to the ethical dimension of the narrative and examines aspects of the problematic and legal experience portrayed in literature. It is understood as a literary work and “as a document of application of law and legal consciousness, based on the idea that the virtuality represented by the narrative makes it possible to reach a better understanding of law and its phenomena” (Trindade, 2012, p. 150).

In the line of productions that approximate the study between law and literature, we find the Imaginary Theory and poetics / poiesis⁶ of Law, by Guerra Filho and Cantarini (2015), which serves as the background to this work. The Imaginary Theory and Poetics / poiesis of law, as opposed to the rationalist tradition, come to understand law in its original and fundamental form, that is, the image, the imaginary. The authors emphasize that law has an imaginary character, being the way in which society knows the expected behavior of each one of its members. Thus, law does not deal with a simulation of what is real, but creates another reality, deontological in nature, with a mode of construction of its own. According to the authors, like fiction, as a collective dream, law is constructed by the human being, in a diffuse way, and endowed with a binding character. With this, law is attained to the conception of the possible, of the imaginary. Not by chance, Jacob Grimm (1882, online) pointed out: “Both [law and poetry] originate from two essentials, the fantastic and what we believe”⁷.

The fictional world, according to Guerra Filho and Cantarini (2015, p. 32), “is a world of reduced possibilities where one cannot know about what is not made known by those responsible for its creation”. The judgments formulated within the fictional universe, therefore, are different from reality itself, since in that universe one can only know what the authors of the works tell us, whether in literature or in law. With this, the question remains as to the reasons for this concealment. We believe

⁶ The Imaginary Theory and poetics/poiesis of Law highlight the autopoiesis character of Law and the necessary and indissoluble link between it and philosophy, theater and literature.

⁷ In the original, “Ihr beider ursprung beruhet auf zweierlei wesentlichem, auf wunderbaren und dem glaubreichen”.

that the reasons for concealment lie in ideology. In this work there is no room to deal with a complex theme such as ideology, but we borrow from the idea by Bernard Edelman⁸ (1976). According to the author, law occupies this unique place where it can sanction by constraint its ideology, which is hidden. According to Edelman, legal ideology does no more than legally specify the bourgeois ideology. From this clipping, we infer that the romantic literature of *Senhora* shows us an ideological vision of the bourgeois city of the independent country. If in Edelman (1976) bourgeois science of law lived because, perhaps literature gives us the key to understanding this form of law.

Thus, the interpenetration between law and literature ends up claiming for us the use of discourse analysis, which, according to Brandão (2004), understands language at the same time as formal and crossed by subjective and social inputs. This instance presents itself as a point of articulation of ideological processes and linguistic phenomena. Language as discourse, still in the same author's point of view, is neither neutral nor innocent nor natural: it is the "support system of ideological representations". Adding to this notion the understanding of Foucault (2015), for whom discourse is the space in which knowledge and power are articulated, therefore, the speaker speaks from somewhere, from an institutionally recognized law, and this discourse, which is seen as truth, conveys institutional knowledge and generates power, so we come to the conclusion that literary knowledge also conveys discourses, previously selected by its creators. This is what we look for in the analysis of the legal discourse present in *Senhora*.

According to Guerra Filho and Cantarini (2015, p. 41), in their interesting synthesis about law and fiction, "fiction is the truth of Law, and Law is the camouflage of power". If Law is the Power that camouflages itself, which is not assumed as such, it enacts a narrative, a fictionalized truth, in the speech that it enunciates. Once these premises have been established, it is possible to find out how the literary and legal narratives are present in the novel *Senhora*, which we analyze from now on.

⁸ The French philosopher and jurist deals with another form of narrative representation in his work *The law captured by photography: elements for a Marxist theory of law* (Edelman, 1976).

3 THE INHERITANCE NARRATIVE

The story is conducted under the perspective of Aurelia Camargo, protagonist of the novel. The requirement of her condition of subject, which will be further clarified in this section, is driven by a legal phenomenon: the inheritance law. With this, research on legal concepts and customs of the Second Empire of Brazil is needed. Heidegger (2005, p. 45) says: “Time is the starting point from which the present always understands and interprets the being”. Therefore, our analysis of *Senhora* is dated; it is a synthesis of what was when the work was written, delivered together with what the present interpreter, permeated by historicity, apprehends of the analysis object. Having said that, let us turn to the analysis of the work by José de Alencar.

Aurelia is the daughter of Emília Lemos and Pedro de Sousa Camargo. Pedro de Sousa Camargo is the so-called “natural son” of Lourenço de Sousa Camargo. This category comes from the Philippine Ordinations, and referred to a kind of illegitimate child, who was born of single people or widows (Almeida, 1870). Under the law, the natural son of a noble father would not be considered in the open succession if not supported by a will, nor could he compete with the legitimate children of the deceased or with any of his ascendants, having only the right to be fed.

Pedro de Sousa Camargo, the natural son who later became the father of Aurelia Camargo, studied medicine at the expense of his father, who, in the words of the narrator (Alencar, 1999, p. 85), “did not recognize him, which was of the utmost importance, since, in addition to the existence of the farmer’s mother around Minas [ascendant of the author of the inheritance], the subject was still robust and could well marry and have legitimate children”. Excerpts like this reveal how the juridical discourse permeates the literary narrative of Alencar. In the light of the Imaginary Theory of Law it is possible to perceive that the law has a fictional sense, being a product of desire. The distinction between children, in force at the time and abolished by the 1988 Constitution⁹, is nothing more than legal fiction, with the specific aim of perpetuating patriarchal and patrimonialist

⁹ According to Article 227, paragraph 6, of the current Constitution, “children, whether or not they have been fruit of marriage, or by adoption, shall have the same rights and qualifications, prohibited any discriminatory designations related to mother or fatherhood”.

bourgeois ideology, inasmuch as classifying offspring as illegitimate is a typical form of controlling female sexuality and the presumption of paternity of the children who have been married for succession purposes.

The patrimonialist bias regarding the illegitimate son is extracted from the work, among other excerpts, in “[...] Pedro Camargo was a natural son as yet unrecognized; his future depended exclusively on the will of his father, who could abandon him as a stranger, leaving him reduced to indigence [...]” (Alencar, 1999, p. 88). We note in these excerpts that the literary narrative – whose synthesis is necessary to situate the protagonist that will be the object of analysis – informs us legal institutes in force at the time.

The passages cited also allow perceiving that the patrimonial question is central to the unfolding of the narrative and the formation of the character’s personality. A natural son (illegitimate son of a single person or widow), Pedro Camargo, when dying without recognition of his father, leaves his daughter Aurelia growing helplessly. With the death of her father, and in the face of her mother’s health problems, Aurelia exposes herself to the window in an attempt to arrange marriage, being subjected to vulgar gallantry, and receives the proposal of her uncle to become a prostitute. Here we see the patriarchal bias in two juridical-social practices in force at the time, unveiled by the plot: the exhibition of the woman at the window (Alencar, 1999, p. 93), and the arranged marriage. Marriage is fundamental for the conversion of Aurelia to a *Lady (Senhora)*, with all the nuances of meanings that this brings in the novel, from its title and original subtitle: “Senhora: perfil de mulher”, meaning “Lady: the profile of a woman”.

The practice of exposing the woman to the window had the sense that she was single and available for marriage proposals in order to get the attention of men passing by. According to Cida Golin (2002), there was a special meaning in the private windows for Carioca women of the nineteenth century, real “cabins of public events”, because they indicated the distance of the subject from certain events considered collective and comprehensive by the official record of history.

The arranged marriage corresponded, as Renato Drummond Tapioca Neto (2014) explains, to a kind of social contract among the white elites, with the specific aim of elevating or maintaining the economic status

among the families, which in *Senhora* appears as a licit form of political and economic ascension of the groom, through the dowry granted by the bride.

In Book V, Title XXII of the Philippine Ordinances (Almeida, 1870), it is clear that the matrimonial arrangements were so strongly controlled that, in case the parties married without parental consent, they could be disinherited, that is, they would lose their succession rights, a penalty that would only be hindered if the applicant were of a better condition than the one chosen by the parents (denoting the strong patrimonialism of the legislation).

Mentions of the “counter sample” and the arranged marriage give us an idea about the gender roles prevailing in Imperial Brazil. The feminine figure is associated with that of the object available in the matrimonial market, a figure capable of generating wealth, which relegated personal will (and even love, an ideal vastly worked in Romanticism, a literary school in which *Senhora* is inserted) to second place in the basis of patriarchal thinking. These institutes corroborate the Imaginary Theory of Law, revealing the juridical phenomenon through Literature, insofar as the expected behaviors of the members of the society of the time reveal themselves as collective and semiconscious dreams – the ideal marriage, the ideal woman, and the life projects of the members of the bourgeois families in the capital city of the Empire.

After the death of his mother, Aurelia was surprised by the correspondent of his late paternal grandfather, Lourenço, with whom she had reconciled. In the correspondence, Lourenço recognizes the father of Aurelia as his son and makes Aurelia his heiress. The narrator (Alencar, 1999, p. 117) exposes a true stratagem for a granddaughter from a natural child to become heir:

The paper contained the will in which Lourenço de Sousa Camargo recognized and legitimized as his son Pedro Camargo, who had been married to D. Emília Lemos; declaring that her granddaughter, D. Aurelia Camargo, *born of a legitimate marriage*, instituted her sole universal heir (highlighted by us).

It is possible to highlight the fact that Aurelia was born of a legitimate marriage as a legal condition to become an heiress, from which the patriarchal content of the narrative is extracted. Two distinctive discursive formations are unveiled here: Alencar emphasizes the legitimacy of

marriage as an institution of legal and social definitions of relevance and status, while making inheritance a construct of empowerment, that is, equity becomes a possibility for the female assumption. We return here to Edelman's (1976) idea, in order to relate it to the work under analysis. Marriage, and therefore law, ends up functioning ideologically, legally specifying the bourgeois ideology.

The notion of empowerment to which we refer is linked to the process of challenging existing power relations and gaining more control over sources of power, according to Batliwala's (1997) theoretical postulates. This understanding, which pervades individual affirmation, collective resistance, protest and mobilization to challenge power relations, comprises the recognition of the systemic forces that oppress and the action to change them. According to Batliwala (1997), women's empowerment challenges patriarchal ideology, male domination and subordination of women, as well as strives to transform structures and institutions that reinforce and perpetuate gender discrimination and social inequality and empower poor women to have access and control of material and information resources. This phenomenon, with Aurelia Camargo, did not happen in full. Although there is an individual affirmation of the challenge of the existing power relations, it is not possible to recognize the systemic forces of feminine oppression and masculine domination. The position of Aurelia is peculiar and individual, lacking, in the work, elements that demonstrate the collective resistance, the protest and the mobilization. Considering the prevailing ideological influxes at the end of the nineteenth century, it is to be recognized that a phenomenon of empowerment, even if frustrated, occurred with the protagonist of *Senhora*.

With the acquisition of the inheritance, the relatives of Aurelia Camargo immediately approach the protagonist, and, while she was bashful, her uncle Lemos would arrange from the judge of orphans the appointment of tutor of the niece. Aurelia accepts the idea of having a tutor she could command. In the words of the narrator (Alencar, 1999, p. 117): "At first impulse, Aurelia thought of revolting against this appointment, showing the judge the infamous letter that her uncle had written to her; but in addition to disgusting the scandal, she smiled at the idea of having a mentor whom she could domain".

On the acquisition of assets, the author (1999, p. 117) states:

The wealth, which came to her unexpectedly, lifting her suddenly from the indigence to the opulence, operated in Aurelia a rapid transformation; it was not, however, in the character or sentiments there was a revolution; these were unalterable, had the fine temper of her heart. The change was consummated only in the attitude, if we may express ourselves, of that soul before society.

Aurelia Camargo became an important figure of “society”, thanks to the inheritance acquired. But it was necessary to show off, in an institution, her role before the elite of Rio. For that, Alencar appealed to marriage.

4 THE MARRIAGE NARRATIVE

The institute of marriage, on which the present work is based at this moment, is treated, in the first chapter of the first part of *Senhora* (“The Price”), through four expressions. The narrator (Alencar, 1999, p. 17) mentions that Aurelia would give suitors “a certain monetary value”, which “quoted their worshipers for the price they could reasonably obtain in the marital market”, that those who woo her “the game that often resulted from the goodwill of his actions in that nuptial enterprise”, and also that if the suitor did something to the girl’s satisfaction, satisfying her fantasies, she “raised the price”. What all these expressions have in common is the patrimonial character of the institute of marriage in the Brazilian social and juridical system of the second half of the nineteenth century and, consequently, in the representation offered by the literature of Alencar.

In Title XLVI of Book IV, named “How husband and wife are sharecroppers in their property”, the Philippine Ordinations describe modes of marriage (Almeida, 1870, online): one, by which “[...] husband and wife are married at the door of the Church, or for a prelate’s leave outside it, if there is a fleshly intercourse, they will be sharecroppers in their property and lucre [...]”, and another, which today most resembles a stable union, by which “others will be sharecroppers, proving that they have been at home in the house and in the house of their father, or in another, in public voice and fame of husband and wife for so long, that according to law it suffices to presume Marriage [...]”.

Normativity, when shedding light on marriage, gave it remarkably patrimonial tones. Flávia David Vieira and Edvania Gomes da Silva (2015) observe the absence of an exclusive chapter to regulate the institute and the emphasis of legislation on the repercussion of property of marriage, since Title XLVI was adopted in the property regime of the Charter in half, which would be equivalent to safeguarding the specificities of current treatment and universal communion of goods, limiting the legislative instrument to the regulation of goods and obligations between spouses, skewed by notions of Catholic religiosity. Such sacramentality is represented in the marriage ceremony that appears in the novel, when the jurist novelist introduces the element of inheritance law. In a symbolic dimension, Aurelia, in Alencar's work (1999, p. 76), announces, "[...] It is not so extravagant what I do now, because the will is also part of the confession". And she goes on: "[...] I want to take advantage of this moment when I am still a mistress of myself and my wishes, to declare the last, which was also the first of my life". The narrator justifies the reason for such an act:

The association of two such opposing acts, the dawn of existence and the farewell; the idea of death entwined in that youth so rich in all the garments; the bridal garland girding a forehead to faint; this contrast was to leave a deep impression on the mood.

The institute of marriage, although more socially ritualized than legally regulated, has a special meaning for women in the Brazilian bourgeois family since the nineteenth century, as Maria Ângela D'Incao (2001, p. 229) explains:

[...] Married women were given a new role: to contribute to the family project of social mobility through their position in the halls as hosts and in daily life, in general, as model wives and good mothers. Increasingly, the idea that being a woman is to be almost entirely dedicated and caring mother, an ideal that can only be fully achieved within the sphere of the "bourgeois and sanitized" family. The mother's care and supervision are greatly valued at this time, and the idea that it is very important that the mothers themselves take care of their children's first education and not let them simply be released under the influence of nannies, slaves or "strangers", "brats" of the street.

In *Senhora*, however, there is a reversal of this logic, even if it does not become definitive. Aurelia Camargo, formerly in love and denied by Fernando Seixas, who had changed her for Adelaide Amaral, for purely

economic pretensions, begins the execution of her project of revenge. She negotiates her own marriage and proposes to Seixas the dowry of one hundred thousand *contos de reis*, imposing the condition that the identity of the bride would not be revealed to him until the matrimony. Fernando Seixas, in the face of such amount, accepts the conditions of Aurelia, which reinforces, in dialogues with her spouse, her negotiating position even after the bond, as the patrimonial character of marriage, which is an instrument of her ongoing empowerment, in a demonstration that the law is the camouflage of power.

Let us look at excerpts from the dialogue on the wedding night, which is offered to us by the narrator (1999, p. 80):

- So you never loved the other one?
- I swear to you, Aurelia. These lips never touched the face of another woman, other than my mother. My first kiss of love, I kept it for my wife, for you ...
Rising to meet her face, Seixas did not see the sudden mutation that had taken place in the face of his bride. Aurelia was livid, and her beauty, radiant just now, had been marred.
- Or a richer one! She said, withdrawing to escape her husband's kiss, pushing him away with her fingertips.
The girl's voice had taken on the crystalline timbre, echoing the harshness of the feeling that rocked her breast, which seemed to ring on her lips like steel.
- Aurelia! What does this mean?
- We play a comedy, in which we both play our part with consummate skill. We can have this pride, that the best actors would not exceed us. But it is time to put an end to this cruel mystification, with which we are mocking each other, sir. Let us really enter into reality, however sad it may be; and resign ourselves to everyone what we are, I, a woman betrayed; you, a sold man.
- Sold! Exclaimed Seixas wounded within his soul.
- Sold yes: it has no other name. I am rich, very rich, I am a millionaire; I needed a husband, an indispensable commodity for honest women. You were in the market; I bought you. It cost me a hundred contos de reis, it was cheap; did not assert yourself. I would have given double, triple, all my wealth for this time.

This dialogue demonstrates, in various parts, the patrimonialist notion that Alencar's work reveals to us and that, in the face of the polyphony of the subject, Mikhail Bakhtin's notion that we will develop in the next topic, is shown as the voice of the society of Imperial Brazil. The kiss of love would be kept for the richer, as Aurelia argues, which, in

qualifying the subjects of the relationship, imposes a predication of commercial denotation on her husband: a sold man. At the same time, she qualifies him as an indispensable fret – that is, marriage was a taxing necessity at the time. It was through the marriage bond that the woman could, in any case, be considered a true member of “society”. Man, therefore, was indispensable to the constitution of the female subject, even though it was a “fret”. Afterwards, the emphasis on the commercialization of the conjugal relationship is wide open: Seixas was in the market and was bought by Aurelia, who would not measure patrimonial efforts to appear like dominant entity of the relation.

The narrator reports the thoughts and feelings of the characters, for example with Fernando Seixas: “Marriage, as long as it did not bring him a brilliant position and wealth, was nothing less than a disaster to him” (Alencar, 1999, p. 111). Thus, for the masculine subject, marriage was also a pressing need, a social obligation of the time.

Elsewhere in the work, divorce, an institute imbricated to marriage, is presented under bias that reinforces the condition – even if reversed, at the end of the work – of the woman’s subject. Although she had mentioned it since the wedding night, stressing that there would be a fear of the scandal that the divorce would cause, the position that the protagonist assumes, of at all times reaffirming her condition of the subject of the marriage, finding a husband who, simultaneously, had the obligation to obey as a servant and fulfill the social role of husband, makes the relationship between them quite tense at various times. Let us see how the narrator (Alencar, 1999, p. 175-176) deals with the theme in a dialogue of the couple:

- Our destinies are bound together forever. Luck refused me the happiness I dreamed. I had this whim that no other would possess, as long as I live. But I do not intend to condemn you to the torture of this existence, which we have lived for more than a month. I do not hold it; it's free; spare your time as you please; You do not have to give me accounts.

The girl paused, waiting for an answer.

- Do you want to be alone? asked Seixas. Command, that I withdraw, now as at any other time.

- You did not understand me. There is a way of relieving you of the weight of this chain that binds us fatally and of

sparing you the constant outbursts of my eccentric genius. It's the divorce I'm offering you.

- The divorce? exclaimed Seixas briskly.

- You can treat about it anytime, Aurelia answered in a steady tone, and walked away.

From then on, Seixas intensifies the search for his “freedom”, while the romantic ideology makes the sentimental involvement of the characters more and more intense. When he finally manages to raise enough income to cover the dowry, Alencar's patriarchal legal discourse reveals itself. Seixas annuls the dominance of the protagonist on him and assumes the condition of main subject of the conjugal society. According to Tapioca Neto (2016, online): “[...] Alencar returned his characters to the roles pre-established by the nineteenth-century patriarchal order. Aurelia, before the Lady, rejected the position of dominant element of marriage in order finally to be subjectivized as a dominated element [...]”, a phenomenon that is presented, for example, in the following excerpts from the work of Alencar (1999, p. 242):

- Well, now I kneel at your feet, Fernando, and I beseech you to accept my love, this love that never ceased to be yours, even when it cruelly offended you.

[...]

- The one who humiliated you, here you have it down, in the same place where you have been outraged, in the wrath of your passion. Here you have her begging for your forgiveness and happy because she adores you, as master of her soul.

We understand, in this point, to refer to the theoretical influxes of Foucault (2015), to which the subject suffers the subjecting, through the ideological phenomenon. In Orlandi's analysis (2006), ideology subjects the individual, and does it by appealing to through the discourse. In the narrative of marriage in *Senhora*, the dominant juridical, patriarchal ideology, of which José de Alencar figures as an exponent – both in law and in literature – ends up subjecting Aurelia Camargo, who, driven by revenge, renounces her condition of empowerment in progress, frustrating it, and is relegated to the condition of a woman of the bourgeois from Brazil in the nineteenth century, as a dominated woman by her spouse.

5 AURELIA CAMARGO: FEMININE SUBJECT OF LAW AND LANGUAGE

After addressing the narratives of inheritance and marriage, it is up to us to investigate what the discourse by Alencar reveals about Aurelia Camargo in order to verify the initial hypothesis of this work, that the novel *Senhora* reveals a juridical discourse of patriarchal and patrimonialist order and, in this bias, constructs the narrative of apparent feminine empowerment by the acquisition of patrimony and consequent constitution as a female subject of law by means of intricate relations of subjecting. The relevance of the research is reiterated, given the analysis of the legal discourses present in literature, which serve to understand the law and society, given the interrelationship between law and literature. After all, as Hans-Georg Gadamer (2015) points out, the work of art is a game that is only complete when welcomed by the viewer.

The understanding of legal discourse in the Romanesque universe allows us to know more about legal institutes and past gender patterns in society. We attach to this understanding the comprehension that feminine identity is a historical-cultural construct, whose process is developed by Beauvoir (2009, p. 79):

The world always belonged to males. None of the reasons they proposed to explain this fact seemed sufficient. It is by reviewing in the light of existential philosophy the data of prehistory and ethnography that we can understand how the hierarchy of the sexes was established. We have already seen that when two human categories are present, each of them wants to impose their sovereignty on the other; when both are in a state of sustaining the claim, a relationship of reciprocity is created between them, whether in hostility or friendship, always in tension. If one is privileged, one dominates the others and does everything to keep them in oppression. It is understood, therefore, that the man has wanted to dominate the woman.

In addition to the enslavement of women to the generative function, which limits their participation in the construction of the world, because it is focused on domestic work, the economic privilege of men, the social value they occupy, the prestige of marriage, the usefulness that male support represents, everything ends up impelling women to the ardent desire to please men. The vassal situation of the woman remains as a servant in a feudal society. As a consequence, the philosopher points out (2009, p. 155):

[...] The woman knows herself and chooses herself, not as she exists for herself, but as the man defines her. We must therefore first describe her as men dream, since their being-for-men is one of the essential elements of their concrete condition.

In *Senhora*, we see how the identity building of the character Aurelia is shaped by men: the poor orphan who exposes herself out the window because of her grandfather's non-recognition, the romantic and dreamy girl's personality to the vengeful Lady version and then, a vulnerable suppliant of the love of Fernando Seixas.

In the process of composing the feminine identity, Hannah Arendt (2007) emphasizes that it is the task of man to maintain the individual and, consequently, the survival of the woman. With this, there is an idea of male superiority and female inferiority, relegating women to subaltern status, not having historically constituted themselves as subjects. Tereza Cristina Pereira Carvalho Fagundes (2003) points out that also from the perspective of the theory of law the patriarchal argumentation for establishing and maintaining power is constructed. The feminine identity is diminished and is inscribed in the relations of exploitation and in the sensibility of people, perpetuating the movement in a symbolic domination, as pointed out by Bourdieu (2014).

In order to verify whether Aurelia Camargo, a female character and therefore inserted in the spectrum of symbolic domination, could be considered as a subject of law and subject of language, we must explicit the meanings of these categories. Traditionally, the subject of law appears as being endowed with reason, owner of his / her actions. According to Kelsen (2006, p. 191), "traditional theory identifies the concept of legal subject with that of person. Here is his definition: a person is the *man* as a subject with rights and duties" (highlighted by us). The subject of law, rational and universal, is linked to the understanding of an individual able to reason, to act freely and to dominate the objects of the world, becoming subject to a legal order. For Miguel Reale (2002), man (and we must emphasize the preponderance, in the language, of the employment of the male gender as the generalizing one) is endowed with the duty of fulfillment or the power to demand, or both.

Under the light of the Imaginary Theory of Law, we understand that the legal phenomenon is revealed as the way in which society knows the

expected behavior of each of its members. The legal discourse present in *Senhora* allows verifying the expected behavior of the woman of the 19th century. Aurelia embodies the representation of the feminine and the romanticized rationality – the novel is inserted in Romanticism. It is interesting to observe the limitations imposed by the Law to the full and autonomous exercise of reason to the female subject represented by the character. In the novel, this is evidenced when it is necessary for Aurelia to use the contribution of the figure of her tutor, Mr. Lemos, to perform various legal acts. Despite this representation of the female subject of law, Aurelia denotes knowledge of the rights to which she is entitled, even if limited to her conditions as a woman, orphaned and protected. This is what we extract, for example, from the dialogue that she has with her tutor:

- Forgive me, my uncle, I do not understand your figurative language. I tell you that I have chosen the man with whom I shall marry.
- I understand. But you see! ... As a tutor, I have to give my approval.
- Certainly, my tutor; but this approval you will not be so cruel as to deny it. If you do, which I do not expect, the orphan judge will fill it.
- The judge? ... What stories are these that are going through your head, Aurelia?
- Mr. Lemos, the girl said quietly, and with a cold stare at the old man's perplexed glance; I've completed nineteen years of age; I can now require an age supplement showing that I have the ability to govern my person and property; I shall most certainly obtain from the orphan judge, in spite of your opposition, a license to marry whom I choose. If these legal arguments do not satisfy you, I shall give you one that is personal to me (ALENCAR, 1999, p. 29).

Considering that José de Alencar brings to the plot his legal knowledge and the character Aurelia was under 21 years of age, it is interesting to observe the legal determinations to which she would be subjected at the time. The Philippine Ordinances (Book I, Title LXXXVIII, §§ 19 and 27) would determine to Aurelia the necessity of a legally constituted adult, as her responsible, to give her permission to marry (a requirement made also for men, since the legal text referred to the “orphans”). With the death of her parents, such permission could be given by her guardian, assigned by the Judiciary. If her guardian filed an objection, Aurelia could still apply for the age supplement (authorized from the age of 18), similar to the provision of the current emancipation,

provided in Book I, Title LXXXVIII, §§ 27 and 28, instrument by which could confirm her ability to govern life independently. In this case, it would be necessary to produce testimonial evidence, and the demand would still pass through the screen of the General Custodian of Orphans, who interceded in the deeds that involved the interests of minors and unable, according to Book III, Titles XLI and LXXV of Philippine Ordinances. It was, however complex, possible, and this is what the protagonist's speech externalizes: she had knowledge of legal institutes and procedural mechanisms, acquiring a rationalist subject's vision.

- That means that if I had a guardian who opposed me and fell into my displeasure, upon reaching the age of majority I would not give him a payment, without first passing an examination in the accounts of his administration, to which fortunately I could arrange both lawyers and book-keepers.
[...]

- In this case, instead of killing patience and bothering me with bills and accounts, I have it done well. Even more, I know that tutelage is free, but it should not be so when orphans have more than enough to reward the work they give. (ALENCAR, 1999: 30).

When marrying, however, such independence would be reduced: women owed marital reverence (since according to Book IV, Title XCV of the Philippine Ordinances, the husband was the head of the couple) and could even be punished corporally, just like the children and the slaves (Book V, Title XXXVI, Philippine Ordinances). It is interesting to note that in the light of the law of the time, an orphan who got rid of the guardianship is more autonomous than a married woman.

For Bakhtin (2009), the constitution of the subject takes place in the interaction with the other, when the subject is then completed. This subject, influenced by ideology, remains in a dialogical articulation, constituted by the other and constituent of the other. For Bakhtin, subjects inhabit and are inhabited by different voices. The verbal interaction is the space of constitution of the language, allowing that, when we dialog with each other, we participate in the process of constitution of subjects. The other of the subject is a "we".

In the representation of Aurelia, the construction of identity as a subject is possible only when she relates to her husband Seixas: the plot emerges when she uses the inheritance acquired in order to reach the other,

and, after she got him, she becomes complete, when she relegates to the other the conduct of her future as a subaltern wife. Nevertheless, the rich lady, who could have had the age majority document, becoming able to regulate her life autonomously, chose, in a behavior expected by the members of society (as is proper to the legal phenomenon, in the light of the Imaginary Theory), the way of marriage.

The Lady subjects herself in the relation with the other, object of her desire. For Foucault (2006), the subject is formed in one's subjection, which allows constructing one's identity, since submission is the first condition for the possibility of existence. Even the transient submission of Fernando Seixas to Aurelia serves to "create the idea of woman as a being whose fullness would reside in her relationship with a man, building an identity centered only in him" as well observes Ana Carolina Eiras Coelho Soares (2010). Foucault (1985) demonstrates that sex is a determinant and fundamental component of identity. Recalling the ideas of Culler (1999), the idea of sex is also constructed in literature. To give up the autonomy to be constituted as a married woman, as Aurelia does, means to construct an identity that is defined in relation to the other according to the gender roles imposed by ideology. Ideology that, according to Althusser (1980), represents the imaginary relation of individuals with their real conditions of existence, transforming individuals in subjects, when they are subjected in practices regulated by ideological apparatuses.

This movement is clear in *Senhora*, in the marriage relationship of Aurelia and Seixas, but also in her assuming "masculine" characteristics to support the family. The narrator (Alencar, 1999, p. 91) tells us: "Nature endows Aurelia with the living and brilliant intelligence of the woman of talent, who does not reach the vigorous reasoning of man, has the precious ductility of to be open to all matters, however diverse they may be". Culler (1999) points out that literature provokes the identification of the reader with the characters and helps in the formation of their identity – in a joint interpretation of this understanding with the one brought to us by Bakhtin (2009), we can infer that literary works reveal interactions between reader and writer through shared world representations, which produces, in the construction of the reader's identity, echoes of the voices of the fictitious figures. The identification of the character with the reader

is sought by Alencar (1999, p. 92-93): “Like all women of imagination and feeling, she found within herself, in the schisms of thought, the dawn of her soul that is called whim, and which gilds the horizon of life with its sweet light”.

It is important to mention the question of the search myth, presented by Ellen H. Douglas (1990). The patriarchal tradition brings the notions of the hero who conquers his goals and the passive heroine. The woman, the other of the hero, builds her identity from the masculine entity that finds her. According to Ana Carolina Eiras Coelho Soares (2010), in *Senhora*, this myth takes place in reverse. However, this search is not a feminist one, but merely a feminine one, because, although performed by a woman, the patriarchal structure remains.

In light of the aforementioned theoretical frameworks, we realize that the fictional narrative elaborated in *Senhora* exposes behavioral expectations of members of the Brazilian nineteenth-century society through literature. With this, it reveals a legal discourse in which power and law are articulated and constitutes the protagonist as subject of language and feminine entity of law, as it subjects her in the relations of power with the other, crossed by ideology, a phenomenon that crosses the figure of the tutor, the condition of the female sex, the empowerment in progress, conquered through patrimony, and the frustration of this empowerment due to the opposite sex (amorous revenge) and her resignation as a plea for love.

6 FINAL CONSIDERATIONS

The approximation between law and literature is possible because both areas reveal fictional discourses. Like literature, law has an imaginary character, as well as represents the way in which society knows the behavior of its members. In both, the fictional dimension of discourse represents reduced possibilities, whose reality only allows one to know what the authors of the works tell. In doing so, they conceal what their creators wish to be concealed – the very rationale of legal ideology.

In this perspective, the present work was inserted in the field of “law in literature”, since it examines aspects of the problematic and legal experience portrayed in *Senhora*, perceiving the virtuality of the work as a catalyst for understanding the legal phenomenon and its discourses,

institutes and procedures, finding out the legal discourse that reflected gender roles in the institutes in force at the time José de Alencar lived.

Literature being the *locus* of playful work with language, and this, understood as formal and crossed by subjective and social inputs, we perceive in *Senhora* the articulation of ideological processes of the author. With support in Foucault and Guerra Filho, we can see that the literary work conveys discourses, articulating knowledge and powers. The law camouflaged patriarchal power, staging the fictionalized narrative of Aurelia's truth. In *Senhora*, this phenomenon was revealed in the narrative of inheritance, which presents legal-fictional distinctions between children, and, in the testamentary succession, also camouflaged, surprises the heiress. We thus perceive the gears of the juridical phenomenon, which perpetuate the ideology of the ruling class and legitimize its privileges and powers.

The intertwining between the themes of inheritance, matrimonial and constitution and realization of the subject and the female profile are the most interesting aspect of the plot. From the inheritance rights, the negotiation runs through the marriage of Aurelia and Seixas and flows to the social ascension of the woman and her subjecting to become a married woman. Thus, *Senhora* is a fruitful example of how, through literature, law is revealed as an instrument of knowledge of the expected behavior of each of its members, as advocated by the Imaginary Theory of Law, from which we can state that the emphasis on the patrimonial character of marriage allows us to conclude that it is the prospect of arranged marriage, the “counter sample” and the juridical-social structure around this institute. Thus, we perceive in *Senhora* the experience of patriarchal social-legal construction, with man at the center of the identity of the marital relationship and, even more so, in the construction of a subjected feminine identity, since it is by frustrating her empowerment and by her pleading for love and offering submission to the spouse that Aurelia Camargo truly completes the romantic ideals espoused by Alencar.

Although at first glance the proud personality, wealth, and manner in which she claims at all times to be the subject of her own plot – be it in the marriage relationship with Seixas, or in the condition of a pupil, capable of managing her own tutelage – may make us believe that there is a condition

of empowerment and recognition of the condition of the subject of the woman, in fact, Alencar does so only from the perspective of creating her as a woman who exists for men. Identity, therefore, is centered on it, maintaining the patriarchist bias, albeit under a feminine focus: man, an “indispensable fret”, is a necessary condition for the constitution of the female subject, which occurs by subjection to man and patriarchal ideology – Aurelia is formed in her subjection through relations of power, and initiates the course of her empowerment by acquiring inheritance through succession and, subjecting herself to the control and dependence of the patriarchal marriage relationship, subjecting herself, frustrating her empowerment. Not to mention that Aurelia, as a fictional character, represents the imaginary of the whole society, in front of the polyphonic voice of the subject.

The subjection as a condition of existence, in Foucauldian terms, is experienced by Aurelia Camargo: the protagonist fulfills her role only when she annuls her condition of subject of history, revealing, as the subtitle of the novel indicates, a “woman’s profile” instilling it with legal institutes and procedures capable of revealing the law and the social apparatus of the time, in the face of the bakhtinian polyphonic voice of the subject who enunciates the discourse, including the writing of the literary work. With this, the expected behavior of the members of society is revealed from the perspective of the Imaginary Theory: Aurelia reveals a “profile”. Alencar shows us a portrait of the Brazilian bourgeois woman of the 19th century, and the literary juridical discourse he built reveals to us what 19th century society expected of it.

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