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## LEGAL ANALYSIS OF POLYAMOROUS RELATIONSHIPS BASED ON THE BRAZILIAN FILM *EU, TU, ELES*

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**ABSTRACT:** The present study analyzes polyamorous relationships and their implications for Law. Different loving and affective practices exist, some of them are sometimes experienced by multiple people at the same time, which breaks with the traditional idea of monogamy as the only relationship identity that is able to constitute families. This occurs, on the one hand, due to largely accepted social and cultural values. On the other hand, the phenomenon of monogamy is further strengthened because the State grants protection mainly to traditional forms of family. However, society begins to resignify such unions, which puts into question the traditional legislation. From the methodological point of view, this research has a qualitative character, with bibliographical and documentary sources, based mainly on the Brazilian film *Eu tu eles* as reference. On the theoretical level, the paper is based on arguments from the Brazilian Constitutional Civil Law. Based on the material analyzed, it is concluded that there is an effective possibility of extending family rights to new arrangements, the main reason being to consider affectivity as the norm, since monogamy is only a historically established value in Brazilian society.

**KEYWORDS:** polyamorous relationships; theory of Law; *Eu tu eles*.

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## 1 INTRODUCTION

This paper has the objective of analyzing elements from the Brazilian film *Eu tu eles*, in order to deepen the studies of the correlations between Law and Art. This is done to show how the narrative in question is able to raise social discussions about moral interdictions within the concept of family. Also, this paper attempts to contribute, through this analysis, to the field of Law and Literature and the field of Law and Humanities.

In the film *Eu tu eles*, an eccentric behavior of the characters is portrayed, because polyamory is present in the specific context of the Brazilian countryside, although this setting is represented in the film with traits of universality. The legal analysis, in turn, points to the need for normative protections to polyamorous unions. It should be emphasized that the normative function of the constitutional legal framework must converge to create a space of protection for the personality of the subject. Therefore, the State must be impartial and safeguard individuals, even those who do not choose to adopt monogamy, the socially consecrated relational pattern. It remains clear, therefore, that the intimate choices concern the private life of the individuals, and should not be hindered by legal norms.

Man is a plural being. To stigmatize him is to leave aside the multiple choices that are presented to him, and prevents the emergence of the most specific characteristics of the individual. Hence the importance of investigating polyamory under the epistemological prism, to seek the construction and transformation of social reality, in order to legitimize multiple relational identities. It is also clear that there is a gap in the Brazilian legal system for the recognition of these unions. It can be seen that monogamy is a guiding value of society, but it cannot be considered a legal norm, since it is neither a rule nor a principle, and therefore is not a norm.

The first section of this article analyzes the romantic practices represented in the cinematographic work in question. For this, it became necessary to conceptualize the term polyamory, since there is little knowledge about the subject, mainly due to the prejudice involved. The second part deals with the possibility of plural relationships originating families. In addition, Law, as a technique, interprets, constructs and must have the pretension of transforming human and social reality. The last

question deals with how, through the representation of reality in the film *Eu tu eles*, it is possible to analyze the sociocultural and human context of polyamory as well as the capacity of this type of family arrangement. Thus, this paper seeks to build a legal argument capable of supporting the normative protection for these unions, in the legal order of the country.

At the methodological level, the research has a *qualitative* nature, by analyzing and interpreting monogamy and polyamory in the search of due legal treatment; it also has a *descriptive* nature, because it focuses on the film's plot; and a *documentary* characteristic, since it is based on a feature film, that is, a cinematographic work of art.

## 2 POLYAMORY IN THE FILM *EU TU ELES*

The interdisciplinarity between Law and Art is relevant to this paper's theme, since the two fields constitute ways of interpreting the reality of life in society. Trindade and Bernsts (2017, p. 246) call attention to the importance of scientific production that mixes Law, Art and Literature in the article "The study of law and literature in Brazil: emergence, evolution and expansion". In Brazil, the first studies on the subject of Law and Literature date back to the 1930s and 1940s.<sup>3</sup> The authors note that the "diversity" of these studies is compatible with the "continental dimensions" of the country. It is also possible to affirm that "every fiction is sustained by a social speech", which contributes to the awakening of the subject in relation to human conflicts, through the creative influence of a new "culture of rights"<sup>4</sup> (Barthes, 1999, p. 23 and 38).

Adorno (2003, p. 26) points out, in favor of a method of effective analysis, the difficulty of understanding the fact without the concept, and vice versa. Thus, works of art, "creations of fantasy, supposedly liberated from space and time, refer to individual existence, although by derivation". In addition, within them, "form and content of actions become inseparable"

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<sup>3</sup> Trindade and Bernsts (2017, p. 234) point out that "The first master's thesis on the subject, in turn, is authored by Arnaldo Sampaio de Moraes Godoy, with the title *Law and Literature: anatomy of a disenchantment – legal disillusionment in Monteiro Lobato*, having been defended in 2000 at PUCSP."

<sup>4</sup> According to Santos (1985, p. 50), "The analysis of social conditions, cultural contexts, and organizational models of scientific research, which was previously housed in the separate and sealed field of the sociology of science, came to play a prominent role in the epistemological reflection".

and configure a practical and ethical plan of actions. The viewer both sees the drama as judging “the legitimacy or otherwise of the motives that explain the behaviors represented”<sup>5</sup> (Ghirardi, 2016, p. 54).

According to Luz Segundo (2017, p. 172), “there is no way to define literature as an aesthetic discourse and law as an instrumental discourse”, because “both are narratives and insinuate interpretations, rhetoric, meanings and representations”<sup>6</sup>. According to Ghirardi (2016, p. 60), “they are diverse responses to the same fundamental problem, which is the meaning and conditions for the full flowering of individuals within the societies in which they live”.

In this case, the film *Eu tu eles* (2000) is the starting point for the understanding of polyamory in Brazilian society. The work is inspired by a woman born in the state of Ceará, Dona Marlene, who lived for 17 years under the same roof with three husbands, in a rural district 36 km far from the Municipality of Morada Nova, in the countryside of Ceará. This is a real and rare case of long-lasting polyamorous union recorded, especially since it is a woman with more than one husband, not the other way around (Bartolomei, 2010).

The theme of polyamory itself permeates the narrative, and the events lead to the formation of a polyamorous web, around the different affections. In the first scene, Darlene, pregnant, talks to her dying mother, who wishes her child not to be born a woman – an example of discrimination against women in the countryside. Darlene’s fiancé does not attend the wedding. As a single mother, after an indefinite time, she returns to the old house of her mother, where she dwells.

She meets Osias, who offers her home and food in exchange for work. The affective bond between the two provides the basic needs of the protagonist. The dynamics of the couple changes with the arrival of the

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<sup>5</sup> Suárez Llanos (2017, p. 352) warns that “Law is narration. That is why literature is the appropriate way to know and rebuild it.” Derrida (2014, p. 165) points out that “the literary operates, in the limits of his revelation and his secret, in his overflowing frontiers and in his pleasure, his deconstructions of the foundations of Western culture, especially of phallogocentrism, of the hierarchical opposition between the masculine and the feminine that has governed Western culture for centuries.”

<sup>6</sup> Stephan Kirste (2018, p. 317) points out that both Literature and Law are “somewhat fictional, as they create worlds opposed to the worlds hitherto represented”. Lenio Streck (Streck; Karam, 2018, p. 617), for his part, states that “literature has the same role as that of hermeneutics and psychoanalysis. By fiction or realism, that is, by any literary current, our certainties fall to the ground”.

cousin of Osias, Zezinho, homeless after the death of his mother. Darlene and Zezinho get involved, she persuades her husband to accept the new arrangement, claiming she needs help in the farm and in the house. However, the protagonist then becomes involved with young *Ciro*. Zezinho watches them having sex and cries of jealousy. Darlene comforts him. Pregnant of *Ciro*, she refuses to run away with him and makes Osias accept the construction of a “guesthouse” for the newly included man in the family arrangement, showing everyone the correctness and convenience of maintaining the polyamorous web.

The film is a bridge between agrarian and archaic Brazil and modernity, because a rustic and patriarchal environment testifies to an innovative affective arrangement. However, there is a contradiction, for Osias allows himself to retire and lives from Darlene’s work. And she continues to work in the fields next to other men and escape the stereotypes. It is evident there is a strong “oppression” imposed on the woman, since she works in the farm, in the kitchen, and is available to her husband as a housewife. It is acceptance, consent, but also subjection.

The first part of the movie brings a critical reflection: Darlene agrees to live with Osias for not having a better life perspective. The values of land and labor are evidenced. In Osias one can see the patriarch, the owner of the house and of the land, while in the others one can see the strength of the work. When Zezinho appears, marriage is made explicit as a family value. Osias tolerates the new presence, since he remains the “owner of his wife” before the family and the community. “Honor”, therefore, is linked to the possession of women, a patriarchal foundation rooted in the region. However, in accepting *Ciro*, Osias reveals that he is interested in appropriating new work force and maintaining control of all. A noteworthy scene is the one in which *Ciro* rejects Marlene’s invitation to dance, stating that he will do so at the next opportunity. From this, it is inferred that the role of the woman must be passive, and that of the man, active.

Therefore, the existence, requirements and dynamics of polyamory are understood in the plot. All those involved in the polyamorous web have affections, but these are different and govern the logic of the introduction and action of their participants. Thus, it is necessary to conceptualize the term polyamory, considering that this conceptualization is central to

elucidate the context of the plot and to compare it with the legal aspects that it provokes.

### **2.1 Building the polyaffection concept**

Polyamory can be defined as the constitution of various affections between individuals, leading them to build loving relationships with more than one person. These relationships must occur with the consent and knowledge of all involved, respecting the freedom of its practitioners, who can break with the arrangement at any time, since these unions respect the autonomy of the subjects.

Therefore, polyamorous love experiences, to be successful, imply a degree of awareness of the subjects that allows them to recognize themselves as members of a relationship web, but each one must take part in the responsibilities that this form of arrangement brings, such as the abandonment of monogamy, the commitment to the truth, and the overcoming of jealousy arising from the openness to this new entity and its legal consequences. Polyamorous relationships, as a conceptual framework, are characterized, as is seen, by the fact that all the involved persons are aware of the situation and feel comfortable with it. In this context, it is essential to develop the exchange of intimate information, as well as the importance of knowledge of the others and of one's behavior, so that the relations are long lasting (Santiago, 2015), are rife.

It is vitally important to differentiate polyamory from the idea of promiscuity, a stigma that almost always falls on its practitioners. It should be emphasized that sexual intimacy among practitioners is only a possibility, and the existence of the various affections that can be developed by more than one person is more important (Cardoso, 2010, p. 7). Polyamorous practices assume responsibility. Honesty is necessary among all those involved in the relationship. The existence of a polyamorist ethic evidences the refusal of a consecrated moral in society, since the polyamorists opt for this behavior, molding themselves from what they feel and how they define themselves (Cardoso, 2010, p. 7).

However, although such relationships should be based on affection and intimacy, with an ethical content that involves all subjects, jealousy may also be present in polyamorous relationships. However, this feeling cannot make the relationship unfeasible, because if this occurs, one cannot

speak of polyamory, since it is based on the various affections (Santiago, 2015). In the film, jealousy, when Zezinho moves<sup>7</sup> in with Darlene and Osias, is unable to lead to tension. In fact, this feeling only intensifies the consensus between them. And the sublimation of jealousy shows itself in the harmonious coexistence and in the value that each one acquires in the constitution of the polyamorous web.

In effect, the term polyamory refers, as already said, to affection. Thus, it is observed that the character Darlene nourishes a brotherly love for Osias, since he appears like the best choice within a context of abandonment, when she sees herself as a single mother in the patriarchal society of the Brazilian semiarid countryside. On the other hand, the involvement with Zezinho looms naturally and romantically. They dance, engage sexually, and when they move to live under the same roof, they become companions in coexistence and accomplices. This becomes clear when she asks him to persuade Osias to build a “guesthouse” so that Ciro gives up on leaving with her. With Ciro, another type of affection materializes. Their history is marked by “erotic love”, present in glancing and in sex. Darlene, when she finds him, seems to anticipate that the polyamorous web will reach a new level. In polyamorous terms, if the third coexistent represents the erotic, Darlene now represents the countryside woman who is full of disposition and sexual energy.

In this scenario, polyamory and polyaffection refer to the adoption of a lifestyle in which subjects are open to live more than one love relationship at the same time, with the consent of those involved. In juridical terms, the thematic implies the assumption of a posture that leads to the construction of legal recognition of these unions, since the State must refrain from interfering in the intimate and sexual choices of individuals.

In this sense, Michael Foucault’s (2014, p. 3) view of the idea of repression of sex and human desires stands out:

More than a society dedicated to the repression of sex, I would see ours dedicated to “its expression”. May I be forgiven for this devalued expression. I would see the

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<sup>7</sup> The character Osias, husband of Darlene, in one of the scenes, wants to make believe that Zezinho “is not very manly”, that is to say, he mocks of the masculinity of the cousin to affirm himself before the neighborhood; In fact, jealousy surfaces, but it does not make the relationship unfeasible, which normally follows.

obstinate West pull the truth out of sex. The silences, the hindrances, the escapades should not be underestimated; but they could only be formed and produce their fearful effects at the bottom of a will to know that runs through our entire relationship with sex. This will to know is deep in such an imperious point, and in which we are so involved, that we come not only to seek the truth of sex but to ask it about our own truth. It is sex who must tell us what is made of us.

It should be mentioned that polyamorous relationships, marked by affection and the search for stability, differ from families based on episodic and occasional relationships, in which there may be the presence of affections, but they lack the sure consolidation of time. Solidarity is an element in the polyamorous web, because it represents an effective affection in the preservation of the family and the life in common.

The Brazilian family, on the social plane, should be seen as plural. It is observed that, in the daily life, the relationships are not exactly monogamous, nor are they basically based on monoamory. It should be noted that some have as their source not only marriage but also actual relationships. On the other hand, there are those who have parallel unions, such as concubinage<sup>8</sup> and extramarital affairs. It is therefore necessary to recognize that monogamy does not necessarily imply fidelity. If so, why inject so much prejudice<sup>9</sup> into polyamorous relationships? It may not be possible to answer this question without a good deal of hypocrisy.

### **3 THE BORDERS AROUND THE ECCENTRIC AND POLYAMORY: THE “REGIONAL” AS “UNIVERSAL”**

As part of this study, it is necessary to understand the changes that the concept of family has undergone over time. It is crucial to be aware that every human being seeks a place and personal space, at any time and everywhere. It can be argued, therefore, that his place is where their truth lies or, to a lesser degree, their claim to establish it. And this truth can be established in the constitution of one or several family nuclei.

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<sup>8</sup> The country's legal system has also granted social security benefits to long-term non-marital unions. This is the case of the Civil Appeal AC 33447 GO 95.01.33447-3 (TRF-1).

<sup>9</sup> The ideas about the private life of the people were criticized by the Minister Carlos Ayres Britto in ADI 4277, who, in substantiating his vote, uttered the following sentence: “nothing bothers people more than the sexual preference of others” (Brazil, 2011, p. 627).

In this way, the representation of the countryside as a choice for the polyamorous plot intensifies the human condition portrayed as part of a region. When linking the eccentric with polyamory, a strong signaled convergence in the theme is sought. If the countryside is the scenario, this leads to many readings. In fact, one talks about the work of Guimarães Rosa, who brought together these themes so well: the intrinsic relation between men, the means in which they live and the universal feelings that intertwine them. In addition, the choice of a female protagonist exposes the social values of the division of roles. Darlene goes out to the plantation, Osias, her husband, the landowner, always lies in his hammock and demands that, in addition to the manual work, she cooks, washes and irons the clothes.

The emergence of polyamory, as a relational practice, raises doubts as an affective category, especially in the face of the family institution founded on monoamory. However, Brazilian society is eccentric, and this encompasses the theme of polyamory as depicted in the countryside. One could say: if such various affections happen in the countryside, these will happen anywhere. Such ideas are inspired by the literary vision of Antonio Candido (1983, p. 295), when he talks about the eccentric in the literature by Guimarães Rosa: “the great commonplaces without which art does not survive: pain, love, death – whose orbit drags us in every moment, showing that the eccentric is accessory and that, in fact, the countryside is the world”.

It is emphasized that regionalism is present in the representation of the polyamorous nucleus. It is understood as eccentric what is picturesque, scenic in a society or place. It is when you cut off a certain space in which the conditions of the regional approach to the universal, that is, the passions accompany the human being wherever they may be. A counter-normative discourse on monogamy might not seem credible in the countryside context, but its presence induces the notion that the regional is universal, and it is in the perspective of love or the various affections. For Candido (1987, p. 206), “the rustic world of the countryside still exists in Brazil and to ignore it is an artifice. The picturesque is the regional, and thus, by managing to nullify it as particularity, it becomes a value of all”.

It is necessary to emphasize that in any society, archaic or recent, western or eastern, two poles will be present and will appear as necessary to understand the role of the human being: the economic one and the familiar one (Hironaka, 2009, p. 1). However, the expected treatment of the family as an institution is to bring it as close as possible to the realm of the affections. After all, the family is inserted in a trajectory of subjective rights that seek to act in the field of freedom, that is, the right to be what one wants to be (Fachin, 2003, p. 6).

Now, it is necessary to contextualize polyamory through the concept of family and its trajectory. In this sense, a notion of family based on postmodernity must prevail, even if it escapes the relational pattern practiced by society. Thus, the State should not intervene in the affective choices of individuals, especially in the family, unless it is for the assurance of rights.

It is known that, from the 1960s onwards, changes occurred in social conceptions, through the feminist movement and the sexual liberation movement, which questioned many concepts, especially those involving the family, as an institution centered solely on marriage and all levels, including the legal dependence of women and children, totally attached to the patriarchal model.

In this sense, it is clear that as early as the beginning of the 2000s, *Eu tu eles*, in fiction, deals with these new family arrangements, such as those based on polyamorous relationships. After all, according to Shecaira (2018, p. 337), “It is more difficult to preserve our stereotypes and prejudices against certain social groups after coming into contact with a credible story about the suffering of individuals who are part of that group”. In this way, the intersection of Law and art contributes to an increase in the commitment to the multiple constructions of the contemporary family and to the need for changes in the perspectives of society, such as the search for solidarity and respect for individual decisions. In this context, Law must give importance to new forms and new concepts, such as affectivity, eudaemonist family<sup>10</sup>, as well as the broad freedom to choose the type of relational identity.

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<sup>10</sup> In this sense, Hironaka (2003, p. 1) defines eudaemonist family as being that family that is “Biological or not, arising from marriage or not, matrilineal or patrilineal, monogamous

#### 4 LEGAL ASPECTS

Polyamorous unions need legal recognition, above all because Law, as a science, is not always sensitive to social transformations and, on the other hand, it cannot keep up with the pace and diversity of these changes. The traditional family entity, that is, monogamous, should not be privileged to the detriment of individuals' ideals of happiness in relation to their choice of love. Based on recent changes in Family Law, polyamory as a relational entity can originate family entities. In this context, the family must translate the valuation of interest of the human person to the detriment of interests and patrimonial relations. In this way, the contemporary family can only be understood as a space of personal and affective fulfillment, in which patrimonial interests lose their function and importance (Gama, 2008, p. 126).

The re-personalization of Family Law, therefore, is not incompatible with the intervention of the State in family relations, since it must intervene to assert its protective force by protecting the subjects and forces within the family. The prohibition applies to the excessive and harmful interference of the State in the family group, as it is unreasonable and unrelated to the constitutional values that gave it cause (Santiago, 2015). In addition, the recognition of polyamorous unions cannot consider any doctrinal position that in the past understood the Family Law institutes as responsible for supra-individual protection, whether because of political objects, and against authoritarian ideologies, or religious inspiration (Tepedino, 2008).

The Law of families essentially consubstantiates, as a general rule, the exercise of the private autonomy of its members, because only in this way will it be possible to effectively assure the realization of their fundamental rights and the promotion of their personality. State intervention in family relations should only occur in extreme situations, such as *ultima ratio*,

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or polygamous, with single or multiple parents, in short, the structure does not matter. Nor does it matter the role that the individual plays in his organization, whether that of father, mother or child. The important thing is to belong to its core, being in that idealized space where it is possible to integrate feelings, hopes, values and to feel, therefore, on the way to the realization of his project of personal happiness”.

insofar as the general rule of family members' freedom must prevail (Alves, 2010, p. 153).

In this sense, it is necessary to construct an understanding within which monogamy is seen as a value, and affectivity, as a constitutional principle. At this point, the role of law is transformative, since it affirms the construction of a new relational identity in Brazilian society, taking into consideration the legal order as a whole and the relation of constitutional principles, which must take precedence over moral values or conventions. Thus, it is not necessary to speak about a literal interpretation of Article 226 of the Federal Constitution.

The juridical legal order defends firmly the practice of monogamy. Although not explicitly envisaged in the Constitution, it has become a true axiom for doctrine, finding support in infra-constitutional legislation and in society, whose orientation is Judeo-Christian (Ferrarini, 2010, p. 92-93). It is also true that the word "monogamy" is used in the wrong way, since, in defining it as a condition of being married with only one person at a time, it has not been established that the members are sexually faithful within the relationships, that is, adultery stems precisely from monogamy. *Monogamy* does not imply *fidelity*, and the two terms should not be understood as synonyms (Fischer, 1992, p. 60).

It should be stressed that monogamy reflects a personal preference. Therefore, it should not have the pretension of compelling everyone. As a value or recommendation of society, it should be regarded as mere personal judgment. The monogamous choice should not exclude other relational entities. In this way, individuals who do not adopt it, because they do not recognize it as a cause of happiness, must have their rights respected and recognized. Therefore, not only does the interpreter construct but he/she also reconstructs the meaning of the legal norm, using normative texts that impose limitations on the configuration of the senses and incorporating preexisting sense nuclei into the individual interpretative process. The role of interpreters is not only to describe meanings, but also to reconstruct meanings (Ávila, 2012, p. 37).

The distinction between the text and the norm must also be placed. The normative scope is part of the norm, so it is not confused with the text. Only positivism conforms to the application of laws in the sense of the

greater premise and accordance to real circumstances in search of a kind of syllogism of truth (Müller, 2008, p. 192). This demonstrates the great importance of values and social facts in the densification of the norm to the concrete case for the Law to affect the elements of reality. A closed, rigid text will not be able to offer answers to the constant evolution of the complex postmodern society: “Of the factual elements that are interpreted and that, in reality, necessarily integrate the process of normative densification or application of Law” (Carvalho Netto, 2004, p. 37-38).

In addition, monogamy emanates from common sense, and it translates a dogma, that is, an “*a priori* truth”, which requires only argumentative constructions or a “legitimate justification for triumph” (Santiago, 2015, p. 122). As it is in reality only a possibility for those who share its values, it should not be a mandatory objective for all individuals. Polyamorists, therefore, are those who do not want monogamy as a lifestyle or a relational practice. It is understood, therefore, that the recognition of these unions must be constructed by the legal interpreter, considering monogamy as a social value, and affectivity, as a principle. And if one moves towards the recognition of these unions, it will be logical and reasonable to accept polyamory as the generator of true family entities. In fact, some manifestations of freedom have a strong connection with the formation and development of the personality, and they deserve reinforced protection. It is the case of the freedom to choose the people with whom to maintain relationships of affection and companionship, which must be fulfilled in a full, rather than clandestine, way (Barroso, 2011).

It is worth emphasizing, furthermore, that desire, romantic love and attachment do not always go together and may not be connected to each other. It is possible for someone to feel a deep attachment to a long-time partner, while living an intense romantic love for another individual, and at the same time feeling sexual desire for people other than those partners (Fischer, 1992, p. 68). This is the central idea of *Eu tu eles*. The protagonist develops different affections in each loving choice. Perhaps more than the theme of polyamory, the film highlights that one can love more than one person at a time.

It is clear that the polyamorous web was gradually formed, oscillating between the “love attachment” for Osias, the “romantic love” for Zezinho and “the erotic love” for Ciro. In the final part of the narrative, the tension is generated when Osias disappears with Darlene’s children. However, he returns with the them and says, “Now they’re registered as my children”. It is therefore necessary to conclude that it was a case of polyamory, since there was, in the polyphonic web, the consent and the full knowledge of all.

Now it is necessary to identify and interpret polyaffection as a differential category of the polyamory idea. Polyaffection symbolizes the various affections and therefore consubstantiates a material reality fruit of the spiritual and romantic human experiences. Polyamory, on the other hand, is connected to the polyamorous joints and is opposed to those founded in monoamory. In the film, the primacy in the constitution of the various affections remains evident. Thus, the characters try to express and live their happiness while also seeking a better life. The path of polyaffection reflects the desire to transmute the difficulties of the countryside’s life. Choices are therefore conditioned by natural, psychic, cultural, economic, and historical circumstances. It remains clear how law and art merge, for they do not refer only to a subjective dimension, but they involve the human being and the collectivity before the concrete and objective possibility of deciding how or how many people to love.

#### **4.1 The impossibility of discriminatory treatment for polyaffection: an argument based on fundamental rights**

##### **4.1.1 Dignity of the human person**

Dignity of the human person represents one of the foundations of the Brazilian 1988 Constitution<sup>11</sup>. It comprehends values that are indispensable to the existence of individuals, understood as unique in their individuality. This implies that all human coexistence in society must be subject to this principle. And as for family relationships, so diverse and plural, as well as the cultural practices of love, they must be protected by all the values

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<sup>11</sup> Art. 1 of the Federal Constitution of 1988, namely: “The Federative Republic of Brazil, formed by the indissoluble union of States and Municipalities and the Federal District, constitutes a Democratic State of Law and has as its foundations: [...] III - the dignity of the human person” (Brazil, 1988).

instituted by this principle. As a result, polyaffectionate relations need recognition and protection in the pursuit for non-discrimination.

The Civil Code of 2002 (Brazil, 2002) broke with the dominant patriarchal tradition in the Civil Code of 1916 and personalized itself “to the extent that dignity was determinant so that the existential juridical relations maintain the necessary predominance on the patrimonial relations” (Moraes’s, 2006, p. 234). Therefore, legal understandings that discriminate relational identities should be avoided, based only on the alleged equity consequences. These issues cannot prevent the recognition of polyamory, since its practitioners have sufficient degree of consciousness and autonomy to cope with the social and financial risks arising from this type of arrangement.

Nonetheless, the recognition of polyamory impacts legal issues involving social security or inheritance rights. The State, however, must place the need for adjustments, without creating obstacles to respect this type of union. In this way, preserving legal security without prejudice to the autonomy of individuals is necessary. It should be pointed out, in addition, that polyaffectionate subjects should be considered economically active and capable of producing wealth.

#### **4.1.2 Freedom of family choice**

Taking the individual as a center, it is important to understand freedom as a right that should not be restricted in the context of existential relations. The 1988 Constitution, in art. 226, §7 (Brazil, 1988), exposes the freedom of the couple to choose their family planning as well as the way to elect the means to accomplish this task. In this way, family must be understood in a broad sense, abandoning a restrictive functionality of choices.

For its part, Lôbo (2011, p. 70) states that “[...] it makes no sense for the State to regulate duties that deeply restrict freedom, privacy and private life of persons, when they do not affect the general interest”. Imposing limits on the autonomy of those involved in polyamory culture is blatantly unconstitutional. The state should not interfere in the individual’s basic private issues, otherwise it will diminish its capacity. It is necessary to guarantee broad freedom so that each one chooses the project of life that

best suits them, without the imposition of dogmas. Hence, just like monogamy, polyamory must be respected as a relational identity.

It is not by chance that Pêpe (2016, p. 7) points out that Law can allow itself to be “permeated by new narratives, assimilable in the reflexive processes of autonomies, singularities and alterities, so necessary in an increasingly judicialized daily life”. In relating individual freedom to the idea of general interest, it opens the perspective that it does not matter whether one lives in monogamy, polyamory, or any other type of relationship, nor the values that weigh on such choices. When we talk about subjects of fundamental rights, the main idea is that the field opened by the legislator allows the broad exercise of the capacities of individuals, achieved only when there are conditions for the practice of individual personal projects.

#### **4.1.3 Affection**

The postmodern concept of family reveals particularities and differences in what concerns a social and human construction. Affection is the differentiating element between the unfamiliar grouping and the family. This is because affection must be considered the vital force in the contemporary perspective, capable of leading to both the union and the breakdown of people in relation to this entity. One cannot speak of polyamory without considering this principle. Thus, the form of polyamory capable of generating juridical recognition can only be that which is based on the principle of affection. Without affection, you can have any other type of relationship except polyamory.

Feelings such as contempt, pain, separation, violation of custody duties and protection of the relationship, after all, can occur both in monoamory and polyamory, and none of these relationships is free from infidelities or betrayals. There are no guarantees in any kind of human interaction, they are all cultural rather than biological. Human and family relationships should require individuals to have coherent ethical conduct without placing unreasonable hopes or expectations on the other.

#### **4.1.4 Respect for family plurality**

Symbolically, the 1988 Constitution gave a new feature to families. Society walks in search of plurality and diversity, which impacts the family.

For Dias (2013, p. 70), in the previous codifications, only marriage deserved legal recognition. The other family ties were doomed to invisibility. From the moment other civil unions were recognized, the concept of family gained new definitions.

Fachin (2003, p. 93), in turn, adduces this phenomenon as

[...] a doctrinal and jurisprudential construction, a sociological reality, the plural family gains the constitutional shelter and is projected in the most recent legislation that is pronounced. From the family by marriage to the jurisprudential recognition of concubinage, Law progressively built the statute of nonmarital coexistence. The guiding thread of this course is also in the juridical redirection conquered by the woman and the affiliation, especially shielded in the principle of equality. It accepted, thus, new social models of conduct.

#### **4.1.5 Equality**

The principle of equality implies the differentiation between two directions – formal and material – and is therefore a social construction, since there is inequality everywhere. Considering these dimensions of the principle of equality, Barroso (2011, p. 120) affirms that formal equality, situated in a liberal historical origin, prevents hierarchization between people. In this way, there should not be privileges or advantages that cannot be justified. Thus, individuals are endowed with equal value and dignity, which implies the State's duty to act in an impersonal way without directly benefiting or harming different people. In the context of material equality, the ideological aspects associated with conceptions of social justice stand out, according to which it is not enough to equate persons before the law. They must be equated with life. It is, in fact, not to restrict them to formal equality.

In a pluralistic democratic society, with an active constitutionalism and civil legislation that prioritizes the human person, one cannot deny the right to equality among the different types of family. Equality is the opposite of authoritarianism, hierarchy, or recognition of certain loving practices over others. And there is no justification for granting privileges to the monogamists and withdrawing the guarantees of those who, through freedom, opt for other intimate relationships. The quest for individual happiness of all members in the family context should be emphasized. What

is most important is that affective self-determination, that is, the freedom of loving choice of individuals, is respected and valued. These values must be present and cannot be removed by moral conventions. Therefore, all state interference must serve the protection of individuals and the affirmation of the freedom of their intimate and sexual choices.

The interpreter must remove literal or syllogistic interpretations of the constitutional text and find, in this legal vacuum, a construction to be carried out based on the similarity with the monogamous family. Families are similar, since they are bound by the protection of the members and the preservation of human dignity and freedom based on the free choice of affection. This similarity comes from the Constitution, so the recognition of polyamory is imposed. Thus, all the interpreters involved in the application of the Constitution must work to move their intellectual aptitudes beyond the Law, considering love as a clearly human aspect, the fruit of individual experiences. This finding is complex, but challenging. It converges to the construction of equality from the State, which assures and ensures that the social purposes of the normative text affect human life, thus granting special protection to all kinds of families.

## 5 CONCLUSIONS

Faced with the issues dealt with in this paper, remains the certainty of the contribution that art, in general, and cinema, in the present case, can give to the Law and studies in the field of Law and Humanities. This contribution, however, does not take place with regard to the legal dogma, but within the scope of the theory of law. Thus, *Eu tu eles* de-stigmatizes polyamory by exploring the legitimate affections of each of the participants in the family arrangement.

In this way, we can see how the conflict, that is, tension or central tensions, in literary, dramatic or cinematic narratives, antagonize actions by legitimizing them or not, a process without which the fictional universe cannot be constructed in a convincing way nor apprehended by the public as such. Art as a human enterprise (and fictional narrative as one of its subtypes) includes, in search for verisimilitude, reasons for the actions of its

characters and judgments of values derived from them. And it does so in a more shocking and memorable way than law theory or sociology ever could.

Thus, in the amorous context of the film, polyamory offers the public a view – to paraphrase Plato’s celebrated allegory – beyond the hegemonic shadows of monogamy, a familiar model which, without doubt, should be understood as value and should not be taken as a norm or principle. Therefore, the polyaffectionate network refers to the constitution and construction of specific affections in their relational demands, since they require the consent and knowledge of all those involved, who can leave the arrangement when they want, since these unions respect the autonomy of the present subjects in the relationship.

Indeed, diversity, perhaps a greater mark of Brazilian society, demands the legal recognition of polyamorous unions, especially since law, as a science, should accompany social transformations, although it does not always accomplish that, as in the present case, since this recognition does not yet exist. Thus, the ideal model of a monogamous family cannot be privileged at the expense of self-realization and happiness in relation to intimate, and therefore idiosyncratic, choices of love. Polyamory, therefore, as a relational entity, can and should originate families, since it implies ethical choices linked to private autonomy and individual freedom – elements that should not suffer interference from the State. After all, the family should protect the affective interests of the human person, rather than merely patrimonial or moral issues. In addition, fidelity configures a choice of subjects. So much so that, even in the monogamous arrangement, it is perhaps less a rule than an exception – and adultery, concubinage, and extramarital affairs have always occurred in monogamy.

Any restriction, therefore, of rights can only occur in extreme cases, as they affect the lives of other individuals. It is not possible to consider that the intimate and sexual expression of the subjects attacks society. Hence, it is necessary to reaffirm the urgent need to give polyamorous relationships the same legal treatment given to monogamists. It is a matter of ensuring legal isonomy to the various forms of family formation, including those that, although seen as eccentric or transgressors of monogamous “value”,

already occur in the situations of fact. It is also a matter of granting them the dignity of the human person principle.

That being said, the polyaffection institute is in perfect harmony with the guarantees and individual rights foreseen in the legal order. The interpreter of law must avoid literal inferences of the Federal Constitution that lead to the establishment of a single model of affective practice. What is sought is to establish equal treatment for all types of family, recognizing them as social and cultural practices that deserve the same protection. As we have seen here, the principles of equality, freedom, private autonomy and dignity of the human person provided for in the Federal Constitution of 1988 legitimize the non-discrimination of these models.

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