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**LAW AND LITERATURE: A WORM’S VIEW ON JUSTICE,
IRONY AND LAUGHTER BASED ON *THE POSTHUMOUS
MEMOIRS OF BRÁS CUBAS***

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ABSTRACT: This paper articulates Law and Literature to develop considerations on law, irony and laughter, based on the novel *The Posthumous Memoirs of Brás Cubas* (also translated as *Epitaph of a Small Winner*), by Machado de Assis. As an essay, the paper develops a reflection from the point of view of the worm to whom Machado de Assis dedicates his novel. Four main topics are thus developed: the first one introduces Machado de Assis, highlighting the main aspects of his work; the second one refers specifically to the novel hereby analyzed; the third one deals with the training of jurists, with indications on the practitioner’s actions and thoughts; then, the fourth topic is dedicated to analyzing the character Brás Cubas, based on the previously developed ideas. As final considerations, the paper brings ideas on the role of jurists, irony, laughter, in order to contribute to the reflection about contemporary law. The method used is of heuristic basis.

KEYWORDS: law and literature; law and irony; jurist and laughter; *The Posthumous Memoirs of Brás Cubas: Epitaph of a Small Winner*; law and Machado de Assis.

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To the reader who first read these considerations written by this worm, I dedicate this paper.

FOREWORD

Long have I hesitated whether I should write these considerations on the role of jurists, irony, and laughter in *The Posthumous Memoirs*. Especially whether I should write them from the perspective of the worm who first gnawed the cold flesh of Brás Cubas' corpse. The idea came to me some day in 2013 and soon developed while I was reading the novel, "I do not know for what kind of cerebral ventriloquism phenomenon" (Assis, 2011, p. 197, translated). It happened due to the coupling between certain characteristics of Machado de Assis' work, on the one hand, as a literary foundation, with, on the other hand, the perspective of a jurist reader, with his thoughts and practice, as a legal ingredient. The concerns I had then have not changed much, but have been broadened with new, more current matters. And these, if confronted with older viewpoints, from generations past, may lead to provocative epilogues to those who study the legal thought and the juridic, legal culture of Brazil. This is, thus, a paper that articulates Law and Literature, in an institutional intersection², according to the definition proposed by José Calvo González (2008), especially due to the choice of epistemological breaking and the possibility of (re)building the law, by critically renewing the focus of the old legal text.

Regarding its form, this paper is like an invertebrate, as it is soft, diffuse, freely expressed, less of a scientific paper and more of an essay of literary traits, much like what Adorno³ (2003) and Lukács⁴ (2015) wrote

² In addition to that institutional intersection, González (2008, p. 3 et ff.) establishes instrumental and structural intersections between Law and Literature.

³ "An essay [...] does not admit a previously prescribed scope. Instead of scientifically achieving something or artistically creating something, its efforts still mirror the availability of those who, like a child, are not ashamed to be enthusiastic about what others have already done. An essay reflects what is loved and hated, rather than conceiving the spirit as a creation out of nothing, by following the model of an unrestricted work morality. Happiness and playfulness are essential for it. It does not start with Adam and Eve, but with what it wants to talk about; it says what comes to its mind and ends up where it feels it has reached the end, not where there is nothing left to say: so, an essay occupies a place among the nonsense. Its concepts are not built from a first principle, nor do they converge to an ultimate end. Their interpretations are not

about, each in different ways. Thus, and yet, this paper is a critical, legal-humanistic essay; somewhat post-disciplinary, even if a little undisciplined; with a heuristic approach⁵; by making sort of confessed intertext, drinking from different and uncertain fountains of thought, and by discussing diffuse topics with the sole objective of making one think, more than generating answers and conclusions, which, from a certain point of view, do not really exist. “This thing of method, as indispensable as it is, however, it is best wearing no tie or suspenders, but rather free and unleashed”, as Brás Cubas recommends (Assis, 2011, p. 36, translated).

Evidently the greatest challenge for this paper is you, jurist reader. “You hurry to get older, and this novel moves slowly; you love a nourished and straightforward narrative, a regular and fluent style, and this novel and my style are drunken, leaning right and left, to-and-fro, mumbling, screaming, laughing out, defying paradise, slipping, and falling... And falling!” as also said by Brás himself (Assis, 2011, p. 130-131, translated). And what he says about the novel, I say about my paper. A worm gnaws slowly; and, when it does not fall, it makes another being fall. A traditional reader jurist will find in this article some traits of deliberate abuse, somewhat infamous, pure speculative loss of time, lack of prudence, or mere offense, disrespect, scorn, profanation, and the frivolous ones will not see in this paper any necessity or utility, even if they read it.

philologically rigid and pondered, they are in principle overinterpretations, according to the verdict already automated by that vigilant intellect that puts itself at the service of stupidity as a guard dog against the spirit” (Adorno, 2003, p. 16-17, translated).

⁴ “An essay always speaks of something previously condensed into form or, at best, of something that had already existed; it is part of its essence not to extract new things from nothing, but simply to reorder things that were once alive. And as it only reorders them, as it does not create new forms from the formless, the essay is also linked to things, always having to express the “truth” about them, to find expression for their essence. Perhaps the briefest way to express this difference is as follows: poetry draws its motives from life (and art); however, for an essay, it is art (and life) that serve as a model” (Lukács, 2015, p. 43, translated).

⁵ Ou seja, algo caracterizado “pela procura aleatória de informações e conhecimentos, mas também pela interrupção da procura devido ao reconhecimento das limitações; pelo reconhecimento da ignorância de boa parte das informações; pela recaptação de memórias e intuições conscientes e inconscientes; pela tomada rápida de decisão; pelas previsões e julgamentos parciais; pelas determinações decorrentes de afetos, simpatias, antipatias, afinidades; pela facilidade com que similaridades discursivas vem à mente; pela possibilidade de alteração das decisões conforme os elementos e fatores envolvidos; pela esquemática, pelo uso de mecanismos inversos, pelo uso de problemas concretos, pela abordagem amplificadora; pela busca de soluções válidas e aproximadas, ainda que não sejam avaliadas como as melhores; pela formação de linhas de raciocínio possíveis” (Sbizera, 2018, p. 299).

Within the core of this text, as playful as it seems, there is a bitter and rough feeling, which is not generated by the usual legal or literary models at all. The work of a worm. A worm's considerations to discuss the role of jurists, irony, laughter, in a way that can only be accomplished with jest mixed with melancholy. "And it is not hard to foresee what can come up of this marriage" (Assis, 2011, p. 17, translated), as Brás tells the reader once again, in the beginning of the novel. All that is due to the possibility of reinterpreting the novel in its deep, universal aspect, as Candido (2007) emphasizes. As a consequence, similarly to the way Brás avoids explaining the extraordinary process that led him to be able to tell his story from the afterlife, this worm here also avoids explaining the extraordinary process of the making of these curious but excessively lengthy and unnecessary considerations to understand the text, which is what it is. And I believe I have nothing more to say here, because again, according to Brás Cubas, "the best foreword is the one that contains the least things, or the one that says them in an obscure and truncated way" (Assis, 2011, p. 17, translated). Our paper follows, therefore, with the first thoughts.

FIRST CONSIDERATIONS

To accomplish these first considerations of a worm on the role of jurists, irony, and laughter in *The Posthumous Memoirs of Brás Cubas*, it is necessary to draw certain observations on the writer Machado de Assis. However, "Machado cannot be introduced, but enjoyed" as Cristiana Jacquemin (2011, p. 9, translated), when introducing a book about Machado de Assis. That is why we are not dealing with a thorough description of his life and work, something that was extensively accomplished by other, more important, more intellectual, qualified, dedicated authors, such as Alfredo Bosi (2003; 2006), Marcos Bagno (2003), Lucia Miguel Pereira (1988), Raymundo Faoro (2001), and Roberto Schwartz (2000, 2000a). Also, in the studies of Law and Literature, several scholars have studied Machado de Assis. To mention only one as a representative of all the others, we should respectfully mention the late Luis Carlos Cancellier de Olivo (2011). The idea of these considerations, then, is to mention some general comments from writers

on the work and life of Machado de Assis. And it is done with aims at bringing other considerations to be developed further.

Thus, Joaquim Maria Machado de Assis was born at Morro do Livramento, in Rio de Janeiro, in June 1839. As a person of mixed race, son of a black painter and a Portuguese washerwoman, early orphaned, of poor origins, he had never been to university and did not finish school. Even though, he took an effort to socially ascend through culture and intellect, an undervalued route. He learned it all by himself. So, he “imposed himself into the dominant groups due to the originality of his work and the vigor of his discreet personality, reaching a level of public acknowledgement that few writers had done in Brazil” (Candido, 2007, p. 65, translated). He took on numerous public positions. He wrote for newspapers and in this way gained recognition. In a more mature phase, in 1897, he joined his fellows, founded, and presided over the *Academia Brasileira de Letras*. He witnessed the abolition of slavery, the proclamation of the Republic and other social and political movements of the period, about which he wrote. He died in the year 1908, at the age of sixty-nine, victim of a cancerous ulcer.

His work is composed of novels, short stories, theater plays, poems, sonnets, articles, and biographies⁶. The first part of his publications is made of specialized criticism and reviews, attached to the Romanticism project. The second part was more mature, with elements of Realism coexisting with Romanticism characteristics. The importance of Machado’s work for the establishment of Brazilian literary projects in the turn from the 19th to the 20th century is widely observed, and even more than a century and decade after the author’s death, academic debates remain fertile and fruitful.

⁶ In a research for her Master’s Degree in History at *Universidade Federal de Santa Catarina*, completed in 2016 and titled “*Um projeto de revista n’O Espelho: literatura, modas, indústria e artes (1859-1860)*” (“A review project in *O Espelho*: literature, trends, industry and arts (1859-1860)”), researcher Cristiane Garcia Teixeira investigated the periodical publication “*O Espelho*”, which was published in Rio de Janeiro between September 1859 and January 1860, totaling only 19 issues. The most assiduous contributor to this magazine was Machado de Assis, who was then 20 years old. This research resulted in a recently published discovery: the text “*Machado biógrafo: da investigação de uma revista a um texto inédito*” (“Machado biographer: a finding from the investigation of a journal to an unpublished text”), in which Teixeira (2020) works on a possible finding, a biography of Dom Pedro II written by Machado de Assis.

Antonio Candido, in his course on Brazilian literature, highlights Machado de Assis as one of the most consolidated writers of the Brazilian literary system. He refers to the writer as someone “with a rare literary perception”, who acquired, by his own effort, “strong intellectual culture, based on classics and open to contemporary philosophers and writers”, getting to the old age as “the most important figure of literature and object of a veneration almost with no exception” (Candido, 2007, p. 65, translated). About Machado’s work, he describes it as varied and with characteristics of eminent productions that satisfied “both the refined and the simple” readers (Candido, 2007, p. 65, translated). One of the traits that Candido describes – and that these considerations of a worm intend to discuss – is Machado’s ironic coldness, a fleeting element, which causes some perplexity, even though he also considers one it of the author’s strengths. Such irony, according to Candido (2007), may mean a certain dislike for men, but it can also be a method of distancing, which covers a certain pious understanding. “Because of this ability to fuse coldness and passion, serenity and revolt, elegance and violence, his writing is a prodigy of elaboration” (Candido, 2007, p. 67, translated).

Alfredo Bosi (1979, p. 193), in turn, in his concise history of Brazilian literature, places Machado as “the highest and most balanced point of Brazilian Realist prose”. For Bosi, “Machado’s balance was that of men who, being sensitive to human pettiness and the precarious fate of individuals, finally accept these as an inalienable heritage, and make them food for their daily reflection”. As well as Candido, Bosi (1979, p. 201, translated) also refers to the traces of irony and humor in Assis’ work, of a non-metaphysical humor, but of a humor that plays with everyday signs, in an “inversion process parody of the traditional codes that Romanticism had made circulate for almost a century”.

Another scholar of Western literature, Otto Maria Carpeaux (2012, p 48-49, translated), in his monumental work, establishes Machado de Assis as “the greatest writer in Brazilian literature”; someone exotic in relation to Brazil; a country which Carpeaux describes, at the time, as a “semi-colony of Victorian England”. He also mentions that Machado knew how to express himself with reserved urbanity, with traces of a skeptical, satirical humor, somewhat suspicious about the honesty of the motives of

human acts and, above all, he draws attention to its half-ironic, half-funeral-like atmosphere, which understood life *sub specie mortis* (Carpeaux, 2012).

Afrânio Coutinho (1972, p. 176), in his own way, refers to Machado, his personality and his work as “the greatest product of Brazilian literature”. And he notes that Machado is a “confessed debtor to the romanticist input” (Coutinho, 1972, p. 209, translated). There is, according to the researcher, a peculiar trait in the intentions of Machado’s work:

the existence of a civilizing mission by the writer, who, as a mage or prophet, was destined to intervene in the flow of events, thanks to his inspiration or enlightenment. He had a responsibility, a specific vocation, a role of promoting social and political reform, in the leading of his community, an education function, whit moralizing, progressive assets, to change the mind of his fellow citizens. This concept was defended by the Brazilian society and became dominant, lasting to this day, and it made the writer fit to act and be judged more by his possible political and social actions than by the work he wrote. Political, journalistic, administrative actions are always considered as a main trait of literature writers in Brazil, who are usually unhappy and unsatisfied with purely writing for a living, whether in the imagination or the criticism areas (Coutinho, 1972, p. 176, translated).

In his own way, Raymundo Faoro (2001) emphasizes the lack of need for searching revolt, denunciation or indignation in Machado de Assis’s work, arguing that his aspects of mockery and irony are more relevant when talking about serious things, with unequaled humor, which exposes the intimate falsehood of all society, its secret sin.

This aspect of irony is also emphasized by Elias Thomé Saliba (2002, p. 75), in a study on the origins of laughter, especially regarding the topic of disappointment with republican values, which can be perceived to this day; also, there is a visible disappointment with contemporary democracy and with the law, as developed in the article by Arnaldo Godoy (2004).

However, throughout a long time in the life of this worm, the ideas about the life and work of Machado de Assis had not been enjoyed, as defended by Jacquemin; rather, they were known in theory, due to professors, critics, friends, enemies, scholars. With this, Machado’s irony

was seen as something so often repeated and talked about that it became a kind of commonplace that, as contradicted later, served more to block than to help the reflection. Throughout the reading of *The Posthumous Memoirs*, irony was sought in the text, at all costs. It was only almost at the end of *Brás Cubas* that this worm began to understand that Machado's irony, so often pointed by common readers and specialists, gave itself freely, in non-superficial articulations and not always tied to the work itself: this blood should be sucked and extracted from this tissue from whatever is happening in reality, our own, at any time. Irony regardless of time; untimely humor. Hence its universality and fluidity. Hence what Schwartz (2000a, p. 10) says: "the writer imbued with his time and country, even when dealing with distant subjects, is a programmatic figure". Hence, finally, the present composition, these considerations of a worm.

Every word, every new idea and reflection on his work, his words, will be repeated, dissected, echoed, opened wide. In an infinite text in which the reader's understanding – in all senses – counts for less than the game proposed by our first immortal, everything is mobili (Jacquemin, 2011, p. 9, translated).

So, the second considerations follow.

SECOND CONSIDERATIONS

The second considerations of this worm on the role of jurists, irony, and laughter in *The Posthumous Memoirs* are specifically related to gnawing the novel about Brás Cubas, in order to build the lines of thought for the reflections intended.

Hence, we firstly remind of what Afrânio Coutinho said about the work by Machado de Assis, that he did not simply portray reality, but transfigured it; he created a work that was more similar to life than a mimetic copy of reality could ever be. This way, Machado de Assis perceived the difference between art and life. In the words of Coutinho (1972, p. 201),

Machado knew how to see literature as a set of symbols and conventions, whose manipulation is crucial for the use of elements of life it proposes, otherwise it would be inartistic. He knew that the artist's mission was, at the expense of those symbols, artifices and conventions, to create a special world, similar to the real one, which

would awaken an illusion of life, without being life itself. Of course, this world had to be credible, but with a deeper verisimilitude, because it is more universal, and capture it and represent it, the needed action would be to show reality through small representative snapshots, properly selected and structured, that could communicate the impression of the complete effect.

Besides that, one can say that *The Posthumous Memoirs of Brás Cubas* (often translated to English as *Epitaph of a Small Winner*) is one of the most famous novels by Joaquim Maria Machado de Assis. It was written and published throughout 1880 in serial journals and released the following year as a book. Even so long after its publication time, the novel continues to receive accolades, and is still the focus of research, interpretation, adaptations for other media, as well as translations to other languages.

In his foreword, as a letter to the reader, Machado de Assis points to influences he had from the Irish writer Laurence Sterne and the French author Xavier de Maistre; after that, in the prologue to the fourth edition of the novel, he also added a reference to the Portuguese writer João Baptista da Silva Leitão de Almeida Garrett. All of these authors served as foundation to his non-objectivistic audacity, his non-linear innovation, his fragmented structure of narration, his silent and sleek taste, and his meta-narrative interventions in the structure of the text with a fantasy trait that the author himself would later acknowledge as a pinnacle of his career.

As a narrator, Brás Cubas does not justify the reasons that took him to choose such method, which, to a certain extent, invites the reader to a certain position of autonomy and at the same time makes them cooperate with the author to fill in the gaps of the text (Rouanet, 2007, p. 53-54). There are, for example, chapter with no title; there are even chapters with no text, or literal dialogues with the reader, telling them to stop, think, and decide whatever suits them.

So, the novel is narrated by a deceased author who uses irony to deal with several topics of his life while telling his memoirs. To be different from the *Pentateuch*, in which Moses tells of his death in the end, Brás Cubas chooses to inform us about his death in a more novel and gallant way, right at the beginning of the narrative. He died on a Friday, at two in the afternoon, in August 1869, at the age of sixty-four, ripe and prosper.

He makes a point of saying that he had about three hundred *contos* and says that he was accompanied to the cemetery by 11 friends, justifying the scarcity of close ones because there were no advertisements of his death and because it was raining.

Afterwards, he narrates the cause of his death, a mixture of pneumonia with a grandiose idea, contracted while he was inventing the “Brás Cubas ointment”, a kind of anti-hypochondriac drug remedy designed to alleviate the melancholy of humanity, a distant cousin of “Bálsamo de Ferrabrás”, from the narrative of *Don Quixote*. His last obsession supposedly could have brought him life-long recognition, as he confesses that his main drive was “the pleasure of seeing on the newspapers, magazines, folders, brochures, pamphlets, streets, and of course the boxes of the medicine, those three words: Brás Cubas Ointment”, and he adds: “So my idea had two faces, like a medal, one facing the audience, the other facing me. On the one hand, solidarity and profit; on the other, the thirst for fame” (Assis, 2011, p. 21, translated).

Throughout the novel there is the background of the historical time, with slavery, the social classes, Evolutionism, Positivism, the ideas of those times. About himself, Brás Cubas tells us of his childhood, as a rich boy, spoiled and rude; he suggests his affection for contemplating human injustice, his inclination to attenuate it, to explain it, to classify it by parts and understand it, “not according to a rigid standard, but according to circumstances and places” (Assis, 2011, p. 39, translated); he tells about family and school occasions; his first kiss and first love of youth, with Marcela, who loved him for “15 months and 11 *contos de réis* spent” (Assis, 2011, p. 53, translated); he also tells of other loves, travels, delusions and everyday situations as a whole.

About his studies in Coimbra, where he went more to cure his disappointment in love than to study, Brás Cubas tells that he hoped to make “a great future! [...] Perhaps to become a naturalist, a literate, an archaeologist, a banker, a politician, or even a bishop [...] as long as there was a profession, a pre-eminence, a great reputation, a superior position” (Assis, 2011, p. 62, translated). He ends up becoming a Bachelor of Laws.

At some point, he presents himself as modest, joins the “Third Order of ***”, and pretty much says that he held positions there: “it was the most

brilliant phase of my life. However, I remain silent, I say nothing, I do not talk about my services, what I have done to the poor and the sick, nor the rewards I have received, nothing, I say absolutely nothing” (Assis, 2011, p. 222, translated). However, regarding the joy he had in helping the sick and the needy, Cubas admits: “I felt it in a reflexive way, and yet it was big, so big that it gave me an excellent idea of myself” (Assis, 2011, p. 222, translated).

After his mother died, he wanted to become a politician and marry the daughter of a Counselor. After his father’s death, he struggled with his sister and brother-in-law in a dispute over the inheritance. To keep a relationship under wraps, he corrupts a Mistress. Also throughout his memoirs, he tells that he learned from a friend the philosophy of Humanitism, to which he considers himself a partisan; he narrates about how he wanted to be a Marquis but it did not happen; he remembers how he was not a Caliph and how he was not a Minister of State; he founded a journal that had no success; he neither married nor achieved the celebrity of the ointment; he brags that he did not die one way, though he died another; and, finally, he notes: “I had no child, I did not transmit to any creature the legacy of our misery”. (Assis, 2011, p. 225, translated).

THIRD CONSIDERATIONS

The third considerations by this worm who writes are a sort of eavesdropping practice on the matter of law; especially to that which grants a foundation to all the legal thought, the origin of the whole of the legal culture, the ground on which every logic of a jurist starts. “From this ground and this manure comes a flower” (Assis, 2011, p. 41, translated). For that, one must search, even if superficially and shortly, for elements of the training of legal practitioners from the past.

When Brazil was founded, in the first half of the nineteenth century, the teaching of law was worried about the political commandment of building the bureaucracy of the government by the State that was beginning to form, as well as exerting some control over the process of ideology development by the professionals that were training to work with the law (Wolkmer, 2010). Coming from rich classes, the young men from plantation families or fancy city houses searched for bachelor’s degree

diplomas, especially Law, Medicine and Engineering, not due to vocation or aspiration for knowledge or the will to help society by diminishing its problems, but due to the social status those professions could grant them, in order to keep or enhance their position. So, driven by individualistic mindsets and by economically liberal politics, save rare exceptions, those law practitioners had as their concrete objective to legalize the interests of dominant classes from whence they came. Sérgio Adorno (1988, p. 91, translated) says that

the legal culture in the Brazilian Empire produced a specific type of intellectual: politically disciplined according to the ideological foundations of the State; thoughtfully professionalized to materialize the functioning and control of the administrative apparatus; and skillfully convinced, if not of the legitimacy, at least of the legality of the established form of government

Summing up, these were the characteristics of the bachelor of that time, even if their so-called liberalism could be easily seen as questionable, as Roberto Schwartz (2000a) classifies, a liberalism of appearances only, with a certain impression of farce, when commenting on those modern and progressive pretensions, but with work relationships, forms of sociability, religious influence, types of prestige with marks of another time, of the Ancient Regime. Liberal ideas in Brazil were never lacking, Paulo Sérgio Pinheiro says in the publication of Adorno (1988 s/p), “they were always present in social movements and in the discourse of the ruling classes, which, since the 18th century, had found in liberalism powerful instruments for the dissimulation of command and will”.

Also, from the study developed by Adorno, it is shown that the Bachelor of Laws of the 19th century was an intellectual trained at the expense of a controversial, agitated and heterogeneous academic life, formed voluntarily or, above all, within institutes, associations, academic journals, literary associations and Masonic lodges, more than effectively inside the classroom, focused on legal science. “The secret of legal education during the Empire was precisely that of teaching nothing or almost nothing about the legal sciences”, concludes Adorno (1988, p. 237, translated).

Thus characterized, in legal training courses, a Coimbra-based style was used, the method of lesson-monologue, of academic preaching, in the description given by Alberto Venâncio Filho (2011, p. 249), a doctrinal and exegetical scholasticism, which was not even theoretical not practical, says Unger (2005), contemporarily. Such teaching method can be described, at last, as a logical and balanced understanding of the Law, but also as a disinterested, fatalistic culture, with naive perceptions of social reality, with worldviews aimed at the perpetuation of the reigning power structures, with knowledge about the present as something to be standardized and with a perspective of the future as a never-ending repetition of the present (Sbizera, 2015). It was all something like that from the Empire to the first Republic, and from then on, until today, it can be said that it continues to be so, as an endless gerund, with slight and always unsatisfactory results from small, attempted reforms and changes.

Even though countless studies on the teaching of law and the training of jurists in Brazil have been carried out and published⁷, each with their different points of view, approaches, objects of study, and with different types of criticism, questions, and possible solutions, a common ground among them is naming a status of crisis in legal education. However, if seen from a historical point of view, with the right attention given, this crisis is more of a critical symptom of a chronic disease, hosted since the past but still present, deeper and more dangerous than a simple, recent crisis and social pathology (Sbizera, 2015). To close these third considerations, thus, we add:

The problem of law education and teaching in Brazil is an extreme case. As it is now, it is no good. It is not useful, neither to teach students to exercise the law, in any part of its professional aspects, nor to train people who can improve the level of debate of our problems, our institutions and our public policies. It represents a massive and lasting waste of many of our best geniuses.

⁷ To mention a few, see Roberto Lyra Filho, Joaquim Arruda Falcão Neto, Alberto Venâncio Filho, Sérgio Adorno, Aurélio Wander Bastos, Roberto Armando de Aguiar e Silva, Horácio Wanderlei Rodrigues, Edmundo Lima de Arruda Júnior and Roberto Mangabeira Unger, who published legal education studies in Brazil.

And it frustrates those who, as students or professors, participate in it: the more serious they are, the more frustrated they get (Unger, 2005, p. 16-17, translated).

The fourth considerations follow.

FOURTH CONSIDERATIONS

The second considerations by this worm who writes were about the novel *The Posthumous Memoirs of Brás Cubas: Epitaph of a Small Winner*. These fourth considerations are about the leading character of that novel. His characteristics, which are oscillating, are seen as inner and outer in relation to the novel, which is thus rich and able to be reread several times, due to that potency of public and private purposes of the work by Machado de Assis.

Hence, regarding the inner aspect of the novel, one could point to the memoirs Brás brings about his great future perspectives, as mentioned before, when he compares it to the reality of a period he spent studying at the University of Coimbra, as follows:

University expected me with its arduous subjects; I studied all of them with mediocre dedication, but still gained the bachelor's degree; they granted it to me with solemnity and style, after those years of law school, with a beautiful party that brought me pride and good memories – especially those memories. I had in Coimbra the reputation of a party boy; an academic student who was superficial, ballsy, tumultuous, and petulant, given to adventure, a believer of practical romanticism and theoretical liberalism, living in the pure faith of black eyes and written constitutions. On the day the university attested to me, on parchment, a science that I was far from having rooted in my brain, I confess that I found myself somehow cheated, however proud (Assis, 2011, p. 62-63, translated).

Following to that, he explains himself, saying that that diploma worked as a letter of freedom, which brought together a great deal of responsibility; after holding his diploma, he felt a “desire to be seen by the others, to influence over, to be happy, to live – to stay in university forever...” (Assis, 2011, p. 63, translated). About university itself and its lack of philosophy, he adds:

I would not say university did not teach me anything; but I memorized the formulae, the vocabulary, the skeleton. I treated it the way I treat studying Latin; Memorizing three verses by Virgilio, two of Horace, a dozen moral and political sayings, just to be able to hold

conversations. I treated my studies the way I treat History and Jurisprudence. Of all things, I stuck with the sentences, the outer appearances, the pretty wordings... (Assis, 2011, p. 68, translated).

Back to Rio de Janeiro, he hits a stalled donkey that nearly knocked him out of the saddle, a muleteer that was there saved him from disaster. “And it was true; if the donkey had run out there, it would really hurt me, and I don’t know if death wouldn’t be lurking at the end of the disaster; a broken head, a congestion, any disorder inside, there would have gone my blooming science”, considers Brás, “maybe the muleteer had saved my life; it was positive; I felt it in the blood that stirred my heart” (Assis, 2011, p. 63, translated). For all he had done, Brás decides to give the muleteer three gold coins, out of the five he had, and he mentions to the reader: “not that this amount was the price of my life or anything like that, but it seemed like a dignified reward for a man who had saved me” (Assis, 2011, p. 63, translated). As he went to the saddlebag to take out the coins, he wondered if the gratification was not perhaps excessive, if two coins would not be enough; maybe one. “Indeed, a coin was enough to give him shivers of joy”, Brás Cubas thinks to himself; after all, the muleteer probably “was a poor devil, who had never seen a gold coin” (Assis, 2011, p. 64, translated). A cold man, he ends up giving the muleteer a single silver coin, justifying to himself that “it was good money, maybe even too much”. He concludes, stingily, even with remorse and regret, that he should have given a mere penny of copper instead of silver, “because, in the end, he did not take any reward or virtue in sight, he gave in to a natural impulse, to temperament, to the habits of the trade”, “that the circumstances of being at the right time and the right place to hinder the disaster seemed to make him a simple instrument of Providence”, and that, “one way or another, the merit of the act was positively none” (Assis, 2011, p. 64-65, translated).

Another moment, Brás Cubas recalls a case in which a black butterfly entered his bedroom, flying around him and landing on his forehead. After he shakes it off, the insect flies around for some moments and lands on top of his father’s portrait. Brás interprets the weakness of the butterflies’ wings as mockery and gets irritated, and he ends up killing the insect with a towel. “It did not drop dead at first; it was still twisting its body and moving the antennae. It was pitiful; I took it in the palm of my

hand and went to place it on the windowsill. It was late”, says Brás. With the butterfly’s death, he gets annoyed and asks himself: “Why the hell was it not blue too?”. This reflection, considered by Brás as “one of the most profound that has been done since the invention of butterflies”, leads to the following thought:

I contemplated the insect’s corpse with a little sympathy, I must confess. I imagined that it had probably come from the bushes, with a filled stomach, happily. It was a lovely morning. It came from outside, modest and black, showing off its beauty, under the vast dome of the blue sky, which is always blue, no matter one’s wing color. I suppose it had never seen a man before; it flew infinitely around my body, saw that I was moving, that I had eyes, arms, legs, a divine appearance, a colossal height. So, it said to itself: ‘this is probably the creator of all butterflies’. [...] And the strike of a towel ended its adventure. The blue infiniteness, the joy of all the flowers, the beauty of the green leaves, none of that was enough against the strength of that linen bathroom towel. It is incredibly good to be superior to those butterflies! Because it would be fair to say that if it had been a blue or an orange butterfly, it would also had died, as I might have wanted to have it pinned on the wall or something. This last idea restored my consolation; I linked my big finger to my thumb, flicked, and the corpse fell into the garden. It was time; here came the ants provided... No, I must return to the first idea; I think it would have been better for her to have been born blue (Assis, 2011, p. 79-80, translated).

At another moment of the novel, when taking off his boots, which were tight, Brás Cubas feels relieved and begins to consider that “tight boots are one of the greatest fortunes on earth, because, making the feet hurt, they give rise to the pleasure of taking them off”, and concludes that “life is the most incredible of phenomena, since it makes people feel hungry so that they can feel the pleasure of eating, so a callus exists so that they create happiness on Earth”, and that “all of human knowledge values less than a pair of short boots” (Assis, 2011, p. 85, translated).

Besides these occasions, Brás Cubas reveals his personality many times throughout the novel. Alfredo Bosi (1979) considers that *The Posthumous Memoirs* is able to convey an ideologic and formal revolution, as it deepens the contempt to those romanticist idealizations, especially regarding the myth of the omniscient narrator, who sees and judges all, to let the individual conscience of a character emerge, as a weak and incoherent person.

It was in this surprising book that Machado discovered [...] that the character's status in fiction does not depend on having psychological fixity, nor on its conversion into a type character; and that the reporting of the most disparate sensations and states of consciousness conveys, in an exemplary way, something that goes beyond the idea of persona: the continuum of the human psyche (Bosi, 1979, p. 200, translated).

The deceased author Brás Cubas is different from the living Brás Cubas. After death, he gains full permission to show fearlessly his hypocrisy and indifference about human history. At least, about the human history he got to know, not transcending the common-sense philosophy of bourgeoisie, frozen due to the irreversible condition of being deceased; what remains are the memoirs of a man who is the same as so many others, the cautious and enjoyer Brás Cubas, as Bosi (1979) says. The points of view constructed by Brás reveal “the several different interests of position, prestige and money, granting leadership to the libido and the will to power that more profoundly govern men in society”, or, in a single sentence: “there are no more heroes to fulfill missions or to assert their own wills; there are only destinations, destinations without greatness” (Bosi, 1979, p. 200, translated).

Eduardo Portella (2007, p. 12, translated), in the foreword of *Riso e melancolia (Laughter and Melancholy)*, by Sergio Paulo Rouanet, comments that the character Brás Cubas “is the only one who starts to live after his death. As if dying had rid him of a melancholic and usurping life”. These characteristics make up what Rouanet calls the Shandean form, that is, something that shelters, that conceals and reprograms melancholy behind a veil of funniness. Within laughter, mockery and ridicule, melancholy can be found; “laughter helps melancholy to overcome accidents”, as Portella puts (2007, p. 15, translated).

And one of the main traits of this Shandean form is the exaggeration of subjectivity, which is an attribute of the narrator, not of the author of a work, according to Rouanet (2007). With this exaggeration of subjectivity, Brás Cubas builds all his considerations, as seen so far, which makes us question a certain legal imagery. Machado (2011, p. 68, translated) makes Brás Cubas admit that it might be a surprise for readers how frankly he exposes and highlights his own mediocrity, “frankness is the first virtue of a deceased man”. According to Rouanet (2007, p. 220, translated),

Machado conscientiously fulfills his duty to supply the reader with comic jokes, to make them laugh. But [...] he has no illusions about the therapeutic benefits of this laughter. Rather, the function of laughter seems to be to unbuild the idea that melancholy could ever be cured at all. It was the Brás Cubas Ointment that could cure it. But the project failed, and it had to fail, because Brás was never serious enough to produce a real invention.

EPILOGUE

“If this world were not this region of inattentive spirits, I would not need to remind the reader that I can only affirm certain laws when I indeed know about them; as for the others, I restrict myself to only admitting their probability”, as Brás points out (Assis, 2011, p. 166). From that, as we expect to have shown, there is nothing, either in the past, the future, or even in the beyond, that the narrator of *Posthumous Memoirs*, as a deceased man, would not be able to speak about. Likewise, from a world different than that of humans, that this worm decides to speak, to provoke, to make one think about this other human world, especially regarding the universe of law. According to Schwarz (2000a, p. 11), Machado observed in real society, with its social relations, a “horribly divided” place. Likewise, this worm perceives the divisions of jurists of all sorts and their thoughts and actions.

If Machado de Assis (2011, p. 24, translated) cares for making Brás Cubas say that the book was written “with the assurance of a man who is already unchallenged by the brevity of the century, a supinely philosophical work, of an unequal philosophy, austere sometimes, then playful other times, something that neither edifies nor destroys, neither inflames nor entertains”, being, however, “more than a hobby and less than an apostolate”, this worm uses the same argument, and the same meanings.

Hence, we consider that, as in Afrânio Coutinho’s descriptions of Romanticism, it can also be said, in reality, that the jurist is a pretentious author or critic; that a jurist embodies a writer’s civilizing mission, as if they were champions of justice; that a jurist imagines him or herself endowed with the traits of a sorcerer or prophet, destined to greatly influence the course of events, thanks to a doubtful inspiration, enlightenment, or supreme education; a person who thinks they have the

responsibility for social and political change, for leading humanity, with educating, progressive, moralizing functions. Such ideas gain fertile ground in the jurist's even more fertile imagination. Since a remote past, jurists have fantasized themselves and even today they see themselves as the professional who is best able to think, act and be superlatively considered, but who ends up being just another reproduction of everything that Adorno described and we punctuated in the third considerations.

Also, in parallel with what Coutinho says about Machado, one can understand that we also face the law, the jurist, their thoughts and practices as a body of symbols and conventions; and we also use an artistic manipulation, of worms, to use the legal elements in twisted ways. The intention of this worm is, at the expense of symbols, metaphors, and conventions – illusions – other than life, to create life. Of course, everything we have said here is not exactly the real world, none of it is the complete truth. Between what we describe and reality there is a gap, another world, of a different kind. But therein also lies deep verisimilitude, buried down, as it is captured in time, life, and details, and represented through small representative snapshots, carefully selected, structured, gnawed, chewed, tasted, meanings that remain to communicate an impression of the total effect. "I write my memoirs and not yours, peaceful reader" (Assis, 2011, p. 164, translated). Everything to gnaw this rigid juridical apparatus, this Law that does not dedicate its existence to life.

According to Cancellier, the legal imagery "is that of rules, standards, of the tested, the dogma, the certainties, concreteness, absolute logic, with the symbol of a mythical image of the law". And in this imagery, law would be a father figure, who teaches, counsels, punishes, delivers. "In the representation of the legal imagery, the name of the father is the law itself. That is what allows for the cohesion of legality that builds this imagery, based on the principle of non-contradiction" (2011, p. 153, translated).

Otherwise, we develop the opposite sense. We are made of the materials of dreams and our little life is surrounded by slumber, as says another character, by Shakespeare, not completely decomposed, on the

island of Caliban. Us, little worms, are surrounded by a kind of perennial slumber, but from of it and its flavors or deceptions, we also build dreams. Just ask around. We invent dreams and now we write to make these dreams come true. A worm that dreams of another law, of other jurists, thoughts and actions in reality.

And that is why in these considerations of a worm based on *The Posthumous Memoirs*, we could say, intertextually, that the jurist usually shows him / herself as someone “gifted with rare discernment”, with “a strong intellectual culture, based on the classics but open to contemporary philosophers and writers”, as “the most important figure in literature and the object of an almost without exception veneration”, serving “both the refined and the simple”; that the jurist portrays him / herself as “the highest point”; and exhibits him / herself as “the greatest”, endowed with the ability to “express himself with reserved urbanity”, as “the ultimate work”, characteristics all attributed to Joaquim Maria Machado de Assis and his work. However, Alfredo Bosi (1979, p. 203, translated) says that Machado’s fiction should not be turned into an idol, as “this would not suit an author who has made literature an assiduous refusal of all myths”.

Hence, to ironically unbuild myths and to provide laughter – and laughter is never far from death – this worm must say that the jurists show themselves, more realistically, just like the character Brás Cubas. That is, someone who studies only mediocly; someone who is academically superficial, tumultuous, and petulant, given to adventures; who celebrates something not lived; who lives practical Romanticism and theoretical Liberalism; who only brings their science on paper, far from bringing it in the brain and in their life; someone proud; someone who only memorizes the formulae, the vocabulary, the shape of the skeleton; who uses only the pretty lettering, shells of ideas.

A juris tis traditionally projected as he or she is Machado de Assis, but they are all similar to Brás Cubas in reality. They create myths about themselves and consider themselves generous when giving gold coins to others, when deeply regretting not having given lesser nickels; they do not acknowledge merit from smaller third parties. They distillate about themselves a plethora of pretentious reflections from stupid actions, with

airs of sadism, as a butterfly that does not please the eyes due to its color; they think a weak wing movement is mockery to their persons and get annoyed easily; their piety then transforms into killing the small opponent. They deduce pretentious knowledge of prosaic situations, as a philosophy of tight boots. Let the reader return to the considerations and its exaggerations to see the argument for themselves.

Yes, worm, you live. Do not fear losing this rag that brings you pride; you shall taste, for some hours longer, the bread of pain and the wine of misery. Even now you have gone mad, you live; and if your consciousness recovers an instant of sagacity, you shall say you want to live (Assis, 2011, p. 30, translated).

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