

THE BRAZILIAN EPOPEE AND DANGEROUS ANTI-HERO:

Brief study on the contributions of literature to the study of law from

The Barrens, Euclides da Cunha¹

Ellen Rodrigues²

Mara Vieira de Oliveira³

ABSTRACT

This paper highlights the importance of art in learning the law. It was chosen as a clipping the relationship between law and literature the work of The Barrens from Euclides da Cunha, aiming to identify traits present in literary narrative allowing the law student to understand better the different aspects of Brazilian criminal policy in the late nineteenth century to the twentieth.

Keywords: Law, Literature, Realism, Positivism; Criminal Policy.

A EPOPEIA BRASILEIRA E O ANTI-HERÓI PERIGOSO:

Breve estudo sobre as contribuições da literatura ao estudo do Direito a partir de

Os Sertões, de Euclides da Cunha

RESUMO

O presente trabalho destaca a importância da arte como veículo propulsor de um método de aprendizagem que privilegia a interdisciplinaridade e a intersubjetividade como possibilidades de se pensar o Direito para além da letra da lei. Elegeu-se como recorte da

¹ This article was translated by Ana Luiza Calil, Dandara Araujo, Douglas Oliveira e Helena Lettieri and the translated version was approved by the author.

² Doutoranda em Direito Penal (UERJ), Mestre em Ciências Sociais (UFJF), Professora de Direito Penal e Criminologia da Faculdade de Direito da UFJF.

³ Doutora em Letras (UFF), Mestre em Letras (UFJF), Professora nos cursos de Direito da Faculdade Estácio de Sá – Campus Juiz de Fora/MG.UNESA

This article was translated by Ana Luiza Calil, Dandara Araujo, Douglas Oliveira e Helena Lettieri and authorized for publication by the authors in 26/06/2014. Version in Portuguese received in 07/04/2014, accepted in 06/05/2014

relação entre o Direito e a Literatura a obra *Os Sertões* de Euclides da Cunha, tendo como objetivo identificar traços presentes na narrativa literária que permitam ao estudante de Direito tornar mais palatável a compreensão dos diferentes aspectos da política criminal levada a efeito no Brasil na transição do século XIX para o XX.

Palavras-chave: Direito; Literatura; Realismo; Positivismo; Política Criminal.

INTRODUCTION

This work aims a deepening study of the law, with art as its motivation to a learning method that emphasizes interdisciplinary studies and the capacity of thinking the law beyond its text. Because of the law's coverage over society, only the pure interpretation of the law is not enough as it does not consider social factors implied in the relationships analyzed by the judiciary, which hampers a just and adequate exercise of its competences. Having as a base the need to an interdisciplinary perspective for whoever applies the law, it is crucial that, during their education, theoretical and epistemological instruments are provided so they can have an intellectual and human footing in order to give effect to the weighting of opposite sides when exercising their jobs.

In this study it was chosen the relationship between Law and Literature, *The Barrens* of Euclides da Cunha, and tries to identify traces in this story that could offer to law students more context to comprehend the social and historical period of the Brazilian legal system in the change of the 19th century to the 20th, so they could observe which aspects were modified and which ones remains nowadays. This article, therefore, intends to stimulate a wide reading of social facts, offering alternative interpretations different from the convencionalism of a functionalist reading, in which there is only one meaning. From an analysis based on intertextuality, that has the objective to overcome the structuralism, this study tries to bring closer legal and literary matters, considering the theories of the reception's esthetics.

1 LITERARY AND PEDAGOGICAL

Art is considered, in this study, as a hypothesis of a element that motivates a learning that will prioritize the interdisciplinarity and the capacity of thinking the Law, not through a conventional perspective anymore, but through a more critical one. Many concepts were created about art and they often complement themselves. Also, the

difference between a literary and a non-literary text (a very controversial matter) is intensively discussed by theoreticians. As a more profound mention of this subject is not the ambition of this article, it will be considered the non-literary text here as the one which sends a clear and objective message (like the newspapers, medicine leaflets, traffic rules); while the literary text, because it is constructed figuratively, is the one that gives the reader many possible interpretations. The subjectivity of this type of text is understood as an important element in the elaboration of a less conventional reading in the legal area.

In the book of Gilles Deleuze, *What is philosophy?*, the author discusses how the thought works in philosophy, in science and in art, considering that, for him, the problem is its infinite speed, that needs a way to express itself that also moves infinitely. Philosophy creates concepts, which means it has the role of having ideas and defining them according to an immanence plan that causes a experimentation and filtrates the chaos. It seeks thinking consistently, without losing, however, its infinite atmosphere, in which the thought penetrates. On the other hand, art performs itself in a world of sensations, composed by *perceptos* and *afectos*⁴. Because of that, it is circumscribed in the real world, feeling the infinite speed of the thought in its creation and its concrete realization.

The literary narratives have in its discursive structure various meanings which, while proposing many interpretations, provokes reflections and critiques - essential to law students because they often anticipate the analysis constricting themselves to a deductive reasoning strategy. Maybe it is because they don't know how to "explore the infinite speed of their thoughts" or because they have angst to "criticize", but they lose the opportunity to examine many interpretations, which would give them the capacity to understand the many voices that compose a text.

We chose the inductive method to analyze the legal speech to stimulate the experience of thinking through the art, in order to the literary text to become notorious and allow, therefore, its structures to inspire the exercise of interpretation. The reading of a literary text will make the student to investigate more carefully the narratives, the descriptions and the values expressed in each scene. Literature, by being more extreme, intensifies narratives and gives more importance to social factors of the text. The use of

⁴ The perceptos are not perception, they are an independent condition of those who experiment it; while the afectos are not feelings anymore, but overflow the strength of those who cross it. These feelings, perceptos e afectos, are worth by themselves and outstrip any lived situation. They exist without the men because the men are composed by them. The work of art is a being of feelings and nothing more: it exists in itself.

literature has the goal to break immediatism, which, according to Benjamin (1994), weakens the capacity of thinking. Yunes says the modern life has accelerated the urban routine: we have reached a time when *“the leisure is no longer an anteroom of laziness to become preliminary to the reflection, condition and the memorial of creation. Every man has the right to a period to contemplate and experience the creative idleness. However, in the urban life it is not possible because we have the need to produce everything “automatically”* (YUNES, 2003, p.11).

This acceleration of life makes it difficult to have, not only the capacity of narrating, but also of reading, the capacity of becoming a reader that can, in the words of Umberto Eco (1994), dawdle in the text. It is through this dawdle that a reader is constructed, a reader that reflects and thinks without taking away from him the space to contemplate.

It is fundamental in Law courses the reading of concrete situations for the construction of textual comprehension, but it cannot be the only learning method. This study advocates for the need to think the importance of literary reading as a tool to a better comprehension of legal cases, because the case by itself, by being more close to reality, gives often the student an urge to judge it without even analyzing it first. This urge expresses the automaticity of the modern life, mentioned by Yunes. In this process, the student skips important steps of the comprehension of the text and ends up elaborating inconsistent arguments.

Umberto Eco turns the reader as the main character, in the perspective of the esthetics of reception, and understands that the reading must be a slow process, and to express that, he uses a metaphor of a walk in the woods:

Let's go for a walk in the woods. If we won't have to run away from a wolf or an ogre, it is awesome to be there, watching the sunlight that plays between the trees and spreads the glades, examining the moss, the mushrooms, the bushes. To dawdle is not to waste time: frequently, we stop to think before taking a decision. Since we can walk in the woods without having a specific destination and since sometimes it is funny to get lost for joy, I'll talk about those walks that the author's strategy makes the reader to give. One of the ways that can be used by an author to dawdle or reduce the speed is the one who allows the reader to “walk in inferences”. (ECO, 1994, p. 56)

Although usually it is necessary the use of an impartial and objective text to legal studies, many other aspects cannot be forgotten, such as the subjective, ideological, political and criminological ones. Ingedore Koch (2009) recognizes that any text is fully neutral: every text always brings a value and shows linguistic elements that reviews a specific interest. Even if the text has apparently harmless opinion, its language uses a

specific strategy instead of other construction strategies. Language always has some intention and one of its main characteristics is to be a way to share ideologies. *“It is not our voice that directs the speech, but the voice of the common sense, of the ideology, of the interpretative community where we are restricted; it determines what we say and what we read of the world e of the letters, social and culturally.”* (YUNES, 2003, p.10)

Literary texts can be useful for the formation of new readers and future law professionals, serving as a tool to complement the process of textual intellection, and allows them to give different interpretations of legal cases. This makes law students more compromised to accept different arguments and more sensitive to the many life situations and, therefore, turning them more capable of valuating, interpreting and judging the society's behavior.

Regarding the book referred in this article, *The Barrens*, this article will be limited to study the Brazilian social organization during the end of the 19th century – in the context of urban growth, economical and political crises, critiques against slavery, popular demonstrations and the emergence of the republican system – that has the massacre of Canudos war as one of its most evident scar. The book, published in 1902, is divided into 3 parts: The Earth, The Man and The Fight, and denounces the reality at that time, showing for the first time in Brazilian literature the true life conditions of the country's northeast. This story was chosen because it reveals national problems that remain nowadays, specially the criminal matters, which gives the student the possibility to analyze the current criminal issues through more critical eyes.

2 LITERATURE AS A WAY IN THE HUMANIZATION PROCESS

Since its creation, literature allows men to share stories, historical facts, findings, codes and experiences that – when spread - influences the production of the individual conscience. On the other hand, there are books that bring universal and timeless issues, reaching hidden parts of the human soul, whose characters are like a myth frequently.

After the work, culture can be established as one of the major elements that transform reality. While human work is directed by specific purposes and it is the answer to the challenges given from nature in the fight for survival, culture is the process through which men collect their lived experiences, distinguish and keep the encouraging ones and, as a result, convert them into images and memories. Those memories, attached to sensitive reality at first, are later generalized in the creative meeting with the natural

world. Therefore, the world that comes from human acts is not natural anymore since it is increasingly humanized, transformed by men. (ARANHA, 1986, p. 5)

This process of autoliberalization and progressive humanization, with the culture, turns the experiences of the people into an universal matter. Analyzing the different culture expressions, literature is the way through which men can locate themselves in time, remembering things that happened in the past and bringing forward the future using their thought. While the literary language permits men to move away from the world by its symbolical and abstract expression, it also gives the possibility of returning to the world in a revolutionized form. That is why literature is extremely important to the learning process of law and to the humanization of the future professional of this area. Taking law as an arm of the common knowledge, it aims for the social balance and peace using affirmative and regulative actions, which only can be defined in an assertive way by people compromised with social and human issues.

Considering society as a condition to men's liberty, but also to their alienation⁵, it is crucial to keep to the dialectic *heritage-renovation* in order to the maintenance of men's improvement process, even if engrossed in the news of their time, distinguishing themselves from the others without losing the notion of otherness. The high importance of techniques and instrumental reason⁶ in capitalist societies blocks the access to the *alter* and, consequently, sensibility is expelled from human transactions. The rudeness banishes sensibility, hinders the production of art and extinguishes subtle feelings for things and people. Globalized capitalism dries up creative and reflexive energies from production and consumerism, in whose cycle competition is present and alienates the relationship between social factors. Art and, in the specific case of this article, literature

⁵ The alienated man loses his comprehension of the world he lives and considers an important element of his reality as unfamiliar to his conscience. The alienated conscience makes the man stop being the center of himself. In capitalist societies, the internalization of money and profit as the most crucial values turn these ideas into components more important than men, and, consequently, money stops being mediation between individuals, characterizing a process known as *rectification*. (MARX, 1984)

⁶ The sense that emerges in modern times is an instrumental sense, a type of reason that destroys human existence in its fullness, reducing it into one of its aspects. This form accepted by modern society as a technical sense, whose profit is used by the production conveyor to extract benefits, reveals power and domination, keeping man in a praxis dimension which separates ego from the perception of himself and others, creating an instrumentalization of nature, of others, of the body, of the spirit, of coexistence, of family, of society as a whole. (HORKHEIMER e ADORNO, 1997)

are important in the scenario because they imply a denial of the world as mentioned, connecting intensively with the it, by exercising social critics regarding the predominant normation or stimulating the exercise of thought that will lead the reader to elaborate its own critics.

2 LITERATURE AS A MOBILE IN THE PROCESS OF HUMANIZATION

Since the beginning, literature makes possible to tell facts, historical events, discoveries, codes and experiences, which – by being disseminated - influence the construction of individual consciousness. On the other hand, there are books that translate timeless and universal statements and questions, so that they reach the human soul in its less known aspects, and in these books characters often act like a kind of myth.

After work, culture could be listed as one of the biggest mechanisms to change the reality. While human work is the action directed to conscious goals and it is also the answer to nature's challenges in the fight for survival, culture is the process in which people can combine experiences they are able to live, then they discern these experiences, they set the good ones and, as the result of this action, people turn ideas into images and memories. These memories are initially related to sensitive realities, and later they are expanded by an inventive contact with the natural world. Thus, the world as a result of human action is a world that we can't call natural anymore, because it is increasingly humanized, i. e., it is transformed by man (ARANHA, 1986. p.5).

Through culture, this process of “self-liberation” and progressive humanization goes beyond the experience of involved people and it takes a universal aspect. Among the different cultural expressions, literature can be highlighted as the tool which makes possible that man places himself in time, so that he remembers what happened in the past and he can anticipate the future by thinking. At the same time that literary language allows a distance from the world because of symbolic and abstract representation, it also makes possible the return to the world through a different and new way. Therefore literature is an extremely important tool in the process of learning Law and also in the humanization of this science's professional future. Whereas Law is considered a type of knowledge which mainly search the harmony and social peace's promotion through affirmative and

regulatory actions, it is understood that these actions only can be correctly searched by people who are truly concerned about human and social issues.

Whereas society is the condition of man's freedom and also of his alienation⁷, it is essential to keep alive the concern about the dialectic "*heritage-renewal*", in order to keep man always in process of improvement in his position of a social being, even if he is deeply involved in his time's innovations, so that he distinguish himself from the others without losing the notion of otherness. The prevalence of technicism and instrumental reason⁸ in capitalist societies obstructs the access bridges into the *alter* and so sensitiveness is banished from the universe of human transactions. The rudeness in the exclusion of sensitiveness obstructs art and ends with the more subtle feelings about things and people. The capitalism of global times exhausts the creative and reflexive energies from those who are focused on working and consuming, in a cycle based on a competition logic that guides the alienated way of acting the social agents ones against the others. Hence the relevance of art and, here, particularly the importance of literature, because it provokes some kind of rejection of the world as a set horizon, in a tension relation with this world, which can be noted whether in the social criticism against the predominant rules or when literature brings reflections that allow the careful reader to formulate his or her own criticism.

Although the influence of culture industry (ADORNO, 2002) in contemporary societies seems to have no limits, the process of creating a masse and standards is not absolute in terms of art, because this would mean its end. Art is a way of resistance against

⁷ The alienated man lose the comprehension about the world where he live and makes extraneous to his consciousness an important part of the reality where he is located. The alienated consciousness makes man stop being the center of himself. In capitalist societies, the fact of considering in first place the values of money and gain puts them in a higher position than man himself, so that money is no more medium among people and so starts the process known as reification (MARX, 1984).

⁸ In modern times emerges the instrumental reason, which is a kind of reason that fully tears the human existence and, so, this reason reduces human existence to only one of its aspects. Modern reason as a technical reason that offers benefits to production models is an aspect that shows power and domination, so that man stays inside a *práxis* that keeps the perception of the man himself away from the perception of others, who are viewed by an instrumental way, as well as body, spirit, coexistence, family and the entire society (HORKHEIMER and ADORNO, 1997).

this process, because it subverts the order and it proposes something new, or even as a culture tradition passed through generations, like it happens with literature classics.

In this regard, it is inferred that nowadays relation between Law and Literature is necessary because of the rare reading habit of students and those who apply the Law, who are encouraged to guide their search for knowledge often in an alienated way, by the consumer society and especially by the mass media and the social networks.

The artificial incentive about needs causes aberrations in the activity of consuming and this fact affect the book market, which turns to be also guided by the modern logic of market. In relation to the segment of law books in Brazil, the leading economic sector is the one of studies related to public tenders, or also Law textbooks, among which summarized books are the most searched ones. Thus the legal culture and the science of Law lose quality as sources of knowledge and reflections, so that technicism becomes predominant in Law schools around the country.

In a such simplistic universe, it is not rare to find professionals that treat not literature as a way of learning, but as a way to distinguish economic power and to set an idea of higher culture (BOURDIER, 2007), so that books commonly stay unread as a simply adornment. Down inside the dark waters of technicism and untrue erudition, the Law education in Brazil stays immersed in the production-consume logic that prevails in capitalist society and that is a mark of modern man, in spite of the admirable efforts from people with really intellectual knowledge and without other interests, who have a lifework to improve national legal reflection.

So, considering the current moment of society and the listed consequences provoked by the use of instrumental reason as a guide of the modern world, it is a must the encouragement of sensitiveness and human skills, which are also essential to Law studies. In contrast to Kant's thoughts, the modern instrumental reason has apparently beaten sensitiveness and this reason in many aspects applies rudeness and it makes rudeness become part of life. This rudeness obstructs human senses and it is the same phenomenon that allows the unreasonableness to become usual; this rudeness builds the daily insensitiveness. Therefore, social practices also start to be expressed by a toughly

and indifferent treat, as well as it happens with many of legal practices (BITTAR, 2010, p. 661).

3 LITERARY NARRATIVES: FROM MYTH TO REASON

According to Aranha (1986, p. 22), myth as a process appears not only as a logical truth, but also as a discursive truth, which is expressed through the lived reality, in instead of the reason. Myth's origins are found not in the exclusively reasonable explanations, but in the lived reality, which precedes reflections and it's full of emotions. The main myth's role is not to explain reality, but to calm down man and to make him feel comfortable in a scary world (ARANHA, 1986, p.22-23). As well as myths, epic stories had a pedagogical function in Greeks' lives, because these stories used to describe heroic facts that happened mainly on battlefields because of strength and courage, but those facts also occurred on assemblies through the power of persuasion at speech, which inspires humans until nowadays. The development of philosophy makes thinkers progressively abandon the traditional way of reporting mythical and epic stories, which consists on explanations about the origins of everything, so that it happens the split between *mythos* and *logos*. Positivist conceptions guide human evolution based on the maturity of human spirit, which abandons all mythical aspects and it gives relevance to positive facts, i. e., facts free of opinions and personal aspects and which can be analyzed and controlled through experiences. The criticism against myth, however, makes positivism shows its way of provoking a loss of quality on the offered conceptions of world, since putting science as the only way to know the truth leads to another myth, which is the one related to the scientific criteria as the only one (a kind of "scientism"), fact that makes the terrible technocracy born.

A reasonable criticism against myths must be done with the reflection, so that archetypal values rule mythical stories, because these values keep their universal and timeless aspects since they exist inside our primitive and unconscious nature.

Therefore, considering the different contributions that literary texts of epic stories and historical and mythological narratives can give to a better comprehension of the

human being and of the existence problems, it is clear that using these texts in the process of legal learning makes possible the development of students and the development of the legal science itself, since the way to a critic comprehension of the knowledge gets opened and it makes possible to take the awareness into the less known points of the human soul. So, it is possible to promote the search for alternative solutions in relation to the theory of Law, which has been built since the beginning of humanity.

4 MYTH AND MAN: ANTÔNIO CONSELHEIRO AND THE DILEMMA ABOUT “*REBELLION IN THE BACKLANDS*” (“OS SERTÕES”)

How a monster is formed: And so there appeared in Bahia the somber anchorite with hair down to his shoulders, a long tangled beard, an emaciated face, and a piercing eye; a monstrous being clad in a blue canvas garment and leaning on the classic staff which is used to stay the pilgrim's tottering steps. (CUNHA, 2012, p. 194).

The book “Rebellion in the Backlands”, written by Euclides da Cunha and published in 1902, is the first literary production of the premodernist⁹ period, with clear concerns about making a portrait of Brazilian reality from the report of a modern historical event - the War of Canudos. The social and historical context of the period shows the deep tension in Brazilian politics scene at that time, caused by the Proclamation of the Republic, the abolition of slavery, the economic growth of Brazilian Southeast, popular insurgencies against public politics for health problems and also military insurrections in Rio de Janeiro, which became known as Vaccination Rebellion and Chibata Revolt, respectively, and also rebellions of factory workers in São Paulo and popular insurrections in Brazilian Northeast, especially in Bahia and Ceará (NICOLA, 1992, p. 177-178).

⁹ Premodernism is a generic word to name the huge literary production of the first twenty years of the twentieth century in Brazil, in which there is a lot of trends and literary styles and particularly the regional aspect (NICOLA, 1992; PAULINA, 1988).

Brazilian regional aspects can be noted among the main authors of the period: North and Northeast were represented by Euclides da Cunha; the region known as Vale do Paraíba and the hinterland of São Paulo were represented by Monteiro Lobato; Espírito Santo by Graça Aranha and the poor areas of Rio de Janeiro by Lima Barreto. Most of these writings brings the complaint and the criticism against the national reality, in a way that denies the Brazilian image built before by Parnassianism and that presents the non-official faces of the backland of Northeast, of native people from the hinterland, of poor areas and of discriminated groups, as the inhabitants of the backlands (*“sertanejo”*), people from rural areas, black people and their descendants. The critical aspect of these writings consists on the relation between narrative and political facts of that time, as well as economic and social facts, so that the distance between fiction and reality becomes smaller, in a typical strategy of realistic texts (NICOLA, 1992, p. 172-176).

Euclides da Cunha was positivist and republican and he studied Military Engineering and Natural Sciences in the Higher School of War, where he was graduated in 1888. In 1896, he left definitely the army, because of his disagreements about the way Republic was guided, and so he has become journalist in the newspaper “O Estado de São Paulo”. In mission for the newspaper, he went to Canudos, Bahia, to report the events of the popular rebellion that occurred there. He was murdered in 1909, in the city of Rio de Janeiro (NICOLA, 1992, p. 177).

Although the narrative of “Rebellion in the Backlands” preserves some determinism from Hypolite Taine and although it also presents a scientificist and naturalistic vision of the world, the book offers to the reader the first social complaints about the real life conditions in the backlands of Brazilian Northeast. Thus, the revolutionary aspect of this book, since it not only brings a literary innovation, but also presents a detailed report about the politics of neglect that the inhabitants of the backlands passed through at that period and which has been, later, historically perpetuated in the country.

The rebellion headed by Antônio Conselheiro was considered a campaign for monarchy and, so, a threat to Republic. Because of this, according to the newspaper, the so journalist Euclides should have made a report about that threat. However, when

Euclides da Cunha arrived at Canudos, he was deeply moved by the terrible conditions of the region and he noticed that the rebellion was not exclusively a fight about a system of government, but a fight against the mistreatment and the oppression suffered by people in that region for centuries.

Hence, Euclides gave to his work the complaint aspect and he reported the extermination of about 25.000 people in the hinterland of Bahia, so that he put the Brazilian reader in front of a country that was totally different from the one of stories like Peri, Iracema and Juca-Pirinha.

“Rebellion in the Backlands” has presented to the Brazilian reader a new comprehension about the process of domination by the powerful elites, groups that had as their goals at that period and in that region the inhabitants of the backlands, who were known as humans of less importance - so that their actions were considered legal by speeches based on fear and scientificism.

The book has three parts: *The Land* - a detailed description of the region of Canudos; *The Man* - a complex work about Brazilian ethnology, in which there are determinist and naturalistic comments about Brazilian ethnology and the formation of races, all of them inserted in an analyses about Brazilian types, including Antônio Conselheiro; *The Rebellion* - this is the part of the book in which the writer reports the war of Canudos, which had its reasons explained by the previous chapters, especially the more violent daily aspects of the war.

In chapter *The Man*, the author makes clear his scientificist and evolutionist side, typical of his education. When Euclides tells about *The Rebellion*, however, he causes a surprise with the too realistic texts and full of criticism, which takes the reader into Canudos and all its misery. In chapter *“Canudos did not surrender”*, the writer presents the resistance of people from Canudos against republican attacks and he highlights the comprehension of politics of those Brazilians that were *“more alien to us in this land of ours than were the immigrants who came from Europe”*:

Canudos did not surrender. The only case of its kind in history, it held out to the last man. Conquered inch by inch in the literal meaning of the words, it fell on October 5, towards dusk—when its last defenders fell, dying every man

of them. There were only four of them left: an old man, two other full-grown men, and a child, facing a furiously raging army of 5,000 soldiers. We shall spare ourselves the task of describing the last moments. [...] Shall we defy the incredulity of future generations by telling in detail how women hurled themselves on their burning homes, their young ones in their arms? ... And, words being what they are, what comment should we make on the fact that, from the morning of the third on, nothing more was to be seen of the able-bodied prisoners who had been rounded up the day before, among them the same “Pious Anthony” who had surrendered to us so trustingly - and to whom we owe so much valuable information concerning this obscure phase of our history? [...] (CUNHA, 1946, p. 611-12).

The book was written in XX century, but its ideas are similar to ancient styles and the schools of knowledge developed during the XIX century, as the *Scientificism* from Augusto Comte and the *Evolutionism* from Charles Darwin, as well as different kinds of Socialism. In literature, the period is typified by the development of *Realistic* and *Naturalistic* styles. *Realism's*¹⁰ peculiarities are completely related to the historical period, so that it totally reflects *Positivism*, *Socialism* and *Evolutionism*: objectivity instead of the romantic subjectivity; preference for universal aspects, instead of personal ones; the concerns about current conflicts. Because of Hypolite Taine’s influence, realistic authors pay attention to determinism, an idea through which works are set by three factors: the tool, the moment and the race. All of this can be noticed on “Rebellion in the Backlands” (NICOLA, 1992, p. 118-120).

Although the influence of determinism leads to a literary criticism focused on simplified explanations about human actions, it is important to highlight that realists have described with details the world where they lived and the way people build connections

¹⁰ Realism reflects deep economical, political, social and cultural changes of the second half of the XX century, which were a result of the adoption of capitalism in modern way, translated on the big industrial complexes; on the other hand, the masse of urban industry workers started to grow, so that a poor and neglected people started to appear and they were excluded of the benefits produced by the industrial progress. These groups started to be explored and they had to pass through unfair conditions of life and work (PAULINO, 1988, p. 196-212).

with others in this world: by lies, fights for power, untruth on relationships; besides the notion of the end of human's life, which was expressed by diseases and by death.

On the other hand, in "Rebellion in the Backlands" it is important to highlight a realistic-naturalistic vision, which was concerned to social aspects and their problems and conflicts. In this work, the mistreatment and the poverty of Canudos take big proportions that allow the text to escape from a determinist vision. Besides, the writer eliminates the myth of the hero as a symbol of perfection with the character of Antônio Conselheiro, who represented an entire masse of men and women, poor and forgotten in Brazilian hinterland, in spite of being Conselheiro considered at that time a kind of dangerous anti-hero. Conselheiro's adventure starts to take an important place in the book's story and, so, also inside each reader's thoughts.

Despite its presence in a lot of periods since Antiquity, the myth of the hero was contested by Euclides da Cunha, who has been able to write an anti-hero that becomes the center of the question, not as a man full of good values, but as an opposition to the perfect man of XIX/XX century in his esthetical, biological and evolutive aspects.

Diversely from mythological figures and virtuous characters from the classic and medieval epic stories, Conselheiro offers a portrait of the image of the Other, who was also identified among Greeks, Romans and in the medieval culture, but that has never been highlighted. The Other can be defined as a dangerous man that can be killed (ZAFFARONI, 2007; AGAMBEN, 2002). The anti-hero here, however, has something of timeless and universal, as well as the memorable characters of the world literature, because he suffers a really human drama and, thus, the reader can identify himself or herself. With Conselheiro, Euclides da Cunha shows the life of men and women who were put as less important humans through history because of fear and suspicion from the others.

4.1. The mystic cangaceiro

Antônio Vicente Mendes Maciel, known as Antônio Conselheiro (Antônio the Counselor), was born in Ceará in 1828. The son of a merchant who want make him priest, Antônio was teacher and pedlar until financial problems that make him be converted in a

blessed - “a kind of backland’s nomad, one mystic and ascetic cangaceiro”. For 17 years he roamed by caatinga claiming to the poor people build and rebuild churches, rise up the walls of cemetery and live a life of penance and meditation¹¹.

In 1876, warmed with the numbers of followers, the Church and the Government begin a campaign to destroy the blessed. He was falsely accused of killing his wife and children. After been arrested, he has been judged innocent and back roaming in backlands and gathering followers. Around 8000 followers were gathering. They establish themselves in Belo Monte’s camp and called Canudos. Antonio the Counselor began to organize an evangelical community self-sefficient resulting in Canudos.

No private property in Canudos. The farming, food and animals are shared between everyone. This brings over a great number of miserable peasantry unattended by government and church. The Counselor finds a breeding ground on the miserable soil of backland. Besides the religious element, the aggregation around the blessed was justified by the decline of mills, the end of slavery without an adequate incorporation of the freed blacks on society. The drought in 1878 killed more than 100 hundred of hunger. The job market was limited because the great income of European immigrants. These contribute to increase the misery in the backlands, at the same time increase the faith in Counselor’s words (BUENO, 2010, p. 264-271).

The Counselor was monarchist and claim against the Republic and the taxes, attracting the attention of government leaders who want to hush him. The destruction of Canudos was considered essential to maintain the order and the interests of powerful agents of those days. According to Bueno, the press sensationalism, the weak foundations of Republic, the blindness of Brazilian elite regarding on social problems, all these factors contributed to an episode created by a secular inequality of life in the backland, without precedent in Brazil’s history (BUENO, 2010, p. 267).

¹¹ In a weberian perspective, the Counselor was one leader of one religion of flight from the world. We not intend to aboard the religion essence, but just analyze the conditions and effects of this kind of communitarian action, as Max Weber does. The religion is saw as a heuristic way to interpretate individual actions by the sense given to the agent (SOUZA, 1998, p.01).

After a brave resistance, Canudos was destroyed by numerous onslaughts of government troops. The Counselor body was exhumed without possibility to check the death reason because the state of putrefaction.

Antonio's head was sent to Bahia Medicine School to be examined by specialists who are inspired in Lombroso's positivism. They search in Counselor's brain for abnormalities and symptoms of the born criminal. After the researches, Nina Rodrigues, an important criminologist of this period, say to the press that Counselor's cranium doesn't show any abnormality to indicate degeneration or propensity to crime.

5 ON THE SHADOW OF DANGEROUSNESS: BREAKS AND CONTINUITIES OF CRIMINAL POLICIES IN BRAZIL

After a long time of Canudo's carnage and the destruction of Counselor's myth, the Euclidian text brings one dilemma to the law student. It's the need of reflection on the Brazilian contradictions in face of the social problems happened in the transition of 19th century to twentieth century, focusing in the positivist ideas and the incipient liberal legislation.

Thinkers as Vera Malaguti, Cristina Rauter, Ignacio Anitua, Eugênio Raúl Zaffaroni, Nilo Batista, and others, enquire why Empire's jurists considered the rules with liberal nature inadequate to Brazil, running against the values incorporated on Constitution and Penal Code. To maintain the structures of a liberal society and, at the same time, a slave society, marked by the exploration of a majority for one minority, was necessary to State arm itself with powerful instruments to defend society. At this juncture, came to Brazil in the last decades of 19th century, the European movement called positivism.

The positivism served as a theoretical basis to the social structure of control of the poor mass in the end of 19th century. It belongs in the Brazilian social thinking nowadays. In the word of Vera Malaguti Batista (2011, p.41), the positivism "*more than a school of thought, constitute a culture*".

According to Anitua (2008), positivism can be seen as an ideology created by the fear of popular revolutions. The positivism disqualifies the idea of equality supported in

the 18th century that was important to break the Ancient Regime. The bourgeois liberalism succeed the feudalism and the Occident witness the development of many ways of social control that, as Cristina Rauter (2003, p. 20) appointed, demonstrate that the freedom idea wasn't available to all.

In a manacheistic view, the society is divided between normal and abnormal. The poor are considered abnormal with characteristics and behaviors contrary to the bourgeois order. They are identified as pathological beings, dirty, disease agents, doubtful character and propensity for violence. Based on Darwin's theories, they made a selection on society justified by the ideas of race inferiority and degeneration. The equality ideal fall down. On this view, remember Vera Malaguti (2011, p. 42), remain to our "*mestiçagem*" occupy the lower floors on the human evolution and should to accept all kinds of interventions and submission because these will cure the evil inside them until their born. On the arguments of salvation and rehabilitation were developed extermination policies like Canudos. These policies had and has a central role in the formation of Brazilian society.

"Why was so important examine the Counselor's head?" This question reminds us to phrenology studies in the 19th century. According to studies of Gall and Spurtzheim, developed by Cesare Lombroso on criminal analysis, the spirit is located in the brain. The brain should be studied in details to identify the superiority and inferiority of the races and other issues as love, friendship, aggressiveness, defense, levity, laziness, evil, crime proneness, and others. If in the 18th century the object to analyze the crime was the offenses, in the 19th century the focus is on the criminal.

From concepts like atavism and degeneration, these concepts never been confirmed, the transformation of Antonio the Counselor in an anti-hero had the goal to reduce him to a dangerous criminal doomed by madness and fanaticism. He never been seen as a man desperate for his and his equals precarious being.

Although since the legal texts of Classical Antiquity characters as the Counselor had been present, only with realism they can be descript so well in the literature, as Euclides da Cunha done. In the realistic narrative is the reader who decides what the role of each character. It's not so important the title received by the character, if hero or anti-hero. The most important is understood the drama that they are immersed and how the

reality is enough to touch the reader. If this reader is a law student, this touch should be able to make him rebuild the scenario that emerges the criminal policies in Brazil of 19th and 20th century. On this perspective the reader can do a critical and historical reading of Criminal Law, which was learned on graduation in an ahistorical and reduced view of the application of penal law and the devices of social control.

Raúl Zaffaroni warn in his book *Criminologia: aproximación desde un margen* (1998) that to understand the criminal question of our society we need feel it on the edge, based on historical and cultural dramas that we are emerged.

5.1. Rebellion in the Backland and the biopower: beyond the law

The medical and biological knowledge legitimate the determinism and social Darwinism. The theories of atavism and degeneration create networks of social control of groups that show behaviors that not conform with the bourgeois order.

Those argumentative structure generate what Foucault (1999) called “biopower” when the actions spread in a capillary forms on capitalist societies by different productions of discourses to determine the social intervention from specific skills¹².

The national production are marked by realism and naturalism making available approach with the scenario that these discourses are received on Brazil, just as well the changes, based on positivism, on areas like social, politic and legal. In the criminal policies field, the influence of positivist criminology legitimate the extremely repression on the outsiders in different Brazil’s regions, focusing this repression on that people who oppose to the majority interest or been an obstacle to them.

According to Nilo Batista (1996), the criminal policy of 19th century in Europe was worried with dangerous subject who had a lifestyle that can be a danger to bourgeois order, even without crimes commit. Every standard of living that is not conform with the bourgeois standards will be constantly in suspicion. Vera Malaguti (2003, p. 28) advertise that the choice done was delimit the “other” and make strategies of control. Never ask

¹² According Cristina Rauter, these subjects aren’t necessarily subordinated to State, and organize themselves by cellular dispositive, on institutions, on vigilance methodology and on people control. (RAUTER, 2003, Op. Cit., p. 20-27).

about the social contradictions that generate this precarious lifestyle, on the bourgeois view.

The social control mentioned in Canudos by Euclides had components marked by authoritarianism and genocide. This kind of control was neither a kind of particular case in Brazil's history nor a rightful republican act. This event was an expression of the structure of social control of the social classes marked as dangerous. They are marked as dangerous, according to Sidney Chalhoub¹³, because they are poor and challenge the social control policies:

In this meaning the positivism never was only a way of thinking that was integrated in the mind and practices of Brazilian policies. It was mainly a way to feel the people who were ever treated like lower, pathologic, discriminated, and, at the end, criminalized. Worked and work nowadays as a great catalytic of violence and inequality. [...]. (BATISTA, 2011, p. 48)

According to Ginzburg (1991), each society needs to identify its components. In Europe, the born of industry and the geographic and social migration make new systems of identification in the end of 19th century. By the capitalist relations was create a new concept of bourgeois based on a certain lifestyle, an appearance and ways of life. He enhance that the distinction is a constant on Occident's history. In each social scenario the "outsiders" are indentified and built by attributes of contingencies. This happened in the pursuit of lepers and Jews in Inquisition and happened with the witches in 14th century. Other victims were the Indian in colonization, the insurgent blacks on the fights to abolition and, why not, the Canudo's residents.

CONCLUSION

The book *Rebellion in the Backlands* give to reader a lecture of one of the most sad event in Brazilian history and a opportunity to reflection on the motivation that caused it. For the future jurist this battle is essential to understand why that Brazilians are indicted, condemned and ruthlessly killed without judgment, without right of defense,

¹³ CHALOUB, S. (1996, Medo branco de almas negras: escravos libertos e republicanos na cidade do Rio de Janeiro. In: Discursos sediciosos: crime, direito e sociedade, nº1, Rio de Janeiro: ICC. p. 185) In BATISTA, V.M. (2003), Ibidem. p.37.

without fundamental guarantees, and all these rights are stated on the Constitution. Men, women and children were killed because supposedly dangerous.

This movement concern with the relation with the other and because this relation the societies try to classify, separate, restrict, and eliminate the “outsiders”. Like the Counselor and his followers, many other men and women of “bare life” had their lives controlled or destroyed by social control policies. These policies are fed for speeches that want supply the order request (PAVARINI, 1983) and actually try to draw the distinction points to identify its targets.

The characteristics of the “new outsiders” in brazilian society works as distinct features to identify them to the agents of social control. The distinct features are in their behaviors, in their bodies, speeches, and lifestyle working as emblems that contain the stigma, like Bourdieu’s definition (2007, p. 171). These individuals feature histories of suffering, misery and social exclusion, just like the killed in Canudos. Those histories aren’t fictions and in face of them the Legal System must give answers or a reflection so deep as the scream for justice of those souls silenced by history.

REFERÊNCIAS

ADORNO, T. W. (2002), **Indústria Cultural**. São Paulo: Paz e Terra.

AGAMBEN, G. **Homo Sacer: O Poder Soberano e a Vida Nua I**, trad. Henrique Burigo, 2 ed., Belo Horizonte: Editora UFMG, 2002.

ANITUA, G. I. (2008), **História dos Pensamentos Criminológicos**. Trad. Sérgio Lamarão. Rio de Janeiro: Revan. ARISTÓTELES. (2011), **Retórica**. Tradução: Edson Bini. São Paulo: Edipro.

ARANHA, M. L. de A. (1986), **Filosofando: introdução à filosofia**. São Paulo: Moderna.

BARTHES, R. (2004), **O Rumor da Língua**. São Paulo: Martins Fontes.

BATISTA, N. (1996), **Um oportuno estudo para tempos sombrios**. In: Discursos Sediciosos – crime, direito e sociedade, nº 2. Rio de Janeiro: Instituto Carioca de Criminologia. p. 302.

BATISTA, V.M. (2003), **O medo na cidade do Rio de Janeiro**. Dois tempos de uma história. Rio de Janeiro: Revan.

_____. (2011), **Introdução crítica à criminologia brasileira**. Rio de Janeiro: Revan.

BENJAMIN, W. (1994), **Magia e Técnica, arte e política: ensaios sobre literatura e história cultural**. São Paulo: Brasiliense.

BITTAR, E.C.B. (2010), **Curso de Filosofia do Direito**. 8 ed. São Paulo: Atlas.

BOURDIEU, P. (2007), **A Distinção: crítica social do julgamento**. São Paulo, Edusp.

BUENO, E. (2010), **Brasil: uma história**. Cinco séculos de um país em construção. São Paulo: Leya.

CUNHA, E. (1946), **Os sertões (Campanha de Canudos)**. 19 ed. Rio de Janeiro: Francisco Alves.

DAMIÃO, Regina Toledo; HENRIQUES, Antônio. (2004), **Curso de português jurídico**. 9. ed. São Paulo: Atlas.

ECO, U. (1994), **Seis passeios pelo bosque da ficção**. São Paulo: Cia das Letras.

FETZNER, Neli Luiza Cavalieri (Coord.). (2007), **Lições de gramática aplicadas ao texto jurídico**. 2. ed. Rio de Janeiro: América Jurídica.

FETZNER, Néli Luiza Cavalieri (Org.). (2009), **Lições de argumentação jurídica: da teoria à prática**. Rio de Janeiro: Forense.

FOUCAULT, M. (1999), **Em defesa da sociedade**. São Paulo: Martins Fontes.

GARCIA, O. M. (2004), **Comunicação em prosa moderna**. Rio de Janeiro: FGV.

GINZBURG, C. (1991), **História noturna**. São Paulo: Companhia das Letras.

HENRIQUES, A. (2008), **Argumentação e Discurso Jurídico**. São Paulo: Atlas.

HORKHEIMER, M., e ADORNO, T. W. (1997), **Dialética do Esclarecimento: Fragmentos filosóficos**. Trad. Guido Antônio de Almeida. Rio de Janeiro: Jorge Zahar.

ISER, W. (1996), **O ato da leitura – volume 1 e 2**. Trad. Johannes Kretschmer. São Paulo: Ed. 34.

KOCH, I.G.V. (2009), **Argumentação e linguagem**. 12 ed. São Paulo: Cortez Editora.

- LAJOLO, M. (2002), **Do mundo da leitura para a leitura do mundo**. São Paulo: Ática.
- MARCUSE. H. (1968), **A ideologia da sociedade industrial**. Rio de Janeiro: Freitas Bastos. v. II.
- MARX, K. e ENGELS, F. (1984), **A ideologia alemã** (Feuerbach). São Paulo: Hucitec.
- MORA, J.F. (2001), **Dicionário de filosofia**. São Paulo: Martins Fontes.
- NICOLA, J. (1992), **Literatura brasileira – das origens aos nossos dias**. São Paulo: Scipione.
- PAULINO, G. (1988), **Literatura: participação e prazer**. São Paulo: FTD.
- PAVARINI, M. (1983), **Control y Dominación: teorías criminológicas burguesas y proyecto hegemónico**. México: Siglo Veinteuno Editores.
- PLANTIN, C. (2008), **A argumentação: história, teorias, perspectivas**. São Paulo: Parábola.
- PERELMAN, Chaim; OLBRECHTS-TYTECA, Lucie. (2002), **Tratado da argumentação: a nova retórica**. São Paulo: Martins Fontes.
- RAUTER, C. (2003), **Criminologia e subjetividade no Brasil**. Rio de Janeiro: Revan.
- SOUZA, J. (1988), **A ética protestante e a ideologia do atraso brasileiro**. Rev. Bras. Ciências Soc. vol. 13 n. 38 São Paulo.
- WEBER, M. (1982), **Rejeições Religiosas do Mundo e Suas Direções**. In: Ensaio de Sociologia, 5a.ed, Ed. Guanabara, Rio de Janeiro.
- YUNES, E. (2003), **A experiência da leitura**. São Paulo: Loyola.
- _____. (2009), **Tecendo um leitor: uma rede de fios cruzados**. Curitiba: Aymará.
- ZAFFARONI, E. R. (1988), **Criminologia: aproximacion desde un margen**. Bogotá: Temis.
- _____. (2007), **O inimigo no direito penal**. Rio de Janeiro: Revan.

ERROR: syntaxerror
OFFENDING COMMAND: --nostringval--

STACK:

/Title
()
/Subject
(D:20140604153019-03'00')
/ModDate
()
/Keywords
(PDFCreator Version 0.9.5)
/Creator
(D:20140604153019-03'00')
/CreationDate
(obrarara)
/Author
-mark-