


CHAPTER 20

Law and art: importance, relevance and challenges

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ABSTRACT

Law and Art. can be connected in many different ways: as a constitutional right, as intellectual property

rights, as well as reflected in other legal branches. This paper aims to analyze how these two subjects can be used in an interdisciplinary way, whether as methodological proposal in legal education, or as a tool to approximate this content to the population as a whole. Considering this is exploratory research, the main objectives are to contribute to Law and Art epistemological branch, as well as provide the initial contact with readers that might be interested by this interdisciplinarity. It is chosen as methodological instrument deductive reasoning in order to perform comprehensive-juridical research. The materials used are bibliographic and qualitative. Among the results, it can be noticed the relevance in this intersectional field, while also comprehending its origins, its relevancy and the main challenge it faces.

Keywords: Law, Art, interdisciplinarity

1 INTRODUCTION

The right to art refers to a right foreseen in the Federal Constitution, whether through freedom of artistic expression (art. 5, IX), through study (art. 210, caput) and the guarantee of access to it (art. 208, V), or through the protection of goods with artistic values (art. 23, III and IV, art. 24, VII and VIII). Thus, art is part of the patrimony of Brazilian culture (art. 216, caput, III, IV and V).

On the other hand, art law refers mainly to Civil Law in the branch intended for the protection of intellectual property. Specifically, in the scope of copyright law and its legal reflexes, such as the possibility of registration, the mode of legal protection and the consequences in case of non-compliance with these rights.

However, the art law also has reflexes in other areas besides civil, such as Administrative, Tax and International Law (MAMEDE; FRANCA FILHO; RODRIGUES JUNIOR, 2015). Another caveat that should be made is that

although 'art' lato sensu includes 'the arts' (music, film, theater, literature, etc.), art law, as traditionally defined, is concerned only with works of fine art and/or visual arts. Additionally, art law is closely related to, and often coincides with, the area known as cultural art property (GEORGETOWN LAW, 2021, online, our translation).

There is also the possibility of understanding Law as an object of Art, "[...] art being the form of representation of the historical forms of Law, especially through the statuary of justice, the symbols of justice, the painting of justice, the liturgy of justice, the architecture of the palaces of justice, constituting the so-called Legal Symbolism" (BITTAR, 2020, p. 22-23, emphasis added).

The relationship between Law and Art is interdisciplinary. After all, this movement, also called Law and Art, results from the interconnection between two branches of studies that, at first, may be seen as unrelated.

However, according to MASCARO, "[...] it occurs that, beyond this relationship of exteriority, there is an intimate and recondite connection between law and art: from the same social structures come the legal form and the form in which art is taken historically" (2015, p. 17).

Thus, it is in this last sense that the present work aims to analyze how Art can be used as a tool that can facilitate the study and understanding of Law. For this, the importance and relevance of this area of study will be analyzed, also seeking to understand the main challenges to make this union.

2 THEORETICAL REFERENCE

As a reference, the work of Marçílio Franca Filho is adopted, especially the work *Antimanual of Law & Art*, which he organized together with Geilson Salomão Leite and Rodolfo Pamplona Filho. This choice is justified because it is a work of reference in the area, seeking to strengthen the field of epistemology on Law and Art.

3 METHODOLOGICAL PROCEDURES

Regarding the methodologies used, deductive reasoning is employed (starting from the assumption that true premises must result in an equally true conclusion). The research is of the legal-comprehensive type, in which "[...] the analytical procedure of decomposing a legal problem into its various aspects, relations and levels is used. [These are researches that investigate objects of greater complexity and with greater depth]" (GUSTIN; DIAS, 2010, p. 28-29).

As for the materials, this is qualitative bibliographical research, which "[...] aims to know and analyze the fundamental theoretical contributions on a topic or problem, which makes it an indispensable instrument for any type of research" (HENRIQUES; MEDEIROS, 2017, p. 106).

4 RESULTS AND DISCUSSION

The study of different disciplines can be done through four different categories: disciplinarity, multidisciplinary, interdisciplinarity, and transdisciplinarity. Therefore, initially, "it is necessary to identify, conceptually, the differences between them. The idea of integration and totality that apparently permeates these concepts has different theoretical-philosophical references that are irreconcilable" (PIRES, 1998, p. 176). The exclusive study of a single discipline, with its own methods and objects, constitutes disciplinarity.

Multidisciplinarity seems to be exhausted in attempts by teachers to work together among disciplines in which each one deals with common themes from its own point of view, sometimes articulating bibliography, teaching techniques and evaluation procedures. It could be said that in multidisciplinary people, in this case the disciplines of the school curriculum,

study close together but not together. The idea here is the juxtaposition of disciplines (PIRES, 1998, p. 176, emphasis added).

In a next step, the interdisciplinary study is based on the proposal of performing an intersection of two (or more) disciplines, using different methods from a research object, which ends up being the link between the different disciplines, aiming at the perception of a phenomenon in a broader way.

Therefore, nowadays, it is very important that education professionals seek to provide this contact to students, allowing them to relate a theme to its various applications in different disciplines, allowing the understanding that the subjects are not isolated, but interconnected. In this sense,

The integration of theory and practice that interdisciplinarity deals with refers to comprehensive training from the perspective of totality. The critical thinking that inspires this discussion leads to a deeper understanding of this relationship, placing as fundamental importance the definition of the practice that is intended to relate to theory [...] interdisciplinarity can be taken as a possibility to break the rigidity of the compartments in which the disciplines of the school curriculum are isolated (PIRES, 1998, p. 177).

A next step to be aimed at is transdisciplinarity, which is not opposed to interdisciplinarity. On the contrary, it forms the basis of the former. It seeks to go beyond, being a theoretical principle that aims to remove the barriers between disciplines. Thus, it is understood that this theory is a "[...] suggestion of a new vision of knowledge, less compartmentalized and disciplinary. More holistic, with open systems capable of producing new science and new technologies" (DOMINGUES, 2003, online).

However, DOMINGUES makes an important caveat about this method: "We must understand that transdisciplinarity is still a kind of utopia, and positively value the term utopia, in the sense of non-place. That is, it has not been realized anywhere, but it is a search, a quest" (DOMINGUES, 2003, online).

Therefore, without too many pretensions, one can classify the study currently done on Law and Art by the interdisciplinary bias. The barriers between disciplines have not been definitively overcome, but they complement and interconnect each other.

One thought that may arise is: what is the object of Art that can be explored in this legal context? A sample list of the most common media includes music, architecture, sculpture, painting, theater, cinema, pop culture, literature (FRANCA FILHO, LEITE; PAMPLONA FILHO, 2016, p. 5-7).

It would not be compatible to establish a restrictive list. After all, Art can be understood as any artistic expression. This artistic language can be verbal, either written or oral, and/or non-verbal, that is, through symbols such as images, gestures, colors, etc. Thus, one can conclude that the limit of Art is the very limit of human imagination, not fitting its reduction to some specific categories (which, if it occurred, would collide with the interdisciplinary concept proposed).

Regarding the intersection between Law and Art, MASCARO explains that

The relationship between law and art must be taken in three instances. In the first instance, both derive from a common social-historical root. Law and art are configured, in contemporary capitalist societies, as forms crossed by the same commodity logic. Moreover, in the second of the instances of relationship, art is crossed by the legal form. And, even

more, in a third level of relations, it is necessary to ask about the possibility of the artistic form to go through law and, more specifically, justice (2015, p. 18).

Therefore, one of the great roles of Art, fostering its importance, is precisely to allow it to be an expression of reflection of social practices - whether past, present or imagined as they may be in the future. As a consequence, "if art is a manifestation haurida of the structures of the world, it somehow mirrors the contradictions and injustices of society, economy, culture and power" (MASCARO, 2015, p. 21). This occurs because artistic expression itself is a means of interpretation:

The artist cannot create anything without interpreting as he creates; since he is intended to produce art, he must have at least a tacit theory as to why what he produces is art and why it is a better work of art through the scribbles of the pen or brush or chisel rather than other means (DWORKING, 1982, p. 158, own translation).

Just as there is no way to limit the types of artistic expression, the legal connections are also countless. This interdisciplinarity is most often explored in the criminal (which even allows the comparison of the Brazilian judicial model with that of other countries), civil, family, environmental, constitutional, etc. spheres. In this last point, great themes that are constant objects of debate emerge: justice, fundamental rights and citizenship. Especially about the latter, BITTAR clarifies in his work that

Here we intend to work on the idea that the potency of citizenship can be explored in various ways, and that "the spheres and practices of the arts", as an arsenal of concepts, categories and experiences, can represent an important path (methods) for the creation, expression, interpretation and evaluation of concepts, sensibilities and sensations that are fundamental for expressing issues related to the struggle and conquest of rights, forms of injustice, exercise of citizenship, and protest against the violation of human rights (BITTAR, 2020, p. 27).

Art allows the visualization of different realities. Besides reflecting situations with which the audience identifies, this tool can even introduce unknown or un-experienced situations. After all, "each society creates its fictional, poetic and dramatic manifestations according to its impulses, its beliefs, its feelings, its norms, in order to strengthen in each one the presence and performance of them" (CÂNDIDO, 2011, p. 177).

From the moment of this contact, especially with what is different, some questions may arise as a result of the sensitization brought by Art. And in this, there is a development of reasoning and critical thinking, rethinking the Law applied and applicable to these cases. According to STRECK,

Literature helps to existentialize law. Therefore, what is always closer to literature is hermeneutics. Anguish, to be "treated", requires mediation. It demands the other. [...] For the law deals with this relationship we have with the world, with things. Democracy, social rights, citizenship: this occurs as an intermediated conquest. Literature does existential intermediation. Hermeneutics, in the sense that I work on it in the Hermeneutic Critique of Law, also. [It is not for nothing that Dworkin's central thesis is the chain novel to describe the response-sentence in law. The role of the interpreter-judge is to make adjustments (fit). This is the point where law and literature meet: in the treatment of epistemological anguish. The jurist, inserted in the theoretical common sense, does not know that he does not know. Literature metaphorizes this inconclusive relationship. It names things. It does things with words, as Austin would say.

[...] Philosophy has to be in Law. And not "of". And literature is at the existential core of Law. And not just for erudition or rhetoric (STRECK, 2018, p. 617-618, author's underline).

In other words, in studying this interconnection, Art is not seen as an object of Law but, effectively, as a new methodology that can be employed for its study and understanding. In an analogy made by CÂNDIDO to Literature, one can understand Art as a "powerful instrument of instruction and education, entering the curricula, being proposed to each one as intellectual and affective equipment" (CÂNDIDO, 2011, p. 177). From this, then, arise some problems for its effective application.

First of all, interdisciplinarity between Law and Art requires access to culture on the part of those who will use this methodology. After all, it is necessary to know the Art (in a broad sense) that will be related to some institute of the legal system. As a consequence, this demands constant professional updating, both of the norms (and their changes), and access to the works that will be referenced as an example.

Secondly, despite being an increasingly studied branch, its systematization is still lacking, either to define methodological strategies that bring greater benefits to this intersection, or even to perhaps reach the conclusion that there is no way to pre-define methods. As Art is a free expression, with the increase of practice, the hypothesis arises as to whether its relationship with Law may also not be subject to pre-established methodologies, and should be adequate to each case. On the other hand, this demands a greater ability from the professional who uses this methodology.

Thirdly, it is not enough for the professional to have access to this cultural acquis if his peers or the public do not have the same access to this content. In this sense, it was seen that the right to Art is constitutionally provided. However, in practice, how is it implemented in relation to other fundamental human rights? For CÂNDIDO,

On this point people are often victims of a curious obfuscation. They say that their neighbor is certainly entitled to certain fundamental goods, such as a house, food, education, health, things that nobody well-informed admits today are the privilege of minorities, as they are in Brazil. But do they think that their fellow poor would be entitled to read Dostoevsky or listen to Beethoven quartets? Despite their good intentions in the other sector, perhaps this does not cross their minds. And not out of spite, but only because when they list their rights, they do not extend all of them to their fellow human beings. Now, the effort to include our fellow men in the same list of goods that we claim is at the basis of reflection on human rights (CÂNDIDO, 2011, p. 174-175).

A fourth essential point about the application of Law and Literature as an educational and cultural tool focuses on some problems related to the authors themselves, from the care to avoid violation of copyrights, but also with regard to the implication arising from the chosen intersection.

After all, what if the example runs counter to the work being analyzed, or if it is applied with a purpose different from the author's original proposal due to differences in interpretation, or if it is used to defend something that the original author would feel offended by? This could be reflected in the scope of the personality right with patrimonial reflexes, as in the case of moral damages suffered by the author or

by those legitimized in the sole paragraph of art. 12 of the Civil Code ("surviving spouse, or any direct or collateral relative up to the fourth degree"). Still in relation to the author, whoever mentions his work must pay attention to his biography, in addition to the content itself.

From these considerations, we seek to bring contributions to the Law and Literature branch, since "this epistemological area is, in fact, in a phase of maturity, in which its universal academic acceptance begins to be verified" (CUNHA, 2016, p. 10).

The origin of this strand stems mainly from the union between Law and Art with the *Law and Literature Movement* in the 1970s in the United States, with repercussions in Europe. According to LYRA,

Thus, renowned authors such as Sophocles, Aeschylus, Shakespeare, Kafka, Dostoievski, Proust, Molière, Jane Austen, Tolstoy, Mark Twain, among others, had their immense contribution to the legal universe recognized with the publication of the text -The Legal Imagination. In this context, literature begins to act as an intercessor, promoting debate and critical thinking in Law against the backdrop of the issues brought up by the respective literary writings. On the other hand, legal acts, especially in Procedural Law, take on an aesthetic dimension through which they come to be seen as a representation. As a legal narrative, the rhetorical discourse takes on an outline similar to a literary piece (2016, p. 141-142).

In Brazil, there was no such influence from the United States. Some of the first interdisciplinary studies were made by Lemos Britto (1946), Aloísio de Carvalho Filho (1959), Raymundo Faoro (1974) and Eliane Botelho Junqueira (1998). However, MONTEIRO points out that "[...] there is a resistance in affiliating such authors with the *Law and Literature Movement*, as both would have less legal than political or sociological purposes" (2020, p. 73). This, then, justifies the reason for

some researchers attribute to Arnaldo Sampaio de Moraes Godoy the pioneering spirit in Brazil, in view of his Master's dissertation defended in 2000 and published in 2002 under the title *Law and literature: anatomy of a disenchantment: legal disillusionment in Monteiro Lobato* (PRADO, 2007). In 2005, Luis Carlos Cancellier de Olivo analyzed William Shakespeare legally, commenting en passant on Junqueira and Godoy's contributions in *O estudo do direito através da literatura* (2005) (MONTEIRO, 2020, p. 73, author's underline)

However, since the 1980s, studies in this area have been done at the Federal University of Santa Catarina, even if it did not call itself part of such movement (MONTEIRO, 2020, p. 73). In this context, some exponents who started this current of studies in the country are Luis Alberto Warat, Luiz Carlos Cancellier de Olivo, Dino del Pino and Lênio Streck (STRECK, 2018, p. 616).

However, this methodological approach, although very useful for teaching Law, need not (and should not) be restricted to the field of teaching. This is because just as Art is a constitutional right for all, Law is an element present at all times in the lives of citizens.

Thus, this intersection can be an important tool in helping the dissemination and understanding of various legal institutes through artistic language, its differentiated approach and the sensitization it instills in the public.

Thus, one may ask: by what means is it possible to start studying Law and Art? How is it possible to access this content? Besides books such as *Semiotics, Law & Art: between theory of justice and theory of law*, *Antimanual of Law & Art* and *Antimanual of Law & Art*, there are some other initiatives in the country that work with this interdisciplinarity.

Regarding periodicals, there is the *Revista de Direito, Arte e Literatura* (Law, Art and Literature Journal), edited by CONPEDI (National Council for Research and Post-graduation in Law), and *ANAMORPHOSIS - Revista Internacional de Direito e Literatura* (International Journal of Law and Literature), edited by RDL (Brazilian Network of Law and Literature, founded by Lênio Streck). On the YouTube channel of "TV e Rádio Unisinos" and on TV Justiça (Justice TV), Professor Streck publishes videos in his *Law & Literature* program. In a more restricted scope, one can list the work of IBDFAM (Brazilian Institute of Family Law) that publishes podcasts on the Spotify and SoundCloud platforms with the title Family Law & Art.

It can be noticed, then, that this Law and Art movement tends to expand more and more, either as a teaching methodology, as an epistemological tool and as a link with the population.

5 FINAL CONSIDERATIONS

The Law and Art movement is an interdisciplinary teaching methodology, performing a true intersection between disciplines so that the same object of study is analyzed from different perspectives and with its various reflections.

Access to culture is a constitutional right and, as Law is an element that is present on a daily basis, this tool allows not only to improve teaching in Law, but also to ensure an approach to a larger public that tends to benefit from this knowledge. Art, whether by the way it is exteriorized, reflects the society in which it is inserted, brings questions and encourages discussions.

Therefore, this paper sought to understand what this movement consists of, its origins, its main exponents, as well as the benefits that can be achieved and the difficulties that must be faced with regard to its realization in practice.

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