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Disrespect to human dignity: dialogues between law, literature and culture

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ABSTRACT

This article presents an analysis of the tale *Negrinha* by Monteiro Lobato, first published in 1920 in a storybook of the same name. In this analysis, we establish a relation between Law, more precisely the transformation of family relationships and the fundamental rights inscribed in the article 227 of the Federal Constitution, Literature and Culture, explaining and exemplifying the theme with a literary text. The proposition of the subject is based on the understanding that the mobility of cultural processes acts on the way society regulates, manages and represents, in its rules of social behavior, issues related to the identity of individuals and its bonds. In this regard the tale written by Lobato denounces the violation of human and fundamental rights expressed in the article above, which assume relevance both legal and social as well as cultural, considering that it is the duty of the state, the family and society protect and support the minor. Elements of research in doctrine and legislation will be used to trace the legal aspects present in the theme, followed by an analysis of the suggested tale, given its legal, contextual and cultural aspects.

Keywords: Law; Literature; Culture; Family Relationships; Monteiro Lobato.

Desrespeito à dignidade humana: diálogos entre direito, literatura e cultura

RESUMO

O presente artigo apresenta uma análise do conto *Negrinha* de Monteiro Lobato, publicado inicialmente em 1920 em um livro de contos de mesmo nome. Nessa análise, estabelece-se uma relação entre o Direito, mais precisamente os direitos fundamentais inscritos no artigo 227 da Constituição Federal, a Literatura e a Cultura, utilizando um texto literário para exemplificar e explicar o tema. A proposição do tema parte da compreensão de que o texto literário reflete a mobilidade dos processos culturais a qual atua sobre o modo como a sociedade regula, administra e representa, em suas normas de comportamento social, questões relacionadas à identidade dos indivíduos e aos laços que os vinculam. Sob esse aspecto, o conto de Lobato denuncia o desrespeito aos direitos humanos e aos direitos fundamentais expressos no artigo supracitado, que assumem relevância tanto jurídica quanto social e cultural, tendo em vista que é dever do Estado, da família e da sociedade proteger e amparar o menor. Elementos de pesquisa em doutrina e legislação serão utilizados para traçar os aspectos jurídicos presentes no tema, seguindo-se uma análise do conto proposto, tendo em vista seus aspectos jurídicos, contextuais e culturais.

Palavras-chave: Direito; Literatura; Cultura; Relações Familiares; Monteiro Lobato.

Introduction

This article aims to discuss the transformation of family relationships and to briefly address the Fundamental Rights of the Article 227 of the Brazilian Federal Constitution, from the perspective of Law, Literature and Cultural Manifestations, having as basis for the exemplification the tale *Negrinha* written by Monteiro Lobato. The study of this text begins with a brief historical contextualization, because the author draws a portrait of the Brazilian society of the early twentieth century, in which Brazil was living the transition from slavery to a Republican regime (FAUSTO, 2000).

When it comes to the analysis of a *corpus*, it is essential, before undertaking any such attempt, to try to understand it in its various meanings and representations. The interdisciplinary aspect was also taken into account, since the literature interacts with various areas of expertise, and, a novel, a tale, a poem or a drama can act as valid and imbued critical responses to questions that emanate from the social conflicts. Thus, it's necessary to understand that literature can be related to the fields of Law and Culture, because of its characteristic of being a communication, understanding and discussion channel. It must be understood as part of the overall product of human labor, since "[...] the culture of a people is their achievements in various senses, such as science and the arts. It is a socially inherited set, which somehow determines the lives of individuals" (SAMUEL, 1985). As a cultural element, literature works to transform reality, indirectly interfering in human consciousness, because by establishing a relationship with the reader, acts in his thoughts in a critical way, to expose and denounce social behaviors. In this context, using a sociological view of the Law, the interdisciplinary study of the Law demonstrates that it "[...] is not limited to the legislation and its study should not be limited to mere legality" (SAMUEL, 1985).

Germano Schwartz (2006, p.52) points out that one reason to link the study of these two areas is the fact that Literature offers "[...] points of support that provide Law [...] the necessary understandings". In other words, literature can help legal professionals to deepen their values, decisions and interpretations.

The analysis of the Law in the Literature also assumes significance due to the fact that a literary work is a witness of the social and legal reality, in which the various portraits and contours of a society are exposed. Literature can denounce behaviors and contribute to social and juridical changes, allowing a focus of times and institutions that capture the legal world as a cultural product (GODOY, 2003). Antônio Cândido (2000), in his essay "Literature and Social Life" states that social factors, such as values and ideologies influence the literary life and, because of that, a literary work to be fully understood should not be separated from its social and historical context and, we may add, juridical.

Consequently, this article aims to rethink the transformations and the evolution process of the conception of the family, before society and culture, in order to present a critical analysis and reflection on how society regulates, manages and represents in its rules of social behavior, issues related to the bonds that unite individuals.

This research intends to collaborate with the discussion on the need for a new form of legal order, capable of ensuring the observance and enforcement of human rights in global society, more specifically in the family, as well as emphasize the importance of the application of the fundamental duties, considering that the contemporary family, based on affection and solidarity, and its members need effective protection. In this sense, the interdisciplinary study is relevant, since it will be possible to demonstrate how different subjects can be worked together in a way they all can contribute to the understanding of the theme.

Thereby, the research will be enriched by the interaction of Law, Literature and Culture, as well as its articulation assumes importance because in the constitution of the current family, affection has a prominent place, and in this sense, the Law finds in the analysis of the Culture of a given society support to the understanding of social facts and, consequently, for the interpretation of legal situations. Elements of research in doctrine and legislation will be used to define the legal aspects involved in the subject, followed by an analysis of the proposed tale, considering its legal, contextual and cultural aspects.

The current family and the rights of the article 227 of the Federal Constitution

The processes of cultural formation, because they are a result of human actions, are dynamic and constitute themselves into true clusters of meanings, ideas, values, that, as a whole, affect the organization of societies, the concept of collective and individual identities and why not to say, the concept of family. As it constitutes one of the basis of society, the concept of family is closely associated with the culture of the society in which it operates, not showing a homogeneous character, because it is susceptible to external influences. Therefore, due to the dynamic nature of culture, social, spatial and temporal changes may influence not only the understanding of family, but also its analysis. And, in this context, the changes in the status of the family and the way it is seen, it is a product of social and cultural changes.

Given this, the theme of family relationships regarding the rights of the Article 227 of the Federal Constitution and the influence exerted by the culture is relevant both social and legal. In this respect, the proposition of the subject arises from the understanding that the mobility of cultural and social processes acts on the way society regulates, manages and represents, in its rules of social behavior, issues related to the bonds that unite the individuals. Thus, the articulation of these areas assumes importance because in the composition of the modern family, affection has a prominent place, being considered a central element, with no more space for the patriarchal and hierarchical familiar model. In this sense, Law finds in the analysis of the culture of a given society support to the understanding of social facts, and consequently for the interpretation of legal situations, as well as Literature can help Law exemplify these behaviors.

The Law has as characteristic the dynamism, and is constantly changing and being updated, and as the Culture, can be adapted to the needs of human beings, in each historical moment, even if it does not do it with the same rapidity of the cultural changes. Also, law acts as a kind of mediator within each society and culture. Since it regulates and discipline behaviors, it ends up playing an important role in social life. Therefore, it can be investigated as a social fact, being, in this case, the social relations its primary source. Ada Bogliolo Piancastelli Siqueira (2011, p.86), in *Notes of Law and Literature*, using the thoughts of James

Boyd White, states that Law can be understood as a cultural factor, as

[...] it constitutes one of the possible ways in which man thinks and expresses himself, as well as results in the performance of each individual towards the world and his neighbors. This mode of manifestation and action prescribed by law is given through the use of a specific language able to dictate and delimit social relationships.

Restrictively, Law is understood as a set of legal rules conducting life in society, so it disciplines human relations settling disputes that could not be solved without legal intervention. But the biggest problem of this attribution lies in the imbalance between social facts and Law, because the latter is not able to follow the transformations of the society. As an example, one can mention the family relationships. Therefore, by accepting the Law as a cultural manifestation, it becomes possible its discussion as a work in progress and continuously evolving (SIQUEIRA, 2011).

Thus, the role of the legislator and the jurists is to help Law adapt itself quickly and effectively to society and life, finding solutions to problems that arise. In this perspective, it is noteworthy that in the same way Law operates in society and changes constantly, to be adapted to it, society is a reflection of the ideologies, norms and the law of a particular social group, i.e. culture.

The jurist and professor Miguel Reale when considering that “[...] culture is nothing but the implementation or upgrade of the freedom, of the power that man has to respond to natural stimuli in a different way than other animals” (REALE, 2002, p.244), demonstrates the importance of thinking and integrating culture in all areas. It means that “[...] law does not live according to the form, but in function of humanity” (ASSUMPÇÃO, 2004, p.145). That is why, in the proposed context, it can be stated that the Law is intrinsically linked to the world of Culture, since it arises from human relations, and is marked by the transformation of values in different historical periods.

Currently, it can be said that the family institution is marked primarily by affective bonds and no longer by ownership. This is nothing more than the result of a social and cultural evolution.

As difficult as it may be to define the legal institution of the family, one must take into account when trying to define it, the fact that it is constantly renewing itself in each time. To make it closer to reality and that other models of families can be recognized, it is necessary to dissociate the notion of family from the matrimonial union, considering it as the interrelationship between individuals that seek, especially love, respect, trust, as it occurs, for example, in adoption, in common-law marriage and same-sex unions.

Due to the fact that the family constitutes itself as one of the basis of society, both in past times, as in contemporary times, where values and principles are built, it is possible to observe that the new concepts of society and family directly affect the concept of filiation, and that the transformation of the modern family yearns for a conscious and responsible parenthood, and no longer has as goal the simple perpetuation of the species or procreation. Therefore, from the angle of the bonds established spontaneously, family, marked by patriarchalism and the bonds of kinship, gave place to the one based on the bonds of affection,

In this sense, the Brazilian Federal Constitution of 1988 not only equalized the biological and affective filiation, but above all, made it clear that the relationship between parents and children should not be

of control or possession, but of love, affection, respect, as it can be seen in the following excerpt:

While the biological family navigates on the blood cavity, the affective family transcends the seas of blood, connecting the ideal of responsible fatherhood and motherhood, hoisting the impenetrable veil that covers the sociological relationships, rejoicing with the emotional and spiritual birth of the child, building the family by the umbilical cord of love, affection, devotion, heart and emotion, (re)veiling the unfathomable mystery of parenthood, engendering a true recognition of the condition of affective child (WELTER, 2003, p.13).

Rodrigo da Cunha Pereira (2012, p.30) understands that “[...] the assignment of a legal value to the affection resizes the axiological board of the Law and authorizes us to talk about the ethics of affection as one of the supports and pillars of Family Law”. Within this context, one can say that the familial affection “[...] connects and communicates people, even when they are distant in time and space, by a deep and fundamental solidarity - of their lives - of living, coexistence and survival [...] (BARROS, 2002, p.9).

The idea of the family, as well as complex, shows itself as variable both in time and in space. Alfredo Bosi, in his book “Plural but not chaotic”, says that culture admits a plural character, “[...] outcome of a process of multiple interactions and oppositions in time and space” (2008, p.7). In this sense it can be said that the conception of family also changes with the passage of time, and does not show a single and homogeneous feature in the same society. After all, depending on the historical moment, the place, the political, economical, social and religious power of each time, the familial institute may have different characteristics (GAMA, 2007).

Maria Helena Diniz, in her course on Brazilian Civil Law, emphasizes the dynamic character of the family by asserting that “[...] the Family Law, contingent as life, is far from being static, which would undoubtedly has as result a stagnation thwarting the evolution of the civilization and the society” (1993, preface).

In this context, Bauman (2001) says that the fluidity is a major metaphor for the present stage of the modern era - an image that can also be applied to the family, because it is always ready to transformations. This description fits well the context explained, because the fluids do not hold their shape easily, do not fixate on space or hold time and, therefore, are always ready to be modified (BAUMAN, 2001). However, the author points out that modernity was not fluid since its inception.

The striking feature of modernity, the “melting of solids”, i.e., the undo “[...] of the links that tie the individual choices in projects and collective actions” (BAUMAN, 2001, p.9) has as result the fragility of social relations. In this sense, Stuart Hall (2006, p.12) states that

The individual, having previously lived with an unified and stable identity, is becoming fragmented, consisted of not one but multiple identities, sometimes contradictory or unresolved. Correspondingly, the identities, that made up the social landscapes ‘out there’ and that ensured our subjective accordance with the objective ‘needs’ of the culture, are collapsing as a result of structural and institutional changes.

The fragmentation, which the author refers, can be understood in the specific case of this research, as an important element to comprehend the modifications in the structure in which families in contemporary society are going through. It demonstrates that the concept of family as well as the individuals are

changing, and that exchange of postures and identity brings a direct reflection on the current family constitution.

Another aspect possible to be understood as crucial to the “melting” of family relationships is the change on the economical profile of families, since in contemporaneity many women took the place of the provider of the family (BAUMAN, 2001).

Bakhtin (1988, p.21) states that “[...] the conception of the individuals and the notion that they have of themselves acquire shape and existence in the signs created by an organized group, of which they share in the course of their social relations”. Thus, the family relationship must be more than ever grounded in the affective component and not merely at the biological, considering that the interaction between individuals is responsible for the formation of identities.

Over the years, human rights and Family Law had their concepts modified and extended. New values were added to the society and their reflections in the legal system are shown in the reread of institutes with a different interpretation. In this context it is important to note that parenting is a complex act that involves human, social and legal aspects. At the same time, as it can engage, in some cases, different cultures, one can say that parenting is a complex institute that has been modified over the years.

Currently, as already said, the family institution is marked primarily by affective bonds and no longer by ownership. This is nothing more than the result of a social and cultural evolution, because new values were - and are being- aggregated to society.

Moreover, it is understood that the changing of family structure occurs gradually and that the transformations observed in the legal conformation of the family, carry deep relationship with the social changes and conceptions of the culture of a given society (FACHIN, 1986). As an example, it is possible to cite the rights provided by Article 227 of the Brazilian Federal Constitution:

It is the duty of the family, society and the State to ensure children, adolescents and youth, with absolute priority, the right to life, health, food, education, leisure, professional training, culture, dignity, respect, freedom and family and community living, in addition to keeping them safe from all forms of negligence, discrimination, exploitation, violence, cruelty and oppression (BRASIL, 1988).

The article above has protective rules about the rights and guarantees of human beings. In this respect it is understood that fundamental rights are those that, regardless of their formal designation, confer subjective rights to individuals, having regard to the principle of human dignity, since their intention is to ensure their holders a dignified existence, according to the dictates of social justice (HOLTHER, 2009). It is also noteworthy to mention that the Brazilian Constitution of 1988 opted for a material conception of fundamental rights when it determines in its Article 5, § 2 that “(...) the rights and guarantees expressed in this Constitution do not exclude others deriving from the regime and from the principles adopted by it, or international treaties to which the Federative Republic of Brazil is a party” (BRASIL, 1988). Therefore, this conception enables the inclusion of other rights that come with the evolution of social relations.

It is also understood that the fundamental rights somehow are related with human rights insofar

as they represent the fundamental rights of the human person. Thus, understanding the rights of children and adolescents expressed in the Article 227 of the Federal Constitution as fundamental rights denotes a concern with human rights as these minors are more vulnerable than adults and need protection. Thereby, in addition to all the human rights enshrined to everyone, others are assigned in that Article.

From the Federal Constitution of 1988 Brazilian Law passed to ensure children and adolescents the right to life, health, food, education, leisure, professional training, culture, dignity, respect, freedom and family and community living, as well as safeguarded them from any form of negligence towards society, sexual violence, discrimination, cruelty and oppression. Thus, the effectiveness of this protection is duty of the family, society and the State, not forgetting its concrete and practical applicability occurred through the Statute of Children and Adolescents (VERONESE, 1996).

Children and teenagers hold special rights because of their specific condition of being in development. Consequently, Brazilian Federal Constitution made these individuals not only subjects of fundamental rights, assigned to everyone and mentioned in the *caput* of Article 5 of the Federal Constitution, but also holders of special rights also understood as fundamental because of its nature.

From the brief explanation provided above it is understood that the fundamental rights of children and adolescents represent an advance and should be practiced in order to not only represent a formal achievement. Also, one need to have in mind that to avoid the fragility of social relations and the fragmentation of family the fundamental characteristic of this institution must be the affectivity. Likewise, it can be seen that culture permeates all spheres of society, influencing their rites and customs as well as the Law, given that both the Culture and the Law are marked by dynamism. In this way, given the scope of this work, the analysis of the tale *Negrinha* will be used as exemplification and reflection on the evolution of family relationships and these fundamental rights and their effective enforcement, as well as to show how a literary text can be used to exemplify a theme and reflect about it.

The neglect portrayed in *Negrinha*

The author of the tale *Negrinha*, Monteiro Lobato, was born on April 18th of 1882. He graduated, by imposition of his grandfather, in Law, from the Faculty of São Paulo, and later, was nominated prosecutor. But his lack of interest in the legal area was such that, when he inherited his grandfather's farm, he dropped the prosecution office and became a farmer (GODOY, 2003). However, even if he had not worked so long with Law, Lobato had knowledge of this area, expressing the defense of legal principles in statements that took shape in texts, like stories, essays, novels, translations, letters and newspaper articles.

In the Literature, Lobato took advantage of his characters to criticize situations and expose their own thinking: original and contrary to the conventions. He stood out for his children's books, for example, "O sítio do pica pau amarelo", that can be translated to English as The Yellow Woodpecker Ranch (GODOY, 2003). The tale, object of this analysis, entitled *Negrinha*, was first published in 1920 in a storybook of the same name, exposing peculiar behaviors of Brazilian society of the early twentieth century.

In this period, the Brazilian State was still in a process of transition from an imperial regime, parliamentary and unitary, marked by a slavery order, to a Republican regime, presidential and federal (SOUZA JUNIOR, 2002). The Republican Constitution, promulgated in 1891, granted to all residents in the country, the right to freedom, security and political manifestation, though the economic exploitation of man by man and the restriction to the free choice of leaders remained, as if the understanding of the new structure had not been installed. Example of this is the practice of controlling the vote of the population, by which the colonels allied with the governors, used to determine in whom their workers would vote. In this way, they could control the national political reality, since the workers were afraid to disobey and receive corporal punishment (FAUSTO, 2000).

The First Republic was the era of “coffee with milk”, as it is commonly cited the alliance between the states of São Paulo and Minas Gerais, where the presidents of the Brazilian Republic were chosen among the representatives of the richest and most populous states, in this case, São Paulo and Minas Gerais. During this period, in which coffee aristocracy dominated the economy and politics, there was severe criticism of industrial booming, because agricultural sectors, especially coffee and milk were being privileged by the “coffee with milk” policy (FAUSTO, 2000). Meanwhile, even if the abolition of slavery had already occurred and black people were no longer considered merchandise, this mentality was still present in some attitudes of society, such as in the way Dona Inácia treated *Negrinha*. In other words, even if the country was moving into the industrialization and urbanization process, prejudice and remnants from slavery were still present in the cultural mentality of that society.

At the same time, the increasing industrialization of the country brought problems of social nature, since a wide range of workers who once worked as craftsmen, have lost their livelihoods. In addition to this, the new political forces were ruled not by the statement of legitimating the principles of human dignity, so that the vast majority of former slaves were abandoned to their fate. Unemployment, allied with the human disrespect, brought serious repercussions on the black population and even though the abolition of slavery had occurred, black people were still seen as inferior to the white, which left them only the status of someone's property. In other words, as much as the country was moving in the process of industrialization and urbanization, remnants of the slave regime were still present in the cultural thinking of society.

Consequently, placing the story of *Negrinha* in a post-abolition period, but that there was still a slave mentality, and opting for the issue of violence against the lowest and racial prejudice, Monteiro Lobato not only portrays the mentality of the society at that time, but also exposes this society, denounces its behaviors, and, makes the reader reflect on the inclusion of children in the family, which goes far beyond the financial and biological aspects.

Negrinha was a black and orphan child who had been born in a slave quarter and due to the death of her mother went to live under the care of Dona Inácia, which besides not liking children, was a master in the art of hurting them

Negrinha was a poor orphan of seven years old. Black? No, dusky, dark mulatto, of dappled hair and frightened eyes. Born in the slave quarter, of a slave mother, lived her early years through the dark corners of the kitchen, on the old treadmill and filthy rags. Always hidden, because the missus did not like children (LOBATO, 1948, p.03).

Negrinha is a character marked by suffering and prejudice on the part of those around her. She was seven years old and physically was a stunted, with eternally frightened eyes” and had the body “[...] tattooed of signs, scars, welts” (LOBATO, 1948, p.03). About her, still stands out the fact that the adjective “negrinha” (little black person) is used as a proper name, highlighting the neglect from everybody, especially from Dona Inácia with her. It’s important to emphasize that an individual without a name cannot be registered or have identity documents, so the impression we have is that *Negrinha* was not considered a person, but, a thing or an animal.

Besides being called *Negrinha* she had other diverse nicknames:

Brat, devil, owl, cockroach, witch, ugly duck, dead fly, dirt, gob, rag, puppy, bad thing, garbage – you cannot imagine the numerous nicknames that she had. There was a time she was the bubonic plague. The epidemic was the big news, and *Negrinha* was also named after it - by the way she liked the word. But when they noticed that, they deleted it from the list. Was written that she would not have any taste in life – neither the taste of customizing the plague (LOBATO, 1948, 04-05).

The excerpt above shows the inhuman environment where *Negrinha* was placed, as well as the mistreatment, including psychological, that she suffered, considering that she didn’t have the possibility to like or dislike, or even choose a nickname. Her preferences and tastes were ignored, and on purpose, by the people of the house.

It should also be taken into account that the understanding of the characters is very useful for a better comprehension of the text by the reader, since their descriptions are imbued with emotion. Dona Inácia, oppositely to *Negrinha*, is described as a “[...] virtuous woman [...]” widow, “[...] fat, rich, owner of the world [...]” (LOBATO, 1948) that felt pleasure in hurting *Negrinha*, but by the society she was seen as a good woman. Ironically, she is described by the narrator as “Saint Inácia”, “Great Lady”, “Good Lady” and “Excellent Dona Inácia” (LOBATO, 1948), which, in a way, explains her violent and prejudiced character.

Dona Inácia did not agree with the abolition of slavery and “[...] kept *Negrinha* at home as a remedy for her frenzies”, striking against her physical and verbal abuse, and also did not agree with “[...] this indecency that black was equal to white and for everything: the police!” (LOBATO, 1948, p.05). It can be said that Dona Inácia liked to hurt *Negrinha* in many different ways and had pleasure doing it.

The May 13th removed from her hands the whip, but did not take from her soul the anger. [...] Pinches: hand angrily closed and nodes fingers singing in the head of the patient. Ear pulling: the twisted, to peel the shell (good! good! good!) And the two hands and the jerky. The entire range of tweaks: the choosy with her fingernail, the twisted navel, equivalent to the ear pulling. The rubdown: slaps, pinches, kicks and tweaks - exhilarating! The quince stick, flexible, cutting: for “thin hurt” nothing better! It was little, but rather that than nothing. From time to time there came a greater punishment to unclog the liver and kill the longing for good times (LOBATO, 1948, p.05-06).

The paragraph above also refers to the Imperial Law number 3353 of May 13, 1888 (BRASIL, 1988), known as *Lei Áurea*, which, in its first article declared extinguished slavery in Brazil.

Despite that Dona Inácia raised *Negrinha*, giving her food and shelter, she did not appear to do this

by zeal or dedication, but by a feeling of love and submission to God, even having her attitudes justified by a priest. He reminds Dona Inácia that “[...] charity is the most beautiful of Christian virtues” and that “[...] who gives to the poor lends to God” (LOBATO, 1948, p.07). What mattered was that *Negrinha* had a place to live, i.e., the inhuman attitudes of Dona Inácia were corroborated by the fact that she was doing “the good” for one orphan child. The canonical interests were above the affective, so the narrator denounces the hypocrisy of her attitude by the irony that exposes the “holy” Dona Inácia.

Also, the reverend, even being a secondary character, is important in the history because he confirms and justifies the actions of Dona Inácia. He sees her as a “[...] lady of great apostolic virtues, mainstay of religion and morality” (LOBATO, 1948, p.03).

In this regard Dona Inácia can be compared to the Spanishes and Portuguese who colonized America and Brazil respectively, because they all declared to be at the service of faith, but the mercantilists and personal goals were above the religious. In the same way that the colonizer imposes itself towards the colonized (TODOROV, 1999), Dona Inácia imposes herself towards *Negrinha*, trying to put in *Negrinha*'s head her point of view about black people. Consequently, *Negrinha* sees herself as an inferior being allowing Dona Inácia to mistreat her. Therefore, it can be said that the relationship between these two characters is constructed from the interests of Dona Inácia, in a process of domination as that established between colonizer and colonized.

One day two “[...] small, beautiful blonde girls, rich, born and bred in a nest of plumes [...]” nieces of Dona Inácia were spending the holidays in her home and when they asked her about who would be *Negrinha* she replies: “- Who will it be? - Said the aunt, with a sigh of a victim. - A charity of mine. I do not change, I live raising these poors of God ... An orphan. But play, little girls, the house is big, play so forth” (LOBATO, 1948, p.08).

The visit of these girls made *Negrinha* enjoy, even for a short time, from their childhood. For a few moments, *Negrinha* had the notion of what was to be a child, play and be happy. As she had never been given that opportunity, when she faced a doll she was enraptured.

It was of ecstasy the look of *Negrinha*. She had never seen a doll and did not even know the name of this toy. But she understood that it was an artificial child. - It's made ...? - Asked enraptured. [...] The girls marveled with that. - Never saw a doll? - Doll? - Repeated *Negrinha*. - It's called doll? They laughed at the girl. - How silly (LOBATO, 1948, p.09).

The author stresses that in this day *Negrinha* realized she had a soul, i.e, she became aware of herself, the child that she was. The excerpt below explains this understanding:

Negrinha, human thing, realized this day that the doll had a soul. Divine hatching! Wonderful surprise brought the world to her and that blossomed after all, as flowers blazing with light. Felt elevated to a human being. Stopped to be a thing - and now it would be impossible to live the life of a thing. If it was not anything! She was feeling herself! She was thrilled! (LOBATO, 1958, p.11).

Finally, the two beautiful, blond and rich nieces of Dona Inácia are fundamental in the awakening consciousness of *Negrinha*, because they present the doll to her. This toy, as already stated, has changed the

life of the main character. She learned that being a kid was synonymous of joy and play and not just being insulted and abused as she was used to.

But unfortunately, this consciousness killed her, since the nieces of Dona Inácia went away and took with them the doll. *Negrinha's* sad life and routine returned to its usual status. She fell into deep sadness, stopped eating, gradually languished, and one can say that she simply started absenting from her life.

She died on a tattered mat, abandoned from all, like a stray cat. Never, however, no one died with greater beauty. Delirium surrounded her with dolls, all blond and blue-eyed. And angels ... And dolls and angels waltzed around her in a dance from the sky. She felt grabbed by those little hands of crockery - embraced, waltzed (LOBATO, 1948, p.12).

But, unfortunately, the end of *Negrinha* is tragic. She gets sick, let sadness beat her up and ends up dying. Monteiro Lobato highlights that for the people of the house only two impressions of *Negrinha* remained: a comedy, in the memory of the rich nieces of Dona Inácia and another of hurting her by Dona Inácia, which demonstrates the non-human and inferior condition of *Negrinha*. From it is possible to visualize the lack of space that the protagonist had to establish her alterity as a subject and not as an object to be manipulated and vilified in her rights. Her vision of herself was deeply marked by the view that others had from her and probably this was the reason that *Negrinha* let herself to be treated as an object.

Negrinha is a character who appears to live in constant conflict, especially after her awakening to childhood. Being an orphan, black and daughter of slaves, on the understanding of Dona Inácia, didn't give her the right to live as a normal child that studies, plays and has fun.

The context in which *Negrinha* is living, shows us that there is no room for her to be loved and cared for as a child. Dona Inácia is not concerned with the welfare of the girl. She thinks that she just needs to feed *Negrinha* with crumbs and give her a place to live, which in the eyes of the church and that society, is a good thing to be done.

As much as Dona Inácia states that she has adopted *Negrinha*, she didn't do it properly, not only because she didn't followed the formal and legal aspects of adoption, but mainly because she never treated *Negrinha* as daughter and family.

In view of the foregoing, the tale denounces social behaviors of the time portrayed, i.e., discrimination against black people and the physical and psychological abuse suffered by the main character, as well as it leads us to reflect on the current family and its evolution and transformation. The analysis allowed us to demonstrate aspects of the culture and society of the early twentieth century in Brazil and contributed to a better understanding of the text, drawing, in a restricted environment a conception of family organization. However, from the perspective of Family Law, one can notice the lack of the main constituent element of the current family: affection, since family relations are no longer grounded in patriarchalism, but, in the valuation of affective bonds.

Final considerations

The tale used to illustrate the theme demonstrates the importance of the fundamental rights of children and adolescents expressed in the Article 227 of the 1988 Brazilian Federal Constitution and its necessary implementation and enforcement, and reaffirms the Literature as a cultural manifestation, as a vehicle to expose the human condition and to demonstrate the articulation of distinct knowledges which Literature proceeds because it is a chronotope that combines representation and critical reflection of reality. Regarding the analysis of the Law in Literature, its importance lies in the possibility of rebuilding some images concerning the legal framework, perceived by the writer, as well as the possibility of making the juridical world less abstract and rethink its social function (JUNQUEIRA, 1998).

The tale *Negrinha* can be considered a denouncer of social behaviors, in this specific case the discrimination against black people, physical and psychological abuse, as well as the restriction of the rights enshrined in Article 227 of the Brazilian Constitution.

Its analysis allowed us to demonstrate aspects of culture and society of a time that would possibly be unnoticed to the reader in a less attentive reading. The understanding of the characters also had importance in the comprehension of the text by the reader, since their descriptions are imbued with emotion. From the perspective of Family Law, it is possible to observe the lack of the main important element of the current family: affection. Thus, one should bear in mind that differently from *Negrinha's* tale, family relationships are not anymore based in patriarchalism, but, in the affective unity, in the enhancement of affective bonds.

From the foregoing analysis of *Negrinha*, bringing the facts of the narrative to present times, it's possible to understand that the fundamental rights of the Article 227 of the Federal Constitution are simply ignored by Dona Inácia, which hurts even the principle of human dignity. It can be stated that *Negrinha* had only the right to be fed, and that the rights to life, health, education, leisure, culture and, especially, dignity, respect, freedom and family life were neglected. Moreover, discrimination and cruelty with *Negrinha* were evident. The poor little girl was only treated like a child and felt like one for only a short period of time and due to a sudden and unexpected act of kindness of Dona Inácia.

Within the proposed framework, and considering that the literary text is a cultural manifestation, as it reflects the human condition, the subject could be treated by drawing a parallel with Literature and Culture. Antonio Cândido in an article written in 1988, entitled "Right to literature" states that:

[...] The literature corresponds to a universal need that must be satisfied otherwise the personality will be mutilated, since it gives form to feelings and views, it organizes us, frees us from chaos and thus humanizes us. Deny the enjoyment of literature is mutilating our humanity. Secondly, literature can be a conscious tool of unmasking, because it focuses on restriction of rights situations, or denial of them, including poverty, servitude, spiritual mutilation (CANDIDO, 2004, p.1986).

Understanding the literary text as a cultural manifestation that may denounce the restriction of human rights, the tale called *Negrinha* exemplifies this limitation and induces the reader to reflect about Article 227 of the Federal Constitution, which establishes that raise a child means not only give her a place to live or feed her, but also to protect her welfare and human integrity.

In this context, the analysis of the Law allied with the Literature and the Culture sustains the interpretation and understanding of situations, legal or not, enabling the study of the Law to not being limited

just to the analysis of the legislation. The reciprocity between these two areas can help the Law to look into the facts and legal phenomena with a critical look, in a way that law operators may face the given situations without relying themselves solely on legal principles, since the legal study should extrapolate and break the paradigm of the exegetical-normative positivism as the answers are not always found in the cold letter of the law.

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