# MULTISENSORY LAW AND ITALO CALVINO'S "LEZIONI AMERICANE"

## - ELEMENTS FOR AN IMPURE THEORY OF LAW -

MARCILIO T. FRANCA-FILHO*

*On June 6th, 1984, Italo Calvino – one of the most important Italian writers of the 20th century – was invited by University of Harvard (USA) to give the traditional and respected Charles Eliot Norton Poetry Lectures for the 1985/1986 academic year. Set in 1925 to pay homage to one of the first professors of art and literature in Harvard, the Charles Eliot Norton Poetry Lectures are a set of six conferences given by a great name in the field of arts, literature, painting, music or architecture on a topic of his/her choice in the course of one academic year. In the previous years, names such as Leonard Bernstein, Octavio Paz, Jorge Luis Borges, Meyer Schapiro, Igor Stravinsky e T. S. Eliot had accepted University of Harvard's invitation. Calvino was the first Italian ever invited. Overcoming the excessive liberty he was given – "believing as he did in the importance of constraints" over the literary work – Italo Calvino set the theme of his six conferences: he would cover some of the literary values that deserved to be preserved in the course of the new millennium which was to start some years later. Lightness, quickness, exactitude, visibility, multiplicity and consistency would be the themes and titles of each of his lessons. He wrote five of them before getting to Harvard and he intended to write the last one (consistency) after his arrival in the city of Cambridge, in the US state of Massachusetts, where the renowned university is located. However, Calvino passed away on September 19th, 1985, shortly before setting off to the United States, thus before the conferences and before preparing the last of his six lessons. Posthumously, the five conferences written so far were collected in one volume entitled Lezioni Americane: Sei Proposte per il Prossimo Millennio, whose English version is entitled "Six Memos for the Next Millennium". Although it was conceived as an aesthetic-literary discussion, Italo Calvino's book had great impact in arts in general, including design. This text will care to examine if and how those five literary values described by Italo Calvino – lightness, quickness, exactitude, visibility and multiplicity – have echoed in the world of Law of the present millennium, especially in the discussions over new forms of production and understanding Law. In other words, our intention is to find out what Calliope could say to Themis many years after those conferences were written.*

---

* MARCILIO T. FRANCA-FILHO is Professor of Public Law (Faculty of Law, Federal University of Paraíba, Brazil) and Attorney/Prosecutor (Prosecution Office at the Audit Court of Paraiba, Brazil). Previously, he was International Legal Adviser of the United Nations Office in Timor Leste (UNOTIL) and worked for the World Bank/PFMCPB/Timor. From 2007 to 2008, he was Calouste Gulbenkian Post-Doctoral Fellow at the Law Department of the European University Institute (Florence, Italy). He is member of the International Association of Constitutional Law, the International Society of Public Law and the Brazilian branch of the International Law Association (member of the national board). He holds a PhD from the University of Coimbra (Portugal, 2006, FCT fellowship) and a Master of Laws (UFPB, Brazil, 1999). He is former student (*Gasthörer*) of the Free University of Berlin (Germany) and former trainee at the Court of Justice of the European Community (Luxembourg). Member of the UNDP Democratic Governance Roster of Experts in Anti-Corruption (PNUD/ONU). A previous version of this paper appeared in NOVAKOVIC, Marko. *Basic Concepts of Public International Law - Monism & Dualism*. Belgrade: Faculty of Law of the University of Belgrade / Institute of Comparative Law / Institute of International Politics and Economics, 2013. The current version was delivered at the VII International Conference on Multisensory Law, January 27 & 28, 2014, hosted by University of Zurich, Department of Law.

TABLE OF CONTENTS



*"I venture to believe that it is as important to a judge called upon to pass on a question of constitutional law, to have at least a bowing acquaintance with Acton and Maitland, with Thucydides, Gibbon, and Carlyle, with Homer, Dante, Shakespeare and Milton, with Machiavelli, Montaigne and Rabelais, with Plato, Bacon, Hume and Kant, as with the books which have been specifically written on the subject."*
*Judge Learned Hand, 1930*

## I. INTRODUCTION

The insufficiency of the legal positivism for understanding and interpreting the juridical phenomenon has been an obvious and frequent finding in contemporary theories of law. In search of new epistemological and methodological models for the Law, legal scholars have sought to approach more and more other languages in pursuit of a cross-cultural dialogue. And so, since the 1990s, the emergence of various hues of the "Law and ..." movement - such as the Law & Society, Law & Literature and the Law & Humanities - sparked a wide-spread wave of aesthetic and cultural studies on the legal phenomenon. Since then, it has not been uncommon to find in law schools events, disciplines and bibliographies on themes hitherto unfamiliar to the legal doctrine, as art, opera, theater, cinema, jazz and poetry. It is for no other reason but this familiarity with the domains of Themis, goddess of justice, and those of Calliope, the Muse of Epic Poetry – who starts and leads the choir of all Muses, according to Hesiod – that this writing seeks to bring some arguments, narratives and wisdom originally conceived in the womb of literature into the field of Law (domestic and international Law), of State and of Political Ideas.

On June 6th, 1984, Italo Calvino – one of the most important Italian writers of the 20th century – was invited by University of Harvard (USA) to give the traditional and respected Charles Eliot Norton Poetry Lectures for the 1985/1986 academic year. Set in 1925 to pay homage to one of the first professors of art and literature in Harvard, the Charles Eliot Norton Poetry Lectures are a set of six conferences given by a great name in the field of arts, literature, painting, music or architecture on a topic of his/her choice in the course of one academic year. In the previous years, names such as Leonard Bernstein, Octavio Paz, Jorge Luis Borges, Meyer Schapiro, Igor Stravinsky e T. S. Eliot had accepted University of Harvard's invitation. Calvino was the first Italian ever invited.

Overcoming the excessive liberty he was given – "believing as he did in the importance of constraints" over the literary work[1] – Italo Calvino set the theme of his six conferences: he would cover some of the literary values that deserved to be preserved in the course of the new millennium which was to start some years later. Lightness, quickness, exactitude, visibility, multiplicity and consistency would be the themes and titles of each of his lessons. He wrote five of them before getting to Harvard and he intended to write the last one (consistency) after his arrival in the city of Cambridge, in the US state of Massachusetts, where the renowned university is located. However, Calvino passed away on September 19th, 1985, shortly before setting off to the United States, thus before the conferences and before preparing the last of his six lessons. Posthumously, the five conferences written so far were collected in one volume entitled Lezioni Americane: Sei Proposte per il Prossimo Millennio, whose English version is entitled "Six Memos for the Next Millennium".

Although it was conceived as an aesthetic-literary discussion, Italo Calvino's book had great impact in arts in general, including design. This text will care to examine if and how those five literary values described by Italo Calvino – lightness, quickness, exactitude, visibility and multiplicity – have echoed in the legal world of the present millennium. In other words, our intention is to find out what Calliope could say to Themis years after those conferences were written.

[1] Introductory note by Esther Calvino to CALVINO, 1996, p. I.

## II. LIGHTNESS

Italo Calvino starts his lesson on lightness by remembering that "to cut off Medusa's head without being turned to stone, Perseus supports himself on the very lightest of things, the winds and the clouds (...)."[2] Likewise, it is supported on the very lightest of juridicity – legal principles and soft law – that the contemporary State has found its best strategies to fight the current Medusas of transboundary air pollution, transnational organized crime, international monopolies, ubiquitous economic instability, global degradation of labor conditions or even contemporary terrorism, which ignores geographical limits. The more complex the social system has become, the lighter the juridical structure becomes in order to reach the necessary conceptual-interpretative flexibility to embrace the fractal infinite of situations each time more far-reaching and complex in society.

In a more interdependent economy, which for this reason becomes more susceptible to the risks produced by global economic actors, the contemporary State, both alone and as part of great constellations or post-national networks, has come to frequently take up a more effective function of market's regulatory agent, in order to guarantee economic stability, competition, free trade or minimum standards of healthcare, security, environment, human rights, labor rights and consumer protection. This way, in the last years, the impoverished and weakened State has become mainly and fundamentally a market's regulatory entity, so as to better face – alone or as a group –, present-day's huge transboundary challenges. It is in this context that the contemporary State lets go of the monopolized provision of public services, with highly centralized norms, by becoming the market's supervisor (or co-supervisor).

This phenomenon is particularly evident in Latin America, where massive privatization of public services in the last twenty years has determined the end of the State-Actor or State-Producer/Provider of goods and services and the beginning of a new era in which the State is, basically, regulatory. This new State profile as a regulatory entity in the global scenario leads to the appreciation of the

[2] CALVINO, 1996, p. 4.

lightness, flexibility and subtlety of the juridical post-positivist forms: generality, abstraction and polymorphism of the legal principles and soft-law are more worthy that the density, casuistry and temporality of the detailed, rigid and fixed legal rule, unable to operate in the vastness of regional integration or to establish a dialogue in the ever- more frequent geographies of transboundary normative cooperation.

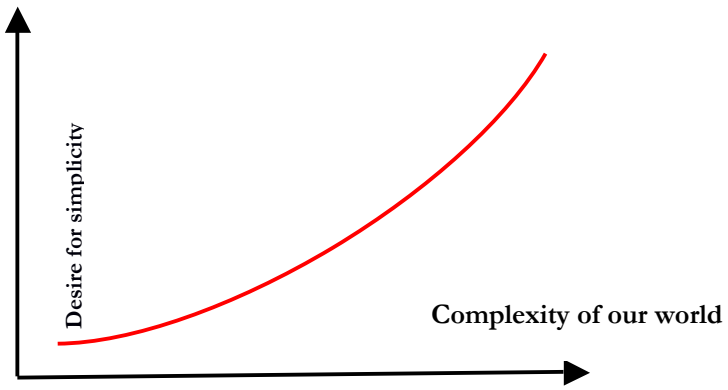
Apart from that, as global public goods[3] cross national borders, collective responses to the same extent start to be required. In these "network actions", the weight, thickness, stiffness and concretion of the traditional positive juridical rule give way to flexibility, openness, lightness and flexibility peculiar of juridical principles and soft law – without foregoing effectiveness, for sure. The prestige that the principle-based argumentation has reached in the last decades in several national and international courts; the growing number of informal intergovernmental networks between national regulatory entities (such as the horizontal cooperation founded by the Basel Committee on Banking Supervision or the coordination organized by the International Competition Network); the growing presence of distributed administration, in which national authorities set rules and policies subject to international regulation (such as the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal and several directives issued by the European Union and the MERCOSUR); the public-private regulatory partnerships (such as the Internet Corporation for Assigned Names and Numbers, ICANN); the importance of essentially private organs in charge of developing standardization and certification mechanisms (such as the International Standardization Organization, ISO, or the Society for Worldwide Interbank Financial Telecommunication, SWIFT, and the World Anti-Doping Agency or the Court of Arbitration for Sport); all this shows

[3] By definition, public or collective goods cannot be provided by a private party (individuals or corporations). In an even wider dimension, "global" public goods, such as security, healthful environment or free trade, must now be supplied in an even larger scale of global collective action, involving public and private, local and international actors (POSNER, 2008, p. 1).

traits of "radical changes in the understanding of positivity" of which Gomes Canotilho[4] has long been talking.

Leaving the mere reductionist Manichaeism behind, Italo Calvino himself warns that none of the values he chose as a theme of his five conferences excludes its opposite value at all.[5] Likewise, this encomium to the lightness of the juridical forms does not neutralize the acknowledgment that the jus-political weight of the State and its positive rules still enjoy the centrality in juridical rationale. However, this centrality is more and more shared by new "centers of normativity": interjusfundamentalism, multilevel constitutionalism, transconstitutionality, interjusfundamentality, internormativity, interconstitutionality, as Gomes Canotilho has been emphasizing in his latest writings.[6]

According to Roman Tschäppeler and Mikael Krogerus, the more complex is the world, the greater is the need for simplicity, adaptability, malleability and ductility. The current world is light.[7] The figure below reflects this desire for simplicity, adaptability, malleability and ductility:[8]




[4] CANOTILHO, 2001, p. 707.

[5] CALVINO, 2010, p. 59.

[6] Speaking in "new centers of normativity" has a certain "rhizomatic" flavor. Gilles Deleuze and Félix Guattari use the terms "rhizome" and "rhizomatic" to describe epistemological models in which the organization of the elements does not follow a line of hierarchical subordination but where any element can affect or influence any other.. In their book "A Thousand Plateaus" (1987), they oppose "rhizome" and "rhizomatic" to an "arborescent" conception of knowledge, which derives from a commom stem or trunk and works with dualist categories and binary choices.

[7] CUNHA, 2013, p. 332.

[8] TSCHÄPPELER and KROGERUS, 2013, p. 3.

In order to guarantee more and more simplicity, adaptability, malleability and ductility, the new "centers of normativity" shall also include, of course, new modalities of legal discourse, as mentioned by Colette R. Brunschwig[9], i. e., "multimodal or multisensory systems"; " visual, auditory, kinaesthetic, and so forth". This shows how right Italo Calvino is as he indicated, in 1984, lightness as one of the values that would go on guiding the aesthetics of the third millennium – in literature but also in the paths of Law.

## III. QUICKNESS

In his second conference, Quickness, Italo Calvino makes an "apology for quickness" without, however, denying the "pleasures of delay".[10] And he explains his apparent paradox by stating that:

"From my youth on, my personal motto has been the old Latin tag, Festina lente, hurry slowly. Perhaps what attracted me, even more than the words and the idea, was the suggestiveness of its emblems. You may recall that the great Venetian humanist publisher, Aldus Manutius, on all his title pages symbolized the motto Festina Lente by a dolphin in a sinuous curve around an anchor. The intensity and constancy of intellectual work are represented in that elegant graphic trademark, which Erasmus of Rotterdam commented on in some memorable pages. But both dolphin and anchor belong to the same world of marine emblems, and l have always preferred emblems that throw together incongruous and enigmatic figures, as in a rebus. Such are the butterfly and crab that illustrate Festina lente in the sixteenth-century collection of emblems by Paolo Giovio. Butterfly and crab are both bizarre, both symmetrical in shape, and between them establish an unexpected kind of harmony." [11]

[9] BRUNSCHWIG, 2013, passim.

[10] CALVINO, 2010, p. 59. In another – undoubtedly more hedonistic – context, the same pleasure of delay can be found in Zino Davidoff's work: *Il y a dans les gestes lents, dignes et mesurés du fumeur de cigare une cérémonie qui permet de retrouver des rythmes oubliés et de rétablir une communication avec soi-même* (1967, p. 28). Also: SANSOT, Pierre. *Du Bon Usage de la Lenteur.*. Paris: Payot/Rivage, 2004.

[11] CALVINO, 1996, p. 48.

It is not new that much before being global, informational or post-industrial, the contemporary world is, above all, a world of paradoxes. The paradoxical nature of current society is, without a doubt, one of the most vehement signs of the complexity that emerges from current daily life. In the recent years, for example, fewer wars did not result necessarily in more peace nor did a bigger production of richness lead to a reduction in poverty. In this period, the bigger and deeper the development of science and techniques has been, the smaller the number of unquestionable certainties in society has become. The quest for hurry slow can be seen as one more of the several paradoxes produced in the bosom of current society. In the path of juridicity, the search for such paradoxical harmony between quickness and slowness has also been a constant goal of the contemporary juridical systems: how can we combine, the best way possible, decision quickness and due process of law? How can we coadunate the necessary quick, efficient and legitimate legislative response without ending up in perverse and insecure legislative inflation?

As Gomes Canotilho discussed the relations between Time and Law, he once again sagaciously pondered:

"(...) In a work suggestively entitled Law and Time (Recht und Zeit, 1955), [Gehrard Husserl] identified the legislator as 'man of the future', the agent of administration as 'man of the present' and the judge as 'man of the past'. Today, these formulas must be object of urgent critical review. Anyway, one would say that various 'instances of temporality' shall be summoned in a theory of the temporally-adequate Constitution." [12]

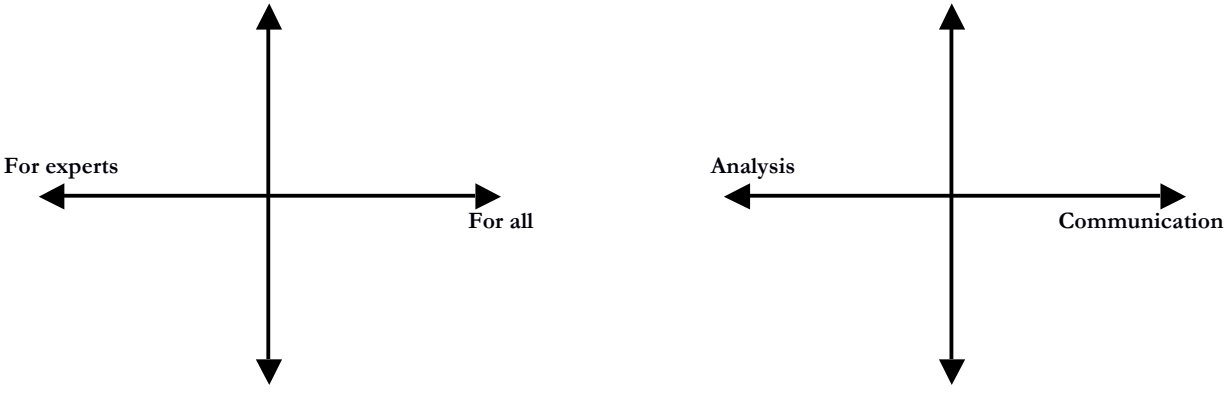
The abysmal discrepancy between the time of Law (anchor) and the time of economy and technology (dolphin) has long been known, in such a way that the quest for more celerity has been continuously attempted in legal cases. Legislative renovations, creation of instruments and quicker rules of procedure, administrative control over legal deadlines, the appreciation of more agile forms of conflict settlement (conciliation, mediation and arbitration), as well as the fast digitalization and virtualization of the state jurisdiction, in combination with the

[12] CANOTILHO, 2006, p. 26.

jusfundamental view of "right to a reasonable duration ofthe trial", all these examples are clear signs of the need to approximate the rhythm of juridical relations to the beat of economical and technological relations.

However, as the Latin motto Festina lente itself claims, the speed of Law cannot neglect the slow and mature legislative development, which might generate a legislative inflation that would cause much insecurity. The phenomenon of legislative inflation does not translate itself into a proportional rise in legal certainty for the citizen; much the contrary, many times it generates normative systems in the form of a web, whose traits are multiplicity, conflict, mistake in the prognosis and temporality of its normative structures.[13] Additionally, many laws are highly individualizing and discriminatory and thus, once again the parsimonious care with nomogenesis emerges.

In search of more efficient (and faster[14]) ways to understand and spread the juridicity, many legal scholars have been studying, in the last years, non-textual forms of communication, which obviously have its pros and cons. As noted by Tschäppeler and Krogerus[15] or Wahlgren[16], the diverse forms of communication (models, signs, schemes, trees, semantic nets, mind maps, matrices, etc.) can navigate in territories of diagrams as follow:




[13] HESPANHA, 2007, p. 322 and following.

[14] *"Bilder werden deutlich schneller als Wörter vom Gehirn aufgenommen"*- says Boehme-Neßler (2010, p. 64).

[15] TSCHÄPPELER and KROGERUS, 2013, p. 5.

[16] WAHLGREN, Peter. *Visualization of the Law*. In: MODEER AND SUNNQVIST, 2012, p. 24.

For all this reasons, the contemporaneity and adequacy of Calvino's literary thinking in the ways of legal thought lie unquestionable a second time.

## IV. EXACTITUDE

Italo Calvino begins his conference on exactitude remembering Maat, Egyptian goddess of justice whose iconography always depicted a set of scales, and goes about his topic in the following way:

"To my mind exactitude means three things above all: 1) a well-defined and well-calculated plan for the work in question; 2) an evocation of clear, incisive, memorable visual images (...); 3) a language as precise as possible both in choice of words and in expression of the subtleties of thought and imagination." [17]

In the project of juridicity that rises in Modern times, definition, calculation, sharpness, exactitude, precision and certainty also constitute values that belong to Law, so much that the scale – a precision tool par excellence – remains firmly incorporated to the contemporary iconography of Lady Justice. However, this scientific, logical and rational exigency that Law move itself in the field of exactitude and prognosis is, day by day, put to test when confronted with the ubiquity of scientific uncertainty and the inherent risk in contemporary society – risk always connected to the idea of insecurity.

In a place where science becomes critical of itself, it is evident that there are no more risk-free activities. In this scenario, Law cannot vainly assume to sail a sea of definition, calculation, sharpness, exactitude, precision, predictability and certainty. Central themes in contemporary security and international trade, such as genetically modified organisms, global warming, biosecurity, climate changes or biotechnology require more and more an approximation between jurists and scientists in order to clarify concepts, definitions, terms, consequences, hypotheses and, above all, risks.

[17] CALVINO, 1996, p. 55-56.

Law alone is unable to produce the truth; only with constant, honest, open and profound dialogue with science (and not only science but also the Arts[18]) can it mitigate – never eliminate – risk and chase exactitude.

Although the incapacity of the State and Law in this third millennium to eliminate all risk is known, there is growing demand in the international organizations (such as the World Trade Organization, European Union and the UN, for example) for the State and Law to embrace firm policies of "risk assessment" and to work on the threshold of exactitude, as proposed by Calvino, as: 1) a well-defined and well-calculated plan; 2) an evocation of clear, incisive, memorable visual images; and 3) a language as precise as possible. This international scenario is not much different in the domestic perspective: national courts have recurred more and more to the collaboration of scientists to try to convey justice.[19] Thus, for the third time, another one of Calvino's memos for this millennium shows to be adequate and modern in the world of Law.

## V. VISIBILITY

In 1984, some "primacy of the visual image" over "verbal expression" was highlighted by Italo Calvino[20], who explained his method of creation like this:
"In devising a story the first thing that comes to my mind is an image that for some reason strikes me as charged with meaning, even if I cannot formulate this

[18] CAPES (Coordenação de Aperfeiçoamento de Pessoal de Nível Superior) is the Brazilian agency responsible for assessing the quality of master's and PhD programs in all public and private academic institutions. In the results of its latest triennial review, a fact particularly caught my attention: among 73 master's and PhD programs (in Law) evaluated, 20 of them had some sort of artistic or cultural production of its faculty. In other words, in addition to books, chapters and articles on legal themes, the Professors of these master's and doctorates in law also produced pieces of Performing Arts, Music and Visual Arts - demonstrating, once again, the necessary dialogue between the arts and the Law. Altogether, those 20 post-graduate programs in law produced 64 artistic or cultural works (for details, consult http://www.avaliacaotrienal2013.capes.gov.br/). In this scenario, Law's new academic partners could be, also, media and cultural studies, art history, music theory, network theory, cognitive psychology, psychoanalysis or neurosciences (SHERWIN, 2011, p. 3).

[19] In Brazil, in two recent and important cases, the dialogue between law and science was much explored: the Supreme Court's examination on embryonic stem cells and abortion in cases of brainless fetus (Arguição de Descumprimento de Preceito Fundamental ADPF 54 e Ação Direta de Inconstitucionalidade ADIN 3510).

[20] CALVINO, 2010, p. 102.

meaning in discursive or conceptual terms. As soon as the image has become sufficiently clear in my mind, I set about developing it into a story; or better yet, it is the images themselves that develop their own implicit potentialities, the story they carry within them. Around each image others come into being, forming a field of analogies, symmetries, confrontations."[21]

As a matter of fact, social sciences and humanities have relied on images to understand and explain the world around, and Law is not immune to this tendency. Nowadays, because of the great visual appeal in our culture, in special, of the juridical information itself, Law is becoming more permeable to argumentation incited by the visual, aesthetic or artistic field, and is also using visual resources to make itself understood. Strongly influenced by information technologies, legal informatics and the multimedia character of contemporary culture, a brand new juridical discipline has originated in Austria, Switzerland and Germany since the early 21st century: "Rechtsvisualisierung" or "legal visuality" (or "BilderRecht" or even "Visuelle Rechtskommunikation"). This multisensory discipline takes upon studying the design of juridical information and the multiple modalities of communication of the juridical phenomenon – from richly-illustrated medieval manuscripts to the tridimensional digital information layouts of today.[22]

For long, Law was understood as an exclusively textual science (Textwissenschaft) whose essence would reside in the purest interpretation of legal texts, with no room for images – jurists seemed to suffer from imagophobia, the phobia about images. The numerous academic discussion forums (institutions, projects and publications) that deal with these themes nowadays and the growing presence in courtrooms of graphic aid of sophisticated technology, closed circuit images and GPS maps, magnetic resonance imaging or CAT scan and even 3D

[21] CALVINO, 1996, p. 88-89.

[22] FRANCA FILHO, 2011, *passim*. BRUNSCHWIG, 2009, *passim*. Also Peter Wahlgren states that *"it must nevertheless be mentioned that also text is a form of visualization. It should likewise be underlined that text is, and for the foreseeable future will remain, the most important tool in this respect. (…) Looking beyond representations utilizing text elements, and approaching what more easily can be understood as visualizations, it is indisputable that pictures, films, animations, symbols, and icons can be employed in order to depict different aspects of law"* – WAHLGREN, Peter. *Visualization of the Law*. In: MODEER AND SUNNQVIST, 2012, p. 20-21.

scale model (as means of evidence and argumentation tools), all this signals the presence of one "iconic turn" or "pictorial turn" in our contemporary mediatic legal system.[23]

Social sciences and the Humanities' iconophilia is due, overall, to three factors: 1) the easy access to antique images, based on technological improvement for the conservation, digitalization, storing and research in large image banks; 2) the easy production and dissemination of new images, also based on new technologies of production and publishing (among which are youtube and flickr); and, finally, 3) the huge quantity of images continually produced, consumed and discarded in the most traditional media channels, such as cable television, newspapers, magazines, websites, blogs, mobile phones, etc., which has led men to an essentially visual way of thinking nowadays. To these three factors, we must add that communication through images is always faster than text and speed is undoubtedly a central concern these days – as seen in paragraph 3 above.

This iconophilic tendency spread in contemporary social sciences and the humanities is recognized by the 2009 METRIS Report of the European Union as one of the vectors of contemporary production of knowledge:

"Visualisation and visual tools have always played an important role in the sciences. Anatomical atlas makers, illustrators of herbaria, and physicists have made ample use of images when presenting, representing, illustrating, and explaining natural phenomena. Yet, the history and the use of visualisation as a field of specialised study have gained prominence only recently. This 'iconic turn' has become a major paradigm in the SSH [Social Sciences and Humanities]. Several dimensions of this turn can be identified, including the new role of images and of the visual in sciences as well as in contemporary societies in general. The recent study of images, as a more general category than works of art, is underpinned by important studies published in the past two decades. (…)

[23] FRANCA FILHO, 2011, *passim*. In the foreground of constitutional-juridical methodism and methodology, Gomes Canotilho included visual elements in his writings long ago. See, for instance, the numerous informational charts, designs and models found in his *Constitutional Law and Theory of Constitution (Direito Constitucional e Teoria da Constituição)* or his *Studies on Fundamental Rights (Estudos de Direitos Fundamentais)*.

Studying the historically distinct use of images in different eras, fields and disciplines, provides an opportunity to explore methodological and epistemological issues in new ways. The iconic turn in the sciences is a special aspect of a more general trend in contemporary societies. In fact, the private and public spheres in European and Non-European societies alike are characterised, if not dominated, by an increasing flood of images. Television, digital photography, the Internet and the print media have led to new forms of interaction and intertwining or fusion between the private and the public. Information has become more and more 'iconic'." [24]

In this scenario of excessive visualization of contemporary culture, it is paradoxical that one of the most frequent attributes of iconography on Lady Justice today still is the blindfold over the eyes, a sign of the absence of sight. All this considered, for the fourth time, Italo Calvino's writings deal with a tendency that Law in the third millennium totally welcomed.

## VI. MULTIPLICITY

The theme of the last conference written by Italo Calvino for his stay in Harvard, dedicated to multiplicity, deals with the contemporary romance "above all as a network of connections between the events, the people, and the things of the world...".[25] One "system of systems"[26] or one "hyper-romance".[27] In one previous conference (on Quickness), Calvino had already made clear his idea of literature as a multiplicity of connections in the following way:

"Since in each of my lectures I have set myself the task of recommending to the next millennium a particular value close to my heart, the value I want to recommend today is precisely this: In an age when other fantastically speedy, widespread media are triumphing, and running the risk of flattening all communication onto a single, homogeneous surface, the function of literature is communication between things that are different simply because they are

[24] EUROPEAN COMMISSION, 2009, p. 112-113.
[25] CALVINO, 2010, p. 121.
[26] CALVINO, 2010, p. 121.
[27] CALVINO, 2010, p. 134.

different, not blunting but even sharpening the differences between them, following the true bent of written language."[28]

With a similar tone to "connections between the events, the people, and the things of the world…." or a "system of systems", the legal doctrine of this third millennium has also frequently sought the construction of a "network of constitutionality"[29] under the shelter of definitions such as global constitutionalism, multilevel constitutionalism, interconstitutionalism or transconstitutionalism. Apart from the specificity of each of these concepts, the conducting idea of them all is the network juxtaposition and the dialogue (or polylogue, as Gomes Canotilho[30] proposes) among several constitutions and many powers that constitute in the same global political space a dialogue that is, as a matter of fact, far from being always convergent and harmonious, sometimes being divergent, concurrent and conflicting.

It is important to see that the origins of the idea of "constitutional network" were not born in the international arena, but in the grammar of the domestic law itself. In 2000, Prof. Lawrence Tribe, from Harvard University, for example, underlined that Constitutional Law was in fact a hypertext, a network of networks.

The Constitution is (or has become) a hypertext – as a text and a gloss – not unlike a medieval manuscript. Most of us at some level sense that an adequate embodiment of constitutional meaning would have to be multidimensional; would have to make possible the display and observation of numerous links and feedback loops; would have to be viewable from more than a single angle; would benefit from exploration through various crosssectional transparencies; would be coded so one could tell at a glance when each part of the whole was proposed and when ratified; would include some means of indicating which provisions had been superceded or rendered inoperative by subsequent amendments (as a matter of logic even if not by express repeal); would employ links permitting one to see in

[28] CALVINO, 1996, p. 45.
[29] CANOTILHO, 2006, p. 261.
[30] CANOTILHO, 2008, p. 117.

an instant where else in the text a given word or phrase appears and what the possibly analogous phrases or words were in the Articles of Confederation and other arguably relevant surrounding texts such as the Declaration of Independence; would come equipped with suitable annotations so that one could tell what lines of institutional practice and what lines of decisional authority had given each provision or constellation of related provisions a specific substantive gloss; and would contain a further set of annotations pointing to features of the national ethos and identity helping to orient and give direction to various combinations of constitutional clauses and provisions.[31]

Obviously, the legal polylogue (as mentioned by Gomes Canotilho[32]) implies an intercultural polylogue: "the theory of inter-constitutionality is not merely a problem of inter-oganization. It is also a theory of constitutional interculturality."[33]. This generates the fifth and last adequacy of Calvino's propositions to the structures of juridical discourse – must Law be open to multiplicity in the third millennium! In this sense, multiplicity in Law does not signify the mere openness to multiples jurisdictions or multiples branches of law. The many contemporary Laws (jurisdictions and legal systems) are not enough in themselves and, much more than building walls or dykes, these Laws (jurisdictions) need new bridges, windows and passages - among themselves and with other forms of knowledge. In this framework, unlike Theseus (who tried to kill the hybrid Minotaur), contemporary Law must value positively symbiosis and polymorphy.

In this context, the literary genre "essay" gains today particular relevance as a form of legal writing, since - as an encyclopedia and never as a dictionary – an essay is capable of opening multiple references and links to elements not strictly legal or juridical.[34]

---

[31] TRIBE, 2000, p. 40.

[32] CANOTILHO, 2008, p. 117.

[33] CANOTILHO, 2006, p. 271.

[34] In a positive (but sometimes critic) point of view regarding the essays, GAUDREAULT-DESBIENS (2010, p. 138) says: *" Les limites du genre étant admises, l'essai juridique offer néanmoins des possibles. D'une part, il admet d'emblée la dimension esthétique du droit, si souvent occultée mais pourtant si présente dans la structure mytho-logique et symbolique de toute tradition juridique. D'autre part, en raison de sa*

## VII. CONCLUSIONS

Rather than being an inventory (incomplete and fragmented as it is) of legal news, this outline aimed at reaffirming the proximity of Law and literature (and the arts in general) based on the adequacy and legitimacy of certain literary arguments (originally developed by Italo Calvino) in the field of Law. This writing attempted to show that not only jurists, professors, scholars, lawyers or judges talk about Law. Many others can do so with propriety: poets, painters, architects, playwrights, movie makers, novel writers, tragedy writers, musicians etc. Their authority lies in their non-dogmatism, their dynamic complexity, their refined comprehension of the world, their openness and their creativity.

Thinking is becoming more and more relative, complex, relational, entangled and transdisciplinary, and Literature and Law cannot refuse their mutual comprehension. As cultural phenomena that they are – and phenomena whose raw material is language and whose object is the "narrative of life", Literature and Law set a fertile path for symbolic exchanges. For didactic effects, it is common to hear that such symbolic exchanges between art and Law can be currently separated in four fields of profound interaction:

1) Law as object of art, that is, all those episodes in which justice and Law have been the theme of masterpieces by great artists in the fields of painting, literature, cinema, theater, etc.; [35]

2) Art as object of Law, that it, the numerous cases in which Law itself sought to regulate, discipline, protect, limit or mold the themes, works, liberties or the rights of artists;

*fonction interrogative et de son caractère spéculatif, l'essai recèle un important potentiel libérateur. Il peut notamment servir à établir des passerelles entre le droit envisagé sous l'angle positiviste et d'autres mondes. Aussi, comme j'espère l'avoir démontré dans les libres propos qui ont précédé, il mérite de se voir reconnaître une certaine légitimité dans une culture juridique encore profondément marquée par le formalisme, mais qui a déjà entrepris de s'en libérer."*

[35] In this field, the pioneer works of jurists Enrico Ferri (*I Delinquenti Nell'Arte*, de 1896) and Bernardino Alimena (*Il Delitto Nell' Arte*, de 1899) stand out.

3) Art as a right[36], where the many discussions on the right to culture take place, as well as the right to the protection of the artistic heritage and the exercise of freedom in artistic expression[37]; and

4) Law as art, which arouses the classic definition of Law as "the art of good and just" ("ius est ars boni et aequo" according to Celsius) and its occasional implications in the grammars of lawLaw as science and as technology.

Such relations, as one can notice, operate in an extrinsic perspective of the dialogue between Themis, goddess of justice, and Calliope, the Muse of Epic Poetry, more directed to the thematic contents of Law and literature. This quadripartite classification, however, ignores that novels, essays, poems, plays, tragedies, paintings, engravings, sculptures, movies, music, perfumes and architecture can always create innovative legal arguments and contents, simply by putting convictions in disorder, by halting certainties, by freeing possibilities, by anticipating the future, even if they did not indicate Law as their primal object of reflection.

There is, then, a fifth plan of interaction between art and Law: the art that speaks to Law even if it does not talk of Law. In the case of Italo Calvino's Lezioni Americane, it is clear that those five literary values that he developed – lightness, quickness, exactitude, visibility and multiplicity – also have great repercussion in the plot of the legal text (domestic and international) of this third millennium and not only in novels or literary essays. Then, even if inadvertently, Italo Calvino accentuates and reinforces the indispensable dialogue between Calliope and Themis – one dialogue that, with no trace of doubt, makes both Law and literature richer.

[36] It is important to note that in Portuguese we can use the same word "Direito" to express both Law and right. Thus, in Portuguese, there is a "direito à arte" (i.e. the "right to art") and a "Direito da Arte" (Art Law).

[37] In this field, it is impossible not to mention the important essay by Antônio Cândido, one of the principal names in literary theory and critique in Brazil, on "The Right to Literature" (in CÂNDIDO, Antônio. *The Right to Literature and Other Essays*. Coimbra: Angelus Novus, 2005).

## BIBLIOGRAPHY

ALBUQUERQUE, Ruy de. Poesia e Direito. Suplemento da Revista da Faculdade de Direito da Universidade de Lisboa. Lisboa: Faculdade de Direito da Universidade de Lisboa, 2007.

BALKIN, Jack M.; LEVINSON, Sanford V. Law and the Humanities: An Uneasy Relationship. Yale Journal of Law and the Humanities. v. 18, p. 155, 2006.

BANKOWSKI, Zenon; MAR, Maksymilian Del; MAHARG, Paul (editors). The Arts and the Legal Academy: Beyond Text in Legal Education. London: Ashgate, 2012.

BRAGA, Theóphilo. Poesia do Direito. Porto: Casa da Viúva Moré, 1865.

BRUNSCHWIG, Colette R. Law Is Not or Must Not Be Just Verbal and Visual in the 21st Century: Toward Multisensory Law. In: SVANTESSON, Dan Jerker B.; GREENSTEIN, Stanley (editors). Internationalisation of Law in the Digital Information Society: Nordic Yearbook of Law and Informatics 2010-2012. Copenhagen: Ex Tuto, 2013, p. 231-284.

____. Rechtsvisualisierung: Skizze eines nahezu unbekannten Feldes. MultiMedia und Recht. v. 12, n. 1, 2009, p. IX-XII.

BOEHME-NESSLER, Volker. BilderRecht: Die Macht der Bilder und die Ohnmacht des Rechts. Berlin: Springer, 2010.

CALVINO, Italo. Seis Propostas para o Próximo Milênio. São Paulo: Companhia das Letras, 2010.

____. Six Memos for the Next Millenium. London: Vintage Books, 1996.

____. Romanzi e Racconti. Milano: Arnoldo Mondadori, 1994.

CANOTILHO, José Joaquim Gomes. Estudos sobre Direitos Fundamentais. São Paulo/Coimbra: Revista dos Tribunais/Coimbra Editora, 2008.

____. "Brancosos" e Interconstitucionalidade - Itinerários dos Discursos sobre a Historicidade Constitucional. Coimbra: Almedina, 2006.

____. Direito Constitucional e Teoria da Constituição. Coimbra: Almedina, 2002.

____. O Direito Constitucional Passa; O Direito Administrativo Passa Também. AA.VV. Estudos em Homenagem ao Prof. Doutor Rogério Soares. Faculdade de Direito da Universidade de Coimbra. Coimbra: Coimbra Editora, 2001, p. 705-721.

CHAZOURNES, Laurence Boisson de; MBENGUE, Makane Moïse; THOMAS, Urs P. Réflexions sur la Relation entre la Science, l'Incertitude Scientifique et l'Accord sur les Mesures Sanitaires et Phytosanitaires (SPS). In: TRINDADE, Rita Trigo; PETER, Henry; BOVET, Christian (eds.). Liber Amicorum Anne Petitpierre-

Sauvain: Economie, Environnement, Ethique – De la Responsabilité Sociale et Sociétale. Genebra: Faculté de Droit e Schulthess, 2009, p. 43-56.

COMISSÃO EUROPÉIA / Directorate-General for Research. The METRIS Report: Emerging Trends in Socio-economic Sciences and Humanities in Europe (EUR 23741). Luxembourg: Office for Official Publications of the European Communities, 2009.

CUNHA, Paulo Ferreira da. Nova Teoria do Estado: Estado, República, Constituição. São Paulo: Malheiros, 2013.

DAVIDOFF, Zino. Le Livre du Connaiseur de Cigare. Paris: Robert Laffont, 1967.

DELEUZE, Gilles; GUATTARI, Felix. A Thousand Plateaus: Capitalism and Schizophrenia. Minneapolis: University of Minnesota Press, 1987.

DÉONNA, Waldemar. Le Symbolisme de l'Œil. Paris: E. de Boccard, 1965.

ECO, Umberto. L'Arte Sublime di Denigrare Il Nemico. La Repubblica, 16 de maio de 2008, p. 1, seção Prima Pagina.

ESTY, D. C. Good Governance at the Supranational Scale: Globalizing Administrative Law. Yale Law Journal 115(7):1490-1562, 2006.

FRANCA FILHO, Marcílio Toscano. A Cegueira da Justiça - Diálogo Iconográfico entre Arte e Direito. Porto Alegre: Fabris, 2011.

GAUDREAULT-DESBIENS, Jean-François. De l'Essai en Droit, ou du Droit à l'Essai dans la Doctrine?. Revue Interdisciplinaire d'Études Juridiques. v. 65, n. 2, 2010, p. 135-177.

GRIMM, Jacob. Von der Poesie im Recht. Zeitschrift für geschichtliche Rechtswissenschaft. n. 2, 1815/1816, p. 25 e ss.

HESPANHA, António Manuel. O Caleidoscópio do Direito – O Direito e a Justiça nos Dias e no Mundo de Hoje. Coimbra: Almedina, 2007.

MODEER, Kjell; SUNNQVIST, Martin (Editors). Legal Stagings: The Visualization, Medialization and Ritualization of Law in Language, Literature, Media, Art and Architecture. Copenhagen: Museum Tusculanum Press, 2012.

POSNER, E. A. The Rise of Global Legalism. Firenze: European University Institute, 2008.

SHERWIN, Richard K. Visualizing Law in the Age of the Digital Baroque. New York: Routledge, 2011.

TRIBE, Laurence H. American Constitutional Law – Volume One. New York: Foundation Press, 2000.

TSCHÄPPELER, Roman; KROGERUS, Mikael. The Change Book. London: Profile Books, 2013.