Law as an exclusive or inclusive normativity and discourse:

prescriptive contents, juridical narratives, and translation frames in gender issues

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ABSTRACT

Regarding law as a necessarily exclusive and/or inclusive *discourse*, and the juridical text as a specific narrative expression of certain fractional *form(s) of life*, the continuously required translation of the meaning(s) and intention(s) of each word within it allows for innumerable different possibilities, according to the interpretive communities *in presence* and to the different identities they assume and express. Conceiving, therefore, the *meanings* of law and of the juridical materials and the intentions of legal thinking as multipolar conglomerates of partial convictions and understandings. Exemplarily, some contemporary *Feminist Jurisprudences* and *LGBT-GNCcrits*, as derivations of the so-called third *Critical Legal Scholar's* generation, in militant empowering sights, face law as an originally and intentionally *exclusive* normativity and discourse. Involving specific *identity deflections* in the definition of *juridical intersubjectivity*, and in the meaning, intent, and content of law, in order to get the *recognition* of some partially affirmed *inclusive* normativity and discourse. And, therefore, requiring specific *juridical narratives,* and *translation frames*, within *prescriptive contents,* both *substantively* – in the answers offered by law to *gender* problems and to subjects of different *gender identity* – and *linguistically* – in the concomitantly mobilised vocabulary and interpretation. Which offer new components and delimitations to the notion of *subject of law*, transferring the core of the discussion on the meaning(s) and content(s) of law from *comparability* and *tertiality* to *incomparability* and *singularity*... Drawing alternative *images*, and distinct *statements*, on *identity* and *difference*, beyond *equality*, as intrinsic features of law – *subjectively*, in the meaning and structure of the concept of *juridical person*, and, *objectively*, in the meaning and structure of *juridical normativity* and *discourse*.

«D'où vient que ce monde a toujours appartenu aux hommes
et que seulement aujourd'hui les choses commencent à changer?»

Simone de Beauvoir,
Le Deuxième Sexe,
1949, Gallimard, 1966, 22

1. Exclusive and inclusive discourses as *forms of life* narratives and the law

Almost a century ago, in 1928, Virginia Woolf affirmed, in her *A Room of One's Own* (an extended essay by Virginia Woolf, first published in September 1929, based on two lectures Woolf delivered in October 1928 at Newnham College and Girton College, women's constituent colleges at the University of Cambridge), that « (…) a woman must have money and a room of her own if she is to write fiction; and that, as you will see, leaves the great problem of the true nature of woman and the true nature of fiction unsolved». In fact, the narratives of different *forms of life* based on gender relations and diversity lay on culturally traditional and civilizationally structural distinctions between men and women. Such a binary reference has allowed for the multiplication of references on the visions and practices of the world depending on the gender perspective. Which may have also inspired Simone de Beauvoir, in 1949, to write: "Mais une question se pose aussitôt: comment toute cette histoire a-t-elle commencé? On comprend que la dualité des sexes comme toute dualité se soit traduite par un conflit. On comprend que si l'un des deux réussissait à imposer sa supériorité, celle-ci devait s'établir comme absolue. Il reste à expliquer que ce soit l'homme qui ait gagné au départ. Il semble que les femmes auraient pu remporter la victoire ; ou la lutte aurait pu ne jamais se résoudre. D'où vient que ce monde a toujours appartenu aux hommes et que seulement aujourd'hui les choses commencent à changer? Ce changement est-il un bien? Amènera-t-il ou non un égal partage du monde entre hommes et femmes?" (Simone de Beauvoir, *Le Deuxième Sexe*, 1949, Gallimard, 1966, 22). Actually, as Judith Butler also asserted (Judith Butler, *Gender Trouble*, 1990), the *gender trouble* is still very present in our societies, representing the difficulties in understanding and in dialogue between the different genders – firstly in the binary sense, but today with plural significations.

In this communication, titled «Law as an exclusive or inclusive normativity and discourse: prescriptive contents, juridical narratives, and translation frames in gender issues», I propose a discussion on the normative composition of law and on its discursive expressions – in their intrinsic *exclusiveness* and *inclusiveness* –, then exposed in three nuclear questions: (1) what are and which are juridical prescriptive contents, (2) how are they expressed through juridical narratives – and whether these are instrumental or aim references, and (3) which translation frames shall/must be mobilised to *make sense* of those contents.

1.1. juridical prescriptive contents

Law is mostly concerned with the prescription of action in society. Which involves that one of the first questions to pose when willing to determine what *the law* is certainly is the question about who creates the law and to whom it is created. The western civilizational context as traditionally accomplished the hierarchical structure of a patriarchal society – which indicates that the society, and law within it, should be constructed by men to men. The critical issue is, then, what does the word *men* mean. What is, then, at stake is the etymology and the semiotics of the signs mobilised in the society and, within it, in law, to signify the member of the human species as *the* subject of law. If this word means the male specimen of humankind, then we have the context of the problems to be stated here – as if the universal reference to the humankind elements would have as its paradigm the male reference.

In fact, nowadays, *discourses* on gender pluralism still oscillate between *radical exclusivism* and *radical inclusivism* – in which the relevance of gender goes far beyond the *sameness* or *difference* between men and women. That is, on the one hand, presenting universalizing assimilation proposals, therefore, potentially excluding, of hegemonic intention – independently from the gender identity of the subjects. And, on the other hand, stating inclusive proposals, often as a compensatory reflection, aiming at the integration of the supposedly excluded subjects and discourses – thus, specifically concerned with the gender identity of the subjects involved. Several of these latter proposals assume a position of radical recognition, of complete and assumed absence of aggregating elements of intersubjective practices. While both often fail to appeal to a discourse of tolerance, omnipotent and omniscient, like the *philosopher's stone*... As if the entire cultural construction which generates intersubjectivity and juridicity could now be seen only as a reflection of the macroscopically (a)criticism, spraying society in a growing movement towards individuality. And as if, in a eventually compensatory counterpoint, there were voluntarily (even individualistically sustained…) agreed, and/or (re)converted, (post-modern) community-densifying aggregations, in microscopically substantialized forms of life – in the limit (and paradoxically) inhibiting individuality… –, of human and trans-human communities – in assimilations of and/or with other forms of life and/or other forms of intelligence. Thus, the borders of personal (inter)subjectivity are surpassed, as human and axiologically rooted and (or, at least…) communicatively consti-

tuted, and/or displacing the problematic core of the discussion of meaning(s) and content(s) of the category of *subject of law* as a tool of understanding.

1.2. juridical narratives

The juridical discourse is most of times formally independent of gender reference. Of course, this statement is to be waived when gender issues and specific references on gender questions are at stake. Knowing that the historical narrative concerning law and the juridical language were mostly posed from a male perspective, as its paradigm, it should be now emphasised that we move nowadays – due to a strong discussion and critique – to a great change at this point. There are several examples – for instance, on criminal law, distinguishing men and women and other gender expressions as crime victims, and labour law, looking for levelling the roles of motherhood and fatherhood and in familiar assistance. Of course, law in action is not simply the mirror of law in action. Certainly, the main oxymoron of law in this field is that *equality* and *isonomy* as a normative intention of law and the corresponding discourse.

Law is, in fact, an intrinsically exclusive and inclusive normative order. Each determination implies, both substantially and linguistically, the inclusion of the references to be considered legal or illegal, valid or invalid, fair or unfair… The reality clipping which law selects as a relevant question requires a pre-reflexive exercise on its fact contours and intentionality. Such a discriminatory function of law produces several direct effects in gender, race and ethnic questions. The adjectives *exclusive* and *inclusive* are narratively mobilised to express the essentially definitional nature of law, signifying the use of categorical vocabulary, with words expressing meanings that delineate the margins of signification to a specific set of admissible meanings.

In a semiotic analysis, the narratively constitutive meanings of words are delimitations of admissible and non-admissible meanings. That is, of course, a way of valuing the words in a legal text, in their natural polysemy. And go on developing a search for community or communities flowing out in the experience of incommensurable *forms of life* (involving gender, race, sexual orientation, economic condition, social status, practical-cultural and geo-political provenance, health, mental and physical disability, etc – Heilbrun/Resnik (1990)). Regarding law as a necessarily exclusive or inclusive *discourse*, and the juridical text as a specific narrative expression of certain fractional

form(s) of life, within the continuously required *cultural translation*, according to the interpretive communities *in presence* (Nussbaum/LaCroix (2013)).

1.3. translation frames

The translation of legal terms is a widely discussed problem nowadays, much more widely than the first stage of feminist translation, as emerged in Quebec, in the late 1970s and early 1980s, proposing a *political praxis* and an *interdisciplinary framework* for the study of the links between *translation politics* and *gender politics* (Castro/Ergun 2017, 1). In the words of Olga Castro and Emek Ergun, «(…) our definition of feminisms is not only in the plural, but also intersectional and interconnectionist—it highlights simultaneously the interlocking nature of local and global systems of oppression, as well as the cross-border interdependence of discourses and movements of resistance against oppression» (Castro/Ergun 2017, 2).

The translation frames need to make sense of juridical normativity require a totally re-understanding of the use of language, and, perhaps, a new language.

2. *Recognition, identity deflections* and *juridical inter-subjectivity* in partially affirmed *exclusive* and *inclusive* normativity and discourse

Juridically recognizing all, or, at least, most of *identity deflections*, requires questioning the definition of *juridical intersubjectivity*, and of the intent and content of law, in its foundations, in order to get the *recognition* of some partially affirmed *inclusive* normativity and discourse. And, therefore, requiring specific *juridical narratives,* and *translation frames*, within *prescriptive contents,* both *substantively* – in the answers offered by law to *gender* problems and to subjects of different *gender identity* – and *linguistically* – in the concomitantly mobilised vocabulary and interpretation. Which offer new components and delimitations to the notion of *subject of law*, transferring the core of the discussion on the meaning(s) and content(s) of law from *comparability* and *tertiality* to *incomparability* and *singularity*… Drawing alternative *images*, and distinct *statements*, on *identity* and *difference*, beyond *equality*, as intrinsic features of law – *subjectively*, in the meaning and

structure of the concept of *juridical person*, and, *objectively*, in the meaning and structure of *juridical normativity* and *discourse*.

The clash between liberal intersubjectivity and communitarian intersubjectivity is mostly founded in critical manifestations – expressly assumed as such – of the specific balance – this one also in multiple nuanced ramifications – of the relationship between the individual and society, in its particular autonomy and free attachment, on the one hand, and, on the other hand, between the individual and the community. However, other possibilities of understanding this balance emerge, such as, considering, for example, Amitai Etzioni, regarding the individual and the community as mutually constitutive. And, in this sense, if the subject is not limited or totally absorbed by the belonging to a community, but complementary – not exclusively – conditioned by it, it is even possible to be simultaneously a member of different communities[1]. With the foundation of community values residing not presupposing religion nor the idea of natural law, nor any other anthropological morally based values, due to their vulnerability, but in an axiology based on human nature and on a human condition culturally sculptured[2]. And considering the warning offered, for example, by Robert Booth Fowler, about the determination of the denotation of community – distinguishing as main conceptions of community those of "communities of ideas", "communities of crisis" and "communities of memory", although immediately referring to the possibility of other compositions[3] –, namely regarding the danger of diluting the individual in the community as a whole, and of the *tyranny of the community*, advocating the need for an "*exis-*

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[1] «I argue that the relationship between the individual and the community is more nuanced than the simple opposition of the individual versus the overarching collectives generally posited by liberals. Essentially, I assume as the cornerstone of this discussion that individuals and communities are constitutive of one another, and their relationship is, at one and the same time, mutually supportive and tensed». (Etzioni 1995, 16-17. See *ibidem*, 18). «People are at one and the same time members of several communities such as those at work and at home. They can do use these multimemberships (...) to protect themselves from excessive pressure by any one community.» (Etzioni 1995, 25).

[2] See Etzioni (1995), 28-34. «As I see it, human nature is universal; we are – men and women, black, brown, yellow, white, and so on – all basically the same under all the layers that cultures foster and impose on us.» (Etzioni 1995, 33).

[3] «I argue that community in American political thought at present engages three kinds of community: (1) communities of ideas: for example, the participatory democratic and republican models, (2) communities of crisis: for example, the earth community born of the environmental crisis, and (3) communities of memory: for example, religious and traditional ideas of community.
These categories are not exhaustive of contemporary intellectual views. Yet they include principal conceptions of community today and suggest how far from consensus we are on what community means». (Fowler 1995, 88, referring to Fowler 1991).

tential watchfullness" to avoid it[4]. A sense of community which Fowler himself affirms distinct from that of "communities of practice", presented by Charles Anderson, and, supposedly, still according to Fowler, from that proposed by Alasdair MacIntyre[5] – positioning the former in a pragmatic liberalism, and, thus, in a nuanced version of liberalism, in which the collective dimension assumes a decisive role in the construction of the subject[6], and the latter presenting crucial nuances of construction which demand a strict differentiation, both in terms of the notion of *community* and of *communitarian*.

Despite the liberal critiques of collectivization, the communitarian perspectives present, at least in their mitigated versions, the possibility of an effective confrontation between the subject and the community, admitting an intermediate position, in which the "community individual" claims to be not only in but also before the community to which he belongs[7], and as a person and not just as an individual, since keeping the *distinctiveness*[8]. And this despite the multiple critiques to such a construction of intersubjectivity, highlighting from the outset Jeremy Waldron's proposal, in a cosmopolitan alternative, starting from a specific notion of ethnic community, espousing the multiplicity of valuations which constitute the individual – now as a «cosmopolitan self»[9] –, not giving it a single solid cultural structure as an essential basis, so, unlike Kymlicka, rather shaping it as the result of different influences and experiences[10]. Indeed, if, in the proposals of the *ethics of*

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4 «(...) there is no sure protection from tyranny in any publicly constituted community (...). My counsel is to continue exploring what structures and attitudes may help, but community must always be approached, advanced, and limited by what I call *existential watchfulness*.

(...) From this perspective, community is an aspiration, one to be nourished, but not an ideal likely to be fully realized (...)» (Fowler 1995, 94).

5 See Fowler (1995), 291, n. 2, and 88, referring to Anderson (1990) and MacIntyre (1981).

6 See Anderson (1990), 1-6 («Introduction: Practical Political Reason», 1-13), 17-18, 35-38 (2. «Liberal Principles and the Performance of Enterprise», 17-44), 53 (3. «The Community of Practice and Inquiry», 45-55).

7 Considering the meaning followed by Amitai Etzioni: «(...) the communitarian individual is very much an individual. She is an individual who does not stand as an isolate but as a being emerging out of a dense social ground.» (Elshtain 1995, 108).

8 «The implicated self is also a particular self, with its own claims to individuality and autonomy. But this is the autonomy of selfhood, not of unfettered or ungoverned choice. (...) Rather, self-determination is the freedom to find one's proper place within a moral order, not outside it. (...) (...) persons are at once socially constituted and self-determining». (Selznick 1995, 125).

9 «It is 'community' in the sense of *ethnic* community: a particular people sharing a heritage of custom, ritual, and way of life that is in some real or imagined sense immemorial, being referred back to a shared history and shared provenance or homeland. This is the sense of 'community' implicated in nineteenth- and twentieth-century nationalism.» (Waldron 1995, 96).

10 See Waldron (1995), 105, referring to Kymlicka (1989). «(...) membership in a particular community,

duties – including utilitarian ethics and Kantian ethics –, the existence of a duty-obligation results from the requirement of a rule, law or principle, in any domain, as in the case of morals, and in that of law, for the *ethics of virtues* this determination, at the moral level, the *ought-to-be*, comes from a supra-human entity, thus establishing the distinction between morality and law starting from a historical review of the emergence of the idea of "moral obligation"[11].

Understanding subjectivity, and intersubjectivity itself, requires rethinking the notions of value, person, man, woman, child, family, citizen, all of these increasingly under discussion. Is the reference to *man* to be understood today as describing a member of the human species, and, thus, as *the human being*? Is he/she the *homo ludens*, as a ideally subject in a welfare society, in a society which dominates technology – or which is dominated by technology…? (Fennema 2007, 415-418; Somerville 2009, 157 ff.; Nunes 2003, 120; Neves 1998-1999, 72, 38-39; Neves 1995, 331-336). The most common answer may possibly be the following: each subject will be whatever he/she (or other) wishes… Identity issues multiply and pulverize the discourses, in the speech acts that embody them – if we can say it with John L. Austin –, in their locutionary, illocutionary and perlocutionary expressions, in the *places of speech* from which they emanate (in the analysis of the French-influenced discourse, presented by several authors, such as Bourdieu, Foucault and Butler).

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defined by its identification with a single cultural frame or matrix, has none of the importance that Kymlicka claims it does. We need cultural meanings, but we do not need homogeneous cultural frameworks.» (Waldron 1995, 108).

[11] Following the proposal presented by Daniel Statman: «I will sometimes use 'Duty Ethics (de)' to refer to all non-ve theories, including both utilitarianism and Kantianism. This way of dividing the camps in contemporary ethics might seem odd, in particular the piling together of utilitarianism and Kantianism. Yet these two approaches do share some essential characteristics, all of which are denied by ve: that all human beings are bound by some universal *duties* (…); that moral reasoning is a matter of applying *principles*; and that the value of the virtues is derivative from the notion of the right and of the good.» (Statman 1997, 3). See also Nussbaum 1998, 259-261; Nussbaum 1999; MacIntyre 1998, 285-291.

3. The specific contemporary juridical concerns of *Feminist Jurisprudences* and *LGBT-GNCcrits*: prescriptive contents, juridical narratives, and translation frames in gender issues

Exemplarily, some contemporary *Feminist Jurisprudences* and *LGBT-GNC-crits* (Gay, Bisexual, Transgender and Gender Non-conforming Critical Studies)[12], as derivations of the so-called third *Critical Legal Scholar's* generation, in militant empowering sights, face law as an originally and intentionally *exclusive* normativity and discourse. In a militant empowering discourse, law is, then, presented as an originally and intentionally exclusive normativity and discourse. Which implies to recognize several proposals settled on post-structuralist gender de/constructionism(s), as Nina Lykke assumes: «While the Lacanian feminist definition of gender as language and sign drew on a structuralist framework, another important contribution to language and discourse-oriented feminist gender de/constructionism and its critique of biological determinism is inspired by poststructuralist language theory and, in particular, by the deconstructive method of French language philosopher Jacques Derrida (…).» (Lykke 2010, 100.)

Poststructural perceptions of the issues under discussions often regard social and juridical relations as if the cultural construction of juridicity could be seen only as an echo of a macroscopical, hegemonic set of convictions, stated against microscopical minority assertions. And, therefore, look for a compensatory assertion – both descriptively and normatively –, laid on the irreducibility and incomparability of the subjects. Accentuating the cleavage that sets apart, in an eventual counterpoint, a presupposed majority against multiple presupposed minorities, uncommensurably distinct, perpetuating the impossibility of harmonisation. As if these identity references and mechanisms could be integrated as compensatory community-densifying aggregations, creating clusters, that is, communities within communities, based on some identity statement. And, so, to what now concerns, proposing gender as an irreducible diversity feature, ineluctably separating subjects according to the biological and/or cultural characteristics that shape them. And, thus, stating a situation of difficult or even impossible dialogue. If the juridical

[12] On this topic, see, as an essential reference, Linhares (2021).

valuation of socially interfering behaviours (or the materially underlying meaning of them) does nor reside any more in the axis of relativisation and comparability of subjects, it is not only a change in the positioning of the defining line of juridical intersubjectivity that it will be at stake, but an effective change of the meaning, intent and content of law itself, opening a radically new space to substantialise and delimitate what, after all, signifies *to be* a subject of law and *who is* a subject of law.

Undoubtfully, the discussions of the *LGBT-GNCcrits*, concerning the problems of social acceptance of the diverse sexual identity and orientation are now producing their expected effect, leading to the contemporary improvement of public policy and legislation on LGBTI+ anti-discrimination. This involves the acknowledgment that the problems of gender equality and of gender diversity – specifically to be taken, theoretically and practically, as two different kinds of problems – expose the vulnerability of the subjects involved in what concerns their identity, requiring careful consideration. Some practical examples may illustrate these questions: the words *woman* and *mother* may bring some identity problems when the subject to be designated does not recognize himself as such – himself, herself or some other word-*sign* that must be used, considering the wide difference of susceptibilities in the locutionary situation. This signals that the risk to hurt the convictions of each and every person through words is very high, indicating that effectively the cultural expressions are now be at stake and under new revision. It is actually proposed by some perspectives that the solution to the divergences on these issues could be at the *gender-neutral legal language*. This presupposes considering the vocabular characterisation of the legal discourse as the mirror image of the assumption of identity affirmation. In fact, law should then take one of the following points of view: 1) law should not consider the gender differences, requiring that it would keep away from those identity references, and, so, avoid the distinctions based on gender differences, which go far beyond the binary feminine and masculine references; or 2) law should consider and distinguish all, or, at least, most of those distinctions, and, then, specify every identity feature. Of course, in several fields of law the gender presupposition is not at stake, at least at a first glance – this could perhaps be said to property law and commercial law, for instance. But it is not necessarily so: in fact, the experience shows that in some cases the fact that the contract subject is a man or a women, or any other non-binary person, changes *de facto* what should not be relevant *de jure*. And, besides, in several other fields, law is directly concerned with different features of the subjects in

relationships, such as, for instance, the *pregnant woman*, or the *mother*, and, I must say, the *father*, whilst considered by law under the concept of *workers*.

4. Law as an exclusive and inclusive normative content and intention, within a specific structure and mobilising a specialised vocabulary and discourse

All that has been said represents, more than supposing a matter of *minorities*, exposing a shift in the understandings of *intersubjectivity*, and in the *role of law*… Actually, claiming for equality, in any normative order, and specifically within law, from the point of view of the identity category that is the supposed cause of exclusion, as a way to construct a counter-narrative, should not concede keeping on the cleavage that such a narrative aims to abolish.

Law states a specific kind of regulation to different positions of subjects towards each other. But law is not everywhere intersubjectivity, and, where it is, it is no only, and not at first, a discourse. Law is, actually, first of all, a normative content and intention within a specific structure, mobilising a specialised vocabulary and discourse. It is under these conditions, then, that the matter of discourse shall be considered. So, the matter is much wider than to discuss: (1) what is the gender of words in different languages – for instance, the word *world* is a masculine one in most of the western languages, but it is a feminine word in German – *die Welt* –, for instance; (2) what is the dominant gender for plural words considering people – mostly composed by masculine plural expressions; (3) and then, more specifically, what are the prevailing gender of the words mobilised in the legal discourse – for instance, the reference to the subject of law as the creditor, the taxpayer, the victim, the defendant, using the masculine predominantly… We may argue that these references do not constitute true criteria of inclusiveness or exclusiveness. That's a point I would like to emphasise. But it cannot be forgotten that their uses do. And this is the main point. If the vocabulary changes, as an instrument or a reflection of a cultural and civilizational change, then it will produce the effects of undoing the traditional hierarchical structure of patriarchal society. But if only the vocabulary changes, then everything remains at stake. The matter of gender is a very deeply open wound in our civilization.

The specific narrative expressions of juridical texts represent certain fractional *forms of life*, whilst clippings of and judgments on reality. The continuously required translation of the meaning(s) and of the intention(s) of each word within it allows for innumerable different possibilities, according to the interpretive theories adopted and the interpretive communities, and also to the different identities they assume and express. But the juridical materials – whether criteria or principles – are not reducible to their texts. It is, then, theoretically and practically reductive to keep on presupposing the reification of the meaning of the normative texts and the narratives they constitute, thus crystalising the meaning of words in law in their etymological and linguistic frames, whilst not disconsidering their normative intention or strictly conveiving them always as determined by some *exclusiveness bias*. But it would be reductive too, to conceive the *meanings* of law and of the juridical materials and the intentions of legal thinking as *inclusive* multipolar conglomerates of partial convictions and understandings.

To state the *problem of law*, today, however, involves giving law a *materially autonomous foundational matrix*, representing a cultural aggregation sense and a civilizational structure, in the light of *material-axiological foundations*[13]. This does not involve to forcibly propose a supposedly *normal* notion of *normality*. What I mean by such an autonomy is the presentation of a translation frame which may allow for the consideration of each subject's diversity in what concerns law. Which is to realise that not every field of intersubjectivity is juridically relevant: and, therefore, that some of the gender convictions and demands are crucially ideological and political, which does not imply directly that they should have juridical relevance. That is to say that all this depends on what is the space conferred to law in each culture. The juridification of every relationship and of every movement of the subjects will activate the pulverisation of rules, proposing that when there is no rule literal correspondence there is no juridical protection – and, so, going back to the formal positivims' convictions whilst affirming to be doing exactly the opposite.

Such a *translation frame's* assimilation, both narratively and normatively, requires joining the material densification of a *principle of translation* –

[13] See Neves (2002a), 9-21. «(...) o direito é só uma resposta *possível* para um problema *necessário* – e daí as suas alternativas. Isto, porque o direito apenas surgirá, enquanto tal, se se verificarem certas condições e essas condições – ou algumas delas – não são de verificação necessária». (Neves 2002b, 839). See also Neves (1985/1986, 1998, 2012).

following the ethical projection given to it by James Boyd White («Translation as I am now defining it is thus the art of facing the impossible, of confronting unbridgeable discontinuities between texts, between languages, and between people. As such it has an ethical as well as an intellectual dimension. It recognizes the other – the composer of the original text – as a center of meaning apart from oneself. It requires one to discover both the value of the other's language and the limits of one's own. Good translation thus proceeds not by the motives of dominance or acquisition, but by respect». (White, 1990, 257)[14]. Which does not represent a mere establishment of formal conditions for dialogue –, aiming to achieve not a formal-procedural compossibility of different procedures with contradictory assumptions; it actually represents a substantial assimilation in the light of the principles of mutual respect and cooperation. As a response both to attempts at radical universalization and to the antagonistic assertions of radical particularization.

The effective *recognition of difference* through law will, thus, imply, from the outset, on a pre-juridical stage – even a trans-juridical one (firstly, ethical…) –, admitting the other as different, on a first level, in order to, on a second level, decide on the basis of the position to be taken in the face of such difference. Therefore, recognition must be envisaged as crucial feature in the fundamental substantiation of intersubjectivity. And implying the exigence of being assumed as reciprocal recognition, in this condition and contingency. Which will also imply, in this understanding, a relationship that conforms *recognition* as a *translation*. And, thus, as a set of practices capable of constituting a standard (standard) of justice, in the awareness of the impossibility of fully understanding the other[15].

[14] «Translation as I am now defining it is thus the art of facing the impossible, of confronting unbridgeable discontinuities between texts, between languages, and between people. As such it has an ethical as well as an intellectual dimension. It recognizes the other – the composer of the original text – as a center of meaning apart from oneself. It requires one to discover both the value of the other's language and the limits of one's own. Good translation thus proceeds not by the motives of dominance or acquisition, but by respect». (White 1990, 257).

[15] «(…) the activity I call "translation" – making texts in response to others while recognizing the impossibility of full comprehension or reproduction – becomes a set of practices that can serve as an ethical and political model for the law and, beyond it, as a standard of justice». (White 1990, 258). «Translation is thus a species of what in the opening chapter I called "integration": putting two things together in such a way as to make a third, a new thing with a meaning of its own». – (White 1990, 263, 3-4).

As Ramona Vijeyarasa recently wrote (Vijeyarasa 2021, 4): «Regardless of its limitations, the law remains a powerful tool – one which may *reflect* a changed society, or which may *help* to change society (Revel and Vapnek 2020, p. 110). The law determines how society functions; it can shift norms and set new trends. Law shapes how people live (Vijeyarasa 2019, p. 276). The powerful potential of the law to legislate better, and with women in mind, invites us to revisit the law as a solution to gender inequality».

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