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LAW AND STYLE. FIRST CONJECTURES ABOUT JURIDICAL STYLISTICS

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Abstract
This paper deals with the concept of style and its historical evolution, looking at how stylistics, as a method, can be of interest to Law. It is suggested that style be understood as a structure by means of which the most varied discourses, including juridical, can be expressed. Juridical stylistics is analysed by means of its rhetoric and argumentation, the conclusion being that, seen in this way, new meanings may be revealed that are of interest for the narrative of law.

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Law and style. First conjectures about juridical stylistics

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1. The concept of style

Style is the set of characteristics that distinguish a determined form of expression. Originally the idea of style was expressed in French as *le style c'est l'homme même*, to consider that style is the manifestation of the subject, just as he is. However, it is still a matter for discussion whether style is in the subject or in the material used, in the case of a work of art, since it is the material that takes form and expresses style. The question remains open, since there are no conclusive answers regarding it. We thus inquire whether style is in the subject (the essence) or in the thing (the material), or rather, in the content or in the form.

Style can be conceptualized as the special manner or character of expressing thoughts, in speech or writing; styles can be classified as simple, natural, elegant, graceful, rich, energetic, sublime, noble, affected, burlesque, restrained, didactic, historical, orthodox, etc. Styles can accompany different schools of thought or art, such as gothic, classical, baroque, expressionist, impressionist, etc. Styles can be infinite, as infinite as human creativity and its capacity for expression.

However great the difference may be between material and expression, some works of art obey common characteristics, such as the predominance of lines, the representation in planes and the clarity of outlines, which reflect a certain type of structuring vision. There we find the basis for the classification of styles. However, styles are structuring categories, such that it is possible to pass from one to another, historically, although each style continues to exist. In this sense, styles are temporary and non-temporary, depending on the point of view from which one analyzes them.

Style is related to taste, depending on it and varying according to it. According to David Hume, the extreme variety of tastes that there are in the world, as well of opinions, is too obvious not to be noticed by all. Hume was attempting to find a standard taste, towards which different opinions converged, since he believed in the existence of universal principles of taste, and therefore of style. For Hume, this standard would lie mainly in ethics and morals, from which the principles underlying taste ultimately derived. It is impossible to deny the

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plausibility of this claim, which is in no way denied by the majority of writers and philosophers of all ages, since the connection between ethics and aesthetics is evident. In this way, ethical principles do indeed influence style.

2. The social evolution of style and ornament

Style is a kind of method, which is felt clearly in the sentiments, ideas and enthusiasms of the artists and authors, according to social variations, in all the eras of which we have a record. In this sense, style can be considered as a mirror of historical transformations, and consequently of the values which imbue them. While there are stylistic signs in ascendancy, there are others in decline, in a constant movement in the heart of societies (Abbagnano 1998: 375).

It should be remembered, however, that the faithful reproduction of the ornamental patterns that characterize style may be less important than the contribution of each artisan to the infinite progress of these patterns. That brings up the question of authorship, which was not yet present in the Middle Ages. It was only from the Renaissance on that authorship – the basis of author’s rights and rights over copies – arises, not by chance alongside the development of the concept of the subject of rights, ever broader and more all-embracing in the juridical field, right up to present times.

Ornament is a form of differentiation which characterizes style. Gilberto Paim (2000), quoting Ruskin, claims that industrialization interrupted the mutation of ornamental patterns, fixing them and emptying them of their power of expression. Only the patterns executed by artisans, he says, are able to bring the variety of nature and society to the world, since mechanization replaces the variety achieved by individual artisans with a dull monotony.

The ornamental styles of the past respected the laws that regulate the distribution of form in nature. To interpret them, therefore, one must first observe nature (Ivi: 19).

Abstract forms are more recent. In any case, the ornamental impulse can be understood as a powerful and inalienable instinct, present in all peoples (also: Haskell 1995).

It is interesting to observe, however, that in stylistic expression, especially in poems, there are also subliminal and irrational traces, which do not always correspond to a determined explicit knowledge. This is why, in stylistics, there is a kind of phenomenology and a dialectic, maybe pregnant with essentialities to be revealed, in which linguistic links play the role of vital links. Miniatures and panegyrics are categorical examples of this phenomenon, since praises and reductions are types of syntheses of values and ideas.

Meanwhile, one cannot talk of style without mentioning the famous expression ‘lifestyle’, which in modern terms is related to buying and consumerism: you are what you buy (Sim 1998: 53), so different and so opposed to the original meaning of style and ornamentation, which were based on the forms found in nature.

In the west, stylistics in general was influenced in its origins by Greek classical culture. Thus, the nobility was considered the source of culture, and the education of heroes, models. The Spartan and Platonic ideals were the inspiration and limit of beauty and art, including poetry (Jaeger 1994). But that was just the beginning since, as the centuries went by, political and social changes soon tried to express themselves too through styles.

In colonial Brazil, stylistic incursions into neoclassicism were sporadic, as the personality of the people did not suit the coldness and intellectualism which characterized this style. The Brazilian tradition, at the time, was markedly Baroque-Rococo, in which
the emotionality and sensuality of the Brazilian mestiço found more suitable and authentic forms of expression, although the neoclassical style was imposed, from schools to the highest courts of law, as if by decree (Barbosa 2005: 19-20).

In the course of this paper we will analyze contemporary juridical stylistics, expressed specifically by means of argumentation, although it is not possible to ignore the fact that there are different styles permeating the juridical universe, even coexisting simultaneously, in different spaces and times.

As a synthesis of this brief topic, we can say that ornament is the practical expression of style, this being a method which contains historical and geographic differences.

Let us now look at aspects of the intellectual formation of style, which can be considered an approach to the theory of knowledge.

3. The cognitive architecture of style: structure or statement

There can be no doubt that, didactically, we can distinguish our experiences of the ‘beautiful’ (whether natural or artistic) from ordinary sensory perceptions, such as sight, smell, touch and hearing. Both through aesthetic experience and ordinary sensory experience, we acquire knowledge; and this is also of interest to gnoseology, or the theory of knowledge. Now style is an expression of the ‘beautiful’, and this being so it can also be analyzed under the prism of gnoseology.

Analysis of the concept of áístesis leads us to at least two branches of aesthetics: one the artistic, which concerns the appreciation of works of art, and the other gnoseological, which goes back to the mental faculty of learning and knowing, through perception and through the senses. We can observe that both these branches of aesthetics originate in the philological roots of the concept, and that from each one various theories derive, in different fields of study (Carneiro 2008).

According to Michel Foucault, there exist various discursive formations in the human mind. First of all, objects and their enunciations form, followed by concepts, strategies, and their consequences. After that statements are acquired, which are functional (Foucault 1997; see also Wittgenstein 1997). We propose that, for the purpose of this study, style should be considered a statement. Let us see what that signifies. We suggest that style should in principle be understood as a kind of structure or architecture formed in the human mind, by means of which the most varied discourses, including juridical, are expressed. Being a structure, style can be conceptualized as a statement. Now let us take into account that a structure is an abstraction, just a form or formation, without content. It is an empty form. In this sense, style, as a statement or mere structure, is a form, not a content (see first topic of this article, infra).

For Foucault, a statement is an utterance and, at the same time, a norm or rule, capable of conferring unity on the discourse and its elements. It is a function which belongs to signs, on the basis of which decisions are taken (Foucault 1997: 79-87). This is clearly of great interest to Law, which is based on the taking of decisions and which therefore makes use of statements, which are stylistic, according to our present proposal. In this way juridical discourse, including judicial decisions, are also matters of style.

As the first stylistic characteristic of juridical-discursive statements, let us assume that Law uses the logic of causal imputation, which assumes temporal order. According to Paul Ricoeur,
the singular causal imputation is the explanatory procedure which makes the transition between narrative causality – the structure of one by the other, which Aristotle distinguishes from one after the other – and explanatory causality which, in the nomological model, is not distinguished from explanation by laws. [Ricoeur 1994: 261]

For these reasons, we are of the opinion that the analysis of the discursive style of Law and its statements, to be made by means of the argumentation and rhetoric which it uses, can reveal meanings and significations intrinsic to Law itself.

4. Rhetoric as style in Law

For Aristotle, rhetoric is the faculty of seeing theoretically what, in each case, can be capable of causing persuasion, and he adds that no other art has this function. The Estagint, who is Aristotle, claims that, through rhetoric, proof can be obtained – which is of special concern to Law. Some proofs do not depend on art (for example confessions, especially those obtained by torture), as well as scientific proofs, while others, those referring to discourse, are persuasive proofs and relate to art and also style, because they ultimately go back to the most deeply held convictions, which are the principles and morals in which style is reflected as in a mirror: there we have the first basis of the statement.

Rhetoric is useful because the true and the just are, by nature, better than their opposites (Ricoeur 1994: 31), from which it follows that the convincing true and just are in conformity with statements, and therefore with style, and this in turn with the moral principles and values of a particular society at a given time. We are thus of the opinion that there is indeed a possible truth, capable of generating genuine conviction, although this is relative to time, place and subject, just as styles, principles and tastes, all interrelated, are variable. What seems curious to us is that, rhetoric being built into the statement of style, it is capable of generating a deeper and more intimate persuasion, which is taken and accepted as true, that is, internalized.

However, despite the conditioning offered by persuasion, arising from the rhetoric which adjusts itself to the statement, it is important to emphasize that there is indeed freedom of reasoning: it concerns the invention in which originality lies. For Perelman, freedom of invention, the foundation of originality (Perelman 1997: 249), is symmetrical to freedom of adhesion, which is the foundation of the immanation of minds (Ibid.).

Thus, if we follow this line of understanding, we find that decision-taking is only truly free in invention; otherwise it is conditioned by the structuring style of persuasion, stemming from rhetoric and stylistics. It is worth wondering, therefore, if in the acts of a legal case there is always freedom for creative invention, or whether, on the contrary, the decision is previously conditioned by the stylistics of rhetoric, this conditioning in turn determined by the strength and interaction of the arguments employed (Perelman & Olbrechts-Tyteca1996: 523).

In other words, the question is to what extent is style capable of influencing the meanings and signification of Law and its paths.
5. Preliminary conclusions

Summing up, we have seen in this brief article that juridical stylistics stems, in aspects, from rhetoric and the way in which arguments in Law are arranged, aiming at persuasion, in keeping with the possible valid truths, the principles and tastes, which are reflected in style.

In these times when democracy is valued, we conclude that it is difficult to make explicit what neutrality comes to be, where juridical principles are concerned. A certain contradiction (Alberto 2012: 155) lies therein, since principles are always tied to the political and historical process, to the morals in force, and therefore to the statement, or rather, to style. It also involves a hermeneutical question about the freedom to think and invent, in the field of juridical narrative. In this aspect, it is worth emphasizing the role of jurisprudence, capable of innovating and renovating style, by means of inventive decisions.

However, if we consider that juridical discourse and decision are necessarily based on pre-comprehension, valuation, objectivity and rationality, these being their structuring, and therefore stylistic, factors, we come up against the discussion on the controllability of juridical methodology, at the same time that we verify its main characteristics regarding style, which is the form by means of which content is expressed. In this sense, the methodology of Law is a stylistic expression and also a rhetoric.

Thus, considering that juridical Stylistics stems from the methodology of Law and is in keeping with it, it needs to be borne in mind that the majority of theorists accept that the juridical method of modern times presents the following main characteristics (Larenz1995): i) the influence of the positivist rationality of science; ii) the logical structuring of juridical propositions and the application of law; iii) juridical acceptance and appreciation of the true situation; iv) hermeneutics and criteria for the interpretation of laws, amongst other things. What also needs to be taken into account is the problem of the formation of concepts and systems and their historical-temporal variations (Larenz 1996).

If these characteristics are accepted as being those of juridical methodology, and hence argumentation, the style of law stems from them, because there lies its structuring.

Now what is seen as a synthesis of the methodological and argumentative characteristics of law is the predominance of logical formations and scientific rationality. It therefore follows that the juridical stylistics that stems from it is principally based on objectivity or, that is to say, the style of Law presents an objective aesthetics, at least insofar as logical-argumentative rationality is concerned. We have to observe, however, that reduction to order constitutes a principle of objective aesthetics equally characteristic of a limitation that favors some aspects to the detriment of others (Tagliaferri1978: 15). This reinforces the thesis that, while some things stay ‘within’ the juridical system, favored, others remain ‘outside’, neglected.

Other studies on the style of Law will come, shedding new light on the subject, including on the coexistence of different styles in Law. What is awaited more immediately is the revelation and the place of emotivity – such a human element – in the midst of this argumentative stylistics based so strongly on logical objectivity and rationality – specific attributes of the western canon (Bloom1995) – so that it can be possible to describe which is the perceptual model of the emotions adopted by postmodern juridical stylistics, since even human feelings, in order to be expressed, follow determined models and structuring styles.
This is because Law, being knowledge which has to do with practically the whole of human activity, can also be appreciated as an artistic experience (Dewey 1980) and interpreted as a work of art (Burckhardt 2012), of expression and organization, the fruit of inventiveness, which is the greatest characteristic of the human race.
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