Justice as Translation
and Counter-storytelling

Coimbra, May 26th to 28th 2022

Trindade College

The Colloquium is jointly organized by UCILeR (Instituto Jurídico da Faculdade de Direito da Universidade de Coimbra—University of Coimbra Institute for Legal Research), ISLL (Italian Society for Law and Literature) and ATFD (Associação Portuguesa de Teoria do Direito, Filosofia do Direito e Filosofia Social, the Portuguese section of IVR)

Organizational Committee:

Carla Faralli, Maria Paola Mittica, Alessandro Serpe,

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PROGRAMME AND BOOK OF ABSTRACTS

INTRODUCTORY NOTE

In a well-known passage from *The Narrative Paradigm (Communication Monographs,* vol. 52, 1985, p. 350), Walter Fisher argues that "narrative rationality", since it "celebrates human beings" as "storytellers", should be treated as an "attempt to recapture Aristotle's concept of *phronesis*". It is this central topos in the contemporary rehabilitation of practical thinking (projected in Law's specific *practical world*) that our Colloquium will explore, whilst paying attention to the plurality of approaches it allows. Its title establishes actually an immediate counterpoint between two polarized *assimilation modes*.

1) *On one hand* we have the so-called *paradigm of translation*, not only in the general version that we owe to MacIntyre's *communitarian narrativism* — exploring the possibilities of dialogue between traditions (notwithstanding the impossibility of an equidistant *tertium comparationis*) — but also in the specific projections that James Boyd White *(justice as translation)* and François Ost *(le droit comme traduction)* exemplarily open: the first highlighting a kind of a permanent movement *(from ordinary language to legal language, and from legal language back to ordinary language*) —whilst exploring *narrative* as the archetypal form of *praxis* and *practical thinking* and whilst conceiving of Law as "a set of occasions and opportunities for the creation of meaning" ("a rather fragile piece of our culture, requiring those who live with it to remake it constantly, over and over") —, the second autonomizing three indispensable thematic cores and the exercises *in translation* that they demand, namely, the one which is required by the plural network of (national and international, state and non-state) legal orders, the one which the judge's *modus operandi* (interconnecting the world of practical controversies and legal materials) manifests and, last but not least, the one which this same judge develops whilst assuming his/her role as third ("le tiers qui triangule le différend opposant les parties [et qui traduit] (…) leurs discours dans le langage de la loi commune") — without forgetting that this *thirdness* (also as a *fonction tièrce* "internalized by legal subjects") is precisely the feature which *distinguishes* Law, its discourses and practices *(Le droit ou l'empire du tiers)*.

2) *On the other hand*, we have the blossoming of a wide range of discourses on *marginalised identities* (sometimes even on *marginalised bodies*), the core of which is undoubtedly composed of narrative *outsider* jurisprudences and *community-building counterstorytelling* (to use the well-known formulae proposed respectively by Mari J. Matsuda and Richard Delgado). This remarkable multiplication of perspectives and academic fields (going from *Feminist Jurisprudences* to *Critical Philosophy of Race* and from *LGBT-GNCCrits* to *Postcolonial Legal Theory*) — which were opened up with the so-called third *Critical Legal Scholar's* generation 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 geopolitical provenance, health,

mental and physical disability, etc) — pose certainly specific problems —concerning the "standards" which should be used to evaluate the different uses of narrative resources (and the merits of the nfinal outcome), the challenges of intersectionality or *intersectional persons* (overlapping diverse identities), as well as the risk of transforming more or less persuasive counterstories into stereotyped narratives (with characters and roles that are implacably pre-determined). They offer however also an unique opportunity to discuss Law's and legal theory's *claims to comparability*. Is in fact the fragmentation of meanings, semantic values and performative models provoked (or aggravated) by those approaches compatible with the claim for an integrating context (and its *tertium comparationis*) or does, on the contrary, this fragmentation (in its narrative intelligibility) prevent or frustrate the attempt to recognise an authentic *inter-discourse* and, with this, the aspiration to treat *law* as the "empire" of thirdness?

Participants are invited to explore both these lines of development and their internal possibilities, as well as to discuss their reciprocal intertwinement and their dialectical tensions, which means also projecting them in specific contemporary societal challenges, such as those which involve the morality of *political correctness*, the juridical relevance of hate speech, the digitization of life, the climate justice (or the climate emergency), the biopolitics of human and trans-human.

José Manuel Aroso Linhares

For communication reasons it is strongly recommended English as working language. However, communications in Castilian, French, German, Italian and Portuguese are also possible (provided they are always accompanied by an abstract in English).

Thursday, 26th May

REGISTRATION (14.00)

OUVERTURE (14.15)

J M AROSO LINHARES (President of the Coordination Board of UCILeR)
with a very special intervention (via ZOOM) by
JAMES BOYD WHITE

SESSION I - OPENING LECTURES A & B (14.35-16.20)
Chair: J M Aroso Linhares

14.35-15.20 **| FRANÇOIS OST** (Université Saint-Louis, Bruxelles)**, *Au plus près du "différend" : tiers et traduction intérieurs***

Ce colloque pose la question radicale de notre temps : la diffraction sociale et culturelle actuelle, la revendication identitaire des minorités, la mise en avant systématique du « droit à la différence » ne discréditent-elles pas définitivement les grandes entreprises de médiation collective que sont le droit et la traduction - autrement dit, l'empire de la norme qui fait lien, et l'emprise du langage qui assure la reconnaissance ?
Mon constat est celui de l'isomorphie de ces mises en question ; mon intuition est celle d'une pareille isomorphie des manières dont il convient de les prendre au sérieux et de les traiter (les traiter, c'est-à-dire les assumer, et non les résoudre comme si on pouvait les dissoudre); mon souhait est de tenir le plus longtemps possible les deux bouts de la question : ne rien lâcher quant à la nécessité de la médiation et de la traduction tant du langage que du droit, tout en me tenant au plus près du « différend ». Comment donc faire droit aux revendications du particulier, et en même temps plaider en faveur des ressources médiatrices – mieux innovatrices – du langage et des valeurs à prétention générale ? Comment penser un jeu à somme positive ? Comment imaginer un dispositif social à « propriété émergente » où le tout est plus grand que la somme des parties ?

15.20-16.05 | **CARLA FARALLI** (Università di Bologna), ***Black Women's Literary Renaissance***

Starting in the mid-1970s, black women came fully into the realization that their oppression was owed to several intersecting factors (what Kimberle Crenshaw identified as intersectionality). And with that appreciation, they began to forcefully assert themselves in light of the specificity of their multifaceted condition and identity, to that end availing themselves of a range of tools, among which those of Law as Narrative (as detailed in Robert Cover's essay "Nomos and Narrative"), enabling them to better describe their experience of discrimination and to lay bare the hegemonic structures and interests of those in power.

16.05- 16.20| **Debate**

Coffee Break (16.20-16.45)

SESSION II - WORKSHOP 1 (16.45-18.25)
Chair: Ana Margarida Gaudêncio

16.45-17.15 | **CLARA CALHEIROS** (Universidade do Minho), ***Are victims of domestic violence doomed to relive Cassandra's fate?***

The problem of domestic violence still needs an efficient response from the courts. This article intends to support the thesis that procedural rules (in particular, those related to evidentiary aspects) conflict with the unfolding of the narrative of events that proves essential to overcome the test of coherence on which the final outcome of the process depends. On the other hand, it is also intended to demonstrate the relevance of the possible dialogue between the narratives that take place *in* the judicial proceedings and those that exist, beyond it, in society at large and in judicial culture.

17.15-17.45 | **MIROSŁAW MICHAŁ SADOWSKI** (Doctor candidate McGill University, Montreal)**, *What can Foucault tell us about Transitional Justice? Legal changes, counter-memories and new official narratives in central and eastern Europe***

In his vast oeuvre, Foucault rarely engaged directly with the questions of collective memory (never using the actual term), however he could not remain completely silent on the matter in his vast analysis of the question of power. Thus, he introduced two particularly useful concepts for any and all analysis of the issues regarding collective memory, that of counter-memory and – the closely related – counter-history, which describe those collective memories and narratives which remain in opposition to the mainstream, official ones. The idea of counter-memory, potentially applied to all conflicts between various social groups where one is in power and another subjected to it, is rendered particularly useful in transitional contexts when the old official narratives are overpowered by the ex-oppositions who bring their – now former – counter-memories to the forefront of the debate, turning them into the official narrative, whereas those of the members of the previous regime at the same time become counter-memories themselves. The purpose of this paper is to build up on the original concept of Foucault in order to analyse the abovementioned process of 'counter-memory inversion' on the cases of Poland, Hungary and Ukraine, which employed it – successfully, to a point – well into the second decade of the 21st century in order to cement the former counter-memories as collective memory in the respective country's official narratives using different legal means, from changing street names and removing monuments to lustration to introducing memory laws.

17.45-18.15 | **BRISA DUARTE** (Universidade de Coimbra), ***Law as translation and the counter-narrative of (jus)aesthetic criticism***

Starting from an intertwined dialogue with some prominent voices in critical legal think-ing (mainly connected to "law and literature" and "law and aesthetics" clusters), this pa-per discusses the possibility of reassessing aesthetic criticism counter-narratively: as a viable alternative both to "typical/paradigmatic" and to "peripheral" legal discourses. Ra-ther than being promoted as just another indication of the overcoming of the «metanarra-tive» which establishes law as an hegemonic order of necessity and power, standing in clear opposition to centripetal understandings of law's autonomy, and affirming itself as a means for escaping the pitfalls of legal culture, the critical aesthetic standpoint is brought up as jusaesthetics, and so not a moving outwards, but a turn towards the kernel of law's cultural meaning and

experience, and of the corpus iuris in its complex constitu-tive dynamics. In this context, the counter-narrative of jusaesthetics then highlights a much-needed opportunity to enhance the activity of translation (B. White, F. Ost…) «law as law» requires, since it continues to operate between the stability of institution and nov-elty of life to (re)produce itself as a project of materially densified, analogically consti-tuted historical normative validity (C. Neves, P. Bronze). In such a way, jusaesthetics is stated as a medium for reimagining the very principle of plurality embedded in the «form of life» (B. White, A. Linhares) the legal experience claims for.

18.15-18.25 |**Debate**

SESSION III - WORKSHOP 2 (18.25-20.00)
Chair: Alberto Vespaziani

18.25-18.55 **| VALERIO NITRATO IZZO** (Università di Napoli Federico II)**, *Translating tragedies in law and humanities. Dilemmatic judgments in the works of Sciascia, McEwan and Von Schirach***

Moral dilemmas are a philosophical puzzle that continues to attract the attention of scholars from different disciplines and schools of thought (Bagnoli 2006, Belanger 2011; Edmonds 2013; Tessman 2015;). For a long time they have been recognized in a relationship with literature in order to foster philosophical reflection on issues of moral failure, tragic choices, conflicts of norms, decision making in challenging moral scenarios (Nussbaum 1986; Leichter-Flack 2012). However, the law and humanities approach, following the lack of interest for dilemmas by legal scholars, has overlooked the topic, with a few exceptions that have focused mainly on classic texts as the Antigone (Etxabe 2013). In this paper I propose to investigate into the dilemmatic and potentially tragic dimension of judging in legal reasoning. In order to do so, I will show how the relationship between law, humanities and dilemmas can be retraced in authors and writers in contemporary literature and theatre. Among different possible choices, I will mainly focus on three renowned writers whose works are of specific relevance to the subject: Leonardo Sciascia, Ian McEwan and Ferdinand Von Schirach. The common feature among them will be the decision-making process and the problematics of judging in legal dilemmas. Showing how the dilemmas of life have been translated and imagined between law and literature by these authors, I will argue that dilemmatic judgments are an unavoidable possibility in constitutional orders of justification that can be fruitfully illuminated by a law and humanities methodology.

18.55-19.20 | **ANA M. GAUDÊNCIO** (Universidade de Coimbra) ***, Law as an exclusive or inclusive discourse: prescriptive contents, juridical narratives, and translation frames in gender issues***

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*, 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*. So, more than supposing a matter of *minorities*, exposing a shift in the understandings of *intersubjectivity*, and in the *role of law*…

19.20-19.50 | **ANDREA ANDREU GUTIÉRREZ** (Doctoranda en la Universitat de València)**, *La teoría crítica de la raza y su impacto en la literatura jurídica***

The critical theory of race emerged during the 1970s as a methodology promulgated mainly by jurists that sought to study and analyze the foundations of racism in American society in order to eliminate those factors that favor or perpetuate it -even at the national level. institutional- achieving a fairer and more equitable treatment of society in terms of the recognition of rights and access to resources under equal conditions among its members.
It is based on the existence of a strong ideological bias in American society that encourages the existence of classist, sexist and racist actions even from public powers, which clearly stand as a threat to people's freedom.
This theory advocates that race is an artificial construction of society and that it is not a biological or predetermined factor by nature; on the contrary, the existence of various ethnic, religious, geographical, cultural or physiological characteristics that are common to certain groups as opposed to others and that are usually the origin of discriminatory treatment between them can only be affirmed.
Although the critical theory of race defends the right to self-determination of the different social groups, it aims to study and respond to the discriminatory actions that are produced as a result.
The texts produced within this theory are mainly characterized by common features such as the use of allegories, first-person narration or the use of counter-narrative.Authors such as Dunbar, Brown or Matsuda seek to include in their work marginalized or neglected sectors whose interests have been historically silenced by challenging the traditional social conception, including marginalized social sectors or promoting social awareness.

19.50 - 20.00 | **Debate**

Friday, 27th. May

SESSION IV - WORKSHOP 3 (8.30-10.10)
Chair: Inês Godinho

08.30-09.00 **| J M AROSO LINHARES** (Universidade de Coimbra), ***The Jurisprudence of Marginalized Identities: a Challenge to Law's claim to Comparability?***

The aim of this paper is to discuss the impact that a critical-reflexive experience of marginalized identities and *forms of life* — opening the path to a plural ensemble of *outsider jurisprudence(s)* and their *particular* (*incommensurable) ways of* storytelling — may have in our understanding of law as a specific practical-cultural *way* of creating and institutionalizing communitarian meanings. Should this impact be reduced to a contingent prescriptive statutory assimilation of plausible answers? Should not instead this impact be reconstituted under the possibilities of Fish's *interpretative communities*, or, in alternative, as an opportunity (explored in the «thematic level» of Greimassian semiotics) to confront different «narrative typifications of action» (Jackson) and the corresponding *sociolects*? Doesn't this experience of the margins impose however a more drastic reflexive challenge? I would say it does, not only as a possibility to discuss the impact of *narrative rationality* in law's construction of meaning (in counterpoint with other types of rationality), but also as an opportunity to discuss law's and legal theory's *claims to comparability*, which means returning to Duncan Kennedy and Robin West, i.e to the specific gaping wounds that *Feminist Jurisprudence(s)*, *Critical Race Theory*, *Lesbian, Gay and Transgender Legal Studies* or *Postcolonial Law Theory* opened in *Critical Legal Studies.*

9.00-9.30 **| LEONOR SUÁREZ LLANOS** (Universidad de Oviedo)**, *Curling y el Derecho***

La idea y concepto de trabajo, como tales, aparecen vinculados a la esclavitud y la servidumbre sucesivamente matizadas a través de la contratación laboral en modelos de actividad voluntaria a cambio de precio, dando lugar a estructuras similares, paralelas, cercanas, etc. a lo que el Derecho considera el arrendamiento de servicios.
En esta intervención abordaré desde una perspectiva crítica y tan dinámica como el Curling el concepto de trabajo, tratando de destacar que no es posible delimitar ni el concepto ni su regulación sin centrarse y configurar el concepto de trabajador y de trabajadora. Porque el trabajo es un instrumento central del "reconocimiento" como posibilidad de autorrealización plena y vital. Y porque desconocer y desatender a la persona que lleva la máscara del que o de la que trabaja significa abandonar a aquella persona a la macroestructura ideológica, capitalista, política, jurídica y cultural de la entrega y sumisión por necesidad, pero como forma de virtud, a quien monopoliza los medios de producción y distribución.
Una monopolización que en todos los niveles ya se sirve de un discurso acerca de la esencia, el deber, la disposición y la servidumbre que se exacerban en el actual mercado laboral hiperdimensionado, transnacional, interconectado, subcontratista, temporal y cambiante en el que la persona, ya desde el proceso previo de selección de personal laboral, se hace consciente de que las posibilidades al completo de realización de sus derechos depende de la adquisición de un estatus de trabajador que ya no produce mercancía y productos para entregarlos generando plusvalía, sino que parte de asumir la actividad laboral como un proceso personal de física, psicológica y emocional a un mundo laboral que absorbe el tiempo y la necesidad de quien trabaja a cambio de permitirle seguir consumiendo los mismos bienes

que se producen y consolidan como imprescindibles por el mismo discurso del consumo tecnológico y de tiempos hiperlimitados que la producción esclava propone.
Todo ello en el contexto del Estado de Derecho se impone a través de un discurso ideológico que trata de convencer acerca de la conversión de la distopía en utopía, de la enajenación a través de los recursos tecnológicos en felicidad, del control de redes de comunicación y expresión como forma una práctica efectiva. De la conversión del discurso neuropatológico y corrosivo del yo en una forma de aislamiento edificante dependiente de procesos de autoayuda y renacer personal.
Todo ello está presente en Curling. Presentado en un tono realista, muy cercano y humanamente cómico que aumenta el temor ante nuestra propia incompetencia racional.
Manejando de forma convincente los conceptos centrales de las distintas disciplinas sociales como el arte, la música, la psicología y la economía y también los del Derecho, en particular del Derecho laboral —la libertad, el yo, la igualdad, la superación, el salario, la mercancía laboral, la entrega a la empresa, la vigilancia y el control disciplinario de tiempos, productividad, actitud, entrega y disposición, etc. etc. — de un modo tan corrupto y realista que nos advierte del proceso de esclavización, patologización y robotización en el que ya todos y todas estamos inmersos.

9.30-10.00 | **ALINE SOUZA** (Doutoranda na Universidade de Coimbra), ***Principles as «Guiding Lights» and «Performance Moments» for the stabilisation of Indigenous Property Rights in Brazil***

This study proposes a methodological reflection on the problem raised in the Extraordinary Appeal 1.017.365/ SC, through which the Federal Supreme Court (Brazil) considers the definition of the legal-constitutional statute of the territories of traditional indigenous settlement as a matter of general repercussion. Simplified, we can say that the conflict is played out by two rival narratives: Traditionality vs. Temporality, which makes it possible to invoke Drucilla Cornell, whose "Philosophy of the Limit" offers a deconstructionist and diachronic reading of the legal system by promoting the genealogical reconstruction of the problem and the hierarchical relations involved, which makes it possible to understand legal interpretation as the simultaneous discovery and invention of the solution through the normative orientation of principles, understood as "guiding lights", that guide us away from paths incompatible with their material content, which a way of dealing with differences through the Law. Indeed, the problem requires remembering the colonial past of violence and the expulsion of indigenous people from their land, which continues in today's agrarian conflicts. Out of this historicity, we can find the principle of self-determination; the original rights over the land they inhabit, the right to an ecologically balanced environment, without forgetting others. Despite these guidelines, there are a number of external complexities raised by the parties involved (including the impact on the macro-economy, agribusiness, the criteria for elaboration of anthropological reports to establish traditionality) that draw attention to the need for the "Performance Moments", which means the moment for the presentation of different arguments by the different actors involved (not only lawyers but also other interested third parties) to the audience(s), in a way that is accountable for the intended effects and sensitive to the impressions received. This is a clear allusion to the metaphor of "Law as Performance" developed by Sanford Levinson and Jack Balkin, albeit with some differences, as their developments focus on the performance of jurists, especially in the role of interpreter/judge, while the present work also seeks to explore the "responsibilities of performances" of the other actors involved.

10.00-10.10 | **Debate**

SESSION Va - LECTURE C (10.10-11.05)
Chair: Carla Faralli

10.10-10.55 | **MANUEL ATIENZA** (Universidad de Alicante), *El Derecho, el Quijote y la compasión*

Lo que se defiende en la ponencia es que el Quijote debería ser considerado como un texto clásico cuando se aborda el estudio del Derecho y la literatura. Y que la clave de interpretación de los diversos pasajes de la obra referidos al Derecho se encuentra en la noción de compasión.

10.55 -11.05 | **Debate**

Coffee Break (11.05 - 11.20)

SESSION Vb - LECTURES D & E (11.20-13.00)
Chair: Yvette Russell

11.20-12.05**| ALESSANDRO SERPE** (Università degli Studi "G. d'Annunzio" di Chieti e Pescara)***, Narrative ethics from narrative care***

In spite of the indeterminate boundaries for what is categorised as *care*, this concept has come into being as a subject for fascinating philosophically discussions. A fundamental contribution to the core of the concept of care was made by Gilligan (1982) who assumed that central parts of moral philosophy and evolutionary psychology were misleading as inspired by Kantian impartial, unattached and universal numenic subject. Noddings (1984) laid the philosophical and moral foundations of the ethics of care by claiming that not individuals, rather (caring) *relations* are ontologically basic. By highlighting character, relations and contexts, care ethics has marked a philosophical turn in contrast with traditional approaches under the labels of Utilitarianism and Deontologism.

However, in this latter regard care ethics did not lead the way. After a long lasting neglect by moral philosophers, from the 1950s onwards the interest in the concept of *virtue* arose within the School of analytical philosophy: Anscombe (1958), von Wright (1963), Geach (1977), Foot (1978). Who pulled the strings of the reflections on virtue and grounded a virtue-centered theory of ethics was the communitarian MacIntyre (1981) who proposed a down-to-earth Aristotelian inspired moral approach (1981). Both care ethics and virtue ethics purport to show an intersubjective basis for ethics by portraying humans as subjects in mutual and particular relations who make sense of themselves and the others. This gives the ground to think that narrativity plays a central role for both ethics as a narrative ethicists work more with stories than facts, more with particular contexts than abstract rules and principles. Accordingly, care ethics can be said to offer a narrative ethical approach: humans are *narrative* beings morally interacting in *narrative* contexts. For its own part, MacIntyre's virtue ethics suggests the notions of human lives as *narrative* (intertwined) units, having definite *narrative* forms.

The purpose of this contribution is neither to provide an overall picture of (narrative) care nor of (narrative) care ethics. Firstly, it will reflect upon *care* and the ontological and philosophical tenets central to the care ethics. Secondly, it will be devoted to underlying dis/similarities between care ethics and its "nearest (*narrative*) neighbour": the virtue ethics.

12.05-12.50 **| JOANA AGUIAR E SILVA** (Universidade do Minho), ***The misery and splendour of translation across the law: building identity through narratives of violence***

We are challenged towards the present imperfect and (ever) unfinished reflection in the face of the acknowledgment that law is pervasively permeated by a narrative understanding of the surrounding world, one which crossing its multiple constituent layers, ends up asserting itself as an inherent piece of its own humanity.
From this point on, we're drawn into a very specific narrative environment, and to its potential impacts upon legal and jurisprudential/judicial realization. We are all aware of the delicate moment we are now living across Europe and the world. Much in the likeness of what happened in the course of previous conflicts that once afflicted the world's geopolitics, victims and witnesses' testimonies are being carefully collected and recorded in order to preserve the memory of countless violations of human rights that are taking place all over the Ukrainian soil. In order to endow victims, their stories, their narratives, with a distinctive voice, when the time comes to call those responsible to justice. Maybe theirs are (just) counternarratives, depending on the achieved fragile balances of power. They will surely be narratives aimed at *translating* emotions, however inexpressible they are, in which dialogue gets to be weaved not only amongst different , Glanguages, but also between verbal and non-verbal languages, between histories, stories and cultures; between multiple identities. These narratives will be the mainstay for the dialogue between the pulsing of life and the efforts to "normify" it, or between the inexplicable (though perhaps portrayable) irrationality of violence and the stabilizing reason of institutionalized Justice and Law. Throughout the last decades, the issue of victims of large scale armed conflicts' testimonies/narratives, its mediating role inside legal and judicial architecture, and its potential for ethical and political manipulation, has gained a distinctive significance in law and language studies. The creation of the ICC, and of *ad hoc* international criminal tribunals represents an extraordinary challenge to be embraced by narrativist conceptions of law and by those who recognize in law the immanence of linguistic, interpretive and translational processes. Our present goal is but to lift a tip of this veil, at a particularly dramatic moment in the flow (and return) of History.

12.50-13.00 |**Debate**

SESSION VI - LECTURES F, G & H (15.15-17.45)
Chair: Alessandro Serpe

15.15-16.00 **| FERNANDA PALMA** (Universidade de Lisboa), ***Judgement of Solomon and Judgement of Azdak- from biblical text to Brecht theater, translation, intertextuality and new possibilities to justify Justice***

From Kristeva's Intertextuality and the perspective of dialogic translation, I compare the Judgment of Solomon with Brecht Caucasian Schalk Circle. I present the algorithm of the two judgments ab initio and conclude that it is impossible to translate one story into the other, because they belong to different systems. However, dialogue is possible and creative and it is also through dialogue that we understand the criteria of justice of the two closed ethical systems.

Law can offer the possibility of overcoming the contradiction between systems through an open system and creating another form of relationship between the question of truth and the question of justice beyond tradition and ideology.

16.00-16.45 | **ALBERTO VESPAZIANI** (Università degli Studi del Molise), ***Dante's political narratives***

Dante is a poet and a thinker who seeks the unity of knowledge. The investigations on Dante as a jurist or on the juridical dimension in Dante's work have therefore remained marginal. Conversely, Dante's reflections on law and politics inspired the reflections of medieval and modern jurists.
This contribution discusses two recent contributions on the relationship between Dante and the law, analyzes two twentieth-century reflections on Dante and the State (Kantorowicz and Kelsen), and finally focuses on Dante's Monarchia and Commedia, analyzing the concept of constitution there developed.
The thesis advanced is that Dante's monarchical theory is neither utopian nor realistic, but ideological: a political theology of the empire, an apology of the legitimacy and superiority of the Roman-German tradition.

16.45-17.30 |**MARIA PAOLA MITTICA** (Università degli Studi di Urbino Carlo Bo), ***Narration as a threshold in the search for meaning***

How can a narration that has been moved by an artistic sensibility contribute to the understanding of the work of the jurist?
This question is valid for any work of art, any artistic genre, in the fields of literature, music, figurative art, or cinema. The chosen narrative in response to the question is from literature and revolves around a page by Musil from The Man Without Qualities, in which Musil talks about man's need to give a narrative order to his life. The intervention aims to analyze this page:
As one of the apparently detached and abstract thoughts, which so often in his life acquired an immediate value, it occurred to him that the law of this life, to which oppressed people aspire by dreaming of simplicity, is none other than that of the narrative order, that normal order which consists in being able to say: "After this happened something else occurred". What reassures us is the simple succession, the reducing to one dimension - as a mathematician would say - the oppressive variety of life; picking up the thread, that famous thread of the story of which the thread of life is also made, through everything that has happened in time and space! Blessed is he who can say "when", "before" and "after that"! he may have experienced sad events, he may have writhed with pain, but as soon as he is able to report the events in their order of succession, he feels so good as if the sun were warming his body. The novel has benefited from this; the traveller can have a pleasant walk, along the main road in torrential rain, or can moan with his feet in the snow, at twenty degrees below zero: the reader gets nothing but a feeling of well-being, and it would be difficult to understand if the eternal trick of heroic poetry, with which even the nannies calm their little ones, this experienced "perspective shortening of intelligence", was not already part of life. In the fundamental relationship with themselves almost all men are storytellers. They don't like opera, or only from time to time, and if in the thread of life some "why" or "in order that"" becomes entangled in it they execrate any reflection that goes beyond that: they like the ordered series of facts because it is like a necessity, and thanks to the impression that life has "a course" they feel somehow protected in the midst of chaos. And Urlich realized that

he had lost that primitive epic to which private life still holds firm, although publicly everything has already become non-narrative and no longer follows a "thread" but extends itself to an endless surface.

17.30- 17.45| **Debate**

Coffee Break (17.45-18.10)

SESSION VII - WORKSHOP 4 (18.10-19.50)
Chair: Luís Meneses do Vale

18.10-18.40 |**ROBERTA SIVOLELLA** (UERJ- Universidade do Estado do Rio de Janeiro)**, *Modernidade virtual e direito; velhas soluções, novos desafios*** *[Virtual Modernity and Law: Old solutions, new Challenges]*

The proposed work seeks to identify which mechanisms are able to achieve the balance between the virtual legal discourse and its meaning, based on reality and opportunity, and the harmony between signifier and meaning. Whether from the perspective that the world of words creates the world of things, with the order (or structure) of language pre-existing to speech, and responsible for justifying the formation of the social organization itself[1], or from the understanding that words do not keep the same meaning in all times and circumstances, just as desires do not keep the same direction, nor do ideas keep the same logic[2], legal discourse must keep relevance to the dynamics of society, and with a dialogic narrative between its own actors and traditions. Otherwise, under the guise of an alleged greater speed, the use of virtual reality can create a "non-law" and a notion of non-belonging. In the pandemic scenario that started in 2020, the urgency to find solutions to the increased vulnerability due to the crisis accelerated the tendency to resort to the virtual world for the practice of acts of life in society. In this context, the order of language used by legal discourse has deeply changed. The simple use of a new guise in legal discourse without due attention to the reliability between its meaning and its objectives can, however, produce the opposite effect to the desired one. Thus, through the analysis of concepts related to law such as translation, and their reinterpretation according to aspects related to the algorithmic reality and the virtual tools symbols of contemporary legal discourse, it becomes more likely to reach the effectiveness of fundamental principles such as access to justice and the integrity of the legal system.

18.40-19.10 | **RAFAEL VASCONCELLOS** (Doutorando na Universidade de Coimbra), ***Juízes: funcionários, ativistas ou mediadores? As balizas interpretativas como contributo à racionalidade judicial*** [*Judges: officials, activists or mediators? The interpretative beacons as a contribution to judicial rationality]*

[1] LACAN, Jacques [1956]/1998, "Função e campo da fala e da linguagem em psicanálise". In: Escritos Rio de Janeiro: Jorge Zahar, p. 277. *Apud* VICENZI, Eduardo. Psicanálise e linguística estrutural: as relações entre as concepções de linguagem e de significação de Saussure e Lacan. Ágora, Rio de Janeiro, v. 12 (1), junho de 2009.
[2] FOUCAULT, Michael. Microfísica do poder. Graal, Rio de Janeiro, 1979, p. 15. *Apud* THIRY-CHERQUES, Hermano Roberto. *À moda de Foucault: um exame das estratégias arqueológica e genealógica de investigação.* Rev. Lua Nova, São Paulo, 81: 215-247, 2010, pp. 235.

Depending on the way in which jurisdiction is exercised, different models of judges were conceived by jurists such as François Ost, Duncan Kennedy, Ronald Dworkin and Lon L. Fuller. In legal systems there are openings and interpretative limits resulting from the bundle of internal factors, related to the person of the magistrate, and external, linked to the environment that surrounds him. From the combination of these factors and considering the modus operandi of the judge, this work presents a model of three types: *judges-officials*, *judges-activists* and *judges-mediators*. Different methodological proposals look for ways to arrive at the "correct answer" or at least to restrict *discretion*, highlighting Ronald Dworkin's principled argument and Castanheira Neves' methodical scheme as affirmative conceptions. The requirement to deliberate well imposes on the magistrate what can be called judicial *phronesis*, whose practical virtues limit their performance to limits. The Aristotelian virtue of the middle ground is determined by a rational principle proper to the man endowed with practical wisdom. With the intention of providing a contribution to the issue of judicial interpretation and its limits, this work takes the opposite path to the two aforementioned methodological proposals, offering a negative conception, inspired by Drucilla Cornell. That is, it stipulates limiting assumptions whose overcoming leads to a legally irrational and, therefore, arbitrary decision. Such presuppositions are the interpretative beacons seen under the *objective-temporal* and *subjective-spatial* binomial that can serve as interpretative limits. They are boundaries within which judicial *phronesis* manifests itself.

19.10-19.40 | **ISABELA NASCIMENTO (**(Doutoranda na Universidade de Coimbra), ***A Reconstituição das Narrativas pelo Julgador: entre emoção e razão (prática)*** *[The Reconstitution of Narratives by the Judge: between emotion and (practical) reason]*

The judiciary is not a charity house. But it can't be a lottery house either. When dealing with an applied social science (which is not – and cannot be cartesian) the human factor will inevitably make a difference in the equation because people perceive the same situation differently, according to their own filters. The law, doctrine and jurisprudence could offer limits to this cognitive process, but end up being used (manipulated) later, just to justify what the subject-judge already wanted to do, simply deciding according to his own conscience. The ideal of justice is so discredited that the most modern courses revolve around persuasion (rhetoric) in court precisely because "in every head, a different sentence". That increase the adherents to the empire of the law. But as history has taught, extremes are dangerous. On the one hand, narcissistic judges, who simply do what they want, when they want. On the other hand, judges who do not print their identity in the decision, using only the law, the process in its rawness, forgetting the human factor. The judge can understand what cannot be written: emotions. But he is also a human being, so it is important that he perceives his own to remain in the place of external third party in the concrete realization of law. The intention, therefore, is to reverse the procedure so that it is heeded to legislative changes and contemporary jurisprudence, which should be followed by hierarchy, rather than anchoring itself in diary-sentences or parchment-sentences. Therefore, practical rationality, by encouraging the judge to fit the law (previously studied) to the concrete case (analyzed later) inspires (self)control (emotionally) and allows adequate fundamentation. It is possible and urgent because people under jurisdiction deserves some legal certainty.

19.40-19.50| **Debate**

Saturday, 28th. May

SESSION VIII - WORKSHOP 5 (8.30-9.40)
Chair: Ana Margarida Gaudêncio

8.30-9.00 **|LEONARDO DIAS** (Doutorando na Universidade de Coimbra), ***A questão metodológica na concepção de justiça como tradução em James Boyd White e a abordagem no direito e literatura*** *(The methodological issue in the conception of justice as translation in James Boyd White and the approach in the law and literature)*

The philosophical reflection of the 20th century is marked by the linguistic turn and its consequent inquiry into the possibility of knowledge without the problematization of language. From this turn, it is possible to perceive that language shapes man's vision and thinking, including his conception about himself and the world. With this, contemporary philosophy emphasises the commitment to sobriety and objectivity of the declaration of law through the subject/interpreter and text/object relationship. Aware of this condition and of the intersubjectivity present in law, James Boyd White brings the concept of justice closer to that of translation by understanding that in the translation process there is a confrontation of attempts to build bridges between languages and people. The American philosopher understands that words would not only be carriers of meaning, but powers to obtain them. From this perspective, James Boyd White proposes a reflection on legal and ordinary language as a fundamental point to be perceived in the translation process, starting from the premise that the law can be conceived as a set of literary practices that create new possibilities of meaning for human communities in different ways. The approximation of literary and legal practices as participatory elements of cultural and community life, proposed by Boyd White, ends up highlighting him as one of the precursors of the Law and Literature movement. In this study, however, the contribution, the limitation and the methodological bases of the conception of justice as translation and the aspects of White's proposal to the movement called Law and Literature are questioned.
Therefore, this study is dedicated to analysing the counter-storytelling and its power of articulation to solve the real problems of law and legal argumentatio

9.00- 9.30**| ALMA LUNA UBERO PANIAGUA** (Universidad de Oviedo), ***El Derecho como literatura: Mi planta de naranja lima o la necesidad de protección del interés superior del menor*** [Law as literature: *O Meu Pé de Laranja Lima* or the need to protect the best interests of the childhood]

The *Law and Literature* movement is one of the currents that is postulated as a critique of the formalist rigidity of positivism. It offers, among other opportunities, value to the study of human rights based on literature, as well as overcoming the neutrality of legal theory by highlighting issues such as facts or values in law itself.
The relationship among law and literature offers us three clearly differentiated lines of study. The first one refers to the literature on legal themes, in which one of the main focuses of attention is literature as a pedagogical resource of law.
The second one is related to the regulation of literature by law, where we can find all the legal regulations concerning literary activity.
Whilst the third relationship is that of law as a form of literature. In which law is understood as a specific literary narrative and in which literary methods are applied to the legal area. It is precisely in this current that I would like to focus my contribution and, specifically, in the field of the development of the counter-narratives of law as literature.

This will allow me to carry out an analysis that relates to those elaborated by critical theory, insofar as the universal analytical method is modified and the construction of a universal legal subject will be questioned by revealing the legal traps to which the people who produce these counter-storytelling are exposed.
Specifically, following the narrative set out in the work of *O Meu Pé de Laranja Lima*, I will analyse various normative concepts. On some occasions, based on their violation, as is the case of the principle of the best interest of the childhood in the dangerousness of the family environment; on other occasions, in less and less extraordinary situations such as the state of poverty; and, throughout the story, the exceptional situation of some minors within the vulnerable group itself will guide this entire analysis.

09.30-9.40 **|Debate**

SESSION IX - WORKSHOP 6 (9.40-11.20)
Chair: Luís Meneses do Vale

09.40-10.10 **| MIGUEL ÁNGEL ANDRÉS LLAMAS** (Universidad de Salamanca), ***El relato político moderno frente a la lógica jurídica***

El relato político moderno frente a la lógica jurídica Miguel Ángel Andrés Llamas Investigador posdoctoral en Derecho Administrativo en la Universidad de Salamanca mllamas@usal.es En el campo jurídico todavía tiene una enorme relevancia social y discursiva la distinción entre Derecho público y Derecho privado, cuyo origen suele atribuirse al Derecho romano (Digesto). En la actualidad, el criterio de diferenciación más extendido es el subjetivo: el Derecho público comprendería las normas que atañen a la configuración de los poderes públicos y a las relaciones entre estos y los particulares, mientras que el Derecho privado se ocuparía de las relaciones entre particulares. En la modernidad, el desarrollo de la distinción entre Derecho público y Derecho privado trae causa de una diferenciación previa: la separación entre las esferas pública y privada. La esfera privada es el espacio en el que los individuos gozan de sus derechos de libertad y propiedad sin que el poder instituido pueda inmiscuirse. En la cosmovisión liberal, la esfera privada es un espacio autónomo ajeno a las interferencias del poder político, mientras que la esfera pública se identifica con la política. El surgimiento de la economía también ha acentuado la separación entre estas dos esferas. Estos elementos narrativos se materializan en el desarrollo científico de las concretas ramas del Derecho, en el Derecho positivo y en los elementos nucleares del constitucionalismo. Así, la división de poderes solo se proyecta en los poderes públicos, mientras que los poderes privados apenas se conceptúan. Además, el pensamiento jurídico moderno exalta la idea de derecho subjetivo e inhibe el desarrollo de los deberes, ocultando que estos son la condición de posibilidad de los derechos. En suma, el "relato político moderno" (Capella, 2008) impregna la razón jurídica. Solo el garantismo (Ferrajoli, 2016) parece rebelarse desde la lógica jurídica contra la narrativa del Derecho moderno.

10.10-10.40 **| MARIA JOÃO PEREIRA DE MELO** (Doutoranda na Universidade Lusófona do Porto), ***Law as Literature in International Law: A importância da Narrativa e da Linguagem na construção das normas de* jus cogens**

Contemporary jurists often note the crisis that is raging in international law, marked by the replacement of bilateral dynamics by multilateral dynamics, as well as the loss of sovereignty

of its main subjects. Aware of the proposals that have emerged in this framework, admittedly instigated by the recovery of a strong practical thinking, we propose to reflect on the importance of narrative and language in international law as active elements of construction, aggregation, and linkage. To this end, we will rely on the Law and Literature Movement, especially on the Law as Literature methodological approach, demonstrating that importance in the light of the construction of binding force in ius cogens norms.

10.40-11.10 | **CAMILO ARANCIBIA** (Universidad Autónoma de Barcelona/Universidad de Valparaíso), ***Hannah Arendt and Law and Literature: Redemptive Narrative and Understanding***

What are the main tasks of the Law and Literature movement? I think that, among other possible ones, there are two: to make the subject appear that has not been shown in Law and to problematize it in order to understand it.
Where Law shows the abstract subject, disembodied and detached from the contexts of life, literature can help to show the situated subject. In this sense, Hannah Arendt's reflections on narrative and understanding can be useful.
As Cristina Sanchez points out, Arendt finds in narratives, a way to recover the stories of History and, in that way, reconcile us with the world around us. Here we find the two ways in which we can use stories in Law: as a redemptive narrative and as a form of critical understanding of reality.
The first, in Benhabib's words, seeks to "redeem the memory of the dead, the defeated and the vanquished, making present once again their failed hopes" (Benhabib, 1990). It is about making them appear once again in the public space through the reading of their specific circumstances and the lives they lived.
The second seeks to represent a dilemma as contingent, in order to stimulate reflection. Lisa Disch notes, "Tragic storytelling serves not to close down problems but to raise them, and to inspire spontaneous critical thinking..." (Disch, 2011).
In this way, I think that Arendt's work can make fruitful the tension between the universal subject of Law and the situated subject of reality, constituting a contribution to the Law and Literature movement.

11.10-11.20|**Debate**

SESSION X - LECTURE I (11.25-12.20)
Chair: Brisa Duarte

11.25-12.10 **| YVETTE RUSSELL** (University of Bristol), ***On the 'Second Rape' of Law and Towards Justice After Sexual Violence***

In this address I seek to interrogate what survivors of sexual violence and the criminal justice system refer to as the 'second rape' of the courtroom. What does it mean to claim that one has been raped by the law after giving evidence in a trial to seek justice in the aftermath of sexual violence? Literary techniques have been used by critical legal scholars to reveal the ethical or political nature of law, but can they help us understand law's ontological force? By consulting rape trial transcripts as literary texts I seek to uncover another story of the rape trial, one in which the violence or 'strangeness' of law is made plain. I argue that the ontological force of law is profoundly nihilistic and that if we are to understand the 'second

rape' of law in cases of sexual violence, we need to interrogate law's investment in the simultaneous expulsion and invocation of sexual difference, and its role in engendering the material becoming of the subjects in the rape trial. In this paper I consider the conditions under which we might move towards a sexuate jurisprudence in which the law is orientated towards life and intersubjectivity and through which it might be possible to contemplate justice in the aftermath of sexual violence without such grave consequences for those naming it.

12.10-12.20| **Debate**

SESSION XI - WORKSHOP 7 (14.15-15.25)
Chair: JM Aroso Linhares

14.15 -14.45 | **GAVIN KEENEY** (ZRC SAZU, Ljubljana), ***Form-of-life and Life-works***

Until a new and coherent ontology of potentiality
(beyond the steps that have been made in this direction
by Spinoza, Schelling, Nietzsche, and Heidegger)
has replaced the ontology founded on the primacy
of actuality and its relation to potentiality,
a political theory freed from the aporias
of sovereignty remains unthinkable.
– Giorgio Agamben

Intellectual and artistic achievements are often a case of covering up an impoverished heart, though they need not be so. Perhaps this is also the reason why early Franciscanism discouraged bookish intentions and "scholarly disquisitions" in the manner of Medieval scholastics. Perhaps this is also the reason why the Franciscan Rule (form-of-life) went from fairly straightforward to florid and then to bare bones – ending with Francis more or less issuing a reduction, on his deathbed, very close to the (in)famous Augustinian proclamation, "Love and do what you will."
Agamben's "aporias of sovereignty" suggest the holes in ideological posturing, through which one might drive a cart full of wares destined not for the markets but for "else-where." His hoped-for "ontology of potentiality" without measure (ends) suggests the otherwise suggestive devolution of this-worldly justifications for forms of knowledge that might, under the right conditions, lead to this proverbial else-where. Yet grounding it in the expectation of a "political theory" seems ill-advised. The remnant that he often refers to in his theological and a-theological musings has little to do with socio-political intrigue; and his own position in constructing a response to the "primacy of actuality" seems often based upon far too many actualities in the form of historically determined impositions upon subjects from the empty centers of ideological posturing.
The paper will introduce thematics associated with the PhD project, Works for Works: "No Rights," a project that addresses the necessity of developing a new ecosystem for radical forms of artistic scholarship.

14.45-15.15 |**LUÍS MENESES DO VALE** (Universidade de Coimbra), ***Trans-lations* of the *common* and *de-signs* of justice: *alter-narratives* of constitutionality as a *trans-titutional* nomos**

The *impossibly long* title of the short *reflection* to be shared in this occasion is hopefully justified by the attempt to circumscribe a sort of *clearing space* for the thematization intended, while already insinuating a hypothetical itinerary through all the topics comprised therein, notwithstanding the manifold possibilities of meaning and alternative pathways devised behind each of the locutions used to signal them.
As a matter of fact, in a first, *historical-philosophical* note, the communication purports to probe and question the history of the concepts it mobilizes, resisting both the sirens of *historicism* and *Kontinuitatsdenken*, as well as to test the *symbolic productivity* of the formulations inspired by the *imaginary potential* of the underlying *etymons*, through a set of *deconstructive* exercises (i.a. of prefixation and suffixation).
In the ontic intervals metonymized by unsutured semiotic interstices, the conditions for the (*hopeful* and/or *redemptive*) *rewriting/correction* of the *memories* and *promises* of *that imp-possible justice*, which is (the) desiring *excess* and *lack* of the common, seem to authorize the cultural theorization of constitutionality as *polytonomy* of the latter quasi-correlated integral *universality* – opening up to an ongoing (and always most needed) problematization of the *community* and its declinations, regarded as one of the most ambiguous or ambivalent *super novas/black holes* of our juridical and political thought and praxis. At the same time - it comes as no surprise, then - the two become exposed, radically, to old diagnoses of unlikelihood and unfeasibility obviously accrued in a context in which *societal differentiation*, with a clear predominance of *economization*, marries anthropological *individualization*, temporal *acceleration* and geographical *globalization*.
Even so, in order to take into serious account the double challenge posed by the call, the present study departs from the *axial mediations* warranted by the institutions of societal *structure-action* through which contemporary democratic-social constitutionality should be dialectically realized, and pursues, very epitomatically though, the multiple translations (transliterations, transformations, movements) of the common and its nomical design, in the margins and hidden spaces of the official history of modern constitutionalism, e.g., going back to Jewish and Hellenic antiquity, focusing on the Roman Lex and Res Publica, as well as on the forgotten canonist, conciliarist and proto-federalist proposals of the Middle Ages, or on modern communal constitutions, before considering the peculiar flavour of the proto-enlightenment *ius gentium* and to suit the current readings of political normativity, called constitutional.

15.15-15.25 | **Debate**

SESSION XII - CLOSING LECTURE J (15.25-16.30)
Chair: Maria Paola Mittica

15.25-16.10 **| JEANNE GAAKEER** (Erasmus University Rotterdam), ***Narrating the Human Condition: Judicial Storytelling and Imagining the Real***

In my contribution I focus on the various aspects of the narrative paradigm in law and I aim to provide a narratological lense with which to view law as a *praxis* of reading and writing the human condition, on the view that jurists, generally, and judges more specifically translate

the often chaotic brute facts of "what happened" into narratives of what is probable[3] and consequential in law. This translation, or configuration of a new narrative after selecting "the relevant facts" (a process of judging and choosing in itself), can only be done well if jurists possess narrative intelligence (the building blocks of which I will delineate) and at the same time it enlightens us on the kinds of things that happen, i.e., it provides insights in the development of law and legal doctrine and concepts.
I will discuss relevant insights from the Aristotelean tradition on the topic of *phronèsis* or practical wisdom as a judicial intellectual (and practical) virtue, combined with the philosophical hermeneutics of Paul Ricoeur as developed in his seminal work *Time and Narrative*, while including his views on self-narration, voice and identity. Finally, I will illustrate my theoretical points by practical examples from and for legal practice.

16.10-16.30 | **Debate and Closing Session**

[1] Cf. Aristotle, *Poetics*, 1451b5-b12 .