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**Anthropology and Law: Dialogue for  
Otherness**

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## **Anthropology and Law: Dialogue for Otherness**

*Abstract: To become self-reflexive, Jurisprudence must to establish a dialogue: the human sciences should lose their exotic character in the eyes of Legal Science. It is in the middle between the "order" and the thinking about it, where the "naked experience" happens, that culture and therefore Law builds itself e it is constructed. This paper demonstrates the need to use other human sciences, with emphasis on anthropology, as "methodological strategies" for Jurisprudence self-reflection to become more faithful to the reality of the researched object. Anthropology has the power to show what is "anti-modern". It questions the intellectual space of modernity where the hard definition of antagonisms detached from reality occurs - West/East, "I"/other, civilized/barbarian. Jurisprudence consolidates antagonisms: the diversity and plurality of human societies are rarely seen as a fact but as an aberration, always demanding a justification. It is necessary to create a methodology using what is most extraordinary and human in the analysis of fact: "Anthopological Blues". Anthropology is capable of breaking with the classical conception of scientific methodology that is based on stiffness to produce absolute truths and also support the fulfillment of legal concepts with content and meaning, providing a reinterpretation of science as a human instrument of intervention on reality.*

*Keywords: Anthropology; Law; Methodology.*

### **I. Introduction**

This essay is dedicated to the ordinary man. Ordinary hero. Character disseminated. Innumerable walker. Invoking the absent that gives them principle and necessity in the threshold of my stories I wonder about the desire whose impossible object it represents. To this oracle that merges with sound of history what do we ask to make us believe or that allow us to say when we have dedicated to the writing that once we offered in tribute to the gods or the muses?<sup>2</sup>

To become self-reflexive, Jurisprudence must establish a dialogue: Legal Science needs to see human sciences without an exotic character. It is in the middle, between the "order" and the

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<sup>2</sup> "Este ensaio é dedicado ao homem ordinário. Herói comum. Personagem disseminada. Caminhante inumerável. Invocando, no limiar de meus relatos, o ausente que lhes dá princípio e necessidade, interrogo-me sobre o desejo cujo objeto impossível ele representa. A este oráculo que se confunde com o rumor da história, o que é que pedimos para nos fazer crer ou autorizar-nos a dizer quando lhe dedicamos a escrita que outrora se oferecia em homenagem aos deuses ou às musas inspiradoras?" Michel de Certeau, *A Invenção do Cotidiano*, 1994, 57.

thinking about it, where the "naked experience"<sup>3</sup> happens, that culture and, therefore, Law builds itself e where it is constructed. "The restriction of complexity and the isolation do not allow us to see that the whole can bring new qualities or properties to the parties".<sup>4</sup>

This paper demonstrates the need to dialogue with other human sciences, specially focused on Anthropology as a "methodological strategy" for Jurisprudence self-reflection in order to become more faithful to researched object's reality. Anthropology has the power to show what is "anti-modern". It questions the intellectual modernity's space where the antagonisms' hard definition detached from reality occurs - West/East, "I"/other, civilized/barbarian.

This article is therefore a desire for an ethnographic and anthropological Jurisprudence reading because "Law is not just a thing you know, it's also something you feel".<sup>5</sup> Ethnography is a methodological fieldwork strategy that involves anthropologist's participant observation with his study and its object in a symbiotic and syncretic relationship.<sup>6</sup>

Jurisprudence consolidates antagonisms: human societies' diversity and plurality are rarely seen as a fact but as an aberration, always demanding a justification. It is necessary to create a methodology using what is most extraordinary and human in the analysis of fact: "Anthopological Blues", a Roberto Da Matta's expression.<sup>7</sup>

Anthropology is capable of breaking with scientific methodology's classical conception based on hardness to produce absolute truths. And can also provide content and meaning to juridical concepts, giving a reinterpretation of science as a human instrument of intervention on reality by unveiling the "I" hidden inside a juridical, formal and instrumental "I".

The proposal is also based on Geertz's hermeneutical conception of interpretative Anthropology which sees reality as a text that should be interpreted: all cultural, historical and social phenomena are symbols that need to be deciphered. The jurist needs in this sense to use an anthropological view to establish a holistic relationship with their researched object that is usually constrained by juridical discourse's concepts: it should be fulfilled with meaning. As the anthropologist becomes native trying to implement the research, the jurist, Law scientist, needs to become the object of study, not with devotion, but as a participant.

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<sup>3</sup> A term used by Michel Foucault.

<sup>4</sup> "A restrição da complexidade e o isolamento não permitem ver que o todo pode trazer qualidades ou propriedades novas às partes consideradas". Edgar Morin cited by Juliana Medeiros. A Conexão Ensino e Pesquisa, in: *Pedagogia da Emancipação: desafios e perspectivas para o ensino das ciências sociais aplicadas no século XXI*, 134.

<sup>5</sup> "Direito não é só uma coisa que se sabe, é também uma coisa que se sente" C. Britto, *O humanismo como Categoria Constitucional*, 2007, 75.

<sup>6</sup> Gilmar Rocha, *Etnografia: do Campo ao Texto*, 2000.

<sup>7</sup> Roberto DaMatta, O Ofício de Etnólogo ou Como Ter 'Antropological Blues', in: *A Aventura Sociológica: Objetividade, Paixão e Improviso e Método na Pesquisa Social*, 1978.

## II. Anthropology and Otherness

“anthropology constitutes [...] the fundamental disposition that has governed and controlled the path of philosophical thought since Kant until our own day. It is an essential provision because is part of our history, but in the process of decoupling under our eyes because we begin to recognize in it, report in it on a critical manner, at one time, the oblivion of the opening that made it possible and the tenacious obstacle that opposes stubbornly to a thought to come (Foucault cited by ROCHA, 2008, p.1).<sup>8</sup>

Anthropology is the study of man in a social, cultural and even biological perspective. The anthropological knowledge main areas are physical anthropology or paleontology and cultural anthropology or Ethnological. The last one is the article's field of analysis.<sup>9</sup>

The anthropological perspective is a scientific look about cultural diversity, about the other in his difference and similarity with the researcher, promoting a dialogue of different world's perspectives trying to understand and interpret symbols<sup>10</sup> and human practices. Anthropology became self-reflexive while searching its political and social role, what deconstructed the notion that "cultures are autonomous and integrated totalities". It is based on the idea that the symbols are not categorically established because they develop and change in time and space.<sup>11</sup>

Since Malinowski, Anthropology became the science of otherness and ethnography<sup>12</sup>, the main anthropology's methodological strategy involving field work. Until XIX/XX century, it corresponded to the simple description of primitive peoples' everyday life.

According to Santiago<sup>13</sup>, using Montaigne's metaphor, anthropological area has always been marked by perpetual conflict between the civilized and barbarian, colonialist and colonized, two civilizations completely strange to each other and whose relationship was based on extreme mutual ignorance. These antagonisms' consolidation began in the genesis of

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<sup>8</sup> “A antropologia constitui talvez a disposição fundamental que comandou e conduziu o pensamento filosófico desde Kant até nós. Disposição essencial, pois que faz parte de nossa história; mas em via de se dissociar sob nossos olhos, pois começamos a nela reconhecer, a nela denunciar de um modo crítico, a um tempo, o esquecimento da abertura que a tornou possível e o obstáculo tenaz que se opõe obstinadamente a um pensamento por vir” Michel Foucault cited by José Manuel de Sacadura Rocha, *Antropologia Jurídica: para uma filosofia antropológica do direito*, 2008, 1.

<sup>9</sup> José Manuel de Sacadura Rocha, *Antropologia Jurídica: para uma filosofia antropológica do direito*, 2008.

<sup>10</sup> The symbol is "[...] the whole structure of signification in which a direct sense, the primary and literal sense, means, by extension, other indirect sense, secondary and figured sense that can only be perceived through the first one" Paul Ricoeur, *O Conflito das Interpretações*, 1978, 15.

<sup>11</sup> Oliveira e Cabral cited by Thaís Colaço, O Despertar da Antropologia Jurídica, in: *Elementos da Antropologia Jurídica*, 2008, 16.

<sup>12</sup> Some authors make the distinction between ethnography and ethnology, conceptualizing the first as the data collection procedure and the second as the explanation and systematization procedure of ethnographic data collection. This distinction will not be used in this article, using the term ethnography meaning both, collection and explanation procedure.

<sup>13</sup> Silviano Santiago, O Entre-lugar do Discurso Latino-americano, in: SANTIAGO, Silviano. *Uma Literatura nos Trópicos*, 2000, 9-26.

contemporary anthropological thought, namely with New World's discovery. The human societies' extreme diversity rarely appeared to men as a fact, but as an aberration, demanding a justification.

The word "primitive" is the one that will triumph in the nineteenth century, while we chose in our present time the term "underdeveloped". This attitude that means the expel from the culture, to nature, all those that do not participate in the belt of humanity to which we belong and with which we identify ourselves is the most common of all humanity, as noted Levi-Strauss.<sup>14</sup>

However, "Cultures are never unitary in themselves, nor simply dualistic in relation of Self to Other".<sup>15</sup> Sapir's publication<sup>16</sup>, in 1924, took the concept of culture, necessary to anthropological thought, from the factual description sphere, transferring it to cognition's field, contributing to anthropologists' new experiences in social and cultural interaction with others from a reworked senses' conception.<sup>17</sup> The social and cultural anthropologist, born after this paradigm shift and began to develop participant observation of culture, when the field work began to lost the exoticism that Copans indicates.<sup>18</sup>

Look, listen and write acquired a constitutive role on anthropological knowledge's construction. Participant observation gained a key role in understanding the meaning of the other.<sup>19</sup> "[...] without a look, a listen [...] able to give life and voice to the 'other', the anthropologist cannot overcome the 'native theory' or overcome their ethnocentrism".<sup>20</sup> Smell, hearing, touch and taste are what allow an exercise of self-reflection.<sup>21</sup>

The concept of culture and researcher's or object's own identity are constructed in the relation established in the field. Even the construction of anthropologist's persona is linked to their experience.<sup>22</sup> "Participant observation forces its practitioners to experiment the translation's vicissitudes in a physical and intellectual way. It requires an arduous learning

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<sup>14</sup> "O termo *primitivos* é que triunfará no século XIX, enquanto optamos preferencialmente na época atual pelo 'subdesenvolvidos'. Essa atitude, que consiste em expulsar da cultura, isto é, para a natureza, todos aqueles que não participam da faixa de humanidade à qual pertencemos e com a qual nos identificamos, é, como lembra Lévi-Strauss, a mais comum a toda a humanidade" François Laplantine, *Aprender Antropologia*, 1988, 40.

<sup>15</sup> "nenhuma cultura é jamais unitária em si mesma, nem simplesmente dualista na relação do Eu com o Outro" Homi Bhabha, *O Local na Cultura*, 2003, 65.

<sup>16</sup> "Cultura Autêntica e Espúria" from Edward Sapir.

<sup>17</sup> Gilmar Rocha, *Etnografia: do Campo ao Texto*, 2000.

<sup>18</sup> Jean Copans, *Críticas e Políticas da Antropologia*, 1981.

<sup>19</sup> Roberto Cardoso de Oliveira, *O Trabalho do Antropólogo*, 1988.

<sup>20</sup> "[...] sem um olhar, um ouvir [...] capaz de dar vida e voz a um 'outro', o antropólogo corre o risco de não superar a 'teoria nativa' nem de superar-se em seu etnocentrismo" Gilmar Rocha, *Etnografia: do Campo ao Texto*, 2000, 06.

<sup>21</sup> Anton Tchekhov. *Um Bom Par de Sapatos e um Caderno de Anotações: Como Fazer uma Reportagem*, 2007.

<sup>22</sup> Gilmar Rocha, *Etnografia: do Campo ao Texto*, 2000.

languages, some degree of direct involvement and conversation, and often a 'breakdown' of personal and cultural expectations".<sup>23</sup>

The field work was crucial for the paradigm shift on anthropological science methodology. According to Pirani (1999), after colonies' emancipation, Anthropology has experienced a positive crisis because the anthropological field work's actors ceased to be mere objects of study: "[...] were [...] seen as exotic, foreign, [...] 'voiceless' cultures, cold, ahistorical, submitted to the vision and evaluation of dominant Western culture, became subject [...]"<sup>24</sup>

Citing Fanon<sup>25</sup>, Bhabha considers that postcolonial era questioned the traditions of past and present, redefining the symbolic process that transforms the nation, culture or community into discourse subjects. The notion of people as homogeneous picture was demystified by postcolonial theory and Anthropology had its contribution through the ethnographic work.

The people as a form of address emerge from the abyss of enunciation where the subject splits, the signifier 'fades', the pedagogical and the performative are agonistically articulated. [...] This supplementary space of cultural signification that opens up - and holds together - the performative and the pedagogical, provides a narrative structure characteristic of modern political rationality: the marginal integration of individuals is a repetitious movement between the antinomies of law and order. From the liminal movement of the culture of the nation - at once opened up and held together - minority discourse emerges.<sup>26</sup>

There are new limits on cultural difference's boundary. The epistemological limits of traditional conceptions related to dichotomy of self/other, primitive/civilized also became a enunciation's space of many silenced voices - women, colonized minority groups became anthropologically perceived from an inclusive and sensitive perspective to other's gaze.<sup>27</sup>

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<sup>23</sup> "A observação participante obriga seus praticantes a experimentar, tanto em termos físicos quanto intelectuais, as vicissitudes da tradução. Ela requer um árduo aprendizado linguístico, algum grau de envolvimento direto e conversação, e frequentemente um 'desarranjo' das expectativas pessoais e culturais" James Clifford, *A Experiência Etnográfica: Antropologia e Literatura no Séc.XX*, 1998, 20.

<sup>24</sup> "[...] eram vistos [...] como exóticos, estrangeiros, [...] 'culturas sem voz', frias, a-históricas, submetidos à visão e à avaliação da cultura ocidental e dominante, transformaram-se em sujeitos [...]" Denise Pirani, Do campo ao texto, do objeto ao sujeito, in: *Cadernos de Ciências Sociais PUC-MINAS*, 1999, 22.

<sup>25</sup> Fanon is an important theorist in postcolonial studies field - an area that gained prominence in the '70s, focusing on the economic, historical, scientific and cultural impacts caused by Europe in their respective colonies in the modern period - by using anti-colonial revolutionary thought, especially considering the psychological oppression of black people by white colonizer in the 50s and 60s of last century.

<sup>26</sup> "O povo como uma forma de interpelação emerge do abismo da enunciação onde o sujeito se divide, o significante "desaparece gradualmente" e o pedagógico e o performativo são articulados de forma agonística. [...] Esse espaço suplementar de significação cultural que revela - e une - o performativo e o pedagógico nos oferece uma estrutura narrativa característica da racionalidade política moderna: a integração marginal de indivíduos num movimento repetitivo entre as antinomias da lei e da ordem. É do movimento liminar da cultura da nação - ao mesmo tempo revelado e unido - que o discurso da minoria emerge" Homi Bhabha, *O Local da Cultura*, 2003, 217-218.

<sup>27</sup> Homi Bhabha, *O Local da Cultura*, 2003.

The field work has become fundamental in the relationship between the researcher and the object which was transformed into subject in this moment of anthropology history. Geertz, in this sense, increased the notion of ethnography, linking it's concept to thick description: the perception of details that define concrete situations. The anthropologist needs to read, to construct a different reading of a strange manuscript by interpreting the flow of social discourse and its searchable forms. There is a necessity to describe symbols, perceptions, feelings, experiences.<sup>28</sup>

The author deals with a semiotic concept of culture, on an interpretative approach<sup>29</sup>, seeking to understand the role of symbolic forms in human life and social action (art, religion, ideology, law, morality, common sense). The anthropologist must find the structures' concepts that inform subject's actions included in social discourse.

It is crucial to Geertz the understanding of semiotic means through which people define themselves and are defined by others: the pace of conceptual analysis is "a continuous dialectical navigation between the smallest detail at smaller places, and the most global of global structures, so that both can be observed simultaneously".<sup>30</sup> The author uses the comprehensive Weberian sociology to define that the anthropologist turns individual social phenomena into something comprehensible: reality is interpreted from the subject perspective, varying the interpretation method according to the object.

On Geertz's conception, the anthropologist must see the world through natives eyes, by a "cross-cultural identification," giving sense and carrying meanings. The look and listen to the anthropologist must always be careful: seeking the essence without arrest the other's truth. There is now a need to move beyond the original subjective narratives and analyze processes produced in the interaction between cultures. "These 'in-between spaces provide the terrains for elaborating strategies of selfhood [...] that new signs of identity, and innovative sites of collaboration, and contestation, in the act of defining the idea of society itself".<sup>31</sup>

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<sup>28</sup>Clifford Geertz, *A Interpretação das Culturas*, 1989.

<sup>29</sup> Interpretation "is the work of thought which is to decipher the hidden meaning of the apparent meaning, it is to reveal the levels of meaning implied in the literal meaning. In this way I keep the original reference to exegesis, to the interpretation of hidden meanings. Symbol and interpretation becomes thus correlative concepts" Paul Ricoeur, *O Conflito das Interpretações*, 1978, 15.

<sup>30</sup> "um bordejar dialético contínuo, entre o menor detalhe nos locais menores, e a mais global das estruturas globais, de tal forma que ambos possam ser observados simultaneamente" Clifford Geertz, *O Saber Local: novos ensaios em antropologia interpretativa*, 1997, 105.

<sup>31</sup> "Esses 'entre-lugares' fornecem o terreno para a elaboração de estratégias de subjetivação [...] que dão início a novos signos de identidade [...] no ato de definir a própria ideia de sociedade" Homi Bhabha, *O Local da Cultura*, 2003, 20.



### III. Anthropology, Reality and Law: Necessary Dialogue

Ethnocentrism is a vision of the world where our own group is taken as the center of everything and all the other are thought and felt through our values, our models, our definitions of what is existence. On the intellectual plane, can be seen as the difficulty of thinking about the difference.<sup>32</sup>

Law has the pretension to hold the other's truth without hearing what the other has to say: a lack of exercise of otherness and essentially self-reflection. Legal Science should be able to rethink its discourse and its basic way of interaction with their researched object to become self-reflexive. The legal thought is highly ethnocentric, "the difference is threatening because it hurts our own cultural identity".<sup>33</sup>

The scientific debate surrounding Law is dominated by formalism, asserting the absolute Legal Science autonomy in relation to social elements, and by instrumentalism, when Law is perceived as a domination mechanism. The Legal Science sees Law as an autonomous system, closed, detached from social weight.<sup>34</sup>

The juridical field is the place of a competition for the monopoly for the right to say the law. Within this field there occurs a confrontation among actors possessing a technical competence which is inevitably social and which consists essentially in the socially recognized capacity to *interpret* a corpus of texts sanctifying a correct or legitimized vision of the social world.<sup>35</sup>

Bourdieu (2001) considers legal authority as a legitimate form of symbolic violence exercised by state in a given social universe; a text is permeated by legal fights and its reading or its interpretation is a way of appropriation of a symbolic power, as well as the own legal language, intended to be impersonal, neutral and universal.

The legal discourse presents itself, therefore, as independent, neutral and universal, creating a sort of scientific area seeking for full independence from other knowledge areas and thinking itself as legitimated and technically skilled to interpret social realities - classified as common sense beyond assumptions that own Law created. Jurisprudence is the flank of

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<sup>32</sup> "Etnocentrismo é uma visão do mundo onde o nosso próprio grupo é tomado como centro de tudo e todos os outros são pensados e sentidos através dos nossos valores, nossos modelos, nossa definições do que é a existência. No plano intelectual, pode ser visto como a dificuldade de pensarmos a diferença" Everardo P. Guimarães Rocha. *O que é Etnocentrismo*, 1990, 07.

<sup>33</sup> "A diferença é ameaçadora porque fere nossa própria identidade cultural" Everardo P. Guimarães Rocha. *O que é Etnocentrismo*, 1990, 09.

<sup>34</sup> Pierre Bourdieu, *O Poder Simbólico*, 2001.

<sup>35</sup> "O campo jurídico é o lugar de concorrência pelo monopólio do direito de dizer o direito, quer dizer, a boa distribuição (*nomos*) ou a boa ordem, na qual se defrontam agentes investidos de competência ao mesmo tempo social e técnica que consiste essencialmente na capacidade reconhecida de *interpretar* (de maneira mais ou menos livre ou autorizada) um *corpus* de textos que consagram a visão legítima, justa, do mundo social" Pierre Bourdieu, *O Poder Simbólico*, 2001, 212.

specialists supported by authority arguments: “The difference between the vulgar vision of the person who is about to come under the jurisdiction of the court [...] and the professional vision of the expert [...] is essential to a power relation [...] two world-views - are grounded.”<sup>36</sup>

The anthropological methodology and knowledge have the power to break with the totemic relationship established between Law and Jurisprudence’s object of analysis and between Law and the society itself, a society that was mummified and homogenized by legal relations. Thinking the reality as a text, it is necessary to interpret it, decipher the hidden meanings. Anthropology lends to Law the ability to redeem the contexts in which movements make sense to reveal the structure of working life.

The problem of the legal field is that "most of the time, little space has been reserved for the 'natives' to express their own identity. As a result of cultural exoticism, the 'native' becomes an anthropologist’s invention".<sup>37</sup> The native is called citizen or the one who is under jurisdiction on juridical field. And it is a concept divorced from textual meaning, from the context.

Law and the judicialization of relations and conflicts try to neutralize social conflict dynamics in dispute by decontextualizing them through this, "derealization" and "distanciation", implemented by mediators: Law specialists.<sup>38</sup>

[...]transformation of irreconcilable conflict into regulated exchanges of rational arguments between equal subjects is registered in the own existence of a specialized body, autonomous related to social groups in conflict and in charge of organizing, according to codified forms, the social conflicts public manifestation and giving them solutions socially recognized as neutral, because they are defined according to formal and logically coherent rules perceived as independent from immediate antagonisms.<sup>39</sup>

Law, therefore, in the author's thought, is a form of symbolic power which gives permanence to realities and seeks to consecrate the "order" by consecrating a vision of that order: the

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<sup>36</sup> “o desvio entre a visão vulgar daquele que se vai tornar um ‘justiciável’ [...] e a visão científica do perito [...] é constitutivo de uma relação de poder, [...] duas visões do mundo” Pierre Bourdieu, *O Poder Simbólico*, 2001, 226.

<sup>37</sup> “na maioria das vezes, pouco espaço tem sido reservado aos ‘nativos’ na expressão de sua identidade. Como efeito do exotismo cultural, o ‘nativo’ torna-se uma invenção do antropólogo” Gilmar Rocha, *Etnografia: do Campo ao Texto*, 2000, 07.

<sup>38</sup> Pierre Bourdieu, *O Poder Simbólico*, 2001.

<sup>39</sup> “[...] a transformação dos conflitos inconciliáveis em permutas reguladas de argumentos racionais entre sujeitos iguais está inscrita na própria existência de um pessoal especializado, independente dos grupos sociais em conflito e encarregado de organizar, segundo formas codificadas, a *manifestação pública* dos conflitos sociais e de lhes dar soluções socialmente reconhecidas como imparciais, pois que são definidas segundo as regras formais e logicamente coerentes de uma doutrina percebida como independente dos antagonismos imediatos” Pierre Bourdieu, *O Poder Simbólico*, 2001, 228.

vision of the state; Law "makes the social world".<sup>40</sup> The legal monism, installed in the West during the seventeenth and eighteenth centuries, unfortunately minimized the processes of legal and procedural pluralism, "the differences are denied in the name of justice and equality, the unity tends to be confused with uniformity".<sup>41</sup>

Between the order defined by Law and the reflection about it there is a "naked experience of order and its modes of being" that must be interpreted, deciphered and analyzed as defining the own order. The legal reasoning needs to absorb the anthropological perspective to see what is beyond the order and that legitimate it every day in small gestures, perceptions and symbols.

The fundamental codes of a culture [...] fix, from the start, for each man, the empiric orders with which he will have to work and in which he must be found. In the other extremity of thought, scientific theories or philosophers' interpretations explain why there is in general an order, to what general law this order obeys, what principle can in general justify it, for what reason it was this order that had been established and no other. But between those two such distant areas, it reigns a domain that, in spite of having an intermediate role above all, is not less fundamental: it is more confuse, more obscure and, certainly, less easy to analyze. [...] Thus, between the glance already codified and the reflexive knowledge, there is a middle area that delivers the order in its proper being: it is there that it appears, according to cultures and according to periods [...]. In a way that, this middle "area", as long as it manifests the manners of being of the order, can present itself as the most fundamental [...]. So, in every culture, among the use of what someone could call the order codes and the reflections on the order, there is the nude experience of the order and of its manners of being.<sup>42</sup>

In that sense, there is a delay of legal science comparing to other disciplines because of its isolation.<sup>43</sup> The Science of Law requires the use of other sciences, particularly Anthropology, as "methodological strategies" to turn juridical self-reflection more faithful to reality, to "naked experience" of the researched object. It is necessary to reflect about the integration and interaction between the researcher and the object of study and about the theoretical production

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<sup>40</sup> "faz o mundo social" Pierre Bourdieu, *O Poder Simbólico*, 2001, 237.

<sup>41</sup> "as diferenças são negadas em nome da justiça e da igualdade, a unidade tende a confundir-se com a uniformidade" Rouland cited by Thaís Colaço, *O Despertar da Antropologia Jurídica*, in: *Elementos da Antropologia Jurídica* 2008, 30.

<sup>42</sup> "Os códigos fundamentais de uma cultura [...] fixam, logo de entrada, para cada homem, as ordens empíricas com as quais terá de lidar [...]. Na outra extremidade do pensamento, teorias científicas ou interpretações de filósofos explicam porque há em geral uma ordem, a que lei geral obedece [...]. Mas, entre essas duas regiões tão distantes, reina um domínio que, apesar de ter sobretudo um papel intermediário, não é menos fundamental [...] Assim, entre o olhar já codificado e o conhecimento reflexivo, há uma região mediana que [...] na medida em que manifesta os modos de ser da ordem, pode apresentar-se como a mais fundamental: anterior às palavras, às percepções e aos gestos [...]. Assim, em toda a cultura, entre o uso do que se poderia chamar os códigos ordenadores e as reflexões sobre a ordem, há a experiência nua da ordem e de seus modos de ser" Michel Foucault, *As Palavras e as Coisas: uma arqueologia das ciências humanas*, 2000, 11-12.

<sup>43</sup> Marcos Nobre, *Apontamentos sobre a Pesquisa em Direito no Brasil. Novos Estudos CEBRAP*, 2003.

of truths, considering that the researcher cannot carry the understanding and interpretation of all social facts.<sup>44</sup>

The Science of Law has been consolidating antagonisms. It is necessary to juridical methodology what is most extraordinary human in the analysis of fact: "Anthropological Blues" and the perspective of otherness.

There are three stages in a research, according to Roberto DaMatta: a first one, theoretical-intellectual, characterized by no contact with researched object; the second, called "practical phase," which is the field research's eve; and a third one that he calls "personal or existential," when the anthropologist experiences the clash between two worlds, between their perception of culture and the other's perception, research's subject/object.<sup>45</sup>

And it is on this stage that the author presents the necessity of using "Anthropological Blues": "it is necessary to incorporate into the own field of official routines [...] those extraordinary things, always ready to emerge in all human relations [...]".<sup>46</sup> The anthropologist gives voice to those who always remained silent, either because they were misunderstood, either because their speech was castrated, either because they were never heard. And this is also the role of jurist, the Law investigator.<sup>47</sup>

The anthropologist must learn to perform two tasks: making the exotic familiar and turns the familiar into exotic.<sup>48</sup> There must be a strangeness: strangeness between jurisprudence and its research, but not in self-other, legitimate and illegitimate, legal and illegal dichotomy; it cannot occur based on extreme ignorance of each other.

The jurist needs, in this sense, to build an anthropological view to establish a holistic relationship with their researched object which is usually constrained by juridical discourse's concepts that need to be fulfilled with meaning: the juridical research needs to lose that tone of "'haloed' experience with the prestige of the exotic".<sup>49</sup> [...] break the vicious cycle of object-subject-object, expanding the comprehension's, commensurability's and, therefore,

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<sup>44</sup> Denise Pirani, Do campo ao texto, do objeto ao sujeito, in: *Cadernos de Ciências Sociais PUC-MINAS*, 1999.

<sup>45</sup> Roberto DaMatta, O Ofício de Etnólogo ou Como Ter 'Anthropological Blues', in: *A Aventura Sociológica: Objetividade, Paixão e Improviso e Método na Pesquisa Social*, 1978.

<sup>46</sup> "trata-se de incorporar no campo mesmo das rotinas oficiais [...] aqueles aspectos extraordinários, sempre prontos a emergir em todo relacionamento humano [...]" Roberto DaMatta, O Ofício de Etnólogo ou Como Ter 'Anthropological Blues', in: *A Aventura Sociológica: Objetividade, Paixão e Improviso e Método na Pesquisa Social*, 1978, 27-28.

<sup>47</sup> Thaís Colaço, O Despertar da Antropologia Jurídica, in: *Elementos da Antropologia Jurídica*, 2008.

<sup>48</sup> Roberto DaMatta, O Ofício de Etnólogo ou Como Ter 'Anthropological Blues', in: *A Aventura Sociológica: Objetividade, Paixão e Improviso e Método na Pesquisa Social*, 1978.

<sup>49</sup> "experiência aureolada com os prestígios do exotismo" Jean Copans, *Críticas e Políticas da Antropologia*, 1981, 59.

intersubjectivity's field, and in this way gain ground for the dialogue I/we – you/they what now is no more than a mechanical relation I/we - They/thing".<sup>50</sup>

Anthropology presents to Jurisprudence the "anti-modern"<sup>51</sup>, making possible the task of questioning the intellectual modernity space where the rigid definition of antagonisms - West/East, I/other, civilized/barbarian is constructed. The application of Anthropology to Law happens by Anthropology of Law<sup>52</sup> – dedicated to the study of legal institutions in contemporary society, Law in simple societies, comparative law and legal pluralism.<sup>53</sup>

The post-modern science no longer limits itself to simplified situations<sup>54</sup>: it keeps the researcher in touch with real world complexity, emphasizing the creativity and eliminating barriers in the production of knowledge. Scientific reasoning must fight for the creation of a "disciplines' border area", understood as

A swap space and not as a barrier, processes that spur to migration of concepts, to frequentation exploratory of other territories, dialogue that modifies with the difference and with the otherwise, processes that do not finish themselves in the division of the same object between different disciplines, prisoners of unique points of view, irreducible, tight, with no communication<sup>55</sup>. "Research sociologization and anthropologization focus on the anonymous and on the routine where zooms highlight metonymic details [...]"<sup>56</sup>. Jurisprudence needs to understand everyday practices and researchers should be attentive to the social and cultural conditions and either to the courts' and subject necessities.

Jurisprudence needs to be thought and felt by "Anthropological Blues" because the juridical fact is, in essence, a social and cultural fact. The juridical concepts need to be fulfilled by elements from other disciplines, particularly Anthropology, because the real self

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<sup>50</sup> “[...] romper o círculo vicioso do objeto-sujeito-objeto, ampliando o campo da compreensão, da comensurabilidade e, portanto, da intersubjetividade, e por essa via vai ganhando para o diálogo eu/nós-tu/vós o que agora não é mais que uma relação mecânica eu/nós-eles/coisas” Boaventura de Souza Santos, *Introdução a uma Ciência Pós-Moderna*, 1989, 16.

<sup>51</sup> Walter D. Mignolo, *La Razón Postcolonial: herencias Coloniales y teorías postcoloniales*. *Revista Gragoatá*, 1996.

<sup>52</sup> Thaís Colaço, *O Despertar da Antropologia Jurídica*, in: *Elementos da Antropologia Jurídica* 2008.

<sup>53</sup> Legal Pluralism means "multitude of legal practices existing in the same sociopolitical space, interacted with conflict or consensus, whether or not officers, material and cultural" Antônio Carlos Wolkmer, *Pluralismo Jurídico*, in: *Dicionário de Filosofia do Direito*, 2006, 639.

<sup>54</sup> As stated by Ilya Prigogine, *Uma Nova Racionalidade (Prólogo)*, in: *O Fim das Certezas: tempo, caos e as leis da natureza*, 1996 and Boaventura de Souza Santos, *Um Discurso sobre as Ciências*, 1988.

<sup>55</sup> “como espaço de troca e não como barreira, processos que incitam à migração de conceitos, à frequentação exploratória de outros territórios, ao diálogo modificador com o diverso e o de outra forma, processos que não esgotam na partição de um mesmo objeto entre disciplinas diferentes, prisioneiras de pontos de vista singulares, irreduzíveis, estanques, incomunicados” Evandro Mirra de Paula Silva, *Os caminhos da transdisciplinaridade*, in: *Conhecimento e transdisciplinaridade*, 2001.

<sup>56</sup> “Sociologização e antropologização da pesquisa privilegiam o anônimo e o cotidiano onde zooms destacam detalhes metonímicos [...]” Michel de Certeau, *A Invenção do Cotidiano*, 1994, 57.

must be unveiled within the juridical self. "[...] Law is there for man. Law must always exist so that the individual could take place".<sup>57</sup>

#### **IV. Conclusion**

Law and therefore juridical research is usually too formal and instrumentalist, far from their objects of analysis and in many ways indifferent to social reality: a lack of exercise of self-reflection and otherness. In an anthropological perspective, legal reasoning, analyzed by itself as independent, neutral and universal, is ethnocentric because it neglects the other and the sociocultural context in which the citizen – or research subject/object – appears. Legal science created a kind of scientific area legitimated to interpret social reality in a disjointed and independent way – in relation to other areas of knowledge.

The paper aims to demonstrate the need to combine juridical knowledge with anthropological methodology to break with the isolationist perspective constructed by Law. The social relations' and conflicts' judicialization is a phenomenon that seeks to neutralize social dynamics through the process of decontextualization from reality: so that science and juridical practice consolidate antagonisms and dualities that simplify reality. Human relationships' plurality and diversity should be regarded by Law using "Anthropological Blues" and the perspective of otherness: the different conceptions of world should be respected and juridical researched object should be seen and heard.

Geertz interpretative anthropology gives a different treatment for cultural, historical and social phenomena. They are perceived as symbols to be deciphered. The jurist needs to use the anthropological tone to establish an interpretative relationship with their researched object, which usually is highly constrained by juridical concepts that need to be fulfilled with meaning.

Reality must be interpreted, deciphered in its hidden meanings and Anthropology lends to Law the possibility of rescuing contexts where juridical facts move. And the jurist is built in this meeting with the reality of the researched object, when he translates and when he is translated. As the anthropologist, the researcher in juridical field must look, listen and build a reflective narrative, they give voice to the other and overcome their own "ethnocentrism." Looking, listening and writing are three fundamental faculties in the anthropologist's field work and mainly in the Law scientists' field work: it is an exercise of self-reflection.

It is necessary to understand the "naked experience" hidden in the dynamics of juridical fact and to comprehend what is more subtle and escapes to researcher mechanical look -

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<sup>57</sup> “[...] el derecho está ahí para el hombre. El derecho tiene que existir siempre a fin de que el individuo pueda realizarse” Jan Broekman, *Derecho y Antropología*, 1993, 34.

someone who cannot be limited by fictitious testimonials. The jurist must perceive the characteristics that emphasize the descriptive nature in each story and the emotional games that involves the subjects, their conflicts, their changes of position and their isolation. To do this, Law must abandon its own isolation.

It is necessary to see social reality and the research itself as an instrument of life and effectiveness; to perceive conflicts, stories and communication codes that needs to be deciphered. The researcher, as the anthropologist, is an interpreter, a participant observer susceptible to symbolic representations of their researched object – framed by the interaction. The Law scientist must develop the ability to perceive people and their worlds by naked eye, a way of looking based on “otherness”.

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