

Law and Opera

Stimuli to a Sensible Perception of Law

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This article is an abridged version of a longer one, published by FGV Law School Series, vol. 11 (Rio de Janeiro, 2015). The title and the idea, however, remain the same. The obvious purpose is in effect to stimulate the perception of law with the senses, to feel the law, as opposed to the traditional approach of trying to learn and understand it, with a supposedly rational and verbally articulate set of theories and concepts. The original text starts by revisiting the work and the experiences of the author, during his previous ten years at the school, using the exhibition and discussion of movie pictures as a tool to initiate beginner students into the mechanisms through which the legal system interacts with any given society to which it applies.

In all the courses that the author taught at the school, he emphasized, right from the very first class, that the purpose of the program was not to distribute to students the contents of a basket full of information, knowledge, or science, but merely to exercise an ability. Metaphorically, just like exercising at the gym strengthens muscles and helps to build a healthy body, watching and debating movies sharpens the mind and helps to build the ability to analyze any given set of facts with a particular look, a *juridical* look, which almost instinctively moves away from the traditional right or wrong, black and white approach that other professionals tend to adopt when dealing with legal or moral rules and standards of conduct.

Law lives in the gray area and any legal professional must be able to perceive and elaborate the almost infinite number of tonalities that lie somewhere within the extremely broad spectrum between plainly black and plainly white. Apart from that, the whole exercise hopefully implied *per se* a single lesson or perhaps a message; the importance of developing a holistic perception of law. The set of rules which regulate the social life in any given human community, at any particular moment in time, is always a part of a whole, an element of an open system. Law did not fall from heaven and nor was it bestowed upon humanity by an omnipotent God. The texts and theories which regulate a community are generated by the community itself and carry with them the history, the economy, the language, the predominant religion and even the climate of that community.

This article proposes a similar exercise, using operas instead of movies. An opera is essentially a plot, most of the time a hyperbolically romantic one, expressed in a theatrical way, and enhanced by elaborate music. The aggregate result of words, music, scenario, ballet, and action working together is that people watching a good performance of an opera usually experience a strong emotional response. A person whose mind is legally trained will necessarily capture with intensity and depth the several legal issues which may be perceived in-between the many lines of poetry and music involved in an opera. Conversely, locating, showing, and underscoring legal issues that may be hidden in opera librettos to someone not similarly trained, may hopefully sharpen an overall sensibility to such issues.

That is, in a nutshell, the purpose of this article: to review a number of operas, singling out and magnifying sections that somehow encompass legal questions or themes. The exercise may at first surprise, perhaps even shock learned scholars. There are practically no references to sources or footnotes, no logical explanation or articulate arguments. Quite frankly, the purpose of the article is not to inform but to generate feelings using the hyperbolic words of opera librettos and the music that accompanies them. When confronted with a problem the intuitive impulse of a jurist, even more so in the case of law professors, is to mobilize his/her logical mind to analyze, to put the problem into a so-to-speak *verbal equation*, and to articulate, and theorize in search of, a solution or, at least, a learned and elegant digression. The idea of the article is different. It intends to shake, to mobilize the reader so that he/she can grasp the situation with the heart not with the mind, sense the drama that often underlies scenes that normally he/she would be seeing from a cold technical standpoint.

Someone without a legal background might take a contrary view, and be led from a primarily sensitive perception in their attempt to rationalize any given situation, so as to identify in dramatic opera scenes any possible similarities with some classic legal theoretical questions.

The overall effect will hopefully be to bring legal scholars closer to the rest of the outside world while planting a seed of familiarity with legal reasoning in the minds of lay people and maybe helping jurists to become clearer and more humble, by agreeing to take lessons on how to translate their sometimes incomprehensible jargon into common people's language.

As the purpose of the article is just to exemplify, I could have picked just two or three, or maybe thirty or forty operas. A true jurist can perceive legal issues practically anywhere and operas are essentially works of art meant to provoke and exaggerate feelings. The only pattern for the selection used in this article was to pick examples from the most well-known composer from the three fundamental schools of opera – Italian, German and, French. Since the intention is not to prove any specific point but just to stimulate feelings and perceptions, I picked totally at random five among the best-known operas and added a quick glance at the celebrated Richard Wagner's four opera cycle, *The Ring of the Nibelungen*. Each work was approached in a slightly different way, mostly, but not exclusively, selecting given parts of the libretto and always focusing on the underlying legal issue or issues.

Otello

The well-known Shakespearean tragedy was adapted into an opera libretto by Arrigo Boito and, based on this libretto, Giuseppe Verdi composed his own before the last opera, perhaps the musically most elaborate of his works. The plot is dense, deep, and raises several different questions; from racial prejudice to the very nature of evil. From a strictly legal point of view, however, the whole story could be perceived as built around a single yes or no factual question: is Desdemona guilty or not guilty of the crime of adultery of which she is accused? The viewer knows that she is innocent but Otello, her husband, does not. The envious Yago forges a

suspicion, manipulating the subtly implied insecurity that the marriage to a white and blonde Venetian girl might have caused in the mind of the dark-skinned moor.

Otello is nervous, suffering the intense agony of doubt. At the very beginning of the intrigue he confesses to Yago: I believe Desdemona is loyal and that she did not betray me. I believe she is not loyal. I want proof. I want certainty.¹

Yago's reply is cruel and cold:

- *What kind of certainty could you expect? Catch them in the act, perhaps? It would be a very hard task.*

Otello screams to the heavens above:

- *Death and damnation!*

The moor is desperate. He loves Desdemona and the mere idea that she may have committed adultery terrifies him. Yago, in turn, rejoices. His wife, Emilia, obeying his order, has already stolen from Desdemona the delicate handkerchief with which she has just dried the sweat from her husband's forehead, after he had an epileptic fit. The music reflects the contrast. Yago's lines are sung to an extremely soft and sweet melody, while Otello's are based on aggressive strikes with a predominance of the brass.

In the tragedy's plot, Otello is of course the victim of the suspected crime of adultery and this position intensifies his agony. His feeling, in substance, is nevertheless very similar to the most typical of the many agonies that afflict law professionals, particularly judges: What is the truth? What exactly happened? Is the accused guilty or not guilty?

Once he is finally convinced by Yago that Desdemona did in fact betray him, Otello issues his decision, perfectly in line with customs of the time: she is sentenced to death. He asks Yago to arrange a poison. Yago, in his usual sweet tone, cynically suggests a more suitable means of execution:

- *It would be better to strangle her. There, on her bed, where she has sinned.*

Judges face a similar dilemma. Once guilt is determined, an adequate penalty must be applied.

The final scene magnifies an even more acute question. Right after Otello has killed his wife, three quick depositions show him, without a shadow of a doubt, that Desdemona was innocent. Yago's plot is fully disclosed. The last aria of the opera is Otello's lament:

- *Nobody should fear me, even though I am armed. This is the end of my path. Oh glory! Otello was.*

The melody of the aria is poignant; a sequence of chords based on the strings and soft woodwind support the words.

¹ This and all other quotations in this article were taken from the same source: PÂRIS, Alain – *Livrets d'opéra-Édition bilingue*. Éditions Robert Laffont, Collection Bouquins, Paris 1991. The translations into English were made by the author from French and Italian originals or from the French translation of German originals. Please use OSCOLA formatting.

The Moor contemplates Desdemona's corpse, kisses her lips three times and stabs himself to death.

Otello's suicide was an individually plausible, almost logical, reaction to his error in evaluating the evidence. What would be the adequate reply had institutional justice sentenced to death and executed a suspect, later proved innocent?

With music, action, and words, any person watching the opera is given the opportunity to experience in his/her own heart two of the most dramatic sensations that sometimes torture professionals who have to apply the law to facts. Watching Otello's afflictions, a legal professional would presumably share a little of the anguish a judge sometimes has to go through in his efforts to evaluate the evidence; a lay person could be put in a position to appreciate better how difficult it is to formulate correct rules of evidence.

'Give me the facts, I will give you the law' (*da mihi fact dabo tibi jus*) is one of the most traditional legal sentences, but determining facts may become a difficult task and wrong determinations can produce enormous injustices. An obvious statement of course, but, exactly because it is so obvious, it is also extremely important to have it deeply and dramatically ingrained in the heart and mind of anyone dealing with legal questions.

Don Carlo

This other Verdi masterpiece had its première in 1867 in Paris, with a French libretto by G. Méry and C. du Locle, and was subsequently staged in Milan in a revised version in Italian, the version that is quoted here. The opera that initiates the final phase of Verdi's career is based on a play by Schiller and takes place during the 16th Century in the court of the Spanish king Phillip II, with the customary historical licenses.

The title character is Phillip's son, the heir to the crown, who, in real life, died in prison on the orders of his father, allegedly because he had gone mad. To settle the peace between Spain and France, Phillip II had agreed with Henry II, the King of France, that Don Carlo, then just 14 years old, would marry Henry's daughter, Princess Elizabeth de Valois. Shortly after the agreement, Phillip changed his mind and, being a widower, decided to marry Elizabeth himself.

Elaborating on these historical facts, the libretto fancies an intense and reciprocal passion between Carlo and Elizabeth.²

² One scholar who analyzed the text observed that the facts as described in the libretto are not representative of the truth and they are not representative of legal phenomena which is not dramatic but rather very boring. Both assertions are of course correct. Opera plots do not represent truth and legal phenomena are normally studied in a manner that often deserves to be qualified as very boring. The same commentator also added that the legal system is sober in contrast to the world of the operas. Another essentially correct statement. What the commentator may possibly have missed is that, to elaborate on this obvious contrast was a technique used by the author to generate what is anticipated in the title of the work - stimuli to a sensible (neither rational and, hopefully, not boring) approach to the study of law and legal phenomena.

In one of the first scenes of the opera, the desperate Don Carlo is advised by his friend, Rodrigo, Marquis of Posa, to seek solace from his afflictions by moving to Flanders, then a predominantly Protestant Spanish colony and severely repressed by Philip in his effort to impose Catholicism.

The delirious romantic intrigue and the wider political and religious issues are densely interwoven in the plot. In this context, a very specific point is brought up that induces immediate and deep legal thought: the tense relation between the king's absolute power and a strong external and independent source, the Catholic church, represented by the Inquisition.

The presence of the Inquisition is marked with lively colors in a solemn scene, of strong visual aspects and brilliant music, representing a big *auto da fé*. From their thrones, placed on a platform high above a square in Madrid, Phillip and Elizabeth preside over a parade of heretics, sentenced by the Inquisition, who march slowly and solemnly to the roque where they are to be burned alive. The square is crowded; orchestra and chorus play themes that mix festive and sinister tones.

A delegation coming from Flanders interrupts the ceremony to present a demand to the King. They are rudely repealed. Don Carlo, in an outburst of compassion and revolt, steps forward and asks his father to appoint him to take over the government of the colony. Phillip firmly denies the request. Carlo then draws his sword and threatens to attack Phillip. Carlo's friend, the Marquis of Posa, detains the prince and compels him to turn over the sword to his father.

The climax of the main juridical/political theme in the opera occurs a couple of scenes after. Phillip calls to his presence the Grand Inquisitor, a blind 90 year-old Dominican monk. The music is slow and dark.

- *Carlo, says the King, opening his heart to the priest, fills my heart with a bitter sadness. He armed himself against his father.*

The Inquisitor's answer is a question:

- *How do you intend to punish him?*
- *Extreme punishment* – says the king.
- *Noted*, concludes the Inquisitor.

Phillip is reluctant. The thrilling dialogue, made even more impressive by the dense music and the cavernous deep bass voice of the two characters, deserves transcription:

- *If I send my son to death, will your hand absolve me?*
- *The peace of the empire is more valuable than the days of a rebel.*
- *May I sacrifice my son to the world, I, a Christian?*
- *To redeem us God sacrificed His.*
- *But can you enforce such a severe law?*

- *It shall be enforced everywhere if it was enforced in the Calvary.*
- *Could nature and love silence in me?*
- *Everything must silence to praise faith.*

The Inquisitor has sealed Carlo's fate. The dialogue about what to do with the Prince is finished. The Inquisitor then asks the King whether he has any further questions; after Phillip confirms that he has nothing more to ask, the Inquisitor directly asks him to punish Rodrigo, Marquis of Posa. The Marquis openly defends the Flemish heretics and his treason is even more serious than that of Carlos, he argues. The King, who already liked the Marquis, was immensely grateful to him for having taken the sword from Carlo and so does not abide by the Inquisitor's request. A short discussion takes place but, as the Inquisitor threatens to go away, Phillip finally agrees to punish Rodrigo and declares with solemn bitterness:

- *The throne must always bow to the altar.*

In this single sentence one can immediately perceive the most serious question that has been, and will always continue to be, put before law and legal systems everywhere and at all times. In XVI century Spain, the King, in spite of his absolute and unquestionably God-given powers, was nevertheless subject to a higher power. Present-day jurists, historians, philosophers, and political scientists debate what is or should be the fundamental standard, the ultimate directive, or, in Kelsen's theory, the *basic norm*, to inform not just the legal systems of the Western democratic states, but the whole modern, globalized world.

The words and the music of the duet between Philip and the Inquisitor are a powerful and dramatic illustration of a cold theoretical concept. Humble and depressed, the powerful absolute monarch realizes and accepts that *the throne must bow to the altar*. Would strict, hard-core normativists be capable of a similar attitude? To what higher authority, if any, should interpreters and makers of the law at all times bow?

Madam Butterfly

The legal mind almost instinctively identifies in the plot of Puccini's *Madam Butterfly* the conflict between two different cultures and respective legal systems. The story is well known and very simple. A Nagasaki-based American navy lieutenant, Benjamin Franklin Pinkerton, buys himself a wife, the delicate 15 year-old Cio Cio San (literally *Miss Butterfly* in Japanese.) The contract is, he says, *elastic*: it is valid for 999 years but he is permitted to unilaterally terminate it at any time. Pinkerton is not really a bad person. He is just taking advantage of Japanese cultural and legal institutions to sweeten his mission in the country with feminine company. The problem is that Cio Cio San is really in love with her handsome blue-eyed American husband, going as far as to convert herself to the Christian religion, attracting the malediction of her uncle, a Buddhist monk, and of the rest of her family.

The outcome is almost predictable. Pinkerton leaves Japan and promises Butterfly that he will be back. She believes his word, waits and waits, bears him a son, and refuses to marry a Japanese suitor. Three years after his departure, Pinkerton finally returns to Nagasaki, now married to an American young lady. He did not even know that he had a son from Butterfly but, once informed, he and his wife want to adopt the child and take the boy to America. Butterfly must obey her husband; she agrees but with one condition: she will give the boy only to his father in person. Pinkerton accepts the condition and shows up, overwhelmed with remorse, just to see his boy blindfolded, holding a Japanese flag in one hand and the United States flag in the other, sitting by his mother who, as could be expected, has just committed suicide by cutting her throat.

A particular dialogue in the second act of the opera goes straight to the point and deals specifically with the legal question brought about by the libretto. Pinkerton is away but Sharpless, the American consul in Nagasaki, already knows that he is coming back and that he is now married to an American wife. He tries to convince Butterfly to accept a marriage proposal from a rich Japanese man, Mr. Yamadori Goro, the agent who is trying to close the marriage contract, tells Sharpless:

- *She believes she is still married.*
- *I don't just believe. I am. I am married,* Butterfly affirms.
- *Abandonment of the wife under law is the same as divorce,* states Goro.
- *Japanese law, not the law of my country, the United States. It is known that to open the door and chase away the wife here is considered divorce. But in America this cannot be done. There, a brave judge, stands upright and seriously asks the husband: "so you want to go away? Let us hear why. I am just tired of marriage. And the judge: ah you scoundrel! go right up to jail".*

Cio Cio San's notions of the prevailing theories of conflict of laws are obviously wrong. The whole opera, the tender and touching melodies and the sensitive dialogues, are so structured as to touch the feelings of Western romantic spectators, who usually shed warm tears for the sort of pure innocent Japanese girl who had the misfortune to believe the word of a frivolous Yankee. Butterfly's delicate sensibility simply did not adapt to her country's current customs and laws. She was, in effect, cruelly hurt just because she was different and more sensitive than the majority of her fellow citizens.

The question that comes to mind is that, perhaps more frequently than it would be desirable, a given legal system will unjustly hurt pure souls like Cio Cio San's. Laws are designed to represent the general feelings of the community to which they apply and normally cannot be bent to accommodate the particular sensibilities of given individuals. But art sometimes can open a community's eyes to the agonies of minority groups and produce changes that will counteract rooted prejudices. Laws permitting marriage between people of the same sex are a good example of a situation where traditional legislation was changed to accommodate feelings of people who do not live according to the accepted patterns of the majority.

Carmen

George Bizet's *Carmen* is unquestionably the best-known opera in the vast French repertoire. Based on a somewhat mediocre novel, Meilhac and Halévy managed to produce a libretto and Bizet composed a musical score that resulted in a genuine masterpiece, which inspired many other works, movies, ballets, and several adaptations, from rock & roll to samba.³

Carmen deals with essential and eternal elements that frequently contaminate man-woman relationships. It tells the tragedy of Don José, the modest soldier who falls passionately in love with the sensual gypsy, Carmen. Carmen's loves don't last long and, in a short time, she breaks up with Don José and replaces him with a rich and popular bullfighter - the classical love triangle that has occurred so many times, under countless different circumstances.

In the end, as in many other similar cases, the jealous José stabs Carmen to death at the gate of the arena, as his rival the bullfighter pierces the bull's nape with his sword.

The drama is intense, the music extraordinarily brilliant, the sequence of facts satisfactorily plausible. The aggregate result entails, at first sight, just one obvious association with a traditional legal issue: how to react to a type of crime that has been with humanity at all times. Much has been, and will still be, said about this issue: is the death penalty an appropriate punishment? If so, how should it be applied? If not, what should society's reaction be? Could Don José's crime somehow be morally excused by the many humiliations that he suffered at the hands of Carmen?

A trained legal mind will be able to perceive in the plot many other circumstances that might, in some way, be related to legal themes.

Carmen, in the first place, is a gypsy. Reference to this circumstance appears many times in the libretto. Would this not be tantamount to legitimizing a stereotype of a given minority group? Carmen works in a cigarette factory, possibly under conditions that current law would consider unhealthy. The female workers, as a group, are presented as a morally reprehensible caste of women who smoke, seduce, and engage in knife fights. Carmen's friends are part of a team of contrabandists, technically professional criminals. They follow a code, a flagrant illustration of how law is inevitably associated with community life and necessarily and spontaneously generated by the mere fact of association. When Carmen refuses to go with her friends on an ambitious expedition because she wants to meet Don José, she tells her friend that particular night: *love is more important than duty*. She had a quasi-contractual duty to the group.

Wherever there is a community, there is law (or, in Latin, *ubi societas ibi jus*), a proven fact that is sometimes overlooked by people dealing with the law in their day-to-day life. Last, but not least, the bullfighter is perceived in the opera as a glorified popular hero which may

³ Cf. *Carmen Jones*, movie picture, produced in 1954, directed by Otto Preminger, with Dorothy Dandridge as Carmen and Harry Belafonte as Don José. The music is adapted to rock and roll and the bullfighter appears as a boxer. *Carmen – Sambópera* adaptation of the opera to samba rhythm, by Augusto Boal, and music by Cláudio Lameira, staged in Rio de Janeiro, São Paulo and Paris in 1991. The bullfighter here becomes a soccer player.

not sound proper at the present time, when bullfight spectacles are no longer generally perceived as sport but rather as an outdated and cruel activity.

Once again, legal minds see legal issues almost everywhere and *Carmen* is one more illustration of this. Jurists watching the opera may fail to notice most of the issues underscored above, intoxicated by the beauty of the music and the intensity of the drama. They may even go as far as to disregard completely the eternal question of what should be the state's proper answer to the crime committed by Don José. The penalty of death by strangling is almost taken for granted, regardless of the circumstances that generate the public's sympathy for the poor, desperate deserter. The effort to stimulate a sensible perception of legal phenomena should not be so intense as to let the legal mind be totally carried away from its intrinsic analytical structure. In contrast, anyone who is not legally trained certainly will never observe that the intense romantic plot may be used as an illustration in a discussion about themes currently debated in the legal scenario.

Perhaps the force of an extraordinary work of art is so intense that the proper attitude in the case of *Carmen* would be simply to abandon any and all speculation and surrender to the emotion generated by the brilliant music and the excellent libretto. Concerns with law and legal issues cannot and should not occupy us 100 percent of the time. A jurist moved by the emotion may sometimes become a better and deeper jurist.

Lohengrin

Moving from French to German opera, let us now use the example of one of the works of Richard Wagner. Different from *Carmen*, almost all the librettos of Wagner's operas, written by the composer himself, raise issues that directly induce thinking about some of the most important legal questions. This is particularly true in the case of *Lohengrin*, an opera plot which departs precisely from the decision of a legal case.

The opera takes place during the Middle Ages, in the German duchy of Brabant. The former Duke died when his two children, Elsa and Gottfrey, were still very young. Gottfrey has mysteriously disappeared and one of the nobles, Friedrich von Talamund, in support of his claim to be nominated as the Duke's legitimate successor, argues that the late Duke had appointed him as tutor of his children and had offered him the hand of his daughter, Elsa, if he so wished.

Friedrich goes further and, as Germany's King Henry visits the duchy, formally accuses Elsa of killing her brother. A quick verdict of guilty or not guilty must be issued. King Henry declares himself not competent to judge Elsa and submits the case to the *ancient judgment* (in German, *Urteil*, sharing the same origin as the English word *ordeal*). Only God Himself, the omnipotent Lord of the Christian culture, can know the truth. Elsa's fate is to be decided in a duel between her accuser and any other noble who volunteers to defend her. The will of God will grant victory to the advocate of the truth. Elsa is then brought to the scene and the king asks her to appoint someone to support her cause.

Elsa's replies in a poetical daydreaming state:

- *I see a glorious knight, immersed in a splendid light. His eyes contemplate me with sweetness. He rests with his sword amidst the clouds, next to a house made of gold. Heaven sent him to save me. He will be my defender.*

The assembled court only perceives that Elsa is not delirious when they see, out in the distance, that a knight has just disembarked from a boat, pulled by a big white swan. With slow majestic steps the knight marches through the open door and enters the hall. Elsa throws herself at his feet and he immediately accepts to defend her in combat, without saying who he is or where he comes from. Is Elsa's perception of her defender akin to the way anyone unjustly accused of crime feels about his or her lawyer?

The combat takes place and the mysterious knight wins. God has expressed His will. Elsa is innocent. According to the tradition of *urteil*, the knight has now the right to kill Friedrich von Talamund. But he does not. Talamund is just ordered to leave the duchy. The plot continues and, at the very end, the audience is informed that the knight is really Lohengrin, one of the knights of the Holy Grail, the legendary cup used by Christ at the last supper which collected the blood shed by him when he was crucified.

As if to confirm the truthfulness of the judgment, the flying swan that had brought Lohengrin's boat acquires a human form – it is actually Gotfrey, Elsa's brother, who had been bewitched by Talamund's wife.

The procedure used in Brabant to judge Elsa is just one of the many examples of trials that appear in the opera repertoire. Judgments are actually a rather common feature in opera plots: in Donizetti's *Roberto Devereux*, the title character, supposedly a lover of Queen Elizabeth I of England, is sentenced to death by a council of noble men; in early Verdi's *I Due Foscari*, another council, the Council of Ten of medieval Venice, sentences the son of its own head, the old Doge, to perpetual exile; Radames, the hero of late Verdi's *Aida*, is considered guilty of treason and also sentenced to death by one of the gods of ancient Egypt, who announces the decision through a council of priests. Gods have no role in XVIII century revolutionary France though, where the title character in Giordano's opera *Andrea Chénier* is sent to the guillotine by a human committee.

Essentially, all these forms are different dramatized responses to the same eternal question that has always haunted those who must apply the laws, especially criminal laws: how to determine whether or not someone accused of a crime is guilty. In modern times, the vast majority of countries in the Western world seem to have accepted the method of trial by jury as the most adequate, especially in murder cases. But it is universally accepted that juries are not perfect and will inevitably commit errors. God, however, at least to believers, is perfect. After Lohengrin won his duel with Talamund, no one in Brabant was left with any doubt whatsoever that Elsa was innocent. Faith and beliefs are, by definition, not based on reason or logic - just feelings. Modern civilizations ultimately believe that, albeit imperfect, trial by jury is still the most reasonable method to determine an always uncertain truth. Lohengrin and other opera plots remind us that other methods exist and that any conceivable method is only as good as its consistency with the prevailing beliefs in the society to which it is to be applied.

Right and wrong, good and bad, are, after all, always relative and essentially subjective. Opera helps jurists not just to realize that simple truth in their minds but to feel it with their hearts.

The Ring of the Nibelungen

One anonymous commentator on the draft of this article observed that *an article on law and opera has to discuss Wagner's Ring*. The point is absolutely correct. The *Ring* or *The Ring of the Nibelungen*, is not just an opera but a full cycle of four operas, based on German/Scandinavian mythology. Its complete performance lasts for 16 hours and the extremely elaborate libretto has all sorts of fantastic characters and events: a giant that turns into a dragon, brother and sister, the son and daughter of a god, who fall in love with each other and generate a hero without fear who ultimately kills the dragon, which is sitting on a ring made from a piece of gold, stolen from the bottom of the river Rhine, that gives power but brings death to its possessor, and so on and so forth.

Even a compressed summary of such a huge plot would take all the space of this article. But, if focusing on just the legal issues, a particular feature of the plot of the *Ring*, dealing with the very nature and scope of the laws, should be emphasized.

The whole universe covered by the saga, human beings, gods and goddesses who communicate with humans and live in a palace built in the skies, the strange gnomes who live in the bottom of the Earth – the Nibelungen, are all governed by laws and treaties, the *runes*, which are obeyed by all, at all times.

The runes are engraved in the handle of the spear of Wotan, the most important of the gods, the father of twins and grandfather of the hero, Siegfried. Siegfried and Wotan get involved in a fight and the spear is broken. A frustrated Wotan orders a group of heroes who defended his palace to cut off all the branches of the ash tree from which the spear had been made. To reinforce the symbolic value of the legend, the ash tree has roots, deep into the earth, and grows all the way to heaven, keeping the whole universe together. Around its cut-off branches, three old ladies used to weave the destiny of the universe.

The cycle ends with an apocalyptic scene. Siegfried is killed; from the pyre built to burn his dead body a big fire grows and destroys everything on land and the palace of the gods in heaven.

Some see the mythological plot as adapted by Wagner as a criticism of XIX century capitalism in Europe. It is a plausible interpretation - the ring made from the stolen gold brings power and disgrace. However, for a legal mind, maybe the more important symbolic material is the force of laws and the fact that when the spear on which they are written is broken, the whole world collapses. Without laws, human beings and gods can no longer exist.

Watching the final colossal scene of the destruction of the world - music, voices, flames, all at the same time in apocalyptic harmony, it would be plausible to wonder if what we are watching today in the modern world is not akin to the breaking of the spear where the laws are written and possibly bring about some kind of catastrophe. Significant places and institutions in the countries that are the cradle of modern Western culture are being attacked -

the twin towers were destroyed, the Pentagon severely damaged, the 14th of July party in Nice was rendered chaotic, the subway stations in London and Madrid were bombed.

That sinister scenario is of course an overly sensitive, clearly personal, and certainly exaggerated vision. But no one reflecting on the current legal scenario could dispute the fact that the fundamental premises of Western democracy are being challenged. Throughout the world, people seem not to feel represented by their supposed representatives. A small but certainly impressive number of citizens of the leading nations of the world are converting to a distorted version of Islam that preaches terrorism and destruction as a route for salvation.

Once more, this is a scenario to be studied and theorized in depth by scholars. But the opera plot of the *Ring of the Nibelungen* delivers a strong symbolic message, capable of producing a relevant feeling - the order of the universe is reflected in laws, written on the handle of a spear. Don't break the spear.

Mefistofele

One of the most remarkable pieces of western literature is the tragedy *Faust* by Johann Wolfgang Goethe. It took Goethe more than 60 years to finish the two separate parts of his dramatic version of the legend of the old wise man who entered into a contract with the devil. The play inspired at least three operas: the less popular *The Damnation of Faust* by Hector Berlioz, Charles Gounod's *Faust* (libretto by Jules Barbier and Michel Carré), and *Mefistofele*, by the Italian composer Arrigo Boito, who also wrote the libretto for *Otello*, cited above, and the words for his own opera – *La Gioconda*.

The two best known versions of Goethe's tragedy will be commented on below. Before that, it is worth quoting parenthetically a part of the original Goethe play that, to some extent, reflects a point of view about the legal profession akin to the ideas expressed in this article. The devil is chatting with Wagner, Dr. Faust's young assistant, who is in doubt about which career to follow. *For jurisprudence* – he says, *I feel no special bent*. The reply of the devil is extremely skeptical:

I scarcely blame you for the sentiment.

I know about this endeavor.

We drag prerogatives and laws

From place to place by slow degrees,

Age handing age ancestral flaws,

Like an inherited disease.

Sense turns to nonsense, boon to plague.

Woe to the grandson that you are!

Our human birthright prior to the bar,

On that, alas! the gentlemen are vague.

(Faust – A tragedy – translated by Walter Arndt, W.W. Norton & Company, New York, 1976).

Going back to the operas, both the Gounod and Boito versions include the pact with the devil. In the French libretto, based just on Part I of Goethe's tragedy, Dr. Faust commits his soul to the devil in exchange for getting his youth back. The contract, signed with the old man's blood, is unconditional. Faust becomes young again, falls in love with Gretchen, a young and naïve peasant girl, and seduces her. Gretchen goes insane and drowns both her mother and the baby she had with Faust. She is sentenced to death and beheaded but her soul is saved; Angels come down onto the stage and take Gretchen to heaven. The verdicts of human and divine justice are widely apart.

Mefistofele encompasses both parts of Goethe's tragedy. The critical difference is that the pact with the devil is conditional; Dr. Faust would only surrender his soul to burn in hell if he is granted an hour of so much peace and quiet that he says to the fleeting moment of time "*stop, you are beautiful.*" Under the traditional theory of Roman law, such a clause would not be considered valid as it includes a condition that is totally at the discretion of one of the parties (condition *si volam* – *if I want*).

But *Mefistofele* accepts the condition. Faust turns young again, lives his love affair with Gretchen, attends with *Mefistofele* a mythical witches' night (the night of Walpurgis at the peak of Brocken mountain), travels to ancient Greece, and lives another romance with Helen of Troy.

In the epilogue after the last act of the opera, Faust starts an especially beautiful aria by saying:

- *I have tasted every single mortal mystery. Reality and ideal. Love of the virgin love of the goddess. But reality was sorrow and ideal was dream.*

Faust gradually realizes that he is again old and is dying. Singing a serene melody, extremely harmonious and sweet, he delights his soul in a dream.

- *King of a placid world, in an infinite land, I want to give my life to fecund people.*

The devil seems disturbed. Faust continues his aria:

- *Under a wise law, I want that people and herds, houses, fields and villages appear by the thousands. I want this dream to be the saint poem, the last wish of my existence.*

Mefistofele perceives that Faust is already enjoying a glimpse of Paradise. He extends his mantle and invites Faust to fly way to *inebriate himself among beautiful sirens*.

The music emphasizes the contradiction in a superbly dramatic form. *Mefistofele* gets more and more agitated and sings repeatedly the same line - *turn your look, turn your look* – each time stronger and in a higher tone. Faust is totally alienated in his soft delirium. Gradually, a melodious chorus of children's voices is heard from the distance, angels who praise the Lord. *Mefistofele* insists that Faust must turn his gaze to other visions. The old man

grabs the thick book of the Gospels and rejects the devil and keeps his eyes fixed on the vision of paradise. Magnificent chords create a musical atmosphere of dream. The choir of angels gets stronger and higher at every moment. Faust finally exclaims:

- *Fleeing moment of time: stop, you are beautiful! Come to me oh eternity.* (Or, in the above quoted translation of Goethe's text: *I might entreat the fleeting minute: Oh tarry yet, thou art so fair!*)

Faust bends his head and dies. A rain of rose petals falls from heaven amidst brilliant beams of light. Mefistofele plunges slowly into earth, whistling sharply and in contortions. Angels pray for the soul that rises to heaven.

Several questions that might be classified as strictly *technical*, such as the possible invalidity of the contract between Faust and the devil, could be built around Boito's *Mefistofele*. But in the libretto of the opera and in Goethe's immortal text on which it is based, there is a much deeper question: Dr. Faust is a scholar, a wise man, always seeking knowledge and tormented by doubts. He is not concerned with the *other life*; his only wish is that *himself and the world be revealed to his somber thought*. Would this posture not be identical to that of the true jurist? Would not the brain that questions everything at all times, seeking answers that it does not find, be typical of one who studies law, its reach and its limits?

The idea becomes clearer with a closer analysis of the final scene. Faust literally fulfills the condition inserted in his contract with Mefistofele and tells time to stop. He pronounces exactly the same words of the agreement: *fleeing moment of time: stop, you are beautiful*. However his soul is not, as he had promised, *swollen by hell*. The devil himself gradually realizes that he has lost the bet he had made with God and has not succeeded in corrupting Faust. Angels proclaim in glorious hymns that the soul of the old wise man has ascended to paradise.

How many judges would not have believed themselves to be doing a similar thing, on a smaller scale, when they deny the application of contractual clauses or even statutes to express texts, guided by higher intuition, perhaps illuminated by a light from above.

Paradise, after all, as glimpsed by Faust in the last moments of his life, *is a placid word, an infinite land, subject to a wise law, where thousands and thousands of people live in Peace in houses, fields and villages*.

Would this not also be the dream to which jurists aspire, the saintly poem, the absolute justice, that strives to reach the ultimate goal of their search?

Justice, actually, has always been, and will always be, essentially an ideal. Unfortunately, as Faust says, the ideal is a dream and reality sorrow. In real life, all that jurists can do is to try to mitigate as much as possible the inevitable pain of the imperfection of justice.

The marvelous final scene of *Mefistofele* unquestionably translates this crucial and essential dilemma of law and of legal professionals into an intense emotional experience—Interpreters must, as a general rule, accept and apply laws and contracts as they are written but there are circumstances where this runs totally against a vivid inner feeling of justice and right. Angels carry Dr. Faust to Heaven; the Devil plunges back to his deep domain, whistling and arguing the validity of the literal words of his contract with the old wise man.

Tentative Conclusion

Readers of academic papers normally expect to derive from their reading some sort of conclusion, be it a proposal, a discovery, a theory, bright new ideas, or at least some intelligent and elegant sentences to quote from. This particular article, however, was originally meant to be just a series of short examples, illustrating how operas could be used to stimulate what was called a *sensible*, as opposed to a *rational*, perception of law.

In his effort to stimulate the readers' feelings the author also stimulated his own, which, in turn, generated questions, not answers, about a significant set of phenomena that affect modern societies. Let us mention both feelings and questions. And also, for the sake of mere speculation, dare to launch some scattered insights about what could possibly be the answers to said questions.

In the duet between Phillip II and the Inquisitor in Verdi's *Don Carlo*, the powerful Spanish king, who ruled over the largest empire then existing on Earth, humbly bowed his head to the will of the church, personified by a blind 90 year-old monk. *The throne must always bow before the altar* he would have said, in reply to the statement of the Grand Inquisitor that *everything should silence so praise faith*. The impressive scene naturally induces the spectator to feel the inherent and essential need of any legal system to be supported by some higher directives, rooted on beliefs shared by the community to which it is applied.

The events referred to in *Don Carlo* happened in the second part of the XVI century. The protestant reform had already occurred and the power of the Catholic church had already started to decline as the power of sovereign kings of national states and multinational empires increased.

At end of the XVII Century, the so called *Century of the Lights*, the French, the American, and the Industrial Revolution completely revised most of the then predominant ideas in the Western world.

As mentioned above, *present day jurists, historians, philosophers and political scientists debate what is or should be the fundamental standard, the ultimate directive, or, in Kelsen's theory, the basic norm, to inform the legal system not any longer just of the western democratic states but of the whole modern globalized world.*

The intuitive answer suggested is that very soon the whole world will be forced to accept as a fact that legal systems of all countries must absolutely adopt the preservation of the environment as their basic norm.

Another classical opposition is constant in opera plots, romantic literature, TV series and in the common person's perception of life – the opposition between reason and emotion, or, in other words, the conflict between rational and irrational motives in any context where lines to separate right from wrong must be drawn. Madam Butterfly's delicate emotions were totally dissociated from the intrinsic logic of her country's legal system in harmony with the nation's culture. The decision in *Talramund v. Elsa*, unquestionably accepted by all the subjects of the Duchy of Brabant as being perfectly just and consistent with the true facts of the case, rested strictly on the belief – a feeling, by definition irrational - that the victory of Lohengrin,

the knight who appeared in court having arrived in a boat pulled by a swan, over the accuser, represented a revelation of the true facts of the case as disclosed by God our Lord. Angels, coming from heaven, knew better to interpret the real spiritual meaning, as opposed to strict lexical meaning, of contract words.

The century of lights generated a sort of radical approach to such alleged opposition between the rational and irrational, which are really not as irreconcilable as it may sometimes seem. More sophisticated thinking, and even sheer common sense, tell us that both reason and emotion can, must, and generally are weighted in an elaborate attempt to reach a reasonable and just decision regarding any conflict.

But the fact of the matter is that the influence of the views of XVIII century rationalist philosophers is still very powerful today. In the Portuguese language, to say *you have reason* still means exactly the same as to say *you are right*. Decisions and policies and, of course, laws, decrees, and court rulings, still strive to show some sort of apparently consistent logical reasoning, no matter how artificial they may sometimes sound. Reason, consistency, and rationality are still revered by presidents, kings, prime ministers, lawyers and courts.

Such a scenario is, however, undergoing a visible change; as a matter of fact, every day a growing number of attempts are made, in courses, books, lectures and essays, to relate law to other cultural expressions that historically were always perceived as having nothing to do with the dense and wordy speculations that used to be a common characteristic of legal academic production; law and movies, law and literature, law and Shakespeare, law and art, become every day a more frequent theme⁴.

This might perhaps be regarded as an indirect admission that the basic theoretical structures on which legal studies in the Western world have been built – the cult of logical reasoning, the search for an allegedly *scientific* approach to legal and social issues – are, to say the least, insufficient to cover vast and increasingly complex modern societies.

After all, the ultimate purpose of legal studies, the final goal of the solemn columns and formalities that still form most modern legal systems, is simply to deliver Justice. And justice is perhaps an undefinable concept, something that can be perceived, felt, but not rationally and scientifically demonstrated.

King Solomon consulted his heart, not any code, theory, or doctrine, when he issued this tentative sentence ordering that the child disputed by two women both alleging to be the child's true mother be cut in half and each half given to one of the claimants. Solomon's decision stands until today in the Jewish Christian civilization as an example of perfect justice,

⁴ Volume 12 of a recent edition of the Law Journal of Getúlio Vargas Foundation Law School in Rio de Janeiro, (Cadernos FGVDireito Rio – Volume 12, 2015) published a series of articles that are indicative of the trend: see, for instance: Friedman, Lawrence – Direito, Advogados e Cultura Popular (Law, Lawyers and Popular Culture); Steiner, Henry – Photography, Popular Culture and Law; Mulayert, Eduardo – Lei e Fotografia – Duas paredes da mesma caverna – (Law and Photography, Two walls of the same cave; Mikuzami, Pedro - Jogos Eletrônicos e Direito (Electronic Games and Law); Schwartz, Germano --Law and Rock – When two worlds collide or break through to the other side; Gebara, Ana Elvira Luciano and Ghirardi, José Garcez – Look at all these lonely people: ainda a interpretação em artes e direito (still the interpretation in arts and law); Sampaio Ferraz Júnior, Tercio - Moses and Aron – Música e libretto de Arnold Schoenberg (Moses and Aron - Music and libretto by Arnold Schoenberg); and many others.

a justice that transcends any conceivable modern formal legal system, possible only because issued by a wise man acting in his capacity as an absolute monarch.

In one sentence: the sensible (irrational) element seems to be getting back into law.

We are unquestionably closing the era which is generally thought to have begun at the end of the XVIII century with the French, American, and Industrial Revolutions and entering a new era. The XXI century will possibly go into history as the *century of bites*, when all the concepts and ideas generated in the *century of lights* underwent radical changes.

The feeling, akin perhaps to one of terror, that haunts the author's mind is that conflicts, especially the ones involving legal entities and/or citizens on one side and the State on the other, will tend to be resolved by allegedly fair, objective, neutral and rational sets of computer programs. Until some relatively short time ago, computers were not yet capable of beating individual masters at the game of chess, allegedly because the huge capacity of storing and processing data could not replace human intuition. When Gary Kasparov lost his match against Deep Blue, computers proved that now they can beat even the best human player in the world. Would they not shortly be accepted as capable of evaluating more adequately than human beings the best possible interpretation of legal texts and concepts?

The only alternative to this scenario seems to be to face the risk of authoritarian rules and go back to the times of King Solomon when pure feelings, not allegedly logical reasoning, exercised over pre-determined written rules were used to resolve disputes. In other words, going back somehow to a government of men, not a government of laws, may be the only alternative a perceived trend towards a government of machines.

To what extent has the predominant approach traditionally used by jurists to analyze legal problems become as inadequate to the cybernetic world of the present as Cio-Cio-San's romantic and naïve efforts to be accepted as Madam Butterfly were to the society of her time? Is the spear in which the runes were inscribed about to be broken? Will Angels not soon be descending from heaven to consecrate a different perception of contractual clauses and legal texts?

The strong feelings provoked by watching operas may help to capture those certainly far-fetched but not plainly absurd statements and hopefully may be a useful exercise in any attempt to anticipate how the process of resolving conflicts will be designed in this new era.