

# MACHADO DE ASSIS, THE LAW AND THE LAWYERS

Machado de Assis, o direito e os advogados

Área: Direito. Literatura.

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**ABSTRACT:** Machado de Assis' fiction, novels and short stories, abounds with legal terms and allusions. The number of lawyers and bureaucratic staff is impressive. Advocacy is by far the profession most exercised by the numerous characters, followed by politicians and members of the Church. In a rather unequal slave society these métiers were preferred by the bourgeoisie of Rio de Janeiro for social ascension at any cost or means, whether lawful or not. Ironically the vast majority of this plethora of fictional characters is not endowed with good ethical and moral principles. In general, they are mediocre professionals and cunningly exploit their peers to take advantage of their credulity and good faith. For the purposes of this essay, I chose only two lawyers, or rather two law graduates, protagonists and narrators of the two of the most acclaimed novels of Machado de Assis: Brás Cubas and Bento Santiago, "Bentinho" for the family, and "Dom Casmurro" by nickname. Brás Cubas, the main character of Posthumous Memoirs of Brás Cubas (1881), is graduated in law from the prestigious University of Coimbra, where wealthy families used to send their children to study. But his tedium for academic life led him not to fulfill himself professionally. Bento, the protagonist of Dom Casmurro (1900) is also a bachelor of law without having any enthusiasm for the profession. Law and literature are closely intertwined in this novel. The titles of some chapters of the book evidence the interdisciplinary use of the blending of law and artistic creation: "The law is beautiful", "The private audience", "Oath at the well", "The treaty", "Third party claim

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proceeding”, “Legal papers”, “The speech”, etc. This aesthetic procedure demonstrates that Machado de Assis was very attentive to the shortcomings of the bachelors’ society of his time, writing with wit and irony two of the best novels ever produced in Brazil.

**KEYWORDS:** Machado de Assis, the law, novels, lawyers

**RESUMO:** A ficção, romances e contos de Machado de Assis está repleta de termos e alusões jurídicas. A quantidade de advogados e pessoal burocrático jurídico é impressionante. A advocacia é de longe a profissão mais exercida pelas numerosas personagens, seguida pelos políticos e membros da Igreja. Em uma sociedade escravista bastante desigual, essas ocupações eram preferidas pela burguesia do Rio de Janeiro em busca de ascensão social a qualquer custo ou meio, legal ou não. Ironicamente, a grande maioria dessa infinidade de personagens fictícias não é dotada de bons princípios éticos e morais. Em geral, elas são profissionais medíocres e astuciosamente exploram seus pares para tirar proveito de sua credulidade e boa-fé. Para os fins deste ensaio, escolhi apenas dois advogados, ou melhor, dois graduados em direito, protagonistas e narradores dos dois romances mais aclamados de Machado de Assis: Brás Cubas e Bento Santiago, “Bentinho” para a família e “Dom Casmurro” pelo apelido, respectivamente. Brás Cubas, a personagem principal das Memórias Póstumas de Brás Cubas (1881), é formado em Direito pela prestigiada Universidade de Coimbra, para onde famílias ricas costumavam enviar seus filhos para estudar. Mas seu tédio pela vida acadêmica o levou a não se realizar profissionalmente. Bento, o protagonista de Dom Casmurro (1900), também é bacharel em Direito sem entusiasmo pela profissão. Assim, Direito e literatura estão intimamente entrelaçados neste romance. Os títulos de alguns capítulos do livro evidenciam o uso interdisciplinar da mistura da lei e da criação artística: “As leis são belas”, “A audiência secreta”, “Juramento do poço”, “O tratado”, “Embargos de terceiro”, “Os autos”, “O discurso, etc. Esse procedimento estético demonstra que Machado de Assis estava muito atento às deficiências da sociedade de bacharéis de sua época, escrevendo com humor e ironia dois dos melhores romances já produzidos no Brasil.

**PALAVRAS-CHAVE:** Machado de Assis. Direito. Romances. Advogados.

**SUMMARY:** 1. Introduction. 2. The Posthumous Memoirs of Brás Cubas. 3. Quincas Borba. 4. Dom Casmurro. Notes. Works Cited

## 1. Introduction

Machado de Assis (1839-1908) has always shown an abiding interest in the hypocritical attitudes of middle-class men and women, especially with regard to the exploitation of one another. The Machadian characters, in a general way, shrewdly deceive or are cruelly deceived by their peers. These dubious and misleading relationships entail the search for social ascension at any cost, regardless of whether the means used are unlawful or socially repressed. In this sense, marriage and inheritance, almost frequently depicted as a hidden dirty trick, become powerful tools for upward mobility.

For his conscious and mature themes, Machado de Assis is not a writer for the young people since they cannot grasp the meaning of the ironic and subtle tone with which are narrated the human miseries. They do not fully appreciate the richness of intertextuality that comes out in a profusion of references, quotations and literary borrowings taken from the bible and foreign authors, with a predominance of Shakespeare.

This bitter and pessimistic tone that emerges in Machado's work led the critic Mário de Andrade to write an essay on the occasion of the celebrations of the author's centenary of birth in 1949 in which he points out that "the Brazilian writer lacked Brazilian qualities", such as impetus of the soul, imprudence, gambling, outpouring, the naive taste of living, and exuberant cordiality.

Fearing negative reactions from the readers against his essay, Mário begins his text expressing hesitation in writing it because he was outlining a non-apologetic profile of the acclaimed writer,

Perhaps I should not write about Machado de Assis in these centenary celebrations ... I have for his genius a great admiration, for his work a fervent worship, but. I ask, reader, to answer the secret of your conscience; Do you love Machado de Assis? ... And this uneasiness makes me melancholic.<sup>2</sup>

For a long time the image of writer alienated from Brazilian problems persisted. From 2008, the year of another centennial, this time of death, Machado de Assis transcended national borders and reached the glory of being included

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<sup>2</sup> Talvez eu não devesse escrever sobre Machado de Assis nestas celebrações de centenário... Tenho pelo gênio dele uma enorme admiração, pela obra dele um fervoroso culto, mas. Eu pergunto, leitor, pra que respostas ao segredo da tua consciência; amas Machado de Assis?... E esta inquietação me melancoliza (p. 87).

among the greatest writers of world literature of the nineteenth and twentieth centuries such as Flaubert, Henry James, Dostoevsky, Proust, Joyce, Kafka, Thomas Mann, etc. It took him one hundred years to be known outside the arena of Brazilianists. His works have received several translations in the most important languages of the world. In English, for example, only few of his texts still await translator, but the main works have already had more than one foreign version.<sup>3</sup>

In dealing with the weakness of human character, Machado de Assis surpasses the geographical boundaries of Brazil, although his novels and short stories have Rio de Janeiro city as setting. Being a carioca (the native born of Rio de Janeiro), he transcends the mere local colors of his contemporaries. Within a broad spectrum of themes and motifs found in his work, the interrelation of law with literature aroused deep interest in his intense activity of a prolific writer, and bears an extraordinary relevance in his writings.

There are countless lawyers in Machado's fiction. In this aspect, he proves to be aware of Brazilian social reality because Law graduates were predominant in the bourgeois society of his time. Politicians come next in quantity, followed by members of the Church. To study this fascinating theme in Machado's work, there is no need to go beyond the readings of the three best-known novels out nine he wrote: *The Posthumous Memoirs of Brás Cubas* (1881), *Quincas Borba* (1891), and *Dom Casmurro* (1900), published regularly over a period of ten years each.

## **2. The Posthumous Memoirs of Brás Cubas**

Brás Cubas, the protagonist narrator, is graduated from Coimbra University, where the affluent families used to send their sons to study law. But he has no good memories of his school years,

The university was waiting for me with its difficult subjects. I studied them in a very mediocre way, but even so I didn't lose my law degree. They gave me it to me with all the solemnity of the occasion, following years of custom, a beautiful ceremony that filled me with pride and nostalgia – mostly nostalgia. In

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<sup>3</sup> All the short stories of the Brazilian writer were translated into a single 930-page volume entitled *The Collected Stories of Machado de Assis*, translated by Margaret Jull Costa and Robin Patterson, and published by Liveright Publishing Corporation, a division of W. W. Norton & Company, New York, in 2018.

Coimbra I'd earned a great reputation as a carouser. I was a profligate, superficial, riotous, and petulant student given to larks, following romanticism in practice and liberalism in theory, living with a pure faith in dark eyes and written constitutions. On the day that the university certified me, on parchment, a knowledge that was far from rooted in my brain, I must confess I thought myself hoodwinked in some way, even though I was proud. Let me explain: the diploma was a certificate of emancipation. It gave me freedom, but it also gave me responsibility. I put it away, I left the banks of the Mondego and came away rather disconsolate but already feeling a drive, a curiosity, a desire to elbow others aside, to influence, to enjoy, to live – to prolong the university for my whole life forward... (46; ch. XX).

The mere bookish learning of the legal sciences did not arouse in him the curiosity for debates on the human existence; only granted him a diploma at the end of a number of years required by the university statute. The passing of time was sufficient to receive the graduate degree. Only the passage of time was enough to reach graduation, for he had studied mediocly, as he himself admits without embarrassment. His lack of interest in work and noticeable boredom over life intensified his apathy and inability to practice law, to perform the profession of lawyer chosen by his father: "You're going to Europe" ... "I want you to be a serious man, not a loafer and a thief" (38; ch. XVII).

The division of the inheritance left by his father is narrated in a dense dramatic form, following the structure of a scene upon the stage. After his father's death, Brás Cubas, who had lived in harmony with his sister Sabina, had become involved in ferocious and sarcastic oral litigation with her and Cotrim her husband. Instead of a fraternal fair division of each brother's share, the three characters in the scene do not agree. The three characters of the scene enter into a rough discussion and do not reach an agreement capable of restoring peace between them.

The scene is magnificently depicted by Machado de Assis in a remarkable sequence of a surprising game of proposals and refusals of goods and people such as the silver by two slaves, the country house by the town house, the carriage by the coachman. The division of the valuable silver, the most important part of the inheritance, for its workmanship, for its antiquity, and for the origins of its ownership was impossible because who would get the teapot and who would get the sugar bowl, etc.

Even the interference of their uncle, who had arrived after dinner, did not

calm the moods and lessen the greed of the contenders:

“My children,” he said. “Remember that my brother left a loaf large enough to be divided up for everyone.”

But Cotrim said, “I know, I know. But the question doesn’t concern the bread, it concerns the butter. I can’t swallow dry bread.

The division was finally made but peace wasn’t (80; ch. XLVI).

Cotrin, the narrator’s brother-in-law, is a hesitant character, whose personality oscillated from “profligacy to circumspection.” Ironically Brás Cubas uses Cotrin’s public reputation to give the reader his own impression: “People said he was tightfisted.” In fact, reading the scene of the division of the inheritance, the reader has no doubt that avarice was indeed a trace of Cotrin’s personality.

Using the technique of digressive and fragmented account, the dead narrator puts an end to his story when he was alive. His unrelieved tedium for academic life led him not to fulfill himself professionally. In the last chapter of the book, significantly entitled “On Negatives”, Brás Cubas has the sole comfort: the good fortune of not having to earn his bread by the sweat of his brow, and a final negative: “I had no children, I haven’t transmitted the legacy of our misery to any creature” (203; ch. CLX).

### 3. Quincas Borba

In some sense, *Quincas Borba* can be considered a continuation of *Bras Cubas* because the main features of its protagonist have already been introduced in an earlier novel. The writer acting as an intrusive narrator reminds the reader of the character’s previous appearance: “This *Quincas Borba*, in case you have done me the favor of reading the *Posthumous Memoirs of Bras Cubas*, is that very same castaway from existence who appeared there, a beggar, an unexpected heir, and the inventor of a philosophy” (8; ch. IV).

The leading motive of this novel is an inheritance with an eccentric condition. After the death of his friend *Quincas Borba*, *Rubião* comes to know he was named the testator’s sole heir under the single condition stated in the will that he should keep the dog, *Quincas Borba*, whose master had given him his own name because of the great love he had for the dog.

*Rubião* had the task to treat the dog as if he were not a dog, but a human being, and upon the dog’s death, “it is to be given decent burial in its own plot, which will be covered with flowers and sweet-smelling plants, and furthermore,

he has to disinter the bones of said dog after the suitable period and gather them together in a casket of fine wood, to be placed in the most honored place in the house” (22; ch. XIV).

Even before knowing the terms of the will, Rubião had already given the dog as a gift to his good friend Angelica. In the possession of the fortune, he decides to leave his provincial town Barbacena for Rio de Janeiro, “which he knew well, with its enchantment, movement, theaters everywhere, pretty girls dressed in the latest French fashions” (24, ch. XV).

On his trip to Rio de Janeiro city, Rubião meets the beautiful Sofia and her husband, Cristiano Palha, the fatal couple, whose friendship will cause him ruin. The meaning of their names provides a plausible explanation for their attitudes. “Palha” means “straw”, as such; he was a man of straw, that is, a man of apparent, but not real, power. “Sofia”, from Greek Σοφία, means “wisdom”, whose meaning will be ironically unveiled throughout the novel. Palha uses his wife to seduce Rubião in order to extort money from him. Rubião falls in love with her, but the dream adultery will never happen for his misfortune.

Rubião is deeply attracted to the seductive and clever Sofia, who flirts and teases him mercilessly. The episode in which she sends him a letter in a small basket with strawberries<sup>4</sup> covered with a cambric handkerchief is very significant to the beginning of the protagonist’s moral collapse. Her pretty handwriting said:

I’m sending you these bits of fruit for lunch, if they arrive in time. And by order of Cristiano you’re invited to come and dine with us without fail. Your true friend,  
Sofia<sup>5</sup> (42; Ch. XXXII)

Those “adulterous strawberries” will awake Rubião’s carnal desires for Sofia who will keep him in a prudent distance from his sexual attempts. In one of the most poetic scenes of the novel, Sofia is seen cruelly refusing to behold the Southern Cross from the window he had asked her for. Acting as a true fatal woman, she does not love him but makes an effort to pretend she does.

Before leaving the provincial town of Barbacena, Rubião occasionally remembers the dog left with Angelica, and unpleasant thoughts come to his mind.

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<sup>4</sup> This scene reminds me of Othello’s first gift to Desdemona: a handkerchief spotted with strawberries stolen by Iago and used as a “proof” of her infidelity to the king. Shakespeare comes right after the Bible as the most influential source of Machado de Assis.

<sup>5</sup> The reader will discover later in Chapter L that her husband had dictated the letter. She had limited herself to copying it down, signing it, and sending it off.

If some enemy kills or steals the dog he loses his inheritance. But a malicious interpretation of the law dissipates his fears:

“I’m not familiar with legal matters,” he thought, “but it seems to me that I’m not involved. The clause supposes the dog to be alive or at home. But if he runs away or dies  
there’s no reason to invent a dog. Therefore the original intent... But my enemies are capable of chicanery. If the clause isn’t fulfilled...” (25; ch. XVI).

Through a tricky interpretation of the law, Rubião goes to the big city and becomes an inveterate money spender, who eventually will go mad and die miserably on the street.

Doctor Camacho, politician who “had no problem in lying”, is a lawyer, and the one who will foster Rubião downfall. Treating those in power with familiarity, to simulate influence, Camacho pressed for some appointments in the government but was not a learned man: “He had absolutely no concern for literature, the natural sciences, history, philosophy, or art. Nor did he have great knowledge of the law. He still retained a few things from school along with subsequent legislation and court procedures. With that he argued in court and earned money (82; ch. LVII).

When madness came upon, Rubião was left alone with his devoted dog in a little house rented by Palha. Trying to remember whether he had in any way offended his friends by word or deed, he goes to see his lawyer friend Camacho who pretends to read legal documents: “Camacho pulled back his leg to let him pass. He took down a volume of Ordinances of the Realm and leafed through it, jumping ahead, going back, idly, without finding anything, simply to get rid of the unwelcome visitor. But the unwelcome visitor stayed right there for that very reason, and they concealed glances at each other. Camacho went back to his libel suit. In order to read, sitting down, he leaned ways over to the left, where the light was coming from, turning his back to Rubião (249; ch. CLXXIX).

Towards a better understanding of Rubião’s tragic end, it is necessary to be acquainted with his philosophical conception of life, ironically called *Humanitas* that he learned from Quincas Borba. The struggle for survival is explained in terms of a hunger metaphor. The passage in which the philosopher usages the image of a crop of potatoes and two starving tribes fighting for the right to hold it as property is one of the most cited passages in the novel:



One of the tribes will exterminate the other and collect the spoils. This explains the joy of victory, anthems, cheers, public recompense, and all the other results of warlike action. If the nature of war were different, those demonstrations would never take place, for the real reason that man only commemorates and loves what he finds pleasant and advantageous, and for the reasonable motive that no person can canonize an action that actually destroys him. To the conquered, hate or compassion; to the victor, the potatoes (13; ch. VI).

According to Humanitas principle, the individual subsumes into the organic whole and therefore ceases to exist: “Individuals are those transitory bubbles” [in boiling water], says Quincas Borba, to conclude: “A bubble has no opinion”.

The motto “to the victor, the potatoes” is a recurrent theme throughout the novel and reflects the ironic usage of Darwin’s theory of natural selection applied to human beings. Life is a battlefield where only the fittest will survive and the weak and naïve, like Rubião, are manipulated and annihilated by superior and tricky people, like Palha and Sofia, true social climbers, who will be rich and enjoy the mundane pleasures of life.

In such context, Humanism is less important than Humanitas, where people appear as a false and deceitful creation. So, a dog can be more faithful friend than human beings. That is why Quincas Borba named his dog after him: “Since Humanitas, according to my doctrine, is the principle of life and is present everywhere, it also exists in the dog, so, therefore, he can have a human name, be it Christian or Muslim...” (9, ch. V).

Neglected and abandoned by his friends, Rubião flees from sanatorium and leaves for his old hometown Barbacena. He takes the dog along with him. In the small village he and his dog began to wander without any direction like two tramps until they fall asleep: “When they awoke in the morning they were so close together that they seemed glued to one another.” (268; ch. CXCVII). The wandering re-starts over and over again. They pass by old friend Angelica’s door, who gives them shelter and breakfast. Rubião tries to explain what had happened to him, but she begins to feel fear because she could not understand a thing, his facts and ideas were so confused. She excuses herself and goes to tell a neighbor woman that Rubião seemed to have lost his mind.

Before than an hour had passed great crowd of people were around looking on from the street: “To the victor, the potatoes!” Rubião shouted to

the onlookers. “Here I am, the emperor! To the victor, the potatoes!” (269; ch CXCIX).

The last two chapters of the novel give a moving account of what happened with the protagonist and his dog; their tragic ends. Rubião died completely insane suffering from the illusion of being an emperor:

Before the start of his death agony, which was short, he put the crown on his head – a crown that wasn’t even an old hat or a basin, where the spectators could touch the illusion. No, sir. He took hold of nothing, lifted up nothing, and put nothing on his head. Only he saw the imperial insignia, heavy with gold, sparkling with diamonds and other precious stones. The effort he made to lift his body up halfway didn’t last long and his body fell back again. His face maintained a glorious expression, however.

“Take care of my crown,” he murmured. “To the victor...”

His face grew serious, because death is serious. Two minutes of agony, a horrible grimace, and his abdication was signed (270; ch. CC).

After finishing reading the novel, the reader remains puzzled by the enigma: To whom the title of the novel refers to? The philosopher or the dog named after him? Either the man or the animal or even both can possibly be the correct answer. The narrator leaves to the reader the task of having a personal preference, undoing the apparent dichotomy between weeps and laughs. Both are perfectly acceptable within the context of the plot.

The final irony of the novel lies in the fact that Rubião lost the fortune not because the breaking of a will clause but for being betrayed and used by people he considered his loyal friends.

#### **4. Dom Casmurro**

As it occurs in *The Posthumous Memoirs of Brás Cubas*, the protagonist of this novel is a Bachelor of Laws, and also as Brás Cubas, he feels no enthusiasm for the profession. When he sees the diploma out of its case, while unpacking his trunk, he has the sensation of hearing an invisible fairy saying, “You will be happy, Bentinho; you are going to be happy.” This scene reminds him of the witches in *Macbeth*: “Thou shalt be king, Macbeth!”- “Thou shalt be happy, Bentinho!” By associating his fate with that of the Shakespearean character, Bentinho anticipates his own misfortune. He will not be happy, but will be deceived as it was Macbeth

by the predictions.

He will be not a good lawyer either, but will make money because of familiar friendships: “I was an attorney for several wealthy houses, and the cases were coming in. Escobar had contributed greatly to my beginnings in the law courts. He had intervened with a celebrated lawyer to have me taken into his office, and had arranged some retainers for me, all of his own accord”(195-196, ch. 104).

Having a lawyer as the omniscient narrator Machado de Assis is able to make full use of admirable interdisciplinarity of literature and law, noticeable in the abundance of legal terminology interwoven with the plot. Many chapters of the book have legal terms for titles, such as “Law is beautiful”, “The private audience”, “Oath at the well”, “The treaty”, “Third party claim proceeding”, “Legal papers”, among others.

Besides the protagonist, there is another lawyer in the novel, the widower Cosme, Bentinho’s uncle: “Formed for the serene functions of capitalism, uncle Cosme did not get rich in law courts: he made a living” (13; ch. 6). He was in criminal law. Having no children, and considered a failure with bitter spirit and pessimistic view of the world, his portrait is depicted as it follows:

He no longer went in for love affairs. They say that, as a young man, he was a devil with the women, besides being a hotheaded partyman. But the years had taken from him most of his ardor, both political and sexual, and his fat put an end to the rest of his ideas, public and specific. Now he merely performed the duties of his job, and without love. In his hours of leisure he looked on, or played backgammon. Now and again he made a witty remark (14; ch. 6).

The recurrent theme of inheritance appears in the novel with a subtle but very ironical aspect. Escobar, the narrator’s best friend since the years of seminary, whom Bentinho suspects to be his son’s father, named him substitute executor in the will: “He did not leave me anything, but the words that he wrote me in a separate letter were sublime in their friendship and esteem” (235; ch. 128).

There had been heated debates whether Capitu, the narrator’s wife, committed adultery. The novel is almost 120 years old and even today articles and essays appear on the press defending opposing theses. The ones who accuse Capitu believe in the narrator’s final report: “one thing remains and it is the sum of sums, the rest of the residuum, to wit, that my first love and my greatest friend,

both so loving me, both so loved, were destined to join together and deceive me...”(262-63, ch. 148)

The ones who defend Capitu say the narrator is self-centered and mystified, and as such unreliable. Feminism criticism shares the same idea, and points out that Bentinho embodied the stereotype of machismo.

I do not think the essence of the novel is whether Capitu is adulterous or not. But she cannot be convicted on a trial because the evidence against her is inconsistent, and there are no witnesses to support Bentinho’s plea. Everything he says comes from his fertile and witty imagination.

To sharpen the doubt that arises in the head of the reader, Machado de Assis writes a chapter titled “Othello” in which makes its protagonist watch the play of Shakespeare. On leaving the theater Bentinho started saying to himself that Capitu, like Desdemona in the play, was innocent. But when he arrives home he changes his mind and argues with Capitu and peremptorily claimed that the boy was not his son.

The enigma of Capitu is another of Machado de Assis’s many literary devices. Of all most known novels on adultery, namely *Madame Bovary* (Flaubert), *Anna Karenina*, (Tolstoy), *Cousin Bazilio* (Eça de Queiroz), *Dom Casmurro* is the only one to raise doubts in the reader about the woman’s adulterous behavior. The other three are very explicit in this regard: the wives commit adultery.

## Notes

An earlier version of this essay was read at the XXII Congress of the International Comparative Literature Association – ICLA - held at the University of Macau, China, from July 29 to August 2, 2019.

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