

Editorial

Social Studies of Law and Justice. Perspective and Challenges

Luis Miguel Donatello* , Federico Lorenc Valcarce**
and Julieta Mira***

From their origins in the 19th century, the social sciences have treated law and justices as privileged objects, although naturally these were not the first critical and systemic approaches to these objects that used philosophy since the classical era and which have been addressed by political theory and legal science in modern day. Nevertheless, the social sciences' approach to the world of law and the exercise of the judicial function differs greatly from that proposed by this normative disciplines. The social sciences perspective is essentially based on an operation that is quite simple: to consider law and justice as social facts (Durkheim, 2001 [1895]).

With this purpose in mind, we must assume a distanced analytical posture, place our previous notions within parentheses, and reject both spontaneous sociology and common sense evaluations. It is true that, especially in terms of politics, art or morality, there are all different types of obstacles for accepting the objectivization proposed by the social sciences. In many cases, we are faced with the need to renounce strongly rooted prejudices, political convictions or even moral values

* PhD. in Sociology, École des Hautes Études en Sciences Sociales; PhD. in Social Sciences, Universidad de Buenos Aires. Consejo Nacional de Investigaciones Científicas y Técnicas, Centro de Estudios e Investigaciones Laborales, Universidad Nacional del Litoral, Universidad de Buenos Aires. Buenos Aires, Argentina. E-mail: ldonatello@ceil-conicet.gob.ar

** PhD. in Political Science, Université Paris 1 Panthéon-Sorbonne. Consejo Nacional de Investigaciones Científicas y Técnicas, Universidad de Buenos Aires, Centro de Estudios Sociales y Políticos, Universidad Nacional de Mar del Plata. Mar del Plata, Argentina. E-mail: florencvalcarce@conicet.gov.ar

*** PhD. in Social Sciences, Universidad de Buenos Aires. Rosa Luxemburg Stiftung (Berlin, Germany), Universidad Nacional de Mar del Plata, Universidad Nacional de San Martín, Buenos Aires Province, Argentina. E-mail: jmira@unsam.edu.ar

that we possibly esteem. This is the price we must pay if we are to be willing to produce meticulous knowledge, that is empirically and theoretically founded, on these areas of social life. All of these operations are indispensable to objectivizing law and submitting it to scientific analysis.

As shown by classical authors, just as a critique of ideology and religion is required to be able to observe the social nature of these phenomena, so too must a critique of legal discourse be developed. In the words of Max Weber:

As law is considered as an object, sociology does not seek to determine the logically correct "*objective*" meaning of legal statutes, but rather the *action*, where the ideas of men on the "meaning" and "validity" of certain legal statutes play an important role among its determinants and results. (Weber, 2014 [1922], p. 389).

And also:

When talking about "law," "legal order," and "legal precepts," the distinction between the legal and sociological consideration must be taken into account in a particularly rigorous manner. The former asks what is ideally valid as law. That is: what signification or what logically correct normative meaning must correspond to a verbal formation presented as a legal standard. While the latter questions what in fact occurs in a community due to the fact that there is the probability that the men who participate in community actions, especially those who may considerably influence that activity, subjectively consider a determined order as valid and let their practical conduct be guided by it. (Weber, 2014 [1922], p. 657).

It is worth remembering that for classical authors of the social sciences, the goal was to understand what society is like, and not how it should be. Therefore, if we adopt this perspective, law is considered a crystallization of social conceptions about what is fair and unfair, permitted and prohibited, what complies with a norm and what strays from it, what is socially acceptable and what must be sanctioned. We have spoken before of social facts, as Emile Durkheim (2001 [1895]) does to symbolize the need to objectivize the realities we study. Of course it is not about assuming a Durkheimian perspective, because we know that this is only one way to study the social sciences. Beyond this starting

point, it is important to consider that, even with their theoretical and methodological variations, our disciplines take on the challenge to empirically address the constitution and how the different regions of the social world operate.

Based on these premises, in the social study of law and justice we come upon basic categories of the social sciences: action, system, rules, power, institution, culture, to name a few. We will be able to apply the common techniques of disciplines such as sociology, anthropology or social history, including ethnography, interviews, archive work, statistics and discourse analysis. We will also use the basic forms of reasoning inherent to the social sciences: observation, comparison, generalization and abstraction. In this way, our proposal looks to recover this perspective that discredits the singularity of legal and judicial objects, considering them social phenomena like any other. From there, the same analytical systems and methodological procedures used to study politics, art, religion or economy can be applied.

In sum, the social sciences address legal facts in order to describe them, understand them, interpret them and explain them. The great authors of the 20th and 21st century have dedicated entire works to the study of legal facts and how they operate in social life (Becker, 2009 [1963]; Bourdieu, 2000; Geertz, 1994 [1983]; Habermas, 1998 [1993]; Latour, 2002; Luhmann, 2005 [1993]; Parsons, 1960 [1966]). Similar contributions have been made from feminist theory, highlighting the specificity of legal dynamics in terms of the question of gender and sexualities (Benhabib, 2007; Benhabib & Cornell, 1987; Mackinnon, 1987; Moller Okin, 1987; Nussbaum, 2004; Pitch, 1995; Smart, 1989). One notorious group of colleagues has developed research programs focused on law, justice, legal culture and legal operators (Abel & Lewis, 1988; Commaille, 1994; Commaille & Kaluszynski, 2007; Dezalay & Garth, 2003; Friedman, 1975). From different perspectives, these works look to highlight the activities and processes that are intertwined around law and justice, and they analyze how certain forms of regulation of social behaviors come about and are institutionalized and how legal standards are selected and applied in particular cases.

These approaches treat the effects of law and justice on practices, socio-political dynamics and identities. In some cases, they analyze moral, political and professional values that accompany the production and ap-

plication of law, while in others, they identify the players who create the law and put it into practice, and study their social characteristics, trajectories and networks of belonging. This configures a social science of legal facts or what we could call *social studies of law and justice*. It is not about commenting on law, criticizing it or proposing reforms. On the contrary, as already announced, it is about recovering the different theories, concepts, methods and techniques offered by the social sciences, in order to apply them to this singular field of objects.

From this position, the present dossier proposes a study of law and the administration of justice from the perspective of the social sciences. With this goal in mind, we recover a series of theoretical questions, methodological tools and analysis models that allow for a comprehensive understanding of how law is created. This ascertainment also facilitates our observation of how law operates in social life and how law is produced in the political and judicial institutions by which society is governed and justice is administered.

The proposal we share here invites readers to analyze both law and the judicial branch from the perspective of the players, networks and categories of thought that constitute it. This way of addressing the world of law looks to grasp the social conditionings of the behavior of judicial operators and the performance of law institutions. In this way, we can interpret the actions of judges, defenders and prosecutors, and observe the rulings in which the practices and representations of the court space are translated. All of this occurs based on the specific logics of the legal field (careers, standards, organization, institutional culture) and their reproduction over time.

This approach helps determine the impact of the institutional and political frameworks on the performance of justice and analyze the public policies proposed to shape the judicial function. Finally, we are also interested in identifying and describing the broader symbolic, social, cultural and political conditionings that shape the legal and judicial processes.

This edition presents different articles organized around four fundamental sociological dimensions for addressing the objects of law: 1) practices and representations in the legal world; 2) players in the field of law; 3) legal institutions and their transformations; and 4) social and

political conditioning of law. In this way, we allow the following different research studies to converse while we highlight the construction of questions, perspectives and approaches with sociological vocation.

1. Practices and representations in the legal world

The papers brought together in this section address how law is constructed and applied. This brings us to reflect on the application of regulations in particular cases within the framework of judicial processes, justice reforms or institutions emerging from legal transformations. In all of these cases, practices are presented in relation to certain representations that make up the judicial work and the conception of law, without forgetting the positioning before more general social problems and political and ideological questions.

In this pursuit, we find the work of María Eugenia Gastiazoro on jury trials related to femicide, as well as the article by Clarissa Rodrigues Souza on the judicialization incorporated by public defenders in the field of public policy by invoking tutelage of diffuse, collective and homogeneous individual rights. The text by Luis Donatello and Federico Lorenc Valcarce presents an analysis of the reasonings produced by judges when explaining how they got to where they are and how they make decisions, while highlighting the different factors at play in the exercise of the judicial function. The article by Julieta Mira shows how certain judges manage and drive federal criminal procedure reform in Argentina. This approach shows the reform practice within a framework of ideal representations for a more humane and democratic justice.

Meanwhile, Angélica Cuéllar Vázquez focuses on a profoundly important topic in Latin America: commissions for the truth. Among the significant experiences in the Latin American regions that were global pioneers, we can mention Mexico's recent attempt to process the disappearance of forty-three normalist students from Ayotzinapa. The author tells about each of the fifteen commissions that took place in the Latin American region, how they were put together, how they worked and the results they obtained. This type of non-judicial mechanism is within a set of possible actions in the so-called transitional justice applied after authoritarian governments, armed conflicts or human rights violations.

Also in this area, Ezequiel Kostenwein analyzes how the flagrancy procedure, recently introduced in the criminal justice system of the Province of Buenos Aires, arises from the problematization of justice administration times and proposes tools to speed up the judicial treatment of cases. The author presents and works with the discourse of those who promoted this reform and observes hearings resolved by this procedure, which are supplemented by interviews with judicial agents. In this sense, he addresses the practices and organization of judicial work from the perspective of its institutional framing and recovering the point of view of different players.

2. Players in the field of law

The practices we observe in judicial processes, rulings or other decisions made in the ordinary course of work of judicial administrations are performed by players with certain characteristics, who have been socialized, formed and selected through social processes and determined institutional mechanisms. Among the studies included in this section, we can observe hidden mechanisms inherent to the relations between the judicial branch and the political field, and others not so much, such as symbolic, social, cultural and ideological dynamics that determine the characteristics and actions of those who make decisions in the judicial sphere.

Upon analysis of the judicialization of public policies in São Paulo, Rodrigues Souza introduces a study of the characteristics and visions of official defenders, linking these to the actions taken with respect to social rights. In her work on the treatment of femicides by criminal justice in Cordoba, Argentina, Gastiazoro characterizes the operators who participate in the process with specially attention to the role and composition of public juries. In historical and social terms, the incorporation of public juries in criminal processes expresses an intellectual and political movement that recovers the role of the victim and looks to more directly couple judicial decisions with public opinion. These reforms can also be read in terms of social demands before the legal field, in order to observe how society and politics exercise influence and pressure upon judicial institutions.

The work by Donatello and Lorenc Valcarce and the article by Juan Jose Nardi focus on the selection processes for judicial operators, in two

fairly different yet complementary senses. In the first case, the authors analyze the narratives and trajectories of Argentinean federal judges to determine how the players themselves reveal social factors, particularly those considered to be political, that affect their careers and the exercise of their institutional role. Throughout the judges' discourse, a polysemic sense of politicacy can be seen through their in-court practices and different sociability strategies, whether explicitly or implicitly, while also revealing certain tensions between politics and merit, especially since the founding of the Council of Magistracy, which influence their self-perception and how they construct their biography as judges. There is a significant competition of versions regarding the positive or negative existence of politics between "old" and "new" judges, where those who have reached their positions by institutionalized mechanisms seek to uphold their appointment based on competency, while trying to push politics to the side. In the second case, the text by Nardi focuses on the immediate selection process. The author addresses the way in which the mechanism combines academic and political elements when the academic qualifications are those that officially order the process, while political considerations -which no one denies- operate as an unspoken basis for selection.

Another look at the players can be found in the article by Mira, who presents the exemplary trajectories of two judges who, thanks to their symbolic capital -which includes their international circulation- were able to drive changes in the system for judging federal crimes. The interview with Lidia Casas, director of the Center for Human Rights at Diego Portales University, in Santiago, Chile, also contributes to the discussion of judicial players. From her work and experience in the area of investigation and litigation, she reflects on how local judges act according to where they have studied law and the values inscribed in their socialization, which also shows distinctive aspects between different generations of judges.

3. Legal institutions and their transformations

The judicial practice and exercise of legal professions are materialized within the framework of certain institutions of justice, such as the courts, which express organization, cultural and ideological properties that regulate the actions and processes occurring in that sphere. Some

of these characteristics are the product of rooted traditions produced and reproduced by the players. Others express the demands of social movements, theoretical innovations and political wills which translate to reforms in legislation and the judicial branch. We find legislative transformations and reforms in the judiciary as contextual elements in the studies on judge selection, the conformation of public juries or the change in function of official defenders. In other cases, the reforms and creation of new judicial instruments constitute the focus of analysis and are treated as intellectual and institutional responses to problems of the judicial branch's operation.

This second group includes the works by Julieta Mira and Ezequiel Kostenwein who, each in their own way, offer an analysis of the accusatory transformations of the criminal system. Likewise, the interview with Lidia Casas gives us an opportunity to measure the social implications around the reform of the Chilean Constitution within a context of social outburst in 2019 and further complicated by the current COVID-19 pandemic. In this reform, the dispute is focused around the incorporation of the rights of indigenous communities, economic and social rights, sexual and women's reproductive rights. The inclusion of this interview, performed by Mariela Delgado, looks to give visibility to human rights from a socio-legal perspective and also offers an enriching look at the current issues of a Chilean society in the face of an open constitutional challenge.

On the one hand, Mira addresses the reform of the Argentine Code of Criminal Procedure based on an analysis of the trajectories, personal and positional attributes, and local and international networks that drove this reform. The paper focuses on two renowned jurist figures, Ricardo Levene and Julio Maier, both professors and judges working in the institutional field as academically and judicially legitimated experts. Therefore, special attention is given to the ideas of these reformers, their origins and their work. This scaffolding looks to demonstrate that the two players, in addition to applying the law, have also used their authority to "speak the law" (Bourdieu, 2000), in this case seen in their writing of bills and promotion of reforms to the criminal justice system. The analysis offers a broad perspective of the phenomenon, taking relevant agents for the process of legal change and innovation. As key, influential players, their actions have overarching effects on the institutions.

On the other hand, the work of Kostenwein addresses the reforms to the Code of Criminal Procedure of the Province of Buenos Aires, which introduces the so-called accusatory system, and focuses particularly on an analysis of the incorporation of the flagrancy procedure. To do this, the author presents the objectives, foundations and interests behind this institutional innovation and reconstructs the perspective of those who promoted it and those responsible for implementing it. The reformist discourse provides a framework for interpreting and analyzing the members of the criminal justice system, through which delay and inefficiency began to be seen as difficulties to tackle. Therefore, the reform appears as a response to one of the main focal points of the social and political criticism of the judiciary. The practices and testimonies of the legal operators in the judicial process show some of the reform's limits in the achievement of its objectives, due to external factors that condition the judicial activity or to internal organizational factors that prevent the judiciary from operating more expeditiously.

4. Social and political conditioning of law

Another classical matter revisited in this edition is how broader social and political processes affect the legal field. Law and the judiciary are subject to external conditioning. It can be seen that the social and political demands articulated through a language of rights do not turn towards, or at least not exclusively, public opinion, the communications media, political parties or the government, but are rather presented before the courts. This peculiar movement has an impact on the judiciary strengthening process in the public arena and enables a growing influence of judicial decisions on the government. This phenomenon is confirmed as social players turn to justice to make their claims heard and to exercise their rights. It should be noted that even when the initiative is taken by the operators of justice themselves (judges, public prosecutors or official defenders), the relations between the government branches are modified. That invisible, hidden power, outside the public light, which at one time was reserved to the judges, has now become a space for social and political debate, and cultural and ideological dispute. It is important to consider these issues when working with subjects from the legal sphere, as we are reminded by Gastiazoro, Rodríguez and Cuéllar Vázquez, authors in this edition.

As Gastiazoro mentions, the incorporation of the gender perspective in criminal law expresses the movements and theoretical advances of feminist activism, which also manages to affect the political sphere and legislation. However, its application within the judicial process supposes resistances and disputes that directly involve the judges and other legal operators of the law. In this regard, the author observes that the gender problem is increasingly visible in the judiciary sphere within a social and political context of greater recognition and visibilization of gender violence, and the use of the word *femicide*, not incorporated as such in the legislation, shows how the players themselves who operate in the criminal process incorporate categories and concepts used in daily life and the media. This article addresses a topic that has received special attention in recent years and measures the impact of cultural and ideological transformations on legislation and the judicial process. In the same way, we could think that the transformations of the law express changes in society with respect to the environment, housing, consumer defense, corruption and intimacy. In all of these cases, the academic elaborations and activism, which operate upon common sense and the communications media, also manage to shape the representations and actions of political and judicial actors.

The article by Rodrigues Souza addresses how official defenders of the State of São Paulo intervene in the field of public policy by invoking the rights of certain sectors of the population. In this way, certain social aid, housing, education, healthcare or consumer defense services are judicialized, filing demands primarily before the state or municipal governments or public service concessions companies. In these rulings, the author observes that the right to education and healthcare are recognized as obligations of the State and fully constitutional rights of the citizens.

Finally, the article by Cuéllar Vázquez introduces a research mechanism on past crimes which, while not judicial in and of itself, has the capacity to strongly impact this dimension in post-dictatorship or post-conflict contexts. This is made possible because the information collected during investigations can become judicial proof in the criminal persecution of perpetrators of crime. The commission for the truth have allowed, with varying degrees of extension and

success, for the reconstruction of crimes, the recognition of the victims and, in some cases, the aggressors, although in some cases the commissions have denounced the failure to publish the names of the perpetrators identified. These processes have not been exempt from intense disputes between the players involved regarding the best way to organize, select its members, and the information collected that could be made public. The existence of this type of instrument which reconstructs the truth regarding past events, is in tension with the criminal persecution of crimes and has cemented the development of the right to the truth. Nevertheless, past experiences have shown that it is not possible to substitute justice with the truth nor would it be possible for the two spheres to negotiate, as this would translate to impunity. It is at this point where we find interesting academic debates on the ideals of memory, truth and justice, driven by human rights movements over the decades in the face of the -not always satisfactory- responses provided by the state.

A final invitation

This passage through practices, representations, players, institutions and conditioning found in the empirical studies that make up this dossier, demonstrate the productivity of the proposed program on the world of law: a perspective inspired by classical authors and which recognizes developments in different theoretical traditions. As seen in the present edition, there is a large number of topics related to the legal sphere that could be addressed by social studies, and which open up multiple feasible research routes. Even more so given the current global circumstances related to the current COVID-19 pandemic, which has set off numerous legal actions on controversies and issues especially in terms of human rights, highlighting a tension between the right to life and healthcare and individual guarantees and liberties.

For these opportunities to effectively become research studies, the academic community needs to make the decision to make greater efforts in the construction of this field of study. Without a doubt, we can work to expand the understanding of the social phenomenon crystallized within legal standards, institutions of law and the administration of justice. We leave this invitation open.

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