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PETER COLLIN
AGUSTÍN CASAGRANDE (EDS.)

Law and Diversity: European and Latin American Experiences from a Legal Historical Perspective

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Agustín Casagrande

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1 Introduction

Thinking about the theoretical foundation running underneath the topic of diversity in Argentina, allows us to understand not only the potentialities for the emergence and recognition of the problem but also the limits inherent to each system of thought at different times in history. In the case of sociology in its connection with law – legal sociology –, this presents some additional difficulties.

The first question to keep in mind is the role of the discipline within the legal field.[1] Despite the usual qualification of legal sociology as a simple auxiliary science, it plays a central role in structuring the mentality of jurists. On the one hand, it presents the jurist with an image of society that constitutes a view of the world (a legal representation of society), often without expressly declaring the theoretical content that informs such a perspective. On the other hand, it functions as a narrative device that rewires the dud circuits of the positivist legal system in its autopoiesis, especially in times of crisis, when law fails to adapt quickly enough to social problems. As can be seen, there arises here a first structural question in terms of understanding the formation of legal knowledge: the relationship between sociologists and jurists. It is now in this constant tension, where the hermeneutic paradigm moves from integration, to equality, alterity or differentiation – as ways of addressing the topic of diversity. This paradigm has mutated over time, showing how the formation of legal-sociological knowledge is, on the one hand, related to providing stability to the legal system, and, on the other, it fulfills a role of scientific mediation between the political, the social and the legal sphere.

1 Bourdieu (1976).

The second problem presented by the theoretical foundations for thinking about diversity is the historical variability exhibited by models within the socio-legal tradition. If a question about the existence of a 'tradition' is raised in Germany,[2] in Argentina, it is enough to recall a fragment of Borges which, although dedicated to literature, can be predicated on sociology: "What is the Argentine tradition? […] I believe that our tradition is the whole of Western culture, and I believe that we have a right to this tradition. […] We can handle all European issues, handle them without superstitions, with an irreverence that can have, and already has, fortunate consequences."[3] This phrase sounds like a warning as to the plurality of authors and theories that were recovered in Argentina, but also, and above all, concerning the irreverence of their treatment, which implies adjustments and translations that may surprise European readers. This irreverent appropriation can, however, be denounced as "an unbearable hermeneutic nihilism".[4] In order to avoid falling into a simplified theory which explains the selection of a tradition as a consequence of the taste of each author, it is fundamental to contextualize the political and social dimension that impacted on the configuration of the juridical field at different moments in history. This will aid in understanding the conditions of possibility for the reception of diverse sociological theories: North American, German, French and, later, Lusitanian-Latin American.

This warning requires observing jointly the tension within the legal field (jurists-sociologists) in the modus of production/appropriation of sociological theory in differentiated historical contexts (political, social and theoretical). This operation makes it possible to recognize different legal representations of the social and also particular theories on diversity. In order to do so, we shall go through three political contexts for the formation of a particular sociological imagination, each one of which establishes specific presuppositions that impact on social theory to make the juridical system work under alternative sociological traditions and *vice-versa*.

2 See the contribution by Alfons Bora in this volume.
3 Borges (1996 [1932]) 272–273.
4 Gadamer (1990) 100.

2 In the beginning … there was the *nation*

One of the key elements for thinking about diversity in juridical sociology relates to the history of social sciences in Argentina (1890–1930). In this case, the selective tradition of the handbooks of the present as well as the historical studies are coincident. Both juridical sociologists and historians recognize in Juan Agustín García and Ernesto Quesada the precursors of socio-legal thought in Argentina.[5] Although legal sociology was not yet a curricular subject, through Sociology (1904), Introduction to Law and Political Economy (1903, 1907), the role of the jurist-sociologist would establish the study of social sciences in Argentina.[6] At this genetic moment of social discipline in law, but for in the problem of the method, in a dispute of social science against the traditional exegesis of law, the tension between jurists and sociologists went unexpressed.

It was a period of social conflict over immigration, criminality and other problems which exhibited the limits of liberalism. It was also a time of reception of various foreign theories, but with an approach that would be necessarily national. In other words, not only Savigny, Mill, Schmoller, Comte and Spencer were recovered, but also, in their translation processes, the common tone of the Argentinian readers would be to think about social problems based on national particularities. This mediation would also be observed in a context that presented the need to mediate between the classical political economy (of strong individualism) and the socialist positions, which were regarded with fear. This is how history and sociology were articulated, predisposing a State intervention in Argentine society. These jurists (sociologists) had a local, historical (in the sense of building a national tradition), deterministic and empirical method. This was reflected in a common pre-comprehensive basis of the difference that would be articulated under Darwinian and Spencerian influences by the vision of progress of the (national) civilization.[7]

This state of the art of the discipline would lead Quesada and García to ask themselves about how to conceive a national unity that would solve the problem of migration and, at the same time, how integration would or not promote the progress of the nation. Here the elements of "environment,

5 Fucito (1999) 262–267.
6 Zimmermann (1995) 83–100; Terán (2008) 207–287; Devoto (2006) 15.
7 Altamirano (2004).

race and epoch" would dominate the positive question of the integration and homogeneity of Argentine society.[8] In this framework, the debate on the 'national question' was developed with the aim of ascertaining the population logics of the young nation. In order to do so, the narrative deployed by these authors presented a social basis conformed by Europeans as a constitutive element of Argentinian National-being, which was thought of as the possibility (and the reason) for overcoming the indigenous past and the Hispanic tradition (both considered backward). This prejudice is understood by the influence of the national imagery of Alberdi – the father of the constitution – who dreamed of Argentina as a result of a transplanting of northern Europeans, marking France as an ideal of civilization. The main problem, then, was not how to reconcile the indigenous peoples with the European immigration, but how to generate a 'good mixture' between the Creole – consequence of the first immigration – and the new migratory waves that arrived in the country. This would determine the problem of race derivations, which could start from either a Creole or foreign base. This model would occlude the indigenous character of the population as a problem and as a type, while, at the same time, producing a European take on the development of nationality.[9]

The government of the social therefore also implied a theory of the national being, of origin or derivative, but projected toward the future. On this tone, for Ernesto Quesada – who rescued the moral and psychological perspective of a people rather than the pure Darwinian determination – the problem of immigration subsumed that of the national language, adopting a "Creole-based derivativist" view that implied: "preserving the autochthony symbolically and materially incorporating foreign contributions".[10] Thus, he stated that the *gaucho* had resulted from the transplant of Spaniards to the *pampas* in the 17th and 18th centuries, to which was added the work

8 Terán (2008) 214.

9 Terán (2008). On the concept of race and the uses of the period see: Zimmermann (1992). This eradication of the indigenous question would be a fundamental part of Argentina's social imagination, especially of the socio-legal imagination for thinking about modern law. Hence heterogeneity and integration would be thought of as a problem of transplanted Europeans of different generations.

10 Terán (2008) 241.

of the environment until the 19th century. However, this crystallization of a special being had already disappeared at the end of the 19th century leaving only a myth that should be rescued to defend the best of the nation from the new immigrants (especially Italians). The *gaucho* became a literary topic (myth) and recent immigration (the material fact) that would define the problem of hybridization. This perception of the future was not entirely desired, hence the need to intervene in language, in symbolic forms and in the processes of unification transmitted through the elites, who represented this original past: the *gaucho*. Although the problem of diversity was perceived as a negative factor that brought social difficulties – ungovernability –, the "plurality and hybridization with data from the Argentine process [was the price] that a modern like Quesada was willing to accept as a tribute to progress".[11]

The work of Juan Agustín García would have a greater influence. According to Tau Anzoátegui: "the impact he had on his disciples and students was strong in that it highlighted the social roots of law, criticized the theory of codification and stimulated the study of Argentinian social phenomena."[12] In the first edition from 1896 of his classic book *Introducción al estudio de las ciencias sociales argentinas*, he warned:

> "First of all it is necessary to know the national character, a very complex thing and difficult to analyze. It has been shaped by all the past generations that handed down to us by inheritance innumerable moral qualities, the physical environment; the social environment formed by intellectual and moral development, in which the races that immigrate and join our sociability actively contribute; European culture, our main source of inspiration and science. Our sociability, although legally one and the same, is composed of different elements, some simply superimposed, others amalgamated by the irresistible tendency that leads us to moral unity."[13]

In this fragment, García condensed the sociological common sense that would imprint itself on the legal knowledge where "the national character" figured centrally. In that search, there was the superposition or amalgamation of races in Argentina as a central element in understanding society (and its government) under the abstract legal equality proposed by the codification. However, in the third edition of 1907, at the time of thinking about diversity, the gaze of social psychology became a state:

11 Terán (2008) 242.
12 Tau Anzoátegui (2007) 22.
13 García (2006 [1896–1899]) 374.

> "The problems of Argentine psychology are complicated by the variety of more or less antagonistic and diverse elements that contribute to forming society. While the different races in contact are not founded on a single one by the predominance of any of them, the characteristic note of our people will be heterogeneity, division and subdivision into groups, with radically different ideas and feelings […]."[14]

The fear of immigrants was based on the ungovernability that this subdivision produced, so the path toward heterogeneity had to be repaired.[15]

As can be seen, in thinking about Argentine society, it was a question of discarding what was considered weak and backward (the aboriginal peoples) yet, at the same time, representing the problem of diversity as hybridization. The consequences of this position would structure the socio-legal knowledge until the 20th century. It would thus become an urban problem, of relation between codification, progress and social control as structural elements of a discourse, which was rarely disputed by the socio-legal imagery.

In this way, the model thought in the logic of progress and of the nation proposed a two-faced social knowledge and sociological imagery. In Comtean terms, this model could be synthesized in a *savoir* that was phylogenetic and historical (by a historicity regime of the concept of nation); and in a *prevoir* as a horizon of expectation that envisioned a special society manifested only in the future (not without the aid of state intervention). Therein lay the logic of the 'melting pot' of the modernist project in the birth of sociology (of jurists). Not by chance, 'introduction to law' would remain in the hands of legal historians who could recompose the genetic magma from which the present came.

3 State and society: State theory and scientific sociology

By the end of the 1920s, the social science model was in retreat owing, in part, to the supposed inability to articulate a political process in a deterministic code, as well as to the inability to problematize the ethical dimension of law.[16] This aporia would allow the entry of legal philosophy which, based on German and Italian roots, would be established as the fundamental introduction to legal studies.[17] This change can be synthesized in the *Insti-*

14 García (1907 [1899]) 49.
15 Terán (2008) 235.
16 Terán (2008) 148.
17 Tau Anzoátegui (2007) 34–35.

tuto Argentino de Filosofía Jurídica y Social (Argentine Institute of Juridical and Social Philosophy), where diverse authors coexisted. They positioned legal philosophy with preeminence over sociology. There, however, arose a tension that would allow a better understanding of some representations of Argentine society. In this context there would appear, on the one hand, an Aristotelian-Tomist aspect that would become the thought about the State (theory of the State) and, on the other hand, a neo-Kantianism based on the influence of Kelsenean juridical positivism. Both traditions, coexisting and in dispute, would not fail to present the ontic and axiological element as crucial.

This philosophical turn would redefine the topic of juridical language at the same time as the redefinition of the relationship between jurists and sociologists, who would be involved in the question of *Sein* and *Sollen*. The result would be a new language of law. In the case of Thomistic aristotelism, it would result in the problem of *Sein*, the State, the political community and the constitution, in clear correspondence with the Schmittian grammar.[18] This relationship would suture the problem of the nation as a hybridization of races, presenting in its place the univocal entity of the people. The significant effect of this new language would be to suppress the separation between state and society.[19]

Precisely Ernesto Palacio's first State Theory would define its object in connection with political science, which studies "the polis, or organized human society, not in its written legislation […] but in its historical projection and in its totality, specializing in its expression as a State, that is, the relationship between governors and governed, the active and passive subject of power, as will and as action".[20] The diversity within the State was given by that structural position in the organization that was projected as the relationship between the personal power of the leader, the ruling class and the people. This redefinition of the field of study would present the problem of 'order' as the conformation of a legitimate social hierarchy ultimately requiring the recognition of "a cultural tradition embodied in successive personalities whose thought and action have left a mark on the collective

18 Dotti (2000) 13–24.
19 Sampay (1951) 99, 374–375.
20 Palacio (1962 [1949]) 15.

mind".[21] This anti-liberalism would end up postulating a government without interference from the ruling class, paving the way for the formation of a 'real' rather than a 'legal' constitution. For his part, Arturo Sampay would be more careful of the role of political sociology, ranking it as the knowledge prior to constitutional law.[22] In that framework, in the face of the crisis of constitutional liberalism, the thought of social plurality would be subsumed under the question of corporatism. Clearly, recognizing a state totality under this intermediate instance, the workers' and employers' unions remained as a representation mechanism, but also as a sociological data of the diversity of social groups.[23]

The reaction of neo-Kantian logical positivism would be a rejection of what they would call the Thomistic "iusnaturalism" that presupposed a natural law.[24] On the one hand, it would reject the existence of a superior norm of order by turning to positivism of Kelsenian root. It would also link this rule to a problem of conduct. In this way, legal sociology would be seen as a perspective of interest, although not as part of the legal science.[25] The closure of the positivism on the norm and conduct with a shift toward the ontological question of law would be accompanied by a hegemony of the 'juridical dogmatics' that would obturate, in part, the question of diversity.

In this dialogical dimension, the State theory would be the space to think through the social, especially in its political-constitutional dimension, which would be accentuated by the rise of Peronism to government and the constitutional reform of 1949. The problem of thinking about diversity as corporatism and as representation of the people configured by the world of labor would not only deepen the oblivion of ethnic and social bases, but would also blind the representation of a possible self-regulated society as opposed to the State.

Faced with this dilemma, Argentinian legal sociology found its object through a turn in constitutional law and the need to break with the logical structure of the State theory. The monumental work of Segundo V. Linares Quintana is a good example of the "destatization of the political", pointing

21 Palacio (1962 [1949]) 132.
22 Sampay (1951) 502–503.
23 Ramella (1993 [1945]) 281–289.
24 Cossio (1937).
25 Cossio (1946).

out that the representation of society as part of the State simplified the true meaning of social and constitutional thought. The latter dealt with the problem of "power in society" as distinct from the State, seen rather as administration. Power in society would determine the problems of legal sociology in its rediscovery of society: lobby groups, interest groups etc. This 'rediscovery' of society, in turn, would have its political basis in the confrontation with Peronism and statehood present in Peronist constitutional rhetoric.[26]

Such confrontation – political and epistemological – would produce a change in the way society was studied. Contrary to the State theory, scientific sociology would be closer to North-American modernization theories, which would reconfigure the imagery on the social problem adopting mainly structural-functionalism as a prism of analysis.[27] It can be seen here how sociology would reconfigure the status of the jurist and the juridical sociologist, imposing the latter as an auxiliary of the constitutionalist and, at the same time, linking him more and more to general sociology. Here it is worth highlighting the central influence of Gino Germani and his *Estructura social de la Argentina*, which would compose an image of Argentine society, with a structure that represented the (urban) society and its diversification as a system of "high", "middle" – extended and almost majority – and working classes.[28]

4 Modern legal sociology: structural functionalism and integration through inclusion

Faced with this context, legal sociology would have to find its own space between the critique of legal dogmatics and philosophy of law. In this way, society was rediscovered as an object that had to be explained taking into account the illusion of the Kelsenian uniform and pyramidal legal system, which was represented as the totality of the science of law. Society was thus newly explored as an object of study in legal sociology and its possible 'diversity' would be examined under the lens of American hegemonic sociology. The themes of legal sociology, measured from an ideological perspec-

26 Casagrande (2018) 194–195.
27 Adamovsky (2009) 349–360.
28 Germani (2010); Cardinaux/Gerlero (2000) 154–156.

tive that implied similarity between Argentina and the United States, would be: social control and deviation (Robert Merton); the system of expectations and social position – status, roles – in the social structure (Talcott Parsons); socialization and ideology (Ralph Linton, Gordon Childe), and so on.[29]

In a geopolitical context of conflict between communism and capitalism, added to the various military dictatorships that Argentina experienced, Marx's reception would be critical and little thematized.[30] Clearly, the reductive readings of the Marxist approach were not only the fruit of an interest of authors but also part of the characteristic censorship of these regimes. The key theme, however, was also Peronism as a mass phenomenon, which would postulate the question of authoritarian personality and the types of charismatic domination that would become a central theme in the construction of the socio-juridical imagination in Argentina.

Hence, the most important receptions of European sociology, which would influence the new classic founders of social thought – primarily, Durkheim and Weber – were initially strained through Parsons' sieve.[31] The problem of differentiation would, however, rarely be addressed, but rather, the point was to recover the role of law in theories. Thus, in Durkheim's case, the methodological function of law (as a social fact) was studied in order to observe solidarity; the role of punishment in the reassurance of collective consciousness; and finally, the problem of anomie. On this central point, the readings were varied and 'irreverent'. Indeed, under this sociological concept, the recurring question was synthesized: why is law not respected in Argentina? This key topic used anomie to synthesize the different reflections that mutated from race at the beginning of the 19th century to the theories of imitation from the middle of the 20th, allowing for recognition of the sociological discourse that served as a basis in the different stages.[32]

In Weber's case, the theory of social action and rationality both in law (legal) and in the modes of domination (legal-bureaucratic) had a double effect. The first was to reinforce Parsons' approach to social action as a structure for thought on the social phenomenon, the subjectivism of which

29 Ves Losada (1967).

30 Here we see the influence of Robert Nisbet as a critical model towards classical Marxism: Nisbet (2003 [1969 first Spanish edition]).

31 Alexander (1987).

32 Nino (1992); Kunz (2008).

fit very well with the logic of subjective modern law. On the other hand, the type of charismatic domination would serve to attack Peronism and confront it with the type of legal-bureaucratic domination that was expected in terms of overcoming (evolution-modernization) political practices in contemporary Argentina.[33] As can be seen, legal-sociology also provided adjustment tools for the understanding of the political through the social.[34]

The configuration of the socio-legal language would then be given by the grammar of systemic-functionalism: social structure, status, roles, action, modernization-evolution. As for integration, Parsons is recovered to point out that law is "a generalized mechanism of control that operates diffusely in almost all sectors of the social system".[35] Parsons is also a cognitive filter that would serve to incorporate Luhmann's theory of systems which would be seen as an extension of the logic of Parsonian systems and subsystems. That reception, however, has been lateral and counts more as an anecdotal fact in legal-sociology handbooks than as an explanatory theory of diversity. Diversity as differentiation in Luhmann's system has, therefore, been little noticed in its full dimension.[36]

Beyond this theoretical exposition by authors, and although handbooks do not deal with it in greater depth, in sociology and legal sociology programs of law schools, the model of integration *via* inclusion refers to the problem of migration addressed from an evolutionary perspective as the integration of countryside – defined as traditional society – into the city – defined as "industrial or modernized society". The crisis of modern society is thus inevitable, but it is a cost to bear in order to overcome the traditional, undifferentiated and totalitarian mentality in Argentina. A referential text is Gino Germani's "Assimilation of migrants in the urban environment" *[Asimilación de los migrantes en el medio urbano]*, where the migrant situation is studied at the 'environmental', 'normative' and 'psychosocial' levels, from which arise the capacities of *assimilation*, dependent on the categories of

33 Germani (2010 [1962]): "Massive immigration and its role in the modernization of the country" *[La inmigración masiva y su papel en la modernización del país]*.

34 An interesting fact is provided by Germani when analyzing the social groups of the island Maciel, when emphasizing that the "families" of old residence showed "more cooperative and democratic attitudes" while those of recent migration showed "a more authoritarian climate". See Germani (2010 [1967]) 425.

35 Fucito (1999 [1993]) 240–246.

36 Hence many of the dialogical disconnections between Germany and Argentina.

adaptation (capacity of the subjects), participation (which includes the institutions in the reception space) and 'acculturation' (as the learning process of the migrant), all of which produce a general integration.[37] The main ingredient that Germani took into account was the psychosocial factor in relation to the normativity (formal and informal), where the concordance between the expectations of the actors and the normative system would not produce any deviation.[38] Faced with this ideal type of reference, migration produced various social conflicts, however resolvable through good integration. As can be seen, the game between integration and social action redefined the key issue as deviation.[39] From there, it is possible to understand the rapid shift toward North-American criminology as a key issue in legal sociology.

Until then, the question of cultural diversity had not been openly put into play. Its incorporation has, however, been due more to the problem of criminal subcultures than to the question of differentiated identities in Argentine society. It is in this criminological field, in particular, with the reception of the Chicago School, where the issue has been most problematized, but also as a derivation of the problem of integration *via* inclusion. The studies of W. I. Thomas and the social ecologism have particularly served for dealing with the problems of social integration, especially of the immigrants in the *barrios*.[40] This reception was, however, critical because of its deterministic framework. Thus, theories about youth and the way crime is learned through differentiated association have sociologized the dimension of diversity in subcultures.[41] The problem of the subculture is clearly presented from the systemic viewpoint, but the problem is the understanding of deviance and its solution was tinged with a preventive rather than problematizing character of social conflicts in highly differentiated societies. The logic remained urban and characterized as the conflict within an imagined society that, as a result of the actions of several historical folds of discourses, occluded the problems of aboriginal peoples, social movements, gender and the various forms of cultural diversity in the face of the legal system.

37 Germani (2010).

38 Germani (2010) 470: "In a perfectly integrated society, without deviations from the ideal standard, the normative framework would be exactly reflected in the internalized attitudes and expectations of individuals".

39 See the contribution by Alfons Bora in this volume.

40 Park et al. (1967 [1925]); Thomas / Znaniecki (1977).

41 Taylor et al. (1977).

It is perceived, then, as the way in which, in accordance with the North-American sociological imagination, the categories of juridical sociology were defined in Argentina and, from there, as the representation of society with a diversified social structure, with migrations and problems of assimilation that had to be solved by means of proper integration. The formal system of law and the culture of urban reception proved, in any case, an ethical teleologism that, under the logic of modernization, had to subsume the cultural backwardness in the modern-urban society. In the field of socio-legal knowledge, this perspective must always be considered in the light of the strong hegemony of legal dogmatics – in other words, without calling into question the incapacities of the formal legal system. This tension between dogmatic jurists and sociologists was exerting more and more pressure on sociology to dedicate itself to the study of the phenomena of normative application and the functioning of the legal system: access to justice, criminality, theory of the organizations of justice and administration, and so on.[42] An extension of topics was therefore observed under a model of structural-functionalist analysis, although with recent modifications in light of the new legal sociology.

5 From Europe to Latin America, diversity in the context of the legal crisis

The return of democracy in 1983 has been marked as a milestone in the development of social sciences in Argentina. In legal sociology, it would undoubtedly be a foundation for the reception of various authors, but always under the traditional model that characterized the discipline. Clearly, the reception of authors and key themes in thought on diversity will take time to dismantle the theoretical apparatus of the discipline. However, towards the 1990s, a reception of Habermas and the theory of communicative action can be appreciated, which would be read as key in a participative democracy as a transforming factor in the social reality. Although this normativistic aspect of inclusion would be touched by sociology, its use would quickly move toward the field of legal philosophy and legal theory. Legal

42 González / Lista (2011). This pressure can be observed in the constant attempt to remove legal sociology from the curricular plan of the faculties, making them optional or reducing their schedule.

philosophy (in its analytical face) would dominate the political-institutional and cognitive scene during the first decade of democracy in such a way that its influence would bring the thought of law towards philosophy, also dislocating the role of sociology. This first moment of reception, however, was accompanied by a process of decomposition of the social fabric, which would result mainly from the neo-liberal reforms of Menemism.[43] The study of law would thus quickly overcome the question of facticity and validity, awakening a new sociological imagination that could no longer be anchored in structural-functionalist theory or in the reforming illusion of democracy.

Such a crisis of the identity of law that could no longer be thought of as a transforming factor per se along with the increase in social conflict would determine a radical change in the theoretical perspective, especially from 2001 onward. At this time, legal sociology initiated a break with the juridical, transforming itself into a movement of sociologization of the discipline: that is to say, recovering the sociological knowledge before the juridical and ius-philosophical which had been enclosed in a new dogmatic – not without innovations – but, at the same time, maintaining a distinct autopoietic rationality. Indeed, the economic, political and social crisis would configure a double hermeneutic turn in sociology, on the one hand, toward the reception of the most critical European sociology – Foucault and Bourdieu, above all. On the other hand, there was also a decolonial and anthropological turn that would seek to approach Latin-American problems from the local perspective.

In this combination of influences, the productions and bibliographies would gear themselves toward local problems with renewed perspectives: at this time, the concept of diversity together with the concept of multinormativity would penetrate the vocabulary of legal sociology. As for Bourdieu, the reception of his theory would be reduced, above all, to the incorporation of his reflections on the juridical field, proposing a new reading centered on the formation of legal thought and action, which would avert the systemic gaze.[44] Foucault's work would have an impact on two fields. In criminology, it would break with the view on deviation, resending the problem to the production of normality and discipline; but also his "History of

43 Pucciarelli (2011).

44 Bourdieu (2000). This reception can be found ubiquitously in the general bibliography of legal sociology.

sexuality" would produce a strong effect for the study of the problematic of sexual diversity, which reverberates in several works on the LGBT collectives.[45] Radical criticism of the concept of normality would open the door to thinking about diversity by assuming the normative framework of human rights with the recognition of the dignity of the person before state practices and formal law.

The greatest impact would be given not so much by the reception in manuals and texts on sociology, but rather by a bibliography that was incorporated as 'secondary' to deal with specific topics. Therein can be observed an epistemological turn to viewing Latin America through as its own categories and social problems at the hub of the actors, which accentuated the anthropological view displacing the model of statistical sociology.

Two clues serve the understanding of the epistemic basis of this turn. The first was postcolonial positioning with a view from the South. Boaventura de Sousa Santos defines it as

> "[a] set of theoretical and analytical currents firmly rooted in cultural studies but nowadays found in all social sciences, whose common feature is the primacy given to the theoretical and political aspects of the unequal relations between North and South in the explanation or understanding of the contemporary world. Such relations were historically constructed by colonialism, and the end of colonialism as a political relationship did not bring about the end of colonialism as a social relationship, as a mentality, or as a form of authoritarian and discriminatory sociability. For this current the problem is to know to what extent we live in postcolonial societies."[46]

The South is not geographical, but rather incorporates a view from the subaltern sectors under colonial social relation – which is also found in Western Europe. This critical turn makes it possible to understand the rise of subalternist trends and the emergence of a question of alternative modernity that, starting from the margins, would render the logic of power more explicit. Secondly, the normativist bet has as its purpose the recognition and reconstruction of a counter-hegemonic practice from plurality.

This culturalist-critical turn with normativist characteristics possesses the peculiarity of being able to apprehend through its wideness, varied experiences and social demands. On the other hand, from the analytical field it moves the legal sociology toward the knowledge of multi-normativity, study-

45 Gerlero (2009, 2013).
46 Sousa Santos (2006) 39.

ing social groups and spaces taking for granted cultural diversity as a model of comprehension. The grammar of legal sociology has gradually been redefined with rather vague categories, but with a system of autoimmunity in the face of criticism for its effective semantics on an emotional-political level: counter-hegemony, alternative rights, multi-normativity, diversity, collective transformation, the fight against discrimination and exclusion, legal pluralism, cultural citizenship and so on.

Although the South is an encompassing category of non-European-North-American experiences, in Argentina the reception of the sociology produced in Latin America seems to confirm more the geographical dimension than the epistemological one.[47] The influences that have begun to appear as central are those of Boaventura de Sousa Santos, Carlos António Wolkmer, Oscar Correa, – for critical law.[48] The culturalist and plural turn presupposes diversity as an existing reality, although it is blocked by the traditional Western epistemology of the North. There must, therefore, be a 'sociology of absences' to lift the veil that does not allow diversity to be recognized, a 'sociology of emergencies' that allows the visualization of that which was obscured by the western and colonial epistemological paradigm.

This, deserves a particular use of the voice diversity that adds to the epistemological pluralism and, consequently, juridical new subjects to analyze: 1) a cultural diversity that cannot be learned by a general theory; 2) an 'epistemological diversity', that is to say, plural knowledges that allow for alternative law; 3) an intercultural diversity to think about Human Rights in a non-Western way; 4) a judicial practice with diversity – especially for indigenous communities; 5) a diversity of sources of law that recognizes alternative modes of legal creation; 6) a new constitutional organization founded on pluralism and diversity (primarily after the Bolivian experience); 7) a 'demodiversity' to think through the logics of democracy beyond the liberal model, etc.

The European tradition and the narrative on nationality are contradicted by this perspective. The problem is thus observed in the incompatibilities between a constitutional history anchored in the Eurocentrist paradigm and a legal sociology that accompanies a new Latin-American constitutionalism.

47 Sousa Santos/Mendes (2018) 8: "The South is a metaphor for the systematic suffering produced by capitalism, colonialism and patriarchalism."

48 Wolkmer (2018).

In this instance, the question is not sociological but historical, considering the weight of historical narratives, which appears as an obstacle to the unfolding of the new perspective. The incorporation of new problems from Latin America therefore requires the rearrangement of the historical perspective. Criticism of nationalism and statehood somewhat begins to disconnect the European imagination from the traditional historiography of the Argentine Nation (founded in the 19th–20th centuries). However, the reference to the present makes these selective traditions play both in a process of hegemonic dispute.[49]

This new problematic core has produced a recognition of themes that are focused more on anthropology than on structural sociology. To this epistemic picture must be added the process of professionalization of legal sociology research with demands for dialogue with sociologists and anthropologists. There can, then, be seen the emergence of a micro perspective of increasingly ethnographic character on the issue of poverty, territory, studies on political institutions (police, justice, prison), on aboriginal peoples, on disability, feminism and the relationship with patriarchalism, on social movements, local politics in spaces peripheral to the State, criminality and youth.[50]

The approach to sociology – of sociologists – rather than law is reconfiguring the discipline, which includes two central problems, which emerge from the specialized differentiation of socio-legal knowledge with respect to law. On the one hand, the anthropological tendency of the scientific field is generating a complex volume of bibliography that does not provide a global view of Argentine society. This central element of the legal imagination, which is required for the deployment of a legal system thought in the Kelsenian or analytical rational way, is in crisis. On the other hand, and in a logic born of the scientific field, the 'sociologization' of juridical sociology tends to obturate the dialogue with jurists, and, although it demarcates the advance of new perspectives and topics – among which diversity is included –, the isolationism of the new juridical sociology can prepare the ground for the eradication of the discipline from the lecture halls of law faculties.

49 Williams (2009) 148–165.

50 Svampa (2005, 2008); Ossona (2014); Segato (2016); Grimson / Bidaseca (2013); Kessler (2010), and so on.

6 Preliminary conclusions: law, diversity and historical narrative

As can be seen, the appropriation of various theories and fields of research has been a recurrent practice in the formation of the sociological imagination in Argentina, and, although many of them have been, in part, rejected for the ethical problems of their premises (Darwinism, for example), it can be affirmed that their presence has been sedimented in a particular tradition of thought and representation. In this way, beyond the outdated theoretical formation that accompanied the view of Argentina as a European universe (transplanted), these layers of significance persist and are active in the actual legal representation of society. This can be seen in the invisibilization of the problems of the native peoples *(pueblos originarios)* of Argentina, especially in view of the recent deaths of Santiago Maldonado and Rafael Nahuel (2017). These cases and the way in which they were treated by the press and the collectivity, show precisely a process of invisibility based on a foundational trauma, which is expressed in the reinforcement of the myth of white and European Argentina, constituent of the collective memory – especially, metropolitan. Gayol & Kessler have recently remarked:

> "We know that Argentine history is marked by the killing and expulsion of the aboriginal communities from their lands, as well as by the denial of this fact, and by the absence of the aboriginal communities in the shaping of our national identity, by a significant part of the population. The traditional narrative of the melting pot of races and its centrality in the basic school formation, as well as the scarce vision from the metropolitan area of the topic, contributed, we think, to not being able to install the topic with the urgency that it possesses."[51]

In this traumatic context, in a moment of post-truth transmitted by the media, the new juridical sociology – which is based on the presupposition of diversity to think about law – must face daily resistance not only in the classroom but also in the juridical-judicial field. The politicization implied by the new sociology is then subjected to a series of traumatic displacements that quickly label any intervention in favor of diversity as the actions of 'leftists'. This situation harkens back to the latent trauma of Argentine democracy – the last military dictatorship. Thus, selective traditions continue to play a fundamental role societal perspective, which deserves historical reconstruction, something which rarely penetrates the classrooms of law. It is therefore worth highlighting the importance of legal history and a look

51 Gayol/Kessler (2018) 243.

at diversity that historicizes the contexts of production of the prejudices found in Argentinian jurists.

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