

PETER COLLIN
AGUSTÍN CASAGRANDE (EDS.)

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

Vol. 1: Fundamental Questions

Agustín Casagrande

Autonomy, Subjectivity and Diversity:
Genesis and Logic of a Juridical-political Concept
in Argentina (19th–20th Centuries)
| 581–597



MAX PLANCK INSTITUTE
FOR LEGAL HISTORY AND LEGAL THEORY

Autonomy, Subjectivity and Diversity: Genesis and Logic of a Juridical-political Concept in Argentina (19th–20th Centuries)

1 Introduction: Autonomy between space and subjectivity

The concept of autonomy was unknown to the legal debate of traditional Hispanic-Latin American law of the 17th and 18th centuries. In order to think about the categories of what today would be called autonomy in terms of normative self-regulation, the signifiers that covered the ground were sovereignty, jurisdiction, or economic power. This state of affairs may be corroborated by the absence of the word in dictionaries as well as in jurisprudential knowledge.¹ As Alejandro Agüero has demonstrated, in the case of Argentina, autonomy entered the conceptual framework of public law as part of a move in the construction of a nation-state that would disarm the pretensions of the provinces, which called for a ‘provincial sovereignty’ in the context of an unstable language of local federalism. On the basis of that dispute, the concept of autonomy would be linked to the progressive disarticulation of a local order to permit the formation of a state founded on the idea of nation, for which it would use a new blend of languages deriving from international law and the nascent vocabulary of administrative law to suture the internal conflict.² In this way, the word ‘autonomy’ meaning a capacity for self-regulation within a given space would be articulated through a counter-conceptual opposition to ‘sovereignty’. That is to say, amid the constitutional tension resulting from efforts to build a Republic composed of different provinces, the concept of sovereignty would be reserved exclusively to designate the supreme attribute of governance, which remained in the hands of the ‘Nation’. Hence, the use of the word autonomy as an attribute of the provinces meant a diminution of their political and jurisdictional role. This pragmatic use of a displacement of signifiers allowed

1 AGÜERO (2014) 341–349.

2 AGÜERO (2014); CHIARAMONTE (1993).

old ambitions, conveyed through claims to provincial ‘sovereignty’ to be dispelled.³ Thus, as a consequence of the birth of a new language that resorted mainly to history for the construction of the imaginary subject of sovereignty (the Nation), a space would also be opened for the linguistic incorporation of new knowledge which, in the hands of constitutional law and history (1870–1930), would streamline the semiotic artefact of law by incorporating formulas that would become hegemonic towards the middle of the 20th century.⁴ Indeed, the word ‘autonomy’ would later be given muscle by the novel knowledge of Administrative Law, which would not only provide new hermeneutical resources for the deployment of the state phenomenon in progress but would also reinforce historiography by furnishing more refined concepts that would serve anachronistically to narrate the history of the Nation.⁵

This new phase of public law would find in territorial divisions new counter-concepts that would end up occluding the original sovereignty-related usage and inscribing the concept in a theory of organization that, by taking the state as its fountainhead, regarded anything that was not state sovereignty as the product of administrative dismemberment. In this way, the word ‘autonomy’ would be politically neutralized by being conceived as one of the forms of administrative organization. From then on, ‘autonomy vs. autarchy’ would be the dichotomous categories used to denote the degrees of self-government arising from practices of ‘centralization’ or ‘decentralization’ that were intended to be optimal for the scientific management of resources.⁶ Not in vain did Rafael Bielsa, one of the leading authorities on the formation of administrative law, reject autonomy on the grounds that it was a political resource for evading state control. For him, those institutions struggling for autonomy – universities, for example – were necessarily suspect.⁷

As can be seen, although for the contemporary reader this originally Kantian term clearly suggests a paradigm of practical philosophy corresponding to the actions of the subject, its first application in Argentina had to do

3 On language and performativity see: PALTÍ (2009) 13–22.

4 CHIARAMONTE/BUCHBINDER (1992).

5 CASAGRANDE (2014) 251–254.

6 CASAGRANDE (2014) 251–254.

7 BIELSA (1935) 103.

with the development of constitutional and administrative law. This is not surprising. That tardy evolution is bound up with the slow process of dissolving the structures of *Derecho Indiano*, which, in conformity with the logic of *ius commune*, looked more to status than subjectivities and, consequently, dealt with corporate territorial entities as bearers of privileges since it was not yet vertebrated around rights structured under the paradigm of the subject.⁸ Thus, the view of the city and, beyond it, the province as classic thorns in the side of political order shaped the constitutional structure. Only later would the legal subject, bearer of subjective rights, emerge from this progressive problematization; and only then would that subject's autonomous character emerge with respect to the 'Republic' that had to safeguard its rights.⁹ This new conceptual fold would allow the voice of autonomy to gradually migrate from the sphere of constitutional-administrative law to enter the sphere of private law.

That route was not a straight line. The very analysis of the concept of autonomy – which, in its civil law aspect, would merge into the syntagma 'autonomy of the will' – entails a two-fold, historical-conceptual critical operation. The first part of that operation requires the re-composition of the translation process in order to historicize (temporalize) the context of the syntagma's incorporation into Argentina's Ius-civilist tradition. The second part entails bringing to light how the critical use of this principle made it possible from within the sphere of civil law to conceive different forms of 'autonomy', which would produce, in turn, special categories of rights and diverse forms of subjectivity.

2 Autonomy of the will: Individualism and sociality

In the German-speaking world the concept of *Autonomie* has served to explain the freedom of subjects as well as the formation of a particular right of associations which breeds diversity through multi-normativity.¹⁰ In the case of Argentina, the concept has been reduced to the possibility of disposing of patrimonial property by means of a contract between parties, which, although subject to public order, manifests the freedom to contract. That is

8 CLAVERO (1990); TARELLO (1988).

9 CASAGRANDE (2018).

10 COLLIN (2014).

to say, what would later be recognized as ‘autonomy’ was to be found in the sphere of expressions of a subjective will that operated as a ‘source of obligations’.

In the *ius-civilist* doctrine there is widespread jurisprudence ascribing this principle to that stipulated by art. 1197 of the Civil Code of Vélez, which was in use from 1871 to 2015.¹¹ However, legal doctrine only began to identify the word ‘autonomy’ with art. 1197 of the Civil Code at the beginning of the 20th century: when the Code was drafted, no term was available to denote that meaning. Indeed, the word was not part of the language of the Civil Code of Velez, nor was it known to the doctrine that presided lessons in civil law at the University of Buenos Aires.¹² Rather, instead of tracing ‘autonomy’ to its German source, it referred back to Hispanic law as the origin of that norm. Thus, in its preliminary rulings the Supreme Court stated:

“The [law] of Spain, in imitation of the Roman, established the same principle in laws 6, 7, 5 and 1^a, title 11, Partida 5^a; and in consonance with that radical jurisprudence our current Civil Code was established and said [...]: ‘The conventions made in contracts form for the parties a rule, to which they must submit as to the law.’”¹³

As can be seen, for the Supreme Court the article was treated as a continuation of the Hispanic model.

However, for some doctrine, the interpretation of the text emphasized Velez’s note referring to the Civil Code of France (art. 1134), where the key concept was the ‘will’ of the subject. As a consequence, the ‘will’ of the subject, the very essence of subjective modernity, made its appearance, but the concept of autonomy was not central to declaring the subject’s freedom.¹⁴

In the first half of the 20th century this traditional civil law reading would be revised with the introduction of the concept of autonomy. Why did the tradition change and how did this principle arrive in the language of Argentine civil law? The crisis experienced by the liberal model in the face of the

11 Art. 1197: “Las convenciones hechas en los contratos forman para las partes una regla a la cual deben someterse como a la ley misma.” [“The conventions made in the contracts form for the parties a rule to which they must submit as to the law itself.”]

12 LLERENA (1900) 297–298.

13 Argentina’s National Supreme Court, Fallos (decisions): 23, 62, 1882.

14 MACHADO (1899) 529–530; SEGOVIA (1894) 195.

problems generated by industrialization and migration provided the setting for the translation. The phenomenon that would come to be known as the ‘Social Question’ raised a very specific question about the true autonomy of the workers in a situation of need to express a will that would be binding on them.¹⁵ Thus, the abstract equality that 19th-century civil thought took for granted as the theoretical basis for its functioning was problematized.¹⁶ In this context, looking back at the past ceased to be useful and the law had to be regenerated on the basis of the new civil doctrines that were being formulated in Europe, particularly in France.

This change of perspective would be given flesh in an innovative civil doctrine. In particular, it would be Alfredo Colmo and, through him, Raymundo Salvat, who looked to León Duguit and François Géný as models to help understand the need for civil law to be overhauled.¹⁷ In 1916 Alfredo Colmo published a work entitled *La Técnica Jurídica en la obra del profesor Géný* where he synthesized the change of perspective of French civil law theory and characterized its theoretical nature as

“ly[ing] in the almost systematic abandonment of what is common to French authors: of a jurisprudentialism, of a scientific fragmentation and of a casuism that are simply enervating. There are very few works of any importance which raise juridical edifices, ascending in high flight to the superior regions of law, where the latter rubs shoulders with other social disciplines (economy, politics, history, etc.).”¹⁸

On the other hand, he warns that “this evolution was due to the German example, above all to that of such eminent and brilliant scholars as Ihering, and to the adoption of the *Bürgerliches Gesetzbuch*.”¹⁹ Here we can recognize how the German method and language would be appropriated by Argentine civil law as mediated by the French channel. In this translation, however, some doctrinal usages of the originally German concept of Autonomy would be lost.

15 ZIMMERMANN (2013).

16 CARONI (2013) 48–49.

17 On the influence of Duguit in Argentina through its 1911 conferences see: ZIMMERMANN (2013) and HERRERA (2014). In fact, one of the conferences given at that time was called “*La autonomía de la voluntad*”, where Duguit presented a severe critique of the individualism of this principle.

18 COLMO (1916) 6.

19 COLMO (1916) 8.

As Jean-Louis Halpérin has demonstrated, both in the language of the Civil Code of 1804 and in the doctrines of the time, there was no such theory or term of any Kantian origin.²⁰ It would be later, through the conflicts resulting from private international law, that the expression would enter the French legal language. Only then would French civil law doctrine undertake its problematization, in particular, in François Géný's appropriation of the concept. However, Géný would filter the concept through a comparative national history by recovering the principle of the 'autonomy' of the *private will* and discarding the German version of 'legislative autonomy'. Indeed, he wrote:

“Telle semble bien être la portée de l'*Autonomie*, reconnue comme institution parallèle à la législation d'État par les juriconsultes allemands. [*This was* “l'autonomie législative, en droit allemand”] – Toutefois, cette institution, qui ne va pas sans contrarier la souveraineté, exclusive et jalouse, de l'État moderne, et qui, par suite, perd de plus en plus de son importance, n'a plus, sur le terrain du fait, aucun domaine d'application incontestable en France, où tout régime de castes est aboli, la noblesse elle-même ne représentant plus qu'une distinction historique – [...] les groupements, doués d'une véritable homogénéité corporative, ne lient leurs membres par des statuts que suivant la loi générale et dans les limites fixées par celle-ci (autonomie privée en vertu de la liberté des conventions).”²¹

As a result of this French mediation, the civil law usage of *autonomy* that would later be recovered in Argentina trained its sights on the legal subject and his 'private autonomy', discarding the particular German usage (legislative autonomy) which squared ill with the idea of state sovereignty and the principle of equality. 'Private autonomy' became whatever action was taken in 'freedom of conventions'. Hence, after such mediation and appropriation of the German term via the French, the principle was condensed for direct assimilation into article 1197 of the Civil Code.

Thus, when Alfredo Colmo first began to use the expression, he no longer considered “legislative” gravitation but only the subjective matrix of will. In his *Técnica Legislativa del Código Civil Argentino* of 1917 – dedicated “*Al maestro François Géný*” – he dealt with the political problem of the Civil Code in connection with the tension between individualism and the “sociality of the law”. In this regard, he criticized Vélez and warned that “it is an

20 HALPÉRIN (2014).

21 GÉNY (1913) 58–59.

essential and mainly individualistic code”. Within this critique of individualism, the concept of autonomy made its appearance:

“Art. 1197 enshrines an exaggerated extent of the autonomy of the private will: hence it follows that any convention has the force of law as long as it does not attack inalienable rights; and as long as it is not possible to have it annulled in accordance with the stereotypical principles of error, malice or violence. There is, however, much more than one situation in which particular conventions compromise collective demands: such is the case of usurious loans [...], of labor contracts entered into in disgraceful conditions by workers pressed by hunger, who do not hesitate to accept clauses stipulating shameful fines or the arbitrary withholding of their wages; and so on.”²²

On the coat-tails of the term autonomy, a radical critique emerged which operated on different planes. Epistemologically, thinking about civil law could not be divorced from historical, social and political experience, under the light of which the principle of ‘autonomy of the will’ had become a subjective excess which did not respect the collective role of law. Hence, in value terms, the principle itself was not conceived in a positive way, as equivalent to the legal subject’s freedom, but had to be thought objectively in order to take stock of the injustice committed by not bearing in mind those ‘disgraceful conditions’.

This social viewpoint was also shared by the authors of the 1936 Civil Code, a failed reform which, in its message of enactment, stated:

“Above all, and sometimes to the detriment of the autonomy of will and the sovereignty of contracts, we wanted our Code to breathe an atmosphere of less individualism, of greater ethics and collective solidarity. Thus, the principles of good faith and feelings of humanity constantly inspire the contractual rules, in order to limit powers that seemed excessive to us or to allow the emergence of new rights previously unknown.”

That social perspective was also shared by commentators on the 1936 Civil Code Reform project. Professor Risolía said in a seminar that “as a consequence of this exacerbated social problem, the individualistic codes inspired by the liberal movement of the 19th century have suffered the attack of reformers sympathetic to the new theories.” He went on to say:

“Positive legislation is naturally affected by this convulsion of ideas. It is not a matter of drawing up an index, but [...] the autonomy of the will is reduced in such a way

22 COLMO (1917) 91.

that contracts, formerly tributaries of morality, of custom, of tradition, have now turned towards the economic needs that dominate them.”²³

Years later, after the 1936 reform project was dead and buried, the question of autonomy and its limitation remained a central theme of doctrinal study. In volume V of his classic *Tratado de Derecho Civil Argentino* (1946), Raymundo Salvat provided a personal summary of the principle’s history. When analysing article 1197 he wrote: “it is the principle of the autonomy of the will, whose origin was in Roman law, whence it has passed to ancient and modern legislations, stimulated in the latter by the juridical and economic individualism that has characterized them for so long.”²⁴ As can be seen, with one stroke of the pen, he erased the history of the concept, transforming it into an idea that had been transmitted without interruption from Rome to the present. Later on, he took up Colmo’s criticism of the principle’s excessive individualism. However, Salvat would limit it for fear of state intervention in private contracts:

“The principle of the autonomy of the will has been severely criticized: it has been said that under its aegis, in many cases the greed and petty interest of unscrupulous persons will prevail over the accepted interests of society; that one of the parties will frequently impose abusive conditions on the other party, which the latter will be obliged to accept for reasons of necessity and circumstance, as is the case with usurious stipulations and others which represent a real attack on the social interest. These criticisms are in part well-founded. In fact, there is no overlooking the dangers of usury and other stipulations that actually compromise the economic future and the freedom of work of the weak party to the contract. But it cannot be ignored that the principle of the autonomy of the will has been and is also the source of incalculable progress in the economic order [...]”²⁵

For Salvat, the just solution was to find a middle ground between the autonomy of private will – which brought advances and economic progress – and intervention to limit it. Thus, as early as 1946, we catch a glimpse of the total assimilation of the concept that once again pivoted on the tension generated by socialization and the fear of state intervention.

As can be seen, the concept of autonomy entered doctrine in the middle of a process to re-configure civil law that spanned two historical phenomena: 19th-century individualism and 20th-century socialization. Thus, the critical

23 RISOLÍA (1940) 24.

24 SALVAT (1946) 105.

25 SALVAT (1946) 107.

gaze of the authors of the first half of the 20th century was blinkered by the limits imposed by the violence of 19th-century abstraction. Thus, too, the inequalities that had been covered over by the codifying mentality of the 19th century reappeared once law and society began to be viewed as an integral whole for the first time. As a result, at the very moment of its incorporation into juridical language, the concept of autonomy would be put in check, especially because of the ‘pressure’ to which “weak party to the contract” was submitted. Therefore, in order for the principle to be maintained, the abstract assumption of contractual freedom between equal parties had to be qualified in order to allow for the social conditions of the subjects. Thus, this dent to a structural element of civil law not only led to recognition of a wide range of social statuses under contractual obligation, but also to thought being given to the need for a new right that contemplated this “limited autonomy” of broad social sectors. Labor law would be the consequence of a social diversity that broke through the opacity of civil dogmatics.²⁶

3 Limited autonomy, regulatory autonomy: inequality and compensation

Labor law in Argentina was developed in tension with civil codification as it trained its sights on the relative situations of abuse and necessity between parties who could no longer be regarded as equals. Thus, when plans were being made for a special contract for employment, there was debate over whether it take the form of a modification of the Civil Code or, being an ‘autonomous’ branch of law, it should have its own tailored legislation and courts. The inequality inherent in the employment relationship entailed denying the *autonomy of the will*. In fact, one of the fathers of Labor Law in Argentina, Alfredo Palacio, wrote in 1930:

“If we study the Civil Code and look at article 1197, which establishes that the conventions made in contracts form for the parties a rule to which they must submit as to the law itself, we find the principle of autonomy of the will enshrined by the regime of economic liberalism. Modern labour legislation combats this legal provision by holding that in the private contract of a worker and a capitalist, the former

26 CARONI (2013).

is not a free agent, and that the time for which he can freely sell his labour force is the time for which he is obliged to sell it.”²⁷

It can be seen that by 1930 the concept of ‘autonomy of the will’ was already circulating among legal experts and that its limitation was central to the construction of a legal doctrine more in line with social reality. Hence the emergence of some premises of labor law, such as, for example, the ‘limitation of the autonomy of the will’ or ‘normative (collective) autonomy’.

The consequences of the principle of autonomy are key to thinking about the diversity of identities that the Labor Law was establishing. On the one hand, the social question implied adopting new premises to account for the juridical phenomenon, premises which would clear away the opacity of civil law dogmatics. This sociological, historical and political view of law discovered a diversity of situations (and status) that had been occluded by the premises of 19th-century liberalism. This, in turn, enabled a new subjectivity to arise from the separation between the needs of the private-civil law universe with respect to that of the world of work. As a consequence of that dialectic, new identities would arise that would be considered under the paradigm of the structural inequality of capitalism. This new legal subject (the worker) would accrue a novel identity proper to it that took into account its situation in the social system and required the due protection of the state; consequently, a distinction was introduced with respect to the principle of contractual equality.

Thus, the recognition of limited autonomy and the regime of collective agreements led to regulatory diversity which, from 1945 onwards, would also manifest itself as the social and cultural political identity of the worker vis-à-vis the rest of society. At the political level, the consequence would be confrontation between the world of labor and the so-called “oligarchy”.²⁸ But that was only one facet. Within the labor world, the suspension of the ‘autonomy of private will’ and the consolidation of a contractual practice conceived in terms of whole unions would also lead to the construction of diverse identities among the actors that joined different unions (depending on the labor branch). This is what explains why a worker identified with

27 ALFREDO PALACIO (1930), *La democratización de la enseñanza*, in: *Anales de la Facultad de Ciencias Jurídicas y Sociales de la Universidad de La Plata*, tomo V, 376. Quoted by STAGNARO (2012) 89–90.

28 ADAMOVSKY (2009).

Peronism would also have his identity defined with respect to the union he belongs to.²⁹

From the 1950s the anti-Peronist movement (which brought together socialists, conservatives and the Catholic Church) defended the cause of the ‘middle class’ as opposed to the Peronist worker. It was a thrifty, educated, independent class in which the key stakeholders were the ‘liberal’ professions – that is, those that did not depend on a union. Inevitably, that tension had an impact on how the autonomy of will was observed. The terminology of the different pension systems is illuminating in this regard: workers exist in a ‘relationship of dependency’, while the liberal professions are considered ‘autonomous’. So, the adscription to one pension system or another constitutes a symbol of status and class.³⁰ As a result, autonomy partially recovered its role as signifying independence, freedom and status and would temporarily gain the ascendancy during the anti-statism that accompanied the neo-liberal reforms of the 90’s.

The neoliberal doctrine sought to expunge the labor imaginary by re-founding a subject (even an employed subject) with full autonomy of will and thereby undermining the subjectivity created by law and politics between 1930–1989. This erosion, which has been painstakingly analysed by labor sociologists paved the way for the return of an individual subjectivity that is no longer recognized as a worker and for the consequent re-configuring of the way the social world is represented.³¹ Thus, today, there is a discourse which tends towards meritocracy, radical subjectivity, and detachment from labor and collective ties and consolidates the eradication of labor identity by privileging cultural diversity over social or labor diversity. Hence, the continued attempts at labor reform and the discourses that further this goal.³²

4 Autonomy as *Leitbegriff*: the return of the subject

The radical critique of the state, the trade unions and any space for collective thought by the hegemonic discourses of neoliberalism have inaugurated a

29 LOBATO (2004).

30 GOFFMAN (1951).

31 MÚÑIZ TERRA (2012).

32 VASILACHIS DE GIALDINO (1997).

reconfiguration of the concept of autonomy. If in the 1930s its wings were clipped to avoid social conflict, in recent decades it was reformulated to suit a society broadly characterized by individualism and ‘singularization’. This pattern was not only local but global, too.³³ In the case of Argentina, a market-driven configuration of the subject was further apparent; in other words, consumption became the prime indicator of the subject’s social status and autonomy as, for a broad swathe of society, diversity manifested itself in the consumption of differentiated cultural goods. Meanwhile, for those vast sectors of the population excluded from the market model, identity was territorialized on the basis of structures defined no longer around labor but *barrios*.³⁴

This new context was defined by the passage from “citizens to consumers”, while the ‘autonomy of the will’ was recovered to signify the ability to negotiate in the market, but without state interference.³⁵ However, this claim to freedom was quickly jeopardized by inequality before an increasingly concentrated market. Thus, civil law turned its attention to ‘consumer law’ and its aim “to protect consumers from entrepreneurs who produce and put into circulation goods and services for consumption”.³⁶ Consequently, in spite of a new anti-statist configuration, social self-organization was sought through the ‘consumer associations’. This social (non-state) space intended to undermine the principle of art. 1197 of the Civil Code and therefore to avoid any ‘abuse of rights’ obtaining on the disadvantageous position of the consumer. A new limitation thus arose: the limitation of the autonomy of the will of the promisor. It sought to alleviate the situation of consumer helplessness vis-à-vis companies; thus, although the market moved towards self-regulation where the freedom of individuals was exercised without any interference from the state, the concept of autonomy soon entered a crisis.³⁷ Autonomy began to be viewed as the possibility of configuring a differentiated subjectivity through a logic of consumption-defined *distinction*.³⁸ This reinstatement of private autonomy as a capacity to choose would be funda-

33 RECKWITZ (2018).

34 SVAMPA (2005).

35 LEWKOWICZ (2006) 19–25.

36 GARRIDO CORDOBERA (2015) 2.

37 Article 42 of the reformed 1994 National Constitution deals with consumer law.

38 BOURDIEU (1998).

mental for another usage that made the concept the rationale for setting the ideal of subjects of right on a plane of equality, but within the cultural diversity of consumption.

At present, especially from 2001 onwards, social movements have re-appropriated the concept, expanding it from the exclusive context of consumption to enter the spheres of equality and personal freedom. This renewed paradigm in which the concept of autonomy has been inserted gradually no longer refers to contracting (or contractual freedom) but to the field of human rights. In fact, in the last two decades the topic of human rights has grown to become a paradigm from which to understand the law, and even an interpretative source of the civil law – new Civil and Commercial Code (art. 2). This is a response to an integralist take on the dignity of the person and democratization that pursues a society conceived on the basis of diversity.

However, for this to come fully to fruition, attention must be paid to the activities of social movements. They have been mounting a political bid to realize rights on the basis of diversity through the concept of autonomy. One example of this is the spread of autonomy beyond the sphere of economic contracts to considered as a right in the enactment of the law of marriage equality, which pursues a very specific agenda in terms of gender and diversity. Likewise, the term ‘autonomous’ has begun to break loose of images of disability (*discapacidad*). Thus, far from seeking the tutelary role, in place since the 19th century, of the state of the ‘disabled’ (*discapacitado*), modern international legislation and modern doctrine on the subject seek the autonomy of people with different abilities. In these regulations, autonomy is linked to a ‘dignity’ ensured through “individual autonomy, including the freedom to make one’s own decisions and the independence of persons”.³⁹

A final field of law in which the concept has received much attention in the last fifteen years is gender studies, where the principle of ‘autonomy’ has been linked to the possibility of establishing an equality policy that addresses three fundamental aspects: ‘economic autonomy’, ‘physical autonomy, free-

39 Convention on the Rights of Persons with Disabilities, approved by Law 26.318. In the same sense, article 152 ter. of the new Civil and Commercial Code states that decisions on disability will affect “individual autonomy” as little as possible. It is only at this point that the concept enters the legal field.

dom and rights' and 'autonomy in decision-making processes'. These correlative fields call into question the asymmetric relationship in which economic and legal institutions – of patriarchal origin – place women. In the field of gender studies, the logics of the labor market – in its production of inequalities –, the violence against women that affects physical and moral integrity, and the impossibility of political participation fostered by the state and its institutions have come in for particular criticism.

5 Conclusion. Autonomy: From will to diversity

The concept of autonomy in the history of Argentine legal languages is central. In its passage from the field of public to private law, there was a movement from territorial spaces and political institutions towards a vision that cast the subject of bourgeois-private law as the main actor of autonomy. This passage reveals how the concept's appropriation in private law produced a diversity of social status, without being able to contain the social conflict that would occur in the first decades of the 20th century. Indeed, the discursive retreat that served as a basis for its adoption (the problematization of the social question) facilitated rupture with the very postulate of equality that the concept had implied in the 19th century, giving rise to a constellation of diverse identities among workers (which would derive in labor law) that countered the bourgeoisie as an exclusive model of representation of social relations. However, the concept did not remain locked in this context but moved on to cultivate another semantic field when confronted, first, with the neoliberal discourse proposing an egalitarian reformulation through the simplification of social tensions under aegis of the market and the consumer; then, reaching its culmination in its assimilation into the field of human rights as the basis for the development of the recognition of diversity and equality.

At those different moments, what can be observed are the political uses of the concept, which behaves like a genuine *Leitbegriff* of the social movements of the region. This is evidenced in the internal temporalization of the concept that connects with the past by denouncing the lack of freedom implied by not enjoying an autonomous life, while the struggle for such freedom is expressed in the search for a greater independence that allows the diverse subjectivity of social groups to be expressed. What is significant is its current politicized projection as a way of thinking diversity in an exaltation of

autonomy. While in the 1930s it mounted a critique against an autonomy of the individual will that was seen as an abstraction that occluded divergent social positions and the conflict inherent to the mode of production, today we are witnessed to the politicization and social struggle of individuals claiming full autonomy and linked by a common problematic (solitude-common).⁴⁰ This new phase throws fascinating light on how a juridical-turned-political concept vertebrates the potentials and limitations of social protest. Autonomy shifted from state protection to a form of civil self-organization, so that the field of work became closer to legal sociology than to traditional civil law. The new connections between these disciplines are promising and the concept of autonomy currently provides much food for thought which, taking political philosophy and law as its instruments, will straighten out social phenomena.

Bibliography

- ADAMOVSKY, EZEQUIEL (2009), *Historia de la clase media argentina. Apogeo y decadencia de una ilusión, 1919–2003*, Buenos Aires
- AGÜERO, ALEJANDRO (2014), *Autonomía por soberanía provincial. Historia de un desplazamiento conceptual en el federalismo argentino (1860–1930)*, in: *Quaderni fiorentini per la storia del pensiero giuridico moderno* 43,1, 341–392
- ALEMÁN, JORGE (2012), *Soledad Común: Políticas en Lacan*, Madrid
- BIELSA, RAFAEL (1935), *El problema de la descentralización administrativa*, Buenos Aires
- BOURDIEU, PIERRE (1998), *La distinción. Criterios y bases sociales del gusto*, Madrid
- CARONI, PIO (2013), *Lecciones de historia de la codificación*, Madrid
- CASAGRANDE, AGUSTÍN (2014), *Autonomía y descentralización en la construcción del Estado argentino (1860–1940). Por una historia política de los conceptos jurídico-administrativos*, in: *Quaderni fiorentini per la storia del pensiero giuridico moderno* 43,1, 251–290
- CASAGRANDE, AGUSTÍN (2018), *Para una historia del derecho público en la Argentina (siglos XIX–XX): Tradiciones, saberes, conceptos*, in: *Academia. Revista sobre enseñanza del Derecho* 16, no. 31, 37–66
- CHIARAMONTE, JOSÉ CARLOS (1993), *El federalismo argentino en la primera mitad del siglo XIX*, in: CARMAGNINI, MARCELLO (ed.), *Federalismos latinoamericanos: México/Brasil/Argentina*, México

40 ALEMÁN (2012).

- CHIARAMONTE, JOSÉ CARLOS, PABLO BUCHBINDER (1992), Provincias, caudillos, nación y la historiografía constitucionalista argentina, 1853–1930, in: Anuario IHES (Instituto de Estudios Histórico Sociales) 7, 93–120
- CLAVERO, BARTOLOMÉ (1990), Almas y Cuerpos. Sujetos del derecho en la edad moderna, in: Annali della Facoltà di Giurisprudenza di Genova, Studi in Memoria di Giovanni Tarello, Milano, vol. I, 153–171
- COLLIN, PETER (2014), Konzeptionen, Spielarten und Wechselbeziehungen administrativer und justizieller Autonomie in Deutschland im späten 19. und frühen 20. Jahrhundert, in: Quaderni fiorentini per la storia del pensiero giuridico moderno 43,1, 166–228
- COLMO, ALFREDO (1916), La Técnica Jurídica en la obra del profesor Gény, Buenos Aires
- COLMO, ALFREDO (1917), Técnica Legislativa del Código Civil Argentino, Buenos Aires
- GARRIDO CORDOBERA, LIDIA M.R. (2015), El derecho del consumidor y su influencia en el derecho contractual [= cap. X de: Incidencias del Código Civil y Comercial – Contrato en general, Buenos Aires 2015, 219–235], online (sin paginación): http://secretarias.unc.edu.ar/acaderc/el-derecho-del-consumidor-y-su-influencia-en-el-derecho-contractual/at_download/file
- GÉNY, FRANÇOIS (1913), Science et technique en droit privé positif: nouvelle contribution à la critique de la méthode juridique, Paris
- GOFFMAN, ERVING (1951), Symbols of Class Status, in: The British Journal of Sociology 2,4, 294–304
- HALPÉRIN, JEAN-LOUIS (2014), L'autonomie privée en France: un concept cantonné ou rejeté?, in: Quaderni fiorentini per la storia del pensiero giuridico moderno 43,1, 461–480
- HERRERA, CARLOS MIGUEL (2014), León Duguit en Buenos Aires: sociabilidad y política en la recepción de una teoría jurídica, in: PROBLEMA. Anuario de Filosofía y Teoría del Derecho 8, 147–177
- LEWKOWICZ, IGNACIO (2006), Pensar sin Estado. La subjetividad en la era de la fluidez, Buenos Aires
- LLERENA, BALDOMERO (1900), Concordancias y comentarios del Código Civil Argentino, Buenos Aires
- LOBATO, MIRTA Z. (2004), La vida en las fábricas. Trabajo, protesta y política en una comunidad obrera, Berisso (1904–1970), Buenos Aires
- MACHADO, JOSÉ OLEGARIO (1899), Exposición y Comentario del Código Civil Argentino, Buenos Aires
- MÚÑIZ TERRA, LETICIA (2012), Los (ex) trabajadores de YPF. Trayectorias laborales a 20 años de la privatización, Buenos Aires
- PALTI, ELÍAS (2009), El momento romántico: nación, historia y lenguajes políticos en la Argentina del siglo XIX, Buenos Aires
- RECKWITZ, ANDREAS (2018), Die Gesellschaft der Singularitäten. Zum Strukturwandel der Moderne, Frankfurt am Main

- RISOLÍA, MARCO AURELIO (1940), *El Espíritu de la Legislación Civil y su Reforma*, Buenos Aires
- SALVAT, RAYMUNDO (1946), *Tratado de Derecho Civil Argentino*, vol. V: Fuentes de las obligaciones, Tomo 1: Contratos, Buenos Aires
- SEGOVIA, LISANDRO (1894), *El Código Civil Argentino Anotado*, Buenos Aires
- STAGNARO, ANDRÉS (2012), *Los Tribunales del Trabajo como escenario del conflicto entre el capital y el trabajo (1948–1960)*, La Plata
- SVAMPA, MARISTELLA (2005), *La sociedad excluyente. La Argentina bajo el signo del Neoliberalismo*, Buenos Aires
- TARELLO, GIOVANNI (1988), *Cultura giuridica e politica del diritto*, Bologna
- VASILACHIS DE GIALDINO, IRENE (1997), *Discurso Político y prensa escrita. Un análisis sociológico, jurídico y lingüístico*, Barcelona
- ZIMMERMANN, EDUARDO (2013), *Un espíritu nuevo: la cuestión social y el derecho en la Argentina (1890–1930)*, in: *Revista de Indias* 73, no. 257, 81–106