

**LAW AND SOCIAL SCIENCES: A REFLECTION ON HOW SOCIAL SCIENCES
CAN CONTRIBUTE TO THE DEVELOPMENT OF RESEARCH IN THE LEGAL
FIELD**

***DIREITO E CIÊNCIAS SOCIAIS: UMA REFLEXÃO ACERCA DE COMO
INSTRUMENTOS DAS CIÊNCIAS SOCIAIS PODEM CONTRIBUIR PARA O
DESENVOLVIMENTO DA PESQUISA NO CAMPO JURÍDICO***

***DERECHO Y CIENCIAS SOCIALES: UNA REFLEXIÓN SOBRE CÓMO LOS
INSTRUMENTOS DE LAS CIENCIAS SOCIALES PUEDEN CONTRIBUIR AL
DESARROLLO DE LA INVESTIGACIÓN EN EL CAMPO JURÍDICO***



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ABSTRACT: This scientific article aims to demonstrate how instruments inserted in Social Sciences can contribute to the legal field. For this, the approach of the relationship between both spheres will present (i) the possible reasons for the distancing between those areas; (ii) the inevitable consequences of this absence of dialogue; (iii) and, through examples, demonstrate that research that used methods from different areas of Social Sciences could see beyond the Law, to highlight the need to strengthen ties in the same field, even with different perspectives. In this way, it will be possible to understand how these two spheres that do not dialogue with each other can contribute to the advancement of the legal field.

KEYWORDS: Empirical research. Law. Social Sciences. Methodology.

RESUMO: *O presente artigo científico objetiva demonstrar como instrumentos inseridos na área das Ciências Sociais podem contribuir para o campo jurídico. Para isso, a abordagem da relação entre ambas as esferas pontuará (i) as possíveis razões do distanciamento; (ii) as inevitáveis consequências dessa ausência de diálogo; (iii) e, por meio de exemplos, demonstrar que pesquisas que utilizaram métodos de áreas das Ciências Sociais puderam enxergar além do Direito, a fim de denotar a necessidade de se estreitarem os laços do mesmo campo, mesmo que com diferentes olhares. Desse modo, será possível compreender como essas duas esferas que não dialogam entre si podem contribuir para o avanço do campo jurídico.*

PALAVRAS-CHAVE: *Use até 05 (Pesquisa empírica. Direito. Ciências Sociais. Metodologia.*

RESUMEN: *Este artículo busca demostrar como instrumentos insertados em el área de las Ciencias sociales pueden contribuir al campo jurídico. Para ello, el planteamiento de la relación entre ambas esferas puntuará (i) las posibles razones del distanciamiento; (ii) las consecuencias inevitables de esta falta de diálogo; (iii) y, a través de ejemplos, demostrar que la investigación que utilizó métodos de áreas de las ciencias sociales pudo ver más allá del derecho, para denotar la necesidad de fortalecer los lazos del mismo campo, incluso con diferentes perspectivas. De esta manera, será posible comprender cómo estas dos esferas que no dialogan entre sí pueden contribuir al avance del campo legal.*

PALABRAS CLAVE: *Investigación empírica. Derecho. Ciencias Sociales. Metodología.*

Introduction

This article assumes that Law needs to be studied from the perspective of its applicability. In this way, contributions from other areas of knowledge are extremely important so that the legal field can be covered by analyses outside what the codes and other normative provisions provide. In short, we intend to demonstrate through research notes that methods from the areas of Social Sciences (Anthropology, Sociology, Geography, History, Criminology, etc.) are the interdisciplinary relationship between these fields that have become distant throughout time.

In a dialogue, most of the time without exchange, jurists tend to consider that only they can say anything pertinent about Law and accuse social scientists of “sociologism”, that is, of being incapable of understanding the conventions of Law. Social scientists claim the opposite and accuse jurists of “juridism”³, that is, of being incapable of analyzing Law from the point of view that is external to it (GARCIA, 2014, p. 187).

Although this work mentions the term interdisciplinarity – because the exhibition focuses on the dialogue between Law and Social Sciences – it is not, however, an analysis of this topic nor interpretations that guide its deep and varied observation. After all, when it comes to the subject, to attribute it to the research methodology, it is known that there are different variations, depending on the degrees of coordination between the disciplines involved: in the slightest degree, multidisciplinary; then, pluri or polydisciplinarity; then, interdisciplinarity itself; and, at the most advanced stage, transdisciplinarity (ALVES DA SILVA, 2022, p. 142). Complementary to this understanding, these terms designate successive degrees of increasing coordination and cooperation between disciplines, inducing interactions and reciprocal exchanges of techniques, methods, concepts, and analyses.

Interdisciplinarity, properly speaking, is the central and generic term, those related terms serve you for your better understanding. In the last stage, the complete integration between the disciplines generates another total system, without the border lines between them - the so-called transdisciplinarity (JAPIASSU, 1976, p. 75).

Multidisciplinarity would be just a simple juxtaposition of two or more disciplines without coordination between them, simply “studying an object from different angles, without a prior agreement on the methods to follow or the concepts to be used” (JAPIASSU, 1976, p.

³ Based on Pierre Bourdieu (1986), the term **juridism**, according to Margarida Garcia, can be defined as a “specific” way of thinking, “completely freed from social weight”: “the 'legal science', as it is conceived jurists [...] understand the Law as a closed and autonomous system, whose development cannot be achieved except according to 'internal dynamics'.” (GARCIA, 2014, our translation).

73, our translation). The juxtaposition of different disciplines also characterizes Multidisciplinary, but it already promotes some cooperation and coordination between them.

The juxtaposition of different disciplines is normally located at the same hierarchical level and grouped to make the relationships between them appear. The phenomena that he identifies as interdisciplinary and transdisciplinary would promote a degree of exchange capable of promoting real integration, therefore transformative, in the disciplines involved in the process (JAPIASSU, 1976, p. 74).

Having observed this point, it is noted that society, in its daily demands, is regulated, increasingly, by an open normative texture (fundamental values, human rights, etc.), making it possible, therefore, for Social Sciences to be categorized as important cognitive resources for legal determination and specification, behaving as key elements for those who think and say the Law (GARCIA, 2014, p. 183).

With this, it is understood that interdisciplinarity, in the present work, will be limited to the possibility of being an opening for jurists to the contributions of Social Sciences, for the understanding of phenomena in the legal sphere, as emphasized by Hugues Dumont and Antoine Bailleux (VILLAS BÔAS FILHO, 2019, p. 539). When discussing this feasibility, the authors emphasize the importance of jurists only using anthropology, philosophy, history, political science, and sociology studies to enrich the conception of legal regulation. Furthermore, the authors also emphasize that this appropriation of jurists does not imply the assumption that they will carry out their studies of greater relevance within the scope of the different disciplines on which they draw (VILLAS BÔAS FILHOS, 2019, p. 539).

Even because the fact of exploring contributions from other areas does not imply becoming an anthropologist, economist, philosopher, historian, political scientist, or sociologist, developing an approach that, benefiting from interdisciplinarity, can provide a more consistent understanding of legal regulation (VILLAS BÔAS FILHO, 2019, p. 539).

This work involves reflection on the gap between Law and Social Sciences to demonstrate the need for dialogue between both spheres. In this way, the reflection proposes the essential promotion of field research and the clarification of the possible reasons why the legal field is limited to bibliographical research; from this, reflect on the need to use Social Sciences instruments as foundation research that provide this dialogue.

Law and Social Sciences: reflections on the distancing and use of methodology from areas outside Law in empirical research

Even though, routinely, there is an exponential increase in research published in scientific journals, in the same proportion, there is no growing presentation of studies that reflect research practices in Law. In this north, through observation – participatory and non-participatory –, Fayga Silveira Bedê and Robson Sabino de Sousa (2018), when consulting the most highly regarded journals of the CAPES Qualis Program, found that field research is much more the exception than the rule, preferred by researchers in the legal field⁴.

Given this, the reason why such researchers limit themselves, for the most part, to bibliographical research, depriving themselves of going into the field, to expand the methods through dialogue with different disciplines that could help and contribute to the result, in a logical Popperian⁵ – in which the evolution of science does not only occur through the proof of its theses but also through the possibility of verifying and falsifying it – that can serve scientifically for the advancement of Law⁶.

The genesis of such questioning can be observed in a brief historical analysis, through the considerations of Maria Tereza Sadek (2013), who verifies the introduction of Law schools in Brazil around the 19th century, while Social Sciences were only introduced during the 1930s. While the former were instructed to form the right to a ruling elite, the latter were created to encourage the development of a critical spirit regarding reality. The philosophy that guided the first schools of social sciences was anti-empirical, with a predominance of French influence,

⁴ The authors understood that “*from the comparison of research published in the most well-regarded Brazilian journals in the Capes Qualis Program, it appears, through observation³ — participatory and non-participatory — that, even today, field research in the area Law is much more the exception than the rule. After compiling a lot of material, and refining the research, some studies were collected in which field research could be verified, whether qualitative or quantitative. Observing this phenomenon does not occur in health sciences and exact sciences. And even in applied human and social sciences — except, obviously, Philosophy — the general rule is that researchers test their knowledge, seeking to falsify their hypotheses through field research. Just look at research in Sociology and Administration — just to mention the closest examples — and you will be able to observe the dissemination of field research as the standard of behavior widely expected by peers in their respective communities*”. (BEDÊ; SOUSA, 2018, our translation).

⁵ When mentioning Popperian logic, the authors refer to the following concept: “From a Popperian conception of science, it would not make sense to understand the falsification of a hypothesis as equivalent to the “failure” of research, since the verification of demonstrably false results leads, by logical exclusion, to a smaller number of possibilities for error towards the discovery of the truth, contributing, slowly and gradually, to the evolution of science, in most cases, through trial and error” (BEDÊ; SOUSA, 2018, p. 783, our translation).

⁶ Proof of this advancement is demonstrated by Vinicius Gomes de Vasconcellos, Gustavo Mascarenhas Lacerda Pedrina, Caio Facco Salles, and Áquila Magalhães Duarte, when conducting research regarding the scenario of the granting of habeas corpus orders by the Federal Supreme Court, in the year 2018, they were able to verify, for means of comparison and contrast, the notable distinction between Ministers to the granting of orders, in addition to an evident predominance of monocratic decisions over collegiate decisions (PEDRINA, 2019).

which was expressed in the valorization of ideological/dogmatic knowledge. Such dogmatism, in turn, contributed to minimizing the importance of the real, empirics⁷.

Based on the historical conception of Law and Social Sciences, it is known that both developed, for some time, in parallel. In this way, there was no possibility of an intersection between this two knowledge and, as one of the consequences of this distance, the contribution to the development of the universe of Law without constituting a tradition of empirical research is highlighted, with its studies, therefore, aimed only at researching legislations, jurisprudence, and bibliographies. In turn, the social sciences did not give the Law the dimension of an object of research, and when they used empirical research, they developed analyses that did not correspond to the universe of Law. Thus, in a historical synthesis explored by Maria Tereza Sadek (2013), these two spheres did not maintain communication channels.

Due to the lack of dialogue between these spheres (Law and Social Sciences), it becomes important to propose a reflection capable of expanding the relationship between Law and other areas of knowledge, such as Social Sciences. In this way, both sciences are not exposed in different ways, allowing only the Law to be observed from an internal perspective (which commonly occurs in its practice) and an external one, although they are not incompatible, as Margarida Garcia (2014, p. 185) suggests.

This is because, as highlighted by Margarida Garcia (2014), in the view of Michel Van de Kerchove and François Ost (2014, p. 186), the internal look consists of the idea that the legal structures themselves adhere to discourse about themselves. Underlyingly, the external view consists of the epistemological rupture, in which it can either insert a theoretical departure, considering the descriptive and explanatory terms from the internal point of view, adopted by the legal system – external moderating point of view –; or conduct an theoretical construction that entirely abstracts the existence of the internal point of view – a radical external point of view⁸.

From this perspective, Orlando Villas Boas Filho (2019, p. 547, our translation) points out that Hugues Dumont and Antoine Bailleux propose what is called an “outline of a theory of interdisciplinary openings accessible to jurists”. Here, the authors highlight the importance of

⁷ In the proceedings of the 1st Meeting of Empirical Research in Law, Maria Tereza Sadek brings the understanding of why empirical research would have been neglected, by those who work in the legal field, in order to establish the historical reconstruction between the formation of universities and the courses of degree, as one of the possible factors (SADEK, 2013).

⁸ This approach was proposed by Belgian jurists François Ost & Michel van de Kerchove (1988) who, based on the work of H. L. Hart, considerably advanced this epistemological orientation.

jurists using studies developed in anthropology, philosophy, history, political science, and sociology to understand their conception of legal regulation.

André-Jean Arnaud, highlighting the difficulties of interdisciplinary research, presents as a fundamental problem, in this area, the fact that researchers from different disciplines tend to constitute the object according to the canon of their respective areas of origin (VILLAS BÔAS FILHO, 2019, p. 532).

This fact was also alerted by Margarida Garcia (2014, p. 204), when pointing out the existence of disciplinary imperialism, which occurs in the case where one discipline overlaps others, compromising interdisciplinarity itself⁹ – Hugues Dumont and Antoine Bailleux (2010, p. 276-277) argue that this, however, does not imply that jurists will themselves carry out studies of greater relevance within the disciplines they use and, rather, that they will develop an approach that, benefiting from through interdisciplinarity, is capable of providing a more consistent understanding of legal regulation.

Furthermore, in the view of Margarida Garcia (2014), in a general sense, interdisciplinary research is understood to be that which mobilizes paradigms, theories, and even methods from at least two disciplines. However, the author also warns that, if researchers are not aware of the different ways of constructing the same content, they will be faced with a disciplinary cacophony, which means a “dialogue without exchange” or, “dialogue of the deaf”, in vision of Niklas Luhmann¹⁰ (GARCIA, 2014, p. 204).

In this way, the science of Law, in the concept of Hugues Dumont and Antoine Bailleux (VILLAS BÔAS FILHO, 2019) should assume a critical and disciplinary methodology, to address the external point of view, with Social Sciences being an important instrument to be used in the researchers’ methodology.

After all, when the importance of understanding legal regulation is assumed, in a social context of relevant complexity, the need for an interdisciplinary plan is admitted in which contributions from the most diverse areas of Social Sciences can be appropriated by jurists for a greater understanding of legal regulation.

⁹ “a scenario of disciplinary imperialism, in which one discipline overlaps the others, compromising the very idea of interdisciplinarity. This last scenario can occur at any time: when choosing starting points, building hypotheses, fieldwork, etc. It may happen, for example, that when writing a research report, one of the disciplines – often Law, in multidisciplinary research “with (a lot of) Law” – imposes its vocabulary, its categories, and thus, necessarily, its “vision of the world.” To avoid this problem, everyone must be aware of how each person constructs the forms of the same medium differently” (GARCIA, 2014, our translation).

¹⁰ This is a concept that Niklas Luhmann and Margarida Garcia mention when describing a situation in which researchers are not aware of the different disciplinary ways of constructing the forms of the same concept. (GARCIA, 2014).

In this vein, Roberto Kant de Lima, and Barbara Gomes Lupetti Baptista (2014) observed that legal practitioners¹¹ think about Law based on abstract normative ideals (ought-to-be) that tend to obscure the field's vision of practices and rituals that contradict it, which become the object of stigma and, at the limit of denunciation, accusation, and criminalization, not of research. Thus, they state that legal operators are socialized in the logic of contradiction, whether in the process or dogmatics¹², jurists are very few accustomed to the logic of argumentation, aimed at provisional and successive consensualizations.

Therefore, in this aspect, one can aim to understand the reasons why empirical research, in the legal area, has not been explored by researchers in the field of Law. Convergent with the idea that the authors exposed above, the first point to be observed by Fayga Silveira Bedê and Robson Sabino de Sousa (2018) is the fact of the existence of the “reproduction of the logic of the forum” in the research culture, in a model proposed, fundamentally, to commit to ideological beliefs, being a mere doctrinal reproduction, without any analytical bias, to the point of criticizing the ideas highlighted by the doctrine¹³.

Furthermore, complementing the idea of uncontested reproduction¹⁴, the second point to be observed by the authors is the dissemination of the cult of the argument of authority, in which the disproportionate credibility attributed to those who occupy positions in the highest courts contaminates the environment of universities and, therefore, do not contribute to the promotion of methodologies capable of achieving destigmatizing content.

¹¹ In this sense, the term “Law operator” is used here broadly, covering the different spheres, not limited to those who only think about the Law, but also apply it.

¹² Kant de Lima and Baptista, emphasize that: “*The dogmatic expression is equivalent to the legal doctrine which, in Law, means: ‘the study of a scientific nature that jurists carry out regarding the Law, whether with the merely speculative objective of knowledge and systematization or with the practical scope of interpreting legal norms for their exact application’ (Diniz, 1994:284). In short, it can be said that dogmatics is a normativism inspired by the positivist theory of Hans Kelsen*” (KANT LIMA; BAPTISTA, 2014, our translation).

¹³ Recently, the term manualization has been treated by some scholars as a criticism of the reproductive way in which Law is structured in its field of knowledge, not for nothing, Lenio Streck (2005:180), in his text “Philosophical hermeneutics and the possibilities of overcoming positivism through (neo)constitutionalism”, refers to “*a positivist and manualistic culture that continues to be rooted in Law schools and in what is understood as doctrine and application of Law*”. João Maurício Adeodato also uses the expression in his book *O Direito Dogmático Periférico e sua Retórica*, when mentioning that the book “*seeks to escape the manualistic character that has characterized much of national legal production*”. Oscar Vilhena, on one occasion, referring to his training mixed between Law and Social Sciences, said that, upon entering the aforementioned courses, he found himself between “*the manual desert of jurists and the seductive literature of the other human sciences*” (Interview available at: virtualbib.fgv.br. “The books that made my head”) (KANT LIMA; BAPTISTA, 2014, our translation).

¹⁴ Pedro Demo builds interesting reasoning on the topic, since when describing that the classroom model contributes more to the annihilation of research than to its promotion, he says that: “[...] *they are not study or learning environments, not even assiduous reading, much less building knowledge. The teacher himself does not produce knowledge, not through fault, but due to an original defect in training [...]. Expects from the student the same reproductivism of which he is a legitimate and consummate representative*” (DEMO, 1996, our translation).

Thus, the logic of the authority argument, cultivated at all levels of the Judiciary, produces more aggravated damage when transposed to the academic environment, as it establishes a culture of refraction to autonomous thought, according to which the authority argument is worth more than the authority of the argument, as stated by Pedro Demo (2005).

Given this conception, Fayga Silveira Bedê and Robson Sabino de Sousa (2018) appoint that legal education is one of the great access keys to understanding the reasons for the low incidence of field research, with most of it being associated with bibliographic research.

This is because, as Luis Alberto Warat (2004) indicates, when modern universities impose consumption standards and manufacture what is called instructional research, there is a space of control in which it is determined at each moment what should be legitimized as true.

It is exactly in this sense that anthropology, in the form of a methodological field¹⁵ – an instrument inserted in the Social Sciences – can, for example, contribute to the legal field, as it sees the movements of society and its representations, to relativize concepts and categories, aiming to deconstruct consecrated truths, this is because important anthropological exercises can also be a fundamental legal exercise, of great value in promoting the consequent transformations.

Researchers Roberto Kant de Lima and Barbara Gomes Lupetti Baptista (2014), presenting fieldwork using the ethnographic method¹⁶, demonstrated the capacity of empirical research to contrast aspects that, in the field, are viewed in a which, in doctrine and legislation, take on a completely different meaning.

It was thus that, when observing the principle of procedural orality, they concluded such an understanding, because, while doctrine and legislation recognize orality as a guarantee of the parties to a fair and democratic process when carrying out the field research carried out at the Court of Justice of the State of Rio de Janeiro, it was possible to notice that orality is discarded by field operators. After all, this form of procedural manifestation ends up being an

¹⁵ Kant de Lima and Baptista reinforce that Otávio Velho provides an interesting definition for those who are not from the field of social sciences regarding anthropological methodology when he states that: “[...] *Anthropology does not have 'methods and techniques', anthropology is a thing that enters through the pores, something spontaneous, something that has to do with this great fundamental contact with the field or with our interlocutors, or, in short, with the social group we are studying*” (KANT LIMA; BAPTISTA, 2014, our translation).

¹⁶ In another work on the subject, of appropriate mention, the concept of ethnography is better defined: “*the central point of the ethnographic method is the detailed description and interpretation of the observed phenomena with the indispensable explanation of both the 'native' categories and those of the anthropological knowledge used by the researcher [...]*” (LIMA, p. 12, 2008). To understand how to do ethnography, using participant observation, see Foote-Whyte (1975) (KANT LIMA; BAPTISTA, 2014, our translation).

obstacle to the implementation of another procedural principle, namely, the speed of judicial provision¹⁷.

There are different points of view, which assume the dichotomy of orality versus speed, in the result of each approach. While in theoretical-dogmatic discourse, orality presents a completely positive connotation, in fieldwork, legal operators, who deal with orality daily, view it as an obstacle, that is, they see it in a diametrically opposite sense.

Even though the result is a timely object of discussion, the central point of the research addressed is not, exactly, in its content, but in the idea that, no matter how many paradoxical points of view have been demonstrated, between dogmatic and empirical, this it was only allowed through the methodology applied by anthropology, to ethnography, with an empirical basis, and with the application of the contrastive method. In other words, the fact that the legal field used tools from the Social Sciences so that the aforementioned divergence could be observed.

Another example, that deserves to be highlighted, of the practice of empirical research based on instruments provided by the Social Sciences, is that presented by Margarida Garcia (2014), who presents empirical research on the paradoxical relationship between human rights and criminal Law, to explore the points said to be intriguing in contemporary punishment, that is, the fact that, on the one hand, human rights can limit the right to punish and favor the moderation of sentences and, on the other, they legitimize the right to punish and of favoring the severity of penalties.

Hence, when it comes to criminal Law, human rights can be oriented in opposite directions¹⁸, having their functionality, at certain times, as critical normativity and, at others, as punitive reason, as stated by Delmas-Marty (GARCIA, 2014, p. 189).

¹⁷ When describing how Law can incorporate fieldwork and ethnography, the principle of procedural orality was the object of study that allowed researchers to observe the contradictions between practical application and doctrine and legislation: “[...] *It is curious what was found in the fieldwork because, when comparing the dogmatic discourse with the empirical one, notably regarding the dichotomy of orality x celerity, it was realized that, for the theoretical-dogmatic discourse, orality has an immensely positive evaluative connotation. It is romanticized by indoctrinators, while in the discourse of operators, who deal with orality in their daily lives, it is, on the contrary, seen with a negative connotation. It is seen as something that hinders the smooth running of the process and has no useful purpose. The doctrine, as expected – as this is how Law is structured: between the real and the ideal – has a poetic and utopian vision of the principle of orality in civil proceedings. When reading the dogmatic manifestations, one has the feeling that orality is the solution to all the system's ills and the end of the abyss that notoriously separates and distances citizens from the Judiciary*” (KANT LIMA; BAPTISTA, 2014, our translation).

¹⁸ “*The contours of this enigma can be captured from a series of questions present at the origin of our reflection. If we consider the semantics of human rights as a powerful cognitive and normative resource, capable of evolving the structures and ideas that surround the right to punish, how can we explain it, then – certainly from a point of view that will call into question the role of Law itself in updating this reality – that this semantics has not produced innovative effects in the way of thinking about criminal sanctions and modes of intervention? What, in terms of the*

Thus, from an empirical and methodological point of view, the research, for a long time, was sustained through interviews conducted by actors from the judiciary who work within legal institutions. In this approach, prosecutors and judges were interviewed, using the classic method of Social Sciences, in qualitative analyses centered on semi-structured interviews, in which the epistemological approach was guided by the possibility of conducting interviews with the systems and not with the actors.

This approach had as its scope the idea disseminated by Niklas Luhmann in a "Sociology of Law with Law"¹⁹, which seeks to capture the concepts, conventions, ideas, and theories of the legal system (GARCIA, 2014, p. 186). Thus, one of the points to be addressed by the research was the decentering of the subject, to seek answers in the historicity of the system, that is, in its cognitive structures and not in the psychology of the actors; Even though one of the pillars of the research was the qualitative interview with the actors of the system, by approaching the perspective of the system and not the subject, the research contrasted the approach taken by Hogarth²⁰, on determining the sentence (in which the focus was more on discourse of the actors than the communication of the systems, one of the elements considered central to the research being the assumption of a relationship between the chosen sentence and the criminal philosophy of the magistrate).

structures and internal mechanisms of Law, would make it possible to understand this phenomenon - at least sociologically intriguing - according to which human rights, as they present themselves within the borders of the criminal system, appear most of the time as rights "partisan" humans? In other words, how can we understand that these are rights that defend some (for example, the victims) against others (that is, the accused)? How can we sociologically explain this persistent and effective inability to consider the interests of all participants in the criminal sphere? And how can we produce an explanation that does not lose sight of what, in this dynamic, directly refers to Law, its ways of functioning, and its "worldview"? Within a Sociology of Law "with Law", how can we explain that human rights in the criminal system, more particularly in the domain of penalties, do not seem to fulfill their function as a mechanism of social integration? How can we explain, on the contrary, that a whole series of contemporary movements defending human rights (protection of children, women, people with disabilities, sexual minorities, etc.) have demanded severe, punitive penalties and generated social exclusion – in the name of human rights? And finally – the most neutral and general question behind all the others – in what way have human rights been received and continue to be received by the Criminal Law system?" (GARCIA, 2014, our translation)

¹⁹ In the author's view, decentering the subject is a strategy that can be used in conjunction with different methodologies and techniques. Within her research, this epistemological starting point was developed within the framework of a qualitative methodology that made use of semi-structured interviews. The question of whether such a stance is useful in other types of research, based, for example, on document analysis or participant observation, remains open (GARCIA, 2014).

²⁰ To highlight the contrast between the approach that the author favored and the hitherto classical approach, there was mention of the research carried out by Hogarth (1971) on the determination of the sentence, *Sentencing as a Human Process*. In Margarida Garcia's view, this research was a study in which, as a unit of analysis, the "discourse" of the actors was privileged rather than the "communication" of the system. Therefore, Hogarth's research serves as a comparative example concerning Margarida Garcia's, for at least three aspects, according to the author: "(i) it is a classic and pioneering study in the research niche that takes into account the theories of punishment in the sentence determination process, (ii) the study was carried out in collaboration with Canadian judges, in an openly empirical approach, and finally (iii) this research, like ours, privileged interdisciplinarity" (GARCIA, 2014, our translation).

The conception of the research work is denoted, from an interdisciplinary perspective, inspired by methods inserted in Social Sciences, in which the reflection was based on sociology, and, as a methodology, qualitative analysis based on interviews.

In other words, in the research cited by Margarida Garcia (2014), the applied hypothesis of “decentering of the subject” allowed us to problematize what the system is – and there is also the possibility of problematizing what the theories of punishment and modern penal rationality are, as the dominant system of thought in modern criminal Law – in the research presented by researchers Roberto Kant de Lima and Barbara Gomes Lupetti Baptista (2014) it was possible to identify the dichotomy and paradoxes that exist between precepts applicable within the scope of Law, with both results they were only permitted through a methodology and an approach from an area of knowledge different from that of Law itself.

It is important to emphasize that although this essay presents a favorable opinion on field research, it should not be considered that doctrinal research is the main point to be problematized. On the contrary, doctrine is the theoretical ground from which one must start to expand the frontiers of knowledge, (BEDÊ; SOUSA, 2018, p. 792) since what is questioned is the dogmatizing stance that one has in the face of doctrine, and this stance is disseminated throughout universities, mostly in their undergraduate courses.

It is necessary to encourage dialogue between different areas of knowledge, more specifically between Law and Social Sciences, which can be seen to have been initiated through the introduction of the discipline called General Notions of Law and Humanistic Training, as part of the eliminatory test in public competitions for entry into the judiciary career, in all branches of the national Judiciary and also through the activities of ENFAM – National School for Training and Improvement of Magistrates, which operates alongside the Superior Court of Justice (STJ), with the to develop research aimed at a better understanding of Law. There was even the recent publication of a notice, prepared by the National Council of Justice, in partnership with CAPES, entitled CNJ Academic, also aiming to stimulate dialogue between academia, the production of knowledge, and the Judiciary itself.

However, even though there is the aforementioned stimulus, in which legal institutions, introduce disciplines and possibilities for research development, it is in this scenario that the interdisciplinary field needs to be fostered with Social Sciences, included in the domain of

socio-legal studies – known as “interdisciplinary field” –, are characterized as an instrument of epistemological surveillance, as Orlando Villas Bôas Filho (2019, p. 547-548) highlights²¹.

In the examples previously mentioned, in which anthropology, due to its character of otherness and decentering, presented itself as an important tool for unveiling ethnocentrism (an example of the research highlighted by Roberto Kant de Lima and Barbara Gomes Lupetti Baptista) and sociology, as a perspective external and descriptive of Law (example of the research highlighted by Margarida Garcia), the contribution of the different areas of Social Sciences were of central importance in obtaining an external and expanded understanding of legal regulation.

However, this should not be confused with the idea that Social Sciences would assume a subordinate status in the domain of socio-legal studies, as Orlando Villas Bôas Filho points out when mentioning the teachings of Jean Carbonnier (VILLAS BÔAS FILHO, 2019, p. 545), who understands sociology before the science of Law.

On the contrary, this means stating that the contributions included in the Social Sciences would support an active role in the critical construction of the criteria established to establish legality. After all, as Orlando Villas Bôas Filho (2019, p. 546) himself argues, supported by Antoine Bailleux and François Ost (VILLAS BÔAS FILHO, 2019, p. 546), the Law is not an object established *a priori*, endowed with a certain natural substantiality. Understanding it as such means assuming a naïve presupposition that, guided by ontological postulates, leads to the idea that reality would be divided into naturally pre-established domains or fields.

Thus, the proposal presented by André-Jean Arnaud and Maria José Fariñas Dulce, cited in the essay by Orlando Villas Bôas Filho (2019, p. 547-548)²², to conceive socio-legal studies, as a field of interdisciplinary research, which enables the interaction of multiple perspectives on Law, would make the structured combination of the most diverse angles feasible in an approach to legal regulation. In addition, of course, to providing different methods from different areas as tools from an external point of view, as in the examples previously demonstrated, without the Law itself is compromised in its perspectives.

²¹ Within the scope of “socio-legal studies”, the author points out that social sciences could be understood as instruments of “epistemological surveillance”, in the sense in which they are defined by Pierre Bourdieu, Jean Claude Chamboredon and Jean-Claude Passeron (VILLAS BÔAS FILHO, 2019).

²² This proposal is guided by conceiving “socio-legal studies” as an interdisciplinary field in which contributions from the most diverse areas of social sciences can be appropriated by jurists to obtain a more sophisticated understanding of legal regulation. Furthermore, the characterization of “socio-legal studies”, in these terms, in addition to stimulating interdisciplinary research, allows the expansion of legality beyond the horizon established by positivist jurists, to encourage the explanation of its social roots. Within the scope of “socio-legal studies”, social sciences could be understood as instruments of “epistemological surveillance”, in the sense in which Pierre Bourdieu, Jean Claude Chamboredon, and Jean-Claude Passeron define it (VILLAS BÔAS FILHO, 2019).

Final considerations

Therefore, if there is no dissemination of interdisciplinary research, in the conception of socio-legal studies, in which there is the application of different areas of knowledge, with the promotion of field research, the community of researchers in the area of Law will continue to reproduce the subservient content applied by legal operators, in the hierarchy of the Judiciary, which are often naturalized in everyday life. In addition to reproducing academic research with a methodology almost always restricted to bibliographical soil, as noted by Fayga Silveira Bedê and Robson Sabino de Sousa (2018).

Even though institutional strategies, such as those previously mentioned, have been encouraged to broaden the vision of legal researchers, they need to focus their attention on social transformations, so that they can analyze them and not just be retransmitters of ideas that are already widely disseminated. This, as Foucauldian logic points out, analytically criticizes dogmatics, arguing that Law is analyzed through its practices, or even as proposed by Pierre Bourdieu (2004), who exposes the idea that the legal field exists only for the maintenance of its legitimacy and need, without worrying about justice or social transformation.

By assuming a constructivist perspective, it is possible to affirm that the contributions of Social Sciences would be decisive in the constitution of the object itself since it is not endowed with prior essentiality. Thus, among other things, the social sciences, understood in the terms suggested here, would have an active role in the critical construction of the criteria for establishing the legality, to allow the overcoming of “sterile dogmatism”, “pure theorization” and contamination by the “spontaneous knowledge” of jurists, that is, by common sense, as highlighted by Orlando Villas Bôas Filho (2019).

After all, the legal field itself cannot provide the definitive answers that Law offers to the daily and dynamic problems of society, which is why Social Sciences, as an instrument of epistemological surveillance, can contribute to breaking down stigmas and applying methods that dialogue about and with the Law, in a way that internally, the Law (alone) proves to be insufficient.

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