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EDITORIAL

From knowing how to search to knowing how to ask. Some ideas about episteme and legal science

The title of this editorial represents a great concern of fellow professors and researchers who have among their main motivations the teaching of research in legal sciences. As a branch of the social sciences, this scientific discipline undoubtedly has an object of study like that of its common trunk: the sciences of human beings living in society, for which it is nourished precisely by the complexity that makes up the system it deals with. Human society not only possesses that gregarious element defined by classical philosophy, but it is shaped by another element that often fails to be visualized as part of the system that we form as such a society: the fact of being the individual that we each are within the framework of the socio-anthropological conglomerate that makes us unique beings as human essence. The human individual makes the social, while the social makes the individual, conforming the anthropo-sociological loop individual-society, whose essential scope constitutes the human species "in society": "individual-society-species" (Morin, 2005).

This is an obvious fact for the social sciences and the so-called human sciences. Contemporary sociology and anthropology, however, suffered a hard blow before their flourishing as such disciplines from the ancestral notion of the struggle of opposites that characterizes the structural elements that make up every system, of which, by the way, human nature participates in all its details and characteristics. This means that those sciences, possessing an object of study that is made up of a system, face what precisely characterizes every system: the question of change and transformation that we have been learning since the classics with their instructive conceptions, encompassing bold explanations in the conformation of the phenomena of nature: the struggle between the opposites that means the opposition between the dynamic and changing nature of Heraclitus, against the static and fixed nature of Parminedean nature, comes to our memory. Our professor Miguel Martínez Miguélez (2005) expresses that from this struggle the second perspective was the winner, due to epistemic questions.

We express this statement precisely because of the significance of a cosmological vision of nature and human nature in a non-dynamic and non-changing epistemic perspective in the social sciences, which I have already discussed on other occasions. What I want to highlight on this occasion is the question of the legal sciences as part of the epistemic web

of the social sciences, as it should be. To think of an object of study for these sciences that is not the human being in his dynamic relationship with the environment as a complex system, would lead this discipline down unprofitable paths in terms of unveiling the truth of the facts that contour the social conflicts with which this science is directly concerned. However, it is necessary to establish levels of observation in front of a core issue in this type of scientific action.

As MacIntyre (1985) states, every science aspires to possess a system of laws that explain its object of study, an issue from which the social sciences cannot escape, if they intend to earn the privileged place held by the natural sciences, whose paradigmatic example is physics, in particular, due to its ancestral origin, when even in its foundations they were in a single epistemic framework with philosophy, the latter being configured as a mother ship from where they sailed together until the beginning of the second Modernity, marking the beginning of their separation from that first ship through the Discourse of Method. Considering the world split in order to be able to know it in a clear and different way, and separating the subject from the object of knowledge, although it gave thought new paths to follow in order to separate itself from the submerged epistemic world in which it found itself, since it was under the attacks of epistemic theologism, it also gave weapons to the non-dynamic and non-changing thought that promoted a characterization of life in Parminedean terms, which logical positivism raised to its maximum levels of separability.

This is why the social sciences were catapulted as "hard" sciences from the 19th century onwards, when they understood that they had to aspire to the scientificity of those natural sciences, such as physics, in order to enjoy the necessary prestige from which the disciplines that have to do with knowledge recognized as such by virtue of their possibilities of systematicity and prediction are nourished. As we have argued in these spaces of reflection, it is precisely this that makes scientific knowledge clothe itself with certainties that little by little have been understood as absent to a large extent, precisely because of the fact of condensing in its bosom the errors that point towards the existence of uncertainty itself, in this era of exponential knowledge in the framework of new paradigms of sustainability of life in society: even the social sense is changing with the overwhelming presence of the digital world that characterizes this era of techno-knowledge.

Well, seen, thus the things, the social sciences, coated as they are of uncertainties before the facts that raise it as an aspirant to the knowledge able to predict, is placed in the way of circumstances that expose it precisely in front of the opposite sidewalk: the unpredictability of the social facts by the uncertainties that conform the human action, in the frame of the society that gives it life and institutional and organizational strengths. From there that all those sciences that derive from them are also coated with this fault of origin, as MacIntyre (1985) reminds us. From this, of course, Habermas (1999) and the Frankfort School wrote memorable pages around this discussion, relative to the epistemic questions of social sciences and their imprecise method of prediction.

The legal sciences are in the middle of this path: the idea of regulating conduct by means of normative prescriptions carries the error of origin. It is possible to violate the legal norm created to prevent actions, despite the fact that it has been promulgated based on descriptions of the actions of human beings living in society; something that cannot be said of the laws of nature, as it would be to violate the law of gravity without dire consequences.

Therefore, the action seen as a correlate of the will to act, entails precisely the idea that the classical philosophy of law shows us as a fundamental element to understand the idea of law wielded as a legal theory, which implies raising it as a social theory. The legal sciences, as the professor Emilio Betti (2019) teaches, are interpretative sciences, so the facts that cover it as an object of science, are subject to the ups and downs of all social science: the uncertainty that characterizes all social systems, so it is also characteristic of the legal sciences.

However, it is necessary to make a disquisition to understand more clearly the episteme of legal science, because it itself is coated with a complexity as a scientific discipline, since several instances are distinguished in its process and deployment as such discipline. First of all, it is necessary to understand that social action with the characteristic of juridical action is defined by the fact of bringing consequences to actions at the level of the obligatory, the permitted and the prohibited defined by the deontic logic of Von Wright (2018). But this is not the point of discussion. Where I want to point is towards the fact that human actions in the socio-legal context are as marked by the volitional act as are human actions in the social context in general, and as a whole. The will, as the founding element of action, is by nature clothed in the

garments of uncertainty taught by the Canadian philosopher mentioned above, to whom I refer for a better understanding.

From the above, the core problem of this whole issue emerges, a question that is nothing new: how to approach from a methodological point of view the idea of the search for knowledge in the legal sciences. For which we move on to the second point of the plan we are trying to draw: the idea of the fields of approachability of the legal sciences as a complex social discipline. If on the one hand there are the logical consequences of action in this deontological defined tripartite framework, on the other hand there is the fact of the ontological framework that also structures them as sciences: these are the fields of their knowledge. From this perspective, the legal sciences will be distinguished from the application framework of the legal norms to the socio-anthropological framework that defines it.

With respect to the first moment, legal sciences assume a role regarding the framework that organized society designs to apply the legal norm created to the assumptions that make up the constituent elements of such a norm, a matter that it does through the institutions that organize society, but also through the necessary research on the legitimacy of the decisions that are thus taken. This applicative framework is equivalent to saying that there is a framework of normative validity of the action that has been interpreted according to the parameters set by the institutionality (hence the different epistemic positions on the legal sciences: iusnaturalism and iuspositivism, to cite only the two most controversial; this compared to the current conception of law as argumentation, among other epistemic positions).

With regard to the second moment as mentioned, there is the socio-anthropological question of the legal sciences, so that the law is seen from this perspective as the foundation of the facts that are projected into the legal world. In this sense we speak of legal sciences whose facts are evidenced no longer in the applicative sense of the norm, but in the legitimizing sense of the action as such, which is why the law in force is a unifying element of society because it fits the sense sought by the institutions, since it is the models of actions that were collected in the normative institutes created. The law is already in the action that defines it previously, so that anyone who has carried out actions contrary to the prescriptions established in the legal order thus established is subjected to the sanctions that come by way of the applicatory sense of the created law.

According to the above, the knowledge of law, which is what is proposed from its episteme, is reached by different methodological ways. If it is about the applicative sense of the legal rule, what is proposed is to know it through the interpretation of the act of application; but if we are in the second case, the law is known through methodologies that address the empirical aspects of obedience or not of the legal rule arisen; that is, through the interpretation not in the first instance of the act of application (or creation), but through the idea of knowing the proto-legal action. The truth is that, from both perspectives, strategies of knowledge proper to this branch of science are imposed on the legal scientist in order to understand it as a social discipline. In the first case, the question focuses on the path of the different interpretations that can be given with respect to the legal norm in its social context. But in the second case, it is about knowing the social actions with respect to the juridical norm on which one interacts. Let us say some ideas about the first aspect, and leave the second for another opportunity.

Regarding the interpretation of the act of application of the law, knowing the different aspects that arise from such act, implies reaching a knowledge about, first, the Law in general sense (in all its forms and nuances: Laws, Decrees, Regulations, Treaties, Ordinances, etc.), and second, understanding the textual context of the law as a legal phenomenon embodied in a normative corpus that gives it shape and legal life as such, and second, to understand the textual context of the law as a juridical phenomenon embodied in a normative corpus that gives it shape and juridical life as such. In any case, what I am affirming is that Law as an object of study from this sphere of social action (through the texts that contain it), is shaped as an object of study that must be interpreted in order to reach its meaning; especially when it has been applied by some institutional decision that affects particular citizens. In short: Law is text, and as such, object of the theories of textual interpretation as the aforementioned of the master Betti (2019), or that of Gadamer (1987) with whom the Italian master arduously discussed, or of some of the emerging positions for more than 20 years about law as argumentation (Atienza, 2016; Alexy, 1997; Habermas, 2010).

From the aforementioned perspective, Law as a science deals with its object of study through the texts in which it is found as a source of knowledge. Law as a science aims to know the law applied to specific cases, but also from the provisions established to prevent actions

contrary to, or in adherence to, the rules drawn by the social order (hence its concept as an organizer of the social environment). Thus, to know it is to interpret it, according to the canons and rules of interpretation to which the interpreter ascribes himself, through the acts decided by the competent authority when he textualizes it or defines it as an act of authority: the Law in a broad sense, the Jurisprudence, the treaties that emerge as national laws when they are incorporated into the legal system according to the rules in force, etc. In this way, ontologically, Law is text, so epistemically it is equivalent to a truth value that is decided in certain circumstances (let us remember the deontic logic of Von Wright).

That is why the episteme of the Science of Law, from this applicative sense, is that of being a merely interpretative discipline, so that the knowledge reached through this way of being of Law is an interpreted knowledge, or what is the same as saying, knowledge by interpretation. To know is to interpret, Nietzsche would say, so the acts of the life of Law make up a corpus of knowledge, not of acts, which contains what could be said to be the conglomerate of doctrines about its reality as an object of study. To know the law through institutional legal acts is to attribute to it a textual and hermeneutic nature, in order to establish a corpus of interpreted knowledge. Therefore, the designs that are structured methodologically to know it, it would be appropriate that they adhere to this epistemic conception. So far, I see some confusion in the panorama of legal research learning which we will address on another occasion.

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