

# Law and Society in Brazil at the Crossroads: A Review

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## Abstract

This article presents a general overview of Brazilian sociolegal studies. After presenting a short historical narrative of the field in Brazil, we argue that the early years of intense teaching of legal sociology had a politically committed approach, which gave rise to growing criticism of Brazilian legal scholarship that in turn affected the self-image of law professors. Different theoretical strands appeared in the years that followed, and some specific fields of research gained importance, particularly those concerning a sociology of the legal profession, the administration of courts, and law schools. However, we contend that as time went by, many sociolegal scholars began to neglect the critical approach to law, and today most of them fail to confront critical aspects of the gap between law on the books and law in action, especially when that gap affects lower classes or stigmatized populations.

## INTRODUCTION

This article is an assessment of legal sociology in Brazil. We refer to legal sociology, sociology of law, or law and society studies interchangeably to mean a wide field of teaching and research. Eliane Junqueira (2001) and Luciano Oliveira (2004) have written about the differences between a sociology of law (*sociologia do direito*) and legal sociology (*sociologia jurídica*): The first is a specialized field in the realm of sociology; the second a critical approach of legal institutions, doctrine, and practice by jurists themselves. According to Junqueira and Oliveira, as legal sociology is conducted by jurists, it lacks the analytical rigor expected from field work and empirical research conducted by social scientists. In this article, we nevertheless refer to works of all three types. The first section of this review gives the historical background against which recent sociolegal studies have been incorporated into Brazilian academia and explains how sociology and related disciplines fit into Brazilian law schools. We then give, in the second section, a general view of contemporary studies, organizing them around four main topics: theoretical debates, the legal profession and legal education, crime and violence, and institutional reform. The last section provides a critical appraisal of the field.

## HISTORICAL ANTECEDENTS

There have been three great waves of law and society studies in Brazil. The first began toward the end of the nineteenth century (1870–1920) when a group of legal scholars, influenced by Herbert Spencer, conceived of law as a natural phenomenon to be studied and taught as part of an all-embracing science of society. They were essentially philosophers or theorists of society (Lopes 2014). A second wave (in the 1930s) comprised a group of legal scholars who were immediately interested in reforming the Brazilian legal system and whose main interest was to make law more socially effective: They viewed the gap between law on the books and law in action to be a result of the artificiality of liberal institutions in Brazil and their contrast with a traditional society. They rejected liberalism in favor of either socialism or corporatism, but both strands thought that social studies provided a vantage point to approach law (Lopes & Garcia Neto 2011). We are contemporaries of a third wave. Its inception can formally be dated back to Resolution 3 of the Federal Education Council in 1972, which changed the law school curriculum to require that a class on sociology be provided in the first year.

### Pioneers

The longevity and success of this third wave may be explained by at least three factors. First, it coincided with Brazil's long transition to democracy. Although a military dictatorship lasted from 1964 to 1985, the political situation started to change in 1979 (e.g., with the freedom to create new political parties, the Amnesty Act of 1979, an end to censorship, a return of habeas corpus for political issues). Sociology courses in law schools became an important locus for academic discussions of the whole political process and of the possible changes to be introduced in the legal system. Second, public interest litigation began to grow in importance: As the legislative and executive branches were, in many respects, out of reach for ordinary citizens and political groups that could not freely organize, social movements started to use the judicial branch to voice their claims (Faria 1989). These two factors may be directly related to the demise of the military dictatorship, which had been sponsored by the United States' doctrine of national security and its ideology of economic development (Comblin 1978, Rist 2004). During the military's reign, Brazil was subject to a radical subversion of its legal system, and attempts to create political legitimacy for the military relied on policies of modernization and development. The second half of the military

regime, beginning in 1975, was a period of slow decline of its political power and a rising tide of popular social movements in whose discourse the terms rights and justice featured prominently. Garcia Villegas (2010, pp. 319–54) and Wolkmer (2001) have written valuable assessments of this phase. During this third wave, sociolegal studies joined a well-established and modern academic environment in which the social sciences had made considerable progress: Legal scholars now had expert social scientists who would challenge their way of thinking on substantive and methodological matters. The third wave built onto the earlier efforts of Claudio Souto and Joaquim Falcão in Recife and Miranda Rosa (1970) in Rio, who had developed sociological approaches to law in the late 1960s and early 1970s.

The implementation of Resolution 3 was slow, as it required new professors and materials, but by the end of the 1980s, its results could be clearly seen in the major law schools of the country (Recife, Brasília, and São Paulo). Despite all their differences, they had many things in common. First, faculty at each school tried to catch up on contemporary foreign law and society studies, translating, publishing, and using much of the classical and recent literature. Joaquim Falcão and Claudio Souto in Recife, true pioneers of the field, published a first reader in Portuguese (Souto & Falcão 1980); José Eduardo Faria in São Paulo published his essay on the symbolic violence of law (Faria 1988b) and collected essays of a group of young scholars (Faria 1988a, 1989); and Roberto Lyra Filho in Brasília published an influential essay on the ideological nature of law (Lyra Filho 1980) and a text on the wrongs of legal education in Brazil (Lyra Filho 1982). The major law schools also shared a similar research agenda: a sociology of the legal profession (first a sociology of the law schools themselves), the administration of justice, and social movements, which constituted a study of the obstacles to the recognition of social and human rights. Their efforts fructified. Today, for example, in the state of São Paulo, an important academic region in Brazil, four of the most significant law programs offer sociolegal content in their curricula, including courses titled Sociology, Sociology of Law, Legal Sociology, General Sociology, and Introduction to Sociology, with workloads of 60 to 75 hours per semester. The same curricular format is found in other important law programs, with similar workloads. The enactment of the 1988 constitution gave rise to research on the effectiveness of the legal system and some theoretical issues. There was also a push for the alternative use of law and critical law, coinciding with critical/alternative jurist movements in Spain, France, and Italy (*magistratura democratica*) and the critical legal studies movement in North America. Once again, Brazilian scholars borrowed from foreign thinkers to help analyze their domestic process. Chief among these social theorists were Pierre Bourdieu and Niklas Luhmann, but Roberto Mangabeira Unger, Michel Mialle, and neo-Marxist (especially Gramscian readings of Marxism) and poststructuralist authors (Foucault, for example) were also influential (Faria 1988b, Neves 1994).

## Teaching Law and Society

To have an idea of the place of law and society studies in Brazilian legal education, it is important to understand the bigger picture of law schools in the country. Law is an undergraduate course, as it is in all civil law jurisdictions. Brazil has 1,158 law schools and 736,586 students enrolled in them (see <http://portal.inep.gov.br/superior-censosuperior-sinopse>). All law students will have some contact with legal sociology, as it is a required course in law programs. There are many Brazilian scholars whose work is directly or indirectly related to a law and society approach, according to data stored by the official higher education agency of Brazil (see <http://www.cnpq.br>).

However, because law schools are professional schools, students are naturally inclined to dedicate more time to their professional training, which will eventually help them in the professional market after they graduate. A large number of them apply for public jobs (in competitive public

*concursos*): With their law diplomas, they can become judges, public prosecutors, public attorneys, court clerks of all kinds and levels, police officers, etc. (Fontainha 2011, Fragale Filho 2006, Silva & Freitas Filho 2008). Those in the more prestigious schools of the largest cities may also contemplate a private career in large law firms. Few graduates will ever join the academy, and even fewer will go further into theoretical aspects of law (including jurisprudence and legal sociology).

With such a large number of students, law schools and law professors need textbooks, and they may use teaching materials with different purposes. Some teach descriptive courses and use textbooks that provide their students with information, such as the basics of the sociological tradition, giving them brief summaries of Durkheim, Marx, and Weber and possibly even Jürgen Habermas and Luhmann, two widely cited authors in Brazilian law schools. Others take a more critical approach, tending toward what could be called militant, committed teaching, politicizing the subject and including in their syllabi some of the issues raised by social movements around the injustices and inequalities of Brazilian society. These courses are more about the inadequacy of the legal order and its inability to respond to redistributive claims of different groups in society, at either the domestic or the international/global level, with little attention to analytical rigor or conceptual questions. Still others concentrate on the gap between the modernization of some strata of Brazilian law and society, which are part of the globalized economy, and what they see as a traditional legal culture. In this third line of teaching, favorite issues include globalization, international business practices, money laundering, and similar cases.

Each of these approaches uses different textbooks dealing with the history of the discipline; general overviews of authors; concepts and theories; and references to certain canonical subjects, such as the legal profession, gender issues, crime and criminology, democracy, state power, globalization, system theory, and drugs (see Castro 2001, 2003; Lemos Filho 2008; Machado Neto 1987; Manole Rosa 2001; Moraes 2002; Sabadell 2008; Saldanha 1999; Scuro Neto 1997; Souto & Souto 1981, 1997; Treves 2004). Some of these books provide not only information but also critical appraisals of authors and theories (Faria 1988a, 1999; Souza 2002).

## RECENT YEARS

After the above-described efforts toward the establishment of sociology as a required credit in law schools and the first essays and studies on law and society, lawyers and social scientists tried to work out possible forms of cooperation. In the early 1990s, the National Association of Graduate Studies in Social Sciences (ANPOCS) created a committee on the sociology of law. Under the leadership of Joaquim Falcão (a legal scholar) and, among others, Maria Celia Paoli (a political science scholar), the experiment lasted only a few years. And although it led to individual collaborations of lawyers and social scientists in some research, it did not really develop into an established area in the social sciences. As time went by, those who were interested in law developed their own agenda, which in the past few years has focused on four main topics: social theory and law, mostly by law professors; the legal profession, including legal education in which social scientists play a more prominent role; investigations on violence and crime; and institutional reform of the courts, sponsored largely by government or public interest foundations.

## Theoretical Debates

There are three basic strands of theoretical research. First, there is a Weberian or functional-systemic approach, employed mostly in the work of legal scholars trying to extend social theory into the legal field, criticizing legal theory and practice, and inquiring into a possible dialogue

between legal theory and contemporary social theory. They use social theory concepts borrowed from specific theoretical schools (e.g., Luhmann) to clarify legal theories. Instead of criticizing law's injustice, they criticize legal scholars' naiveté and lack of objectivity when analyzing social phenomena. These scholars draw from theories of society to provide the ideal standard of objectivity they seem to favor.

Included in this type of work is Luis Fernando Schuartz's (2005) *Norma, contingência e racionalidade*, which presents what the author calls "preliminary studies for a theory of legal decision-making." The first chapter reconstructs Hans Kelsen's doctrine, and the rest of the book confronts it with Luhmann's, Robert Alexy's, and Habermas's theories of human action and understanding. Kelsen and Alexy are, of course, legal scholars, whereas Luhmann and Habermas are social theorists of an essentially philosophical approach. Also in this theoretical vein is Orlando Villas Bôas Filho's (2009) *Teoria dos sistemas e o direito brasileiro*. The author presents his readers with one question: How can one use Luhmann's social theory to analyze Brazilian society and especially Brazilian law? The first half of the book is a reconstruction and explanation of Luhmann's ingenious conception of society, with its acknowledged special relation to modernity. The second half deals with Brazil's selective modernity and its own conception of law, with Brazil viewed as a case of incomplete modernization. A third important theoretical work is Celso Campilongo's (2011) essay on social movements and law, also with a Luhmannian take. Also influential are Marcelo Neves's (1994, 2008) discussions of the nature of constitutional law and institutions from the perspective of social-philosophical theories. His contribution has been to clarify some conceptual debates taking place in Europe, mostly those between Luhmann and Habermas. Both sociologists offer a philosophical conception of society, but the frameworks within which they work depend on taking complex, modern, advanced societies of the North Atlantic kind as a paradigm of modernity. Because the rest of the world does not share this history or social structure, Neves's work has been dedicated to understanding the extent to which such theories help explain non-European modern societies.

A second approach tends to integrate legal problems with economic theory and analysis. José Eduardo Faria from São Paulo, a leading scholar in the field of legal sociology, focuses his research on globalization and the economy: His latest books deal with the transformation of legal theory under the influence of globalization and economics (e.g., Faria 1999). Faria's work is representative of scholarship on the intersection of law and economics and points out a need for lawyers to concern themselves more with economic constraints and efficient results. Given the rise of economists as managers of state affairs, Faria suggests that if lawyers are to maintain or even regain any relevance in the political and intellectual scene, they should approach their discipline with a renewed interest in economic models of social analysis (Faria 2010).

A third approach leans toward a normative critique of Brazilian law, sometimes in line with Boaventura de Sousa Santos's perspective, like José Geraldo de Souza, Jr., (2002) from Brasília; aligned with popular resistance in recurring cases of social injustice; or with a clearly moral view of law, like Luciano de Oliveira (2004, 2009, 2011) in Recife. Junqueira, in Rio de Janeiro, provides a constant epistemological critique of the whole debate. The unifying feature of these different scholars and schools is a normative, rather than analytical, critique of legal theories. This connects them to law and society studies in a more comprehensive way, by means of a combined criticism of legal theories and their ideological and alienating role in society.

These three strands, Luhmannian social theory, economic globalization analysis, and critical approaches, do not rely on firsthand social inquiry. Their original contribution lies in trying to connect fact-finding done by others (sociologists, economists) with general social theories and the role of law and legal systems in society. Whatever their ideological perspective, they all seem to highlight Brazilians' discomfort with their relation to modernity, writing about the gap

between legal rules and economic policy decisions (Faria 2010) or the incomplete modernization of Brazilian society (Neves 1994, Villas Bôas Filho 2009). In this respect, all three strands address a traditional issue in sociology and in cultural studies, which have frequently theorized about the gap or lack of modernity in postcolonial societies [e.g., Bendix 1996 (1964); see Rist 2004 for a general discussion]. Modernization and development theories tend to conceive of modernity from a North Atlantic perspective, and a modern, bureaucratic, impersonal legal system seems to be an essential part of the modernity kit. Years ago, sociologists and other scholars would interpret Brazil's apparent failure to meet North Atlantic standards of modernity with a culturalist twist (Freyre 1951, 1995). Today some law and society scholars have turned to other views, including Luhmann's systemic theories, as mentioned above. But even with this theoretical updating, many theoretical studies have kept this leitmotif of a distorted or incomplete modernity (e.g., Souza 1999, 2000). As a result, Brazil's legal system is viewed as an insufficiently autonomous social system or as an incompletely rational system, whose failures should be attributed either to intentionally political misuse of institutions or to an institutional design incapable of providing the right incentives for people to comply with modernity's requirement.

### The Legal Profession and Legal Education

The sociology of the legal profession has been the object of several studies. For example, Gloria Bonelli, a sociologist, has investigated a number of changes within the legal profession, focusing on topics such as professional organization and mobilization, class and social origins, and gender (Bonelli 2002; 2003; 2010; 2013a,b,c; Bonelli et al. 2006). Luiz Werneck Vianna, political scientist and sociologist, has analyzed changes in recruitment and ascension of magistrates within the judicial branch (Vianna et al. 1997). According to Vianna's research, during the period being observed, judges were increasingly recruited from ascending middle class families, whose children had benefited from wider access to legal education over the previous three decades. This shift in class origin resulted in a wider variety of political ideologies and inclinations within the judiciary. Fabiano Engelman, also a sociologist, has investigated changes within a group of influential young law professors, especially in southern Brazil, where important forms of politicization of law have taken place over the past three decades (Engelman 2000; 2006; 2011a,b; 2013). Drawing from the sociology of Bourdieu, Engelman analyzes how a generation of young legal scholars embraced the idea of legal education reform, presented themselves as experts in the field, and soon occupied relevant bureaucratic positions in the state machinery. Engelman finds that, over time, the scholars became consultants to private law schools, which, due to innovations in law school curricula issued by the Ministry of Education, had to meet the new standards and formalities. Because they had been part of the group of people who designed some of the changes, they were able to provide advice and advocate for the interests of recently created private law schools. There have also been some attempts to track the professional careers of law students, but not in a systematic way.

Bonelli and Engelman owe part of the fundamental framework of their work to Bourdieu's general sociology and to Ives Dezalay's focus on lawyers and their intellectual and professional environments. Vianna's (1997) *Corpo e alma da magistratura brasileira* is a more class-oriented analysis, and the author is especially known for his research on the changes brought about in the body of professional judges by a steady process of democratization in recruitment.

The work of Maria Tereza Sadek (2000) and Rogério Arantes (2002) takes a different approach. These authors, professors of political science at the University of São Paulo, have conducted surveys mainly with judges and members of district attorneys' offices (*ministérios públicos*), focusing on individuals' self-perception and the institutional changes they consciously bring about

in practice and in lobbying initiatives whenever a bill that might affect their powers and activities is introduced in congress. For Sadek and Arantes, institutional changes made during the 1980s and 1990s, as well as a more politicized perception of the role of judges and district attorneys, have modified the traditional low profile of legal professionals, not only helping them gain more visibility, but also negatively affecting the role of political institutions as loci of public debates. Sadek's and Arantes's work merges an analysis of the legal profession with institutional studies.

## Crime and Violence

A third line of work studies crime and violence. Social scientists in certain research institutes and lawyers at the Instituto Brasileiro de Ciências Criminais (IBCCrim; <http://www.ibccrim.org.br>) have chosen prisons and violence as their principal research interest. Like many of the Brazilian law and society groups, they favor theoretical approaches to legal doctrine. Thus, many of their studies, meetings, and publications are an attempt to deconstruct traditional criminal law, advocating for so-called penal abolitionism, minimal criminal law, and the like. Being of a rather theoretical vein, the IBCCrim does not boast many empirical studies. As its membership and board of directors include primarily lawyers, IBCCrim tends to produce work that is either of a conceptual kind—introducing themes and imported theories into the Brazilian intellectual milieu—or hermeneutical and interpretative essays on criminal law doctrine, precedents, and legislative activity. Other social scientists, by contrast, concentrate less on prisons and more on violence in general, with some work having been done on police brutality. The Núcleo de Estudos da Violência (NEV) at the University of São Paulo (<http://www.nevusp.org>) and its leading researchers Sergio Adorno and Nancy Cardia are at the forefront of this line of study. A network of researchers, human rights activists, and police officers also gathers around the Fórum Brasileiro de Segurança Pública, which conducts firsthand research on law enforcement in Brazil (<http://www.forumseguranca.org.br>).

## Institutional Reform

Finally there has been a growing number of studies commissioned by governmental agencies and private institutions of all kinds. Such commissions are usually awarded after a national bidding processes, so that specific schools of research are not improperly favored. For example, the Ministry of Justice has sponsored research funded by the United Nations Development Programme, in order to provide Parliament with trustworthy data when debating government-sponsored bills. Similarly, the National Council of Justice, the overall administrative section of the judicial branch, has sponsored research aimed at helping management and strategic planning of courts. Centro Brasileiro de Estudos e Pesquisas Judiciais (<http://www.cebepej.org.br>), a private nonprofit organization headed by two leading professors of civil procedure in Brazil, has also conducted its own agenda of empirical research on the working of Brazilian courts. In a similar line of research on the organization, effectiveness, and efficiency of Brazilian courts, Direito GV Rio has collected important data through the Supremo em Números project (<http://supremoemnumeros.fgv.br>). Direito GV Rio also hosts the Center of Justice and Society, which has a broader research agenda (<http://direitorio.fgv.br/cjus>).

Legal scholars interested in a dialogue with the social sciences have recently created the Network of Empirical Legal Studies (Rede de Estudos Empíricos em Direito, or REED). Its approach to law and empirical studies is still unclear from a theoretical point of view. So far it has tried only to bring together legal scholars throughout the whole country with a large variety of theoretical and empirical interests.



Since 2012, the Center for Applied Legal Research (CPJA) of Direito SP of the Fundação Getúlio Vargas in São Paulo has also contributed to innovative legal studies (<http://direitosp.fgv.br>). Part of its work has been to create different indexes of rule of law in Brazil, such as one on Brazilians' trust in the judicial branch (Índice de Confiança na Justiça) and one on their perception of compliance with the law (Percepção de Cumprimento da Lei), both of which are based on opinion surveys. The Center concentrates mostly on legal research of conflicts between unequal social groups, but it integrates the contributions of scholars from different areas. Moreover, it is not devoted to empirical sociological research but is an example of the use of secondary research in order to understand legal institutions.

All of the previous studies concentrate on the efficiency of institutions and possible reforms to their regulatory framework. They basically intend to provide data for remedying failures in the performance of institutions, especially courts and law enforcement agencies.

### **ANALYTICAL AND THEORETICAL TRENDS: WHERE ARE WE HEADED?**

Sociolegal or law and society studies in Brazil are presently at a crossroads that was foreseen in the early 2000s by two scholars of the field, Junqueira (2001) and Oliveira (2004). Contrary to previous assumptions that sociology would contribute to a more critical view of law, it now appears that sociology may domesticate lawyers. Oliveira (2004, pp. 63–69) stressed that empirical studies and sociological approaches to law in Brazil, when focusing on the living law, or the law in action, might end up silently legitimizing violence and injustice in society. The data collected by empirical research, which is the province of social scientists, need to be confronted with normative concepts, such as democracy and justice, which should be the province of lawyers. If this doesn't happen, current practices and understandings of law (law in action, or law as it really is) will be used as the standard to update utopian legal provisions (law on the books)—a clear problem when society is too unequal, undemocratic, and unjust. To avoid being a domesticating discipline, legal sociology needs the input of normative critical theory. And critical social theory must show where its standards come from (Tugendhat 1997). A value-free sociology has to display its foundations and assumptions, which will require a prescientific conception of society and its institutions (Winch 2008).

In the early 1980s, political scientists and sociologists had little interest in the legal profession or in the administration of justice. Over time, resistance to military rule by legal means, human rights movements, and struggles against torture, police brutality, and social injustice, as well as the persistence of public interest litigation, proved to be resilient phenomena that would not go away with political democratization. As social phenomena, they started to attract the attention of social scientists, who tended to do what they had been trained to do: gather data. Meanwhile, jurists did not have the organized data: What they experienced as flaws of the system or pervasive injustices of law could not be classified, typified, and quantified with law's conceptual tools. Some sort of cooperation was necessary. The results of social scientists' analysis of working legal institutions vary quite a bit in terms of analytical depth, consistency, and theoretical understanding.

Political scientists have explored the legal field either through surveys focusing on the opinion of members of the judicial branch and district attorneys, or through data concerning courts' organization (Oliveira & Sadek 2012; Sadek 2003, 2013; Sadek & Arantes 2003; Sadek & Cavalcanti 2003; Sadek et al. 2006; Sadek & Oliveira 2012). A recent investigation focuses on Brazilians' perception of law enforcement (see <http://cpja.fgv.br/pesquisas/ipclbrasil>). Another interesting case is Alberto Carlos Almeida's (2007) book *A cabeça do brasileiro*. It tried to compare Roberto Damatta's (1997) famous account of Brazilians' way of conceiving social relations (hierarchical,



antiliberal, etc.) with ordinary Brazilians perceptions. In doing so, he concluded that Damatta's insights were essentially right; however, Almeida also concluded that opinions varied a great deal along class, age, educational level, and location. So, as Brazil becomes more urban, as people have access to more formal education, and as a younger generation comes to replace their parents and grandparents, Brazilians' relationships with democracy, hierarchy, and even law are changing. Almeida does not claim too much originality, as he says a survey such as his is more interested in confirming Damatta's intuition, as opposed to providing us with new data. But his work has created categories for the assessment of these changes in perception. Other surveys of interest for the relationship between ordinary citizens' perceptions of inequality, injustice, and discrimination include the following: Gustavo Venturi & Vilma Bokany's (2011) *Diversidade sexual e homofobia no Brasil* and Gevanilda Santos & Maria Palmira da Silva's (2009) *Racismo no Brasil: percepções da discriminação e do preconceito racial no século XXI*. The interest of such surveys lies in their showing how widespread discriminatory conceptions of social life still are. Lawyers can learn from these surveys if they need to interpret antidiscrimination law or even if they want to advance antidiscrimination legislation.

However, dealing with the workings of legal institutions requires the cooperation of lawyers as well. The first studies of judicial decisions and their economic impact lacked an adequate understanding of how legal institutions work (Aith 2000, p. 170; Pinheiro 2000, p. 58; 2008, pp. 31–36). They were later criticized by legal scholars with degrees in empirical research methods who applied not only quantitative methods but also more substantial and content-based analysis of court decisions ([http://www.ipea.gov.br/ipeacaixa/premio2006/docs/trabpremiados/IpeaCaixa2006\\_Profissional\\_01lugar\\_tema01.pdf](http://www.ipea.gov.br/ipeacaixa/premio2006/docs/trabpremiados/IpeaCaixa2006_Profissional_01lugar_tema01.pdf)). Investigations would also call for content analysis of judicial decisions (leading cases, precedents), statutes, and current prevailing interpretation of statutes by legal scholars (doctrine) in order to gain a clear idea of what the law in the field is.

Furthermore, law in action cannot be assessed without a cultural background of normative assumptions. The fact is that juridical data are not brute facts: They depend not only on general citizens' common-sense interpretation but on lawyers' expert interpretation as well. If research is conducted from an outsider's perspective, taking law and legal data as brute facts, empirical research will lose its interpretative and critical force. At the origins of legal sociology, there were hermeneutical approaches to law, such as those of Eugen Ehrlich, Karl Renner, and even John Commons. Legal sociology for them meant understanding how a certain institution, such as private property, family, contracts, or tort, had a conceptual intelligibility and made a certain sense to its users and how this sense changed over time across territories and social strata in society. They also assumed that people's intention and understandings might differ from the actual and overall results of the workings of institutions, the so-called paradox of unintended consequences. This difference between expected and intended results of legal institutions and legal reform and the social consequences of their workings were at the center of much of these scholars' analysis. An important part of their research required the understanding and interpretation of legal institutions from an insider's perspective.

Most sociolegal studies currently conducted in Brazil lack this perspective. As they concentrate on more empirical and visible aspects of institutions (such as court administration and management of dockets, case load, recruitment processes, etc.; see reference to Cunha & Silva 2013 below), they lose part of their critical grip on the legal system. Typically, there has been very little research on contracts or property since the enactment of the new civil code in 2002. Have the poor benefited from changes in lease agreements? How have landlords and tenants reacted to new legislation in urban peripheries? How have courts interpreted such statutes? Studies on such topics of private law (civil law for the European tradition—that is, family, torts, property, contracts) and thus law

and society studies were unable to fertilize the most traditional and conservative of law school subjects: civil law. Private law departments remain impervious to law and society studies and research, and as a consequence, the teaching of private law has also remained for the most part a very traditional course in Brazilian law schools. Few sociolegal studies investigate family life or property rights. Traditional textbooks in these fields have not incorporated a critical approach, and legal scholars do not have a large number of sociolegal works to rely on for developing more critical and innovative thinking.

The research presented at the annual meeting of the Rede de Pesquisa Empírica em Direito (Cunha & Silva 2013) was concerned primarily with the administration of courts and the use of judicial decisions and courts' dockets as a source of research. There were no reports on the actual enforcement of statutes or citizens' trust in institutions, nor studies on topics such as family law, lease agreements, property, and torts, reflecting ordinary people's understanding of legal institutions. In short, the research agenda seems to have shifted entirely to the program of justice administration as suggested two decades ago for Latin America by the World Bank. In this respect, the research agenda went mainstream.

Nonetheless, the impact of law and society studies may still lead to a more critical agenda. Even if these important matters are not explored, it still represents an important opening for legal studies. By creating an awareness that judicial decisions are part of a large background, which includes their context and the way they fit within specific courts and their decisions, or by comparing decisions of different courts on a single matter, socially oriented legal scholars opened a new field for the understanding of law. Pioneer studies appeared as early as 1998 (Lopes 1998, 1999, 2006) and developed into two different lines of research: first, a more precise investigation of courts and their doctrines, with growing preoccupation with standards of comparability, and, second, a growing number of logical standards and critical patterns of courts' decisions, with attempts to create formal protocols of logical analysis, looking for consistency and coherence in cases and precedent (Freitas Filho & Lima 2010).

A critical approach is normative and, when concerned with legal institutions, dependent on the more fundamental concept of justice shared by members of a given community or society. In fact, the pioneers of sociolegal studies in Brazil were nonconformist lawyers, many of them preoccupied with the effects of the legal order as an instrument of injustice in Brazilian society. For most of them, the problem to be tackled was one not only of effectiveness (the gap between law on the books and law in action) or efficiency (the high costs of litigation or inaccessibility of the legal system) but also of the overall injustice of Brazilian society, which was usually invisible for many of the participants in the legal system.

The crossroads at which law and society studies in Brazil find themselves is, paradoxically, the result of pioneering efforts within the field: Having thought of sociology as an instrument to enlarge a critical view of the jurist, the very success of scholars' attempts resulted in a growing field of empirical and sociological research. They have helped to renew teaching and research. Countless efforts are being conducted to transform law schools. More than ever before, legal scholars refer to research from other disciplines. Attempts at legal reform are made with the help of social and empirical analysis. This new research, however, is a lot less critical than expected. It has gone mainstream and tends to concentrate on efficiency or effectiveness issues to the exclusion of the normative and critical approaches of earlier years.

## **DISCLOSURE STATEMENT**

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## LITERATURE CITED

- Aith M. 2000. O impacto do judiciário nas atividades das instituições financeiras. In *Judiciário e economia no Brasil*, ed. AC Pinheiro, pp. 103–12. São Paulo: Sumaré
- Almeida AC. 2007. *A cabeça do brasileiro*. Rio de Janeiro/São Paulo: Record
- Arantes RB. 2002. *Ministério Público e política no Brasil*. São Paulo: Sumaré/Educ.
- Bendix R. 1996 (1964). *Construção nacional e cidadania* [Nation-building and citizenship]. São Paulo: Edusp
- Bonelli MG. 2002. *Profissionalismo e política no mundo do direito*, Vol. 1. São Carlos: EdUFSCar/Sumaré/FAPESP. 1st ed.
- Bonelli MG. 2003. Perfil social e de carreira dos delegados de polícia. In *Delegados de polícia*, Vol. 1, ed. MT Sadek, pp. 31–67. São Paulo: Sumaré/Fund. Ford. 1st ed.
- Bonelli MG. 2010. Juventude, profissão e gênero. In *Juventude e iniciação científica: políticas públicas para o ensino médio*, Vol. 1, ed. CA Ferreira, SO Peres, CN Braga, MLM Cardoso, pp. 107–19. Rio de Janeiro: EPSJV/UFRJ. 1st ed.
- Bonelli MG. 2013a. A internacionalização da advocacia e o perfil da profissão no Brasil. In *Manual de sociologia jurídica*, Vol. 1, ed. FG Silva, JR Rodrigues, pp. 289–308. São Paulo: Saraiva. 1st ed.
- Bonelli MG. 2013b. Magistrados(as) e promotores (as): profissionalismo e gênero. In *Pesquisa empírica em direito*, ed. AS Cunha, Silva PEA, pp. 153–60. Brasília: IPEA
- Bonelli MG. 2013c. *Profissionalismo, gênero e diferença nas carreiras jurídicas*. São Carlos: EdUFSCar
- Bonelli MG, Oliveira FL, Martins R. 2006. *Profissões jurídicas, identidades e imagem pública*, Vol. 1. São Carlos: EdUFSCar. 1st ed.
- Campilongo CF. 2011. *Interpretação do direito e movimentos sociais: hermenêutica do sistema jurídico e da sociedade*. Thesis (livre docência), Dep. Filos. Teoria Geral Direito, Univ. São Paulo
- Castro CAP. 2001. *Sociologia aplicada ao direito*. São Paulo: Atlas
- Castro CAP. 2003. *Sociologia do direito: fundamentos de sociologia geral; sociologia aplicada ao direito*. São Paulo: Atlas. 8th ed.
- Comblin J. 1978. *A ideologia da segurança nacional: poder militar na América Latina*. Rio de Janeiro: Civiliz. Bras.
- Cunha AS, Silva PEA, eds. 2013. *Pesquisa empírica em direito*. Rio de Janeiro: IPEA
- Damatta R. 1997. *A casa e a rua*. Rio de Janeiro: Rocco
- Engelmann F. 2000. O poder das escolas do poder. In *A faculdade de direito de Porto Alegre: subsídios para sua história*, ed. JP dos Santos, pp. 11–18. Porto Alegre: Síntese
- Engelmann F. 2006. *Sociologia do campo jurídico: juristas e usos do direito*. Porto Alegre: Fabris
- Engelmann F. 2011a. A sociologia jurídica no Brasil. In *Curso de sociologia jurídica*, Vol. 1, ed. LP Ferreira Jr, R Guanabara, V Lombardo, pp. 347–69. Rio de Janeiro: Campus Elsevier
- Engelmann F. 2011b. Critique du droit et mouvement du droit alternatif au Brésil dans les années 1990. In *Le droit en révolution*, Vol. 23, ed. M Kaluszynski, X Dupré, pp. 173–87. Paris: Maison Sci. Homme. 1st ed.
- Engelmann F. 2013. Elites judiciais. In *Dimensões políticas da justiça*, ed. L Avritzer, N Bignotto, F Filgueiras, JR Guimarães, pp. 1–7. Rio de Janeiro: Civiliz. Bras. 1st ed.
- Faria JECO, ed. 1988a. *A crise do direito numa sociedade em mudança*. Brasília: Editora UnB
- Faria JECO, ed. 1988b. *Eficácia jurídica e violência simbólica*. São Paulo: Edusp
- Faria JECO, ed. 1989. *Direito e justiça: a função social do judiciário*. São Paulo: Ática
- Faria JECO, ed. 1999. *O direito na economia globalizada*. São Paulo: Malheiros
- Faria JECO, ed. 2010. *Direito e conjuntura*. São Paulo: Saraiva
- Fontainha FC. 2011. O perfil do aluno da EMERJ: um estudo sobre ‘concursandos.’ *Revista EMERJ* 14:7–31
- Fragale Filho R. 2006. Ensinar sociologia nas faculdades de direito: possibilidades e significados. In *O ensino jurídico em debate: o papel das disciplinas propedêuticas na formação jurídica*, ed. DT Cerqueira, R Fragale Filho, pp. 45–58. Campinas: Millennium
- Freitas Filho R, Lima TM. 2010. Metodologia de análise de decisões. *Univ. Jus*, Vol. 21. <http://www.publicacoesacademicas.uniceub.br/index.php/jus/article/view/1206>
- Freyre G. 1951. *Sobrados e mucambos*, Vol. 1. Rio de Janeiro/São Paulo: José Olympio
- Freyre G. 1995. *Casa grande e senzala*. Rio de Janeiro: Record. 30th ed.
- Garcia Villegas M. 2010. *Sociologia y crítica del derecho*. Mexico, DF: Fontamara
- Junqueira EB. 2001. *Através do espelho: ensaios de sociologia do direito*. Rio de Janeiro: IDES/Letra Capital

- Lemos Filho A, ed. 2008. *Sociologia geral e do direito*. Campinas: Alínea. 3rd ed.
- Lopes JRL. 1998. Planos de saúde e consumidor: relatório de pesquisa—Brasilcon. *Revista direito consumidor* 28:137–56
- Lopes JRL. 1999. Social rights and the courts. In *From Dissonance to Sense: Welfare State Expectations, Privatisation and Private Law*, ed. T Wilhelmsson, S Hurri, pp. 567–90. Aldershot, UK: Ashgate
- Lopes JRL. 2006. Brazilian courts and social rights: a case study revisited. In *Courts and Social Transformation in New Democracies*, ed. R Gargarella, P Domingo, T Roux, pp. 185–211. Aldershot, UK: Ashgate
- Lopes JRL. 2014. *Naturalismo jurídico no pensamento brasileiro*. São Paulo: Saraiva. In press
- Lopes JRL, Garcia Neto PM. 2011. Pensamiento jurídico crítico en Brasil (1920–1940). In *Crítica jurídica comparada*, ed. MG Villegas, MP Saffon, pp. 105–41. Bogotá, Colomb.: Univ. Nac. Colomb.
- Lyra Filho R. 1980. *O direito que se ensina errado*. Brasília: Editora UnB
- Lyra Filho R. 1982. *O que é direito*. São Paulo: Brasiliense
- Machado Neto AL. 1987. *Sociologia jurídica*. São Paulo: Saraiva. 6th ed.
- Manole Rosa FAM. 2001. *Sociologia do direito: o fenômeno jurídico como fato social*. Rio de Janeiro: Zahar
- Miranda Rosa FA. 1970. *Sociologia do direito: o fenômeno jurídico como fato social*. Rio de Janeiro: Zahar
- Morais R. 2002. *Sociologia jurídica contemporânea*. Campinas: Edicamp
- Neves M. 1994. *A constitucionalização simbólica*. São Paulo: Acadêmica
- Neves M. 2008. *Entre Têmis e Leviatã: uma relação difícil*. São Paulo: Martins Fontes
- Oliveira FL, Sadek MT. 2012. Vivência de conflitos e usos das instituições formais de justiça pelos moradores das favelas. In *UPPs, direitos e justiça: Um estudo de caso das favelas do Vidigal e do Cantagalo*, ed. FL Oliveira, pp. 91–122. Rio de Janeiro: FGV. 1st ed.
- Oliveira L. 2004. *Sua Excelência o Comissário: e outros ensaios de sociologia jurídica*. Rio de Janeiro: Letra Legal
- Oliveira L. 2009. *Do nunca mais ao eterno retorno: uma reflexão sobre a tortura*. São Paulo: Brasiliense. 2nd ed.
- Oliveira L. 2011. *O Enigma da Democracia—o pensamento de Claude Lefort*. Piracicaba: Jacintho. 1st ed.
- Pinheiro AC. 2000. O judiciário e a economia: evidência empírica para o caso brasileiro. In *Judiciário e economia no Brasil*, ed. AC Pinheiro, pp. 54–75. São Paulo: Sumaré
- Pinheiro AC. 2008. Direito e economia num mundo globalizado: cooperação ou confronto? In *Direito e economia*, ed. LB Timm, pp. 19–47. Porto Alegre: Livraria Advogado. 2nd ed.
- Rist G. 2004. *The History of Development: From Western Origins to Global Faith*. London/New York: Zed Books
- Sabadell AL. 2008. *Manual de sociologia jurídica: introdução a uma leitura externa do direito*. São Paulo: Revista dos Tribunais. 4th ed.
- Sadek MT. 2000. *Cidadania e Ministério Público*. São Paulo: Sumaré
- Sadek MT. 2003. *Delegados de polícias*. São Paulo: Sumaré
- Sadek MT. 2013. *O Perfil da magistratura brasileira. Pesquisa empírica em direito*. Brasília: IPEA
- Sadek MT, Arantes RB. 2003. *Delegados de polícia: quem são e o que pensam. Segurança cidadã e polícia na democracia*. Rio de Janeiro: Fund. Konrad Adenauer. 1st ed.
- Sadek MT, Beneti SA, Falcão J, Collaco R. 2006. *Magistrados—uma imagem em movimento*. Rio de Janeiro: FGV. 1st ed.
- Sadek MT, Cavalcanti RB. 2003. The new Brazilian public prosecution: an agent of accountability. In *Democratic Accountability in Latin America*, ed. S Mainwaring, C Welna, pp. 201–27. New York: Oxford Univ. Press
- Sadek MT, Oliveira FL. 2012. Estudos, pesquisas e dados em justiça. In *Justiça em foco—estudos empíricos*, Vol. 1, ed. FL Oliveira, pp. 15–62. Rio de Janeiro: FGV. 1st ed.
- Saldanha N. 1999. *Sociologia do direito*. Rio de Janeiro: Renovar. 4th ed.
- Santos G, Silva MP. 2009. *Racismo no Brasil: percepções da discriminação e do preconceito racial no século XXI*. São Paulo: Fund. Perseu Abramo/Rosa Luxemburgo Stiftung
- Schwartz LF. 2005. *Norma, contingência e racionalidade: estudos preparatórios para uma teoria da decisão jurídica*. Rio de Janeiro: Renovar
- Scuro Neto P. 1997. *Manual de sociologia geral e jurídica: lógica e método do direito, problemas sociais, controle social*. São Paulo: Saraiva. 2nd ed.
- Silva FAB, Freitas Filho R. 2008. Ensino superior do direito, concursos e a monografia jurídica. In *Anais do XVII Encontro Preparatório para o Congresso Nacional do CONPEDI Conselho Nacional de Pesquisa e Pós-Graduação em Direito*, ed. Cons. Nac. Pesqui. Pós-Grad. Direito, pp. 3172–95. Florianópolis, Braz.: CONPEDI. [http://www.conpedi.org.br/manaus/arquivos/anais/salvador/roberto\\_freitas\\_filho.pdf](http://www.conpedi.org.br/manaus/arquivos/anais/salvador/roberto_freitas_filho.pdf)

- Souto C, Falcão J. 1980. *Sociologia e direito: leituras básicas de sociologia jurídica*. São Paulo: Livraria Pioneira
- Souto C, Souto S. 1981. *Sociologia do direito*. Rio de Janeiro/São Paulo: LCT/Edusp
- Souto C, Souto S. 1997. *Sociologia do direito: uma visão substantiva*. Porto Alegre: Fabris
- Souza J. 1999. A ética protestante e a ideologia do atraso brasileiro. In *O malandro e o protestante: A tese weberiana e a singularidade cultural brasileira*, ed. J Souza, pp. 17–54. Brasília: Editora UnB
- Souza J. 2000. *A modernização seletiva: uma interpretação do dilema brasileiro*. Brasília: Editora UnB
- Souza JG Jr. 2002. *Sociologia jurídica: condições sociais e possibilidades teóricas*. Porto Alegre: Fabris
- Treves R. 2004. *Sociologia do direito: origens, pesquisas e problemas*, transl. M Branchini. Barueri: Manole
- Tugendhat E. 1997. *Lições sobre ética*. Petrópolis: Vozes
- Venturi G, Bokany V, eds. 2011. *Diversidade sexual e homofobia no Brasil*. São Paulo: Inst. Rosa Luxemburgo Stiftung/Editora Fund. Perseu Abramo
- Vianna LW, Carvalho MAR, Melo MPC, Burgos MB. 1997. *Corpo e alma da magistratura brasileira*. Rio de Janeiro: Revan. 2nd ed.
- Villas Bôas Filho O. 2009. *Teoria dos sistemas e o direito brasileiro*. São Paulo: Saraiva
- Winch P. 2008. *The Idea of a Social Science and Its Relation to Philosophy*. London/New York: Routledge
- Wolkmer AC. 2001. *Introdução ao pensamento jurídico crítico*. São Paulo: Saraiva. 3rd ed.