A Comparison of Sociopolitical Legal Studies

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Abstract
This article compares sociopolitical perspectives about the law in three regions of the world: the United States, France, and Latin America. Despite their heterogeneity, these sociological perspectives share many practical and theoretical similarities. For this reason, this article proposes grouping them under the more general title of sociopolitical legal studies (SLS). This general label includes a collection of transdisciplinary research, theories, and studies that view law as a sociopolitical phenomenon central to the understanding of power and society. The concept of SLS reveals the existence of a transversal ground between three academic disciplines: sociology of law, legal theory, and sociolegal studies, which, in spite of multiple connections, rarely communicate with one another. Additionally, the term studies is used in a broad sense, including not just legal theories but also empirical analyses of the law.
INTRODUCTION

For classical thinkers law could not be understood outside its relationship with society and political power. This can be seen in classic social theory and jurisprudence. On the one hand, classical sociologists understood law as closely related to social reality and political power. Law was, for them, an essential element of social cohesion, collective identity, and economic development. Durkheim (1963, p. 12), for instance, argued that to understand the character of a society, one had to recognize the type of law that prevailed within it:

[When one wants to know the way in which a society is divided politically, the way in which these divisions are composed, the more or less complete fusion which exists between them, it is not with the aid of a material inspection and by geographical observations that one arrives at an understanding; for these divisions are moral as well as having some basis in physical nature. It is only through public law that it is possible to study this organization, for it is this law, which determines it, just as it determines our domestic and civil relations.]

Law, power, and society were intimately linked—so much so that the study of each one was crucial for their mutual comprehension. Thus, classical sociology was also a political sociology of law.2

On the other hand, jurisprudence and classical legal thinking also viewed law, society, and politics as interconnected. Indeed, the great majority of legal thinkers, from Plato to Kant, envisaged law as intimately linked to social order, justice, and the defense of the political community (Berman 1983, Del Vecchio 1964, Legendre 1974, Platon 1980, Sabine 1961, Tamanaha 2001, Villey 1975). They understood law and politics not only as two interlocked elements but also as essential instruments for justice and the common good.3

The idea that law, society, and politics were closely intertwined (what I refer to as a sociopolitical vision of law) gained strength in both sociology and jurisprudence at the beginning of the twentieth century, as a reaction to the formalist conceptions of law that had previously dominated Europe and the United States.4 In the United States, this vision became known as “the sociological movement in law.”5 In Europe, a similar reaction spurred by the emergence of social and socialist ideologies arose against the French codification movement and the school of exegesis.6

Sociopolitical visions of law began to lose ground in both Europe and the United States after World War II, as conservative ideas and legal formalism once again took hold. At the same time, the social sciences began to distance themselves from legal thinking. Up until that point, economics,
political science, and sociology—relatively young disciplines—were quite often promoted and even taught by lawyers, which could have led legal science and lawyers to claim paternity of these disciplines. Thus, in their quest for disciplinary autonomy, these new social sciences excluded the law from their methods and objects, fearing that its presence would threaten their recently gained independence (Deflem 2010, Pécaut 1996).

Nevertheless, despite formalism in legal theory and sociologists’ withdrawal from law, the sociopolitical perspective was never obliterated. Its advocates, however, did not face the same fate everywhere: They were more or less successful in the United States, aided by a more dynamic and political conception of legal practice, but they failed in Europe and Latin America, in particular between World War II and the end of the twentieth century, when the integrity of the law was preserved by a caste of jurists and professors who benefited from great social power (Boigeol & Dezalay 1997; Bourdieu 1989, 1991; Dezalay 1992; López 2004).

Today, once again, we are witnessing a renaissance of social and political visions of law in Europe and Latin America, and even in France, the country that was the greatest defender of juridical formalism.7 This renaissance, nonetheless, is founded upon disciplinary niches that differ from country to country: Whereas in France it has flourished largely in departments and institutes of sociology and political science,8 in Latin America, in countries such as Brazil, Colombia, and Argentina (see, for example, Campilongo 1997, García-Villegas 1993, Gargarella 2005, Lemaitre 2009, López 2004), it has prospered primarily in law schools. It must be added, however, that formalist visions of the law continue to dominate most law schools, even in the United States, where the law is, prima facie, more open to social sciences. Similarly, in the overall context of international legal knowledge, the new sociopolitical visions of law are relatively marginal.

My objective in this article is twofold: first, to propose an interdisciplinary concept for the comparison of sociopolitical perspectives in law, and second, to set up the basis to compare these sociopolitical perspectives in the United States, France, and Latin America. The structure of the article follows these two ideas and ends with some reflections on the future of sociopolitical perspectives in law today.

THE SOCIOPOLITICAL VISION OF LAW

I address two points in this section, first explaining the idea of sociopolitical legal studies (SLS) and second proposing a new transdisciplinary title to make sense of them all.

The Core Idea

In spite of their differences, all sociopolitical approaches to the law (both in Europe and in the Americas) share the idea that the law cannot be understood outside of its social and political dimensions (Griffiths 2006). More specifically, they share two fundamental theoretical premises.

First, they reject the two central tenets of legal formalism: (a) legal autonomy in relation to society and (b) legal neutrality in relation to political power. The critique of legal autonomy assumes that law is embedded in society and therefore is not a self-sufficient knowledge that determines its

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own truth. The critique of legal neutrality assumes that law is not an expression of the people’s will, interpreted and applied in a technical and impartial way by politically disinterested legislators of bureaucrats. Sometimes these rejections are radical and reduce the law to either society or politics, whereas other times they are moderate and lead to the recognition of relative legal autonomy or relative legal neutrality. Not all of these critiques reject both legal autonomy and legal neutrality. Some focus only on one of these formalist legal features. I develop these ideas in the next section.

Second, these sociopolitical approaches draw upon the idea that the law is a language composed primarily of words and symbols that reflect society’s core values, such as justice, equality, order, cooperation, and freedom. They claim that legal language and values do not have a fixed meaning, and that the reality of the law depends to a large extent upon the political ability of social actors and institutions to determine the meaning of legal texts in an adversarial legal field (García-Villegas 2014). The symbolic dimension of legal norms is grounded in the fluidity of legal meaning, that is, in the malleable understanding of legal words, and particularly of legal rights. A good portion of the current legal mobilization is founded in what Scheingold (1974) called “the myth of rights,” i.e., the fight for rights as banners of political mobilization used by social movements. Rather than simply law, rights are political and moral symbols whose interpretation depends upon a political struggle for the final meaning of legal texts. Such a meaning is reached at the intersection of several discourses and approaches: “Most of what is articulated as ‘law’ and ‘rights,’” Dudas et al. (2015, p. 369) argue, “is a complex mix of generically legal, moral, religious, technical and other logics.”

A New Concept: Sociopolitical Legal Studies

Thus, despite their heterogeneity, these new sociolegal perspectives share many practical and theoretical similarities. For this reason, I propose grouping them under the more general label of SLS. This general label includes a collection of transdisciplinary research, theories, and studies that see law as a sociopolitical phenomenon that is central to the understanding of power and society.10

It is worth saying that there have been other efforts to bring together critical, sociological, and sociological scholars. In the United States, for instance, the book Crossing Boundaries, edited by Austin Sarat and others [see, e.g., Munger’s (1998) chapter “Mapping Law and Society”], is a good example of it. A book edited by Clark (2012), Comparative Law and Society, is also worth mentioning here.11 In Europe, Gessner & Nelken (2007) published an interesting collection of articles in which scholars from different disciplines compare European law with other legal systems.12 The work of Travers & Bankar, in which an effort is made to bring the classic sociological approach to law, 9The symbolic idea of law is a concept that goes beyond the practice of interpreting rules and standards in the process of legal adjudication. This is why the difference between the law’s symbolic efficacy and its instrumental efficacy does not necessarily coincide with the difference between an internal (technical) point of view and an external point of view (Hart 1961). As has been shown by critical legal theories, the political dimension of law is embedded in the internal and technical point of view, due to the fluidity of legal meaning (Kennedy 1997, Tushnet 1984). Therefore, the symbolic efficacy of law encompasses the entire legal phenomenon, and this is why it is the key concept for understanding the political dimension of law. For a development of these ideas, see García-Villegas 2014.

10Transdisciplinarity is the intellectual posture that is, simultaneously, between, across, and beyond all disciplines (Morin 1994, Nicolescu 2002). For a discussion of transdisciplinarity in law, see Arnaud 2013a,b; Chassagnard-Pinet et al. 2013; van de Kerchove 2013.


is also part of this endeavor (Banakar & Travers 2002, Travers 1993). Likewise, scholars working in specific subfields have attempted to do the same. This is evident in the work of McCann on the dialogue between social movement scholars and legal mobilization scholars (Dudas et al. 2015, McCann 2006). Some integrative efforts have also been made at the regional level. In Latin America, particularly in Colombia, México, Argentina, and Brazil, there is a growing interest in the law and society scholarship (see, for instance, de Lima Lopes & Freitas 2014; de Sousa Santos & Rodríguez-Garavito 2005; Garcia-Villegas 2010, 2014; Junqueira 2001; Lemaitre 2015; Ríos Figeroa 2012; and Rodríguez-Garavito 2003, 2011, 2014).

This article is intended as a contribution to this literature, not only by deepening the disciplinary connections within SLS but also by expanding the geographical scope of comparison of SLS. As for disciplinary connections, this article takes up the old idea of the classics of sociology according to which the understanding of law cannot be made independently of society and power. As for the latter, my analysis benefits from the advances made by the SLS in Europe and Latin America.

The idea of SLS reveals the existence of a transverse ground of studies between three academic areas: sociology of the law, legal theory, and sociolegal studies, which, in spite of multiple connections, rarely communicate with one another. From a comparative perspective, the adoption of this general and inclusive terminology has four advantages:

First, it helps overcome the lack of communication between the three aforementioned academic disciplines and, in doing so, highlights the multiple relationships between their legal scholarships. Replacing the conventional expressions sociology of law, sociolegal studies, and critical theory of law (susceptible to being appropriated by jurists as well as sociologists) with the more neutral SLS helps avoid disciplinary quarrels, particularly common in countries with civil law traditions, between a sociology of law crafted by jurists and one crafted by sociologists. Assuming a more general point of view than that of the disciplines at stake (law, political science, and sociology) can help not only to make peace in disciplinary battles (Wallerstein 1999) but also to better understand, from a comparative perspective, the multiple connections between legal scholarships that barely communicate.

Second, this more inclusive perspective highlights the fact that the great contribution of these new visions of the law resides less in the methodological or epistemological enrichment of each of these disciplines than in the analysis of certain fundamental social and political problems of the contemporary world. This can be seen in the tendency of SLS authors toward the study of subjects such as the politicization of justice, the globalization of law, human rights activism, the politicization of the juridical profession, the increasing contestation of the law, and the pervasiveness of juridical pluralism, among others. All these issues are traversed by the double phenomenon (disciplinarily unclassifiable) of the increased judicialization of politics and of the politicization of justice, which characterizes a great deal of current social relations. In short, instead of beginning with the discipline and moving to the problems, SLS begins with the problems and moves toward the disciplines, and then returns to the problems.

On this point, I share not only the surprise of scholars (especially American ones) upon observing the persistence and even virulence of disciplinary debates between jurists and sociologists that take place in France, and sometimes in Latin America, around the existence of sociology

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13On this subject, see Arnaud 1998, Banakar & Travers 2002, Caillosse 2011, Commaille 2003, Israël 2008, Loiselle 2000, Travers 1993, Treves 1995. More recently, see the two volumes of the Droit et Société, the French journal dedicated to this debate: the first of them (no. 69–70), from the sociological perspective, organized by Liora Israël, and the second (no. 75), from the juridical perspective, organized by Pierre Brunet and Michel van de Kerchove. It must be said that in the United States and England sometimes these divisions can also be seen; see, for instance Banakar & Travers 2002; Deflem 2010, p. 275; Travers 1993; Sarat & Ewick 2015.
of law, but also their concern for the unfavorable consequences that such debates have for the construction of cooperative academic communities.\textsuperscript{14}

Third, the inclusive nature of this perspective can help overcome a kind of legal and sociolegal knowledge that is too parochial, too focused on the nation-state, and too limited to local and domestic law (Assier-Andrieu 1996, Darian-Smith 2013, de Sousa Santos & Rodríguez-Garavito 2005, Twining 2009). SLS not only relativizes the dependency of law in relation to the nation-state but also expands the notions of time and space that we need to address modern issues of globalization and the weakening of nation-states (Pogge 2008, Roodt 2013, Singer 2004).

Finally, with this label, I believe we will more easily reach the objective some sociologists of law pursue, particularly Jacques Commaille in France, of recovering the perspective of classical sociologists (and, I add, of classical legal thinkers) to better understand the close connections that currently exist between power, legal norms, and social relations.\textsuperscript{15}

**BASIC IDEAS FOR THE COMPARISON OF SOCIOPOLITICAL LEGAL STUDIES**

For the comparison of SLS I draw upon two main presuppositions: First, legal and sociolegal ideas are shaped, to some extent, by the distribution of symbolic and social capital among legal actors (e.g., lawyers, law professors, legislators, and judges) and by the relationships that these actors maintain with actors in the political field. These power relations among actors in the legal field differ according to the civil law and common law traditions, as Weber (1922) explains in a classical text. Second, in each of these traditions and legal cultures, certain types of relationships between law, power, and society are established, which are the reference points that allow for the construction and interpretation of norms and legal doctrines (Van Caenegem 1987).\textsuperscript{16} In short, the different positions and tendencies that legal actors have occupied in the history of common law and civil law, on the one hand, and their relation with political power, on the other, have shaped the sociopolitical visions of law.

**Actors in the Legal Field**

Whereas in France and other civil law countries law professors enjoy the most prestige, in common law countries judges and lawyers do.\textsuperscript{17} The success of professors of (civil) law and of law schools in France, Germany, and Latin America comes from their capacity to present themselves as the keepers of state knowledge. They have thus acquired not only great visibility and political significance but also great autonomy vis-à-vis political power (Dahrendorf 1969). By contrast, the success of lawyers and judges in the United States is due to their role as social engineers in the resolution of conflicts and in a wide range of sociopolitical questions. I come back to these differences in the following section.

In short, a comparative sociolegal assessment of the authors, debates, and movements in the legal field must keep in mind the legal tradition in which they operate, the political struggles among legal actors, and the social and political context in which they succeed or fail in their search

\textsuperscript{14}On this subject, see Arnaud 1998, Cailloise 2004, Treves 1995.

\textsuperscript{15}See Commaille et al. (2010, 2015); a similar vision can be found in the writings of Hunt (1978, 1982, 1993).

\textsuperscript{16}The particular identities of common law and civil law were shaped by the debate around the concept of sovereignty in the seventeenth and eighteenth centuries in England and France (García-Villegas 2009).

\textsuperscript{17}For a detailed explanation of the differences, see Bourdieu 1986, Legrand 1999, Rheinstein 1954, Van Caenegem 1987.
for symbolic power (Bourdieu 2012, Dezalay 1990, Garth & Sterling 1998). Only thus can we appreciate the reasons for which certain ideas, authors, or movements are accepted while others are rejected (López 2004, Nelken 2001). By bearing in mind this complex web of connections, we can avoid both what Friedman calls the “internalist school”\footnote{According to Friedman (1989, p. 10), this perspective “observes law as the lawyer or the jurist observes law.”}—that is, the temptation to explain the evolution of a discipline (in this case, law) by tracing the vicissitudes of its arguments, movements, and ideas—and the materialist approach that reduces legal thought to the economic context in which it arises.\footnote{This reductionist vision is adopted by both orthodox Marxism and contemporary perspectives from the law and economics movement.}

The Relationship Between the State and the Law

The particular identities of common law and civil law were shaped by the debate around the concept of sovereignty in the seventeenth and eighteenth centuries in England and France (Bourdieu 1997, Elias 1986, Tilly 1990). The two countries had different ideas on this subject. In the French tradition, which came out of absolutism, law was the expression of the sovereignty of the state, represented by the monarch (Van Houtte 1986). Under this conception, law does not precede the state but is its expression. In the civil law tradition, popular sovereignty is expressed in the civil code,\footnote{According to article 4 of the Declaration of the Rights of Man and Citizen of 1793, the law is an expression of the general will.} which seeks to create a consciousness of all belonging to a single nation, governed by one sole law and one sole will. According to Merryman (1994, p. 28), “the French Code of 1804 was conceived as a sort of book of the people which could be placed on the shelf next to the Bible.”

The common law tradition rests, conversely, on the medieval conception of mixed constitution,\footnote{In England, the adoption of the tradition of the mixed constitution, inherited from the Middle Ages, was an antidote to the idea of sovereignty (see Fioravanti 1999, 2001; Matteucci 1988; Zagrebelzki 1992. In the seventeenth century, the Stuarts failed in their attempt to import the French model of sovereignty. The Glorious Revolution of 1688, which ran counter to this French tradition, adopted the idea of the separation of power between Parliament and the King.} according to which the law belongs to the people, almost as an attribute of the group or a common possession that helps the group maintain its unity (Sabine 1961).\footnote{In the common law tradition, George Sabine (1961) explains, law is “found” rather than “created,” and it is inappropriate to say that there exists a body of people whose task is to create law.} The legal culture is thus founded on practices and common sense, not on general principles. This is why it is supposed that common law has always existed and must be discovered and ceaselessly adapted.\footnote{For example, in the United States, although the popular will might play an important role in times of constitutional crisis (marked by radical changes of political regimes), once this crisis is over, the sovereign people withdraws and acts through the powers established by the Constitution (Ackerman & Rosenkrantz 1991).}

In short, there is a neat differentiation between the law as resulting from essential rights embedded in human nature (England) and the law resulting from the representatives of the people, who are the only ones capable of establishing the content of fundamental rights (France and Latin America). In the first case, rights are natural rights; therefore, they are autonomous from political power, and legal norms can be the object of an institutionalized legal critique, developed within
the juridical system, without putting the social contract into question. In the second case (France), law has no autonomy in relation to politics, and legal critique, to be effective, must question the entire social contract.

All of this has a direct impact on the political conception of law and on the social and political uses of rights. Legal critiques in Europe have a tendency to neglect legal analysis by subordinating law to political power. Conversely, in the United States, the critique of legal norms is natural and therefore does not involve a critique of the political order. In France, the conceptual separation between the state and the exercise of power was more tortuous than in England, where the state is more related to natural law and therefore is not affected by historical facts.24

Moreover, whereas in continental Europe the political struggle around law is concentrated on the lawmaking process, in the United States this struggle extends beyond lawmaking to adjudication, in which citizens and social movements are involved.25

The social and political visions expressed in these traditions have determined two different types of SLS, each one with a particular conception of the relationship between law and sociopolitical realities. From that emerged two different ideas of legal critique, and two particular conceptions of the relationship between law and social sciences.

Two caveats are at stake here: (a) These differences are valid from a longue durée perspective. Today, the globalization of the economy, the constitutionalization of rights, the legalization of politics, and the rise of a European legal field, among other factors, have produced a lot of homogenization in legal fields. And (b) the inclusion of Latin-America among the civil law tradition is, although justified, problematic. SLS in Latin America have had a fate similar to that of their European counterparts, particularly in France. The existence of a common legal tradition on the two continents, inherited from Roman law, not only engenders similar conceptions of law, political power, and law’s relationship with society but also helps explain why sociolegal studies are marginal and scatter in the academic world. But unlike what happens in Europe, the specificity of sociolegal studies in Latin America cannot be fully captured by these two theoretical presuppositions. Law, sovereignty, and political power, whose conceptions and implementation were imported from Europe and the United States, have a limited ability to determine social behavior. As a consequence, Latin American civil society is often embedded in state institutions, which makes the classical categories of legal theory, legality (validity), sovereignty, and legal effectiveness problematic (Centeno & Ferraro 2013, Escalante 2002, Esquirol 2008, García-Villegas 2008).

Comparative Overview of Sociopolitical Legal Studies

The two conceptions of SLS described above can be analyzed in terms of the stand they take vis-à-vis legal autonomy and legal neutrality.

The closer law is to political power and the state (France and Latin America), the more the autonomy of juridical doctrine will be proclaimed and, as a consequence, the weaker the connection between law and the social sciences will be and a more radical turn the legal critique will take. Conversely, the closer law is to society and the market (United States), the weaker the autonomy

24The autonomy of the state in France was built from the supremacy of the public administration, as an expression of the Civil Code (Carré de Malberg 1922, Jellinek 1981). The same was true in Latin America, but with less symbolic force legitimizing state institutions (García-Villegas 2009).

25This dichotomy can be a little reductive in relation to certain works that, especially in France, tend to show that public engagement with law exists during legal implementation (see Baudot & Revillard 2014, Lejeune 2011).
of legal doctrine and the stronger the connection between law and the social sciences.26 Let me explain this in more detail.

SLS adopt a critical position in regard to legal autonomy, to legal neutrality, or to both. Therefore, it is possible, in principle, to differentiate SLS according to the critical target at which they take aim. We can then separate those contesting the autonomy of law from those contesting the political neutrality of the law.

SLS can also be classified according to the point of view they adopt in relation to law. To that extent, there are, on the one hand, internal SLS that view things from inside the legal system and, on the other hand, external SLS, which view things from outside the law. Internal perspectives, usually carried out by lawyers, envisage law from within the legal discipline, whereas external perspectives, usually carried out by social scientists, consider legal norms from social sciences.27

From the combination of these two points of view (the critical target and the position with respect to the law), four types of SLS emerge. The first two are internal to the law (one against legal autonomy and one against legal neutrality), and the latter two are external to the law (one against legal autonomy and one against legal neutrality). I consider first the internal or legal positions and then the external critiques of law.

The first combines the internal vision with the critique of legal autonomy. We often find this type of vision in the work of law professors and jurists who are unsatisfied with the doctrinal conception of law that is taught in law schools. Their objective is to show the relative dependence of the law on social reality, but without dismissing the legal system’s internal rationality (imperfect though it may be). For them, it is about adapting law to social reality (against the idea of autonomy) to improve either its internal logic or its social efficacy. In this category, we can include theories like Sociological Jurisprudence, led by Pound (1912, 1927) in the United States; the legislative sociology of Carbonnier (1978, 2001) in France; some political conceptions of law in Latin America, like Nino’s (1973, 1997) constitutional theory or Garzón Valdés’s (1993) political theory of law; and more recently most of what is written in Empirical Legal Studies today in the United States.28 This type of SLS was particularly important in law schools, first in the United States during the first decades of the twentieth century, and second in France with the sociology of legislation (Jean Carbonnier) during the 1970s. Because the ultimate goal of these authors is to improve the law and the legal system, the critical potential of their theories is thus very often limited.

The second position results from the combination of the internal point of view and the critique of legal neutrality. Legal norms are perceived here as instruments designed and used for political domination. The goal of authors who adopt this perspective is to deconstruct legal rationality and show the gaps and inconsistencies of the law to prove that law is and functions like a political instrument intended to dominate subaltern classes and minorities. Critical legal theories, such as

26 American legal antiformalism is not necessarily a progressive form of thought. Movements such as law and economics and law and society may present themselves as heirs of legal realism, even if they espouse different political visions. Additionally, the fact that American legal thought draws from the interstices between the market, power, and the law has problematic implications, not just in relation to the domestication of critical perspectives but also in relation to the commodification of law schools, which results in a loss of professors’ autonomy vis-à-vis existing political and economic powers. One might even suggest that the American antiformalist criticism, which emphasizes the need to define the connections between law and society, was favorable to the legal field and conservative views. See Dezalay et al. 1989, Garth & Sterling 1998, Tamanaha 2012, Tomlins 2000.


28 For a general overview of this movement, see Suchman & Mertz 2010; see also Chambliss 2008, Leiter 2003, Nourse & Shaffer 2009, Shaffer 2008.
critical legal studies,\textsuperscript{29} critical race theory,\textsuperscript{30} and legal feminism\textsuperscript{31} in the United States, provide the best examples of this perspective. This perspective has dominated in law schools the United States since the early 1970s.

Let Us Now Turn to the External Visions

The third position results from the connection between the external point of view and the critique of the autonomy of law. The external perspective can originate in sociology, anthropology, political science, or another social discipline. The SLS located in this position attempt to demonstrate that law has no autonomy from social reality, that is to say, legal truth is not provided by the legal system itself. Their critique relies on the idea of mutual dependency between law and society, without being interested in the political character of law and its practice. This point of view has a long academic tradition, especially in sociology, which goes back to the writings of Montesquieu, Gurvitch (1935, 1942), Petrazycki (1955), Alberdi (1981), and Ehrlich (1922, 1936), among others, and closer to us, to authors such as Deflem (2010) and, sometimes, Cotterrell (1983, 2004, 2012) and anthropologists in legal consciousness studies (Ewick & Silbey 1998, Merry 1988, Silbey 2005). The alternative law movement in Brazil is close to this model: Its authors—de Arruda (1993), Rodrigues (1993), and Wolkmer (2012)—adopt a social or sociological point of view when they critique the traditional legal operators (e.g., judges, legislators), nevertheless emphasizing the importance that a more open and social legal rationality can have. This perspective has prospered in social science departments in France and the United States over the last decades.

Finally, the fourth position results from the combination of an external view of law and a critique of its political neutrality. From this position, law is seen as domination, and its rationality and technique can emerge only from outside the legal system. The authors from this group are frequently the most radical: The fact that they do not recognize or are not interested in the internal rationality of law drives them to adopt an attitude of radical disqualification of the legal system. This is the case of the French critics in the \textit{critique du droit}\textsuperscript{32} movement and of some Latin American authors influenced by Marxist thought on law (Correas 1993, De la Torre 2006, Rojas & Moncayo 1978, Wolkmer 1995). This type succeeded in law schools in France and Latin America, especially during the 1970s and 1980s. \textbf{Table 1} presents the typology established here, along with examples of some authors from each group.

The differences between these ideal types have important implications for the social and political scope of SLS. Indeed, as a general rule, internal critiques are more moderate than external visions, for the simple reason that recognizing the internal rationality of law involves, in principle, a certain acceptance of the legal system. External visions, however, tend to neglect not only legal rationality but also any possibility of redemption for existing law. This is particularly obvious for


\textsuperscript{30}For an introduction to these studies, see Crenshaw 2002, Crenshaw et al. 1995; Delgado 1987; Delgado & Stefancic 2013; Haney López 1994. There are also critical perspectives on race in law and society; see, for example, Curry 2012, Moran 2010, Obasogie 2010.

\textsuperscript{31}See Butler 1992; MacKinnon 1982, 1989; West 1988, 1997; for a closer assessment, see Kessler 2011.

Table 1

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<thead>
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<th>Position</th>
<th>Against legal autonomy (embeddedness)</th>
<th>Against legal neutrality (domination)</th>
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<tbody>
<tr>
<td>Internal (law)</td>
<td>a. Legal improvement</td>
<td>b. Legal deconstruction</td>
</tr>
<tr>
<td>External (social sciences)</td>
<td>c. Sociological explanation of law</td>
<td>d. Political admonition of law</td>
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the critical authors of the 1970s in France (Mialle 1976), as well as for some Latin American critics of the 1980s (Novoa Monreal 1980, Wolkmer & Correas 2013).

Furthermore, SLS opposed to legal autonomy are usually less radical than those opposed to legal neutrality. The former points out how the law is socially dependent, but admits that this can be addressed through institutional engineering and sociolegal reforms. By contrast, SLS that conceive of law as a mechanism of domination tend to see no outcome other than a radical social change or revolution.

Overall, the evolution of the SLS in the United States has favored the b and c positions in Table 1, i.e., a moderate position against neutrality (legal deconstruction) and a radical position against autonomy (sociological explanation of law). In France, by contrast, these same studies have privileged positions a and d, i.e., ranging between the most moderate position against autonomy (legal improvement) and the most radical position against neutrality (political admonition of law). In Latin America, meanwhile, at least over the last decades, external positions like c and d have predominated.

Finally, and even more importantly, it is necessary to highlight that SLS against legal autonomy and against legal neutrality are not mutually exclusive. In fact, almost all the radical versions against neutrality are also strongly opposed to autonomy. This is why, although the typology is useful for explaining the historical diversity of SLS, it does not sufficiently take into account all the possible movements that have existed. This is the case of Max Weber’s or Pierre Bourdieu’s sociology of law, because although they adopt an external point of view, they also recognize the internal point of view (Bourdieu 1986, Weber 1922). Moreover, the legal theory of Ost & van de Kerchove (1987) in Belgium, which adopts an internal and critical legal point of view, does not ignore the external point of view.

Furthermore, for at least the past two decades, the majority of SLS, even those developed in France and Latin America, draw upon a constructionist social theory, which leads them to oppose both legal autonomy and legal neutrality without reducing legal phenomena to the social or the political (McCann 1992, 1994; Scheingold 1974). This constructionist approach is more sensitive to the complexity of legal phenomena and to the refinements of oppression; it is often defended by the authors of the law and society movement and has established itself in France and Latin America (Commaile 2015, García-Villegas 2015, Rodríguez-Garavito 2014).

THE FUTURE OF SOCIOPOLITICAL LEGAL STUDIES AND SOME CONCLUSIONS

What will be the future of SLS? The answer to this question is undoubtedly difficult, given not only the great dispersion of these studies but also the uncertainties of law in the present world. Nevertheless, it seems to me that all depend on the capacity of SLS to adapt to at least two conditions of the current situation: first, the increasing flexibility of disciplinary divisions, and second, the softening of the national dimension of law.
Transdisciplinarity

SLS should echo the lack of differentiation of the social sciences and the need for social imagination in the contemporary world (Wright Mills 1959). Disciplinary divisions have frequently become straitjackets that prevent us from understanding problems and social realities that are more and more complex, multidimensional, and interconnected (Abbott 1995, 2001). In fact, most intellectual traditions do not correspond to objective borders in social reality. All social understanding is porous and interconnected with other social knowledge and disciplines. Encasing them in borders, or cataloguing them, is problematic (Hunt & Colander 2013). Disciplines reveal as much as they conceal, as de Sousa Santos (1995) says, or, in Abbott’s (2001, p. 18) terms, disciplines correct each other’s mistakes.

The case for methodological flexibility is particularly strong now given the complexity of problems that SLS deals with in today’s world, in which the state has lost its monopoly on legal creation and legal interpretation. In these circumstances the legal phenomenon is often a diffuse and complex feature that cannot be grasped from one discipline alone. Indeed, monodisciplinary analyses of contemporary sociolegal problems tend to be, most of the time, incomplete or even misleading. As Cotterrell (2004, p. 15) states, “social theory can no longer be considered the preserve of any particular academic discipline. It has to be defined in terms of its objectives rather than particular traditions that have shaped it.”

I would add that the recognition of the sociopolitical dimension of law involves a delicate interdisciplinary balance, a balance that does not fall into either of these extremes: one converting social sciences into legal servants, without any possibility for them to question legal rationality, and the other dissolving the specificity of law in the contents of sociology, political science, or any other social science, i.e., overriding any degree of autonomy to the legal system.

Let me now address some practical implications of this disciplinary point. Today new groups and movements of SLS are created with extraordinary ease, particularly in the United States. Such an explosion of groups goes against the call for disciplinary flexibility. This was particularly true in the 1990s, with the formation of a series of critical movements (e.g., legal feminism, critical race theory, Lat Crit, and postmodernism) and the rise of new tendencies within law and society (e.g., empirical legal studies, new legal realism, and legal consciousness studies). Such a proliferation has been facilitated by the proximity that law (and law schools) has to society in the United States. Law is close to social reality, which is strongly determined by the market and economic dynamics. In this sense, American lawyers are perceived as social engineers whose role is to find solutions to the problems that emerge in society. Because of that, the legal field initiates the logic of the market: Law professors are supposed to produce intellectual goods (e.g., conferences, journals, colloquia, and commentaries) that must be sold in the academic market. In this sense, the fragmentation of SLS also succumbs to the necessity of making these academic products more visible and more attractive in a competitive market.

Another consequence of this fragmentation is the lack of communication between the new groups that are created. It is true that specialization may serve to increase the rigor of the analysis of social reality. But because the sociopolitical reality of law is only one, excessive specialization and the lack of communication between specializations impedes an adequate explanation of the legal phenomenon. For an outside observer, it is always surprising that there is not more academic exchange between, for example, critical legal studies and law and society, or between law and

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33Israel (2008, p. 381) is close to the interdisciplinary vision when she proposes a “methodological indifferentiation” for the sociology of law. See also Arnaud (2013a,b), Levine (1990), and the Belgian debate on the relationship between law and context (Univ. Saint-Louis 2013).
economics and law and society. Not only are the groups too focused on themselves to communicate with other new groups and too eager and too invested in their positions and scholarly productions, but, even worse, they neglect to communicate even with the theoretical core of general disciplines like political science or sociology. For instance, there is, in general terms, a lack of academic exchange between the literature on social movements belonging to political science and the law and society literature on the political use of laws by these movements (for a notable exception, see McCann 2004). Moreover, there are cleavages between theory and practice and between theoretical analysis and empirical analysis, as is the case between the sociology of law and critical legal studies. These cleavages prevent scholars from having a precise comprehension of legal phenomena.

The lack of communication among groups has obstructed the construction of a progressive understanding of the law. Although a long tradition of the progressive use of law has developed over the past few decades (particularly during the civil rights movement and beyond), this tradition has been undermined by the lack of an encompassing critical legal theory. Although it is true that SLS constitutes a very dynamic field of political practice and scholarship, its critical and transformative impact has been, especially over the last two decades, rather weak. It is true that it is difficult to sustain a progressive and critical project in a period of economic and political recession and uncertainty.34 But there are also epistemological reasons for this lack of impact, at least regarding law and society. Even though the cultural turn in SLS has contributed to understanding the social reality of law, it has obscured the big picture and structural and class dimensions of the legal phenomena. It is impossible to see this large picture from the daily lives and legal consciousness of social actors.35 This culturalist, often anthropological and postmodern vision of the law has produced an excessive reaction against the study of public policy and, in general, against the study of state institutions.

Challenges in a Globalized World

The weakening of the nation-state, with all its implications (e.g., the decline of sovereignty, the democratic deficit, the loss of universal values, the rise of illegal powers, the deficit of regulation, legal pluralism) is a challenge for those who think about law and work with it.

SLS are still too local and too dependent on conceptual categories belonging to the nation-state (e.g., sovereignty, codification, both legal territoriality and legal spatiality, popular will, international law). It is true that globalization has become a relevant subject today (Sarat & Ewick 2015). But the way it is treated is very local, very restricted to the global expressions of the national. It is also very conservative, because it does not question the whole world system, in which unity is the nation-state. SLS are not taking current globalization and cosmopolitization seriously (Darian-Smith 2013). Despite the fact that the world is more and more interconnected, SLS continue to think in terms of national jurisdictions. We need to be aware of the fact that most of the big problems we face today, such as climate change, economic deregulation, illegal drug trafficking, migration, war, nuclear risks, the judgment of crimes against humanity, and the weakening of the nation-state, are, for the most part, problems of regulation, i.e., sociopolitical legal problems that have no solutions in today’s legal frameworks.

34As Arnold (1971) suggests, in periods of expansion, citizens are open to new ideas and ready to rise to new challenges. In periods of stagnation, however, citizens turn to the past for sources of stability and communal values.

To understand the interconnection between law, society, and power in today’s world, we need to enlarge our idea of time and space. A more global approach is essential to imagine and implement the legal strategies that can face the contemporary challenges, risks, and demands of the current world.

Our world is legally divided into nation-states and politically legitimized by the general will of national peoples. But these are formal and discursive patterns. In reality, we live in an interdependent world, dominated mostly by powerful national interests of a few nations, whose domination is both hidden and strengthened behind the fetishism of legal forms and political discourses. If the nation-state has always enacted limits to the effectiveness of rights and to the protection of human dignity, these limits are fortified in our globalized world: Rights depend today upon passports, as they depended upon race or social class two centuries ago. The chasm between legal forms and sociopolitical realities has increased during this time of globalization. This is why the myth of law, which is the myth of national laws, was never so fictional and so mythical as it is today. The political burden of these myths and forms (their symbolic violence) prevents us from understanding the current relationship between law, societies, and politics in the global arena, and therefore precludes us from facing global problems in democratic, humanitarian, and cosmopolitan ways.

We live in a world that believes it can solve its problems through technological innovations, markets, and repression. Science, business, and war seem to be the only keys to defining the future of humanity. Law, global democracy, and international institutions have a marginal and diminishing role in defining and solving these problems, when everything indicates that they should play a leading role in such issues.

For these reasons, we need to reconsider SLS in a world that is losing the regulatory power of states, a world that is witness not only to new and more subtle forms of domination that go beyond geographical and political borders, but also to new forms of social and political struggles that go beyond the framework of national borders. What are the implications of these changes in terms of rights and democracy? This is a crucial question for the future of SLS.

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