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Legal education in crisis and construction of new post-pandemic paradigms

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ABSTRACT
This article addresses topics related to the future of legal education in Brazilian universities in the post-pandemic of the so-called new coronavirus. As a specific objective, it intends to expose the change that occurred in the need for online undergraduate courses, in addition to reflecting on the economic gain and educational loss of this system. To materialize this research, the methodology used in the elaboration of the article is a qualitative analysis via bibliographic review, carried out through exploration through the survey of scientific articles indexed in appropriate databases such as Scielo, Google Scholar, and in the public domain. In this way, the bibliographic research consisted of reading texts related to the subject, prioritizing the fundamental bibliography. The problem to be researched starts from the premise that legal education in Brazil deserves a new educational perspective, and that means, in addition to the method, support in critical and interdisciplinary law. The relevance of the work takes place amid the new coronavirus pandemic, which transformed, overnight, access to education and its practice. It also seeks to initiate a reflection on the training of uncritical professionals, mere repeaters of given knowledge. Considering the expression "theoretical common sense", it is expected to contribute to a critical look at legal science and its teaching model amid profound social change.

Keywords: Legal education, Conflict management, Theoretical common sense, Methodology, Pandemic.

1 INTRODUCTION

It is a fact that global society has been facing numerous difficulties in the face of the advent of the COVID-19 pandemic, which began in 2020. Since then, there have been many challenges to be faced by social formations, not only in the area of health, but also in the economy, public safety, and culture, among others. This article is concerned with this and its ramifications, to criticize its bias in education and, in particular, in higher education. Based on the findings of UNESCO (2020), Dias and Pinto (2020, p.545) point out the need to think about an adequate articulation between remote and face-to-face teaching. There are numerous challenges faced by educational institutions. In his words:

> [...] many in Brazil do not have access to computers, cell phones or the Internet of quality – a reality verified by the departments of Education of States and municipalities at present – and a considerable high number of teachers have had to learn to use digital platforms, insert online activities, evaluate students at a distance and produce and insert in the material of the platform that helps the student to understand the contents, in addition to the usual recorded and online classes. In the pandemic, some schools and universities are doing their best to ensure the use of digital tools, but without having the time to test them or train faculty and administrative staff to use them correctly. [...]

They further and regrettably emphasize that:

> [...] The difficulties were accentuated in terms of access to education, especially for more impoverished students and teachers, many of them located on the outskirts of large cities or in rural areas. There is a lack of computers, mobile telephony devices, software, and good quality Internet, essential resources for a distance education that results in learning (DIAS and PINTO, 2020, p. 546)

This study aims to reflect on the current scenario of higher education in Brazil and its impact on the distance education methodology, adding to the criticism of Luis Alberto Warat made in the 70s. It starts from the premise that legal education has its basis in traditional dogmatic teaching, whose model essentially privileges the norm, without sufficient stimulus for reflection. The current scenario of education in Brazil requires rethinking the form and contents of teaching. The time seems opportune to start audiences.

To this end, the present work is divided into three stages. In the first of these, a social panorama of reality in the pandemic will be brought to the text. Subsequently, after the history of the creation of legal courses, the possible need for new methodologies for the transformation of the teaching-learning process, including remote learning (EAD), will be evaluated. Finally, there will be the reflections of Luis Alberto Warat and his proposal to review the way the law is taught and the importance of language for this.

2 PANDEMIC AND ECONOMY

This article is being written in February 2022 while the novel coronavirus pandemic is still active. In January 2021, Brazil added the loss of more than 2 million lives and 100 million people infected (PAHO/WHO in Brazil) by the SARS-COV-2 (Covid-19) virus. There is a sharp shake-up of global economies and an inhumane scramble for vaccine distribution. If, on the one hand, the peripheral countries suffer, the economically hegemonic nations invest more and more in the research and development of vaccines, maintaining practically the monopoly of their production, in the hands of private capital.

If the pandemic has brought many economic, social, and psychological losses to wage earners in general, as well as to small entrepreneurs, and specifically to students at all stages of education and their families, due to the economic crisis that has settled in Brazil, for others, a few, it has been the driving force, an opportunity for "growth", for some segments of capital, notably certain companies that operate in the field of education.

The pandemic has accentuated economic inequality in the world. A survey by the Bloomberg Billionaires Index points out that the 500 richest people on the planet collectively earned $ 1 trillion in 2021. On the other hand, the United Nations (UN) estimates that 150 million people in the world

crossed the poverty line in the same period. The astronomical profits of 0.001% of the world's population have bridged the economic chasm with the rest of the population: combined, the fortunes of the world's 500 richest exceed $8.4 trillion, less than only the Gross Domestic Product (GDP) of the United States and China. The Bloomberg Billionaires Index is a daily *ranking* of the richest people in the world. Details about the calculations are provided in the equity analysis on each billionaire's profile page. The numbers are updated at the close of each trading day in New York.

OXFAM BRASIL, 2022) is a Brazilian civil society organization created in 2014 to build a Brazil with more justice and fewer inequalities. It is reported that in Brazil there are 55 billionaires with total wealth of US$ 176 billion. Since March 2020, when the pandemic was declared, the country has gained 10 new billionaires. The increase in billionaires' wealth during the pandemic was 30 percent ($39.6 billion), while 90 percent of the population saw a 0.2 percent decrease between 2019 and 2021. The country's top 20 billionaires have more wealth ($121 billion) than 128 million Brazilians (60% of the population).

The COVID-19 pandemic eventually induced educational institutions to take remote actions in face-to-face courses (BRASIL, 2020 -Opinion CNE/CP n.º 5). Taking advantage of this, many higher education institutions, especially private ones, have seen the distance education modality as a cost-saving strategy(PESCE, 2010). For now, what is seen with the institutionalization of distance education, based on such a premise, are disastrous results, as the literature points out (BARRETO, 2006; IVORY and PESCE, 2019). The same encouraging results were presented about face-to-face courses that, due to the pandemic, have used the so-called Digital Technologies of Training and Communication (TDIC). The concern is with the saving of expenses, even if to the detriment of the quality and social impact of these practices (CONAE, 2018) and the teaching processes.

In addition, the following topic of the research brings a historical overview of law courses in Brazil, their authorization for offers in distance education, and the social expectation regarding the training of the new professional.

3 LAW COURSES: NEW CHALLENGES

The first legal courses began in the Law Academies of São Paulo and Olinda, in 1827, and since then there have been many transformations in legal education in the country. The reform of free education in 1879 was given by Decree No. 7,247, of April 19, 1879, and allowed the creation of other faculties. After the imperial period and with the proclamation of the republic, as well as the social transformations, there was a need for an expansion of legal education beyond the faculties of Olinda and São Paulo, which led to the opening of new law courses in other states.

Without the intention of entering into an in-depth historical discussion, it was possible to observe that such expansion of the courses gained strength in Brazil with the installation of neoliberal governments from the end of the military dictatorship. It is important to emphasize that this growth in supposed democratization of access to Brazilian legal courses contributed to an increase in the "demand for vacancies in Universities or Colleges, causing the proliferation of private institutions of higher education, most without reasonable standards of quality" (AGUIAR, 2004, p. 183).

Aguiar (2004, p. 186), already at the beginning of the twenty-first century, warned that:

> The teaching experience in legal courses has shown a frightening phenomenon: the fading of vigor, interest, curiosity, and indignity of students, in the direct reason of their advancement in the course. At first, their eyes shine, their curiosity is acute, and their antennae are turned on to what happens in the world, even taking transformative political positions. Gradually, in the process in which they climb other levels of the course, they begin to become emsimesmar, to lose their transformative affair, abandoning creative informality and adopting standardized clothing, a standardized language, marked by outdated rhetoric, send their dreams abandoned and replaced by short desires to pass competitions or belong to successful law firms to make money and conquer the so decanted bourgeois security. His eyes are no longer bright, his creativity has appeared as an ability to weave new solutions, different assumptions, and transformative theories. In short, that young man who entered university became, in a few years, a precocious old man.

In the country, there are more than 1,200 active undergraduate law courses and approximately 3 million enrollments, according to data from the latest census of the National Institute of Educational Studies and Research (INEP). (BRAZIL, 2017). The largest share of the market is concentrated in private universities, with the law course being the largest degree in the country in absolute numbers. Brazil alone has the largest number of law courses in the world. Despite the grandiosity of the numbers, the MEC continues to authorize the opening of more courses in the country: in July 2018 alone the Ministry authorized more than 90 new law courses (BRASIL, 2018). The current scenario is thus described by GENTIL (2021):

> The learner becomes an apprentice, who must receive uncritical information and be trained to give answers, and be separated from the market. Reflection, contestation, rebellion, proper to restless minds, as they should even be during the process of maturation, are discouraged. Night courses of all levels and shades sprout, assuming that the student must work all day and, at night, still have a stock of spirit and concentration that allows him to absorb contents – naturally stripped of reflective elements. In such conditions, it is understandable and part of this dynamic that the public school cedes, at all levels, space to private initiative, which, making education an enterprise, will produce merchandise that fits the need for the reproduction of capital.

The number of active undergraduate courses in law will surely jump precipitously from 2022 with the authorizations of the MEC so that these courses could work in a hundred percent digital way. Requests for authorization for this modality began to arrive in 2009 and several higher education

institutions reported the non-evolution of the accreditation process in the MEC for distance education law courses.

3.1 LAW IN DISTANCE EDUCATION

It was then that from July 2021 the processes evolved from internship and were approved in dozens of Brazilian HEIs, starting virtual visits carried out by the MEC for accreditation of the courses, still during the pandemic, which certainly accelerated the procedure. There is some controversy about the viability of distance education courses among the legal and academic community, suggesting that new guidelines and debates should take place. Some jurists are opposed because they understand the law as a social science in which the interaction of educational agents is a fundamental part of the process. The fear is that distance education law courses will transform legal education into "knowledge pills", further tearing apart the meager spaces for learning and reflection.

In addition, with the promotion of international organizations, this model of training via distance education seems to have found the pandemic the strength it needed to accelerate its consolidation. In 2020, we saw a massive attack on the public character of Brazilian education, paving the way for the process of financialization of higher education, whose way of acting has contributed greatly to the increase in the precariousness of teaching and to the severe exploitation of teaching work. See the report below:

> Insulation that makes a profit
> Behind the paralysis of part of the economy, some businesses and companies accelerate their sales and results. And the changes in consumer habits imposed by social distancing create opportunities to innovate and grow.[...] A survey conducted by Catho Educação shows that there was, between March 21 and April 6, a 68% increase in enrollment for distance learning (EAD) or semi-face-to-face courses. Also according to the survey, the first weeks of isolation have already pointed to growth. Between the week of March 3 and 20, the platform had already registered a 44% increase in demand for distance learning courses. Among the most sought-after disciplines are Administration, HR Management, Biomedicine, Accounting, and Logistics. "In addition to the low cost, and in comparison to traditional teaching models, distance education courses have their methodology of greater focus on professional practice, ideal for distance learning," says Fernando Gaiofatto, director of Catho Education. "In the current scenario, education can also be seen as an opportunity, not only for qualification but also for adaptation to circumstances," he says. The same survey finds that, like workers, the labor market is more open to candidates with distance courses: 79% of the recruiters participating in the survey said that distance education or face-to-face training is no longer a determining criterion of evaluation to recruit professionals. (OAK; SCALLOP; CILO, 2020, s/pg.).

The text highlights a crucial characteristic of educational policy in Brazil: the emergence of legislation as much as is enough to promote the expansion and privatization of higher education through the distance modality. It is possible to perceive that, in recent years, distance education has had a guaranteed presence in the agenda of public policies aimed at higher education, especially when considering the expansion of this level of education. There is political discourse in the sense of

justifying and defending these public policies, affirming that, through this teaching model, democratization is consolidated. This is in the sense that many places with meager resources in the country could receive such content. This is a mistake because distance education is used by students from large urban centers, in its majority.

> For higher education in the private sector, the World Bank defended its expansion, due to what it considered as efficient and flexible its reactions to the transformations in market demands, in addition to "democratically" expanding access to this level of education at low or no cost to the State, however, as stated, recognized the almost always low quality in HEIs in this sector. (COSTA, 2016, p. 158).

In the field of legal education, academics and jurists in favor of the liberation of the law in distance education format have also argued: distance courses enable access to graduation for a new range of people, previously left on the margins of higher education, and also offer the opportunity to those who need flexibility in the time and pace of study to comply with academic demands, not to mention more affordable tuition.

It is certain that many institutions of higher education play an important role and with social responsibility, having serious proposals from an academic/pedagogical point of view; others, however, with a marketing bias. In addition to the manifestation of the class body, the Federal Court of Auditors had already prepared an audit report evaluating the performance of the Secretariat of Regulation and Supervision of Higher Education of the Ministry of Education (SERES/MEC) and the National Institute of Educational Studies and Research Anísio Teixeira in the processes of regulation, supervision, and evaluation of undergraduate courses in the country. (BRAZIL, 2018).

The audit originated at the request of the Consumer Protection Commission, aiming to evaluate the performance of the MEC in the inspection procedures of the Law Courses (Proposal for Inspection and Control - PFC 64/2015), whose initial focus was the regulation of undergraduate law courses. On the grounds of the proposal it was stated that

> "Despite all the legislative apparatus for the Ministry (MEC) to exercise oversight over the functioning of Law Schools, students have seen their consumer rights undermined in the face of the poor quality of many institutions. It is enough, therefore, to verify the very low rate of approval in the Bar Exams of the OAB to conclude that the formation of Bachelor in Law is compromised" (BRASIL, 2018).

In the document, the confrontation between the results of the OAB exams and the evaluations carried out by Inep/MEC (ENADE/CPC), pointed out that the examinations of the Order have undergone numerous changes to adapt to the new realities and also to meet the expansion of the number of law schools. It is also observed that the high failure rate in the OAB exams is directly related to the poor quality of legal education in the country. (BRAZIL, 2018). All support the real need for a deeper academic discussion about the teaching of Law in Brazil.

The rapporteur of the judgment of the TCU, Ana Arraes, highlights in her judgment that "[...] there are many bottlenecks to be overcome in order to offer good quality higher education in Brazil" (BRASIL, 2018), stressing that it is up to institutions committed to the country's legal education to perceive and reevaluate how content and competencies are taught. Nothing, finally, seems more current than discussing the adoption of new forms of methodologies for the training of law school students.

Well, it is known that traditional education does not allow undergraduate courses to account for adequate training taking into account the volume of new demands in society. Quiroz and Castillo (2017), point out that, due to the wide access to higher education, the need for new technologies, content that is constantly updated, and necessary a new posture of the academy, having the transformation of a process that only transmits information to another that promotes the participation of students.

Every cultural change requires time and social organization. To demand proactivity in academics, it is necessary to start, among other points, with the training of the teacher. For this reason, March (2006) points out that the success of this new process passes through a special qualification of the university professor, requiring pedagogical training consistent with the transformation in which the protagonist of learning is the learner himself. In this case, the role of the teacher is to accompany, guide, and support the academic, plowing the ground in favor of this, which over time gains autonomy and independence. In this perspective Luis Alberto Warat already understands that "educar es facilitar el aprendizaje del aprender". (WARAT, 2002, p. 366).

Important emphasis should be given to the active methodologies, which are composed of methods, techniques, and strategies used by the teacher to convert the teaching process into activities that foster the participation of the undergraduate student and, at the same time, contribute to the learning process. That is, they correspond to processes that transform the way of understanding, being more focused on the activities that themselves-mind on the contents. (PIQUER; ANDRÉS, 2008).

4 BEYOND TECHNOLOGY

Rethinking the way to teach law is a long way from being summarized in new methodologies. It will be necessary to visualize the pedagogical training of the law professor, who often has to teach as his second or third job. And most importantly: the reformulation of teaching must go through evaluating the content of the curricular matrices. That is why the ideal is to discuss what the right is, and then to debate how to understand it.

Thus, it teaches (TAGLIAVINI, 66, 2014):

> If professional practice helps the teaching work, on the other hand, it can hinder the pedagogical preparation. The law professor usually performs another fundamental activity in his life, such as judge, prosecutor, delegate, lawyer or graduated public servant, dedicating

> himself partially to the teaching work. Being a teacher is not his profession and, therefore, he usually does not have pedagogical training for the performance of his tasks as an educator. He usually dedicates himself to one discipline only, does not do research, and has little commitment to the school. As a teacher, his career is marginal.

Already in tune with the necessary reform of legal education, in the 1970s, Luis Alberto Warat launched the critique under the form of technical/instrumental legal education. There is depth in his critique when discussing under which paradigms the law is understood/taught: the reason for the present article, which proposes to rethink teaching, both about content and about the method. Andle identified a system of production of scientific subjectivities (uniformization of meaning), which would act in favor of the truths posed by the State. Analyzing this problem, inserted in the way of understanding and teaching the law, also verified the existence of (re)productions of legal truths, calling this phenomenon the theoretical common sense of jurists. (WARAT, 1995, p. 69).

In the case of legal science, it is a matter of condensations of knowledge, which establish in a mass way the legal facts. In the opinion of GENTIL,

> [...] the teaching put into practice in universities [...] is charged to meet the demands of the market, which demands, in most cases, banal forensic services, as well as docile professionals, as befits well-trained employees; in this way, this teaching thus directed to serve the market, lacking content on which to theorize, is lost in operational minutiae of questionable utility, Useful only for theorizing of superficiality, with a scientific appearance. Bureaucracy is becoming an end in itself (2013, p. 418).

But from another perspective, censorious scientism (maker of realities) is replaced by juridical, an attitude that consists of clinging to the letter of the law without seeking to contextualize it; that is, a form of specific science that reproduces imprisonments and uniformizations of meaning, resulting in the withdrawal of autonomy from the legal community. Still based on the teachings of Warat – the precursor of the conceptualization of the phenomenon and the phenomenon investigated here – it can be said that the *modus operandi* of juridicism is the law. (WARAT, 1995, p. 85).

On the other hand, it will not be possible to attribute only to the way of teaching the law its true understanding but to consider that the academy is currently represented by a very high percentage of private educational companies, euphemistically called institutions of higher education. In most of them, precarious work relationships of teachers predominate, poorly paid, exploited beyond their natural functions as educators, sometimes paid through parallel entities and other times hired as legal entities. At the origin of this state of affairs is what many call *the business reform of education*, among those Luiz Carlos de Freitas, who points to neoliberalism as the matrix of this transformation. For this author, "they [the neoliberals] do not think of repositioning state management, but of eliminating it, establishing an entrepreneurial market in the area" (FREITAS, 2018, p. 40).

In this sense, there is a strong tendency to privatize higher education, and with it, the commodification of education. One walks with great strides. It would be no different, in a society that is not used to thinking critically. Especially in law schools, there is a "way" of teaching that leads them to robotization. Most teachers start with ready-made speeches, called "uniformization of meanings". Everyone thinks the same way, not knowing why they think it. But it's always been that way.

With [...] the overcoming of the dictatorship it was to be expected, of course, that the uniformity of meaning would remain defeated. It happens, however, that the legal theorization – which should represent the theoretical and practical application of the legal discourse – ended up reproducing the imprisonment and the dictatorial censorship, through the conception and diffusion of shallow and precarious teachings, distant from the existing juridical-social reality. In this context, the operators of the law are inserted in *habitus dogmatics*. (STRECK, 2011, p. 86).

Explaining more clearly, the overcoming of the law characterized few changes in the way of understanding the law, considering that this new truth is not exempt from censorship and subjectivity controlled by the social institution. The movement of the representatives of the *habitus dogmaticus* (STRECK, 2011), when overcoming the truths bound by the law, fell into a new paradigmatic and theoretical trap. The problem of shallow teaching, however, continued with some evolutions. Now the law is no longer self-sufficient and the answer, found by common sense, is the creation of legal principles that resolve the ambiguities of the law.

Observes STRECK (2013):

> It seems interesting to me to talk about the crisis of paradigm(s) that the Law is going through. The old conceptions about him obfuscate the new conceptions. The new cannot be born. And don't even impose yourself. Perhaps the big problem lies in the fact that the new one fails to show itself. The old is so strong that it veils the minimal possibilities of the new appearing through some first of meaning. It is like in the allegory of the hermeneut who arrives on an island and there finds that people despise the head and tail of fish, even in the face of food shortages. Intrigued, he turned the linguistic ground on which the tradition was based and reconstructed the institutional history of that "institute", discovering that, at the beginning of the settlement of the islet, the fish were large and abundant, not fitting in the frying pans. Consequently, they cut off their heads and tails... Today, even if the fish are smaller than the pots, they continue to cut off the head and tail. Asked, one of the residents why they did so: "I don't know... But things have always been that way around here!"

That's common sense. And to understand it it is enough to be in the world, without criticizing it. The world is given. That's just the way it is. And the same author continues, quoting the story of the seven monkeys:

> Some scientists decided to put seven monkeys in a cage. In the cage, there was only a ladder, on which was placed a bunch of bananas. Every time a monkey climbed the ladder to the bananas, a splash of water was triggered and directed at the monkeys that remained on the ground. Thus, after some time, the monkeys that remained on the ground and therefore received a bath of cold water began to prevent another monkey from trying to catch the bananas. They even used aggression to inhibit the attempts of the other monkeys. Despite the

> temptation that bananas posed to the monkeys, they stood firm in the face of the threat of aggression. So the scientists decided to exchange a veteran monkey for an unknown one from the rest of the pack. The rookie's first reaction was always to take the bananas, but he received immediate disapproval from the rest of the pack. Thus, the procedure was repeated until all the veteran monkeys were replaced by new monkeys. The detail is that each monkey, after being attacked, began to attack the next novice who wanted the bananas. Finally, there were seven monkeys left inside a cage, which without ever having taken a cold water bath, did not allow another monkey to try to catch the bananas. (Streck, 2013).

The aforementioned allegory demonstrates how the reproduction of truths directly interferes with the actions of social actors. It should be noted that in the story narrated those monkeys that never had contact with water ended up reproducing what was taught to them by the other members, without even investigating the veracity – and the unsaid – of these teachings.

From this idea, it is possible to understand what is meant by the theoretical common sense of jurists. This system creates and reproduces itself between them, without anyone stopping to analyze why things are and work in a certain way. It can be seen that the censoring threat of the new and the unknown is a common element in both cases. From this analogy, both for the monkeys and for most jurists, it is better to accept the veiled truth, than to be somehow punished for the courage to break with the massifying traditions imposed by the authoritarian mechanisms of the production of *scientific truths*.

Moreover, (STRECK, 2011) reveals that Brazilian law suffers a systemic problem, concerning the way legal science has been taught in Brazil. According to the author, the law has been taught in a wrong and incomplete way, which provides the formation of theoretical common sense. The law as it has been theorized serves for the Brazilian social situation to remain static. In this sense, most universities and their undergraduate law courses, end up forming replicators of theoretical common sense, without any interference and performance of legal hermeneutics.

It seems that legal science boils down to a product, as does the preparatory courses for public tenders: both have become producers of a precarious education. This is what you see in practice. A moment of crisis, brought on by the coronavirus pandemic, may be opportune for paradigm revision. What is sought is the awakening, even if initial, of a critical look at legal phenomena, moving from dogmatic productions and repetitions to a democratic process of search for knowledge.

Complementing the analysis of the expression "theoretical common sense", it should be said that instead of judgments of explanation, only judgments of verification are produced. Common sense, then, becomes the *place of the secret.* Thus, the jurists:

> *They rely on a tangle of intellectual mores that are accepted as principled truths to hide the political component of truth research. Therefore, they canonize certain images and beliefs to preserve the secret that hides the truths" (*WARAT, 1994, p. 15).

It is then observed that they use *an experienced lie as a truth, a lie that intends to be taken seriously* ***(ZIZEK, 1996).*** It is from the meeting of this conjuncture, therefore, that a '*magnetic discursiveness' emerges, which – without many drawbacks – contributes to the stabilization and consolidation of meanings that disturb the possibilities of a democratic social form.*

Developing a critical sense is a struggle against the "authorized speech" that emanates from the "monastery of the wise" (WARAT, 2002). Since the objective of this article is to bring to reflection the way in which the right has been lived, the author proposes to recover the dignity of listening, because we cannot continue to "learn" what does not dignify us. And he adds that concepts and ideas are delimited so that a critical look at the knowledge and application of the law is developed. It is an attitude that, denied as a position, exposes a body of ideas, which, produced from different conceptual frameworks, relates to each other in a flexible and problematic way and that intends to understand the historical conditions of elaboration and the various social meanings of the theoretical habits accepted as the competent discourse of jurists.

In this perspective, the knowledge and exercise of "critical knowledge" seek to establish a new epistemological formulation of "institutionally sacralized legal knowledge". What arouses curiosity about the study of the critique of law is the fact that they recognize the limits, the silences, and especially the political function of legal science. With this, it is possible to understand the political meaning of the construction of law as a science, as well as the heated discourses that jurists distill in the name o truth. Fundamental is the analysis of the legal truths that have been known since the first years in the undergraduate course in law, of the relations of force, which form domains of knowledge and subjects as effects of power and knowledge itself. Finally, the analysis is about a critical knowledge of the law as a new point of view for legal epistemology, which seeks an acute look at legal truths (competent discourses).

Such competent discourses are forged in the legal *praxis* itself, which is why it is suggested to call them the theoretical common sense of jurists. The characterization and explanation of this common sense should be the initial goal of critical knowledge of the law. This theoretical common sense does not cease to be an extra conceptual signification within a system of concepts, an ideology within science, or a doxa within the episteme (WARAT, 2002). It is what this author calls the "epistemology of meanings" in contrast to the "epistemology of concepts". When faced with the latter, one cannot discuss the political meaning of the knowledge of law, since concepts are constructed by reason as an attempt to suppress from ideas their links with metaphysical ideological representations and with their relations with power.

There are three specific moments for understanding the author's reasoning. The first of these is to look at the construction and maintenance of significant habits (a *doxa*); in the second moment the

construction of concepts (an episteme constructed through purifying logical processes in the first moment); and, in the third moment, the theoretical common sense (given by the reincorporation of the concepts in the significant habits). This last moment is characterized by the use of episteme as *doxa*. And then the dialectical scene described begins again.

What he calls the significant processes of law can be understood as a heterogeneous set of semiological habits of reference (theoretical common sense) and discourses organized from said habits. That is, the former operates as a code for later legal enunciations. This means that the theoretical common sense of jurists corresponds not only to a certain set of beliefs that guide the theoretical habits and practical activities of jurists but rather establishes the very conditions by which judges, lawyers, teachers, prosecutors, theorists, and jurists, in general, can "produce socially legitimate decisions or meanings" (WARAT, 1979, p. 19).

The true principle of legality which underlies juridical communication finds support in the ritual of the procedures obeyed by its authorities, thus allowing each jurist – to the extent that he may be accepted as such by the monastery of the wise – to be a collaborator in the reproduction of this order. The nature of the elaboration of the law in society is a complex process, which deserves deepening since it does not simply go through the application of the legal norm to the concrete case.

5 FINAL CONSIDERATIONS

One walks apparently towards remote learning. A great challenge for new methodologies. The form is changed, but the essence is in the content. For those who set out to learn right, the password seems more or less as follows: you will be led by theoretical common sense, filled with conservative ideological charge, to learn not to reason. It is a model that continues to influence contemporary legal thought. Thus, under this aspect, it is asked: what right is being presented to undergraduate students in universities? Would it not be appropriate to review the paradigms on which teaching is based?

It is perceived in this research that the right, when entering the scope of epistemology - which in general lines is the general deflection around nature, stages, and limits of knowledge a year, with special attention to the relationship between subject and object, seems to be scientific knowledge, but it is not. Just as a curiosity, in Susan Sontag's "In the Face of the Pain of Others," The author demonstrates, from the literature, that people often believe they know a reality that they do not know by the simple fact of accessing photos and images of that reality.

Thus, it is asked: how much does the construction of positive law, here understood with its principles, concepts, and judicial interpretations, stamp and fit into the social reality to which it lends itself to reorganizing? In this context, the jurist comes to believe that he is aware of the reality of law and human conflicts, from a paradigm that has been calibrating his gaze and his formation for a long

time, and which has been called "theoretical common sense" here. In addition, judicial decisions, legal texts, and legal education are mere images of human reality, called law, and there is certainly a gap between legal *praxis* and the teaching of law.

The current legal system is essentially based on the rationalist-Cartesian paradigm, through which, to know the whole of the object of study, it is necessary to dismantle or fragment it, studying each part separately. In this way, dogmatics came to occupy a preponderant role in modern legal theory, in a posture of separation between what is theory and what is practical. The first would be in charge of criticism, while the second would be procedural.

It can be inferred then that this right in fragments is greatly influenced by theoretical common sense, which even finds a voice in the main courts of the country, as is the case of the state and higher courts. The truth is that they end up using arational, moral-looking disc bear to justify and substantiate ideologically charged judicial decisions.

And is there a way to break down this theoretical common sense? In this first moment, to reevaluate and reform this way of thinking, which undoubtedly impacts the judicial system, it seems fruitful to consider reform in the university, going through a process of (de)construction of knowledge, which could take into account expressions such as complexity, interdisciplinarity and multi-dimension quality, in its richest spectrums.

The time lived since the beginning of the coronavirus pandemic has produced a new environment of dialogue, including in academia. The virtual mode of communication has meant the reduction of the number of educators in private teaching companies and the organization of classrooms. To this is added the increase in the massification of the contents, which favors an even shallower understanding of the objects of knowledge, among which the law, whose treatment had already been held for a long time and with methodical constancy. Besides this, the increase in the social gap cannot go unnoticed, represented by the pauperization of the working population, on the one hand, and by the increase in the number of large private fortunes, on the other, all evidencing greater concentration and, consequently, less distribution of national wealth. The law naturally does not remain indefensible to these movements and tends, as a manifestation of the superstructure of society, to legitimize the *status quo*, reinforcing the situations reached by the action of economic forces and the relations resulting from them. This requires, without a doubt, an even sharper capacity to criticize this right, which our academy has not achieved, but which, at the cost of the provocation and insistence of avant-garde forces, it will always be possible to expect from it.

Finally, it is opportune to value doubt, in the following sense: the world is made of uncertainties, and – again remembering the coronavirus pandemic – the uncertainty suddenly presented

itself as the most guaranteed. In the face of uncertainties, it is understood that knowledge cannot dialogue with an ocean of certainties, immersed in a false sense of security. Seems like a good start.

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