

The complex method applied to the teaching of law



<https://doi.org/10.56238/ptoketheeducati-041>

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ABSTRACT

This is a theoretical reflection whose scope is to approximate Edgar Morin's concept of complexity with the Teaching of Law. The work focuses on showing that Morin's proposal is admissible and interesting for changing the paradigm of legal education in Brazil.

Therefore, the text reconstructs the concept of knowledge, method and legal teaching. To establish this relationship, the authors built the study under the aegis of bibliographical analysis, articulating the deductive methods with the complex. It is concluded that Law can be taught in several ways, but the methodology or theory of complexity proves to be interesting as it makes the scholar think with his own epistemologies.

Keywords: Complex Method, Legal Education, Morin.

1 INTRODUCTION

Today there is an extremely complicated problem for the educator, for the trainer, namely: how to respond to the challenges of the vertiginous transformations of the means of communication, of information technologies, disseminated on a global scale? In a world where the process of knowledge is atomized, how to make teaching an exercise for the progress of society, human capital, citizenship?¹ The answer, it seems to us, is simple! Use the methods appropriately.

Knowledge is acquired through methods. But the method is not only the way by which knowledge is given. The method is the very knowledge employed for the new knowledge. It is the opposition between knowing and knowledge. It is the making of knowledge². It is how knowledge

¹ CITELLI, Adilson. *Comunicação e Educação: A Linguagem em Movimento*. São Paulo. Editora Senac. pg 246

² Human activities aim to create, invent, conceive, transform, modify, produce control and use products or systems. We can say that generically these actions correspond to interventions of a technical nature, constituting the basis of the pedagogical process itself.



employs its characteristics in a new approach, in a new prospect of knowledge.

The bipolar relationship between the subject and the object is called knowledge. The relationship begins timidly, moving from the subject's tolerance towards the object, to the subject's recognition of the object. As the subject takes possession of the essence of the object, the relationship between the two is narrowing, to the point of being an intimate relationship, generating modes, models, paths, techniques of approximation and apprehension of the object by the subject. In other words, generating the *Method*.

The method, employed in the perspective of Edgar Morin, or, in the light of complex thinking, is a method that translates into macroconcepts, macrounderstanding, that is, through the association of hitherto separate atomic concepts, sometimes antagonistic, but which, in their interrelationship, generate complex figures that, without this interactive dynamic, volatilize and cease to exist³. Now, this method is possible in every scientific application, therefore also applicable in the science of law.

In this perspective, the objective of this study is to verify whether legal knowledge, or more precisely, legal education, as it has been developed in law schools and by professionals in the area, is or is not acquired through method or methods, and, if so, how it is characterized and what its suitability for the science of law⁴.

2 THE INTELIGIBILITY OF REASON: KNOWLEDGE

What is it to know? "To know is to bring to our consciousness something that we know or that we suppose outside of us, teaches us Professor Miguel Reale, in his book *Introduction to Philosophy*⁵. It really is just that. To know is to bring to oneself, into oneself something that is outside. Thus, the process of knowledge implies and involves the existence of two terms, that is, a subject, which is precisely the one who knows, or the one who seeks and brings something into himself, and an object, the one that is outside and that will be known.

The etymological structure of these two words - *object and subject* - helps us to understand them well. *Ob* means in Latin, before of, in front of; and the word *jectum*, cast or posted. We then have *object*, put or thrown forward. Therefore, object is that which is before us, which lies before a subject, available to be known. Put another way, the object is that which is in front of it, placed at its disposal to be thought, captured by the cognoscent subjective consciousness. Already *subjectus* has several meanings, such as underneath, added, submitted, always suggesting the idea of apprehension and

³ MORIN, Edgar. *Educating in the Planetary Age: Complex Thinking as a Method of Learning in Human Error and Uncertainty*. St. Paul. Ed. Cortez. pg. 58th

⁴ Science of Law: positive science or moral science? The science of law (or legal science) is a science that has as its object the study of the application of law in society. It studies the process of drafting or creating the law and its application. It governs, therefore, the function which consists in producing the juridical norm and which consists in applying it in the relations between men.

⁵ REALE, Miguel. *Introdução à Filosofia*. 2 edição. São Paulo. Saraiva. 1989



internalization of something, that is, what is under (we, those who know); what was before (**ob**) became incorporated, under (**sub**). So, *subjectus*, giving the word subject.

It can be stated that knowledge is, then, the bipolar relationship between the cognoscente subject and the knowable object captured and incorporated into the consciousness of the subject who knows.

There are deep relationships between the subject who knows and the known object, a subject studied by gnosiology and epistemology, but it is not the case to develop this study here. At the moment, it is enough for us to establish that the object is apprehended in its representation, with the interference of the subject that, in a certain way, constitutes it.

Knowledge has different shapes and degrees, exhibits different planes. Knowledge is a human need, without which society would not be what it is today in its most varied aspects, as well as in its most varied sciences.

If knowledge needs two elements, or supposes its existence, that is, the subject and the object, the relation of these being what constitutes knowledge, one asks: what does it take to know? Apparently the immediate answer would be: it takes a subject capable of knowing and an object capable of being known. However, the hermeneutic knot that underlies the question is how the subject apprehends the object, whether there is a way, a criterion, or whether there is a method that enables the subject to capture the object in its entirety. It is important to say, therefore, that the object is who determines the use of this or that method.

Several were the thinkers who addressed this problem, from the pre-Socratic naturalists to the present day in the most diverse currents of thought, there is the concern of how it is possible for the subject to know his object and the methods used by him to unravel the mysteries of each object studied, or placed before the thinking self.

We are only concerned with highlighting the method in terms of its conceptuality and not its forms of expression. Each science corresponds to the use of one or more orderly and disciplined ways of thinking about the objective reality being studied. These forms of rational and disciplined apprehension of reality are called methods of approach. The main ones among them are the deductive, inductive, hypothetical-deductive, dialectical and phenomenological methods. Each of them having its own starting points and its own stages of development translates into stages, logically coordinated, the type of approximation of reality made possible by the corresponding epistemological perspective.⁶

In other words, the challenge, in all research, is to account for the chosen object of study, that is, that phenomenon or set of phenomena that one intends to know. This implies finding ways to describe it, characterize it, identify the variables that affect it, understand the laws that govern it, understand its genesis, evolution and disappearance. None of this can be achieved off the cuff. Common sense is not enough. It is necessary to find a way, a strategy that allows extracting information

⁶ POZZEBON. P.M.G. *Minima Metodologica*. Campinas, SP: Ed. Alínea. 2004. pg. 27



from that reality, disconnection from its elements and even its decontextualization.⁷

The method is this strategy, carefully elaborated, that the researcher uses to make "speak" the phenomena he researches, that is, a path or set of procedures that allows him to obtain information from a natural or human reality that he is studying.⁸

3 THE POLYSEMY OF THE METHOD

In a broad sense, method is the process, or set of processes, that allows to know a certain reality, produce a certain object (product), or perform this or that type of behavior. Confusing with the notion of process, of means, employed in the achievement of a certain end. The notion of method also coincides, to a large extent, with the notion of technique, of knowing how to do. Whether it refers to the knowledge of the real, the production of beautiful or useful objects, or the discipline of conduct, the method is always the means or technique that is employed to achieve a previously established goal.⁹

The word method is not univocal. Sometimes it refers to a certain way of thinking, to a certain specific kind of reasoning; other times it is used to designate the set of procedures proper to a particular science, or even scientific work. This word is also used to translate a specific and special way of examining some theme, and there are still those who seek to distinguish methods from techniques. In short: the use of the word method generates misconceptions, and it is useful to specify in what sense we will use it during this essay.

Implicit in all forms of human activity – theoretical or practical, productive or 'poietic' – to adopt Aristotelian classification and terminology, the term method, as already stated, has been used with quite varied meanings, which causes some confusion. In this confusion, the word technical also appears. Most of the time, the difference is only that of degree of generality and abstraction: methods are paths, the strategic options that one chooses to go through to know a certain phenomenon. They are general and abstract. To be fulfilled, they require a set of techniques. Techniques are the concrete procedures, which put the researcher in direct contact with the phenomena. They are specific to each type of phenomenon and can be used by different methods.¹⁰

The polysemic status of the term "method"¹¹ encourages us to walk towards the Cartesian episteme, however, by virtue of speculation, and by the aegis of understanding, it seems feasible to us

⁷ Ibid. pg. 27

⁸ Ditto, pg. 27-28

⁹ MÉTODO. *Enciclopédia Mirador Internacional*. Encyclopaedia Britannica do Brasil Publicações Ltda. São Paulo - Rio de Janeiro. vol. 14. pg. 7530

¹⁰ POZZEBON. P.M.G. *Minima Metodologica*. Campinas, SP: Ed. Alínea. 2004. pg. 27

¹¹ As stated by Paulo Pozzebon (2004, pg. 28) in a first sense is found in the expression scientific method used frequently, indicates, generically, that scientific knowledge uses planned procedures. In a second sense, the term method is used to indicate the epistemological perspective under which the methodology of a research is inserted. A third sense of the word method is represented by the logical models used to investigate reality. A fourth sense of the term method designates the specific operational arrangements of the different scientific areas, such as those used by the natural sciences, i.e., experimental method, statistical method, and by the human sciences, i.e., historical, comparative method.



to set out along the paths of another French thinker, however, contemporary, I speak of Edgar Morin, for whom, the foundation of the method lies in the absence of any foundation.¹²

4 COMPLEX THINKING AS A METHOD

For Edgar Morin "there is a relationship between method as a path and the experience of knowledge research, understood as a crossing that generates knowledge and wisdom".¹³ Thus, he says, "the method as a path that one experiences to follow is a method that dissolves in walking."¹⁴ Now, the method is dynamic. It is a process of perennial consubstantiation of the being and ceasing to be of the method in its use and application to a certain science, to a certain area of knowledge.

The method moves towards an end, that is, to bring to light the complexity inherent in the specific case studied. The problem with the method, says Edgar Morin, lay in its possible aptitude for capturing complexity.¹⁵ The complexity of knowledge lies in its dynamism, in its dialectic. Knowledge is and ceases to be at every moment. It is being built and deconstructed with the research itself. The same process goes on with the method. Its relativity does not allow mediate programming, but rather the immediate construction for the end set, the knowledge of the object placed before the subject.

The method does not produce any knowledge, it only makes it possible, for the method itself is knowledge. For Edgar Morin, only a deficient and unreflective vision can reduce the multiple dimension of the method to a programmatic activity and a technique of knowledge production.

To elucidate the circumstances, to understand human complexity and the future of the world, requires a thinking that transcends the order of constituted knowledge and the triviality of academic discourse. A writing and thinking that embody the wandering and risk of reflection. It is impossible today to frame the search for knowledge in the stereotypes of inherited discourses and literary genres.¹⁶

The method in the complex perspective, says Morin, to be put into operation, needs strategy, initiative, invention, art. A recursive relationship is established between method and theory. The method, generated by the theory, regenerates the theory itself.¹⁷

The accumulated knowledge, built continuously, growing and complementary, gradually constitutes a coherent body and deconstituting others that become, by virtue of new knowledge, new techniques, new methods, inadequate for a given sphere of problems, or observable objects. However, for complex thinking, for everything that has been observed, studied, constructed, to be or constitute a new knowledge, a totalizing sense is necessary. Thus, a set of new ideas and behaviors by which the

¹² MORIN, Edgar. *Educar na era Planetária: o pensamento complexo como método de aprendizagem no erro ena incerteza humana*. São Paulo. Ed. Cortez. pg. 20

¹³ Idem. pg. 20

¹⁴ Idem. pg. 20

¹⁵ Idem. pg. 21

¹⁶ MORIN, Edgar. *Educar na era Planetária: o pensamento complexo como método de aprendizagem no erro ena incerteza humana*. São Paulo. Ed. Cortez. pg. 23

¹⁷ Idem. pg. 24



experience was assimilated and expressed rationally. It should be noted that to discover the "new" the scholar used a method, a knowledge. Given the new knowledge, a new method springs up. Hence the complex thought says that method is method and knowledge at the same time.

Edgar Morin states that the method is the work of an intelligent being who rehearses strategies to respond to uncertainties. In this sense, to reduce the method to a program is to believe that there is an a priori way to eliminate uncertainty. Method is, therefore, that which serves to learn and, at the same time, is learning. It is what allows us to know knowledge. It is for all these that Gaston Bachelard asserted that every discourse of method is a discourse of circumstances. There is no method outside the conditions in which the subject finds himself.¹⁸

In its most general sense, the method is what teaches to know and to learn. It is the order that is imposed on the different processes necessary to achieve an end, in this hypothesis knowledge. Knowledge, for Morin, is a journey that does not begin with a method; It begins with the search for the method.¹⁹ It's a trip that doesn't improvise. Of course, the method is also an exercise in organized spiritual resistance, which, as Adorno intended, involves a permanent exercise against the blindness and rigidity generated by the conventions and clichés coined by social organization, Morin says.²⁰

Complex thinking does not propose a program, but a path (method) in which to test certain strategies that will prove fruitful or not in the dialogical path itself.²¹ Whatever form or modality it presents, the method is always the logic of the scholar's interest in rationalizing his relationship with his object of study. For Edgar Morin, complex thinking is a style of thinking and approximation to reality.²² In this sense, it is aimed at the total expression of knowledge about the object and the whole reality of life.

In short, complex thinking, with regard specifically to method, it should be said that it is not the method that makes the knowledge and nor the knowledge that makes the method, but it is the dialectical relationship between the being knowledge of the method and the method of being knowledge that makes and remakes the way by which knowledge can be achieved.

5 THE COMPLEX METHOD APPLIED TO THE TEACHING OF LAW

The teaching of law breathes method. It is inherent in the thinking of the law the questions related to the techniques, the procedures, the varied ways to reach the right. All this reveals, however, only the concern with the applicability of norms, confused with the law science. This is a common mistake, almost inevitable. However, one cannot confuse the meanings of the word right as designating

¹⁸ Idem. pg. 29

¹⁹ Idem. pg. 29

²⁰ Idem. pg. 30

²¹ Idem. pg. 30

²² Idem. pg. 30



a branch of human knowledge or a science with the object of that science. It remains clear to us that a science cannot be confused with its object: who would confuse the human soul or psyche with Psychology, or the vital phenomena with Biology, or even the movement with Mechanics, or even the measurable quantities with Mathematics? In these cases science is designated by one name and the object studied by science by another, in order to facilitate understanding. In the case of law, no. Both the object studied and the science or branch of knowledge that studies it, are designated by the right name. Thus, considering these elements, it is worth asking: is law a science? It is obvious that one does not want to know if a set of norms is a science, because this is known from the outset that it is not. What matters is whether the knowledge developed over centuries by jurists and other legal scholars, having as their object, directly or indirectly, norms of conduct, constitutes a scientific knowledge, or not.

If science, or scientific knowledge, is marked, characterized by having a determined or determinable object, being a conceptual or typological knowledge, organized, configuring a system or systems and be acquired through method or methods, and its purpose is the transmission of true information, through statements about findings made about the object chosen for the study, Then the doubt about whether or not law is a science is exhausted to the extent that all these characteristics are verified in law. Law is a science.

It must be said that whether or not there is a science called law, or, to put it another way, whether or not law can be the object of science is not a peaceful question, but a problematic one. However, admitted as a science, therefore, systematic, coherent, rigorous, we are concerned about its method. Much has been said about a crisis in the teaching of law, whether it is the result of ideological, economic, political, or even structural issues. But the greatest difficulty encountered for the teaching of law has long been the problem of method.

To understand law only as a set of norms and rules is to reduce it too much to what in fact it is not. Law deserves a method of macro-understanding, of macro-conceptualization. In other words, it seems reasonable to us to say that the law is lacking and deserving of a complex method.

According to the perspective of Edgar Morin, the main goal of the complex method is the awakening of a world-society.²³

To awaken to a world-society is to build paths that lead to the exercise of citizenship, that transform citizens into protagonists, aware of their participation in the construction of the world-society, so that they know that the knowledge built is not finished, and that it cannot be. In other words, the complex method makes it possible to build a critical and thinking consciousness.

To think, study, and teach law in the light of Morin's complex method is to think, study, and

²³ MORIN, Edgar. *Educar na era Planetária: o pensamento complexo como método de aprendizagem no erro e na incerteza humana*. São Paulo. Ed. Cortez. pg. 63



teach the totality of law. It is to see law as a complex knowledge. This does not mean that the simplifying thinking of law is outdated, bankrupt, finished. On the contrary, complex thinking does not reject, says Morin, simplifying thinking, but reconfigures its consequences through a critique of a mode of thinking.²⁴

Finally, the complex method applied to the teaching of law is the practice of macroconceptualization, of macro-understanding, because with this reference the teaching of law only has to gain with regard to its epistemological status the character of a science of totalizing understanding. For Edgar Morin, an education that aims at a complex conception of reality and that effectively leads to it, would be collaborating to end cruelty and all the negative elements of the world, be they economic, social, political or cultural.

6 CONCLUSION

Considering that the practice of law is the just means, or pacification, complex thinking, or complex method opens the way to better understand the problems of the world, human problems.

Moreover, using what Edgar Morin says, evidently translated into other words, the teaching of law has been characterized by a piecemeal, compartmentalized, mechanical, disjunctive, reductionist teaching, which breaks the complex of the world, produces fragments, fractionates problems, separates what is connected, uni-dimensionalizes the multidimensional. It is a teaching at once myopic, presbytery, colorblind.²⁵

Finally, it remains for the teaching of law the mission of breaking the current paradigms and immersing itself in totalizing, complex thinking, capable of encouraging a fruitful path towards the complex structures of real and true knowledge.²⁶

²⁴ Idem. pg. 58

²⁵ MORIN, Edgar. *Da Necessidade de um Pensamento Complexo*. Tradução de Juremir M. da Silva. pg 27 Available at: < <https://edisciplinas.usp.br/mod/resource/view.php?id=3040967&forceview=1> >. Access on: 13 jul. 2023.

²⁶ Idem. pg. 26-27



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