

**CONTOURS OF THE LEGAL KNOWLEDGE: THE SCIENTIFIC
VALIDITY OF THE FIELD*****CONTORNOS DO CONHECIMENTO JURÍDICO: A CIENTIFICIDADE
DO CAMPO EM QUESTÃO*****JOSÉ EDMILSON DE SOUZA-LIMA**

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ABSTRACT

This article studies the contours of law knowledge and the scientific field. In methodological terms, make use of literature that highlights some law works contributions epistemic, theoretical and methodological of each author to the law field. It concludes that the law knowledge can be understand as a field of coexistence. The other contribution is that the article introduces an analytical model for future researches and the scientific validity claimed for the law field is associated to the each approaches analyzed.

KEYWORDS: Science of Law; Epistemological Contributions; Theoretical Contributions; Methodological Contributions; Legal Epistemology.

RESUMO

Este artigo encontra lugar no debate sempre inacabado em torno da cientificidade no campo jurídico. Neste sentido, o objetivo do artigo é refletir acerca dos contornos do conhecimento jurídico e da cientificidade do campo. Para tanto, este artigo teórico apoia-se em uma pesquisa bibliográfica que destaca de algumas obras jurídicas as contribuições epistêmicas, teóricas e metodológicas de cada autor para o campo. A principal conclusão alcançada está associada ao fato de que o conhecimento jurídico precisa ser apreendido como um campo de coexistência, não como um bloco monolítico. A outra contribuição é que o artigo torna público um modesto modelo analítico para estudos futuros que aprofundem o debate aqui iniciado. E por fim, conclui-se que a cientificidade reivindicada para o campo jurídico varia conforme as abordagens de cada autor analisado.

PALAVRAS-CHAVE: ciência do direito; contribuições epistêmicas; contribuições teóricas; contribuições metodológicas; epistemologia jurídica.

INTRODUCTION

The construction of legal knowledge and field scientificity is historically trailer to at least two epistemic fundamental - rationalism and empiricism - as if both are radically dissociate from one another. This dissociation becomes one of the main obstacles to a dialogical epistemology, capable of promoting the coexistence between the two fundamental consolidated by classical reductionist epistemology. In this sense, it makes sense an investigation that aims to reflect on the contours of legal knowledge and field scientificity in order to make visible that law knowledge needs to be understand not as a monolithic block and peaceful, but, unlike, as a field of coexistence from senses and of interest epistemic, theoretical and methodological.

Thus, this theoretical article is, based on a bibliographical research aimed at identifying the epistemic, theoretical and methodological contributions of some authors in the law field¹. Therefore, four works produced by authors in different contexts and historical moments were select. The choice of these authors anchored in the need to present the law field not as a homogeneous field, but as a field, that allows the coexistence of varied epistemological matrices. There is an intentional foundation in the choice of works, for it starts from a matrix epistemological more focused in norm - Kelsen - until arriving at more pluralistic matrices, which transcend to the norm - Boaventura de Sousa Santos, passing through Ross and Warat.

In addition to the introduction and the final considerations, the article is structured the following form: the first section presents some notes on scientificity in the law field. Based on Bombassaro (1992), Encabo (2009) and Burawoy (2006), we draws up an illustrative picture that evidences three epistemological tendencies: analytical, historical and dialogical, understood as living phenomena, which interrelate and influence each other. In the following sections (second, third, fourth and fifth) become visible on the contributions and limits for the law field of the investigative programs of Kelsen (2009), Ross (2007), Warat (2002) and Boaventura de Sousa Santos (1988)). In the sixth section, presents a summary table containing the main constituent elements of scientificity in the law field based on the

¹ We to be grateful for of the Masters students of Law of the UNICURITIBA, who participated in the Seminars in the discipline of Epistemology and Methodology of Legal Knowledge, class 2013.

investigative programs of each author analyzed.

2 NOTES ON SCIENCE

Plato's famous allegory of the cave (1999) is still current in the debate around epistemology, be it with rationalist, deductive, invented a priori, or empiricist, inductive, invented a posteriori. An epistemology inspired by rationalism, because it constituted a priori, does not take into account the empirical, as it would lead an epistemology centers on empirical, a posteriori.

Plato's emphasis on the escape from the cave reveals his clearly rationalist preference, since valid knowledge for him is not knowledge derived from the contingencies of the empirical but from the domain of ideas. The world of contingencies is the world of “doxa”, of vulgarity, of ephemeral, of the deepest darkness of the cavern. Overcoming this world of shadows is tantamount to moving in the direction of the world of pure ideas, of the episteme.

Without this idea of epistemic purity losing importance, in the transition period between the Middle and Modern Ages, break out an alternative epistemology; this time focus no more on the escape of the cave, but on a deep dive in the interior of the same. Unleash an empiricist epistemology derived from experimental and inductive knowledge emerges that helps to define the contours of Modern Physics and to project it as a reference for knowledge characterized as scientificity from that context. The condition of this unique way of producing knowledge becomes the main criterion defining the validity or not of field knowledge. In this sense, the reductionist episteme of physics popularized by Galileo (1999) is the result of the consolidation of a practice focused on experimentation and induction. However, once instituted, this alternative epistemology acquires a relative autonomy relative to the practice and begins to exert influence on the field itself. The practice instituted by Galileo founds an epistemology that, in turn, (re) founds the practice in a “autopoiese” movement. Reasoning may be taken to the other fields of knowledge; is what we will see, for example, with the legal field.

In summary, if we take as reference these two epistemic fundamentals –

rationalism and empiricism - the scientificity was trailer to each of them as if they were radically dissociated from each other. This dissociation erupts as one of the main epistemological obstacles (BACHELARD, 1974) to be overcome by a more open epistemology, dialogic and capable of promoting coexistence between the two fundamentals' consolidated by classical reductionist epistemology.

2.1 EPISTEMIC FOUNDATIONS IN THE LEGAL FIELD

In the epistemic perspective, it should be clarified that the legal field, like other fields of knowledge, it cannot be understood as a monolithic block without internal disputes and tensions. Taking as reference the two epistemic matrices presented above, it may be possible to affirm that there is a predominance of an epistemology with a greater emphasis on rationalism in the legal field. This statement is associated with the fact that the structuralist epistemic tendency, which has Kelsen (2009) as one of the main founders, is predominant. In structuralism epistemic tendency, is self-sufficient, apart from the concrete, external world.

The knowledge recognized as valid is one that stands in logical terms, true to the *Grundnorm* invented by Kelsen and taken as a reference both by his followers and by some of his opponents. Any knowledge that distances itself from this hard core has difficulty claiming valid knowledge *status*, since the contours of the legal field where been delineated very consistently. The empiricist epistemic tendencies, although less visible, are fundamental to the field of law knowledge. If in the first tendency, knowledge derived from a retracted or enclosed right is almost lifeless knowledge, in the second tendency, the murmur of reality nourishes and gives life to legal knowledge.

This means that if in the rationalist tendency, the founding and instituting criterion of the validity of legal knowledge is formal logic, in the empiricist tendency, besides logic, the impact to arouse from applying the norm in the world were taken into account.

The law knowledge that simultaneously produces - and are produce - by an empiricist episteme never claims isolation, but on reverse ever-closer contacts with other fields of knowledge, such as Sociology, Anthropology, Biology, genuine, popular

knowledge etc.

The production of legal knowledge, based on empiricist fundamentals, founds an alternative episteme for the legal field. Once established, this new episteme, due to its more open and sensitive nature to other fields of knowledge, serves not policing or enclosure, but a source of feedback and inspiration for legal knowledge.

2.2 RATIONALIST TREND

It is a trend centers on the binomial hypothesis-deduction, elaborated a priori, as an analytical model that serves as a guide for the processes of production, access and validation of field knowledge. The claim of any knowledge must have the approval of this field that must be close to or aligned with the foundational guide of the field itself. The contours of the field are define from the guide. The link of knowledge produced with this episteme is fundamentally logical, formal. In this particular case, in the legal field, whenever a "legal operator" (judge, prosecutor, lawyer) applies a positive norm, its central concern is related to the coherence of the same in relation to what Kelsen calls Grundnorm, not necessarily with the refutations In the concrete world. Any study that proposes to evaluate the constitutionality of a law, decree, etc. Tends to produce knowledge adhering to this hypothetical-deductive episteme.

2.3 EMPIRICAL TRENDENCY

It is an inductive trend, elaborated throughout and *posteriori* the research. The knowledge derived from this epistemic fundamental go being constitute throughout the research. If in the rationalist tendency, the main protagonist is the "cognoscent subject", in the empiricist tendency, the "object" becomes the central protagonist.

In the legal field, the researches that take as a starting point the jurisprudence are directly associated with this epistemic fundamental. It is an investigation focus on the positive norm, which singularity it as a legal research, however, it is an investigation of the norm in action - which has already been

effectively or is being applied - not an investigation of the norm recorded in books as the rationalist tendency prescribes.

2.4 DIALOGICAL TREDENCY

Differently from the reductionist epistemology, which is constituted and consolidated through two strongly dissociated tendencies, contemporary epistemology has been constituting and consolidating itself as a field of coexistence (SOUZA-LIMA and KNECHTEL, 2012), which studies the forms and conditions.

A field of knowledge produces, allows access and validates both internally and publicly the knowledge (BURAWOY, 2006; ENCOBO, 2009). Taking epistemology as a field of coexistence involve situating it not in the vanguard, but in the rearward of the definitive knowledge of the contours of a determined field of knowledge. Situating the epistemology in the rearward implies admitting it is as a living field of investigation that in a recursive way, at the same time that produces the field are produce by it. Its means an epistemology that is inside and outside of the field, so, without giving up the internal criteria that singularity each field of knowledge, it opens to society in search of legitimacy external to the field. An epistemology of coexistence has a supposed to be the principle that ends and means must be justifiable. It is an epistemic fundamental whose effort is associated not with the need to separate but to bring the rational and empiricist fundamentals approach together. Here, the a priori or a posteriori model of knowledge is less important, for the openness of the “cognoscente” subject (SOUZA-LIMA, BRAGA and SILVA, 2013) matters much more to the clamours and indicators of reality.

In the law field, the norm can be apprehend not only in its instituted aspect, but also in its instituting, living aspect, capable of producing reality.

Figure 1 summarizes the main constituent and constituent elements of the two hegemonic epistemological tendencies and an alternative epistemology that is constitute through coexistence between the other two.

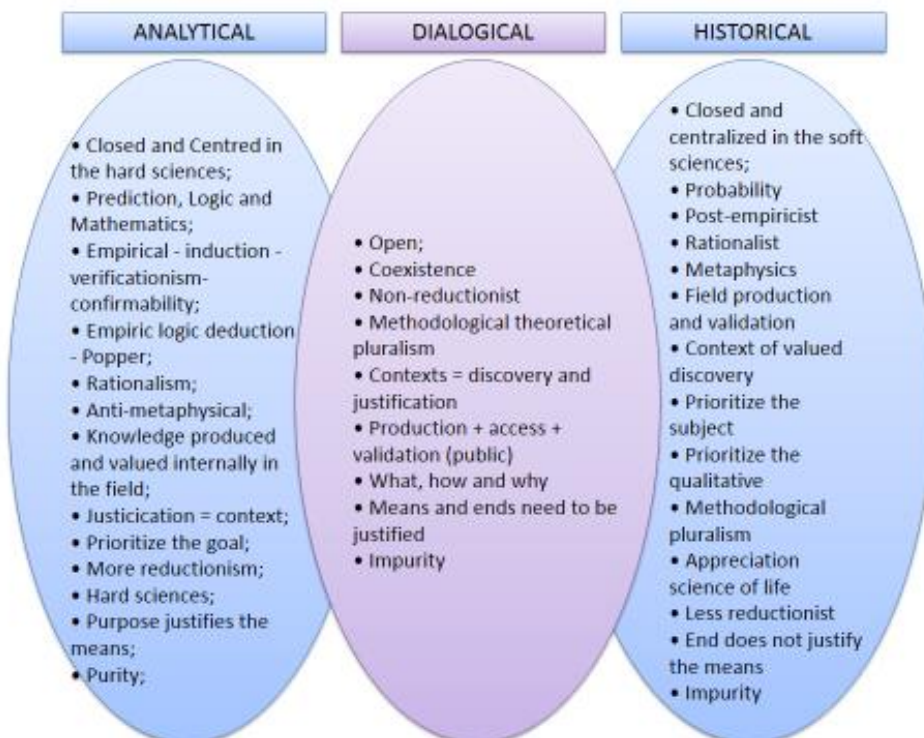


FIGURE 1: EPISTEMOLOGICAL TRENDCIES.

SOURCES: Prepared from Bombassaro (1992); Encabo (2009); Burawoy (2006).

The three epistemological tendencies are arranged in a horizontal perspective with the purpose of emphasizing that tendencies that need to be apprehended as living phenomena, that be interrelated and influence each other. Horizontality attempts to dispel linear and "progressive" readings of trends in contemporary research. There is not one tendency worse or better than another a priori; it is up to the researcher to make his choice in accordance with his interests, beliefs and concrete context of the investigation. This is what we will see in the following sections.

3 THE SCIENTIFICITY OF KELSEN

Taking into account the discussion in section 1, the idea-force in this section is to make visible the contributions and limitations of Kelsen's research program for the legal field.

3.1 CONTRIBUTION OF KELSEN

The founding element that makes it possible to delineate the contours of the Kelsenian epistemology is the rationalism, presented and popularized like fundamental norm or Grundnorm. In establishing this archmedical point, Kelsen makes it well marked that any knowledge that pretend to claim the seal of legitimacy of the legal field need be in tune with this archmedical point. It is an absolute formal rationality, but it defines a specific epistemic statute for the own legal field.

3.1.1 Epistemic fundamental

Kelsen's founder question, "what is law?" Is revealing of his philosophical inclinations with a view to instituting epistemological canons for the legal field.

This is a question, which in propose out to describe what "is the law", claims a pure theory and, in function of this, ignores any concern with what "should be law". The knowledge constructed in the light of this question will be knowledge whose limit is the description of legal practices without any concerns that transcend this predefined limit. Questions derived from the background questions posed by Kelsen: does it make any sense to claim a pure theory for the legal field?

From Kelsen's perspective, it makes sense, as his starting point is what standard, operator of law and fact intertwine and separate without any reciprocal influence. The description made by the researcher of the legal field does not deny the existence of reciprocal influences, but on opposite, does not consider them. It is not a question of denying the impossibility of describing without prescribing, but of not considering this fact.

With the background of questions, Kelsen believes that he has separated the law from all focus of contamination and external impurities and has founded a science of law (positive) - not a policy of law - capable of describing the applications fulfilled by the operators of law. Kelsen, in alignment with the tradition of German social thought, places the field of law knowledge in the broader field of the spirit sciences - for Weber (1977), sciences of culture - not in the physical sciences, and this is enough to understand his choice by description rather than the explanation of

legal phenomena. If the explanation has a privileged place in the physical sciences, since they have been instituted and consolidated through the investigation of cause and effect relationships between physical phenomena. In the field of the sciences of the spirit it does not make sense to try to investigate these same relations for a very simple reason, they do not exist. Against this limit, Kelsen presents as more appropriate to speak of describing a legal phenomenon that, strictly speaking, implies describing how a legal operator confers or "lends" a law sense to a specific social fact. Kelsen's belief seems to be that it is possible to describe without interfering in a phenomenon; it is possible to describe without prescribing; It is possible to describe without contaminate both in the sense of the objective attributed a priori to the positive norm and the specific social fact.

This notion of a pure description and simple of legal practice serves as a reinforcement of the usual idea of taking the magistrate (judge, prosecutor, lawyer, etc.) as the "operator of the law". Since this is described by the scholar of the legal field as if he were an automaton, fully stripped of interests, will and whims simply, whenever necessary, resort to the norm warehouse, just as a tool is used (a hammer, for example), with the purpose of stamping with the legal seal a specific phenomenon. After performing its mechanical task, it returns the tool - the norm - to the warehouse and waits for the next task. The description of the fact by the scholar of the legal field, to be taken into account, must claim the utmost neutrality. After the contact involving norm, operator and fact, each of them returns to their places of origin as if nothing had happened. Following this mechanistic fundamental, there is no reciprocal interference and if there is no reciprocal interference, there is no coevolution (NORGAARD, 1994; SOUZA-LIMA, 2012), a founding element of the dialogical tendency (Figure 1). Taking coevolution as an epistemic fundamental implies taking the positive norm not as a dead phenomenon, but alive and capable of influencing and being influenced by reality data. In this perspective, the scientificity claimed for law knowledge, constructed in the light of Kelsen's epistemic program, is only possible if any evidence of external contamination, coevolution, is denied in a radical way.

Kelsen's horror to the various forms of contamination of the legal field must to be fetched in some of the most important influences he has assimilated throughout his

intellectual trajectory.. In addition to the influences absorbed by Kant's (1999) knowledge theory and Nietzsche's (1983) It is undeniable demystifying force, the undeclared presence of Weber's (1980) rationalist sociology in Kelsen's formulations is undeniable. In this line of reasoning, focused on a rationalistic epistemic fundamental - invented by the human mind -, Morrison (2006, p.383), an important scholar of the philosophy of law and, in particular, of the works of Kelsen, states that the Viennese jurist. "[...] constructs this system not to remove humanity from this legal enterprise, (...) but to make us understand that the law has nothing to advance it except human projects".

The excerpt cut off from Morrison becomes visible strive of Kelsen in recognizing that taking into account the essential freedom of Homo sapiens implies recognizing that society is distinct from nature. Here Kelsen dissociates the natural science of social science, claiming a proper method for the science of law, without the influence of physical science. As a good scholar of Kant, he resumes the human as a *sine qua non* of transcendence in the face of the obstacles posed by the biophysical environment. As a good scholar of Kant, the human is for him taken over as condition *sine qua non* of transcendence in the face of the obstacles placed by the biophysical environment. Kelsen's theory, if it accepts its claim to dissociation from Homo sapiens in relation to the biophysical environment, is a "phenomenological description that seeks to bring to light what is essentially human in the law order - the inner or normative aspect" (MORRISON, 2006, p. 385).

Kelsen made a point of making public his clamour for an exacerbated intention of neutrality as a founding element of the science of law. Pure theory is an adaptation of Kant's rationalist-critical episteme to the episteme delineating the contours of a science of law. If reality will never be achieved, it is necessary to create categories to apprehend phenomenological levels of this reality, these are the procedures (to achieve the legal phenomenon), which are equivalent to the categories of the epistemic system inherited from Kant. A pure science of law must not justify anything, since every justification presupposes value judgment and other emotional factors, which beside escape, since projected as obstacles to the deeper scope of knowledge with scientificity pretensions, the neutral description of legal phenomena.

3.1.2 Theoretical Fundamental

The theory derived from Grundnorm it cannot let if contaminated by other fields of knowledge, much less by data or indicators of empirical reality. Kelsen was one of the most emphatic writers in his declaration of war on metaphysics or any external source of contamination of the legal field, such as political ideology, physical sciences, ethics, economics, psychology, and sociology. With this, the Viennese author founded his pure theory of law, which in its own terms,

Like theory, unique only to know its own object. It tries to answer this question: what is and how is the Law? However, you no longer care about the question of how the Law should be, or how it should be done. It is a legal and not a political science of law (KELSEN, 2012, p.1)

The excerpt is revealing of Kelsen's obstinacy in explaining the fundamental that allow delineating the contours of a theoretical field exclusive to the legal phenomenon. His claim is associated with the necessity of founding a positive theory (in the sense used by Saint-Simon, Comte, and Durkheim in Sociology also emerging), with its own object and method, centers on the ideas of objectivity and exactitude. The excerpt reveals that, in spite of its need to characterize the legal field as a science of the spirit (German tradition), the physical sciences are the references of scientificity fields consolidated in the context in which it is constructing his theory.

There is a similarity between Kelsen in the legal field and Durkheim (2002) in the sociological field, since the French sociologist, engaged in delineating the contours of the specific field of study of society, Sociology, did not hesitate to eliminate or dismiss all possible sources of contamination. Durkheim (2002, p.127-8), in the conclusion of his classic book "The Rules of Sociological Method", makes explicit his concerns about the purity of the sociological field by admitting.

[...] that the moment has come for Sociology to renounce to worldly successes, taking the esoteric character that is appropriate to all science. What he would lose in popularity would thus gain in dignity and authority. For as long as it remains mixed with partisan struggles, so long as it is satisfied with the elaboration of common ideas by employing a logic more elaborate than that of the common people alone, and so long as it assumes no special competence for the individuals who worship it. It will not be in a position to

speaking with enough strength and to silence passions and prejudices.

It is a clamour similar to that of Kelsen, when lay claim to purity for the legal field. Both Durkheim and Kelsen could not in that context of emergence and consolidation of the two fields of knowledge, make concessions to the most diverse kinds of epistemic syncretism, theoretical and methodological syncretism. In Kelsen's strong formulation (2012, p. 2) against external focus of contamination it is possible to highlight his attempt to "avoid a methodological syncretism that obscures the essence of legal science and dilutes the limits imposed on it by the Nature of its object".

The recuperation of the cited excerpt to demonstrate that both authors sought inspiration in the already constituted and consolidated sciences, the physical sciences, however, did not spare efforts in order to establish own epistemic statutes and adapted to the singularity of the two emerging fields.

3.1.3 Methodological fundamental

The methodology with greater adherence to the fundamental norm of Kelsen and to the clamour for a pure theory needs to be centralize in processes or logical-deductive constructions. Any methodological procedure that exposes the field to possible metajuridic contaminations needs to be immediately neutralised and discarded.

3.2 LIMITS OF KELSEN'S CONTRIBUTION

At the end of his life, Kelsen recognized some limits of his ambitious pure science of law. Grundnorm, considered until 1963 as an epistemic foundation, it's taken as a fiction, for Kelsen himself feels obliged to admit that the "pure" foundation is a translation of the will of the legal authorities. This will can range from the noblest to the most stakes and caprices that characterize the human condition in its most concrete sense. This recognition leads Kelsen inexorably to find his historic enemy, legal realism. It is as if he abandoned or minimized old

and strong rationalist positions to empiricist positions and less idealized in relation to the human condition². Kelsen tends to move away from his original analytic epistemic tendency and to approach the opposite socio-historical tendency (Figure 1).

In summary, Kelsen - alongside Hobbes (1999) and others - was one of the main architects of the founding elements of what became world-renowned as modern legal positivism, namely:

The law as a system of norms is a human invention.
The methodologies lay claim to their own statute based on logic-deductive and value-free principles.
The right should not be confused with morality nor with any ideology..
It is a claim of purity, absence of any external contamination to the field.

TABLE 1 - FUNDING ELEMENTS OF THE PURE SCIENCE OF LAW

Source: Kelsen (2009).

4 THE SCIENCE IN ROSS

Taking into account the discussion in section 1, the idea-force of this section is to make visible the contribution and limitations of Ross's investigative program to the legal field.

4.1 CONTRIBUTION OF ROSS

It is important to emphasize that Ross's contribution comes from on his critical dialogue regarding Kelsen's contribution.

4.1.1 Epistemic fundamental

Ross's main epistemic contribution to the legal field is associated with the choice of an empirical foundation, the legal phenomenon. The choice of an epistemic

² "Idealism has such a high concept of humanity that it runs the risk of despising human beings" (SCHILLER cited by SIMMEL, 2006, p.100).

foundation delineates the contours of the knowledge that will be produce and of the methodological strategies.

4.1.2 Theoretical fundamentals

The theory derived from this epistemic choice must compulsorily have an empirical anchoring; it will be building *a posteriori*, never *a priori*.

4.1.3 Metodological fundamental

In the methodological perspective, perhaps the most important contribution of Ross to the legal field, strategy it is anchored in the induction, in the broach of the epistemic subject (SOUZA-LIMA, SILVA and BRAGA, 2013) of concrete cases. The ambition of universality of this knowledge does not exceed the contours of the concrete case effectively analyzed. This check does not eliminate the fact that knowledge is treat as condition for possibilities or inspiring of new knowledge.

For the cognoscente empiricist subject, the starting point is the legal phenomenon, the right embodied in social practices. The legal phenomenon is a tangle involving positive norm and social practice (Figure 2).

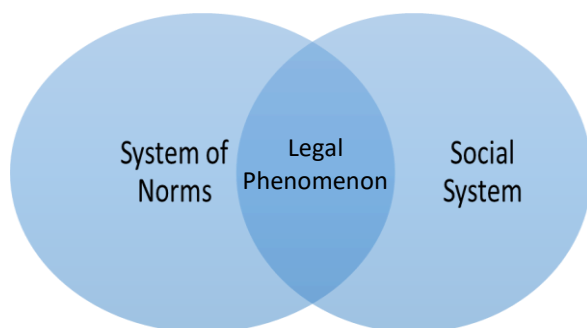


FIGURE 2 - REPRESENTATION OF THE LEGAL PHENOMENON

In Accordance to Figure 2, the legal phenomenon would be represented at the interface between the system of norms and the social system. What reveals that

a law phenomenon, in Ross's perspective, is the entanglement involving norm and society; it is as if Ross was demanding a reality bath for the system of norms.

Involvement with empirical signals that theoretical approaches need to be made in the face of empirical reality data. The criterion of validation of legal knowledge, for Ross, is the verificationism inherited from Kant (1999) and hegemonic during most of the validity of the Vienna Philosophical Circle (PEPE, 2007). The verificationism

[...] It is a principle of modern empirical science that a proposition about reality, (contrasting with an analytic, logical-mathematical proposition) necessarily implies that following a certain procedure, under certain conditions, certain direct experiences will result (ROSS, 2007, p.64).

The cropped excerpt indicates that legal knowledge conquest the status of valid the measure that it translates or makes visible the crossroad, the interface between the normative system and the social system. Therefore, valid legal knowledge is empirically crystallized knowledge. In Ross's world there is no space for any kind of idealization the distance of the observation, for the "real content of the propositions of the science of law refers to the actions of the courts under certain conditions" (ROSS, 2007, p.65) clearly delimited social, historically and politically.

As in Ross's formulation, the metaphysical dimension (of ethical value, for example), as in Kelsen, is ignored, valid legal knowledge does not necessarily mean fair or emancipatory knowledge, but simply a knowledge which is possible and capable of the observable empirically. To this description, Ross denominates "law in action" or, for him, it is interchangeable, "Current law". It is worth recovering the literal understanding of this concept, for it is a key concept for the theoretical formulation with anchorage of empiricism in Ross's and if it construct, as it moves away from the idealistic conception of Kelsen. If for Kelsen, "current law" is limited to the system of positive norms, for Ross.

It means the abstract set of normative ideas that serves as an interpretive schema for the phenomena of law in action, which in turn means that these norms are effectively adhered to and that they are because they are experienced and felt as socially obligatory (ROSS, 2007, 41).

It is possible to identify Ross's cut off excerpt the fidelity to the empiricist epistemic fundamentals, for the system of norms isolated, without being entanglement in the social system, may be necessary, but it is insufficient. To the student of the law field aligned to the proposal of Ross, It is only a matter of reliably describing the arguments that sustain and ensures that a positive norm comes into action. At this point, Ross is emphatic, "[...] the descriptive terminology has nothing to do with approval or condemnation moral" (ROSS, 2007, p.56). It is always fitting to recall that at this moment he is in full agreement with Kelsen in declaring war on any contamination arising from the field of values, therefore, from ethics. Legal knowledge neither prescribes nor judges, it merely describes the observable entanglement involving norm and society.

4.2 LIMITS OF THE CONTRIBUTION OF ROSS

If, on the one hand, Kelsen declares war on all kinds of syncretism, on the other, Ross vehemently rejects eclecticism by fixing his theory on a sociological fundamental. The approximation of the two formulations makes it possible to identify that both authors claim purity, since if Kelsen calls for a logical-analytical purity, Ross, in turn, claims for a sociological purity. If Kelsen's contribution is a debtor of the analytic tendency, Ross is distant by remaining true to the socio-historical trend. Common among them is fidelity to a reductionist fundamental, a logical-mathematical and sociological other.

5 THE SCIENCE IN WARAT

Taking into account the discussion in section 1, the idea-force this section is to make visible the contribution and limits of Warat's investigative program to the legal field.

5.1 CONTRIBUTION OF WARAT

In explaining his objective of constructing a critical epistemology for the legal field, Warat identifies the main limits of legal dogmatic³ and, from them, proposes new constituent elements of a critical epistemology.

5.1.1 Limits of legal dogmatic

If Kelsen and Ross attempt to construct epistemic fields from well-defined fundamentals, in the case of the first a rationalist fundamental and the second an empiricist fundamental of sociological character, In Warat's perspective there is no claim to an archimedical point capable of sustaining and giving meaning to his epistemological structure. His claim is oriented to a critical epistemology, which has no any foundation a priori and in function of this needs to be analysed in terms not of fundamentals, but of its contours. This position of Warat is associated with a radically interdisciplinary movement, so pluralist to think the field of legal knowledge.

The validity of any knowledge produced here is condition to the sieve of social reality with its tensions, contradictions and uncertainties. This imperative imposes on the researcher or epistemic subject (SOUZA-LIMA, SILVA and BRAGA, 2013) of the legal field the need to move to the borders of his disciplinary field. Since he needs to realize the law is not summary of the system of positive norms (Rationalist tradition) nor to the jurisprudential system, responsible for the application of the norm (realistic tradition).

The displaced to the borders of the field leads the researcher directly into the world of facts away from the abstract world of norms in themselves. The fact, always wickered by the faithful students to the systems of norms, here loses the bad reputation and acquires privileged status for the researcher of borders. According to an author very close to Warat, this horror of fact it is evident as an inducer of the postures in themselves of many legal scholars:

We must recognize that the fact enjoys a bad reputation, because it is

³ Warat refers to the hegemonic legal field as "juridical dogmatics".

always disconcerting. When it is a new fact, it introduces a notion of risk, of danger to order, an intolerable notion for the jurist. If the fact is habitual, it is suspect that it is the product of a machination devised by private individuals to escape the right (ARNAUD, 1991, p.229).

This horror to the fact, highlighted in the above excerpt, has deep connections with Nietzsche's (1983) critique of Plato's known "cave allegory" (1999), since the invitation to escape from the cave is interpreted by the German philologist as one of more abject acts of cowardice in the face of the real world. For Nietzsche, Plato's obsession with fleeing and wanting to bring all the inhabitants of the cave together into a supposed world of light and happiness, is nothing more than a materialization of the horror of the world tainted by the concrete and contradictory facts of all associative life. For Nietzsche, Plato's obsession with fleeing and wanting to gather all the inhabitants of the cave into a supposed world of light and happiness is nothing more than a materialization of the horror of the world stained by the concrete and contradictory facts of all associative life. This horror of possible contamination from the facts seems to be the founding element of the claims of purity, present in the writings of some legal scholars. Consequently, the horror of fact, which is initially important in founding and consolidating an epistemic field, over time, becomes an epistemic obstacle, in the sense used by Bachelard (1974).

In purpose to relativize the strength of this ideology of purity, Warat's contribution (2002) is associated with the need to found a legal field that takes into account the processes of contamination, since a critical epistemology must be attentive to the multiple expressions of the legal phenomenon, not just positive standards.

Inspired in this desire to "desecrate" the legal field, Warat's work is lavish in indicators of the limits of law dogmatic, is what we will present in the sequence, in they are repertoire in some cut excerpt of Warat's work that serve of indicators of the epistemic limits (Table 2), theoretical (Table 3) and methodological (Table 4) of legal dogmatic.

EPISTEMIC LIMIT	PARTS
Accent playback	1. The dogmatic linked to positive law can only produce a reproductive and non-renewing knowledge" (WARAT, 2002, p.39).

Science without epistemology	2. "[...] the legal dogmatic presents itself as a science without epistemology, with uncertain contours between rhapsodic opinions and systematic reasoning. It is an activity that is based more on epidermal and emotional attitudes, translated in apparently rigorous reasoning's, than in an authentic work of theorization. We denying it, therefore, the status of scientificity. One cannot seek to do today a work that intends to display the title of scientist without the epistemological level "(WARAT, 2002, p.45).
Attack on the analytical tendency of epistemology	3. "Stuck to an empiricist conception of knowledge, their cultivator's [of analytical philosophy], will use the term methodology or epistemology to refer to the problematization of the scientificity of legal knowledge "(WARAT, 2002, p.48)
Attack on monismo	4. "[...] The epistemology would have the mission to construct a unitary and rigorous system of knowledge on the norms and theories with a that it is wanted to describe them" (WARAT, 2002, p.48).
Attack on the hegemony of empiricism	5. "It is through the constitution of a rigorous discourse that empiricism manages to create the intersubjectivity effect that it assumes as objectivity. Appealing to the logical rigor of discourse is intended to eliminate subjective interference" (WARAT, 2002, p.50).

TABLE 2: EPISTEMIC LIMITS OF LEGAL DOGMATICS.

SOURCE: Prepared from Warat (2002).

Table 2 they are presented five excerpts that were cut off from work of Warat that can be apprehended as indicators of the epistemic limits of legal dogmatic. In excerpt 1, he indicates as limit the accent on reproduction, which projects as an obstacle to the renewal of the field. In the excerpt 2, he inquired about the possibility of a field of knowledge without epistemological fundamentals. In excerpts 3 and 5 he spares no criticism of the analytic tendency (Figure 1, Section 2) of epistemology with his exaggerated attachment to empiricist fundamentals inherited from the physical sciences. In excerpt 4, Warat refines his critique of to the analytical tendency of epistemology with his ambition to establish epistemic a monism for all fields of knowledge, based on the *modus operandi* of physics.

THEORETICAL LIMIT	PARTS
Cult of current law.	1. "Legal dogmatic [...] is limited to reproduces and explains the content of the law in force, whose legitimation and

	justification does not question” (WARAT, 2002, p.17).
Claim of purity	2. “The general theory of law is the summit of the systematization of dogmatic and reaches its peak with the elaboration of the pure theory of Kelsen that eliminates from its womb every metajuridic notion and not only the law recognition (axiology). But also the facticity (The facts), staying only with the norm and its technical-legal focus, which is reduced to the logical demonstration of the validity of legal norm” (WARAT, 2002, p.19).
Axiomatization and scientificity	3. “Dogmatists, who formulate a general theory of law, express it with the attributes of axiomatization and scientificity, with the affirmation that legal reasoning conforms to the rules of strict and formal logic” (WARAT, 2002, p.38).

TABLE 3: THEORETICAL LIMITS OF LEGAL DOGMATICS.

SOURCE: Prepared from Warat (2002).

Are presented in Table 3, three excerpt of Warat's work that allow us to identify theoretical limits of legal dogmatic. In excerpt 1 he draws attention to the excessive cult of prevailing law, a hallmark of many theoretical approaches, loyal to legal dogmatic. In excerpts 2 and 3, he deepens the criticism begun in excerpt 1, as it strikes in a forceful manner both the purity claim and the axiomatization of the legal field.

In Table 4, three cut off excerpt in the of Warat's work are presented, which make it possible to make visible the methodological limits of legal dogmatic. In the excerpts 1 and 3, Warat attacks methodological monism and the clamour for purity, reigning in practices consolidated in the legal field. In the excerpt 2, he points out his dissatisfaction with of cult of persuasion, typical of the courts, but taken without criticism for the world of the production of legal knowledge. For him, there is a confusion to the measure as the cult of persuasion has the featured place in the courts, in the academic world, needs to be replaced by inspected, investigative and demonstrative practices.

METHODOLOGICAL LIMIT	PARTS
Methodological Monism	1 The legal dogmatic requires a work of logic and legal technique, through which would perform operations of analysis and synthesis, deduction and induction that would result in a series of concepts and principles through which a clear interpretation of the legal rules integrating positive law would be obtained. This

		constructive task is called technical-legal or logical-abstract method, considered by legal dogmatics as the only possible method in the study of legal science.” (WARAT, 2002, p.16).
Cult of Persuasion	of 2	“[...] Legal discourse is persuasive and not demonstrative” (WARAT, 2002, p.37).
Clamour of purity	of 5	“Kelsen acentuou a inexistência de uma metodologia jurídica adequada para construir uma teoria científica baseada na objetiva e sistemática descrição das normas positivas, bem como a necessidade de elaborá-la a partir de conceitos rigorosos que extirpassem do conhecimento jurídico qualquer tipo de interferência ideológica. Sugeriu, também, a construção de uma epistemologia da qual se deveria retirar a crítica do saber jurídico tradicional, um saber inadequadamente assumido como científico” (WARAT, 2002, p.47).

TABLE 4: METHODOLOGICAL LIMITS OF LEGAL DOGMATICS.

SOURCE: Prepared from Warat (2002).

In accordance to Tables 2, 3 and 4, contrary to Kelsen's closed proposal in related for other inspired or empiric-derived methods, in Warat's proposal, that goes in one direction close of the Ross, the search for interdisciplinary research practices Becomes the rule and always diving in the world and social reality.

5.1.2 Constituent elements of critical epistemology

From the epistemic, theoretical and methodological limits of legal dogmatic, indicated in subsection 5.1.1, in this subsection the main constituent elements of an epistemology with critical pretensions are explained (Table 5).

CONSTITUINTE ELEMENT	PARTS
Provision of critical epistemology	1.“Every critical theory is provisional, conjuncture and dependent on the state of development of research that accepts its limits and that responds to a logic of contradictions” (WARAT, 2002, p.21).
Appeal against – dogmatic	2. Critical Epistemology “Leads us to the production of a counter-dogmatic object of knowledge, [which] seeks alternative theoretical historic mark to seek the role that should have the topical in the contexts of justification of positive law, the questionability of which is accepted” (WARAT, 2002, p.29-30).
Emergence and	3. The critical epistemology

fertility of a border	“Seeks new opinions, which incorporates positive rights, extending its borders, permeating its limits for the ingress of knowledge accumulated in other domains, overcoming the determinations that limit the legal knowledge cornered in the positive right, offering new problematics” (WARAT, 2002, p.30).
Ideologies as obstacles	4. a) "It is possible to advance with scientificity knowledge precisely because it considers accumulated knowledge" (WARAT, 2002, p.51). b) "The comprehension of each explanatory system is produce through the critique of its limits" (WARAT, 2002, p.51). c) "a method of producing an object of knowledge requires a comprehension anticipated understanding of the limits of existing knowledge as the initial condition of the new process of objectification" (WARAT, 2002, p.52).
Need for rupture	5. “We need for the Right an epistemological work of rupture. This is the epistemological activity before us today: the establishment of a critical theory of law. An epistemological level that transcends, incorporating what is redeemable from the Kelsenian theory, reformulating and denying some of its presuppositions, as well as analytic philosophy ”(WARAT, 2002, p. 43).
Need of desecration	6.“It is on the epistemological level that resistance can be produced to sacred demonstrations ”(WARAT, 2002, p.44).
First concept of epistemology	7.“The rationalization of methodological experience is [...] its epistemology. [...] Epistemology would be the theoretical field where the knowledge about the methodological object is produced ”(WARAT, 2002, p.52).

TABLE 5: CONSTITUENT ELEMENTS OF CRITICAL EPISTEMOLOGY.

SOURCE: Prepared from Warat (2002).

In Table 5, are present seven excerpts cut-out of Warat's work are outlined that outline the contours of a critical epistemology, with open borders to the contaminations and fertilizations of other fields of knowledge and the concrete reality lived beyond the legal field. The key word that synthesizes Warat's critical epistemology is "rupture" (section 5), but what supports it are the complementary ideas of "profanation" (excerpt 6), of "dogmatic appeal" (excerpt 2).

In short, for Warat (2002, p.54), "[...] legal thought manifests a double absence. Not if found the thematic nor the obstacles on methodological or epistemological", which leaves open the investigation about the constitution of the

field.

Then, after indicating and highlighting several obstacles derived from the rationalist and empiricist traditions of modern science, he makes explicit his main claim for an anti-empirical epistemology for law, With a view to making way for an anti-dogmatic methodology (WARAT, 2002, p. 54).

5.2 LIMITS OF WARAT'S INVESTIGATIVE PROGRAM

It is about an investigative program focused on an anti-empiricist epistemology that claims an anti-dogmatic methodology, as a counterpoint to any investigation program derived or inspired by Kelsen (2009).

In contrast to Habermas (2011 and 2012), Kuhn (2005), Foucault (1979 and 1987) who value the need for explicit metaphysics (they are post-empiricists), Warat seizes metaphysics as an obstacle in the same sense as Bachelard (1974), as an epistemic obstacle that preclude legal knowledge from expanding. This explains his affection to the idea of rupture (which own Warat did not realize that is another metaphysics). Warat continued attach to the reductionist foundation of the analytic epistemological tendency in claiming the rupture with metaphysics, as Kelsen did. This seems to be one of its limits. Overcoming could be associated with the need to construct an episteme that takes into account and does not break with metaphysics, reinforcing the need to construct knowledge as if it were a continuous exercise of weaving together, not dissociating. To identify and make explicit the place of metaphysics (utopia), not to hide it or to deny it in a mechanistic way.

6 THE SCIENCE IN BOAVENTURA DE SOUSA SANTOS

Taking into account the discussion there were in section 1, the force-idea of this section is to make visible the contribution and limits of Santos' investigative program to the legal field.

6.1 CONTRIBUTION OF SANTOS

In this sense, the main objective of Santos (1988, p. 9) is to make a sociology of law rhetoric and, for this, he carries out a comparative study between "the legal practice of state law of capitalist countries and legal practice within a neighbourhood [...] of Rio de Janeiro (Pasárgada)". According to Santos, two legal sociologies, the positivist and the Marxist marginalize legal discourse. "For both sociological paradigms, legal discourse is a marginal area to the study of the structures of power and social control in society and contemporary and like as can be left to the domain of philosophical speculation" (SANTOS, 1988, p.5).

Faced with this controversy, the author positions he by explaining his epistemic fundamentals focused on empiricism to extend to in legal pluralism. "[...] In the present work if explored some of the access routes sociological on the law discourse in the light of empirical investigations that also the interested the question of legal pluralism" (SANTOS, 1988, p.5).

Taking as a reference a strategy close to that of Warat, Santos constructs his field of investigation from the identification of some limits of the hegemonic episteme of the field, the legal positivism.

6.1.1 LIMITS OF THE HEGEMONIC LEGAL FIELD

The epistemic fundament claimed by Santos is empirical, since it uses the contributions of Sociology and Anthropology. From this foundation, Santos identifies some limits of the hegemonic legal field (Table 6) to propose a pluralistic epistemology (Table 7).

Are presented in Table 6, six cut sections from Santos' work, which allow identifying the main limits of the hegemonic legal field. It is a field focused on axiomatic (excerpt 1), in formal rationality (excerpt 2), in coercion (excerpt 4) and, in addition to these indicators, appropriates a legal ideology (excerpt 5) to apply the positive norm Like a fetish (excerpt 3). Finally, the idea of coexistence (section 6), under the domination of a colonialist episteme, prevails foundation logic of "juridicídios" (SANTOS, 2011) and (SANTOS and TRINDADE, 2003), that is,

massacre of legal systems not taken into account by official eyes simply because they are law systems derived from native social systems.

LIMIT OF THE HEGEMONIC FIELD	PARTS
Axiomatic	1. “The topic-rhetoric conception has as its objective a critique, which pretends to be radical, to the prevailing jus-philosophical conceptions, which have tried in various ways to convert legal science into a dogmatic or axiomatic one, from which it would be possible to deduce concrete solutions within the framework of a Closed system of techno-law rationality” (SANTOS, 1988, p.7).
Formal Rationality	2. “Technical language, like formalism in general, is a distancing” (SANTOS, 1988, p.34).
Norm as a fetish	3. On the official texts, which “[...] are used as legal fetishes and, like any other fetish, represent a frozen rhetoric, a silence of things that makes the words of discourse hyper-spoken” (SANTOS, 1988, p.43).
Coercion	4. “when more powerful are the instruments of coercion at the service of lesser legal production tend to be the rhetorical space of legal discourse, and vice versa” (SANTOS, 1988, p.61).
Legal Ideology	5. “[...] It is in this misappropriation of the remaining (supra-individual) dimensions that lies the ideological character of capitalist law construction” (SANTOS, 1988, p.93).
Coexistence	6. “Contrary to traditional law, state law tends to present a higher level of institutionalization of the legal function and more powerful instruments of coercion - which in the colonial situation is particularly evident. In addition, concomitantly in its legal discourse tends to have a smaller rhetorical space in the colonial situation, since colonial domination / repression reproduces itself directly in the domination / repression of native languages.” (SANTOS, 1988, p.58).

TABLE 6: LIMITS OF THE HEGEMONIC LEGAL FIELD.

SOURCE: Prepared from Santos (1988).

Table 6 makes it enable to visualize that through the topic-rhetoric conception Santos identifies some of the main limits of hegemonic conceptions in the legal field. The Framework also makes it possible to anticipate methodological procedures inspired and imported from socio-anthropology (participant observation). They are

procedures derived from inductive principles, for it is constitute not on the norms, but on concrete cases observed in social reality.

6.1.2 Constituent elements of Santos' pluralist epistemology

In this subsection, are introduce the main constituent elements of the Santos investigative program for the legal field.

Are presented in Table 7, six-cut excerpt of Santos' work that allow us to delineate the contours of a pluralist epistemology for the legal field. Unlike Kelsen's investigative program (Section 3), fully aligned with the analytical trend; or Ross's (Section 4), aligned with the socio-historical tendency, Santos's proposal is close to the dialogical epistemic tendency (Figure 1, Section). Instead of worrying about the shielding or closure of the legal field, in a manner similar to Warat's (Section 5), all excerpt cut out indicate a concern to open the legal field to other domain of knowledge, whether these scientificity or not. In this perspective, Santos's investigative program has pluralist contours (section 1), Supports itself on a topic-rhetoric (section 2) and on a common sense language (section 3). Finally, to consolidate itself as an alternative legality (excerpt 6) it grasps its object of litigation not as a purely law phenomenon (claiming a pure episteme), but as a tangle (Figure 2, Section 4) that does not lack coercion (excerpt 5) of a *Leviathan* to be managed.

CONSTITUINTE ELEMENT	PARTS
Pluralism	<p>“Legal discourse in general and judicial speech in particular are a pluralistic discourses that, while antithetical, it remains dialogic and horizontal” (SANTOS, 1988, p.8).</p> <p>“[...] The truth to which it aspires is always relative, and its conditions of validity never transcend the circumstantialism historical-concrete of the auditorium” (SANTOS, 1988, p.8).</p> <p>In Pasárgada, the residents' association acts as a judge (legal forum) for emerging problems. "In the light of official Brazilian law, the relationship of this type established within the slums are illegal or legally null” (SANTOS, 1988, p.14).</p> <p>In the interior of Pasárgada emerge a practice and a legal discourse, the law of Pasárgada, that the author propose to investigate and characterize as an indicator of a legal pluralism</p>

	<p>Everything undergoes an inversion process, for "illegal occupation [...] becomes legal ownership and property" (SANTOS, 1988, p.14).</p>
<p>Topic-rhetoric - <i>topoi</i></p>	<p>2. Pasargada's law "[...] is triggered through a legal discourse characterized by the very intense and complex use of legal rhetoric" (SANTOS, 1988, p. 17). This finding led the author to resort to the topical-rhetorical conception to analyse the processes of "reproduction of legality within Pasargada" (Santos, 1988, p.17). Contrary to what happens in the Law of asphalt (official), a construction starts from the concrete to the abstract. "The objective is to build progressively and by multiple approaches a decision that is accepted by the parties and for the relevant auditorium" (SANTOS, 1988, p.17-8). "A legal discourse dominated by the use of <i>topoi</i>⁴ is necessarily an open discourse and permeable to the influences of related discourses" (SANTOS, 1988, p.25). "A estrutura tópic-retórica do discurso transforma-se num antídoto eficaz do legalismo" (SANTOS, 1988, p.25). The legal discourse of Pasargada makes a great use of <i>topoi</i> and, simultaneously, a scarce use of law "(SANTOS, 1988, p. 43). "From the confrontation it is clear that in legal societies where law has a low level of institutionalization of the legal function and instruments of coercion that are not very powerful, legal discourse tends to be characterized by a broad rhetorical space" (SANTOS, 1988, p. 57). "The structure of mediation is the topography of a space of mutual giving and reciprocal gain" (SANTOS, 1988, p. 21). "... The reconciliation of the parties takes preference over everything else in the resolution of litigation" (SANTOS, 1988, p.81). There is not one winner and another subdued like a right of the asphalt.</p>
<p>Common sense language</p>	<p>"The rhetorical circulation among non-professional participants presupposes a vulgar, non-professional common language, and it is in this language that Pasargada's legal discourse is dressed" (SANTOS, 1988, p. 34). "Being Pasargada's legal discourse with a strong topic-rhetoric dominance, it is a non-legalistic legal discourse and, therefore, the law thought he projects is an essentially every day and common thought" (SANTOS, 1988, p.45). "Again in parallel with what it happens with forms and requirements procedural, the technical language of Pasargadae law does not create a distance that implies rupture, that is, that it changes</p>

⁴ Consensus spaces, "viewpoints, or commonly accepted opinions" (SANTOS, 2011, p.17).

	significantly and permanently the field of the relevant auditorium. It is a popular technical language "(SANTOS, 1988, p. 36).
Litigious object as a tangle	"Normativity rhizomatic "(SANTOS, 1988, p.42). The object of the processed of litigation - and through it, the oneself actual object of the litigation - is never established with rigidity, for it is itself object negotiated in elapse of the argument on the relevant matter" (SANTOS, 1988, p.45) . " the participation in the exercise of tasks is more decisive than the hierarchy of functions" (SANTOS, 1988, p.53).
Rhetoric of force = Coercion	"[...] The law of Pasargada dispose of instruments of coercion very incipient and indeed almost non-existent" (SANTOS, 1988, p.55). "[...] The association may request the support of the police station located in the neighbourhood to imposed, by force, a decision" (SANTOS, 1988, p.55). "[...] In Pasárgada the main instruments of coercion are threats, the discourse of violence" (SANTOS, 1988, p.56). "[...] Although the resource of the police is often referred to as threat, it is only in extreme circumstances it is concretized" (SANTOS, 1988, p.56). "The topic-rhetorical rationality seems to move against two forms of violence: the violence of principles and absolute proofs, that succeed necessary solutions (the institutional-systemic logic to which aspires the bureaucratic instrument), and the physical and psychic violence of the coercive instrument." (SANTOS, 1988, p.94).
Alternative Legality	"Despite all its precariousness, Pasargada's law represents the practice of an alternative legality and, as such, an alternative exercise of political power, although very embryonic" (SANTOS, 1988, p.99).

TABLE 7: CONSTITUENT ELEMENTS OF PLURALIST EPISTEMOLOGY

SOURCE: Prepared from Santos (1988).

6.2 SELF-CRITICISM OF THE AUTHOR ABOUT ITS OWN APPROACH

In this section, in a very honest and unusual way it are presented the main constituent elements of Santos' self-criticism to his own epistemic and theoretical choice.

SELF-CRITICISM	PARTS
Need for refinement	"[...] If it is true that Marxist theory is, in my understand, better condition to cover the vast analytical field mapped in

	the present work, it is no less true that, for that to happen, it is necessary that it will tackle deficiencies, it here I suggested with very deep historical roots "(SANTOS, 1988, p.8" (SANTOS, 1988, p.88).
Simplification	"One of the shortcomings of the Marxist theorizing of law has been to attribute to it a general political function which, for too abstractly, leaves without an adequate cover an amalgam of secondary functions which, as has already been noted, ends up being accounted to title of 'ambiguities' of the law" (SANTOS, 1988, p.93).

TABLE 8: SELF-CRITICISM OF THE AUTHOR ON THEIR OWN APPROACH
 SOURCE: Prepared from Santos (1988).

In Table 8, two clipping excerpt of Santos' work are presented that allow us to translate some of the main limits of the theoretical framework inspired by Marx to deal with the legal field. In section 1, Santos claims the need for refinement of criticism, and in section 2, it goes further by demonstrating with his reflections that there is another need more imperative than the first, to escape the simplifying and deductive temptation not necessarily of Marx, but of some of his most devoted followers. The legal field can not be reduced to an expression of the ideological superstructure created by the hegemonic groups of society. Santos' contribution shows that the legal field is much more than this.

6.3 LIMITS OF TOPIC-RHETORIC

In this section are presented, the main constituent elements of some limits identified by Santos about topical-rhetoric.

LIMIT	PARTS
Emancipation or dissimulation of violence?	"[...] When compared to the other 'discourses' (bureaucratic and coercitive) of law, is rhetorical discourse really the least violent, or is it the one that best dissemble violence?" (SANTOS, 1988, p.93-4). "As increases volume and consolidates the inequality of the inhabitants of the rhetorical space grows, it makes sense to critically reconstruct rhetoric as a new form of violence, alongside bureaucratic violence and physical violence - symbolic violence" (SANTOS, 1988, p.96).

TABLE 9: LIMITS OF TOPIC-RHETORIC
 SOURCE: Produced from Santos (1988).

In table 9 is presented a single excerpt containing two clippings of the work of Santos where the translate one of the most fundamental boundaries for whom propose as to understand and to produce knowledge from the topic – rhetoric. It may be appropriate now as desire of emancipation, but it can be equally be taken as more another perverse form the dissimulation of physical and symbolic violence. It comply to highlight that the alert of Santos the need to be apprehended as a principle, the precautionary principle epistemic, but above all as an ethical precautionary principle of every subject epistemic. (SOUZA-LIMA, SILVA e BRAGA, 2013).

7 THE CIENTIFICITY IN THE LEGAL FIELD

Whereas the objective of the article was to reflect, from the epistemic criteria, theoretical and methodological, about the contours of the legal knowledge and the cientificity of the field, the idea-force of this section is to present a summary table containing the main constituent elements of the cientificity in the legal field from the investigative programs of each author analyzed.

CIENTIFICITY	KELSEN	ROSS	WARAT	SANTOS
EPISTEMIC	Analytical trend Rationalism Reductionism	Socio-historical trend Empiricism Reductionism	Socio-historical Trend Anti-empiricist No reductionism	Dialogic trend Empiricist and Rationalist No reductionism
THEORETICAL	Abstract to concrete Application Purity	Concrete to Abstract Application Syncretism	Abstract Comprehension Syncretism	Concrete to Abstract Comprehension Application Syncretism
METHODOLOGICAL	Deduction Monism	Induction	Anti-dogmatic Pluralism	Topical-rhetoric Dialectic Pluralism Participant

				observation
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TABLE 10: THE CIENTIFICITY IN THE LEGAL FIELD.

SOURCE: Developed by the authors from **Kelsen (2009), Ross (2007), Warat (2002) e Santos (1988).**

Table 10 makes it visible that legal knowledge needs to be to apprehend not as a monolithic and pacific bloc, but rather as a field of coexistence (Souza-Lima and Knechtel, 2012) of senses and of epistemic interests, theoretical and methodological. Each of the authors studied claims for themselves the right to define what can and what it cannot characterized as a founder element of the cientificity of the legal field. Table 10 equally allows you to identify a movement of the opening of the field if we take as a reference – as Ground Zero – the contribution of Kelsen. In the perspective of Epistemic, Kelsen to Santos, there is a "desecration"⁵ (Souza-Lima, 2013) of the field, for beside the reductionism rationalist inaugurated by the Viennese scholar; they pass coexist fundamentals empiricists, Anti-empiricists and Post-empiricists. In the theoretical perspective, the claims of purity are aggregated in concepts and definitions fertilized – these are the diverse expressions of syncretism rejected forcefully by Kelsen other fields of knowledge and socio-cultural practices. Finally, in the methodological perspective, the "desecration" of the legal field becomes more visible, as it is in this perspective that any framework epistemic/theoretical touches and is touched by the concrete world. Thus, beside the deductive monism (Kelsen proposal), to break out some strange methodological procedures and opponents of him. In this case, procedures focused in the direct contact with data of reality through the induction (proposal of Ross); of it psychoanalyzes (proposal of Warat); e finally, of the topical-rhetoric and the participant comment, both mattering of the anthropology for the legal field for Santos.

FINAL CONSIDERATIONS

⁵ In the sense of the intensity of the founding structures of the field with view to identifying limits and possibilities of overcoming to himself them in epistemic, theoretical and methodological terms.

Finally, the table 10 allow returning to the objective of the article that synthesize objectively in order to the main contributions and limits of each one of the analysed authors, beyond presenting the legal knowledge not as a monolithic block, but as a coexistence field. Another contribution of this article, beyond table 10, is that it supplies an analytical model of continuity of studies the legal field from other authors.

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