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**LEGAL PSYCHOLOGY:  
EPISTEMOLOGICAL  
ANALYSIS**

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**Abstract:** Psychology is currently concerned with maintaining its scientific status, giving great importance to empirical evidence, considering that critical and innovative thinking constitutes obligatory stages of this understanding. The teaching of Law, though scientific, is no longer teaching with an abstract content. It is an operational science, which is not limited to describing or reproducing the established legal order, but transcends it in the search for new contents applicable to concrete life. It is common to refer to several areas of work of the psychologist. Psychology is one, but it has different faces and is expressed through different languages. One of them is Legal Psychology. This consists of studying the behavior of people and groups while they have the need to develop within legally regulated environments, as well as the evolution of these normative regulations or laws as the social groups develop within them. The approximation of Law and Psychology, as well as the creation of a transdisciplinary space, as a result of convergences-divergences capable of establishing a new epistemological statute, configures a true essential question of justice.

**Keywords:** Psychology; Right; Juridical Psychology.

## INTRODUCTION

In today's world, scientific and technological development has reached levels never before imagined. Time and space acquire new meanings with the elimination of distances by computerized networks. New knowledge comes to profoundly transform the productive structure, education, assistance, health, the arts, interpersonal reactions.

Psychology is often defined as the science that seeks to understand, predict and control behavior and mental activities. Its extraordinary expansion as a science, profession and teaching has been

accompanied by the growing recognition of the contributions it offers to the solution of anthropic, personal and social problems. For its part, Law consists of a broad and vague expression, without, however, being imprecise, since it leaves a wide margin of discretion for its content. The biggest stumbling block, without a doubt, resides in the choice and order of themes in the immense legal horizon. Thus, the legal practice, when addressing contemporary problems that affect society, requests professionals and researchers in Human Sciences, especially psychologists,

## DEVELOPMENT

The word Psychology has, for the layman, a very poorly defined meaning. It can suggest many phenomena for the same person and also different phenomena for different people. According to the Greek origin of the word, Psychology, in the light of Braghirolli's magisterium; Bisi; Rizzon; Nicoletto (sd), means the study or discourse (logos) about the soul or spirit (psyche).

A brief historical overview of Psychology has shown that this meaning has changed over time and that, today, it is a difficult task to formulate it in a reasonably broad concept to encompass all positions in Psychology. Nevertheless, most psychologists agree in calling psychology the science of behavior. There is much more to behavior than flagrant movements like walking from one place to another. It includes very subtle activities such as perceiving, thinking, conceiving and feeling. Psychology is concerned with all the activities of the total person. Also according to Trindade (2004) Psychology, in contemporary times, can be defined as the scientific study of behavior and mental processes. Ultimately, behavior consists of the characterization of human behavior, such as talking, walking, reading, compose, swim and such phenomena. Mental processes are

internal experiences, such as the feelings, memories, affections, desires and dreams. Therefore, the behavior is applied to designate a wide range of activities. It may include directly observable activities such as talking, walking, etc.; internal physiological reactions such as heartbeats, blood chemical changes, etc; and conscious processes of sensation, thought, feeling, etc.

A brief survey of the common expectations of those who are going to start their studies in Psychology illustrates this diversity of concepts well. Some believe that it is up to them to study the causes and characteristics of mental imbalance; others hope to learn how to deal with children in their successive developmental stages; there are those who intend to reach an understanding of the rules of good interpersonal relationships; some express the wish to be able to psychoanalyze people; still others aspire to train themselves in measuring intelligence; and there are also those who, in a more vague way, want to come to understand the human being (BRAGHIROLI; BISI; RIZZON; NICOLETTO, sd). serious, of methods that demand experimentation and meticulously controlled observations.

For Braghirolli; Bisi; Rizzon; Nicoletto (sd), the apprentice must adopt, from the outset, a scientific posture, that is, investigate what has already been established by scientificity, and what has not yet received a satisfactory explanation, reject any conception that has not been submitted to studies and verification strict. In short, he needs to adopt a critical spirit that is always suspicious of natural knowledge about people.

Whatever the arguments, believing in the impossibility of generalizing about man has the immediate and logical consequence of disbelieving in the possibility of a science about man. However, Psychology has been developing, establishing valid generalizations,

despite the real complexity and diversity of human conduct and despite, also, the controversy over man's own will. in which the first Sciences to develop were precisely those that deal with what is most remote from the human being, such as, for example, Astronomy. Those that refer to what is closest to it, or those that refer directly to it, such as Psychology, developed later.

The epistemic object of Psychology lay the analysis of conscious experience into its basic components and the determination of the principles by which these simple elements are related to form the complex experience. In the past, the word psychologist generally referred to a person dedicated to teaching and research activities on mental life, behavior, adjustment and personality disorders. it has expanded in such a way that today there is hardly any segment of human activity that does not need its presence and action, to a greater or lesser extent.

Thus, Wundt gave birth to a psychic school that was called structuralism because it sought the structure of the mind, that is, to understand mental phenomena through the decomposition of states of consciousness caused by environmental stimulation (BRAGHIROLI; BISI; RIZZON; NICOLETTO, sd). Given the situation in which Psychology found itself, and inspired by the great development of Natural Sciences at the time, Watson proposed a new object of study for it: strictly observable behavior. With that, he discarded studies of mental phenomena, sensations, images or ideas, mental functions, and also introspection as a method. He claimed that the only source of data about man was his behavior, what people do and what they utter (BRAGHIROLI; BISI; RIZZON; NICOLETTO, sd).

At present, classical behaviorism no longer exists, but it is fair to say that most, if not most, research has a behaviorist

orientation. The very concept of Psychology as a science of behavior, widely accepted, seems to indicate this. Behaviorism proposes a fundamentally experimental approach, and the themes of learning and motivation owe their great development to it. In this context, Bleger points out that it is not just a science of observable manifestations, nor just of mental phenomena, but encompasses the study of all manifestations of the human being (BRAGHIROLI; BISI; RIZZON; NICOLETTO, sd).

In fact, any attempt at isolated treatment of active, sensitive, intellectual or other phenomena does not correspond to reality, because in each act, in any reaction of man, there is an interrelation of aspects, that is, man is an indivisible unit. Demanding, probably, to include all the manifestations of the human being, it is sought to call human psychology the science of behavior and experience. By experience he means the conscious state or mental phenomenon experienced by the person as part of his inner life.

Like all Science, Psychology uses rigorous heuristic methods and, like any other Science, seeks to understand, predict and control the phenomena it studies, in this case, behavior.

Among living beings, it is undoubtedly the man who presents the most varied and complex behavior. For this reason, and also because it is more difficult to study human beings, the objective of understanding behavior is not at all easy to achieve. Psychologists admit that they still don't know all the answers to problems related to anthropic behavior. However, they not only want to understand, but also to predict phenomena. If the conditions under which a certain event occurs are already established, it is possible to anticipate that it will occur if those conditions are present. In Psychology, however, a young science, scientists are still, in most subjects, trying to gain an understanding of behavioral

events; and the last stage, behavior control,

Thus, it configures a very broad field of application, which fully justifies its importance and the denomination it has received as "the science of our century". Furthermore, he cultivates an interest in all types of behavior, but intends to study them insofar as they are describable, that is, some will be studied directly and others indirectly, as they manifest themselves through observable behavior. Nowadays, it is quite concerned with maintaining its status as a scientist, giving relevance to empirical evidence, considering that critical and innovative thinking are mandatory steps in this understanding.

Netto (sd) points out that, nowadays, it can be safely stated that Psychology has established itself all over the world, both as a basic science and as an applied science. The general public's interest in psychology, in turn, expanded significantly as evidence accumulated of its importance to human understanding and well-being, and as a multitude of problems, individual and social, were found to exist. public and private, are essentially, or in part, psychological. Therefore, it is commonplace to mention several areas of work. The Psychological Science is only one, however it hosts several faces and is expressed through different languages. For example, Legal Psychology.

From another point of view, Law, like any object that is intended to be conceptualized, can be defined according to two basic criteria: the nominal, which seeks to say what the word or name means; and the real or logical, which seeks to discover the essence of the defined object, translate what thing or reality it is.

The word right comes from low Latin. It originates from the adjective *directus* (quality of what conforms to a straight line; that which has no inclination, deviation or curvature), from the past participle of the verb *dirigere*, equivalent to guide, conduct, trace, align,

straighten, order (HERKENHOFF, 1982). However, according to Herkenhoff (1982) it is not possible to establish a single definition of Law, since the word is used in different meanings.

For Krylenko, for his part, law consists of the expression – in the form of current law and in the unwritten form of customary law – of the social actions of humans, which take place on the basis of the production relations of a given society and which have, by content, the discipline of such relations, in the interest of the dominant class of society and are protected by it, through coercive force (HERKENHOFF, 1982). Still following the teaching of Strogovic, the Law, ultimately, consists of the set of rules of conduct that express the will of the ruling class, established or sanctioned by the State, whose execution and observance comes from the coercive force of the State, with the objective of to protect, consolidate and develop social relations and order, favorable and advantageous for the dominant class (HERKENHOFF, 1982). Therefore, it is up to Legal Science to interpret, conceptualize and systematize positive law, and from this it can be seen that, given that the data is already available in the positive legal system, such work is nothing more than a technique, an art of a didactic nature. Perhaps more markedly than any other science, allows, from a certain stage of knowledge, the scholar to take his own leaps and choose his paths.

Law requires global perception, which only years of study will provide. This comprehensive view or global conception is indispensable to legal reasoning and rule-making. No legal phenomenon will be isolated or exclusively sectorized, not being able to dispense at any time with elements and principles compared from various fields of law and auxiliary sciences. For Venosa (2004), the word law intuitively bestows the notion of what is right, correct, fair, equitable. When a word is

mentioned, it is important to know whether it is used as a noun, adjective or adverb. The word right, in common usage, is syntactically imprecise. Thus, the General Theory of Law, which appears as a logical antecedent in the study of scientificity, has several meanings, according to the orientation of philosophers.

The initial study of Law, through what is called Introduction to Law, makes use of all these fields of legal knowledge, without identifying with any of them, precisely because it is an initial knowledge. Its meaning is to give the beginner in legal science the fundamental notions and principles. For this reason, it has many points of contact with the general theory and philosophy of law (VENOSA, 2004). The principles of law are normative enunciations of generic value that guide and condition the understanding of the legal system, whether for its integration and application, or for the elaboration of new norms. Thus, they cover both the field of pure law research and that of its operational updating. Thus, it is up to Legal Science to interpret, conceptualize and systematize positive law,

As with other branches of knowledge, the history of Western legal thought is imbued with formality, which is evidenced by the very concept of law, understood as a system of norms. Taken to its ultimate consequences, formalism led the law to the legalistic positivism of the Exegesis school and remained in the normativism of the Vienna school and in neopositivist thought (PRADO, 2005). The teaching of Law, although scientific, is no longer teaching content. It is a practical science that is not limited to describing or reproducing the established legal order, but transcends it in the search for new contents applicable to concrete life. Furthermore, Amaral (2004) proclaims that the origin of Law is certainly social; its nature is essentially cultural, as a product of man's intellect; its purpose is to facilitate the coexistence and



freedom of each and everyone, in the interest of the common good and moved by the value of justice; hence its greater or lesser possibility of spontaneous adherence by individuals and even by human groups.

The Law, as much as the political system, sustained by force, since it is lawful, does not last for long. The Law acts in mere visual contact, the man in what is minimally civilized tends, almost instinctively, to follow the rules of the social game. The law is only well perceived by the layman as a resisted right, when then it is nothing more than a sick right in need of specific treatment. Alongside this, the law is a vast ideological reserve. Both in technique and in content, law always revolves around two basic ideas that have long involved man, which is justice and security. Therefore, the Law is, immediately, a fact or social phenomenon; it exists only in society and cannot be idealized outside of it. One of the characteristics of legal reality is its sociality, its attribute of being social. Thus, for Reale (2002), a unitary view of Law is not enough. It is also important to have a sense of the complementarity inherent in this communion. The different parts of the Law are not placed side by side, as static and finished things, since the law is an order that is renewed every day.

In short, any definition will always involve persuasion, since a neutral definition of law is impossible, free from the emotional burdens that permeate this theoretical and practical problem of legal knowledge. By the way, this labyrinth is a supra-scientific problem, that is to say, it goes beyond the articulations of the science of law, being, therefore, a jusphilosophical theme, more precisely of legal ontology.

For its part, Legal Psychology was born from the call for psychologists to enter areas originally assigned to legal practice. This demand places specific demands, defined by the Law, however it is necessary to admit that

the entrance of Psychology in the legal world must find its own engine, since its impetus comes from a commitment with the subject that is of another order (GONÇALVES and BRANDÃO, 2004).

The first signs of the emergence of legal psychology begin in the eighteenth century. One of the initial themes that established the relationship between Psychology and Law was the legal feeling of establishing norms for common living in accordance with rules and norms of conduct. internal to the newly born experimental science of psychology, as well as to the very science of law, which found itself amalgamating the fundamental principles (JESUS, 2001). For Clemente, Legal Psychology consists of the study of the behavior of people and groups while they have the need to develop within legally regulated environments, as well as the evolution of these legal regulations or laws while social groups develop in them (TRINDADE, 2004). Complement Sabaté that the knowledge that Legal Psychology is able to contribute to the legal world can be exercised in two ways: one in the form of legislative advice, contributing to the elaboration of laws that are more suitable for society, and the other in the task of judicial advice, collaborating in the organization of the justice administration system (TRINDADE, 2004).

Since authors identify Legal Psychology with judicial, forensic or legal psychology, in the trajectory of psychology and law, it was historically relevant to differentiate these two modalities of action. Legal Psychology deals with the psychic foundations of justice, while judicial psychology appears as the study and application of psychological processes to the jurist's praxis, being inaugurated with criminal psychology. Likewise, it is important to point out that both Legal Psychology and Judicial Psychology, although with different historical origins, are really inseparable. Moreover,

nowadays there seems to be no more reason for this terminological distinction. While the expression judicial psychology has been more common among psychologists. On the other hand, there was the opportunity to emerge Psychology from the restrictive statute of merely auxiliary scientificity of Law and to constitute it in a branch of thought and application of this. This requires an epistemic awareness that forces the creation of a true space for interlocution, transdisciplinarity, which is neither metapsychological nor metalegal, but at the same time psycholegal.

For Lopez, Legal Psychology consists of applying it to the best exercise of the Law, which means considering other possibilities, among which can be included, due to its relevance, studies about the psychosocial dynamics of judicial decisions, the special rights of target groups over the effects of the labeling approach in the sphere of legal acts and therapeutic justice (TRINDADE, 2004). Legal Psychology is a large and specific field of relations between the spheres of Law and Psychology, in terms of epistemic, explanatory and research aspects, as well as application, evaluation and treatment.

Furthermore, it must be restricted to the psychic contents of the norm, without trying to explain whether or not it is fair, nor intending to argue about its purposes, as these questions do not belong to the psychologist's field of action. However, it must not be prevented from providing information that, collaterally, can be interpreted by jurists as a sample of the dysfunctionality of certain objectives. This way, people will form the basis of a psychology that is not only empirical, but empirical-critical.

Forensic Psychology is a discipline still in development. On the one hand, because the impermeability of jurists, often dissociated from the scientific method, causes essentially compilation productions,

remaining at a basically discursive level on human phenomena. On the other hand, the epistemological youth of Psychology. In the confrontation between the psychic and the normative order, from an epistemological point of view, one can clarify the divergent methods used by law and psychology. While Law makes use of jurisprudence from a deductive methodology of case analysis, using a top-down information processing model, based on norms of coherence with previously taken decisions, psychology is more creative, through the empirical, its teleology being description and explanation, that are in opposition to the prescription of the legal norm (JESUS, 2001). In summary, Legal Psychology constitutes a specialized research field, whose purpose is to study the behavior of legal actors within the scope of normative devices and justice. It is internationally recognized as the legal and/or forensic psychology. However, it is more appropriate to call it Legal Psychology, considering that this term covers a much larger field than the term forensics, which would be applied only to activities carried out in the forum. Thus, The functions of the legal psychologist, in the exercise of his attributions, could be summarized in evaluation and diagnosis; advice; intervention; training and education; social prevention campaigns against crime in the media; search; victimology; and mediation.

López (2005) teaches that it is Psychology applied to the best practice of Law. However, the current state of psychological science does not allow its knowledge to be used in all aspects of law and this means that legal psychology is currently limited to certain chapters and legal problems, which are, in chronological order: the psychism of testimony; obtaining criminal evidence; the understanding of the crime, that is, the discovery of its psychological motivation; forensic information about you;

the moral reform of the delinquent, foreseeing possible subsequent crimes. To these can be added a sixth chapter, on mental hygiene, which raises the prophylactic problem in its broadest sense, that is, how to prevent the individual from coming into conflict with the social laws.

It is easy to see that Law and Psychology have a common destiny, as both deal with human behavior. For Sobral, psychology and law seem like two worlds condemned to understand each other (TRINDADE, 2004). Psychology is obsessed with understanding the keys to human behavior, while law is the set of rules that seek to regulate this behavior, prescribing conduct and forms of conflict resolution, according to which the social contract in which supports life in society.

The relationship between the two spheres is a matter of justice. Psychology and law necessarily have to relate because they deal with human conduct. Human behavior is nothing more than an object of study, and it is known that the same object can be appropriated by various types of knowledge simultaneously, from different perspectives, without thereby becoming epistemologically exhausted. Different readings and different sciences can share the same immediate material object, after all, from the finalistic point of view, all knowledge must converge for the human person, since the ultimate goal of all science is to reduce human suffering.

The modern world needs to overcome the scope of disciplines and separate doing, the latter responsible for reductionist approaches to human beings, life and the world. The crisis of science is a post-disciplinary crisis. Individualized and disciplinary knowledge no longer finds a place in a world marked by complexity and globalization.

The epistemological solitude of isolated disciplines, each in its own world and dedicated to its own object, belongs, if not to

a conscious past, at least to a time that must urgently be reformed in the name of the very survival of science.

In this sense, the theory of law must attend to the urgency of the process of integration of social knowledge, since the crisis of contemporary legal thought is permeated by the belief that law is an autonomous and independent science, which can disregard connections with other branches of knowledge, and that the jurist is a technician of the subsumption of the concrete fact sterilized to the sterility of the abstract norm.

Despite so many indicators for the convergence between law and psychology in the sense of building an area in the space of interdisciplinary tangency, there are those who continue to assert the impossibility of psycholegal formulation, claiming that law and psychology belong to very different worlds: psychology, to the world of being; the right, to the world of the must-be; psychology based on the causal relationship; the right on the principle of finality.

This line of thought, sometimes referred to the distinction between the natural sciences and the sciences of the spirit, forgets that man is actually a citizen of two worlds, that he belongs simultaneously to being and to what must be.

According to Trindade (2004) psychology has also been attached to its fundamental dogmas in the name of the same security with which the law is shielded and turned a deaf ear to the contributions of other human disciplines.

Legal psychology is important not only to law, but mainly essential to justice. In fact, to arrive at justice, law and psychology are needed, both sharing the same object, which is man and his well-being.

In general, psychology can allow man to better understand the world, others and himself. Legal psychology, in particular,



can help to understand and improve *homojuridicus*, but it can also help to understand laws and their conflicts, especially legal institutions, as well as to improve them.

For Trindade (2004) the approximation of law and psychology, as well as the creation of a transdisciplinary territory, is a true essential issue of justice.

Forensic psychology, even enjoying greater popularity in recent years, remains a discipline yet to be developed. From experimental birth, psychology, including legal psychology, has resisted the legal discourse, while law, tied to an epistemological hegemony, has difficulties in accepting it, only making concessions to an auxiliary discipline.

Thus, legal psychology was restricted to psychology for the law, remaining far from any interference in the process of the fundamentals of law, that is, the psychology of law, as well as away from the psychological issues that intrinsically make up the normative world, that is, of psychology in law.

Trindade (2004) states that the psychology of law was never well received by the legal tradition, in fact, nor was legal sociology itself.

On the other hand, the psychology of law presents the dangers of purposeless utilitarianism, the risks of determinism on judicial decisions and on the very ends of justice, since science has no competence over what must be. In other words, the fundamental answers about the ends of science is not what science can give.

Legal psychology is the psychology that helps the law to achieve its ends. It is an auxiliary science of law, and not the one that questions it, nor the one capable of questioning it. For this reason, legal psychology, psychology for law, has kept away from the question of the foundations and essence of law.

The truth is that legal psychology is not authorized to think law, or is not appropriate for that purpose. It must stick to the norm and

only the norm, leaving it to any examination of its justice or injustice.

Thus, as Trindade (2004) states, legal psychology has remained fundamentally a psychology for law, this because it resists the stratified model in which law can only be thought of by law.

Psychology for law came to be called simply legal psychology. It is, by far, not the whole of legal psychology, nor, certainly, the noblest slice of psycho-legal reflection. However, at the moment and at the present stage of its development, psychology for law is the only legal psychology possible.

However, legal psychology, even so considered, is not just a simple juxtaposition of psychology with the law. More than a discipline, it is a territory in which almost everything is yet to be explored.

Therefore, the approximation of law and psychology, as well as the creation of a transdisciplinary territory, as a result of convergences-divergences capable of establishing a new epistemological statute, configures a true essential question of justice.

## FINAL CONSIDERATIONS

The techniques and procedures employed by Psychology need a conceptual framework, which cannot be reduced to an innocent use of a psychological theory, but must consist of a theory within the legal world, so that there can be integration between the psychological fields. It's cool. The penetration of Psychology, considered an autonomous science within the scope of Brazilian culture, must be seen from the angle of the local determinations and its intrinsic development in general terms. discover, order, and present knowledge. The word science designates both the process of the scientist's search for knowledge and the results of this search. Moreover, Psychology must be conceived, researched, carried out and taught with objectivity, intelligence,

seriousness and solid scientific foundation. It is a disservice that is rendered, and with serious consequences, both to those who cultivate it or begin to study it and to those who resort to it, to make it trivial, obscure or verbose, without the necessary support of scientific research.

On the other hand, it can be said that the Law is necessary. Society does not exist without it. It is not an abstract creation. It does not survive on abstract entities. Law is realized in society. There is a whole rational activity oriented towards the creation of law. Law, or better, the Science of Law is certainly social, however, a science, as much as Psychology, of difficult reduction to those classes, collimating the complexity of the phenomenon that it is responsible for studying.

Conceptualizing general principles of law is an arduous task, which spreads over countless theories, not always conclusive. The matter is philosophical. The enumeration of

the sources of law usually ends with a mention of these principles. To dogmatize the Law, in a very contemporary sense, is to enable the law to emancipate itself from other normative orders, it is to allow the self-reference of the legal system. The multifaceted universe of Law demands from the explorer stripped of one-sidedness, along with experience and technical knowledge, availability to examine their psychic, social, economic, religious and historical influences. Other approaches, from a philosophical perspective, emphasize the inclusion of legal phenomena in the world of justice, with those that deal with studying it from the perspective of concepts.

Finally, the challenge for Legal Psychology is launched. It is expected that Psychology can adequately respond to the concerns of the legal world, quickly and effectively, collimating the immediate need for interference in legal practice.

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