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The sociopsychological conception of law in Pontes de Miranda's Philosophy

A concepção sociopsicológica do direito na filosofia de Pontes de Miranda

La concepción sociopsicológica del derecho en la filosofía de Pontes de Miranda

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Abstract
This study aims to provide brief considerations on the sociopsychological conception of law in Pontes de Miranda's work, highlighting his pioneering role in overcoming the dichotomy between objectivism (social structures) and subjectivism (individual representations). Traditional legal theory associates law with the State and codified norms, whereas Pontes de Miranda understands it as a process of social adaptation and a product of psychic assimilation and dissimilation. Methodologically, this research is bibliographic in nature, seeking works on the subject and conducting a critical and dialogical reading of the found materials. The results demonstrate that, in Pontes de Miranda's view, law is a natural phenomenon essential to social life, not limited to state legislation but rooted in social practices. It consists of an internal criterion of valuation, a system of evaluating or measuring facts, ingrained in individuals throughout their lives in society.
Keywords: Pontes de Miranda; Sociopsychological; Legal Theory; Objectivism; Subjectivism.

Resumo
O presente estudo tem por objetivo tecer breves considerações sobre a concepção sociopsicológica de direito na obra de Pontes de Miranda, destacando seu pioneirismo na superação da dicotomia entre objetivismo (estruturas sociais) e subjetivismo (representações individuais). A teoria jurídica tradicional associa o direito ao Estado e às normas codificadas, Pontes de Miranda o compreende como um processo de adaptação social e um produto de assimilação e desassimilação psíquica. Metodologicamente, a pesquisa é de natureza bibliográfica, buscando trabalhos sobre o tema e realizando uma leitura crítica e dialógica das obras encontradas. Os resultados demonstram que o direito, na visão de Pontes de Miranda, é um fenômeno natural essencial à vida social, não se limitando à legislação estatal, mas enraizado nas práticas sociais e consiste em um critério interior de valorização, um sistema de avaliação ou aferição dos fatos, inculcado nos indivíduos ao longo da sua vida na sociedade.
Palavras-chave: Pontes de Miranda; Sociopsicológico; Teoria do Direito; Objetivismo; Subjetivismo.

Resumen
El presente estudio tiene como objetivo realizar breves consideraciones sobre la concepción sociopsicológica del derecho en la obra de Pontes de Miranda, destacando su pionerismo en la superación de la dicotomía entre objetivismo (estructuras sociales) y subjetivismo (representaciones individuales). La teoría jurídica tradicional asocia el derecho al Estado y a las normas codificadas; Pontes de Miranda lo comprende como un proceso de adaptación social y un producto de asimilación y desasimilación psíquica. Metodológicamente, la investigación es de naturaleza bibliográfica, buscando trabajos sobre el tema y realizando una lectura crítica y dialógica de las obras encontradas. Los resultados demuestran que el derecho, en la visión de Pontes de Miranda, es un fenómeno natural esencial para la vida social, que no se limita a la legislación estatal, sino que está enraizado en las prácticas sociales y consiste en un criterio interior de valoración, un sistema de evaluación o medición de los hechos, inculcado en los individuos a lo largo de su vida en la sociedad.
Palabras clave: Pontes de Miranda; Sociopsicológico; Teoría del Derecho; Objetivismo; Subjetivismo.

1. Introduction

What we call law is a complex social phenomenon that varies within the same society over time and across different societies. For example, the law in our Westernized society today differs from that of the Brazilian Empire era and also from the law of isolated tribes in the Amazon rainforest. These obvious differences have never stopped jurists and philosophers from

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attempting to define what law truly is.

Nowadays, we strongly associate law with the State, often thinking that law is whatever the State declares it to be. However, this has not always been the case. If we consider that our legal culture is largely a product of the material and symbolic violence of colonization—a continuation of European legal traditions—we can see that even in Europe, law historically emanated from multiple sources. There was the sovereign's law, but also the law of the Inquisition, guild laws (which gave rise to contemporary Business law), and other manifestations. With the consolidation of the modern Western State, particularly in the 18th century, the entity called the "State" claimed a monopoly on law production (Jellinek, 1914; Elias, 1997; Bourdieu, 2012).

The formation of the State gave rise to numerous authors who associate law with the State. Although they may disagree on specifics, they generally agree that law is what the State says it is. This conception became a dominant worldview, not only among legal scholars but also among the general population, who often equate law with state legislation and judicial decisions—public officials acting in the name of the State.

Formalists are the majority, but they are not the only ones who discuss law. We have, for example, interesting skeptical conceptions like Foucault's (2002), which observe that law is deeply tied to power, or critical (Marxist) perspectives that understand law as part of society's superstructure, reflecting and refracting its economic base, particularly production relations. It is worth noting that an author may lean toward formalism, skepticism, or Marxism at different times—we ourselves do this in everyday life when we notice that laws are not applied equally to the influential or wealthy.

A particularly interesting perspective on law is the so-called sociological positivism of Pontes de Miranda, especially because it presents a sociopsychological conception of law. This approach considers law both as a social process of adaptation and as a product of psychic assimilation and dissimilation, thereby overcoming the dichotomy between individualistic subjectivism (agency) and abstract objectivism (structure).

This study aims to provide brief considerations on the sociopsychological conception of law in Pontes de Miranda's work, highlighting his pioneering role in overcoming the dichotomy between objectivism (social structures) and subjectivism (individual representations).

Broadly speaking, subjectivism overemphasizes the individual, focusing on perceptions, representations, and lived experiences while neglecting the social and economic conditions that underpin them. Objectivism, in contrast, emphasizes society as a whole, treating structures, regularities, and systems of relations as independent of individual consciousness and will (Gonçalves, 2017). In law, this dichotomy traditionally manifests in the opposition between objective law (a system of general and abstract rules) and subjective law (the faculty to act, the right to demand something from someone).

2. Methodology (and some epistemological considerations)

A scientific study requires constant epistemological vigilance, exercised not only by the researcher but also by those engaging in dialogue with them. It is necessary not only to apply the method correctly but also to clarify—objectify—how the research was conducted so that both the research and the method itself can be subjected to critique (Bachelard, 2004; Gonçalves, 2017). Therefore, in the following lines, we will explain not only how the research was carried out but also the reasons for choosing the topic and the risks identified in its execution.

Constructing a research object requires selecting a specific aspect of the world to study in depth. Since it is impossible to discuss everything, we delimit a topic to examine it thoroughly. Laville and Dionne (1996) note that the initial concern in research often arises intuitively—there is a sense that a problem exists, and from there, the process of rationalization begins, formulating questions, hypotheses, etc.

This study emerged in the same way. In our professional activities, we inevitably encountered Pontes de Miranda's

work and had the impression that his conception of law contained an underlying relationship between society and the individual that pioneeringly overcame the dichotomy between objectivism and subjectivism (agency). As we know, this is one of the major epistemological obstacles in the human and social sciences and has preoccupied diverse authors such as Volóchinov (2017[2]), Elias (1997[3]), and Bourdieu (1972). From the latter's work, we extract the following warning:

> I want to return now to the most profound antinomy, upon which all divisions of the social-scientific field are ultimately founded: the opposition between objectivism and subjectivism. This basic dichotomy runs parallel to entire series of other oppositions, such as materialism versus idealism, economism versus culturalism, mechanism versus finalism, causal explanation versus interpretative understanding. Like a mythological system in which each opposition—high/low, male/female, dry/wet—is overdetermined and maintains homologous relations with all others, these scientific oppositions contaminate and reinforce one another to shape the practices and products of social science. Their structuring power is greatest when they maintain a strong affinity with the fundamental oppositions that organize ordinary perception of the social and political world, such as individual versus society (or individualism versus socialism). Indeed, such paired concepts are so deeply rooted in both scientific and lay common sense that only through an extraordinary and constant effort of epistemological vigilance can the sociologist hope to escape these false alternatives." (Bourdieu, 2000, p. 77-78).

As we see, objectivism tends to see only social structures, while subjectivism tends to see only individuals' representations of things. Both perspectives are incapable of producing a truly rigorous scientific understanding of the phenomena under study—this applies to law and the emphasis many jurists place either on objective law (the system of legal rules in a given society) or on subjective law (the right to demand something from someone). Bourdieu's warning is useful as a reminder that Pontes de Miranda was a man of his time, and his works reflect and refract the culture of his era while also contributing to its reproduction and transformation.

Before explaining our approach and data collection procedures, we must briefly discuss Pontes de Miranda and his work to justify the relevance of this study and demonstrate the importance of maintaining epistemological vigilance. The author of the "greatest universal work written by a single man" (Silva, 1981)—the Treatise on Private Law, spanning over 30,000 pages across 60 volumes—Pontes de Miranda is considered the greatest Brazilian jurist in history (cf. Pinto Ferreira, 1981, p. 212; Carvalho, 2021, p. 63). Despite passing away in 1979, he remains the most cited author by judges in their decisions, as confirmed by research from the Brazilian Magistrates Association (AMB, 2018, p. 109), and has been referenced in countless academic works, many of which circulated only in print several years ago, which posed a difficulty in carrying out the present research.[4]

Beyond law, Pontes de Miranda was prominent in philosophy, psychology, sociology, literature (he was an immortal of the Brazilian Academy of Letters), and even mathematics and physics. He debated the theory of relativity with Albert Einstein during Einstein's visit to Brazil, leaving a strong impression. Einstein recommended that Pontes publish his thesis on the representation of space, which occurred at the V Congresso Internazionale di Filosofia in Naples in 1924 (Pontes de Miranda, 1925; Alves, 2003). Due to his importance, some consider Pontes de Miranda "the greatest of Brazilian geniuses" (Alves, 2003, p. 296).

As mentioned, discussing Pontes de Miranda's work requires constant epistemological vigilance. This is because, as Bourdieu, Chamboredon, and Passeron warn, such vigilance is especially necessary in the human sciences, where "the separation between common opinion and scientific discourse is more blurred than elsewhere" (1983, p. 27). When dealing with

[2]Originally published in 1929.

[3]Originally published in 1939.

[4]As an example, we identified a considerable potential for dialogue between the present research and the book by Argentino Cescon, entitled A teoria do conhecimento de Pontes de Miranda (2003), but we did not obtain access to the aforementioned work in its entirety.

someone of such an impressive trajectory and body of work, we must strive for the most impartial assessment possible, avoiding both uncritical admiration and rejection stemming from envy or resentment.

Regarding data collection, we conducted a bibliographic search, initially using SciELO's search engine, which yielded no relevant results. We then turned to Google Scholar, which provided a large number of works potentially related to our topic. The keywords used were:[5]

"Pontes de Miranda," "objetivismo" ("objectivism" "subjectivism" – 127 documents.

"Pontes de Miranda," "law," "psychosocial" – 404 documents.

"Pontes de Miranda," "law," "sociopsychological" – 19 documents.

The last combination led us to Pontes de Miranda's book Method of Sociopsychological Analysis (2024), which had been lost for decades and was only recently republished.

For data treatment, we accessed the works and searched for keywords in the text, identifying those that might contain useful information for this research and discarding those where the keywords appeared out of context. Works related to civil law, criminal law, or disability law, for example, occasionally cite Pontes de Miranda and mention "psychosocial" and "law" in unrelated contexts.

After identifying potentially useful works, we conducted a preliminary reading to determine which were truly relevant. For these, we performed an in-depth, dialogical reading to gather the necessary material for this study.

3. Results and Discussion

The works found emphasize Pontes de Miranda's pioneering role and relevance in legal psychology and even social psychology,[6] but they do not adequately address the dichotomy between objectivism and subjectivism. Their main contribution was guiding our reading of Pontes de Miranda's own works. The lack of specific studies on the topic, on one hand, highlights the ineditism[7] of this research but, on the other, makes it more challenging. Below, we discuss the most important findings.

3.1 Social Adaptation Processes and Overcoming the Objectivism-Subjectivism Dichotomy

We have already discussed how the dichotomy between objectivism and subjectivism permeates the human sciences and constitutes a major epistemological obstacle to rigorous scientific knowledge. In the human sciences, objectivism tends to manifest in functionalism and an uncritical adherence to quantitative methods, while subjectivism appears in interactionism and a preference for qualitative methods. In law, objectivism emphasizes law—the system of legal rules in a given society (*norma agendi* in Latin or *direito objetivo* objective in Portughese)—while subjectivism focuses on right—the faculty to act, the right to demand something from someone (*facultas agendi* in Latin or *direito subjetivo* in Portughese). More than concepts dating back to Roman law, these are worldviews that guide jurists, and an emphasis on one or the other impedes a proper understanding of the legal phenomenon.

[5]The research was made in Portghese:

"Pontes de Miranda", "objetivismo", "subjetivismo".

"Pontes de Miranda", "direito", "psicossocial";

"Pontes de Miranda"; "direito" "socio-psicológico".

[6]Many consider that social psychology was born with Wilhelm Wundt's Volkerpsychologie (Popular or Cultural Psychology), published from 1900 to 1920, or that it would accentuate certain pioneering in Pontes de Miranda's studies on social psychology. It is also worth noting that it dialogues with Wundt's work.

[7]It is important to remember that some of the studies on the work of Pontes de Miranda have only been published in print, so it is possible that some work to which we have no access may be directly addressed as a socio-psychological phenomenon based on the work of Pontes de Miranda.

Citing a passage from Volume I of *Sistema de ciência positiva do direito* (System of positive legal science), Heinen argues that Pontes de Miranda falls into the dichotomy between objective and subjective law:

> His bibliographic production, especially from the 1950s onward, centers on adaptation, viewing law as a phenomenon of peace and opting for the objectivism of social relations. See what he says about objective and subjective law: "Objective law is the legal rule before any subjective or non-subjectivized right. Only after the incidence of the legal rule do factual supports enter the legal world, becoming juridical facts.' For Pontes de Miranda, unlike Kelsen's understanding, it is incorrect to say that objective and subjective law are two sides of the same law, as they belong to two different worlds." (Heinen, 2019, p. 222).

This reading is mistaken. A point of convergence between Pontes de Miranda and Kelsen is that, for both, a claim can only be called law if guaranteed by objective law. For Pontes, objective and subjective law are different because the legal rule gives rise to the juridical fact, and subjective law is the consequence of that fact. As he himself says, debating the difference between the two is like debating the difference between fire and ashes or between river water and the erosion it causes on the banks (Pontes de Miranda, 1972b, 2012).

> For the jurist, law in the strict sense is the advantage conferred upon someone due to the incidence of a legal rule on a factual support. In the distribution of life's goods—entirely governed by legal rules—excluding arbitrariness, each position of advantage granted to someone is law. Before each right, there was the legal order, the lex, the rule: the same etymology gives us rex, regere, regula; the other, leg-, gives us lego, legere, legio, and lex. Rule, king; read, legion, law (Pontes de Miranda, 2013, p. 282).

As we see, legal rules distribute life's goods, and an advantage not grounded in law is arbitrariness. However, a fundamental difference separates Pontes de Miranda from Kelsen and other formalists: the Brazilian does not understand law as a system of rules issued by the State but as a *social process of adaptation*.

Social adaptation processes are a recurring theme in Pontes de Miranda's work (1928, 2003, 2012, etc.), and are probably the main link that connects his intellectual work to the traditional Recife School.[8] The seven main processes and their stability values, in descending order, are:

Religion: +3
Morality: +2
Art: +1
Science: 0
Law: -1
Politics: -2
Economics: -3

By stability we refer to the ability of each process to maintain society in its current state.

Religion has a value of +3 because it is the most stable process, with the greatest potential to stabilize society, related to the difficulty of changing religious dogmas, which can last for millennia. Religion is thus a restraining process for social

[8]Gonçalves (in press) notes that Pontes de Miranda's conception of the social adaptation process dialogues with Silvio Romero's idea of cultural phenomena that constitute human civilization, which would allow him to be included in the intellectual tradition of the Recife School, even though he himself denied such a connection — Nelson Saldanha also understands that there is a distance between Pontes de Miranda and the Recife School. While conducting research for this work, we found a previous study by Fernandes (2018), which mentions the relationship with Silvio Romero and also with Soriano de Albuquerque, another graduate of the Recife Law School.

transformations.

Law, in Pontes de Miranda's view, has a value of -1, making it an intermediate process in terms of stabilization and transformation but leaning toward transformation. One could argue against this, as law is often used to maintain the status quo. However, compared to Religion and Morality, Law tends to be more transformative, more destabilizing of the existing order—we see this in religious and moral arguments against progressive laws.

Law, as Pontes de Miranda observes, is the most efficient adaptation process because it most closely mimics the laws of physics (Pontes de Miranda, 2012). Legal rules change more easily than religious ones but are applied with greater certainty, bringing more predictability to social relations.

Economics, in turn, is the most destabilizing process. Legal rules change more slowly than economic ones—the value of the Brazilian real against the U.S. dollar, for example, can fluctuate multiple times in a single day.

The neutral value of Science stands out because, at least in theory, it neither stabilizes nor destabilizes. A society can even exist harmoniously without what we call science: "It is only in a very late stage that Science predominates as an adaptation process—a predominance, moreover, restricted to the 'elite,' the chosen layers" (Pontes de Miranda, 2024, p. 11). Additionally, in theory, changing scientific laws only requires demonstrating their error.

> In Science, one cannot cling to ideas, adhere to thinking, because everything that binds the spirit compromises it. Science has the precious gift of neither provoking variations nor stubbornly opposing them. It lives in perpetual expansion. It neither closes nor flings open doors; whatever must enter, enters. It only demands more object, greater knowledge (Pontes de Miranda, 2024, p. 10).

For example, take the Leaning Tower of Pisa experiment, where Aristotle's theory of gravity was corrected by Galileo. Aristotle claimed that objects fall at speeds proportional to their mass—the heavier, the faster. Galileo supposedly proved this wrong by dropping objects of different weights, showing they fell at the same speed. Of course, this story is somewhat mythical—others had already demonstrated Aristotle's error before Galileo, and it is doubtful whether Galileo actually performed the experiment at the tower—but it is useful in illustrating how science ideally functions.

To understand, just think that when we are born, we encounter an already structured society with its various rules and behavioral patterns, which we must learn and internalize to act effectively in society. We have all heard stories of migrants who moved to other countries—or even other regions within a country—and struggled to adapt to the new culture's norms. The function of social adaptation processes is precisely this: to internalize standards of what is acceptable and desirable so that people are well-adapted to the society in which they live.

As Pontes de Miranda warns: "Religion, Morality, Art, Law, Economics, Politics, and Science are internal criteria of valuation, systems of evaluating or measuring facts, special senses of their respective orders of psychic syntheses" (Pontes de Miranda, 1972a, p. 182). They are, therefore, the ways in which the social is internalized in individuals' bodies. The potential for dialogue with Elias and Bourdieu's concept of habitus is remarkable.

As we know, Law is the most efficient adaptation process because it most closely mimics the laws of physics, primarily due to the incidence of the legal rule.

3.2 The Sociopsychological Aspect of Incidence

As mentioned, Pontes de Miranda is recognized for his pioneering role in legal psychology and social psychology, particularly due to his 1912 book À margem do direito (On the margins of law), subtitled "ensaio de psicologia jurídica" ("essay on legal psychology"), and the aforementioned Método de análise sociopsicológica (Method of sociopsychological

analysis), originally published in 1924 or 1925.[9] From these works, we can understand law as both a social adaptation process and a product of society's psychic assimilation and dissimilation, allowing for a sociopsychological understanding of incidence.

Incidence is often seen as purely logical, which is not wrong but is not the only possible interpretation. We believe a broader—dialogical and somewhat heterodox—reading is entirely possible.

The conception of incidence as logical stems largely from the influence of Marcos Bernardes de Mello, one of the foremost scholars and developers of Pontes de Miranda's work. To understand its logical aspect, we must briefly examine how legal rules are formed. In short, facts are occurrences in the world—"something that happened, is happening, or will happen" (Pontes de Miranda, 2012, p. 59).

Among the world's facts, some are deemed legally relevant, and society establishes consequences for their occurrence. Consider an example from the Brazilian Penal Code: "Art. 121. Killing someone: Penalty—imprisonment, from six to twenty years." The abstract hypothesis ("killing someone") is what Pontes de Miranda calls the Factual Support (*Suporte Fático*). The consequence ("imprisonment from six to twenty years") is the Precept (*Preceito*).[10]

When the hypothesis in the rule (Factual Support) occurs in reality, the rule incides—automatically and infallibly—in the realm of thought. Incidence gives rise to the juridical fact, which may then produce effects (legal efficacy). For example, if a man named Mickey kills another named Donald, what the rule predicted occurs, and through a logical operation, we perceive that the rule has incided, the juridical fact is born, and the consequence (Precept) may follow: Mickey should receive a prison sentence of six to twenty years. From there, Mickey may suffer the punishment. Importantly, the rule's incidence does not guarantee its correct application—errors or biases in judgment may lead to Mickey's acquittal or escape.

From a logical standpoint, we can always understand that if the abstract hypothesis (Factual Support) occurs in reality, the rule incides, and in this regard, Marcos Bernardes de Mello (2012, p. 110) is correct.

Where we differ is in the possibility of reading Pontes de Miranda's work in a way that allows for a sociopsychological understanding of incidence.

Law is not limited to rules established by the State. For Pontes de Miranda, it is a natural phenomenon: "Law is essential to the life of societies, as the heart and lungs are to man. It must not be confused with written laws, which are physiological results, like the song of birds" (Pontes de Miranda, 1972a, p. 88). The assertion that law is not synonymous with written laws is striking—we will return to this later. For now, suffice it to say that law is, above all, a social adaptation process and, as such, permeates our conscious and unconscious, conditioning how we understand and act in the world.

To illustrate our argument, lets consider customary law, recognized in both domestic and international law. It has a sociological or objective aspect—repeated behavior over time—and a psychological or subjective aspect—the belief that one acts that way because it is a legal obligation (*opinio juris*), i.e., the belief that the action complies with the law.

Now lets imagine a custom that becomes law. When does it incide? When courts affirm it? Courts merely recognize that the custom already existed as law and may enforce its application. A good example is the post-dated check.

Checks, as we know, are orders for payment on demand, and Law No. 2.591, in its Art. 6, even imposed a 10% fine for issuing checks with "false dates." This kept post-dated checks outside Brazilian state law for a long time, yet they were widely used, and people acted this way because they believed it was the law.

When courts were asked to rule on the matter, they were forced to recognize that the customary legal rule existed, had

[9]The question of how much a year is exactly was stated by Pontes de Miranda himself in a round table held on November 22, 1974 (Pontes de Miranda et al., 1975).

[10]Inspired by the work of Pontes de Miranda, Marcos Bernardes de Mello details the structure of the system: "'se SF então deve ser P', em que a hypotese (= antecedent) is represented by factual support (SF) and a tese (= consequence) by preceito (P)" (Mello, 2012, p. 62).

incided, and that those who presented the check before its date should compensate the issuers. The issue was eventually addressed by Superior Court of Justice Precedent 370: “The early presentation of a post-dated check constitutes moral damages.”

This does not deny the importance of state law or suggest that legal systems cease to be "logical systems composed of propositions referring to life situations" (Pontes de Miranda, 2012, p. 13). Rather, it acknowledges that such propositions can form independently of the State. This conception allows for an interesting rereading of Pontes de Miranda’s work:

> Law is a social adaptation process consisting of establishing rules of conduct whose incidence is independent of the adherence of those whom the incidence may concern. The unconditionality of incidence is what characterizes it. A religious rule that achieves this unconditionality becomes legal (e.g., prohibition of divorce); a moral rule that achieves it becomes legal (e.g., “Thong swimsuits are prohibited on beaches”); an economic rule that achieves it becomes legal (e.g., “The price of product A shall be x”); a rule of customs and manners that achieves it becomes legal (e.g., “At presidential inauguration ceremonies, deputies and senators shall wear such attire”). (Pontes de Miranda, 1960, p. 27).

The incidence would occur not because the legislature wrote it into law but because society, in all its complexity and plurality, conferred upon a given rule the capacity to incide. The emergence of a legal rule and its capacity to incide would thus have sociopsychological dimensions: sociologically, there would be a behavioral pattern repeated over time—an observable regularity, akin to Herbert Hart’s external point of view; psychologically, from an internal point of view, there would be acceptance of that pattern as a guide for conduct in social life, as an idea of what is legally correct (*cf*. Hart, 1994, Gonçalves, 2024).

Is this a highly heterodox reading of Pontes de Miranda’s work? We think not, as he himself stated that law is not synonymous with written law. Let us revisit his words in a longer passage:

> First, it must be noted that *ius* does not correspond in extension to *lex* (law). Knowledge of the law is indirect, imperfect, and partial knowledge of law because the law is not the entire effective content of the legal system or legal science, just as a document is merely an element of indirect cognition, not the effective content of history. Hence the specific difference between those who interpret the law and claim to construct a science of reasoning and those who redirect legal inquiry to the path of observation (analysis), induction, and experience. Written laws are nothing more than external, more or less accidental traces of the real content of objective law; thus, it is necessary to extract all the reality they represent without depriving ourselves of seeking, outside the laws, everything that may complete the portion—perhaps small—we derive from them.
> Law is a logical system, but one must seek, through observation of the legal rules that compose it, through induction and experience, through examination of the historical and evolutionary course of institutions and the rules themselves, the concepts and propositions with which to work, explicating the system.
> It may occur:
> a) That the law, an admirable and fruitful synthesis, provides all reality, all objective law, leaving the interpreter only the task of adapting the principle to concrete cases: *ius* = *lex*.
> b) That all law and more than all law is in the law, or, conversely, that little is found in it or almost everything lies in other sources and manifestations of legal reality and truth: *lex* > *ius*, or *lex* < *ius*—that is, in the latter case, the law is less than the law, and in the former (which would be difficult), greater.
> c) That, despite the law’s material (written proposition) and spiritual (intention) existence, no truth can be drawn from it; then no comparison is possible: the lex is neither greater nor less than the law, much less equal—there is an essential difference, making them heterogeneous and unsuitable for joint analysis: the study of the law does not belong to legal science but to the chapter of politics concerning teratology. (Pontes de Miranda, 1999, p. 577-578).

The citation is a bit lengthy, but its transcription is justified as it clearly shows that law differs from written law. State-made laws reflect and refract only part of real law, the process that adapts people to social life. While state laws may coincide with law, they may also fail to represent it.

If state laws do not resonate with society, they are unlikely to be obeyed. This does not ignore law's transformative potential, especially when accompanied by educational efforts to ensure compliance. But how often do we see laws that lack social adherence? How many laws are entirely senseless and disconnected from reality? For example: "Atlanta, Georgia, made it unlawful to tie a giraffe to a telephone pole or a street lamp within the city limits" (Henry, 1987, p. 5), and in Colorado and also in Hartford, Connecticut: "It is illegal for a man to kiss his wife on Sunday" (Wenkart, 2014, p. 21).

To truly be law, state-enacted laws must resonate with people, be known, and make sense to them—only then can we say they are law and, as such, capable of incidence.

4. Final Considerations

Pontes de Miranda's legal theory is considered sociological, which is not wrong, but it is interesting to note that in the Brazilian philosopher's work, the sociological dimension is intertwined with the psychological—one cannot exist without the other. It is precisely here that the false dichotomy between objectivism and subjectivism is overcome.

Throughout this study, we have analyzed the sociopsychological conception of law in Pontes de Miranda, highlighting how it overcomes the dichotomy between objectivism (social structures) and subjectivism (individual representations). While traditional law is associated with the State and codified norms, Pontes de Miranda understands it as a social adaptation process and, consequently, a product of psychic assimilation and dissimilation, integrating sociological and psychological dimensions. Law is thus a natural phenomenon, essential to social life, not to be confused with written law.

The incidence of legal rules is central to Pontes de Miranda's legal theory. Although commonly seen as a logical operation, we argue that a reading of his work allows for a sociopsychological dimension of incidence—the rule that incides is the one society considers law. We illustrated this with legal custom, showing that law is not limited to state legislation but exists, above all, as a living phenomenon in society—a social adaptation process and, consequently, a product of psychic assimilation and dissimilation. Law, like other social adaptation processes, is an internal criterion of valuation, a system of evaluating or measuring facts, ingrained in individuals throughout their lives in society—it is the social made flesh.

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