

Legal Socialisation:

From Compliance to Familiarisation through Permeation

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“Believing, with Max Weber, that man is an animal suspended in webs of significance he himself has spun, I take culture to be those webs” (C. GEERTZ).¹

“Law, here, there, anywhere, is part of a distinctive way of imagining the real” (C. GEERTZ).²

The study of legal socialisation phenomena -*i.e.*, following the development of representations and attitudes towards the law in childhood and adolescence- corresponds to the desire to shed light on the attitudes of adults by understanding their genesis. “By considering only adults”, Jean Piaget wrote, “we perceive only mechanisms which are already formed, whereas by following childhood development, we reach to the formation of those mechanisms, and formation alone is explicative”.³

However, long before the emergence of an interest in the origins of behaviour towards law, research conducted by legal sociologists in Europe had focussed on these attitudes in general. What was its subject? This was more than providing snapshots of ‘ordinary’ adults’ opinions about law and justice. In a more general and more ambitious perspective, it aimed at understanding how law ‘operates’ within a given society; how it achieves -or does not achieve- one of its objectives as assigned by politics; *i.e.*, the regulation of social relations in particular via norms aimed at governing individual behaviour.

In Europe, the answer to “how to do it?” came first from jurists and legal sociologists. The drastic maxim “every person is expected to know the law” as an answer to *de facto* ignorance matches a process of thought which was partially that of the first European studies

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¹ C. GEERTZ, “Thick Description: Toward an Interpretive Theory of Culture”, in *The Interpretation of Cultures*, New York, Basic Books, 1973, p. 5.

² C. GEERTZ, “Local Knowledge: Fact and Law in Comparative Perspective”, in *Local Knowledge: Further Essays in Interpretive Anthropology*, New York, Basic Books, 1983, p. 184.

³ J. PIAGET, *Epistémologie des sciences de l’homme*, Paris, Gallimard, 1972, p. 139.

A. PERCHERON, *L’univers politique des enfants*, Paris, FNSP/Armand Colin, 1974, p. 39.

on the attitudes of non-lawyer adults towards law. These studies focussed on legal knowledge as much as on the opinions on law, like/as in the framework of the European project *Knowledge and Opinion about Law*. One of the initial hypotheses was indeed that knowledge of the law is conducive to compliance. This hypothesis was proved incorrect in the case of young offenders who are more aware of criminal laws than many spontaneously law abiding citizens. But legal sociologists were overly aware of the multiple aspects of law to limit their research to attitudes towards law and criminal justice. Multiple pieces of research concerning a number of situations coming under civil law followed.

Did this concern the effectiveness of legal rules? Jean Carbonnier, in his time, had provided lawyers and politicians with an ironic answer to the frustrating question of the effectiveness of legal rules: it would only be possible to summarise law as a body of mandatory rules of injunctions and prohibitions (the transgression of which triggers punishment) within a Durkheimian sociological understanding of law “en termes dramatiques de commandement et d’obéissance”.⁴ In fact law, notably in civil and administrative law, which both cover a considerable part of every day life, often contains a series of “purely optional” rules granting individuals simple faculties which they would be free to exercise. How can we address the effectiveness of an optional rule? A similar argument was to be raised a dozen years later in the US, again by a legal sociologist - Lawrence M. Friedman.⁵ According to him, the conception of law underlying psychologist June L. Tapp’s work in the new field of legal socialisation (as she had named it),⁶ was too restrictive because it was limited solely to rules of authority. In the case of legal rules providing rights or possibilities of action to individuals, it is more appropriate to speak of *use*, *non-use* or *misuse* of the rule rather than compliance with it.

What then does the legal socialisation of the individual consist of? Here I must first specify which disciplines are called upon to study socialisation, since the first American pieces of research on legal socialisation were preceded by a quantity of research on specific aspects of socialisation such as political socialisation and moral socialisation.

⁴ **J. CARBONNIER**, “Effectivité et ineffectivité de la règle de droit”, *L’Année Sociologique*, 1957-1958, pp. 3-17.

⁵ **L.M. FRIEDMAN**, “The Idea of Right as a Social and Legal Concept”, *Journal of Social Issues*, 1971, No 27/2, pp. 189-198.

⁶ **J.L. TAPP**, “Socialization, the Law, and Society: Reflections”, *Journal of Social Issues*, 1971, No 27/2, pp. 4-5.

I. The individual's socialisation from the perspective of psychology, sociology and anthropology

Research on the socialisation of the individual, the way humans become social beings by interacting with others from birth onwards, implies an interrogation into society's own future. Mentioned according to an increasing intensity, with the issue of socialisation, would not only be at a stake the future of an individual, the manner in which he will integrate within the society he was born in, but also the cohesion, the coherence, the renewal and the continued existence or very survival of this society.

Researches on the phenomena of individuals' socialisation have been developed in three disciplines: psychology, anthropology and sociology. They respond to these concerns, especially in their more recent developments, by describing in a different but complementary manner the necessary interactions between the individual and society. Psychologists, who operate at the level of the individual, emphasize the construction of the personality⁷ or identity of the subject.⁸ But this growth cannot occur independently from the interaction between the subject and his social environment, whether his family, peers or other groups to which he belongs. From the opposite perspective, most anthropologists start with a specific culture, considered as an entity formed by a group of people who share "ways of thinking, feeling and acting", values and behavioural norms. These common values and norms are then internalised by new generations and ensure the cohesion and continuance of the community. Like anthropologists, sociologists view the object of study from the perspective of society as a whole, but perceive socialisation more strongly in terms of the transmission of behavioural norms and models by persons and institutions. They tend to assign to them, for functional purposes, the role of socialisation agents. Socialisation of subjects is also considered in terms of learning of social roles or attainment of social skills.⁹

In fact these three approaches tend to combine into two schools of thought. The first gives pre-eminence to the subject's viewpoint, but can only consider its development in relation to the interactions with the culture and society in which he is immersed. The second gives pre-eminence to society or culture as a whole, but can only apprehend subjects'

⁷ P. MALRIEU et al., "La formation de la personnalité", in H. GRATIOT-ALPHANDERY and R. ZAZZO, *Traité de psychologie de l'enfant*, Vol. V, Paris, PUF, 1973.

⁸ E. ERIKSON, *Enfance et société*, Neuchâtel-Paris, Delachaux et Niestlé, 1982.

⁹ D.E. GOSLIN, *Handbook of Socialization Theory and Research*, Chicago, Rand McNally, 1969.

modalities of adaptation or participation in this society by looking at modalities of individual development.

An interactional conception of socialisation phenomena thus prevails in current research: norms, values and behavioural models (*savoir-faire, savoir-dire, savoir-penser*) are transmitted to the child-subject or the socialised subject by different agents (family, school, peer group, relational network). However, contrary to what initial sociological research suggested (*i.e.*, socialisation was a systematic conditioning through education),¹⁰ children are far from passive in assimilating what they are transmitted and actively participate in their own socialisation. Certainly they adapt to the demands, pressures and constraints of their environment, but they influence this environment to bring it closer to their own expectations. Children go through successive phases of learning norms, values and behavioural models. They thus develop, by internalising them, the *savoir-dire, savoir-penser* and *savoir-faire*, which are necessary in order to become really integrated and recognised as a member of these groups. But this internalisation is not automatic, nor its outcome an “identical reproduction” of what was transmitted.¹¹ It indeed requires from children a process of personal appropriation. This leads, by *reinterpretation* or, in the words of Piaget, by *assimilation* and *adaptation*,¹² to the making of their own system of representations of themselves, of others and of the world, as well as of their own system of norms, values and practices. Their personal and social identity is elaborated in the course of this process.¹³

Construction of personal identity and of social identity are intimately linked in the course of childhood and adolescence.¹⁴ From a psychological viewpoint, the system of norms and values of the subject and his system of representations of the world certainly constitute a unique combination of the knowledge and values transmitted by the groups to which he belongs, as he has made them his own, appropriated and reinterpreted them, giving them his

¹⁰ E. DURKHEIM, *Education et sociologie*, Paris, PUF, 1922/1985.

¹¹ A. PERCHERON, “La socialisation politique: Défense et illustration”, in M. GRAWITZ and J. LECA, *Traité de science politique*, Vol. III, Paris, PUF, 1985.

¹² The subject tends to incorporate things and people within his own activities, that he *assimilates* the outside world to the structures he has built himself. But he also tends to adjust these structures according to transformations imposed by the arrival of new elements and hence he tends to *adapt* them with outside objects. What Piaget calls *adaptation* to reality encompasses the balance of assimilations and adaptations. See, in particular: J. PIAGET, “Le développement mental de l’enfant”, in *Six études de psychologie*, Paris, Denoël/Gonthier, 1964.

¹³ A. PERCHERON, “La socialisation politique: Défense et illustration”, *o.c.*

¹⁴ C. KOURILSKY-AUGEVEN, “Qu’est-ce que la socialisation juridique?”, in C. KOURILSKY-AUGEVEN, M. ARUTIUNYAN and O. ZDRAVOMYSLOVA, *Socialisation juridique et modèle culture: L’image du droit en Russie et en France*, Paris, LGDJ, 1996, p. 19.

own imprint. Amongst the groups to which he belongs (the family, the social group within which the family belongs, the group of peers from school or neighbourhood, age and gender groups, to mention only a few), family has a particular status: it is the group to which an individual belongs from birth and within which they develop their personal identity, by identifying with particular people from his immediate surroundings.¹⁵

However, from a sociological viewpoint, the family is the group through which the subject internalises the values of his social environment and starts to develop his own social identity. The child may be capable or incapable of articulating what these values are, what the components of this social identity are, especially if these values remain implicit within the family discourse, but he knows, or feels more or less distinctly (as he learns it progressively), what he is allowed to do, what he must do or what he is expected to think, say or do as a child, elder or younger child, within his family, in relation to his parents or whoever member of his family, in whatever situation.

He also progressively learns, from conversations he has heard or situations he has witnessed, what the rights and possible courses of action of adults are, in every day tasks. In his presence, adults carry out these activities or discuss them and the difficulties encountered in their relationships with certain persons, authorities or institutions. From their accounts, the child can also more or less quickly situate the social characteristics of his parents (blue-collars, shopkeepers or executives; of foreign descent or from another region than their place of residence) and connect the rights, difficulties and courses of actions connected to these characteristics, according to his parents' value judgements.

The child's own contacts with the outside world, in particular his experience in the school context, contribute to defining more precisely his own specificity and differences in relation to individuals who belong to other groups. He then learns to characterise more or less clearly the values of his social environment in relation to those of others, and to define his social identity, which we may say pervades his personal identity. But insofar as these elements are valued within his family, sharpened by the outside world as factors of differentiation and conflict, the child ceases to take them for granted and perceives them as

¹⁵ P. MALRIEU et al., "La formation de la personnalité", *o.c.*

social characteristics which apply to him and his family. Social identity is defined by characterisation and differentiation.

II. The first US studies on legal socialisation: The viewpoint of society

How does one go about studying the individual's socialisation in the area of law? One could follow the approach of the psychologist Joseph Adelson¹⁶ who used cognitive psychology in his research on political socialisation, in particular on the sense of community. His research shows the development of individual reasoning from childhood to adolescence. As the subject grows, he progressively masters hypothetico-deductive thinking, thus, his approach evolves from a concrete, personalist, 'egocentric' one, perceiving people and institutions as personal relationships, to a more abstract and socio-centric approach, which takes into account past, present and future social objectives and compares the interests of society with his own. Adelson did not formulate any value judgements on the development of the subject's thinking. He merely specifies that only the age variable is determinative (13-14 years is generally the transition point from one type of reasoning to the other) and that other variables such as IQ and gender play no significant role. It is the viewpoint of the subject that is predominant. The importance of the 13-14 years old period was subsequently confirmed by French research carried out by Annick Percheron on political socialisation from childhood to adulthood and then by my own research on legal socialisation.¹⁷

The first pieces of American research on legal socialisation are very different. They define the concept of legal socialisation, but while they do observe individuals' development, they apply a value judgement in accordance with objectives pursued not by individuals but by society. Certainly, this research is framed in a specific political context, where the American conservatives were particularly concerned by the wave of anti-establishment challenges sweeping through universities either on the basis of civil rights or the Vietnam war. These first pieces of research followed previous international research on the socialisation of children to systems of compliance,¹⁸ developed by psychologist June L. Tapp, and focus on

¹⁶ **J. ADELSON and R.P. O'NEIL**, "Growth of Political Ideas in Adolescence: The Sense of Community", *Journal of Personality and Social Psychology*, 1966, No 4/3, pp. 295-306.

¹⁷ **A. PERCHERON**, "La socialisation politique: Défense et illustration", *o.c.*

¹⁸ **R. D. HESS and J.L. TAPP**, *Authority, Rules and Aggression: A Cross-National Study of the Socialization of Children into Compliance Systems*, Vol. I, Washington (D.C.), Department of Health, Education and Welfare, 1969.

the mechanisms which, according to her, contribute to the integration of individuals in society.

The definition of legal socialisation, and, in particular, of socialisation itself, reflects this concern. According to June L. Tapp, “compliance to laws and respect for authority is variously called socialization, internalization of norms, conformity to rules, identification, moral internalization, and conscience formation. Regardless of nomenclature, psychologists have attended to the problem of compliant behaviour as an aspect of socialisation research, crucial to the maintenance of the social system. Essentially socialisation is the process whereby members of a society learn its norms and acquire its values and behaviour patterns”.

Socialisation and legal socialisation are therefore barely distinguishable, since legal norms are considered as extensions of social norms in what June Tapp calls “legal continuity”, provided that social norms enjoy “authoritative validity”. The only nuance is that “the term ‘legal socialization’ delineates that aspect of the socialisation process dealing with the emergence of legal attitudes and behaviours;¹⁹ e.g., the internalisation of legal norms, the issues surrounding compliance to rules and laws, the learning of deviant and compliant modes... Legal socialization covers both the ‘positive’ and ‘negative’ sides of learning, specifically for the institution of law and generally for any human rule system which holds an authoritative validity. Whether the term ‘law’, ‘norm’ or ‘rule’ is employed, all convey some obligation to obey and none is conceived without the possibility of disobedience”.²⁰

It is worth noting that the use of the term ‘legal’ to characterise socialisation shows that legal socialisation is, in neutral terms, both a socialisation in the law field in general and a socialisation in relation to compliance with law or in relation to legally acceptable behaviour – even though researchers deny that this conformity implicitly lacks of critical thinking. However, Lawrence M. Friedman, as mentioned above, highlights that by privileging the notion of ‘obedience’ or compliance with law, early research on legal socialisation reduced legal discipline to laws, *rectius* to exclusively imperative laws. Such laws would contain only direct orders to act in a certain manner under the threat of punishment, or prohibitions, whose violation would trigger a sanction. Another, rather ambitious, approach concerning how to achieve effective legal rules applied in specific policy frameworks, is to understand how law

¹⁹ The term ‘legal’ implies the double meaning of “of a legal nature” and “complying with law”.

²⁰ **J.L. TAPP**, “Socialization, the Law, and Society: Reflections”, *o.c.*, pp. 4-5.

is transmitted to younger generations and how they are supposed to interiorise it. The social point of view nevertheless predominates: particular importance is given to “learning modes of deviance and compliance” in relation to social and legal norms. While this process does not exclude conflicts or critical thinking by the subject, compliance with rules and laws means “successful socialisation”, whereas the opposite behaviour signals the failure of the socialisation process.

What does interiorising the law, legal rules and norms mean?

Concerning this issue, June L. Tapp elaborated a “cognitive theory of legal development”, inspired by levels of moral development defined by psychologist Lawrence Kohlberg, who systematised Jean Piaget’s hypotheses on the formation of moral judgement.²¹ *At the pre-conventional level*, children develop an attitude based on punishment or compliance to rules. These mandatory rules, which define prohibitions, are perceived as emanating from the authority of adults which is unconditionally correct as its objective is being the protection from danger. *At the conventional level*, laws and rules become more prescriptive than prohibitive, designed to avoid disorder and chaos. The subject complies either because of interpersonal conformity, so as to obtain approval from others, either because of social conformity, so as to preserve the social structure. *At the post-conventional level*, the system of laws and rules is perceived in a much more flexible manner. The application of principles of morality and justice are the main factors which would determine the compliance by individuals with the rules. Moreover, as these are based on the consensus of the social community, they may be modified or even infringed, if they are perceived as unjust.

Beside the critique coming from legal sociology against the American implicit assumption in legal socialisation that legal norms are only those imperative ones, Carol Gilligan raised other critiques within the American psychology *milieu*. She was sceptical about the universal reach of Kohlbergs’ theory on levels of developments and in particular on the validity of the observation that the girls under scrutiny do not go beyond the conventional stage of reasoning, that is the stage of interpersonal conformity or social conformity. Carol Gilligan firstly regrets that Lawrence Kohlberg, whom she worked with, *repeated* the Freudian mistake by elaborating his theory on the basis of results obtained from a male-only

²¹ J. PIAGET, *Le jugement moral chez l’enfant*, Paris, PUF, 1978.

sample.²² Secondly, she demonstrated that the phenomenon of girls “stopping” at the conventional stage is linked to the fact that modes of socialisation are differentiated by gender. According to her, while boys are conditioned by independence, which drives their thinking in terms of individual rights, even at the price of conflict (post conventional stage); girls are conditioned by an ethical solicitude which leads them to avoid conflict and maintaining links within the group (conventional stage of interpersonal conformity).

III. A different conception of legal socialisation: The individual point of view

In his work on what he defines as interpretive anthropology, Clifford Geertz, adds to the quotation of Max Weber, that if “man is an animal suspended in webs of significance he himself has spun”,²³ then these webs of significance constitute culture. Later, in an essay on law and anthropology, he wrote that law, “here, there, anywhere, is part of a distinctive way of imagining the real”.²⁴ Hence, any comparative research proceeds into an exercise in intercultural translation.

In my opinion, his approach appears decisive in order to understand how, in different cultures, law, taking into account its nebulous components and underpinning values, is an object of appropriation for the individual members of the cultural system concerned. Why appropriation? Because this notion, taken from cognitive psychology, goes further than simple knowledge or the image underlying individual or collective representations. According to Piaget, true knowledge can only be acquired if the individual appropriates what he perceives of the surrounding world – which we may call information or knowledge relating to this world. This requires the individual (1) to make an *ex-ante* exercise in reinterpretation, in relation to the codes of understanding that he has interiorised during his education, (2) in order to give his personal meaning to information, (3) so that he operates a double investment, affective and cognitive, to transform this information into knowledge; Annick Percheron defines this “acknowledgment of personal responsibility”.

For the past twenty years, I have devoted my research to the significance given by members of different cultures to law and its diverse elements. This research was carried out in

²² C. GILLIGAN, *In a Different Voice: Psychological Theory and Women's Development*, Cambridge, Harvard University Press, 1982.

²³ C. GEERTZ, “Thick Description: Toward an Interpretive Theory of Culture”, *o.c.*

²⁴ C. GEERTZ, “Local Knowledge: Fact and Law in Comparative Perspective”, *o.c.*

collaboration with researchers, from the cultures concerned, in the fields of sociology, legal sociology and psycho-sociology.

This implies a specific conception of legal socialisation that, first and foremost, does not adopt the social point of view which judges the ‘success’ of socialisation in terms of realisation of assigned social objectives. It instead adopts the individual point of view to shed light on the “imaginary conception of reality”, within the culture the individual is embedded in, and within this reality, his “imaginary understanding of the law”.

Children face the diversity of law in their everyday life, either because they hear about law, either because they are themselves involved in or witness the application of law. Partially legal socialisation is based on the inculcation, albeit informal, of concepts relating to law, justice and traditional figures of authority, in relation to the notions of allowed and forbidden within the family, school or media language. But every day life comes under the ‘grid’ provided by law and by the set of legal categories used in common language. Rather than by inculcation, the child gets accustomed to the activities these legal categories designate by familiarisation through impregnation, absorbing the images these categories evoke and the associated values. This learning process requires the appropriation of the external world which itself requires language as obligatory mediator. Activities, values, emotions are organised in individual representations around the terms used in the mother tongue. How then can I define my understanding of legal socialisation?

(1) The pre-eminence previously given to the transmission processes of values, norms and behavioural models should be renounced in favour of a definition of legal socialisation during childhood and adolescence, from the perspective of the subject playing an active part. This is “un processus d’appropriation, c’est-à-dire d’assimilation progressive et de réorganisation par le sujet, dans son propre univers de représentations et de savoirs, des éléments du droit qui régit sa société (normes, institutions, relations dans lesquelles elles interviennent, statut des sujets et valeurs qui les investissent)”.²⁵

But not all elements of law enjoy the same degree of “social visibility”. Surveys show a strong tendency of subjects to perceive law and justice exclusively as imperative and

²⁵ C. KOURILSKY-AUGEVEN, “Socialisation juridique et modèle culturel”, in C. KOURILSKY-AUGEVEN, *Socialisation juridique et conscience du droit*, Paris, LGDJ, p. 17.

repressive. Not that civil or administrative aspects are ignored, but these are often assimilated with know-how, uses or practices of every day life. Therefore, “explicit legal socialisation”, which covers socially obvious aspects of law, consciously identified with what he calls law, should be distinguished from “implicit legal socialisation” which regulates every day situations that the subject does not associate with law, due to their familiarity in every day life.

Three other elements of legal socialisation must be taken into account:

(2) Law must be considered as a fundamental part of the culture the subject belongs to, as Clifford Geertz expresses it, as part of this “distinctive way of imagining the real”. But is this the culture of the relevant society or of the family, social and local culture? The phenomena of “legal acculturation of the subject” must be distinguished from the phenomena of “legal acculturation by the subject”.

(3) The subject acquires the common knowledge of the dominant legal culture in his society by what I call “legal acculturation of the subject”. The acquiring of shared knowledge, the existence of common social representations regarding laws and institutions, the relationship between state and citizens, their formation in the course of national history and the common values they appeal to, provide the individuals within a given culture a “common language” with common meanings, which allows these individuals to communicate and recognise each other through “shared implicit obviousness”.

(4) In parallel occurs the “acculturation by the subject” concerning different objects of the common legal culture, because he recreates them through reinterpretation so as they make sense in relation to his own culture; *i.e.*, the culture acquired in his family and social environment. Again, they will be “shared implicit obviousness” between the members of this local and family culture. It will be deeper than the obviousness acquired during the “legal acculturation of the subject”. The latter may, in every day life, serve opportunities of communication, marking what should be said or not, in order to be considered a reliable member of the relevant community – the school community, for example, regarding the age group which is concerned in many of our surveys.²⁶

²⁶ *Ibid.*, p. 17.

The legal sociologist may indeed be tempted to call ‘vulgar law’ the law as practised by the ordinary man on the street,²⁷ who in good faith believes it to be truly ‘the law’, when such practises are only related to law as practised by professionals in a limited and unsystematic way. According to Jean Carbonnier, the formation of vulgar law is a constant in sociology. He defines it as “the tendency of laymen to constitute a sort of inferior law by combining autonomous practises with elements borrowed from the legal ordering operated by the state”. Carbonnier underlines that this “infra-legal zone” is of considerable importance in quantitative terms. What the legal sociologist is submitting to a value judgment is quite apparent. It is the gap between the law in force and the representations or practises of non-lawyers, their subconscious misrepresentations of the rules in force. But this perspective, centred on the existence of positive legal rules, is eventually the perspective of a lawyer trying to assess the effectiveness of a legal norm by reference to how accurately it is known.

However, from the preferred anthropological perspective,²⁸ one must mention a necessary condition for the diffusion to individual members of a given culture of law as elaborated within that culture, and for the reception of this law by them. I call this condition ‘appropriation’ of the law by individuals. For law to ‘function’ in society, fulfil its role as an implicit or explicit reference and as rule of the game in the relevant culture, individuals must appropriate it, it must become ‘their’ law. The paradox of this appropriation which makes law the property of individuals and allows it to function within society, is that it presupposes a transformation operated by personal reinterpretation, the key to appropriation.

The “legal acculturation of the subject” would thus occur thanks to the transmission by school (or other channels conveying of the common culture), integrating the historical experience assimilated by national culture and fundamental concepts and values of the national legal heritage (in particular regarding the state, the citizen, law or justice) while the subject would himself proceed to the “acculturation of these concepts” in light of the codes of interpretation of reality acquired within his close environment in order to integrate them within his own system of representations.

²⁷ **J. CARBONNIER** reminds us, in his textbook on *Sociologie juridique*, that for German roman law lawyers “*Vulgärrecht* was a mixture of local traditions and roman law, whether classic or imperial, in a more or less degenerated or deformed form which in the Low Empire applied in provinces, at least within popular classes”, Paris, PUF, Quadriga, 1994, pp. 370-ff.

²⁸ **C. KOURILSKY-AUGEVEN**, “Significations et résonances des concepts juridiques au sein d’une culture unilingue”, *Droit et Cultures*, 2002, No 44/2, pp. 95-105.

The issue was analysed in depth in relation to adults and the notion of rights by Genevan psychologists of the Piagetian school of cognitive psychology.²⁹ Regarding the issue of individual access to justice, they highlight that individuals gather their information from expert sources. But the transformation of expert knowledge into ordinary knowledge supposes the transformation of informative thinking into representative thinking. Representative thinking is characterised by rules and content that differ from informative thinking because it is elaborated in different contexts. The issue is not to produce knowledge, as in scientific thinking, but to use knowledge, and in this process, knowledge changes. While individual representations are largely pervaded by legal texts, they are structured according to principles which rely on social norms.

Regarding the acquiring of knowledge, A. Clemence and W. Doise describe the process in a detailed fashion which complements my remarks about appropriation: many legal notions are circulated in everyday conversations but are necessarily simplified and separated from their specific context. Through the media, encounters and conversations, individuals access specialised information to which they assign a meaning to make it operational in their every day life. The process of objectivising notions that are often abstract and general into concrete notions is accompanied by the rooting of this new information in common knowledge. Such a socio-cognitive dynamic leads to a very different representation from the theory of reference as shared by specialists. The latter do not refrain from highlighting this difference and attribute it to the misunderstandings of ordinary people.

The process can be analysed as follows: non-lawyers rebuild their own code by borrowing disparate elements from official texts, which they complement with elements gathered during their exchanges of information on the matter.

American sociologists Susan S. Silbey and Patricia Ewick formulate the problem of legal acculturation of the subject and of acculturation of the law by subjects in a different manner.³⁰ According to them, while a basic 'kit' of knowledge is available to all in the relevant culture, not all individuals enjoy the same means to analyse and use this knowledge.

²⁹ **A. CLEMENCE and W. DOISE**, "La représentation sociale de la justice: Une approche des droits dans la pensée cognitive", *L'Année Sociologique*, 1995, pp. 371-400.

³⁰ **S.S. SILBEY and P. EWICK**, "Devant la loi: La construction sociale du juridique", in **C. KOURILSKY-AUGEVEN**, *Socialisation juridique et conscience du droit, o.c.*, pp. 33-56.

And “while individual consciousness expresses common conceptions, these meanings and their interpretation are not perfect reproductions of a pre-existing model. The implementation of these collective conceptions varies, as it is shaped and located at local level. It supposes some improvisation and inventiveness, but also implies appropriation and reproduction”.

What criteria can characterise socialisation as ‘legal’ as opposed to general socialisation? The question is a difficult one. Images of law and images of the world are indeed built simultaneously by a child or an adolescent and fuel each other: both are generated in relation to events that personally affect the subject or have been related to him. Images of law and justice cannot be understood without reference to representations developed by the subject in relation to the fundamental notions of authority, fault, punishment, freedom or equality.

So, must socialisation be explicit, conscious, in order to exist?

No. Firstly, this would be tantamount to saying that the system of representations and attitudes of the subject could only concern the nucleus, the socially visible and obvious elements of the legal system: Laws (especially in their imperative manifestations), Law and Justice. Even then, the subject may erroneously attribute to law or laws what is not part of them, because legislative reform has occurred in the relevant area: this has been established as a fact on several occasions in opinion surveys of adult populations.

Secondly, “implicit” or “subconscious” legal socialisation -whereby the subject does not realise it is a matter of law, but thinks it is only ordinary practice- seems as effective as the first type of socialisation. It can be observed for example that even when the subject believes certain personal areas such as family or property to be far removed from the grasp of law, he nevertheless integrates within the relevant representations the element consecrated by law.

At this point, it may be objected that family and property, like many other areas of every day life, each constitute a distinct “integral social phenomenon” regulated by non-legal social norms, from which law has merely borrowed and sanctioned the content; that the researcher may be misled in considering as legal socialisation a phenomenon that belongs to general socialisation.

Attempting to isolate the effect or part played by a specific legal norm in individual representations -as well as in behaviours- certainly constitutes a challenge. It is only rarely possible to characterise a legal norm by its exclusive content since, precisely, legal norms frequently sanction the content of a pre-existing social norm by systematising it and making it applicable to all situations within the relevant category.³¹ But it seems absurd to exclude from the field of legal socialisation all legal norms overlapping with other social norms.

On the contrary, it seems that it is precisely this inter-normativity that confers law its particular strength and ability to penetrate mentalities. By sanctioning as a general rule a type of behaviour regulated by another social norm, the law raises this behaviour to the status of a model. But the authority of this model remains largely conveyed by other norms which act as driver belts. This can be seen, in relation to family, from the result of the Franco-Russian research of 1993. If the purpose of law is truly to regulate social relations, whether it achieves this purpose with the assistance of other norms is of not particular relevance.

Hence my stance in relation to the concepts I use in my research.

Firstly, regarding my surveys and enquiries in western industrialised societies, which belong to systems of written law, I choose to mention the relationship between the individual and a legal order emanating from the state, bearing in mind that the effect of the legal order is often mediated by other norms and social practices.

Secondly, I prefer to refer to *normative pluralism* rather than to *legal pluralism*, in the absence of an empirical and operational criterion that would allow the identification of a plurality of systems, arbitrarily called legal within the subject's representations.

Thirdly, I do not consider it possible to mention what June L. Tapp called a 'legal continuity' between all the systems of norms based on "authoritative validity".

Fourthly, because in my research on legal socialisation on childhood and adolescence I have studied images and representations being formed, rather than behaviours, I will not refer,

³¹ J. CARBONNIER, "Les phénomènes d'internormativité", *European Yearbook in Law and Sociology*, 1977, pp. 42-53.

as Susan S. Silbey and Patricia Ewick do,³² to a ‘legality’ constructed by individuals in their daily use of what they understand as being law. Certainly children and adolescents are prompt in asserting they “have the right” to do such and such a thing, especially in France where that expression is part of common language, and are equally prompt in using what they believe are ‘rules’ or games circumventing the rules. But the time of life under consideration is that of a progressive entering of the individual into law (Jean Carbonnier referred to a the progressive juridicisation of the individual) which precedes the entering into adulthood “for real”, if such a thing as an adult age exists.³³

Finally, my initial education as a lawyer invited me to put to the test the pertinence of legal categories using empirical research based on an approach and methods borrowed from social sciences. Moreover, these seem to be the only ones able to address the question of the symbolic value of the behavioural models enshrined in the law. The approach of American legal anthropologists such as David M. Engel and Frank W. Munger,³⁴ -authors of a remarkable study on the way disabled subjects judge, in the context of their professional situation, whether the rights they are granted by legislation such as the 1991 *Americans with Disabilities Act* are appropriate, and consequently use or ignore these rights- doubly confirms my approach. Not only are law and rights themselves objects of the representations, attitudes and behaviours of disabled subjects, but these representations and behaviours find their origin in their experience of childhood and adolescence.

A. Specific research methods to observe the emergence of images of law

The desire to observe, within the formation of representations of the world during childhood and adolescence, the emergence of those representations of law, in a way dictated the use of specific research methods. It indeed became apparent that the succession of structured questions used for adult or adolescent populations in previous research seemed to signal a general direction to the respondents and allowed them to guess the expected answer.

³² S.S. SILBEY and P. EWICK, “Devant la loi: La construction sociale du juridique”, *o.c.*

³³ A. MALRAUX quotes, in *Antimémoires*, the answer of the priest to whom he had asked what the practice of the confessional had taught him about the human soul: “La vérité, c’est qu’il n’y a pas de grandes personnes”; Paris, Gallimard, 1972, p. 10.

³⁴ D.M. ENGEL and F.W. MUNGER, *Rights of Inclusion: Law and Identity in the Life Stories of Americans with Disabilities*, Chicago, University of Chicago Press, 2003.

A method borrowed from psychoanalysis and already used in a modified form in social psychology and in French research on political socialisation was chosen: the method of spontaneous verbal associations to a series of keywords used in legal terminology and in everyday life, under limited time constraints.

The primary objective was to have a means of knowing, in the subject's mind, the content of concepts theoretically considered clear or univocal, such as laws, law and justice, which have so far been considered to form the nucleus of legal socialisation. If one was to follow the development of these notions with age, as postulated by Kohlbergian theory, and taken up by June L. Trapp,³⁵ one had to know what they meant for the subjects of the enquiry, what they associated them to, what thoughts they spontaneously provoked. No doubt these associations vary with national cultures, history and political systems. But they should also vary within a single culture according to projections and negative or positive expectations of adolescents as determined by their age, gender, social and local backgrounds. Secondly, the same approach had to be followed in relation to concepts, designated figures or structures of authority such as the state and administration, mayors, judges, lawyers and members of the police force, in order to try to determine the role they were attributed by individuals. Finally, the areas pertaining to the most familiar aspects of every day life, family and property -where rules of law are the least visible because they are closely interwoven with other social rules- had to be investigated, in order to find out when and in what form individual representations of law emerged.

Already used in France,³⁶ albeit less systematically, for research on political socialisation, the spontaneous associations method is one of the methods which better allow distinguishing the 'images' around which 'representations' are organised. Even when individual representations significantly borrow from dominant social representations, they rely, in the subject's psyche, on images which have often become subconscious by adulthood but which keep influencing representations. It seems the power of images formed during childhood and adulthood ensures their lasting nature and sometimes explains the rigidity of the representations organised around them.

³⁵ J.L. TAPP and L. KOHLBERG, "Developing Senses of Law and Legal Justice", *Journal of Social Issues*, 1971, No 27/2, pp. 65-91.

³⁶ A. PERCHERON, *L'univers politique des enfants*, o.c.

The spontaneous association method has been doubled with a selective association method, whereby the subjects of the survey were asked to associate their choice with one or more notion-values (law, laws, justice, responsibility, freedom, equality, solidarity, authority, security, discipline) and a series of concepts encountered on a daily basis.³⁷

B. Development or acculturation?

The intercultural comparisons between the results gathered from French, Polish, Russian and Hungarian adolescents did not show any conclusive evidence of the ‘development’, in the Kohlbergian sense, of universal conceptions of law and justice. However, age appeared to be a decisive variable in the legal acculturation of the subject, in the manner he apprehends the common legal categories that will allow him to communicate with his peers. In this respect ‘development’ with age seemed the most appropriate to ‘separate’ the members of different national cultures.

For example while French, Russian, Polish and Hungarian 11-12 year-olds shared, for most of them, ‘universal’ conceptions of *law* as essentially imperative, of *the right* as freedom to act, of the *citizen* as being “everyone” or “someone like you and me”, of the *state* as simply a country, the cultural divide -and consequently the acculturation of the subjects- became apparent at the age of 13-14. From this age “shared obvious assumptions” settled within the culture concerned. Paradoxically at this age adolescents are also appropriating the world by reconstructing it with their own concepts. But these concepts are those that were transmitted by various channels of common legal culture. And they are appropriated with such belief that the 13-14 year olds can be described as having become the “model students of legal socialisation” by giving a maximum of “answers with legal connotation” even for terms having both an ordinary and a legal meaning.

In France, it appeared the law *loses* its imperative character with the subject’s aging, and becomes, consensually, a “rule of the social game” designed to facilitate social interaction: individual *rights* are asserted and systematically associated with freedoms while

³⁷ In most research carried out in France, Poland, Russia or Hungary, the concepts used in the selective associations method concerned the status of subjects (whether adults, citizens), structures (state, administration, courts) and figures of authority (judges, policemen and women, lawyers, mayors), fundamental legal concepts (laws, the law, obligations, rules, contracts) and private and family life (family, divorce, allowance, tax, property).

law, as a subject, is the discipline of judges and lawyers. To be a *citizen* of a country it is enough to live there, a sort of citizenship of residence, related to a loose conception of *ius soli*. Finally, the state is associated with a legitimate political power supervised by law. In Eastern European countries, the law, in the 1990s, was still under a Soviet-type of political influence, and far from receding with the aging of the subject, its imperative and repressive character increased, while, paradoxically, *rights* were increasingly vindicated, even though objective *law* acquired the imperative character. In Poland, the state was stripped of political power and reduced to a territory and a cultural community, or, like in Russia, was denied any responsibilities.

Strangely, in relation to citizenship, a divide appeared between subjects from states with a population of diverse origins, such as France and Russia, and countries such as Poland and Hungary, which historically have experienced both being broken up and occupied by foreign troops. The former countries showed an extensive conception of *ius soli* and attributed citizenship to all their residents, while the latter favoured a conception of citizenship closer to *ius sanguinis*, whereby only residents of Polish or Hungarian descent could avail themselves of national citizenship.

In accordance with Adelson's findings, the 16-18 years old age group only refined and strengthened these conceptions, showing a variable tendency to cultural and political conformism in middle classes, the challenging of established order occurring mainly in older male age groups in Poland, France and Russia. In this respect, it was observed that the impact of social class variables differed in different cultures, and that the social geography of such challenges to legal norms, justice and institutions varied in different countries. In Poland and in Russia, 16-18 years old belonging to the intelligentsia taught virtues to the state, providing answers with strong moral overtones; in contrast, the working classes, whose social legitimacy was dramatically declining along with that of the communist party, were the most aggressive in their accusations of corruption. In France, however, working classes subjects adhered to more 'moral' conceptions of the role of the law and to a largely economic analysis, while boys from privileged backgrounds sought to show both their knowledge of institutional mechanisms and that they were not fooled by their apparent virtue.

IV. The effect of the time variable on representations of law in different cultures

As mentioned earlier, part of the complexity in researching legal socialisation is due to the process by which representations of the law are constructed. These are generated together with events which personally affect the subject or which have been recounted to him, images of the law and images of the world *are constructed simultaneously* and fuel each other in childhood and adolescence. Within law (*lato sensu*) itself, images of the law, of law and of justice cannot be understood without the assistance of the representations developed by the subject in relation to the fundamental notions of authority, fault, punishment, freedom and equality. A second factor contributing to the complexity of the task, previously underlined in research on political socialisation,³⁸ is that legal socialisation occurs both in a spatial dimension and in a time dimension. What the child and later the adolescent interiorise (and which will remain deeply ingrained, even subconsciously, in adult representations) is the image he forms of law at a *particular moment in time*, in relation to information acquired directly or indirectly, in a *particular social context* and within a *particular society*. It should also be added that legal socialisation is *situated in time in two respects*, since information received by the subject is conditioned by dominant social representations, which in turn are not only *impregnated by a particular given culture* but also often impressed by the *previous experiences of adults* who give a specific interpretation of the information while transmitting it.

If law is an integrating part of culture (*i.e.*, a distinctive way of imagining the real, to paraphrase Clifford Geertz once more), representations of law progressively produce what some call the legal consciousness of the individual, that is to say amongst other things the manner in which individuals belonging to this culture *perceive or imagine, in a double refraction of reality, the manner in which law imagines reality*.

It might have been thought, in line with a simplified and static understanding of culture, that culture and consequently representations of law or the legal consciousness developed by individuals within that culture were homogeneous and stable. Law would respond only belatedly to social changes and culture would constitute, to use a musical analogy, the bass background music, reassuring individuals by ensuring the continuity of the

³⁸ A. PERCHERON, *L'univers politique des enfants*, o.c.

tune and its rhythm, and hence its ability to be identifiable by individuals belonging to that culture. In relation to law and individual representations of law, it would thus be possible to talk of the law of the French, of the Russians, of the Poles or of the Hungarians.

However, because it is alive, no culture can be static. Law may be static in successive stages, the duration of which may lead to an impression of stability.

Relatively stable, but belatedly changing, is law homogeneous? One may think so if one adopts the perspective of Sirius, made harmonious by distance, and neglects the concrete approach of lawyers and legal sociologists who analyse the content and functioning of law and underline the diversity amongst its various branches.

Finally, to move from law itself to the perception of law by individuals, it seems difficult to believe in a homogenous representation of law or legal consciousness, since different aspects of law, which regulate different aspects of social reality (criminal acts, rights and freedoms or property for example), draw upon individual's different emotions or motivations to act.

Two different evolutions in time of a so-called 'French model' or a 'Russian model' of legal socialisation will be considered.³⁹ Regarding the former, the evolutions shown by two surveys carried out in France in 1987 and 1993 respectively will be considered. Regarding the latter, which will be defined in terms of its own coherence and in terms of differences from the French model, evolutions will be inferred from the surveys carried out in 1993 (at the same time as the second French survey) and in 2000.

A. Evolution in time of the 'French model' of legal socialisation

The analysis of responses to the French survey of 1987 highlighted the extreme fertility in adolescent's representations of the republican tradition of rights and freedom of citizens against the state. During adolescence, the State is increasingly identified to political power and less so with a community. The notion of duty was largely ignored, and adolescents

³⁹ C. KOURILSKY-AUGEVEN, O. ZDRAVOMYSLOVA and M. ARUTIUNYAN, "Modèle français et modèle russe de socialisation juridique: La construction des attitudes à l'égard du droit avant l'âge adulte", *Revue d'Etudes Comparatives Est-Ouest*, 1994, No 25/3, pp. 37-131.

favoured the notion of obligation only, in so far as it took the form of ‘responsibilities’ which could be freely assumed.

As in surveys of adult populations, law was mainly perceived in its most socially visible form, namely an imperative norm stipulating injunctions and prohibitions accompanied by punishments (on the model of criminal law, tax law, or the highway code). The corollary was the perception of judges as criminal judges. The reasons for this can be seen even in a democratic state: two external reasons (extreme publicity in the media on the one hand, the inflation of the notion of respect for the law in political discourse on the other), and two psychological reasons (sense of security provided to individuals by a type of law which represents order, and acceptance of a ‘fatherly’ type of law assigning individuals the limits of their field of possible actions).⁴⁰ However this circle of constraints was well accepted because, increasingly with age, it came to be considered a consensual body of rules of the social game. The notion of rule, far from being confused with a moral or religious rule, was (increasingly with age) assimilated with the law, to which it was strongly associated.

Challenges to the establishment, mainly emanating from boys from privileged backgrounds or middle classes, focussed on elements of the system symbolising authority and its figures: authority itself, in all its forms (parental, professorial, public), public administration and tax administration, the whole body of civil servants and especially members of the police force, who were severely taunted but nevertheless perceived as reassuring; and finally lawyers who, while symbolising the rights of the defence, contrasted only feebly in terms of honesty with agents of the state providing the public services of policing and justice.

In addition the 1987 data showed the fertility of a more general model of “control of emotions”⁴¹ which prompts objectification in the style of responses. This model seemed differentiated by social classes, and contrasted what resembled “the confidence and easy desecration of students from a *bourgeoisie* background” with “the realism of students from

⁴⁰ C. KOURILSKY-AUGEVEN, “Le rôle du pénal dans la vision du monde juridique évident: Dominance ou omniprésence”, in C. KOURILSKY-AUGEVEN et al., *Socialisation juridique et modèle culturel: L’image du droit en Russie et en France, o.c.*, pp. 53-54.

⁴¹ N. ELIAS, *La civilisation des mœurs*, Paris, Calman-Lévy, 1973.

popular backgrounds”.⁴² Apparently more pressing for boys, this model implied that the higher their social background, the more their answers move away from affective or moral considerations. In fact answers with affective or moral overtones were essentially from working class backgrounds and girls.

In 1993, this differentiation of answers by social background and gender had considerably diminished, in particular with respect to judgements based on moral considerations expressed in Manichean terms of good and evil. This decline could be seen in respondents from working class backgrounds as well as in girls, the only category where they existed in 1987. Did everyone feel compelled, in order to integrate and be socially recognised, to adopt the new dominant and imperative model of “being relaxed”, an avatar of Elias’ “distancing” or of Bourdieu’s “desecrating ease”?

But this model required, in order to look ‘intelligent’, not to be ‘fooled’ by ostentatiously displayed ideals in particular where these called upon morality in the negative form of condemnation and creating a feeling of guilt. In this regard, French teenagers refused to condemn young offenders. The analysis of the associations to the terms ‘fault’, ‘offence’ and ‘punishment’ was quite demonstrative. The concept of fault was considered hypocritical, as it designated no more than an act disapproved of by society. Adolescent vocabulary favoured the term ‘mistakes’ which, as everyone knows, are only human. The systematic over-emphasising of evil character, which used to attach to persevering mistakes, had disappeared. The subjects of the survey identified with anyone committing a fault, trivialised into an error, rejected morality, which was perceived as formal and imposed by any authority engaged in producing rules. Taking this line of reasoning a step further, they barely formulated any negative judgements on offences at all. The offence, however severe, was objectified into a simple infringement of the rules. In parallel, punishment was totally rejected, characterised as a form of vengeance or injustice, and in the best of cases as an ineffective method or as a psychological mistake.

This generalised attitude of tolerance in respect to fault and of intolerance with respect to sanctions, which represented an important change in contrast to 1987, seemed largely disconnected from the dominant attitude in respect of judges. While the condemnation of the

⁴² **P. BOURDIEU and J.-C. PASSERON**, *La reproduction: Eléments pour une théorie du système d’enseignement*, Paris, Editions de Minuit, 1970.

notions of fault and offence has strongly diminished, judges and justice were, at the same time, associated with the performance of positive social functions (ensuring justice, guaranteeing social peace, rights, and equality before the law). The criticism of law and the legal system confidently aired by young upper and middle class boys in 1989 had significantly reduced. It may be that criticism had become as superfluous as demystified morality. Logically, the role of civil justice was better perceived, and law and legal institutions were evaluated twice as positively as in the previous study 6 years before. The same could be said of the sanctuary structure provided by family. However, the attention of adolescents peaked in relation to Citizens and Solidarity.

Spontaneous associations with the notions of right equality and freedom showed an increased 'legalistic' awareness: 54% (as opposed to 42% in 1987) of responses on freedom (equal freedom to act, constitutional principle, guaranteeing human rights, freedom of thought and freedom of expression) showed legal overtones, and similarly 62% (as opposed to 34% 1987) in relation to equality (equal rights, constitutional principle, non-discrimination, equality before the law and the legal institutions).

A similar phenomenon is revealed in Russia by comparing the results of the 1993 survey with those of the 2000 survey.

B. Evolution in time of the 'Russian model' of legal socialisation

In order to analyse the status of law in individual representations in Russia, two factors which have contributed to minimising the status of law and rights in Russian culture must be taken into account. One is the soviet legal system, which gave priority to politics, resorted mainly to repressive laws and reduced to a minimum the circle of individual rights. Another is a more ancient Russian cultural tradition that valued morality above law, extended family rules into the social sphere and seemed to reject excessive regulation of human relations as well as abstract rules such as the rule of law. This 'rejection of law',⁴³ as some authors have called it, has been analysed in relation to the profound influence of the Orthodox religion, which privileges affective values over action values. However, the hierarchy of the Orthodox Church did not abstain from siding with the powers that were "masters of the law": this guilt

⁴³ W. WEIDLE, *La Russie absente et présente*, Paris, Gallimard, 1949.

provoking formulation brought an awakening of consciences by fixing the moral norm of truth, a notion which arose again in the Stalin period in particular in family law, which was the most rigorous in Europe by 1944.

1. The results of the 1993 study in Russia

The results of the study carried out in Russia in 1993 firstly show, as in France, the influence of history and of the spreading of a specific notion of law. While in France the predominant image of the law is one which, despite its imperative and constraining character, simply considers law as a rule to be respected or complied with because it facilitates social interactions, in Russia one finds the quasi omnipresence in individual representations of a repressive element which above all should not be transgressed. The play on words on *transgression* -the Russian term *prestuplenie*, which is the exact translation of the French term ‘transgression’, has the double meaning of *crime*⁴⁴ in common language and *criminal offence* in legal language- gives rise to a representation of the law focussed on criminal law, invested with the power to delineate good and evil. Hence the strong moral condemnation which attached to offences in the majority of Russian answers extended to delinquents, excluded from daily life and placed into a world of abnormality (“people with no conscience” who have committed “monstrous acts”).

In parallel, the guilt attached to the notion of fault, a notion rejected or obliterated in France, seemed fully accepted in Russia. While in France fault was objectified into a mistake or a simple infringement of rules which anyone could potentially commit, in Russia fault never seemed detached from the person to whom it had caused harm. One was considered ‘guilty’ in relation to someone and this fault generated ‘remorse’, ‘repentance’ and/or a ‘desire to fix things’, as if the severance from another or from the community generated by fault was the worst of all evils, and as if only reconciliation or reintegration could put an end to the isolation of the individual.

As in the two French surveys of 1987 and 1993 and in the 1987 Polish survey, if there was indeed any ‘development’ with age, it consisted of interiorising or appropriating this cultural model present in educational practices within both schools and families. In contrast to

⁴⁴ This is the term used by Dostoevsky in *Crime and Punishment*. As Russian legal vocabulary re-uses common vocabulary, in Russian criminal law the title would mean “Offence and Sentence”.

the French model, a positive evaluation of punishment, which helps the guilty “realise the meaning of his fault” and “sets him along the right path”, increased with age until it reached 40% of answers in the 16-18 years old age group. Transferred to the criminal plane, such an evaluation of fault and punishment did not carry any challenges to law and repressive justice, since any punishment was justified (“a just judge is a severe judge”), the only accusation being aimed at possible cases of corruption.

The counterpart to such a specialised conception of law as “not to be transgressed” was that law did not seem fit for regulating social interactions in daily life. In order to avoid transgressing the law and going beyond the limit, it is indeed better to avoid the law or keep at a safe distance. While in France the notion of rules was, increasingly with age, associated with law, in Russia this association decreased, rules being considered mostly informal rules governing the different circles within which the individual was included – family, friends or work environment.

The distance from the French model of an increased legalistic perception of reality with age was further stretched in relation to the notions of freedom and equality. As in Poland, the very notion of equality was undermined by its ‘confiscation’ by official slogans, which seemed to reflect only the situation of the most privileged within the communist system. Half as many Russian adolescents as French adolescents (35% and 62% respectively) perceived the concept of equality as having legal significance, while twice as many (60% and 27% respectively) adhered to the humanist principle according to which all human beings are valued equally. While in France the concept of citizenship was the most associated with equality, through selective value associations, in Russia it was most associated with family.

As for freedom, the majority of Russian adolescents associated its image with total and absolute freedom, excluding any form of dependence, in short a fantasy of freedom that has no corresponding embodiment on a social plane. Contrary to French adolescents, only 28% (54% in France) of Russian adolescents thought of a legal regulation of freedoms and they rarely thought that freedom could be limited by the freedom of others.

There were thus two opposite models in Russia and in France. For French adolescents fault was negated, thus ignoring others, and reduced to a simple violation of rules emanating from whatever authority; freedom was socialised and considered from a legalistic perspective

to “end where freedom of others begins”. For Russian adolescents fault implied harm caused to another and generated repentance and remorse; freedom was anarchic and totally obliterated others, and was closer to a poetic (*volja* in Russian) notion of freedom than to a socialised freedom (*svoboda*). But it seemed that both notions of freedom were intimately linked to a specific notion of power. For French adolescents, power was essentially a legitimate political power which acknowledged the supremacy of law to regulate its activities, and was in principle respectful of public freedoms. For Russian adolescents, power was conceived as an “enormous force” infiltrating all aspects of social life, which did not acknowledge any form of control and excluded the supremacy of law.

The value of family therefore appeared to be a haven, much more so than in France, where the status of citizen, and along with it social and political life, were highly regarded in adolescent representations. The importance of family, presented in the cliché form of a place of absolute happiness and safety, from which all conflicts are excluded, was not without ambiguity. Amongst all the selective associations available it was divorce that most incarnated freedom for Russian adolescents. One may recall that following the October Revolution in Russia, divorce had been the first legalised freedom in Russia.

2. Breaks in the ‘Russian model’ in 2000

The most striking breaks over time occurred in the representations that seemed the most anchored, since the 1917 October Revolution, in the legal consciousness of the Russians interviewed in the 1993 and 2000 surveys.⁴⁵ One such break occurred in what might be called the *Russian conception of repressiveness* (fault and punishment), another in the *conception of freedom*, which far from remaining absolute (to be unconditional or not to be), gets socialised by taking into consideration the freedom of the other.

⁴⁵ In June 2000 and February 1993 adolescents belonging to three age groups were questioned: 11-12 year-olds, 13-14 year-olds and 16-18 year-olds from families from different social backgrounds (sorted according to the parents' profession: intellectual professions and executives, employees and intermediate professions, workers, lower ranked employees and shopkeepers). The sample questioned in 2000 also includes a reference population of adults.

a. A break in the sense of repressiveness and guilt

In the 1993 Russian model, the prevalence of repressiveness in the representation of law, a legacy of the Soviet legislative tradition, which during its entire history favoured criminal sanctions, was backed by a remarkable prevalence of repressiveness in moral conscience. In this constellation of repression/guilt, fault, conceived as harm caused to another, was an expression of the primacy in Russian culture of interpersonal relations over relations to the rule,⁴⁶ and sanctions were considered the only means of making the author realise the importance of his action. The social mechanism could be understood thus: *the relation to fault*, as harm caused to another and generating guilt and/or remedies, and *the relation to punishment*, as the only means of making the person at fault aware of their bad action, resulted in two by-products, the *hyper-legitimacy of the most severe criminal sanction*, and, beyond that, *a strong intolerance towards offenders*, considered abnormal and conscienceless.

A break is apparent in 2000 in relation to this cultural model. Certainly law remained imperative and even repressive in individual representations, both conforming to the traditional image of law in Russia and perceived as reassuring in the face of current criminal activities. But Russians now also consider law as granting rights and possibilities of action to individuals. Moreover (as in the conceptions developed by the French subjects of the 1993 survey) law is considered by a significant proportion of the Russian subjects as a sort of rule of the game necessary for the functioning of society. And while -or despite- importance given to the institutions applying criminal law does not diminish with age, positive evaluation of the law is the expression of a desire to be protected against criminality.

In parallel judges are still mainly considered according to their role in criminal law, but, in contrast to 1993, their civil jurisdiction is also perceived for the first time. An almost mythical image in 1993, embodying the rigour of justice, by 2000 the judge is perceived in a less passionate and more realistic manner as embodying law, and is recognised as fulfilling positive social functions (maintaining social order, equality, and protection of individual rights). Associations with the word ‘offence’ also suggest a significant reduction in the number of moral condemnations of the offending act, in favour of it being characterised in

⁴⁶ C. KOURILSKY, “Modèle culturel russe et évolution de la régulation normative de la famille”, *Droit et Cultures*, 1989, No 18, pp. 7-38.

terms of an act subjected to justice and criminal punishment. Finally the mythical image of criminals (abnormal beings deprived of a conscience) has also disappeared in favour of a questioning of their feelings or motivations.

The break, in relation to the normative and institutional aspect of representations within individual conscience, consists in a double phenomenon *of increasingly legalistic answers* and a *reduction in answers implying a moral judgement*; or, in other words, in the *development of the field of legal consciousness and the reduction of the field of moral consciousness*.

What about the representations of Fault and Punishment that gave an underlying repressive basis to representations of legal norms and justice? The status of punishment has strongly evolved in representations where it was of crucial importance. Positive evaluations of punishment drop dramatically from 40% to 7% in the older subjects and totally disappear in the younger subjects. Even adults, most of whom would have been expected to have interiorised the repressive model, question the practice of punishment in Russian society. In particular, in the 18 to 30 years old group, answers express strong doubts (as in France in 1993) as to the appropriateness of punishment in general, its adequacy in relation to the act committed and the motivations of the person inflicting the punishment. Characterised as ‘unjust’ or ‘inhumane’, punishment is, as in France in 1993, likened to “vengeance” or an “irresponsible act driven by anger”.

However, *the reduction of the repressive field of moral consciousness seems to reach only weakly into the field of guilt*, according to the spontaneous associations with the term “fault”. The concept is certainly perceived more legalistically than in 1993, as it associated by 40% of the young (as opposed to 14% in 1993) to the transgression of a rule or law, and more specifically to the transgression of criminal law. Anecdotally, it also appears that the number of moralising associations with ‘fault’ in terms of ‘remorse’ has significantly declined. However, given the iconoclast challenges of cult authors such as Dostoevsky, one may ask whether the term is not simply out of fashion. Hence the issue might be a change of vocabulary rather than the evolution of the cultural model of guilt, since the decline of remorse is correlated with an strong increase in clearly less romantic answers of the “feeling guilty” type, the proportion of which varies between 23 and 34% (guilt peaking at the key age of legal socialisation; *i.e.*, 13 to 14 years old).

However, a subtle nuance distinguished current answers from those given in 1993: the number of answers associating fault with *harm caused to another* (to be guilty towards someone) has considerably *diminished* (4% amongst 11-14 year-olds and 7% amongst 16-18 year-olds, as opposed to 40% and 14% respectively in 1993). Could this difference indicate a weakening, from childhood onwards and in family and school education, of the instillation of a strong bond between members of a community?

It may seem strange to mention a psychological link between the members of a community in relation to fault. This observation was nevertheless suggested to French and Russian researchers by the contrast between associations with fault in France in 1993, which were exclusively formulated in *impersonal terms of transgression of a rule*, and similar associations in Russia in 1993 which were mainly conceived in terms of *guilt towards another* or harm caused to others. This allowed the identification of a constant element of the Russian cultural model consolidated by the soviet model (because it was operational in relation to its objectives) in such a manner that it was still operating in the early 1990's.⁴⁷ Educational models unquestionably changed in 2000 more than the affective pressures of families – or we can at least assume so. These respective influences must be strong enough for certain Russian answers to use irony to challenge the use of guilt as a weapon, in particular against women, still largely practised in current Russian society. Whatever the case may be, in 1993 excessive guilt implied excessive responsibility. Finally, in the redistribution of values associated with fault, the excessive imposing of responsibility was brought into proportion by the legalistic approach to fault, and by its inclusion in the legal process. In the 1993 survey, fault was associated twice as much with Responsibility as with law by three-quarters of the 16-18 year-olds; it is now associated on an equal standing with the law and with responsibility as well as with justice to a lesser extent.

Does this break operated by the phenomenon of increased legalistic perception in turn create an even more important break by weakening the sense of others so characteristic of

⁴⁷ In Russian rural society, at the end of the 19th century, the decisions of the community assemblies had to be reached unanimously, and 'dissidents' were excluded until they made good and asked for reintegration. This model was taken up by the soviet regime, in the form of constant interference of party assemblies into professional and private life, and a call for self-criticism before final exclusion or reintegration. This was also apparent in educational practices in the form of public excuses to the school community.

Russian culture? It seems not; it may even reinforce it, as is suggested by the obvious changes in relation to freedom which will be considered below.

b. The increased legalistic and socialised sense of freedom and equality

In 1993, two contradictory trends underlined the French and Russian answers in relation to how others were taken into account by individuals. In Russia, there was a sharp contrast between the notion of fault, always linked to others, and the notion of Freedom totally oblivious of the others. In France, the individual, unaware of others in relation to the notion of fault, as it was exclusively linked with rules (and probably implicitly to the Authority stipulating the rule), became aware of others again in relation to a conception of freedom which respected the freedoms of others: our freedom ends where freedom of others begins. In 2000, a turning point occurred in Russia.

While Russian subjects always combine moral consciousness of personal guilt with a feeling of responsibility towards the victims of their faulty conduct, they also develop *a true legal conscience of others*, through the notion of rights and freedoms. The notion of *individual rights* is better interiorised whether in considering one's self or others as individuals and citizens. And the Russian conception of *freedom* meets the French conception of freedom tempered by equality, a freedom which takes into account others and their rights.

The perception of rights and freedoms has also significantly broadened since 1993. Young subjects characterise as human rights not only the "right to life", which they insisted upon already in 1993, but also and repeatedly what they call "the right to choose", which they assimilate with "choice of life" (which meets the free choice of one's private life) and "being one's self". The vindication of *personal freedom*, always present, is accompanied by a much more active vindication of *civic freedoms*. The most important of these civic freedoms is freedom of opinion, also formulated in terms of freedom of thought, speech and religion, freedom of the press, and obviously in terms of the right to vote, which generated little interest in 1993. The necessary respect for certain limits protecting one's self and others is mentioned in various manners: necessary respect for others, duties towards others in consideration of freedoms. This is an important qualitative change since 1993, as at that time rights and duties were essentially in relation to the state.

The notion of equality too has been significantly socialised and perceived in a legalistic manner. In 1993, while French adolescents gave precedence to the legal instruments of equality, Russian adolescents were much more receptive to the importance of social equality (equal chances in equal amounts) and of the moral value of equality (“all men are equal”). The change is obvious in Russia as currently more than 80% of 16-18 year-olds (as opposed to 55% seven years before) mention the legal aspect of equality, as if they had discovered the purpose of the legal protection of equality. Moreover a theorisation of equality as a social value appears in their answers: tolerance and social harmony as a basis for democracy.

c. Towards a reluctant reconciliation of citizens with state and power?

In 1993, which seems to have been a period of crisis of the representations of the state (coup of August 1991, dismembering of the USSR, declaration of the independence of Russia, Elstin’s coup against Parliament), answers were rather of an emotional nature and the state was massively associated with the haven-like notion of ‘country’ (answers which could be found to such an extent only amongst the younger French subjects). The notion of ‘state’ seemed devoid of political power, and while it was associated with law, it never was associated with democratic mechanisms. In this sense several answers referred to the absence of a state.

It seems the answers obtained in 2000 show a reconstruction of the notion of state, ambivalently linked to several notions. Firstly, the state is much more often associated with *a community of citizens linked* by a common culture, common traditions and a common language (such associations have doubled in the space of seven years). A sort of rebalancing between state and citizens appears in the associations between these two notions and responsibility as a value. An insignificant relationship between an almost irresponsible state and citizens stripped of any responsibilities (15% of such associations amongst 16-18 year-olds) had developed by 2000 into a situation in which citizens and the state are equally responsible (over 50% of such associations amongst adults as well as children).

Moreover, the state is now assimilated with political power. This is not unambiguous, as the state is now exclusively embodied by the President whose prestige increases to the detriment of the image of government. The image of political power seems restored under the

double sign of authority of law and centralisation. But what law is it? Subjects often mention the Russian proverb according to which “Law is like the draw bar of the plough, it goes the way it is pointed to” (*i.e.*, by power).⁴⁸ Answers which in 1993 exposed the “absence of a state” have almost disappeared and the state is starting to be invested with classic social values (social justice, equality, protection, security, democracy and protection of freedoms).

Associations with the term ‘power’ confirm this progressive legitimisation: firstly, by the personalisation of power, new generations associating power with the President; but also, and quite ambiguously in light of the above, by taking into account democratic mechanisms such as the functioning of legislative power, largely ignored seven years before (let us remember the 1993 survey was conducted in February, 6 months before Elstin’s use of force against the Douma’s opposition). However, the ambivalence of the reconstruction of representations of the state and of power around the President comes with two new and worrying elements: the frequent mentioning of “the power of a single man” and the considerable increase in the space of seven years of answers mentioning the “power of money” and the “power of connections”, both of which are embodied by these new social phenomena, oligarchs.

V. Conclusion

To summarise my experience in researching legal socialisation, I firstly reached the conclusion that, in order to better understand representations and behaviours of adults in relation to law and rights, their origin in childhood and adolescence are of relevance. This conclusion is reinforced by the findings of several of my European and American colleagues (Adelson and Engel & Munger in the U.S., Vari-Szilagyi in Hungary, Arutiunyan and Zdravomyslova in Russia and Percheron in France, for example).

Secondly, it is more appropriate to use qualitative methods. The methodology used combined spontaneous associations with selective associations of terms belonging to both common language and legal vocabulary, in order to explore the content of the concepts used in the survey questionnaire. In research on the legal consciousness of adults in the US, this

⁴⁸ P. MANSON, “Law Is a Tiller, It Goes Where It’s Turned: Russian Attitudes Toward Power and Law”, *Droit et Cultures*, 2004, Special Issue, pp. 53-77.

method is now replaced by the “life stories” methodology. Here the subjects tell their daily experiences *inter alia* in relation to law.

However, while Clifford Geertz is correct in suggesting that any comparative legal exercise is an exercise in “intercultural translation”,⁴⁹ a remark which *a fortiori* also applies to individuals’ representations of the law, it is possible to obtain certain results from quantitative methods in the form of standard questionnaires. These have some virtues,⁵⁰ but also substantial drawbacks,⁵¹ not least that the answers given by individuals from different cultures to the questions imagined by researchers does not allow the understanding of the subject’s interpretation of the concepts used in the questions.

Ideally the advantages of each method should be combined. This was attempted in the European project *Toward a New Russia: Changing Images and Uses of Law among Ordinary People*.⁵² Here, in relation to adults, the comparison of the results of the 1993 and 2000 studies on representations of law in Russia amongst so-called “ordinary” people (as opposed to lawyers) is combined with the results of two complementary questionnaires and interviews used in 2001 and 2002 in relation to *uses of law by individuals in their daily life*, in two economically and culturally contrasted locations: Moscow and Ivanovo.

Combining the various factors influencing legal socialisation requires a significant amount of data. By focussing on images and uses of law in relation to *work* and *rights and freedoms*, it was possible to analyse the variations of the local context (Moscow and Ivanovo) on legal socialisation by gender: data from the 1993 study (spontaneous and selective associations in Moscow), the 2000 study (spontaneous and selective associations in Moscow and Ivanovo), the 2001 study (questionnaire-based study in both locations) and 2002 (study based on in-depth interviews).⁵³

⁴⁹ C. GEERTZ, “Local Knowledge: Fact and Law in Comparative Perspective”, *o.c.*, p. 232.

⁵⁰ C. KOURILSKY-AUGEVEN, “Legal Consciousness, Social Anxiety and Cultural Models: Europe v. the USA”, 1998, www.reds.msh-paris.fr/publications/collvir/kourilski/kourilski

⁵¹ A. SAJO, “Imaginary Westernization of Legal Representations: Lessons from a Comparative Survey”, 1998, www.reds.msh-paris.fr/publications/collvir/kourilski/sajo

⁵² Project INTAS 99-01157, “Toward a New Russia? Changing Images and Uses of Law among Ordinary People”, was financed from May 2000 to November 2002 by the International Association for the Promotion of Cooperation with Scientists from the New Independent States of the Former Soviet Union. Coordinated by C. Kourilsky-Augeven, the team included Swedish sociologists from Göteborg University (P. Manson and O. Shmulyar-Gréen) and two Russian teams headed by O. Zdravomyslova-Stoyunina and M. Arutiunyan.

⁵³ C. KOURILSKY-AUGEVEN, “Gender, Local Context and Legal Socialization: Women in Moscow and Ivanovo”, *Droit et Cultures*, 2004, Special Issue, pp. 189-207.

Researching socialisation in relation to such a diversified object as law indeed supposes considering a whole glistening palette of representations, emotions and knowledge regarding social interactions covered by a certain branch of law as well as the status of law, individuals and values in each discipline involved.

Far from me the idea of casting aside approaches to the “core nucleus” of the legal system (the law and imperative norms) which was initially considered its essence even in the first pieces of research on legal socialisation. I believe this nucleus, from the perspective of legal conscience as well as from the perspective of the processes of legal socialisation leading up to it, is an “archaic nucleus” rooted in a feeling of guilt formed early into childhood. The archaic conception of Law is of a body of prohibitions and injunctions, the transgression of which triggers punishment. Recall that at a primary stage of legal socialisation, law and justice are considered only in their criminal aspect, the judicial system chastising disobedience to an injunction or the transgression of a prohibition, while the transgressor, carrying in him the guilt or the awareness of his own fault, engages in a process where ‘crime’ generates ‘punishment’. One can recognise Piaget’s first definition of law and justice as the initial stage of moral judgement, and later redefined by Lawrence Kohlberg and June L. Tapp as the “pre-conventional” stage of moral and political conscience. At this stage, punishment is perceived as just since it chastises the transgression of prohibitions and injunctions stipulated by a just authority whose only concern is to avoid danger to its subjects.

However, it is difficult to argue that this constitutes *only* a primary or childhood stage of legal socialisation. On the one hand, it constitutes the essential level to which any criminal legislation appeals. On the other hand, we know that individual representations which express a systematically repressive conception of law and justice often reflect a repressive legislative policy or, in broader terms, a repercussion of an authoritarian political system.⁵⁴ In both cases the subject, constantly submitted to the control of authority and to many criminal provisions systematically used at legislative level, is in no situation to develop a relation of equality or reciprocity in relation to other members of the community; nor is he even in a position to develop a certain autonomy in relation to the law.

⁵⁴ I. JAKUBOWSKA-BRANICKA, “Expectations Regarding Law and the Emerging Concept of Legality in the Process of Democratic Transformation”, www.reds.msh-paris.fr/publications/collvir/kourilski/jakubowska-branicka.

With regard to the elements of Law which are the object of social representations, we are therefore dealing with two types or relations, the geometry of which varies: vertical relations between individuals on the one hand, and the norm of authority, the figures and structures of the authority of the legal system on the other; and horizontal contract-type relations between partners located at a similar level.