

THE PRACTICAL UTILITY OF PIERRE BOURDIEU'S RELATIONAL THEORY IN SOCIO-LEGAL RESEARCH¹

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LA UTILIDAD PRÁCTICA DE LA TEORÍA RELACIONAL DE PIERRE BOURDIEU EN LA INVESTIGACIÓN SOCIOJURÍDICA

ABSTRACT

The purpose of this text is to offer a proposal for the use of the concepts included in French sociologist PIERRE BOURDIEU's relational theory in the field of socio-legal research. BOURDIEU defines such notions as *habitus* (schemes of interpretation), field and capital. To do this, we undertake a succinct review of the concepts and then expose their practical use in an empirical research study on the changes in the Mexican legal model, *i. e.*, the transition from an inquisitorial system to an adversarial oral one, concretely in the city of Cuernavaca in the state of Morelos. Due to space limitations, we only develop two topics analyzing the practices and the judges: the construction of legal truth and the new and old practices, known as the oral accusatory system.

Keywords: Sociology; Jurist; Interpretation; Law.

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RESUMEN

En este texto se pretende ofrecer una propuesta para el uso de los conceptos de la teoría relacional del sociólogo francés PIERRE BOURDIEU en la investigación sociojurídica. Estas nociones son el *habitus* (esquemas de interpretación), campo y capital. Para lograr ese objetivo, se hará una revisión sucinta de ellas y después se expondrá su utilidad práctica en una investigación empírica que versa sobre el cambio en el modelo de justicia en México: el tránsito del sistema inquisitivo al acusatorio-oral, concretamente en la ciudad de Cuernavaca en el estado de Morelos. Por razones de espacio, solo se desarrollarán dos temas de análisis de las prácticas de los jueces: la construcción de la verdad jurídica y las nuevas y viejas prácticas, el llamado sistema "tradicio-oral".

Palabras clave: Sociología; Jurista; Interpretación; Derecho.

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I. INTRODUCTION

The aim of this text is to demonstrate, using PIERRE BOURDIEU's key concepts, how judges' practices in oral trials have been redefined through the incorporation of new skills, as well as their role in the new justice system, and how the new structure is affected by the way it incorporates new practices while preserving old inertia. In short, I want to show how orality impacts old practices and generates new ones. The research employed qualitative methodology techniques, including interviews with legal professionals, on-site observation of hearings, and video recordings of those hearings. The interviews were conducted between January and March 2014. The professionals interviewed were six judges (who do not fulfill a specific role, but rather rotate, meaning they perform the three functions established by the reform in different proceedings), three public defenders, and three public prosecutors.

II. CRIMINAL JUSTICE REFORM IN THE STATE OF MORELOS

The reform to the criminal justice system in Mexico was published in the Official Gazette of the Federation on June 18, 2008, and brought

about a complete restructuring of the justice system. This reform modified various aspects of the criminal process:

- Public safety (police forces).
- Law enforcement (functions of the Public Prosecutor's Office).
- Administration of justice (functions of judges).

In this research, I will focus on analyzing the new practices in the administration of justice, specifically the functions judges perform in oral trials. This review was conducted after observing how the new practices established by the reform for the role of the judge are adapted and adopted in the new context.

The new justice system proposes that oral trials be a way to present and debate a case based on the principle of presumption of innocence. The process is an open dialogue among the participants (judges, public prosecutors, and defense attorneys) who will confront each other to construct the legal truth. The new justice system establishes orality as the primary means to implement the guiding principles of the adversarial system and modify the practices of those involved in the system. The principles outlined by the reform are:

- Advertising.
- Immediacy.
- Continuity.
- Concentration.
- Contradiction.

As previously mentioned, the focus of this research is to identify new practices arising from orality. Although not explicitly stated as one of the principles established in the reform, it is explained that orality guides the entire course of the new justice system. For the purposes of socio-legal research, orality represents a rich area for analysis because it signifies a paradigm shift in the practices of legal professionals, moving from a written to an oral justice system. In the old inquisitorial system, testimonial evidence and the case file were privileged, and there was a concentration of functions in the Public Prosecutor's Office at all stages of the process. In contrast, the new justice system proposes a separation of functions, that is, a procedural balance, to ensure greater transparency in the process and respect for the human rights of victims and defendants.

The reform represents a fundamental modification to the functions of legal professionals. Training has been phased in and led by the Technical Secretariat of the Coordinating Council for the Implementation of the Criminal Justice System –SETEC–, a government agency under the Ministry of the Interior. It should be noted that, for the training of these professionals, the Ministry has received support from national and international organizations such as the US Agency for International Development –USAID–², the Program to Support the Rule of Law in Mexico –PRODERECHO–, the National Commission of Superior Courts of Justice of the United Mexican States –CONATRI–, and public universities in the state of Morelos, as well as various institutions from Spain, Germany, Chile, Canada, Italy, the United Kingdom, and the European Union, all of which have invested in the implementation of the reform.

The transition from the inquisitorial to the adversarial-oral system in Mexico has been gradual and, in some states, almost non-existent. For this reason, the analysis was conducted in the city of Cuernavaca³. The state of Morelos implemented oral trials almost simultaneously with the publication of the reform. To date, legal professionals have been working within the new system for seven years.

The reform establishes a new role for all legal operators, but in this work, I will only mention that of judges, public servants belonging to the judicial branch responsible for directing the presentation of arguments and evidence in a public, adversarial and oral manner.

Furthermore, each stage of the process has a different type of judge: the preliminary hearing judge, responsible for ensuring due process is respected during the investigation stage; the trial judge, who is in charge of issuing the sentence based on the presentation of evidence by the parties; and the enforcement judge, who oversees compliance with the imposed sentence.

2 USAID is a U.S. agency that has been responsible for training legal professionals in Latin America during the transition to new justice systems. It also provides funding for state policy development projects in the Americas.

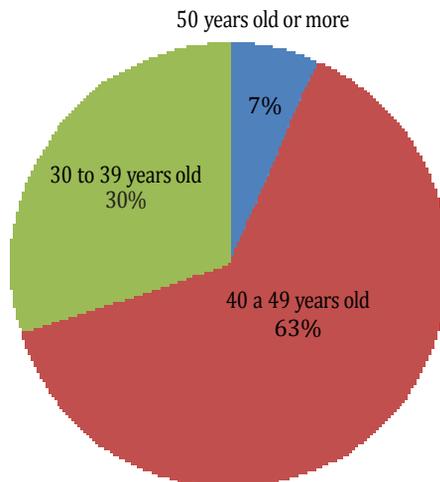
3 According to data from SETEC, until the end of 2014 the implementation of the reform in the states of the Mexican Republic was as follows: initial stage, 1; planning stage, 15; entry into force stage, 5; partial operation, 8; and total operation, 3, among them, the state of Morelos.

Article 20 of the Constitution outlines, in general terms, the new functions that judges must fulfill and their institutional role: they must be present throughout the entire process and will not be familiar with the case beforehand; they will direct the taking and presentation of evidence during the public and oral hearing; they cannot meet with either party without the other being present; they will be the only ones authorized to grant a search warrant or order preventive detention and must apply the constitutional principles that govern the system to respect due process and protect the human rights of victims and defendants.

To establish a comprehensive profile of legal professionals, in this case judges, it is not enough to have an institutional profile; a socio-demographic profile of these professionals in the state of Morelos must also be defined. Combining both provides sufficient information to characterize the emerging field and the new practices of judges within the Mexican justice system, and to identify some of the practices they have redefined.

I obtained the sociodemographic profile by examining publicly available information on judges in the state of Morelos. Currently, the state has 45 criminal court judges, whose average age is between 40 and 49 years (Chart 1).

CHART 1
AGE RANGE OF CRIMINAL JUDGES IN THE STATE OF MORELOS



Source: Own elaboration.

Judicial careers were also considered another important element of the profile of the state's judges. It was observed that, prior to their appointment as judges, a high percentage served as court clerks, drafting clerks, or legal secretaries, with over 75% of current judges having held one of these positions under the old system.

The drafting secretaries were responsible for reading and reviewing the case files and, therefore, proposing a draft judgment for the judge to review; the court clerks were responsible for compiling the case file with the complaints, briefs, official communications, orders, and motions that arrived at the courts; and the study and accounting secretaries studied the case files, complaints, or briefs and presented a draft judgment to the judge for approval. Institutionally, the secretaries were meant to support the judge; however, in practice, the entire evaluation of the case file, the evidence, and the drafting of the judgment fell to them, which led to the judge not attending hearings regularly.

Judges in the state of Morelos have received training to operate the new justice system, focusing on human rights, skills, and abilities for oral argumentation, as well as courses on interpreting body language.

III. THE NEW STRUCTURES AND THE DEFINITION OF THE NEW SOCIO-LEGAL FIELD

This section will define the structure of the new justice system field in Cuernavaca using Pierre Bourdieu's concepts, specifically the concept of the field, to observe how judges adopt the new practices and redefine the legal field.

The false premise of overcoming dualities (macro-micro, structure-subject, method-theory) led BOURDIEU to propose a relational theory, that is, to understand the agent's action not only based on a structure, but also on observing the influence the subject has on it. For the French sociologist, overcoming dichotomies or dualities means studying a social phenomenon by thinking relationally:

... the real is the relational: what exists in the social world are relations. Not interactions between agents or intersubjective ties between individuals, but

objective relations that exist “independently of individual consciousness or will”⁴.

In other words, his concepts have meaning thanks to a system of relations, since a concept cannot be used independently, but only in relation to another.

PIERRE BOURDIEU's concepts have been used in both qualitative and quantitative studies because they can be empirically constructed using both methodologies⁵.

The empirically constructed data for this research made it possible to observe how an agent –the judge– uses their knowledge, experiences, and ways of perceiving reality to operate within a specific space, following a logic of operation. Neither structures nor agents can be understood autonomously, because the relationship between them is what allows for the explanation of action.

With the penal reform in Mexico, the legal framework and the actions of its operators were modified, as observed in their practices. The analysis of this change showed how the structure and actions of judges are linked in oral trials. The starting point was an element that has been incorporated into the composition of the new field in the logic of judges' operations: orality.

This paradigmatic shift implied a change in judges' practices, which led me to focus on how legal operators internalized the new legal structure in their daily practices, how judges adapt to it, and how they modify it.

One might think that reform, in and of itself, changes the field of the justice system, but the actions of judges do not do so automatically. Bourdieu explains that the agent's actions affect the structures

4 PIERRE BOURDIEU and LOÏC WACQUANT. *Una invitación a la Sociología reflexiva*, Buenos Aires, Siglo XXI editores, 2008, p. 134.

5 BOURDIEU points out: “Nothing has been explained, nothing has been understood, when the existence of a strong correlation between a so-called independent variable and a so-called dependent variable has been established: as long as what it designates in each particular case, that is, in each particular relationship, each of the terms of the relationship (for example, the level of education and the knowledge of composers), has not been determined, the statistical relationship, however great the precision with which it can be numerically determined, remains a pure datum, devoid of meaning [...] In this way, to adequately interpret the observed differences [...] it will be necessary to analyze in their entirety the social uses, legitimate or illegitimate, to which each one lends itself”. PIERRE BOURDIEU. *La distinción. Criterio y bases sociales del gusto*, Madrid, Taurus, 2012, p. 21.

and vice versa, by considering objective structures as embodied in the form of interpretive frameworks, which he calls *habitus*.

To understand the agent's actions, one must consider their skills and the contexts in which they operate. The concept of *habitus* accounts for both the objective structures of the field and the embodied structures, which are the choices judges make to modify their practices. There is neither a causal nor a one-to-one relationship between objective structures and the agents' practices.

BOURDIEU defines the field as:

... a network or configuration of objective relations between positions. These positions are objectively defined, in their existence and in the determinations, they impose on their occupants, agents or institutions, by their present and potential situation (*situs*) in the structure of distribution of species of power (or *capital*) whose possession orders access to specific advantages that are at stake in the field, as well as by their objective relation with other positions (domination, subordination, homology, etc.)⁶.

The field is the concept that provides containment for *habitus*; that is, it is the specific space where judges will utilize their capital. Capital is the accumulation of knowledge and skills that judges possess to position themselves within the new criminal justice system, and this position impacts the perception of the other agents participating in the hearings through interaction. In relational theory, capital is understood as:

A type of capital is something that is effective in a given field, both as a weapon and as a factor in the contest, allowing its possessors to wield power and influence, and therefore to exist within the field in question, rather than being considered a negligible figure⁷.

Judges mobilize their capital to redefine their practices based on orality, which, in turn, functions as a form of capital that they acquire and develop, first through the training they receive and then through their daily work in the hearings.

A field is a small social universe where power relations, relations of force, the use of capital, and struggles to transform or preserve that

6 BOURDIEU and WACQUANT. *Una invitación a la Sociología reflexiva*, cit., p. 135.

7 *Ibid.*, p. 152.

space are observed. It is governed by its own laws that do not apply in other social fields. To think about a field is to think relationally and to recognize its relative autonomy.

A field is constructed with regularities that may be explicit or implicit; it is configured and operates according to specific written and unwritten rules. Furthermore, it can be seen as a place where judges make use of their skills and knowledge.

In the new criminal justice system, judges mobilize their resources according to beliefs, skills, prior experiences, interests, and values, which manifest themselves in their interactions within the field. Within any field, a power dynamic will always exist.

... whose necessity is imposed on the agents who have entered it, and as a field of struggles within which the agents confront each other, with means and ends differentiated according to their position in the structure of the field of forces, thus contributing to preserving or transforming its structure⁸.

Judges who have joined the oral justice system have undergone a training process that transforms them into “professionals” and is designed to update their practices and acquire new skills. However, this does not represent a complete overhaul of practices, but rather a re-interpretation of them.

With the reform of the criminal justice system, a reconfiguration of the legal field, and consequently, of judges' habits, can be observed. The accumulation of acquired knowledge plays a significant role in this process, as it serves as a tool for appropriating and interpreting new legal practices.

In this research, it was pertinent to begin with a reconfiguration of the justice system in Mexico following the reform. The field is the objective structure, but at the same time, it is a space where judges put into practice all the skills, prior experiences, and knowledge they possess and acquire. Judges not only reinterpret their practices based on the reform decree, but also on the experience they have gained in their daily work within the judiciary.

The field of study was constructed from empirical data and, in this specific case, through analysis of the reform, interviews with judges

8 PIERRE BOURDIEU. *Razones prácticas. Sobre la teoría de la acción*, Barcelona, Anagrama, 1997, p. 49.

and other legal professionals, and observation of hearings. Both the judges' past experiences and their encounter with the new oral justice system were crucial in constructing this field of study.

IV. THE REINTERPRETATION OF JUDGES' PRACTICES: THE NEW *HABITUS*

Habitus can be a difficult concept to operationalize due to its level of abstraction, so one approach is to find it in the judges' mental capital. This also includes the incorporated or acquired structures, capital that can be observed in the interpretive framework's judges use to make decisions or express preferences. These interpretive frameworks are embedded in *habitus*, and therefore it is the concept that gives meaning to the relational aspect.

For this research, orality is the incorporated practice that will touch upon the judges' long-standing practices and inertia.

Interpretive frameworks made it possible to include empirical material in the research and to approach the judges' *habitus*: "BOURDIEU characterizes *habitus* as a 'system of internalized schemas that allow for the generation of all the thoughts, perceptions, and actions characteristic of a culture⁹.'"

It is important to emphasize that *habitus* is a central concept because it recognizes that the participating individuals are not passive and do not simply follow instructions. PIERRE BOURDIEU starts from the assumption that each individual generates expectations in every interaction and that they have interests that guide their actions.

The concept of *habitus* accounts for both the pre-reflective and the intentional aspects present in the judges' practices; that is, in the practices they carry out according to their interpretive frameworks, which may be the product of their past practices and also of a strategic calculation of their actions.

The value of using relational theory also revealed that judges have resistance and inertia in their practices with respect to change.

9 GILBERTO GIMÉNEZ. *La Sociología de Pierre Bourdieu*, México D. F., Universidad Nacional Autónoma de México -UNAM-, 1997, p. 6.

BOURDIEU presents the genesis of *habitus* as a process of inculcation of a cultural arbitrariness and as the incorporation of certain conditions of existence [...] Inculcation [...] involves a pedagogical action carried out within an institutional space, “family or school”, by specialized agents, endowed with the authority to delegate, who impose norms [...] Incorporation, on the other hand, refers to the idea of an internalization by subjects of the regularities inscribed in their conditions of existence [...] What BOURDIEU postulates, then, is a dialectical articulation between inculcation and incorporation, between the institutional and the experience of the social world¹⁰.

V. HOW JUDGES REFRAME THEIR PRACTICES IN THE NEW FIELD OF THE JUSTICE SYSTEM IN MEXICO

This section will examine how judges reframe their practices and incorporate a new *habitus* based on the reconfiguration of the justice system in Mexico and their past experiences.

The choices judges make are not predetermined; they are filtered through frameworks and preferences defined by the resources they possess and acquire, and by their interactions with other legal professionals.

As a generative and organizing principle of practices and representations, the concept of *habitus* involves observing all aspects of a person's life –their interests, knowledge, and experiences– that define their choices; it is the principle that allows judges to draw upon a distinct set of knowledge and experiences to reframe their practices.

The *habitus*, as measured by the capital, shows that each judge generates interpretive frameworks.

In the construction of legal truth and in the observation of new and old practices, I found a rich field of analysis. There, the objective structure –which is the field of the new justice system, delimited and established– converges with the reform and the incorporated structures –which are the knowledge, past experiences, and skills acquired through training–. Judges incorporate these practices when carrying out their duties in oral trials; old and new capital shape a new *habitus*.

When using relational theory in social research, the key concepts cannot be separated. As LOÏC WACQUANT points out:

¹⁰ Ibid., pp. 11 and 12.

The concepts of *habitus* and field allow BOURDIEU to move beyond the false dichotomies of personal spontaneity and social compulsion, freedom and necessity, choice and obligation, and to shift his focus to the state from the common alternatives of individual and structure, micro (BLUMER, COLEMAN) and macro (BLA, SKOCPOL) analyses imposed by a polarized, dualistic social ontology: “One does not have to choose between structure and agents, between the field, which gives meaning and value to the properties objectified in things or embodied in people, and the agents, who play with their properties in the playing field thus defined”, or between positions within a space of resources and the socialized urgencies, motives, and “intentions” of its occupants¹¹.

Two themes derived from the interviews will be presented below¹²: on the one hand, the construction of legal truth, and on the other, new and old practices, the “traditional-oral” system.

VI. THE CONSTRUCTION OF LEGAL TRUTH

Depending on the legal system in which it operates, the construction of legal truth has distinct characteristics. In the old system, it was based on circumstantial evidence, that is, on logical reasoning developed by judges or drafting clerks based on the testimonies presented during the proceedings. Testimonial evidence was privileged, particularly that provided by police officers and witnesses offered by the Public Prosecutor’s Office, which held all the power, accusing and essentially judging under the presumption of guilt.

In the interviews, it was observed that judges are reinterpreting the practice of judging based on the work of the clerks, a role they themselves performed in the old system.

It is worth noting that more than 75% of the judges operating in the state of Morelos served as clerks for judges in the old system. It could be said that current judges draw on the experiences of the old system and the new practices established by the reform to construct legal truth.

11 Ibid., p. 49.

12 To identify the interviews, I assigned an identification code, in order to maintain the anonymity of the legal operators interviewed: judge, J; defense lawyers, ad; Public Prosecutors, MP.

Delivering a sentence immediately, as evidence is being received, developed, or presented, and then having to deliver a sentence literally orally, is not an easy situation, because the drafter took days¹³.

I have to orally issue a ruling explaining in real time why I'm ruling in favor of one person and why I'm ruling against the other, and this requires certain communication skills that many judges in the traditional system lacked because the system didn't demand them. There was a drafter from the outset¹⁴.

And there was also a drafting clerk, who analyzed the case and proposed a draft. Here, in these hearings, we judges don't have those two powerful tools. This means that the prosecutors and the defense have to give me precise, direct, necessary, and appropriate information so that I don't get lost in the sea of information that might be generated and can rule according to the parties' claims¹⁵.

In the new system, the primary evidence, established by the reform, is scientific or expert evidence. The aim was to transition to a system that guarantees rights based on the principle of the presumption of innocence; Therefore, the evidence presented must be scientifically supported in order to prove the fact. However, judges still rely on testimonial evidence to support their rulings.

... we have witnesses who testified that these young men were there; what is clear is that they were there for the money, right? And that they arrived on the motorcycle. I don't see where, with that direct accusation, I need any more evidence, not even from the victim; with those two testimonies, a sentence can be upheld [...] it's pure logic; the process is pure logic. We have to look at formal issues, for example, regarding the accusation [...] so, when there are already two or three incriminating circumstances, I can issue a guilty verdict with that¹⁶.

The analysis of the interviews revealed that the judges rely on their past experience; they continue to sentence as in the old system, in a veiled, non-explicit manner, and they admit, at times, that they still use testimony to construct legal truth.

13 J2, personal communication, January 21, 2014.

14 J1, personal communication, January 21, 2014.

15 Idem.

16 J5, personal communication, March 4, 2014.

One of the most common things we've seen regarding this issue in robbery cases [...] is that the police come and say, "I arrested him", and maybe "I arrested him with the stolen items" or "I arrested him because the victim pointed him out to me".

Is there any doubt? However, the law states that the crime must be thoroughly proven [...] Indirectly, we are certain that they did participate, but it is not fully proven. What happens in these cases? Goodbye, they're gone¹⁷.

Two defense attorneys expressed the following opinion regarding the judges' assessment:

But we believe there is evidence, or rather, facts that should only be proven by scientific evidence, as in this case, and there are judges who say: "I don't care about scientific evidence; as long as the witness said so, that's enough"¹⁸.

Previously, in the formal indictment, the *corpus delicti* had to be proven; now it's no longer necessary. Now, it's enough that there are indications that a crime has been committed and that there is a possibility that the accused committed it. So, the standard of proof has been lowered considerably; Then, based solely on circumstantial evidence, they can indict you¹⁹.

This excerpt sheds light on how, in constructing legal truth, the judge makes a judgment before the evidence is presented, based on the police officer's testimony. The testimony reveals the ingrained habits of legal professionals in the operation of the new system. The judge is making his judgment based on a pre-existing interpretive framework, which he is familiar with because he was a court clerk.

I argued that oral proceedings offer a rich space for analyzing the reinterpretation of judges' practices.

Ultimately, I can't intervene, because among the formalities I must respect is that I am a passive entity, a recipient of information. Therefore, I can't rectify any omission by the public prosecutor, especially since they are a technical body and must possess the skills to communicate information effectively. And finally, if I'm dealing with a public prosecutor who isn't properly trained in this technique and skill, there's a very high risk of a negative outcome when it should be positive. So, the implementation problem isn't so much the

17 J3, personal communication, March 4, 2014.

18 AD1, personal communication, March 13, 2014.

19 AD2, personal communication, March 13, 2014.

infrastructure, but rather the training of the operators to develop these skills, which weren't required in a traditional system²⁰.

It was bland, impersonal; it felt like you were dealing with robots or something. Even the questions to the court clerk prevented you from freely questioning a witness, because it was already in their statement. But what if they hadn't said it? That's what freedom of evidence is all about in the development of hearings; it's much better, because we're not fighting against a piece of paper. The major paradigm shift from having a written document to having the live testimony of a witness is that we are now judging people²¹.

In these excerpts, it is clear that orality influences the construction of legal truth and the evaluation of evidence. The transition from one system to another reveals the practices and their process of reinterpretation.

In addition to orality, new elements are incorporated that were not present in the old system, such as the interpretation of the body language of those involved in a process.

... the paper doesn't speak to you, it doesn't express you, it doesn't tell you anything; So it stays there, and [...] if you only value the written record, you don't value the gestures, the way the victim expresses themselves, what they're trying to tell you, because that's how we talk; many times we don't use the right words, but we know what people mean through their expressions²².

As I mentioned, another characteristic of the new system, which comes with oral proceedings, is that the judge doesn't have prior access to the case file; they don't know the facts or the evidence.

... the big difference in this system is that we have nothing. Our administrative file has absolutely nothing, it only has [...] a detention order right now, just the notification that the case has been assigned to me, the request for a hearing from the Public Prosecutor's Office that says nothing about the facts, nothing at all²³.

20 J1, personal communication, January 21, 2014.

21 J4, personal communication, March 13, 2014.

22 J4, personal communication, March 13, 2014.

23 Idem.

VII. NEW AND OLD PRACTICES, THE “TRADITIONAL-ORAL” SYSTEM

In a brief overview, I observed how judges incorporate a new habitus, formed from past experiences and skills acquired through training and their daily experience in oral trials.

We are convinced that the system is good; however, it still needs much improvement to achieve its intended purpose: for justice to be as clear as possible. I insist that, given these deficiencies, I believe, as a defense attorney, that the Attorney General’s Office has [...] The role of the judge, which should be, in a way, simply that of the arbiter of the oral trial debate, ends up, in a sense... correcting their own errors and issuing convictions, sometimes without sufficient evidence²⁴.

I adopted the term “traditional-oral” system from the legal professionals themselves. They categorize it as such because they believe it is a blend of the principles of both systems. This showed me that judges adopt and adapt new practices based on their existing knowledge and experience.

The new system continues to place special emphasis on circumstantial evidence:

... they mix elements of the traditional system with elements of the oral system [...] that’s what “traditional-oral” means. Here we call it the “traditional-oral” system, a mixture of one and the other, creating a hybrid system²⁵.

... because they (the judges) have to issue a ruling based on the evidence presented at trial, but even so, there have been cases where we, as defense attorneys, say: it was grounds for acquittal. And they took it, and now they’re reconsidering based on circumstantial evidence²⁶.

In practice, judges make use of two types of knowledge: that acquired from their previous experiences within the judiciary and that acquired from the reform; with this, they form a hybrid system that they call the “traditional-oral” system.

24 AD1, personal communication, March 13, 2014.

25 J4, personal communication, March 13, 2014.

26 AD1, personal communication, March 13, 2014.

CONCLUSION

As LOÏC WACQUANT points out, manufacturing concepts in socio-legal research means assuming that:

The peculiar difficulty of sociology, then, is to produce a precise science from an imprecise, diffuse, and complex reality. For this, it is better that its concepts be polymorphic, flexible, and adaptable, rather than defined, calibrated, and rigidly applied²⁷.

The use of BOURDIEU in empirical research, beyond the debates surrounding his work, its validity, or its fallacy, allowed us to understand the importance of overcoming the most common dichotomies in sociology, as well as understanding that concepts are flexible and must be constructed throughout the research process and methodological delimitation. The strength of this proposal also lies in the fact that sociological research is a theoretical-methodological construction that is carried out simultaneously.

In the specific case of this research on oral trials, BOURDIEU's concepts allowed me to observe the transition and transformation of the justice system and how judges' practices are reinterpreted within the new field, moving toward the construction of a new *habitus*. This *habitus* incorporates interpretive frameworks from their previous experiences in the old system, along with new skills and new interpretive frameworks. In his words, they construct a hybrid justice system –the “traditional-oral”– using the old and the new, and openly acknowledge that the new structure of the penal system is filtered through their old interpretive frameworks.

Relational theory led to the understanding that structures are not imposed on the agent, but rather that the agent modifies, molds, and adapts them to make choices within the field in which they find themselves.

Following the analysis of interviews with legal professionals, it was observed that judges continue to place particular emphasis on constructing legal truth through an interpretive framework based on testimonial evidence; however, at times they manage to balance their traditional practices with newly acquired skills.

27 BOURDIEU and WACQUANT. *Una invitación a la Sociología reflexiva*, cit., p. 49.

This initial approach to the redefinition of judges' practices and the restructuring of the criminal justice system not only identified the development of judges' skills and knowledge but also their impact on the administration of justice.

The implementation of the reform nationwide is a gradual and slow process because it requires modifications to the practices of those operating within the system, as well as to the structure and functions of Mexican judicial institutions. Understanding the true outcome of the restructuring of the justice system in Mexico will be a lengthy process. Relational theory allows us to observe how this change is emerging: the change in the justice system and the change in the *habitus* of legal professionals in Mexico.

REFERENCES

- BOURDIEU, PIERRE. *La distinción. Criterio y bases sociales del gusto*, Madrid, Taurus, 2012.
- BOURDIEU, PIERRE. *Razones prácticas. Sobre la teoría de la acción*, Barcelona, Anagrama, 1997.
- BOURDIEU, PIERRE and LOÏC WACQUANT. *Una invitación a la Sociología reflexiva*, Buenos Aires, Siglo XXI editores, 2008.
- CÁMARA DE DIPUTADOS. "Dictamen de las Comisiones Unidas de Puntos Constitucionales y de Justicia, con Proyecto de Decreto que reforma, adiciona y deroga diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos", México D. F., *Gaceta Parlamentaria de la Cámara de Diputados*, año XI, n.º 2401-VIII, 11 de diciembre de 2007, available in [<https://gaceta.diputados.gob.mx/Gaceta/60/2007/dic/20071211-VIII.html>].
- CONSEJERÍA JURÍDICA DEL PODER EJECUTIVO DEL ESTADO DE MORELOS. "Código de Procedimiento Penal para el Estado de Morelos", Cuernavaca, *Periódico Oficial Tierra y Libertad*, n.º 4.570, 22 de noviembre de 2007, available in [<https://www.fiscaliamorelos.gob.mx/wp-content/uploads/2021/12/4570.pdf>].
- GIMÉNEZ, GILBERTO. *La Sociología de Pierre Bourdieu*, México D. F., Universidad Nacional Autónoma de México -UNAM-, 1997.
- PODER JUDICIAL DE LA NACIÓN *et al.* "El nuevo sistema de justicia penal acusatorio, desde la perspectiva constitucional", available in [http://www.web.valles.udg.mx/laboratoriojuiciosorales/sites/default/files/adjuntos/nuevo_sistema_de_justicia_penal_acusatorio.pdf].
- SECRETARÍA DE GOBERNACIÓN. "Decreto por el que se reforman y adicionan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos", México D. F., *Diario Oficial de la Federación*, 18 de junio de 2008, available in [https://www.dof.gob.mx/nota_detalle.php?codigo=5046978&fecha=18/06/2008#gsc.tab=0].

GOBIERNO DEL ESTADO DE MORELOS. "Plan estatal de desarrollo 2007-2012 del Estado de Morelos", available in [https://transparenciamorelos.mx/sites/default/files/PEDMor%202007-12_0.pdf].

PODER JUDICIAL DEL ESTADO DE MORELOS. "Información en Poder Judicial del Estado de Morelos, Juzgados de primera instancia".

