



Juridical empirical research:

Some records of a field research done in Rio de Janeiro's slums¹

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ABSTRACT

This paper aims to spread some thoughts on our own experience with empirical research, especially that we run from 2009 to 2010, in two slums of Rio de Janeiro. The object of this research was recognizing and analysing the juridical institutions which have really been working in Rio's slums, above of all, those regarded to the land and buildings ownership records, and to the right to build as well. The paper intends to bring some reflection on methodological and epistemological challenges which are likely to be faced for those who aim to develop this kind of research and to deal with empirical data. Specifically, this article discusses those features which can be seen as proper of a so-called juridical approach.

KEY WORDS: juridical research; empirical research; slum; methodology; epistemology

Pesquisa empírica em direito:

Memórias de trabalho de campo em favelas do Rio de Janeiro

RESUMO

O presente trabalho visa socializar reflexões a respeito de nossa própria experiência de pesquisa empírica, especialmente aquela desenvolvida entre os anos de 2009 e 2010, em duas favelas da cidade do Rio de Janeiro. Tal pesquisa teve por objeto reconhecer e analisar as

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instituições jurídicas ali concretamente operantes, com maior interesse por aquelas relacionadas ao controle da propriedade de terrenos e edificações, bem como aquelas reguladoras do direito de construir. O trabalho propõe-se a oferecer algumas reflexões a respeito dos desafios metodológicos e epistemológicos que provavelmente serão enfrentados por aqueles que se proponham a desenvolver tais pesquisas e a lidar com dados empíricos, discutindo, em especial, aqueles aspectos que seriam próprios do que se pretende constituir uma abordagem de cunho jurídico.

PALAVRAS-CHAVE: pesquisa jurídica; pesquisa empírica; favela; metodologia; epistemologia.

Introduction

This work is an extract of the results of our own research carried out between 2007 and 2010, which resulted in the elaboration of our doctoral thesis (MAGALHÃES, 2010). It proposed to deepen the debate about the recent transformations in the process of legal regulation of the slums³, especially regarding the forms of ownership, use and exploitation of space, with spatial focus on the case of the city of Rio de Janeiro, seeking an updated understanding of the regulatory framework that emerges from these transformations. According to our comprehension, such transformations are being driven, basically, by the development of

³ In the present work, we will not enter the questioning and conceptual debate about the term 'slum', since we work with cases that were officially treated as such because they were benefited by the Favela-Bairro Program, as it will be detailed below. We clarify, however, that among the references that we use for the development of our research on the topic, in addition to those of legal order - that is to say, the concept approved in the strategic plan of the city of Rio de Janeiro, for urban policy -, are the important discussions organized in the framework of the Brazilian Geographic and Statistics Institute (BGS) (organized in the works of COSTA, 2004 e 2005), in addition to the seminal work "What is slum, anyway?" ("*O que é favela, afinal?*") organized by the Observatory of Favelas (SILVA *et alli*, 2009). The concept expressed in this last work seems quite appropriate for educational and analytical purposes, and can be summarized in four axes, namely: (1) political axis: areas where it is historically recurrent the incompleteness of policies, implying in low expectations of its residents with regard to the implementation of their rights; (2) economic axis: areas where the formal market investments are also precarious, constituting considerable differences with regard to the conditions present throughout the city; (3) urban axis: areas dominated by self-constructed buildings, implanted without compliance with municipal building standards, portraying the unequal conditions of Brazilian urbanization and the struggles of its inhabitants for the right to live; (4) cultural axis: areas marked by a rich diversity of ethnic groups, place of birth and identities, where sociability networks acquire a particular expression in relation to the rest of the city, constituting one of the most important social capital accumulated there.



interventions in slums characterized as urbanization and regularization actions (agrarian, urban, taxes, for the supply of goods and public services, small businesses, etc.).

The subject of regulation of the slums is one of the classic concerns of urban scientists, even though legal experts' contributions to these discussions are somewhat limited. Therefore, it is known to all in urban references that, in the process of formation of slums and other similar species of settlements that concentrate the low-income population, these spaces *"built forms of legitimation, results of the negotiations among the actors involved in the process of construction of the local "rules of the game"* (ROLNIK, 1997, p. 134). Such rules began to act as *"local law"*, real *"territorial pacts parallel to the official legal rules itself"* that, although parallel, were built in constant dialogue with the official order, effectively being adopted both by the inhabitants of these settlements and by officials and authorities responsible for the application of the rules, enabling the creation of *"a kind of unofficial law used to sustain the law breaking, the result of conflict between the legitimate and the legal, which has as urban expression the condition of a temporary nature"*.(ROLNIK, 1998, p. 193).

Thus, one of the facets of our research consists in the effort to give greater prominence to the subject of **legal pluralism**, which we evaluate to be one of the crucial aspects of the regulatory dynamics of slums. This theme is very present in social and judicial research, but appears fragmentarily, episodic and on the side line of references about agrarian regularization and in empirical research on slums. Therefore, we bring to the surface something that was between the lines, in hope that this may help realize something that historically and analytically cannot be called new, but that is not being brought to the center of the debate about State intervention in slums, not being properly considered and updated in urban research already constituted. Therefore, it seemed appropriate to us to go through it again in a contextualized way, in the course of the transformations that have been taking place in recent decades in the Brazilian society, both in its established legal order, and in its socio-political relations.

The research that we have done has strong emphasis on the empirical aspect, since the object that we have built was heavily directed to knowledge and analysis of regulatory practices in force in the slums, that is, those that historically are in operation. Thus, the present work is an initial synthesis of some thoughts about this research experience, in a particular framework, as well as about the vicissitudes of empirical research, especially those that seek a legal approach of



social phenomena, within the general framework. It is a fundamental and indispensable exercise, for which the researcher is in charge, in which the same has the opportunity to review his own practices as such, in order to improve his epistemic and methodological monitoring devices (BOURDIEU, 2004; DEMO, 1990). In fact, the researcher's role cannot be reduced to reflect about the phenomena that he wants to understand, but extends also on the processes and instruments which he employs to this end. This is the example that we perceive from several authors who have been seriously devoted to research in Law, many of them, by the way, having focused on very similar objects from our research (v. g., CARVALHO, 1991; FONSECA, 1989; SANTOS, 1988).

On the other hand, we have observed certain thrive of legal research that proposes to employ empirical data collection and production tools as a way to expand its repertoire of cognitive processes on the objects and issues to which they are dedicated⁴. This is an initially commendable effort that can help fill a lack historically observed in legal research, opening possibility for theoretical renewal, since the purely formal-rational methods which are dominant in legal thought were seen to be extrapolated. However, as with all artifacts, real or supposedly, "new", the risks of joining the fads and the occurrence of misconceptions resulting from insufficient theoretical preparation seem to us more than predictable. Given this challenge, this article aims to provide a contribution to the deepening of necessary reflections for empirical research in the legal field, as well as offer bibliographical material that can be used by teachers and students who wish to engage in projects of this nature, with an interdisciplinary scope.

From the point of view of its methodological basis, in a tight synthesis the research sought to steer an ethnological perspective regarding the legal structures found in the slums, which tries to understand these structures in its internal rationality, unraveling the social meaning they specifically take, in addition to recognizing and mapping them based on what they actually have and not considering as to what they would supposedly lack. In this sense, we do not prioritize, for example, the procedure that would seek to extract from them meanings in contrast

⁴ That is what we have seen in II SEMINÁRIO INTERDISCIPLINAR EM SOCIOLOGIA E DIREITO, recently held at the Graduate Law Program at Fluminense Federal University (Niterói, October/2012), in which the working group entitled *Empirical Research in Law* featured no fewer than 16 applications, certainly being a local event, in which only researchers of the metropolitan region of Rio de Janeiro enrolled.



with the existing legal framework, which would seem to remove the meaning of the empirical data with which we intend to work.

Regarding the methodological procedures, we seek to develop rigorous content analysis of interviews, of the documentation obtained on the cases studied, and of personal notes from field observations, performed with support on the elements provided by the critical social and judicial method, as advocated by Fonseca (1989), also using Carvalho's valuable contributions (1991). This author, who, in a happy coincidence, also takes as reference the empirical case of slum residents involved in land conflicts, provides a theoretical framework for understanding the discursive strategies of popular classes that considers what is called *legal sensibilities* developed within the popular classes, which constitute standards that are determinants to the construction of his concept – and therefore, of his speech. – on *what is law*. That one summarizes the fundamental references of social and judicial critical methodology in four aspects, namely: (a) the analytic starting point lies in the specific case, understood as a place of detailed relationships that develop conditioned by the spatio-temporal circumstances, in which the appropriate understanding is constitutive of the understanding of the case itself; (b) the knowledge of law does not reproduce reality, but rather builds representations, interpretations or versions of it, which are, by nature, relative, refutable, partial, bringing the ideology of power implicit; (c) Law, while a social phenomenon, can only be understood in an interdisciplinary perspective, which abandons the self-sufficiency that characterized the dominant approach in this scientific field; (d) the jurist is ethically responsible for his epistemological and practical options, that is, for the application of the knowledge and techniques he adopts and/or contributes to develop.

The conception of empirical research and its stages

First of all, we seek to know - based on empirical research of two reference cases, with the data provided by research already carried out in other slums - the current "*state of the art*" regulation of the slums, building a description of that state with the maximum degree of objectivity, in order to have the ideal empirical basis for the theoretical and speculative nature exercises.

In order to face the questionings that we have created, we've developed a research process that started from thinking about what would be the most suitable empirical reference,



this is, the reference case definition to be the object of the survey and systemization of specific, detailed and original information about it. Thus, we conclude that, for fieldwork, the most suitable cases fall back on some of the 16 slums included in the first phase of the implementation of the *Favela-Bairro Program*, developed between 1994 and 1996, since it had already been edited, since 2000, specific legislation for them and, consequently, where a municipal organ of supervision and promotion of compliance with this legislation was installed, in addition to receiving a set of infrastructure works, public facilities and services. This way, we seek to know more closely a case that probably would have configured the local regulation dialectic *versus* central regulation, with all the conflicts and tensions arising from it. We also seek a case in which this new situation presented itself for the longest period of time possible in order to avoid dealing with very recent processes and in the early stages, when its effects might still not be minimally noticeable for the agents involved, making it difficult to assess.

For the second stage of the research, a *control case* should be elected to serve as a reference for comparison with the *original case*, studied in the previous phase, as well as to allow assess – although with limitations – the possible degree of processes and dynamics generalization verified in the original case, that is, which allowed us to realize if what we were able to capture was an isolated event or if, in some way, its reiteration occurred in other locations. So, we elected as a control case a second slum, also included in the *Favela-Bairro Program*, urbanized, with the issue of its urban legislation and a control organ installed. However, this place stands out from other possible cases in the city of Rio de Janeiro, among other things, for the fact of being the one in which more advances took place to formalize the land property according to State standards. In current circumstances in the city of Rio de Janeiro, this would represent one of the earliest cases of introduction of regulation through State Law, of the ownership, use and occupation of space by the inhabitants of this place. In this sense, the control case elected would serve for the construction of future trends prognosis that could eventually come to manifest itself in the reference case.

The process of selection of cases and the researcher's social capital

As already said, the research effort articulated includes a case study, seen as necessary in order to capture the ongoing transformations in the process of legal regulation for the slums –



notably in the context of the city of Rio de Janeiro, since the issuing of the Master Plan of 1992 up to the present day – regarding the forms of ownership, use and exploitation of space, gathering empirical elements that allow for the qualification of this regulation in multiple dimensions.

In this sense, a slum located at *Ilha do Governador* (Governor's Island) was elected as the main reference case, since it is a slum that:

- received the urbanization works performed under the Favela-Bairro Program, as early as its first phase, in the period of 1993-1996;
- was the subject of a set of normative acts which aim to promote their urban settlement and discipline procedures for the use and occupation of the land in the area officially delimited;
- was provided with public agency to monitor and promote compliance with this legislation (named *Posto de Orientação Urbanística e Social* – POUISO - Urbanistic and Social Orientation Post);
- received a set of services and public facilities.

Therefore, it configures as one among all those available in the city of Rio de Janeiro at the time of the research planning in which state regulation had longer been in effect in the context of broader urbanization program, in other words, of public investment, to improve habitat conditions. Given these characteristics, the study targeted would be favored, focused on the dialectics between local existing regulation, communitarian and/or traditional, in face of a new generation or State regulatory effort that emerges from the mid-1990s, in the wake of urbanization.

It must be recognized, however, that other factors of a more *personal* connection to the researcher interfered positively to ratify the determination of the case, operating as elements which form part of the calculation of the viability of the research. These factors were the proximity between the slum chosen and the place of residence of the researcher and the availability of some contacts of strategic nature for an "entry" in this slum, that is, people who served as a link between the researcher and reference agents of the field to be researched.

For example, the researcher had a very close relative that occupied the COMLURB management of the neighborhood in which he resided, having constant contact with the board of



the Residents' Association of the slums in question, which allowed him to make use of the relationship network built by his relative, who provided a very important service to the community and even employed some residents in the *gari comunitário* program. So we counted on the positive image that the company itself enjoyed with the residents. Other examples can be aggregated, as the neighbors, who had been born and raised in the neighborhood and also had stories related to the slums in question and could introduce us to people to be interviewed, and could subsidize the research with information from their life history. On the other hand, the location proximity makes it easier to go to the offsets of the field research, even during the hours and days initially unfavorable, as well as it represents an incentive for getting to know better the place, the people who live there and where they settle part of their affections and identity aspects.

In general, such aspects show that the choices made in the research are not reduced to a strictly technical, rational, objective and abstract field, related to the usual imperatives for the development of research. Otherwise, the research has strong links with the researcher's social capital, constituting an administration method of that capital, which may even contribute to its expansion! Therefore, it is an element that can be a key differentiator, even crucial, to the success of the research to be undertaken.

The stages of field work and negotiations with the "informants"⁵

The case chosen as main in our research was explored in two moments. The first of them - developed between November and December 2007 - a bit shorter than the other, had an exploratory character above all, in which we (1) have assembled an initial set of information about the location being studied; (2) identified the main actors acting in it; and (3) made a number of contacts aiming the next phase of the research. This initial moment led to a preliminary report of field research, drawn up in 2008, which guided the review of the research's instruments and of the issues to be worked on next phases.

⁵ The quotes are used here to highlight our discomfort with the use of this term, which we used due to the lack of another. We share the concerns shown by Boaventura de Sousa Santos (1988) related to the importation, to the research activities, the typical language of police institutions, a process that should not be naturalized, but taken as a starting point for a necessary reflection on the political and social commitment debts of the scientific labor. Pedro Demo (DEMO, 1990) also provides relevant elements for this reflection.



In a second moment, developed between January and May 2009, we tried to apply the new questionnaires (developed as a product of the earlier moment), which were restricted to more specific issues and less open than those worked in the initial moment of field research. At that time, the number of interviewed people, and other research activities performed, was significantly higher than in the earlier moment, being the one in which we produced a more extensive and more specific set of information.

In the second phase of the survey, carried out between June and August 2009, we elected a community located in the neighborhood of Caju – also included in the *Favela-Bairro Program*, urbanized through the issuing of its urban legislation and the installation of the control organ – as a *control case*. We did it this way so that we had a frame of reference for comparison with the *main case*, so that it could be realized if the dynamics found in this case somehow were reproduced in that one, indicating a possible generalization of them. On the other hand, since the case is usually regarded as the earliest cases of agrarian regularization in Rio de Janeiro, it can serve to make forecasts about the future developments of the main case, which is a second possible analytical exercise that may be tested in the reports and articles resulting from the research.

The research of reference and control cases was structured with three techniques:

- interviews, individual or collective (in this case, involving groups of two to five people), with the use of semi-structured questionnaires;
- consultation of documents about these cases, available at the City Office of Housing;
- observations and informal conversations, carried out during our trips to the field, to carry out the interviews.

In regard to the first technique employed, residents of both locations were interviewed, as a matter of priority. The interviews were conducted at the residence of respondents, or at the headquarters of the Residents' Association, or, finally, in other places, as the public school attended by some of the people interviewed who were part of the adult and youth education program or other spaces of local organizations, as the community nursery school, the social center or family health center. This conduct was adopted in order to find a space in which the interviewed people felt free to address the issues raised by the researcher, which, as a general rule, bother them, being noticeable that the interview requests were accepted with some level –



higher or lower - of resistance and suspicion. After all, it was to talk about subjects that are related to the relationship of the interviewed people with Governments, with the law, with neighbors, with the places where drugs are bought, to a stranger who they don't know exactly who this person is, where he comes from, and what are his interests and social links. On several occasions, we were asked if we were not part of the municipality or of the police, which led us to ask ourselves about the general perspective of people interviewed about the University and its role. It is a question that intrigues us until today, because we did not try to seek more specific information about this.

In general, we can say that the resistance and the suspicion that we faced are a constant of fieldwork. The agents found in it, which we will discuss in the next section, are not, in any way, passive agents before the researcher, but agents with whom it is necessary to negotiate to obtain information and have their conditions and limits to provide them. So, even though we got to our informants through the President of the Association, the school principal, the head of the health and social assistance service, the Protestant pastor, none of this exempted us from the tensions involving how to deal with the nominees for our interviews.

One of the examples that we believe to be quite representative of these tensions was the question made by one of the ancient community leaders of the slum about what would be our interest in the conduct of this research, which we interpreted as a question about what would be the return or the benefit, to the slum, from the help that its residents would be giving to the researcher in the form of interviews and information about the place. The issue met a nuisance shared closely by the researcher, who also had the feeling that residents would provide the raw material for his academic work, and for all that it follows in terms of academic achievement, whereas the benefit to the slum studied was something that, if it existed, it would be very fleeting and indirect. This is a problem that concerns the role of the University in general, and its debts to society. As for the answer to the question made by the leaders, in face of the surprise of being placed in the position of interviewee, not the interviewer, and in face of the little time for a more accurate reflection on the issue, we decided, in the split second that we had, to be frank, on the assumption that it would induce a posture of honesty in the continuity of the conversation: we affirmed that our interest was to learn from the locals about the location, in order to know it well and write a paper that could teach something to those who would read it.



To this example we can add another equally relevant that represented one of the greatest frustrations we faced in the field work: some of the interviews that we wanted to accomplish could not be carried out due to different factors, among them the **refusal** of people we sought to grant an interview. This prevented us from accessing some sources of information that, at first glance, seemed critical to the accurate and comprehensive knowledge of the case being studied. Among the most significant cases, were two former Presidents of the Residents' Association of the slum studied as main case, who were at the head of this Organization throughout the 1980s and early 1990s, which corresponds, according to evidence we collected, to the climax moment of the effervescence of the associative movement in this slum, and that seems to coincide with what occurred with the popular movements on a national scale.

One of the interpretations that we gave this fact was as an indication of likely jettisoning processes - and/or selfjettisoning – of old slum leaders in relation to all and any matter of **public** nature that involves the location, motivated by (mis)conducts trailed by the Residents' Associations in the last twenty to thirty years. During this period, a series of transformations was witnessed in the relationship between the slums and the State, the City as a whole, as well as between locally referenced agents, that is, within the slum itself , such as those which involved community leaderships, drug dealing leaders, religious leaders, and other members of the so-called *slum bourgeoisie* (merchants, owners of several buildings and/or most expensive real estate, people with higher level of education and/or insertion in State organs.

The procedures of empirical research: questioning about its limitations

First of all the research of reference and control cases was done by conducting interviews. Mainly residents of both locations were interviewed, being the interviews either at the interviewee's residence, at the headquarters of the Residents' Association or at the public school attended by some interviewees that were inserted into education programs for young people and adults.

On the other hand, the research of the two elected cases involved consulting and collecting documents produced by and available at the City Housing Department as a necessary step to promoting urban and agrarian regularization. From this research we were able to produce



some quantitative data about the original reference case, which gave the basis for drawing up a detailed description and analysis of the case, developed in three chapters of the thesis⁶.

The research of the two cases involved informal observations during the trips to both locations for interviews. Unfortunately a sensitive limitation in the research was that there were very few opportunities for the observation of significant social events in the two localities - such as parties, solemnities, elections, assemblies or community meetings held by the respective Residents' Associations or by other local organizations, campaigns developed by State or community bodies, etc. - since social events did not occur during the periods in which the work was performed, which was divided into two stages, the first developed between November/2007 and May/2009, and the second developed between June and August/2009. Basically during the periods of field work we were able to follow some cases of the drawing up of contracts for purchase and sale of real estate held in front of the President of the Residents' Association, in addition to attending to residents' requests, which sought the Association to mediate conflicts with neighbors or with the one from whom they had purchased their property.

In the implementation of field research limits as these should be properly considered at the time of analysis of the empirical material obtained in order not to assign the findings, interpretations and hypotheses derived from this material a degree of certainty and generality not supported by empirical references that one has at hand. So we clearly have that both the time we had available for the fieldwork and the instruments applied to doing this work were not those which we view as *ideal* and the most able to provide us with a radical approach of the empirical objects with which we worked. We imagine that a more profound approach could be favored in circumstances in which the subject/object dichotomy was more diluted than we could accomplish, which partly could be overcome in any university extension projects and other research procedures of collaborative nature. So we have conceived the empirical research developed as an important approach of the social matter involved in the research, which does not constitute definitive approach towards the empirical research involved in it, despite being sufficient to permit a relevant contribution to the knowledge of our object of study so that in

⁶ Cf. MAGALHÃES, 2010, Part II, Chapters 4 to 6.



cases such as these we think it is possible and necessary the planning of new movements of approach, allowing the achievement of more reliable results.

Taxonomy and quantification of informants

The field work done revealed itself to be a source of great learning, according to our expectations. One of them, which was slowly uncovered as the work advanced, is about the plurality of agents comprising the field represented by the slum which was the object of study. In other words, slums are urban and social formations not at all homogeneous, whether in its physical aspect, or in the group of people therein gathered. This fact allows - and in our view requires, on behalf of the consistency of the research - an effort to make explicit and demonstrate this heterogeneity.

With regard to the physical aspect, this requires the recognition of subregions in the slum studied. This aspect was made easier by the theoretical contributions of Marcos Alvito (ALVITO, 2001), from whom we took advantage of the fertile notion of *micro areas*, which he not only uses, but which he effectively defines in his work, coming from exemplary fieldwork conducted in set of slums in Acari.

With regard to the social aspect, the awareness of the differences at hand enabled us to arrive at a classification of the set of informants in the analysis and synthesis of the data constructed at the end of the research. Thus, among the people interviewed during the execution of the research, we were able to distinguish the following groups and subgroups:

1. Residents of the location studied:
 - 1.1 leaders of the Residents' Association (commonly referred to as "community leaderships");
 - 1.2 former leaders of the Residents' Association
 - 1.3 community agents of government agencies;
 - 1.4 merchants;
 - 1.5 realtor;
 - 1.6 Protestant pastor;
 - 1.7 community postman;
 - 1.8 owners of several properties (or "*great owners*").



2. People somehow related to the location (that is, people who do not reside in the slum, but that, in general, act professionally or voluntarily):
 - 2.1 pastoral agent;
 - 2.2 realtor;
 - 2.3 psychologist, who developed voluntary social work on the location;
 - 2.4 journalist;⁷
 - 2.5 lawyer, with an established office in the slum;
 - 2.6 former resident.
3. People around this place (that is, residents or working professionals in the neighborhood of the slum).
4. Servers from government agencies:
 - 4.1 management level (occupants of positions of Coordinator or Manager of municipal offices to provide social and health services);
 - 4.2 technical level (from POUISO, from the City Housing Office, from the City Education Office, from the Licensing and Law Enforcement Superintendence, from the Health Center);
 - 4.3 contractors (third-party servers in service of the State).
5. Academics (that is., persons who have developed research about the location or neighboring slums to the location).

These subgroups can be quantified as follows, depending on the frequency of interviews:

Table 1 – Number of interviews by Sub-groups

	Stage 1 Moment 1	Stage 1 Moment 2	Stage 2	Totals by sub-group
1. RESIDENTS	17	61	05	83
2. RELATED ONES	03	06	---	09
3. SURROUNDINGS	---	08	---	08
4. SERVERS	04	15	02	21

⁷ He is a professional from a known journalistic vehicle, who covered a police operation in the slum, and from there created a bond with the residents using his network of political relationships to achieve improvements in the slum.



5. ACADEMICS	01	04	---	05
TOTALS BY STAGE	25	94	07	126

Table 2 – Number of interviews by Research Stage

Stage 1 – Moment 1

RESIDENTS	<ul style="list-style-type: none"> • 1 leader of the Residents’ Association • 2 community agents • 14 simple residents
RELATED ONES	<ul style="list-style-type: none"> • 2 pastoral agents • 1 lawyer
SERVERS	<ul style="list-style-type: none"> • 1 management level • 2 technical level • 1 contractor

Stage 1 – Moment 2

RESIDENTS	<ul style="list-style-type: none"> • 14 community agents • 8 merchants • 6 former leaders of the Residents’ Association • 5 current leaders of the Residents’ • 2 “great owners” • 1 realtor • 1 protestant pastor • 1 postman • 23 simple residents
RELATED ONES	<ul style="list-style-type: none"> • 2 realtors • 1 psychologist • 1 journalist • 1 lawyer



	<ul style="list-style-type: none"> • 1 former resident
SURROUNDINGS	<ul style="list-style-type: none"> • 4 realtors • 3 residents of housing estate nearby the slums • 1 former leader of the Neighborhood Association
SERVERS	<ul style="list-style-type: none"> • 2 management level • 10 technical level • 3 contractors

Stage 2

RESIDENTS	<ul style="list-style-type: none"> • 2 leaders of the Residents' Association • 3 simple residents
SERVERS	<ul style="list-style-type: none"> • 2 technical level

Of the 126 interviews, 96 have been recorded, with the consent of the interviewees. The recordings amounted to approximately 62 hours of recording, from which we selected those most relevant, with the purpose of transcription and direct mention in written work. The transcripts amounted to 44 interviews, with 58 interviewees and approximately 50 hours of recording.

The elusive character of empirical matter: the difference in *codes*

Many residents informed us that they had the document of their house "*notarized*", which led us to work with the hypothesis that the civil registry in question was the Notary's Office of real estate. However, this hypothesis would be impossible since the whole area was in (unfinished) process of agrarian regularization, and only at the end of this process registrations would be opened, which would allow access to the Folio. From this issue we started to notice the problem of the specificities not only of the regulatory codes that govern the slums, but also of the linguistic codes handled by its residents, consequent of development processes not dominated by the researcher at first, who lacks this social experience. So, one of the challenges immediately



perceived, and that should be overcome so that the research could succeed would be a daily effort of decoding, as researcher and informants use the same language, but not the same speech.

We can say this is a situation that took place in various ways and that is one of the great exercises to be held in the empirical research among other reasons, so that it does not fall in one of the evils that will pursue those who want to venture out (in a good way!) in the complex and devious ways to master the empirical matters the whole time: called *ethnocentrism*⁸. This is a problem that becomes more severe as there is very low degree of accumulation of reflection about this problem under the legal courses, which leaves many of the students and **teachers** widely unequipped theoretically to meet the challenges of this endeavor.

Thus, we can mention among others, the following cases:

1. "*invasions*", which do not concern to the occupation of land, but rather to the taking of a slum by a rival gang;
2. the notion of "*irregularity*" developed by the locals, which contains legal and illegal constructions, although strictly none of the erected buildings counted on a construction license or living license obtained from the City Housing Office. According to what we realized, this is a concept that refers to the legitimation of a building based on the rules (in the case studied, unwritten!) to build agreed locally in the process of formation of the slum, whose guardian is the Residents' Association;
3. the many appropriations of terminologies used by the laws, which are adopted in the current regulatory practices in the slum, as part of its roster of institutions, such as the terms "*legalization*" (of a building), "*improvement*" (which would correspond to what the Civil Code calls accession), "*market value*" (the sale value of a property that is declared to the Residents' Association, object of declaration report, of strict analogy with the procedures for tax evasion) and even "*the customs law*" (by which the control of real estate business by the Residents' Association is justified, as well as a transfer fee).

In short, when treating the empirical matter collected in the case studied, we observed that we were systematically faced with discursive and communicative strategies, which were not organized according to a linear, cartesian rationality or formal-rational, but we faced a number of

⁸ This is a problem that we can only register in this article, leaving for another time its proper deepening. There is, however, extensive bibliography on the topic, which can be sought by anyone interested.



nuances – or roughly, of *skills* - whose capture demanded time and effort from the researcher, not revealing itself in a first approach, coming to meet the scientific principle according to which reality is not transparent, translucent or self-evident, offering systematically misleading appearances to the observer. In other words, the speeches made by the actors of the slums field, particularly when placed in the context of conflicting relationships with the State and with other actors external to the slums, take on tones that are not strictly "*true*" or "*false*", but may form arrangements that go far beyond a binary schema that considers only one of these two alternatives. This is what we identify in the case which we call "*speech of ignorance*", in which residents claimed to ignore facts that seemed public and notorious to the researcher, to his astonishment.

This is an image built by residents of the slum studied with respect to the control and inspection structures posted by the City in this slum. One of the particular aspects of this image which quickly drew our attention in the research refers to a contradictory movement that exists within the collectivity, which oscillates between "memory" and "oblivion" – or "knowledge" and "ignorance" – of the existence and operation devices of this control. Little by little, we put together some elements that would make up what we call a "*speech of ignorance*" handled by residents of this slum, which we will try to systematize in this section.

This is an aspect that seemed analytically relevant to us since it makes up the framework of tensions and conflicts underlying the process of regulation of the slum. As we have been arguing, this regulation has been changing from the moment the State drafted some outlines towards establishing a new urban order in the slums. On the other hand, as we have said this mutation is an essentially conflicting process and object of disputes, as it concerns the reconfiguration of space and power established in this field. Given these premises, the relevance of the strategies adopted by the agents of this field is highlighted, which outline their way of facing and managing the ongoing conflict. So, we understand the "*speech of ignorance*" as a political and discursive resource, that is, as one of the strategic ways by which the residents of the slum in study are showing resistance in the face of the attempts to bring to completion the normative order advocated by the State. Such resistance is also seen in other ways, so the "*speech of ignorance*" is one of its several objective manifestations, an indirect resistance, not frontal to the power of the State, to make its work harder.



In other terms, although the "*speech of ignorance*" is not something strictly conscious and planned, it is a phenomenon so politically exploited as the "*speech of irregularity*", this one handled by State agents, representative of the perspective of its view of the slums, seeing in them, basically, a complicated situation of "wrong things", many of them illegal. Perhaps each of these *speeches* represents the counterpart of the other. Thus, the "*speech of ignorance*" would be the other side of the coin of urban control. This speech would tend to increase as people realize that they are facing a restrictive legislation of their right to build on their own property, which point to the "*freezing*" of the area. This reaction would restate the urban freedom that does not exist in the slum as well as in the rest of the city if we look at the existing mechanisms of State and community setting, but is a frequent aspiration of homeowners.

Finally, we emphasize that in the three examples listed above another very observable component in legal (and/or normative) practice developed in the slums is present: what we call *resignification* — that is, assigning new meaning — of the official legal institutions. So, this is not a "*wrong*" use of concepts and terms drawn up within the framework of legal science and technology, the result of an alleged deficiency of the staff which handles it, but rather a process of appropriation of a fragment of the "*official legal building*", in order to compose its own speech, so it displays a legal aspect. One of the emblematic cases in this regard is the valorization of the electricity bills as evidence of the acquisition and ownership of a property, and not merely the home address, as this document is usually valued in the dominant code.

Although we were faced in some opportunities with questions from residents regarding the "*correct*" way - read, "juridical" or "legal" - to practice certain acts - as, for example, the sale and rental of real estate - issue that we attribute to the fact of being represented by the locals as "educated" people - this does not mean absence of legal and illegal concepts built and shared by residents, with relative autonomy in relation to concepts elaborated based on the official regulations, in accordance with recognized technical procedures. On the contrary, this kind of questioning reaffirms the clear perception on the part of the residents of the slum, of the existence and operation of separate regulatory codes; in other words, it is the perception that "*the law for the slum is another one*", as we could roughly define.

In short, the empirical work requires from the researcher the perception of this current polyphony in contemporary cities – perhaps, societies - as well as that he sees them stripped of



the *prior* ethnocentric oriented effectiveness. These are two fundamental requirements for proper treatment of the empirical matter, without which both information gathering operations and its analysis may fail, which removes the scientific value of such research.

Final Considerations

In this work we exposed some of the difficulties and problems faced in our experience - not too wide! - of empirical research. With these notes we aim to warn the Law and the social sciences researchers to some of the challenges faced in this endeavor.

On one hand, we see the growth of interest and of experiences on the development of research with this nature involving students and law professors as promising, as well as seeking a legal-oriented approach, in spite of interdisciplinary references and inspirations. On the other hand, we must immediately alert to a misplaced euphoria with the "*new*" methods and techniques that are being incorporated into the Jurists' repertoire as well as to the illnesses of a **empiricism**, which would represent nothing more than the reversal of the signs of **rationalism** and **formalism** that so profoundly mark the legal field and constitute its fundamental epistemological references.

In case of legal research we understand this empiricism as illustrated by some typical conducts or expressions, such as:

- searching in empiricism nothing more than the confirmation or illustration of indisputable assumptions, closed and preconceived;
- trying to resolve, by means of empiricism, problems of theoretical nature, irreducible to it;
- addressing empiricism in a way to give an ethical content to it, seeing in it a higher or lower moral than a universal nature reference (e.g., the legal system established) by definition, incurring thereby on the same mistake committed by the dominant legal thought.

The empirical research is not the "*salvation of the crop*" of the problems of the law's science, but on the contrary, adds new problems to be faced by it as it incorporates this research technique to its repertoire, which makes the lawyer's task more difficult.



Finally, we seek to bring to this work some initial problems that we noticed in our own experience, which requires attention from current and future researchers, so that practices that aim to broaden the scope of research activities in Law can be consolidated in the sense that these activities can contribute to a healthy renewal of knowledge and intellectual environment of this field.

In other words, it is not enough to just explode the walls of rational-formal paradigm that ravages and impoverishes us, going to drink in the "*new source*" of empirical matter. More than that, we must know "*what to do*" with that matter, as well as "*what can be taken from it*" which means to seek the appropriate theoretical equipment to handle its transitory elements, which are "*so solid, that dismantle in the air*" (BERMAN, 1986).

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