

Perspectives on judicial practices that serve an area of justice

The discussion began with Jacques Commaille, emeritus professor in sociology at ENS Paris-Saclay, Jean-Louis Halpérin, professor of law at the ENS, Nathalie Przygodzki-Lionet, professor of social psychology at the University of Lille and Pierre Mousseron, professor of law at the University of Montpellier sharing their perspectives on the subject of the series, “Thinking about judicial practices that serve an area of justice”.

Mr Commaille, pointing to the changes in the structures that underpin the institution of justice, commented that the law was no stranger to the shift from a time of certainties to a time of uncertainties in a society that is questioning the monopoly of top-down regulation, against a background of the exhaustion of hierarchical solutions and the relativization of sovereignty. The crisis of confidence in institutions and the professions in general means that the law is now viewed as a simple resource, rather than a central point of reference. The legal-political matrix that makes justice part of the prevalent managerial normativity by seeking to rationalize its activity and its territorialization and challenges the exceptional nature of its role must therefore be questioned.

Mr Halpérin, while emphasizing the fact that the archives offer little information on judicial practices, noted the fundamental structural change in judicial ideology, namely in the way judges represented their role in the 19th century: the vocation of ensuring respect for legality is gradually replaced by a more secular concept and the idea of a public-service mission. The practice of producing manuals to help investigating judges carry out their enquiries developed at the end of the 19th century.

According to Ms Przygodzki-Lionet, social psychology considers that any judge is confronted in parallel with their own role, what is at stake in passing judgment and the rules governing that situation, but also the other people involved in it. Research into the mechanisms used to form a judgment reveals the importance of extralegal variables. In this, the view of justice and its practitioners is “realistic” and includes, among other things, the crisis of confidence and the substantive difficulties faced by judges. Studies show the importance of affirming self-esteem among justice professionals by valuing their work and practices, as this lecture series does.

Since the discussion was on judicial practices, Mr Mousseron, returning to the notion of interactions, focused his comments on the existence of a community, potentially encompassing all legal professionals, to define these practices as repeated, precisely defined behaviours observed in certain communities that contribute to establishing the law. Given that judicial practices as such may respond to various objectives, he noted that the discussion was limited to judicial practices that serve an area of law and was pleased that it offered legal professionals “a relevant topic” for their community and for litigants and defendants, a greater understanding of justice and more transparency.

According to Mr Commaille, the position of litigants and defendants was ample justification for the discussion, insofar as knowledge about public policies had moved from the conditions under which they were produced to those under which they were received. Those concerned thus become stakeholders in a new legal framework, as actors in the law rather than simply being subject to it. Research into the perception of litigants and defendants, which includes consideration of subjective elements, emotions and values, shows that the latter are less sensitive to the decision made than the way in which they are treated during proceedings. Ms Przygodzki-Lionet explained that the details of what happens during a hearing are just as important as the general organization of the proceedings: the litigant’s or defendant’s sense of justice is determined, admittedly distributively, by the relationship between the penalty and the offence and procedurally, by the basis of the decision, but above all, interpersonally, by the quality and quantity of the information conveyed and the treatment of the individual as a person. A sense of justice helps the litigant or defendant to feel confident and cooperative, while a sense of injustice can result in violence.

Mr Halpérin recalled that the interest for litigants and defendants appeared during the French Revolution and that in fact, the necessity of maintaining even minimal openness towards citizens had always existed to guarantee the legitimacy of the courts. It was this desire to bring judges closer to litigants and defendants that resulted, among other things, in district judges and people's courts, with reference to the Heliiaia, which ensured that every citizen in Athens had the experience of passing judgment, and developed judicial assistance.

While lawyers recognize that not everything in the law is written down, and historians acknowledge that practices and their changes can be approached indirectly, all the speakers saw the benefit of stepping out of the academic environment and linking different areas of expertise to tackle the challenge of the overarching question of an area of justice for litigants and defendants, and the challenge of building relationships of trust.

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