



Why (not) talk about the sociology of competition?

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Antitrust law may (still) sound like an “extraneous body” to part of Brazilian society. This understanding is partially grounded on Brazil’s background of closed economy, under strong state intervention and controlling prices, for instance.

Nonetheless, by virtue of constant stimulus of educational actions forged by the authorities of the Brazilian Competition Defense System (SBDC), supported by active role performed by private entities and associations (e.g. IBRAC, CECORE, CEDES)¹ and academic research groups (such as the ones from USP, UnB, FGV, PUC, Mackenzie etc.),² the current scenario is far more promising than one could notice in the past, and this gradually contributes for mitigating the general sense of a weak competitive culture in Brazil.

Roughly speaking, the Brazilian society seems to be more cognizant of the harmful effects caused by non-compliance with competition law, notably in light of rigid enforcement and also due to an enhanced role of public and private advocacy. In that regard, a virtuous mainframe that encompasses the legacy of Law 8,884/1994 (Revoked Antitrust Law) along with the improvements introduced by Law 12,529/2011, whose 5th anniversary was recently celebrated,³ have been key for generating a fertile institutional landscape to foster a genuine culture of competition in the country.

That being said and going straight to the heart of this brief remarks, first of all, one should note that a very usual starting point on the study of competition law is to start the explanation off by mentioning the fundamentals of economic and the its underlying inputs that gear the analysis of competition phenomena.

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¹ Respectively, Brazilian Institute of Studies of Competition, Consumer and International Trade (IBRAC); Commission on Competition Studies and Economic Regulation (CECORE) of the Brazilian Bars Association – São Paulo Section (OAB-SP); Center for Economic and Social Law Studies (CEDES).

² Respectively, University of São Paulo (USP); University of Brasilia (UnB); Getulio Vargas Foundation (FGV); Pontifical Catholic University (PUC); Mackenzie Presbyterian University (Mackenzie).

³ The Brazilian Antitrust Law enters into effect on May 29, 2012.





The economic rationale is usually regarded by many as of utmost importance for bringing insights and honing the analyses in order to enrich the legal assessment and meet the Law and Economics paradigm.

Put simply, by way of evidencing the importance of economic rationale, one may consider the calculation of damages in cartel cases. This is usually an intricate and sensitive issue in the international agenda. Econometric tools are especially useful for defining many of the complex variants and thus allowing a comprehensive antitrust analysis. Moreover, one has been experiencing a heated debate about big data and algorithms. In this strand, there is also an important room for economic studies to aid the antitrust considerations (e.g., the use of econometric screenings to monitor and detect the potentiality for collusive arrangements engendered by artificial intelligence).⁴

Undoubtedly, we see positive synergies between legal and economics sciences to help achieve a robust and well-defined analysis. The genuine dialogue between both field is of primary importance.

In any event, although relevant, one may question whether the economics tools would be sufficient in themselves for capturing and understanding the whole phenomenon of competition in its myriad of spectrums?

Our response follows with a flavor of skepticism. In other words, we contend that there are strong reasons to believe that in addition to economics, legal sociology (but not only it)⁵ has its merits in helping understand the competition phenomenon in a more nuanced fashion, exploring elements that go beyond the economic effects. In that line, the sociology sheds light on issues resulting from the interplay between the law and society – social system. As such, the legal sociology, mainly through the *systems theory*, as it will be briefly pointed out below, may allow us to understand what is under the surface, that is, what cannot be easily apprehend if one does not augment its lenses of analysis.

Academic researches classified as “sociology of competition”, however, are scarce and limited, especially in Brazil. Its avant-garde version was introduced by Georg Simmel in 1903,⁶ in an article that remains full of useful (and up-to-date) insights for the comprehension of this phenomenon. Amongst the definitions and insights arising from his analysis, in short, Simmel defined the competition model as a requisite of modernity, based on legal and oral rules organizing social relations in a specific way; more than that, this pattern was characterized by *indirect competition*, in opposition to *direct competition*.

In a nutshell, by indirect competition one or more agents dispute something via independent efforts directed at conquering their goal, turning a blind eye on the existence one of the other, while the concept of direct competition is associated with the common kind of “fight”/“struggle” where the *dispute* among agents take place by one attacking the other aiming at its “annihilation”. Under this approximation, the perceived competition of modernity would be the indirect one, found, *obviously*, in the behavior of companies trying to conquer/capture clients while ignoring their competitors and implementing business

⁴ The OECD has recently held a session on the subject of algorithms and collusion. See: <http://www.oecd.org/competition/algorithms-and-collusion.htm>.

⁵ By way of reference, reflections on psychology have been increasing when coupled with behavioral economics analysis.

⁶ SIMMEL, Georg, *Soziologie der Konkurrenz* (1903), trad. HELLE, Horst J., *Sociology of Competition*, Canadian Journal of Sociology 33(4), 2008, pp. 957-978.





strategies, and, *less obviously*, in social behaviors such as the seduction of a person also desired by a third one.

In view of the foregoing, we understand that legal sociology can approach competition and offer insights on it in a complementary manner to the economic approach, under a multidisciplinary perspective.

A quick problem arising, however, is the considerable quantity of sociological theories nowadays, a certainly much bigger number than the existing in the days of Simmel; through which lenses should competition be analyzed? Any answer to this might be questionable, but as detailed above, we propose that the *systems theory* may be appropriate for analyzing competition, adding to this affirmation that the more powerful formulation of this theory for this purpose is probably the one developed by Niklas Luhmann.

The main advantages of using *systems theory* as a tool of analysis are connected essentially to its openness to complexity. As the plural form in “systems” indicates, it is a theory that deals with contemporary societies’ complexity through the identification of several centers as observation points, denying that society can be interpreted from only one point of view. Thus, we can recognize that law and economy are central systems in social life, without one of them being the fundamental point from which the other must be understood.

Social systems function independently (*autopoiesis*), but they communicate one with the other – and the role of language and communication is central for systems theory – (con)forming society, in an analogy with concepts from Biology. In this description, we start to perceive that antitrust law, as an element of the legal system, may work as an element of linkage to the economic system (and vice-versa). By corollary, one would see antitrust law as part of the legal system and the economic system working independently with their own logics, but despite the *operational closure*, both systems can engage via communication, provided that their systemic languages remain preserved.

The formulation of Luhmann’s system theory has as main advantage its comprehensiveness. The author’s goal was to make a theory of the whole society, dismembering its systems in dozens of books, aiming at reaching a vision of the total. Luhmann was responsible for evidencing communication as a core element of society, highlighting that social systems contain many kinds of communication according to internal codes (as the binomial *licit/illicit* in law) used for its *autopoiesis*, while the systems communicate one with the other, as described above.

Although the author did not develop a “sociology of competition” in its exact terms, dealing separately with the legal and economic systems, he defined a “sociology of society”. It is in this part of his work that one can find a number of insights on what typically cannot be seen about the economy (and consequently about competition): as general examples, Luhmann described how *autopoiesis* worked in the economy, how money worked as an element for communication among economic agents and the purpose of their social relations.⁷

⁷ LUHMANN, Niklas, *Die Wirtschaft der Gesellschaft als autopoietisches System*(1984), trad. Hugo Cadernas, *La Economía de la Sociedad como Sistema Autopoiético*, Revista Mad – Universidad de Chile, n° 29, 2013.





In addition, one should also highlight the dilemma of *double contingency*, fundamental for the reformulation of the *systems theory* by Luhmann, described by the author as the social situation where certain agent considers, before acting, both her possibilities and the ones of the other agent, all of them being undetermined.⁸ Indeed, it is a very common situation among businesspeople, consumers, customers, etc. (stakeholders in general) against a background of risks, asymmetry of information etc.

Bearing this understanding in mind, we underscore that legal sociology offers an analytical technique to increase the comprehension of competition, especially in Luhmann's version of the *systems theory*. It is necessary, thus, to be "bold" in exploring this toolbox.

Finally, we notice that a multitude of questions from the theoretical reflection about antitrust law may be illuminated by sociological reasoning, which, in turn, brings a sound contribution to the analysis performed by law and economics.

Accordingly, by way of succinct example, we underline three interrelated vectors: (i) the function(s) and purpose(s) of antitrust law, considering (ii) economic sectors that might admit distinct levels of competition ("exhaust valves"), and (iii) the macro structural context of a developing country under the specificities of a colonial historic of "economic drainage" and the implications of this model for society.

Last but not least, we recognize that the development of a sociology of competition is yet a relatively seminal project that counts with few supporters to date if compared to the research on the interface between Law & Economics.⁹ Regardless, we should mention that there is an immense academic wellspring for the analysis of competition by means of sociological tools.

We truly believe that reflections from sociology allow to capture the nuances of the competition phenomenon from complementary (and perhaps not even raised yet) angles, resulting in colorful and refined analysis. In that way, through the lens of sociology of competition, for example, the thoughts on the vectors aforementioned might receive interesting and promising (new) answers.

All in all, the pivotal point consists in knowing (how) to explore the potentiality embedded in sociology, not hesitating to bring this tool to light, especially because it has tremendous value in understanding the competitive dilemmas which challenge society daily.

Bottom line, sociology of competition comprises a broad and relevant avenue for academic researches to anyone interested in delving deep into the subject so as to better understand the social structures of competition. Such a debate is usually obviated or even not regarded in ordinary reflections and, unfortunately, prevents from reaching all the richness in the sociological analysis of social phenomena.

We need to talk about sociology, and especially about sociology of competition.

⁸ COHN, Gabriel, *As Diferenças Finais: de Simmel a Luhmann*, Revista Brasileira de Ciências Sociais, vol. 13 n. 38, 1998.

⁹ As a non-exhaustive example of the recent work of researchers interested in sociology of competition, we mention the text "Why do we believe in (sociology of competition?)" published by Tobias Werron, Professor of Theory and General Sociology in the University of Bielefeld, and the Doctor of Laws candidate in the University of São Paulo and visiting researcher in the University of Bielefeld Luiz Felipe Ramos, available at: https://necsousp.files.wordpress.com/2016/09/why-do-we-believe-in-sociology-of-competition_necso.pdf.





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