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The concept of theory and its function in four types of legal research.

O conceito de teoria e a sua função em quatro tipos de pesquisa em Direito

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Resumo

Muitas das dúvidas, disputas e incompreensões sobre teoria na pesquisa em Direito ocorrem porque frequentemente não nos atentamos para o fato de que a teoria pode ter diversas definições e usos a depender do tipo de pesquisa em Direito que se produz. Portanto, para esclarecer os diferentes conceitos de teoria e as suas funções, o presente artigo apresenta e discute quatro tipos de pesquisa no Direito, que refletem dimensões diferentes dessa disciplina: Direito como disciplina prática, como ciência social positivista, como ciência social interpretativista e como humanidade. Compreender essas diferenças desfaz algumas confusões e angústia em torno do uso teoria na pesquisa em Direito e permite que se trabalhe com a teoria de forma mais rigorosa, além de ajudar a posicionar o campo da pesquisa em Direito em relação a outras disciplinas e à prática jurídica.

Palavras-chave: Pesquisa em Direito; Teoria; Dogmática jurídica; Ciência social; Humanidades.

Abstract

Many of the doubts, disputes, and misunderstandings surrounding theory in legal research are due to our lack of attention to the fact that there are different types of legal research and that each of them understands, uses, and creates theory in its own way. Therefore, to clarify the different concepts and functions of theory, this article presents and discusses four types of legal research, which reflect different discipline dimensions: Law as a practical discipline, Law as a positivist social science, Law as an interpretivist social science, and Law as a humanity. Understanding these differences can help unmake some of the misunderstandings and anxieties around the use of theory in legal research and allow a more rigorous employment of theory by researchers. It also helps to position the field of legal research in relation to other disciplines and legal practice.

Keywords: Legal research; Theory; Doctrinal research; Social sciences; Humanities.

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Introduction

As legal research becomes more professional in Brazil, reflections, doubts, and disputes about what it is and how it should be conducted and evaluated become more frequent and complex. These are questions from a field still searching for its identity, seeking what distinguishes it from legal practice and other disciplines while simultaneously seeking dialogue with practice and aiming to innovate by approaching other fields of knowledge.

It is in this context that questions and misunderstandings about the concept of theory and its role in legal research often arise in research seminars and postgraduate courses. On the one hand, it's common to hear disparaging references to theory. "That text is very theoretical" does not always express praise but rather that the content of a paper is disconnected from reality or has little practical use in solving concrete problems. Behind this view is the opposition between theory *versus* empirical observation or practice. On the other hand, many research students are distressed by the question "How does your research relate to theory?" or "Which theory do you adopt?". There is a fear that the lack of affiliation to a well-established theory will strip a text of its academic character and bring it closer to other types of legal production, such as court judgments and legal opinions.

These different views may reflect epistemological and academic politics disputes about what research in Law is or should be and what it is for. Although there is some truth in this hypothesis, this article starts from a more basic premise: many doubts, disputes, and contradictions occur because we often fail to pay attention to the different meanings and functions of theory in legal research. This, in turn, stems from a lack of clarity about the different types of research in Law, which comprehend, make, and use theories in their own way.

Based on this premise, this article will classify legal research into four types and discuss the different meanings and functions of theory within each. It is not its purpose to exhaust all the possible meanings of "theory" or to define what would be a legitimate or correct use of it. Work in other areas has already shown the polysemy of this word (SUTTON, 1995; DIMAGGIO, 1995). The purpose here is simply to draw attention to the fact that "theory" can have various meanings and uses in legal research. Understanding this helps to clarify the contribution that theory can offer to legal research, avoid its

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misuse, and resolve possible doubts about its role and presence in a particular research project.

Mastering the different uses and meanings that theory can have in legal research allows us to work with theory in a more rigorous way, which brings great advances to the field, such as enhancing its capacity to accumulate knowledge and to frame and solve research problems. It also helps to reveal the diversity in the field of legal research and to position it in relation to other disciplines and the legal practice, which helps when seeking dialog or emphasizing distinctions.

Research in Law: a proposed typology

This text is based on a broad conception of research in Law, which accommodates any research that has law, or phenomena or concepts related to law, as its main object of study. The definition of this field of research by the object of study is not consensual within legal academia. Still, it reflects the growing plurality of approaches within law schools and their academic output.

Within this more plural and inclusive perspective, research in Law can be classified in various ways. There are broad classifications, such as the division between research that takes an internal point of view and a point of view external to the law (SCHWARTZ, 1992; TAMANAHA, 1996). There are more detailed classifications, such as the division between doctrinal research, interdisciplinary research that combines doctrinal research with other disciplines, and research into law and legal institutions without a doctrinal component (ROUX, 2014; ROUX, 2015). They all have their advantages and usefulness.

However, considering the scope of this article, I propose a classification based on the work of Siems and Mac Síthigh (2012). They identify three ways of conceptualizing the discipline of Law: (i) as a practical discipline, (ii) as an aspect of the social sciences, and (iii) as an aspect of the humanities. This classification is broad enough to cover the diversity of research in Law, while being sufficiently specific to allow the contrast between the different concepts and uses of theory in each. A modification was added to Siems and Mac Síthigh's classification to separate social sciences into two approaches - positivist and interpretivist - because they see theory differently.

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It's important to note that these types are not exhaustive (not all research projects will fit easily into one of the types), nor are they mutually exclusive (research can fit into more than one type). I also recognize that the description of the types of research in this article involves simplifications and that the division into these four types of research, as well as how I characterize each of them, is debatable. However, I believe that more sophisticated and detailed classifications and typologies than the one proposed here will only reinforce the argument that the concept of theory and its function differ according to the type of legal research.

Law as a practical discipline: theory as prescription

Research in Law as a practical discipline is what is called doctrinal research.[1] In this type of research, the aim is to produce knowledge that is directly useful for legal practice and to influence the legal professions. There is, therefore, a great convergence of language, reasoning, and working material between academia and legal practice.

The research activity includes collecting, describing, and organizing the set of norms, decisions, interpretations, arguments, and concepts relevant to a given field of law; analyzing this set in order, as far as possible, to make it intelligible, coherent, and consistent to offer persuasive solutions to concrete legal problems; and critically and normatively evaluating this set, pointing out contradictions and obscurities, comparing with alternative solutions and proposing changes.

In this type of research, a theory is *a systematized set of propositions with some degree of abstraction and generality, which prescribes a way of solving concrete legal problems anchored in positive law*. As with the definition of theory in the other types of research discussed below, systematization refers to the claim that propositions (definitions, classifications, connections, etc.) are linked in a coherent and organized way. Abstraction and generality refer to a theory's claim to solve not just a specific problem

[1] There is research in Law, especially in the fields of Law and Development and Law and Public Policy, which seeks to be directly applicable to improving a particular public policy or institution. However, unlike doctrinal research, this type of research more often seeks dialogue with the public administration, regulatory bodies, the legislature and companies rather than with the legal professions. Although they could be classified as research in Law as a practical discipline, they will be discussed later in this article because they generally combine different types of research.

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but a set of problems. Anchoring in positive law means that the theory must lead to solutions based on legal norms that are valid within a legal system.

For example, let's think about Robert Alexy´s theory of principles in Human Rights Law. This theory divides human rights norms into two types: rules and principles (ALEXY, 2011; ÁVILA, 2014). Rules express definitive obligations and are applied by subsuming facts under rules. In cases of conflict between two rules, an antinomy arises, and one of them will have to be excluded from the legal system. Principles, in turn, express *prima facie* duties, and the definitive duties will be defined in concrete cases after balancing a principle against a conflicting principle using the proportionality test. Competing principles can coexist within the same legal system, and the prevalence of one over the other is contingent upon the factual circumstances of each case.

This division between rules and principles offers a method for resolving conflicts between fundamental rights. Let's imagine that the constitutionality of a law authorizing torture when necessary to save a life is questioned. Applying the theory of principles, we must first assess whether Art. 5th, inc. III, of the Brazilian Federal Constitution, which prohibits torture, is a rule or a principle. Considering that the norm in this provision is a rule, a court should resolve this issue via subsumption. Premise 1: the Constitution prohibits torture; Premise 2: the law in question allows torture; Conclusion: the law is unconstitutional.

Let's now imagine a law that restricts religious practices that express discriminatory views against same-sex couples and which is challenged for violating religious freedom (Art. 5th, inc. VI). If we consider that religious freedom and protection against discrimination are principles, then instead of subsumption, the proportionality test applies. The law then needs to pass the three subtests of the proportionality test: suitability (does the restriction on religious freedom promote non-discrimination?), necessity (is there another means less restrictive of religious freedom and which promotes protection against discrimination to the same extent?), and proportionality in the narrow sense (does the degree of restriction on religious freedom justify the gain in protection against discrimination?).

A theory can have various uses in a doctrinal work depending on the analytical purpose of the research. Research can apply a theory to solve a concrete problem (WANG, MORIBE; ARRUDA, 2021), analyze how courts understand and apply a theory (ELLIS, 1999; AFONSO DA SILVA, 2003), evaluate the advantages and disadvantages of a theory, or

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compare it with competing theories to solve legal problems (HUSCROFT; MILLER; WEBBER, 2014), or delve into some aspect of it that requires further theorizing (AFONSO DA SILVA, 2023).

Theories can vary in their degree of abstraction. For example, the theory of principles is part of a theory of Human Rights which contains other propositions in addition to those relating to the theory of principles. Theories with a greater degree of abstraction and generality are sometimes called "general theories" because they are a set of propositions that aim to organize or construct the entirety of a field of law coherently to resolve all conflicts within its scope. When they are discussed on an even more general and abstract level and begin to detach themselves from positive law, doctrinal research starts to overlap with research in Law as a humanity, which will be discussed later.

Doctrinal research, of course, makes use of knowledge from the social sciences and from legal, moral and political philosophy (ROUX, 2014). To continue with the example of the theory of principles, the application of the proportionality test may require social science analyses of whether a measure is suitable (if it is capable of promoting the desired objective) or necessary (if there is another means capable of promoting the desired objective, to the same degree, but less restrictive of rights). The analysis of proportionality in the narrow sense, on the other hand, may have similarities with how arguments are made in political and moral philosophy, as it involves balancing conflicting values. In this sense, it is expected that theories from other types of research in Law or even from outside will appear in doctrinal research.

However, the mere use of a theory in a doctrinal work does not make it a doctrinal theory. Even those who believe that law as a practice is operationally closed admit that it is cognitively open (LUHMANN 1992). In other words, it can use knowledge from any source. Still, this knowledge must be filtered and incorporated into arguments and reasonings specific to doctrinal research, which are those supported by positive law and accepted by the community of legal professionals to solve legal problems (COTTERRELL, 2021; ROUX, 2015).

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Law as a positivist social science: theory as an empirically falsifiable explanation

Unlike legal doctrine, the social sciences are not bound by the materials, arguments, and reasonings of the legal professions. The social sciences seek to describe and explain social phenomena, including those related to law (judicial decisions, practices of the legal community, institutions, creation of norms, social discourses on the law, etc.)

One paradigm of the social sciences - currently predominant in the English-language Political Science and Economics - is positivism. This approach starts from the premise that there is an objective reality, and the purpose of the research is to capture this reality, transforming it into objectively observable data to seek patterns and regularities and, ideally, to show and explain causal relationships. Within this paradigm, legal phenomena can be what are sought to be explained (dependent variable) or what are used to explain other phenomena (independent variable).

Within the positivist paradigm, the aim is to explain social phenomena by formulating hypotheses that can be falsified, i.e., that can be subjected to empirical tests to verify their correspondence with reality (GEORGE, BENNETT, 2005). Hypotheses can be tested using qualitative methods (studies that extract a lot of information from a few cases or one case) or quantitative methods (studies that extract a little information from a large number of cases) (GOERTZ, MAHONEY, 2012). Whatever the method, it is common for the choice of cases in a study to be methodologically justified by the generalizability of the findings. That is, the possibility of, from observed cases, making inferences about the set to which these cases belong.

In this type of research, a theory is *a systematized set of empirically falsifiable propositions, with some degree of abstraction and generality, which aims to explain social phenomena related to law*. Abstraction and generality are central because a theory aims to achieve a valid explanation for a set of phenomena and is not just an *ad hoc* explanation for a particular event. Generality is achieved through generalizability, i.e., making inferences about a whole from observing a part of it. The requirement for a theory to be falsifiable and the ability to be tested using empirical data distinguishes the positivist paradigm of the social sciences from other types of research.

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An example of a theory within the positivist paradigm of social science is Ran Hirschl's theory of hegemonic preservation.[2] He wants to explain the emergence of neoconstitutionalism worldwide from the end of the 20th century. That is, the creation of constitutions with wide-ranging bills of rights and the transfer of significant decision-making power from elected representatives to constitutional courts, which has become increasingly empowered to control legislation (HIRSCHL, 2004, 2007). Why would political elites agree to cede part of their power and voluntarily submit to the control of a Court, contrary to the theory that politicians are rational agents who act strategically to maximize their power?

Hirschl sees no contradiction. Based on case studies, he develops the theory that neoconstitutionalism arises from the interests of hegemonic but threatened political elites. Anticipating the loss of their hegemony, these elites prefer to limit their powers in the present by distributing power to a Court (over whose composition and initial functioning they will have some control) in the expectation that these same limits will also apply to subsequent political elites. In this way, they can guarantee that their political preferences and interests will have some degree of protection and continuity even after they leave power. Hirschl studied only a few jurisdictions, but they were selected in such a way as to allow inferences to be drawn to explain the emergence of neoconstitutionalism in other cases.[3]

A theory can appear in different ways within research in Law as a positivist social science. Research can, for example, develop a theory for phenomena that have not yet been satisfactorily explained (as Hirschl did), test an established theory to falsify it or show its limitations (HAZAMA, 2012; SEVEN; VINX, 2017), apply a theory to understand or explain a particular case (GARCÍA-JARAMILLO; CURREA-MONCADA, 2020; HIRSCHL, 2005; OLIVEIRA, 2020), compare competing theories to explain a phenomenon (GINSBURG; VERSTEEG, 2012), modify a theory that proves to be insufficient to explain a phenomenon (GARDBAUM, 2013), or defend a theory against work that seeks to falsify it (DIXON; GINSBURG, 2017).

[2] Ran Hirschl's theory can be understood as a variation of the insurance theory to explain the emergence of powerful constitutional courts. See: DIXON, Rosalind; GINSBURG, Tom. The forms and limits of constitutions as political insurance. **International Journal of Constitutional Law**, v. 15, n. 4, p. 988–1012, 2017.

[3] On the methodological justification for choosing cases and the possibility of making inferences from a small number of case studies, see: RAN, Hirschl. Comparative Matters. [s.l.]: Oxford University Press, 2014.

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Theories within the positivist paradigm can also vary in their degree of abstraction and generality. Hirschl, for example, creates a middle-range theory to explain a more delimited issue but builds on a comprehensive theory of the behavior of political agents that understands them as predominantly rational, self-interested, and strategic. This theory is often used to explain a much larger set of political phenomena.

Law as an interpretivist social science: theory as interpretation of systems of meaning

Research in Law as an interpretivist social science does not seek to solve concrete legal problems (like doctrinal research), nor does it seek generalizable and empirically falsifiable causal explanations (like positivist social sciences). Interpretivist research seeks to explain social phenomena by studying the beliefs, ideas, values and perceptions (the systems of meaning) of social agents.

The interpretivist paradigm assumes that human actions result from socially constructed systems of meaning. Interpretivist research can be defined as an interpretation of the meanings of human actions to uncover the system of meanings of social agents and thus explain how this affects their behavior and leads to the social phenomena under study (BEVIR; RHODES, 2002; KENNEDY, 1986; PORTA; KEATING, 2008; TRUBEK, 1984). Interpretivist studies, because they move away from the positivist paradigm's ideal of objectivity and falsifiability, place less emphasis on objective data and focus instead on interpreting the systems of meaning of those doing the research and those being researched. Methods preferred by interpretivist approaches include discourse analysis, close observations, and thick descriptions of social behaviors (for example, via ethnography).

Theory in interpretivist social science is *a systematized set of empirically supported propositions, with some degree of abstraction and generality, which offers an interpretation of the systems of meaning of social agents to explain social phenomena related to law*. The interpretivist paradigm is skeptical about the idea of generalizability, in the sense that conclusions about one or a few events can apply to other events. Still, there is a claim that a study of the relationship between certain phenomena can help understand other phenomena within the same category (WILLIAMS, 2000). In this sense, interpretivist research also makes theoretical inferences that transcend what is directly

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observed. Therefore, there can be abstraction and generality, albeit without claiming generalizability.

An example of interpretivist research in Law is Sally Engle Merry´s article "Transnational Human Rights and Local Activism: Mapping the Middle" (MERRY, 2006). The question guiding this study is how transnational human rights language for combating violence against women (such as the UN Convention on the Elimination of All Forms of Discrimination against Women) is adopted and affects practices in places with different systems of meaning, including different understandings of gender, family, and justice.

This process of translation from the global to the local, which Sally Merry called "vernacularization", is carried out by "translators" (intellectuals, activists, consultants, etc.) who have one foot in the transnational human rights movement where the discourse is produced, and the other in the local community where this discourse is expected to have an impact. As well as translating transnational ideas to make them understandable and attractive locally, they also reframe local problems as human rights issues to strengthen the transnational movement of which they are also a part.

Based on ethnographic studies, Merry proposes a model with two types of vernacularization of human rights. The first type is replication, in which a model is transplanted to another location. One example is the creation of centers in Hong Kong to shelter and raise awareness among female victims of violence and to treat male aggressors. These centers replicated the model created in the United States by human rights activists and feminists, although the content and approach gradually began to include values from the local culture. The second type is hybridization, in which local ideas and institutions merge with those from outside. One example is the "women's courts" in India, which resolved family conflicts by combining human rights, Indian law, and community customs. These courts were created for the empowerment and promotion of women's human rights but were established by taking advantage of long-standing structures for conflict resolution by the local community.

Replication tends to be more subversive, with the potential to bring about radical changes in the local culture and power structure by inserting external ideas and practices. Yet, it may have less adherence when it clashes with local values and customs. Hybridization is easier to be accepted but has less transformative potential because it draws on existing structures and practices. This creates challenges and dilemmas for translators negotiating the relationship between the transnational and the local.

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Merry's analysis is based on the ethnography of a few cases. However, the in-depth and contextualized study of the discourses, practices, and ideas of the social actors involved makes it possible to develop concepts (such as "vernacularization"), explain interactions between the transnational and the local (such as the role of "translators") and point out tensions (replication vs. hybridization) that help to understand how legal ideas circulate globally. This contributes to theoretical discussions on legal pluralism (MERRY, 1992); provides a theoretical framework for other studies on the functioning of international law (MERRY, 2006) and the local impact of international human rights law (LILIEBLAD, 2022; PIERSON; BLOOMER, 2017; REILLY, 2011); and inform human rights activism and the formulation of public policies in many areas (GOODALE, 2021).

Interpretivist research can also have different degrees of abstraction and generality. Sally Merry's work focus on the local impact of specific transnational human rights laws, but other research can build and draw on broader theories of society and law. As the level of abstraction and generality increases, research in Law as an interpretivist social science starts to have a stronger interlocution with socio-legal theories, which will be discussed below.

Law as a humanity: theory as object of study and research material

The definition of the humanities is controversial, as is the line between the humanities and the social sciences. For this article, research into law as a humanity includes studies in Philosophy of Law (Legal Theory)[4] and Socio-Legal Theory.

Philosophy of Law seeks to answer questions with a high degree of abstraction by employing philosophical analyses to answer fundamental questions such as those around which the classic debate between jus-naturalist and jus positivist theories revolves: "What is law?", "When should law be obeyed?" and "What is the relationship between law and justice?".[5] Philosophy of Law also seeks to define, evaluate, and reflect on concepts and

[4] Although some authors differentiate between Legal Theory and Philosophy of Law, I won't go into this distinction as I don't consider it indispensable for the purpose of this work. On the distinction, and its possible irrelevance, see WACKS, Raymond. **Philosophy of law: a very short introduction**. 2ed, Oxford: Oxford University Press, 2014, cap. xiii; ROUX, Theunis Robert. Judging the Quality of Legal Research: A Qualified Response to the Demand for Greater Methodological Rigour. **SSRN Electronic Journal**, 2014, p.17-18.

[5] Just to cite a few examples of contemporary exponents of this debate, see: FINNIS, John. **Natural Law and Natural Rights**. 2ed. Oxford: Oxford University Press, 2011; HART, H. L. A. **The Concept of Law**. 3ed Oxford:

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phenomena related to law by proposing answers to questions such as "what are rights?" (WALDRON, 1984), "what elements characterize the rule of law?" (TASIOULAS, 2018), "what is a constitution?" (LOUGHLIN, 2005), "what is the justification for the judicial control of constitutionality in a democracy?" (WALDRON, 2006; FALLON, 2018) and "what are the legal meanings of equality?" (FREDMAN, 2016). Research in Law here distances itself from doctrinal research because its analyses do not need to be grounded in positive law (ALEXY, 2011, p.29). It also distinguishes itself from social sciences research because its theories tend not to result from empirical observations nor be subject to empirical verification.

A theory here is a *systematized set of propositions, with a high degree of abstraction and generality, which offers a perspective on the nature of concepts and phenomena related to law, and/or evaluates these concepts and phenomena normatively based on moral or political theories*. In this type of research, due to the comparatively greater degree of abstraction, theories are the object of study and the research material, whereas empirical data and positive law tend to play a much less relevant role (if any). In terms of method, research is carried out by formulating, interpreting, and evaluating theories using as parameters the requirements of philosophical argumentation, such as logical rigor (consistency between propositions, absence of contradictions, conclusions that follow from premises, etc.), terminological precision, clear exposition, acceptability of premises and conclusions, and the broad scope and applicability of a theory to enlighten our understanding of concrete problems (LIST; VALENTINI, 2016). Normative evaluation here does not refer to discussions about legal validity or legality but to moral and political evaluations of fairness and legitimacy.

An example of research in legal philosophy can be found in Jeremy Waldron´s article "The Core of the Case Against Judicial Review" (WALDRON, 2006). He argues against the judicial control over the constitutionality of legislation because it is incompatible with the premises of a liberal theory of democracy. Waldron does not seek to explain the emergence of the judicial review of legislation or to empirically observe how a court decides or relates to the other branches of government and public opinion when performing this function (a social sciences topic). Nor does he intend to tell us how constitutional courts should behave when reviewing legislation or rule on specific issues

Oxford University Press, 2012; DWORKIN, Ronald. **Law's Empire**. Cambridge: Belknap Press, 1997; DICKSON, Julie. Methodology in Jurisprudence: A Critical Survey. **Legal Theory**, v. 10, n. 3, p. 117–156, 2004.

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(a matter for doctrinal research). Waldron also makes it clear that he intends to construct an argument that is independent of assessments about the effects of the judicial review of legislation in a particular jurisdiction and "uncontaminated by the cultural, historical, and political preoccupations of each society". This further underscores the high degree of abstraction and generality in his work.

Waldron assumes that there will always be moral disagreement in democratic societies. Consequently, a decision-making process accepted as legitimate by all parties is needed for resolving these disagreements. He, therefore, adheres to a procedural theory of political legitimacy: decisions are legitimate not because we agree with them but because they result from a process that we accept. In a democracy, according to Waldron, the majority rule is the legitimate process because it respects the principle of political equality, which would be violated by the judicial invalidation of legislation: why should a majority of eleven (in the case of the Brazilian Supreme Court) override a majority of hundreds elected by a majority of millions? To support his argument, Waldron seeks to differentiate himself from other theoretical works in this debate and rebuts possible criticisms to his argument, such as the risk of a tyranny of the majority.

Research into Law as a humanity also includes social-legal theories, which seek to theorize law considering its social nature, offering a sociological perspective for understanding law and legal phenomena and institutions. Socio-legal theories oppose legal theories that aim to be independent of context because they consider law a social institution and should thus be theorized as such (TAMANAHA, 2017; COTTERRELL, 1998, 2021). This approach works with theories from law and sociology combined with findings from history and the social sciences.

An example of this type of research is the book *A General Jurisprudence of Law and Society* by Brian Tamanaha (TAMANAHA, 2001). He problematizes established theories in Law and in Sociology that see law as the reflection of a society's customs and values (*mirror thesis*) and whose function is to maintain social order. Tamanaha points out that law is largely the product of external influences and a professional elite, which do not necessarily reflect the values and customs of a given society. He also questions whether the law is necessary or sufficient to maintain social order.

By challenging well-established views on the law, he offers new perspectives to answer theoretical questions such as "What is law?", "What is its function in society?" and "What is its relationship with politics and morality?". At the same time, his theoretical

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work opens up research agendas with questions to be answered by social science research, such as "To what extent does law reflect the values and customs of a given society?" and "To what extent does law contribute to the maintenance of social order" (TAMANAHA, 2001; TAMANAHA, 2017). Socio-legal theories not only draw on knowledge produced by other types of research, but also aims to offer tools for interpreting empirical findings.

Finally, it is worth pointing out that the separation between research in law as a practical discipline and as an aspect of the humanities may not always be clear either. As mentioned, when doctrinal theories become more abstract, doctrinal research starts to resemble legal philosophy. For some, such as Ronald Dworkin, there is no line dividing legal philosophy from its practice, and the answer to the question "What is law?" is inseparable from theories about how courts should interpret and apply it (DWORKIN, 1997).

Approaches between different types of research and their theories

The purpose of differentiating the types of research in Law is to understand the various concepts of theories and their functions in legal research (see Table 1). This, however, should not be read as a defense of the compartmentalization of legal research. Such compartmentalization would go against the trend in legal research to seek innovation by incorporating different approaches and knowledge.

Type of research in Law	Definition of theory
as a practical subject	a systematized set of propositions, with some degree of abstraction and generality, which prescribes a way of solving concrete legal problems anchored in positive law.
as a positivist social science	a systematized set of empirically falsifiable propositions, with some degree of abstraction and generality, which aims to explain social phenomena related to law.
as an interpretivist social science	a systematized set of propositions with empirical support, with some degree of abstraction and generality, which offers an interpretation of the systems of meaning of social agents to explain social phenomena related to law.
as a humanity	a systematized set of propositions, with a high degree of abstraction and generality, which offers a perspective on the nature of concepts and phenomena related to law, and/or evaluates these concepts and phenomena normatively based on moral or political theories.

Chart 1 - types of research in Law and their definitions of theory

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Doctrinal research has been transformed by the welcoming of empirical data and consequentialist considerations in legal argumentation (PARGENDLER; SALAMA, 2013) and by the resolution of disputes based on abstract principles that allow courts broad decision-making discretion (SUNDFELD, 2012). This transformation narrows the gap between abstractly analyzing legal concepts and institutions, observing and explaining the effects of law on society, and solving concrete legal problems (BARROSO, 2015; WANG, 2018a).

Research in relatively new areas such as Law & Development (COUTINHO, MIOLA, 2022; PRADO, COUTINHO, SCHAPIRO, 2016) and Law & Public Policy (COUTINHO, 2013; BUCCI, SOUZA, 2022) draws on knowledge (including theories) from different types of research. Although the contours of these fields have yet to be defined, it can be said that these are studies that intertwine analyses of legality, the functioning of institutions, efficiency, and social justice. For example, research can empirically analyze the impacts of the judicialization of social rights on a social policy (Law as a social science) and the legitimacy of the judiciary to decide on these issues in the light of a theory of democracy (Law as a humanity) to develop a doctrinal theory that guides the adjudication of social rights (Law as a practical discipline) (FERRAZ, 2020; WANG, 2018b).

Furthermore, different types of research can share the same premises and be part of the same intellectual movement. For example, Critical Legal Theory (CLT) is a socio-legal theory that understands law as part of a set of beliefs (ideologies) that maintain the dominance of a social class (Marxist theories), gender/sex (feminist theories), race (critical race theory), etc. CLT critically analyses the role of law in social relations, revealing the contradictions and structures of power and domination that law and legal institutions maintain and legitimize.

CLT, which is skeptical of the objectivity and universality sought by the positivist social science paradigm (SARAT, 1990; KENNEDY, 1986; TRUBEK, 1984), offers instruments for interpretivist social science research to interpret legal phenomena (BARTLETT, 1990). The CLT, by rejecting the rationality and objectivity of law on which doctrinal research is based, advances a project of deconstructing law and legal doctrine (ROUX, 2015). However, the CLT also inspires agendas that seek their reconstruction, such as the Feminist Judgments Project. This project seeks to reveal that the judicial practice is neither neutral nor objective by showing how cases could have been decided differently in light of feminist theories, and that court decisions reflect dominant values and

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interests. At the same time, these researchers are proposing new ways of solving legal problems (HUNTER, 2010).

Another intellectual movement that encompasses different types of research is Law & Economics(L&E), which applies theories and methods from Economics to the study of law. L&E can be understood as a branch of legal theory which argues that the function of the law is to facilitate free market operations, seen by proponents of L&E as the most efficient mechanism for allocating resources in society and thus maximizing social welfare.

Within L&E, there is also a positivist social science research agenda that seeks to understand the effect of legal norms and institutions on human behavior and the distribution of goods in society (COOTER; ULEN, 2012). This type of analysis applies the economic theories and methods, especially Microeconomics and Behavioral Economics, to study legal phenomena (CARPENTER; NGUYEN, 2021; PARAMESWARAN; CAMERON; KORNHAUSER, 2021; ZABINSKI; BLACK, 2022).

L&E also contributes to legal doctrine and has its own theories on how law should be interpreted and applied by courts. Doctrinal research related to L&E includes, for example, work that analyze and reflect on the growing use of economic theories in judicial decisions (PARGENDLER; SALAMA, 2013), guide the resolution of problems in certain areas of law (FAURE; PARTAIN, 2019; ZAMIR; TEICHMAN, 2018), and advocate a pragmatic approach to adjudication, which takes into account empirical data and consequences (COOTER; GILBERT, 2022; POSNER, 1990, 1998).

The approximation and combination of different types of research in Law do not make the typology proposed in this article any less relevant. On the contrary, the greater this approximation and combination, the greater the importance of understanding their differences in method, objective, reasoning, and in how theory is understood, used, and produced.

Conclusion

Examining the concept of theory and its function in different types of legal research allows us to reflect on the concerns and misunderstandings presented in the Introduction to this article. Firstly, it is clear that the opposition between theory and "practice" or "reality" is false. Theory within Law as a practical discipline seeks primarily to inform legal practice.

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A good doctrinal theory is capable of organizing the law that applies to a set of situations and offering rational and persuasive answers to concrete problems.[6] Furthermore, to some extent, law is the product of legal doctrine, that is, of scholarly discourses and analyses about what the law is and how it should be applied and interpreted.

In research in Law as a social science, theory explains reality based on observations about the social world. One of the main criteria for assessing the merits of a theory is exactly how well it captures the real functioning of the aspect of the world being studied. Social science theories can also inform the research of more applied nature that analyzes specific institutions or evaluates and informs judicial, administrative, and legislative decisions.

Research in Law as an aspect of the humanities, in turn, allows us to reflect more deeply and rigorously on reality. This depth and rigor also make it possible to find more consistent and reasonable solutions to concrete problems of practical relevance. Just think, for example, of the importance of philosophy (and bioethics, more specifically) for the field of Health Law (FREEMAN, 2008; PHILIPS, CAMPOS, HERRING, 2019). In addition, humanities theories, to be persuasive, need to start from premises that the audience accepts as compatible with reality. WALDRON (2006), for example, mentions empirical observations on the functioning of the legislature and the judiciary to strengthen his argument.

Secondly, it is also clear that the role that theory must play in research varies according to the type of research being carried out. In research in Law as a humanity, theory is the object of study and the research material, and, therefore, theory will be present and play a leading role. In other types of research, the answer depends on whether the research is predominantly problem-driven or theory-driven (PORTA; KEATING, 2008; SHAPIRO, 2002).

Research that is predominantly theory-driven aims to discuss, test, apply, and develop a theory, and, therefore, cases will be selected to best achieve these objectives. For example, work that discusses the limits of Alexy´s theory of principles will choose the cases that make these limitations most apparent. If you want to falsify Hirschl´s theory of hegemonic preservation, you'd better look for a case in which it appears insufficient. A case serves as an instrument for analyzing a theory.

[6] On the relationship between theory and practice in disciplines that produce research and train professionals (for example, Law, Engineering, Medicine and Administration), see Van de Ven & Johnson (2006).

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However, much of the research in Law is predominantly problem-oriented. Cases are chosen for research not because they will necessarily bring great theoretical contributions but because they are relevant to society or specific groups. Problem-driven research often involves theory, for example, to frame a problem and try to offer an explanation, interpretation, or solution. Ideally (but not necessarily), research findings should feed into theoretical reflections. Theories serves as instruments for analyzing concrete problems, and their importance varies from research to research.

In short, clarity about the different types of research in Law allows for better use and understanding of the various types of theory. It is hoped that this will help researchers work with theory more rigorously and confidently, even when trying to combine different types of research in the same research project. Working competently with theory enables important advances in legal research by enhancing our ability to accumulate knowledge, understand and explain phenomena and concepts, and solve practical problems. Understanding what theory is and its function in research also helps to position the field of legal research in relation to other disciplines and to legal practice, either to seek approximations or to mark distinctions.

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Bibliographical references

AFONSO DA SILVA, Luis Virgilio Afonso da. Princípios e regras: mitos e equívocos acerca de uma distinção. **Revista Latino-Americana de Estudos Constitucionais**, n. 1, p. 607–630, 2003.

AFONSO DA SILVA, Luis Virgilio Afonso da. Standing in the shadows of balancing: proportionality and the necessity test. **International Journal of Constitutional Law,** v.20, n.5, p.1738-1767, 2023.

ALEXY, Robert. **Teoria dos direitos fundamentais**. 2. ed. São Paulo: Malheiros Editores, 2011. (tradução de Virgílio Afonso da Silva)

https://doi.org/10.1590/2179-8966/2023/73590 | ISSN: 2179-8966 | e73590

BARROSO, Luís Roberto. A razão sem voto: o Supremo Tribunal Federal e o governo da maioria. **Revista Brasileira de Políticas Públicas**, v. 5, n. especial, p. 23-50, 2015.

BARTLETT, Katharine T. Feminist Legal Methods. **Harvard Law Review**, v. 103, n. 4, p. 829–888, 1990.

BEVIR, Mark; RHODES, R. A. W. **Interpretive Theory.** Theory and Methods in Political Science, 1, 2002.

BUCCI, Maria Paula Dallari; SOUZA, Matheus Silveira de. A abordagem Direito e políticas públicas: temas para uma agenda de pesquisa. **Seqüência: Estudos Jurídicos Políticos**, *43*(90), 1–28, 2022.

CARPENTER, Christopher S.; NGUYEN, Hai V. Intended and Unintended Effects of Banning Menthol Cigarettes. **The Journal of Law and Economics**, v. 64, n. 3, 2021.

COOTER, Robert D.; GILBERT, Michael D. Theory of Adjudication. *In*: COOTER, Robert; GILBERT, Michael (Eds.). **Public Law and Economics**. 1. ed. Oxford: Oxford University Press, 2022.

COOTER, Robert; ULEN, Thomas. **Law & economics**. 6th ed. Boston: Prentice Hall, 2012.

COTTERRELL, Roger. Social Theory and Legal Theory: Contemporary Interactions. **Annual Review of Law and Social Science**, v. 17, n. 1, p. 15–29, 2021.

COTTERRELL, Roger. Why Must Legal Ideas Be Interpreted Sociologically? **Journal of Law and Society**, v. 25, n. 2, p. 171–192, 1998.

COUTINHO, Diogo R. O direito nas políticas públicas, In: MARQUES, Eduardo; FARIA, Carlos Aurélio Pimenta (Orgs.). **Política Pública como Campo Disciplinar.** São Paulo: Editora Unesp, 2013.

COUTINHO, Diogo R.; MIOLA, Iagê Z. What We Talk About When We Talk About Law and Development. **Verfassung und Recht in Übersee**, v. 55, n. 2, p. 242–258, 2022.

DICKSON, Julie. METHODOLOGY IN JURISPRUDENCE: A Critical Survey. **Legal Theory**, v. 10, n. 3, p. 117–156, 2004.

DIMAGGIO, Paul J. Comments on "What Theory is Not". **Administrative Science Quarterly**, v. 40, n. 3, p. 391, 1995.

DIXON, Rosalind; GINSBURG, Tom. The forms and limits of constitutions as political insurance. **International Journal of Constitutional Law**, v. 15, n. 4, p. 988–1012, 2017.

https://doi.org/10.1590/2179-8966/2023/73590 | ISSN: 2179-8966 | e73590

DWORKIN, Ronald. **Law's empire**. 10. print. Cambridge, Mass.: Belknap Press of Harvard Univ. Press, 1997.

ELLIS, Evelyn (Org.). **The principle of proportionality in the laws of Europe**. Oxford: Hart Publishing, 1999.

FALLON, Richard Henry. The Core Of An Uneasy Case For Judicial Review. **Harvard Law Review**, v. 121, n, 7, p. 1693-1735, 2018

FAURE, Michael G.; PARTAIN, Roy A. **Environmental Law and Economics: Theory and Practice**. 1. ed. [s.l.]: Cambridge University Press, 2019.

FERRAZ, Octávio Luiz Motta. **Health as a human right: the politics and judicialization of health in Brazil**. 1. ed. Cambridge: Cambridge University Press, 2020.

FINNIS, John. **Natural law and natural rights**. 2nd ed. Oxford: Oxford University Press, 2011.

FREDMAN, Sandra. Substantive equality revisited. **International Journal of Constitutional Law**, v. 14, n. 3, p. 712–738, 2016.

FREEMAN, Michael (ed.), **Law and Bioethics**. Oxford: Oxford University Press, 2008

GARCÍA-JARAMILLO, Santiago; CURREA-MONCADA, Daniel. The Colombian Tale of Two Legal Revolutions. **Cornell International Law Journal Online**, v. 53, 2020.

GARDBAUM, Stephen. Separation of Powers and the Growth of Judicial Review (Or Why has the Model of Legislative Supremacy Mostly Been Withdrawn from Sale?). **Straus Working Paper 05**, 2013.

GEORGE, Alexander L.; BENNETT, Andrew. **Case studies and theory development in the social sciences**. Cambridge, Mass: MIT Press, 2005.

GINSBURG, Tom; VERSTEEG, Mila. Why Do Countries Adopt Constitutional Review? **SSRN Electronic Journal**, 2012.

GOERTZ, Gary; MAHONEY, James. **A tale of two cultures: qualitative and quantitative research in the social sciences**. Princeton: Princeton University Press, 2012.

GOODALE, Mark. Sally Engle Merry: Shaping the Anthropology of Law. **The Journal of Legal**
Pluralism and Unofficial Law, v. 53, n. 1, p. 4–10, 2021.

https://doi.org/10.1590/2179-8966/2023/73590 | ISSN: 2179-8966 | e73590

HART, H. L. A. **The concept of law**. Third edition. Oxford, United Kingdom: Oxford University Press, 2012.

HAZAMA, Yasushi. Hegemonic preservation or horizontal accountability: constitutional review in Turkey. **International Political Science Review**, v. 33, n. 4, p. 421–440, 2012.

HIRSCHL, Ran. Preserving hegemony? Assessing the political origins of the EU Constitution. **International Journal of Constitutional Law**, v. 3, n. 2–3, p. 269–291, 2005.

HIRSCHL, Ran. The Political Origins of the New Constitutionalism. **Indiana Journal of Global Legal Studies**, v. 11, n. 1, p. 71–108, 2004.

HIRSCHL, Ran. **Towards juristocracy: the origins and consequences of the new constitutionalism**. 1. paperback ed. Cambridge, Mass.: Harvard University Press, 2007.

HIRSCHL, Ran. **Comparative Matters**. Oxford: Oxford University Press, 2014.

HUNTER, Rosemary C.; MCGLYNN, Clare; RACKLEY, Erika; *et al*. **Feminist judgments: from theory to practice**. Oxford: Hart, 2010.

HUSCROFT, Grant; MILLER, Bradley W.; WEBBER, Grégoire. Proportionality and the Rule of Law: Rights, Justification, Reasoning. *In*: MILLER, Bradley W.; HUSCROFT, Grant; WEBBER, Grégoire (Orgs.). **Proportionality and the Rule of Law: Rights, Justification, Reasoning**. Cambridge: Cambridge University Press, 2014.

KAMPOURAKIS, Ioannis. Empiricism, Constructivism, and Grand Theory in Sociological Approaches to Law: The Case of Transnational Private Regulation. **German Law Journal**, v. 21, n. 7, p. 1411–1426, 2020.

KENNEDY, David W. Critical Theory, **Structuralism and Contemporary Legal Scholarship**, New England Law Review, p. 209-289. 1986.

LILJEBLAD, Jonathan. International human rights teachers in Myanmar universities: The individual constraints of structure on intermediaries. **Journal of Human Rights**, p. 1–20, 2022.

LIST, Christian; VALENTINI, Laura. The methodology of political theory, In CAPPELEN, H.; GENDLER, T.; HAWTHORNE, J. **The Oxford Handbook of Philosophical Methodology.** Oxford: Oxford University Press, 2016.

LOUGHLIN, Martin. Constitutional Theory: A 25th Anniversary Essay. **Oxford Journal of Legal Studies**, v. 25, n. 2, p. 183–202, 2005.

https://doi.org/10.1590/2179-8966/2023/73590 | ISSN: 2179-8966 | e73590

LUHMANN, Niklas. Operational closure and structural coupling: The differentiation of the legal system. **Cardozo Law Review**, 13, 1419–1441, 1992.

MERRY, Sally Engle. Anthropology, law, and transnational processes. **Annual Review of Anthropology**. v. 21, n 1, p.357-379, 1992.

MERRY, Sally Engle. Anthropology and International Law. **Annual Review of Anthropology**, v. 35, n. 1, p. 99–116, 2006.

OLIVEIRA, MARCELA REZENDE. Constitutional courts in transitions to democracy: Limits, critiques and possibilities in Brazil and Argentina. **Latin American Law Review**, n. 5, p. 27–44, 2020.

PARAMESWARAN, Giri; CAMERON, Charles; KORNHAUSER, Lewis A. Bargaining and Strategic Voting on Appellate Courts. **American Political Science Review**, v. 115, n. 3, p. 835–850, 2021.

PARGENDLER, Mariana; SALAMA, Bruno Meyerhof. Direito e Consequência no Brasil: em busca de um discurso sobre o método. **Revista de Direito Administrativo**, v. 262, p. 95, 2013.

PHILLIPS, Andelka M., Thana C. de Campos, and Jonathan Herring (eds), **Philosophical Foundations of Medical Law**. Oxford: Oxford University Press, 2019.

PIERSON, Claire; BLOOMER, Fiona. Macro- and Micro-Political Vernaculizations of Rights: Human Rights and Abortion Discourses in Northern Ireland. **Health and Human Rights**, v. 19, n. 1, p. 173–186, 2017.

PORTA, Donatella della; KEATING, Michael. How many approaches in the social sciences? An epistemological introduction. *In*: DELLA PORTA, Donatella; KEATING, Michael (Orgs.). **Approaches and Methodologies in the Social Sciences: A Pluralist Perspective**. Cambridge: Cambridge University Press, 2008, p. 19–39

POSNER, Richard A. **The problems of jurisprudence**. Cambridge, Mass: Harvard University Press, 1990.

PRADO Mariana Mota; COUTINHO, Diogo Rosenthal; SCHAPIRO, Mario Gomes. Law and Development: An Evolving Research Agenda. **The Law and Development Review**, v. 9, n.2, pages 223-231, 2016

REILLY, Niamh. Doing Transnational Feminism, Transforming Human Rights: The Emancipatory Possibilities Revisited. **Irish Journal of Sociology**, v. 19, n. 2, p. 60–76, 2011.

https://doi.org/10.1590/2179-8966/2023/73590 | ISSN: 2179-8966 | e73590

ROUX, Theunis Robert. Judging the Quality of Legal Research: A Qualified Response to the Demand for Greater Methodological Rigour. **SSRN Electronic Journal**, 2014.

ROUX, Theunis Robert. The Incorporation Problem in Interdisciplinary Legal Research: Some Conceptual Issues and a Practical Illustration. **Erasmus Law Review**, 2015.

SARAT, Austin. Off to Meet the Wizard: Beyond Validity and Reliability in the Search for a Post-empiricist Sociology of Law. **Law & Social Inquiry**, v. 15, n. 1, p. 155–170, 1990.

SCHWARTZ, Richard L. Internal and External Method in the Study of Law. **Law and Philosophy**, v. 11, n. 3, p. 179–199, 1992.

SEVEN, Gülşen; VINX, Lars. The Hegemonic Preservation Thesis Revisited: The Example of Turkey. **Hague Journal on the Rule of Law**, v. 9, n. 1, p. 45–82, 2017.

SHAPIRO, Ian. Problems, Methods, and Theories in the Study of Politics, or What's Wrong with Political Science and What to Do about It. **Political Theory**, v. 30, n. 4, p. 596–619, 2002.

SIEMS, Mathias M.; MAC SÍTHIGH, Daithí. MAPPING LEGAL RESEARCH. **The Cambridge Law Journal**, v. 71, n. 3, p. 651–676, 2012.

SUNDFELD, Carlos Ari. **Direito Administrativo para Céticos**. São Paulo: Malheiros Editores, 2012.

SUTTON, Robert I.; STAW, Barry M. What Theory is Not. **Administrative Science Quarterly**, v. 40, n. 3, p. 371, 1995.

TAMANAHA, Brian Z. **A general jurisprudence of law and society**. Oxford: Oxford University Press, 2001.

TAMANAHA, Brian Z. **A Realistic Theory of Law**. 1. ed. Cambridge: Cambridge University Press, 2017.

TAMANAHA, Brian Z. The Internal/External Distinction and the Notion of a "Practice" in Legal Theory and Sociolegal Studies. **Law & Society Review**, v. 30, n. 1, p. 163, 1996.

TASIOULAS, John. The Rule of Law. **King's College London Law School Research Paper No. 21**, 2018.

TRUBEK, David M. Where the Action Is: Critical Legal Studies and Empiricism. **Stanford Law Review**, v. 36, n. 1/2, p. 575–622, 1984.

https://doi.org/10.1590/2179-8966/2023/73590 | ISSN: 2179-8966 | e73590

VAN DE VEN, Andrew H., and JOHNSON, Paul E.. Knowledge for Theory and Practice. *The Academy of Management Review*, vol. 31, no. 4, pp. 802–21, 2006.

WACKS, Raymond. **Philosophy of law: a very short introduction**. 2ed. Oxford: Oxford University Press, 2014.

WALDRON, Jeremy. The Core of the Case against Judicial Review. **The Yale Law Journal**, v. 115, n. 6, p. 1346–1406, 2006.

WALDRON, Jeremy (Org.). **Theories of rights**. Oxford: Oxford University Press, 1984.

WANG, Daniel Wei Liang. Entre o consequenciachismo e o principiachismo, fico com a deferência, **JOTA**, 2018a.

WANG, Daniel. Social Rights Adjudication and the Nirvana Fallacy. **Public Law**, p. 482-499, 2018b.

WANG, Daniel Wei Liang; MORIBE, Gabriela; ARRUDA, Ana Luiza Gajardoni De M. Is Mandatory Vaccination for COVID-19 Constitutional under Brazilian Law? **Health and Human Rights**, v. 23, n. 1, p. 163–174, 2021.

WILLIAMS, Malcolm. Interpretivism and Generalisation. **Sociology**, v. 34, n. 2, p. 209–224, 2000.

ZABINSKI, Zenon; BLACK, Bernard S. The deterrent effect of tort law: Evidence from medical malpractice reform. **Journal of Health Economics**, v. 84, p. 102638, 2022.

ZAMIR, Eyal; TEICHMAN, Doron. **Behavioral Law and Economics**. Oxford: Oxford University Press, 2018.

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