

Importation, Dissemination, and Inflections of Legal Consciousness Studies in French Sociology

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■ Résumé

Importations, diffusions et inflexions des *Legal Consciousness Studies* dans la recherche française

Cet article propose un bilan critique de l'importation et des usages des *Legal Consciousness Studies* dans l'espace académique francophone. Ce cadre d'analyse a révolutionné pour une part la sociologie du droit américaine dans les années 1990 et 2000, en mettant l'accent sur les acteurs profanes, leurs représentations ordinaires et usages quotidiens du droit. Vingt ans après la publication de l'ouvrage emblématique de cette perspective – *The Common Place of Law: Stories of Everyday Life* par P. Ewick et S. Silbey en 1998 –, quel état des lieux concernant le processus d'importation, de diffusion et d'inflexions des *Legal Consciousness Studies* en France ? Ont-elles contribué à renouveler les recherches en sociologie du droit, et plus généralement en sciences sociales ? L'article s'appuie sur une base de données de citations d'une part, et l'analyse qualitative d'une vingtaine d'articles se référant aux *Legal Consciousness Studies*, avant de proposer quelques pistes de recherche futures.

Hégémonie du droit – Importation – Legal consciousness – Traduction.

■ Summary

This article proposes a critical assessment of the importation and uses of legal consciousness studies in French-speaking academia. The analytical framework of legal consciousness studies contributed to a revolution in American sociology of law in the 1990s and 2000s, by focusing on lay actors and their conceptions and daily uses of the law. Twenty years after the publication of this perspective's emblematic book—*The Common Place of Law: Stories of Everyday Life*, by P. Ewick and S. Silbey (1998)—we look at the importation, diffusion, and inflection of legal consciousness studies in France and ask whether this approach has helped to renew research in the sociology of law, and in the social sciences more generally. In this article, we rely on both a citation database and a qualitative analysis of twenty French language articles referring to legal consciousness studies in order to analyze the process by which the approach has been imported, disseminated, and adapted in France before suggesting avenues for future research.

Dissemination – Hegemony of law – Importation – Legal consciousness.

This article proposes a critical assessment of the importation and uses of legal consciousness studies (LCS) in French-speaking academia. This framework of analysis revolutionized the American sociology of law in the 1990s and 2000s by focusing on lay actors and their conceptions and daily uses of the law. Twenty years after the publication of this perspective's emblematic book—*The Common Place of Law: Stories of Everyday Life*, by Patricia Ewick and Susan Silbey¹—we consider whether legal consciousness studies have helped to renew research in the sociology of law, and in the social sciences in France more generally. Has this approach strengthened a sociology of law focused on the daily experience of legality and its structuring of social reality? Has it remained confined to the sociology of law or spread more widely into French sociological research?

This article is based on a bibliometric analysis of citations from a corpus composed of central texts within this research perspective and productions explicitly aimed at importing it into French-speaking research; it is also rooted in a thematic analysis of twenty French language articles that refer to one or more of these works. On these foundations, the article proposes an assessment of the process by which legal consciousness studies have been disseminated in French-speaking academia.

Our analysis shows that the process of cultural importation and theoretical dissemination also produces a series of inflections. As such, we support the hypothesis of a three-stage process: the translation and importation of legal consciousness studies first took place between the late 1990s and 2005, exclusively in the field of anthropology and sociology of law. A second period of progressive diffusion was marked by a movement similar to the one identified by S. Silbey in her 2005 text translated in this special issue. This period is characterized by a superficial, deferential use of the approach that is more individualistic than structuralist and which obliterates the notion of legality and the issues of hegemony of the law that are essential to the founding works of the perspective. We have also identified a multiplication of references to the concept of legal consciousness, mainly in institutional legal contexts, and even in the courts—far from P. Ewick and S. Silbey's perspective of analysis. A third phase now in progress features appropriations of legal consciousness studies that are both more faithful (i.e., situated outside of any institutional context, even if a small share of research remains within an institutional context) and more remote (insofar as they propose a more direct confrontation between the limited and limiting powers that the law offers or otherwise frames and the way in which socially situated actors construct law, live it, and give it life in their daily existence).

Following a brief review of the origins of legal consciousness studies, this article examines its importation process (I), proposes elements to give concrete form to its dissemination in France (II), and then considers the variety of works within this field of research, touching on the renewed perspectives enabled by the notion of legal consciousness as well as the limits that its dissemination has met and the more recent liveliness in the field (III). In the conclusion, we propose avenues for deepening this renewed use of legal consciousness studies in French-speaking countries.

1. Patricia EWICK and Susan S. SILBEY, *The Common Place of Law: Stories from Everyday Life*, Chicago: University of Chicago Press, 1998.

I. Revisiting an Import: From “Legal Consciousness” to “Conscience du Droit”

The notion of legal consciousness could easily appear to be a classic subject in the sociology of law. It constitutes an entry in the *Dictionnaire de sociologie juridique*, published in 1993,² and evokes research such as that conducted by Alan Podgórecki, who directed a major international program entitled “Knowledge and Opinion about Law” between 1968 and 1973, and by François Terré and Alain Sayag, who published an article entitled “*Connaissances et consciences du droit, problèmes de recherche*”³ in *L'Année sociologique* in 1975. It also recalls the Marxist analysis of law, which questions the experience, knowledge, and consciousness of law from a critique of legal ideology. These propositions, however, have remained largely theoretical, whether contributing to functionalist perspectives aimed at understanding the level of knowledge of citizens’ rights or serving critical approaches not based on empirical surveys.

In this latter perspective, David M. Trubek called for the development of empirical works that concentrate on the daily legal experiences of ordinary actors, first in 1984 then in 1989 (with John Esser).⁴ This research is situated less in a perspective of “legal needs” that public authorities or legal professionals would have to fulfill than in a critique that aims to deconstruct and comprehend the legal ideology that regulates daily life and legitimates the powers of public authorities to the point where they are “taken for granted.”⁵ Empirical works on legal consciousness—which could be grasped as a form of “sociologization” of Critical Legal Studies⁶—thus began to emerge in the 1980s. A seminar organized at Amherst by Austin Sarat and Susan Silbey initiated a series of research on the subject. In her article in this special issue, S. Silbey recalls that this seminar favored an entry through culture and ideology: The aim was to study the concrete practices of everyday life in which legal rules are used and perceived (or not) as dimensions of reality, rather than focusing on legal professionals or the way the courts work.

The concept of legal consciousness was developing at the same time in Europe, and particularly in France, in anthropological research that focused on questions of legal socialization without this critical perspective. Following a first article published in *Droit et Société* in 1986, C. Kourilsky-Augeven initiated large-scale studies involving international comparisons with Eastern European countries. These studies focus on

2. André-Jean ARNAUD (dir.), *Dictionnaire encyclopédique de théorie et de sociologie du droit*, Paris: LGDJ, 1993.

3. Alain SAYAG et François TERRÉ, “Connaissance et conscience du droit : problèmes de recherche”, *L'Année sociologique*, 26, 1975, p. 465-495.

4. David M. TRUBEK, “Where the Action is: Critical Legal Studies and Empiricism”, *Stanford Law Review*, 36, 1984, p. 575-622; David M. TRUBEK and John ESSER, “‘Critical Empiricism’ in American Legal Studies: Paradox, Program, or Pandora’s Box?”, *Law & Social Inquiry*, 14 (1), 1989, p. 3-52.

5. See also David M. ENGEL, “How Does Law Matter in the Constitution of Legal Consciousness?”, in Bryant G. GARTH and Austin SARAT (eds.), *How Does Law Matter?*, Evanston: Northwestern University Press, 1998, p. 109-145. Analyzing six works of research on these questions, the author traces this double origin of American legal consciousness studies between functionalist and more critical approaches.

6. Jérôme PÉLISSE, “Les *Legal Consciousness Studies* : une sociologisation domestiquée des *Critical Legal Studies*?”, in Hourya BENTOUHAMI, Anne KUPIEC, Ninon GRANGÉ and Julie SAADA (dir.), *Le souci du droit : où en est la théorie critique ?*, Paris: Sens & Tonka, 2009, p. 223-238.

the characterization and analysis of the modes in which young people (but also adults) are socialized in respect to the law so as to grasp ordinary relationships to the law and popular legal cultures.⁷ The research methods are grounded in surveys and the resulting analyses focus on perceptions and attitudes rather than on conceptions and practices. A first meeting point between the American and European scenes took place when P. Ewick and S. Silbey finalized the publication of *The Common Place of Law*. In 1997, they published the translation of the third chapter of their book which would be published the following year, as an article in *Droit et cultures*, the journal founded by C. Kourilsky-Augeven.⁸ In 1998, a special issue of the same journal was published on “*Legal consciousness et socialisation juridique : pour un dialogue franco-américain*” [“*Legal Consciousness and Legal Socialization: Toward a Franco-American Dialogue*”]. The special issue also included an article by David Engel and Franck M. Munger, who would later write another important work in the field of LCS—*Rights of Inclusion*, published in 2003. A first attempt at importation therefore took place at the end of the 1990s, addressing an audience of legal anthropologists in France. The bibliometric analysis shows that this effort failed: According to Google Scholar almost twenty years later, the two American articles in this special issue are never quoted!⁹

A second attempt was made a few years later: After discovering the work of P. Ewick and S. Silbey in 2001 during a conference organized by the Law and Society Association, L. Israël proposed to students at the ENS Cachan to translate the same chapter in 2002–2003—which Liora Israël and Jérôme Péliasse, who wrote the introduction to the translation, noticed only after the fact.¹⁰ J. Péliasse, who discovered the work under the same conditions and participated in the translation seminar, draws on this research in his PhD dissertation and in 2003 published an article in *Droit et Société* using the research to analyze the implementation of the 35-hour workweek. The same issue of *Droit et Société* also features an article in English by Mauricio García-Villegas, which also offers a critical presentation of LCS.¹¹ This first phase of discovery, translation, and presentation of legal consciousness studies

7. Chantal KOURILSKY, “Connaissances et représentations du droit”, *Droit et Société*, 4, 1986, p. 383-403; Id., *Images and Uses of Law Among Ordinary People*, Paris: Société de législation comparée, 2004.

8. A first encounter had already taken place: Susan Silbey published an article in *Droit et Société* in 1991, in an issue of coordinated by Chantal Kourilsky on “Le rapport des jeunes au Droit à l’Est et à l’Ouest” [The Relationship of Young People to the Law in the East and in the West]. The title of S. Silbey’s article translated in French already included the notion of legal consciousness, as it was entitled “Un jeu d’enfant : une analyse culturelle de la conscience juridique des adolescents américains”.

9. The article by David M. Engel and Franck W. Munger is actually quoted once in an article by Isabelle Carles, published in 2010 in *Champs psy*, entitled “Usage du droit et discriminations multiples : le genre des plaintes visant à lutter contre les discriminations raciales”.

10. See Liora ISRAËL and Jérôme PÉLISSE, “Quelques éléments sur les conditions d’une ‘importation’ (Note liminaire à la traduction du texte de S. Silbey et P. Ewick)”, *Terrains & travaux*, 6, 2004, p. 101-111. The discovery of the 1997 translation and the special issue of *Droit et cultures* in 1998 occurred *after* the translation seminar held in Cachan. A comparison of translation choices, mentioned in the introduction to this article, shows a move from “conscience juridique” (C. Kourilsky-Augeven) to “conscience du droit” (Cachan translators), while “before the law” is no longer translated as “*devant la loi*” but rather as “*face au droit*”.

11. See Jérôme PÉLISSE, “Consciences du temps et consciences du droit chez des salariés à 35 heures” and Mauricio GARCÍA-VILLEGAS, “Symbolic Power Without Symbolic Violence? Critical Comments on Legal Consciousness Studies in USA”, *Droit et Société*, 53, 2003, p. 163-186 et 137-163. M. Garcia-Villegas’ article is a reprint of an article published in the *Florida Law Review* the same year.

ended in 2005 with a publication by J. Péliisse in *Genèses*.¹² We will next consider how LCS was disseminated and through which channels and in what ways it was taken up, used or criticized in the French-speaking social sciences milieu during the second phase of its appropriation.

Table No. 1
The seven American references considered as central to LCS

Title of the reference	Date	Reasons for inclusion in the corpus	Number of citations in French (October 2018)
SARAT A., "The Law is 'All Over': Power, Resistance and the Legal Consciousness of the Welfare Poor", <i>Yale Law Journal of Humanities</i> , 2, p. 343-379	1990	One of the founding articles of LCS, in which the author hesitates between the notion of legal ideology and legal consciousness and relies on a survey of welfare offices.	19
MERRY S. E., <i>Getting Justice and Getting Even, Legal Consciousness Among Working-Class Americans</i> , University of Chicago Press	1990	A book that helped found LCS, based on a thorough investigation of small-courts in a state in New England.	37
MC CANN M. W., <i>Rights at Work. Pay Equity Reform and the Politics of Legal Mobilization</i> , University of Chicago Press	1994	An important work in the Law and Society field that articulates sociology of social movements and LCS.	56
EWICK P., SILBEY S.S., <i>The Common Place of Law: Stories from Everyday Life</i> , University of Chicago Press	1998	The seminal work of LCS.	89
ENGLE D., MUNGER F., <i>Rights of Inclusion. Law and Identity in the life Stories of Americans with Disabilities</i> , University of Chicago Press	2003	An LCS book translated into French in 2017 by EHESS editions.	13
SILBEY S. S., "After Legal Consciousness", <i>Annual Review of Law and Social Science</i> , 1, p. 323-368	2005	Feedback from S. Silbey on the uses and misuses of the concept of legal consciousness in American sociology of law.	11
NIELSEN L. B., FLEURY-STEINER B. (eds.), <i>The New Civil Rights Research: A Constitutive Approach</i> , Ashgate, preface by M. McCann	2006	A collective book based on papers presented at Law and Society colloquia on LCS in various social worlds (work, prison, same-sex marriage, etc.).	0

12. Jérôme PÉLIISSE, "A-t-on conscience du droit?", *Autour des Legal Consciousness Studies, Genèses*, 59, 2005, p. 114-130.

Table No. 2
The six French-language productions that translate or present LCS

Title of the reference	Date	Reasons for inclusion in the corpus	Number of citations in French (October 2018)
SILBEY S., EWICK P., “Devant la loi : la construction sociale du juridique”, in C. KOURILSKY-AUGEVEN (dir.), <i>Socialisation juridique et conscience du droit : attitudes individuelles, modèles culturels et changement social</i> , Paris: MSH-LGDJ, p. 33-56	1997	The first translation of chapter 3 of P. Ewick and S. Silbey book, then in preparation ¹³ .	9
KOURILSKY-AUGEVEN C., “ <i>Legal Consciousness</i> et sociologie juridique : pour un dialogue franco-américain”, <i>Droit et cultures</i> , 35, p. 7-13	1998	An article to introduce LCS to French language researchers and to situate it within legal sociology.	0
PÉLISSE J., “Consciences du temps et consciences du droit chez des salariés à 35 h”, <i>Droit et Société</i> , 53, p. 163-186	2003	An article that presents LCS, uses the approach on a survey focused on the implementation of the 35-hour workweek in French companies, and proposes a first series of critiques.	15
ISRAËL L., PÉLISSE J., “Quelques éléments sur les conditions d’une ‘importation’ (Note liminaire à la traduction du texte de S. Silbey et P. Ewick)”, <i>Terrains & travaux</i> , 6, p. 101-111	2004	Introduction to a translation, offers some initial thoughts on the conditions for importing LCS.	6
EWICK P., SILBEY S., “La construction sociale de la légalité”, <i>Terrains & travaux</i> , 6, p. 112-138 (trad. G. Cassan, D. Didier, E. Gardella, L. Israël, R. Lutaud, C. Ollivier, J. Pélisse, M. Pujuguet, J. Souloumiac, M. Trespeuch, G. Truc, B. Williams)	2004	Second translation of chapter 3 of the Ewick and Silbey’s book, executed by students at ENS Cachan.	16
PÉLISSE J., “A-t-on conscience du droit ? Autour des <i>Legal Consciousness Studies</i> ”, <i>Genèses</i> , 59, p. 114-130	2005	Article presenting LCS, points to certain limits and reflects on the conditions of importing this research perspective.	71

II. Measuring the Dissemination of a Research Perspective

Using a bibliometric analysis, supplemented by a qualitative analysis of the collected literature, we seek to articulate the paths by which works and concepts associated with LCS have been imported into French-speaking academia.

13. Susan Silbey’s 1991 article is not included because it does not present the current of legal consciousness studies, which was still in development in the United States. The article by Maurício García-Villegas published in 2003 is not included because it was published in English, despite being reprinted in a French journal. It is cited nine times, including six times in French in Google scholar.

II.1. Bibliometric Research: Method, Data, Choice

We analyze the dissemination of a corpus of target documents *via* the distribution of French language quotations from these texts. This is less a bibliometric analysis that enables the evaluation of researchers and their prestige¹⁴ than it is a study of the modes of scientific sociability approached through citation practices.¹⁵ A scathing note by Louis Pinto considers the interest of a “sociology of quotations” and underlines the need to define the citational competence underlying it.¹⁶ Little-known forerunner of LCS in France,¹⁷ L. Pinto puts forward “the hypothesis that, in general, the act of citing reflects (objectively as well as subjectively) the position occupied in the field, a position which controls the selection and hierarchization of texts and authors.”¹⁸ In this article we make more rudimentary use of citation practices, aiming to identify the spread of American works from a limited corpus of texts *via* citations made in French language texts.

This corpus is composed of two main parts:

- Books and articles considered seminal or central in English language LCS (N=7);
- French language articles or French translations that played an intermediary role in importing LCS into French academia (N=6).

For each of these documents, we have sought to identify all the French citations¹⁹ in academic publications. No scientific database made it possible to carry out this work in a satisfactory manner: the large American databases include only very few French-speaking journals, and the French databases (Cairn, Isidore) do not make it possible to trace target documents to those that cite them. As such, we use Google Scholar while keeping in mind its limitations.²⁰ Using the Publish or Perish program,²¹ we created a database in the form of an Excel file that contains all French bibliographic references that cite each of the 13 documents. Despite the flaws linked to creating entries by citation and to Google Scholar, once cleaned, this database enables an initial analysis of LCS distribution in France. Our matrix opens on a visualization specific to network analysis and the identification of citation poles.

14. David PONTILLE and Didier TORNY, “La manufacture de l’évaluation scientifique”, *Réseaux*, 177, 2013, p. 23-61.

15. Béatrice MILARD, “Quelles sociabilités derrière les références bibliographiques ? Citations et relations sociales”, *Socio-logos* [Online], 8, 2013.

16. Louis PINTO, “Note pour une sociologie des citations”, *Lire les sciences sociales*, 16 avril 2015, <<https://lss.hypotheses.org/793>> [webpage visited 12 mars 2018].

17. ID., “Du ‘pépin’ au litige de consommation. Une étude du sens juridique ordinaire”, *Actes de la recherche en sciences sociales*, 76-77, 1989, p. 65-81.

18. ID., “Note pour une sociologie des citations”, art. cité, p. 2.

19. Quebec papers are therefore included, but they rarely and only recently cite LCS, a phenomenon already observed in other American legal sociology trends such as the cause lawyering.

20. Manuel DURAND-BARTHEZ *et al.*, “Outils et méthodes”, *Documentaliste-Sciences de l’Information*, 46 (4), 2009, p. 44-59.

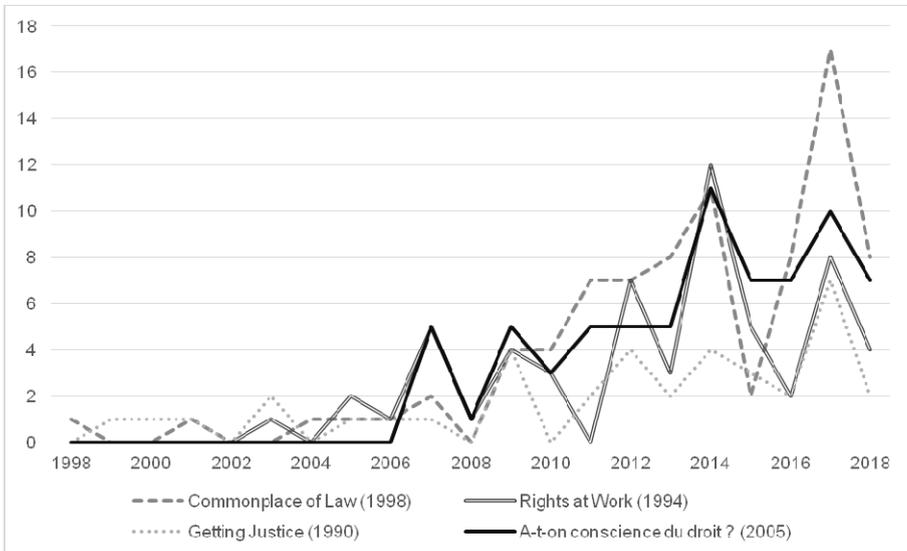
21. Software for extraction and analyze of Google Scholar’s data.

II.2. Results: Rhythms, Supports, Knots

A Rather Slow and Regular Dissemination of LCS

The various documents are cited very unequally. Among the English documents, there is a strong attraction to *The Common Place of Law* (89 citations), followed by *Rights at Work* (56) and *Getting Justice* (37).²² The number of such citations increases significantly from the end of the 2000s.

Graph No. 1
Evolution of the citations of 4 main books and articles
about LCS in France (1995-2018)



Reading: In 2014, *The Common Place of Law* and *Rights at Work* were cited twelve times among the French language publications in Google Scholar. The year 2018 is incomplete since the database was created in October 2018.

The spread of LCS in France really took place ten years after the publication of the emblematic work by P. Ewick and S. Silbey, and three to four years after the translation of *Terrains et travaux* and J. Péliissé's presentation of the research current in 2005. This presentation is much more frequently cited than the translation of Chapter 3 of *The Common Place of Law* (cited sixteen times in fourteen years, between 2005 and 2018). The 1997 translation of the same chapter by C. Kourilsky-Augeven has relatively few citations (nine between 1997 and 2018), and articles in English, even when published in French journals, are rarely cited. To be disseminated and cited, texts must also be published in a medium that lends itself to dissemination—

22. These figures contain all the quotations obtained by Google Scholar, filtered by the French language and cleaned of duplicates.

thus C. Kourilsky-Augeven's introduction in the dossier that she coordinated in 1998 is never mentioned: the support is local (Paris 10 Nanterre, where C. Kourilsky-Augeven works and where the journal *Droit et cultures* is published) and anchored in a sub-discipline (legal anthropology), bringing together a small number of researchers. J. Péliasse's 2005 synthesis, on the other hand, is regularly cited: it is at the crossroads of multiple disciplinary fields (sociology, history, anthropology) and was published in a journal with the widest readership (*Genèses*).

Reviews and Disciplinary Anchoring

19 of the 137 articles published in scientific journals and referring to at least one target document (that is to say 14%) were published in *Droit et Société*. Six of the articles were published in the journal *Genèses* and five in *L'Année sociologique* (mainly in a special issue). Other generalist journals also participated in the circulation of LCS, with five articles published in *Sociologie du travail*, and five in the *Revue française de science politique*. The *Revue française de sociologie* joins in later, and to a lesser extent. *Droit et Société* has played a major role in welcoming works inspired by LCS. Distribution in French-speaking journals was initially sectorial before a fairly recent form of normalization took place in the other fields of French sociology.

A Citation Pole around the ENS Cachan

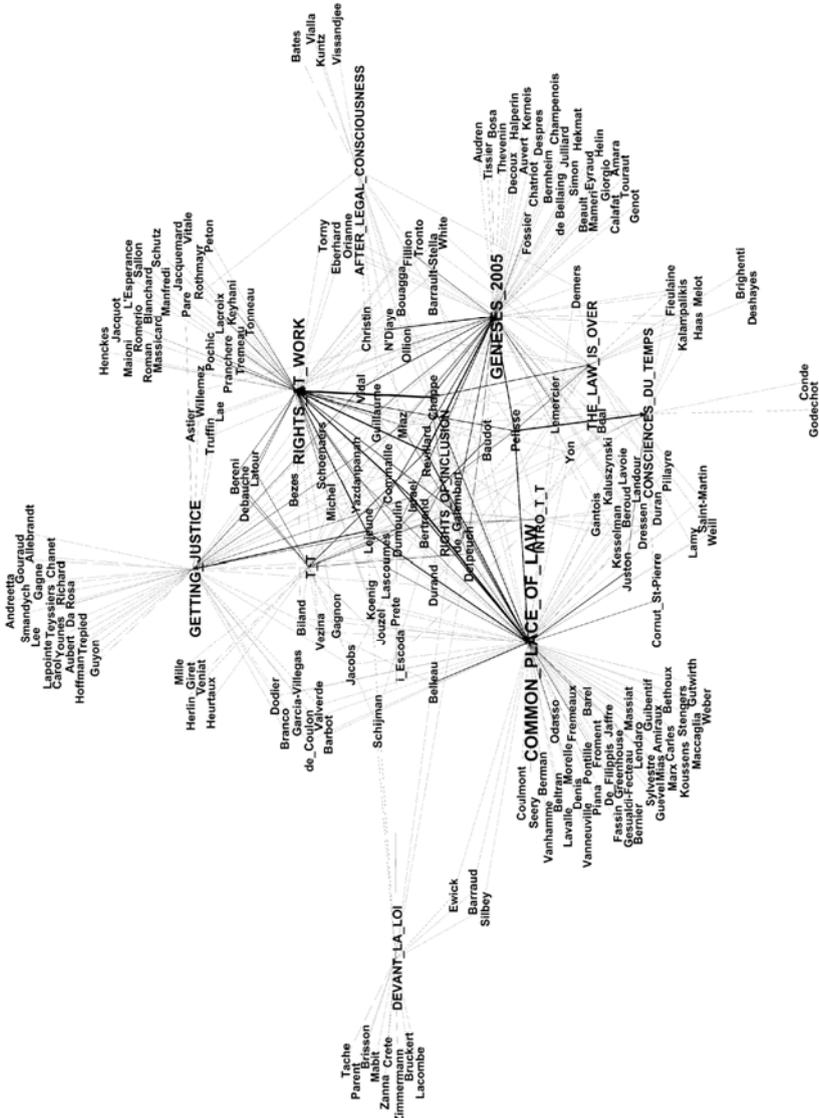
There is a polarization around a core group of authors who cite a target document repeatedly in different publications. Aside from those authors situated in the sociology of law, many other researchers cite a single work (below, we can see the most cited documents).

Table No 3
Distribution of unique and multiple citations of 3 target documents

Targeted document	Number of authors who cite it only once	Number of authors who cite it more than once
<i>The Common Place of Law</i>	79	14
« A-t-on conscience du droit ? »	64	15
<i>Rights at Work</i>	37	24

This matrix table of citing authors/documents shows that authors who cite the same document several times also tend to cite other documents in the corpus. The network visualization makes it easy to locate this core of citing authors who regularly reference multiple publications related to LCS (see graph No 2).

Graph No. 2
Citation networks between French authors and target documents



Note: While most abbreviations referring to these titles appear obvious, it may be noted that "T_T" refers to the translation of Chapter 3 of *The Common Place of Law in Terrains & Travaux*; "INTRO_T_T" to the introductory text written by Liora Israël and Jérôme Péliissé from the translation of Chapter 3 of *The Common Place of Law in Terrains & Travaux*; and "GENESES_2005" to the article presenting the LCS by J. Péliissé in the journal *Genèses* in 2005.

This graph is also available online on the *Droit et Société* website: <<https://ds.hypotheses.org/4577>>.

The citing authors who have a practice of plural citation (bolder lines) distributed across several target documents are closer to the center of the graph. They have either directly participated in importing LCS to France (Liora Israël, Jérôme Pélisse) or they have a very clear connection to the ENS Cachan, and with the Institute of Social Sciences of Politics—ISP—in particular (Jacques Commaille, Claire de Galembert, Thierry Delpeuch, Laurence Dumoulin, Vincent-Arnaud. Chappe, Anne Revillard, etc.). The ISP, a center for public policy and the sociology of law, contributed to the visibility if not the appropriation (and current discussion) of LCS works in France, notably by inviting S. Silbey—who received an honorary doctorate from the ENS Cachan in 2007—to participate in several seminars. Another sub-pole stands out in connection to this research center that is closer to political science (Pierre Lascoumes, Aude Lejeune, Hélène Michel or Pierre-Yves Baudot), as well as a third sub-pole composed of researchers not linked to the ISP or the ENS Cachan who primarily study labor law and industrial relations (Cécile Guillaume, Frédéric Schoenaers, Karel Yon, Maylis Gantois, etc.). This situation may explain the triple anchoring of LCS in France, between the political sociology of law, the sociology of public policy, and the sociology of labor and industrial relations—an anchor that has recently spread to other areas, as shown by the names of young researchers such as Héléna Yazdanpanah, Jonathan Miaz or Corentin Durand.

Beyond Bibliometrics

These elements make it possible to identify a mode of distribution, as well as poles and channels (both translations and presentation articles), a temporality (the existence of a delay effect, but also of a peak in 2014) and formats (beginning with a specialized review and progressively moving to more generalist journal). These initial elements nevertheless remain very limited, due to the source used (Google Scholar) and because many works elude this survey (e.g., most communications and PhD dissertations). Above all, it should be noted that this bibliometric approach says nothing about the actual *uses* of LCS in French language work.

III. From a Limited, Superficial Use to a Recent Effervescence around Legal Consciousness

We conducted a more detailed analysis of works that cite legal consciousness studies by carefully reading twenty such texts. Our analysis finds a limited if not distant use of the reference works, at least initially, corresponding to S. Silbey's findings in 2005 in regard to the American academic community.²³ However, a recent effervescence seems to indicate a renewed interest in this research perspective in France, aiming more to complement the approach than to use it with deference, if not to discuss it more directly as this issue of *Droit et Société* shows.

23. Susan S. SILBEY, "After Legal Consciousness", *Annual Review of Law and Social Science*, 1, 2005, p. 323-368. See translation in this special issue.

III.1. A Deferential and Distant Approach to Legal Consciousness Studies *Systematic Content Analysis*

A sub-corpus of twenty articles identified in our initial database (and thus citing at least one of the reference articles or books) was elaborated by varying the author, the author's academic origin, the target document to which they refer, the empirical field, the periods concerned, and the journals in which they are published. These twenty articles are referenced in the appendix.

Framework

To conduct the analysis, we identified:

- the status of authors;
- the main discipline (sociology, political science, history, social psychology);
- the main questions raised by the article;
- LCS citations and other citations in the sociology of law;
- the ways in which LCS quotations are used: superficial, de-bated, critical, conforming, or deferential;
- reference (or lack thereof) to P. Ewick and S. Silbey's typology;
- problematization in terms of the power of law, or even legal hegemony;
- the "legal context" (lay/judicial/administrative/etc.);
- the type of data and methods used.

These questions reflect our interrogation of the more or less superficial and ostentatious use of LCS works, and the discussion that they initiate (or not) of the results and the theoretical and methodological presuppositions of LCS. We have paid attention to the ways in which these works take up (or not) the problems of power and the hegemony of law—which were associated with the texts that P. Ewick and S. Silbey were in dialogue with—and to the center of the assessment that S. Silbey draws up in article "After Legal Consciousness", in 2005.

LCS: References Rather than Analytical Tools

The qualitative analysis confirms our first intuition: LCS is rarely mobilized in a "tight" fashion, but rather as a set of references legitimizing a sociological approach to law, alongside other classical references in the sociology of French or American law. Referencing LCS supports an approach to the law in action, studied through its practices or the relationships that individuals have with it rather than as a corpus of texts and results to be discussed. Many such references are deferential, evoking the typology *before, with* and *against the law*, or, more frequently, considering the law with regard to the conceptions, categories, and practices to which it gives rise without invoking the notion of legality that is central to S. Silbey (see in this issue). Authors who maintain a more vigorous discussion with LCS are often or have at some time been linked to the ENS Cachan pole (Revillard, 2017;²⁴ Touraut, 2014; Pillayre, 2014; Israël, 2009), even if Durand (2014) or Lascoumes and Bezès (2009), for example, have

24. The names and years in parentheses here refer to the annex at the end of the article, which here is a material, rather than references.

fewer direct or recent close connections with this pole. We may also note the case of articles where a connection to LCS is not made or discussed, despite obvious potential links (for example, de Bellaing, 2010, on legal consciousness in the context of police academies, or Trémeau, 2017, on ordinary legality in the workplace for young employees).

The Absence of Issues Formulated in Terms of Hegemony

A second observation concerns the question of power and hegemony. This is a central concern in a number of LCS works:²⁵ not only is law powerful—even imposing—and offer frameworks for interpretation, but its uses and the ways in which it is constructed, lived, and practiced in daily life depend on social resources, organizational contexts, dispositions, and positions embedded in power relations. Furthermore, as S. Silbey strongly insists in her 2005 article, legality as it is shaped in everyday life through the three forms of relationship to the law (before, with, and against) is fundamentally *structuring* and *hegemonic*. Our social relations and all the spheres in which we live are marked by a partly contradictory legal ideology whose contradictions support its hegemony. While the question of the power of law (the link between law and causes, for example) is present in our corpus, that of the law's hegemony in everyday life remains absent, as evidenced by the rarity of the notion of legality in the twenty articles studied.

A Continued Law-first Approach

This observation echoes the high number of articles on the border between sociology and political science, produced in the wake of J. Commaille's calls for a political sociology of law. Many of the works that refer to LCS thus borrow from the sociology of collective action, echoing M. McCann's work—they are in fact less interested in the law in ordinary life than in its specific use in collective actions. Similarly, several articles deal with a set of legal rules or a regulatory process that begins with the State, and then analyze the implementation or effects—a classic political science problem (Vidal, 2009; N'Diaye, 2016; Commaille, 2016).

Most of the articles in our corpus are even part of a claiming perspective, where the legal horizon is more or less close and explicit: de Galember (2015) and the case of the veil; Fillion and Torny (2015) on judicial compensation for victims of distilbene; Jouzel and Prete (2014) on victims of pesticides; Lejeune and Oriane (2014) concerning strategic litigation on discrimination; Guillaume (2015) on English trade unions, etc. The law is handled within a strategic horizon, as a manipulable resource rather than a hegemonic framework of thought, even if this does not prevent taking into account its cognitive effects on the definition of situation, responsibilities, and wrongs.

The perspective of studying law outside of institutions or in everyday life thus appears relatively remote, as most of the references in our corpus focusing on interac-

25. See Mauricio GARCÍA-VILLEGAS, "Symbolic Power Without Symbolic Violence? Critical Comments on Legal Consciousness Studies in USA", *op. cit.*; Jérôme PÉLISSE, "A-t-on conscience du droit?", *op. cit.*; Michael W. McCANN, "On Legal Rights Consciousness: A Challenging Analytical Tradition", in Benjamin FLEURY-STEINER and Laura Beth NIELSEN (eds.), *The New Civil Rights Research: A Constitutive Approach*, Aldershot : Ashgate, 2006, p. 9-30.

tions between laymen, intermediaries, and/or legal professional, within pre-judicial, judicial, or administrative spaces. Some articles, however, take a more strongly off-center view, focusing on the law outside of institutional settings, such as Revillard (2017) on the appropriation of disability policies (based on Engel and Munger's perspective); Schijman (2013) on the uses of social housing in Argentina; Denis and Pontille (2013) on Internet users participating in the creation of maps; or Lascoumes and Bezès (2009) concerning ordinary representations of corruption in France. None of them enter directly into discussion with P. Ewick and S. Silbey's typology, with the exception of the dossier edited by Barrault-Stella and Spire (2017), which, following the criticisms set out ten years earlier, returns to the before/with/against the law model's absence of social anchoring.

III.2. A Recent Effervescence around LCS and the Question of Power

There has been a certain effervescence around LCS in France recently: from the defense of several theses that use it more or less centrally (Kubiak,²⁶ Vincent²⁷ and Juston²⁸ in 2016; Pillayre²⁹ and Trémeau³⁰ in 2017, for example) to the PhD seminar of the Sociology of Law and Justice network of the French Sociological Association in March 2018, which reproduces the cover image of *The Common Place of Law*; from the translation in 2017 of David Engel and Franck Munger's book (*op. cit.*) to the publication of special issues such as those put out by *Sociétés contemporaines*³¹ (Barrault-Stella and Spire, 2017) or this special issue in *Droit et Société*. While our bibliometric analysis showed a decrease in the number of references after 2014, the dissemination continues in 2017 and probably also in 2018. Of course, the references are sometimes cosmetic and are often introduced through the question of legal socialization in the midst of a chapter or an article.

But we believe that this dissemination reflects the institutional recognition of a perspective that has profoundly renewed the sociology of American and French law over the past fifteen years or so. The place of LCS in recent French handbooks,³² in L. Israël's article on the evolution of French socio-legal studies,³³ and in J. Commaille's

26. Julien KUBIAK, *La "managérialisation" de la prévention des risques professionnels en entreprise. Enquête parmi les préventeurs de la SNCF*, PhD dissertation in Sociology, Université Versailles Saint Quentin en Yvelines, 2016.

27. Fanny VINCENT, *Un temps qui compte. Une sociologie ethnographique du travail "en 12 heures" à l'hôpital public*, PhD dissertation in Sociology, Université Paris Dauphine, 2016.

28. Romain JUSTON, *Le corps médico-légal. Les médecins légistes et leurs expertises*, PhD dissertation in Sociology, Université Versailles Saint Quentin en Yvelines, 2016.

29. Héloïse PILLAYRE, *Justice et justesse de l'indemnisation. Acteurs et dispositifs de l'État providence à l'épreuve du scandale de l'amiante*, PhD dissertation in Sociology, École des hautes études en sciences sociales (EHESS), 2017.

30. Camille TRÉMEAU, *S'informer, s'indigner, réclamer, revendiquer ou non en entreprise : les jeunes salariés à l'épreuve de leurs droits*, PhD dissertation in Sociology, Université de Nantes, 2017.

31. Special issue "Quand les classes supérieures s'arrangent avec le droit", *Sociétés contemporaines*, 108, 2017.

32. See Thierry DELPEUCH, Laurence DUMOULIN and Claire DE GALEMBERT, *Sociologie du droit et de la justice*, Paris: Armand Colin, 2014; Angèle CHRISTIN and Étienne OLLION, *La sociologie aux États-Unis aujourd'hui*, Paris: La Découverte, 2012.

33. Liora ISRAËL, "Legalize it! The Rising Place of Law in French Sociology", *International Journal of Law in Context*, 9 (2), 2013, p. 262-278.

recent synthesis of his work³⁴ are evidence of this interest. In the context of this effervescence, scholars are also beginning to challenge this perspective—to use it not only with deference or to signal an approach to the law in action, but also with the ambition of analyzing its limits, presuppositions, or to point out the need to push further. Some works propose, as has already been mentioned, to make use of the LCS perspective by specifying the relationships to and uses of law by the “haves”; others propose to complete P. Ewick and S. Silbey’s typology from a study of ordinary representations of the law *via* the use of focus groups;³⁵ some scholars criticize the approach’s overly mentalist aspects (that is, focused on the representations of the actors) by attempting to join it to a pragmatist approach³⁶ while still others seek to use LCS to study public policy.³⁷ In short, the uses of LCS are varied, plural, and rarely frontal and critical, even if an effervescence in 2017-2018 reflects a more direct discussion that is strongly apparent in this issue of *Droit et Société*.

Conclusion

Leaving aside issues of translating concepts that are culturally rooted in a particular society³⁸, as well as the reception of LCS in the United States and other academic zones,³⁹ the present article has attempted to show how this research perspective has been imported and disseminated in France and French-speaking countries. The story begins with translations presented in generalist journals as well as empirical testing and theoretical discussions in the early 2000s; increasingly frequent references, though mostly superficial, for the next ten years; and finally, a recent effervescence that has inaugurated a more direct discussion on this theoretical framework, its contributions, and its limits. Our analysis attempted to define this dissemination process by identifying citation networks and scientific poles, as well as by closely studying a limited but significant corpus of articles that cite some of the main texts of LCS.

Let us conclude by proposing some avenues for future research that would allow for the integration of problems raised by LCS. These perspectives are often limited

34. Jacques COMMAILLE, *À quoi nous sert le droit ?*, Paris: Gallimard, 2015.

35. Laurence DUMOULIN and Cécile VIGOUR, “A Focus Group Approach to Analyzing Experiences of Law and Justice”, Annual Law and Society Meeting, Mexico, 2017.

36. Vincent-Arnaud CHAPPE, *L'égalité en procès. Sociologie politique du recours au droit contre les discriminations au travail*, PhD dissertation in the Social Sciences, ENS Cachan, 2013.

37. See for example Pierre-Yves BAUDOT and Anne REVILLARD, “Entre mobilisations et institutions. Les politiques des droits dans l’action publique”, *Gouvernement et action publique*, 4 (4), 2014, p. 9-33.

38. See elements in Liora ISRAËL and Jérôme PÉLISSE, “Quelques éléments sur les conditions d’une “importation” (Note liminaire à la traduction du texte de S. Silbey et P. Ewick)”, *op. cit.* and Jérôme PÉLISSE, “A-t-on conscience du droit?”, *op. cit.* LCS are strongly internationalized today, as shown by the diversity of geographical areas that mobilize this perspective, whether in our corpus or outside the Francophone world. In the two panels dedicated to LCS at the Law and Society Association conference in 2017, for example, half of the speakers were non-American.

39. This is not without its problems, as this reception also has a history in the United States and elsewhere. See Jérôme PÉLISSE, “A-t-on conscience du droit?”, *op. cit.*, which discusses for example the work of M. Hertogh, a Dutch researcher who claims a European approach to LCS distinct from that theorized by P. Ewick and S. Silbey.

to the use of P. Ewick and S. Silbey's founding typology of relationships to the law, notably in a strategic readings of individual or collective action. A more faithful consideration would require starting "backwards"—that is, from the place of the law in daily life. Indeed, much remains to be done to document the influence of the law in the various subfields of social life. How pervasive is the law? Is it hegemonic? How and in what form is it expressed? Is it constructed, represented, practiced, lived? Legal conscience studies may lead us to question the centrality of legality, or even the idea of a process of increasing legalization (or "juridification") of our social relations, which would oblige us to give an increasingly important place to law in our daily lives.

This postulate or hypothesis is not, in fact, an obvious one, as Engels' work on legal consciousness in Thailand has shown.⁴⁰ It is not necessarily pertinent to speak of the hegemony of the law and it is undoubtedly necessary to treat both horizontal and vertical perspectives in studying legal consciousness.⁴¹ As such, it is an important matter to ask how the law fits together with ordinary legality, which incorporates many other logics and normativities. Should we not distinguish the different spheres of social life, where legal categories impose themselves more or less regularly and more or less totally on social practices and interactions? It is important not to be trapped by the totalizing dimension of the notion of hegemony, to rethink the degrees, variations, contrasts, and tensions within the legalization process from a more pragmatic perspective. It is also important to think about the "silent phases" of the law, where it exists in the background as a "grammatical unconscious"⁴² that structures what S. Silbey calls *legality*. In a number of cases, the law does not explicitly participate in the regulation of situations, but there is always a potential for interaction – a possible horizon towards which it could be brought to unfold. We must thus explore the conditions of legalization not of a society or a social system, but of a situation:⁴³ How is the law defined and why is it invoked? What are the conditions for its "passage"?⁴⁴ This calls for micro-sociological work on the dynamics of interaction, particularly in situations of dispute.

A second avenue of exploration concerns the actors, forms, and materiality of the law, or rather of legality. The assertion of legal hegemony leaves in the shadows the question of power apparatuses (in the sense of Michel Foucault) by which it is capable of expressing itself. We are not referring here only to the formal apparatuses of the police and the justice system, but more broadly to all forms of mediation

40. See David M. ENGEL and Jaruwan S. ENGEL, *Tort, Custom and Karma. Globalization and Legal Consciousness in Thailand*, Stanford : Stanford University Press, 2010. The authors notably show that the law not only plays a small role in daily life for people in many villages in this country (as it competes with the spirits and other references to religion), but that law and legality could even « move back » despite processes of legal globalization, which have developed in these villages.

41. See David M. ENGEL, "Vertical and Horizontal Perspectives on Rights Consciousness", *Indiana Journal of Global Legal Studies*, 19 (2), p. 423-455.

42. Cyril LEMIEUX, *Le devoir et la grâce*, Paris: Economica, 2009.

43. As proposed, for example, by Renaud DULONG, "'On n'a pas le droit...'. Sur les formes d'appropriation du droit dans les interactions ordinaires », in François CHAZEL and Jacques COMMAILLE (dir.), *Normes juridiques et régulation sociale*, Paris: LGDJ, 1991, p. 257-264.

44. To borrow a term used by Bruno Latour and Jean-Marc Weller.

by which the law recalls itself as a potential actor in our existence. These mediations may be embodied by “legal intermediaries” who are not necessarily professionals,⁴⁵ but they are also diffused throughout our daily environments, by way of signs, alerts, regulations, etc.—all products of the law that indirectly recall the legalization of our daily lives, like the “management tools”⁴⁶ and “negotiation tools”⁴⁷ that pervade the world of work. Legality also emerges at the meeting points between humans and objects that populate social spaces. These few suggestions call for an understanding of LCS not as a paradigm in relation to which we should take a position, but as a set of theoretical resources open to criticism and hybridizations, in order to think about the presence of legality and action *of the law* and *through the law* in our societies.

45. See Shauhin TALESH and Jérôme PÉLISSE, “How Legal Intermediaries Facilitate or Inhibit Social Change”, *LIEPP Working Paper*, 73, 2018 and Jérôme PÉLISSE, “Travailler le droit : lectures et perspectives sociologiques”, *Revue française de sociologie*, 59 (1), 2018, p. 99-125.

46. See Ève CHIAPELLO and Patrick GILBERT, *Sociologie des outils de gestion : introduction à l'analyse sociale de l'instrumentation de gestion*, Paris: La Découverte, 2013.

47. Vincent-Arnaud CHAPPE, “L’agentivité d’un outil de quantification des inégalités sexuées en entreprise”, *Working Paper i3*, 2017, <<https://hal-mines-paristech.archives-ouvertes.fr/hal-01667367/document>> [web-page visited on 29 January 2018].

Annex: The Corpus of Twenty Articles

- BARRAULT-STELLA Lorenzo et SPIRE Alexis, "Introduction", *Sociétés contemporaines*, 108, 2017, p. 5-14.
- BEAL Arnaud, KALAMPALIKIS Nikos, FIEULAINÉ Nicolas et HAAS Valérie, "Expériences de justice et représentations sociales : l'exemple du non-recours aux droits", *Les Cahiers Internationaux de Psychologie Sociale*, 103, p. 549-573.
- BELLAING Cédric MOREAU DE, "De l'obligation à la ressource", *Déviance et Société*, 34 (3), 2010, p. 325-346.
- COMMAILLE Jacques, "Les enjeux politiques d'un régime de connaissance sur le droit. La sociologie du droit de Georges Gurwitsch", *Droit et Société*, 94, 2016, p. 547-564.
- DENIS Jérôme et PONTILLE David, "Une infrastructure évasive", *Réseaux*, 178-179, 2013, p. 91-125.
- DURAND Corentin, "Construire sa légitimité à énoncer le droit. Étude de doléances de prisonniers", *Droit et Société*, 87, 2014, p. 329-348.
- FILLION Emmanuelle et TORNY Didier, "De la réparation individuelle à l'élaboration d'une cause collective", *Revue française de science politique*, 65 (4), 2015, p. 583-607.
- GALEMBERT CLAIRE DE, "Le droit à porter le voile : cause perdue ou naissance d'une *politics of rights* ?", *Revue interdisciplinaire d'études juridiques*, 2016, p. 91-114.
- GUILLAUME Cécile, "Les syndicats britanniques et le recours au contentieux juridique", *La nouvelle revue du travail*, 7, 2015 (en ligne <<http://nrt.revues.org/2354>>).
- ISRAËL Liora, "Résister par le droit ?", *L'Année sociologique*, 59 (1), 2009, p. 149-175.
- JOUZEL Jean-Noël et PRETE Giovanni, "Devenir victime des pesticides. Le recours au droit et ses effets sur la mobilisation des agriculteurs Phyto-victimes", *Sociologie du travail*, 56 (4), 2014, p. 435-453.
- LASCOUMES Pierre et BEZÈS Philippe, "Les formes de jugement du politique", *L'Année sociologique*, 59 (1), 2009, p. 109-147.
- LEJEUNE Aude et ORIANNE Jean-François, "Choisir des cas exemplaires : la *Strategic litigation* face aux discriminations", *Déviance et Société*, 38 (1), 2014, p. 55-76.
- N'DIAYE Marième, "La réforme de la Moudawana : une révolution ? Lire la norme islamique à l'aune de sa redéfinition par l'État", *Studies in Religion / Sciences Religieuses*, 45 (2), 2016, p. 146-165.
- PILLAYRE Héloïse, "Les victimes confrontées à l'incertitude scientifique et à sa traduction juridique : le cas du vaccin contre l'hépatite B", *Droit et Société*, 86, 2014, p. 33-53.
- REVILLARD Anne, "La réception des politiques du handicap : une approche par entretiens biographiques", *Revue française de sociologie*, 58 (1), 2017, p. 71-95.
- SCHIJMAN Emilia, "Usages, pactes et 'passes du droit'", *Déviance et Société*, 37 (1), 2013, p. 51-65.
- TOURAUT Caroline, "Les proches de détenus et leurs rapports ordinaires au droit pénitentiaire", *Droit et Société*, 87, 2014, p. 375-392.

TRÉMEAU Camille, “De jeunes salariés confrontés à l’(in)justice du travail : recours aux prud’hommes et effets socialisateurs de l’épreuve judiciaire”, *Politix*, 118, 2017, p. 157-181.

VIDAL Dominique, “Une relation ancillaire à l’épreuve du droit”, *Travail, genre et sociétés*, 22, 2009, p. 97-113.

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