

The Goldschmidts and their contributions to the legal culture of South America (Intellectual paths of exile) (*)

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Summary: In this paper we carry out a reconstruction of the intellectual biographies of James, Robert and Werner Goldschmidt and their influence on the legal culture of South America. To that end we have analyzed their contributions in the areas of Procedural Law, Criminal Law, Commercial Law, Private International Law, Comparative Law and Philosophy of Law, at a theoretical level, and Positive Law. We have considered them especially in their integration with local legal elites and the formation of a large number of disciples who have occupied and occupy various University Chairs.

Keywords: Goldschmidt. South America, Procedural Law. Criminal Law. Comercial Law. Private International Law. Comparative Law. Philosophy of Law.

Abstract: In der vorliegenden Arbeit rekonstruieren wir die intellektuellen Biografien von James, Robert und Werner Goldschmidt und deren Einfluss auf die Rechtskultur Südamerikas. Zu diesem Zweck haben wir die Beiträge der Goldschmidts in den Bereichen Verfahrensrecht, Strafrecht, Handelsrecht, internationales Privatrecht, vergleichende Rechtswissenschaft und Rechtsphilosophie sowohl auf theoretischer Ebene als auch das positive Recht betreffend analysiert. Dabei haben wir uns besonders auf deren Integration in die lokalen Rechtseliten und ihre Ausbildungsarbeit an einer großen Anzahl an Studenten konzentriert, die diverse Lehrstühle und/oder andere Funktionen des Rechtsbereiches innehatten oder innehaben.

Schlüsselworte: Goldschmidt. Südamerika. Verfahrensrecht. Strafrecht. Handelsrecht. Internationales Privatrecht. Vergleichende Rechtswissenschaft. Rechtsphilosophie.

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Resumen: En el presente trabajo realizamos una reconstrucción de las biografías intelectuales de James, Robert y Werner Goldschmidt y su influencia en la cultura jurídica de América del Sur. Con esa finalidad hemos analizado sus aportes en los ámbitos del Derecho Procesal, Penal, Mercantil, Internacional Privado y Comparado y en la Filosofía del Derecho, en los niveles teóricos y de Derecho Positivo. Nos hemos detenido especialmente en su integración con las élites jurídicas locales y en la formación de una gran cantidad de discípulos que han ocupado y ocupan diversas cátedras universitarias y otros lugares en el protagonismo jurídico.

Keywords: Goldschmidt. América del Sur. Derecho Procesal. Derecho Penal. Derecho Mercantil. Derecho Internacional Privado. Derecho Comparado. Filosofía del Derecho

I. The Goldschmidts on the previous European context before the exile

1. Biographical and intellectual profiles of James, Robert and Werner Goldschmidt before the advent of National Socialism

James Goldschmidt was born in Berlin on December 17, 1874. Born in a prosperous Jewish family (his father was a banker) he was given a thorough education during his childhood and teen years, with regard to both culture and foreign languages, at the French Lycée in Berlin. He studied Law at the University of Heidelberg and later in Berlin, where he met and became first a disciple and then a colleague of Frank von Liszt. He developed his doctoral thesis, under the title *La teoría de la tentative acabada e inacabada*¹, submitted it in 1895 and published it two years later. While he trained for his teaching licence, Goldschmidt did practice in Administration of Justice, required of him for the second State examination. In 1902 he received his licence after submitting his research paper called *Derecho penal administrativo*². He began his teaching career in Berlin in 1901 as a *Privatdozent*, that is, as a professor with no fixed salary, whose remuneration was based on the number of students who registered for his courses.

¹ Original title: Die Lehre vom unbeeidigten und beeidigten Versuch, Breslau, 1897. There is a Spanish translation by Jacobo López Barja de Quiroga and León García- Comendador Alonso, in *James Goldschmidt, Derecho, Derecho penal y Proceso*, Tº I, Problemas Fundamentales del Derecho, Jacobo López Barja de Quiroga (ed.), 2010 (189/240 ff.).

² Original title: Das Verwaltungsstrafrecht: eine Untersuchung der Grenzgebiete zwischen Strafrecht und Verwaltungsrecht auf rechtsgeschichtlicher und rechtsvergleichender Grundlage, 1902.

On August 7, 1906 he married Margarethe Lange (Margarethe Goldschmidt as from then), and from this marriage four children were born: Robert, Werner, Víctor and Ada.

In 1908 he became Professor Extraordinaire at the School of Law of the University of Berlin. As from 1919 he was appointed full professor at the same University, while working at the Institute of Criminal Law, which he co-directed along with Eduard Kohlrausch. He was twice Dean of the School of Law and, from 1927, member of the scientific examinations office.

Like most citizens of his generation, James Goldschmidt took part in the Great War (1914-1918). This is significant because, as a result of this, as we shall see in the following paragraph, when the National Socialist political persecutions began, he was protected for a brief period by the so-called *Hindenburg exception*.

James Goldschmidt visited a variety of research horizons. His bibliography includes 94 titles, among books and articles³. Despite the variety reflected in them, his main scientific concerns undoubtedly developed around four axes: criminal law, administrative criminal law, procedural law (civil and criminal) and the philosophy of law.

With regard to matters relating to the criminal, criminal procedural and criminal administrative domains – those covered by our research – his main works, besides those already mentioned, were: *La punibilidad de la coacción ilícita*⁴ (1897); “Sobre la teoría del hurto” (1900);⁵ *El estado de necesidad un problema de la culpabilidad* (1913);⁶ *Sobre la reforma del proceso penal*; ⁷ *Contribución a la teoría de la estafa de crédito* (1928);⁸ “La concepción normativa de la culpabilidad”, an article included in Libro

³For a compilation of his works, cfr. *Jacobo López Barja de Quiroga*, “James Goldschmidt, un gran jurista judío perseguido por el nazismo”, in James Goldschmidt, *Derecho, Derecho penal y Proceso*, Vol I, 37 (42 ff.).

⁴ Original title: *Die Strafbarkeit der widerrechtlichen Notigung nach dem Reichsstrafgesetzbuch*, Schletter, 1897.

⁵ Original title: “Aus der Lehre vom Diebstahl”. In: *Archiv für Strafrecht und Strafprozeß* Jg. 47, 1900.

⁶ Original title: *Der Notstand ein Schuld problem: mit Rücksicht auf die Strafgesetzesentwürfe Deutschlands, Osterreichs und der Schweiz*, Manzsche K.u.k. Hof- Verlags- und Universitätsbuchhandlung, 1913.

⁷ Original title: *Zur Reform des Strafverfahrens*, 1919.

⁸ Original title: *Beiträge zur Lehre vom Kreditbetrug* Beiträge zur Lehre vom Kreditbetrug, in *Zeitschrift für die gesamte Strafrechtswissenschaft*, Vol. 48, 1928.

Homenaje a Frank⁹, and published in 1930; *Metodología jurídico - penal*¹⁰ (1935) and *Problemas jurídicos y políticos del proceso penal* (1935).¹¹

One of the most relevant indicators of Goldschmidt's influence in those days is reflected in his participation in several legislative initiatives. In this sense, it is fitting to recall that at the start of the twentieth century there was a clear need to reform the criminal code of 1871. At the time, German scientific theory was in tension between two doctrines: the so-called *classical* school, which posed a retributive theory of sentences, represented mainly by Karl Binding and Karl v. Birkmeyer, and the *modern* school, with a special preventive social orientation, where the most outstanding and binding figure was v. Liszt. For the reform to go ahead successfully, it was necessary to seek a certain balance between these positions.¹² Within this context, an initial draft of the German criminal code appeared in 1909, "which attempted to reconcile the classical and modern schools and which, though adhering to the theory of retribution, made important concessions to the modern school".¹³ In the face of this draft, professors Kahl, v. Liszt, v. Lilienthal and James Goldschmidt submitted a more advanced counter-project in 1911.¹⁴

On the other hand, and as regards the criminal process, the Minister of Justice of the Empire charged James Goldschmidt with drawing up a new project of the Criminal Procedural Ordinance, which became known by the author's name. This project of

⁹ Original title: Normativer Schuldbegriff. Festgabe für Reinhard von Frank zum 70, 1930.

¹⁰ Legal-criminal methodology: workshop held at the University of Madrid from February to April, 1934: Guide to solve practical cases of criminal law, Volume 60, from the Library of General Revision of Legislation and Jurisprudence, 1935.

¹¹ Legal and political problems of the criminal process: conferences given at the University of Madrid from December 1934 to March 1935.

¹² On this matter: *Claus Roxin*, Derecho Penal. Parte general, 1997, 114 ff. Despite the theoretical dispute between the two schools, modern research claims that the differences between Binding and v. Liszt lay more in name than in content. Indeed, *Francisco Muñoz Conde*, in "La herencia de Franz von Liszt", Review of criminal law and criminal procedural law, 2001, 28 ff., states that: "What Von Liszt proposed with his author's typology was to "make the incorrigible harmless"; what Binding defended in his retributive criminal law was exactly the same thing although, rather than refer to a police measure, he would resort to the gravity of the sentence, claiming a more severe criminal reaction (life sentence, or even the death penalty) based on the severity of the author's culpability or on abstract ideas of probity, exaggerating the concept of the sentence. However, the end is, in short, the same in both authors, as well as quite manifest."

¹³ *Roxin*, 115 ff. Roxin indicates these among the concessions: introduction of a conditional sentence, admissibility of custody for mentally ill delinquents, internment in a rehabilitation centre, creation of a higher "security sentence" for professional recidivists, habitual delinquents, as well as a criminal law for minors aimed at educating and increasing the criminal age of majority from 12 to 14 years.

¹⁴ It was thus qualified by *Hans Heinrich Jescheck*, Tratado de Derecho Penal. Parte general, 1993, 88 ff. The 1909 draft and the 1911 counter-project were taken into account for the first Criminal Law Reform Committee which drew up the 1913 Draft; however, this project never gained legal status because WWI had begun.

Goldschmidt's sought to "overcome all the issues proper to the inquisitive process and the development of the accusatory criminal process", introducing the mixed jury; establishing extraordinary appeal for all affairs; restricting and controlling the possibility of agreeing on provisional imprisonment, by demanding very strict concurrence causes for it to be ordered.¹⁵

Robert Goldschmidt was James's first-born. He was born in Berlin on July 4, 1907. He graduated in law at the University of Berlin in 1929 and was appointed Civil Judge in 1932. Unlike his father, Robert developed an early interest in research linked to trade law. His thesis, which obtained a *magna cum laude*, referred to the merging of public limited companies¹⁶ and was published in 1930.¹⁷ Although his bibliography exceeded one hundred and forty two titles (including books, articles and translations) on a wide variety of topics (maritime law, labour law, comparative law, process theory, legal philosophy, etc.);¹⁸ his contributions to criminal law (substantive and administrative) and procedural criminal law, coincided with his stay in Italy and his exile in Latin America, which is why they will be analysed when we focus on these sections of his intellectual biography.

Werner Goldschmidt was born in Berlin on February 9th, 1910 and was the son of James and Margarethe (Lange) Goldschmidt. He studied Law in Kiel, Berlin and Hamburg. In this University, he obtained a Doctorate Degree in Law.¹⁹ He was an assistant professor at the University of Kiel.

2. German racial laws and the Goldschmidt family

On January 30, 1933, Hindenburg appointed Hitler as Chancellor. Weimar Germany had come to an end. And although right-wing political forces, under the inspiration of different ideologists (e.g. Ernst Jünger), were guided towards designing a

¹⁵López Barja de Quiroga, 23 ff. The project was strongly resisted in the political environment and did not prosper.

¹⁶ Stefan Grundmann (et al.), Festschrift 200 Jahre Juristische Fakultät der Humboldt-Universität zu Berlin: Geschichte, Gegenwart und Zukunft, 2010, 92 ff.

¹⁷ The thesis was entitled: Die sofortige Verschmelzung (Fusion) von Aktiengesellschaften unter besonderer Berücksichtigung der Reformfragen, 1930.

¹⁸ Roberto Goldschmidt, List of publications, University Print, Cordoba, 1949. Likewise, Libro / Homenaje a la memoria de Roberto Goldschmidt, Central University of Venezuela, School of Law, Caracas University Print. 1967, 20 ff.

¹⁹ On this matter: Werner Goldschmidt, La Universidad alemana, in Justicia y verdad, Buenos Aires, La Ley, 1978, 525 ff.

national identity based on racial principles²⁰, the first phase of the new government's anti-Semitic policy became apparent in the Act of April 7, 1933 on *re-establishing the civil professional service* and its regulation.²¹ By virtue of this document's 1st and 2nd articles, two officials who were not Aryan would be made to retire. If they were honorary officials, they would be dismissed. However, those officials serving by 1 August, 1914 "or who had fought at the front for the German *Reich* or its allies during the world war, or whose parents or children fell during the world war".²² The last part of the rule established the so-called *Hindenburg exception*. Indeed, President Hindenburg limited Hitler's anti-Semitic claims by invoking the character of former combatants in the war, or parents or children of those who had fallen in combat as a result thereof. The expulsion of "my old soldiers at the front", of Jewish origin, Hindenburg said, would be "absolute anathema to me." And he immediately added: If "they were good enough for us to call them to the ranks and shed their blood for Germany, they should also be so to continue with their professions and so serve their fatherland".²³ James Goldschmidt, as we have said before, was a war veteran; for a time, this exception sheltered him. Nevertheless, his situation was far from restful. On the contrary, notwithstanding this exception, between September and November 1935, with the so-called *Nuremberg Laws*, Jews, once deprived of their citizenship, began losing their political rights. As from then, the non-Aryan circumlocution disappeared and there was no further exception as that accepted in relation to Hebrew former combatants.²⁴ Some time earlier, however, on June 23, 1934, coerced by the Nazis, Goldschmidt had to apply to be relieved of his obligations as an official and give up his Professorship in Berlin.

²⁰ On this matter: *Eric D. Weitz*, *La Alemania de Weimar*, 2009, 394 ff. On Hitler's reading of Jünger, *Timothy W. Ryback*, *Los libros del Gran Dictador; Readings that moulded Adolf Hitler's life and ideology*, 2010, 115 ff.

²¹ Thus recognized by *Cristian Buchrucker/Susana Dawbarn/María Carolina Ferraris*, *Del mito al genocidio. Una historia documental de la antisemitismo en Alemania*, 2012, 144 ff. Naturally, before April 7, 1933, regulations can be found that would lead to the resurgence of totalitarian forms. In this regard, as a result of the fire at Reichstag on February 28, 1933, the Presidential Decree of the Reich for the Protection of the State and the People was passed; by virtue of which freedom of movement, inviolability of domicile and privacy of postal communications were suspended. To which we would need to add the loss of freedom of speech, meeting, association and of economic freedom. With regard to this decree, *F. Javier Blázquez Ruíz*, *Fundamentos biológicos del derecho nacional socialista*, in *F. Javier Blázquez Ruíz* (Coord.), *Nazismo, Derecho y Estado*, 2014, 107 ff.

²² Legal text taken from *Buchrucker/Dawbarn/Ferraris*, 173 ff. On April 11, 1933 an amendment was introduced to the First Regulation of the Law of Civil Professional Service. Its 1st article defined those who should be considered non Aryans in the following terms: "persons of non-Aryan descent, especially those descending from Jewish parents or grandparents."

²³ Hindenburg to Hitler, April 4, 1933. Cited at *Claudia Koonz*, *La conciencia nazi*, 2005, 62 ff. *Álvaro Lozano*, *La Alemania nazi, 1933 – 1945*, 2011, 330 ff.; indicates that, during WWI, 12000 jews gave their lives for Germany.

²⁴ *Buchrucker/Dawbarn/Ferraris* (fn 21), 148 ff.

Likewise his home and the rest of his assets were confiscated; his departure from Germany was hindered, he was only barely able to exit the country, leaving his family behind on German territory as virtual hostages to ensure his return.²⁵ Such a juncture determined the need for the Goldschmidt family to go into exile. Which was not simple either, because besides the difficulty in obtaining the necessary visas to exit the country transitorily, there was also the need to find employment abroad, learn a new language, not to mention that most Jews did not wish to leave Germany because in fact they felt German.²⁶ However, the situation eventually became intolerable. On account of this, first James's children left Germany: Robert moved to Italy; Victor settled in Switzerland²⁷ and Werner was initially exiled in Spain. Once his children had left, James and his wife managed to move to Madrid.

Perhaps one of the factors that determined to take roots in Spain was that James Goldschmidt had made some contacts there, immediately before going into exile. Indeed, from February to April 1934, the professor from Berlin gave a workshop at the University of Madrid, entitled *Metodología jurídica penal*. This academic activity was relevant because, among other aspects, it went in greater depth into the dogmatic method, keeping up the dialogue between Spanish jurists and legal science in Germany at that moment (Radbruch, Beling, Mezger, etcetera). In the preamble of this booklet, the product of this course, Goldschmidt thanked Luis Jiménez de Asúa for his continual presence during the development thereof. Towards 1935, the professor from Berlin managed to take up residence in Spain and began to give different conferences. Thus, during the first quarter of the year, he developed a new course at the university in Madrid, in this case one in criminal procedural law, from which a book resulted, *Problemas jurídicos y políticos del proceso penal*, which was published by Bosch from Barcelona. He also gave other conferences at the Universities of Barcelona, Valencia, Sevilla and Zaragoza, as well as collaborating with the *Revista General de Legislación y Jurisprudencia*.²⁸ By that time, the professor from Berlin had mastered Spanish, to the extent of writing some of his works directly in the language.²⁹

²⁵ López Barja de Quiroga, 27 ff.

²⁶ As Peter Fritzsche described in *Vida y muerte en el Tercer Reich*, 2008, 125 ff.

²⁷ He then moved to France.

²⁸ López Barja de Quiroga, 27 ff.

²⁹ Such is the case of *Problemas generales del Derecho*, a book he wrote during his exile in Spain and which was published after his death.

Meanwhile Robert Goldschmidt, as we indicated earlier, had taken exile in Italy. He settled in Florence in 1933, where he obtained a second Doctor's degree with research entitled *Recentitendenzeneldirittodellasocietàanonima*.³⁰ Between 1934 and 1936 he was assistant professor at the University of Milan. The advent of fascism determined his new destination,³¹ Switzerland, where he taught at the University of Saint Gallen, in the department of Trade Law.³²

In Spain, Werner Goldschmidt converted to Catholicism, married Dolores Sánchez Ron Alcazar (a woman of Catholic faith) and obtained the Spanish citizenship (on which he died). In this peninsular country, he performed diverse scientific activities principally as a member of the "Francisco de Vitoria" Institute and the Institute for Political Studies. He practiced Law as a solicitor since 1945.

II. The Goldschmidt family in Uruguay

At the start of the Spanish Civil War, James Goldschmidt and his wife moved to Cardiff (Wales). There he met up again with his son Robert. In October 1939, James wrote a letter to the professor of Civil Procedural Law at the University of the Republic (Uruguay), Eduardo Couture. Dramatically, the professor from Berlin expressed: "I know your books and I have references of yours. I am in England and my residence permit expires on December 31, 1939. I cannot return to Germany because I am Jewish; nor can I go to France because I am German; least of all can I go to Spain. I must leave England and I do not have a consular visa to go anywhere in the world".³³ A few weeks later, and thanks to Couture's³⁴ arrangements, James and Robert Goldschmidt, along with his mother, were settling in Montevideo. On September 24, 1941, at his host's request, Robert gave a conference at the School of Law on "Political ideas and the

³⁰ Published in Florence in 1935 by Vallecchi.

³¹ Indeed, as from 1938 the Italian university experienced a profound transformation as a result of the racial laws adopted by fascism. In general, on this matter, *Marie Anne Matard Bonucci*, *L'Italiefascisteeet la persécution des juifs*. 2007, 341 (349 ff.). Also, *Roberto Finzi*, *L'università italiana e le leggi antiebraiche*, Editori Riuniti. 2003.

³² *López Barja de Quiroga*, 20 ff.

³³ *Eduardo Couture*, James Goldschmidt, un judío muerto por la libertad de la cultura, Available at: <http://www.fder.edu.uy/archivo/documentos/couture-libertad-de-la-cultura.pdf>. Accessed: 17/8/2014.

³⁴ On the invaluable assistance Couture gave to European jurists, especially Italian (e.g. Renato Treves and Enrico Tullio Liebman) though also German Jews (as in the case of the Goldschmidts), *Mario G. Losano*, *Tra Uruguay e Italia: Couture e Calamadrei, due giuristi democratic nell'epoca delle dittature europee*, in *María Rosario Polotto/Thomas Duve/Thorsten Keiser* (Eds.), *Derecho privado y modernización. América Latina y Europa en la primera mitad del siglo XX*, 2015, 275 ff.

public limited company", which was later published by *La Revista de Derecho, Jurisprudencia y Administración*.³⁵ of which Couture was director.

However, the Goldschmidts' exile in Montevideo was brief. This was due to James Goldschmidt's death on June 28, 1940 after giving two classes at the host University.

Fortunately "Eduardo J. Couture" Foundation and the Faculty of Law, University of the Republic (Montevideo, Uruguay) have preserved the original paper of a conference³⁶ given by the uruguayan expert on Procedural Law, shortly after the death of James Goldschmidt. No one in better position to weigh the South American perception on our honoree. Couture's conference began saying: "James Goldschmidt, a jew who died for the freedom of culture. This issue is, in a few lines, the story of the end of an illustrious life. I wanted to add to this piece of history some considerations, to show where the drama of that life lies, that is, where can lie the drama of the life of us all, not entirely free of his destiny. Finally, in the form of conclusions -in a constructive way-, I wanted to conjecture about the kind of lessons we draw from this philosophy of life."

III. James Goldschmidt and his influence in South America

1. General considerations

As most of the legal science community acknowledges, James Goldschmidt was a remarkable german jurist who made outstanding contributions to the development of Criminal Law, and supported the emerging Procedural Law. His talent and laboriosity were, generously, passed on to his children.

The impact of his work in South America was due to its procedural investigations. This is how it's possible to explain that "the jurists of this branch of Law, are those who have dealt with his work and his personality, almost exclusively, in América".³⁷

³⁵ N° 10, October 1941, 289 (297 ff).

³⁶ <http://www.fder.edu.uy/archivo/documentos/couture-libertad-de-la-cultura.pdf>, 03-07-2015.

³⁷ *Ricardo C. Nuñez*, "Prefacio a la obra La concepción normativa de la culpabilidad, *Goldschmidt, James*", Margarethe de Goldschmidt and Ricardo C. Núñez (trans), 2nd. ed, B de F, Montevideo-Buenos Aires, 2002, 53 ff. (the translation is ours)

This remarkable influence on procedural matters should not obscure his outstanding performance on the Criminal Law field ("Goldschmidt did not become a criminal law expert expanding his action field as a Procedural Law expert; it was the other way around: from accomplished Criminal Law expert he became a virtuoso on Procedural Law, but without abandoning that field")³⁸ and his philosophical concerns. Regarding the latter, it is said that "[t]his new orientation of his thought had its genesis in the political events surrounding his world near the end of his career as a scientist of Positive Law. Goldschmidt sought on the philosophical work the stability and justice which were denied by the new views that influenced Positive Law, giving it a sense incapable of satisfy his delicate liberal spirit. However, Goldschmidt was not in contact with philosophy for the first in this stage of his life. In previous works he included contributions to Philosophy of the Law, since 1924, in his 'Gesetzesdämmerung'. In 'Juristische Wochenschrift', he combats legal positivism and leans his works towards Natural Law perspective..."³⁹

The work in South America

Among the many priceless influences that James Goldschmidt had in South American jurists, we have chosen the area of Procedural Law, in particular considering the views of the General Theory of Procedure and Civil Procedural Law.

a) Elementally, his most original and profound contribution in this area was the Theory of the Procedure as *legal situation*. Goldschmidt emphasized the dynamic aspect of the procedure and built the categories that everybody knows today: *expectations*, *possibilities* and *burdens*. He exhibited this theoretic view for the first time in his book *Prozeß als Rechtslage* (Springer, 1925) and subsequently materialized it in *Teoría general del proceso* (Labor, 1936).

It is noteworthy the notion of *justicial material law*, that became the center of his scientific construction. To understand the measure of its importance in these latitudes, we only had to remember that *Materielles Justizrecht* was published entirely in spanish (translated by Dr. Catherine Grossmann and with the authorization of James Goldschmidt's family) under the title *Derecho justicial material (pretensión de tutela jurídica y derecho penal)* on the Journal of Procedural Law (Argentina), 1946, No. 4, 1 (68 ff).

³⁸ Nuñez, 54 ff.

³⁹ Nuñez, 57 ff.

On the same issue of that Journal was published the work of a professor at the National University of Tucuman (Argentina) and former professor at the University of Urbino, Renato Treves, under the title "*El testamento filosófico de un procesalista: James Goldschmidt*".⁴⁰ In a footnote, the head of the magazine clarified that "[a]lthough this work refers to the philosophical ideas of Goldschmidt, and not to the specifically procedure, we consider it of great interest for scholars, because the procedural construction of the Berlin professor, finds true foundation in those ideas".

That "philosophical" work of James Goldschmidt dominates the pages he was working on in the winter of 1940, when death surprised him. They were collected and sorted by Roberto Goldschmidt and Ricardo Nunez in the posthumous publication "*Problemas generales del derecho*" (Buenos Aires, 1944). For Treves, "these basic principles constitute guidelines and ideas... the most personal and constructive contribution of Goldschmidt to philosophical studies of law. They consist in the conception of law as a product of culture, in distinction from the law of the State, and the affirmation that the basis of law is on the personalist justice."⁴¹

Precisely at another number from the prestigious Journal of Procedural Law, they published three papers that - ten years after Goldschmidt's death - denote the deep imprint of the author.

The great spanish procedural expert Niceto Alcalá Zamora y Castillo, professor at the Universities of Valencia and Mexico, wrote his work "*Los actos procesales en la doctrina de Goldschmidt*".⁴² He meticulously analyzed the goldschmidtian classification and abounds on laudatory and critical considerations.

For his part, Ernst Heintz, professor at the University of Erlangen (Germany), is the author of "*El impulso que James Goldschmidt dio a la teoría del "elemento normativo de la culpabilidad"*", translated by Margaret Goldschmidt and Luis F. Martínez Gaviera⁴³.

Finally, Luis Juárez Echegaray, professor at the University of Córdoba, published his work entitled "*Algunas teorías sobre la cosa juzgada y la opinión del profesor James Goldschmidt sobre su naturaleza.*"⁴⁴

⁴⁰ Nuñez, 187-205 ff. (the translation is ours)

⁴¹ Nuñez, 194 ff. (the translation is ours)

⁴² Revista de Derecho Procesal (Argentina), N° 12, 1951, 49 (76 ff).

⁴³ Revista de Derecho Procesal (Argentina), N° 12, 1951, 393 (403 ff.)

⁴⁴ Revista de Derecho Procesal (Argentina), N° 12, 1951, 405 (415 ff.)

We only have to read the works of some of the top procedural law experts of the region to find the traces of the intellectual respect and the influence that the Berlin professor inspired.

As paradigmatic examples, we must remember some of them:

b) Humberto Briseño Sierra, one of the most prominent Mexican procedural law experts, says unequivocally that "[a]fter the 1914 War, Procedure Law's German literature was deprived of many scholars and could not return to its beginnings. Because of that, Alcalá Zamora qualifies Sauer's "Basis of Procedural Law" as more ambitious than consistent, and he placed James Goldschmidt's work first, with his theory of the procedure as a legal situation".⁴⁵

The author devotes no less than twenty pages to describe and assess the Goldschmidtian theory of *Der Prozeß Rechtslage*.⁴⁶ Among many considerations expressed by the Mexican professor, we highlight:

- 1) For Goldschmidt, the concept of legal situation is specifically procedural: "is born a dynamic conception of the process, considering that it converts the legal relationships in legal situations that, without denying their previous status, changes them through the transplant to the procedural field";⁴⁷
- 2) As premises of his thesis, Goldschmidt says the judge's obligation to meet the demand is not based on a procedural relationship but "Public Law, which imposes on the State a duty to administer justice. There's no obligations set upon the complainant, only burdens, especially to assert facts and to provide evidence";⁴⁸
- 3) Briseño, particularly, highlights a concept: justicial material law, to which belong the requirement of legal protection; "by making it unchangeable with the provisions of private law sees, behind every subjective title, the appropriate legal action. This is, the concept of justicial material law that requires from the State the reinforcement needed to fulfill the provisions made by particulars".⁴⁹ This concept also covers "the precepts that, being outside Procedural Law, relate to transcendental situations for the evaluation of evidence".⁵⁰ To Briseño, "the

⁴⁵ Humberto Briseño Sierra, "Derecho Procesal", vol. I, México D.F., Cárdenas Editor y Distribuidor, 429 ff. (the translation is ours)

⁴⁶ James Goldschmidt's work title (Berlin, 1925).

⁴⁷ Briseño Sierra, vol. II, 37 ff. (the translation is ours)

⁴⁸ Briseño Sierra, vol. II, 38 ff. (the translation is ours)

⁴⁹ Briseño Sierra, vol. II, 38 ff.

⁵⁰ Briseño Sierra, vol. II, 39 ff. (the translation is ours)

interesting part of justicial material law is that it explains the importance of *material*";⁵¹

- 4) Goldschmidt used the categories: *expectations, possibilities, chances* and *burdens*. These are procedural categories that do not fall under the concept of legal relationship: "rather, they represent legal situations, that is, a person's status from the court ruling point of view, made in accordance with legal rules. This concept applies to any right that arises in the procedural course, since the ligaments are not abstract; they have content that is determined by the application of material procedural law, forming the procedural object. This application produces a double metamorphosis on the private material rights: a transposition into a requirement of legal protection, and a reduction of the requirement to mere expectation or procedural possibility. The legal situation constitutes the synthesis of abstract considerations -procedural postulation- and concrete considerations -material postulation of justicial law-. It reduces to a common denominator, the abstract requirement which states that the State must administer justice, and the concrete requirement which states that the State must provide protection through a favorable ruling. The first, is the possibility of forming a close and certain expectation -of lower value- that the judge proceed, as a result of the plaint, according to the procedural law; but at the same time opens up an uncertain and faraway expectation that the judge might rule in favour of the plaintiff;⁵²
- 5) As closure, Briseño Sierra considers that it is appropriate to recognize in Goldschmidt the perennial effort to introduce a system, a set of consistent concepts connections. The terminology enthroned by the Berlin jurist was widely accepted by legislators and much of the doctrine.⁵³

c) The uruguayan procedural expert Eduardo J. Couture, who dedicated -not in vain- his most important work to the german jurist,⁵⁴ also conducted an extensive review of James Goldschmidt's als Rechtslage procedural doctrine.

⁵¹ *Briseño Sierra*, vol. II, 40 ff. (the translation is ours)

⁵² *Briseño Sierra*, vol. II, 47 (48 ff).

⁵³ *Briseño Sierra*, vol. II, 56 ff.

⁵⁴ *Eduardo J. Couture*, *Fundamentos del Derecho Procesal Civil*, 3rd. ed., Buenos Aires, Depalma, 1976.

The procedure is not a relationship, but a situation: a person's status from the court ruling point of view in accordance -as expected- with legal rules.

It is interesting to point out the linking that Couture performed with Spengler and his parallel, urging replace the static justice of the Romans by a dynamic justice. Like this, Goldschmidt "realizes that the spectacle of war afforded him the conviction that the winner can get to enjoy a right which is legitimated by struggle. In peacetime, the rights are static and they're something of an untouchable reign: this situation of Political Law projects itself identically into the order of Private Law. But war breaks out and Law is placed at the tip of the sword: the most intangible rights are affected by the fighting and the Law, in its fullness, is nothing but a set of possibilities, burdens and expectations. Similarly, also in the procedure, Law is reduced to possibilities, burdens and expectations, because after the plaintiff follows a state of uncertainty and it means that, according to the exercise or the negligence or cessation of activity, can occur that - as in war- rights that do not actually exist, could get recognition."⁵⁵

According to Couture, this true war "metaphor" allows Goldschmidt to distinguish two major branches of legal imperatives: first, the rules that represent imperatives to individuals, pointing out certain desired behavior in their social activity (extrajudicial, static); secondly, the imperatives that functions as a measure for the judge (judicial, dynamic).

When rights take the dynamic condition of the procedure, they change their structure: from rights, to possibilities (Möglichkeiten) for that right to be recognized at the ruling; expectations (Aussichten) to get such recognition; and burdens (Lasten) -or imperatives- of self-interest to meet procedural acts.

Hence it can not be said there is a relationship between the parties and the judge, or between the parties: the judge rules because is a functional duty; the parties are not affiliated with each other, but subjected to the legal order as a whole field of possibilities, expectations and burdens.

After that description, Couture reviews the criticisms that have been made to the doctrine to conclude, however, in his profound scientific findings: "In effect, there are two distinct parts in the general conception of the legal situation. On the one hand, the

⁵⁵ *Couture*, 136 (137 ff).

part connected with the general theory and legal philosophy; on the other, the technical part that sets categories for procedural rights in particular. The criticism has been more directed towards the last part, giving the curious contrast that while certain aspects of detail and terminology are refuted, the general ideas of this doctrine obtained wide recognition and it grows with each passing day, with greater emphasis especially in our countries. Such is the case of the unanimous adoption in the modern procedural lexicon of the concept of *procedural burdens*, his distinction between procedural acts and legal transactions, his precise classification of procedural acts, etc. ".⁵⁶

Finally, the great uruguayan professor concludes that "the very foundation of the doctrine, the starting points that served the author to support his thesis, have fallen by the time without refutation. Same thing can be said for the fact that this doctrine sustains, in his own words, an empirical non finalist position of Procedural Law: that is, a search for its immediate practical purpose to obtaining *res iudicata*, regardless of their content, and not a determination of its remote ends, in the sense of permanence or absence of the substantive right after the procedure ".⁵⁷

d) In Argentina its impact was decisive. We can say that Podetti J. Ramiro was a true "disciple", author of "*La ciencia del proceso y las doctrinas de Goldschmidt*", published in Buenos Aires in 1938. Subsequently, one of the first great writers of argentine Procedural Law, Hugo Alsina, comprehensively outlined the goldschmidtian theory of the "process as a legal situation".⁵⁸

Alsina begins neatly exposing the theory of legal situation, stating and explaining its basic principles as well: his denial of the existence of a procedural relationship, the linking of the so-called procedural prerequisites to the decision of valid background (and not as a condition of existence of a legal relationship), the characterization of duty of the judge to decide the controversy, as constitutional duty (rather than procedural), the dynamic nature of the procedure from the state of uncertainty that involves litigation, the legal situation as a expected favorable ruling and the consequent dependence of the forecast and performance of the parties in the procedure, the relevance of talking about "burdens and possibilities" of the parties, and so on.

⁵⁶ *Couture*, 138 (139 ff.) (the translation is ours)

⁵⁷ *Couture*, 139 ff.

⁵⁸ *Hugo Alsina*, *Tratado Teórico Práctico de Derecho Procesal Civil y Comercial*, T. I, , 2nd. ed., Buenos Aires, Ediar, 1956, 420 ff.

Alsina criticizes the theory of legal situation, concluding that it "destroys without building". However, the proper measure of the importance and impact of Goldschmidt's teachings can be weighted in a long author's note: "In reality, the theory of the legal situation shouldn't be seen as opposite but complementary to that of the legal relationship. This was pointed out by Calamandrei (Un maestro del liberalismo procesal, Rev. Der. Proc., A, 1951, 162 ff.), whom after stating that he would not dare to ratify all the terms expressed on Riv. di Dir. Proc. Civ. in 1927, says: 'I think you can remain faithful to the traditional theory of the procedural relationship, which refers to the external constitution of the procedure, while recognizing the essential validity of the Goldschmidt's theory about legal situation, which is especially important to clarify internal situations between procedure and substantive law, and to demonstrate how operates the delicate mechanism of procedural dialectic -necessary process through which the abstract law embodies itself into the dictum- determining the content of the ruling '. This perspective was developed by us in our work presented to Congreso de Juristas de Lima in 1952, entitled "La teoría de la situación jurídica no se opone, antes bien integra el concepto de la relación jurídica" (Rev. Der. Proc. A, 1952, I, pág. 1), in which, after recalling that there can be no legal situation without a legal relationship (the concept of creditor needs the concept of debtor, the concept of defendant needs the concept of plaintiff, etc.), we reach the conclusion that the situation (legal) of the procedural subjects varies according to the procedural relationships; that is, if they complying with burdens (duties) that the law imposes or not. Meanwhile, Castro Prieto (Tratado, t. 1, 15 ff.), with a broader conception, expressed: 'Contract theory (from which the quasi-contract is a derivation), procedural relationship theory and legal situation theory, do not exclude on another, but are rather complementary. There are three different ways of approaching the phenomenon, responding to varying degrees of knowledge. Contract theory saw only the external appearance and responded to the concern of finding a unifying principle of acts, oriented to their final mission: the ruling. The theory of procedural relationship is an internal examination that gives a single meaning to procedural acts. The theory of legal situation is the sociological foundation of the procedure; the procedure is not seen as a legal unit but as a reality of social life. One explains how the procedure 'should be', and aims for the triumph of the party holding the truth; the other explains 'how the procedure is' in reality, on which

triumphs the party who better defends its right by complying with the procedural burdens'.⁵⁹

IV. Robert Goldschmidt in South America

His time and contributions in Córdoba (Argentina)

a. Robert Goldschmidt's participation in the Institute of Comparative Law of the School of Law of the National University of Cordoba

On August 29, 1939, Ordinance No. 107 was passed in the environment of the School of Law and Social Sciences of the National University of Cordoba, by virtue of which the Institute of Comparative Law was established.⁶⁰ This institute was organized into five sections, which comprised the following subjects: Civil Law, Trade Law, Criminal Law, Public Law and Procedural Law.

The directorship of the institute, by virtue of Dean Jorge A. Núñez's provisions, befell to Enrique Martínez Paz, professor of Comparative Civil Law.

As occurred with other European exiles (as was the case of Marcello Finzi),⁶¹ no sooner did he arrive in Cordoba than Goldschmidt entered the Institute.

Parallel to this, in this environment, he committed himself to teaching Comparative Law and to doing a number of translations.

While he was directing the Institute Ernesto Cordeiro Álvarez, in 1948 and 1949, Goldschmidt gave two courses in Comparative Trade Law. The topic of the first was "The public limited company in Argentinian and Comparative Law",⁶² while the second was devoted to "Goodwill and unfair competition".⁶³

In 1950, holding the new degree of "Specialist in Comparative Law", Goldschmidt was also assigned two subjects to teach.

⁵⁹ *Hugo Alsina*, 424 ff., footnote # 12/1.

⁶⁰ Nbr. 10, (1941), 289 (297ff.)

⁶¹ The text of the ordinance is published in the Bulletin of the School of Law and Social Sciences, Year III, July - August of 1939, 420 (422 ff.)

⁶² On this matter, *José Daniel Cesano/Marcello Finzi*, *La inclusión de un penalista exiliado en la cultura jurídica de Córdoba*, 2014.

⁶³ Institute of Comparative Law. Practical Course of Comparative Trade Law. Report from the course's coordinator, Dr. Robert Goldschmidt, in the Bulletin of the School of Law and Social Sciences, Year XII, 1948, 973 ff.

On one hand he was charged with a "Course of Comparative Trade Law", in which he gave attendants an overview of the most important problems in the subject, including: the concept of Comparative Trade Law; the possibility and restrictions to international unification; the uniform law of Geneva on bills of exchange and the forecast theory in Foreign Exchange Law; the problem of the unification of private law at the local level; the businessman and his business; representation and mandate in Comparative Trade Law; brokerage; the transportation contract and civil liability of the transportation of people; the insurance contract; companies of persons and of capitals; the transference of rights to partners; civil liability of the administrators of a public liability company and the resolutions of the general meeting of a public limited company.

He was also in charge of the "Introductory Course to Contemporary Studies of Law", which covered the following over eighteen lectures: Constitutional Law, Administrative Law, Administrative Criminal Law, Criminal Law, Procedural Law and Substantive Judicial Law, Labour Law and Civil Law, from the perspective of the German, English, Swiss and Italian legal orders.

This propaedeutic course was significantly meaningful in forming the local criminal legal culture. Indeed, within it, Goldschmidt devoted two lectures to the presentation and analysis of the fundamental principles of Administrative Law and German Criminal Administrative Law. The main problems dealt with concerned the concept of Administrative Law in German legislation as compared to French and English legislation; to police law and administrative courts; pointing out in the report he submitted after the end of the course that: "The development of administrative criminal law in Germany, especially in economic matters, is of great interest, at least as *lege ferenda*, for the current situation in Argentina and the argument lends itself particularly to studies of comparative law".⁶⁴ Likewise, he devoted three lectures to Criminal Law. He developed it from the dogmatic perspective, taking German systematics from the theory of crime as a basis and then comparing the discipline with English Law. Among

⁶⁴ *Crónica*, Institute of Comparative Law. Practical Course of Comparative Trade Law. School Year 1949. Report from the course coordinator, Dr. Robert Goldschmidt, in the Bulletin of the School of Law and Social Sciences, Year XIV, No. 1-2, 1950, 509 ff.

the bibliographical material employed for this task, along with some of his own work,⁶⁵ Robert Goldschmidt included his father's booklet *Metodología jurídico– penal, Tratado* by Edmund Mezger and an article by Adolf Schönke, entitled “Problemas de sistemática jurídico– penal en la reciente doctrina alemana”.

It is interesting to highlight – as occurred with Marcello Finzi's pedagogical work – Goldschmidt's concern regarding the continuity given to one of the scientific traditions laid down by Enrique Martínez Paz during the early years of the Institute. We refer to his conception regarding the fact that the teaching of Comparative Law, in any of its sub disciplines, should prioritize the acquisition of skills related to the comparative method. In Goldschmidt's own words: "What students must learn from these in-depth courses is to work with the comparative method, and this end is best achieved by means of the common study of a restricted topic; the choice of such a topic does not exclude the Professor relating the study to other issues, even to problems of a general nature. (...) When the student knows how to manage the comparative method, he or she shall apply it to any topic, even to those not expressly developed in the Specialisation Course".⁶⁶

With regard to criminal legal culture, the Institute presided by Martínez Paz undertook the translation of a series of works by German authors. This task was charged to Marcello Finzi and Robert Goldschmidt. Along with them, Ricardo C. Núñez also made an important contribution.

Several of these translations were published soon by the Institute of Comparative Law, of the University of Cordoba. Thus it was that the following works became available: *Derecho procesal penal*, by Ernst Beling, translated by Núñez and Goldschmidt⁶⁷; *El problema de la antijuridicidad material*, by Ernest Heinitz, also translated by Núñez and Goldschmidt; *El Derecho penal administrative (Contribuciones para su estudio)*, by James Goldschmidt and Georg Anders, translated by Robert Goldschmidt, Margarethe Goldschmidt and Luis F. Martínez Gavier, with an

⁶⁵ *Labor de Institutos*. Introductory Course to the Study of Contemporary Law. School Year 1950. Report from the course coordinator, Dr. Robert Goldschmidt, in the Bulletin of the School of Law and Social Sciences, Year XV, No. 1-2, 1951, 97 ff.

⁶⁶ E. g., The introduction with which the translation of James Goldschmidt's article entitled “Antijuridicidad y culpabilidad en el derecho penal y en el Civil”, included in *James Goldschmidt, Studies of Legal Philosophy*. 1947, 239 (244 ff.), in which Robert Goldschmidt debates with Sebastián Soler on “Radbruch y el Espíritu del derecho Inglés”, Bulletin of the School of Law of Cordoba, No. 2 – 5, 1948, 843 ff.

⁶⁷ Bulletin of the School of Law and Social Sciences, Year XV, No. 1-2, 1951, 208 ff.

introduction by Ernesto Roque Gavier and *Contribución a la doctrina de la estafa de crédito*, by James Goldschmidt⁶⁸, translated by Robert Goldschmidt. Also, in the same geographical environment, but within the context of the *Revista jurídica de Córdoba* (which we shall return to later), Robert Goldschmidt translated Adolfo Shönke's article “Problemas de la sistemática jurídico– penal en la reciente doctrina alemana”.⁶⁹

The cultural agents trained along with Martínez Paz expanded their editorial work by publishing translations of German authors even outside Cordoba, which gave their work nationwide projection. Thus Núñez published some of his work with Roque Depalma, whose bookshop and publishing house was in the city of Buenos Aires. In 1943, Núñez, along with James Goldschmidt's wife Margarethe, published his book entitled *La concepción normativa de la culpabilidad*. Meanwhile Robert Goldschmidt, together with Carlos Pizarro Crespo, translated James Goldschmidt's *Estudios de Filosofía Jurídica*, which was published in Buenos Aires in 1947 by Tipográfica Editora Argentina; this text included some essays on criminal dogmatics,⁷⁰ with an introductory note by Robert Goldschmidt.⁷¹ Likewise the review *Revista de Derecho Procesal*, directed by Hugo Alsina and published in Buenos Aires by Ediar, collected some translations by Robert Goldschmidt; this was the case of Adolf Schönke's article, “La doctrina de Derecho Penal Administrativo de J. Goldschmidt y su reconocimiento en la legislación alemana”.⁷²

Several aspects that were relevant for criminal legal culture in Cordoba resulted from this translation activity:

The first of these relates to greater depth in the dissemination – and the corresponding increase in the reception process – of research in German criminal legal dogmatics. The influence of the reception of these ideas was particularly significant with regard to the theories of illegality and culpability. With regard to the first category, Heinitz's monograph is highlighted, the significance of which was underscored by

⁶⁸ In which Alfredo Vélez Mariconde also collaborated, until paragraph 10 in the work; according to Enrique Martínez Paz, in: “La traducción del Derecho procesal de Ernesto Beling”, preliminary note in Ernst Beling, *Derecho Procesal Penal*, 1943, XIII f.

⁶⁹ *James Goldschmidt*, *Contribución a la doctrina de la estafa de crédito*, National University of Cordoba, School of Law and Social Sciences, Institute of Comparative Law, Series B – No. 16, 1944.

⁷⁰ *Legal Review of Cordoba*, Year 3, No. 10, April-June, 1949, 223 (229 ff.)

⁷¹ Especially highlighted is *James Goldschmidt's* article “Antijuridicidad y culpabilidad en el Derecho Penal y en el Civil”, 245 (255 ff.)

⁷² *Robert Goldschmidt*, “Alrededor de la concepción normativa de la culpabilidad”, in *James Goldschmidt*, *Estudios de filosofía jurídica*, 1947, 239 ff.

Ricardo C. Núñez's preface.⁷³ In this sense it is interesting to mention how Núñez himself justified the choice of translating this work in stating: "(...) the Institute has taken upon itself that Heinitz's work, on account of its very nature, shall not aspire to be an easy and vulgar book to work with in the current conditions of Argentine criminal science. But it is also a task proper to the Institute to disseminate, by means of a stylish Spanish version, the works that show, from their structure, summarily so to speak, a whole field of scientific research (...), whose knowledge becomes an essential and unavoidable requirement for the very scientific developments of Argentine criminal law".⁷⁴ Meanwhile research on culpability was benefited by the translation of James Goldschmidt's *La concepción normativa de la culpabilidad*, preceded by an erudite article by Núñez called "Bosquejo de la culpabilidad".⁷⁵

Another of the environments in which this translation process was fecund and whose projections would leave a mark on prevailing theoretical conceptions in Cordoba for decades is linked to the contributions of James Goldschmidt and Georg Anders on administrative criminal law. Thus the book *El Derecho penal administrativo (Contribuciones para su estudio)*, thoroughly cited and analysed by José Severo Caballero in a text published in 1958,⁷⁶ in which Schönke's article also received attention. The importance of the dissemination of James Goldschmidt's work on this matter was emphasised by Ernesto Roque Gavier who, despite expressing some objections regarding the theory, pointed out in the preliminary note to the translation of this work: "James Goldschmidt is undoubtedly the modern jurist who has addressed in most depth the problem of violation and its legal treatment in Germany during the course of this century (...). According to Goldschmidt, whose research is based on historical-legal data, it is in vain to attempt to establish qualitative differences between crimes and violations while they remain within the field of criminal law, because there the problem is insoluble. In order to obtain it, as occurs with other problems, it is necessary to move to another field (...) from which the conception of administrative crime (police crime or violation) emerges, which is substantially different from criminal

⁷³ Revista de Derecho Procesal, Año IX, Quarter 3-4, No. 3 – 4, 1951, 295 (301 ff.)

⁷⁴ Heinitz's work greatly influenced Núñez's research. An example of this influence can be seen in Ricardo C. Núñez, Conceptos fundamentales acerca de la antijuridicidad, in Revista Jurídica de Córdoba, April – June, Year 3, No. 10, 1949, 205 (222 ff.)

⁷⁵ Ernesto Heinitz, El problema de la antijuridicidad material, National University of Cordoba, School of Law and Social Sciences, Institute of Comparative Law, Series A – No. 6. 1947, 3 ff.

⁷⁶ James Goldschmidt, *La concepción normativa de la culpabilidad*, 2nd. ed., 2002. The work by Núñez we refer to appears between pages 61 and 82, of the 2nd ed.

wrongdoing and therefore from an administrative criminal law (...) before criminal law".⁷⁷ James Goldschmidt's ideas were adopted by Núñez who, from this distinction made by the professor from Berlin, inquired more deeply into the differentiation regarding legislative attributions, derived from our federal structure and its institutional political implications, in a conference given in Mendoza in 1956.⁷⁸

Lastly, the translation of Beling's work, *Derecho procesal penal*, received a particularly positive judgment from Martínez Paz, who linked this task to the recent validity of the Code of Criminal Procedure drawn up by Alfredo Vélez Mariconde and Sebastián Soler. Martínez Paz made reference to the fact that at that time new legislation had made use "of the vast amount of material offered by the positive law of foreign nations and, within it, that of classical times of the great German nation".⁷⁹ "Our fundamental point of view," Martínez Paz pointed out, "is to contribute elements for the sources of our Code of Criminal Procedure; for this purpose Professor Goldschmidt has made an addition that contains the translation of the texts of the articles of the German laws cited in our Code, a chart which refers to the articles in the Cordoba Code, the German ones of 1877 and 1924, and the paragraphs of this treaty, which may assist greatly in promoting a better use of the translation we present".⁸⁰

b. Main environments of Robert Goldschmidt's personal contributions to local legal culture during his stay in Cordoba

There is no doubt that Robert Goldschmidt's most relevant legal contributions were in his speciality, namely Trade Law. In fact, in 1947 Dino Jarach, an Italian jurist of Jewish descent, who had also found himself obliged to go into exile on account of racial laws, settled in Argentina, translated his book *Grundfragen des neuen schweizerischen Aktienrechts* under the title *Problemas jurídicos de la sociedad anónima*, published in Buenos Aires by Roque Depalma with a prologue by Cordoba professor Mauricio L. Yadarola.

⁷⁷ José Severo Caballero, La distinción esencial entre delitos y contravenciones en la doctrina de James Goldschmidt, in Bulletin of the School of Law and Social Sciences, National University of Cordoba, Year XXI, July – December, No. 3 – 4, 1958, 484 ff.

⁷⁸ Cfr. Ernesto R. Gavier, James Goldschmidt y el derecho Penal Administrativo, in El Derecho Penal Administrativo (Contribuciones para su estudio), 17 (18 ff.)

⁷⁹ Ricardo C. Núñez, La diferencia entre delitos y contravenciones y su importancia constitucional, Bulletin of the School of Law and Social Sciences, National University of Cordoba, Year XXI, July – December, No. 3 – 4, 1958, 373 (395 ff.)

⁸⁰ Martínez Paz, in Beling, IX ff.

However, Robert Goldschmidt's intellectual profile sought to break out of the narrow boundaries of the specialist. He was a true intellectual, with a thorough knowledge of several legal and humanistic disciplines (particularly philosophy). That is why, throughout his stay in Cordoba,⁸¹ he wrote several books with considerable repercussion in the local legal criminal culture, opening up a dialogue with some of the leading representatives of criminal law in Cordoba.

What environments were these contributions in?

Perhaps the most significant were related to administrative criminal law and the theory of culpability as an element integrated into the legal concept of crime. In both cases, the contributions were closely related to the continuity of the developments his father had made, and to those Robert Goldschmidt had helped to disseminate through his translations.

As far as administrative criminal law is concerned, Robert Goldschmidt wrote a long article entitled "Problemas político– legislativos en material económica. También una contribución a la teoría del derecho penal Administrativo"⁸² during his stay in Cordoba. The work in question was relevant because it linked normative production, written as a result of State intervention in the economy, structured as a sanction system based on misdemeanours. It must be recalled that in Argentina, this type of interventionism grew during Juan Domingo Peron's administration and that it was even clearly legitimized in the National Constitution of 1949, whose 40th article guaranteed the organization of economic activity in accordance with free private initiative, provided it did not ostensibly or covertly seek to dominate national markets, eliminate the competition or increase profits usuriously. In this article, after recognising the increase in provisions in criminal law and administrative rules with repressive sanctions in the economic field, Goldschmidt posed a series of very complex problems, emphasised the distinction his father had made of the difference in the value relationship between criminal offences and administrative offences: the former, related

⁸¹ This is precisely what occurred with his report "Recientes publicaciones alemanas de Derecho procesal Civil", in which he reports on Leo Rosenberg Schönke, and Erwin Riezler's works, among other jurists, which he published in the *Revista Jurídica de Córdoba*, July - September, Year 3 – No. 11, 1949, 386 (388 ff.) or his article "Novedades en el Derecho Penal Alemán en 1952", published in the legal review *La Ley*, Vol. 68, Buenos Aires, 853 ff.

⁸² We clarify this because Robert Goldschmidt wrote a number of articles on criminal issues during his stay in Italy. The following stand out among them on account of their relevance: *La cambiale di favore ed il reato di truffa*, in *Rivista Italiana di Scienze Commerciali*, 1936, 432 ff., and *In torno al concetto di truffa*, in *Rivista italiana di diritto penale*, Vol. VII, 1936, 210 ff.

to the value of justice, the latter to the value of the public good. "The administrative penalty," Goldschmidt would say, "is linked to a materially administrative conduct that consists in failing to favour the general welfare. It is a penalty that serves to direct the citizen's attention to his or her duties before the government; it has nothing to do with atonement or with special prevention, that is, with the functions that inform the criminal penalty."⁸³ In this same work, the author also dwelt on the need for this distinction to be projected *as a legislative tenet*, analysing the prevailing situation in Germany for this (both prior to the advent of National Socialism and, in the case of Western Germany, through the law on *economic criminal law*, of July 26, 1949). The article concluded by indicating the applicability of the principles of administrative criminal law, both *lege lata* and *lege ferenda*, regarding offences against the economic order regulated in Argentine legislation.

Goldschmidt's contributions, in this matter, were not circumscribed to theoretical development. On the contrary, the applicability of the principles of administrative criminal law extended also to provincial police law through actual normative proposals; this was the case in drafting the Rural Code for the province of Córdoba jointly with Ricardo C. Núñez, whose Chapter II, Book I, makes reference to rural offences (articles 11 to 24).⁸⁴

Goldschmidt's argument regarding a *substantial difference* between criminal law and administrative criminal law, though supported by a number of jurists, also had its detractors. A controversy ensued with Enrique R. Aftalión on this matter, as a result of which Goldschmidt wrote an article entitled "La teoría del Derecho Penal Administrativo y sus críticos".⁸⁵ Among other aspects, this work highlights the author's rejection of certain positions criticising the thesis he defended based on an assumed growth of the disempowerment of the Judiciary, with regard to its jurisdictional powers, in favour of a greater concomitant expansion of administrative powers, a disempowerment which led – according to his critics – to a loss of citizens' individual guarantees. Goldschmidt's ideas, which reasserted his clear convictions in defence of

⁸³ Revista Jurídica de Córdoba, July – September, Year 3, No. 11, 1949, 301 (324 ff.)

⁸⁴ Robert Goldschmidt, Problemas político-legislativos en materia económica. También una contribución a la teoría del derecho penal Administrativo, in Revista Jurídica de Córdoba, July – September, Year 3, No. 11, 1949, 308 ff.

⁸⁵ This work was also developed at the Institute of Comparative Law while Enrique Martínez Paz was director. On this matter, cfr. Dirección de Política Social Agraria, Encuesta sobre derecho rural y códigos rurales, Dirección de Informaciones, Buenos Aires, 1945. This text was also published in the Bulletin of the School of Law and Social Sciences of Córdoba, Vol. IX, 1945, 175 ff.

the Rule of Law, were emphatic when rejecting the criticism outlined above. "The theory of administrative criminal law," the author wrote, "was born within the Rule of Law and has been developed and formulated therein. It has nothing to do with the conceptualization of the legal reality of the totalitarian State, with its rigorous system of sanctions designed to repress offences against the public good, conceived by the dominant group in their own way, applied by administrative authorities or even by members of the Judiciary answering, *de facto* or *de jure*, to the central government. In such States, where there is no division of powers and where the distinction between administration and jurisdiction is of a merely formal nature, the contraposition between the value of well-being and that of justice makes no sense, since public awareness does not distinguish between them or, if it does, cannot express itself, and individual guarantees are no greater if sanctions are applied by courts rather than administrative authorities, as both will abide by the orders from the party in power."⁸⁶

With regard to the theory of culpability, Robert Goldschmidt made a few introductory notes with the aim of clarifying and responding to some criticism made regarding the normative conceptions his father had developed. His work "Alrededor de la concepción normativa de la culpabilidad",⁸⁷ in which he held a controversy with Sebastián Soler, highlights this orientation.

2. Robert Goldschmidt in Venezuela: his contributions to the legislative process and academic life

In 1952, after the death of Enrique Martínez Paz, his host in Córdoba, Robert Goldschmidt moved to Venezuela, thanks also to the contacts he made through Eduardo Couture. His departure from Córdoba was preceded by his unfair dismissal from the University during the Peronist administration. Thus began the last year of his exile, which would conclude with his death in Venezuela on October 18, 1965.

In 1953 Goldschmidt set up residence in Caracas. He was immediately hired by the minister of justice, Luis Felipe Urbaneja, as director of the Office of Comparative Law and Secretary General of the Committee for Trade Reform. He was intensely active in this position, drafting a series of documents aimed at renewing the legislation

⁸⁶ Published in the legal review *La Ley*, Vol. 74, 1954.

⁸⁷ Cfr. *Robert Goldschmidt*, *La teoría del Derecho Penal Administrativo y sus críticos*, in *Estudios de Derecho Comparado*, 1958, 149 ff.

of the country. Indeed, his contributions, though linked in particular to the environment of trade law, greatly exceeded it as they included successful tasks aimed at updating the different areas of the country's legal order by dealing with matters which had hitherto lacked specific regulations, as with the regimes of condominiums, sales with reservation of the right to ownership and copyrights.

However, one of Robert Goldschmidt's most significant tasks was related to the part he played in the partial reform of the Commercial Code in 1955. His intervention was not only linked to the preparation of this reform; he also supplied consultancy and justifications before the parliament. Regarding the latter, Goldschmidt's presence in the project had a huge influence on legislators and was considered a determining factor when it came to passing the reform. In fact, at some moments of the legislative discussion, the German professor was quoted to clarify certain points. This occurred, for example, when debating the topic related to public limited companies with a single partner and some parliamentarians cited Goldschmidt's work entitled *Problemas jurídicos de la sociedad anónima*.⁸⁸

One of his disciples – Alberto Baumeister Toledo – has summarised the importance of this task thus: "We believe we are not making a mistake in claiming that among the particular tasks developed by the professor, the partial reform of the Commercial Code of 1955 stood out, the work and research of which is a part of the interesting and well documented work he published for the Ministry of Justice under the name *La reforma parcial del Código de Comercio de 1955*, in which Goldschmidt, as draftsman, defended and maintained the need and relevance of the partial reform alluded to, using a plethora of doctrinarian citations, notes on jurisprudence and observations from comparative law".⁸⁹

Along with this task as a draftsman, Goldschmidt developed some intense academic work in two areas: university undergraduate and graduate teacher training in trade law, and comparative law and publicist.

⁸⁸ The rule stipulates: "Not punishable are: 1st. Those who could not, at the moment of the fact, on account of either insufficient faculties or morbid alteration of faculties, or on account of lack of awareness, error or ignorance of non-chargeable facts, understand the criminality of the act or take control of their actions".

⁸⁹ *Goldschmidt* (fn 72) 71 (72 ff.), *Goldschmidt* (fn 72), 239 ff. The inserted note is ours.

In the first area, he joined the Central University as soon as he arrived in Venezuela and, later, the Catholic University *Andrés Bello*, where he was professor of Trade Law and professor of doctoral seminars and courses. He was also appointed to the position of director of the Institute of Private Law of the School of Legal and Political Sciences of Universidad Central.

In 1955, Goldschmidt coordinated a group of prestigious jurists – among whom were Gustavo Manrique Pacanins, José Agustín Méndez, Antonio Moles Caubet, Oscar Palacios Herrera, Edgard Sanabria, Joaquín Sánchez-Covisa, Luis Loreto, Silvestre Tovar Lange and René De Sola – and founded the Venezuelan Committee of Comparative Law, thus becoming the heart and soul of comparative studies in the country and appointed secretary of the committee. "This committee developed intense activities within the universities and out of them, making Comparative Law a subject of interest for all jurists".⁹⁰ Some time later, Goldschmidt was appointed professor at the International Faculty for the Teaching of Comparative Law, whose seat was in Strasbourg, and as such gave courses in France, Germany, Finland, Portugal, et cetera; he was then appointed member, representing Latin America, of the Board of the International Association of Legal Sciences, the International Committee of Comparative Law and the International Academy of Comparative Law. The international influence his figure had reached meant he was a habitual participant of international congresses in the discipline, held in France, Belgium, Germany, Spain, England, Switzerland and Sweden. He was also appointed honorary member of the Central American Institute of Comparative Law.⁹¹

As a publicist, during his sojourn in Venezuela, Robert Goldschmidt continued his prolific production, both in the area of trade law and legal comparatism.

⁹⁰ On this matter, cfr. *Julio Rodríguez Berrizbeitia*, La reforma del Código de Comercio de 1955 en su perspectiva actual, in *Boletín de la Academia de Ciencias Políticas y Sociales*, Academia de Ciencias Políticas y Sociales, Caracas, No. 143, 2005, 244 ff.

⁹¹ *Alberto Baumeister Toledo*, Entorno a la operatividad de ciertas causales de disolución de las sociedades mercantiles (una interesante acotación del Profesor Roberto Goldschmidt), in *Boletín de la Academia de Ciencias Políticas y Sociales / Academia de Ciencias Políticas y Sociales*, Caracas, No. 143, 2005, 308 ff.

In this sense, the 1964 publication of his *Curso de Derecho Mercantil* stands out as the first methodologically modern work in the speciality in Venezuela, one which initiated a pedagogic tradition in teaching this discipline.⁹²

Meanwhile, in 1958 and 1962 respectively, by directing publications of the School of Law of the Central University, Goldschmidt edited the volumes in which he compiled a number of articles on legal comparatism under the titles *Estudios de Derecho Comparado* and *Nuevos Estudios de Derecho Comparado*.

3. Conclusions

Latin American legal culture found a remarkable promoter in the figure of Robert Goldschmidt.

During his sojourn in Cordoba, Goldschmidt, along with other European emigrates (as was the case of Marcello Finzi), played an influential role in disseminating the scientific theory developed in Germany. This task was carried out at different converging planes.

On one hand, through his translations (individually or jointly with Ricardo C. Núñez), local jurists were able to discover new authors (Heinitz for example) or delve into the knowledge of other German thinkers such as James Goldschmidt.

Robert Goldschmidt built bridges among several post-war German jurists, inviting them to take part in the cultural undertakings in Cordoba, as occurred with Schönke and his contributions to the *Revista Jurídica de Córdoba*.

Likewise, designing courses of Comparative Law, especially giving the "Introductory Course for the Study of Contemporary Laws", lead participants to observe

⁹² *Tatiana B. Maekelt*, *Derecho Comparado ayer y hoy*, in *Libro Homenaje a Fernando Parra Aranguren*, booklet of Volume II, School of Legal and Political Sciences of the UCV, Caracas, 2002, 98 ff. The author indicates that in 1978 the Committee became the Interuniversity Association of Comparative Law, an institution that held a number of regular meetings of its Directing Committee in different cities in the country, promoting the Conferences and Courses of Comparative Law with a high scientific level and the participation of prestigious comparatist jurists from America and Europe, (Werner Goldschmidt, Leontin-Jean Constantinesco and Ivon Loussouarn, to name some of the most relevant) and whose publications made an important contribution to the development of Comparative Law in Venezuela and the world.

the method of legal dogmatics operating in practice; at that time it only just becoming known, mainly through the work of Sebastián Soler.⁹³

This fruitful task made it possible to consolidate a scientific paradigm that had been in the making in Cordoba as a reaction to the model proposed by criminological positivism, of Italian origin; during the following decades this model would reach a projection over other geographical environments, until it reached hegemonic proportions thanks to the scientific consensus regarding the categorial analysis method, represented by the legal theory of crime.

Later, after his move away from Cordoba, Goldschmidt's prolonged sojourn in Venezuela showed other facets of his contributions to the legal culture of the region.

Indeed, without abandoning his scientific production in the environment of legal comparatism, his figure became influential on account of his intervention in drafting several legislative initiatives, many of which were sanctioned by the Venezuelan parliament. In particular, he acquired great relevance during the process, which concluded with the passing of the partial reform of the Commercial Code of 1955.

But besides, his sojourn in this new host country would find him as the protagonist of two very important aspects: on one hand, as the initiator and main promoter of the scientific institutionalisation of comparative law in Venezuela, through the creation of the Committee for this speciality, and on the other, the inauguration of a modern pedagogic method for teaching trade law, with the publication of *Curso*.

In contrast with the early sociology of culture, in which the tendency to interpret cultural processes in national contexts prevailed, more modern orientations pay attention to the interaction between societies, interchange within each country as well as continuity and transactions between the local and the global.⁹⁴ Transplanting these concepts to our research, Goldschmidt's presence undoubtedly influenced the reception of German legal ideas. In this sense, his *intervention* in Latin American culture meant a contribution towards the methodological method (*legal dogmatics*) *taking root*, which

⁹³ Published in Libro/Homenaje a la memoria de Roberto Goldschmidt, Central University of Venezuela, School of Law, Caracas University Print, 1967, 20 ff.

⁹⁴ In the opinion of Rodríguez Berrizbeitia, 243 ff.: "it was Goldschmidt who, in 1964 (nearly 10 years after the reform of 1955), wrote the first modern course of trade law known in the country. Evidently a new era was beginning in which manuals were followed by authors like Enrique Pérez Olivares, Leopoldo Borjas, Alfredo Morles and Ely Saúl Barboza Parra".

was grafted into the scientific practices of our jurists with hegemonic claims. Along with this, his work in the area of legal comparatism led to a strengthening, in the Argentine case, and the institutionalisation in Venezuela, of the discipline, bringing together, in the latter case, the academic plane and the draftsman's practice, in a formidable task of legislative renovation.

V. Werner Goldschmidt and Argentina

1. Life and works

a) The existence

In 1948 the National University of Tucuman (Argentina), engaged itself in the mission of hierarchize its staff of professors, and offered him the Chair of Private International Law. In 1956 for ideological reasons the University did not renew his contract, so he decided to move to Buenos Aires.

After several years of new uprooting, in 1958 he started working as an advisor to the Treasury Solicitor's Office. In 1959 he resumed his teaching activities as senior lecturer (professor) on Private International Law (Faculty of Comercial, Economical, and Political Sciences of the National University of Litoral based in Rosario). In the same year, he started working as a professor of Introduction to Law at the School of Law of the mentioned Faculty and then was appointed as Head of Private International Law at the same university (later transformed into Law School, now at the National University of Rosario).

Werner Goldschmidt was also Professor of Private International Law and Philosophy of Law at the Faculty of Law (University of Buenos Aires). He was professor on the same subjects at the Pontifical *Catholic University of Argentina* and University of Salvador. He taught Private International Law at the Faculty of Legal and Social Sciences of the National University of Litoral. He also served as professor of the National University of La Plata and the Northeast; the Universities of Belgrano and Notarial of Argentina, and the Foreign Service Institute of the Ministry of Foreign Affairs. In 1972 he taught a course at the Hague Academy of International Law on "Transactions Between States and public firms and foreign private firms, a methodological study".

He was appointed as professor emeritus by: the Nation University of Rosario (1976), the National University of La Plata (1982), the Pontifical Catholic University of La Plata (1982), the Notarial University of Argentina (1984), the Pontifical Catholic University of Argentina (1984) and the National Institute of Foreign Service. He was also an honorary professor at the University of Buenos Aires.

In Argentina Goldschmidt had a very important participation in various scientific organizations. He was a member of the International Institute of Philosophy of Law, the Hispano-Luso-American Institute of International Law, and the International Law Association of Argentina (where he was director of the International Private Law Section). He was honorary director of the Research Center of Legal Philosophy and Social Philosophy at the National University of Rosario. Within its structure works an Interdisciplinary Chair named after him. He joined as well the Argentine Association of Philosophy of Law.

Numerous academic and scientific meetings were held in his honor, among which we can include: the Congress of the Argentine Association of International Law, the Conference of Philosophy of Law in homage to Werner Goldschmidt and Carlos Cossio (on the twentieth anniversary of his death). On June 1st, 2010, the Faculty of Law of the University of Buenos Aires paid him tribute on the centenary of his birth. In 1986, he received the Merit Diploma of the Konex Foundation in Humanities, for his achievements in the field of General Theory and Philosophy of Law.

b) Scientific and normative production

Werner Goldschmidt wrote numerous books and articles published in various countries, mainly in Spain, Germany and Argentina. Based on their exceptional significance we shall mention: "*La consecuencia jurídica de la norma del Derecho Internacional Privado*", Barcelona, Bosch, 1935; "*Sistema y Filosofía del Derecho Internacional Privado*" (2ª. ed., EJEA, 1952); "*La ciencia de la justicia (Dikelogía)*", Madrid, Aguilar, 1958 (y Bs. As., Depalma, 1986); "Suma del Derecho Internacional Privado", Bs. As., EJEA, 1958, 2ª. ed. Buenos Aires, Abeledo-Perrot, 1961; "Introducción al Derecho" (Madrid, Aguilar, 1960 y 1962, later known as "*Introducción filosófica al Derecho. La teoría trialista del mundo jurídico y sus horizontes*" (with numerous editions in Buenos Aires, Depalma and Lexis Nexis editorials since 1967); "*Der Aufbau der Juristischen Welt*", Wiesbaden, Franz Steiner,

1963; “Estudios Jusprivatistas Internacionales”, Rosario, UNR, 1969; “*Derecho Internacional Privado. Derecho de la Tolerancia*” (based on the trialist theory of the juridical world), Buenos Aires, El Derecho, 1970, reaching its 10th. ed. with the very important update made by Alicia M. Perugini Zanetti et al, Buenos Aires, AbeledoPerrot, 2009, and “Justicia y Verdad”, Buenos Aires, La Ley, 1978.

The special Commission established in 1974 by the National Ministry of Justice proposed to take the Draft Code of Private International Law known as Goldschmidt Project as a base for the respective legislation.⁹⁵ That project, and the one elaborated by the Ministry of Justice Commission in 2002, have served as one of the important foundations of Private International Law rules contained in the recent Civil and Commercial Code of Argentina.⁹⁶

Goldschmidt also participated in the Inter-American Specialized Conferences on Private International Law of the Organization of American States. The traces of his influence can be found in the Inter-American Convention on General Rules of Private International Law.

c) The constrains

Perhaps the juridical works of Werner Goldschmidt can be explained by the dramatic situations of his life, marked by multiple uprootings and the falsity of many rights declamations that never came to fruition. Hence his vocation for the reality of the respect for the foreign element and Human Rights; the integration of norms taking into consideration social reality and justice. In a way, his task is understood as an enormous

⁹⁵ On this matter: *Alejandro Aldo Menicocci*, “Werner Goldschmidt y la Codificación del Derecho Internacional Privado”, <http://www.cartapacio.edu.ar/ojs/index.php/iyd/article/viewFile/630/505>, 25-7-2015; *Alicia M. Perugini Zanetti*, “Panorama general del Capítulo I del Título IV del Proyecto de Código Civil y Comercial de la Nación”, in “Análisis del proyecto de nuevo Código Civil y Comercial 2012”, Buenos Aires, El Derecho, <http://bibliotecadigital.uca.edu.ar/repositorio/contribuciones/panorama-general-capitulo-i-titulo-iv.pdf>, 25-7-2015; *Horacio Daniel Piombo*, “Proceso de codificación del Derecho Internacional Privado en la Argentina; recepción legislativa del Código “Goldschmidt”, at Derecho Internacional.net, http://www.derechointernacional.net/privado_lp/doctrina/256-piombocodificacion-del-dip-en-argentina.html, 26-7-2015; could be of interest cfr. “Estudios Jusprivatistas Internacionales” y “Derecho Internacional Privado” as referred.

⁹⁶ Act N° 26994, Book VI, Title IV, arts. 2594 and ss., at Infoleg, <http://www.infoleg.gob.ar/infolegInternet/anexos/235000-239999/235975/norma.htm>, 25-7-2015. “We have had in mind the jurisprudential solutions and the opinions of the authorized doctrine that enriches everyday matter; also, and especially, the Draft Code of Private International Law of 2003, because it largely reflects the earlier reforms, without forgetting the Goldschmidt Draft Code of Private International Law, the Draft Amendments to the Civil Code (Commission Decree 468/92) and the Draft Amendments to the Corporations Law N° 19550 of 2005 consisting of 289 reforms, among other valuable efforts.” Fundamentals of the Civil and Commercial Draft Code (the translation is ours), http://www.lavoz.com.ar/files/FUNDAMENTOS_DEL_ANTEPROYECTO_DE_CODIGO_CIVIL_Y_COMERCIAL_DE_LA_NACION.pdf, 25-7-2015.

effort to achieve, on the fields of Philosophy and Private International Law, a comprehension of Law routed effectively to the realization of justice.

2) Doctrine

a) International Private Law

The main scientific contributions that Werner Goldschmidt brought with himself from Spain to Argentina, include the normological conception of Private International Law's science, making possible for the structure of the norm become the system's base of that particular science. The juridical use theory affirms that foreign law is directed into the sentence by the local judge, whom will take into account the maximum possible probability of what a foreign judge would decide. The comprehension of Private International Law was completed with the notions of Tolerance Law and law and respect of the foreign element and, finally, with the use of the three-dimensional model.

Goldschmidt's influence in the Argentine International Jusprivatist field was so large that it can be said that there is very much a "before" and an "after" of his presence in the rioplatense country.

b) General Theory and Philosophy of the Law

1') His profound legal thought, especially but not exclusively in the field of Private International Law, led Goldschmidt to seek an overcoming jus-philosophy sufficient enough to integrate the normativist perspective pointed out by Hans Kelsen. He tried to move from kelsenian pure simplicity (an improvement to the mixture called "impure complexity"), to the sheer complexity of a three-dimensional integration, culminating on the trialist theory of the juridical world. According to the three-dimensional theory, Law must take into consideration facts, norms and values.⁹⁷

⁹⁷ About the trialistic theory of the juridical worlds elaborated by Werner Goldschmidt, cfr. *Werner Goldschmidt*, "Introducción filosófica al Derecho", e. g. 6^a. ed., 5^a. repr., Buenos Aires, Depalma, 1987; "Justicia y Verdad" as referred. Goldschmidtean perspectives and later developments, e. g. cfr. in *Miguel Angel Ciuro Caldani*, "Derecho y política", Buenos Aires, Depalma, 1976; "Estudios de Filosofía Jurídica y Filosofía Política", Rosario, Fundación para las Investigaciones Jurídicas, 1982/4; "Estudios Jusfilosóficos", Rosario, Fundación para las Investigaciones Jurídicas, 1986; "La conjetura del funcionamiento de las normas jurídicas", Rosario, Fundación para las Investigaciones Jurídicas, 2000; "Metodología Dikelógica", Rosario, Fundación para las Investigaciones Jurídicas, 2007, Cartapacio, <http://www.cartapacio.edu.ar/ojs/index.php/mundojuridico/article/viewFile/1003/883>, 25-7-2015; "Distribuciones y repartos en el mundo jurídico", Rosario, UNR Editora, 2012; *Centre for the Research in Juridical Philosophy and Social Philosophy*, <http://www.centrodefilosofia.org.ar/index.htm>, 19-4-2015; "Estudios Jurídicos del Bicentenario", Rosario, UNR Editora, 2010, *Centre for the Research in Juridical Philosophy and Social Philosophy*,

With or without this denomination, the three-dimensionalism is an orientation of vast presence in Latin America and, today, a very important aspiration guided by the desire to overcome the normological positivism. The name "three-dimensionalism" was used prominently by the Brazilian legal philosopher Miguel Reale. François Gény, Rudolf Stammler, Emil Lask and Ruscoe Pound are often referred as three-dimensionalism precursors. On the same academic direction, other prominent jurists must be remembered: Luis Recaséns Siches, Carlos Fernandez Sessarego, etc.⁹⁸

2') Inside the sociological dimension Goldschmidt includes allotments of power and powerlessness, taking into consideration if they favours or harms being or life. Inside the sociological dimension Goldschmidt includes allotments of power and powerlessness, taking into consideration if they favours or harms being or life. The allotments can be distributions caused by nature, diffused human influences (of the economy, religion, language, etc.) and chance -and nuclearly-, partitions produced by the behavior of determinable human beings.

To analyze partitions one must refer to partitioners (drivers), the beneficiaries and taxed receivers, objects (the powers and impotence), forms (previous paths to reach partitions) and the reasons (including partitioner's mobiles, the alleged reasons and social reasons).

Partitions may develop in the course of the imposition or agreement. The former are authoritarian and realize the value power; the latter are autonomous and realize the value cooperation.

Relations between partitions can show them in order, called regime, or disorder, called anarchy. The order of partitions may occur vertically, by a working government's

<http://www.centrodefilosofia.org.ar/EstudiosJuridicosdelBicentenario.pdf>, 19-4-2015; "Bases del pensamiento jurídico", Rosario, UNR Editora, 2012, *Centre for the Research in Juridical Philosophy and Social Philosophy*, <http://www.centrodefilosofia.org.ar/index.htm>, 10-4-2015; "Complejidad del funcionamiento de las normas", in "La Ley". T. 2008-B, 782 ff; *María Isolina Dabove*, "El Derecho como complejidad de "saberes" diversos", Cartapacio, <http://www.cartapacio.edu.ar/ojs/index.php/ctp/article/viewFile/29/17>, 27-7-2015; *Centre for the Research in Juridical Philosophy and Social Philosophy*, <http://www.centrodefilosofia.org.ar/>, 12-4-2015; Faculty of Law, Unicen, Cartapacio Website for Juridical Publications, <http://www.cartapacio.edu.ar/>, 12-4-2015; Books on Trialistic Integrativism, <http://www.cartapacio.edu.ar/ojs/index.php/mundojuridico/index>, 12-4-2015.

⁹⁸ About three-dimensionalism and its internal tensions e. g. Cfr.: *Miguel Reale*, "Teoria tridimensional do direito", 4ª, São Paulo, Saraiva, 1986; Professor Miguel Reale, <http://www.miguelreale.com.br/>, 25-7-2015. Regarding its need, about iusphilosophers not usually recognized as three-dimensionalists, cfr.: *Robert Alexy*, "El concepto y la validez del derecho", 2da. ed., José M. Seña (trans.), 21 (87 ff.), Barcelona, Gedisa, 1997, in <https://docs.google.com/file/d/0B9kLS4xnCL8SWnZjNktvcmhPU0U/edit?pli=1>, 25-7-2015.

plan that indicates who the supreme partitioners are and which are the supreme criteria for partitions, or exemplary conduct, developed by the following of partitions considered reasonable. When the governmental plan is underway, it realizes the value predictability; the exemplary conduct realizes solidarity. The government plan is usually expressed in formal constitutions, laws, decrees, rulings, administrative decisions, etc. The exemplarity is manifested in customs, traditions, practices, jurisprudence, etc. The system realizes value order.

Partitions may find necessary limits that emerge from the "nature of things". These may be general or special. General limits can be physical, psychological, logical, socio-political or socio-economic. Special limits presented themselves in the authoritarian partitions projected on vital issues. At the time of their compliance they are rethought with the results of its realization or not.

The sociological dimension has great utility to overcome the masking produced by the rules.

3') In the normological dimension, the real sources of the rules are material, the partitions themselves, and formal, the autobiographies of partitions made by the partitioners themselves. The sources of knowledge are the doctrine.

To carry into effect the norms, namely, to realize projected partitions, it is necessary for them to function to develop, as necessary, works of interpretation, determination, development and implementation. The working of the norms is the ultimate expression of the integration of three-dimensionality. The norms conceives through concepts that provide them with accuracy and integrate senses into reality. The norms transform real entities into legal entities, which are called embodiments.

4') The dikelógica dimension, referred to the value justice, considers it objective (not subjective) and natural (not cultural). It must be realized according to the various situations arising. One must differentiate, in general, absolute natural values (justice), relative values (power) and manufactured values (which may be true or false). The theory incorporates the Aristotelian classification of justice.

Justice, as a value, has three displays: valence ("must be" pure ideal), valuation (that indicates a "must be" applied) and the orientation (through guiding general criteria). The material to be estimated by justice, in the juridical world, is the wholeness of the past, present and future allotments. This makes of Justice a "pantonomous" category that can only be met through fractions, when you can not know or do more. The fractions of justice produce legal certainty.

The supreme principle of Justice requires to allot to each a sphere of freedom within which it is able for each one to develop their personality, becoming from individual to individual. It applies to the isolated partitions and to the regime.

Justice of the isolated partitions demands from partitioners, the receivers, objects, forms and the partitions reasons. The justice of the quality of the partitioners is produced by the agreement of the interested parties by autonomy and by related figures: para-autonomy (emerging from the parties when they agree on who must be the partitioner -e.g. In arbitration-) and infra-utonomy (by the agreement of a majority -e.g. in democracy-). Furthermore, legitimates the scientific and technical superiority on aristocracy. Justice of objects makes partionable. Various questions arise, for example linked to life, freedom, duties and "past". The legitimacy of the forms are embodied by the audience.

The legitimacy of the regime occurs when regime is humanist and tolerant. It humanist when it takes individuals as "ends" and not "means to and end", otherwise it is totalitarian. Humanism can be abstentionist or interventional (paternalistic). Individuals must be considered in their uniqueness, their equality and their membership to the human family. The realization of the system of justice requires to protect the individual against all threats: of other individuals, as such and as a regime; from themselves and from all "other things" (disease, ignorance, loneliness, unemployment, etc.).

5') Werner Goldschmidt applied the trialistic approach to the branches legal world, especially to Constitutional Law, Administrative Law, Criminal Procedure Law, Civil Law, Commercial Law, Labour Law, Private International Law, International Public Law and Canonic Law.

3) Disciples

1') The influence of Werner Goldschmidt in Argentina and abroad, is outstanding and in this context exists a vast complex of disciples. As this projections have often been integrated in both disciplines and sometimes into Constitutional Law, Public International Law, Civil Law and Procedural Law, it should be mentioned that, in general, among the direct and indirect disciples of Goldschmidt, which could be called first and second generation -holding the hierarchy of Principal Lecturers or Senior Lecturers on various universities- may be mentioned, for example, Ariel Ariza, Juan José Bentolila, Pedro J. Bertolino, Germán José Bidart Campos, Sonia Bellotti

Podesta, Antonio Boggiano, Juan Carlos Cassagne, Mario Eugenio Chaumet, Miguel Angel Ciuro Caldani Maria Isolina Dabove, Silvia Adriana Dreyzin, Eduardo Leopoldo Ferme, Sandra Analia Frustagli Andres Gil Dominguez, Carlos Hernandez, Eduardo Raimundo Hooft, Adriana Krasnow, Lapenta Eduardo Alejandro Aldo Menicocci, Andrea Angelica Meroi, Naomi Lidia Nicolau, Luis Palma, Alicia Perugini Mariana Zanetti, Horacio Daniel Piombo, Juan Carlos Puig, Alfredo and Alfredo Ronchetti Mario Fernando Soto. The set comes complete with numerous fellow professors, teaching assistant, professor's assistants, etc. As a three-dimensionalist, we should also refer to Agustín Gordillo.

2') Perhaps the biggest institutional influence of Werner Goldschmidt's iusphilosophical work, has been developed at the Faculty of Law at the National University of Rosario, but his teachings spread to several other institutions of Higher Education such as University os Salvador and the Faculty of Law at the National University of Central Buenos Aires. The integrativist trialism also has significant presence in the postgraduate of various universities, including the Master of Philosophy of Law and Master of Private International Law (University of Buenos Aires).

From the works of Werner Goldschmidt's disciples, have emerged a large number of books, articles and doctoral and master's thesis and master published in Argentina and other countries of America and Europe.

* Partes de este trabajo están en prensa en “Viajeros y traductores: Circulación de ideas en la formación de la cultura jurídico penal de Córdoba (1923 / 1952)” de Daniel Cesano y en la “Revista de Filosofía Jurídica y Social.