

# EPISTEMIC-METHODOLOGICAL EXPERIENCES: Questions on the Field and the Teaching of Scientific Research Methodology in Legal Education

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## ABSTRACT

The objective of the present investigation is to understand what epistemic-methodological postures and interpretations can be raised in the field of research and social phenomena. To do so, we use some arguments based on the teaching of scientific methodology in legal education. Dialectic in nature, we focused on problematizing the production of knowledge, especially in its critical dimension, giving an interpretation and meaning to the production of knowledge. The results achieved refer to the identification of “decidability” as a scientific delimitation of creativity in legal-social research. Still, regarding the need for legal research to be organized based on assumptions and techniques that allow greater fluidity in investigations. Finally, we propose an alternative metaphor to the epistemological and methodological framework linked to mere decidability, contemplating the movements of territorialization and deterritorialization of research and of the researcher.

**Keywords:** theory of knowledge; law; methodology; legal research

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## INTRODUCTION

With the crisis of classical epistemology in the production of knowledge, the structures created in modernity begin to be scrapped with the emergence of new problems in the post-modern (or late modern) cultural-historical period. The idea of the classicism crisis (rationalism, cartesianism, positivism) in the sciences in general brings as consequences the dissolution of systems, concepts and methodologies until then applied to the production of knowledge (Bittar, 2009; Saldanha, 2001; Warat, 1982).

More specifically, these symptoms are perceived in social research through the bricolage of research methods. This term is an analogy taken from the *bricoleur*, that is, the one who makes patchwork quilts (Denzin; Lincoln, 2006). Therefore, the researcher uses multiple methods from various disciplines to reach deeper and more dialogical results in a highly complex context. It is, in itself, a movement within qualitative research that supports this plurality and discontinuity of methods and techniques applied today.

However, for the Law area, there has not been a structuring of its productions as the social sciences perform in the academic (or social research) environment. The legal area still produces a discourse focused on decidability of normative conflicts that enter the forensic sphere (Ferraz Júnior, 2015). It is this dogmatization of its structures that, for example, makes it difficult to overcome the deficit creation of empirical studies in law, since the bibliographical production is more aligned to a legal opinion than to a bricoleur research (Andrés; Oliveira; Pinho, 2018; Barros; Barros, 2018; Bittar, 2003; Nobre, 2004).

Therefore, the research problem that guided our study was: what are the postures and interpretations that the legal-social researcher should have when facing the research areas located in the social phenomenon? This problem arises from a criticism with a double effect carried out in the middle of the investigation, the first effect is the distancing or absence of a scientific enclosure in juridical-social productions. The second effect of criticism is the treatment that jurists or legal researchers give to the data of social phenomena away from the institutional aspects of the forensic environment.

Thus, the general objective was: to understand the attitudes and interpretations that the legal-social researcher should have when facing the research areas located in the social phenomenon. For this, alternative metaphors were created to understand these postures and interpretations, that is, the processes of territorialization and deterritorialization in a spatial plane of infinite amplitudes, multidimensional and with diverse temporalities related to social legal research.

Furthermore, the study has three specific objectives. The first is: to investigate the concept of legal decidability as a paradigm of Legal Epistemology. The main idea is to describe how the logic of the forensic environment enters into legal-social research, causing, so to speak, a scientific delimitation of these researches. This, seen as a genuine obstacle, prevents an increasingly free or uncompromising production with the starting points of the legal system.

The second specific objective is to observe the epistemological problems surrounding legal decidability as a scientific enclosure of law. Different from the first one, that makes a simple description of functionalities, this specific objective presents

examples and symptoms of how this relationship between forensic environment and legal research, is a challenge to the transversality processes of knowledge.

Finally, we have the following specific objective: to describe an alternative metaphor to qualitative research in the legal-social area. The purpose of this objective is to give a more original approach by the authors of the study on legal research, by using the bibliometric analyses performed in this study and the concepts of different theories to form an authentic reflective fragment. In other words, it is a juxtaposition of different ideas to create small clues on how to think qualitative research in law from the perspective of plurality and pragmatics.

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## METHODOLOGICAL ASPECTS AND THE CHOSEN RESEARCH UNIVERSE

The method applied to the study was the dialectical method (Lima; Mito, 2007), because there was a revision or a critical reflection to the pre-existing concepts or theoretical models on the research object. Therefore, the study took an approach to investigate the already existing knowledge production on legal research, adding to it critically and giving an alternative interpretation.

The construction of this concrete-thought was articulated with the analyses carried out in scientific works of an ethnographic nature collected in the Law course at the University of Pernambuco – Arcoverde Campus. It was this research universe that allowed us to think about some of the concepts presented in the following sections, giving clues to researchers in Law and in other areas about the attitude they should have when dealing with research objects: bibliographies, documents, social actors and actresses, etc.

The approach was qualitative because of the complexity of the data and the way it was validated (Alami; Desjeux; Garabuau-Moussaoui, 2010; Noreña *et al.*, 2012). This qualitative treatment was materialized by the direct connection between the bibliographic and bibliometric collection, because the combination of these led to an interpretative posture taken by us before the study (Schwandt, 2006). The validity process, on the other hand, was inscribed in a pragmatic perspective of the research, that is, the exhaustive description of the methodological procedures, the access to data and the difficulties in the treatment of data that explain the production conditions of the results.

The types of research undertaken were: exploratory and descriptive (Silveira; Córdova, 2009). The study was exploratory because it got closer to the researchers' practice, rarely observed in the production of knowledge in the area of Law, in order to reflect on some absences present in legal-social methodologies. Moreover, it is a descriptive study because it demands a lot of information from the bibliometric data and its selection process, but not only that, since the description of some functionalities or peculiarities of qualitative research in Law was also presented.

One of the data collection techniques used in the study was: the bibliographic (Lima; Mito, 2007). This technique is used in exploratory and descriptive studies, that is, in cases that have been slightly studied and that do not allow the creation of precise and operational hypotheses. Furthermore, the bibliographical research will gather sporadic studies already published to try to assemble categories or concepts of the observed phenomenon. Given the qualitative approach and the exploratory-descriptive type employed in the current research, the bibliographic research in digital databases was indispensable to reach the results of this study.

The platform used for the bibliographical procedure was Capes Periodical Portal, from its search area the following descriptors were used: qualitative research, field research, ethnographic research and ethnography. Therefore, taking into account the theoretical and methodological treatment of the bibliometric data collected. In addition to these descriptors in the aforementioned platform, the following keywords were applied: philosophy of language, pragmatics, linguistic turn and language games. The results obtained helped in discussions on language and pragmatics in legal-social research.

The research universe chosen for the present study was based on a text *corpus* (Bauer; Aarts, 2008) collected from the Law course at the University of Pernambuco – Arcoverde Campus. The justification for choosing the corpus was the nature of the work developed in the discipline of Legal Psychology during the second semester of the year 2018. That is, ethnographic research as a partial requirement of the discipline evaluation with the purpose of inserting the undergraduate students in a transversal perspective of knowledge. For ethical reasons registered in Resolution 520 of the National Health Council (2016), the names of the students were kept confidential.

The technique used to collect the research universe mentioned above was bibliometric (Café; Bräscher, 2008). Therefore, a physical database was constructed consisting of 12 scientific papers of an ethnographic nature:

Chart 1 – List of scientific work of an ethnographic nature developed at the Law School of the University of Pernambuco – Arcoverde Campus classified by title, number of authors, and Pernambuco cities of data collection during the year 2018

PAPER TITLE	NUMBER OF AUTHORS	CITIES IN PERNAMBUCO OF ETHNOGRAPHIC DATA COLLECTION
Education in the countryside as a way of identity construction in the Pedra Vermelha settlement in Arcoverde – PE	3	Arcoverde
The fallacy of equality in the educational policy of public and private schools in Arcoverde- PE	4	Arcoverde
Individuals on probation and its implementation in the municipality of Arcoverde – PE	2	Arcoverde
The quality of life of street vendors in the city of Limoeiro – PE	1	Limoeiro
The resistance of Arcoverde’s craftsman’s house facing political and cultural invisibility	3	Arcoverde

The limitations present in the integration and permanence of the deaf students in public schools of basic education in Tupanatinga – PE	3	Tupanatinga
Vulnerability factors of prison security agents working at Advogado Brito Alves prison in Arcoverde– PE	3	Arcoverde
Implications of family and public abandonment of the residents of Domus Christi nursing home in the municipality of Arcoverde– PE.	4	Arcoverde
The contrast between the national policy for the homeless population and its implementation: implications of social stigmatization in the access to health and social assistance.	3	Arcoverde
The surviving woman: anthropological analysis of social vulnerability of women in the family environment	4	Arcoverde
The challenges of inclusive education for children diagnosed autistic in Arcoverde – PE	3	Arcoverde
Perspectives on the process of institutional care for children and teenagers in Arcoverde – PE.	3	Arcoverde
Umbanda: religious racism, resistance and territorial marginalization through the eyes of the Terreiro do Pai Cristiano de Iemanjá.	4	Arcoverde

Source: data produced by the authors.

The papers produced were analyzed to find out which strategies and alternatives these authors used to relate to their research universe. It was from this point that some reflections on qualitative research in law were made throughout the text. Moreover, these works were necessary because they follow a data collection (ethnographic) that is not traditional in the legal area, besides using a transversality in the subjects they discuss.

Anyway, after reading the texts, it was necessary to produce a sample. This sample took into account the following considerations: papers well evaluated during the discipline Legal Psychology; population or social groups that communicate in an uncommon way with the researchers; theoretical references of the papers that integrated well with the research universe. After these filters, within the chosen research universe, three papers were selected to compose the current research samples:

Chart 2 – Sampling of scientific work of an ethnographic nature developed at the Law School of the University of Pernambuco – Arcoverde *Campus* sorted by title, number of authors, and vulnerable social groups researched during 2018

PAPER TITLE	NUMBER OF AUTHORS	VULNERABLE SOCIAL GROUP SURVEYED
Individuals on probation and its implementation in the municipality of Arcoverde- PE	2	Individuals on probation and professionals in CREAS in the city of Arcoverde– Pernambuco.

The contrast between the national policy for the homeless population and its implementation: implications of social stigmatization in the access to health and social assistance.	3	Homeless population in the city of Arcoverde – Pernambuco.
Perspectives on the process of institutional care for children and teenagers in Arcoverde– PE.	3	Children and adolescents in foster care at Casa Acolher Antônio Galindo Viana.

Source: data produced by the authors.

The papers presented contributed to the analytical categories, concepts, and analyses developed throughout the text. Therefore, there is a dilution here of the duality between the data collected and the researchers who act on it, because the purpose, in itself, of the study was to promote a joint speech between the methodological narratives of the students and the premises built by us (Cardoso; Carvalho, 2018). Therefore, the important excerpts from previous works (Chart 2) were included among the theoretical references developed in the following sections.

The technique for analyzing the bibliometric data was content analysis (Bauer, 2008): a technique that cannot extract the beauty and the peculiar subtleties of the units of the analyzed *corpus*, but allows to produce valid inferences about the senders of the message, the message or the audience of the message. In this way, the texts, in some moments of the essay, emitted messages that were necessary to the future reflections, not capturing, as said before, the peculiarities of the sample of the present study. But, on the other hand, contributing to the final discussion of the research.

Finally, the critiques, ideas, and experimental<sup>3</sup> concepts present in the following sections have been inscribed into the essay genre. However, what is the essay?? The essay, in a first instance, is a versatile genre between the epistemic and the artistic. In a second instance it is something that values expression and sensibility. In other words, the essay is a hybrid writing genre that values subjective experiences, creative intuitions, and a free examination of problems (Londoño, 2011).

Having said that, the investigation carried out here permeated the academic experiences that we, the authors, had during the orientation and construction of the ethnographic work in the Law course at the University of Pernambuco – Arcoverde Campus. Therefore, in many moments, we use the verb in the first person. Further, we construct a critical examination of legal decidability as a paradigm of knowledge production in law, noting that such an exercise extends beyond legal dogmatics and even traditional zetetic studies.

Another development, typical of the essay genre, is an experimentalism that has no beginning and no end, or that does not present itself as a closed system of solutions. So, our examination has left many criticisms open or metaphors for the reflections

<sup>3</sup> The experimentalism described here is not to be confused with the experimentation carried out in laboratories under the positivism in the natural sciences. On the contrary, it is an experimentation that is the product of the essay and of a subjective and intersubjective nature, where it is practiced and tested the meditations of the authors, when they write, and of the readers, when they read, in the face of a research object.



discussed here to be complemented in other studies. On the other hand, in this ambiguous game, we created some clues for the researcher in the area of Law to be able to apprehend, in a critical way, some points raised about qualitative research in the possible epistemic-cartographic territories in law.

## TERRITORIALIZATION AND DETERRITORIALIZATION PROCESSES OF LEGAL-SOCIAL RESEARCH

The dialogue proposed here is an essay on how to produce knowledge in law and the problem of legal decidability. In this way, it uses authors like Thomas Kuhn (1998) and Wittgenstein (1999) who are not traditionally philosophers of law, morals or ethics, opening the possibility for conceptual appropriations outside the context in which they thought about science and grammar.

However, these “inappropriate” quotations do not prevent their readers from thinking (and rethinking) questions about language and science based on some passages or terms used by these authors. It is observing this, that the proposal of the present study embodies and assumes its status as an essay, trying to build reflections increasingly digressive (read as an antonym of reproductive) and out of a meta-theoretical structure. That said, one can go to the problematization.

To talk about legal science and its production of knowledge is a challenge that many jurists and even philosophers have taken on in the western society. Here or there debates arise at scientific events or meetings about “what is legal science?” and “what are its research processes?” On the other hand, there are others, such as Adeodato (2014), who see no sense in this question: is there a legal science? In any case, for this essay, it is valid to start from the assumption of the existence of a science in the legal area.

In a pragmatic-rhetorical reading, Ferraz Júnior (2014) describes legal science as an epistemological status that thinks its investigations under the problem of legal decidability. It is obvious, for readers in the area of law, that this perspective is almost commonplace in the production of knowledge. This is because its institutionalization as the ultimate rational framework in society has reduced it to thinking about social conflicts and obligatorily resolving them.

The dogmatically organized law, roughly speaking, could be summarized by two principles: the undeniability of starting points and *non liquet* (Ferraz Júnior, 2015). The first principle consists in the impossibility for the legal system to turn to other axioms that are not validly constituted/decided by a previous procedure, in which it is subject. Thus, the one who has the competence to decide in a certain procedure that aggregates it, must argue and justify his answer from data already fixed by the own system.

The principle of *non liquet*, in a different function, constitutes the obligation of the one who has the competence to decide in a legal procedure to answer. In this way, all conflicts that reach the instances of legal decision must have an adequate response using the data that make up the system itself. This characteristic is so strong that the law operators themselves, in their learning and practice, have contact with system integrating techniques when the conflict is unprecedented: conflicts that have no

approximation to any hypothetical fact imagined by legal scholars<sup>4</sup> or similarities to anything judged by case law<sup>5</sup>.

This functionalist reading printed some reflections on the epistemological level, wondering: where does legal science stand? Therefore, the research presented here will use some metaphors to describe them (the reflections). This stylistic resource is nothing more than a way to create images about the theme exposed to the readers without falling into a deep categorical rationalism.

Although the mentioned author (Ferraz Júnior), still in his work, differentiates dogmatic and zetetic investigations in law<sup>6</sup>, his proposition is surrounded by or directed toward the forensic sphere. The term forensic, in its usual sense, is related to courts and to all those who have an activity in this field. But this metaphor in the sense of this study is much wider: it refers to the instances (or spaces) institutionalized in society and connected to the elements of dogmatically organized law.

A hypothetical example might be: a law student who decides to go to an indigenous village in his region to do an investigation. If the imperative logic of that student's education is that of the forensic environment, their first reading of the research field will likely be through the perspective of the forensic: "is the competence of judgment on indigenous issues in the Federal Court accessible to them?" or "what is the duty under the law for public agencies to assist indigenous people?"

Other possible simultaneous perspectives to this example would be those coming from a colonization of knowledge<sup>7</sup>. Therefore, the student, for being the product of a technical-dogmatic perspective, could leave aside the identity of this people, the practices and their customs as irrelevant elements for scientific-legal research or even for a ratifying action (sometimes unconscious) in the subalternization of the subjects, that is, there is nothing new that indigenous people can show or reflect upon the law and/or the social as a whole.

The present text does not want to devalue nor to rank the possible contributions of these research problems in the penultimate paragraph, but the main purpose is to observe the science of law as a spatial plane that crosses several territories. In this way, to limit oneself to purely dogmatic questions when one is in such a rich field of research as the indigenous people is like using eye drops in a dark room in the hope of seeing better.

<sup>4</sup> The doctrine mentioned here is the body of literature produced in the law to teach and help its operators in their practice (judgments, opinions, and lawsuits) in the forensic sphere.

<sup>5</sup> This word can have two meanings: the first refers to a particular case decided by a judge, a chief justice (his panel and plenary in the court) or a minister (his panel and plenary in the court); the second refers to a collection of judged cases classified by themes or subareas of Law.

<sup>6</sup> Ferraz Júnior (2012, 2014, 2015), mentions two types of research in legal science thinking of the problem of decidability: dogmatic and zetetic. The first one thinks law in a dogmatic way, that is, not questioning its systemic starting points, but problematizing or trying to solve the applications of these axioms. Zethethics, on the other hand, thinks about legal research by questioning the starting point itself. In any case, the author expresses that there is a fundamental correlation between the two.

<sup>7</sup> All people (women and non-Europeans) who were considered not to be the cartesian subject or who were in the social classifications inferior in the production of knowledge constructed by the colonizers could not integrate the main axis of epistemology in modernity (Grosfoguel, 2013; Lima; Carneiro, 2019).



Another example that we could elucidate to show another interface of this “compulsion” of the forensic environment in the scientific production of law is: a student who intends to investigate the fundamental concepts in Judith Butler’s work as a theoretical-methodological guide to some social behaviors marked by gender issues. The first question that many in the legal profession will ask is: “what law has to do with it”?

It was this posture that triggered, in the present research, the reading of legal decidability (in various institutionalized instances) as a scientific enclosure. Do not philosophy and other traditional areas of knowledge contribute as some sort of support into legal research? And aren’t new analytical categories such as race and gender also epistemologically valid to permeate these scientific territories of legal and social research?

The axis of the reflection proposed here is precisely to do the opposite of what most legal literatures show as research results. Or rather, it is to remove oneself from the law (comfort zone) to read a legal object with the intention of ending the scientific compartmentalization previously mentioned. For this, the researcher must study and articulate theories or methodological approaches as if the dogmatically organized law did not exist.

To produce scientific knowledge, especially in social research, is to disengage from the structural model of knowledge. In other words, it is to go beyond the linear logic between science and its traditional object of investigation. It is obvious that this perspective is still very present because of the scientific-modern heritage of Descartes (2001), however, to deal with the humankind and its relations as a point of investigation is to use a logic of complexity: different theoretical-methodological lenses pointed to different locus in order to capture ambiguities, contradictions (discontinuities), and peculiarities.

However, the production of knowledge in law is still focused on the epistemic-technology of decision, always bringing up objects of study linked to dogmatically organized law. It is like repeating a constant juridical entry in a linear structure to leave aside the spectrum of affections, sensibility, the symbolic, senses in common language (and consequently of common sense), of the living and the experience that are so important and dear to the subjects, their intersubjective and trans-subjective relations.

In the meantime, to interpret the science of law is not to seek an object of study or an adequate and totalizing syntactic-semantic conception. But it involves building a domain of knowledge capable of traversing several investigative territories. It is to read and understand the various language games<sup>8</sup> that constitute the research

<sup>8</sup> The idea of language games, in one of the meanings that Wittgenstein (1999) thought of, is in a language guided by rules. These rules are not for strategic success, but to guide the interlocutor in the search for meaning (of a system) in its communication. Although the present study uses the term with similarities, it does not match the author’s. The similarity present is in the conception of language as an action and the action as a tacit concretization of certain (internal) logics constructed by the speakers.

locus. Moreover, it is to become a researcher/artisan of investigative techniques and procedures with the purpose of fabricating a bricolage<sup>9</sup>.

Does such a perspective necessarily imply that the science of law as legal decidability is outdated? No. On the contrary, it only selects this type of investigation as one of several territories in the legal universe. This observation even serves as a warning against a possible oxymoron practiced by those who treat law as a single universe and apologize under the logic of the forensic environment as the only research maneuver.

Thus, based on Castro Júnior's (2011) criticism against the constitutionalization of civil law and its Copernican turn, the text appropriates the idea highlighted by him: the universe, as metaphorically conceived today, is infinite, multiverse, expanding, and there is no determined center. Then, this would apply to the science of law and its investigations, because to center it on legal decidability is to declare the death of the metaphor "the legal universe".

The reader, observing this essay perspective created so far, may ask: how to conceive, then, the legal science in order to create its mental image and from there a practice? Since a conceptualization, by the standards here worked out, is out of the question. The resource of metaphor remains and thus legal science takes place on a spatial level of various territories that can be known and visited.

In the extension of the metaphor, these territories can remain within time (where there are various temporalities, i.e., perceptions of time), but they can also disappear or even new territories emerge. Furthermore, there is a direct interaction between territory and researchers. The first one in a calmer (but not stable) way, offering (sometimes ambiguous and contradictory) data to the researcher. The second (the researcher himself or herself and sometimes the social actors and actresses), on the other hand, is more agile in provoking the territory to obtain answers, understand its internal logic and even learn from it.

Moreover, there are the processes of territorialization and deterritorialization. The first is constituted when the researcher, by interest, suggestion or insight, maps out (locates) a research field through the actions of the subjects and the means produced by them<sup>10</sup>. The second is a permanent posture of the researcher to be a nomad in social research, therefore, cannot confine or get used to a residence in the spatial extent of the research. Furthermore, when there is a need for change for the coherence of the research project or for the obtaining of results, the subject must undress from the old location coordinates (deterritorialization) created.

This is where the alert of the present text comes in: the territory and the researcher are in such a strong dynamic of interaction that there is no way to separate them in the processes of territorialization and deterritorialization. This prevents the present

<sup>9</sup> Bricolage is an analogy taken from the *bricoleur*, i.e., the one who makes patchwork quilts. Therefore, the qualitative approach researcher uses multiple methods from various disciplines to reach deeper, more dialogical results with the reader. The researcher *bricoleur* understands that research is complex and has competing and sometimes layered theoretical categories, but does not attempt to reduce or synthesize them. This bricolage of methods is a realization that no single science has the tools to analyze social reality, but needs to communicate with other methodologies from other disciplines (Denzin; Lincoln, 2006).

<sup>10</sup> This concept is very broad, therefore, it involves all the artificial production of mankind.

study from falling into the duality of constructivism (subject constructs everything) and realism (object emits all knowledge) as images of knowledge.

Therefore, observing social research and/or the science of law became in this essay to combat syntactic-semantic perspectives as: the creation of research rules, the enclosure of scientific practice and methodological tools in concepts or worldviews, and the search for statements or truths from the facts or intuitive axioms of rationalism. These characteristics are typical of the linear logic of cartesianism (Descartes, 2001) and of the positivists (Reale; Antiseri, 2005).

Thus, the appropriate contribution to the image suggested here about legal science and/or social research is close to a pragmatic nuance<sup>11</sup>. Thus, to think of legal science through the metaphor of territories is to force the researcher to know a context, previous or concomitant to its existence, before choosing instruments, rules and theories of investigation. In the same way their approach to the research territory is also creating or giving meaning to it.

### **NOTES ON QUALITATIVE LEGAL-SOCIAL RESEARCH UNDER THE EPISTEMIC-CARTOGRAPHIC METAPHOR**

The essay reported here is close to the elements that will or will want to constitute the paradigm of (normal) science, according to Kuhn (1998), in the pre-paradigmatic or crisis phase of normal science. According to the author, the paradigm is a theoretical-methodological statement that wins among the other competitors, so it does not need to be fully successful in a single problem or in several of them. The paradigm needs only to be a promise that normal science will update itself over time, fitting the relevant facts to its predictions.

Therefore, what has been reported so far, even if in an initial way, is only a belief or one more para-theology among other possible ones about legal science or/and social research. Its purpose is not to be the panacea for contemporary epistemological problems, but to offer alternatives capable of deviating from the syntactic-semantic and linear creations of knowledge, besides thinking the research linked to the social actors/actresses, to the artifacts produced by them and to the action-language dyad under the pragmatic prism.

As the logic of complexity was already explained in the previous section, it remains for the present text to clarify more about the social actors(actresses), their artifacts and consequently their practices constituted of linguistic and non-linguistic entities. There is no point in thinking of these commonplaces of social research and/or legal science in quantitative terms, since the results and even the research processes are immeasurable and sometimes unstable. Hence the core of this essay: the qualitative approach.

<sup>11</sup> According to Marcondes (2000), pragmatics determines its semantics by the context in which it is inserted, however, it does not submit to relativism where all propositions are equally equivalent (solipsism).

In a context that avoids causality, linearity, and even a cumulative<sup>12</sup> interpretation of phenomena, the qualitative research opens doors to think about human beings and their daily interactions. It is clear that legal research, in the context of the forensic environment, already performed the qualitative presentation of data, mainly through legal documents and others of a different nature, as well as the bibliographical research itself. However, this is a narrow area of this approach, which since its inception was developed to understand much more unstable phenomena.

Nobre (2004), in a critique of Ferraz Júnior, for example, has already problematized legal decidability as a central point in the science of law. This is what he reports about the logic of the opinions and the detachment with other social sciences and humanities: the logic of the opinion in legal productions is when a thesis, beforehand, already precedes the investigation of a rationality or a problem found in the systematization of doctrines, jurisprudence and legal titles. This practice, he says, creates a strong link with forensic practice, with teaching and with the academic production of law.

The text by Nobre (2004) actually brings a very interesting criticism, also made in the previous section. However, he does not take into account the explanation about zetethics that Ferraz Júnior (2014) makes in his work, implying that he only wrote the science of law based on legal dogmatics. However, as already mentioned in a footnote, Ferraz Júnior reports on the possible zetetic developments and their importance in shaping legal dogmatics. The only reservation, for the present critique, besides the one that was made, but that will not be detailed in this text, is about the arborescent montage: zetethics as a metalanguage and dogmatics as a language.<sup>13</sup>

In any case, it is undeniable the attention that jurists give to legal dogma and the style of logic of the legal opinions in their text. Therefore, at the beginning of this section, recognition is given to the qualitative presentation in the production of legal knowledge, but as already discussed, it is surrounded by legislation, doctrines, jurisprudence and others of a different nature – but which still have the staleness of the forensic environment.

Therefore, it has become extremely important to talk about qualitative research beyond the documentary and bibliographic data collection techniques, such as, for example, the ethnographic model. To do research, reminding inattentive readers, is to go through the various territories, or rather, it is to deterritorialize and territorialize oneself in order to go beyond the subject-object and realism-constructivism dyads. Therefore,

<sup>12</sup> The aforementioned perspective by accumulation brings some problems to historians of science, because chronologically marking the first person or the first experiment of something gets more and more challenging with the amount of data that exists. Moreover, the separation between science and belief/myths/errors (listed by science today) is also disturbing the historical research by accumulation, it is not easy to establish absolute criteria on this. In this way, Kuhn (1998) criticizes this type of knowledge production and says that the separation between science and belief is only a matter of choice, because methods and theories can also make myths science.

<sup>13</sup> This arborescent idea is the metaphor found, for example, in Descartes' (2001) work on philosophy and science being contemplative (metalanguage) of a more concrete "reality" (language). Therefore, zetethics becomes a knowledge beyond dogmatic starting points, while dogmatic knowledge only works from the starting points. Carvalho (2015) when working with Criminology moves slightly away of this movement, as he constructs a dynamic epistemological tripartition of Criminology, Criminal Law and Criminal Procedural Law which does not necessarily obey the arborescent model and is even distant from the privileged place of the philosophy of law as the contemplator of everything and creator of the principles of each science.

to read, interpret and analyze the practices of vulnerable groups or the processes of vulnerability that manifest themselves is to leave the habitat of legal decidability and go towards the human<sup>14</sup> in its context, or in a more metaphorical way, the all too human.<sup>15</sup>

In addition to this comes a pragmatic (contextual) reading of these group or individual existences and their practices as an interaction between linguistic and non-linguistic entities. Therefore, the text appropriates the concept of life forms (*lebensform*) in Wittgenstein (1999) to try to elucidate this process. Just remembering that this concept was thought within the scope of grammar, in the terms used here, it will be metaphorically amplified.

The way of life, as a concept in Wittgenstein (1999), is a direct and almost inseparable link between the sociocultural community and the language games present in it. In this way, every linguistic exercise is connected to a non-linguistic activity. The author is also interested in differentiating between facts of life and forms of life, the first being an element of the second. That is, the regularity of the facts of life constitutes a form of life.

The concept previously mentioned can be intersected with the idea of knowing and visiting the research territory, that is, establishing such a strong connection with those who are gathered that there is not only a convergence of opinions, but even a convergence of ways of life. It is to enter into the beliefs and the needs that generated those beliefs in a certain context, going back, so to speak, to all the internal logic present there. This is such an intense feature from a pragmatic and even ethnographic point of view that to criticize a language game from an external point of view is not to apply “reason” but to use persuasion.

It is interesting, for our essay, to describe this process as part of the deterritorialization of the researcher himself, as it was commented before. Thus, to deterritorialize is to be a researcher who lives cutting himself/herself entirely and later sewing himself/herself to try to observe his/her inner self, as if in a surreal reading, were living in a constant anatomical and physiological change (metaphor for observation, construction and reconstruction of the subject facing the experiences in the research). Let's see:

We chose to use case study as “[...] a strategy that focuses on understanding the dynamics presented within specific contexts” (EISENDHARDT, 1989, p. 534, our translation). In other words, we analyze as carefully and deeply as possible the context in which the recipients are inserted and its influences on them. Associated with the use of the methods cited above, images were used that were taken from drawings that the children and adolescents made regarding their future and their feelings toward home, friends, and caregivers (p. 9).<sup>16</sup>

<sup>14</sup> This is observed as a political act of the researcher himself. The author Denzin and Lincoln (2006) already spoke of qualitative research in a democratic bias, studying the main categories of products of social injustice: ethnicity, gender and class.

<sup>15</sup> The intertext is inspired by Nietzsche's (2000) “*Human, all too human*”, where the philosopher criticizes the true willingness in Western culture, searching for truth that transcends immanence itself.

<sup>16</sup> Data produced by the authors of the scientific paper: Perspectives on the process of institutional care for children and adolescents in Arcoverde – PE.

Analyzing the previous excerpt, it is notable that the students needed to modify their language to be able to collect data and enter into the internal logic of a group of children. To do so, they used drawings to observe what that group expressed in relation to the environment in which they were inserted. This is nothing more than the concretization of the idea present in the penultimate paragraph, where deterritorialization is an important point for the researcher to get rid of what is habitual or natural to him/her and to become what is common to the group or the adopted text *corpus*.

To consolidate what was thought, there are two important concepts by Minayo (2010)<sup>17</sup> that can support this essay of legal/social research, aiming to collect more than the problems of philosophical and technological nature of legal decidability. The first concept is the idea of experience: the basis for all understanding, in fact, the meaning of experience is to understand. That is, the human being seeks to understand himself and his meaning in the world. Moreover, experience will be fuel for reflection and its movement will be the language itself.

Therefore, there is a difficulty in presenting pure experience because of the linguistic intermediary (experience is organized by first-order reflection and interpretation). The first order interpretation, implicit in the intermediation of language, is linked to the cultural aspect, therefore, it is previous to the narrator, the narrative and the researcher himself — this makes the subject an individual and group at the same time.

The second concept is that of living. According to the author, living is not to be confused with experience, for the first is a perspective narrated by the individual (or by a group) about a collective experience. Therefore, experiencing is a living experience (it is consciousness) that is the result of a resistance of the world (historical context) to our movements, wills and impulses. A very illustrative example is the experience of death in a family, where mourning can produce various experiences among the members of that family.

It is from this link between experience and living through language that the researcher must give himself entirely, in order to seek the maximum of what was narrated and what constituted the human being in that context. It is, from our conceptual appropriation of the work presented here, to explore a language game unfamiliar to the observer, author or co-author of the research. Or rather, it is to try to discover, through convergence in the form of life investigated there, the tacit rules that guide the narrators' language in order to grasp the meaning (even if it is not pure) that they give to themselves and to their surroundings.

It is this apprehension and reproduction (at the time of writing) of meanings, which by the perspective worked here, imprints two basic postures to the researcher: the discontinuous role of the author, co-author, and research observer; and transparency of the procedures, reading keys and analytical categories employed in the research; as well as the failures, the obstacles, and the lack of results (which in a contradictory way are also results) in the course of the project.

<sup>17</sup> It is important to remind the reader that Minayo builds her concepts from a phenomenological perspective, the present study, on the other hand, does not label itself as a phenomenological work, therefore, it can be said that there is a conceptual appropriation of the author.



This first attitude (the discontinuous role of the researcher) is taken from the text by Cardoso and Carvalho (2018) when they demonstrate the need for cooperation between subjects, social actors and researchers for the search of interpretations and results. It is an act of signification (by the researcher) and re-signification (by the actors) in social research. The proof of this is in the methodological change when the actors inform the data unknown to the author, making social research an inductive construction of the field or research space.

This explains the use of the keywords “author”, “co-author” and “observer” in social and/or legal research. In the eyes of the critique exposed here, there is a discontinuity in these roles, that is, there is a perceived ambiguity for the researcher’s role in the research itself. Although has an important role as organizer and executor of everything that was planned, his/her performance is sometimes analytical (when reads the field and the social actors and consequently introduces the readers to this) and at other times participative (when becomes an author and co-author because of the plurality of voices present in the investigation)<sup>18</sup>.

The other attitude of the researcher in front of the explored territory is transparency in front of the “topographic” problems (in the spatial plan of the research) found by him/her and his/her methodological undertakings. If the essay here combines with a pragmatic perspective, then circumstances are crucial in determining the meanings of language. Therefore, the uses, the practices, the artifacts and the way the social actors relate to each other are key points to guide the readers and the evaluators – the scientific community – in the way the whole project and the scientific writing took place. Let’s take a look at:

After a late night walk through the city center, the first interviewee was found on the cold floor of the travel desk. With few objects, the individual did not react **until he was offered food and water - which made clear his fear of urban violence**. The scene was one of extreme abandon, considering that the person approached had nothing more than a thin sheet and a improvised bed made of cardboard, of little use during the cold nights of the city (p. 10, emphasis added)<sup>19</sup>.

The passage above is a representation of a “topographic” problem of the researchers, where the access to the vulnerable group, or rather, to the social actor(s) they had chosen for the collection and analysis of data, was intimidated by the urban violence that was usual. The strategy of the authors of the paper was, then, the approach by giving food, something rare to the social actor. This was not a negotiation gesture between researcher and research subject, but a strategy/procedure to connect to the social actor in a genuine way, bringing trust to the relationship that will enrich the research.

<sup>18</sup> This debate revives the idea of methodological purity. In a way, it is the researcher who writes the research, and the researcher, due to linguistic problems, could not express purely the narratives he or she has collected. The experimentalism present here is aware of this, but the speech expressed in this paragraph relates more to the role of a dubbing director, for example, where his task is to organize and systematize the lines, but at some point his role is extinguished in front of the other actors. Furthermore, the well valued use of images, sounds and videos is an alternative to this very strong intermediation between the researcher and the social actors.

<sup>19</sup> Data produced by the authors of an ethnographic scientific paper: The contrast between the national policy for the homeless population and its effectiveness: Implications of social stigmatization in the access to health and social assistance.

To be transparent is not, therefore, to bring methodological purity, on the contrary, it is to make clear all the procedures, the use of theorists and their ideas (as well as possible conceptual appropriations) and the analytical categories included throughout the research and writing process. Furthermore, it is to bring the “zeros” of the research, that is, the lack of material (bibliographic or documental that would help the research), the motivated unavailability of the social actors (actresses), the contradictions and absences present in the collection and systematization of data.

This second characteristic (the attitude of transparency) of the researcher may provide an opportunity to explain the relationship between the context of discovery and justification in social and/or legal research itself. According to Raicik and Peduzzi (2015), the first relates to the psychological, sociological, and historical aspects of the discovery of something, that is, how knowledge was discovered of a subjective dimension. On the other hand, the justification context has to do with the rational or logical reconstruction (relationship between facts and theories) of the results (product of discovery, elaborated theories, the methods used, and the developed empirical justification of the theory) presented to the scientific community.

Based on Hoyningen-Huene (1987), the present study observes that this duality does not materialize, because there are 5 contradictions in this way of thinking. The first criticism is the temporal indifference of the context of discovery and the context of justification, because the two are so intensely linked that their simple disruption could not support scientific research. The second criticism consists in the presence of logical aspects (mainly in the research planning part) in the discovery context, refuting the reduction made by traditional authors to empirical aspects (psychological, sociological and historical). The third criticism lies in the ambiguity between the two contexts, since all knowledge acquisition is simultaneously (explicitly or not) justified.

The author’s penultimate criticism is based on Kuhn (1998), where the justification context has sociological elaboration (the scientific community always establishes paradigms for its orientation at a given time) and psychological elaboration (each individual in that community may interpret the values imbricated in the research differently). The last criticism resides in the feedback that factual disciplines (according to the author’s arborescent reading) can have with epistemology, offering to the latter enlightenments on the final product of research.

Therefore, in the face of this unsatisfactory duality, the attitude of transparency of the researcher unites context of discovery and context of justification, because based on the conditions themselves - the difficulties of the research location, the epistemological selection of the data, the reading keys appropriate to its selection, and the data and results systematics used by the author – in which was inserted, the reader and the scientific community can evaluate or understand the meaning of the justification constructed throughout the investigation. In essence, it is to validate<sup>20</sup> from the very pragmatics (conditions and directions) of research and writing. Let’s look at:

<sup>20</sup> Validity was originally interpreted as a stable interpretive process of the results, that is, the understanding of the data should be the same or similar for all researchers. However, the complexity of qualitative research has changed this into an exhaustive care in the methodological process: the recognition of a social construction of the data and a discourse organization referring to the theoretical foundations that support the study. Furthermore, qualitative research, according to some theorists, leads to a fidelity of the studied phenomenon. This is done by describing the strategies used, the most usual are: triangulation, saturation and contrast with other researchers (Noreña *et al.*, 2012).

In this way, they showed us the importance of creating bonds with the socio learners, which made us realize, in the meetings we had the opportunity to attend, that they do not feel at ease when other people are present, as the social educator had already reported, shyness transcends;[...] However, at no point in the meeting did the young people present open themselves up to participation, where they were several times called forward for demonstrations or even asked if they had ever witnessed any of the situations that were being demonstrated, but they remained quiet or just said “I won’t go”.(p. 18-19)<sup>21</sup>.

It is clear to us that the authors of the scientific paper reported difficulties to justify why so many socio learners on probation did not give interviews to them. This, for qualitative research, is not a failure. On the contrary, it is a transparency of the researcher in reporting the research conditions for data collection and analysis. An important point, since it presents the materialization of the validity of the research by the context (pragmatics) in which it is.

Finally, as part of the author’s transparent attitude and the epistemological or cartographic (continuing the metaphor of territories) cut in the research, there are the scales of observation. It is notable that an inductive movement could not map the territory regardless, so in qualitative research it is essential to define the processes of the research universe, sampling and saturation through the degrees of the lens of the observational scale. This is part of the territorialization process mentioned above that permeates the territory itself and the researcher.

Using the concepts of Alami *et al.* (2010), the social scales are very important to determine which approaches will be taken to the actors’ ways of life and the possible results obtained from this. When studying from a micro individual scale, for example, the researcher observes the direct relationship of the cognitive subject with his or her actions and the environment in which they are. However, when the scale is moved to a microsocial level, the actor studied individually is observed within a wider network of social relationships. Thus, there may be performative elements inserted into the results, even if they are not visible or directly related to the individual in question.

On an intermediary social scale, the action of an individual will be interpreted within a context of power relations between groups of social actors in order to try to describe or analyze the general rules of this “game”. Finally, when an issue is analyzed from a macro-social perspective, the individual is dissolved and what will matter is the recurrence of the action plus its census. Thus, the only diversities (and particularities) understood are the variables of identity: ethnicity, gender, income, education, etc.

For the purposes presented in this research, the micro individual, micro social and intermediate social scales are indispensable. The scales of these territorial maps will help researchers at the time of data collection – What questions and variables could be included in a survey or questionnaire? What bibliographic materials would support the reading of these methodological cartographies? What documents or data produced by

<sup>21</sup> Data produced by the authors of an ethnographic scientific paper: Individuals on probation and its implementation in the municipality of Arcoverde – PE.

other authors or institutions would provide the necessary reference<sup>22</sup> for the research context? – and the analytical categories created or reproduced during the researcher's second-order<sup>23</sup> interpretation.

The macrosocial scale, on the other hand, does not fit the theme discussed here, but belongs to another territory that social and/or legal research can access and understand. This quantitative approach of object exploration obviously has different steps, e.g.: the first step is data selection, then, the researchers must observe possible errors, distortions or lack of data; the second step is the codification of this data, that is, its transformation into classes, symbols or numbers; and the third step is the presentation of the data in graphs, tables or charts (Gustin; Lara; Costa, 2012).

Having made this clear, we return to the subject of scales relevant to the present paper. These need to be intersected with the ideas of sampling in the research universe and saturation in the qualitative approach. In light of this, explaining these terms is a task for the readers to understand how all the procedures take place when planning a research project and executing it.

According to Minayo (2017), for example, the choice of sample in a qualitative research will always depend on the type of object or research problem to be presented. This already reveals that the didactic orders infused in the scientific research methodology textbooks do not illustrate this complex, discontinuous and holistic thinking between research universe, problem and hypothesis. It is essential for the researcher to think jointly, from beginning to end, all the methodological elements of the project and its writing. But, on the other hand, the execution of the project must be thought through step by step.

Some conditions must be observed when selecting the research and submitting it to a project: the instruments to understand the distinctions and differentiations of the group(s); choice of location; to focus on the most relevant groups and those characteristics that will be classified; secondary groups that were linked to the main group; confrontation between field research and theory; to consider a sufficient number for the complementation of information; to provide for a triangulation of methods and techniques.

That is why the territorialization process could not be linear, as was presented earlier in the systematization of quantitative data under the macrosocial scale. The movement of a researcher at a smaller scale level may involve fewer people, but involves a greater complexity and contradiction of research data. Therefore, qualitative

<sup>22</sup> From the term created by Wittgenstein (Glock, 1998) in grammar, the present study gave the following meaning: a basic condition for language to be equivalent to a game, that is, to have an internal logic by using rules and offer of these the possibility of linguistic proficiency so that the interlocutor communicates or understands a communication in that context. The use of rules to construct meaning among signs is something that is within the basic conditions, because without this context or relative stability, there would be an impossibility to make a linguistic move (chess metaphor for move).

<sup>23</sup> The second-order interpretation brings the whole process of sorting, classifying, understanding the material in part (each narrative) and as a whole, and the search for its own peculiar logic. The last one reported is one of the biggest mistakes of qualitative researchers, because many interpret the material without understanding its internal logic. Another common mistake, contrary to the previous one, is an excessive attachment of the researcher to the collected material. From the understanding of the narrators' internal logic, the qualitative researcher needs to transcend the material, making, in fact, a second-order interpretation (Minayo, 2010).

research is developed from a totality perspective (and not a totalizing one) so gradually (from its beginning - project - to its end - publication of results) it can see the gaps in the research field and the possible articulations that will result in the internal logic of the social actors.

The second concept is that of saturation, also discussed in Minayo (2017). This is a consequence of the sample. That is, it is when the sampling of a particular research no longer brings new data, so it is important that the qualitative researcher has the understanding that quantity is often not important, but comprehensiveness (the quality) is. Every researcher must decide well which social actors are relevant to its research problem or working hypothesis.

It is in this collection of concepts that the reflection, still timid, suggested here, highlights the importance of a good research universe under the prism of necessity-time-adequacy<sup>24</sup>. What is that? To territorialize oneself in research through a cartographic process is to keep in mind the social scales, their possible sampling, selection and saturation; but also the adequacy of these conditions with: the time the researcher has to do the research; his financial and human resources; and the (topographic) context of difficulties he has and may have of the ways of life, the language games and the willingness of the actors to “write” the research

In conclusion, doing qualitative research is not as easy as many imagined, for its uncertainties and ambiguities are obstacles to the choice of methodological tools *a priori*, causing a shock in our day-to-day linear pedagogy. Therefore, its formulation occurs through an eternal<sup>25</sup> process of territorialization and deterritorialization of the research subject or of those who will be the object of the research itself.

Moreover, these aspects of affectivity, sensibility, language, practices and the very context or pragmatics of the social actors can become real traps for all those researchers who have spent their lives feeding the logic of opinions and the imperative of the ‘forensic environment’ in legal research. This is because it is very common, in the custom of the implementations of technologies for legal decision or linearity, to reduce the investigated research field to theses (more than consolidated hypotheses), bibliographies or legal documents (such as legislations, for example).

Perhaps it is more interesting to learn from the song *Alucinação* (1976) by the singer and composer Belchior:

I am not interested  
In no theory  
In no fantasy  
Not in something more

<sup>24</sup> Minayo (2017), presents a similar perception, however, in our research we added even more pragmatic issues that are sensitive to Brazilian researchers: the time and funding of the research. Further, we intersect this prism with the well-defined scales of observation.

<sup>25</sup> In fact, using the oxymoron of Vinícius de Moraes in his *Soneto de Fidelidade*: “But let it be infinite while it lasts” (Moraes, 1960, p. 96); This repeated autopsy (a metaphor mentioned earlier in the text) of the researcher will only last as long as the project is carried out, or as long as the researcher decides to dedicate to it. Because no matter how much he dedicates his whole life, the research from a perspective of “truth” or “exhaustiveness” of knowledge, is endless.

Not in paint for my face  
Or oba oba, or melody  
To accompany yawns  
Morning dreams

*Eu não estou interessado  
Em nenhuma teoria  
Em nenhuma fantasia  
Nem no algo mais  
Nem em tinta pro meu rosto  
Ou oba oba, ou melodia  
Para acompanhar bocejos  
Sonhos matinais*

I am not interested  
In any theory  
Nor in that Eastern stuff  
Astral romances  
**My hallucination  
Is to endure the day to day  
And my delusion  
Is to experience  
With real things**

*Eu não estou interessado  
Em nenhuma teoria  
Nem nessas coisas do oriente  
Romances astrais  
**A minha alucinação  
É suportar o dia-a-dia  
E meu delírio  
É a experiência  
Com coisas reais***

It is based on art that the essay written here emphasizes the “delusion with real things” as a need of the researcher to interpret, in a more pragmatic way, the environment where is inserted or wants to be inserted. In a complementary way, the music brings us the warning to avoid “theories” or “astral romances”, therefore, it extends to the researcher the duty of not submitting the narratives and the intersubjective or trans-subjective relations that observes to theoretical-methodological tools. In summary, qualitative research, in the epistemic-cartographic process thought here, is a daily getting familiar and a “sitting at the table” with the research field.

## CONCLUDING REMARKS

The study initially talks about the problem of legal decidability as a scientific enclosure in legal-social research. This first result, a result of our qualitative approach, is a review on how the paradigm of Legal Epistemology is directly related to the forensic environment that produces a technology of decidability of social conflicts.



The second point listed during our study is the need for a broad and diverse legal research, that is, an investigation that goes through different social territories without worrying directly about what the legal system or the dogmatically organized law constructs or conceptualizes in matters of law. Therefore, it is a movement out of the comfort zone of law (dogmatics) to reflect phenomena and issues found in social immanence.

Another aspect that the study permeates is an alternative metaphor to the epistemology of legal decidability. That is, the processes of territorialization and deterritorialization that take place between researchers, research objects, and social actors, in order to dilute the dual process (subject and object) in the construction of knowledge and at the same time present the fluidity that exists between these two traditional components of research. So, to be a researcher is to be a cartographer: to create coordinates and maps of what you are going to research. But also to be nomadic: to change territory when it is not suitable for research.

The concept of life forms and its pragmatic perspective were appropriations used that, in a certain way, became results to think about the ways of investigation of qualitative social-legal research. In other words, the immanence or the researchers' desire of life in relation to their studies is such, under the metaphor used here, that the syntactic-semantic creations are not research maneuvers, because the context and the conditions in which the data or the social actors are inserted are so important that they become starting points for assembling the methodological procedures and the final analyses.

Two positions, also results of the present research, were the discontinuity of the researcher and the ethics of transparency that should have. Thus, the researcher facing the research territories must be discontinuous, that is, not become a linear or totalitarian voice in the research, but share it with the data and the social actors observes, describes and exchanges knowledge with. Furthermore, the ethics of transparency is the deep and detailed description of all the procedures undertaken in the study, so even the "zeros" or difficulties of the research should be elucidated.

Finally, we create the prismatic idea of time-need-adequacy, where the research subject must always make a self-observation to measure or project his financial and human resources to be able to sustain certain research proposals (ambitious or not). In a more complete way, it is to know if the idea of time, materialized in the amount of people and funding for the research, is adequate to the needs that a scientific work plan demands when it comes to being executed, taking into account the quality and amount of data that it will contain.

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