



Study days

Local conflicts and relationship(s) with the law

Thursday 11th April and Friday 12th April 2013

Several recent studies¹ piloted by the UMR CITERES team working on political and social regional construction (*Construction politique et sociale des territoires*) have examined the effects of situations in which collectives of residents, militants, and local political representatives have joined forces to protect the future of certain spaces, to oppose projects, or to demand the protection of sub-areas. We have been able to analyze these situations through their social, political, regional and legal productivity².

The aim of these study days is to compare the results of these studies with other research exploring the role of the law in local conflicts. This will involve examining various hypotheses regarding the legal productivity of conflict situations.

The law plays an important role in conflicts, not only as a resource but also as a cognitive framework. True, it can open up a channel for the judicialization of disputes; a large proportion of conflicts can have a litigation dimension. But aside from dealing with complaints or appeals, the law can play a role in creating expectations and determining positions, and it provides an argumentative resource. For the residents involved, the law exists primarily as a text that they expect to be effective when they confront public authority representatives. They often present their action as a demand that legal norms be made effective and seek local activation / adaptation of the law. In certain cases, they demand new laws or better legal control of the functioning of the action or projects at stake. Moreover, there are more and more agencies, which include residents, negotiating the application of rules. Charters and contracts seem to provide the possibility of local legal production. With regard to local conflicts, residents discover that the law is not automatically applied, and that action must be taken by certain stakeholders if it is to take effect locally. To this end, work is needed to localize the legal system, to give a social construction to its local validity, and to bring it in line with local processes of social regulation.

¹ This text is based on discussions carried out as part of CONFURB and DeSCRI projects. It owes much to the summary reports of the legal aspect of conflicts drawn up by Antonio Azuela, Vicente Ugalde and Patrice Melé.

² Cf the research project of Vicente Ugalde, Studium guest from September 2012 to September 2013 during his sabbatical with UMR CITERES. Also the CONFURB project, *Conflicts de proximité et dynamiques urbaines* (Conflicts of proximity and urban dynamics) (France, Mexico, Canada), P. Melé (coord.), as part of the ANR SHS "Conflicts, guerre(s), violence" (Conflicts, war(s), violence) (2007-2011) and the DeSCRI project, *Décider en situation de crise: gestion des déchets, conflits et concertations* (Decision-making in crisis situations: waste management, conflicts and cooperation) (France, Italy, Mexico), P. Melé (coord.) for the CDE programme *Concertation, décision, environnement*, Ministry for the environment, energy and sustainable development, ADEME (2008-2012). See also the current programme (2012-2016) *Localiser les infrastructures de traitement des déchets: modes de régulation et conflits locaux* (Localizing waste treatment infrastructure: means of regulation and local conflicts) (Mexico, France) (2012-2016), ECOS-Nord programme Association of Mexican Universities (ANUEIS), coord. Vicente Ugalde for the CEDUA du Colegio de Mexico and P. Melé for UMR CITERES / CoST.

First, to understand legal productivity in conflict situations, we will distinguish the framework and distributive effects of judicialization from the symbolic and cognitive effects of the law; we will examine the role of the law in participative procedures, and the role of the spread of conflict situations in the judicialization of society.

The effects of judicialization

Let us consider that a conflict changes when a dispute is taken to court. First, we can identify several effects linked to conflict situations that are dealt with by the law.

We can look first at the effects of the processes of learning the language of the law, and also the way a legal situation can be developed collectively through interactions with legal professionals who decide on the arguments that can be used as legal strategies. Next, we can look at the distributive effects that certain legal facts can have on conflict development. The decisions taken by judges and other strictly legal acts can have direct effects on a conflict. The judiciary can take decisions that settle local conflicts clearly and irreversibly or that have a significant influence on its progress. These legal acts can be considered to be distributive, in that they direct the course of the conflict by what they give to or take from the various stakeholders.

However, empirical studies on conflict situations in various national contexts seem to show that while this outcome is possible, it is not the most widespread experience of the law. There are many local conflicts that are not resolved by means of a pre-existing legal system. Moreover, victory or defeat is just one moment during a situation of opposition and controversy that persists beyond attempts at legal settlement. In certain situations, the effect of a legal decision may be to intensify the conflict. To activate opportunities provided by the legal system at a local level, the protest groups require capacities for action and legal competences. It could moreover be postulated that the experience of the judicialization of conflict situations is marked by a two-fold uncertainty, namely the impossibility of knowing either the result of a legal decision, or its effect.

How do the forms of uncertainty related to judicialization vary according to different types of law or national contexts?

What is the role of confidence in the possibility of activating a legal channel to enforce one's rights?

The symbolic and cognitive effects of the law

Stakeholders can refer to the law when discussing their case, regardless of what may happen at the legal level. In other words, in conflict situations, the law takes different forms according to the specific social context in which they occur. A large proportion of conflict outcomes arise from the fact that new legal categories are incorporated in social interactions, or are up-dated. Legal categories have a symbolic force because they constitute an official definition of events that "institute" reality. Even if the law can sometimes seem to be external and inaccessible without long training, in conflict situations it can acquire a social meaning; it then becomes something that is present and used.

In local conflicts, it has been shown that when residents are confronted with different forms of legal characterization of space, this can have a considerable effect on the production and (re)interpretation of spatial bases. Indeed, the fact that areas protected for environmental and heritage reasons are found in many contexts could constitute a resource for residents' groups. In their search for elements that could be used to define the qualities of the areas that they are trying to protect, the groups come across these forms of 'territorialization' of heritage and environmental values.

How can the cognitive effects of contact with the law be identified in search processes?

What are the effects of the territorialization processes linked to the legal characterization of the space on the residents' relationship with the space?

Conflicts, law and participation processes

The rising number of information, cooperation and participation mechanisms, often designed as alternatives to litigation for reaching agreement, constitute forums for voicing grievances. Within these participation mechanisms, the presence and deployment of different forms of the law can be seen. There is a legal framework of participation that can be contrasted with actual methods of dialogue. Moreover, stakeholders who seek recourse to legal action can also take part in deliberative meetings. Representatives of the public authorities often say they do not understand these strategies. In other cases, legal solutions can allow or nullify attempts at negotiation or cooperation. These cases also provide ways of observing different relationships with the law and its effects.

While legal action is often contrasted with negotiation and deliberation, what is the role of the law in participatory situations?

Local conflicts and the judicialization of society

There is another type of legal process that transcends the conflict but arises from it, and which, in principle, can affect future conflicts. This concerns changes in legislation or in the means of implementing it. We will look here at the link between conflict and judicialization.

The legal framework must provide the claimants with the means of mobilizing the law. Part of the local collectives' capacity to make use of the law is linked to legal changes regarding town planning, the environment, heritage or the landscape, and to procedures for participation, cooperation or transparency. The claims of some groups can include requests for changes in the national legal framework to allow greater possibilities of appeal by referring to procedures in other national contexts or that are promoted by supra-national organizations. In certain national situations, changes in the law have the stated objective of restricting the possibilities of appeal in order to break public policy deadlocks.

What is the role of this capacity to act through the law in spreading local conflicts?

Explicitly or implicitly, the idea behind legislative processes or administrative reforms is that certain conflicts are not dealt with correctly, or that certain activities should be more tightly controlled to avoid conflicts linked to negative externalities. The aim of new laws or reforms could be to avoid the re-occurrence of certain situations, notably on account of their conflictual nature. In other cases, the possibility that conflict situations will increase can be used to justify non-action, maintaining the status quo, or withdrawing a draft law.

How can a conflict situation become a reference justifying new legislation or the adaptation of administrative procedures that modify the conditions regulating the activity at stake or whereby the conflict becomes a matter for the courts?

While we wish to organize debates around these various aspects of the effects of group involvement and contact with the law during local conflicts, these two discussion days should also bring to light other forms of effect. By bringing together legal specialists, legal sociologists, political scientists, geographers and specialists in conflict analysis, we aim to initiate discussion about the

role of the rise in conflict situations – the experience of access to the law for protest groups and the difficulty of litigation for public stakeholders – on changes in the relationships with the law and the demand for laws in contemporary societies.

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