**Zeitschrift:** Schweizerische Zeitschrift für Soziologie = Revue suisse de sociologie = Swiss journal of sociology

**Band:** 25 (1999)

**Heft:** 3

**Artikel:** The sociologist of religions in court : neither witness nor expert?

**Autor:** Hervieu-Léger, Danièle

**DOI:** https://doi.org/10.5169/seals-814106

**Nutzungsbedingungen**

Die ETH-Bibliothek ist die Anbieterin der digitalisierten Zeitschriften. Sie besitzt keine Urheberrechte an den Zeitschriften und ist nicht verantwortlich für deren Inhalte. Die Rechte liegen in der Regel bei den Herausgebern beziehungsweise den externen Rechteinhabern. Siehe Rechtliche Hinweise.

**Conditions d'utilisation**

L'ETH Library est le fournisseur des revues numérisées. Elle ne détient aucun droit d'auteur sur les revues et n'est pas responsable de leur contenu. En règle générale, les droits sont détenus par les éditeurs ou les détenteurs de droits externes. Voir Informations légales.

**Terms of use**

The ETH Library is the provider of the digitised journals. It does not own any copyrights to the journals and is not responsible for their content. The rights usually lie with the publishers or the external rights holders. See Legal notice.

**Download PDF:** 06.10.2024

**ETH-Bibliothek Zürich, E-Periodica, https://www.e-periodica.ch**

Schweiz. Z. Soziol./Rev. suisse sociol./Swiss Journ. Sociol., 25 (3), 1999, 421–426 

# THE SOCIOLOGIST OF RELIGIONS IN COURT: NEITHER WITNESS NOR EXPERT?

*Danièle Hervieu-Léger*
EHESS, Ceifr, Paris

What contribution can a researcher – whose professional responsibilities lie in advancing human knowledge – bring to a court of law, when the very subject of his research is at the centre of a case, whether it be in criminal or civil proceedings? From the point of view of the researcher, the answer will depend upon his view of the epistemological basis of his intellectual work. It will also take into account his attitude towards civic responsibilities. The outcome of such considerations will be all the less obvious in that the one may conflict with the other. The debate that has been taking place in the columns of this journal between Bryan Wilson and Raymond Lemieux, concerning the role of the sociologist as an expert in legal proceedings involving religious groups, has already clearly demonstrated the complexity of the problem. I have never myself been confronted with this situation, but any sociologist of religions watching the present trend towards institutional and legal deregulation of the modern religious scene is bound to reflect upon how he or she would respond. I have no doubt that the best way to resolve the intellectual and moral doubts that must arise should be based on a discussion of the epistemological demands associated with the tasks of sociologists. However, even before considering this, we must examine what the functions of the witness and of the expert constitute in terms of the law itself. To provide the answer to this initial question, we must necessarily place ourselves within a particular national legal framework. Depending on whether we look at the legal and judicial traditions specific to Great Britain, Canada, France or any other country, we should inevitably formulate the problem in quite different manners. The sole aim of the discussion that follows is to clarify this issue as it may be faced by a researcher considering it in terms of the rules of French law, in other words in terms of the formal definitions of the roles of the witness and of the expert as they are specified within the French code of penal procedure.

Can an academic, on the basis of his recognized capabilities, take on one of these roles? A major debate has recently been taking place in France on this subject. This sprang from the reflections of the historians who were summoned as witnesses in the trial of Maurice Papon, as a prefect of the Vichy Government, for crimes against humanity. The exceptional significance of this case was doubtless behind the decision of some historians to accept, as much in their

capacity as citizens as because of their particular expertise, to contribute their share for the sake of justice. Marc Olivier Baruch, the author of a major treatise on the French administration under the Vichy régime, explained this clearly during a workshop at the Ecole des hautes études en sciences sociales (EHESS).[1] He also pointed out on the same occasion the numerous interpretations of which his evidence was made the object, by the lawyers representing the defence and the prosecution, by the accused himself (making his own use of historical "objectivity"), and by the media, who selectively brought to the fore certain points from his contribution. But the question is not whether a historian, who legitimately considered himself entitled to talk about a time and deeds on which he had unparalleled knowledge, was right or wrong to accept this risk. Likewise, nor is our aim here to establish, *a priori*, whether a sociologist is right or wrong to compromise his scientific integrity by participating in a trial relating to a religious sect, when he has carried out long studies that indubitably qualify him to give advice about it. In either case, the first point to be established is whether the acknowledged competence of the academic justifies *in law* his participation as either witness or expert for one party or the other in a legal proceedings. According to this strictly legal view, the reply can only be, to my mind, in the negative. What in fact is expected, in French law, of an individual called as witness before a court of law? He is required, according to Article 331 of the code of penal procedure, to contribute to establishing the exact facts of the case against the accused, of which he should have been an eye-witness or have received direct knowledge. He may also provide information concerning the personality or morals of the accused, in so far as he knows the latter personally. The basic feature is the factual nature of his statement, warranted by his personal presence when the events in question took place. This emphasis on the precision of the information provided explains the lack of significance that the court places on the views or opinions of a witness; they are regarded, at best, as leading to possible sources of distortion of the recollections of the witness.[2] The witness must speak from his personal experience of an event, without supplying any kind of analysis of the facts, which is left entirely to the responsibility of the court. The restriction to oral presentation to which the witness is subjected highlights the need to keep his contribution on the strictly descriptive plane: the witness states what he observed, addressing himself directly to the court without the use of any notes. It is up to the magistrates and lawyers to ask any necessary supplementary questions, and the witness may not refuse to reply or repeat his statements. This basic consideration demonstrates the futility – emphasized by many legal experts – of summoning historians, the

1 10 December 1997.

2 R. Dulong, *Le témoin oculaire*, Paris, Editions de l'EHESS, 1988

more so if they were born since the war, to act as witnesses to events of which their only awareness is from archival sources.

Let us move on to the topic that more directly concerns us, namely the evidence of sociologists about groups accused of criminal or civil offences. Any knowledge, however thorough, of the group, its history, its doctrines or its practices can never, in the absence of eye-witness experience of the events in question, constitute evidence in the eyes of the law. The only situation where such "evidence" could be so described would be if the sociologist were to have come directly into contact, during the course of his field work, with the people and the events at issue in the trial. It would be taking the subtlety of the reasoning too far to suggest that a sociologist, working not with social objects but with constructed sociological objects, never maintains with respect to his object the ordinary, direct relationship with the facts – the "sincerity" required by the law – that forms the basis of evidence. The logic of participatory observation implies that a sociologist immerses himself, with his entire background (his personality, his social and cultural determinants, his aspirations and his interests), in the population that he is studying. One can consider that this immersion draws him, at least temporarily and partially, beyond the position of outsider that constitutes that of a simple observer, and can justify his treatment as an "ordinary" eye-witness. Even so, the court may not necessarily regard his evidence as that of an ordinary witness. Recognizing the special capabilities of the person providing this evidence, the court will be liable to attribute greater weight to it. Conversely, it may instead suspect a degree of collusion between the researcher and the object of his research. In either of these cases, the normal application of evidence is distorted, leading to a risk of quite contradictory interpretations of the "scientific statement", not only within the court but also in the media and in public opinion.

Although it thus appears that the role of a sociologist cannot, except in rare instances, be that of a witness, one may reasonably assume that he can readily take up the position of expert. The sociologist can indeed provide to the court, thanks to his fund of knowledge, information that is essential to put into context the case before it. He can help it to see relationships between the facts at issue, by explaining the historical development of a particular group, the ideals that it pursues, and its wider cultural context. In so doing, the expert acts as an assistant to the magistrate, who makes use of his scientific knowledge to obtain data that are not otherwise available and that are needed for the case. But such assistance does not extend to evaluation of the facts. The role of the expert is a purely technical one and it would be overstepping this role to present, in the guise of expert information, value judgements, views on ethical questions or

legal interpretations that come solely within the competence of the judge.[3] Thus the expert is not entitled to express any view on whether certain beliefs are inherently "dangerous". He can at most point out that, on the basis of his experience and knowledge, the beliefs in question have never justified practices that put in danger the physical or moral integrity of those who hold them, nor incited believers to conduct that would be threatening either to themselves or to society at large. A judge should not hand over responsibility for evaluation of facts to an expert, and even less should he require the expert to make a statement about their legal standing. It is precisely here that the proceedings against groups designated as "sects" pose insurmountable difficulties in French courts for the sociological experts involved. One of the main difficulties in such proceedings concerns the "religious" nature or otherwise of these groups. In order to benefit from the rights associated with the freedom of religious practice in a democratic society, the groups involved naturally claim to qualify as religious. However, the court, which must guarantee these rights, is not, for its part, entitled to make such a definition. The secular status of the State precludes a court from formulating a definition of "a religion", which would provide recognition of particular cults. The court can only take note of the fact that certain groups described socially as "sects" hold a set of common beliefs, which they themselves claim to constitute a "religion", and it must bear in mind that freedom of belief as such is an absolute right. The appeal court of Lyons, which made a judgement on 28 July 1997 in the case of the Church of Scientology, simply recognized this situation. This court made the observation that "in so far as a religion can be defined as a concurrence an objective element and a subjective one, the first being the existence of a community, albeit a small one, and the second a common faith, the Church of Scientology can claim to hold the status of a religion, and may freely carry out activities within the framework of the existing laws, including its missionary activities or proselytism (...)".[4] The Church of Scientology hailed this judgement as giving it the right to be treated as one of the respectable religions. The opponents of the judgement – including anti-sect associations as well as the Catholic church – denounced this religious recognition accorded by the court to the Church of Scientology. However, both of these interpretations distort the reasoning behind the judgement. The Church of Scientology demanded to be treated as a religion in order to be able to invoke the laws that guarantee freedom of religious practice. It was in response to this line of defence that the

3 A statement about the personality of the accused does not, it should be borne in mind, constitute expert information, but rather witness evidence, and it should not be confused with psychiatric expert assessment, which in principle involves exclusively the identification of objective symptoms.

4 *Le Monde*, 30 July 1997.

magistrates pronounced as they did. Lacking any legal basis for determining whether the Church of Scientology could *legitimately* claim to be a religion, they first stated that the question as to whether the association involved was a religion or a sect was in itself pointless. Thus the court was not legally "recognizing" the Church of Scientology as a religion. Indeed, following precedent on this issue, it adopted the only course open to it. It took note of the fact that the members of the Church of Scientology considered it to constitute a religion and that they did indeed share common beliefs. But the court's duty to uphold the absolute freedom of belief did not in the least prevent it from seeking to establish whether activities practised in relation to such beliefs were conducted "within the framework of the existing laws". On this last point, the answer was clearly negative, and the Church of Scientology was duly condemned. The discussions that surrounded this decision show the contradictions that a State finds itself confronted with as soon as the problem of control (or even prevention) of excesses of sect behaviour becomes an issue. But they also highlight the serious dilemma presented to a sociologist of religions when called before a court of law on the basis of special competence in religious affairs, and summoned to apply his knowledge relating to groups whose definition as "religious groups" remains in limbo. The simple act of responding to the court's request might implicitly impart a certain legal status to the facts in question. It may be possible to circumvent this difficulty insofar as the demand for expert information relates to a particular group with which the sociologist has had occasion to become acquainted through his research, independently of the categorization of the group as religious or otherwise that he may have used in classifying his subjects of research. The court can use such subtleties in formulating its request for expert opinion in a manner that does not prejudge the issues. But it is highly unlikely that the group accused, its lawyers, the press and public opinion will follow this approach and refrain from making use of the such ambiguities to interpret the sociologist's participation for their particular ends. In this respect, it is up to each individual to decide whether he personally is willing to run the risks inherent in this situation, on the basis of the importance of the case and of his own intellectual, moral and political attitudes. In my opinion, there cannot be a general, definitive answer to the question of whether a sociologist of religions should agree to a request to provide expert information about a group whose status as a religious group is both uncertain and central to the outcome of the trial. According to logic, the legal contradiction relating to reference to a "religious expert" demands *in principle* a negative response to this question. The call of moral and social responsibility may lead an individual, *on a case by case basis*, to adopt the opposite choice. This is not to plead in favour of an inconsistent approach, but

simply to recognize that conditions can arise when the demands for justice may override the need for a clearly defined position.

*Author's address:*
Danièle Hervieu-Léger
Centre d'Etudes Interdisciplinaires des Faits Religieux
Ecole des Hautes Etudes en Sciences Sociales
54, Bd. Raspail
F-75006 Paris