

CHAPTER 3

THE LAW OF THE OPPRESSED: THE CONSTRUCTION AND REPRODUCTION OF LEGALITY IN PASARGADA

INTRODUCTION

Pasargada is the fictitious name of a squatter settlement (or *favela*) in Rio de Janeiro. Because of the structural inaccessibility of the state legal system, and especially because of the illegal character of the favelas as urban settlements, the popular classes living in them devise adaptive strategies aimed at securing the minimal social ordering of community relations. One such strategy involves the creation of an internal legality, parallel to (and sometimes conflicting with) state official legality. This chapter describes Pasargada legality from the inside (through the sociological analysis of legal rhetoric in dispute prevention and dispute settlement) and in its (unequal) relations with the Brazilian official legal system (from the perspective of legal pluralism).

The study of Pasargada law arose out of my interest in unveiling the operation of the legal system as a whole in a class society, namely Brazil. At the time of the field research (1970) there were in Rio de Janeiro more than two hundred squatter settlements (*favelas*), where approximately one million people lived. Then, as now, not all the poor of the city lived in the *favelas*, nor were those in the *favelas* all poor. There were many lower-class people living outside the *favelas* (including some of the poorest), and lower-middle-class people living in the *favelas*. It is undeniable, however, that the large majority of people in the *favelas* belonged to the lowest strata. I chose for my study one of the oldest and biggest *favelas* in Rio. I called it Pasargada, from the title of a poem by the Brazilian poet Manuel Bandeira. The field research was conducted according to the method of participant observation, if sometimes in an unconventional way (see Chapter Three-in-the-Mirror on the odd pages for the autobiographical account of the empirical research). I lived in Pasargada from July to October of 1970, participating in the community life as much as I could. Although the period of field work was short, I could engage in participant observation from the start, since Portuguese is my native language.

CHAPTER 6 (CHAPTER THREE-IN-THE-MIRROR)

RELATIONSHIPS AMONG PERCEPTIONS THAT WE CALL IDENTITY: DOING RESEARCH IN RIO'S SQUATTER SETTLEMENTS

Genuine blasphemy . . . is the product of partial belief, and it is as impossible to the complete atheist as to the perfect christian.

—T.S. Eliot (Selected Essays, 1950: 73)

*So mak'st thou faith an enemy to faith,
and like a civil war set'st oath to oath,
Thy tongue against thy tongue.*

—Shakespeare (King John, III, 1)

*Myself when young did eagerly frequent Doctor and Saint, and heard
great argument about it and about: but evermore came out by the same
door as in I went.*

—Omar Khayyam (Rubaiyat n^o 27)

INDUCTION

A personal account of one's own research is necessarily something of an autobiography and self-portrait. Literary hermeneutics distinguishes between autobiography and self-portrait. While the former narrates "what I have done," the latter narrates "what I am." They have also different time structures: autobiography is diachronic, and self-portrait is synchronic. Though the distinction seems on the face of it clear, it is indeed very complex, much

The dispute settlement studies in legal anthropology provided the main analytical framework for the research. In the course of my work, however, I came to pay as much attention to dispute prevention as to dispute settlement, since—as it became apparent in the early stages of the field research—the ways in which people prevent disputes are related to the ways in which disputes are settled when they occur. As I concentrated my research on the dispute prevention and dispute settlement mechanisms associated with the Pasargada Residents' Association, I came to conceive of these mechanisms and their institutional setting as forming an unofficial legal system, which I called Pasargada law. I then analyzed this law in its dialectical relations with the Brazilian official system, as an instance of legal pluralism. I used a class analysis framework, examining that particular instance of legal pluralism as the relation between a dominant legal system (the official legal system controlled by the Brazilian dominant classes) and a dominated system (Pasargada law controlled by the oppressed classes).

Except for the work of Gluckman,¹ Fallers² and Bohannan,³ the research in legal anthropology and legal sociology had given until then only scant attention to the structures of legal reasoning and argumentation in sociological processes. The analysis of legal rhetoric had been left to legal philosophers, who had characteristically ignored the sociological context in which legal discourses operated. The study of Pasargada law was thus conceived as an attempt to develop an empirical sociology of legal rhetoric. Drawing upon ideas and concepts developed in European legal philosophy, I identified some basic structures of legal reasoning and argumentation, and correlated them with other features of the social and legal structure. In Section I, I develop the conceptual and theoretical framework deemed adequate to unravel the structure of legal reasoning and argumentation in Pasargada. In Section II, I analyze in depth the legal rhetoric underlying dispute prevention and settlement by the Residents' Association.

I. CONCEPTUAL AND THEORETICAL FRAMEWORK

Justiciability, Dispute Processing and Rhetoric

According to the conception of law put forward in the Introduction to Part One, the regularized procedures and the normative standards must be "considered justiciable in a given group or community." Justiciability is defined by H. Kantorowicz as the characteristic of those rules "which are considered fit to be applied by a judicial organ in some definite procedure."⁴ By "judicial organ" Kantorowicz means "a definite authority concerned with a kind of 'casuistry', to wit, the application of principles to individual cases of conflict between parties."⁵ As we can see, Kantorowicz uses the concept of judicial organ in a very broad sense or, as he puts it, in a very "modest and untechnical sense,"⁶ since it includes state judges, jurors, headmen, chieftains, human gods, magicians, priests, sages, doomsmen, councils of tribal elders, kinship tribunals, military societies, parliaments, international institutions, areopagi, sports umpires, arbitrators, church courts, *censores*, courts of love, courts of honor, *Bierrichter* and eventually gang

beyond the commonly acknowledged fact that what you do or have done portrays what you are. One can say that the self-portrait writes the autobiography. What I am is, in a sense, the last chapter of what I have done, but a last chapter that is contradictorily present in writing all the previous chapters. Saint Augustine was very much aware of this problematic, as he opposed what he had done to what he was while writing the Confessions.¹

In writing this personal account I have tried to keep inside the autobiographical model, while remaining aware that the temptation of self-portrait is intrinsic to it. This raises the question of this chapter's specific constitution: is it literary or scientific? Further, this question raises a much broader issue about the relations between social science and autobiography or, even more generally, between science and literature. Both literature and science transform empirical facts into artifacts. Clearly enough, the literary construction of artifacts differs from the scientific one, and, as shown in Chapter One, the difference has been much emphasized by modern science. It should, however, be borne in mind that such difference is based upon an equally crucial similarity, which is the fact that both literature and science possess constructive structures to build upon the "factual." In a period of paradigmatic transition, it makes much sense to emphasize (and to clarify) similarity rather than difference. After centuries of obfuscation, this is not an easy task. It is probably easier if we start out by studying the borderline cases, such as autobiography in relation to literature and social science in relation to science.

leaders. It is precisely this breadth and flexibility that makes the concept useful here. Justiciability means that the normative standards I will be discussing are applicable by a third party—to use a concept with a wide currency in legal-anthropological literature⁷—within a dispute context and according to certain regularized procedures. According to Gulliver:

A dispute arises out of disagreement between persons (individuals or subgroups) in which the alleged rights of one party are claimed to be infringed, interfered with, or denied by the other party. The second party may deny the infringement, or justify it by reference to some alternative or overriding right, or acknowledge the accusation; but he does not meet the claim. The right-claimant may, for whatever reason, accede to this, in which case no dispute arises. If he is unwilling to accede, he then takes to attempt to rectify the situation by some regularized procedure in the public arena.⁸

Law can be mobilized in the dispute context in three basic ways: dispute creation, dispute prevention, and dispute settlement. These phenomena are structurally related; consequently, the full understanding of one requires the analysis of the others. For instance, if we take the dyad, dispute creation/dispute settlement, the use of the case as the unit of analysis necessarily leads us to conceive of the creation of a dispute as logically and chronologically antecedent to its settlement. This remains true even if we extend the analysis to the prehistory and long-range consequences of the case. But if, instead of analyzing isolated cases of dispute, we examine the constant flow of disputing behavior in a given society, the logical and chronological relationship just mentioned breaks down. The basic premises upon which disputes are created, framed and prevented are structurally related to settlement in two opposing ways: (1) by anticipating and accepting the established settlement norms, procedures and structures; (2) by consciously refusing such norms, procedures and structures, and proposing others. Creation, settlement and prevention of disputes are stones in a fast creek coming down from the mountains in early summer: they stay together in the current but they change their relative positions all the time.⁹ Therefore, the fact that settlement of disputes in one society is dominated by adjudication (“win or lose”) and in another by mediation (“give a little, get a little”) will not be fully explained until we analyze the different structures and processes of dispute creation and prevention in those societies.¹⁰

Dispute prevention occupies a peculiar structural position halfway between the absence of a dispute and its creation. This may seem misleading, not only because dispute prevention appears to imply, by definition, the absence of disputes, but also because, whenever the movement away from this situation begins, we are already in a field of dispute creation. Nevertheless, it is as absurd to speak of dispute prevention after the dispute has been created as it is before the conditions for the creation of the dispute are present. A dispute may be prevented when the conditions for its creation are present in an inchoate, latent or potential form. From another perspective, a dispute may be prevented when, through a kind of short circuit, it is settled before it has actually taken place. For instance, dispute pre-

The literary constitution of autobiography has been much disputed in view of the relative predominance of nonfictional (empirical) elements in it.² On the other hand, in the positivistic tradition, the scientific constitution of social science has also been disputed in view of the relative predominance of fictional (personal, political, value-laden) elements in it. By itself, this positional similarity does not clarify the structural similarity, but it shows how the “ideal types” of literature and science, as developed by literary theory and by epistemology, have left out mixed entities in which literary and scientific elements merge together. It is conceivable that one among these mixed entities is precisely the autobiographical essay on one’s scientific history. Here, in the borderline of the borderline, the mixture of elements may reach such a complexity that it constitutes a tertium genus between science and literature.

Whether or not the present chapter succeeds in this respect, I would emphasize the importance of developing an autobiographical method in the social sciences as a way of testing new answers for questions that are common to both science and literature: for example, the relation between truth and design, between memory and invention, and between description and imagination; the question of time structure; and finally the question of the author. Besides, the development of such an autobiographical line could lead to the emergence of new styles and types of self-publication, to syncretic/synthetic forms in which scientific and literary expressions converge. In the following I

vention, thus conceived, is what people do when they have decided to enter a contractual relationship and work together to make their agreement explicit, following certain established procedures.

One or more individualized third parties may be identified as dispute preventers, and all of them (or only one) may be the third party that would intervene as dispute settler were the dispute not effectively prevented. The relevance of this fact will become clear when we analyze, in the empirical part of this study, the feedback mechanisms between the dispute settlement and the dispute prevention functions of the third party. The norms that govern cooperative behavior between parties in a given relationship (the dispute prevention context) relate in significant (but not always obvious) ways to the norms that govern settlement when a dispute arises between those parties.

The general working hypothesis of this research is that argumentative discourse (rhetoric) is the main structural component of Pasargada law, and that, accordingly, it dominates the procedures and mechanisms of dispute prevention and dispute settlement existing in Pasargada. The theory of argumentation developed by Perelman, and already used in Chapter One with reference to modern science, will be resorted to here to analyse the topic-rhetorical legal reasoning of Pasargada law. In the following I will present the concepts and issues of rhetorical analysis which will be most pertinent in dealing with the empirical analysis carried out in Section II. For illustrations, I rely heavily on the legal anthropological literature which was available at the time of the empirical work and which, in my view, continues to be suggestive.

1. *Topoi* and Judicial Protolicies

In Chapter One I discussed in detail *topoi* as a central concept in the theory of argumentation. At this juncture I want to distinguish *topoi* from judicial protolicies: the latter are not an integral part of the argumentative discourse, though they condition it. Judicial protolicies are organizational principles, principles of action or rules of thumb, on the basis of which strategic decisions are made about how to proceed. These policies are derived from the interests, needs, limitations and potential of the dispute processing mechanism itself, as these are perceived by the social groups that control it or by the dispute settler.

2. Explicit and Implicit Issues: The Object of the Dispute as the Result of a Bargaining Process

To fix the object of a dispute is to narrow it down. That is exactly what the legal process does in defining what is to be decided. This selection is determined by the needs and purposes of the legal process. The evaluation of those issues selected is accompanied by an implicit and parallel evaluation of those that are excluded.

A dialectical relationship exists between the totality and the selected parts, as well as between the relevant and the irrelevant issues. This is best illustrated in the operations of *topoi* and, particularly, in their interaction with legal rules. The narrowing of issues is the result of the gradual exclusion of alternatives, and not vice versa. Besides, this move from breadth to narrowness is not irreversible; during the processing of disputes, shifts of direction are frequent, which expand the

will raise some topics for discussion based on the "autobiography" of the present chapter.

I wrote this chapter somewhere between memory and invention, and yet I was always aware that these two extremes are at one and the same time one single site from which one has to exile oneself in order to be able to write. Indeed, neither memory nor invention offers a secure shelter for a writing enterprise of this kind. Memory is full of dark holes to be flown over by the wings of imagination. Kafka was acutely aware of this when he wrote in his Diaries (1910–1913):

In an autobiography one cannot avoid writing "often" where truth would require that "once" be written for one always remains conscious that the word "once" exploded that darkness on which the memory draws; and though it is not altogether spared by the word "often" either, it is at least preserved in the opinion of the writer, and he is carried across parts which perhaps never existed at all in his life but serve him as a substitute for those which his memory can no longer even guess at.

On the other hand, self-invention, if authentic, is never arbitrary; it is the memory of memory, the reconstruction of a melted away memory. As Saint Augustine puts it: "I mention 'memory' and I recognize what I am speaking

inquiry into new areas. And the key to a deep understanding of the legal process lies in the explanation of this dialectic.

Such an explanation can most profitably be attempted by analyzing structural interactions between the participants in the dispute process, and between them and the relevant audience. At any given point, the selection of issues is a product of the needs and purposes of the dispute process mechanism, and of the ways in which participants and audiences accommodate or react to these needs. The contribution of the parties is not limited to bringing the dispute to the third party, thus setting the process in motion. Throughout the dispute, by allegations and motions, gestures and postures, words and silences, each party tries to frame issues, introduce facts, direct the analysis and advance evaluations, that best fit his or her purposes.

The neutrality of the third party is a rhetorical *topos*, more useful in certain times, systems and situations than in others. The interests of the parties are never the only ones involved. In addition, there are the personal interests of the third party, the interests inherent in the role *he* performs and the interests of the audiences to whom *he* looks for rewards. The third party organizes her own strategy in light of a complex weighing of these interests. It is probably useful to distinguish two situations in which different interests dominate the third party's strategy. On the one hand, the third party may aim at satisfying an external audience. If she is also part of this audience, she may become its representative in the dispute process, especially when its interests are particularly pressing. This may be illustrated by Max Gluckman's discussion of the role of the Lozi *kuta* in certain cases:

The *kuta* may have before it a different kind of case which compels it to widen the field of its enquiry. The *kuta* is not only a judicial forum but also a council watching over the public interest in land, in schools, in prices, etc., etc. A dispute may raise a question of public policy: the *kuta* will then speak as a legislative and administrative council, and enquire into any issue, though as a court it should only punish offences against the law.¹¹

In these cases, the court's strategy produces shifts of direction in the processing of the dispute, which here lead to a widening of the object of inquiry beyond those issues originally raised by the parties. For the *kuta*, as members of an external audience, the dispute has social implications which the parties do not care about or which they may actually prefer to avoid. The *kuta* is successful only because it has sufficient power to override the interests of the parties.

On the other hand, the judge's strategy may be governed by interests that are predominantly internal to the dispute. Here, again, it is convenient to distinguish two situations. In the first, the judge may conclude that the outcome he seeks cannot be secured by pursuing the issues posed by the parties. Therefore, he may himself raise issues or advance facts and interpretations, or induce the parties to do so. In the second, the judge's strategy is governed by his interests as a dispute settler, or by what he perceives to be the needs, limitations and potentialities of the dispute processing context itself: here judicial protopolicies dominate. The dispute settler may fear that the process will take directions and raise issues which he either can-

about. *Where is my recognition located but in memory itself? Surely memory is present to itself through itself, and not through its own image.*"³ According to Renza:

*a given autobiographical text normally manifests the writer's spontaneous "ironic," or experimental efforts to bring his past into the intentional purview of this present narrative project. The autobiographer cannot help but sense his omission of facts from a life, the totality or complexity of which constantly eludes him, the more so when discourse pressures him into ordering these facts. Directly or indirectly infected with the prescience of incompleteness he concedes his life to a narrative "design" in tension with its own postulations, the result being an autobiographical text whose references appear to readers within an aesthetic setting, that is, in terms of the narrative's own "essayistic" disposition rather than in terms of their nontextual truth or falsity.*⁴

I would suggest that this problematic is also common to science and particularly to social science. Indeed "prescience of incompleteness," the "sense of omitting facts" is the original matrix-phantom of scientific research. Such prescience, though suppressed or explained away for a long time, has been the major force behind the struggle against the positivistic conception of sci-

not control or solve, or which would be too threatening for the survival or identity of the role he performs or the context in which he operates. Conversely, he may want to raise issues or choose directions either because they are particularly suited to his role and the dispute processing context, or because both his role and the context will be rewarded by dealing with them. His capacity to engage in these manipulations will vary with his power relative to that of the parties.

On the basis of the preceding discussion we can conclude that the object of the dispute is the result of a complex bargaining process between the parties, the third party, and the relevant audience. This seems to be true irrespective of the type of relationship underlying the dispute or of the structural features of the dispute processing context, even though the extent to which (or the ways in which) the bargaining process operates may vary according to the circumstances. This perspective can be helpful in clarifying points obscured in previous studies on dispute processing. Two will be mentioned here: the breadth or narrowness of the dispute, and the discrepancy or coincidence between the object of the dispute as presented by the parties and the *real* dispute between them.

a. The Breadth or Narrowness of the Dispute. The criterion for measuring the breadth or narrowness of a dispute is very elusive. Gluckman was the first to deal with this question systematically. He advanced the idea that when the parties in a dispute were involved in a multiplex relationship, the *kuta* tended to broaden the inquiry in order to reconcile the parties and preserve the relationship. On the other hand, when strangers disputed, the *kuta* tended to concentrate on narrow issues without making a serious attempt to reconcile the parties.¹²

Although this idea can easily be translated into a testable hypothesis, there is a substantial risk of reducing it to meaninglessness or tautology. For the difference in the breadth of the inquiry in the two situations may be explained not by the importance of the relationship and thus of reconciliation, but rather by the simple fact that disputes involving a multiplex relationship raise more issues by definition. In such a case, the correlation is not possible because the variables are not distinct. In order to measure the breadth of the inquiry, the number of issues dealt with in the dispute process must be compared with the totality of issues emerging out of the relationship between the parties. Once the totality of issues is taken into account, two hypotheses can be formulated. First, as already alluded to, the range of inquiry is influenced by the relative strength of parties, third party, and audiences. Second, the inquiry tends to narrow as the processing of the dispute becomes more formalized. But even this formulation needs further qualification.

The first corrective concerns the problem of false comparisons. In the last chapter of his book, Fallers compares the Soga of Uganda¹³ with the Lozi of Zambia,¹⁴ the Tiv of Nigeria,¹⁵ and the Arusha of Tanzania,¹⁶ and concludes that: "there appears to be a quite clear correlation between the differentiation of the bench, in terms of authority, and the legalism of the proceedings, in the sense of differentiation between law and popular morality."¹⁷ The narrowing of the issues to be processed is then viewed as one expression of such legalism, and it is illustrated by a method of analysis (the case method) in which a case in a court of a "simple" society is compared with a case in a court of a "complex" society. The inevitable conclusion is that judges in the first permit a very broad definition of

ence. As discussed in Chapter One, scientific truth is always conventional truth, facts are manufactured, and the priority of theory in science is the structural reverse of the prescience of incompleteness. Theory is needed to compensate for the ever-missing decisive facts.

In any case, what begins to emerge is that, similarly to the autobiographical text, the scientific text is constituted by a set of references that appear in a specific setting (a scientific setting), that is, in terms of the scientific narrative's own "essayistic" disposition rather than in terms of a nontextual truth or falsity. In these precise terms it is conceivable to view all science as science fiction, or rather, as reality fiction. A further exploration of this topic would probably lead to the conclusion that the scientific text's specific setting is not monolithic. On the contrary, the relation between the act of signification (the text itself) and the object of signification (memory, reality) varies inside it. The instances of tension between the two are not equally distributed throughout the scientific narrative. Accordingly, the distance between the "fictional" and the "factual" may vary widely inside the same text.

For more than one reason, the prescience of incompleteness does not exhaust the question of the factual/fictional value of the autobiographical or scientific text. First, to speak of omission of facts is probably inadequate, since it presupposes the possibility of a total coverage of the author's past or of the reality she studies. Indeed, the question is not how many facts are omit-

the cause of action and the parties are free to vent their grievances, whereas judges in the second insist upon a more rigid object of inquiry and impose narrower criteria of relevance, so that many "important" issues are excluded. When, however, one shifts from a focus upon the individual case to a perspective that encompasses the constant flow of cases in both courts, one may well see that where a court in a "simple" society raises and responds to a large number of issues in a continuous process, a court in a complex society breaks down these issues and distributes them to different judges in the same or different courts. The perceived narrowing of the issues is thus an artifact of the method of analysis which uses a concept—the "case"—that itself may vary between societies; this perspective is therefore inadequate to define and measure legalism. The real question of the division of labor within the total dispute processing context must replace the false question of the narrowing of issues.

The second corrective is that the breadth of the inquiry tends to be discussed in terms of which issues are handled, rather than how they are handled, despite the fact that the latter question may be equally important. It can be analyzed along three dimensions: direction, interpretation, presentation.

Direction refers to the overall value orientation in light of which the disputed issues are to be resolved. Without determining that direction, it is impossible to determine the content of the dispute. The sense of direction is perceptively observed by Gluckman when he comments that the cross-examination conducted by the judges "soon indicates the lines on which they are formulating the merits of the case."¹⁸ This does not mean that the judges reach a definite decision of the case at the outset, but simply that a range of possible solutions is quickly established. When the parties and the judge agree on the direction to be followed, they also tend to agree on what issues and facts are relevant. But when they disagree on the direction, relevance will depend mainly on the relative bargaining position of the participants. Accordingly, the parties may be prevented from raising certain issues; or they may raise them but the judge will ignore them in his decision; or they may force the judge to consider such issues in this or another (appeal) process.

Interpretation refers to the evaluation of specific facts and issues as they are selected in accordance with the overall direction of the dispute process. Interpretation is far more important than mere introduction, for a fact or an issue introduced by one party may become the possession (and weapon) of his opponent. It is through interpretation that certain issues are clarified with the purpose of obscuring others. Indeed, in order to reach a given outcome it may be necessary to clarify an issue, not because its clarification is important, but because another issue is thereby obscured which would otherwise tend toward the opposite outcome.

Interpretation also governs the depth in which a given fact or issue is discussed. The processing of a dispute may be stalled, accelerated or redirected through manipulations of the depth of discussion. Again, the orientation and the success of these manipulations depend mainly on the relative strengths of the participants. This dimension of depth further complicates the question of the breadth of inquiry. If a few facts and issues are discussed in depth, is the inquiry broader or narrower than if many facts and issues are discussed superficially? It seems to me

ted, but rather, how transparently accessible my past or social reality is to myself. Second, the text, as a specific medium or setting, conditions the ways in which such a question may be answered. Since the medium both unifies and separates, and the setting both connects and disconnects, I am left with the possible discrepancy between what my scientific text publicizes about my past (or about the social reality I study) and what this past (and this social reality) signifies to myself. Third, the question of how true or factual a given text is should always be complemented by the question: Compared to what? Indeed there is a (political?) economy of the scientific narrative's content, in which terms the latter is hierarchically disposed along a scale of relative importance. This scale is the code of the scientific text. Rousseau raises this problem in his Confessions, when he says: "I may omit or transpose facts, or make mistakes in dates; but I cannot go wrong about what I have felt or about what my feelings have led me to do; and these are the chief subjects of my story."⁵

The time structure of an account such as this is very much related to the question of the author. The specific temporal dialectics of the autobiography lies in the fact that the author, though writing about the past, attempts to elucidate his present, not his past. But, by doing this, he creates a distance vis-à-vis the present, and, indeed, writes in the name of the future. Thus, the text, though quite time-conscious, becomes relatively timeless. In my own case, such timelessness reveals itself in the fact that, notwithstanding the

that it is necessary to distinguish between two dimensions of breadth: vertical breadth (depth) and horizontal breadth (range).

Presentation refers to the style of dispute processing and how it affects the way in which facts are adduced and issues framed. An attempt to introduce an issue in a style that is alien to the dispute processing context may not only fail, but may also influence the outcome of the case. One way in which style of presentation constrains the parties is illustrated by Fallers's comments on the nature and use of legal concepts in Soga courts:

Such a concept has already begun to shape and narrow the issues by the time the accuser reaches the court with his complaint, for only if he can describe his cause in a word or phrase that corresponds to a wrong recognized by the court will the court summon the accused and allow the action to proceed.¹⁹

Parties must present their cases not as isolated and unique phenomena but rather as typical instances of a recognized rule. It is this very typicality that helps the third party to outline the horizon of expectations and make it comprehensible to the participants. The role of representatives, supporters and advocates is precisely to emphasize the typical character of their party's claim, and thereby bend the horizon of expectations in his favor.²⁰ The style of the dispute process will also condition the way in which this can be done.

The third corrective of the conventional treatment of the breadth of the dispute stems from the critique that it usually measures that quality in terms of the issues explicitly introduced. However, there is no reason to overlook *implicit issues* other than the greater difficulty of detecting them. Because they cannot be perceived by passive observation and recording, they have to be extracted (and, in a sense, invented) from the logical connections of the discourse and from the dialectic between language and silence, to which I will refer later. What is not discussed, or even mentioned, because it is self-evident to the participants, is crucial to an understanding of the internal dynamics of the dispute process.

The implicit discourse is the fluid from which the explicit discourse emerges and becomes meaningful. The two discourses interact in two ways. In the early stages of the process, when the preunderstanding of the case, the *topoi* and the valuations work together to achieve a gradual approximation of facts and norms, implicit discourse progressively excludes implausible solutions. As the dispute proceeds, and facts and norms are clarified, implicit discourse is redirected to making the selected solutions appear self-evident. In this respect, it is useful to distinguish between the implicitness of concepts and the implicitness of facts, since each can contribute to the self-evident quality of the solution. Although both facts and concepts may be implicit because of shared knowledge and normative agreement, the implicitness of concepts may also be explained by the absence or limited development of a legal profession. Fallers should be given credit for having initiated the analysis of implicitness, which he relates to the accessibility of Soga law: "Since the grounds of decisions are so little spelled out, and since crucial subsidiary concepts are so little open to overt statement, everything must be put to the test of courtroom argument."²¹ Furthermore, his distinction between the

appearances to the contrary, I am longing for a future that, in the near future, is meant to take place inside the "world of science," and, thus, the account contains a message on social science research which aspires to be read outside the personal and temporal context in which it has been written. In a word, there is a pedagogy hidden in this text, or even a kind of underground proselytism.

With this, the question of the author is already being raised. Is the I who did the social research narrated in this chapter the same I who wrote the present narrative? And the I of the text that follows, is he the same I of this induction, where the autobiography of that text (the autobiography for the autobiography) is attempted? Roland Barthes wrote: "When a narrator [of a written text] recounts what has happened to him, the I who recounts is no longer the same as the one that is recounted."⁶ The author's discontinuities are not exclusive to the autobiographical text. They also occur inside the scientific process. The scientist's personal time is not a homogeneous sequence. It is rather intrinsically irregular and inconsistent, and this reflects upon his scientific development. Thus, the scientific formation is discontinuous both as it occurs and as it is remembered. That is why any piece of writing is always a bridge between two times (at least).

More accurately even, it is a bridge between different perceptions, the relationship among which we call identity. In A Treatise of Human Nature, Book

implicitness of concepts and of facts allows us to perceive a second correlation: under certain conditions, the implicitness of concepts may lead to a greater explicitness of facts.

The notion of relative explicitness must be applied to a whole range of intermediate communication processes, because statements that explicitly express one thing may implicitly symbolize another. The third party may not express his hostility to the introduction of an issue, but may transmit signals of his feelings. A party who fails to recognize such signals may be adversely affected. Any participant can evoke symbolic meanings favorable to her claim. But when the role of the third party becomes significantly professionalized, it may be more difficult for the disputing parties to perceive and interpret the symbolic meanings of the third party. This is probably one of the reasons why the professionalization of the dispute settler tends to lead to professional representation of the parties.

I would like to mention two other intermediate communication processes studied by rhetoric: *signs* and *indices*. Both have a double meaning: the factual meaning and the evoked meaning. But while signs are intentionally used to evoke a certain meaning, indices evoke a meaning regardless of intent.²² Signs have a closed texture in two senses: the meanings they evoke are specific, and those meanings may be comprehensible only to certain interpreters. Indices, by contrast, have an open texture. We have a sign when, for instance, the dispute settler, lacking formal power to summon someone to "court," sends him an invitation through a policeman on duty in the community with the intention of evoking the meaning that adverse consequences might be expected if the "invitation" is not accepted. We also have a sign when, during the proceedings in court, the representatives of the parties make a gesture or utter a word which, by prearrangement, signifies that their constituents have allowed them to pursue a given path toward settlement. We have an index when a gesture or word is interpreted by any of the participants as evoking a certain meaning without prearrangement, even though the party who gestured or spoke did not want to communicate that meaning. I suggest that as the professional, social or cultural gap between the parties and the third party increases, the use of indices tends to decrease and the use of signs to increase.

b. The Processed Dispute and the Real Dispute. The degree of discrepancy or coincidence between the dispute as it is processed and the real dispute between the parties is obviously related to the preceding variable of breadth, but it must be analyzed separately. The distinction between processed and real dispute is only legitimate if (1) we know a number of instances of disputing behavior involving these parties, and (2) one of these has been selected for processing by the third party.

Whenever a discrepancy exists between the processed and the real dispute, the topic-rhetorical reasoning cannot be fully understood without understanding the reasons or the purposes of the discrepancy. Among people bound by multiplex relationships, or by simplex relationships persisting over time, it is likely that numerous disputes will arise. Many of these disputes will not come to the attention of a third party, either because the parties feel that they can handle them or because the third party offers no remedy, or still because the remedy is too costly

I, Hume questions the idea of identity by observing that it is nothing more than a set of "grammatical" relationships among perceptions:

When I enter most intimately into what I call myself, I always stumble on some particular perception or other. . . . I never catch myself at any time without a perception, and never can observe anything but the perception. . . . What then gives us so great a propensity to ascribe an identity to these successive perceptions, and to suppose ourselves possessed of an invariable and uninterrupted existence thro' the whole course of our lives?⁷

In the present instance the narrator is not me as myself, but rather me as a surrogate Everyman of social science (one is here reminded of Walt Whitman, that master definer of self-identities). Here lies the above-mentioned pedagogy. I write to an "internal audience" (to my "implied reader," as literary theory would have it), an audience of social scientists who have undergone or will undergo experiences very similar to the ones I describe here. The objective is to attack established paper tigers that are the source of much suffering and personal degradation. The objective is to provide a rational meaning (and thus the limits) for the breaking of established rules, so that no one in good faith will shout while reading this account, as Austria does in Shakespeare's King John (III, 1): "Rebellion! Flat rebellion!" Radical criti-

or otherwise dysfunctional. If one or both parties do choose to submit the dispute to a third party, it may not be possible to tell from the processed dispute, by itself, why this has happened. Such an explanation has to be found in the overall history of disputes between the parties. One or both parties may want the third party to consider all past disputes, or they may prefer to restrict the intervention of the third party to the immediate issues. Unless all participants agree, the processing strategy will depend upon their relative bargaining power. It is necessary to determine the social factors that account for both the emergence of the discrepancy between the real and the processed dispute, and the permanence or elimination of such discrepancy during the process. I suggest that the more formalized and bureaucratized the dispute process, the greater the probability that the discrepancy between real and processed dispute will be maintained. When it is, there is a lower probability that the outcome of the dispute process will also be the final settlement of the dispute.

3. *Topoi*, Forms and Procedures: Forms as Arguments

Forms are gestures made, words uttered, formulae written, ceremonies performed, when these must occur in specific ways and at specific times so that their objective in the dispute process is achieved. Procedures are sets of forms. Forms and procedures determine, in an automatic way, decisions about the processing of the dispute. In the legal systems of modern capitalist societies, forms and procedures are not supposed to raise questions of substance. The latter are to be answered in terms of the rights and wrongs (the merits) of the situation, whereas questions of form turn upon the presentation of the situation and its conformity or nonconformity to a preformulated model.

These categories have been used to distinguish formal from informal dispute processing contexts and to measure formalism. For instance, in more “developed” legal systems, temporal limitation (the passage of time under the statute of limitations) and *res judicata* are models of presentation: they involve questions of form or procedure. Soga law, however, treats them differently. Neither the fact that a long time (never precisely determined) has elapsed since the offense was committed, nor the fact that the same case has already been processed and decided by the court, constitutes an automatic bar to hearing the case. Rather, judges should take these factors into consideration in assessing the evidence and judging the credibility of the claimant. Because temporal limitation and *res judicata* are substantive questions, we can say that the Soga legal system is less formal than Western law.²³

Since *topoi* involve points of view that relate to questions of substance, it can be hypothesized that, as formalism increases, topic-rhetorical legal argumentation decreases. In a highly formalized legal system, large portions of the dispute process will be insulated from such legal argumentation, and thus rhetoric will appear in a recessive form. On the contrary, I would expect to find in Pasargada extensive use of topic-rhetorical argumentation.

If it is true that the official legal system of modern capitalist societies never reaches the ideal type of automatic application of rules, it is much more so the case of both the legal systems of “simple” societies and the unofficial legal systems of “complex” societies. In the latter cases, the third party may apply different formal standards to cases that are apparently identical (at least with respect to the

cism has nothing to do with anarchism. The pedagogy chosen here implies choice between two autobiographical models and thus between two author types: on the one side, the total recognition of the author's discontinuities, investing the text with brutal frankness and even with scandal—that is, Rousseau's model in his Confessions⁸ or Montaigne in his Essays;⁹ on the other side, the last I's (the writing I's) full control over his full genealogy, as well as over the global narrative, thus ending in a self-censored quasi-public relations text—that is, Henry Adams's model in The Education of Henry Adams.¹⁰

As will be evident in the text, I have followed Rousseau's or Montaigne's model. Some readers will at times find this text immoral, of an immorality similar to that of Rousseau's while referring to his masturbations or Montaigne's while referring to farting. And yet it would be foolish to deduce from here that I have been “unconditionally free” while writing this text. St. Teresa says recurrently in her Life that the authority of the Church suppressed the free expression of her private (and wicked) life.¹¹ As in St. Teresa's time, there are today many authorities and many churches hovering above (and settling inside) us. If one is at least aware of this, one can be sure of trailing the right path; Kierkegaard's path when he writes in The Journals (1834–1842): “The majority of men are subjective towards themselves and objective towards all others, terribly objective sometimes—but the real task is to be objective towards oneself and subjective towards all others.”¹²

legally cognizable issues). While modern state legal systems derogate such lack of uniformity as manipulation and arbitrariness, from the point of view of a topic-rhetorical conception of the legal process, the lack of formal uniformity may be interpreted as signifying a deeper understanding of the instrumental, subsidiary character of forms in relation to the substance or merits of the case. This will be illustrated in Pasargada law.

Just as *topoi* interact with substantive norms, so they interact with forms and procedures to produce the gradual approximation of facts and norms. Forms and procedures may be used as arguments for the exclusion of implausible solutions. This is why informal legal systems do not decide cases on the basis of technicalities, but construe forms and procedures as arguments that touch upon the merits of the cases. In connection with this, two issues must be raised: the relationship between formalism and ethics in the state law of capitalist societies, and the emergence of folk systems of formalism. The official legal system under modern capitalism tends to be strict on formalism and loose on ethics. The forms and procedures governing each stage of the creation, development and extinction of legal relationships are described in detail, but very little is said about the ethical content of such relationships. Thus, though any violation of forms and procedures prompts the intervention of the legal system, the unjust or unethical character of the relationship must reach extreme proportions before legal intervention will occur, and then only reluctantly. On the contrary, in societies only selectively penetrated by the official legal system, folk systems of legal formalism may emerge that are strict on ethics and loose on formalism. The degree of legal formalism that people require will vary with the type of relationship in which they are involved. As a consequence, different groups and classes in society may develop different folk legal systems of formalism which they superimpose upon the official legal system of formalism. In Pasargada I would expect a folk system that would be relatively loose on formalism and strict on ethics.

The forms used in the folk system are often derived from the official legal system and then modified in order to fit the needs of the group. Thus, folk and official systems may share cultural postulates but differ in the way they specify them, and in the use to which forms and procedures are put. This may be illustrated by the meanings that Western culture attributes to *writing* as a ceremony and to the *written product* as expression of commitment. When people express themselves orally, their words are never fully divorced from them. This is true even when these words are heard by witnesses, who later confront the speaker, because of the plastic and transitory character of the medium. Written words, on the other hand, create a gap between the author and her expression, between a personal affirmation of will and an impersonal fetish living its own life. This gap, which closely follows the myth of the sorcerer's apprentice, has two dialectically related sides. On the one side, there is the autonomy of the written commitment, and the possibility of its use against the committed self. On the other, there is the sense of alienation experienced by the self before her own creation, the sense of dispossession and thus of powerlessness to confront and control the commitment as her own. This dialectic of autonomy and alienation explains why the greater the personal alienation felt by the self, the greater the likelihood that he will perceive others as linking him to his commitment. Thus, she may be persuaded to overcome her sense of alienation by actually honoring the commitment.²⁴

ON THE RISE . . .

I am married to an old lady in whose shop I have worked since 1970 (at least). This is a work report. In the shop I met a beautiful girl with whom I am in love. This is a love report. I live with this girl in Politeia, a suburb outside Scientiapolis, and I commute every day. This is a traffic report. I write on the road. Never sure precisely where. This is a report on the writing site.

. . . AND THE FALL OF METAPHOR

The critique of method cannot be accomplished without a critique of style. Style is not simply the gown and method is not simply the monk. Both are both. However, the critique of scientific method has not been matched by the critique of scientific style both in discourse and in behavior and attitudes. This is probably due to the fact that the critique of science has been made mostly by scientists writing in scientific journals, which tend to be more indulgent with violations of method than with violations of style.

More generally, since the seventeenth century, learned discourse in Europe has been waging a sacred war against poetic discourse and its most important device, the metaphor. As a consequence, few people in our time grow

It appears, then, that the writing and the written are a rhetorical *topos* in our sociolegal culture. But as discussed in Chapter One, antithetical *topoi* frequently exist. We know that in our culture the *topos* of the obligatory character of the written promise is opposed by the *topos* expressed in the old saying: "My word is as good as my bond." It is difficult to elucidate the hierarchical relations between the two, for we lack much of the necessary sociological information. My suspicion is that the *topos* of the written word has a predominantly legal outlook, while the *topos* of the spoken word is predominantly moral. But I acknowledge the possibility of a sociological *petitio principii*: the kind of discourse that predominates in a given situation may be a result of (rather than a condition for) the use of the particular *topos*. In any case, seen from a topic-rhetorical perspective, the distinction between the moral and the legal is never a clear one. In this context, the most important research task is to investigate how the basic cultural meanings expressed by these *topoi* have permeated both the official and the folk systems of formalism, and how the specifications of their meaning differ in each.

4. Language and Silence in Dispute Processing

The rhetorical analysis of legal reasoning makes language the nuclear reality of dispute processing. However, nonlanguage arguments must also be important: gestures, postures, flags, furniture, Bibles, crucifixes, pictures of political or religious leaders, files, written papers, gavels, typewriters, dress, division and allocation of space in the courtroom, rituals of initiation and termination of proceedings, stratification of floor levels and of visibility, and so on. In general, these artifactual arguments provide the framing for the use of verbal language which remains thereby central to the topic-rhetorical circle. Two issues must be mentioned at this juncture: the common language, and the relations between language and silence.

a. Common Language, Technical Language, Folk Technical Language. At first sight, common language does not appear to be an issue: either the participants in the process speak the same language or interpreters must be used. Such an assumption cannot go unquestioned. Articulation, communication and understanding depend, indeed, on common language; without them legal reasoning becomes an absurdity. Closer analysis reveals, however, a myriad of intermediate situations between "the same language" and languages perceived as so different by the groups dominating the dispute processing context as to require the intervention of interpreters. Except in the context of magic and ritual, words are not exchanged as words but rather as meanings. Thus people with different cultural backgrounds may speak different languages with the same words.²⁵ Furthermore, each language has both a potential and an actual vocabulary. Different social and cultural groups carve out different actual vocabularies from the same potential vocabulary.

In addition to the potential and actual vocabularies recognized by those groups with the power to define the official language, there are all kinds of "deviant" vocabularies becoming "official" vocabularies for the subcultures generating them. It has been claimed that people belonging to the same group tend to solve their disputes internally, while disputes between people belonging to different groups tend to be processed by the official legal system.²⁶ If so, the legal system

metaphors in their gardens. Some lack the seeds, others the tools; most of them lack the gardens themselves. For them I will translate the first paragraph of the previous section: the writing site is the site of epistemology; the work is the work of science or rather the work of the scientist while doing science; the love is the love of political action; the traffic is the social line that connects (and disconnects) work and love.

All these topics will be touched upon in this chapter in reference to the discussion of my research on patterns of dispute settlement and legal pluralism in a squatter settlement in Rio. The field research was conducted between July and October of 1970, and Pasargada is the fictional name of the favela where I worked.

ON THE WRITING SITE

The subtitle of the present section should be: the struggle against archeological positivism. To write a scientific paper about what one actually did while doing scientific research raises complex epistemological questions, as is demonstrated by the number and magnitude of the assumptions underlying such a task. First, it assumes that there is a gap between what one actually did and what one should have done if one were to respect the accepted rules of

will most often be the arena for competition between different vocabularies, and such competition must be analyzed in terms of the kinds and degrees of damage it inflicts on the communication processes.

A specific dimension of the language issue in the legal process resides in the distinction between technical and everyday language. Professions develop their own languages because it is through professional languages (probably more than through professional actions) that they are professions. The legal profession is no exception. Whenever the third party and the representatives of the disputing parties become professionalized, a professional language tends to develop. The more professionalized these roles, the more esoteric the language becomes. Whenever technical language comes to dominate the dispute process, the nonprofessional participants, such as parties, witnesses, jurors and audience, run the risk of being expelled from the rhetorical audience. They are surreptitiously pushed out of the position of subjects/actors of the legal process and into the position of objects/victims. This alienation is particularly evident when professionals have to communicate with nonprofessionals. Some deprofessionalization is then necessary: the professional must peel off legal concepts until the commonsensical reasoning that they simultaneously contain and hide becomes visible, expressed in everyday language. This process is not an easy one. Prolonged routine work with technical language may blind the professional to the common sense upon which such language is based; such common sense may even appear as an absurdity to him.

When the dispute process is only partly professionalized, the distinction between technical and everyday language is also blurred. In Pasargada, where there is an even lower degree of professionalization, I would expect legal argumentation to be based on everyday language. But I must refine this hypothesis by specifying further the relations between technical and everyday language. In the preceding analysis it has been assumed that technical language derives its basic meanings from the common sense expressed in everyday language. But the reverse may also be true: technical languages develop verbal formulas and technical meanings which are then popularized and infused with commonsensical connotations. Thus what happens with formalism may also happen with technical language: parallel to the official technical language, a folk technical language may develop. Everyday language must then be conceived to include the folk technical language.

b. Language and Silence. The relationship between language and silence deals with the internal rhythm of communication and the alternation of communicative strategies in dispute processing. Although some may dismiss this issue as trivial, I regard it as crucial. It may be said that silence is merely the chaotic vacuum between spoken words, and therefore cannot be analyzed by itself but only in terms of the words whose absence creates it. On the contrary, I want to argue that silence is as significant a communicative reality as language itself, and that, without the recognition of a dialectical relationship between silence and language, it is impossible to reach a deep understanding of the internal dynamics of dispute processing from a rhetorical point of view.

Many reasons can be suggested to explain why silence has been neglected as an object of scientific research.²⁷ Because social studies in the West have centered

scientific work. Second, it implies that social reality creates obstacles to the smooth operation of scientific standards. In other words, reality is at fault, not science. Third, it suggests that such obstacles can be eliminated or circumvented as one's retrospective writing in itself demonstrates. Fourth, it presents the writer, no longer innocent, as a more or less mature social scientist free from fanatic proselytism as well as from radical deviationism. He has reached the positive age in Comte's evolutionary scale. Finally, it assumes the continuation of a difficult but on the whole rewarding marriage with social science as we know it.

It is not the purpose of the present chapter to specify the different questions raised by the different assumptions, much less to answer them. Moreover, would it be possible to write a report on empirical research without accepting in one way or the other the above-mentioned assumptions? I just want the readers to be aware of the epistemological dogs as they walk down the centre of Scientiapolis. However, three general points should be borne in mind.

[The compulsive use of enumerations throughout the text (first, second, third . . .) is a document in itself. Counting issues, ideas or arguments is an expedient manner of taming the discourse, reality or the reader, and of creating order over chaos in such a way that the latter—that is, chaos, as the moment of ignorance

around language behavior, the social study of silence constitutes a threat not only to accepted scientific boundaries but also to established methods of social research. Second, social scientists tend to feel more confident in speculating with words about words than in speculating with words about silence, since the similarity between the object and the instrument of speculation in the former creates an illusion of control. Third, the usefulness of studies of silence has not yet been demonstrated, and will not be so until the language/silence rhythms in different societies begin to be decoded. Fourth, and most importantly, Western civilization is inherently biased against silence, and this necessarily affects our scientific preferences and capabilities. From the missionary zeal to the global networking of mass communication, Western civilization is constructed upon words as much as some Oriental civilizations are constructed upon silence. If one compares the philosophical works of Hegel, particularly his *Science of Logic*,²⁸ with the philosophical works of Shankara—the great philosopher of Hinduism—particularly with his treatise *Crest-Jewel of Discrimination*,²⁹ one is overwhelmed by the fact that while Hegel desperately seeks to eliminate silence, Shankara effortlessly creates and harmoniously orchestrates silence with words.

Silence is not equally distributed across cultures, nations or even groups and classes in the same society. Silence is a scarce resource, and the ruling classes in every society tend to allocate it according to their convenience and their cultural postulates. When language is important, the ruling classes tend to appropriate it, imposing silence upon the people. Thus, in a totalitarian society, the ruling classes will distribute silence to the people, keeping language for themselves. Conversely, when silence is important, the ruling classes tend to appropriate it, relegating language to the people. In a formally democratic society, people may be freely endowed with language, while a few silent actors make all the crucial decisions pertaining to the nation. But societies cannot be evaluated only in terms of the amount and distribution of silence, for there are different kinds of silence, and these differences may be even more important.

Silence is not an amorphous infinite, but a reality delimited by language, as much as language is delimited by silence. Silence is not an indiscriminate absence of language, but rather, the self-denial of specific words at specific moments of the discourse so that the communication process may be fulfilled. What is silenced, therefore, is a positive expression of meaning.³⁰

It seems to me that the analysis of the relationship between language and silence may contribute significantly to our understanding of features of the dispute process that have thus far been neglected. Watching Laura Nader's film on dispute settlement in a Mexican Zapotec court of law,³¹ I was fascinated by the prolonged silences of the dispute settler (the *presidente*). The lively speeches by the parties and witnesses crossed his desk only to meet the impenetrable ear of a silent listener. After a while the *presidente* would ask some questions, and then move to decide. What is the meaning of the *presidente's* silence? How is it interpreted by the parties? How does it affect the language behavior of parties and witnesses? When does the *presidente* ask questions? What is the rhythm between his questions and his silences? Are the lively arguments of parties and witnesses related in some way to the *presidente's* silence? Is the *presidente's* silence monolithic, or are there different kinds of silence at different stages of the process? Is it possible to

in knowledge-as-regulation—is fictitiously attributed to the discourse, to reality or to the reader before being eliminated by its sole bearer, the author. It is thus an example of how knowledge-as-regulation may be smuggled into a text supposedly telling of knowledge-as-emancipation.]

First, the realm of the relevant experiences in the field research is determined by the researcher's conception of science both while doing the research and while writing his research report, the latter being the most determinant. Second, the presentation of such experiences is determined by both the rules of the dominant scientific discourse and the rules of public discourse in general (which determine, for instance, if and how personal or semi-intimate matters are to be presented). Third, though a report of this kind tends to reflect an antipositivistic stand, it may hide, at a deeper level, elements of positivism, running uncontrolled. This will happen either because the report questions social reality and not science, or because, though refusing the positivistic conception of the subject/object distinction underlying the scientific prescription, it accepts such conception in the analysis of what actually was done in violation of the prescription.

As far as my own report is concerned, it is only marginally on what I "actually" did while doing sociological research. On the one hand, I did so many things that were so important for both my personal life and my scien-

establish correlations between the amount and the kinds of the *presidente's* silence and other features of the dispute processing context, such as the object of the dispute, the seriousness of the offense, the involvement or noninvolvement of public officials, the status of the parties in the community, the relationship between the parties, and so on?

Barbara Yngvesson, in her study of dispute settlement in a Swedish village, advances the important concept of nonaction to express the period of time in which the community limits itself to merely watching deviant behavior.³² If the concept of nonaction is expanded to include what is not said about the deviant behavior, we are confronted again with the question of the relevance of silence in dispute processing. Here the silence is not appropriated by a particular person; it is a communal possession. This collective silence seems to indicate that the community goes through a period of collective brooding about the deviance: how it occurred, its development, the further behavior of the deviant person, the need for and the timing of an overt reaction, and so on. Is it then possible to establish correlations between the amount of collective silence and the type of deviance, the relations of the deviant person with the community, and so on?

One measure of the dispute settler's control over the processing of the dispute is the number of questions he asks and the number of times he interrupts the parties and the witnesses. But such control can also be expressed by the absence of questions and interruptions, that is, by silence. To take one example from Hinduism, it is instructive to observe the contrast between two of the officiants in the ancient Vedic rituals, which are, after all, dispute settlement processes between people and gods. The *hotr*, though he recites extensively and loudly, has little control over the ritual, while the *brahman*, though he remains silent, exercises full control.³³

The structure of language and silence in dispute processing is very complex because, at any given stage, different kinds and amounts of silence may be expressed by different participants (judge, parties, witnesses, audience), each having different meanings. Various classifications of silence are thus possible. The first one distinguishes between procedural silence (for instance, when I am silent in order to let someone else speak) and substantive silence (for instance, when I am silent in order to express my assent). The third party may exert more or less control over the distribution of procedural silence among the parties and audience. In the formal processes of complex societies, he exerts an almost absolute control. In any event, he tends to have little or no control over the substantive silences of the other participants.

Within the category of substantive silence, further classifications are possible: acceptance, rejection, assent, reprobation, intimidation, total disagreement, unenthusiastic acceptance, emotional approval, revolt, powerlessness and resignation, respect or disrespect, explosive tension or need for calm and further deliberation. From the perspective of the other participants and the relevant audience, it is important to distinguish between deviant silence and normal silence. Deviant behavior in court can be explained in part by the tension between contradictory definitions of deviant and normal silence. The relative bargaining positions of the participants will dictate which definitions will prevail. The sanctions for deviant silence may be formal or informal, and may be applied in the same process in which the deviance occurred or in a separate process. From the point of view of

tific formation that it would be impossible to remember all of them, and even if possible, the description would appear as utterly irrelevant, absurd, ridiculous or even improper to most of the readers. On the other hand, since it is through science that something is made unscientific, if I were to restrict too much the realm of relevant experience, I would be condemning myself for having adopted an inadequate concept of science in my research. In such a case, I could be criticized not for having departed from scientific standards, but rather for not having departed enough.

Given that each past has its own present, I write on events in 1970 and onwards which, seen from today, were of the greatest importance for my present conception of modern science and modern law presented in Part One. My discussion in the Induction above should have made it clear that I am aware that this analytical platform involves two risks. First, the risk of infinite regression: as the (scientific, political and social) conditions change, it will always be possible to write a report on what one actually thought while writing about what one actually did while doing empirical research. Second, the risk of relativism: to assume that all the actual experiences in the course of the empirical research were equally determinant for the construction of a scientific (and political) alternative. To a great extent it is impossible for the reader to evaluate if and how I have tried to avoid such risks in the present chapter.

its weight in the communication process, there is also the distinction between heavy silence and light silence. Although the expression "heavy silence" occurs in everyday language, I do not use it as metaphor—since I take figures of speech to be failed reality—but rather as a factual description; there is no reason why the weight of things should be measured only in kilos or pounds. Heavy silence takes place in moments of particular tension in the dispute process, when important decisions are made and dramatic turning points are reached. The more formalized the dispute process, the greater the tendency for a specific meaning to be assigned *a priori* to the silence of a particular party at a particular stage. If the party remains silent at a given moment or after being asked a given question, her silence will have legal significance (assent or admission, for instance). If, after the decision, the losing party remains silent for a specific period of time, this will constitute legal acceptance of the decision and preclude the possibility of appeal. It is in this sense that I speak of the formalization of silence in formal dispute processing. It seems to me, however, that the language/silence structure of the audience remains informal (in this sense) even in formal dispute processing. To be sure, the judge can distribute procedural silence and can even sanction violations (clearing the courtroom). But she cannot force the audience into substantive silence. In this respect, the judge is herself an object of judgment by the audience.

The meaning of a specific instance of silence has to be inferred from the logical connections of the discourse, from the structural position of the silent participant and from the language of the participant that precedes and follows the silence. I will illustrate this with an analysis of the silence of the third party in a hypothetical context of adjudication (which, therefore, should not be taken as a factual description of other processes). Pasargada legal process will provide some enlightening factual illustrations. The language/silence structure of the judge can be divided into two phases. In the first, the judge has begun the process of excluding implausible decisions, but the range of those that remain is still very broad. Either the judge has not yet reached a decision, or else her preferences are still shaky and inarticulate. In the second phase, either the range of plausible decisions has narrowed to the point where the judge concentrates on weighing the relative merits of a few alternatives, or she already has a definite preference and has begun to clarify the reasons for it.

In the first phase, the judge uses silence in order to obtain all the information that his initial understanding of the case suggests he may need to reach a decision. The judge shows no preference for either specific pieces of knowledge or specific pieces of ignorance. At this stage the parties retain the right to knowledge and ignorance, to decide the ratio of knowledge and ignorance upon which they want to base their claims. But since the judge's silence is only rarely punctuated by language, it becomes very difficult for the parties to control the meaning of that silence. Furthermore, what little the judge does say is also ambiguous. The questions asked tend to be open and multidirectional, less questions than invitations to speak freely. The judge is aware of the fact that the less she asks, the more she knows. Consequently, the parties are induced to produce information that they might otherwise suppress or withhold until a later stage.

In the second phase, the language/silence structure of the judge undergoes profound changes. To decide is to specify and to intensify both knowledge and igno-

ON TRAFFIC 1

I graduated in law at Coimbra University in 1963. In 1963 to 1964 I did postgraduate work at the Free University in West Berlin, specializing in criminal law and the philosophy of law. From 1965 to 1969 I was an assistant professor at the Coimbra Law School, having meanwhile returned to West Germany for a short period to prepare a comparative criminal law study at the Max Planck Institut in Freiburg im Breisgau. In 1969 I went to the U.S. to get an LLM at Yale University, with the intention of then preparing a doctoral dissertation on the insanity defense.

When I left Portugal I was a frustrated legal scholar who, having refused to participate in the money machine of law practice usually engaged in by law professors—by writing well-paid opinions (pareceres) on important cases, that is, on cases involving important (powerful) people or groups — had not found intellectual satisfaction in the established science of law, that is in legal dogmatics. Indeed, I had ceased, by that time, to see in legal dogmatics a science in any reasonable sense. To my mind, the scientific study of law had to be organized from a perspective external to law. Such a perspective I then found in psychiatry and psychology. It was broad enough to include questions of legal philosophy which I was well acquainted with (guilt, free will and so on). At the time, due to the opposition of the Portuguese fascist regime to the development of the social sciences, I was not prepared to consider the

rance. To achieve this, however, it is necessary to control the direction of the inquiry. For this purpose the judge is likely to alternate between specific silences and specific questions. In this way, the judge reaches two objectives. On the one hand, he assures himself that he will know more of what he already knows and ignore more of what he already ignores, thus supporting his preferences for a particular decision. On the other hand, he communicates these preferences to the parties, inviting them either to share or to oppose them (particularly when a few alternatives are still open). Thus in this phase, the questions and silences, though they appear to be factually related to knowledge and ignorance, are in essence normative. They point to what *should* be known and ignored. They also indicate that the right to knowledge and ignorance now belongs to the judge.

The objectives of the third party are different in mediation, and so the language/silence structure also differs. In mediation the parties never fully relinquish the right to knowledge and ignorance. They may even retain full control until the end of the dispute process, as is the case when the third party is merely a go-between or errand boy. But when the third party has the power to participate in decisions about what is to be mediated and how it is to be mediated, then the right to knowledge and ignorance is shared by the parties and the judge. In mediation—as Pasargada legal process will illustrate—the judge is mainly concerned with participating in the creation of a horizon of concessions. He does this through the elaboration of *ad hoc* criteria of reasonableness and of legitimate expectations. By making the horizon visible he transforms it. Assuming that the parties belong to the species of *homo juridicus*, they advance their proposed concessions according to a plan of minimum risk. It is up to the third party to transform them into maximum risks. That is why the parties in mediation are often confronted with proposals that appear to be their own but are somehow alien to their intentions and even to their interests. When they try to pull back from the mediator's proposal they may, depending on his skills, go not to their original positions but to some different position. Thus a step back may, in fact, be a step forward. It seems to me (other factors remaining constant) that control of adjudication may be achieved (at certain stages) through prolonged and ambiguous silences, but that control of mediation requires prolonged instances of language coupled with short and unambiguous silences.

In this section I have developed the rhetorical features of the legal process and of legal reasoning that seem most relevant for the analysis of Pasargada law. After postulating a definition of law adequate to the purposes of the present study, I discussed the nature of legal reasoning in terms of argumentative discourse (even when a silent discourse). I distinguished *topoi* from what I call judicial protopolitics and also from forms and procedures, although I did, at some length, consider the use of forms as rhetorical arguments. I then undertook a closer analysis of certain features of legal reasoning, such as: the conceptualization of the object of the dispute as the result of a bargaining process, which led me to distinguish between explicit and implicit issues, between the breadth and the narrowness of the object of the dispute, and finally between language and silence. I recognize that the preceding analysis may have been, at times, a *via dolorosa* of abstraction, but I hope to demonstrate in the following section that this was necessary to capture Pasargada law in the setting of its natural dramaturgy.

sociological perspective as an alternative. My stay in Germany had not been of much help in this regard; German law schools were then actively opposed to the social science approach to law.

Politically speaking, when I left Portugal I was a very moderate leftist. Making my way up from a working-class family, I had always been haunted by the fear of being prevented, for political reasons, from making true the family's dream: to become a lawyer. The Berlin period contributed only partly to my political clarification. Though I organized colloquia against the fascist regime and its colonial policy, and discussed such topics with many students, members of the SDS who were later to become the leaders of the student movement in Germany, I was at the same time traumatized by the daily contact with the Stalinist regime of Walter Ulbricht, in the then Democratic Republic of Germany: I was then crossing the Wall every week to visit my girlfriend in East Berlin. Confronted with crude forms of intellectual control (such as the Haveman affair) and with political repression, and unable to conceive the regime as a degenerate form of socialism, I was prevented from developing a coherent socialist political attitude.

When I arrived in the U.S., the student movement was finally breaking its way into Yale. It was a period of political awareness and of antiestablishment radicalization: Vietnam, the Cambodia invasion, Kent State, the Chicago Seven, the Black Panthers trial in New Haven, The Greening of America by Charles Reich (a Yale law professor), teach-ins, the first students' strike in

II. DISPUTE PREVENTION AND DISPUTE SETTLEMENT IN PASARGADA LAW

The Setting³⁴

Pasargada is one of the largest and oldest squatter settlements in Rio de Janeiro. In 1950 its population was 18,000; by 1957 it had doubled; in 1970 it was more than 50,000. The settlement began in about 1932. According to the oldest residents, there were then only a few shacks at the top of the hill; the rest was farmland. The land was then privately owned, but to whom it belonged and how it subsequently became government land remains uncertain.

Physically, Pasargada is divided into two main parts:³⁵ the hill (*morro*), and the flat section on the two sides of the river that flows at its foot. The latter is very small, muddy and subject to flooding. Many of the shacks are built upon stilts. It is here that the most precarious dwellings are to be found. The streets—whenever they are more than mere gaps between shacks—are narrow and muddy. Sewage sometimes runs through them freely, underneath the miserable wooden huts, into the heavily polluted river. There are a few shaky wooden bridges connecting the two sides of the river. Most of Pasargada lies on the hill, which is neither very high nor, with a few exceptions, steep, and is therefore well suited for construction. Brick and cement are the most common building materials, though the quality of construction varies widely. Most houses have electricity and running water. There are several water networks in Pasargada, drawing from the city main, whose functioning varies greatly. The irregularities are due either to financial mismanagement or technical problems, such as pipe repairs or lack of pumping power. Residents in houses and shacks without running water get it from public taps or neighbors. About eighty percent of the households belong to the electricity network administered by the electricity commission; the rest are served by other small networks.

Today Pasargada is practically in the middle of the city, so that access to the surrounding areas is good. But at its inception, Pasargada was located at the periphery of Rio, on land which at the time had no speculative value. Thus Pasargada was able to develop more or less freely for three decades. And when land prices began to inflate as the city grew around Pasargada—its land presently is highly desirable for both housing and industry—the *favela* was already so big and so developed that outright removal would have involved high social and political costs.

Pasargada's internal economic life is very intense, including both the traditional commercial houses and modernized grocery stores and bars. Many factories surround it, a dozen (or more) of which can be reached in a five-minute walk. The bulk of the active population are industrial workers in nearby factories. The remainder are entrepreneurs inside Pasargada, low-level public officials, municipal workers, and odd-jobbers. Most industrial workers earn the legal minimum wage, but per capita income within Pasargada is about one quarter of the minimum salary.

Associational life in Pasargada is very intensive. There are recreational clubs, soccer teams, churches (whose members often organize themselves in social clubs

Yale's history, professors on trial for their racist behavior in student-controlled courts. It was also the period in which the "invasion" of the law school by the social sciences was reaching its peak. So much so that when I was caught by the social sciences' epidemic and decided to specialize in the field of sociology of law I did not feel the need to abandon the law school for the sociology department.

I was soon convinced that the psychiatric approach to crime had its foundations in the sociology of deviance and that the latter had its foundations in the sociology of law. It is amazing how fast I took all these steps. But still more amazing is how I failed to take the "natural," next step: that sociology of law had its foundation in the sociology of the state. As will be seen in the following, this was due to the two theories that dominated the field of sociology of law at Yale at the time, neither of which questioned the nature of state power: the anthropological theory of dispute settlement, and the Weberian theory of modern law. The missing link was to take shape much later, under the impact of Allende's experience in Chile and of the Portuguese revolution of April 1974.

Sociology of law at Yale was studied under the (dis)joint guidance of socio-legal lawyers, on the one hand, and sociologists, on the other. The former based their teaching either on anthropology of law or on Weber's sociology of law. The sociologists tended either to adopt a somewhat crude behaviorist and positivist position or to be overeclectic in their approach to law. And, in

and charitable associations under the aegis of the catholic priest and other religious leaders), the electricity commission and the Residents' Association. Because of its relevance for the analysis of Pasargada law-ways, the latter (hereafter abbreviated as RA) will be described more fully. The RA was the first community-wide, community-controlled, social action agency in Pasargada. It was created with the objective of organizing the autonomous and collective participation of Pasargadians in the physical and civic improvement of the community. Though there had been other RAs in the past, the current one was founded at the end of 1966, its statutes were approved by the general assembly of members in mid-1967, and it was officially incorporated in 1968. The RA's statutes, which resemble those of other such associations created as part of *Operação Mutirão* in the early 1960s, emphasize, among the statutory objectives:

- I. To plead before the competent state or federal authorities measures intended to ameliorate the public services concerning its associates.
- III. To act as a linking element between the local population, assisting the latter in the resolution of all the problems concerning the community.
- V. To act legally and with great zeal for the maintenance of order and for the security and tranquillity of the families.³⁶

The RA rapidly became known in the community. Though many people may not know about its organizational details or who its directors are, few today are ignorant of its existence. Despite its statutory functions, the RA is identified in the community with "improvements and as a place to go when one has a house or shack problem." The folk meaning of this very broad expression is actually much narrower. Nobody would think of seeking the association's help in solving a technical construction problem. But residents may look to the association when they want to organize communal work to build or repair their house or shack, or think they should obtain authorization to repair or expand it; or want to make (or renounce) a contract concerning it; or have a dispute with neighbors over construction rights, demarcation of boundaries, passage rights or occupancy rights. This enumeration suggests that residents bring to the association only those housing problems that involve their public legal relationships to the community as a whole, or their private legal relationships to each other.

Although the RA had done little in the way of public works, because the state has not come up with the material assistance promised, its original commitment to the community development was strong. This connection with construction, both public and private, was reinforced by the power it then held to authorize and supervise any house repairs, and to demolish any house built without its authority. The RA soon became known as having subject matter jurisdiction over questions involving land and housing, and territorial jurisdiction throughout Pasargada. The genesis of this, as of any informal social function, is obscure. The official power to authorize repairs and to promote public works was certainly a factor. On the other hand, the directors spoke of the "official character" of the association, implying that all actions were backed by state authority, which of course was not the case. Finally, there was the belief that the association not only reflected the stability of the settlement, but would also enhance the security of

any case, all were trapped by the need to gain respectability inside the law school. The competition and rivalry between sociolegal lawyers and sociologists was hardly disguised. The former criticized the latter for not knowing enough law and the latter criticized the former for not knowing enough sociology. The usual thing.

Institutionally, the center of the sociology of law was the ambitious Law and Modernization Program. The objectives of the program were described as follows in a brochure:

Modern laws and legal institutions may be essential to the modernization of developing societies. But despite the belief that law reform is essential for developing nations and growing evidence that effective change through law is an extraordinarily complex process, little systematic research has been undertaken on the role of law in modernization. Although some social scientists have recognized the importance of legal systems in development, they have not been sufficiently interested to explore thoroughly the operation of legal institutions. At the same time, academic lawyers have generally emphasized the conceptual problems of the legal systems of developing countries while focusing only peripherally on related economic, political and social issues. Little joint work has been attempted by lawyers and social scien-

social relations by giving the settlement legal status. All these factors may have contributed to the emergence of the idea of jurisdiction, by way of analogy with the official legal system.

As the RA conceives of its role in the community, it claims no jurisdiction over criminal matters. When confronted with a situation that appears to involve a crime, the association neither handles the matter nor reports it to the police. All it will say to the alleged victim is: "This is not a question for us to solve. This is a question for the police." The RA abstains from criminal matters for several reasons. First, although maintenance of order was one of the statutory objectives of the RA, the directors consider that the primary goal of the RA is community development, not social control. Second, were it to assert criminal jurisdiction, the RA would inevitably devote more of its energies to the "bad neighborhood" of Pasargada, where drug dealers, career criminals and prostitutes are concentrated and crime is more frequent (though not as pervasive as outside criminologists tend to believe). This would not only divert the RA from tasks that it and the community deem more important, but would also damage its image in the more respectable neighborhoods of Pasargada. Third, the authority of the RA has been progressively undermined by an increasingly authoritarian state that abandoned the community development policies of the early 1960s, thereby denying the association the material resources necessary for it to provide the services and public works it had promised the residents. Because criminals, in particular, would deny the legitimacy of this weakened RA, any attempt by its leaders to exercise power over them would be (even physically) dangerous. Finally, state officials and the "official" society in general view *favelas* and crime as nearly synonymous. Repressive action against the *favelas*, from the almost daily police raids to the removal of entire populations and the razing of shacks, is often justified in the name of the fight against crime. By getting involved in criminal matters, the RA would expose itself to the arbitrary actions of an authoritarian state, and might be outlawed. It is true, as will be seen later, that the RA handles many disputes involving some kind of criminal conduct. But in such cases the association proceeds as if the matter were exclusively of a civil nature. On the other hand, the RA conceives its civil jurisdiction as limited to cases involving land and housing rights, although disputes will be processed in which other issues are raised.

The relations between the RA and the state agencies operating in Pasargada are a model of ambiguity. In the early 1960s the populist state seemed to be committed to a policy of more or less autonomous community development in the *favelas*. This policy was abandoned when the military dictatorship came into power in 1964, and since 1967 the state has emphasized control of *favela* organizations and leadership, and the elimination of any "dangerous" autonomy. Community organizations are presently offered "assistance" by various state agencies, but sanctions are imposed should they fail to accept the offer. Under these circumstances, Pasargada's RA has been using different strategies to neutralize state control: refraining from refusing assistance explicitly, yet continuing to ignore the orders that accompany it, while seeking to evade the formal sanctions that are threatened.

The relations between the RA and the police, who are stationed near the association in the central part of the *favela*, are very complex. Police and community

tists. To help fill this gap in research and teaching, the Law School of Yale University has instituted a Program in Law and Modernization. The Program will support theoretical research as well as empirical studies of the social, political and economic dimensions of the legal systems of specific developing societies, of legal barriers to change, of crosscultural comparison of the interaction of legal systems and modernization and of strategies of planned social change in specific societies. Empirical research focuses on legal systems in developing countries, but the Program will also support work on basic legal and social science theory necessary to further comparative study of law in society. Empirical research is currently underway on East Africa, Brazil and India.

The seminar on law and modernization, taught by the director of the Program, was the platform for exciting discussions on law in society. The aggressive Yale style of discussion I found most congenial. Compared with the feudal intellectual relations at Coimbra Law School, the "liberal free market of ideas" was an intellectual liberation. However absurd it may appear in retrospect, the study of sociology was combined in my case with a process of political radicalization. Exposure to the Vietnam War, to American imperialism in Latin America and to social inequalities and political corruption inside

are reciprocally hostile. The community avoids the police, who are aware of this fact and of its negative consequences for social control. In order to increase its penetration within the community, the police have tried to maintain good relations with representative associations, particularly with the RA. Thus they have offered their "good services" to the RA, which the RA has accepted, while conscious of the purpose behind it. In extreme cases, the RA may resort to the police in order to implement a decision, as will be seen below. But most of the time the RA will only threaten the recalcitrant resident with police intervention, without taking further action to punish noncompliance. For the RA knows the risk of becoming too closely identified with an institution ostracized by the community. As a consequence, the association and the police engage in ritualistic interaction, in the course of which they exchange signals of mutual recognition and goodwill that are not followed by substantial cooperation.

The RA's office is located in the central part of Pasargada and occupies a brick and cement two-story house. On the ground floor there are two rooms: a very spacious front room with a large door opening to the street and a small back room that gives access to the first floor, which is still under construction and almost unfurnished. Most of the activities take place in the front room. The back room and the first floor are occasionally used by the *presidente* to hold closed meetings (with the parties in a dispute, for instance). The front room is modestly furnished: a long bench against the wall and three desks with chairs—one for the *presidente*, another for the secretary and a third for the treasurer. Behind the desks are the files. Though the statutory functions of the *presidente* are limited to coordination and representation, he is currently the central figure of the RA. When incumbent directors resign, the *presidente* may temporarily assume their jobs. He and the treasurer are the only members of the board of directors who work daily in the RA's office. The *presidente* arrives about 9:00 or 10:00 A.M., leaves for lunch from 2 P.M. until 5 P.M., and stays until 8:00 P.M. The evening is usually the busiest part of the office day. Whenever he presides over meetings of the board of directors he does not leave the building before 10:00 or 11:00 P.M.

Membership in the RA is restricted to Pasargada residents (or people otherwise integrated in the community) who pay a monthly fee. The RA has about fifteen hundred members (heads of family) but not all pay their fees regularly. Even though only members can participate in the general assembly, the association does not restrict its benefits to them. Occasionally, however, nonmembers who solicit services from the RA may be induced to join it.

Dispute Prevention in Pasargada

1. The Ratification of Legal Relations by the RA

When residents want to draft a contract or enter any other type of legal relationship, they may come to the RA to see the *presidente*. Usually they are accompanied by relatives, friends or neighbors, some of whom will serve as witnesses. The parties explain their intentions to the *presidente*, who may question them about the legitimacy of the contract. For instance, if the contract involves the sale of a shack or house, the *presidente* will request the prospective seller to prove owner-

American society broke the blocking effect that Ulbricht's regime had produced in me, and thus became the objective conditions from which a radical critique of both capitalism and imperialism could develop.

It was in this intellectual and political context that early in 1970 I applied for a Law and Modernization grant to do research in Brazil, after having read on the announcements board that the program was funding research on legal services for the poor in Brazil. I had always wanted to go to Brazil, the promised land of both my grandfathers' stories in my childhood. Besides, the research topic sounded "leftist," and seemed adequate for a critical theory of law and society that I was groping for. Finally, I thought that, in order to establish my credibility as a social scientist, I should do empirical research. Indeed, though I still had not completely abandoned my plans to write a doctoral dissertation on the insanity defense, all my energies were devoted to an almost obsessive reading on general sociology, sociology of law and anthropology of law. My sociological training became crucial at the time, mainly because I thought that the analytical tools developed by functionalist sociology could be used outside their "natural setting," in a radical critique of capitalist society. The political contradictions of conventional social science were then more clear to me than its relative theoretical shallowness and methodological barrenness.

The further inside the conventional social science I moved whilst preparing my research project, the more of an outsider I became. A vacuum was

ship. He will also ask both parties whether they are firmly committed to the contract and willing to comply with the conditions agreed upon, and may seek more detailed information about those conditions.

The secretary or treasurer then writes the contract. The parties may bring a prepared text, which they dictate to the typist, or they may ask the *presidente*, the treasurer or the secretary to draft the text in accordance with the agreed terms. In the latter instance the official will read the draft to the parties, who must agree to it before it is typed. In certain types of contracts—leases, for instance—the official may also resort to routine formulas. After the contract has been typed the *presidente* will read the text to the parties, who will then sign it in his presence. Two witnesses will also sign it. The *presidente* will imprint one or more of the stamps of the association on the document. One copy is given to the parties; the other will remain in the association's files. This intervention of the RA in the mutually agreed creation and termination of legal relationship—similar to the function performed by a notary—is here called *ratification*. In this way the RA contributes to the prevention of disputes in Pasargada, which is thus the joint enterprise of a legal forum and the interested parties. Ratification not only invokes the norms that will govern the relationship while the agreement between the parties endures, but also anticipates the consequences of failure, as when a dispute erupts. Each point of agreement embodies a potential for conflict. Indeed, the agreement itself derives from the perceived potential for conflict, which is why the parties do not agree explicitly where they do not foresee such a possibility.

Ratification is a constitutive act in two senses. First, the RA not only ratifies the agreement proposed by the parties, but may also suggest changes (for instance, additional clauses). This happens when the *presidente* foresees a possibility of future conflict not anticipated by the parties, and brings it to their attention in order to prevent it. The dialectics of dispute prevention and settlement are graphically illustrated here, for, by anticipating conflict, the RA creates new possibilities for breach of contract, and thus adds new legal qualifications to the conflicts that do occur.

But ratification is constitutive in another sense: it is perceived by the parties as an autonomous source of security for their relationship. It is important to analyze the factors that contribute to this perception. I suggest that it is produced by an act of institutional rhetoric, a persuasive institutionalization of forms and procedures conceived as topic-rhetorical arguments. This is a process of re-institutionalization in the sense that some of the forms and procedures are customary, but have now been integrated with new ones in a totality that invests its constituent parts with new meanings and orientations. This institutionalization is intimately related to the atmosphere of officialdom. Since the RA is a juridical person in whom the state has vested some administrative functions, these forms and procedures derive their persuasive power not only from themselves but also from the institutional setting in which they are followed. The forms and procedures that constitute the ratification process are conceived here as rhetorical arguments not only because they contribute to the discussion of the merits of the case, but also because their role in dispute processing can only be fully understood when we take into account how and by whom they are introduced into the process.

created which Marxism gradually (and never fully) filled. An early manifestation of this intellectual process was the complex experience of conflicting identifications which I underwent while reading the empirical and theoretical writings in my chosen field. Sometimes I read the material from the perspective of the social scientist—the view from the top—adopting, as a consequence, the persona of the subject of science. On other occasions, on the contrary, I identified myself with the “victim,” the poor, the squatter settler, in sum, with the object of science: the view from the bottom. As my research went on, the latter identification became dominant. The more credible I became as a subject of science, the deeper I experienced myself as an object of science. In an Alice-in-Wonderland fashion, I climbed up the ladder that took me down. This was due to the fact that the bulk of my reading was on social anthropology and basically on research done by British anthropologists in Africa and by American anthropologists in the “Third World.” The imperialistic nature of “bourgeois” social science emerged gradually in my scientific consciousness. Coming from a relatively “underdeveloped,” “semiperipheral” country, I could witness, while reading the materials, the development of the process of my own scientific (and political) underdevelopment. But besides the political content (and the political form, as I came to conclude much later) of such studies, what struck me most was that they sounded as false, magnificent networks of misinterpretation, monuments of trained and specialized ignorance.

a. Artifacts. I will begin by considering those nonlinguistic arguments that antedate the ratification process and operate throughout it, for they are at the core of the institutional rhetoric, and are some of the new forms and procedures through which the RA accomplishes the reinstitutionalization. Elements of this institutional setting include the building where the RA is located, which is one of the more substantial structures in Pasargada; the furniture of the front room—desks, the typewriter, the flag, the rubber stamps and the documents upon the desks, the files where documents are kept, the posters on the wall advertising the latest state programs seeking popular participation (for instance, the campaign against illiteracy, the vaccination campaign); and finally the officials standing or sitting at their desks. The integration of all these arguments within a spatial and temporal unit helps to imbue the interactions of parties with normativity. The normativity created here is predominantly an ordering normativity, in contrast with the compulsory participation of people in the state institutional discourse, which is more likely to create sanctioning normativity. For though the RA invokes the threat of sanctions, its rhetoric focuses more on the desirability of compliance to achieve shared objectives, as will be seen later.

b. Questioning. The questions asked by the *presidente* about the nature, legitimacy and conditions of the contract perform different functions. First, they provide the information with which he will decide whether the relationship should be ratified. Ratification is most commonly denied when the RA does not have territorial or subject matter jurisdiction. But the *presidente* may also refuse to ratify when, through questioning the parties or from personal private knowledge, he comes to suspect fraud, as, for instance, when the would-be seller does not own the property. In any case, ratification was never denied in my presence.

I want to suggest, however, that the main function of questioning is not to obtain information, but rather to assert the right of the RA to ask such questions. By doing so, the RA reasserts its jurisdiction, reinforces the atmosphere of officiality, and claims to represent the concerns of the community about the eventual consequences of the relationship. The rhetorical aspect of such questions lies in the fact that they have an impact independent of the answers obtained. Moreover, the act of questioning seems more important than the questions asked. This does not mean that the questions are framed arbitrarily. To question the parties on the nature and conditions of the contract is to assert that the freedom of contract is not an absolute principle in Pasargada, but can be restricted to protect overriding interests of the community. The answers also contribute to the ratification process. By answering, the parties not only clarify their commitments for themselves but also make such commitments public, which intensifies the motivation of the parties to honor them.

c. Drafting. From a rhetorical perspective, the drafting of the contract, like the object of a dispute, is a process of bargaining between the parties, and between each of them and the officials. The RA is oriented toward championing community interests and protecting the weaker party. Whenever the parties bring a prepared text of their agreement, the bargaining process between them has already taken place, and there is little room for the RA to intervene. The parties have

I became as arrogant vis-à-vis these studies as only a new Christian could be. My legitimacy was grounded on untrained knowledge emerging from sheer hypothetical experience. My revolt was the revolt of the object against the subject. And when the object revolts against the subject he tends to become a supersubject, in this case, a superscientist. Indeed, to my original motives for undertaking research in Brazil, a new one was added: to demonstrate through my empirical research how wrong American legal anthropologists and legal sociologists were in their analysis of law in "the Third World." The immoderation of my ambition was the counterpart of my resentment. And it could not stop there.

As I said before, the Law and Modernization Program centered around two areas: dispute settlement studies, and law and development studies. An oppressive Weberian atmosphere dominated the latter area. On the political side, the Kennedy heritage was too obvious. The political project underlying law and development studies was hardly processed by sociological theory. There was nothing wrong in presenting law as a positive factor of development, as long as the latter was specified and contrasted with alternative types of social transformation, such as social revolution. However, revolution was taboo, the non dit of dominant discourse on law and development. Under such circumstances, law and development studies were bound to overemphasize the positive role of law—an ideological bias in favor of lawful social transformation and against revolutionary processes. In the case of Brazil, law

shown a degree of determination that the officials prefer not to upset. Whenever a routine formula is used, as in the case of leases, the influence of the RA is embodied in the formula, and is effective when the parties accept it. But the formula has substantive value and creates ordering normativity beyond the mere content of its clauses, since the parties, in subscribing to phrases that have been used routinely by many other residents, come to perceive themselves as involved in an ongoing legal structure that antedates, and survives, their relationship. Furthermore, even though the terms of the formula become part of the contract only after they have been accepted, the parties perceive the formula as manifesting a normativity that transcends their will, whereby a legal hypothesis slides into a legal thesis. The routinization and standardization of legal formulas are a constitutive part of their normative content. Nevertheless, formulas are not mechanically applied. Beyond the obvious need to fill in the blanks (prices, dates, and so on), some clauses may be eliminated and other clauses may be added.

Through drafting, the RA helps to clarify the content of the relationship. It stimulates a dialogue between the parties about unanticipated possibilities for conflict, thus forcing a reopening of the bargaining process. It diffuses legal knowledge by advising the parties about the consequences of their line of conduct, such as the failure to pay, or to sign, a promissory note. It intervenes in the phenomenology of the relationship when it learns, for instance, that the poorer, less articulate party is accepting a particularly onerous commitment, and may suggest different conditions, such as a longer time to pay the balance of the purchase price.

d. Writing. Once the terms of the contract have been settled, the contract must be reduced to writing. Here we must distinguish between the act of writing and the written product. I have already mentioned that a written formulation of will creates a particularly firm sense of commitment, according to Western cultural postulates. Though I did not systematically collect information on this point, it seems to me that, in Pasargada, the *topos* of the written word dominates that of the spoken word, suggesting that such relations are permeated by a legal rather than a moral discourse.

With respect to the activity of writing, its substantive value is not limited to progressively separating the promise from the promisor, and thus expressing the dialectics of autonomy and alienation that appear fully manifested in the written document and its future relations with the committed Self. Writing is a ritual with its own dynamic, oriented to the creation of a mythic legal fetish which it superimposes upon the material base (the elements of the contract, the paper, the writer). The RA performs this superimposition by the substitution of typing for handwriting. The keyboard of the typewriter extracts from the white paper a legal fetish in much the same way that the chisel extracts a statue from stone. The fact that a technological medium stands between the writer and the writing only enhances the myth of impersonality and transcendence, particularly in a community like Pasargada, where typing is not a generalized skill, and a typewriter is a rare object. On the other hand, the persuasive power of the *topos* of the written word increases to the extent that the writing apparatus is perceived as less destructible (closer to printing than to handwriting).

and modernization scholars were trying—having given up the attempt to “civilize” the military dictatorship in power since 1964 with active American support—to create the institutional conditions for a bourgeois democratic regime, stable enough to offset the revolutionary potential meanwhile created by the dictatorship. Though I could not question the personal honesty of the scholars involved, some of them good friends, I could never understand their naïveté and blindness vis-à-vis the objective conditions of the historical process they were living through, both in the U.S. and in Latin America.

One of the privileged areas of law and modernization was research on legal services for the poor. I read extensively on legal aid in America, and visited some offices in the New Haven area. I even attended a meeting on law and poverty organized in Chicago by the American Bar Association, at the time a champion of social transformation through law. Given the differences in scope and in political content among legal aid projects, I soon retreated from my initially overoptimistic view of them. Nevertheless, I was impressed by the socialist conviction of some of the activists working in the more advanced projects. Indeed, it was in view of their activities that I came to anticipate a rather negative picture of legal aid for the poor in the Latin American context. Only a democratic regime with a stable class support—nonexistent in Latin America—could allow the oppressed class to be taught the use of law as a weapon of defense (whatever its shortcomings) without thereby undermining the institutional foundations of class domination and

e. Reading. After being typed, the document is read to the parties. This is probably the first full manifestation, to the parties, of the dialectics of autonomy and alienation. Through the reading, the written agreement appears to stand on its own feet, reflecting, as in a distorted mirror, a strange travesty of the personal affirmation of will. The fact that the document is read aloud by a third party only increases the independence of what is read from the parties who conceived it. Thus, the reading is an important moment in the process of dispute prevention through ratification. The RA presents the agreement to the parties, thus increasing the sense of externality and of alienation which is at the core of any normative structure.

f. Signing. The reading is followed by the signing. Superficially this may appear to be the dialectical synthesis, the moment at which the parties overcome their alienation and reappropriate their commitment for themselves. On further reflection, however, it can be seen that this is a false overcoming. The moment of signing represents the greatest polarization between promisor and promise. In the presence of others, the parties have to certify as their own something that has just been handed to them, thereby denying their role as creators. True synthesis will come later when there is actual compliance with the terms of the contract. The recognition of polarization rather than synthesis at the moment of signing is what justifies, at the deepest level, the complementary signing by two witnesses. Indeed, the witnesses testify to the autonomy of the written agreement vis-à-vis any claims of the personal freedom that gave it birth, thereby intensifying the gap between the parties and the agreement before them. If the signing represented a true synthesis, the witnesses would be not only useless but dysfunctional. But the structure of their participation is much more complex.

g. Witnessing. So far we have lumped the parties together in our analysis, but it must be recognized that the agreement establishes a division of labor in which the parties assume different and sometimes antagonistic positions, which the witnesses may help to secure. For instance, each may regain some sense that the agreement belongs to her through her perception that the agreement is autonomous in relation to the other party. The presence of the witnesses corroborates and reinforces such perception. On the other hand, the witnesses make a grass-roots contribution, collectivizing the relationship between the parties, imbuing it with popular normativity. They represent not only social consensus and social control, but also an ongoing legal process with its aura of continuity and tradition within which the individual agreement must be integrated. From a structural point of view, the witnesses are very similar to the routine formulas mentioned above—in a sense they are human formulas.

Since the RA is also interested in the collective and popular construction of normativity, it and the witnesses work in tandem, but from different perspectives, for the RA belongs to the institutional superstructure, whereas witnesses are an unmediated part of the social base. The collectivization of the legal relationship to which the witness contributes reflects upon herself, which is why one witness is not enough. A single person is an individual, an expression of freedom, while two persons are a community, an expression of social control. By negating each other's

state power. Though this line of reasoning proved later to be somewhat simplistic, I was unable to control my arrogance, and promised to myself that my research would bear witness to the ideological bias underlying law and development studies.

In the light of the precedent, my sociological background when I began the field research comprised two convergent, ill-integrated areas of interest: the dispute settlement/informal justice area, and the access to law/legal aid area. Though my research project was basically focussed on the latter, my scientific interests bent toward the former area, not only because it seemed theoretically more fruitful, but also because it was the least politically determined of the two. I tried, at first, to pull them together in a topic on "attitudes of the poor towards law" but the naïve conceptualization of law underlying such a topic faded away as I became more conscious of the class content of the official legal system in Brazil.

ON LOVE

The first important factor in my field research was that I loved Brazil from the very beginning. I loved the people almost as much as I hated the government. It was like coming home after having spent one year among the

individuality, the two witnesses create an autonomous entity which can function as a source of normativity, an efficient community that symbolizes the actual community.

h. Stamping. After the document is signed, the *presidente* will stamp it. Here again it is useful to distinguish between the stamps as end products and stamping as an activity. Stamps are signs through which the RA symbolically manifests its prerogative to participate in the creation of the normativity embodied in the relationship. Structurally, they resemble the questioning at the beginning of the ratification process. In both, the RA asserts its right to extricate the relationship from the intimacy of the parties. The difference is that this assertion is hypothetical in the questioning, whereas in the stamps, it is definitive. In a sense, the stamps are the answer that the RA gives to its own questions. The normativity symbolized by the stamps is enhanced by the fact that they are also used in administrative documents of the RA. Thus the atmosphere of officialdom is communicated to the ratification process.

Stamping as an activity has its own meaning. It is an up-down movement in which the stamp hits the paper firmly and strongly. The activity is structurally similar to the irate patriarch banging his fist upon the table to command obedience from his children, the priest banging his hand upon the edge of the pulpit to stress an important point, or the angry child hurling his toy or stamping his foot against the floor. All of these activities symbolize command, they stress points, reinforce normativity. Just as a writer puts in italics what he wants to emphasize, so these activities are the italics of social relations. Indeed, the stamping is more important than the stamps. It symbolizes the exercise of control over the finality and the irrevocability of the transaction.

i. Filing. Finally, one copy of the document is given to the parties, and another is kept in the RA's files. Just as funerals and mournings are ceremonies that adjust relationship among the survivors, and between them and the deceased, by reenacting the death, so the act of filing reenacts the ratification process. The parties do not take home the document, which is buried in the files, but a copy of it, much as relatives keep at home a photograph of the deceased. Filing symbolizes security for the relationship, and thus affirmation of collective normativity, because from now on the behavior of the parties will be supervised by the document, which is out of their control. For the document can reveal discrepancies between the terms of the agreement and the actual behavior of the parties.

In the preceding discussion I have argued that the ratification process is a constitutive act, both because it introduces normativity into the relationship between the residents, and because it may influence the future of the relationship. Earlier I predicted that forms and procedures in Pasargada will lack the mechanical character of those in formalized legal systems. This prediction seems to be substantiated by the ratification process: agreements may be drafted by the parties, by the *presidente*, or by all in cooperation; the number of stamps is not fixed; and even the number of copies of the document may vary. In particular, the extent to which the *presidente* questions the parties is highly variable. The length of the questioning is inversely correlated with the *presidente's* knowledge of the parties—their honesty and reputation for fulfilling their commitments—and directly correlated

supernatives of North America. I did not take much time to settle down, and two weeks after my arrival I was already living in the favela of Rio where I was to conduct my field research. Both the language and my class origin facilitated the adaptation: although in the event things turned out not to be that simple.

ON THE SAME LANGUAGE

Before settling down in the favela where I conducted my field research, I visited several other favelas as well as other types of working-class and lumpenproletariat residential areas in the suburbs of Rio. I used to go alone (since I had no "research assistant"), talking to people as I met them. This easiness in face-to-face relations was part of my personality. But it was also due to my innocence (in spite of the literature) vis-à-vis the complexity of these social microcosmoses. The following incident showed me, in a traumatic way, that talking to people is not as simple as it seems to be.

In order to get the "taste" of the different types of favelas, I visited one of the poorest ones, built on stilts and squeezed between the backyard of a factory and the Guanabara Bay. I had never seen before, neither did I see thereafter, "living" conditions as inhuman as those prevailing there. I asked

with the value of property transacted. Since the ratification process is aimed at investing transactions with a load of normativity which will increase the security of contractual relationships in Pasargada, the *presidente* perceives those threats as greater when he does not know the parties, and when the value of the property is high. Thus, the ratification process is structured to give greater security to those relationships that need it more. In this way, the instrumental character of forms and procedures is maintained.

2. Substantive Norms Defining the Type and Range of the Relationships

There are striking differences between the types and range of legal relationships handled by the RA in Pasargada and those handled in the city by the legal aid offices. At the time of my empirical research, roughly eighty-five percent of the caseload of the legal aid offices was alimony and child support cases. Brazilian legal officials tend to conclude from this that such cases are the most typical legal problems of the poor. On the contrary, the pattern of relationships processed by the Pasargada legal system shows that even though most Pasargadians are poor, they are involved in a wide variety of relationships, many of which are structurally (though not substantively) similar to relationships that Brazilian legal officials would consider typical of the middle classes. I will demonstrate this here in the context of dispute prevention, and later in the context of dispute settlement. I begin by analyzing contracts of sale.

Case 1

I, E.L. [full identification], declare that I sold to Mr. O.M. [full identification] a *benfeitoria* of my property located at [location]. He paid [amount] as down payment and the balance of the price will be paid in eight promissory notes beginning [date]. In case Mr. O.M. defaults in making the payment for three months, this document will be declared invalid. This agreement is free and legal and the property is free of charge and encumbrances. The land does not enter in the transaction because it belongs to the State.

This contract will be signed by the parties and by two witnesses in two copies, one of which will be kept by the Association for any contingencies that may arise.

Date:
Signature:
Witnesses:

The normative structure of Case 1 is complex, as can be seen through an analysis of the object of the transaction. Even though that object is a house, it is called a *benfeitoria* in the document. *Benfeitoria* is a technical expression used in the official legal system to refer to improvements upon material things (movable or immovable). These improvements may or may not be transferred separately from the things to which they are attached. It is important to explain the borrowing of this technical expression, both because I predicted that legal language in

to be taken to the shack where the president of the Residents' Association lived. We talked for a while about favelas and about Portugal, and I asked a few questions on that particular favela, such as, for instance, on whose land it was built. At last he asked me: "What are you doing precisely in Brazil?" and I answered: "I am doing research on favelas." The man stared at me, his face livid, his eyes bulging. He suddenly stood up and shouted: "Get the hell out of here!" I could not understand what was going on and was paralyzed by surprise and fear. "Get the hell out of here!" he said again, and pushed me to the door of the shack. Scared as I was, I still tried to say something: that there must be a misunderstanding, that I did not want to offend him. But he kept shouting. By that time a lot of women and children had gathered around the shack. The man said to them in a shouting voice and pointing at me: "This guy is a portuga, a caguete. Came here to spy on us." (Portuga is a pejorative name for a Portuguese in Brazil. Caguete means police informant in Rio slang.) Addressing himself to me again: "I have nothing to say to the police. If you don't move on . . ." and rushed inside. A woman came to me and said: "In your place I would go right away." I tried to explain, to say that I had nothing to do with the police. But he came back holding a rifle. The woman approached him: "Be careful. Let him speak." "Move" was his answer pointing his rifle at me. I looked into the crowd, looking for a friendly eye. I lowered my eyes. Slowly I turned around and moved away. Very slowly and right in the middle of

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Pasargada would be very close to ordinary language, and because the expression is extensively used in Pasargada.

In Pasargada law, the term *benfeitoria* does not refer to any kind of improvement, as it does in the official legal system, but mainly to houses and shacks, revealing the selective character of the borrowing. Moreover, the term is used in Pasargada to certify that the parties do not intend to transfer the land upon which the house or shack is built, for this belongs to the state. To include the land in such a transaction would be a crime, if done intentionally; the use of the term *benfeitoria* precludes that possibility. In order to understand the use of this term it is necessary to conceive Pasargada law not as a closed system, which, despite borrowings, remains independent, but rather as one partial legal system coexisting, in a situation of legal pluralism, with another partial but dominant legal system. The term *benfeitoria* is addressed not to the Pasargadians themselves but, rather, to Brazilian official legal system and legal officials. For this latter audience, what matters is the certification of a specific legal intention. Once this intention is ritually certified, the internal audience asserts itself: from the point of view of Pasargada law, the actual transaction involves both the house or shack and the land upon which it is built.

It may appear that, with reference to houses and shacks, Pasargada law has borrowed the official norms concerning *benfeitorias*. But according to the official legal system, permanent buildings are the outstanding example of *benfeitorias* that cannot be transferred without the land upon which they are built—except in strictly specified and regulated situations—which is precisely the opposite of what is done in Pasargada. Pasargada has borrowed, not the norm, but simply the idea of the logical separability of things that are physically attached. This idea has then been adapted to the needs of Pasargada, and in such a way that the resulting norm is the antithesis of the official rule. To be sure, this contradiction is not based on any profound cleavage in the cultural postulates underlying Pasargada law and the state law, but derives from the dependence of Pasargada law upon the state law in the determination of the legal status of land. The autonomy of Pasargada norms on *benfeitorias* is thus adaptive and instrumental, aimed at minimizing conflict with the official legal system. The basic conflict over the legal status of land is transformed into a superficial conflict between norms on *benfeitorias*.

Because the minimization of conflict in situations of change has often been achieved through legal fictions, I suspect that Pasargada norms on *benfeitorias* embody the fiction that the land is not included in the transaction. This fiction recurs in different forms, for it expresses a conflict between the basic norms of Pasargada law and official law.³⁷ In terms of the basic norm of the “law of the asphalt,”³⁸ land tenure in Pasargada is illegal and the land belongs to the state. This basic norm and its consequences is known in Pasargada not only through repeated experience (for instance, the state uses the illegality of land tenure to justify its failure to provide public services) but also through the contacts of Pasargada with legal officials. Indeed, it underlies all their behavior toward state agencies in general, and those in charge of the “squatter settlements problem” in particular. Even the movement in the early 1960s toward progressive legalization of *favela* land tenure started from the acceptance of the same basic norm.

Within Pasargada, however, this basic norm is inverted by means of the fiction mentioned above, rendering land tenure legal. The Pasargada basic norm provides

the street. Behind me I could hear a favela of voices. Were they following me? Some four hundred meters of doubt and anxiety. Then, a turn to the left and I looked behind me. And ran like crazy till I reached the highway that connects the airport to the city. Direct to the bus stop. I got on the next bus and started to think as the bus started moving. But first, I wanted to make sure that I was still alive.

What had happened? When I got home I suddenly found one possible key to explain such an absurd quid pro quo. When I said that I was doing research on favelas I used the word “investigação.” In Portugal’s Portuguese the term research can be rendered both as “investigação” or as “pesquisa,” though the former is more commonly used. However, in Brazil’s Portuguese, and particularly in ordinary language, “investigação” means police investigation. Having inadvertently used this word, I led my interlocutor to think that I was working for the police.

This however could not provide a full explanation for such a violent reaction. I decided then to discuss the incident with a friend of mine who knew Rio’s favelas very well, as he had been involved in the self-help projects in squatter settlements in the early sixties. It came out that the favela in question was being threatened with removal. The owners of the land wanted to expand the factory, and were pressing the state administration to find “legal grounds” to remove the favela. This was known in the favela, as its residents had often been harassed by both the police and the “jagunços” paid by the

the foundation of legitimacy for transactions among Pasargadians involving houses and shacks viewed as real objects, and not as *benfeitorias* in any technical sense. Although these transactions are officially invalid, because a house cannot legally be transferred without the land on which it stands, and *favela* land cannot be privately owned, this official label of invalidity remains inoperative among Pasargadians as long as these transactions and the social relations they create are kept within Pasargada and under the jurisdiction of Pasargada legal institutions and mechanisms. Thus, the basic legal fiction permits two mutually contradictory ideas of legality to coexist without interference so long as their jurisdictions are kept separated.

These normative dynamics, to which I shall return, elucidate the structure of borrowing in Pasargada law. Borrowing is innovative and selective in order, first, to guarantee the normative survival of Pasargada law in a situation of legal pluralism in which the official law has the power to define normative problems, but cannot solve them; and, secondly, to respond to social conditions and institutional resources of the community that differ from those in the larger society that gave rise to the official law. While the first process may require clear-cut innovation, as I tried to show in the preceding paragraph, the second tends to preserve the general outline of the borrowed norm, innovating at the level of substantive or procedural technicalities. Case 1 involves a contract of sale without conditions other than payment of the balance of the purchase price. But sales in Pasargada often include additional conditions.

Case 2

I, U.L. [full identification], declare that I sold to Mrs. A.M. one room of my house located at [location] for the price of [amount]. We agreed that in case Mrs. A.M. intends to sell the room I will have the right of first refusal.³⁹ Made in the presence of two witnesses.

Date:
Signature:
Witnesses:

Case 3

I, E.D. [full identification], declare that I received [amount of money] from Mr. J.M. as the first installment of the total price [total amount] of the *benfeitoria* I sold him. Mr. J.M. has the obligation to move the second wall backwards to the level of the third wall. The house has three rooms with the following measurements [width and length].

Date:
Signature:
Witnesses:

In Case 2 the object of sale is a room in a house. Although I will not pursue them here, technical problems would arise in the official legal system in such a sale (for

factory owner (jagunço is a hired gunman used mainly in the hinterland by plantation owners or big land owners).

I must confess that I was traumatized for a couple of days. But my analysis of the incident was very superficial. Though I could see that the favelados' reaction was the most reasonable one from the point of view of their interests, I tended to concentrate my analysis on the risks one runs when one fails to master both the language and the social context in which one operates. I could not see at the time that the polysemy of the words involved was not at all accidental, that there was a structural semantic relationship between "investigation" as the work of social science and "investigation" as the work of the police: two different forms of social control and class domination. I questioned my behavior (I had made a mistake), not the science in whose name I acted. Had I not failed, the scientific method would not have failed me. In other words, my criticism of modern science was abstract and idealistic; the scientific praxis was viewed uncritically, and accordingly, the problems which it raised were conceived as my personal problems or problems of the social context. And as I conceived the incident so I learned from it. The incident had been an accident; I learned to be more proficient in science, as the only available insurance policy against research risks. I did not revolt against the insurance company. On the contrary, I was grateful to it for making insurance policies available.

instance, the problem of the ideal quota of *terra firma*). In Pasargada, however, the sale of individual rooms is not only frequent, but does not create any legal problems. Given the unavailability of land for new construction and the rise in housing prices, there are people in need of shelter who can afford to buy a room but not a house. In addition, there are home owners in urgent need of cash who find that selling a room is an ideal solution, because they retain their own shelter and yet raise an amount of money that mere rental would not produce. Since these transactions do not endanger the overriding interests of the community, there is no reason for Pasargada law not to legitimize them.

In Case 3, Mr. E.D. requires Mr. J.M. to reconstruct one of the walls, because he owns the contiguous house and wants to guarantee access to the street. Since demolition and reconstruction are involved, Mr. E.D. gives a full description of the house, with complete measurements. In the law of the asphalt it is always necessary to include a full description of the house. Pasargada law does not rigorously insist on this, and many documents merely indicate the location of the house. In general, transactions within Pasargada are confined to houses and gardens, which have definite unambiguous limits. In case 3, however, the obligations created by the contract justified and demanded a description of the house, which is another revealing instance of the instrumental character of formalities in Pasargada law.

In the preceding cases, contracts of sale created social relationships. Other contracts terminate relationships, exchange houses or shacks for others located in Pasargada or a different squatter settlement or for cars or plots of rural land, and create or terminate a landlord-tenant relationship. Gifts and wills are also among the legal agreements, as illustrated by Case 4.

Case 4

I, S.E. [full identification], live in a "*benfeitoria*" of my property [detailed description of the *benfeitoria*]. For ten years, Mr. and Mrs. X.O. have lived in my company and have helped me and treated me with respect, love, and tenderness. For one year I have been paralyzed on my left side and have lain in bed all the time and moved only with the help of this couple. Having received from this couple so many attentions and assistance and not having any other resources with which to compensate them for so much [again the same expression about care and help], I decided in full lucidity and consciousness, that after my death my "*benfeitoria*" will become their property. This is my way of showing my gratitude for so much [again the same expressions]. Since I am illiterate I put my fingerprints in the presence of two witnesses.

Date:

Fingerprint:

Signature of the couple and witnesses:

Case 4 involves an action that expresses attitudes at the same time as it produces legal consequences. Moral discourse tends to dominate legal discourse, and its topic-rhetorical orientation aims at creating a persuasive argument in favor of the legality of the action undertaken, thereby enhancing the security of the relationships that

ON BEING PORTUGUESE

The subtitle of this section should be: on the almost genetic incompatibility between being Portuguese and being a social scientist in Brazil. As I said before, while at Yale preparing for my field research in Brazil, I came gradually to read the bibliography from the point of view of the "victims" of social science, the view from the object. In a sense this was too easy, as I was not actively involved in producing science. I was consuming it, and the way I elected to do it was little else than a consumer protection strategy. In Brazil, however, it was different, since I was there to produce science and to produce it inside the dominant mode of science production. At first, and as the language incident described above shows, I felt the need to assert myself as a subject of science, as a social scientist. This need was probably exacerbated by the urge to fight against a complex set of stereotypes about the Portuguese in Brazil which made it quite absurd to think of a Portuguese as a sociologist or an anthropologist, particularly if he were to do research in fields up until then almost entirely monopolized by American social scientists. I knew of the stereotypes but I was not aware of their pervasiveness and deep-rootedness. In the following I will show their operations across the class structure of Brazilian society: at Ford Foundation headquarters in Rio; among Brazilian lawyers; among favela residents. Such stereotypes are worthy of study in their own right: though not class-neutral in their origins, they tend to operate

result from it. The need for intense rhetoric stems from the fact that the legality of the action may be doubtful, and there is a significant probability that it will be challenged by others. All the cases previously analyzed are governed by materialistic motives. Here, however, the donor suffers a clear material loss; his only gain is emotional, and also personal in the sense that it cannot be transferred to other people who may later assert rights to his property. Therefore the parties in this case are anxious to neutralize subsequent legal claims by the wife or heirs, by emphasizing the close connection between the ethical imperatives and the legal consequences of the gift in order to prevent a conflicting norm from later overturning that result.

This rhetorical strategy is visible at different levels. In the first place, the *topos* of repetition is widely used. The same expression of gratitude for love, care, tenderness and respect appears over and over. Far from being a product of clumsy legal drafting, this is intended to stress the norms that create the intended legal consequence. At the same time, this moral argument suggests a parallel legal argument, thus undercutting the attempt to isolate the transaction from legal discourse. The rhetoric of the moral argument employs the *topos* of retribution and restitution, through which future and past are connected. It emphasizes the need to compensate the donees for the services they have provided to the donor by presenting a detailed and dramatic description of his illness, thereby implying the magnitude of their services. Performance of these services has created a legal right to compensation. Thus the moral discourse is aimed at transforming the gift into a bilateral contract in which the services are paid for in property. Through its ambiguity, the moral discourse can meet a legal attack on its own ground: the donees were not benefited by the arbitrary generosity of the donor; they were not in fact donees, for they had a legal claim to payment for their services.

Contracts in Pasargada are remarkably well adapted to the needs and interests of the parties. They clearly display the intentions of the parties to obtain the mutual advantage that they anticipate. These contracts also reveal the dialectical relation between dispute prevention and dispute creation. By expanding the areas of anticipated conflict and by drafting clauses to handle them, the parties enhance the dispute prevention function of the contract. At the same time, by multiplying the terms of the agreement, the parties increase the probability of contract violation, and thus of dispute creation. From the perspective of the law of the asphalt, these contracts are very "complex"; were they to conform to all the requirements of that law, they would require cumbersome legal preparation. In Pasargada law, however, they remain extremely flexible, and yet do not demand much time or great skill to draft.

In this section I have dealt with the substantive norms of Pasargada law. I now turn to the study of the formal normative structures. In Pasargada law, the instrumental character of its forms makes the distinction between form and substance highly problematic. Yet the distinction is still useful as both a descriptive strategy and an analytical category.

3. Forms and Procedures for Legalizing Relationships

Legal forms may be nonverbal or verbal; the latter are couched in legal-technical language. I will argue in this section that Pasargada legal forms are consistently instrumental, oriented to the substantive goals that they are supposed to serve. Pasargada law is loose on formalism and strict on ethics. Whenever it borrows

across different classes, which makes them privileged instruments of ideological discourse.

Given the links between the Law and Modernization Program and the Ford Foundation, I was supposed to contact this institution in Rio. The first contacts were disastrous, as it transpired that the big boss did not think the research project was worthwhile; even if worthwhile, it should not be conducted by a Portuguese. He is thought to have said that he had "the worst impression of the Portuguese people." Evidently at the Ford Foundation in Rio I was considered to be neither a competent subject of social science, nor a reasonable object of social science, as presumably I was not underdeveloped enough. I was merely a Portuguese, a zoo category. This was not an isolated view—for in subsequent years I found the prejudice against Portugal and the Portuguese extremely pervasive among U.S. social scientists doing research in Brazil. Was it that Portuguese colonization was conceived as the "natural cause" of Brazilian underdevelopment? Was it that these scientists unconsciously transferred to the ex-colonizer their guilt complexes about American imperialism in Brazil, of which they were, willy-nilly, an integral part? Was it that Brazilians and North Americans, having in common a colonial past, were able to minimize their present unequal relations by joining in the same anticolonial attitude?

In relation to my friends among the practicing lawyers, the stereotype functioned in a different way. Coimbra Law School, where I had graduated

legal forms from the law of the asphalt, the pattern of borrowing is similar to that observed for substantive norms. The relative autonomy of Pasargada formalism in this situation of legal pluralism suggests that a folk system of formalism and a folk technical language have evolved.

The ratification process previously mentioned—which has shown how forms can be used to create or reinforce normativity—centers around the written document that certifies the legal transaction. In the law of the asphalt, two major types of legal documents can be identified: private and public. The latter are written by a notary public according to special procedures, and are mainly used to certify the transfer of legal title to immovable property. They are attached to the official files of property in the appropriate registry of titles. Both private and public documents are usually signed by the parties and by witnesses. Pasargada documents are structurally similar to the private documents of the asphalt, and are signed by the parties and two witnesses. But Pasargada law uses these documents to certify legal transactions (transfer of title to immovable property) that would require a public document in the law of the asphalt.⁴⁰ Therefore, Pasargada law borrows from the state law the general outline of the legal form. A written document is considered necessary to certify contractual intentions and deeds, but the security thus obtained is not dependent upon compliance with the technical distinctions and procedures prescribed by the law of the asphalt. Witnesses are used because they are important symbols, are inexpensive, and do not create delays.

Forms are flexible and are adapted to the circumstances. A good example is the signing of the document by the parties. Since they may be illiterate, both Pasargada law and the law of the asphalt accept the fingerprint of illiterate parties. But while, in the law of the asphalt, the fingerprint has to be printed in the presence of a state official according to formal procedures that establish its authenticity, in Pasargada law nothing more is required than its printing on the paper in just the way that a name is signed. These are not mere differences in form, but in functional conception. While in the law of the asphalt, the fingerprint can *substitute* for the signature, in Pasargada law one *signs* by fingerprint, and accordingly the same expression is used for signature and fingerprint. What has been borrowed is the logical structure of the fingerprint, the possibility of an alternative material sign to express a legal commitment.

Other contingencies may affect the form of the contract. In the following case the seller's son had publicly expressed misgivings about the sale, and the buyer was concerned that he would use his mother's illiteracy as a pretext to try to upset the sale. The buyer, therefore, refused to buy the shack unless the seller convinced her son to sign as a witness.

Case 5

I, C.E. [full identification], declare that I received [amount] as the just value of a *benfeitoria* I sold to Mr. L.P. [full identification]. The *benfeitoria* is [measurements of the shack, a very small one]. It is made of wood and French tiles; with water and light. The buyer has full rights over the *benfeitoria* from now on and he can do with it whatever he pleases.

and taught, had a great prestige among them as one of the oldest universities in Europe and one of the European centers of legal science. I was for them part of this tradition, and whatever contribution I could make to science would be in the field of legal science. The sociological and anthropological studies of law were an "American luxury" and should be left to North Americans. Some of them had tried such studies, but had soon abandoned them in favor of the more prestigious and financially more rewarding study of legal science. Working on (and even worse, living in) a favela was particularly offensive to my status. It involved a real declassement subtly expressed in the paternalistic and half-joking way they talked about my research. They accepted it, or rather, tolerated it as another of my eccentricities (along with poetry writing, way of dressing, hairstyle and so on).

Favela residents had already shown their prejudices against the Portuguese in the language incident. In the favela where I settled down, people did not understand, at first, that a Portuguese—by definition, a shopkeeper—could be doing sociological research. Even community leaders were puzzled. For them, sociology and anthropology research of favelas was by definition "American," meaning, of course, the United States of America. And indeed the favela had been since the early sixties quite polluted (as they used to say) by American social scientists. When I tried to explain that I was doing the same and, at the same time, something quite different, they could hardly understand and were, at first, quite distrustful. As they told me much later,

Since I am illiterate I present my oldest son to answer for this sale, signing as an eye witness (*testemunha de vista*) of the contract.

Date:

Signature of the buyer:

Witnesses (one of whom is Mrs. C.E.'s son):

Mrs. C.E.'s son signs as more than a simple witness to the contract, for he is her legitimate heir, and thus a party whose consent is relevant in Pasargada law to the security of the transaction. Indeed, this concern with security is also evident in the full description of the measurements of the shack and of the rights that the buyer acquires. This case indicates that the parties to a transaction under Pasargada law are not limited to those who buy and sell, but may include persons whose consent is considered particularly relevant. These persons are not agents of the parties because their consent is autonomous, and this consent may substitute for, reinforce or even counteract the consent of the person with whom they have a relevant relationship. The cases that follow illustrate this.

Case 6

Mr. N.T. enters the Association and explains his case to the *presidente*. The following is their dialogue.

MR. N.T.: I bought my shack from Mr. S.D. He promised to give me a receipt six months later, after I completed the payment. But he never did and in the meantime four years went by. Now I sold my shack to Mrs. C.A. but first she wants to see the document showing that I in fact bought the shack from Mr. S.D. But I don't have it.

PRESIDENTE: I understand your problem. You don't have any evidence to show that you are the owner of the shack. In that case you have to ask Mr. S.D. to come to us. He will sign the document concerning the selling of the shack to you and after that you can sell it to Mrs. C.A.

MR. N.T.: But the problem is that Mr. S.D. does not live in Pasargada anymore. He lives very far away and I don't have money for the transportation. But his sons live in Pasargada and they know of everything. They saw me buying the shack from their father.

PRESIDENTE: In that case what you have to do is to try to bring Mr. S.D. to us. If you can't, then bring his sons and they will testify concerning the contract between you and Mr. S.D.

Case 6 illustrates the importance of the written document in certifying legal transactions in Pasargada in two different ways. When Mr. N.T. bought the shack from Mr. S.D., they agreed that the payment would be made in installments. Mr. S.D. did not trust Mr. N.T., and promised to sign a document of sale only after the payment was completed, for without this Mr. N.T. would not be able to prove the sale and thus assert his rights over the shack. But Mr. N.T. never needed the document, and thus did not press Mr. S.D. to sign one. Now he wants to sell the shack, and the buyer wants to see the document first. Mr. N.T. comes to the RA

they were afraid that I, like most American social scientists, might be involved in "urban development," the euphemism used by the state to threaten favelas with removal.

But, dialectically, the stereotype also worked to my advantage in more than one way. To begin with, it protected me from the stereotype of the American social scientist. As I became more familiarized with the people in the community, they would talk (and relate) to me as they never would to a "real" (that is, "American") social scientist. The social space opened to me by countervailing stereotypization enabled me to know how favela residents viewed North American social scientists. They knew the sorts of things social scientists were interested in (and wanted to talk about) and reacted accordingly.

One day a friend of mine introduced me to a person "who knew a lot about the favela and the Americans." Without waiting for my questions, he started talking about the favela, its geographic setting, types of houses and shacks, residents' occupations and so on. It was an articulate discourse molded in a kind of popular science language, revealing a specialized knowledge of the community. I was amazed, and sure that he wanted to impress me. He ended his speech with this astonishing statement: "You are doing research in the favela, aren't you? The Americans wrote their books on my shoulders." I couldn't help laughing. But my friend told me later that, true or false, he was thought to have made money talking to North American social scientists.

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because he knows that the RA is in charge of solving this kind of problem. The *presidente* recognizes the problem, and rephrases it in a way that, though more precise and technical, is readily understood by Mr. N.T.: "You don't have any evidence to show that you are the owner of the shack." The legal skills of the *presidente*, though greater than those of Mr. N.T., are not expressed in esoteric language. The problem is not the existence of Mr. N.T.'s right but its proof. It is therefore morally and legally imperative that he be helped, because problems of form must be subordinated to the normative substance.

The solution is approached by logical steps. The best solution would be to have Mr. S.D. sign a document, but Mr. N.T. tries to convince the *presidente* that this would be very onerous. Instead, he proposes an alternative. If the adult sons of Mr. S.D. testify to the sale, their consent substitutes for his. They are not just witnesses but surrogate parties, because their material interests are presumed to be identical to those of their father. This legal reasoning is shared by the *presidente*, but there are some subtle differences. The *presidente* wants to stress the logical order of the solutions. First, Mr. N.T. should try to bring Mr. S.D.; only if he cannot do so (not an absolute impossibility, but perhaps an impossibility for Mr. N.T.) will the second alternative be accepted. The solution ultimately adopted is the most feasible among several that achieve the same substantive goal.

This case shows that there may be bargaining over forms, just as I predicted there would be over the object of the dispute. Mr. N.T. actively participates in the creation of the form that will be followed in his case. This is possible because forms are not applied automatically in Pasargada. There is a basic structure (the need for a signed document), from which different paths can be followed. That one is the most logical is not sufficient, since this must be weighed against the burdens it imposes. It would not be just to force Mr. N.T., who clearly owns the shack, to spend part of the cash that he will get from the sale in trying to bring Mr. S.D. to the RA. This is another example of how Pasargada law is strict on ethics and loose on formalism.

Case 6 illustrates surrogate parties reinforcing the presumed consent of a missing party. But surrogate parties can also be used to substitute for and counteract the will of a person who might refuse to consent.

Case 7

Mr. G.M. comes to the RA with Mr. M.T. and explains his problem to the *presidente*.

MR. G.M.: You know I own that *benfeitoria* on [location]. I want to sell it to Mr. M.T. but the problem is that I cannot obtain the consent of my wife. She left home nine months ago and never came back.

PRESIDENTE: Where is she now?

MR. G.M.: I don't know. Actually I don't think that her consent is very important in this case because, after all, the whole house was built by my efforts. Besides, there is no document of purchase of construction materials signed by her.

I met him again later and he never showed great enthusiasm in talking to me.

Most probably because I was not enough of a social scientist to deserve his specialized services or because I never offered to pay him.

This encounter was very important to me for two main reasons. First, it revealed the shortcomings of most books on methodology which, though concerned with the different techniques to avoid answer inducement, left out the founding source of such inducement, the social scientist himself as living stereotype reproducing an horizon of expectations. Second, the informant I met was a trained and specialized object of social science who by that process had become a quasisubject (or a "primitive" subject) of social science—an object rising to the status of a subject. Probing deeper (ad absurdum?), one could imagine how further development of the social sciences could lead to a corresponding development of its object. The group of trained and specialized objects (informants) could, if united, act as a pressure group upon science, bargaining for a share in the profits of science production or even for a participation in shaping the results of scientific research. This scenario is not as utopian as it may appear. In anthropology, field workers have long since been confronted with problems that point in this direction.

As my research progressed, the stereotype about the Portuguese became less determinant in my relations with people, and the initial need to assert myself as a social scientist was secundarized. Incapable of seeing myself, without a great dose of hypocrisy or schizophrenia, as an object of social science,

PRESIDENTE (silence, then): Well, I know you are an honest person and your wife has behaved very badly. (Silence) How long has she been away?

MR. G.M.: Nine months.

PRESIDENTE: That is really not very long. (Silence.) I think that your oldest son should agree to the sale of the *benfeitoria* and sign the document as a third witness.

MR. G.M. AND MR. B.T.: We agree.

MR. G.M. TO MR. B.T.: We could draft the document right now. . . .

The document is then drafted in the following way:

I, Mr. G.M. [full identification], being separated from my wife, who disappeared without notice, and living as a good father with my six children, declare that I sold a *benfeitoria* of my property located on [location] to Mr. B.T. [full identification]. He will pay immediately [amount] and the balance will be paid on a basis of [amount] per month. We declare that since there are no documents in my wife's name or in mine, I sell this *benfeitoria* without charges or encumbrances. Indeed it was built through my own efforts. I sign this declaration in the presence of two witnesses and in two copies, one of which will be kept in the Residents' Association in case any contingency arises.

Date:

Signatures:

Signatures of three witnesses:

(one of whom is Mr. G.M.'s oldest son)

It is known in Pasargada that the law of the asphalt requires the consent of the legal spouse for the validity of contracts transferring immovable household property. In Pasargada, however, many couples are not legally married, and in any case the consent of the wife is presumed if she is living with her husband at the time of the transaction. But Mr. G.M. and Mr. B.T. are troubled because Mr. G.M. is legally married, and yet his wife is not living with him, so her consent cannot be presumed. They are concerned that the wife may try to upset the sale, especially since the house is a reasonably good one and Mr. B.T. is paying a substantial amount of money. They resort to the RA for two reasons. They want to make sure that, if Mrs. G.M. elects to use the RA to upset the transaction, her endeavors will be frustrated. But they also want to make sure that if she resorts to the legal institutions of the asphalt, those institutions will respect the solution given by the RA.⁴¹

The *presidente's* question concerning the whereabouts of Mrs. G.M. suggests that the best solution would be to try to obtain her consent. Mr. G.M. promptly answers that he does not know where she is, though he probably does. But the *presidente* does not press the matter, for it is common knowledge that she left with another man and had been unfaithful to Mr. G.M. before leaving him. Under the sexist premises of the male-dominated RA, it would be humiliating for Mr. G.M. to contact her now, a course of action that should not be expected from a "reasonable cuckold."

In any case, Mr. G.M. seeks to eliminate this possibility by convincing the *presidente* that compliance with this formality is not very important in his case "because, after all, the whole house was built by my efforts." This argument

I ended up with a compromise position, locating myself halfway between the object and the subject of science (and thus in an intrinsically ambiguous position). I felt like a kind of errand boy trying to settle a long-term dispute between object and subject, a dispute being fought since the emergence of the social sciences in the nineteenth century. This awkward position was the foundation for the development of what I would call transgressive methodology.

ON TRANSGRESSIVE METHODOLOGY

The relative freedom from the scientist's stereotype helped me to create the persona best suited for my research objectives. I developed a less than moderate respect for the rules of conventional science, particularly for those that filled the fat manuals on participant observation, then the most fashionable method of empirical research. I was led to believe that it was through violation of the rules that I understood social reality: the greater the violation, the deeper the understanding. Nevertheless, at the same time I followed the golden rule of participant observation, and did so in an almost compulsive way: I wrote about my everyday life down to the smallest detail. I kept the traditional distinction between the research cards and the diary, leaving the

embodies the *topos* of fairness, through which the formal norm requiring the wife's consent is reinterpreted in light of the concrete circumstances of the case. This is a convincing argument because, in Pasargada law, forms are not applied mechanically. The consent of the wife is recognized as a form that must be respected, but the substantive justification underlying that form is what gives it content. It is usually just to require the consent of the wife because she has actively participated in the creation of the wealth of the household. But, if it is possible to demonstrate that such participation has not occurred, the form becomes empty. Because the umbilical cord between the form and its moral justification has not yet been cut, compliance with the form may admit gradations.

There are signs in Case 7 that the *topos* of fairness as a moral justification may not be sufficient, by itself, to determine whether the formal norm has been satisfied. This is because the participants are conscious that they are operating in a situation of legal pluralism, and that the law of the asphalt grants considerable weight to the formality of consent (that is, it is more legalistic or formalistic). Therefore, Mr. G.M. feels the need to reinforce his moral discourse with a legal argument: his wife has no legal proof that she has contributed to the construction of the house because there are no receipts for the purchase of building materials signed by her. Unlike Case 4, legal and moral discourse are kept separate, and though they feed back upon one another, the legal discourse remains subsidiary. The *presidente* recognizes the legal argument but does not consider it conclusive; after all, Mrs. G.M. might find other ways to prove her participation in the construction of the house.

The *presidente* considers the case a very complicated one, and his silences are not only indices of his perplexity but also a rhetorical device to communicate those complexities to the parties and convince them that they should not expect the contract to be perfectly secure. The *presidente* tries the only path left open: to dispense with consent. And so he asks for how long Mrs. G.M. has been away. Structurally, the legal reasoning implied here is very similar to that underlying the statute of limitations. If Mrs. G.M. had been away long enough, any subsequent claim against the contract would have little credibility. Had he been living without his wife for a long time, Mr. G.M. could probably contract as if he were not married. But they have been separated for only nine months and this is too short a period. The *presidente* feels that Mr. G.M. deserves, and needs, to make the transaction as secure as possible. In the first place, the *presidente's* male commonsense lets him know that, while Mr. G.M. has always been an honest man, respected in the community, his wife had acquired a bad reputation long before she left him. She has no moral grounds for insisting upon the formalities of consent. Second, the *presidente* knows that the main reason Mr. G.M. is so anxious to sell the house is that he is ashamed of all that has happened and wants to move out of Pasargada as soon as possible. In light of this, the *presidente* devises a solution that enables the parties to contract without Mrs. G.M.'s consent and yet with some assurance that the transaction will not be upset. If the couple's oldest son (an adult) consents to the sale, this will present an additional obstacle to interference by Mrs. G.M. Should she attempt to do so, she will be acting against her children as well as against her husband. Thus her son's participation may discourage her from proceeding, and may contribute to a decision against her claim. Conse-

latter for the more intimate, less "scientific" matters, but, in fact, one medium prolonged the other almost without transition. I could reproduce everything (words included) so vividly that my writing was an authentic transcript of my life.

I changed the focus of my original research project soon after I started living in the favela. I became convinced that the attitudes of the "poor" towards law were the product of the "attitudes" of the law towards the poor. Moreover, as originally framed, my research question was totally ideological. First, "attitudes" were the subjectivistic disguise of the objective conditions under which the legal apparatus of the capitalist state operated. Second, the legal system was fetishized at the same time as its power base, the state, was left outside the analytical framework. Third, the research topic was a law and poverty topic, and as such, based upon a social stratification model of social inequality. Finally, the project centered around state legality, whereas focusing on legal pluralism as a form of class conflict seemed more appropriate to my scientific interests at the time. A complete study would have thus required both an analysis of the community law-ways, and an analysis of legal aid offices in Rio. Lack of time, however, forced me to concentrate on the former, based largely on a dispute settlement approach.

This choice, however clear-cut, was made only gradually and with a great amount of personal anxiety and soul searching. The choice was, in fact, never fully accomplished, as I was basically (and immoderately) interested in a gen-

quently, the oldest son is not a mere witness. Indeed, in the document, Mr. G.M. declares that he signs in the presence of two witnesses; the son is, in real fact, a surrogate party. Yet his consent does not really substitute for that of Mrs. G.M., which is why the document emphasizes the immateriality of the latter rather than the presence of the former. An interesting inversion may be seen in this: while in the dialogue with the *presidente*, the moral argument was dominant and the legal one subsidiary, in the document the inverse occurs. The *benfeitoria* is sold without charges and encumbrances because there are no documents signed in the wife's name. The moral argument ("it was constructed through my efforts") is merely a reinforcer. The document, as a legal instrument, transforms the normative message and induces the legal argument to take the lead.

In this section I have tried to discern the internal structure of legal reasoning in Pasargada, focusing the discussion on the context of dispute prevention. Now I will turn to dispute settlement.

Dispute Settlement in Pasargada

1. Process

Whenever the RA is called upon to settle disputes, the typical procedure is as follows: the plaintiff comes to the Association and explains his grievances to the *presidente* or, in the *presidente's* absence, to one of the directors. If he is not yet a member of the RA, it is highly probable that he will become one on this occasion, and will pay the membership fee and the first month's dues. The official will conduct a kind of preliminary hearing of the case. First, he will ask about the exact location of the *benfeitoria*, to make sure that it belongs to Pasargada and is therefore within the territorial jurisdiction of the RA. His questions will be then oriented toward establishing whether the dispute falls within the subject matter jurisdiction of the RA (property and housing rights). Finally, depending on how well he knows the disputants and how much private knowledge of the dispute he already has, the official will engage in further questioning about the content of the dispute and the *prima facie* reasonableness of the claim. He may conclude that the plaintiff is acting out of spite, or that he is not serious about the dispute or willing to pursue it, or even that he is not involved in a dispute at all.⁴²

When the Association accepts the case, the official registers the name and address of the resident against whom the claim has been brought, and sends a written invitation asking him to come to the RA at the date and hour indicated "to treat matters of his interest." The plaintiff is also told to return then. In the meantime, the *presidente* or a director may inspect the locale. If the defendant replies that he cannot come on the specified date, another time will be arranged. If he says nothing and fails to show up, and the claimant reaffirms his dissatisfaction with the situation, a second invitation will be issued. If this, too, elicits no response, then other devices may be used, such as personal intervention by the *presidente*, by a friend of the defendant or even by the police. Sometimes the defendant will contact the *presidente* before the hearing in order to explain his version of the case and present his own grievances. The parties may be accompanied to the hearing by friends, relatives or neighbors, even though the latter may

eral coverage of the class-determined operation of the legal system in Brazilian society. I continued to pay close attention to and to observe in detail the "Free Justice" services in Rio. I was impressed by some of the lawyers working there under strict institutional limitations (it was a time of dictatorship). Fully aware that they could not change the system of class oppression as reproduced by law, they were as sensitive as possible in the circumstances to the needs of their clients. They showed a practical knowledge of law in society that was indeed much superior to that of those ambitious young Brazilian lawyers who were being sent to the U.S. to study the most sophisticated law and development theories and who—to the despair of their well-intended teachers—showed a quite remarkable incapacity to learn anything beyond the skills required to apply for the highly paid jobs offered by the American multinationals operating in Brazil.

The difficulties in reshaping the research project produced at times a paralysis which could have become dangerous had I not meanwhile coupled it with an alternative project, a political one, as a result of my political radicalization in contact with a dictatorship more ruthless than the one I had known for more than twenty years in my own country. In their writing, Brazilian social scientists, most of them ousted from the universities, helped me to understand Brazilian society. And they helped me also with their political courage. I attended the appeal trial of Caio Prado Júnior, one of the most distinguished Brazilian social scientists. He had been convicted of incitement to subversion

not intervene in the actual discussion. The *presidente* invites the parties to the back room or to one of the rooms upstairs, where the case will be heard *in camera*. Usually the plaintiff presents his case first, followed by the defendant. Then, the *presidente* questions them, and the parties may engage in a lively exchange. Finally, the *presidente* will decide.

I want to argue that the procedural steps prior to the hearing create an ambience of interaction and an atmosphere of evaluation which will feed back upon the final stage of the process and contribute to its outcome. The process not only reflects the jurisdiction of the RA, but also recreates and reinforces that jurisdiction, and in so doing, strengthens the authority of the decision ultimately reached, that is to say, the probability that it will be accepted by the parties. Since the RA neither looks for cases nor possesses any official jurisdiction, a resident who invokes its help publicly acknowledges that jurisdiction. An exchange takes place between the resident who wants his problem solved and the RA which wants its jurisdiction recognized. This, however, does not engender the dependence of the RA upon the resident's claim, for various reasons. First, the act of recognition can only be honored if the RA remains independent in the sense of being able "to make the balance" between the parties; otherwise, its ability to function as third party, and thus to solve the problem, would be destroyed. Second, as already mentioned, the defendant may come to the RA before the hearing to present his own grievances; in so doing he performs an autonomous act of recognition. The RA's jurisdiction is thus strengthened and extended to all the rights and wrongs of the situation. Finally, as has also been discussed, the RA has managed to surround its jurisdiction with an ambience of officialdom which makes it appear that jurisdiction is not sought, and thus that the act of recognition is not necessary; the resident who brings his case to the RA *subjects* himself to a preexisting jurisdiction.

Sometimes, when either the plaintiff or the defendant contacts the *presidente* about the case for the first time, the *presidente* asks if each knows that the RA has "legal quality" ("*qualidade juridica*"). The answer is usually affirmative. The purpose of the question, however, is not to obtain information about how well the legal status of the RA is known, but to establish the unquestioned prerogative of the RA to solve cases that fall within its jurisdiction. Since the law of the asphalt has given the RA no official jurisdiction, there is no other way to create it but by affirming it, in a ritualistic fashion, in contexts in which the assertion is persuasive and meaningful. This affirmation of "legal quality," which takes place so early in the processing of the dispute, is intimately related to the problem of implementing the ultimate decision. Given the weakness of the RA's sanctioning powers, implementation of the decision depends upon its acceptance by the parties without external coercion. But though power can develop suddenly and dramatically, the kind of authority that induces voluntary compliance is always created piecemeal and without drama. The *presidente* wants to point to it early in the dispute process so that its efficacy may unfold at the end.

The determination of territorial jurisdiction also reinforces the RA's authority. The message is not so much that if the shack is located outside Pasargada the RA has no jurisdiction, but rather that, if it is located within it, jurisdiction is indisputable. The same analysis applies to the inquiry into subject matter jurisdiction. By emphasizing the limits of its authority, the RA allays doubts about its author-

on the basis of an interview given to a student magazine of the University of São Paulo, in which he tried to demonstrate that there were no conditions for armed struggle in Brazil at the time. The subversive character of the magazine was "proved" by the prosecutor by reading from an article in which "the Vietnam War was explained from an anti-American perspective." This was for me an eloquent demonstration of American imperialism in Brazil.

But it was through long conversations with radical leaders of the favela that I learned most about the social and political oppression under the military dictatorship. I was at the time, far more than I could ever be aware of then, trapped in the distinction between science and politics, and thus I kept the two projects relatively separated. Anything I could not use in my scientific project I would integrate in my political project, which was basically my own political education and that of those with whom I was in contact. I had ceased to be a one-dimensional social scientist, so I thought, my scientific project thus advancing parallel to my political project. And indeed it was an illusion produced by two one-dimensional projects and authorships nailed together in a very precarious way. As a matter of fact, my attitude contained a high dose of dilettantism. Was it not, after all, the desire to be above classes (Karl Mannheim's free-floating intellectual) that led me sometimes to leave the favela and go to Copacabana beach, get a nice meal in a nice restaurant in order to go on enduring the diet of rice, beans and rabada at Dona Aurora's restaurant in Pasargada? Only later (and never fully) did I understand how

ity within those limits. The initial questions concerning the substance of the claim enable the *presidente* to get a preunderstanding of the case before the processing of the dispute reaches its final stage. This preunderstanding is also influenced by whatever private knowledge the *presidente* may possess about the dispute, by the defendant's *ex parte* appearance to explain his version of the case and express his grievances, and also by the inspection *in loco* of the material basis of the dispute. The *topoi* of dispute settlement are applied in a very vague and inarticulate manner at this stage, but this is sufficient to give the *presidente* a first impression of the relevant features of the case and the norms that may apply to it.

When the *presidente* happens to meet the defendant while inspecting the locale, he will invite him to the hearing orally; otherwise, he will do so in writing. The choice of this latter medium announces the seriousness of the situation and the commitment of the RA to assert its jurisdiction over the case. The message contains an invitation to come to the association "to treat matters of his interest." This epitomizes the ambiguity of the invitation process. Because the command emanates from a weak center of power, it can only be asserted through self-denial, and thus is framed as an invitation. The unity of the explicit message is split into two implied ones: the veiled promise that the resident's interests will be promoted or defended if he accepts the invitation, and the veiled threat that they will be sacrificed if he refuses it.⁴³ If this strategy fails, the RA will intensify its pressure upon the defendant only when the plaintiff reaffirms her interest in the case by renewing her claim. Persuasive messengers—such as a friend of the defendant, the *presidente* or a director—may hint that the police will intervene, either to bring him to the RA or to enforce whatever decision the RA takes in his absence. I have not personally observed such police action, though I have seen them deliver invitations in cases in which the RA wants to embargo the construction of a house or shack. The *presidente* recognizes that absolute noncooperation would constitute a very serious problem, but he also says that such a situation hardly ever occurs. How true this is I could not ascertain.

In most cases observed, the final stage of the dispute settlement process took place *in camera*, ensuring an atmosphere of privacy and intimacy that serves several functions. First, the parties may vent their anxieties without being disturbed by the presence of strangers. Second, since it is much more difficult for other residents to gain access to the *presidente* while he is in the back room, the legal-rhetorical discourse in which he participates will not be interrupted. If this discourse is to be persuasive, the parties must engage in a continuous exchange of views, through which a normative orientation gradually and precariously unfolds. Since the accumulation of persuasion in legal rhetoric is never irreversible, a break may mean a return to zero.

Finally, the movement of the parties from the open front room to the closed back room is accompanied by the removal of the dispute from the natural setting in which it occurred into the legal setting in which it is going to be discussed and eventually settled. The myriad circumstances and implications that comprise the former setting are transformed into the relevant issues of the latter. The dispute does not lose all contact with the natural setting for, like the parties in the back room, it continues to be located in Pasargada and socialized in Pasargada ways. But much as the closed room offers the participants a privileged forum in which

the two projects should feed upon each other if I were to avoid the all-too-pervasive schizophrenic syndrome of radical social scientists of the time: to be revolutionary as political activists and reactionary as scientists.

The construction of an alternative social praxis justified for me the inevitable violation of some of the rules of the scientific method. As an illustration I will mention two questions: "Natural" conversation or the purposeful orientation of verbal interaction in the field? Full participation with the consequent change of the field or the paramouncy of factual observation?

As to the first question, I was reluctant to bring out the topic of my research as long as I felt that it would be a unilateral decision, foreign to the context of the verbal encounter and, on the basis of my higher social status, forced upon the person I was talking with. This attitude was grounded on my refusal to see the subjects of open intercourse as objects of a secret intercourse (between me and the "world of science"). It was also grounded on my self-consciousness about their "refusal" to see me as a (North American) social scientist and thus, on their different expectations about my relation to them. I started to think that the social control function of modern science began with the repressive nature of the verbal discourse it forced upon its objects in both questionnaires and interviews. I was coming to the conclusion that, based on the same premises as material production—that is, private property and profit-oriented productivity—the production of scientific research expro-

to discuss the dispute, so the legal setting gives the dispute a foreshortened perspective.

Once the parties appear at the RA and the hearing begins, we are in the final stage of dispute processing.

2. *Topoi* of Dispute Settlement

The *Topos* of Fairness. In disputes arising out of the conflict of individual interests, this *topos* urges a real or fictitious balance of rights and duties, an outcome that approximates the model of mediation. It has been suggested that we never find either pure adjudication or pure mediation in practice, and that it may be better to work with the categories of mixed adjudication and mixed mediation. I will argue that a third category should also be considered: false mediation. It applies to cases in which the rhetorical needs of the argument lead the dispute settler to present a decision as a compromise when it actually grants the claims of only one party.

I will initiate the discussion with the analysis of case 8.

Case 8

Mr. S.B. sold his shack to Mr. J.Q. for Cr\$1,000.⁴⁴ The purchaser paid half of the price immediately and promised to pay the rest in installments. On the date agreed upon he paid the first installment (Cr\$50). The second installment of Cr\$200 was also paid on time. However, instead of giving the money to the seller himself, Mr. J.Q. gave it to the seller's wife. She kept the money for herself and spent it. Besides, she was unfaithful to her husband and had gone to bed with the purchaser's brother. Having learned this, Mr. S.B., the seller, killed his wife and demanded repossession of the shack. The purchaser complained that he had duly paid the installments and intended to pay the balance. He had given the second installment to the woman in the belief that she would take it to her husband. The seller's sister was called to the Association to represent her brother who could not come since he was being sought by the police. The *presidente* said that it would not be fair to revoke the sale since the purchaser had acted in good faith throughout. On the other hand, the seller should not be injured by the purchaser's failure to tender the money directly to him: therefore the installment in question should not be credited to the balance of the price. The *presidente* finally decided, and the parties agreed, that the purchaser would pay the balance in six installments, three of Cr\$100 and three of Cr\$50.

Because the *presidente* knew the dramatic circumstances of this case before Mr. J.Q. brought his complaint to the RA, he had a preunderstanding of the facts and norms involved in the dispute. In demanding repossession of the shack, Mr. S.B. was using Mr. J.Q. as a scapegoat for his anger at Mr. J.Q.'s brother. But it was clear that Mr. J.Q. had not been involved in his brother's affairs, and had always acted in good faith. After the parties presented their cases, the *presidente* invoked the norm that demands good faith in contractual relations (*pacta servanda sunt*). He also used the *topos* of fairness to eliminate some extreme solutions, thus cre-

riated the autonomous discourse of everyday language from its objects to build its own estate of scientific discourse, which then was used as a form of social power. Later on, while analyzing the data, I was confronted with a kind of retrospective dilemma: my attempt at a "politically correct" posture, and the measure of violation of field research rules it entailed, had made of me more of a conventional social scientist than I was prepared to admit at the time. A (badly) calculated distance from conventional methodology and from hegemonic scientific politics had, in the end, enhanced my "extractive capacity," and enriched my files with abundant and precious information. Indeed, as friendships developed, I was given such information as people would never dream of giving to any North American social scientist. The burden not to violate this friendly and trustful relationship became an obsession later on, when I was forced into the strait jacket of modern science while writing my doctoral dissertation. I would find some consolation only in thinking that the knowledge that was kept secret was crucially important to the construction of the knowledge that I allowed myself to publicize. In any case, while in the field, the political and, after all, merely human passion with transgressive methodology blinded me to the fact that the richness of my research material was proof that the Hydra of modern science could thrive through the wounds that slashed it.

The way I dealt with the second question, the question of changing the field in the process of observation, was as much the result of common sense

ating the normative ground upon which a middle-of-the-road decision could gradually be shaped.

Mr. J.Q. had always conducted himself as a reasonable purchaser. He paid all the installments on time. The fact that he made one of the payments to Mrs. S.B. could not be considered as a violation of the contract. Since Mr. and Mrs. S.B. were legally married the shack was property of both; therefore, Mr. J.Q. made the payment to one of the sellers, reasonably assuming that Mrs. S.B. would give the money to her husband. After all, the use of surrogate parties is well recognized in the Pasargada law and, indeed, it is being used in this case, as Mr. S.B.'s sister is allowed to represent her brother in the hearing to avoid delay. Consequently, it would be unfair to give no consideration to the legitimate interests of Mr. J.Q. by revoking the sale. On the other hand, Mr. S.B. contracted with Mr. J.Q. on the assumption that the installments would always be paid to him, since he did not trust his wife. He got none of the installments to which he was legitimately entitled, and can no longer get it from Mrs. S.B. It would be unfair to give no consideration to Mr. S.B.'s legitimate interest in obtaining full payment for the shack (under the male ethics of the RA, Mr. S.B.'s moral standing had not been affected by the killing of his unfaithful wife). By excluding two alternatives that totally sacrifice the interests of one party, the *presidente* legitimated, indeed necessitated, a decision that would "make the balance": Mr. J.Q. could retain the shack, but the payment of the second installment should be repeated; Mr. S.B. could not repossess the shack but would receive the money from the installment originally paid to his wife.

It is interesting to notice that the *presidente* avoids any involvement in the criminal issues that gave rise to the dispute. The object of the dispute is strictly maintained within the boundaries of the law of contracts, even though the *presidente* knew that Mr. S.B. was using Mr. J.Q. as a scapegoat for his brother. Indeed, the conciliatory decision which, on the surface of the legal discourse, appeared as the normative result of the exclusion of extreme alternatives, was motivated by the *presidente's* policy of avoiding any involvement with the criminal behavior. The *presidente* may have been particularly anxious to persuade the parties to accept the mediation as a fair settlement of the processed dispute because this might settle the real dispute without explicit argumentation. The processed and the real dispute were kept separate in order to allow an "economical" settlement of both.⁴⁵

In Case 9 the problem of the limits of the object of the dispute is raised again, but the *topos* of fairness is used in a somewhat different fashion.

Case 9

The plaintiff, Mrs. B.W., came to the RA with her sister and the latter's three children. The defendant, Miss A.M., came with her oldest daughter (about five years of age). All of them went to the room upstairs where the case was heard by the *presidente*.

MRS. B.W.: The land belongs to Mrs. O.L. She gave me permission to build my shack there. I did it myself, I furnished it and I lived there for a while. In the meantime I got another shack close to the first one and I moved into it. At

as the result of an overriding social or political purpose. If, in the course of the settlement of a dispute, the presidente of the Residents' Association requested the opinion of "our Portuguese friend," I could not refuse, in many cases, to give it without offending all the participants with what would be interpreted as an arrogant attitude. If a group of leaders, having a meeting before the national elections with "asphalt candidates" (an expression meaning that the politicians were outsiders: they did not belong to the community though they campaigned there), asked my opinion about some point of political strategy, they would at least be surprised if I refused, after all the time we had spent together talking about politics. If a marginal—a scared-to-death, middle-aged man, hidden in the favela and feeling like returning to a "softer and more honest activity" (for example, as a drug dealer) upon having heard that his name was on the death squad list for the killing of two policemen—asked me, after having been introduced to me by a friend of mine, to help him find a good lawyer, I could not refuse without breaking the rules of friendship and solidarity.

Whatever the immediate motives, the decision "to change the field" always had political implications. As my research proceeded, it became clear to me that in some instances the correct political decision would be, indeed, not to change the field. As an illustration, I will mention my relations with social workers operating in the community. At the time of the field research, there were great tensions between the Residents' Association and the Social

the same time, Miss A.M. (the defendant) came to me with two of her children saying she had no place to live and that she was sleeping on the street with her children. She knew that the first shack was vacant and asked me to let her move in there. Compassionately, I agreed and I even lent her all the furniture in the shack. I never requested any rent from her. Now I want the shack for this sister of mine and her children who just arrived from the hinterland and have no place to live. But Miss A.M. refuses to leave.

PRESIDENTE: Now Miss A.M., what do you have to say?

MISS A.M.: I do know that the shack belongs to Mrs. B.W. But I know that I cannot leave the shack because I don't have any place else to go. I don't have money to pay any rent. And besides I have three children. Nobody will rent a room to me.

MRS. B.W. (interrupting): She can pay the rent. The truth of the matter is that she is a prostitute and is full of *cachaça* (alcoholic drink) and of *maconha* (marijuana) all the time. And the shack is always full of *marginais* (criminals).

MISS A.M.: This is not true. And what about you? You lived for eleven years with a guy who was crazy and beat you all the time. He committed all kinds of larcenies and finally was caught by the police. Now he is in the mental hospital. But you said that you would receive him when he comes.

MRS. B.W.: That's nonsense. I am very happy with the man I am living with now. I work in a lawyer's home and he said that I had the right to repossess the shack.

MISS A.M.: I don't care. More important than all is that you . . .

PRESIDENTE (interrupting): No. All this argument is not relevant to our problem. If the shack is not Mrs. B.W.'s, neither is it yours, Miss A.M. And, after all, Mrs. B.W. was very kind to have let you move into the shack and even use her furniture.

MISS A.M. (in conciliatory mood): I don't deny that. And as a matter of fact she was very nice when I first met her. But the problem is that I can't find a place to live. I would leave the shack willingly if I found a room. But even if I find it I cannot pay the rent.

PRESIDENTE: Look. I don't think that it is impossible to find a room at a very low rent. After all you have not tried yet. You have to. Your lack of cooperation is not fair. Mrs. B.W.'s sister is here with her children. They also have no place to live. They just came from the Northeast. They don't have money. It is reasonable that Mrs. B.W. wants to help her sister and her children. She has a greater duty to help them than to help you.

MISS A.M.: I know. I know. But how can I find a room?

PRESIDENTE: Look, you have not tried yet. I will give you thirty days to find a room and to leave Mrs. B.W.'s shack. Do you agree, Mrs. B.W.?

MRS. B.W.: Yes, I agree. I wouldn't like to see her on the street.

PRESIDENTE: Do you agree, Miss A.M.?

MISS A.M.: I agree. But I don't know if I will be able to find a room. I will try.

PRESIDENTE: You will try. You will find something.

This case is characterized by normative consensus between the parties concerning the application of the laws of property. Mrs. B.W. was allowed to build on

Center of Fundação Leão XIII, originally a church organization, then already integrated in the state social welfare agencies. The tensions emerged with the resistance of the Residents' Association to the newly enacted laws that gave the Fundação's social workers control over some community activities. The social workers, who were totally insensitive to the crudeness of their intrusion on the autonomy of the association, tried to use my authority to influence the presidente of the Residents' Association and "lead him to change his stupid attitude." I would dress my response with the scientific gown, and tell them that, as a social scientist, I was not supposed to change the field—an argument which overwhelmed them, even if they could not understand it. Indeed, I made available to the Residents' Association my knowledge of the social control strategy of the center, and encouraged them to keep resisting.

Other experiences of a more personal nature—which could hardly be conceived as "changes of the field"—reflected, at the deepest level, the ambiguity of my attitude vis-à-vis the "field." In other words, they betrayed both the residually conventional social scientist living in me and the classist nature of my presence in the community. The best illustration is given by my "religious experiences" and, in particular, by my participation in Umbanda sessions (Umbanda is an Afro-Catholic cult widely practiced in the favelas of Rio, which in a certain sense may be considered a "religion of the oppressed"). Ritual, rather than the class nature of religion, was determinant in revealing

Mrs. O.L.'s land, and thus became the legitimate owner of the shack. She then granted Miss A.M. a precarious tenancy. Mrs. B.W. has the legal right to repossess the shack. None of these legal conditions is questioned by Miss A.M. This explains why the argumentation lacks the legal tone that can be detected in other cases. The discourse is predominantly moral: the parties accept the same normative principle, need for shelter, but use it to support contradictory claims. The supporters that each disputant brings to the hearing (Mrs. B.W.'s sister and her children, Miss A.M.'s daughter) are used as nonverbal arguments, as symbolic reinforcers of the parties' claims.

Each disputant tries to describe the facts in such a way that her claim appears morally superior to her opponent's. Mrs. B.W. emphasizes the moral uprightness of her conduct: how *compassionate* she was in lending the shack to Miss A.M. with *all* its furniture and without asking for *any* rent; only compelling circumstances force her to ask for it back; she would not like "to see Miss A.M. on the street," but her sister and the latter's three children, who fled from the hopelessness and hunger of the hinterland, have no place to live and need her help. On her part, Miss A.M. tries to demonstrate that she does not refuse to leave out of a selfish motive, but solely because her situation is desperate: she has *no* place else to go; she cannot pay *any* rent, and because she has three children, *nobody* would rent her a room. She pushes the argument of necessity to the extreme, so much so that Mrs. B.W., afraid of its persuasiveness, interrupts abruptly and tries to neutralize it. She does so by presenting facts that are so loaded with moral opprobrium that they not only eliminate the factual basis of Miss A.M.'s claim, but also cast serious doubt on her motives and her general moral character. If Miss A.M. is a prostitute, she has money and can pay the rent. She is also a deviant, a characterization reinforced by her alcoholism, drug abuse and contacts with criminals. Mrs. B.W.'s argument, in sum, is that the claim of an unworthy person is an unworthy claim.

Miss A.M. responds by trying to knock Mrs. B.W. off her moral pedestal. Although she denies Mrs. B.W.'s accusations, she does not press this point, probably because she recognizes that the facts are so well known that to deny them will further damage her credibility. Actually her rhetorical question—"And what about you?"—is a confession: "Yes I am bad, but you aren't any good either." Miss A.M. tries to stigmatize Mrs. B.W. as deeply as she has been stigmatized herself: even if Miss A.M. does have contacts with criminals, Mrs. B.W. had lived eleven years with a man who is not only a criminal but also crazy (double stigmatization). Therefore, she cannot be the moral person she alleges to be, and her claim is not worthier than Miss A.M.'s. Mrs. B.W. tries to defend herself, but perceives that she cannot win on moral grounds, and swiftly moves from a moral to a legal argument. She invokes the official law and the lawyer of the asphalt in order to intimidate both Miss A.M. and the *presidente*. It is at this point that the *presidente* breaks his silence and takes control of the discussion. The emotional dialogue between Mrs. B.W. and Miss A.M. has shown the *presidente* that the dispute over the shack is only part of the conflict between them. For reasons that I will analyze below, he does not want to extend the settlement context beyond the issue of the shack, and therefore organizes his argumentative strategy around this issue. At the level of moral argument, the claims of the disputants seem to lead to a tie score: the principle of need of shelter applies equally to both. At the level of

the internal contradiction of my presence in the religious circle. In the Umbanda sessions, community solidarity was mediated by religious identification, and the adequate medium for the latter was not the verbal discourse which I was used to, but rather, a "total discourse," a kind of apocalyptic experience which involved the individual personality as a whole, and merged it into the collective personality of ritual as an ongoing living process. The retreat into observation, that is, into science, was a defense mechanism against my fear of losing control of myself. But I was clearheaded enough to observe that my efforts to keep in control were considered by the crentes precisely as my being out of control, since only a person out of his mind could refuse the invitation of the Pai de Santo to join the group in the collective praise of God and His Saints. There was, thus, no room for halfway involvement or partial participation. I was either paralyzed in my arrogance, or kneeling for mercy. In a situation such as this, the structural mystification upon which participant observation is based was bound to reveal its dilemma in full clarity: if you observe you do not see; if you participate you do not remember. This dilemma was, indeed, an integral part of my religious experience. As a result, there were some Umbanda sessions in which I chained myself to the observation pole, while in other sessions I burned the pole, the scientist, the chains, and let the ashes disperse in a collective orgy of harmony. In the latter case the transgressive methodology was not part of my plan: it happened and I "happened" with it.

legal argument, Mrs. B.W. has an edge, since Miss A.M. recognizes that Mrs. B.W. owns the shack.

It is clear that the *presidente* decides this case for himself on legal grounds. But he cannot present his decision in those terms, because the fact that the parties have chosen a moral argumentation makes such a presentation unpersuasive. Accordingly, the *presidente* inverts his legal reasoning. He converts the legal advantage into a tie score—"If the shack is not Mrs. B.W.'s, neither is it yours"—and then proceeds to create a moral advantage for Mrs. B.W. He begins by emphasizing Mrs. B.W.'s kindness in having let Miss A.M. move into the shack "and even use her furniture." The purpose of this moral rhetoric is to induce Miss A.M. to relinquish her inflexible position by making her feel grateful toward Mrs. B.W. and conciliatory. He is only partially successful, for though she admits that Mrs. B.W. "was very nice when I first met her," she repeats the argument of necessity. It is here that the *presidente* invokes the *topoi* of fairness to exclude an obviously unfair alternative solution. But while in Case 8 the predominant feature of the *topos* is the balance of interests, in this case it is the conflict of moral duties. The *presidente* argues that, though Mrs. B.W. was performing her moral duty to help the needy when she let Miss A.M. live in the shack, she had an even greater moral duty to help her own family. It would be unfair for her to leave her sister and nieces on the street to help Miss A.M. Miss A.M. is touched by the argument, and shows some change in her position when she converts her previous assertion into a rhetorical question: "But how can I find a room?" Promptly, the *presidente* undercuts the rhetorical value of the question by answering that she will find a room if she really tries, and gives her a month to do so. Even though he knows that Mrs. B.W. will agree with this, he asks her consent in order to intensify the conciliation of the parties, since Miss A.M. is still reluctant.

In the first part of the discussion, the *presidente* kept silent. He wanted to know as much about the case as possible. The parties were free to expand the object of the dispute and to raise any issues they deemed relevant. They could also vent their anxieties and release emotional tensions that would stand in the way of a conciliation. But this does not mean that the parties exercised absolute control over the object of the dispute. On the contrary, the *presidente* interrupted Miss A.M. when she was about to say something that she considered "very important." At this point, he had a sufficient understanding of the case and felt that no new issues should be raised. In his argumentation he was careful to concentrate on the issue of the shack, omitting the other facts that the parties had asserted. Why did he proceed in this way? In the first place, he sensed that the dispute over the shack was secondary, and had been triggered by another real dispute between Mrs. B.W. and Miss A.M. They were probably fighting over a man. He did not know what the real dispute was, because the parties never disclosed it, but the emotional character of the discussion between the two women and their use of stigma and counterstigma could not otherwise be understood. However, the *presidente* did not show any interest in reaching the real dispute. This case had a "bad smell." He knew that both parties were prostitutes deeply involved with career criminals and policemen. The role of the RA in such a case should be kept at a minimum. Besides, he was not sure that the plot of land upon which the shack was built was

In the sessions I "observed," the group intimacy and the authenticity of the religious event was disrupted by the intrusion of the social scientist. I was not a neutral observer, I was a policeman—the more so when I pretended to emphasize my "neutrality." By my physical presence, clothing, posture and so on, I was a foreigner and a spy, a dissenter and a troublemaker, and only because I belonged to the hegemonic class was I tolerated. Oftentimes I saw myself as a tourist in a sexy bathing suit visiting the village church during religious services. Indeed, everything I did connoted the presence of an intruder: my place in the room, my relative immobility, my aloofness in particularly crucial moments, my refusal to participate in specific acts of the ritual. My whole posture was a kind of abstract uniform as awkward as the habit of the missionary observing the religious celebrations in the "jungles" of Africa. And, indeed, symbolically speaking, my posture was as white as the missionary's habit (or the doctor's gown). It represented both the aseptic position from where I, like Pilate, could observe the dirty underworld, and the mechanical whiteness of the bride chained, like Prometheus, to her arrogant virginity. It was also a triumphalistic whiteness, since I apparently saw no danger of being contaminated. Like the doctor or the hegemonic priest, I was there to cure or at least to collect the data upon which a cure could be planned.

My "white" posture and presence, however, had nothing to do with the white robes of the médios and of the mǎe-de-Santo. Theirs was a whiteness

still under the territorial jurisdiction of the RA. And his male common sense also told him that the feelings of the prostitutes were “highly changeable”: “they are enemies today, but could be friends tomorrow.” The fate of the agreement was less dependent on what happened in the RA than on what would happen outside, where the real dispute was being fought. The *presidente* was aware of the limits upon his functions in a case like this.⁴⁶

In Case 8, the *topos* of fairness was used to reach a mediated outcome. In Case 9, there was no mediation: Miss A.M. lost her case, even though she was allowed to stay in the shack for another month. In Case 10, we will see how the *topos* of fairness can be used to reach an outcome of false mediation, that is, a decision that, though presented as a mediation, is really an adjudication.

Case 10

Mrs. C.T., the plaintiff, and Mrs. S.N., the defendant, were invited to come to the Association to settle the dispute in which they are involved. Mrs. S.N. is very old, a sick person. Her son, Mr. C.N., came in her place. The parties were taken to the back room and the case was heard by the *presidente*.

MRS. C.T.: My sister came from the hinterland and she had no place to live. I bought for her the back room of Mrs. S.N.’s shack. I paid Cr\$100. My sister lived there for nineteen months. She left a while ago but the man who lived with her is still living there. Now Mrs. S.N. wants to sell the whole shack but she cannot because the back room belongs to me and I am going to sell it myself.

MR. C.N.: This is not true. There was no sale. No Cr\$100 were paid. My mother accepted Mrs. C.T.’s sister in our house because her sister had no place to live.

MRS. C.T.: But I have witnesses of the sale of the back room.

PRESIDENTE: Let’s see. Mrs. C.T., do you have a document of sale?

MRS. C.T.: No, I don’t because she refused to give me the receipt. But I bought the room and I have witnesses.

PRESIDENTE: I’m afraid that is not enough. The Association only recognizes sales for which there are written documents with the Association’s rubber stamp printed on them. Witnesses are not enough. The Association is a juridical institution.

MRS. C.T.: But I have witnesses.

PRESIDENTE: It is not enough, Mrs. C.T. We need a document. But let’s discuss the case according to the logic. I am not saying that you, Mrs. C.T., are not right in your contention. I know neither you nor Mrs. S.N. I only want to find a fair solution. Let’s suppose that you paid Cr\$100. Let’s further suppose that Mrs. S.N. gives you the money back. In that case you have to pay the rent for the period in which your sister occupied the room. Let’s suppose that the rent is Cr\$10 per month. Nineteen months of tenancy amounts to Cr\$190. You paid only Cr\$100. This means that you still owe Mrs. S.N. the amount of Cr\$90. Wouldn’t it be better if you forget the

offered in holocaust, ready to get dirty—which literally happened during the sessions. On the contrary, my whiteness concealed its weakness behind its hegemonic right to establish the rules of the game, and to do so in such a way as never to lose. The radical conflict between the two modes of being white was a kind of religious chasm which barely disguised the class conflict underneath. The fact that, though an intruder and an absolute minority in the group, I could be tolerated by the latter is evidence that the religion to which I belonged was also the religion of the hegemonic class. Accordingly, though observation was reciprocal, I observed the group arrogantly (imperialistically), while the group observed me powerlessly.

The above shows that my observation was only apparently neutral. In real terms it was a hostile observation. I interpreted as hard evidence of this the fact that, during the sessions, and irrespective of the place I occupied in the room, I tended to be surrounded by the quasimarginal elements in the religious group: younger people, always ready to make jokes about the ritual; less-motivated people who were there out of curiosity; new converts who were still afraid of getting too much involved. It may have also been that it was I, rather than they, who took the initiative of standing close to the elements that represented the best chances of discrediting and challenging the religion “under observation.” In either case, my observation became associated with the weakest link in the social process being observed. That is, my “neutral” observation was disruptive, and knew how to maximize

Cr\$100 you paid? In that case, Mrs. S.N. will also forget the Cr\$90 that you owe her. As a matter of fact, you may have paid the Cr\$100 but your sister also occupied the room for nineteen months. I would suggest that you forget the whole thing.

MRS. C.T.: I don't agree. The room is mine. I bought it. I am going to sell it.

PRESIDENTE: Look, in your case I would be cautious. Your case is a lost case. If you want to fight then you should consult a lawyer. I may even refer you to the legal aid agency.

MR. C.N.: I don't care if she wants to go to a lawyer. We will go too.

PRESIDENTE: That's the problem. You may go to the lawyer. But your case, Mrs.

C.T., is a lost one. You don't have a document of purchase. In my opinion you should give the key of the back room to the owner of the house.

MRS. C.T.: All right, I agree.

The legal norms involved in this case are the formal rule requiring a written document to certify the sale of the shack and the substantive rules of property. The basic dispute is about legal title to the shack. Mr. C.N. contends that his mother owns the whole shack, and has the right to sell it because Mrs. C.T.'s sister and her lover have been occupying the back room as precarious possessors. Mrs. C.T. contends that she bought the back room from Mrs. S.N. Both parties use the same moral argument—the principle of need of shelter—to substantiate their legal contentions. Mrs. C.T.'s sister came from the hinterland and had no place to live and no way to support herself. Since Mrs. C.T. could not accommodate her in her own house, the only reasonable and morally commendable way of helping her sister was to find her a room. On the other hand, Mr. C.N. contends that his mother was so deeply moved by the helpless plight of Mrs. C.T.'s sister that she compassionately allowed her to stay in the back room of the shack, and in these circumstances she would not possibly accept money.

Mrs. C.T. tries to strengthen her position through a formal argument: she has witnesses who will testify that the sale took place. It is at this point that the *presidente* decides to intervene. He responds to Mrs. C.T.'s argument by raising the question of formalism. Mrs. C.T. has said that she does not have a document of sale because Mrs. S.N. refused to give it to her, but she does have witnesses, implying that they are just as good evidence as a written document. The *presidente* perceives the implication and disagrees with it as strongly as possible. The RA is a juridical institution and therefore has to maintain a high standard of formalism: witnesses are not enough, nor even just any kind of document—only a document with the association's stamp. The rhetorical device used by the *presidente* to render this formal norm persuasive consists in elevating the standards of formalism by elevating the legal status of the RA. But Mrs. C.T. does not seem persuaded, and the *presidente* recognizes that the formalistic argument is indeed rhetorically weak. He thus turns to argue the substantive issues; he will discuss the case "according to the logic," which is the logic of fairness. However, before doing so, he has to solve two threshold problems. While arguing on formal legal grounds, the *presidente* had indicated to Mrs. C.T. that the case would be decided against her; now he has to retreat from this conclusion or suspend it rhetorically, because otherwise his argumentation on fairness grounds will lack credibility and persua-

disruption. The neutrality of the social scientist was a mode of neutralizing social reality.

What was tragic about all this was that, at the end of the "observation" sessions, I could fill in my checklist very neatly, but could hardly see the relationship between my notes and what had really happened in the session. More tragic still is the fact that this did not surprise me at all. During the sessions, the observation was reciprocal not only because the group observed me, but also because I, myself, observed my own observation. In so doing I sabotaged it. My observation was powerless vis-à-vis its own arrogance.

On the contrary, in the Umbanda sessions in which I participated, I became a more or less indistinct member of the group. There were some disturbing class-related factors, such as my clothing and the color of my skin. But these elements, which in the sessions which I "observed" were part and parcel of a coherent whole and were not individually noticeable, became in the "participating" sessions awkward appendages, anachronistic accessories, floating around in a frantic search for a lost identity. I had to forget them before the other members of the group could do the same. Sometimes I succeeded, sometimes I did not. Reified as I was by the division of labor characteristic of modern science, I tended to see myself in these sessions as vacationing, doing therapy, or simply attending the services of my religion, but I could never see myself working or studying. I must confess that I considered the "participating" sessions as lost for my research. Indeed, when

sive power. Mrs. C.T. will not even listen to him if she knows that the case has already been decided against her. Her resistance has to be overcome and an atmosphere of open-minded evaluation and cooperation has to be created. The *presidente* feels that his formalistic argument may have caused so much damage that he almost implies that Mrs. C.T. may win the case after all: "I am not saying that you, Mrs. C.T., are not right in your contention."

The second threshold problem is the following. The argumentative needs of the formal-legal discourse required an institutional rhetoric that emphasized the legal authority of the RA, but this tone is highly inappropriate to an argumentation based on fairness and cooperation rather than intimidation. Here it is essential to stress the moral authority of someone who stands above the dispute and thus can evaluate impartially the rights and wrongs of the situation: "I know neither you nor Mrs. S.N. I only want to find a fair solution."

Having solved the threshold questions, the *presidente* embarks upon an ingenious argument in which he wants to present a decision against one of the parties as a compromise between them. To achieve this, the *presidente* begins by changing the object of the dispute through imaginary manipulations of reality ("Let's suppose . . ."). He transmutes a dispute over the transfer of property (sale) into a dispute over the amount of rent (tenancy). Diagram 1 represents the structure of the argument.

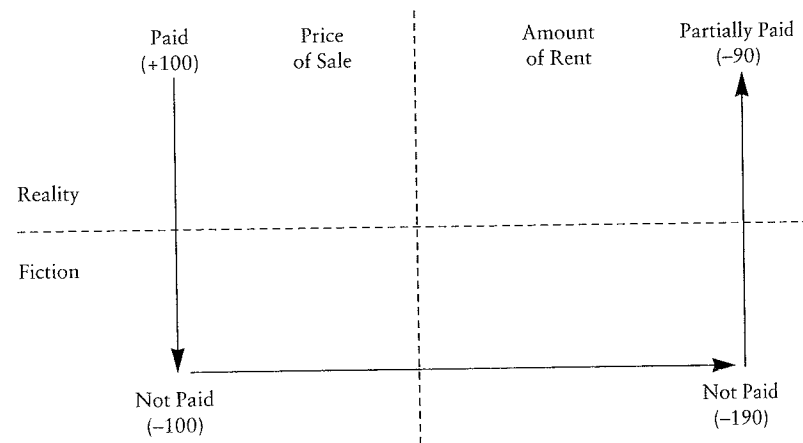


DIAGRAM 1

Through this argument, the *presidente* transforms the plaintiff (Mrs. C.T.) into the defendant. Reality is reconstructed so as to make it appear that her best legal position is to owe Mrs. S.N. Cr\$90, and even this is possible only because he is willing to grant, without further evidence, that Mrs. C.T. actually made the payment of Cr\$100. The *presidente's* reasoning employs an ingenious device: in the course of the argument he manages to separate the payment of Cr\$100 from the legal transaction that required it. He transforms it from a total payment of the purchase price into a partial payment of rent, and on this basis concludes: "You may

after such a session I tried to go through my checklist, the effort seemed ludicrous or even macabre. I did not remember at all (or only vaguely) the items which I was supposed to check. The more "important" the item, the more total the blank. The effort was also macabre: after participating in a love experience I was dissecting corpses in the anatomic theatre. The richness of the experience had nothing to do with the rigid, dead words of the checklist. Indeed, I came to believe that the implicit criterion of observation in most checklists I had consulted tended to orient the researcher's attention toward the technical dimension of social life, to the external apparatus with which things confront other things, and these were the aspects that became least important once participation assumed its own dynamics. Checklists were mechanistic in their construction, and tended to impose a mechanistic view of social reality. The social scientist's quest for neutrality and for keeping in control was the structural equivalent of the technical dimension and external apparatus of social reality. And as much as any mechanistic perspective involved an expansionist ideology and a will to dominate, so was the researcher's neutrality a way of neutralizing the social reality under analysis. Moreover, I reached the conclusion that the researcher could control himself only by way of controlling others.

The types of rule violation which were made possible by the transgressive methodology showed that the latter was, in the last analysis, an attempt to liberate the object of science by liberating the scientist from the illusion of

have paid the 100 *cruzeiros* but your sister also occupied the room for nineteen months." This would not make sense if the 100 *cruzeiros* had been paid as the sale price. But after the manipulation performed by the *presidente*, the stage is set for his proposed compromise: Mrs. C.T. will forget the payment she made and Mrs. S.N. will forget the rest of the rent.

The overall purpose of the *presidente's* strategy is to show Mrs. C.T. that the amount of money she claims to have paid is so small that it could not reasonably be considered the sale price for the back room: nineteen months of a low rent would be almost double that sum. This strategy allows the *presidente* to propose a decision that he considers fair without having to ascertain the facts of the case.

The argumentation is probably too artificial to convince Mrs. C.T., and she reaffirms her view of the case: "The room is mine. I bought it." At this point the *presidente* concludes that it is not possible to obtain spontaneous cooperation, and abandons the *topos* of fairness to return to a formal-legal argument. He seeks to intimidate Mrs. C.T. by warning that if she does not accept the decision of the RA she will have no alternative but to hire a lawyer and try to fight the case in the asphalt. But he admonishes: "In your case I would be cautious." And, though he offers to refer her to the offices of the legal aid, this is less an offer of services than a threat. The folk image of the official legal system is immediately reconstructed in the implicit discourse of the participants: financial costs (even in the case of the legal aid), delays and general inefficiency. Moreover, the *presidente* predicts the decision of the law of the asphalt: "Your case is a lost case" ("*seu caso não dá pé*"). The formal legal argument, which he recognized as weak within Pasargada law, acquires new strength through its direct connection with the official law: since Mrs. C.T. has no document of purchase, her claim will be rejected by the official law.

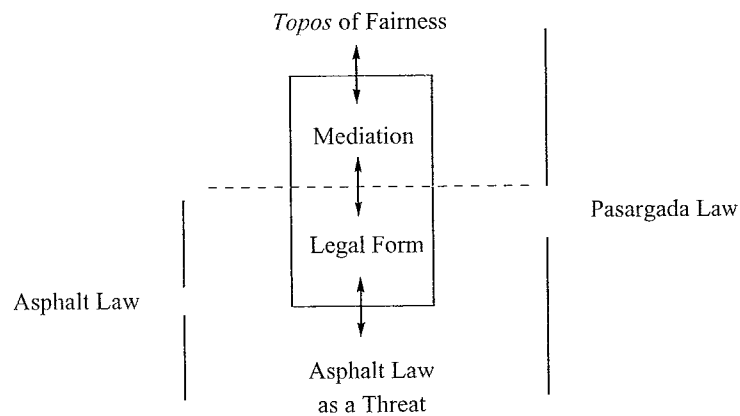


DIAGRAM 2

self-control. It is now very easy to speak of transgressive methodology, but at the time I was ending my field research, things looked rather less clear. Confronted with pressure (both internal and external) to show that I had deserved the money invested in my research, I felt very anxious and lost. The extremely rich material I had collected seemed to be sufficient and even path-breaking for almost any dissertation topic except for the one I was supposed to write about. When I left Brazil I very much doubted that I had enough data to write an acceptable paper, let alone a doctoral dissertation. I even doubted that I had any data at all. I only knew that I had gone through a personally and politically relevant experience. But even that I tried to forget, in order to be able to adapt myself again to life and work in the headquarters of modern science, and, of all places, at Yale.

ON WORK

Back in the U.S., and deprived of the daily contact with the favela, my written record gradually became the main controlling instance of my reference to the past. The "data" began then to emerge from what had been an "undata-ble," total experience. As if science, like Phoenix, arose from the ashes of passion. But the open space thus created for scientific development was shaken

It is interesting to notice that the written document, as a legal form, constitutes the common ground of Pasargada law and the law of the asphalt. In contrast, the argument of fairness is kept within Pasargada law (see Diagram 2).

The official legal system is presented, not as a forum to which a litigant may appeal from an adverse decision under Pasargada law, but as a threat aimed at reinforcing the decision of the RA under that law. The dominance of official law only partly explains the recurrent reference to the legal form of the written document in this case, for it fails to account for its invocation in the initial stage, when the discussion is kept within the boundaries of the Pasargada law. Throughout the section on dispute prevention above, I demonstrated the flexibility of Pasargada law in matters of formalism. Indeed, in Case 6, witnesses were allowed to certify the existence of the contract. The present case thus seems to contradict my theoretical prediction that, because Pasargada law is loose on formalism and strict on ethics, nobody would lose a dispute because of a technicality. I want to argue that these inconsistencies are superficial and disappear once the structure of the legal reasoning in this case is analyzed in depth. After the parties presented their claims, the *presidente* realized that it would be very difficult to learn what actually had happened. It was the word of one against that of another: if Mrs. C.T. brought her witnesses, Mr. C.N. would bring his. He therefore sought a solution on the basis of the data spontaneously offered by the parties. In the first place, it looked highly suspicious that Mrs. S.N. had refused to give a receipt of payment. Since the whole purchase price had been paid at the time of the sale, there was no reasonable motive for Mrs. S.N.'s refusal. Besides, it did not seem plausible that Mrs. C.T., who seemed so articulate and so zealous in defense of her interests, would accept this refusal without doing anything about it. Then, too, the *presidente* questioned whether Mrs. S.N. would have sold the back room for the 100 *cruzeiros* that Mrs. C.T. claimed to have paid. This was a very low price, considering the location of the shack and the fact that its value would diminish as a result of the sale of one of its rooms. Mrs. S.N. would only have agreed to such a sale out of ignorance or because of fraud, and since the evidence of the sale was not unequivocal, her interests should prevail. Finally, Mrs. C.T. does not really need the room, either for herself or her sister. She wants to sell it and make a profit at the expense of Mrs. S.N. Accordingly she must lose the case.

All of this shows that the *presidente* decides against Mrs. C.T. on substantive grounds, with the help of assumptions about reasonable behavior and reasonable prices. The presentation of his arguments reflects, in an inverted form, the process through which he reached his decision. He uses the legal form of a written document (rhetorically buttressed by such details as the requirement of an official stamp) as persuasion for a decision ultimately grounded on principles of fairness.

The Topos of the Reasonable Resident. This *topos* is invoked when a resident has asserted his individual interest in opposition to the primacy of community (or neighborhood) interests. It is far more difficult to apply than norms regulating conflicts among individual interests (as in landlord-tenant controversies), and its currency in Pasargada is open to question. In all the cases collected under the *topos* of the reasonable resident, there are two or more residents who present the same grievance against the same person. In some, the RA represents the interests of the community or the neighborhood in a kind of administrative proceeding.

to the roots by a particular incident. It so happened that, almost by chance, I came to know that the Law and Modernization Program was, like many other programs throughout the country, funded by the State Department. This was a great shock to me and to some of the other foreign graduate students. It had never occurred to me to ask about that, and in retrospect I felt naïve and stupid for having thoughtlessly assumed that the fat money involved could possibly come from nowhere. This naïveté and stupidity, however, were not "innate" traits of my personality, but rather, the result of my scientific socialization in a country where the social sciences had been banned for many years, and where whatever real scientific process was carried out seemed to be dominated by precapitalist relations of scientific production, inside which the scientist could indeed be credibly thought of as an autonomous producer of science. I personally had never questioned such ideology and in Portugal, prior to my U.S. experience, I had always seen myself as an autonomous producer of science, who was paid to teach but not to do research. Indeed, the class determination of my labor process as a "legal scientist" was so complex and contradictory that my autonomy was a convincing appearance and, as such, a lived experience. Probably, this fact also accounted for the contrast between my strong, outraged reaction and that of other leftist students from "more developed" countries. The latter, in fact, were more prepared to accept the facts cynically and to exploit them to their own advantage.

Case 11

When repairing his house, Mr. K.S. extended one of the walls so much that the street, already very narrow, was almost completely obstructed. Some neighbors complained before the Residents' Association. The *presidente* and one director inspected the locale and concluded that the street had been virtually closed by the construction. They went to see Mr. K.S. and explained the situation to him. He was reluctant to do anything about it but the officials pushed the matter very hard. The argument was: "Look, if someone dies, the coffin cannot pass down the street. Not even the street cleaner's wheelbarrow."

Faced with the refusal of Mr. K.S. to cooperate, the *presidente* said: "Look, I think that's unreasonable. But in any event you know that the Association has powers to demolish unlawful buildings in Pasargada. I have the laws here and I can show them to you. And the police are anxious to help the Association enforce its powers."

The *presidente* and the director left without Mr. K.S. making any commitment. Shortly after the discussion, Mr. K.S. decided to demolish the wall himself and to rebuild it according to its original dimensions.

Leaders of Pasargada, the *presidente* and directors included, share the view that Pasargadians are individualists. As one leader puts it: "They may watch someone doing something harmful to the interests of the community, but if they are not directly affected they won't move a straw." Whether or not this is true it constitutes an assumption for evaluating behavior. When some residents came to the Association to complain about Mr. K.S.'s construction, the *presidente* immediately concluded that they must have been significantly affected, because otherwise they would not have acted. The stereotype of selfish individualism helped to build the *presidente's* expectations about the facts and issues involved.

Suspecting that construction was already under way, if not yet completed, the *presidente* anticipated that the defendant might be obstructive, since Pasargadians are very serious about protecting their interests and property values. He asked a director to accompany him in the inspection of the locale, because he was concerned about Mr. K.S.'s reaction and thought that the presence of two officials would have greater impact and deter any violence. Once in the locale, the *presidente* and the director quickly concluded that they faced a flagrant violation of the Pasargada norm that forbids private construction to the detriment of collective interests. The street was virtually closed by Mr. K.S.'s construction, and its residents thereby denied access to the main street. The normative needs of the factual situation were so evident that the *presidente* thought that a discussion between the complainants and the defendant in the RA would be unnecessary. The RA took upon itself the task of representing the interests of the neighborhood against an unreasonable resident. Like the *Lozi kuta*, the RA is a flexible institution which may function as either a judicial body or an administrative agency, as circumstances require.

Mr. K.S. offered a defense at each of the two levels of discourse: the street had always been narrow and he had not exceeded the original dimensions of the house (legal discourse); he had invested money in the construction of the wall and had

My previous scientific background and socialization also accounted for my dealing with the whole issue as an ethical question, leaving in the penumbra the material base of the scientific process in which I was involved. Accordingly, my moral outrage was targeted at the patient director of the program. My central criticism was that he should have let us know, from the start, about the financial structure of the program. The director, though a good friend, was puzzled and offended by my reaction. In his opinion one should accept as a given fact that social science today cannot be pursued unless it is funded. Thus, the question concerns mainly the conditions imposed by the funding institution: it makes no difference whether such an institution is Yale University (which gets its money from stock market operations), or the Ford Foundation or the State Department. And he took great pains to show me that in this case no strings had been attached to the funding, and I was even given a copy of the funding agreement.

I was not really convinced, and kept thinking that the source of the funding had been hidden from us in order to avoid our reactions. Long discussions then took place both with the director and with other Yale professors involved in the program, on the one side, and with foreign graduate students and scholars, on the other. The latter had, as it turned out, the greater influence on my subsequent reactions.

neither money nor time to demolish it and construct it again (moral discourse or discourse of necessity). Since Mr. K.S. showed no respect for the Pasargada norm he had violated, the *presidente* turned to the *topos* of the reasonable resident. By disregarding the interests of his neighbors he was behaving unreasonably because, if all residents behaved like him, Pasargada would very soon be impossible to live in. His cooperation was requested, and in these circumstances the emphasis on cooperation was transformed into a rhetorical *topos* put at the service of (and reinforcing) the *topos* of the reasonable resident: a reasonable resident not only does not violate collective interests, but cooperates to restore them when they have been violated. In the course of the argumentation, the *presidente* managed to magnify the unreasonableness of Mr. K.S.'s behavior by rhetorically expanding the object of the dispute. Mr. K.S.'s conflict was not only with those who live on his street, but also with those who die in Pasargada, and whose coffins have to pass through the street on their way to the cemetery. Mr. K.S. was violating the interests of the living and the dead, and to be disrespectful to the dead is an especially heinous moral offense in Pasargada. His transgression extended beyond the neighborhood in another sense: it damaged the community interest in cleanliness because it prevented the street cleaner, hired by the RA, from carrying the rubbish in a wheelbarrow to the entrance of Pasargada.

Mr. K.S. had invested too much in his wall to be persuaded by the *topos* of cooperation. When this became clear, the *presidente* shifted to the *topos* of intimidation. Pasargada law has developed a characteristic dialectic between these two *topoi*. Intimidation by the *presidente* becomes reasonable only after the unreasonable refusal of the resident to cooperate has been established (even if not explicitly admitted). Once this *topos* was introduced, the legal discourse changed direction. Mr. K.S.'s conduct violated both the Pasargada norm about the community interest and the law of the asphalt that forbids (and orders the demolition of) unauthorized construction in squatter settlements. As long as the *topos* of cooperation dominated the legal argumentation, the *presidente* emphasized the Pasargada norm. But when he turned to the *topos* of intimidation he also invoked the laws of the asphalt. Because these are produced by the state, they are more effective in evoking the sanctioning powers, which the *topos* of intimidation manipulates in order to elicit what I would call imperfect cooperation, that is, compliance in which the act of cooperation is denied by the resident who is persuaded to conform *through* intimidation.

But the laws of the asphalt do not completely dominate this second phase of the legal argumentation. The *presidente* asserts the power of the association to demolish unlawful buildings. Since this power is given by the official law, it may appear that the criteria that determine which buildings are unlawful are also contained in that law. Yet this is not so, as evidenced by the many buildings in Pasargada which are not lawful from the point of view of the official law (since their construction was never authorized) but which the RA has no intention of ordering demolished. Mr. K.S.'s construction is unlawful, not because it violates the interest of the state in stopping or controlling the growth of squatter settlements, but because it violates the community interest in free passage through the streets. Thus, as mentioned in the previous section, the official laws are selectively invoked to protect a recognized interest of the community. The threat of state

We were a very heterogeneous group in terms both of our countries of origin and of our intellectual interests, but most of us shared left-wing political attitudes and a critical stance vis-à-vis American imperialism. After much discussion, we were able to clarify our views on the imperialistic use of the social sciences, and to define our position vis-à-vis the Law and Modernization Program. First, we contended, established social science in advanced capitalist societies reproduces, in a very specific way, the structure of class domination both internally and internationally, and the program was part of this process. Second, such reproduction, far from being limited to the political use of scientific results, involved the theoretical apparatus of social science, the methodological tools, the conceptualization of social reality and probably even the epistemological foundations. Third, under such circumstances, the question of the strings attached to the funding of specific research projects was at least in part a false one, since it confined the question of political determination to the realm of scientific results alone. It played, however, an important role, insofar as it established the conditions under which liberal ideology in science made itself credible within the dominant mode of science production. Fourth, the ideology of liberalism was internally contradictory, and it was through its contradictions that radical science might establish its practice in class societies. In other words, the residual autonomy granted to the scientist by modern science could be used to build up a radical alternative to modern science itself. Was this a reasoned reevaluation or a desperate rationalization?

sanctions and of the police is put at the service of substantive norms of Pasargada law. This case also illustrates how the threat of police intervention is invoked in tandem with the official laws.

Case 12

In this neighborhood, as in every other in Pasargada, there is a water supply network with pipes and pumps installed by the residents. Mr. T.H., one of the residents living in this neighborhood, constructed a device to pump the water into his house. However, he installed it on the street and over the pipes of the water network. Some neighbors complained to the Residents' Association, arguing that this would ruin the pipes and would make repairs very difficult and costly. The *presidente* inspected the locale on the next day. He came to the conclusion that the neighbors' complaint was reasonable. The defendant was not at home at that moment, so the Association sent him an "invitation." He came before the date set for the joint discussion, and was given a hearing in the back room.

PRESIDENTE: You know why the Residents' Association invited you to come here, don't you?

MR. T.H.: Yes, I know but I don't see why the Residents' Association has anything to do with my case.

PRESIDENTE: Well, one moment, please. [The *presidente* went to the desk in the front room and brought back with him the folder with copies of the state laws on construction in squatter settlements.] I am going to read to you the laws that give power to the Residents' Association to order the demolition of unauthorized constructions.

[He read the specific provision.]

MR. T.H.: My problem is that the pumping machine cost me a lot of money and I don't have any other place to install it. Besides, the way I installed it I don't think that any damage can be done to the network.

PRESIDENTE: I have already inspected the place (*a obra*, "the work") and the situation is not so clear to me. I will set a date for you and your neighbors to come to the Residents' Association to discuss the case.

After Mr. T.H. left, the *presidente* commented to me: "I am sure that he will be forced to remove the construction. The neighbors will exert too much pressure." This case illustrates several things: the circumstances under which a defendant comes to the Association prior to the hearing in order to present his own version of the case; the flexibility of Pasargada procedures (the *presidente* first inspected the locale and attempted to meet the defendant on the spot, and only subsequently invited him to a hearing); and the extent of legal argumentation before the dispute even reaches its final stage. In this case—as in the preceding one—the crucial phase of the process is the inspection of the locale. Since the factual basis of the dispute is visible, the *presidente* becomes an eyewitness; the knowledge and authority he acquires in that capacity are a resource in the subsequent processing. Moreover, the issues and the governing norms sometimes appear so unequivocal

Since we had been granted liberal scientific autonomy inside the Law and Modernization Program—in that we had "chosen" our research topics, even if within the preannounced limits of the program; that some of us had changed our research projects once or twice; and that no one had controlled our scientific results or pressed to produce policy recommendations—the conditions were there for us to convert our moral outrage against scientific imperialism into a purposeful scientific and political energy. A few of us started reading and discussing Marx in a more systematic way, and a kind of countercourse on the Marxist analysis of imperialism was organized. Two of us followed the only "official" course on Marxism offered then by the Yale Graduate School and taught by Leon McBride. As I was convinced that Hegel's logic was more important than anything else in the understanding of the roots of Marx's dialectical method, I also attended a seminar on Hegel's logic taught by J. Finlay—a distinguished Hegelian teaching his last year before retirement—and spent a great part of the semester reading The Science of Logic. In the following three years, I studied sociology and political science almost obsessively, took as many courses as I could accommodate in the time I had to write the dissertation and, for that purpose, sixteen-hour-long work-days became a kind of a sweetly monstrous routine.

As the time went by, the subsequent theoretical clarification made it easier for me to distinguish between the institutional setup of the program and the people who ran it. The latter respected my feelings, tolerated my occasional

in this phase that the *presidente* not only acquires a preunderstanding of the case, but in fact, by a kind of shortcut, reaches a decision about it. The requirements of legal argumentation, however, may lead the *presidente* to suspend his decision in order to create the rhetorical space within which the legal discourse can be persuasively articulated. This is why the *presidente* ambiguously says to the defendant, "I have already inspected the work and the situation is not so clear to me," even though he is convinced that the neighbors have a reasonable claim and that Mr. T.H., by his lack of cooperation, has revealed himself to be an unreasonable resident. The ambiguity is generated by the tension between the contradictory elements in the *presidente's* utterance. The first—"I have already inspected the work"—informs Mr. T.H. that the *presidente* possesses firsthand, precise knowledge of the case. The linguistic signs of this phrase reflect and create certainty and precision in each semantic element: the agent ("I"), the temporal dimension ("already"), the activity ("have inspected"), and the object ("work"). In the second phrase, by contrast, the *presidente* confesses his doubts, and accordingly adopts the passive voice, employs a vague referent ("the situation"), and describes it only by its lack of a quality ("not so clear").

Water networks are a recurrent source of disputes among neighbors in Pasargada. They involve an initial investment of money, and demand daily management and constant maintenance, both of which may require technical skills that are not always available. The situation is even more complex in the neighborhoods on the top of the hill, where the lack of cooperation by one resident may create significant hardships for the others, because of the increased difficulty of pumping the water up and into the houses. Mr. T.H.'s neighbors were alarmed about the potentially adverse effects of his construction upon their network. By acquiring a pumping machine, Mr. T.H. was becoming independent from the network. Moreover, he showed his lack of concern about their welfare by failing to build a base of reinforced concrete that would have protected their network from possible damage. Because the neighbors' complaint was expressed in strong terms, the *presidente* inspected the locale the next day. When Mr. T.H. heard this, he became concerned about the security of his investment in a water supply, and decided to come to the association in order to forestall further proceedings without his participation. He began by making a legal challenge to the RA's jurisdiction. But by raising this procedural objection, Mr. T.H. became doubly unreasonable in the eyes of the *presidente*: at the substantive level (by constructing on top of the water network) and at the procedural level (by refusing to recognize the RA's jurisdiction in construction cases).

The *presidente's* first step, therefore, was to assert his jurisdiction, which could only be done through the *topos* of intimidation. The use of that *topos* in this case is very complex, and requires detailed analysis. It is generally characterized by strict legality, precision and impersonality. When the *presidente* left the back room to get the documents, he suspended the action, freezing Mr. T.H. in his own argument, uncertain whether his arrow had struck its target or was ricocheting and would strike him instead. By leaving the room to get the folder, the *presidente* showed Mr. T.H. that he not only had the power to control time and impose silence, but also had access to resources unavailable to Mr. T.H. Thus the *presidente* created distance between himself and Mr. T.H. This ritualistic creation of distance was prolonged when the *presidente* returned. The folder and the copies

arrogance, and eventually became my closest friends. How to integrate the new theoretical developments with the empirical data from my research in Brazil was a much more difficult endeavor. One such problem was of a directly political nature, and concerned the fear that my research data, once beyond my control, might be put to an imperialistic use. At a distance now, this almost obsessive fear seems quite disproportionate in view of the nature of the data themselves. But at the time my anxiety was only appeased by a change of names, numbers and locations so as to prevent the identification of the community, and further, by a careful selection of the data I would permit to be used in the analysis.

In the light of the new position I had taken on modern science as a possible instrument of imperialism, my data changed their political and scientific status or nature. The most interesting data according to my original theoretical purposes became the most politically delicate, and were eliminated from the analysis. For instance, though I was familiar with antifascist, Communist, underground activities inside the community (and also inside the Residents' Association), I would not deal with them irrespective of their relevance to understanding the operation of the community legal system, which constituted the central topic of my research. Indeed, I had to exercise a double control over my data, since, as I mentioned above, Pasargadians had provided me with such information as they would have withheld from someone fitting their stereotype of a North American social scientist.

of the laws were used as nonverbal clichés or legal fetishes, whose infrequent appearance among the paraphernalia of everyday life communicated a distinct note of impersonality. The silent opening of the folder was like the unveiling of a secret treasure. Then the *presidente* announced that he was going to read the laws, in much the same way as the trumpets of the King's heralds aroused the burghers to the news that royal decrees were going to be proclaimed. Instead of explaining the law in his own words, the *presidente* preferred to read the official text, another rhetorical device aimed at intensifying the impersonality of the legal argumentation. The state was speaking through the *presidente's* mouth. Thus, the reading, as a ritual, evoked the myth of the all-powerful state. The laws, as fetishes, summoned the state, as a founding fetish. As with an oracle, it was unimportant whether Mr. T.H. really understood the meaning of the law—the official formula was an incantation against Mr. T.H. by an impersonal state.

Mr. T.H. did not accept or reject the argument. Indeed, it was not a question of either/or, but of whether he was sufficiently overwhelmed. This lack of reaction was interpreted by the *presidente* as indicating the success of the *topos* of intimidation. And he might be right, in view of the fact that Mr. T.H. did not interrupt the legal discourse, and rather, adopted a different line of argumentation that presupposed his recognition of the RA's jurisdiction over the case: the moral argument and the defense of necessity. The *presidente* concluded that the *topos* of the reasonable resident and the *topos* of cooperation could now work in tandem, which is why he decided to create the space for argumentative maneuvering I mentioned earlier. Even then, he was not convinced that the *topos* of cooperation would be persuasive by itself, and was relying on informal sanctions imposed by the neighbors, who had shown their deep concern by raising the matter in the first place. Given the weakness of the RA's own authority and its reluctance to call for police assistance, such self-performance of law jobs is an accepted practice in Pasargada.

From the point of view of the law of the asphalt, legal title to all houses and shacks in Pasargada is precarious: land tenure is illegal; construction does not comply with the housing code; titles are not officially registered; and many buildings violate special official laws on construction in squatter settlements. These sources of legal precariousness are irrelevant to the status of titles under Pasargada law. Yet there are situations in which the law refuses to recognize a given legal title because the collective interest is at stake. In such cases, the neighbors' complaint may not even be necessary; the RA takes upon itself the task of representing the collective interest, and proceeds like an administrative agency. The distinction between judicial and administrative proceedings is extremely elusive in Pasargada, since in both the RA assumes the support of the neighborhood, and follows the same dialectical relationship between the *topoi* of cooperation and intimidation.

Case 13 illustrates the collective interest overriding a claim of individual title.

Case 13

I, Mr. Z.A., [full identification] declare: The area, which is occupied with pipes, in the address where I live, will be delivered to the Residents' Association, spontaneously and free of expenses, at any time that the Residents' Asso-

The priority given to political criteria in the selection of the data was ambiguously conceived as part of the anti-imperialist struggle at the level of social science. The implementation of such a priority, however, was a recurrent source of psychological stress which, at times, led to paralysis. In a sense, I knew too much to be able to write a publishable dissertation, and I knew too little to be able to publish a writable dissertation. At this dilemmatic juncture, Max Gluckman provided me, almost by chance, with precious guidance. Writing about the problems confronting the field-worker, Gluckman pointed out, in a text I came across then, that "he [the anthropologist] has continually to clarify his own role in the society he is studying so that he is neither left completely in ignorance on the outside nor completely captured at the center where he knows so much that he can publish nothing."¹³ This quotation, as well as the whole piece from which it was taken, showed that Gluckman, an undisputed authority in the field, was acutely (even if powerlessly) aware of the dilemmas and ambiguities of established methods of field research, as discussed above in the section on transgressive methodology. To be or not to be "captured at the center" was not merely a political dilemma, as my brooding could imply. It is also a knowledge dilemma, and while Gluckman was concerned with publishable knowledge, I was concerned both with "writable" knowledge and with "publishable" knowledge. This dilemma seemed to have at least three different faces: the face of time, the face of ignorance, and the face of perspective.

ciation needs the said area. The board of directors of the Residents' Association declares: The shack in the address [location] cannot be sold without the receipt being made in the Residents' Association. If the shack is disrespectfully sold without this receipt, the buyer will lose all its rights to the shack or area. Mr. Z.A. is in agreement with all these declarations and signs.

Date:
Signature:

Mr. Z.A. built a shack in an area which the RA had reserved for storing pipes before they were used for the improvement of the community. Mr. Z.A. did not damage the pipes, but simply moved them to create a small space where he could build his shelter. The RA found this an infringement of its rights, but since the pipes had not been injured, the principle of the need of shelter prevailed, and Mr. Z.A. was allowed to stay. In the future, however, this principle may collide with the collective interest (for instance, the need to store more pipes), and the RA wants to avoid possible conflict. The solution does not balance the interests of the community and Mr. Z.A.'s interests but is based on the illegality of his initial occupation. Accordingly, the legal status of Mr. Z.A.'s title over the shack is declared precarious: he will leave when asked, and cannot sell the shack without permission of the RA.

These restrictions reveal some interesting aspects of Pasargada law-ways. The RA recognizes that, in general, people may transfer their property without consulting it. But because Mr. Z.A. has constructed illegally upon an area dedicated to community purposes, he is a squatter under Pasargada law. Mr. Z.A.'s right is dependent upon his need for shelter; if he decides to sell the shack he must no longer have such a need, and the RA determines the fate of the shack. The Association may decide that it needs the area, in which case the shack will be demol-

Asphalt Law		Pasargada Law	
With land tenure	Without land tenure	With land tenure	Without land tenure

a. The two laws reviewed in isolation

Asphalt Law		
With land tenure	Without land tenure	
	Pasargada Law	
	With land tenure	Without land tenure

b. The two laws viewed in a relationship of legal pluralism (inverted basic norm)

DIAGRAM 3: The relationship between the normative structures of Pasargada law and asphalt law

The face of time: *written knowledge appeared a ruminated knowledge, or rather, a delayed knowledge. It was based upon a temporal distance between the knower and the known object, and therefore it lacked the intensity of instant knowledge (practical knowledge as practiced). When at the center—and the center is both a spatial and a temporal category—of a given practice, one needs instant knowledge to orient one's action at any moment, and one tends to be impatient with any form of a posteriori knowledge which purports to know everything only after everything has become nothing in terms of the ongoing social action. To establish the limits of ruminated knowledge, however, does not mean to consider the "skill to ruminate" as useless in general. On the contrary, one could say of writing what Nietzsche said, in The Genealogy of Morals, on the reading of his own writings: "One skill is needed—lost today, unfortunately—for the practice of reading as an art: the skill to ruminate, which cows possess but modern man lacks. This is why my writings will, for some time yet, remain difficult to digest."*¹⁴

The face of ignorance: *there is a critical level of ignorance below which it becomes impossible to write. In order to be able to write about something one has to ignore it to a certain degree. To write is to objectualize, and this both presupposes and creates ignorance about the object. On the contrary, "to be at the center" means supreme identification (supersession of the distinction subject/object of knowledge), and thus to write from there implies a process of deviation, a kind of treason. The French philosopher Giles Deleuze*

ished. Or, it may allow the sale because it has no immediate use for the land, but in this case the precariousness of the legal title will pass to the next occupant. That is why the RA not only forbids a sale without its approval, but also declares that any such contract will be void, so that even a good-faith purchaser will obtain no rights. Pasargada law deals with squatter settlements inside the *favela* in much the same way as the official law deals with Pasargada itself. This similarity occurs through the inversion of the basic norm concerning rights to land, which I discussed earlier. Once this inversion takes place, it is possible to apply the same legal categories and remedies inside and outside the *favela* (see Diagram 3).

Since it is the inversion of basic norm that allows Pasargada law and the asphalt law to provide similar normative solutions to similar problems, a reasonable Pasargadian accepts both this inversion and its consequences, and that is why the Pasargada law "is like the law of the asphalt." In the course of a chat with some residents, the *presidente* said: "If residents rent their shacks to someone and their tenants fail to pay the rent, then the landlords shall have the right to repossess their shacks. Either the tenants leave or they will be forcibly evicted. It is like the law of the asphalt." I have been arguing that this similarity does not reach into technical details, but remains at the level of the broad normative outlook. Moreover, even at this level, Pasargada law may have some normative autonomy. For instance, I have discussed how the basic norm governing landlord-tenant relationships is modified by the principle of the need of shelter. In his relations with other residents, the reasonable resident is expected to disregard whatever the law of the asphalt or its officials say about the legal status of such relations because they take place in squatter settlements, and to accept the normative solutions proposed by the Pasargada law, which are structurally similar to those proposed by the asphalt law for asphalt cases. If a resident tries to take advantage of official law, and, as a consequence, tries to live in Pasargada according to the normative judgments that asphalt law makes about squatter settlements and social relations within them, he is an unreasonable, even a deviant resident, because he places his individual interest above the community interest, under the pretext of the coincidence of his own interest with the state interest. His deviance lies in his being forgetful that it is the community that permits the possibility of peaceful social life in the face of a state that labels it illegal.

CONCLUSION

The Structure of Legal Pluralism

Pasargada law is an example of an informal and unofficial legal system developed by urban oppressed classes living in ghettos and squatter settlements to maintain community survival and minimal social stability in a capitalist society based on speculation in land and housing. I have argued that this situation of legal pluralism is structured by an unequal exchange, in which Pasargada law is the subordinated part. We are thus in the presence of interclass legal pluralism, one of the several forms through which the class struggle is fought in Brazil. In this instance, class conflict is characterized by mutual avoidance (latent confrontation) and

would refer to this problematic in a much more radical way (and from a different perspective) when he wrote:

How can one write except about what one does not know too well? Only then does one imagine to have something to say. One writes but at the limits of one's knowledge, at the far limits that separate one's knowledge from one's ignorance and that make one into the other. Only thus is one determined to write. To defeat ignorance is to postpone writing or even to make it impossible."¹⁵

The face of perspective: *to write about something means to write from the side of it: never from the center. That is why perspective is the essence of writing. On the contrary, the center is perspectiveless, as the evidence of totality will subvert any attempt to define profiles. The one at the center will be in the position of Lewis Carroll's Bellman in The Hunting of the Snark:*

*"What's the good of Mercator's North Pole and Equators,
Tropics, Zones and Meridian Lines?"*

So the Bellman would cry: and the crew would reply

"They are merely conventional signs!

"Other maps are such shapes, with their islands and capes!

adaptation. Pasargada law does not claim to regulate social life outside Pasargada, nor does it question the criteria of legality prevailing in the larger society. Both legal systems are based on the respect for the principle of private property. Pasargada law achieves its informality and flexibility through selective borrowing from the official legal system. Thus, although they occupy different positions along a continuum of formalism, they can be said to share the same basic legal ideology. Using the concept loosely, Pasargada may be thought of as a microcapitalist society whose legal system is to a great extent ideologically congruent with the state legal system. Although Pasargada is not riven by antagonistic classes, the existence of social stratification is undeniable—there are good and bad neighborhoods, as shown earlier. The RA has been controlled by the middle or upper strata, who are most familiar with the official society and most eager for integration in it. The RA does defend the interests of the lower strata of Pasargada, but does it in a paternalistic fashion.

The state strategy of mutual avoidance and adaptation may be illustrated by its relative passivity toward Pasargada. Despite its repressive policy of community control, the state has tolerated a settlement it defines as illegal, and, by that continuing tolerance, it has allowed the settlement to acquire a status we may call legal or extralegal. This may be explained by the fact that Pasargada and its law, as they presently exist, are probably functional to the interests of the power structure in Brazilian society. By disposing of secondary conflicts among the oppressed classes, Pasargada law not only relieves the official courts and the offices of legal aid of the burden of hearing *favela* cases, but also reinforces the socialization of Pasargadians in a legal ideology that legitimates and consolidates class domination. By providing Pasargadians with peaceful means of dispute prevention and settlement, Pasargada law neutralizes potential violence, enhances the possibility of orderly life, and thus instills a respect for law and order that may carry over when Pasargadians go into town and interact with official society. The state coopts the RA through both carrot and stick: it starts by granting the RA a privileged position as representative of the *favela* in its relations with all state agencies; and it then issues repressive threats against any attempt by the RA to assert its autonomy. Finally, the preservation of law and order in the *favela* facilitates vote collection and with it the reproduction of patron/client relationships that have always characterized bourgeois rule in Brazil.

It would be wrong, however, to overemphasize integration and adaptation between the two legal systems. And such an overemphasis will always be the bias of an analysis that views these phenomena in isolation from the social conditions of their production and reproduction. Integration and adaptation are both strategies followed by the antagonistic classes at a given historical moment in a capitalist society. But this situation of legal pluralism remains a reflection of class conflict, and thus a structure of domination and unequal exchange. That the state has tolerated Pasargada thus far is no guarantee against future intervention. There are many examples of large *favelas* in the center of Rio being totally removed, often with only a few hours notice. This harsh fact is never forgotten by Pasargadians or any other *favelados*, and accounts for the basic insecurity that characterizes the squatter settlements.

Unofficial legality is one of the few instruments that can be used by the urban oppressed classes to organize community life, enhance the stability of the settle-

But we've got our brave captain to thank"

(So the crew would protest) "that he's brought us the best—

A perfect and absolute blank!"¹⁶

These different faces of the dilemma came to me, for the first time, as a negative confrontation between the data and the theory. The question was: How could the theory fight against the data without becoming self-destructive?

In view of the nature of my theoretical development after my field research was completed, the data "suffered" several deconstructive and reconstructive transformations, which were also made possible by the transgressive methodology I had adopted while in the field. This process, however, involved a double integration between theory and data. On the one hand, my transgressive methodology had been based on a "spontaneous," hidden, undeveloped and, to a great extent, "intuitive" transgressive theory. As I developed the latter, it became necessary to reconstruct not only the data but also the methodology through which they had come about. The transgressive methodology had to meet the transgressive theory at a higher level of coherence. The temporal structure of this process was a very complex one, since the theoretical development undertaken in the present called for an imaginary (but nonetheless real) continuation of the field research conducted upon the written record according to an enlightened transgressive methodology. The record thus became the record of the past (as written) and of the present (as rewritten).

ment, and thus maximize the possibility of resistance against intervention by the dominant classes, thereby increasing the political cost of any such action. The political evaluation of unofficial legality depends upon the class in whose name it operates, and the social goals at which it aims. In a capitalist society, any attempt to offer a normative alternative to the existing system of land tenure in squatter settlements must be a progressive task. What appears on the surface to be ideological conformism is probably nothing more than a realistic assessment of the constellation of forces and the concrete needs of the class struggle in contemporary urban Brazil. That this unofficial legality may, under the conditions described above, be considered a strategy of class struggle is illustrated by the ways in which Pasargada law “deviates” from the official legal system. Although the two systems share the same basic legal ideology, they put it to very different uses. On the substantive level, I have discussed what I call the *inversion of the basic norm* of immovable property by means of which Pasargada law establishes the legality of land tenure, using the very norm through which the official legal system makes that tenure illegal. This is reminiscent of Renner’s historical analysis of the law of property, which retained its verbal content unchanged, while its social function was transformed from a guarantee of personal autonomy in precapitalist European societies to the legitimation of class domination and exploitation in capitalist societies.⁴⁷ What Renner observed diachronically I have observed synchronically in a situation of interclass legal pluralism. However, in order to sharpen the parallel, it would be necessary to analyze in depth the dominant social relations in Pasargada. Pasargada is fully integrated in Brazilian society. The bulk of its active population works outside Pasargada. It has a flourishing commercial sector as well as some industry.⁴⁸ The latter (mainly shoe shops, bakeries and ice cream shops) are small, family enterprises producing for the market (which sometimes extends outside Pasargada). One of the striking features of this microcapitalist society is a persistent and even increasing social stratification.

By providing housing for the poor working classes, Pasargada contributes to the conditions of reproduction of labor power, and it is here that Pasargada law plays its role. While its official (external) legal quality as a *squatter* settlement is a reflection of capitalist social relations, its internal legal quality as a *settlement* is an attempt to ameliorate the living conditions of the popular classes and to obtain some freedom of autonomous collective action—a progressive task in a situation in which the existence of an immense industrial reserve army makes capitalist rule unconcerned with the reproduction of labor power. Though Pasargada law reflects the basic capitalist legal ideology, it actually operates to organize autonomous social action by the popular classes against the conditions of reproduction imposed by capitalism. This is, then, the inverse of the situation found by Renner, where the liberating content of the legal ideology served as a disguise for the oppressive functioning of the state legal system.

The inversion of the basic norm of property is not the only “deviation” of Pasargada law vis-à-vis the state legal system. Another is what I have called the *selective borrowing of legal formalism*, through which a folk system of formalism evolves. Though informality in general is a function of the absence of professionalization, low role differentiation and little specialization, the specific operation of those informal rules—the ways in which they are created, affirmed, refused,

On the other hand, given the limitations of data reconstruction by this process—data are collected inside a given theoretical object, in this case dispute settlement patterns; changes inside the same object only lead to changes inside the same data—the integration was also between the different theoretical levels called for by the data. More specifically, the question was how to integrate a broad Marxist theory with the theories of dispute settlement. This question was gradually but only partly solved by the data I had collected on the operation of the state legal system vis-à-vis squatter settlements—another instance in which the open-endedness of the field research proved beneficial. It was thus possible to integrate the narrow dispute settlement object into the broader legal pluralism object, and to open upon this middle ground the theoretical space for a Marxist analysis of law in a capitalist society.

In the first paper I wrote on my research, there was juxtaposition rather than integration of the different theoretical objects. In the first part of the paper I tried to develop a theory of the evolution of state legislation on favelas. The theory was aimed at explaining how the state intervention had not sought to solve the structural problem of urban squatter settlements, but had, rather, tried to control the social tensions arising from the continued nonresolution of this problem. This theory, which I presumptuously called the negative dialectics of law, was my first attempt to offer a radical alternative to the law and development theories: I proposed a theorization of law as an obsta-

changed, adulterated, neglected or forgotten—is a function of social objectives, general cultural postulates and ideas of justice and legality. In Pasargada law, the main function of formalism is to guarantee the security and certainty of legal relationships without violating the overriding interest in creating a form of justice that is accessible, cheap, quick, intelligible and reasonable, in sum, a justice that negates the official justice. Finally, it is important to bear in mind that the structure of deviation of Pasargada law is not rigid. Within limits, it is open to manipulation. Among others, Cases 11, 12 and 13 show how the official legal system is excluded from or incorporated within Pasargada law through rhetorical argumentation according to the settlement strategy of specific disputes. Rhetorical strategy and social structure account together for the dynamics of this complex social process; none operates without the other.

The Inside View

A deep understanding of Pasargada law requires the analysis, not only of its legal pluralistic relations with the official legal system, but also of its internal structure, the inside view. In fact, the main goal of the present study has been to capture Pasargada law in action, and both the research method (participant observation) and the analytical perspective (legal rhetoric, legal reasoning) have proved adequate for that purpose.

Though Pasargada law reflects the social stratification of the community and does not transcend, in its ideology, the liberal tradition of capitalism, it seems to me that, as a *functioning legal apparatus*, it possesses some characteristics that would, under different social conditions, be desirable as an alternative to the professionalized, expensive, inaccessible, slow, esoteric and discriminatory state legal system in capitalist societies.

I am very concerned that I should not appear to be romanticizing community life in capitalist societies in general, much less Pasargada life. Such romanticism has been a recurrent element of communitarian ideology, and has been felt in such different realms of social life as psychiatric treatment, police control, deviance control, medicine, legal services, schooling and so on.⁴⁹ Pasargada is not an idyllic community. Like most urban squatter settlements throughout the world, it is the product of expropriation of peasants, savage industrialization and uncontrolled urban growth. Because it is an open residential community significantly integrated into the asphalt society, it is not surprising that it reproduces the basic features of the dominant ideology and of the dominant social, economic and political structures. Its relative autonomy (as expressed in its law) derives both from its specific class composition and from its collective response to the brutalizing housing conditions imposed by capitalist development and translated into state policies such as the illegality of land tenure, social control of the community through the police and social work agencies, and the nonprovision of basic public facilities. The characteristics of Pasargada law that I identify below could never be fully developed within a *favela*, nor do they, in Pasargada, provide a sufficient guarantee against injustice, manipulation or even abuse. My contention is simply that some of these characteristics should be constitutive of an emancipatory legal practice in a radically democratic, socialist society.

*de to social change.*¹⁷ In subsequent drafts of my doctoral dissertation I tried a fuller integration among dispute settlement patterns, legal pluralism and Marxism without ever fully succeeding. This failure was due to a complex set of reasons.

First, there was (at the time) no coherent Marxist theory of law in society. Marx's fragmentary references to this topic were exclusively concerned with the state legality of modern capitalist societies; there was virtually no Marxist theorization of "informal," "unofficial" legality in capitalist societies, or of legal pluralism, or of law in precapitalist social formations. Second, though the legal anthropological theories of dispute settlement had meanwhile become unattractive for their failure to locate communities in their broader political context, I remained committed to a detailed analysis of community legality, as I felt that such an analysis could lead me to sociological insights of a much broader scope. Such a strategy, however, collided with an emphasis on legal pluralism, the ground upon which I had chosen to build a Marxist theory of Pasargada law.

Through much trial and error I reached an unstable compromise. I commenced by analysing dispute settlement and prevention patterns through study of legal rhetoric—the latter seeming to be the most adequate strategy to unveil the basic structure of Pasargada law—and then resorted to the analysis of legal pluralism whenever this helped to illuminate the operation of legal rhetoric in Pasargada. The resort to legal rhetoric also symbolized my per-

1. Nonprofessional. The *presidente* of the RA is a storekeeper who learned to read and write as an adult, and has no formal legal training. His daily work includes other activities besides preventing and settling disputes. Consequently, he performs law jobs in a nonprofessional manner. Legal skills in Pasargada are widely distributed. The fact that law jobs are not professionalized is associated with the structural weakness of the RA as a center of modern political power and with the general pattern of atomized power prevalent in the community. However, we have observed that the rhetorical strategy of the settlement process may include an emphasis upon the nature and the quality of the legal knowledge possessed by the *presidente* and the RA about both asphalt law and Pasargada law. Moreover, this emphasis is reinforced by occasional references to the "official quality" of the RA. The cumulative effect of this dramatization of the RA's position is to create the idea that it is endowed with quasiprofessional or quasiofficial knowledge. And this process is particularly visible in those situations in which the RA adopts a strategy of power restoration to counteract a perceived threat to its normal power position. This suggests that legal knowledge in Pasargada is given professional and official attributes by analogy when extra power is deemed necessary.

In Pasargada, as in any loosely structured society, the relation between power and knowledge is strikingly transparent. Moreover, the two processes of power production and reproduction are combined in the same institution: the *presidente* stresses both the official character of the RA (power, hence knowledge) and its quasiprofessional legal knowledge (knowledge, hence power). What people know about the RA feeds upon what they know through the RA. The knowledge of its official quality is converted into the official quality of its knowledge. The dialectic of power and knowledge is thus present in Pasargada and is made concrete through legal rhetoric. But because professionalization has not been institutionalized, and occurs by analogy and only occasionally, legal skills are still widely distributed.

2. Accessible. Pasargada law is accessible both in terms of its cost in money and time, and in terms of the general pattern of social interaction. Pasargada residents do not pay lawyers' fees or court costs, though they may be asked to join the RA if they are not already members, and to pay the membership fee. They do not have to pay for transportation or lose a day's salary, as they would if they had to consult a lawyer or attend the court in Rio. Furthermore, cases are processed very quickly. The *presidente* is proud of this contrast with the official courts: "We decided the case right on the spot. If the resident had gone to the courts he would never get a decision on his case. It takes two or three years to get a decision on a simple case." Delays are incompatible with the emergencies that usually are the stimulus for an appeal to the RA, and the latter tries in turn to respond to these emergency conditions, although the rhetorical argumentation necessary to achieve a compromise presupposes a tempo that cannot be hastened. But the time spent talking cannot be compared with the magnitude of the delays in the official court.

Finally, the mode of social interaction within the RA is close to that of everyday life. People do not change clothes to go to the RA, or engage in ritualistic self-presentation, and they use ordinary language to convey the facts, values and

sonal revenge against the elitist training in legal philosophy I had received in Portugal and in West Germany. Indeed, I tried to apply the most sophisticated philosophical reconstruction of highly developed Continental legal systems and legal dogmatics to a sociolegal context which, from their point of view, was an illegal setting of marginal and deviant groups living on the fringes of society.

On the other hand, the situation of legal pluralism was conceived in Marxist terms as an unequal exchange between a dominant (official) and a dominated (unofficial) legal system reproducing, in a specific way, class relations and conflicts in Brazilian society. But I failed to theorize the impact of this legal pluralism on the operation of legal rhetoric in Pasargada law.

ON TRAFFIC 2

In 1972 I was invited by some friends then working at the Catholic University in Rio to teach a course on the sociology of law. I carried with me a secret project: to go back to the favela and to discuss with the residents the results of my research, eventually organizing a public meeting at the Residents' Association. The idea was, thus, to return the study back to the community—the most cherished dream of radical social scientists in the late 1960s and early 1970s.

arguments of the case. This does not mean, however, that Pasargada law is equally accessible to all. Not all Pasargadians are well informed about the dispute processing conducted by the RA. Not all feel the need to resort to the RA, since some may find alternative ways of solving conflicts within the community (friends, neighbors, religious leaders and so on). Moreover, in some “bad neighborhoods” of Pasargada, a “rough justice” is still practiced (is there legal pluralism inside Pasargada?). And though Pasargada law is not political justice in the same sense that asphalt law is, the fact that the *presidente* and directors of the RA are elected within the community means that residents will have differential incentives to use it, depending on their ties of friendship or politics. Finally, the legal process in Pasargada has developed what I have called a folk technical language. The barrier thus created may vary according to the rhetorical strategy of the case, but in any event it is not so high that it requires the help of professional legal knowledge. The seeds for differential accessibility do exist in Pasargada law, and they will germinate as social stratification and inequalities of power increase in the community.

3. Participatory. Though closely related to accessibility (particularly as measured by the degree of homology between legal and social interaction), participation deals specifically with the roles played by the different interveners in the dispute process. The level of participation and the informality of the legal process are closely correlated, and in both Pasargada scores high. The parties present their own cases, sometimes helped by kin or neighbors. They are never represented by professional legal specialists. They are not confined in the strait jacket of formal rules, and can express whatever troubles them, since the criteria of relevance are broad. This does not mean that, in Pasargada law, the parties have full control of the process as they do in negotiation, where the third party is reduced to an errand boy or go-between. The *presidente* may interrupt the parties when this is required, by either a judicial protopolicy or the strategy of argumentation he adopts. These factors may also occasionally increase the formality of the process. Indeed, informality, by its very nature, allows for flexibility and gradation, and it is the rhetoric that activates the legal process in different directions. Moreover, the ratification process is permeated by formalism and by rituals of alienation through which the parties are confronted with (and warned not to trespass upon) a legal space (however precarious) that has meanwhile been created. It is as though legality, in the last instance, must mean the construction of alienation, the transformation of the familiar into the foreign, the horizontal into the vertical, the gift into the burden. This process is thus visible in Pasargada, but it does not begin to approach the extremes that characterize the official legal system of the modern state.

4. Consensual. Mediation is the dominant model for dispute settlement in Pasargada law, so much so that adjudication may be disguised as mediation, a situation I have called false mediation. The attempt is always made to reach a compromise in which each party will give a little and get a little. In this respect Pasargada law differs from the official legal system, in which the model of adjudication (all-or-nothing decisions) prevails, although the extent of the differences must not be exaggerated. The predominance of mediation in a given setting may be due to several factors. It may be a reflection, in a legal context, of much

On my first visit to the community, my first contact was with the police at the favela's main entrance. They checked my passport and interrogated me. I was later told that police raids in the favelas had become a daily experience. It did not take long to reach the conclusion that my dream, if not impossible like any dream, was absurd. The most obvious reasons were of a political nature. Since 1970, and in spite of the official rhetoric to the contrary, there had been an increase in political repression, and the search for “Communists” in favelas was a daily experience and a source of anxiety for the persecuted and their families. Local associations had become privileged targets of police infiltration and political repression, and thus the topic of community organization had become highly explosive. Under such conditions it was utterly impossible to have a public discussion of my research topic.

But even if possible, it would have been an absurd exercise. In the course of the few private discussions I had with my friends in the community, it became clear that my findings were either obvious or irrelevant to them. On the one hand, when “expelled” from their theoretical cave and exposed to the light of ordinary language, my data vanished, dissolved in the uninteresting web of my friends' daily experiences, hopes and frustrations. On the other hand, my theories—presented as my interpretations—were utterly irrelevant to the needs of the community, and did not meet the difficult conditions under which the strategy of community survival was being carried out at the time.

broader cultural postulates (Japan is often offered as an illustration). It may be related to the type of social relations between the parties involved in the dispute; if they are bound by "multiplex relationships," as Gluckman called them, involving different sectors of life, mediation is aimed at preserving the relationship. Finally, mediation may result from the fact that the dispute settler lacks the power to impose his decision, a situation which seems to prevail in loosely structured societies based on a plurality of groups, quasigroups and networks, where a center of power is either missing or very weak.

The first factor seems to be irrelevant to Pasargada, which is strongly imbued with the legal ideology of the West. But the others are important. Given the high density of population in Pasargada and the style of community life (street orientation, face-to-face relationships, gossiping, mutual gifts of use-values in knowledge and skills), neighbors interact intensely in public and private spaces and in the context of multipurpose relationships out of which disputes may occasionally arise. On the other hand, the RA has no formal sanctioning power, and the power to demolish illegal repairs is not exercised, since it collides with the overall interests of the community. For the same reason, the RA does not seek the informal support of the police. Threats are often used as intimidation arguments, but then the sanction is limited to the message. These factors, however, are mere preconditions. Mediation occurs through rhetoric, which creates the orientation toward consensus upon which the mediator builds.

What is the political meaning of Pasargada legal rhetoric? Throughout history rhetoric has flourished (both as a style of legal process and as an academic subject) in periods when social and political power were relatively widely distributed among the members of the relevant community. The repressive component of law, by contrast, first came to dominate in situations where the legal system was used to pacify occupied countries defeated in war. It would, however, be both scientifically and politically naïve to evaluate the social meaning of Pasargada rhetoric and orientation toward consensus in a social vacuum. The criterion of relevance in the "relevant community" or "relevant audience" reflects and reproduces unequal power relations. However widely shared, the power is exercised against someone: the irrelevant community. In the Athens of Ancient Greece slaves were not part of the relevant community. Consequently the law of the city-state, dominated by legal rhetoric, did not apply to them. They were merely objects of property relations among the free citizens. This means that a truly democratic legal order inside the relevant community may coexist with (and indeed be based on) the tyrannical oppression of the irrelevant community.

Although law has historically reflected and reproduced social processes of exclusion upon which social integration develops, the focus on legal rhetoric—and here lies its importance for the sociohistorical analysis of the law—leads us to distinguish among different forms of social exclusion and mainly between external and internal inclusion. External exclusion is a social process by means of which a group or class is excluded from power *because it is outside* the relevant community, as illustrated by the law of Athens. Internal exclusion is a social process by means of which a group or class is excluded from power *because it is inside* the relevant community, as illustrated by the state law of modern capitalist societies. In this case, the criterion of relevance of the relevant community is not

In other words, my theories silenced the ever-present question of what is to be done. And my efforts to answer it on the basis of my political commitments were met with scepticism, as my "radicalism" was of little use for people fighting in a situation of fascist political repression. In other words, I was not part of their struggle.

In trying to analyse the failure of this rather naïve attempt to wash out the original sin of modern social science, I came to the following conclusions. First, having decided to avoid policy analysis for the fear that my recommendations, once taken out of context, might be used against the favelados, I thereby eliminated the only ground upon which my research findings might have been understood and discussed in concrete and practical terms inside the favela. Second, the impact which the community had on me during the field research withered away as I returned to the U.S. and took shelter in the temple of science. As I retreated to science, the favela retreated to the object of science; as I became a scientist, favelados became objects. This clearly indicated that the method used for the field research (participant observation plus transgressive methodology) was probably more radical than my subsequent theoretical development, in spite of appearances to the contrary. Such appearances derived from confusing true radicalism with Marxism. Indeed, although, as I thought then, Marxism had the potential to build up a truly radical alternative to modern science, in reality Marxist social science stopped always short of that. This was due not to the social scientists' subjective defi-

evenly applied across the community. Vis-à-vis certain social groups or classes, the relevance is so thin or remote that they may be considered as excluded inside the community. There may also be mixed social processes in which elements of both external and internal exclusion are to be found in different degrees. There is a need to theorize about the impact of these different social processes on the operation of the legal system, and I have been suggesting that the sociology of legal rhetoric will play an important role in the construction of such theory.

In Pasargada the use of legal rhetoric by the relevant community reflects a process of external exclusion, but one which is the reverse of the Athenian example above. The irrelevant community in this case is the asphalt society, with respect to which Pasargada is powerless. Pasargada law is an underground law, the result of a process of social exclusion. But because the law of the excluded community stands in a relation of legal pluralism with the law of the excluding community, we have a mixed social process of the type described above. Because they belong to the oppressed classes in a capitalist society, Pasargadians are internally excluded, as reflected, for instance, in the declaration by state law that their land tenure is illegal. However, the specific form of marginality to which they have been consigned through this process of internal exclusion has made possible alternative social action—Pasargada law—which points to a social process of external exclusion, which, however, is never attained. Nevertheless, as already suggested, the irrelevant community of Pasargada law is probably not only the asphalt society but also some areas or groups of residents inside Pasargada. And since Pasargada law is powerless with respect to both of these communities, it may be concluded that the rhetoric of Pasargada law is less the result of widely shared power than of widely shared powerlessness. The exercise of legal rhetoric directed by the relevant community is subject to certain constraints, illustrated in those cases in which the *presidente's* argumentation is imposed on the parties, rather than accepted by them, as a kind of nonrepressive imposition. These limitations of legal rhetoric in Pasargada law are also related to social stratification in the community, as illustrated in some of the cases analysed above.

Pasargada is not an idyllic community. Far from it. But this does not prevent its internal legality from hinting at some of the characteristics of an emancipatory legal process. Despite the fact that we could everywhere observe the seeds of perversion, the legal tools in Pasargada remain amenable to use in a radically democratic manner: wide distribution (nonmonopolization) of legal skills as expressed in the absence of specialized professionalism; manageable and autonomous institutions as expressed in accessibility and participation; noncoercive justice as expressed in both the predominance of rhetoric and the orientation toward consensus.

ciencies, but rather to the objective conditions of the scientific process. In realizing this, I was becoming ready not only to unravel the hidden positivism of conventional Marxism, but also to question the paradigmatic crisis of modern science. Too late, however, for Pasargada law.