

CHAPTER 5

LAW, THE STATE AND
URBAN STRUGGLES
IN RECIFE

INTRODUCTION

In Part Two, against the modern equation between law and the state I counterpose a multiplicity of equations between social and political practices, on the one hand, and legal forms and struggles, on the other, thereby hoping to reveal an otherwise occult legal landscape and its respective cartography. Laws are indeed mental maps covering and charting different social territories. The specific operations involved in the symbolic cartography of law will be analysed in Part Three. In Part Two I am concerned with the preliminary task of distinguishing among different sociolegal territories or time-spaces, which I then convert into different units of analysis (state or national, infrastate or local, suprastate or transnational), to be combined with different levels of analysis (small-scale or large-scale, macro or micro, bird's-eye or close-up). I try to emphasize the interactions between different units of analysis and, to a lesser extent, between different levels of analysis. In Chapter Three, on Pasargada law, I focused on the infrastate or local legal time-space, while trying to show its articulations with the national, state legal time-space and privileging a micro, small-scale, close-up level of analysis. In Chapter Four, on the transnationalization of the legal field, I focused on the suprastate or transnational legal time-space, and analysed it in multiple articulations with state and local time-spaces, privileging a macro, large-scale, bird's-eye level of analysis.

Chapter Five is, analytically speaking, the most complex chapter of Part Two. Though the privileged unit of analysis is the state legal time-space, it is analysed in deep interpenetration with both local and transnational legal time-spaces; in order to capture that complexity, an intermediate level of analysis is adopted. Both Chapters Three and Five deal with the sociolegal practices of subordinate classes in urban struggles in two big Brazilian cities, Rio de Janeiro and Recife, respectively. However, the two research projects are separated by a decade of such intense political transformation in Brazil that the social political context of the two studies is very different.

The period of the Pasargada study (1970) was a period in which the legitimacy claims of the authoritarian bureaucratic regime, while never significant among the popular classes, were at their lowest. It was a period of brutal repression on the part of the military government, which was far from having exhausted its capac-

ity for internal development at the time. As regards urban policies and urban "development," the measures were of a repressive character. The removal of large squatter settlements and the resulting destruction of the communities could be executed overnight with the massive mobilization of the police and armed forces. The popular classes were so disorganized and isolated, and facing such hostile conditions that they were not capable of struggling for their collective rights, as urban residents, before the government agencies or before the courts. The popular classes were on the defensive, and the development of Pasargada law, as the internal legal ordering of scarce resources (housing and land) and of the social relations clustered around them, was a mere defensive struggle, among others.

When, ten years later, I initiated the research in Recife, the analytical focus was quite different, as was the political and social context.¹ In contrast with the Pasargada study, the Recife study did not focus on the internal legality of the settlements, but rather on the use of the state legality by the residents of these settlements in defense of their sociopolitical right to adequate housing. It did not focus on legal conflicts between individuals, but rather on conflicts that, though having an individual dimension, were collectivized as the struggle evolved. It did not focus on intraclass conflicts (conflicts between residents of the *favelas*), but rather on interclass conflicts (conflicts between the urban poor, on the one hand, and the big landowners, real estate developers and the state, on the other). However, as will become clear in the following, lingering in the background of the conflicts under study were the collective experiences and memories of unofficial legal and social organization of the popular classes inside the squatter settlements of Recife, without which the way these classes moved now in the state legal space could not possibly be understood. The local-national linkage was thus established.

The political and social context of the study was also different. The military regime seemed to have exhausted the conditions of its own reproduction, and its legitimacy claims centered around the political process of its own demise (the democratic transition), the question being how much control the military would have over this process;² in other words, the question was of how much of the present regime would reappear in the next one. It was a period of intense social struggles between the workers and industrial capital in São Paulo, between the peasants and the big landowners in the rural hinterland, and between the urban popular classes living in squatter settlements in large cities and real estate developers and state agencies. The popular classes were not as isolated as in the previous period. The process of redemocratization had permitted a certain return of the old populist politics; but it had also given rise to a new generation of political leaders with a potentially more genuine relationship with the popular classes. Just as important, the dark years of the dictatorship had witnessed the reemergence of a transnational political actor whose oppositional work on the side of the popular classes was contributing to new forms of political mobilization. I am referring to the Brazilian Catholic Church.³

The participation of the Catholic Church in the urban struggles added a new complexity to the unit of analysis: the local-national linkage in the study had to be articulated with a further, transnational time-space. The Catholic Church is, in sociological terms, and among other things, a transnational NGO (even though at times it seems to be rather a TNC of religious services), which has provided fund-

ing, training, ideology and infrastructures for cosmopolitan causes involving the oppressed classes in selected parts of the world and during specific political and ideological contexts and times. In the seventies in Latin America, the emancipatory solidarity of the Catholic Church with the suffering and struggles of the rural and urban poor was sustained by a sophisticated body of theological work, known as liberation theology. Such active solidarity was effected by diverse means and, typically, with the collaboration of local and national NGOs more or less organically connected to the Church. In Recife, the *Comissão Justiça e Paz* (Justice and Peace Commission), under the aegis of the Archbishop of Recife, D. Helder Câmara, was the main coordinating agency for the actions of the Church in support of Recife squatters (particularly as regards legal defense). Interestingly enough, the linkage between local, national and transnational time-spaces in this research was achieved by still another means. In one of the cases analysed, the land belonged to a subsidiary of a powerful TNC, a fact that, as I argue below, played a decisive role in the specific way in which the state dealt with that particular conflict.

In the following, after providing some background information on Recife, I will briefly describe three urban conflicts.⁴ I will then offer a hermeneutical account of the microphysics of the political legality of these conflicts, and finally, I will try to locate such an account in a broader structural and transnational context.

THE PRODUCTION OF URBAN SPACE IN RECIFE

The Metropolitan Region of Recife is one of nine macroregional poles in Brazil. At the time the research was conducted, it had a total population of 2,200,000 inhabitants, fifty-eight percent of which lived in the city of Recife.⁵ The constant "swelling" of the city is basically due to the migration fluxes converging on it.⁶ As happens in any other large city of the capitalist periphery, Recife cannot adequately incorporate these migrations, either in production (employment), or in social reproduction (housing). According to employment statistics, in 1976, seventy-eight percent of the active population was in the tertiary sector, most of it in the so-called informal sector. It was also calculated that more than sixty percent of the urban population lived in squatter settlements.

In Recife, the production of the urban space structure has been shaped by two main factors.⁷ The first one is the sugarcane economy and the plantation system in force since the sixteenth century. According to Recife geographer M. C. de Andrade, forty years ago the sugarcane fields covered areas which are fully urbanized today.⁸ Still comprising more than fifty-two percent of the total area of Recife Metropolitan Region, the big estates of the traditional landed bourgeoisie (the urban *latifúndios*, as they are called) are the main cause of difficulties of access to urban land in Recife.

The second factor concerns the ecological features of the land: located on the coast between the mouths of two rivers, the city is, for the most part, built upon land subject to the influence of the ocean tides. This land is state property, and the

concession of rights to the use of land through perpetual leases has traditionally been tied up with local politics, social influence and administrative corruption. Throughout the history of Recife, both the destruction of genuine legal documents of land rights and the production of forged ones have been common, and account in part for the uncertainty or "ambiguity" of the legal status of urban land in Recife. Another factor contributing to this ambiguity is that part of the land was, in fact, produced by the popular classes through landfill. First, destitute people were allowed to build their shacks upon stilts; they would then create the landfill, and, once it was done, they would be expelled from the area, so that holders of the rights to the use of the land could benefit from the differential ground rent thus produced. This explains why, in some of the conflicts included in our research, the urban poor claim to have a legal right to the land, since they or their ancestors carried out the landfill. Indeed, many legal titles to a declared area in the Register of Deeds do not correspond to the real area or shape of the land, which has been changed by landfill.

The ambiguity of the legal status of the land has caused many land disputes. Their number has increased dramatically in recent years, due mainly to the speculation on the land market brought about by a profitable association between the traditional landowning families (in Recife, mainly three) and the real estate and housing developers. This process has created a new scarcity of urban land in Recife, and has increased the pressure on the land occupied by the popular classes, sometimes for more than a century. This scarcity and this pressure, associated with the constant migration flows to the city, have also produced important changes inside the existing popular settlements. The increase in the demographic density inside these settlements has strained the operation of the internal, informal legal system. For instance, it has led to lease contracts in which the rents for shacks, or rooms in shacks, are priced beyond the reach of the poorest poor, thus forcing the latter to leave and to invade still unused land. Of the nine conflicts originally included in the research, four involved recent occupations. In a survey conducted in six of the nine urban conflicts initially selected, seventy-two percent of the people involved indicated, as the main reason for having participated in the invasion, the fact that they could not afford to pay the rents in the settlements they came from. These aspects of the changing nature of the capitalist production of the urban space in Recife are the background to the social struggles on which I will concentrate below.

THE URBAN CONFLICTS

The Children's Town

In October 1979, three hundred families invaded a tract of land (three acres) which had been unused for more than thirty years. The land was located in a middle-class neighborhood, and had been recently bought by a commercial company, a subsidiary of a multinational corporation specializing in cosmetics, with its main headquarters in São Paulo. One month later, the directors of the company heard of the occupation, immediately hired a couple of lawyers from the Recife bar, and

brought a lawsuit against the invaders. Since the personal identification of each of the defendants was necessary in order to file a complaint, and since the lawyers anticipated that the residents would resist being identified for a court action against them, they obtained the names by deception, claiming that they would be needed for the company to compensate the residents, should they voluntarily abandon the land. The lawsuit was a summary one, and the judge delivered judgment solely on the evidence brought by the plaintiff and without the presence of the defendants. In spite of court congestion, the decision was promptly given and, quite anomalously, was executed on a Saturday and Sunday. The residents were brutally treated when they tried to resist eviction. They tried to obtain outside support, but because it was the weekend, their efforts were in vain.

The Skylab

In July 1979, some two hundred families invaded five acres on a steep hillside owned by a local real estate developer with strong connections to the traditional landed bourgeoisie.⁹ The invasion started on a Friday night. A drunkard passing by and seeing all the work being done to prepare the land, asked whether the satellite Skylab had fallen there. The new settlement was thus baptized. The next morning the area was divided into three hundred plots of land. During that same day the owners heard of the occupation. They immediately requested from the State Secretary of Public Security the intervention of the police to expel the invaders from their land. They were told that they would have to wait until Monday, since the services were closed for the weekend. The owners then talked to the people, and proposed that they abandon the area voluntarily so that the land could be adequately urbanized by the company and then leased to them legally. The invaders suspected the trap in this proposal and rejected it.

The following Monday morning, the directors of the company arrived with two trucks and twenty employees, escorted by several police cars. They destroyed some shacks already built at the bottom of the hill, but the men barricaded themselves on the hill and sent the women, children and old people inside the remaining shacks. In the meantime, some of them contacted the legal office of the Justice and Peace Commission set up by the Archbishop, D. Helder Câmara. The lawyers there promptly agreed on their defensive strategy. First, they asked the residents to go back to the Skylab and try to maintain the occupation by all possible peaceful means. Second, they contacted the mass media, and alerted them to the massive display of police force protecting landowners in their violent actions against poor people struggling for shelter. Third, they contacted the State Secretary of Public Security, and proposed a twenty-four-hour truce during which no demolition or construction of shacks would take place. Finally, they invited the high officials of the State Secretary of Housing to visit the locale. This they did, and came to the conclusion that, given the low market value of the land, the state should expropriate it and distribute it among the invaders. But later on, back in their offices, they retreated from this proposal—which, as they said, could undermine private property—and proposed instead a legal agreement between landowners and residents. The truce was accepted, and when the owners tried to violate it a few hours later, they were stopped by the police. Nevertheless, the tension grew.

The lawyers called the mass media, informed politicians from the opposition parties, and asked D. Helder to visit the settlement to show his solidarity with the settlers and prevent the likely outbreak of violence. D. Helder was enthusiastically welcomed by the residents, and preached to them on peaceful active resistance and on popular organization.

The landowners, for their part, argued that the lawyers and priests were Communist agitators, and refused any negotiations until the invaders left the site. However, due to the insistence of the state officials, they agreed to a meeting with representatives of the state and church lawyers, as well as with the residents' committee that had in the meantime been elected in a widely attended general assembly held in a parish house nearby. After several meetings, an agreement was reached, and a protocol was signed by all the participants. According to the terms of the agreement, which were ratified by the people in general assemblies, the owners and the residents would enter into a land-lease contract for a maximum period of five years.

The Peasants' Town

In November 1979, several hundred people invaded fourteen acres of land owned by a government corporation which produces and distributes electricity in Recife. This area is covered with the poles of high voltage wires. Soon after the occupation, two thousand families were living under the wires. As soon as the corporation was aware of the occupation, their lawyers visited the area several times, in unsuccessful attempts to convince the residents to leave this dangerous place. The residents answered that they had looked downwards (on the land) for a place to live, not upwards (to the wires). Given the need for personal identification of the defendants for the court action, the lawyers managed to obtain 135 names through very much the same deceptive devices that had been used in the Children's Town case.

In February of the following year, the residents were summoned by the judge for a hearing. Having then realized that they were being sued in court, the residents assembled in a nearby church, with the support of their parish priest, and decided to struggle for their rights. They elected a residents' committee, and decided to get the legal assistance of the Justice and Peace Commission. At the meeting the priest advised them—as, later on, the lawyers also did—not to give their names under any circumstances, in order to make it difficult, if not impossible, for the electricity company to sue the rest of them. The lawyers of the Church Commission decided to take the case, and started participating in the general assemblies. At one of these assemblies it was decided that the residents were to be present *en masse* at the court hearing. Hundreds of them filled the courtroom, and indeed the courthouse, singing popular and religious songs and holding posters with slogans such as "Who bought the land from God?" and "The people united won't be defeated." In a very tense atmosphere, the court proceedings started with several motions by the defense lawyers. Shortly after, the proceedings were suspended and adjourned by the judge. The people marched to the Governor's palace, where they were later granted a meeting with both the State Governor and the State Secretary of Housing, and eventually they were promised another tract

of land where they would be relocated. In view of this, the defense lawyers asked for a suspension of the court proceedings for another thirty days, in the hope that an extrajudicial solution would, in the meantime, be found. As it would take months to have the new location ready, the electricity company pressed the charges against the residents. By means of sophisticated legal arguments, however, the defense lawyers managed to persuade the court to defer its decision until February 1981. On the new date set for the hearing, Adolfo Esquivel, the Nobel peace prize winner of 1980, was in Recife and, at the suggestion of the defense lawyers, decided to be present in the courtroom, along with the Archbishop and thousands of residents. But the general public were not allowed to follow the proceedings: the microphones were disconnected, and only the legal professionals around the judge could hear what was going on. Commenting on this fact for the press, D. Helder said: "This disconnecting of microphones is symbolic of a justice that doesn't know how to speak to the people."

The judge delivered judgment in favor of the company, and the crowd was informed by the defense lawyers in the square in front of the courthouse. Gathered in a general meeting, the residents decided to resist eviction. The defense lawyers then filed an appeal based on constitutional grounds, a highly exceptional type of legal measure. According to the main argument, the right to private property should yield in face of the sociopolitical right to decent housing. Moreover, the eviction would affect only 135 of the two thousand families, and the court of appeals was made aware of the social tension involved in the execution of the decision of the lower court. To the surprise of the defense, the appeal was upheld and the execution of the eviction was suspended.

THE MICROPHYSICS OF POLITICAL LEGALITY IN URBAN STRUGGLES

I will now proceed to analyze the microphysics of political legality in the urban struggles in Recife, and later to locate it in the broader concerns of the state and the world system.

At the end of *Whigs and Hunters*, E. P. Thompson, reflecting upon his historical research on the Black Act and its evolution, remarks that, in certain viewpoints, his "concern with the rights and wrongs of law of a few men in 1723 is concern with trivia."¹⁰ The same could be said of my concern with the struggles of the poor in Recife. What can these local social struggles tell us about law and the state in contemporary societies which has not already been told? To the extent that they privileged the struggle through state law, did they not thereby legitimate the classist state, and correspondingly undermine the motivation for autonomous community organization and sustainability? Were these struggles merely adaptive? In what consisted their transformative or emancipatory potential, if any? It is my contention that a concern with the urban struggles in Recife is not a trivial one.

First, these struggles illustrate quite eloquently the argument I am presenting in this book: that politics is ubiquitous in society, and that the specificity of the law is to be determined in terms other than autonomy or autopoiesis. Second,

they show the bluntness of grand theories on the social determination of law, and invite us to analyse in detail the ever-changing conditions of social agency. In the cases under analysis, two conditions seem to be paramount: on the one hand, the historically contingent combination of the experience and memory of local organization with the support of a powerful transnational cosmopolitan agency, the church; on the other, the historically contingent articulation of this agency's social activism with the institutional and political fragmentation of an authoritarian regime in process of selective but accelerated disintegration. Third and finally, the urban struggles of Recife in 1980 show that concrete social struggles tend to be, today more than ever, increasingly complex and multilayered in their legal content. In them we see at work not one legality, but a network of different and sometimes conflicting legalities: local informal legality, state legality, transnational human rights legality, "natural" law legality, insurgent and revolutionary legality and top-down terrorizing legality. This I would call interlegality. The reason why monolithic theories of law (both deterministic and antideterministic) fail so soundly is because they see legality (almost always state legality, which in itself is not monolithic) where there is interlegality. In the following, I will try to substantiate these arguments of my contention that the Recife struggles are not trivial.

The three conflicts I have described do not raise all the important issues of the research in its entirety. But they do raise most of them. They are legal (though in different interlocked kinds of legality), but also social and political conflicts; they are interclass conflicts, though also individual legal conflicts between individualized legal subjects. All of them involve conflicting social actors: the urban subordinate classes and their allies (both national and transnational), the landowning classes, and the state in its quadruple face of government, bureaucratic administration, courts and police; a state, furthermore, unevenly disorganized by the demise of the authoritarian regime. All these social forces use legal (and sometimes illegal) political and ideological resources in complex and dynamic combinations. Since these combinations are socially structured, each one of those social forces produces a specific profile of action, a profile of action, that is, that though historically contingent is neither chaotic nor unintelligible.

As to the urban subordinate classes, the most striking feature of their strategy in urban conflicts is the extent to which they rely on their alliance with the Catholic Church of Recife. In most of the struggles included in the research, the church tends to assume an important role in organizing the communities, providing them with the legal, political and ideological resources required by the strategies called for, which indeed the church also helps to shape. As a matter of fact, we are dealing here with a wide range of grassroots religious actions among the rural and urban poor, involving hundreds of priests and nuns who live among the oppressed and help them organize into hundreds of lay organizations and associations with thousands of members; all this under the inspiring spiritual leadership of D. Helder Câmara, the charismatic Archbishop of Olinda and Recife and, through him, connected with other emancipatory religious activism of the Catholic Church in Brazil and in the American continent as a whole.

The church has recognized the state law as a privileged arena of struggle, and has channeled important financial and organizational resources to provide the

collective conflicts of the poor with engaged and professionally competent legal counsel. The Justice and Peace Commission has been active mostly through its legal office, staffed by highly qualified lawyers. The general characteristic of the legal strategies designed in those legal offices is that the legal defense must always be articulated with a political defense, so that both defenses are mutually reinforced. It is up to the political action to reconstruct the conflict in such a way as to facilitate the investment of sophisticated legal resources, which in turn will produce outcomes that will feed back into the further political development of the conflict. This strategy is adopted for two reasons. First, given the overall class character of state laws on land property and housing, the initial legal position of the urban subordinate classes is, in most conflicts, and in strict legal terms, a rather weak one. If the state legal system *alone* is allowed to control the definition of the conflict, there is very little that can be done on this terrain to defend the interests of the urban poor, and less so in view of the conservative ideology of the judiciary. It is thus imperative to transform the dispute, to reconstruct the conflict in political and social terms, before the legal system gets a grip. In other words, the legal conflict has to be politicized before it is legalized. The second reason is that this strategy is considered to be homologous to that of the ruling classes in their conflicts with the subordinate classes. The apparent absence of political mobilization of the law in this case is due to the fact that the political factors they invoke in their favor are congealed in the legal forms themselves and are, by this process, naturalized or depoliticized (for instance, the legal recognition of possessive individualism through the extensive protection of property and property rights and particularly of land property).

The political mobilization of the state law by the urban poor in Recife comprises a complex set of practices deployed in three main phases, which I have called: *the politics of the fait accompli*; *the social reconstruction of the conflict*; and *the seizing of the law*. After a brief mention of the first, I will then concentrate on the last two.

The Politics of the *Fait Accompli*

The first phase consists, in general, in producing and defending a given status quo, no matter how legal or illegal. In this phase, the political-legal strategy consists in inverting the relations of production of social and legal time in favor of the residents. It consists in a combination of actions which have mainly to do with the fact that the state, as a living bureaucracy, has specific reproductive needs, and cannot function twenty-four hours a day, seven days a week. Thus the weekend suspension of the bureaucracy is converted into an arena of struggle, and can be appropriated, either by the landowners, as in the Children's Town case, or by the urban popular classes, as in the Skylab case.

The Social Reconstruction of the Conflict

This phase is aimed at supplementing the politics of the *fait accompli*, and involves a set of actions which redefine the conflict in such a way as to redistribute its legalities and illegalities in favor of the residents. A legal discourse is used

which almost always implicitly wages one type of law against the other; I would call this kind of discourse an interlegal rhetoric. This is indeed a crucial phase, and consists in transforming the conflict from a legal dispute on land titles between individual legal subjects, into a social and political conflict between antagonistic classes with antagonistic class interests, in which thousands of people struggle for the minimal conditions of survival. By not recognizing such minimal conditions, which are safeguarded by the most basic, universally recognized, human rights, the state positions itself below the civilizatory threshold. The symbolic expansion of the conflict takes place in different directions: from individuals to classes; from private matters to social and political issues; from concrete grievances to a general indictment of an unjust social organization; from an isolated dispute to a series of conflicts resulting from the same social conditions from national law to international law; from positive law to natural law. This symbolic expansion produces a denser and broader social construction of the conflictual reality, which then filters down into the reality of the conflict as "originally" (indeed only hypothetically) constructed by the squatter settlers themselves; it is constitutive of the social practices of the actors involved in the conflict; it is accomplished through an articulated set of actions which include the mass media and both downward and upward politicization.

The *mass media* played a crucial role, their availability being explained by the process of redemocratization hesitantly in course at the time. The symbolic creation of a class enemy by the mass media was quite striking in the case of Skylab. They produced negative images of the landowners capable of damaging their business reputation as real estate developers. The interviews with the landowners reveal how well aware they were of this risk, and how this fact conditioned their strategy. They ended up accepting a negotiated agreement with the residents because, as they said, though they would win in court, such a course of action, because of its delays and publicity, would favor the interests of Communist agitators.

Downward politicization consists basically in the mobilization and organization of the communities to struggle effectively for their collective rights. This grassroots work, in which the Catholic Church again plays a central role, is the least visible, but also the richest social phenomenon emerging from the urban conflicts in Recife. For its efficacy it draws upon the experience of local, informal and unofficial community organization and law within the squatter settlements. Residents' associations are set up; general meetings are convened; rhymes are written on the topic of the struggle, very much in the tradition of the *romance de cordel*, so popular in the Northeast of Brazil; comics are prepared and widely distributed, most of the time by the mass organizations of the church. This is particularly remarkable in the older settlements (like the well-known Movement of Nobody's Lands in the Yellow House Hills), but even in the new settlements, downward politicization is also possible, as we saw in the Skylab and in the Peasants' Town cases. This politicization enables the poor to grasp the deep causes of their misery, to identify the enemy, and to redefine their interests in struggling against it. When such politicization is not possible, as in the Children's Town case, the behavior of the urban poor is desperate, chaotic and self-defeating. In this particular case, some of the residents, upon seeing their shacks destroyed, agreed to be hired by

the landowners to help to destroy the other shacks for a daily wage and two meals a day. In contrast, in the Skylab case, the residents talked to the company employees in charge of the demolition and showed them their common interests (as urban dominated classes). Some of the employees refused to go on demolishing the shacks, and as a consequence were fired on the spot by the landowner. The level of downward politicization is also crucial to understanding the types of concessions obtained from the state, as can be illustrated by the different quality and value of the land promised by the state to the residents in the Children's Town case and in the Peasants' Town case.

Upward politicization consists in the immediate and direct action of the defense lawyers to mobilize, in favor of the residents, the state administrative agencies to which they have access. It involves informal contacts with high officials and heads of state agencies, the use of political connections made possible by the democratization process, and veiled or not so veiled threats of street mobilization and potentially uncontrollable political unrest. In a period of transition after a military dictatorship, in order to be effective at the level of the state, upward politicization had to reach beyond the state and involve high and world renowned dignitaries of the Church, such as D. Helder and even a Nobel Prize winner. Through all these amplifying practices the conflict is socially reconstructed as a political and collective conflict and it is then that its legalization takes place. Hence the third phase of the political legal strategy.

The Seizing of the Law

The principle that the political and the legal development of the conflict should go hand in hand is the key to understanding the legal and judicial strategies of the defense lawyers. In some instances, the political and legal actions are kept separate, though they feed back upon each other. In other instances, however, they are so intimately intertwined in concrete judicial practices that they can hardly be distinguished. These practices are complex action formations, in which political and judicial elements are structurally interpenetrated, and they are the realm of the political mobilization of the law in the narrow sense. I distinguish three of such practices: *the production and distribution of judicial time; the reindividualization of collectivized conflicts; the politicization of the trial.*

The Production and Distribution of Judicial Time. This political-legal practice can be summarized in one remark by a defense lawyer in the Peasants' Town case: "Thank God justice is delayed." Judicial time is an arena of struggle, and can be effectively appropriated by the landowners, as in the Children's Town case, where the objective of the plaintiff was to control the legal development of the conflict before it could become politicized. To this end, the control of court bureaucracy was obtained by both legal and illegal means.

In highly politicized legal conflicts, the legal forms and procedures, in general, and deadlines and schedules, in particular, are the first dimensions of the legal field to reflect outside vibrations leading to the explosion of the bureaucratic mode of operation. They become specifically plastic, operating in a rubber cage

mode rather than in an iron cage mode. Plasticity is the other side of intense struggles around them. These struggles take place at two different levels: in the official legal discourse and reasoning, and in *in camera* sessions of the judges with the lawyers, whereby forms and procedures become objects of legal argumentation, "given the exceptional circumstances of the case." The expansion of legal rhetoric in these areas (form and procedures becoming arguments) brings about an overall informalization of the official legal system, approximating it to the Pasargada law ways analyzed in Chapter Three. This Pasargadification of the state law betrays the existence of underlying archeological correspondences and cross-references among different modes of juridicity. In exceptional circumstances and, therefore, without jeopardizing its overall identity, the official, formal, legal system falls back on modes of operation that are normal in unofficial, informal, legal systems.

In what specifically concerns judicial time, there is still another level at which the struggle for the plasticity of formal normativity is fought. It consists in the informal mobilization of the court bureaucracy, the secretarial services of the courts, through which dossiers can be moved up or down the piles of documents and acts which are waiting for judicial decisions. While in normal circumstances, this informal mobilization takes place in networks centered around interknowledge and corruption, in politicized legal conflicts, political complicities and allegiances are likely to become the central networking factor.

The Reindividualization of Collectivized Conflicts. This practice is particularly important. Legal conflicts are individual conflicts between legal subjects. Both Marxism and critical legal theories have claimed that this is a crucial feature in understanding how class relations and class inequities are reproduced by the legal system.¹¹ The individuals (be they urban invaders or landowners) appear before the law as formally equal citizens, abstracted from the social differences between them, in view of which their formal equality is little more than a sham. Though there is much truth in this critique, it seems to me that, in the course of social struggles of law, things are much more complex, and the process of legal individualization is more contradictory than it appears to be. In the Children's Town case, the legal individualization took place before the conflict could be politicized, and accordingly, it produced all the expected disorganization and atomization of the settlers. In the Peasants' Town case, on the contrary, the landowning company lost control of the process of legal individualization before it was concluded. Hence it could only identify 135 of the two thousand families. In this case, the legal individualization of the conflict, initiated in the landowners' interests, turned against them, as the legal conflict developed side by side with the political conflict. All the settlers who had not been identified were not competent legal subjects, but their incompetence was their most cherished judicial resource, the other side of the judicial powerlessness to tackle them as individualized transgressors. The defense lawyers were skillful in exploring this contradiction: as they said, anyone even vaguely familiar with life in a squatter settlement would understand the practical problems that the court officials or the police would face in identifying the people (a minority of residents) who were to be evicted.

In the Skylab case, the individualization of the conflict took place not in the judicial arena, but rather in the contract arena. But here also, the conflict was made political and collective before it was made legal. The landowners signed individual contracts with the residents only after having negotiated with them collectively. This shows that the political development of the conflict makes it possible for the legal individualization of the invaders to be transformed, from a factor of social atomization into a factor of social polarization.

The Politicization of the Trial. The political reconstruction of the conflict is also the political reconstruction of the actions of the parties brought to trial. For the defense lawyers, the actions of the urban poor, be they new invasions or resistance against eviction from old settlements, are social and political actions, irrespective of their legal or illegal status. The actions for which the settlers are tried are not ordinary illegal or criminal actions; they are social and political actions, in which the settlers are more victims than aggressors. The state law cannot operate in a social vacuum. Even less can it legitimately operate in conflict with the cosmopolitan law of human rights; in the light of this "higher law," the urban settlers are the oppressed victims.

This political reconstruction permeates all the substantive and procedural arguments of defense lawyers. However, to be tried for a political action is one thing, and to make the trial itself political is another. The highest form of political reconstruction is where the two are combined. As Bankowski and Mungham have shown, there are different strategies for politicizing the trials, though they involve in general the breaking up of the consensus in the courtroom, and the presentation of an alternative worldview.¹² The politicization of trials themselves is a relatively uncommon phenomenon in our research, but it did occur to a certain extent in the Peasants' Town case. Twice the crowd jammed the courtroom, singing, shouting and carrying banners. The objective was not so much to transform the court scene from a legal scene into a political scene, but to allow the legal scene to be played inside a political scene and both inside the same courtroom. The defense lawyers never tried to proceed entirely outside the court process, and never neglected the objective of obtaining a legal victory (in contrast, for instance, with the famous Chicago conspiracy trial in the U.S. in the seventies). Indeed, they hoped that, through this dramatization of a play within a play, the legal scene would rebel against its political shell, and would confirm its primacy by granting legally to the defendants what they could not obtain politically.

On the surface at least, it seems that this strategy failed. In both instances, the legal scene knew well how to insulate itself from the political scene. In one case, the judge suspended the proceedings and postponed the moment of decision, and in the other, the microphones were disconnected. On further reflection, an interpenetration of the two scenes may indeed have taken place, not in the trial court but later in the court of appeals. It was in the case of Peasants' Town that, for the first time, the Recife courts recognized the sociopolitical right to adequate housing as a legal right, legal enough, at least, to stop the right of property from aggravating the misery of eight thousand people for a three-month period.

CONTINGENCY AND CONTRADICTION IN STATE ACTION

I argue in this book that state law as well as state power, in general, are far from being monolithic or stable. As far as law is concerned, many factors account for this, some of which I have already mentioned above. I would like to add some more, with particular relevance in this research: the social interests and the social mobilization of the coalitions behind the creation of law or the application of law; the amount of bureaucratic resources ("bureaucratic contingency") or of financial resources ("fiscal crisis") supposed to be available if law is to be effective; the ideological congruence among the premises of law, the subculture of the judiciary or of the bureaucracy in general; the political outlook of the ruling elite; the direction and intensity of transnational pressures; the symbolic universes of popular culture or of "public opinion." All these factors are to be played out in conjunction with the three structural features of modern law: rhetoric, bureaucracy, and violence. Concerning state power in general, its heterogeneity and instability derives mainly from the fact, to be analyzed below, that the state, rather than solving the contradictions of capitalist societies, addresses itself only to the social tensions or conflicts derived therefrom, which it manages by very diverse mechanisms (whether measures or nonmeasures), such as exclusion, suppression, neutralization, trivialization, integration. The diversity of the mechanisms and the specific mixes among them in different areas or periods of state action account for the heterogeneity and asymmetry of state power.

What the Recife research shows is that, in periods of institutional crisis, such as those which usually accompany the process of regime transformation, state action is particularly unstable and contradictory, which, among other things, allows for relatively advanced forms of political action by the subordinate classes to emerge. This is not to say that a relative equilibrium between the ruling classes and the subordinate classes is thereby created and that, as a result, the state assumes a particularly high level of autonomy to fulfill its own interests, as in the so-called Bonapartist state. In our case, the autonomy of the state is less the purposeful affirmation of well-defined policies than the end result of cross-neutralizations of state action, a negative autonomy as it were, a lumpen-Bonapartism if you prefer. The analysis of the conflicts reveals contradictions, both within the different levels of the state government (city, state, federal) and within the different state apparatuses, and even within the same state apparatus, from conflict to conflict, and within the same conflict at different times. For example, the urban settlers may be "treated like dogs" by the state agency, as was denounced in the Children's Town case (mechanisms of exclusion or oppression), or they may be granted meetings with the governor, as in the Peasants' Town conflict (mechanisms of trivialization or integration). The police may act brutally, as in the first case, or intervene in favor of the poor—even though they had been summoned to protect the landowners—as in the Skylab case. In this particular case, the Secretary of Housing started out by proposing the expropriation of the land, and then retreated to a lease contract between the landowners and the residents in order "not to demoralize private property." As I have emphasized, the courts also behaved differently in the Children's Town and in the Peasants' Town case.

From the perspective of the law as both a practical resource and a discursive reference for the social actors, it is worth noting how rhetoric dominated the legal construction of the conflicts, even though bureaucracy and violence were also amply and unevenly present. This was due to the ability of the urban settlers, through their powerful allies at the time, to largely seize the ideological and political initiative over the unfolding of the conflicts. Their legal discourse was characterized by a broad rhetoric based on thick normativity, and political and philosophical *topoi* and arguments, through which the different layers of legality coalesced to amplify and consolidate the normative claims. The mass media played a crucial role as resonance boxes or loudspeakers for the legal rhetoric. In response to that, the courts, in their capacity as good guardians of the state-equals-law equation, tried to restrict the legal discourse as much as possible, subordinating legal rhetoric to legal bureaucracy and legal violence, in line with the orthodox positivistic mix. But the adoption of such a mix, which in "normal times" would be the condition for the courts' efficiency, became, in "abnormal times," a condition for inefficiency (trial suspension, delays, disruption of audiences). More pragmatic than the courts, the state administrative agencies soon concluded for the nonviability of the orthodox mix in such volatile conditions, and accordingly set out to dismember it into apparently incongruent patterns of action, which, however, were welded together by overarching, expedient considerations of political survival: high rhetoric and low violence in the case of Skylab; high violence, high bureaucracy and low rhetoric in the Childrens' Town case; low violence, low rhetoric and high bureaucracy in the Peasants' Town case.

This high level of contradiction in state action becomes constitutive of the social practices of the different classes and social actors in conflict. As to the urban poor and their allies, it confers a great flexibility to their social and political practices. They keep testing the state by increasingly polarizing their struggles and then trying to stop short of the point at which the state will activate the mechanisms of dispersal of contradictions which are most detrimental to their interests, such as the mechanisms of repression and exclusion—sometimes with success, sometimes without. As to the landowners, the high level of contradiction in state action gives a defensive character to their practices, since, in their view, they cannot take the state for granted anymore, not because the state is not globally on their side, but, even worse, because it is disorganized, incompetent or infiltrated.

The emphasis on the contradictions of state action should not imply that such contradictions are either infinite or random. As a matter of fact, they are structured in specific ways: even though social struggles can dislocate the structural boundaries of the state action, these will always exist and shape the social practices of classes and groups. One of such structural boundaries, particularly relevant to this study, is the principle of private property in articulation with the land question and more specifically with the urban land question. This is an area in which, to the surprise of many (understandably enough, since this theme was not a central one to Marx), Marx's theory is still relevant, even if only after some revision. The broader research project in which this study on urban conflicts is

integrated shows that, contrary to the view of some urban sociologists,¹³ the theory of ground rent, as developed by Marx for agriculture (in part following Ricardo),¹⁴ is also valid in the urban context, and that it is valid in its triple form of absolute rent, differential rent and monopoly rent.¹⁵ However, contrary to Marx,¹⁶ I maintain that, because the ground rent is not an exclusively economic factor, it does not operate alone, either in the rural or in the urban context;¹⁷ it operates in articulation with the different forms of land property.¹⁸ Though I cannot go into details on this issue here,¹⁹ the articulation of ground rent with the different forms of land property might help us to unravel the logic underlying the contradictions of state action, at least in some cases.

In the Children's Town conflict, for instance, the land had a very high market value, and was owned by the subsidiary of a multinational corporation which had bought it recently to expand its headquarters in Recife. In this case, state justice and bureaucracy moved swiftly and efficiently in favor of the landowner. In the Skylab conflict, on the contrary, the land had very low market value, and there was no reasonable expectation of dramatic increases in the differential rent in the near future. The land was owned by an old, local, real estate development company with various ties to the traditional landed bourgeoisie. In this case, the state was much more ambiguous in its defense of land property. At first, it proposed expropriation and then, a negotiated solution between landowners and residents. In settling on this latter option, the state sought a compromise that would minimally satisfy the interests of the residents without undermining the right of private property. In the Peasants' Town conflict the land was state-owned and, given the specific public use of the land, ground rent operated only marginally. This was also the case in which the state showed a more specific interest in protecting the rights of the residents.

Ground rent, however, provides only a partial structuring of the contradictions of state action. These contradictions, in the urban context, will not be fully understood unless we take into account other patterns of state action in the same period in other fields of social life, in Recife and in the state of Pernambuco, and indeed in the whole country. Just as an illustration, if we take as adequate, in this context, the time-honored distinction between social production and social reproduction, it is in my view most significant that, at the time of the field research, the same state of Pernambuco, which showed a relative concern for the urban poor and made important concessions at times, even if under pressure, could, at the same time, exercise a brutal repression against the sugarcane workers, who, just a few kilometers outside the city, were fighting the sugarcane growers and sugar mill owners for better wages and a labor contract. The struggle of the urban poor was a struggle for housing, that is, in the context of social reproduction, while the struggle of the rural workers was for wages, that is, in the context of social production. Under the political conditions of the time, the primacy of the relations of social production over the relations of social reproduction in capitalist societies might provide a partial explanation for the contrasting and apparently contradictory state actions in the two fields of social life, very close in physical-geographical terms, but distant in power-geographical terms.

COSMOPOLITANISM MEETS AUTHORITARIAN STATE LAW

The decisive role played by the Catholic Church in supporting and even in organizing the social movement of Recife's popular classes in their struggle for land and shelter deserves some further attention. The participation of the Catholic Church added a transnational dimension to the popular struggles, not only because the church is, in sociological terms, a transnational NGO, but also because it intervenes in the name of internationally recognized human rights law, that is, in the name of cosmopolitan law. Both these factors are relevant to substantiate my argument in this section.

As a transnational NGO, the church acts in accordance with normative principles and logics of collective action whose scope extends far beyond the social movements of Recife. This is documented in my study in two main instances. The first one deals with conceptions of social conflicts and of goals to struggle for, and ultimately with questions of strategy and tactics. I mentioned above how the lawyers of the Justice and Peace Commission were instrumental in amplifying the conflicts from conflicts between individuals to conflicts among social classes, from conventional legal conflicts into broad political conflicts and so on. It cannot be assumed that such amplification was fully apprehended or even unconditionally approved of by the settlers themselves. They, and sometimes even their leaders, conceived of their struggles in relatively narrow terms, as prompted by extreme deprivation and aimed at attenuating it, even if only marginally and temporarily. Concerned as they were with situations of immediate life emergency, they were at times reluctant to broaden the boundaries of their predicament. To amplify the conflict was also to radicalize it, and the risks involved therein were likely to be seen as too high, bearing in mind that in the previous two decades the popular classes had been victims of indiscriminate repression by the authoritarian state. For the church, on the contrary, the radicalization of the conflict was the only realistic alternative to obtaining even moderate concessions from the state and the landowners. The regime was disintegrating; repression could not be resorted to in the same arbitrary way as before, particularly in view of the regime's need for some measure of legitimacy in order to keep under its control the pace and the content of the transition to the new democratic regime called for by internal opposition and international pressure. Moreover, while the settlers tended to see the specific struggle in which they were involved as self-contained, their ultimate goal being a positive outcome for it, the church saw the different struggles as part of a broader social movement whose main objective was to accelerate the demise of the authoritarian regime and contribute to a new social pact, including a better lot for the subordinate classes. As a result, while the settlers tended to think of their concrete struggle in strategic terms, the church tended to think of each individual struggle in tactical terms. This difference became quite apparent in the case of Skylab. While the settlers readily accepted the lease contracts, the lawyers of the Justice and Peace Commission were initially reluctant to accept such a solution. It seemed too easy, and only falsely a safe solution; it led to the immediate demobilization of the settlers, making them unavailable to participate in other conflicts; in a word, it weakened the social movement as a whole.

Another instance in which the transnational character of the church's action came up in my research concerns the discussions I held at the time with the church lawyers and priests about the eventual links between different and apparently conflicting political actions of the church in different parts of the world. At the time, the political role of the Catholic Church in Poland had hit the headlines, and was being widely discussed. While in many countries in Latin America, and specially in Brazil, the political stance of sizable sectors of the church was unequivocally progressive, coupling democracy with social justice and even with socialism, in Poland the political stance of the church was by far more equivocal; it rejected any (not just the official) version of socialism, identified democracy with capitalism, and sought alliances with conservative if not outright reactionary groups. Could we separate the role of the Catholic Church in Recife from its role in Poland? If, as a transnational organization, all of its actions in different parts of the world were in some sense to cohere, where should we look for such coherence? Or should we rather think that the Catholic Church acted with wide regional autonomy? Or could it be that the differences were more apparent than real, since in both instances the church was unequivocally anti-Communist, and considered the call for socialism in Latin America as progressive as the call for capitalism in Poland? As one might expect, these questions were the subject of heated debates, and no consensus was reached at the time. The reason why I mention these questions is because the issues underlying them are much more relevant today than they were then, precisely as a result of the process of globalization and of transnationalization of the legal field discussed in the previous chapter. The proliferation of cosmopolitan transnational coalitions and transnational social movements brings to a new intensity the tension between local and transnational political agendas, between hierarchical and horizontal networking among goals and struggles in different parts of the world, among competing conceptions of tactics and strategy. Such tensions are today widely documented in different transnationalized social movements, be they labor movements, human rights movements, environmental movements, women's movements, indigenous peoples and ethnic minorities movements.

In the urban movements in Recife, the transnational dimension added by the church was added, as I started out by saying, not only because the church acted in its capacity as a transnational NGO, but also because it invoked the international human rights law as a legal justification for its action. Beyond its broader impact on the legitimacy claims of the regime, this legal justification, together with the political movement it constituted, led to a social construction of the law which, for its complexity, approached what we might call, following Lucien Goldman, the maximum of possible consciousness of law in capitalist societies. I will briefly characterize it in two items: law *as* legal, illegal and alegal; and law *as* ideology and utopia.

I have shown above that the social struggles in Recife were practical legal formations in which both legal and illegal moments coexisted. They were legal struggles and struggles for law; but they were also direct action, illegal mass behavior, and other forms of social action, whose legal status was dubious and which, for that reason, I will call alegal (for example, the unusual and unusually noisy crowding of the courtroom, semiauthorized rallylike gatherings of people in front

of the government's offices). The human rights law provided the struggles with an additional layer of "higher" legality, in whose terms those illegalities were in fact instantly created legality against the legalized illegalities committed by the government or the landowners.

This articulation of different legalities and illegalities, each one shading into the other or neutralizing the other according to circumstances, is in my view of great relevance. The classification of social practices as either legal or illegal, whether by legal science or by sociology and anthropology of law, entails, in general, a gross distortion of reality as socially constructed by the actors. Social practices are constellations of meaning in which both legal and illegal elements coexist in different weights and proportions according to the circumstances. In an encapsulated form, Marx somehow expressed this idea while referring to the factory legislation in nineteenth-century England, when he said that this *legal* "creation was the product of a protracted civil war."²⁰ Moreover, this articulation of legal and illegal elements in social practice is not exclusive of the transformative actions by the oppressed classes. Appearances to the contrary notwithstanding, the social practices of the dominant classes, even in the most stabilized democracies, recurrently involve both legal and illegal elements. Indeed, the social struggles of today's social movements are, probably more than ever, struggles for the redistribution of legalities and illegalities produced in social conflicts. In the course of legal strategies, illegalities are produced, and vice versa, and the struggle is, as ever, for the appropriation of the means of production of legality and illegality. The dominant groups in social conflicts are dominant because they manage to control for their own benefit the distribution of the legalities and illegalities produced in society at large, and brought to bear on the conflicts. Though unnoticed by much sociology and political theory of our time, the most powerful forms of resistance against class oppression continue to be made illegal by the dominant social actors (classes, groups), at the same time that they try to conventionalize their own illegalities, be they tax evasion or breach of labor safety regulations. They have also tried, since factory legislation at least—to stick to the same example—to bargain over their illegalities in such a way that minor illegalities are promptly and voluntarily eliminated on the condition that major illegalities go on unpunished.²¹ Needless to say, these processes are contradictory, and their occurrence is historically contingent. Nonetheless, the fact that dominant social actors are forced to frame their social practices in terms of legality and illegality is in itself significant, as it creates the symbolic and normative space within which subordinate social actors try to operate a redistribution of legalities and illegalities to their benefit. Recife's legal society, therefore, was composed of legalities and illegalities, and the social struggles within it aimed at moving the threshold of illegality upward or downward, according to the concrete interests of the social actors and classes in conflict.

A final note on law as ideology and utopia in the urban conflicts. At a time of volatile political transition between a recent past of oppression and injustice and an uncertain but hopeful future, the progressive interlegality promoted by the Catholic Church enabled law to become momentarily doubly transparent, as both ideology and utopia, retrospection and anticipation, domination and emancipation—in sum, somewhat like the Janus face of a Janus face. In order to capture

this transparency, I tried to combine a negative hermeneutics—a hermeneutics of suspicion vis-à-vis law in the face of its accumulated broken promises—with a positive hermeneutics—a hermeneutics of adherence to the choice of law by progressive social movements in specific and transitional conditions. Indeed, I have come to the conclusion that a combination of negative hermeneutics with positive hermeneutics presided over the symbolic universes and the social practices of the urban settlers, their community leaders, and the church activists (lawyers, priests, the Archbishop). Fears and hopes, anticipated frustrations and undecided futures were so transparent to each other that they motivated the social actors to act, as promptly as they prevented the sociologist's hand from writing preposterous predictions about their actions.